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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, March 29, 2018

9:30 a.m.

Volume 24

Pages 1 - 259

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

Computerized Transcription By Eclipse

1 APPEARANCES

2 CALIFORNIA WATER RESOURCES BOARD

3 Division of Water Rights

4 Board Members Present:

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

8 Staff Present:

9 Andrew Deeringer, Senior Staff Attorney
10 Conny Mitterhofer, Supervising Water Resource Control
11 Engineer
12 Jean McCue, Water Resources Control Engineer

13

14 PART 2

15 For Petitioners:

16 California Department of Water Resources:

17 James (Tripp) Mizell
18 Jolie-Anne Ansley

19

20 INTERESTED PARTIES:

21 For California Water Research:

22 Deirdre Des Jardins

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

Michael Jackson

26

27

28

29

1 APPEARANCES (Continued)

2 INTERESTED PARTIES (Continued):

3 For the Environmental Justice Coalition for Water,
4 Islands, Inc., Islands, Inc., Local Agencies of the
5 North Delta, Bogle Vineyards/Delta Watershed Landowner
6 Coalition, Diablo Vineyards and Brad Lange/Delta
7 Watershed Landowner Coalition, Stillwater
8 Orchards/Delta Watershed Landowner Coalition, Brett G.
9 Baker and Daniel Wilson, SAVE OUR SANDHILL CRANES,
10 Friends of Stone Lakes National Wildlife Refuge, The
11 County of Yolo:

12 Osha Meserve

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

17 Dean Ruiz

18 John Herrick

19 For Clifton Court, L.P.:

20 Suzanne Womack

21 For Friends of the River & Sierra Club of California:

22 E. Robert Wright

23 For Restore the Delta:

24 Nina Robertson

25 For State Water Contractors:

Stefanie Morris

For The Environmental Justice Coalition for Water:

Colin Bailey

Osha Meserve

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1 Thursday, March 29, 2018 9:30 a.m.

2 PROCEEDINGS

3 ---000---

4 CO-HEARING OFFICER DODUC: Good morning
5 everyone. Please take a seat.

6 Welcome back to the California Water Right --
7 to the Water Right Change Petition hearing for the
8 California WaterFix Project.

9 I am Tam Doduc. To my right are Board Chair
10 and Co-Hearing Officer Felicia Marcus and Board Member
11 Dee Dee D'Adamo. To my left are Andrew Deeringer and
12 Conny Mitterhofer.

13 We are being assisted today by Miss Gaylon.

14 Since I do see new faces, in the event of an
15 emergency, an alarm will sound and we will evacuate
16 through this door (indicating), because we've learned
17 from experience that it's the only door to which you
18 can access the stairs.

19 Go down to the first floor. And if you're not
20 able to take the stairs, please flag down some of the
21 safety monitors and they will direct you to a
22 protective area.

23 Secondly, please -- Since I just heard a ding,
24 I'll jump to the most important announcement.

25 Please take a moment and put all our

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1 noise-making devices on silent, vibrate, do not
2 disturb. Even if you think they are, please
3 double-check and triple-check.

4 Not only does it help lower my voice annoyance
5 threshold, it also is a courtesy and a sign of respect
6 for all the participants here today.

7 And going back to the second announcement:

8 This meeting is being Webcasted and recorded,
9 so speak into the microphone and begin my stating your
10 name and affiliation once you ensure that the green
11 light is on.

12 Our court reporter is back with us. If you
13 would like a transcript earlier than the end of Part 2,
14 please make arrangements directly with her.

15 We probably have some housekeeping matters to
16 discuss. I know that Mr. Jackson has a housekeeping
17 matter.

18 And I see Miss Des Jardins in the audience,
19 and I have questions for her, if she's able to answer,
20 based on PCFFA's request yesterday.

21 So why don't we begin with -- Actually, why
22 don't we begin with Mr. Mizell. I think the Department
23 sent out an e-mail to the Service List this morning.

24 MR. MIZELL: Yes, that's correct.

25 This morning, we served all the parties in an

1 e-mail with a letter and some informational tables, as
2 well as a copy of the fact sheet that the Department
3 released early this morning on construction engineering
4 design refinements that are taking place as we move
5 from the level of detail contained in the Conceptual
6 Engineering Report to something more substantial than
7 that.

8 So, this was the information that I made the
9 announcement about last Friday, and so we served that
10 on the parties this morning.

11 CO-HEARING OFFICER DODUC: And help me out
12 since I'm not one of you, being an attorney.

13 What does that mean in terms of how we handle
14 it on an evidentiary basis, or is this information?

15 MR. MIZELL: This is information released to
16 the public.

17 At this time, DWR is not proposing to make
18 this an exhibit in Part 2. They're not -- We're not
19 proposing to introduce it into evidence at this time.

20 As I -- As I stated in the letter that's
21 attached to the submission, it's my -- it's my belief
22 that all of the subject matter set forth in the -- in
23 the engineering refinements fall within appropriate
24 rebuttal.

25 But I simply said in the letter that, should

1 the Hearing Officers agree with that determination, all
2 parties would then have the opportunity to review it
3 and use it as they feel necessary in rebuttal.

4 But, no, the Department is not proposing to
5 enter it in as part of their case in chief. This would
6 simply be something to be informative of future --
7 future testimony as appropriate at that time.

8 CO-HEARING OFFICER DODUC: Is there any
9 questions, followup on that before we get to
10 potentially other housekeeping matters?

11 MS. DES JARDINS: I'm just wondering. There's
12 some outstanding discovery requests for engineering
13 changes to the Project, and I'm wondering if anyone in
14 the Department's going to respond to that.

15 MR. MIZELL: If Miss Des Jardins is referring
16 to the last Order from the Hearing Officers that DWR
17 meet and confer with PCFFA regarding their
18 two-and-a-half-year-old subpoena, I have that on my
19 list of things to do, and as soon as I am not here and
20 have a moment, then I will certainly reach out to
21 PCFFA.

22 CO-HEARING OFFICER DODUC: Well, you will have
23 some time next week. I would encourage you to do that.

24 MS. DES JARDINS: I just would like to make a
25 correction.

1 It's with respect to the March 2nd, 2018,
2 subpoena to DWR by PCFFA that was served to you.

3 One of the specifications was for engineer --
4 It was specifically focused on changes to the Project
5 since -- I think since July 17th, 2017.

6 CO-HEARING OFFICER DODUC: Again, I will leave
7 it for you two to confer.

8 Any other question with respect to the
9 announcement Mr. Mizell just discussed, or the release,
10 rather?

11 Mr. Jackson.

12 MR. JACKSON: Yes.

13 As Mr. Mizell indicated, sometime early this
14 morning or, judging from my phone messages, sometime in
15 the middle of the night, this document was released.

16 Could I put it up on the screen? It's now
17 been served on everybody. It'll be easier to point
18 out --

19 CO-HEARING OFFICER DODUC: Any problem with
20 that, Mr. Deeringer?

21 MR. DEERINGER: No.

22 CO-HEARING OFFICER DODUC: Okay.

23 (Exhibit displayed on screen.)

24 CO-HEARING OFFICER DODUC: Attorneys and their
25 rules. Sometimes I have to double-check.

1 MR. JACKSON: Could you scroll down to the
2 design refinements and proposed modification page that
3 has --

4 (Exhibit displayed on screen.)

5 MR. JACKSON: Yeah. The next -- The next
6 page.

7 (Exhibit displayed on screen.)

8 CO-HEARING OFFICER DODUC: Please keep in
9 mind, Mr. Jackson, that I can't speak for everybody,
10 but I have not looked at this.

11 MR. JACKSON: I -- I -- I'm well aware that
12 you haven't looked at this. That's why I wanted to put
13 it up.

14 Basically, what I'm -- I'm asking for is a
15 stay of the hearing for a period of time so that we can
16 have time to examine whether or not our direct cases
17 have been negated by this particular filing.

18 We put on evidence on direct that related to
19 each of these boxes, and related to as late as
20 yesterday.

21 I'll start at the bottom and work my way back
22 up to -- to demonstrate why I think this requires new
23 cases in chief.

24 CO-HEARING OFFICER DODUC: Mr. Jackson, let me
25 do this.

1 Since we have a long break next week, instead
2 of going through this right now, I would suggest you
3 put that in writing. It seems like it's going to be a
4 pretty detailed discussion.

5 MR. JACKSON: I would like to describe for the
6 transcript what -- what these changes are and how
7 they -- they -- they will affect everything you've
8 heard so far.

9 CO-HEARING OFFICER DODUC: And I would prefer
10 you do that in writing rather than use up the time
11 here. That way, the Department and others will have a
12 chance to respond as well as we consider your request.

13 What I'm suggesting, Mr. Jackson, is, this
14 seems to be a perhaps lengthy, detailed and obviously
15 significant request that you would like us to consider.
16 And rather than doing it verbally right here and now,
17 I'm suggesting that, since this will be the last day of
18 hearing this week and we only have Monday next week,
19 that there is time for you to put this in writing.
20 There's time for others to respond to it. And there's
21 time for us to consider it appropriately.

22 MR. JACKSON: I will do as you say.

23 I would just like to point out that the tunnel
24 alignment is changing, the power line alignment is
25 changing.

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

2 MR. JACKSON: The --

3 CO-HEARING OFFICER DODUC: -- there's no need
4 right now for all those because I have not seen it. I
5 don't think -- And we're not going to reach any
6 decision today.

7 And we want to take your request seriously,
8 so, again, I am now directing that you put that in
9 writing so that we can review it, so that we can review
10 this new information that just landed in my e-mail at
11 9 o'clock this morning, and that all the parties have a
12 chance to provide input.

13 Miss Meserve.

14 MS. MESERVE: Good morning. Osha Meserve on
15 behalf of LAND and other parties, including Stone Lake
16 National Wildlife Refuge Association.

17 And I won't belabor the point. I understand
18 your direction to put it in writing.

19 Did you provide a deadline for that or
20 just . . .

21 CO-HEARING OFFICER DODUC: Any day tomorrow?

22 MS. MESERVE: Yeah.

23 CO-HEARING OFFICER DODUC: It sounds like you
24 guys are prepared to talk about it today, so just put
25 it in writing tomorrow.

1 MS. MESERVE: "Prepared" is a little bit of
2 overstatement.

3 I guess I want to briefly state that: I have
4 a concern that there's an abuse of public process going
5 on at the highest levels of DWR, not by the counsel
6 here today, but by -- at the highest levels.

7 Because DWR knew in November and prior that
8 they were changing the Project. And they knew not just
9 about the phased alternative but also about the Project
10 changes that are released in this document today in a
11 very cryptic and PR form. And yet there's been no NOP
12 released yet so we haven't even had a chance to see the
13 whole description.

14 And so it really undermines the ability of the
15 public to participate in this process when we keep
16 marching forward without a stable Project description.
17 And just as any other process, the water rights process
18 requires a stable Project description.

19 As Mr. Jackson just explained, we've responded
20 to a totally different Project.

21 Now, certain of the changes may be beneficial,
22 we don't know yet, and they haven't been described in
23 particularity, but it may have different impacts just
24 as the phased alternative probably would.

25 So, I just am very concerned about continuing

1 to march forward supposedly in the interest of
2 efficiency when it's not efficient for Protestants,
3 it's not efficient for the public and it indeed
4 interferes with our ability to respond to whatever it
5 is that DWR is now proposing.

6 CO-HEARING OFFICER DODUC: If I might hear
7 from Mr. Ruiz and Miss Womack first since they have not
8 had a chance to speak yet today.

9 MR. RUIZ: Good morning. Dean Ruiz for the
10 South Delta Water Agency parties.

11 I also haven't seen this, and so I understand
12 and respect your request to have it in writing, of
13 course, so it's fully briefed.

14 But I would just point out that we're in the
15 midst of some key witness testimony and panels from a
16 public trust/public interest standpoint.

17 I think it's -- it's highly prejudicial and
18 inefficient from a reality standpoint, from our
19 perspectives, when we have limited time, limited
20 budgets.

21 I would respect -- suggest that we don't
22 conclude or move forward at all, because we're going to
23 conclude this panel, they're going to wrap up, then you
24 move into Friends of the River.

25 I just don't think it's -- it's -- it's

1 efficient at all to go forward any further.

2 I haven't seen it, but it seems to be a key
3 element. The fact that Mr. Mizell sent it out last
4 night says, well, I think it only really pertains to
5 rebuttal. We don't even have rebuttal dates set.

6 So, obviously, he has some concern that it
7 pertains more than rebuttal because it could have been
8 sent out whenever. We have plenty of time for
9 rebuttal.

10 I would just suggest that we step back even
11 briefly, even for a day, to step back and see what this
12 is exactly before we move forward with even finishing
13 these panels.

14 Thank you.

15 MR. MIZELL: Hearing Officer Doduc, if I may
16 respond very briefly.

17 As to my intent in making this announcement,
18 it is not because I'm trying to imply that it pertains
19 to rebuttal or to a case in chief or anything else.

20 The timing of the release of this information
21 was made by the Project Team. My duty here in this
22 hearing is to make sure that the Water Board, you
23 Hearing Officers, staff, and the parties at this
24 hearing are informed of evolutions in the information
25 that exist in the public. That was the purpose of my

1 announcement last Friday. That was the purpose of my
2 filing this morning.

3 It was made public by the Project Team for
4 reasons related to other permitting processes, and it
5 was not made public in some nefarious attempt to
6 undermine this process.

7 So I -- I would like it to be very clear:
8 This is not -- This process here is not the only
9 process going on, and I'm doing my best to make sure
10 that the parties do stay informed of the latest
11 information.

12 CO-HEARING OFFICER DODUC: Miss Womack.

13 MS. WOMACK: Thank you so much.

14 Could you move that up to the top because --
15 (Exhibit displayed on screen.)

16 MS. WOMACK: No, the other way, to the end of
17 the paper.

18 (Exhibit displayed on screen.)

19 MS. WOMACK: We have been going on about --
20 Miss Ansley has been going on grilling people, "Is this
21 H -- 4A H3+." Every single person has had to endure
22 that.

23 This does not look like -- Look at Clifton
24 Court. Is Clifton Court in or out? We started these
25 proceedings with me saying, "Hey, am I in or out? I

1 just want to know."

2 My team got 1998 CALFED (indicating); wanted
3 to buy our property.

4 2006, 2008, BDCP (indicating).

5 I've been under a cloud for 20 years. I can't
6 afford attorneys. 20 years of dealing with this.

7 And now we're -- This looks like a change to
8 me. And I understand you needing time. I need time.

9 I couldn't tell much from that, but I can tell
10 it's not 4A H3+. And I think it's very wrong to
11 continue with anybody.

12 I haven't been able -- My testimony would be
13 very different with this from the start --

14 CO-HEARING OFFICER DODUC: Miss Womack.

15 MS. WOMACK: -- from Part 1.

16 I'm sorry. It's just, I've wasted two years,
17 my time. I'm retired. I like to kayak on the rivers.
18 This is -- I know. What an idea.

19 Thank you.

20 Sorry to get upset, but I am upset.

21 CO-HEARING OFFICER DODUC: No. I happen to
22 need a kayaker for Eppie's Great Race.

23 MS. WOMACK: Oh, you do?

24 MR. WRIGHT: Good morning. Bob Wright.

25 CO-HEARING OFFICER DODUC: Okay, Mr. Wright.

1 MS. WOMACK: I'd do it. I love it.

2 MR. WRIGHT: If -- My request is simply, on
3 behalf of Friends of the River and Sierra Club of
4 California, is that if you adhere to your directive to
5 put it in writing, that the parties who wish to put it
6 in writing have until end of day Tuesday as opposed to
7 end of day Friday.

8 CO-HEARING OFFICER DODUC: Yes, I agree.

9 MR. WRIGHT: Thank you very much.

10 MS. ROBERTSON: On behalf of Restore the
11 Delta, I just wanted to reiterate that request and the
12 sentiment expressed here about the problems of the
13 public process and the transparency of Department of
14 Water Resources.

15 Thank you.

16 CO-HEARING OFFICER DODUC: Miss Des Jardins,
17 thank you for being patient.

18 MS. DES JARDINS: Oh, yeah. It's okay.

19 So, I am having the Chair of the San Joaquin
20 County Audubon Society testify, case in chief, about
21 impacts of Alternative 4A on -- as described in the
22 Final EIR on birds.

23 This is a substantial change from
24 Alternative 4A. And I have a very real question of
25 whether the witnesses testifying in this proceeding

1 that Alt 4A, as described in the Final EIR, was the
2 Adopted Project, whether, for example, John Bednarski
3 knew that it was not.

4 And I think, for that reason, that before
5 rebuttal, DWR needs to comply with the outstanding
6 subpoenas. I believe there was one by the City of
7 Antioch that also requested engineering changes, and
8 that should have been produced.

9 I haven't seen anything produced without
10 that -- what was due before the hearing started.

11 It is difficult because rebuttal is limited to
12 rebuttal to what they presented. And when this kind of
13 new information comes out after case in chief, it
14 creates an issue.

15 This is required under the Water Code to be in
16 the Petition at time of filing. This is different than
17 Alternative 4A, which is in the Petition.

18 I've already indicated it does not provide
19 adequate notice to the parties of impacts on either
20 water rights or their -- or their -- their impacts on
21 the public trust.

22 And notice issues are not cured by provision
23 of the information. This is part of due process under
24 the State --

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

1 I'm not asking for arguments today.

2 MS. DES JARDINS: Okay. Thank you.

3 But I -- I do concur that this needs to be
4 addressed in a comprehensive way so that all the
5 parties have adequate notice of what the actual Project
6 is.

7 Thank you.

8 CO-HEARING OFFICER DODUC: Miss Meserve, and
9 then I will turn back to you, Mr. Mizell, to address
10 the issue of how this, if it does, impacts the various
11 alternatives as well as the CWF H3+ that is the focus
12 for this Part 2.

13 Miss Meserve.

14 MS. MESERVE: Good morning. Yes.

15 I'd just like to clarify that I understand
16 Mr. Mizell is doing his job here keeping us apprised,
17 and so my criticism is not of counsel that's here in
18 this room, just to be clear.

19 And I also wanted to point out I just received
20 a communication from Michael Brodsky of Save the
21 Coalition for the Delta -- or Alliance to Save the
22 California Delta.

23 And he's also very concerned that this changes
24 his Part 2 case-in-chief testimony, just I am concerned
25 and others have expressed.

1 Thank you.

2 CO-HEARING OFFICER DODUC: Mr. Jackson.

3 MR. JACKSON: Yes.

4 I just -- I was also notified by Mr. Keeling
5 that he supports . . . the idea that this changes the
6 cases in chief and is not appropriate for rebuttal
7 because we can only rebut their case which now is not
8 this case that's on -- on -- in front of us.

9 I'd also like to point out that this data
10 indicates that they acknowledge that it's different in
11 that they're going to do -- they're going to take care
12 of this in a Supplemental EIR later.

13 And I -- I think it knocks the props out from
14 under the existing environmental document for the
15 purposes of this hearing. It may not change whether or
16 not they have to do a supplemental or a subsequent, but
17 it certainly does change whether or not you are
18 considering an EIR that covers this decision.

19 CO-HEARING OFFICER DODUC: Miss Morris, and
20 then final word to Mr. Mizell.

21 MS. MORRIS: I just wanted to clarify a
22 statement that was just made by Mr. Jackson.

23 As I understood an earlier oral ruling by the
24 Hearing Officer and counsel, that rebuttal did go
25 beyond direct -- beyond people's direct testimony and

1 included items that were covered in cross-examine --

2 CO-HEARING OFFICER DODUC: Correct.

3 MS. MORRIS: -- as well.

4 Thank you.

5 CO-HEARING OFFICER DODUC: Mr. Mizell.

6 MR. MIZELL: Yes. And I'll make this brief
7 because I understand we'll also have an opportunity to
8 respond in writing.

9 I would agree with Miss Morris that, as to
10 Mr. Jackson's last point, we -- at least it's my
11 assertion that the items addressed in the information
12 that -- that I submitted to the parties falls squarely
13 within what has been discussed throughout the course of
14 Part 2 and, therefore, would fall within the rulings
15 previously made on what constitutes appropriate
16 rebuttal material, however, the -- however parties
17 would like to use this information.

18 If we could stroll up to one of the tables,
19 probably the first table. That would be Page 2.

20 (Exhibit displayed on screen.)

21 MR. MIZELL: What I attempted to do -- The
22 tables included in this submission were not released
23 last night.

24 Mr. Jackson does reference a -- the posting of
25 the press piece that you see. The fact sheet was sent

1 out to a very large list, not exclusive to this
2 hearing.

3 The tables that I've included in my letter,
4 however, have only been sent to the parties in this
5 hearing. And I compiled those tables precisely because
6 of the concerns that I expected and we have heard this
7 morning, which is, people will want to know with more
8 precision the changes that are being discussed in the
9 engineering refinements.

10 The tables in this go on to -- to detail both
11 the footprint aspects of Alternative 4A, as well as the
12 fish and wildlife aspects of Alternative 4A.

13 As to how I would characterize these changes
14 with regards to the Project that is the source of the
15 Petition and the subject of this hearing,
16 Alternative 4A is a three-intake 9,000 cfs project.
17 That is not changing.

18 The locations of the intakes, as you can see
19 on the top line of this table, are not changing.

20 The rest of the Water Rights Permits are not
21 changing because of what we have released today.

22 The H3+ Operational Criteria are not changing.

23 So when it comes down to it, it's my belief
24 that Alternative 4A H3+ remains intact and what we are
25 talking about are engineering refinements at this

1 point.

2 CO-HEARING OFFICER DODUC: Which, in your
3 assertion, does not impact the modeling nor the
4 analysis that you presented about the modeling.

5 MR. MIZELL: It does not impact the modeling,
6 and it does not impact the hydrodynamic analysis. And
7 the tables in this -- in this submission would set
8 forth what we believe are shifts in the on-the-ground
9 construction-based biological impacts.

10 CO-HEARING OFFICER DODUC: Okay. You had a
11 question, Mr. Deeringer?

12 MR. DEERINGER: Yes. Thank you.

13 I had a couple clarifying questions for DWR.

14 The first is to just make sure I heard you
15 correctly, Mr. Mizell.

16 Is it your contention that, at this point, DWR
17 is making no commitment one way the other as to how it
18 intends to -- or whether it intends to introduce this
19 as evidence at any later point in this hearing?

20 MR. MIZELL: That's correct. I make -- I'm
21 not making any -- any assertions as to how DWR intends
22 to use this information.

23 I, you know, received this information very
24 close in time to when it becomes public, and so in
25 terms of how it would relate to rebuttal still remains

1 to be seen.

2 I believe that, if I were to use any of this
3 information, I would need to tie it back to parties'
4 cases in chief and cross-examination that has occurred
5 in -- as a part of Part 2.

6 And so I'll have to make that showing if I'm
7 going to develop rebuttal upon it.

8 MR. DEERINGER: Thanks.

9 And then my second question had to do with --
10 I'm trying to understand -- I'll just put it this way:

11 What is your understanding, if you can explain
12 it now -- And if not, then in a written response to the
13 other parties would probably be appropriate.

14 What is DWR's level of legal commitment to
15 these refinements? Is it -- Is this now going back to
16 these commitments? Are these subject to further
17 change?

18 And, again, if that's not something you can
19 speak to today, in writing is fine.

20 MR. MIZELL: Yes. I under -- I believe I
21 understand the question, Mr. Deeringer.

22 I would like to probably provide that in
23 writing. It will give me the opportunity to better
24 understand the other permitting processes that are
25 driving these changes, and that will help inform my

1 answer.

2 MR. DEERINGER: Thank you. That's all I have.

3 CO-HEARING OFFICER DODUC: I'm closing the
4 door. We've spent half an hour on this.

5 And based on Mr. Wright's request, you may
6 have until 5 p.m. Tuesday to provide in writing your
7 concerns, objections, requests regarding this matter.

8 And DWR, you will have until 5 p.m. Wednesday
9 to respond.

10 And we will do our best to see if we can go
11 through this -- and I'm looking at Mr. Deeringer
12 here -- provide a response before we resume, if that's
13 a decision with the hearing the week after. So that
14 gives us about two days.

15 MR. DEERINGER: (Nodding head.)

16 MS. MESERVE: Excuse me. I'm sorry.

17 One other question would just be when the
18 notice of preparation would be released that might list
19 all the things that are subject to the Supplement EIR,
20 because it's quite confusing what Mr. Mizell just said
21 about H3+.

22 CO-HEARING OFFICER DODUC: Miss Meserve, put
23 that in your written request.

24 And Mr. Mizell is here directed to respond in
25 his written response.

1 MS. WOMACK: I'm so sorry to have to come up
2 again, but I -- I can -- I can find nothing at 9:05
3 from Mr. Mizell. I haven't received any of this.

4 CO-HEARING OFFICER DODUC: Because -- Didn't
5 you opt not to receive e-mails?

6 MS. WOMACK: No, I get e-mails. I just -- I
7 have -- Then will I have the material right now? I
8 need to be able to look at this carefully.

9 MR. MIZELL: Yes.

10 So, for Miss Womack, she did opt out of
11 electronic Service.

12 If she provided an e-mail to the electronic
13 service list, she would have been provided an e-mail.
14 However, I believe a print copy was made this morning
15 and is in the U.S. Mail.

16 CO-HEARING OFFICER DODUC: Miss Womack, if you
17 would provide you Miss Gaylon your e-mail address, she
18 will forward it to you right now.

19 MS. WOMACK: So I can't get a print copy from
20 Mr. Mizell right now.

21 I mean, this is short notice. I'd really like
22 to have it in my hand as I leave today. I wasn't
23 planning on coming in.

24 CO-HEARING OFFICER DODUC: This is seven
25 pages. We will make arrangements for you to have a

1 copy.

2 MS. WOMACK: Thank you so much. I really
3 appreciate it.

4 CO-HEARING OFFICER DODUC: Are there any other
5 housekeeping matter?

6 MS. DES JARDINS: Miss Doduc, I'm
7 attempting -- There's two issues with witness
8 availability.

9 One is, PCFFA asked to change with me because
10 Noah Oppenheim and --

11 CO-HEARING OFFICER DODUC: Miss Des Jardins,
12 let me stop you.

13 MS. DES JARDINS: Yeah.

14 CO-HEARING OFFICER DODUC: We have received
15 all those requests.

16 The only thing that I would like you and
17 Mr. Volkel -- Volker to understand is, we cannot
18 guarantee a date for his various witnesses.

19 His latest request had date and witnesses for
20 those dates. I cannot guarantee that. It just depends
21 on how things go, and depending on our decision on this
22 request.

23 So, you may interpret that to be, yes, the
24 change and order is approved --

25 MS. DES JARDINS: Thank you.

1 CO-HEARING OFFICER DODUC: -- but I cannot
2 guarantee the date certain that Mr. Volker's requested.

3 MS. DES JARDINS: I will clarify that with
4 him.

5 And, also, I did -- So CDFW is requesting a
6 date certain.

7 CO-HEARING OFFICER DODUC: Yes.

8 Let me also address that, because you already
9 submitted in writing.

10 The whole point of submitting things in
11 writing, people --

12 MS. DES JARDINS: Yeah.

13 CO-HEARING OFFICER DODUC: -- is that we don't
14 have to take up time during the hearing.

15 We have received a request. We recognized, as
16 I said yesterday, that yours is a special case where
17 some date certainty is needed.

18 We are reviewing your request. You will be
19 receiving further suggestion -- I mean, further
20 direction from us, but we will do our best to
21 accommodate that.

22 But it's not a simple matter because we would
23 have to find time in the schedule in order to fit in
24 your -- your fish and wildlife testimony.

25 So we are looking at that.

1 MS. DES JARDINS: And my other witness can go
2 in whatever --

3 CO-HEARING OFFICER DODUC: I understand.

4 MS. DES JARDINS: Thank you very much.

5 MS. WOMACK: Miss Morris helped me out. I
6 apologize, especially DWR. I did -- I did get it, so
7 (laughing) . . .

8 CO-HEARING OFFICER DODUC: So do you still
9 need --

10 MS. WOMACK: I will be fine getting it from
11 them and looking at it both ways. I give it to my
12 father so that's fine.

13 CO-HEARING OFFICER DODUC: So you're not
14 asking Miss Gaylon to give you a prepare copy.

15 MS. WOMACK: Well, they're sending one, so I
16 will be able to --

17 CO-HEARING OFFICER DODUC: All right .

18 MS. WOMACK: It's for my father.

19 Thank you.

20 CO-HEARING OFFICER DODUC: All right. Okay.
21 Apologize for the wait. We do want to get through this
22 panel.

23 And while I appreciate the request to stop
24 everything and review documents, we get documents all
25 the time, and we just can't stop everything and -- and

1 review it when, especially at this point, I don't know
2 yet what the significance is.

3 So, for that reason, I am going to direct that
4 we proceed today, Monday, and then we do have a break
5 for you all to submit in writing your concerns, your
6 response, and for us to consider that.

7 Is there any other housekeeping matter?

8 MS. MORRIS: I wasn't here yesterday, so I
9 just wanted to alert you to the fact that I may have
10 about 20 minutes of cross-examination for this panel.

11 CO-HEARING OFFICER DODUC: Okay. So let me
12 double-check.

13 I have at least 60 minutes from the
14 Department, 20 from State Water Contractors, 15 from
15 Miss Meserve, 30 from what was Mr. Ruiz but perhaps now
16 it's Mr. Herrick?

17 MR. HERRICK: It's --

18 CO-HEARING OFFICER DODUC: No?

19 MR. HERRICK: -- still Mr. Ruiz.

20 CO-HEARING OFFICER DODUC: It's still
21 Mr. Ruiz. Okay.

22 15 from Mr. Keeling, 15 from Mr. Jackson,
23 although he did say that he might need more.

24 MR. JACKSON: Also, Mr. Keeling asked me to do
25 the cross for him.

1 CO-HEARING OFFICER DODUC: Okay. And that's
2 all I have.

3 So that is 30, an hour, two hours, roughly
4 two and a half, maybe three hours, for this panel.

5 And then depends on whether or not there is
6 redirect or recross.

7 All right. If you could outline your topics,
8 Mr. Mizell.

9 MR. MIZELL: Certainly.

10 I'll start with Miss Barrigan-Parrilla.

11 And the topics are going to be financing,
12 JPAs, Metropolitan Water District Contractors, and
13 sources of information used in her testimony.

14 CO-HEARING OFFICER DODUC: Thank you.

15 Barbara Barrigan-Parrilla,

16 Gary Mulcahy,

17 and

18 Tim Stroshane,

19 called as witnesses by Restore the Delta,

20 having been previously duly sworn, were

21 examined and testified further as follows:

22 CROSS-EXAMINATION BY

23 MR. MIZELL: Miss Barrigan-Parrilla. Good
24 morning.

25 WITNESS BARRIGAN-PARRILLA: Good morning.

1 MR. MIZELL: How would you characterize -- Let
2 me start over.

3 Would you characterize yourself as adamantly
4 opposed to the construction of the California WaterFix?

5 WITNESS BARRIGAN-PARRILLA: Yes.

6 MR. MIZELL: Okay. Are there any alternatives
7 considered in the FEIR that you would support?

8 WITNESS BARRIGAN-PARRILLA: Not as presently
9 described in the EIR because we feel that the . . . no
10 tunnel alternative doesn't put into place other things
11 that we believe need to be put in place for water
12 sustainability in California.

13 MR. MIZELL: Okay. I think I understand.

14 So, there may be some project out there that
15 involves north-south conveyance.

16 So, would you be opposed -- Let's see if I can
17 just get confirmation of that.

18 Would you be opposed to any north-south
19 conveyance using a tunnel or pipeline rather than the
20 Delta channels?

21 WITNESS BARRIGAN-PARRILLA: Yes. However,
22 what I say is that we're talking about other projects,
23 alternative projects throughout California that would
24 create water supply in place of having to put in new
25 conveyance.

1 MR. MIZELL: Okay. So, then, it would also be
2 the case that, if it could be demonstrated that the use
3 of -- of pipeline or tunnels could convey water from
4 north to south instead of using the Delta channels, and
5 that that was beneficial to fish, you would still be
6 opposed to such a project.

7 WITNESS BARRIGAN-PARRILLA: Well, at Restore
8 the Delta, the work that we do is based on broad
9 research and facts that are presented not only through
10 government processes but put on by Water Districts,
11 science panels, et cetera.

12 If there was a piece or pieces of research
13 that indicated that this would be a better solution for
14 the Delta, then we would have to study it and consider
15 it.

16 But, thus far, we have never seen a piece of
17 research or evidence that leads us to that conclusion.

18 MR. MIZELL: Okay. Thank you very much.

19 Have you ever testified as an expert in State
20 Court?

21 WITNESS BARRIGAN-PARRILLA: Not as an expert
22 in State Court. I've testified here at the Part 1 of
23 this hearing.

24 MR. MIZELL: Thank you.

25 Have you ever testified as an expert in

1 Federal Court?

2 WITNESS BARRIGAN-PARRILLA: No.

3 MR. MIZELL: Thank you.

4 Based on my reading, the vast majority of your
5 testimony is based upon Project details for which you
6 cite back to the SWRCB-5 as their source, and that's
7 the 2013 Draft BDCP --

8 WITNESS BARRIGAN-PARRILLA: Yes.

9 MR. MIZELL: -- is that correct?

10 WITNESS BARRIGAN-PARRILLA: Yes.

11 MR. MIZELL: Thank you.

12 Are you aware that the Project is the
13 California WaterFix as adopted in July 2017?

14 WITNESS BARRIGAN-PARRILLA: We understand that
15 there was a change, that it's moved from BDCP to
16 California WaterFix in 2015.

17 MR. MIZELL: So you're aware that the Project
18 description has been refined since 2013?

19 WITNESS BARRIGAN-PARRILLA: Yes.

20 MR. MIZELL: Is it your understanding that
21 those refinements have reduced impacts to fish and
22 wildlife by, for instance, incorporating additional
23 outflow standards?

24 WITNESS BARRIGAN-PARRILLA: We do not see a, I
25 believe, decrease in impacts to fish and wildlife.

1 MR. MIZELL: Okay. Not a complete decrease.

2 Do you see any decrease?

3 WITNESS BARRIGAN-PARRILLA: I can't recall
4 if -- I cannot recall if there are decreases listed in
5 the change.

6 I do know that we don't see overall
7 substantial improvement, and we know that, with the
8 refinement, that there were impacts at the North Delta
9 intakes, particularly on Salmon, that were concerning.

10 MR. MIZELL: Okay. So I'm going to move into
11 sort of some questions regarding financing. I believe
12 the first part of your testimony focuses on financing
13 of the Project.

14 If we could bring up RTD-23, Miss Gaylon.

15 (Exhibit displayed on screen.)

16 MR. MIZELL: And I'm looking for Page 8.

17 (Exhibit displayed on screen.)

18 MR. MIZELL: So if I understood your testimony
19 yesterday, this slide was meant to represent the
20 conclusions of the State audit; is that correct?

21 WITNESS BARRIGAN-PARRILLA: Yes.

22 MR. MIZELL: Isn't it true that only the first
23 bullet is a topic within the State audit?

24 WITNESS BARRIGAN-PARRILLA: No.

25 MR. MIZELL: Which of the bullet points were

1 contained in the State audit?

2 WITNESS BARRIGAN-PARRILLA: If I remember from
3 the conclusions and what I have in my testimony . . .

4 Let me take a moment here.

5 The audit findings were:

6 That there was no detailed financial
7 feasibility study. I think that was also covered
8 recently in Dr. Jeff Michael's testimony.

9 That there wasn't a completed cost-benefit
10 analysis.

11 And there were -- there were findings of no
12 transparency in financial management of planning costs
13 to date.

14 And also the finding of DWR accepting that
15 payment for Reclamation for planning expenses.

16 MR. MIZELL: And you believe those bullet
17 points are contained in the conclusions section of the
18 State audit?

19 WITNESS BARRIGAN-PARRILLA: Yes.

20 MR. MIZELL: Thank you.

21 So based on your answer just now, the bullet
22 point that reads, "Violates Delta Reform Act," that was
23 not a conclusion of the State audit?

24 WITNESS BARRIGAN-PARRILLA: I can't recall if
25 it was in the conclusions or not without having

1 actually the Reform Act in front of me, or, rather, the
2 results from the audit in front of me.

3 MR. MIZELL: Thank you.

4 Miss Gaylon, if we can bring up RTD-22.

5 And much of my questions are going to just go
6 through her testimony.

7 (Exhibit displayed on screen.)

8 MR. MIZELL: So if I can focus your attention
9 on Page 2.

10 (Exhibit displayed on screen.)

11 MR. MIZELL: Line 28.

12 (Exhibit displayed on screen.)

13 MR. MIZELL: So starting on Line 27 and
14 concluding on Line 28, you claim that the Governor set
15 a deadline of fall of 2017 in order to determine the
16 financing of the California WaterFix; is that correct?

17 WITNESS BARRIGAN-PARRILLA: Correct.

18 MR. MIZELL: And you based that conclusion on
19 RTD-247; correct?

20 WITNESS BARRIGAN-PARRILLA: Yes.

21 MR. MIZELL: Isn't it true that RTD-247 is a
22 Sacramento Bee article and is not a statement of the
23 Governor's position?

24 WITNESS BARRIGAN-PARRILLA: Yeah. It could be
25 from a reported article, yes.

1 MR. MIZELL: And isn't it true that RTD-247
2 does not contain a reference to or restatement of the
3 Governor's position?

4 WITNESS BARRIGAN-PARRILLA: I believe it does,
5 and I would have to see the article to recall.

6 MR. MIZELL: Okay. If we could bring up
7 RTD-247, please.

8 (Exhibit displayed on screen.)

9 MR. MIZELL: Can you please identify for me
10 where in the Sacramento Bee article Governor Jerry
11 Brown sets a deadline of the fall of 2017.

12 WITNESS BARRIGAN-PARRILLA: I would have to be
13 able to look at the whole article, which I can't.

14 (Exhibit displayed on screen.)

15 WITNESS BARRIGAN-PARRILLA: Thank you.

16 I can't see. I'm sorry.

17 (Exhibit displayed on screen.)

18 WITNESS BARRIGAN-PARRILLA: Thank you.

19 I can't tell if this continues.

20 (Exhibit displayed on screen.)

21 WITNESS BARRIGAN-PARRILLA: If I can go back
22 up to the top, please. Thank you.

23 (Exhibit displayed on screen.)

24 WITNESS BARRIGAN-PARRILLA: Well, I believe
25 it's from the statement that (reading):

1 "In anticipation that Governor
2 Brown's top aide was -- recently summoned
3 representatives from the Northern
4 California water -- consumers of water to
5 Sacramento."

6 So I see that as a directive through his
7 administration to move forward.

8 MR. MIZELL: And can you identify for me in
9 this article where it states that Nancy McFadden gave a
10 deadline of fall of 2017.

11 WITNESS BARRIGAN-PARRILLA: I'd need to go
12 back down. I mean, really, it's really difficult to
13 read this up and down on the screen and not having the
14 whole article presented to me.

15 (Exhibit displayed on screen.)

16 WITNESS BARRIGAN-PARRILLA: If it is not
17 completely clear in this article and there is an error
18 in my testimony, there were various other announcements
19 that were made during that time by the press. This is
20 not something that is not commonly known by people in
21 water.

22 MR. MIZELL: Okay. Is this -- Is the claim
23 you make on Page 2, Line 28, about the fall 2017
24 deadline the same claim as the one you make on Page 18,
25 Lines 18 through 21?

1 (Exhibit displayed on screen.)

2 WITNESS BARRIGAN-PARRILLA: I'm sorry. Could
3 you rephrase that?

4 Why would -- You're saying the same claim.

5 MR. MIZELL: The same claim. You're relying
6 upon the same article and claiming that the Governor
7 insisted (reading):

8 ". . . State and Federal Water
9 Contractors determine whether they would
10 participate . . ."

11 WITNESS BARRIGAN-PARRILLA: Well, they were
12 summoned, as the article states, to Sacramento.

13 We also know, in addition, from comments made
14 by Metropolitan Water District management that there
15 were meetings with Governor Brown and there were other
16 newspaper articles during that time.

17 MR. MIZELL: Yes. And you cite to RTD-247.

18 And as we just went through, did that article
19 set forth any sort of deadline as to when --

20 WITNESS BARRIGAN-PARRILLA: Perhaps the
21 article itself -- Perhaps the article didn't, and
22 that's why I said, if there is an error in the article
23 that we listed, that we also know that there are other
24 articles that indicated that there was a deadline set
25 and there were statements made during that time by

1 Metropolitan Water District Managers.

2 MR. MIZELL: Thank you.

3 I'll be moving on to the next question but,
4 for the record, I'll object to hearsay for the purposes
5 of these deadlines.

6 CO-HEARING OFFICER DODUC: So noted.

7 And if a correction is necessary, you may do
8 that during rebuttal.

9 WITNESS BARRIGAN-PARRILLA: Thank you.

10 MR. MIZELL: Miss Barrigan-Parrilla, how much
11 experience do you have with public financing for local
12 water agencies?

13 WITNESS BARRIGAN-PARRILLA: My knowledge and
14 understanding of public financing is what I have
15 learned during the course of monitoring this Project
16 for the last 11 years. So it, so to speak, has been
17 on-the-job training.

18 MR. MIZELL: And in that on-the-job training,
19 what is your understanding of the public process for
20 financing that local water agencies use and will be
21 impacted by the California WaterFix?

22 WITNESS BARRIGAN-PARRILLA: My understanding
23 is that public Water Projects, generally speaking, are
24 financed with revenue bonds.

25 However, we also understand from meetings that

1 we attended that there are other bond instruments that
2 are being investigated for use.

3 MR. MIZELL: Okay. And how will those revenue
4 bonds or other bond instruments be impacted by the
5 California WaterFix?

6 MS. ROBERTSON: Can you clarify the question?

7 MR. MIZELL: Yes.

8 How will revenue bonds or other bond
9 instruments utilized by the local water agencies be
10 impacted by the California WaterFix?

11 MS. ROBERTSON: Objection as to scope.

12 I mean, that's not part of -- relevant to her
13 testimony.

14 CO-HEARING OFFICER DODUC: I'm not sure I
15 understand the question, either, Mr. Mizell.

16 MR. MIZELL: Okay. Well, this may help.

17 Miss Gaylon, can we go to Page 7, please.

18 (Exhibit displayed on screen.)

19 MR. MIZELL: So looking at Paragraph 14 here.

20 (Exhibit displayed on screen.)

21 MR. MIZELL: In Paragraph 14,
22 Miss Barrigan-Parrilla discusses local financing --
23 local Water Agency financing and then goes on in the
24 subsequent paragraphs to indicate how California
25 WaterFix will make that financing more difficult.

1 So my question is: I'd like a little bit more
2 specificity here how, in your mind, will the revenue
3 bonds or other bond instruments, as you just described
4 in your last answer, how will they be affected by the
5 California WaterFix?

6 WITNESS BARRIGAN-PARRILLA: I guess I'm not
7 understanding how will the bonds be affected by
8 California WaterFix. I'm not understanding that part
9 of your question.

10 Bonds are required to create the financing for
11 the construction of California WaterFix.

12 MR. MIZELL: So does your testimony not make
13 any conclusion as to impacts to local water agencies'
14 ability to issue revenue bonds or other bond
15 instruments by virtue of the California WaterFix being
16 constructed?

17 WITNESS BARRIGAN-PARRILLA: Oh.

18 We do discuss what debt load could potentially
19 be for water agencies if bonds are taken out to pay for
20 California WaterFix and question what the potential
21 could be on their overall financial health.

22 MR. MIZELL: Thank you. That's -- That is
23 what your testimony says. So, I am glad maybe you
24 clarified the question I was asking.

25 Can you provide me more specific detail as to

1 the mechanisms, the financial whys and what fors that
2 will occur that will result in that leveraging problem
3 you just discussed?

4 WITNESS BARRIGAN-PARRILLA: We haven't
5 looked -- Well, first off, we have attended dozens of
6 meetings and/or listened to probably hundreds of
7 meetings online regarding California WaterFix.

8 We have read through all the documents --
9 well, you know, the majority of the documents I want to
10 say -- regarding financing that have been released by
11 California WaterFix.

12 And . . . what we -- From what we understand,
13 from the messaging that has come out over the years
14 from California WaterFix and by the water agencies that
15 beneficiaries will pay for the Project. It has been
16 discussed at various meetings throughout the years that
17 that would be through revenue bonds, except when we
18 learned of potential other bonds.

19 We've looked at budgets for Water Districts,
20 including Metropolitan Water District, and we have
21 worked with other groups to understand how those . . .
22 how the costs would be repaid.

23 Would it be through payments through -- as one
24 of the regular kind of talking points for Cal WaterFix,
25 paid for by water users through their water rates, the

1 beneficiary of who received the water, and/or what
2 would the potential be for levees on property taxes?

3 It is my understanding, from research that we
4 have done that's included in my testimony, that,
5 ultimately, if a Water Agency or District could not
6 repay their debt, that they would be able to assess a
7 levee, property tax levees, on water users.

8 MR. MIZELL: So I just want to make sure I
9 understand your -- your answer.

10 Your conclusions are based upon an assessment
11 of Metropolitan Water District's budget, and public
12 meetings.

13 WITNESS BARRIGAN-PARRILLA: I -- Metropolitan
14 Water District's budget. What is in the finance plan?
15 What came out of the California audit? 10 years of
16 talking points from California WaterFix.

17 What we have listened to, how this Project
18 will be paid for, at meetings at Santa Clara Valley
19 Water District, Zone 7 tracking.

20 So it's from multiple sources. And in terms
21 of the research sources, they are cited within my
22 testimony.

23 MR. MIZELL: What finance plan are you
24 referring to?

25 WITNESS BARRIGAN-PARRILLA: When I'm talking

1 about finance plan, I'm talking about the finance
2 chapter in the EIR, and, basically, Cal WaterFix pieces
3 that have been released.

4 But there's also the white papers that were
5 published this last summer by Metropolitan Water
6 District.

7 MR. MIZELL: Okay. Miss Gaylon, if we can go
8 to Page 17, please.

9 (Exhibit displayed on screen.)

10 MR. MIZELL: On Lines 2 through 4, you
11 discuss -- you conclude that the California WaterFix
12 will require (reading):

13 ". . . Other items in the budget to be
14 reduced . . ."

15 Correct?

16 WITNESS BARRIGAN-PARRILLA: (Examining
17 document.)

18 Can you rephrase that one more time, please.

19 MR. MIZELL: Sure. Maybe I'll be -- I can be
20 a bit more specific.

21 At the very end of Line 3, going on to Line 4,
22 you state (reading):

23 ". . . Other items in the budget would
24 have to be reduced . . ."

25 WITNESS BARRIGAN-PARRILLA: That is if you are

1 going to raise your percentage in the budget that would
2 go towards contingency, but you're not going to
3 increase your budget.

4 You're looking at an increase, from the
5 meetings we learned of, from 20 percent for
6 Metropolitan Water District and their white papers, to
7 35 percent for contingency, but, yet, they were
8 increasing the budget beyond their annual inflation
9 numbers.

10 MR. MIZELL: So in this statement, you're
11 referring to the Metropolitan Water District budget.

12 WITNESS BARRIGAN-PARRILLA: Yes.

13 I believe I start earlier. Let me take a
14 look.

15 It's from the white -- It's from -- It's from
16 their white paper description.

17 MR. MIZELL: Thank you.

18 Miss Gaylon, if we can go to Page 28, please.

19 (Exhibit displayed on screen.)

20 MR. MIZELL: And I'd like to focus your
21 attention on Line 10.

22 (Exhibit displayed on screen.)

23 MR. MIZELL: You cite to a confidential
24 source; correct?

25 WITNESS BARRIGAN-PARRILLA: Yes.

1 MR. MIZELL: Who is that confidential source?

2 WITNESS BARRIGAN-PARRILLA: I couldn't tell
3 you if I wanted to -- Or I couldn't -- I can't even
4 tell you if you compel me, because that confidential
5 source contacted a Contractor that we worked with and
6 was never revealed to me.

7 So, when we learned of this, the information
8 came to me secondhand, and that is where we moved from
9 releasing the information.

10 MR. MIZELL: So what was the Contractor's
11 name?

12 WITNESS BARRIGAN-PARRILLA: The Contractor is
13 Steve Howcroft.

14 MR. MIZELL: And he would know the
15 confidential source, then?

16 WITNESS BARRIGAN-PARRILLA: I would think. I
17 don't know for sure.

18 MR. MIZELL: So, at this time, I'd like to
19 move to strike Lines 10 and 11.

20 CO-HEARING OFFICER DODUC: On the basis?

21 MR. MIZELL: That they're based upon
22 information that is not only hearsay but also -- and I
23 do recognize we allow hearsay.

24 But they're based upon information that we
25 cannot investigate. We're not being provided the

1 information to assess their relevance or
2 trustworthiness.

3 And those answers aren't readily available by
4 the witnesses provided by Restore the Delta.

5 CO-HEARING OFFICER DODUC: Let me make sure I
6 understand.

7 Are you moving to strike just that sentence or
8 the entirety of Paragraph 70?

9 MR. MIZELL: I believe I only have a basis at
10 this time to strike the sentence.

11 CO-HEARING OFFICER DODUC: The sentence.

12 Miss Robertson.

13 MS. ROBERTSON: We would object. We don't
14 think that's a proper basis for striking. Moreover,
15 this information is already publicly known.

16 CO-HEARING OFFICER DODUC: He's looking at
17 striking just that first sentence.

18 Mr. Jackson.

19 MR. JACKSON: Yes.

20 As we've heard a number of times, hearsay is
21 admissible if it's supported by facts, other facts that
22 are not part of the hearsay.

23 This is a description, it seems to me.
24 Metropolitan did buy these islands. That's a fact.

25 MR. MIZELL: Which is why I'm not seeking to

1 strike anything but --

2 CO-HEARING OFFICER DODUC: Exactly.

3 MR. MIZELL: -- the reliance upon a
4 confidential source that I don't have access to.

5 CO-HEARING OFFICER DODUC: Okay. Again,
6 Engineer here, not lawyer.

7 Why is that sentence important?

8 MR. MIZELL: If -- If we're going to rely upon
9 sources that can't be brought forward to this hearing,
10 I think that's a problem.

11 So, the statement relies upon the statements
12 of another. I'd like to be able to ask the person who
13 made the statements what they are, and I can't even get
14 a name.

15 MS. ROBERTSON: But that's not a proper basis
16 for striking testimony. I mean, if that were the test
17 for --

18 CO-HEARING OFFICER DODUC: Miss Robertson, why
19 is this statement important to you?

20 MS. ROBERTSON: This statement's important
21 because it's a very relevant fact that is brought to
22 light by this . . . statement.

23 CO-HEARING OFFICER DODUC: Okay.

24 MS. ROBERTSON: It's a relevant fact that is
25 supported --

1 CO-HEARING OFFICER DODUC: That there's a
2 confidential source?

3 MS. ROBERTSON: That --

4 CO-HEARING OFFICER DODUC: That's all this
5 statement says is, there's -- you were informed by a
6 confidential source.

7 MS. ROBERTSON: Well, and then it follows the
8 information --

9 CO-HEARING OFFICER DODUC: No, no. He is only
10 striking that first sentence.

11 MS. ROBERTSON: But the entire sentence
12 includes relevant facts.

13 So (reading):

14 "A few weeks later, RTD was informed
15 by a confidential source that" --

16 And the following -- The rest of the sentence
17 is highly relevant and it's fact that supports an --

18 CO-HEARING OFFICER DODUC: Fine, fine, fine.

19 MS. ANSLEY: May I ask for more legal
20 authority?

21 CO-HEARING OFFICER DODUC: No, no.

22 MS. ANSLEY: Okay.

23 CO-HEARING OFFICER DODUC: It's such an
24 insignificant sentence, in my mind, but it will go to
25 weight.

1 And let's move on.

2 MR. MIZELL: All right. So that -- For the
3 record, objection as to hearsay and we can move on.

4 If we can turn to Page 31, please.

5 (Exhibit displayed on screen.)

6 MR. MIZELL: And focusing your attention on
7 Lines 18 through 20.

8 (Exhibit displayed on screen.)

9 MR. MIZELL: On Lines 18 through 20, you
10 assert the opinions of participating Water Districts in
11 the California WaterFix; is that correct?

12 WITNESS BARRIGAN-PARRILLA: Yes.

13 MR. MIZELL: Are you a Board Member on any
14 participating Water Districts?

15 WITNESS BARRIGAN-PARRILLA: No.

16 MR. MIZELL: Are you an employee of any
17 participating Water Districts?

18 WITNESS BARRIGAN-PARRILLA: No.

19 MR. MIZELL: Are you an appointee of any
20 participating Water Districts?

21 WITNESS BARRIGAN-PARRILLA: No.

22 MR. MIZELL: Have any participating Water
23 Districts authorized you to speak on their behalf in
24 this matter, in this hearing?

25 WITNESS BARRIGAN-PARRILLA: No.

1 MR. MIZELL: Are you aware of the sources of
2 water utilized by Central Basin Municipal Water
3 District?

4 WITNESS BARRIGAN-PARRILLA: Yes. Not maybe an
5 exact percentage in detail, but a rough understanding
6 of their sources of water.

7 MR. MIZELL: Okay. So I'm going to ask you a
8 hypothetical.

9 If Central Basin Municipal Water District
10 purchased no water from Metropolitan Water District,
11 how much water would they receive from the California
12 WaterFix?

13 I would put a train leaving Chicago into that
14 question at some point, but, you know . . .

15 (Laughter.)

16 WITNESS BARRIGAN-PARRILLA: In my testimony,
17 what I looked at and explained with Central Basin is
18 that their retail agencies receive different amounts of
19 water from Metropolitan Water District.

20 What my testimony explains is that what
21 portions of that water will come from WaterFix versus
22 the State Water Project, versus Colorado River water,
23 is, if you look at their Urban Management Water Plans,
24 it's very difficult to track. They can't always
25 separate out what -- what imported water comes from

1 which source.

2 So, to be able to say that -- And if you can
3 rephrase it one -- or repeat the question one more
4 time.

5 If I think I have it right, that would it be
6 possible for Central Basin to receive WaterFix water
7 independent of . . .

8 MR. MIZELL: That's -- That is a -- an
9 interesting varying on the question I asked, and I
10 would be happy to receive that answer.

11 I think the hypothetical I provided was a -- a
12 bit simpler, which is:

13 If they simply did not take any water from
14 Metropolitan Water District, is it possible for Central
15 Basin Municipal Water District to receive California
16 WaterFix water?

17 WITNESS BARRIGAN-PARRILLA: I -- I don't think
18 so.

19 MR. MIZELL: Thank you.

20 Miss Gaylon, if we could go back up to Page 6,
21 please.

22 (Exhibit displayed on screen.)

23 MR. MIZELL: And looking at Line 26.

24 (Exhibit displayed on screen.)

25 MR. MIZELL: So on Line 26, you start

1 Paragraph 13, and it proceeds on to the next page.

2 In Paragraph 13 -- And, by all means, ask
3 Miss Gaylon to scroll if you need the screens moved.

4 In Paragraph 13, you're using current State
5 Water Project bond prospectuses to make conclusions
6 about the contractual requirements between DWR and its
7 Contractors; is that correct?

8 WITNESS BARRIGAN-PARRILLA: (Examining
9 document.)

10 As a template to understanding the
11 relationships, yes.

12 MR. MIZELL: Are you aware that bond
13 prospectuses -- and in the case of the State Water
14 Project in, I believe it's Appendix H -- list the
15 projected capital outlays that are for the use of those
16 bond funds?

17 WITNESS BARRIGAN-PARRILLA: I can't say.

18 This part of my testimony was pulled together
19 by Mr. Stroshane, and I went back and looked at and
20 read materials. And I -- I can't say that I know that
21 particular piece.

22 MR. MIZELL: Sorry for the long pause.

23 So, you're not aware of Appendix H; is that --
24 is that what I can gather from your last answer.

25 WITNESS BARRIGAN-PARRILLA: I have been

1 through quite diligently all of the exhibits attached
2 to our testimony. I can't recall off the top of my
3 head what is contained within Appendix H.

4 MR. MIZELL: Are you aware that the bond
5 issuance for the California WaterFix has not yet been
6 made?

7 WITNESS BARRIGAN-PARRILLA: Oh, yes.

8 MR. MIZELL: And are you aware that that's
9 because it's the subject of an ongoing validation
10 lawsuit?

11 WITNESS BARRIGAN-PARRILLA: It is the subject
12 of an ongoing validating lawsuit, and I would add,
13 other plans outside of this -- the scope of this
14 hearing being discussed and examined.

15 MR. MIZELL: Miss Gaylon, if we could move to
16 Page 9, please.

17 (Exhibit displayed on screen.)

18 MR. MIZELL: So on Page 9, starting at
19 Line 24 --

20 (Exhibit displayed on screen.)

21 MR. MIZELL: -- and proceeding through
22 Page 13, Line 8 --

23 And we don't have to scroll the whole -- the
24 whole distance right now.

25 -- you discuss the Office of Inspector General

1 report on Reclamation financing.

2 WITNESS BARRIGAN-PARRILLA: Yes.

3 MR. MIZELL: Are you aware of whether the
4 issue -- the issues in the -- and I'm going to use an
5 acronym here because saying "Office of Inspector
6 General" three times fast is difficult.

7 So, are you aware of whether the issues in the
8 OIG report are considered resolved by OIG?

9 WITNESS BARRIGAN-PARRILLA: I can't recall
10 with the audit conclusions if everything was resolved
11 in the mind of OIG.

12 I do know that a letter was sent by
13 Congressional Representatives looking for further
14 resolution of this matter.

15 MR. MIZELL: Okay. So, to confirm, you're
16 unaware that three of the four issues have been
17 considered resolved.

18 WITNESS BARRIGAN-PARRILLA: It may be, like I
19 said, considered resolved by OIG, but I don't believe
20 that the matter has been closed by inquiries made by
21 Congressional Representatives.

22 MR. MIZELL: Okay.

23 WITNESS BARRIGAN-PARRILLA: So I don't know.

24 MR. MIZELL: And I'll focus just on the Office
25 of Inspector General itself and not the

1 Representatives.

2 Are you aware of what it means to OIG if an
3 issue is resolved?

4 WITNESS BARRIGAN-PARRILLA: I would -- I guess
5 I don't know exactly what their terminology is for it.
6 I would infer that they believe something has been
7 handled or case closed.

8 MR. MIZELL: Are you aware that the U.S.
9 Bureau of Reclamation has not been asked by OIG to
10 modify or terminate any of the arrangements in its
11 report?

12 WITNESS BARRIGAN-PARRILLA: I am not aware of
13 that, and . . .

14 MR. MIZELL: I don't want to cut you off if it
15 was --

16 WITNESS BARRIGAN-PARRILLA: No, that's fine.

17 MR. MIZELL: Okay. I'll move on to my next
18 main topic, and that's JPAs.

19 Miss Gaylon, if we could go to Page 26,
20 please.

21 (Exhibit displayed on screen.)

22 MR. MIZELL: Lines 7 through 15, or
23 Paragraph 65.

24 And in it, you criticize the use of a JPA for
25 the California WaterFix; is that correct?

1 WITNESS BARRIGAN-PARRILLA: Yes.

2 MR. MIZELL: Are you aware that the JPA
3 Formation Agreements associated with the California
4 WaterFix set forth the answers that you posit in
5 Paragraph 65?

6 WITNESS BARRIGAN-PARRILLA: I -- I'm sorry.
7 Can you repeat the question one more time?

8 MR. MIZELL: Are you aware that the questions
9 that you put in Paragraph 65, the questions you asked
10 be answered, are answered within the JPA Formation
11 Agreements associated with the California WaterFix?

12 WITNESS BARRIGAN-PARRILLA: The JPA
13 Agreements, as I understand, for all the potential JPAs
14 haven't been formulated as of yet.

15 So I guess I don't understand how it could be
16 seen as -- as resolved, at least as of the date of this
17 testimony.

18 MR. MIZELL: Miss Gaylon, if we could scroll
19 up to Page 25, Lines 19 through 23.

20 (Exhibit displayed on screen.)

21 MR. MIZELL: So what I'm looking for here in
22 this next question is just a better understanding of
23 what you're discussing in Paragraph 63, because my
24 interpretation was that you were aware of . . . the JPA
25 Formation Agreements, but maybe I'm -- I'm misreading

1 it.

2 So if you could just provide me a little bit
3 more detail.

4 What . . . What Implementation Agreements
5 that address gap funding, coordination and Biological
6 Opinion implementation, CVP participation,
7 construction -- well, the list you see there in
8 Paragraph 63.

9 What Implementation Agreements are you
10 referring to in this paragraph?

11 WITNESS BARRIGAN-PARRILLA: I recall these are
12 references to JPA agreements that were discussed during
13 Metropolitan Water District presentations.

14 I also recall a discussion of JPA, I believe,
15 from the finance chapter, Delta Reform Code . . . in
16 the Westlands. Yeah, in the Westlands. I -- The
17 Westlands presentation, which that was discussed in our
18 Exhibit page -- 269.

19 And also the Delta Reform Act Code 85089
20 discusses the potential for Joint Powers Authorities as
21 well.

22 So those are all the contributing sources in
23 my knowledge of that.

24 MR. MIZELL: So the statement of "at least
25 seven agreements," that it did not include JPA

1 Formation Agreements; is that correct?

2 WITNESS BARRIGAN-PARRILLA: My answer to you
3 to this point has been how have I learned about JPA
4 agreements.

5 Mr. Stroshane reminds me that this paragraph
6 really centers on what we learned at -- in the
7 Westlands Water District's presentation by Goldman
8 Sachs to Westlands Water Board members.

9 MR. MIZELL: And if Mr. Stroshane has an
10 answer, I'm happy to hear it from him, if you prefer.

11 WITNESS STROSHANE: Yeah. I'm happy to -- to
12 share.

13 The particular exhibit is from, as I -- as
14 Barbara has said, the -- as Miss Barrigan-Parrilla has
15 said, was from a presentation given at a Westlands
16 Water District meeting in RTD-269.

17 And my recollection of that particular slide
18 presentation was, it was either a Bureau -- a Bureau
19 personnel member who was there, or it was a Westlands
20 person, who gave a description about the relationship
21 of JPA-type agreements with -- between DWR and the
22 Central Valley Project.

23 WITNESS BARRIGAN-PARRILLA: And in relation to
24 financing.

25 WITNESS STROSHANE: Yeah. And it related to

1 financing.

2 WITNESS BARRIGAN-PARRILLA: Yes.

3 MR. MIZELL: So, Mr. Stroshane, would it be an
4 accurate characterization that the discussion of
5 DWR-JPA Agreements was done for illustrative or
6 educational purposes? It was not a discussion of a
7 specific JPA Agreement.

8 WITNESS STROSHANE: That's correct. They did
9 not produce draft documents, for example. They were
10 describing the variety of types of agreements that
11 would be involved in structuring how -- how the
12 governance of WaterFix would be handled involving the
13 Central Valley Project, which at that time was still
14 very much a possibility.

15 MR. MIZELL: Thank you.

16 And it sounded as though you could not recall
17 who precisely gave the presentation; is that correct?

18 Or can you give me some --

19 WITNESS STROSHANE: If we could call up the
20 exhibit, that might help.

21 MR. MIZELL: What exhibit are you wanting?

22 WITNESS STROSHANE: RTD-269.

23 (Exhibit displayed on screen.)

24 CO-HEARING OFFICER DODUC: And is that --

25 WITNESS STROSHANE: And let's scroll down. If

1 we could scroll down to, I think it was .pdf Page 18
2 and 19.

3 (Exhibit displayed on screen.)

4 WITNESS STROSHANE: And then go back to the
5 beginning of that slide presentation, because that's
6 Page 3.

7 (Exhibit displayed on screen.)

8 WITNESS STROSHANE: Go back to -- If you
9 look -- Yeah, three and then two and then one.

10 (Exhibit displayed on screen.)

11 WITNESS STROSHANE: Okay. This was by
12 Westlands staff, Shelley Ostrowski.

13 MR. MIZELL: And, in your recollection, in
14 making this presentation, did -- did Miss --

15 WITNESS STROSHANE: Ostrowski.

16 MR. MIZELL: -- Ostrowski indicate that she
17 was speaking on behalf of either DWR or Reclamation?

18 WITNESS STROSHANE: That's a good question.

19 I don't recall her specifically saying, "We
20 represent the Bureau." I think she was representing
21 Westlands' understanding based on conversations,
22 perhaps, with Bureau personnel and DWR personnel.

23 But I'm inferring when I say -- when I say
24 that.

25 MR. MIZELL: And, Mr. Stroshane, are you aware

1 that JPAs adopt term sheets and bylaws at their
2 formation that govern the concerns raised in
3 Miss Barrigan-Parrilla's Paragraph 65?

4 WITNESS STROSHANE: I am somewhat aware of
5 that, yeah. They're like a -- You know, how the
6 Constitution of the JPA would function.

7 MR. MIZELL: Okay. Thank you.

8 Miss Gaylon, if we could go back to
9 Miss Barrigan-Parrilla's testimony on Page 26, please.

10 (Exhibit displayed on screen.)

11 MR. MIZELL: I'd like to focus your attention
12 on Lines 21 and 22.

13 (Exhibit displayed on screen.)

14 MR. MIZELL: So starting on Page -- Starting
15 on Line 21 and concluding on Line 22, you state that
16 water (reading):

17 ". . . Contractors" would have "veto
18 power over potential regulatory
19 enforcement actions . . ."

20 Is that correct?

21 WITNESS BARRIGAN-PARRILLA: That there is a
22 potential for that, yes.

23 MR. MIZELL: Is it your opinion, then, that a
24 JPA has the legislative and legal authority to modify
25 the Federal Endangered Species Act?

1 WITNESS BARRIGAN-PARRILLA: It is my
2 understanding that Contractors in a JPA could be in a
3 conflicting type of relationship where they are
4 pursuing what they want to see happen with a Project.

5 That they would have that authority? That
6 would not be my opinion. But it doesn't mean that they
7 wouldn't have influence.

8 MR. MIZELL: So are you equating, then,
9 disagreement with the direction that the fishery
10 agencies might take with a veto power?

11 WITNESS BARRIGAN-PARRILLA: What I am saying
12 is that, when you have Water Contractors in a JPA
13 working with Federal fishery agencies, and you have a
14 combination of a bond payment that has to be made,
15 water that has to be delivered to make that bond
16 payment, I believe the JPA would be ripe for conflict
17 with representatives from Federal fishery agencies.

18 MR. MIZELL: And that conflict, in your mind,
19 equates to a veto power?

20 WITNESS BARRIGAN-PARRILLA: It depends on the
21 power dynamics. It could, yes.

22 MR. MIZELL: So the contract --

23 WITNESS BARRIGAN-PARRILLA: Or it can be
24 pressure. Pressure, yes.

25 MR. MIZELL: And would that pressure obviate

1 the Federal Endangered Species Act?

2 MS. ROBERTSON: Objection: Calls for a legal
3 conclusion.

4 MR. MIZELL: It's --

5 MS. ROBERTSON: She's --

6 MR. MIZELL: -- statements she --

7 CO-HEARING OFFICER DODUC: Hold on.

8 MR. MIZELL: -- made in her testimony and I'm
9 trying to explore the basis of her claim that they
10 would have a veto power, which is a rather strong use
11 word to use.

12 CO-HEARING OFFICER DODUC: And what do you
13 mean by "veto power"?

14 WITNESS BARRIGAN-PARRILLA: Influence,
15 expectation, a push.

16 You know, we see a history in the Delta of
17 regulatory agencies having to split considerations
18 between protecting fish and wildlife and providing
19 water to Water Contractors.

20 So, within that JPA formation, which is kind
21 of removed from public process and public oversight, I
22 see an even greater danger of Contractors being able to
23 push representatives from fishery agencies in a certain
24 direction for water deliveries.

25 CO-HEARING OFFICER DODUC: So your assertion

1 of veto is not based on any legal understanding.

2 WITNESS BARRIGAN-PARRILLA: Yeah. Yeah,
3 exactly. It would be political understanding, power
4 structure, power dynamics.

5 CO-HEARING OFFICER DODUC: That's how I read
6 that.

7 MR. MIZELL: And maybe we can shortcut having
8 to delve back into that.

9 But would those same answers apply to the
10 relationship between the Contractors' JPA and the
11 California Endangered Species Act as well?

12 WITNESS BARRIGAN-PARRILLA: Yes.

13 MR. MIZELL: Are Water Contractors, to your
14 knowledge, public agencies?

15 WITNESS BARRIGAN-PARRILLA: There are Public
16 Water Agencies in California, and there are private
17 water agencies. So, in this case, the Contractors
18 we're talking about are public agencies.

19 MR. MIZELL: And as public agencies, they
20 ultimately have to be responsible to their ratepayers;
21 is that correct?

22 WITNESS BARRIGAN-PARRILLA: Yes.

23 MR. MIZELL: Did you review the testimony of
24 DWR witnesses Miller and Erle from Part 2?

25 WITNESS BARRIGAN-PARRILLA: No.

1 I mean, I've listened or observed Part 2
2 hearings but I can't say I know it in detail for
3 recall.

4 MR. MIZELL: Circling back real quick to JPAs
5 more generally.

6 Are you aware of whether a private entity can
7 join a JPA?

8 WITNESS BARRIGAN-PARRILLA: Yes, private
9 entities can, from what I understand.

10 I have to tell you, in terms of what the
11 California Code says about JPAs, I'm not 100 percent
12 sure that I know, because we've looked at case studies
13 outside of the area, that you can have a JPA as a
14 facility -- as a facilitating mechanism for public --
15 public-private partnership.

16 MR. MIZELL: Miss Gaylon, if we could bring up
17 DWR-1145, please. I mean -- sorry -- 1154.

18 (Exhibit displayed on screen.)

19 MR. MIZELL: So I'll assert to you this was an
20 excerpt of the Board packet for the October 10th, 2017,
21 Board meeting of the Metropolitan Water District of
22 Southern California.

23 If we could please go to Page 12 of this
24 packet.

25 (Exhibit displayed on screen.)

1 MR. MIZELL: As you can see at the header
2 here, this is Attachment 2 to that agenda item.

3 And it's a -- a . . . outline of the major
4 terms of agreement for implementation of an Adaptive
5 Management Program for Project operations related to
6 the California WaterFix.

7 WITNESS BARRIGAN-PARRILLA: Okay.

8 MR. MIZELL: If we could scroll -- Well, no.
9 I want to focus you on 1B real quick.

10 WITNESS BARRIGAN-PARRILLA: Okay.

11 MR. MIZELL: As you can see there, it
12 establishes a group call the -- shortcut to the
13 IICG, which is the Interagency Implementation and
14 Coordination Group.

15 Do you see that?

16 WITNESS BARRIGAN-PARRILLA: Yes.

17 MR. MIZELL: And can we agree that this
18 states, anyhow, that it would have primary
19 responsibility for coordination and implementation of
20 the Adaptive Management Program?

21 WITNESS BARRIGAN-PARRILLA: Yes.

22 MR. MIZELL: Miss Gaylon, if we could go to
23 Page 13, please.

24 (Exhibit displayed on screen.)

25 MR. MIZELL: And looking at Paragraph 5.

1 Does Paragraph 5, as you read it here today,
2 summarize the IICG membership?

3 WITNESS BARRIGAN-PARRILLA: I would have to go
4 back and look at all the groups that you have listed on
5 the less -- on the last page that you just presented
6 prior to this.

7 (Exhibit displayed on screen.)

8 WITNESS BARRIGAN-PARRILLA: So, those are the
9 parties, DWRC.

10 So moving forward.

11 (Exhibit displayed on screen.)

12 WITNESS BARRIGAN-PARRILLA: I guess, in a
13 variation, because it refers to "groups" plural in
14 here. It has a representative.

15 MR. MIZELL: Right.

16 So Paragraph 5.b sets forth who the members of
17 the IICG would be?

18 WITNESS BARRIGAN-PARRILLA: Yes.

19 MR. MIZELL: If we can scroll down a bit. I'm
20 going to look at Paragraph 6.d as in "dog."

21 (Exhibit displayed on screen.)

22 MR. MIZELL: So Paragraph 6d indicates who
23 retains the final decision-making authority on
24 decisions; is that correct?

25 WITNESS BARRIGAN-PARRILLA: (Examining

1 document.)

2 Can you repeat your question one more time?

3 MR. MIZELL: Sure.

4 Does Paragraph 6d indicate who would have
5 final decision-making authority over matters brought --
6 or decisions made by the IICG?

7 WITNESS BARRIGAN-PARRILLA: Not clearly. I
8 mean, you're talking about the entity with final
9 decision-making authority.

10 MR. MIZELL: And that it would only consider
11 the opinions of the panel; is that correct?

12 WITNESS BARRIGAN-PARRILLA: I'm sorry. I just
13 find the questions very vague.

14 You're asking me who is the decision-making
15 authority and saying in that sentence the entity with
16 the final decision-making authority.

17 So it's still unclear to me who you're
18 specifically referring to, taking it out of context.

19 And then (reading):

20 ". . . Shall consider the panel opinions
21 and provide a written response."

22 I would just say it's -- the question's very
23 vague and not clear to me what it is you're looking
24 for.

25 MR. MIZELL: Well, maybe I can cut to the

1 chase and move on.

2 Does anything in DWR-1154 that I just pointed
3 you to -- not asking you to have reviewed anything
4 other than the paragraphs we just went over -- but do
5 any of that text change your opinion as to the veto
6 power that you believe Contractors would have over the
7 decisions of the Federal fish agencies?

8 WITNESS BARRIGAN-PARRILLA: Absolutely not.
9 Because, as I stated, the veto power that I refer to is
10 a social, political, economic dynamic. It's not a one
11 person/one vote, because X amount of people constitute
12 it.

13 It's about power play. It's about who has to
14 recapture -- who has to have water to be able to create
15 revenue for repayment.

16 MR. MIZELL: Miss Gaylon, if we could go back
17 to Miss Barrigan-Parrilla's testimony on Page 27,
18 please.

19 CO-HEARING OFFICER DODUC: Are you still on
20 that line or are you moving on to the next . . .

21 MR. MIZELL: No. I have a few more questions
22 about JPAs, but not specifically on that veto question.

23 CO-HEARING OFFICER DODUC: What I'm going to
24 suggest, because it looks likes you're not done with
25 your cross yet and you are fast approaching your first

1 hour, and it is 11 o'clock, and I need to give the
2 court reporter a break, is, we take a break now.

3 Actually, but before we do, what -- how
4 much -- I mean, you're still on one witness. How much
5 additional cross do you have and, in particular, what
6 specific area do you still need to cover?

7 MR. MIZELL: Yes.

8 I'm about two-thirds of the way through my
9 prepared questions for Miss Barrigan-Parrilla.

10 And Mr. Stroshane's questions are . . .

11 I have a few of them, but I can try and make
12 them more to the point.

13 CO-HEARING OFFICER DODUC: More to the point
14 would be helpful.

15 So would an additional 30 minutes . . .

16 MR. MIZELL: I think I have more than 30. I
17 would say another hour.

18 And I will do my best to speed up during the
19 break here. I'll preview the questions.

20 CO-HEARING OFFICER DODUC: Let's do a time
21 check with everyone else, because I see Mr. Bailey in
22 the audience and I don't want to keep him here.

23 I think, in addition to DWR, I still have two
24 hours of remaining cross-examination for this panel,
25 and a lunch break.

1 So, assuming that you wrap up by noon, we
2 reconvene at 2:00, that's already four.

3 So, Mr. Bailey, we're definitely not getting
4 to you today.

5 And what I will suggest, Mr. Bailey, is, since
6 your witnesses are -- or your Panel 2 is not available
7 until Monday, anyway, we try to get you done on Monday.

8 MR. BAILEY: May I approach?

9 CO-HEARING OFFICER DODUC: Please.

10 MR. BAILEY: I was afraid this was going to
11 happen, despite all of the preparations earlier in this
12 week.

13 And, as you can see, we have our five
14 panelists for Panel Number 1, four of whom are high
15 school students and traveled here very early this
16 morning from the Bay Area.

17 If we were to head in that direction and not
18 have them go today, I am assured that they cannot take
19 another day from school.

20 CO-HEARING OFFICER DODUC: Let's do this:
21 Perhaps, during the break, you might consult with
22 Mr. Wright behind you. And if it's possible for the
23 two switch places . . .

24 MR. BAILEY: That consultation has already
25 occurred and did not meet with --

1 CO-HEARING OFFICER DODUC: Ah.

2 MR. BAILEY: -- swapping of order.

3 We can try again, but I think the unfortunate
4 consequence if we go in that direction would be we
5 would -- we would lose that panel and this particular
6 group's opportunity to speak, unless we truncated it
7 tremendously, or, despite your cautions, I think it was
8 yesterday, that we're going to end 5:00, and we thought
9 were going to have an earlier day today, that we would
10 actually go a little longer if need be.

11 There are some other --

12 CO-HEARING OFFICER DODUC: No.

13 MR. BAILEY: -- maneuvers, like we could
14 stipulate so we don't have to authenticate all of their
15 stuff into the record.

16 We could truncate their time to five minutes
17 apiece.

18 CO-HEARING OFFICER DODUC: Mr. Mizell.

19 MR. MIZELL: This -- This might be helpful
20 information.

21 I -- Last night, I determined that I do not
22 have to cross any of the students.

23 CO-HEARING OFFICER DODUC: Yes, I -- All
24 right.

25 Is there any cross for Friends of the

1 River/Sierra Club California panel?

2 MS. ANSLEY: Yes.

3 CO-HEARING OFFICER DODUC: And how much do you
4 anticipate?

5 MR. MIZELL: I might have a better sense of
6 that after the break.

7 Sorry. I was thinking the rest of -- of ECOS'
8 panel.

9 CO-HEARING OFFICER DODUC: Mr. -- And while
10 they're consulting:

11 Mr. Bailey, how much time would you need for
12 direct?

13 MR. BAILEY: Direct I think can be pretty
14 swift. Everybody's promised me that we can condense it
15 down to 35 minutes, especially if I forego the
16 portion -- the Policy Statement that was --

17 CO-HEARING OFFICER DODUC: Or we can get to
18 that on Monday.

19 MR. BAILEY: Oh, correct.

20 CO-HEARING OFFICER DODUC: Let me do this:

21 We will squeeze your 35 minutes in during our
22 lunch break.

23 MR. BAILEY: Thank you.

24 CO-HEARING OFFICER DODUC: All right.

25 MR. BAILEY: Thank you to all those who will

1 be spending your lunch here with us. Appreciate it.

2 CO-HEARING OFFICER DODUC: We will take a
3 break before lunch so people can gather surprise, and
4 we will make this a brown-bag session for Panel 2.

5 Mr. Wright.

6 MR. WRIGHT: Yes. A quick question.

7 I presume that, at least for now, our
8 witnesses, Friends of the River and Sierra Club, should
9 stay here because it sounds like they may be able to
10 start today?

11 CO-HEARING OFFICER DODUC: How much time do
12 you need for direct?

13 MR. WRIGHT: We put in for -- We have four
14 witnesses. We put in for 20 minutes per witness.
15 What's that? An hour -- That's, I guess, an hour and
16 20.

17 CO-HEARING OFFICER DODUC: Unless the other
18 cross-examiners for this panel are extremely efficient
19 and offer to reduce their cross-examination time, I
20 don't believe we will get to you today.

21 MR. WRIGHT: Okay. Now, is -- is that a
22 release for today, or should we come back within --

23 CO-HEARING OFFICER DODUC: You know what?

24 MR. WRIGHT: -- after 3:00.

25 CO-HEARING OFFICER DODUC: Since I'm feeling

1 generous, it is a release for today.

2 MR. WRIGHT: Okay. So we shall leave and
3 we'll see you Monday morning.

4 CO-HEARING OFFICER DODUC: Goodbye.

5 (Laughter.)

6 CO-HEARING OFFICER DODUC: All joking aside,
7 thank you for coming. This is just the way it goes.
8 We cannot guarantee any specific day or time.

9 MR. WRIGHT: Listen, we understand. We
10 appreciate so much that you gave us a very clear answer
11 Tuesday. We didn't -- We didn't have to be here
12 yesterday and that was much appreciated.

13 And we -- we -- we understand. We see what's
14 here, and these things happen.

15 CO-HEARING OFFICER DODUC: Yeah. Well, thank
16 you, and we will see you Monday.

17 MR. WRIGHT: We'll be here, let's see, 9:30
18 Monday morning.

19 CO-HEARING OFFICER DODUC: 9:30 Monday.

20 MR. WRIGHT: We'll see you.

21 CO-HEARING OFFICER DODUC: All right. With
22 that, we're still taking a break -- thank you,
23 Candace -- and we will return at 11:25.

24 MR. JACKSON: Does that mean we get lunch now?
25 I mean --

1 CO-HEARING OFFICER DODUC: Oh, yes. Actually,
2 yeah, go get your lunch now.

3 MR. JACKSON: Right.

4 CO-HEARING OFFICER DODUC: Yeah.

5 MR. JACKSON: No, no. I meant after the
6 regular lunch.

7 CO-HEARING OFFICER DODUC: It's a brown bag
8 while we listen to that, so bring food.

9 (Recess taken at 11:09 a.m.)

10 * * *

11 (Proceedings resumed at 11:25 a.m.:).

12 CO-HEARING OFFICER DODUC: It is 11:25. We
13 are assuming.

14 Just make sure we all know the plan:

15 After DWR completes its cross-examination of
16 this panel, we will ask EJCW to bring up their first
17 panel, and they will present their direct testimony
18 during a working lunch session today. If there is time
19 afterwards, we might take a short break before
20 resuming.

21 But for now, we'll turn it back to Mr. Mizell.

22 MR. MIZELL: Thank you.

23 If we can to Page 29, please.

24 (Exhibit displayed on screen.)

25 MR. MIZELL: And focusing on Lines 18 through

1 29.

2 (Exhibit displayed on screen.)

3 MR. MIZELL: So this is Paragraph 72. It
4 proceeds on the next page, Lines 1 through 10 as well.

5 WITNESS BARRIGAN-PARRILLA: Yes.

6 MR. MIZELL: Are you aware that the appraisal
7 of the Delta islands was performed by a different
8 purchaser?

9 WITNESS BARRIGAN-PARRILLA: I am aware of the
10 appraisal as it was described by Mr. Kightlinger.

11 MR. MIZELL: But you're not aware of the
12 timing of when that appraisal was conducted and by
13 whom?

14 WITNESS BARRIGAN-PARRILLA: I am aware of what
15 he said, that there was an appraisal that was made four
16 years earlier prior to the purchase.

17 MR. MIZELL: Thank you.

18 Are you aware of the Delta Wetlands Project?

19 WITNESS BARRIGAN-PARRILLA: Yes.

20 MR. MIZELL: Did it involve the same Delta
21 islands that were purchased by Metropolitan Water
22 District?

23 WITNESS BARRIGAN-PARRILLA: Yes. Those were
24 islands that were owned by Delta Wetlands.

25 MR. MIZELL: Are you aware the Metropolitan

1 Water District performed its own Statements of Value in
2 addition to reviewing the previous purchaser's
3 appraisal?

4 WITNESS BARRIGAN-PARRILLA: I recall
5 statements made to that effect. I can't say I have
6 great familiarity with them.

7 MR. MIZELL: Okay. I'm going to move on to my
8 third major topic, and this is Metropolitan Water
9 District Contractors.

10 Miss Barrigan-Parrilla, how often do you talk
11 with Board Members or staff at San Diego County Water
12 Authority?

13 WITNESS BARRIGAN-PARRILLA: I can't say that
14 there's a regular . . . pattern to determine frequency.
15 I may hear from somebody once in awhile.

16 MR. MIZELL: With whom do you talk?

17 WITNESS BARRIGAN-PARRILLA: I have had
18 interaction with the liaison from San Diego to
19 Metropolitan Water District Amy Chen.

20 MR. MIZELL: Anybody else?

21 WITNESS BARRIGAN-PARRILLA: I think that's the
22 only person.

23 I may have spoken with somebody in passing,
24 attending meetings in the past, but that's it.

25 MR. MIZELL: Thank you.

1 And what's the nature of your communications
2 with Miss Chen?

3 WITNESS BARRIGAN-PARRILLA: Once in awhile, a
4 question will be asked if -- if we know a piece of
5 information.

6 I -- I think that's the majority of the
7 communication.

8 MR. MIZELL: Do you share information with
9 San Diego County Water Authority?

10 WITNESS BARRIGAN-PARRILLA: The information
11 that I share with anybody in relation to this Project
12 is information that we also publish.

13 So it's not like they're getting some type of
14 different information than what we publish publicly.
15 There's -- There's -- There's no secret or alter --
16 ulterior information. They know what it is that we
17 publish, what our public statements are, our blogs, our
18 press work, our releases.

19 MR. MIZELL: Okay. So just so I'm clear, the
20 answer would be, yes, you share information but it is
21 of the nature and type that you share with others as
22 well.

23 WITNESS BARRIGAN-PARRILLA: That I share with
24 all of California, yes.

25 MR. MIZELL: Okay. Can you estimate for me

1 how often you've talked with Miss Chen in the last
2 year?

3 WITNESS BARRIGAN-PARRILLA: I think I've said
4 hello to her once in person, maybe two or three phone
5 conversations.

6 MR. MIZELL: Do you have an understanding of
7 the relationship between Metropolitan Water District
8 and San Diego County Water Authority?

9 WITNESS BARRIGAN-PARRILLA: Yes. They're one
10 of their member agencies.

11 MR. MIZELL: Would you consider the
12 relationship between those two agencies a strained
13 relationship?

14 WITNESS BARRIGAN-PARRILLA: I don't think
15 that's a -- really a judgment call for me to make. I
16 understand that they have -- there's been litigation
17 between the agencies.

18 But it doesn't seem to me to be any different
19 than when the City of Los Angeles or LADWP has an
20 interaction with Met for changes in how they want to
21 see things operated within Met. I think that's part of
22 how groups work together. Sometimes there are fights
23 in the family.

24 MR. MIZELL: I understand.

25 I think where I'm trying to better understand

1 is: We have heard previous answers in your testimony
2 about the political dynamics between Water Contractors
3 and fish agencies.

4 I'm wondering if you could provide me a
5 characterization of the political context between
6 Metropolitan Water District and San Diego County Water
7 Authority.

8 WITNESS BARRIGAN-PARRILLA: I think it's
9 pretty obvious from their own court case and from press
10 accounts that San Diego Water Authority likes
11 information and details that they feel that they always
12 don't get directly from Metropolitan Water District.
13 You can see that just observing their general meetings.
14 And so, at times, it's bickering within their
15 membership within the agency.

16 MR. MIZELL: Okay. And is that relationship
17 that you just expressed the basis of your statement on
18 Lines 19 and 20 that Metropolitan Water District was
19 not transparent with San Diego County Water Authority?

20 WITNESS BARRIGAN-PARRILLA: Oh, no. Well --
21 Well, not through their words.

22 Yes, in my observation, because I attended the
23 Metropolitan Water District meetings, and they were
24 raising questions. Or I was watching meetings and they
25 raised questions.

1 So -- And answers weren't always . . .
2 forthcoming. I guess that's the best way to say it.

3 MR. MIZELL: Is Metropolitan Water District
4 not being forthcoming your opinion, or did you have a
5 conversation with San Diego County Water Authority in
6 which they expressed their displeasure or . . .

7 WITNESS BARRIGAN-PARRILLA: That's my
8 opinion --

9 MR. MIZELL: That's your opinion?

10 WITNESS BARRIGAN-PARRILLA: -- from
11 observation, from press accounts, and from listening to
12 meetings and attending meetings.

13 MR. MIZELL: I want to real quick circle back
14 to the question about your communications with
15 San Diego County Water Authority.

16 I want to be clear for the record, I'm using
17 "communications" to mean written, electronic or verbal
18 communications.

19 Does that clarification change your answer in
20 any way?

21 WITNESS BARRIGAN-PARRILLA: Yes. Like I said,
22 I've had a couple phone calls, I think, like, two,
23 three phone calls, and one in-person hello.

24 We . . . Once in awhile, I will get an e-mail
25 from San Diego Water Authority letting me know that

1 they've sent a letter or taken an action.

2 Once in awhile, once something has been
3 publicly released, I will send an e-mail that says,
4 "Here's some information for you." That's all.

5 MR. MIZELL: And so we're clear, the nature of
6 the information you would e-mail to San Diego County
7 Water Authority would be the same nature as before,
8 meaning it is information you also provide to others in
9 the State of California --

10 WITNESS BARRIGAN-PARRILLA: Yes.

11 MR. MIZELL: -- or would it be different?

12 WITNESS BARRIGAN-PARRILLA: Yes. Yeah, it's
13 the same I provide to everyone.

14 MR. MIZELL: Thank you.

15 WITNESS BARRIGAN-PARRILLA: What happens is,
16 when we send information out publicly in bulk, we use,
17 you know, a bulk e-mail service system. And sometimes
18 it goes to spam for people.

19 So we'll send out something publicly and then
20 I'll sit down for a day, and there will be people who I
21 want to see something, so I resend it individually to
22 them so it just doesn't end up in their spam.

23 MR. MIZELL: Okay. Can you estimate how often
24 you've sent e-mails in the last year to San Diego
25 County Water Authority?

1 WITNESS BARRIGAN-PARRILLA: I can't be exact
2 because of the volume of e-mail that goes in and out of
3 Restore the Delta and that I partake in. But I really
4 don't think it's more than maybe five e-mails.

5 It's -- It's not -- Let's put it this way:
6 It's not a relationship that's highly collaborative.
7 There's not constant work or communication or anything
8 like -- of that nature.

9 CO-HEARING OFFICER DODUC: Mr. Mizell, I'm
10 wondering the relevance of this line of questioning.

11 MR. MIZELL: Certainly.

12 In Paragraph 72, Miss Barrigan-Parrilla sets
13 forth what she believes San Diego Water Authority did
14 or did not receive from Metropolitan Water District.

15 I'm trying to ascertain how deep her
16 understanding is of whether or not San Diego County
17 Water Authority feels that they are receiving the
18 appropriate amount of information from Metropolitan
19 Water District.

20 CO-HEARING OFFICER DODUC: Can I just ask her?

21 Miss Barrigan-Parrilla.

22 Hello?

23 WITNESS BARRIGAN-PARRILLA: Yes. I'm sorry.

24 CO-HEARING OFFICER DODUC: What is the basis
25 for your statement here?

1 Because as interesting as your history of
2 correspondence is, if -- what he's trying to get at
3 is --

4 WITNESS BARRIGAN-PARRILLA: Yeah.

5 CO-HEARING OFFICER DODUC: -- how you reached
6 this understanding and whether it is based on any
7 factual evidentiary information.

8 WITNESS BARRIGAN-PARRILLA: It was based, in
9 part, of . . . hearings that I had watched after we
10 learned of the potential land sale. Also, the
11 statement.

12 We work with other groups in Southern
13 California that we collaborate with, other organizing
14 groups. They would go and listen to the report out
15 from a meeting and would share information with us that
16 went into my understanding of the relationship between
17 San Diego Water Authority and Metropolitan Water
18 District.

19 CO-HEARING OFFICER DODUC: But it's not based
20 on any personal, individual communication that you had
21 directly with either San Diego Water Authority or MWD
22 where they say, "Hey, such and such."

23 WITNESS BARRIGAN-PARRILLA: Yeah. I mean,
24 for -- for that statement, no. Yeah, for that
25 statement, no.

1 It's not because they told me that it's this
2 way. It's from observation from information that was
3 given to me by other people, from reading what happened
4 in public accounts, through the newspaper, from their
5 own litigation, and from observing meetings.

6 CO-HEARING OFFICER DODUC: Thank you.

7 MR. MIZELL: I'll move on to my next topic.
8 That was -- You -- You cut right to the heart of it.

9 If we could move to Page 30, please.

10 (Exhibit displayed on screen.)

11 CO-HEARING OFFICER DODUC: And, Mr. Mizell, I
12 suggest you follow my example and cut to the heart of
13 it. And I'm sure Miss Robertson would object if she
14 feels the need to and we could backtrack from there.

15 MR. MIZELL: Thank you.

16 I think I only have about three questions
17 left, so . . . so I'm -- for Miss Barrigan-Parrilla to
18 answer.

19 On Page 30, I'd like to focus on Lines 21 to
20 27, please.

21 (Exhibit displayed on screen.)

22 MR. MIZELL: So this is Paragraph 74.

23 WITNESS BARRIGAN-PARRILLA: Um-hmm.

24 MR. MIZELL: Miss Barrigan-Parrilla, what
25 requirement dictates the Metropolitan Water District to

1 provide funding through the State Water Project
2 Contractors for payment related to this hearing?

3 WITNESS BARRIGAN-PARRILLA: I believe that
4 ties back to the costs in Delta Reform Act Code 85089.

5 I learned of this information as it was --
6 because I had to go back and refresh my memory when I
7 reread the testimony. And it refers to payments not
8 being made.

9 This was a statement made by Tom Howard during
10 a legislative hearing in 2015, I think sponsored by
11 then Senator Bob Wolke.

12 MR. MIZELL: To -- So, as I understand your
13 answer, the basis of your claim that there's a
14 requirement for State Water Contractors -- for the
15 State Water Con -- State Water Project Contractors
16 group to act as a passthrough is contained in the Delta
17 Reform Act.

18 Is that -- Am I understanding you correctly?

19 WITNESS BARRIGAN-PARRILLA: Well, if you go
20 back to what it says in the Delta Reform Act, the cost
21 of the environmental review, planning, design,
22 construction, mitigation, including mitigation required
23 pursuant to Division 13, required for the construction,
24 operation and maintenance of any Delta water conveyance
25 facility.

1 So my -- That is my understanding of why Water
2 Contractors would have to pay for these processes with
3 the Board.

4 And . . . And my information, understanding
5 about why I -- I made the claim was based on what we
6 knew from that hearing in 2015, and we had never heard
7 of any other updates.

8 MR. MIZELL: Okay. I think I understand where
9 I'm getting confused by your testimony, so let me just
10 see if I can follow Hearing Officer Doduc's example.

11 When you reference the State Water Project
12 Contractors, with a capital C, you're referring to
13 those who contract with the Department for water. You
14 are not referring to State Water Project Contractors,
15 Inc., represented by Miss Morris.

16 WITNESS BARRIGAN-PARRILLA: No. The SWP
17 Contractors, I understand them as their -- as their
18 group, not -- not just the Contractors who receive
19 water from DWR.

20 MR. MIZELL: So you're -- Okay. Well, then,
21 maybe I don't understand.

22 On Line 22, where you say, "SWP Contractors,"
23 are you referring to State Water Project or -- State
24 Water Project Contractors, Inc., the organization, or
25 are you referring to, collectively, the Contractors who

1 purchase water from the Department of Water Resources?

2 WITNESS BARRIGAN-PARRILLA: There's a State
3 Water Project -- This is what I'm referring to.

4 There's a State Water Project contribution
5 made to the Department of Water Resources for the --
6 those units that are part of BDCP planning.

7 So, actually, this may be a mistake. I may
8 actually be referring to the State Water Contractors.

9 CO-HEARING OFFICER DODUC: "Contractors" as in
10 individual Contractors, or "Contractor" as in
11 Contractor, Inc.?

12 WITNESS BARRIGAN-PARRILLA: I believe it would
13 be Contractors.

14 I -- You know, I'm looking at this and hearing
15 the question, I'm thinking it was actually a reference
16 to Contractors who would be responsible for paying and
17 for Cal WaterFix planning costs, not Inc.

18 MR. MIZELL: Okay. Thank you.

19 If we can move to Page 35, please.

20 (Exhibit displayed on screen.)

21 MR. MIZELL: I'm going to focus on you Lines 4
22 through 24, which is Paragraph 85.

23 WITNESS BARRIGAN-PARRILLA: Um-hmm.

24 MR. MIZELL: So in this paragraph, you
25 reference polling that Restore the Delta has conducted

1 in 2014.

2 Where in the evidence that you submitted for
3 Part 2 can I find the polling referenced here in
4 Paragraph 85?

5 WITNESS BARRIGAN-PARRILLA: I -- I referenced
6 it as something historically that we know and I believe
7 we still have possession of. I -- We didn't stick to
8 the polling -- Unless, was it in 286? I can't
9 remember.

10 Or I think 286 actually refers to their
11 polling.

12 That was polling that we had done in 2014. I
13 guess we didn't put it in as a reference --

14 MR. MIZELL: Okay.

15 WITNESS BARRIGAN-PARRILLA: -- citation.

16 MR. MIZELL: Miss Robertson, DWR would like to
17 request that polling, if you would.

18 MS. ROBERTSON: Noted.

19 CO-HEARING OFFICER DODUC: What is RTD-286
20 that is referenced here?

21 WITNESS BARRIGAN-PARRILLA: I believe it might
22 be the State Water Contractors polling.

23 MR. MIZELL: The Southern California --

24 WITNESS BARRIGAN-PARRILLA: Southern
25 California --

1 MR. MIZELL: -- Water Committee.

2 WITNESS BARRIGAN-PARRILLA: -- Water
3 Committee.

4 CO-HEARING OFFICER DODUC: But this wasn't
5 RTD's polling.

6 WITNESS BARRIGAN-PARRILLA: No, I don't think
7 so. We're looking.

8 WITNESS STROSHANE: It may -- It may be a
9 typographical error.

10 CO-HEARING OFFICER MARCUS: So it is Restore
11 the Delta.

12 CO-HEARING OFFICER DODUC: So please explain,
13 Mr. Stroshane. What do you mean?

14 WITNESS STROSHANE: Oh, that RTD-286 does not
15 occur in our numbering of our -- Oh, I'm sorry. I'm
16 looking at -- Let me just check.

17 Yeah. It -- We don't have an RTD-286 in our
18 Exhibit Identification Index.

19 CO-HEARING OFFICER DODUC: So that citation is
20 incorrect.

21 WITNESS STROSHANE: So it may be a
22 typographical error, yeah.

23 CO-HEARING OFFICER DODUC: Miss Morris.

24 MS. MORRIS: Actually, on the website it is
25 listed. I think the index got messed up. And I can

1 confirm, because I looked at it, that it is not the --
2 their polling but, rather, done by the Southern
3 California Water Committee.

4 WITNESS BARRIGAN-PARRILLA: Yeah. In
5 reference to the polling that I have, I am happy to
6 share it if I can locate it.

7 It was polling that was done when RTD was part
8 of a pack that was formed during 2014 regarding the
9 Prop 1 campaign. And because it was done on separate
10 computer equipment and not done directly on RTD
11 equipment, because that was a pack, that equipment had
12 been collapsed -- or that equipment doesn't even exist
13 with us any longer. It had been disassembled.

14 I believe there is a digital file folder of
15 the work that was done then, but it's going to take a
16 hunting and pecking process. I don't know if we still
17 have easy access to it.

18 MR. MIZELL: So, Hearing Officer Doduc, I'm
19 not going to take a ton of time now to -- to delve into
20 it. I can, you know -- I have questions about that
21 polling in terms of who conducted it, what the poll
22 size was, you know, where it was conducted.

23 So I -- I very much would like to have a copy
24 of that polling results because I think it's -- it's
25 quite relevant to the statements Miss Barrigan-Parrilla

1 included in her testimony.

2 If --

3 WITNESS BARRIGAN-PARRILLA: There are parts
4 that I remember right now.

5 MR. MIZELL: If we're unable to locate the --
6 the polling, I would have either additional questions
7 for Miss Barrigan-Parrilla or we would move to strike
8 for not having the data behind her statement.

9 CO-HEARING OFFICER DODUC: Let's hear from
10 Miss Morris? No?

11 MS. MORRIS: I just wanted to join that.

12 I don't believe it's proper based on some of
13 the opinions that are drawn in this, specifically
14 comparing and contrasting the polling.

15 But we have no data as to any of the
16 information regarding the size, the polling methods,
17 where it was done, to show that that is a valid
18 comparison. And her opinions are based on that.

19 So without the information available, I don't
20 think it's proper for those statements to remain in her
21 testimony.

22 CO-HEARING OFFICER DODUC: And I've already
23 heard that you will make that information available if
24 you are able to locate it.

25 WITNESS BARRIGAN-PARRILLA: Right.

1 And then there are pieces that I do remember,
2 so . . .

3 CO-HEARING OFFICER DODUC: Okay.

4 WITNESS BARRIGAN-PARRILLA: Yes.

5 CO-HEARING OFFICER DODUC: So to what extent
6 are you familiar with that polling?

7 WITNESS BARRIGAN-PARRILLA: I know that it was
8 conducted on behalf of the pack by Lake Research.

9 CO-HEARING OFFICER DODUC: But do you -- Are
10 you familiar enough with the method of polling, the
11 size --

12 WITNESS BARRIGAN-PARRILLA: Yeah. Some of
13 those things, I would have to pull back to refresh my
14 memory.

15 CO-HEARING OFFICER DODUC: Okay.

16 MS. ROBERTSON: So I guess I would like
17 clarification, then, because it sounds like your Motion
18 to Strike is contingent upon information that
19 Miss Barrigan-Parrilla will look for and respond with.

20 MR. MIZELL: That's correct.

21 MS. ROBERTSON: And so you'll renew your
22 Motion to Strike on what basis? Or . . .

23 MR. MIZELL: I have not made a Motion to
24 Strike. I was simply informing the Hearing Officer
25 that I do have some questions I would like answered

1 about the polling.

2 Should it not be produced, the Department will
3 be filing a Motion to Strike.

4 MS. ROBERTSON: So what are your exact
5 questions about the polling?

6 MR. MIZELL: I have no exact questions until I
7 can see the poll. But some of them would be, like I
8 indicated, the polling method, the size of the polling
9 group, geography of the polling group, who conducted
10 it, when they conducted it, what the demography was of
11 the group that it was conducted upon.

12 And I can probably make up a bunch more, but
13 it would be more helpful probably to see the polling.

14 MS. ROBERTSON: And, then, I guess I would --

15 CO-HEARING OFFICER DODUC: I'm sorry. Let me
16 ask Mr. Mizell:

17 Even if -- Well, should that polling data be
18 provided to you, is Miss Barrigan-Parrilla the most
19 appropriate person to answer those questions?

20 It doesn't sound like she actually conducted
21 the polling herself.

22 WITNESS BARRIGAN-PARRILLA: No. We purchased
23 the polling.

24 CO-HEARING OFFICER DODUC: Yes.

25 WITNESS BARRIGAN-PARRILLA: The polling was

1 done for us.

2 MR. MIZELL: It would be in order to ask her
3 questions about the . . . reliability of her claim that
4 the change in polling from 2014 to 2017 has a
5 conclusion that can be drawn about the California
6 WaterFix.

7 She utilizes the 2014 polling in combination
8 with the 2017 polling to make a comparison between the
9 two and come to a conclusion. I would be investigating
10 the basis of that conclusion.

11 So it would -- We would need to be able to see
12 one poll and compare it to another poll to see if those
13 polls are true and comparable.

14 CO-HEARING OFFICER DODUC: I understand that.
15 And I believe you can do that once you receive the data
16 from Miss Barrigan-Parrilla as part of your rebuttal.

17 You're not suggesting recalling her to ask
18 your questions.

19 MR. MIZELL: I believe that, because it's in
20 her case in chief, I would like to be able to ask those
21 questions of her.

22 She's indicated she can't answer them without
23 refreshing her recollection. I can take that answer, I
24 suppose, and . . .

25 Well, I'm not very satisfied with that answer.

1 I'd like to know the answers to the questions so then
2 we can then make the further inquiry into the
3 conclusions that she draws.

4 We can spend time sort of asking
5 hunting-and-pecking questions now, but I was hoping,
6 for just the efficiency of today, that we might attempt
7 to see the polling before I ask a series of questions
8 that may be answered by the polling itself.

9 CO-HEARING OFFICER DODUC: Miss Morris?

10 MS. MORRIS: I would reserve the right to have
11 this witness come back, if that document was produced,
12 to cross-examine. I would want to look at the document
13 and then decide if it was necessary for
14 cross-examination.

15 So I -- My Motion to Strike, regardless of
16 Mr. Mizell's, would be on the basis that the -- It
17 should be stricken unless it's -- the report is
18 provided and this witness is produced to be
19 cross-examined on her opinions and conclusions drawn
20 from that data.

21 CO-HEARING OFFICER DODUC: Now,
22 Miss Robertson.

23 MS. ROBERTSON: Well, we would, of course,
24 object to that motion and just point out that her
25 opinion has been stated.

1 The fact that she cannot produce that exact
2 document gets to the weight of her testimony, but it
3 is -- does not get to the admissibility.

4 I don't see any need for her to be coming back
5 to be cross-examined on this point. Rather, Hearing
6 Officers can weigh her testimony accordingly.

7 WITNESS BARRIGAN-PARRILLA: And if I may add
8 something.

9 If you look at that paragraph, I'm not doing a
10 compare and contrast between the essays. I did a close
11 reading of the Southern California Water Committee's
12 poll and offered my opinion on that and, as an aside,
13 said, incidentally, this was an inverse.

14 Those were the statistics that I recalled from
15 the poll in 2014. I didn't look for it. I didn't pull
16 it out to do a compare-and-contrast analysis of the
17 two.

18 CO-HEARING OFFICER DODUC: Understood.

19 WITNESS BARRIGAN-PARRILLA: It's just, I saw
20 this observation and, incidentally, it reminded me that
21 it is the inverse of this.

22 CO-HEARING OFFICER DODUC: All right. Enough.
23 Thank you.

24 I agree with Miss Robertson that it goes to
25 weight. However, I will still concur that, to the

1 extent that you're able to, provide DWR with the
2 polling and --

3 WITNESS BARRIGAN-PARRILLA: Sure.

4 CO-HEARING OFFICER DODUC: -- whatever data
5 you have, and they may use that as part of their
6 rebuttal.

7 WITNESS BARRIGAN-PARRILLA: Okay.

8 MR. MIZELL: Okay. And I would just like to
9 ask a few more questions, then, if you would bear with
10 me, so that we have all this on the record.

11 So, Miss Barrigan-Parrilla, are you aware of
12 the . . .

13 Well, I think you stated it but could you
14 restate for me and remind me. Who conducted the 2014
15 poll?

16 WITNESS BARRIGAN-PARRILLA: I think it was
17 Lake Research.

18 MR. MIZELL: And do you know where the poll
19 was conducted.

20 WITNESS BARRIGAN-PARRILLA: The poll was
21 conducted of likely voters throughout California.

22 MR. MIZELL: And the report is dated 2014, but
23 do you know if the poll was conducted at some other
24 date earlier?

25 WITNESS BARRIGAN-PARRILLA: It was conducted,

1 I believe, I want to say summer of 2014, summer into
2 maybe early fall.

3 MR. MIZELL: And was it conducted by
4 telephone? Mail? Or personal?

5 WITNESS BARRIGAN-PARRILLA: It was conducted
6 by phone.

7 MR. MIZELL: And do you know what sort of
8 demographic breakdown the polling results provide?

9 WITNESS BARRIGAN-PARRILLA: I -- I can't
10 remember those specifics without looking at it.

11 MR. MIZELL: And do you recall what questions
12 were asked in the poll?

13 WITNESS BARRIGAN-PARRILLA: I do recall that
14 there were questions asked about California WaterFix.

15 And I do recall that those were the
16 percentages of the responses to the questions.

17 I would have to relook at the poll so that I
18 would not misstate the exact question.

19 MR. MIZELL: And was the poll explicit in
20 discussing the WaterFix, or was it -- I'll just leave
21 it at that.

22 Was it explicit in discussing the WaterFix?

23 WITNESS BARRIGAN-PARRILLA: I believe there
24 were -- there were -- there were a couple of questions
25 about WaterFix.

1 This then -- So that's true. So it would have
2 been BDCP. It would have been BDCP.

3 MR. MIZELL: Okay. So then the questions were
4 specific to the Bay-Delta Conservation Plan.

5 WITNESS BARRIGAN-PARRILLA: Yes.

6 MR. MIZELL: So, with that recollection, and
7 your understanding of the 2017 poll, how
8 similar -- Strike that.

9 Well, I think it's best I just move on to my
10 last question.

11 But thank you very much for giving us the
12 additional detail. And we'll look forward to the --
13 the poll itself if you can find it.

14 WITNESS BARRIGAN-PARRILLA: (Nodding head.)

15 MR. MIZELL: So, earlier in your -- in your
16 responses to my cross-examination, you -- you answered
17 that Mr. Stroshane drafted portions of your testimony
18 related to financing.

19 WITNESS BARRIGAN-PARRILLA: (Nodding head.)

20 MR. MIZELL: Could you please identify for me
21 all the portions of your testimony that Mr. Stroshane
22 drafted.

23 WITNESS BARRIGAN-PARRILLA: Well, I will say
24 this:

25 There are pieces at the beginning that are

1 clearly more Mr. Stroshane's writing, and there are
2 pieces in the back that are more clearly my writing.

3 The problem is, as you go through it, we tend
4 to write on top of each other. So my best description
5 of it would be, in most paragraphs, it's somewhat of a
6 mash up, but . . .

7 WITNESS STROSHANE: And there -- Mr. Mizell,
8 there were passages that had been struck from my
9 Part 1B --

10 WITNESS BARRIGAN-PARRILLA: Yes.

11 WITNESS STROSHANE: -- testimony that we have
12 included here. And they relate to -- I believe they
13 relate to authorization of the Project --

14 WITNESS BARRIGAN-PARRILLA: Yes.

15 WITNESS STROSHANE: -- and financing of the
16 Project.

17 I don't -- Right now, I'd have to spend time
18 looking through and say, "Oh, I think it was this
19 passage," but . . .

20 WITNESS BARRIGAN-PARRILLA: Right.

21 WITNESS STROSHANE: It's -- If you were to
22 compare what got struck from my testimony on those
23 subjects with passages that are in here, you would find
24 overlap.

25 MR. MIZELL: Okay. Thank you.

1 And I --

2 WITNESS STROSHANE: I'm sorry.

3 MR. MIZELL: Yes.

4 WITNESS STROSHANE: If I may add one more
5 thing about that.

6 Those passages were struck in Part 1B because
7 we were -- and they -- and they were struck because we
8 were told they were Part 2 issues.

9 MR. MIZELL: Understood.

10 This next question, please don't infer any mal
11 intent on my part. I don't mean that. I just am
12 trying to understand.

13 Given both of you are witnesses here today,
14 what -- what is the basis of Mr. Stroshane providing
15 Miss Barrigan-Parrilla with information to provide in
16 her testimony rather than simply providing it in his
17 own?

18 And the question, I suppose, is for either of
19 you. I --

20 WITNESS STROSHANE: Or both.

21 MR. MIZELL: -- am just seeking to understand.

22 WITNESS STROSHANE: I would suggest it should
23 be for both of us.

24 And I think one answer that I would give, the
25 answer that I would give, is that we think a lot

1 alike --

2 WITNESS BARRIGAN-PARRILLA: (Nodding head.)

3 WITNESS STROSHANE: -- about this Project.

4 WITNESS BARRIGAN-PARRILLA: And I would add
5 that we fulfill different functions at Restore the
6 Delta. I'm the person who manages day-to-day
7 operations and keeps tabs of the Project on day-to-day,
8 not only in Water Board hearings or releases by DWR,
9 but I track what happens at all the Water Districts
10 that are involved. I track the media work that's
11 involved. I track the responses of other groups that
12 oppose and support the Project.

13 So very often the way our work works together
14 is I will look at or find certain issues that need
15 further exploring.

16 While we are a grassroots group and we are a
17 citizens group, we are very cognizant of the fact that,
18 when you make a statement or you make a claim, it
19 should be supported by facts.

20 So if I have a particular issue, or I think
21 something has to be developed, very often, I will alert
22 Mr. Stroshane about it, who then will spend time doing
23 the background research to see if my observations are
24 valid or invalid.

25 And a great body of our work together is

1 written like this testimony. I don't use the term
2 "mash up" lightly because there's a lot of . . . a lot
3 of similar thinking and a lot of cross-writing with
4 each other. It's very collaborative work.

5 WITNESS STROSHANE: It is very collaborative.
6 And Barbara had the last word on what her testimony
7 would say.

8 She is very committed to her message.

9 MR. MIZELL: Thank you.

10 With that, I can move on to Mr. Stroshane.

11 Do you -- Would you prefer that I continue
12 with Mr. Stroshane, or it's noon and you were
13 indicating you wanted to have the students make their
14 statements over lunch.

15 CO-HEARING OFFICER DODUC: I don't see them
16 here, so why don't we go ahead and proceed.

17 Oh, actually, I was indicating that we would
18 finish up with your cross first.

19 MR. MIZELL: Okay. I'm happy --

20 CO-HEARING OFFICER DODUC: But if --

21 MR. MIZELL: -- to continue.

22 CO-HEARING OFFICER DODUC: Are they waiting
23 outside? Let's --

24 MR. JACKSON: I'll go check. They were.

25 CO-HEARING OFFICER DODUC: I mean, if you

1 don't mind waiting, let's get them in and out so that
2 they can go back to their lives, like we all wish we
3 could.

4 MR. MIZELL: I don't mind. I'm at a good
5 breaking spot to move on to the next witness.

6 CO-HEARING OFFICER DODUC: Let's see if
7 they're ready.

8 MR. JACKSON: They're not in the hall right
9 now. I'll check the lunchroom but --

10 CO-HEARING OFFICER DODUC: No. Why don't we
11 just go ahead and --

12 MR. MIZELL: Go ahead.

13 CO-HEARING OFFICER DODUC: -- continue, then.

14 MR. MIZELL: Okay. Well, now I get to say
15 good afternoon, Mr. Stroshane, so . . .

16 WITNESS STROSHANE: Yes, good afternoon.

17 MR. MIZELL: Some preliminary questions, but
18 those will be followed by the following topics:

19 Legal understanding with regard to
20 unreasonable use; and unreasonable method of diversion,
21 and unlawful acts; sources of information in his
22 testimony; selenium; conditions on the Project; and
23 then a couple of wrap up questions.

24 You're going to find some of these particular
25 questions very familiar, Mr. Stroshane.

1 Would you characterize yourself as adamantly
2 opposed to the construction of the California WaterFix
3 Project?

4 WITNESS STROSHANE: Yes.

5 MR. MIZELL: And are there any alternatives
6 considered in the FEIR that you would support?

7 WITNESS STROSHANE: Not at this time.

8 MR. MIZELL: Would you characterize yourself
9 as adamantly opposed to any north-south conveyance
10 using a tunnel or pipeline rather than the Delta
11 channels?

12 WITNESS STROSHANE: Not at this time.

13 MR. MIZELL: I want to be clear I understand
14 you.

15 You would not -- You would not at this time
16 consider yourself opposed to Delta tunnels, or you are
17 adamantly opposed to Delta tunnels at this time?

18 WITNESS STROSHANE: At this time, I'm
19 adamantly opposed to Delta tunnels.

20 MR. MIZELL: Thank you.

21 And if it could be demonstrated that the use
22 of pipelines or tunnels to convey water from north to
23 south instead of using Delta channels was beneficial to
24 fish, are you still opposed to such a Project?

25 WITNESS STROSHANE: As with the review that I

1 undertook on behalf of the Environmental Water Caucus
2 in 2014 and again in 2015, I would have to examine the
3 alternatives and the effects before I made such a
4 determination.

5 MR. MIZELL: Thank you.

6 Mr. Stroshane, have you ever testified as an
7 expert in State Court?

8 WITNESS STROSHANE: No.

9 MR. MIZELL: Have you ever testified as an
10 expert in Federal Court?

11 WITNESS STROSHANE: No, sir.

12 MR. MIZELL: Do you have any formal training
13 in hydrology?

14 WITNESS STROSHANE: Yes, I do. I took courses
15 in earth sciences as an undergraduate.

16 I believe I answered these questions from --
17 this question, this type of question, from Mr. Berliner
18 in my Part 1B testimony.

19 I took courses on groundwater, hydrology,
20 engineering geology, stratigraphy and sedimentation,
21 fossil record, and there was one other one in there I'm
22 blanking on right now.

23 MR. MIZELL: Did you take any courses in
24 biology?

25 WITNESS STROSHANE: I did not take courses in

1 biology, but I later, in the fall -- or in the winter
2 quarter of 1983, I TA'd a course on natural systems,
3 which was a survey of ecological principles for upper
4 division students in -- at U.C. Santa Cruz.

5 MR. MIZELL: Thank you.

6 Miss Gaylon, if we could bring up RTD-12,
7 Mr. Stroshane's testimony, please.

8 (Exhibit displayed on screen.)

9 MR. MIZELL: And going to Page 5.

10 (Exhibit displayed on screen.)

11 MR. MIZELL: I'd like to focus on Lines 12 and
12 13.

13 (Exhibit displayed on screen.)

14 MR. MIZELL: So on Lines 12 and 13, you
15 conclude that irrigation of lands in the San Luis Unit
16 of the CVP is an unreasonable use of water; correct?

17 WITNESS STROSHANE: I did allege that, yes.

18 MR. MIZELL: Has there been any determination,
19 to your knowledge, by the State Water Board making this
20 conclusion?

21 WITNESS STROSHANE: No, sir.

22 MR. MIZELL: Has any court, to your knowledge,
23 issued a decision concerning this issue?

24 WITNESS STROSHANE: No, sir.

25 MR. MIZELL: So am I appropriately

1 characterizing this conclusion as your opinion?

2 WITNESS STROSHANE: Yes, sir. It's in my
3 testimony.

4 MR. MIZELL: Are you aware that the California
5 WaterFix does not propose to change the place of use of
6 the Water Permits associated with this Change Petition?

7 WITNESS STROSHANE: I am aware.

8 MR. MIZELL: I'd like to focus you on Line 15,
9 please.

10 You conclude that the California WaterFix will
11 be an unreasonable method of water diversion; correct?

12 WITNESS STROSHANE: Correct.

13 That -- I'd add that it would further
14 deteriorate flow and water quality conditions in the
15 Delta, which was a part of that conclusion, yes, or
16 part of that statement.

17 MR. MIZELL: And these claims are explained
18 later on in your testimony at roughly Pages 59 onward.

19 Is that a rough approximation?

20 WITNESS STROSHANE: Yes. This paragraph is
21 contained in my summary --

22 MR. MIZELL: Correct.

23 WITNESS STROSHANE: -- which begins on Page 2.

24 MR. MIZELL: So is your conclusion regarding
25 unreasonable method of diversion of water based upon

1 the California WaterFix's use of state-of-the-art
2 screen technology?

3 WITNESS STROSHANE: (Examining document.)

4 Not in this paragraph.

5 MR. MIZELL: Is this conclusion based upon the
6 California WaterFix's incorporation of all operational
7 requirements suggested by the fishery agencies in the
8 Project Description?

9 WITNESS STROSHANE: No, sir.

10 MR. MIZELL: Miss Gaylon, if we could bring up
11 SWRCB-107, please.

12 (Exhibit displayed on screen.)

13 MR. MIZELL: Yeah. I'd be looking at the
14 Incidental Take Permit itself.

15 (Exhibit displayed on screen.)

16 MR. MIZELL: Page 187, please.

17 (Exhibit displayed on screen.)

18 MR. MIZELL: As part of your conclusion
19 about -- So back on the lines we just went over.

20 Your conclusions as to unreasonable method of
21 diversion went on to state that it would further
22 deteriorate flow and water quality conditions in the
23 Delta.

24 Was your conclusion on Line 15 based upon a
25 claim of increased reverse flows in the Sacramento

1 River?

2 WITNESS STROSHANE: It is part of the argument
3 that I make, yes.

4 The three -- As I state -- stated in my oral
5 testimony yes -- my direct testimony yesterday, and in
6 my Part 1B testimony, there were three components of
7 flow alterations that I discuss in my testimony. I
8 summarize them again here in Part 2.

9 MR. MIZELL: Very good.

10 And as to the reverse flow component of those
11 three, did you review the ITP, specifically
12 Section 9.9.4.1, regarding reverse flows at Georgiana
13 Slough?

14 WITNESS STROSHANE: I did not review the ITP
15 at all.

16 MR. MIZELL: Thank you.

17 So if we could go back to Mr. Stroshane's
18 testimony, Page 5, Line 15.

19 (Exhibit displayed on screen.)

20 MR. MIZELL: Was one of the other components
21 of the three bases for this statement impacts to the
22 City of Stockton?

23 WITNESS STROSHANE: (Examining document.)

24 And you're referring to Line 14 and 15?

25 MR. MIZELL: That's correct.

1 WITNESS STROSHANE: I could have, but I was
2 focused on the . . .

3 As I recall writing this, I was focused more
4 on fish and wildlife-related and water quality-related,
5 thinking of selenium and also thinking of fish screens.

6 MR. MIZELL: For this statement? Okay.

7 WITNESS STROSHANE: For --

8 MR. MIZELL: Thank you.

9 WITNESS STROSHANE: -- this statement, yes.

10 MR. MIZELL: If we could move to Page 6,
11 please.

12 (Exhibit displayed on screen.)

13 MR. MIZELL: So Page 6, Lines 6 through 8.

14 This does make mention of the City of
15 Stockton.

16 So, in this statement, can you please provide
17 me a citation for the basis of your claim that it would
18 increase Stockton's water treatment costs due to
19 degraded water quality from increases in salinity and
20 other constituents.

21 WITNESS STROSHANE: This is an incorporation,
22 as later in the paragraph I state -- I refer to my
23 Part 1B testimony.

24 So to the extent that there are citations
25 underneath that or embedded in that statement, they

1 would be found in my Part 1B testimony.

2 MR. MIZELL: Thank you.

3 Do you have your Part 1B testimony with you
4 here today?

5 WITNESS STROSHANE: No, sir.

6 MR. MIZELL: And you don't recall off the top
7 of your head, as you sit here --

8 WITNESS STROSHANE: What the citations are?

9 MR. MIZELL: Yes.

10 WITNESS STROSHANE: Not off the top of my
11 head.

12 MR. MIZELL: Thank you.

13 WITNESS STROSHANE: The -- The -- I can -- I
14 can add, though, that they would have been -- I
15 remember relying in my Part 1B testimony on City of
16 Stockton sources.

17 They had publicized -- published a water rate
18 study that is part of the basis of that -- of the
19 statement later in the paragraph about water rate
20 increases.

21 MR. MIZELL: And that would --

22 WITNESS STROSHANE: And they also had -- I
23 also relied, as I recall, on City of Stockton comment
24 letters about first Bay-Delta Conservation Plan and,
25 later, California WaterFix, as I recall.

1 That's my best recollection.

2 MR. MIZELL: That's your best recollection --

3 WITNESS STROSHANE: Yes, sir.

4 MR. MIZELL: -- of your Part 1B testimony?

5 WITNESS STROSHANE: Yes, sir.

6 MR. MIZELL: Thank you.

7 If we could go back to Page 5.

8 (Exhibit displayed on screen.)

9 MR. MIZELL: Now focusing on Lines 19 through
10 21.

11 (Exhibit displayed on screen.)

12 MR. MIZELL: In the sentence that
13 starts, "Under Water Code Section 100" and concludes at
14 the end of that paragraph, you make a conclusion that
15 the California WaterFix is unlawful; is that correct?

16 WITNESS STROSHANE: Yes, I do.

17 MR. MIZELL: And we've established that you're
18 not an attorney; is that correct?

19 WITNESS STROSHANE: Yes, that's correct.

20 MR. MIZELL: What case law do you rely upon to
21 make this legal conclusion?

22 WITNESS STROSHANE: To my knowledge, there is
23 no case law that -- To the best of my knowledge, there
24 is no case law that connects or attempts to connect
25 public health environmental justice and recreational

1 community issues with an unreasonable -- an
2 unreasonableness claim under the Constitution.

3 But that doesn't -- I also felt that that does
4 not preclude me from attempting to make that -- to
5 lodge that claim.

6 MR. MIZELL: Thank you.

7 If we could move on to Page 7, please.

8 (Exhibit displayed on screen.)

9 MR. MIZELL: And I'm going to go into my next
10 major topic here, which is sources of information used
11 within the testimony.

12 And I'm looking at -- specifically at Lines 5
13 and 6. The sentence that reads, "This would reduce the
14 San Joaquin River."

15 So Paragraph 16, broadly speaking, and this
16 sentence included within it, relies upon your Part 1B
17 testimony; is that correct?

18 WITNESS STROSHANE: That's correct. This is
19 part of a recap that I talked about in my oral
20 testimony yesterday of what I had presented in my
21 Part 1B testimony.

22 MR. MIZELL: What operational scenario did you
23 assess in your Part 1B testimony in order to make these
24 statements?

25 WITNESS STROSHANE: It was not Operational

1 Scenario 4A H3+, if that's what you're asking. If
2 that's what you're aiming for.

3 It was -- I believe RTD-130 is a set of charts
4 that I prepared from -- my best recollection is that it
5 was from the Draft Environmental Impact Report,
6 possibly the Revised -- Recirculated Draft EIR -- I
7 have trouble remembering all these long names -- that
8 documented, I believe -- if I remember the chart
9 correct -- the charts correctly -- one set dealt with
10 flow reductions, if that's what the context is here.
11 Yes.

12 Oh, no. These -- These may have been the
13 source water fingerprinting, because I'm referring to
14 the San Joaquin River as a source of water at Banks.

15 So these were the source of water
16 fingerprinting appendices both from the Draft EIR/EIS
17 and the recirculated document.

18 And I believe, if you were to review 1 --
19 RTD-130, I think I provide those citations.

20 MR. MIZELL: Okay. I'll review RTD-130.
21 Thank you.

22 And RTD-156, just so that I recall it
23 correctly, this is what -- this was an exhibit that you
24 announced a correction to yesterday that the index
25 referring to a RTD-155 is incorrect. It actually is

1 based upon SWRCB-102; is that correct?

2 WITNESS STROSHANE: Yes, that's correct.

3 And I believe that occurred -- that error
4 occurred just because the Final EIR/EIS -- I don't -- I
5 don't know exactly when the State Water Board added it
6 to its list of State Water Board exhibits. But when I
7 realized that they had done so, and they had requested
8 that parties, you know, not have repetitive and, you
9 know, citations of documents that are in the State
10 Water Board list, I changed it and then forgot to note
11 on our Exhibit Index that a RTD-155 was not in use but
12 it's actually SWRCB-102.

13 That's how that came about.

14 MR. MIZELL: Yeah. Perfect.

15 And -- And I do appreciate you using the
16 Board's exhibits myself because it makes our job easier
17 as well.

18 WITNESS STROSHANE: Of course.

19 MR. MIZELL: The -- The spreadsheet with the
20 graphics in RTD-156 are not the same as the
21 fingerprinting graphics in SWRCB-102.

22 And at the footer, your graphics in RTD-156
23 reference a Source.xlsx file.

24 Am I reading your RTD-156 correctly?

25 WITNESS STROSHANE: Could we look at it?

1 MR. MIZELL: Certainly.

2 Miss Gaylon, can we bring up RTD-156, please.

3 (Exhibit displayed on screen.)

4 MR. MIZELL: And scrolling to the bottom of
5 the footer.

6 (Exhibit displayed on screen.)

7 WITNESS STROSHANE: Yeah. My -- My
8 recollection is that the original source water
9 fingerprinting data are contained in appendices that
10 are presented in short form, and that in order to bring
11 the effects into focus, at least for myself, and I was
12 attempting to do so in this particular exhibit for the
13 Board in its deliberations.

14 I did my best to faithfully interpret each
15 chart in the source water fingerprinting modeling
16 information and put that into an Excel spreadsheet and
17 generate charts based on those spreadsheets.

18 And that's what -- what those -- both the
19 charts and the tables of data that you see in this
20 exhibit are -- are -- that's how they were prepared and
21 how the charts were also prepared. They were based on
22 the Excel data.

23 MR. MIZELL: Does RTD-156, inclusive of all
24 the translation that you performed in order to prepare
25 the graphics and charts in RTD-156, or are -- is there

1 additional information in an Excel file that has not
2 been included?

3 WITNESS STROSHANE: My recollection is that
4 what is shown in the purple and the different colors on
5 the different pages is all the data that I extracted by
6 hand from the chart data in the appendices of the two
7 environmental documents.

8 And those data -- Those data, I was just
9 focused on certain . . . stations, if you will, for the
10 data that were presented, certain ones, not -- not each
11 and every.

12 So the Excel spreadsheet is an excerpt of what
13 I took to be important, relevant stations and presented
14 those in this exhibit.

15 MR. MIZELL: Thank you for that.

16 WITNESS STROSHANE: You're welcome.

17 MR. MIZELL: Miss Gaylon, if we could bring
18 back about up Mr. Stroshane's testimony.

19 (Exhibit displayed on screen.)

20 MR. MIZELL: Thank you.

21 And I'm looking for Page 7.

22 (Exhibit displayed on screen.)

23 MR. MIZELL: Perfect.

24 Scrolling down to Lines 22 to 27.

25 (Exhibit displayed on screen.)

1 MR. MIZELL: And this is the beginning of
2 Paragraph 18, and Paragraph 18 proceeds on to Page 8,
3 Line 22.

4 Sir, recognizing that you have taken an
5 undergraduate class in hydrology, would you consider
6 yourself a hydrologist?

7 WITNESS STROSHANE: Being a hydrologist is a
8 profession. I chose a different profession, that of
9 planning.

10 But as a Planner who knows something about
11 hydrology, I applied certain basic quantitative methods
12 that overlap between the two fields.

13 MR. MIZELL: And would you have a similar
14 answer about being a Water Quality Specialist?

15 WITNESS STROSHANE: Yes, although I would say
16 that I am much less of a Water Quality Specialist.
17 I . . .

18 I'll leave it at that.

19 MR. MIZELL: And we discussed earlier that you
20 have not taken any course work in biology, so is it
21 fair to say you would not consider yourself a
22 Biologist?

23 WITNESS STROSHANE: I am not a Biologist,
24 although I -- I enjoy natural history with my wife and
25 I love reading about biology subjects, yes.

1 MR. MIZELL: And Paragraph 18 consists solely
2 of your understanding as the basis for your
3 conclusions; is that correct?

4 WITNESS STROSHANE: Could you rephrase the
5 question?

6 MR. MIZELL: Certainly.

7 Is the basis for Paragraph 18 anything other
8 than your understanding of the subject matter? Do you
9 provide citations to any external data or have you
10 relied upon any external data or studies in order to
11 reach your conclusions?

12 WITNESS STROSHANE: Yes. For this -- For this
13 paragraph, it is -- it is a summary of -- that I
14 synthesized from the Region 2 Water Board selenium
15 TMDL, as well as having also studied scientific papers
16 about the selenium issues.

17 But, especially, the references to the
18 beneficial uses that can be impaired, those are
19 discussed in more detail and with citations to the
20 Region -- Region 2 Water Board TMDL later in that
21 testimony.

22 So this paragraph is -- is, again, it's kind
23 of -- It's part of the recap section, and the -- I was
24 expanding on the residence time component and how --
25 how the residence time change and alterations that are

1 perhaps previewed by the implementation of the Project
2 and its operations could affect, especially in this --
3 in this passage, the ecosystems of the Bay-Delta
4 Estuary. But only in a summary fashion.

5 MR. MIZELL: Okay. So the -- the external
6 references that you would have relied upon to build
7 your opinions that are summarized in this paragraph,
8 would I be able to find those in RTD-10-Revised2?

9 WITNESS STROSHANE: On residence time, yes.

10 And -- But, as I mentioned, the -- some of the
11 other references, especially in Line 24, to the
12 potential bioavailability of selenium, that is -- that
13 material is influenced by my having read the Region 2
14 Water Board Selenium TMDL.

15 I probably should have cited the Region 2
16 Water Board TMDL at the end of this paragraph.

17 MR. MIZELL: If we could turn to Page 8,
18 please.

19 (Exhibit displayed on screen.)

20 MR. MIZELL: And I'm looking at Paragraph 19,
21 which is Lines 3 through 8.

22 And I see the citation to RTD-159 here, and so
23 forgive me if this is a duplicative question in your
24 mind.

25 But I want to be clear: Is your reference in

1 Line 4 of 16 days to three months found in RTD-159?

2 WITNESS STROSHANE: I believe that's the case.
3 I believe I was summarizing, in the first two sentences
4 of that paragraph, findings that -- about residence
5 time that were provided in RTD-159 on Page 17.

6 MR. MIZELL: If we could go to Page 9, please.

7 (Exhibit displayed on screen.)

8 MR. MIZELL: I'm going to be looking at
9 Lines 24 through 26 --

10 (Exhibit displayed on screen.)

11 MR. MIZELL: -- and then the top of Page 10.

12 WITNESS STROSHANE: I'm sorry. I didn't hear
13 your reference.

14 MR. MIZELL: I was just having her scroll to
15 include some of the next page.

16 WITNESS STROSHANE: Oh, okay.

17 MR. MIZELL: I'm focusing here on
18 Paragraph 25.

19 And this should be a familiar question to you,
20 so . . .

21 Does the California WaterFix propose any new
22 transfers?

23 WITNESS STROSHANE: I don't think that's
24 clear.

25 MR. MIZELL: Are you aware of any specific

1 transfers that will occur if the California WaterFix is
2 operational?

3 WITNESS STROSHANE: I am not aware.

4 MR. MIZELL: Are you aware that there are
5 regulatory processes that transfers must comply with?

6 WITNESS STROSHANE: Very much so.

7 MR. MIZELL: Thank you.

8 If we could bring up RTD-13, please.

9 WITNESS STROSHANE: You mean 13-Revised?

10 MR. MIZELL: Yes, please.

11 (Exhibit displayed on screen.)

12 MR. MIZELL: And looking at Slide 6.

13 (Exhibit displayed on screen.)

14 MR. MIZELL: Did you conduct any independent
15 analysis to determine how selenium loads would change
16 in the Delta with the California WaterFix relative to
17 the No-Action Alternative?

18 WITNESS STROSHANE: Not for this testimony.

19 MR. MIZELL: But you have conducted those --
20 that analysis elsewhere?

21 WITNESS STROSHANE: No.

22 Well, I -- I provided testimony in part -- not
23 part -- in Phase II to this Board, you know, workshop
24 that's related to the Water Quality Control Plan. I
25 presented testimony on salinity and selenium science

1 and concerns that we had when I was -- this was when I
2 was still working with the California Water Impact
3 Network.

4 But, again, you know, I -- I am . . . I'm a
5 bit of a -- I don't know if polymath is the right word,
6 but I'm interested in many things. And I do have an
7 ability to read and review and interpret scientific
8 documents, having some scientific background.

9 So, I may draw from my interpretations of
10 things my own conclusions based on analysis of those
11 kinds of things.

12 But as to doing, say, field research, I'm not
13 a Field Chemist or Biologist. That's clear.

14 MR. MIZELL: I'm going to do my best to go as
15 quickly as possible. I'm coming up on the end of my
16 time block here.

17 I am into just one question to -- my questions
18 about selenium. After that, I have three questions on
19 minor other topics, I'd say maybe another 20 minutes.

20 CO-HEARING OFFICER DODUC: In which case, I'm
21 going to stop you now.

22 MR. MIZELL: (Nodding head.)

23 CO-HEARING OFFICER DODUC: And while we take a
24 short break so the court reporter can eat her lunch and
25 set up, we will hear from EJCW four witnesses during

1 our lunch break, which would normally be until 1:40.

2 So, for this panel, if you want to go grab
3 lunch, please be back at 1:40.

4 And we will take a break until 12:45.

5 WITNESS BARRIGAN-PARRILLA: Should we move our
6 belongings from here?

7 CO-HEARING OFFICER DODUC: Yes, please.

8 We will take a break until 12:45 to do setup
9 and other things, and we will hear from EJCW at 12:45.

10 (Recess taken at 12:37 p.m.)

11 (Proceedings resumed at 12:45 p.m.:)

12 CO-HEARING OFFICER DODUC: All right. It is
13 12:45. We are resuming for a special session of our
14 hearing.

15 Mr. Bailey.

16 MR. BAILEY: Oh.

17 CO-HEARING OFFICER DODUC: Before you begin, I
18 will ask the witnesses to please stand and raise your
19 right hands.

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Allegra Schunemann,

Milo Wetherall,

Luci Paczkowski

and

Caroline Schurz,

called as witnesses by the Environmental
Justice Coalition for Water, having been duly
sworn, were examined and testified as follows:

CO-HEARING OFFICER DODUC: Thank you. Be

seated.

CO-HEARING OFFICER MARCUS: Wait.

(Laughter.)

(Co-Hearing Officer Marcus takes video.)

CO-HEARING OFFICER DODUC: All right.

Mr. Bailey, all yours.

MR. BAILEY: Wonderful. Thank you.

Colin Bailey on behalf of the Environmental
Justice Coalition for Water.

Much thanks to the Board for accommodating
this panel on short time, understanding that time is of
the essence.

We have EJCW's first panel with some
modification:

Mr. Daniel Heagerty will be speaking, likely,

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1 on Monday or at least next in line, probably in
2 combination with EJCW's second panel as will I in my
3 Policy Statement.

4 To dispense with one other preliminary:

5 There was some talk of shortcutting the entry
6 into evidence of the exhibits, which number EJCW-34 for
7 Mr. Milo Wetherall, EJCW-35 for Luci Paczkowski,
8 EJCW-36 Allegra Schunemann, and EJCW-37 for
9 Miss Caroline Schurz.

10 Unless there are objections from any of the
11 parties here represented, I would like to stipulate
12 that those are true and correct copies of their
13 evidence, each of which they prepared themselves, for
14 purposes of entry into evidence.

15 CO-HEARING OFFICER DODUC: All right. And not
16 seeing any objections, so stipulated.

17 MR. BAILEY: All right. So stipulated.

18 DIRECT EXAMINATION BY

19 MR. BAILEY: With that, panel, as you speak,
20 please summarize your testimony and, firstly, state
21 your name for the record and spell it for purposes of
22 the court reporter.

23 Allegra, you may begin.

24 WITNESS STROSHANE: My name is Allegra
25 Schunemann, A-L-L-E-G-R-A, S-C-H-U-N-E-M-A-N-N.

1 Thank you for the opportunity to address the
2 WaterFix proposal.

3 I'm a member of a youth-formed youth-led group
4 engaged in public trust issues, including climate and
5 water called Generation: Our Climate.

6 We are the generation that these decisions
7 most impact. We grow increasingly pessimistic
8 regarding the future being left to us.

9 This issue will affect my generation for years
10 to come because the decisions made today are going to
11 directly impact the conditions of the environment we
12 will inherit.

13 We rely on you, the California State Water
14 Resource Board, and other government agencies to make
15 decisions that aid Californians for generations to
16 come.

17 Thank you.

18 I am a co-founder of a youth grassroots
19 organization, Generation: Our Climate.

20 I'm here today to present an argument against
21 WaterFix.

22 I believe that the implementation of proposed
23 WaterFix will allow the transfer of the water into
24 the -- into the privately held corporations that pose a
25 legitimate threat to the accessibility of water in the

1 future and the effect the Delta tunnels will have on
2 that.

3 To my understanding, WaterFix is an attempt to
4 further the transfer of California water into the
5 private sector.

6 Water rights have been slowly flowing away
7 from the public and into privately owned corporations
8 for years. The allowances afforded to other companies
9 and the permitted usage of water is a violation of the
10 Public Trust Doctrine.

11 And the examples this corruption are numerous.
12 Just last year, Nestli extracted 27 million gallons of
13 water from the California water supply and paid just
14 \$524 for it.

15 This not only shows how much companies are
16 willing to bargain but also that they are afforded the
17 opportunity to not pay what they owe.

18 This water is supplied to corporations with
19 little regard to the environmental impacts of the
20 reckless use of this important resource.

21 The development of WaterFix will enable more
22 corporate exploitation of our natural resources and
23 violate the Public Trust Doctrine.

24 One of the main reasons these companies are
25 profiting off our supply is because of the weak water

1 rights that are impacted in California.

2 The current water rights are outdated and no
3 longer serve the needs of the public and environment
4 like they did 100 years ago.

5 This oversight by our representatives lead the
6 public to believe that the leaders of Californians are
7 ignoring the obvious needs of the state for the sake of
8 corporate profit.

9 California WaterFix and EcoRestore Project
10 will in no way aid Californians and only cause damage
11 to the ecosystem of the San Joaquin and Sacramento
12 River Delta. WaterFix will take away power from the
13 citizens and users of this water and put it into the
14 hands of powerful corporations instead. This
15 absolutely cannot be implemented.

16 Thank you.

17 WITNESS WETHERALL: My name is Milo Wetherall,
18 M-I-L-O, W-E-T-H-E-R-A-L-L.

19 My name's Milo Wetherall and I'm a founding
20 member and current President of the youth activism
21 called Generation: Our Climate.

22 My primary goal as a member of the youth is to
23 convey the sentiments of my peers and make engagement
24 around the politics of environmental policy accessible
25 to students across California.

1 I have testified around Marin and
2 San Francisco Counties and have spoken at the Drawdown
3 Marin Climate Event alongside the Marin County Board of
4 Supervisors.

5 I have reviewed materials focusing on the
6 history of Westlands Water District's unfair
7 maneuvering and disregard for environmental concerns in
8 favor of immediate need and their creation of multiple
9 situations of environmental collapse.

10 They are a critical example of the behavior
11 commonplace in California in terms of ignoring water
12 law in favor of quarterly profits.

13 I will explain how their history of disregard
14 for the environment has earned them understandable
15 distrust from California residents.

16 Since the 1950s, when the issue of irrigation
17 first arose in Southern California, this organization
18 has placed their own benefits over concern for
19 environmental protection.

20 The compliance of the Westlands Water District
21 in the destruction of the environment can be traced
22 back to the 1960s when they decided that the legal
23 risks threatened by United States Congress for building
24 farms in the Southern California desert was not as
25 important as their own personal gain.

1 Their scheme transformed a desert region with
2 depleted aquifers into an irrigated Wonderland of
3 cheaply accessible water.

4 Westlands Water District, as stated
5 previously, has a history of placing immediate water
6 needs of the District over long-term needs and not
7 acknowledging the risks associated with doing so.

8 It is a quasi-government body that has time
9 and time again depleted natural resources, allowed
10 toxins to be exposed to the greater environment, and
11 attempting to avoid responsibilities for these illicit
12 actions time and time again.

13 Environmental concerns and foreseeable
14 repercussions suggest the construction of the Delta
15 twin tunnels is an ecologically dangerous endeavor. It
16 is no surprise that the Westlands Water District is one
17 of its Proponents.

18 The water policy in California is meant to be
19 written with the guiding principles of the Public Trust
20 Doctrine kept at the forefront. This doctrine dictates
21 that current politicians have an obligation to preserve
22 public trust resources like water, air and soil for
23 future generations so that they can enjoy the beauty of
24 the natural earth the way people have for thousands of
25 years. This.

1 Adherence to the Public Trust Doctrine has
2 been clouded by Westlands' political maneuvering. They
3 have secured lawyers who in the past represented them
4 in the United States Department of Reclamations. This
5 in turn allows Westlands Water District to settle out
6 of court in sham deals to continue their theme of
7 reckless environmental policy present in
8 agricultural -- in California agricultural policy.

9 In fact, the support for this Project by the
10 Westlands Water District suggests to me that this is a
11 truly dangerous endeavor that will result in a
12 multibillion dollar bill to be footed by California
13 taxpayers.

14 The responsibility of the -- Sorry.

15 The responsibility of the California Water
16 Resource Control Board is to the current and future
17 generations of California -- Californians. The
18 Proposed Project would cause mass environmental decay
19 and only further the theme of irresponsibility within
20 the Westlands Water District.

21 By granting them this win would tell the
22 Westlands Water District that their irresponsible
23 behavior is acceptable when it is most definitely not.

24 The California Water Resource Board's priority
25 should be to maintain a homeostasis of the Delta and

1 Californians at large under the Public Trust Doctrine.

2 I can testify that this is wholly true because
3 I am a member of the youth. Our perspective on this
4 issue is a unique one and that the policy you dictate
5 today will affect our generation and our children long
6 past all of the current legislators are gone.

7 We as the youth want a California where we can
8 drink water and breathe clean air as adults. We want
9 to live in a world where we can worry about our tests
10 and friends, not the air we breathe and the water we
11 drink.

12 The fact that we must testify today as
13 children against the immense usage of water and the
14 hijacking of democracy is a testament to the graveness
15 of this issue.

16 I should be in school learning about the past
17 failures of the government, not testifying to rectify
18 their wrongdoings here today.

19 Please do not vote in favor of the California
20 WaterFix EcoRestore project.

21 WITNESS PACZKOWSKI: My name is Luci
22 Paczkowski, L-U-C-I, P-A-C-Z-K-O-W-S-K-I.

23 I am a co-founder of the youth climate
24 activism group Generation: Our Climate.

25 If the California State Water Resources Board

1 approves the creation of the twin Delta tunnels, they
2 will continue to violate the Public Trust Doctrine in a
3 similar fashion to their handling of water crises in
4 both the wine and almond industries.

5 For the past two decades, the wine industry
6 has become a prominent player in California
7 agricultural and water usage.

8 As certain wineries devise to gain economic
9 and political influence, they feel they have the power
10 to skirt around California law. A perfect example of
11 this is the winery E&J Gallo.

12 E&J -- Sorry.

13 E&J, who produce 4.7 million cases of high-end
14 wine annually, found that the current amount of water
15 being allocated to them was insufficient to their
16 production of wine.

17 To solve this issue, the winery constructed an
18 8.2 square acre reservoir with a depth of 45 feet to
19 collect water from a nearby stream, essentially damming
20 it. The State Water Board never approved these
21 actions, but failed to take action against this winery.

22 Our government failed to enforce the right of
23 water stated in the Public Trust Doctrine and, instead,
24 served the overwhelming corruption of the wine
25 industry. The Water Board should have stepped in but

1 they failed to respond to protect our basic rights.

2 The Water Board's lack of accountability is
3 also prevalent in the almond industry. The almond
4 industry is notorious for its vast consumption of
5 California water.

6 The \$4.8 billion almond industry continues its
7 intense usage of California water without any
8 restrictions. Now is the time for the Water Board to
9 act.

10 Each year, roughly 80 percent of California
11 water is diverted to usage and agricultural sector. Of
12 this 80 percent, 9 percent of water is used
13 specifically for the cultivation of almonds. Each
14 almond is said to need roughly a gallon of water.

15 The amount of water used annually in the
16 creation of almonds is roughly the same of the yearly
17 household needs of L.A., San Diego, and S.F. Bay Area,
18 about two-thirds of California's population.

19 In its quest for more water, the almond
20 industry, like the wine industry, has turned
21 subterranean for water. It has depleted aquifer after
22 aquifer in its quest for almonds.

23 This unregulated corruption of resources is
24 especially prominent in the Sacramento-San Joaquin
25 River Delta for over 90 percent of its marshes and

1 water has been drained in order to feed the
2 agricultural industry.

3 A direct effect of the increase in groundwater
4 use depleting our water takes form in a small farming
5 community outside the San Joaquin Valley, Alpaugh.

6 In the early 20th Cen -- In the early 20th
7 Century, Alpaugh was once an island in the middle of
8 Tulare Lake until it was drained to feed irrigation
9 agricultural projects.

10 Alpaugh is forced to rely on wells to provide
11 the town with water, but because of the undocumented
12 depletion in groundwater due to the almond industry,
13 the Wells became inoperable.

14 The town then drilled a new well farther into
15 ground to access the water, only to find that the water
16 contained 30 parts per billion of arsenic.

17 The Federal safety standards say that any
18 water with 10 or more parts per billion of arsenic is
19 unfit for human consumption.

20 The residents rely on bottled water, spending
21 over 400,000 as a town annually just to obtain access
22 to a basic human necessity.

23 On top of that, Governor Jerry Brown has
24 imposed severe water use restrictions on Alpaugh
25 residents as part of a statewide effort to combat the

1 drought.

2 The town of Alpaugh and the consistent failure
3 of the almond industry to conserve water serves as an
4 example of the unreliability of the California Water
5 Board when taking action to protect the citizens'
6 Public Trust Doctrine rights. This ineffectiveness of
7 the Water Board plus -- puts Alpaugh and the rest of
8 California in jeopardy.

9 It is the fault of this Board of lobbyists of
10 corporate agriculture that towns in California like
11 Alpaugh are endangered. This lack of water is due to
12 corporate profiteering and not, as Governor Jerry Brown
13 likes to say, long showers and leaky faucets.

14 By allowing the twin Delta tunnels to be
15 constructed, the California State Water Board is both
16 adding another instance to its list of failures to
17 protect the public and allowing for corporate entities
18 to act extrajudiciously.

19 It is the sole purpose of the California State
20 Water Board to ensure that water is distributed fairly
21 to all residents of California equally.

22 By approving the construction of these
23 tunnels, the Water Board is aiding and abetting the
24 agricultural industry in its illegal usage of water.

25 Thank you.

1 WITNESS SCHURZ: My name is Caroline Schurz,
2 S-C-H-U-R-Z.

3 I am also a member of the organization
4 Generation: Our Climate.

5 It is our opinion that the water -- the
6 proposed WaterFix Project does not address the
7 well-being of my generation or future generations.

8 First off, the proposed plan is in direct
9 violation with the current legislation, the Delta
10 Reform Act, which states (reading):

11 "The long-standing constitutional
12 principle of reasonable use and the
13 Public Trust Doctrine shall be the
14 foundation of state water management
15 policy and are particularly important and
16 applicable to the Delta."

17 The policy we are seeing proposed by the
18 WaterFix isn't based off water management but, rather,
19 is based upon maximizing water exports for current
20 businesses.

21 Furthermore, the current infrastructure in
22 place also does not address the public trust as
23 evidenced by the decreasing number of species, the salt
24 water intrusions into freshwater habitats, soil
25 contamination and groundwater pollution, just to name a

1 few.

2 Instead of fixing these problems, the WaterFix
3 Project would only further exacerbate them as the
4 government would be forced to pump increased amounts of
5 water to make up for the sizeable cost associated with
6 this Project.

7 The economic benefits of WaterFix Project are
8 short-term. As a member of Generation Z, it is our
9 belief that government policy should not be based off
10 instant gratification. Water is a resource that must
11 be protected for generations and supplies cannot be
12 threatened by agricultural enterprises.

13 Where is the government accountability to my
14 generation?

15 What this Project is, simply, is taking large
16 quantities of fresh water that contribute to water
17 quality, supply, fish habitats, Delta agricultural and
18 public health, and exporting it to desert lands in
19 order to grow crops that do not belong in California in
20 the first place and are not sustainable to California's
21 future.

22 How would this action not further diminish and
23 degrade our public trust resources in the Sacramento
24 River and the Bay-Delta? It is a clear violation of
25 the Public Trust Doctrine.

1 Water resources are the Trust assets of future
2 generations and must be protected. When there is
3 uncertainty, as there is here, the government must act
4 with great caution and must hold themselves to be
5 responsible for the protection of public trust
6 resources.

7 Because of the huge costs associated with this
8 tunnel, California will be pushed to pump -- will be
9 forced to push even more water south to help pay down
10 the huge Project debts.

11 Salt water is already infiltrating the current
12 water system. This Project would intensify the problem
13 and contaminate even more of California's already
14 limited supply of water.

15 This major infrastructure project commits
16 California to long-term mistakes and ensures that
17 agricultural enterprises in the desert will continue
18 using huge amounts of water.

19 It is my understanding as a member of the
20 youth that my government's purpose is to serve the
21 public and that no one, no one man or one corporation,
22 is to be held or served above anyone else.

23 I know how my generation feels because I am a
24 member of it. It is essential our voices are heard
25 because we will ultimately be feeling the brunt of

1 these decisions made today.

2 I am here because I felt I needed to be. As
3 Milo said, I should be in school right now. I should
4 be learning U.S. history right now, not creating it.

5 I ask the State Water Board to be accountable
6 to us, the beneficiaries of the public trust. I
7 believe the WaterFix Project as proposed fails to
8 secure the protections our Trust asset deserves for my
9 generation and the generations to follow.

10 Thank you.

11 CO-HEARING OFFICER DODUC: Thank you.

12 Does that conclude the direct of this panel,
13 Mr. Bailey?

14 MR. BAILEY: Yes, it does.

15 CO-HEARING OFFICER DODUC: Is there any
16 cross-examination?

17 MS. ANSLEY: Jolie-Anne Ansley for the
18 Department of Water Resources.

19 We have no cross-examination for this panel.

20 CO-HEARING OFFICER DODUC: Thank you.

21 Are there any questions?

22 Yes, Madam Chair.

23 CO-HEARING OFFICER MARCUS: Just a couple
24 things to say, too.

25 I want to make an offer to you all to have a

1 conversation about -- we can't talk about this, other
2 than in this hearing in a formal setting. But I've
3 already talked to Mr. Heagerty.

4 Happy to come talk to you about public trust
5 water rights, all of that, so long as you don't talk
6 WaterFix. Happy to go to your school on a day that I
7 can to talk about the range of issues. Im happy to do
8 that.

9 But I do want to ask you a question.

10 During this, you've all obviously spent a lot
11 of time thinking about California water and done some
12 interesting and impressive research and dives into
13 certain things.

14 So, I want -- I want the date of that E&J
15 Gallo example that you mentioned in your testimony
16 because I am not familiar with it. When I read that, I
17 wasn't familiar but I want to ask about it.

18 WITNESS PACZKOWSKI: Yes. Hold on one second.

19 CO-HEARING OFFICER MARCUS: I know where it
20 is, so maybe that's enough.

21 But you obviously looked a bit at the records,
22 so if you just give me the year, that would help us
23 find it.

24 WITNESS PACZKOWSKI: Yes.

25 One moment. I'm sorry. Thank you.

1 Let's see.

2 CO-HEARING OFFICER MARCUS: You can also look
3 later and Mr. Bailey can let us know.

4 WITNESS PACZKOWSKI: This says 2010 from --
5 This says from 2010 to 2013.

6 CO-HEARING OFFICER MARCUS: 20 -- Great.
7 That's helpful.

8 WITNESS PACZKOWSKI: Yeah.

9 CO-HEARING OFFICER MARCUS: And then I did
10 just want to ask a question of you all as you've
11 thought -- because obviously you were brought -- your
12 interest in water is broader, I would assume, than this
13 particular proceeding.

14 But if you could do one affirmative thing in
15 California, other than what you've testified about this
16 Project and, as you know, our choices here are yes as
17 proposed, no as proposed, or yes with conditions. So a
18 lot of the testimony has been about conditions.

19 I'm tempted to ask you what condition you
20 would put on it, but actually I would rather just ask
21 you: Of all the water issues you've looked at through
22 the course of your studies and your own reading, A,
23 what do you care about most? And, B, what one thing
24 would you do to make things better.

25 WITNESS WETHERALL: Can I answer that?

1 CO-HEARING OFFICER MARCUS: Yeah. Whatever
2 order you want.

3 WITNESS WETHERALL: So we did do research for
4 this. But most of our environmental work has been done
5 within the San Francisco and the general Bay Area in
6 general, more with green energy.

7 And we testified at Air Quality, so this is
8 kind of our entry into the water. But we see it as
9 there isn't so much of a divide between these issues.
10 It's all about protecting the Public Trust Doctrine.

11 So I wouldn't say that we are an air quality
12 group or a water quality group or a green energy group
13 so much as we are a Public Trust Doctrine group.

14 WITNESS PACZKOWSKI: Personally, I think --
15 Well, the water issue is the most concern. We are just
16 how humans are lacking with it, especially with Flint.

17 And, also, I was shocked to find that in our
18 own state Alpaugh is still lacking water from taps.

19 And so I think just that -- Of course the
20 environmental impacts of our testimony and what we have
21 stated is so relevant to today, but also the fact that
22 people in this -- in this nation don't have access to
23 water is incredible -- is -- Yeah. I'm very passionate
24 about it.

25 CO-HEARING OFFICER MARCUS: No, no. That's my

1 number one, too.

2 I'm asking because then I can send you stuff
3 about it and we can think about to talk -- the best way
4 to talk about it.

5 Either of the . . .

6 WITNESS SCHURZ: I don't know if this directly
7 answers your question.

8 But something I would really like to see
9 changed doesn't have to do with water.

10 But it has grown so frustrating to be reading
11 this news and seeing what a large role corporations,
12 especially fossil fuel corporations, what a large role
13 they play in making these decisions.

14 That none of these decisions are for the
15 good -- or wholly for the good of the public. There's
16 always this say from these, you know, giant
17 corporations that are benefiting from these decisions.

18 So I think the number one thing, if I could
19 change anything right now, it would -- for -- just the
20 fossil fuel industry to leave this conversation and for
21 it to be based upon the opinions of the people.

22 Because -- I mean, in my opinion, there should
23 be nobody that is, like, a climate skeptic. There
24 should be no one that's against common-sense
25 environmental regulations, because it's -- It will

1 affect all of us and that would be obviously a negative
2 impact to our futures.

3 WITNESS SCHUNEMANN: And the -- Kind of as a
4 part of that, but also going a little bit further.

5 The thing that I would like to see changed the
6 most is how much youth is involved because that's what
7 we're really trying to change as an organization is
8 getting more youth involved in this whole -- this whole
9 conversation. Because we are really the people who are
10 going to be affected.

11 And sort of the current representatives aren't
12 really representative of who's going to benefit and
13 really be let down by the decisions that are made.

14 So more involve -- more involvement with the
15 youth is really our number one goal.

16 CO-HEARING OFFICER MARCUS: That's great.

17 So thank you all. I look forward to
18 talking to you -- Oh, go ahead.

19 WITNESS PACZKOWSKI: I'm not sure if this is
20 relevant exactly to this conversation, but just adding
21 on to what Allegra said.

22 I think, like, we need to inform youth and
23 also representatives about these issues and be about
24 how to conserve and how to protect our own futures
25 through the environment. But we also need to see more

1 doing and more, like, direct impact.

2 And so I think, like, when we discuss later,
3 it would be a great thing to talk about as well.

4 CO-HEARING OFFICER MARCUS: I look forward to
5 that.

6 Yes, Mr. Wetherall.

7 WITNESS WETHERALL: I hate to keep going on
8 with about this.

9 But what we're trying to do with the power of
10 the youth is hold our so-called pro environment
11 Governor and legislature accountable.

12 It is baffling to us that our government here
13 is seen as an extremely pro environment government when
14 there are citizens in California who are not even able
15 to have water flowing out of their taps.

16 And we see it as a huge hypocrisy that we
17 condemn other nations for their treatment of their
18 citizens when we cannot provide water to our own.

19 So, we are really trying to push the
20 California government to think more about what its
21 citizens need and not what its corporations need in
22 terms of water usage.

23 CO-HEARING OFFICER MARCUS: I will look
24 forward to that conversation, because we are
25 endeavoring to do just that in the legislature.

1 I might have some hearings for you to show up
2 at. Because there's the issue of what totally makes
3 sense and then there's this web of what authorities we
4 have are funding. We have to get it.

5 So, as you move on as activists figuring out
6 what the tools are and the levers and how to get more
7 of them if they don't exist, and looking at the state
8 of play and some of the trade-offs on some of these
9 issues.

10 You all have a bright future as advocates, and
11 so I think helping you access those tools and seeing
12 where those points are, I think, will be -- would be my
13 pleasure, at least. So . . .

14 WITNESS WETHERALL: Thank you.

15 WITNESS SCHURZ: Thank you.

16 WITNESS PACZKOWSKI: Thank you.

17 WITNESS SCHUNEMANN: Thank you.

18 MS. D'ADAMO: I just want to thank you for
19 taking the time to be with us today, and to taking a
20 day off school, not playing hooky, but to undertake a
21 challenge that is way more difficult than doing your
22 homework and going to school, but participating in a
23 forum that you're not used to, taking the time to
24 listen to a very complicated subject.

25 And, as you've seen, this is sort of an

1 adversarial process. There's one side and another.

2 And I just want to encourage you to pursue
3 your passions and stick with it, but also to take the
4 time to hear what the other side has to say because
5 that might make you strong -- stronger advocates for
6 whatever cause, you know, whether it's water, air,
7 energy, whatever the cause may be, to hear what the
8 other side has to say and better understand what led to
9 some of these situations that we all find so appalling,
10 like the lack of drinking water, or a violation of
11 water rights, whatever the concern is that you have.

12 And speaking of the complexity, I do have a
13 question for you with respect to WaterFix.

14 So, one of the things that, you know, we -- we
15 should be considering in this proceeding is climate
16 change, because climate change is upon us and this --
17 whatever we're looking at is not a static situation.

18 So how should we incorporate climate change in
19 our analysis of this Project?

20 WITNESS WETHERALL: Well, we see this Project
21 as kind of a way that the agricultural industry can
22 tender water to themselves as we head further into time
23 where the effects of climate change will damage us
24 more.

25 The Water EcoRestore Project uses water, like

1 knowledge of water as we have it now. But in 100
2 years, in 150 years, the -- because of climate change,
3 we don't know if we're going to have the same amount of
4 drinking water, the Californians.

5 And so once this Delta tunnel thing is built,
6 organizations like our quasi-government agencies like
7 Westlands will secure contracts to ensure that they get
8 water rights for the next 50 years or so.

9 But will our water priorities today be the
10 same as those in 50, 75, 100 years? I would suggest
11 definitely not.

12 And we need to rethink about how we look at
13 water usage, not just now but in the long term.

14 We need to think about how people who don't
15 have political representation now, how will they
16 increase their political representation down the line
17 when the need for water becomes more and the amount of
18 it becomes less?

19 And, so, we see this as a way to grant
20 corporations exclusive water access when we will --
21 when we as regular citizens just trying to be alive
22 will have less access to it.

23 So, essentially, because of that, I would say
24 is enough to deny this Project from being put through.

25 Thank you.

1 CO-HEARING OFFICER MARCUS: Thanks.

2 Anyone else?

3 WITNESS PACZKOWSKI: I agree.

4 WITNESS SCHUNEMANN: Yeah. Second.

5 WITNESS SCHURZ: Yeah, I also agree with that,
6 but -- You know, so I second what Milo said.

7 But I think it's just -- It's a little
8 disheartening to hear there's always so much talk about
9 the California drought and questioning why we are
10 sending so much water to a desert region, I guess to --
11 just so they can continue their practices, which aren't
12 sustainable for California.

13 Like, you shouldn't have almonds growing in a
14 desert. That's -- It doesn't make sense.

15 And considering the trajectory of climate
16 change, things are just going to be getting worse. So
17 why would we be creating this huge infrastructure
18 project if conditions are just going to worsen?

19 WITNESS PACZKOWSKI: And I understand there
20 are two sides to each --

21 CO-HEARING OFFICER MARCUS: More like 15 is
22 what we're finding.

23 WITNESS PACZKOWSKI: Yeah.

24 So -- And so we do understand that but, what
25 we really stated is a reflection of what our concerns

1 are for the next couple of years, just when it
2 addresses our generation.

3 So, although these are facts and -- and the --
4 and, no, we don't know how exactly they came to be,
5 it's still very important to us that these things are
6 going on no matter what, and they shouldn't be, and it
7 affects us especially.

8 And so I just wanted to make that known
9 basically.

10 WITNESS SCHUNEMANN: And just going back to
11 what Caroline said really quickly.

12 Having this huge infrastructure project
13 started now is irresponsible because we don't really
14 know what's going to happen a few years into the
15 future.

16 So even with all the research and all of the
17 regulations that are said to be put in place and
18 everything, it's just irresponsible to try to put it
19 through because we don't know what's going to happen in
20 the future.

21 CO-HEARING OFFICER DODUC: All right. Thank
22 you.

23 WITNESS SCHURZ: Thank you so much.

24 CO-HEARING OFFICER DODUC: I actually have the
25 most important questions to ask.

1 CO-HEARING OFFICER MARCUS: Oh, yeah?

2 CO-HEARING OFFICER DODUC: Remember you're
3 under oath.

4 CO-HEARING OFFICER MARCUS: That's because
5 we're lawyers and she's an engineer, and engineers
6 always have better questions.

7 CO-HEARING OFFICER DODUC: And she anticipated
8 my question.

9 How many of you are thinking about engineering
10 as a future profession?

11 WITNESS PACZKOWSKI: I find it very
12 interesting, and I have done lots of studies about
13 women's techno -- like, women in technology and their
14 attrition in those fields.

15 I personally don't have any skills in those
16 fields, but I do think it's very interesting, and could
17 very well be applicable to the future and especially
18 could be tied to climate change.

19 So I think that's a possibility but I wouldn't
20 say it's my direction. But I think we're all --

21 CO-HEARING OFFICER DODUC: You're not my
22 favorite.

23 (Laughter.)

24 WITNESS SCHUNEMANN: I'm looking to a career
25 in computer engineering --

1 CO-HEARING OFFICER DODUC: Yes!

2 WITNESS SCHUNEMANN: -- or being a lawyer.

3 CO-HEARING OFFICER DODUC: Oh.

4 (Laughter.)

5 CO-HEARING OFFICER DODUC: That was my second
6 question.

7 How many of you are potentially considering
8 going into law?

9 WITNESS SCHUNEMANN: Maybe both at the same
10 time.

11 CO-HEARING OFFICER DODUC: Both?

12 Now -- Now, this is the most important
13 question you'll get:

14 How many of you are considering Cal Berkeley?

15 WITNESS WETHERALL: (Raising hand.)

16 WITNESS SCHURZ: (Raising hand.)

17 WITNESS PACZKOWSKI: (Raising hand.)

18 WITNESS SCHUNEMANN: (Raising hand.)

19 CO-HEARING OFFICER MARCUS: Oh.

20 CO-HEARING OFFICER DODUC: (Clapping.)

21 And I will stop there.

22 (Laughter.)

23 WITNESS SCHURZ: I just visited it, because
24 I'm going to be applying to college soon and I just
25 visited it last month.

1 CO-HEARING OFFICER DODUC: Yes. You're my
2 favorite!

3 Miss Ansley, did you have something to add?

4 MS. ANSLEY: Yes. I want to add that you can
5 be both a scientist and a lawyer.

6 WITNESS PACZKOWSKI: Yes.

7 MS. ANSLEY: That includes engineers and
8 lawyers.

9 CO-HEARING OFFICER DODUC: That is indeed
10 true.

11 Thank you. Thank you for participating in
12 this. Thank you for taking time to do your research,
13 taking time to appear here today and mainly for being
14 engaged on what is a very, very important issue, not
15 just for your generation, but all of our generations,
16 present as well as those to come.

17 I definitely second Board Member D'Adamo's
18 comments about how important it is to listen to
19 different perspectives, to gain as much input as
20 possible, which is actually what we're doing through
21 this process, is going through and listening to
22 everybody, considering all the information, the facts
23 that are presented to us, weighing and balancing all
24 the different factors before hopefully reaching what we
25 hope will be a solution that resolves some of these

1 very complicated, long-standing issues.

2 And a critical part of that is to be
3 open-minded and listening to all perspectives and
4 weighing them with fairness. And so I -- I definitely
5 welcome the younger voices in this very difficult
6 problem, and thank you for your participation.

7 WITNESS SCHURZ: Thank you.

8 WITNESS WETHERALL: Thank you.

9 WITNESS SCHUNEMANN: Thank you.

10 WITNESS PACZKOWSKI: Thank you.

11 CO-HEARING OFFICER DODUC: Mr. Bailey, your
12 witnesses are dismissed.

13 MR. BAILEY: Thank you very much to the Board
14 for accommodating and deeply engaging this panel.

15 CO-HEARING OFFICER DODUC: Thank you.

16 And now we will really adjourn to our lunch
17 break until 1:30.

18 (Recess taken at 1:20 p.m.)

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1 Thursday, March 28, 2018 1:40 p.m.

2 PROCEEDINGS

3 ---000---

4 CO-HEARING OFFICER DODUC: All right. It is
5 1:40 and we are resuming.

6 But before we turn back to Mr. Mizell, let's
7 see if we can do a little bit of time projections.

8 I'm -- I'm gathering that we will spend the
9 rest of today on cross-examination of this panel and,
10 if necessary, bring them back on Monday.

11 But looking forward, what is -- I think
12 Mr. Wright's estimate this morning was that 20 minutes
13 each for four witnesses, so that's about 80 minutes for
14 direct for Friends of the River.

15 And apologies. What was your estimate for
16 cross?

17 MS. ANSLEY: One hour.

18 CO-HEARING OFFICER DODUC: One hour.

19 So that will take at least half a day
20 tomorrow.

21 And what is your estimate for
22 cross-examination of EJCW -- I'm sorry -- Monday --
23 Monday, I mean. EJCW.

24 MR. MIZELL: I'm going to estimate 30 minutes.

25 CO-HEARING OFFICER DODUC: 30 minutes.

1 What's your estimated cross for Mr. Obeji?

2 What I'm trying to determine is whether or not
3 we will get to NRDC on Monday.

4 MS. ANSLEY: I'm happy to get clarification on
5 this.

6 I -- I do not believe that Mr. Obeji is more
7 than an hour, but I -- I will admit that I do not have
8 a hard estimate for him right now.

9 CO-HEARING OFFICER DODUC: Okay. There are
10 only -- Well, there's Miss Des Jardins, Mr. Jackson,
11 and Mr. Ruiz, and Miss Morris.

12 Any anticipated cross-examination for Friends
13 of the River, EJCW, NRDC?

14 MS. MORRIS: On Friends of the River, we will
15 be doing a joint examination with DWR.

16 I don't anticipate any cross on the other two.

17 Mr. Obeji for NRDC, I would reserve 20
18 minutes.

19 CO-HEARING OFFICER DODUC: Okay. Mr. Ruiz.

20 MR. RUIZ: Yes.

21 On behalf of the SCWA parties, I would say 20
22 minutes per group.

23 CO-HEARING OFFICER DODUC: Okay.

24 MS. DES JARDINS: I'd reserve 30 minutes for
25 NRDC.

1 Dierdre Des Jardins.

2 MR. JACKSON: Tentatively 30 minutes for NRDC,
3 although I am trying not to be here on Monday, so --
4 because I have a brief to write.

5 CO-HEARING OFFICER DODUC: Well, let -- let
6 me -- let me help you out on that, Mr. Jackson. You
7 know how much I -- I always like to make you happy.

8 I'm going to say that we will not get to NRDC
9 on Monday. Let's go ahead and just focus Monday on
10 Restore the Delta -- I'm sorry -- on -- well, Restore
11 the Delta if we still need to have you, Friends of the
12 River, and the remaining panelists for EJCW. Then
13 we'll call it a day.

14 MR. JACKSON: Thank you.

15 CO-HEARING OFFICER DODUC: We'll wait to, you
16 know, get your briefings and requests from the
17 discussion earlier today, your responses.

18 And if we resume the following Monday, that's
19 when we will expect NRDC to appear.

20 MR. JACKSON: And after NRDC is . . .

21 CO-HEARING OFFICER DODUC: It would be PCFFA.

22 MR. JACKSON: Okay. Thank you.

23 CO-HEARING OFFICER DODUC: Who has switched
24 places with Miss Des Jardins.

25 MR. JACKSON: All right.

1 CO-HEARING OFFICER DODUC: All right.

2 Mr. Mizell, Miss Ansley, help me out again.

3 How much time do you need to finish up your
4 cross?

5 MR. MIZELL: I only have 10 questions
6 remaining, and if I speak more quickly, maybe 15
7 minutes.

8 CO-HEARING OFFICER DODUC: All right. 15
9 minutes it is.

10 MR. MIZELL: Mr. Baker, if we could bring up
11 Mr. Stroshane's testimony, please.

12 (Exhibit displayed on screen.)

13 MR. MIZELL: RTD-12.

14 (Exhibit displayed on screen.)

15 MR. MIZELL: Thank you.

16 And I'll be looking for Page 4, please.

17 (Exhibit displayed on screen.)

18 MR. MIZELL: Lines 15 through 17.

19 (Exhibit displayed on screen.)

20 MR. MIZELL: So Lines 15 through 17 contains
21 statements about impairment of waterways by selenium;
22 is that correct?

23 WITNESS STROSHANE: I'm sorry. I missed your
24 question.

25 MR. MIZELL: I'm just looking for the topic of

1 the statement here.

2 Is this statement on Lines 15 through 17 about
3 impairment of waters by selenium?

4 WITNESS STROSHANE: Yes.

5 MR. MIZELL: Are you familiar with the
6 modeling described in the FEIR/EIS?

7 WITNESS STROSHANE: Only somewhat. I -- I did
8 review it as part of commenting on the draft and
9 Recirculated EIRs earlier in the process, but I have
10 not looked at any of the modeling for the Final EIR.

11 MR. MIZELL: Okay. In those drafts that you
12 reviewed, did you review Chapter 8?

13 WITNESS STROSHANE: Only in a general way.

14 MR. MIZELL: And that's the water quality
15 chapter of --

16 WITNESS STROSHANE: Yes, I'm aware. Yeah,
17 that's right.

18 MR. MIZELL: And did you happen to review
19 Appendix 8m?

20 WITNESS STROSHANE: That sounds somewhat
21 familiar, yes.

22 MR. MIZELL: Okay. Are you familiar with the
23 Biological Assessment?

24 WITNESS STROSHANE: No.

25 MR. MIZELL: No. Okay.

1 Are you familiar with the Part 2 testimony of
2 Dr. Harry Ohlendorf?

3 WITNESS STROSHANE: I looked it over. I did
4 not read it closely when I realized that it was only
5 about validation -- validating the model or somehow,
6 you know, doing a check on the model.

7 MR. MIZELL: So based upon your readings of
8 the draft Chapter 8 in Appendix 8m, and your own review
9 of Dr. Ohlendorf's testimony in Part 2, is it your
10 understanding that DWR's evidence indicates only small
11 increases in selenium bioaccumulation?

12 WITNESS STROSHANE: I am aware.

13 MR. MIZELL: If we could move to Page 41,
14 please, looking at Line 21.

15 (Exhibit displayed on screen.)

16 MR. MIZELL: Okay. So I'm going to focus you
17 on a block quote here that you've inserted in your
18 testimony from a letter dated September 8th, 2017.

19 Do you have this block quote in your mind?

20 WITNESS STROSHANE: Yes, I'm looking at it,
21 yes.

22 MR. MIZELL: Can we go to the next page,
23 please, and look towards Line 12 -- It's actually 13.
24 I guess it's 13.

25 (Exhibit displayed on screen.)

1 MR. MIZELL: And this block quote here, sir,
2 from another submission by the Department?

3 WITNESS STROSHANE: I'm sorry. Which lines
4 are you -- do you want to direct me to?

5 MR. MIZELL: The block quote between Lines 13
6 and roughly 16.

7 WITNESS STROSHANE: (Examining document.)

8 Okay. I've reviewed it.

9 MR. MIZELL: Thank you.

10 Is it your understanding that these two
11 statements that you block quote in your testimony were
12 made prior to any Part 2 testimony?

13 WITNESS STROSHANE: My Part 2 testimony or --

14 MR. MIZELL: No. The Department's Part 2
15 testimony.

16 WITNESS STROSHANE: Yes. The calendar date on
17 the -- the letter -- the second letter that I cite
18 makes that clear.

19 MR. MIZELL: And you're aware of the numerous
20 statements that I personally made on the record
21 regarding the Department's -- that the Department has
22 yet to propose conditions for the Project? I made
23 those statements throughout Part 1.

24 WITNESS STROSHANE: I think I've heard some of
25 them, yes.

1 MR. MIZELL: Okay. So if we can turn to
2 Page 43, please --

3 (Exhibit displayed on screen.)

4 MR. MIZELL: -- looking at what falls between
5 Lines 8 and 9.

6 The part of the sentence that reads (reading):

7 ". . . Petitioners' proposals for Permit
8 conditions . . ."

9 WITNESS STROSHANE: Yes, I see that.

10 MS. ANSLEY: Do you believe that statement can
11 still be a fair characterization of the quotations
12 you've inserted into your testimony?

13 WITNESS STROSHANE: Well, I based that
14 statement primarily on the content of the September 8,
15 2017, letter.

16 MR. MIZELL: Which was at a time when the
17 Department had made clear that it had not decided to
18 propose conditions at that time.

19 WITNESS STROSHANE: Correct. It was -- But
20 there was a -- I thought there was a statement -- Well,
21 I'll just -- I'll leave it there.

22 MR. MIZELL: If we could go to Page 57,
23 please.

24 (Exhibit displayed on screen.)

25 MR. MIZELL: I'm looking at Lines 25 through

1 27 at the bottom of the page.

2 (Exhibit displayed on screen.)

3 MR. MIZELL: The sentence that begins
4 (reading):

5 "Given this legal requirement . . ."

6 Do you see that sentence?

7 WITNESS STROSHANE: I do. I haven't finished
8 reviewing it yet.

9 (Examining document further.)

10 WITNESS STROSHANE: Okay.

11 MR. MIZELL: Is the point that you were trying
12 to make of this statement, that you take issue with the
13 California WaterFix providing an additional tool for
14 moving water from places of surplus to places of need
15 during a drought?

16 WITNESS STROSHANE: I wouldn't characterize it
17 as a tool, per se.

18 But the tunnels, as I argued elsewhere, or
19 even perhaps here -- Yeah.

20 I've used the phrase either, you know,
21 "additional capacity" or, in this -- the beginning of
22 this paragraph, "unused capacity."

23 The idea that underlies this is the additional
24 capacity -- engineering capacity that the tunnels would
25 create in the Delta for facilitating water transfers.

1 MR. MIZELL: And so is it your opinion behind
2 this statement --

3 WITNESS STROSHANE: I'm sorry. Could you -- I
4 had to cough. Could you start again?

5 MR. MIZELL: Your opinion underlying this
6 statement is your opinion that you would prefer to see
7 less options for moving water around the state during a
8 drought.

9 WITNESS STROSHANE: Well, I don't think I said
10 that.

11 The . . . The tunnels, as I've said, would
12 increase capacity of the system to move water
13 transfers. Whatever the number or volume involved, it
14 would move that water under the Delta, assuming the
15 tunnels are all in place and, you know, we have an
16 operating WaterFix Project, and that that -- those
17 transfers would not rely -- would not need -- at least
18 it is alleged in some of the statements that I have
19 cited elsewhere in my testimony that those transfers
20 would not need what is called transfer -- carriage
21 water, which is the water that accompanies a water
22 transfer under the existing system that is used to help
23 establish and retain the hydraulic barrier that
24 protects the transfer itself from salinity incursion.
25 That's my understanding.

1 So, again, it goes to whatever the number or
2 volume, that's -- that's the difference between
3 transfers now and transfers with the tunnels in place.

4 MR. MIZELL: Thank you for that additional
5 explanation. I appreciate it.

6 If we could go to Page 59, please.

7 (Exhibit displayed on screen.)

8 MR. MIZELL: Can I focus you on lines, looks
9 like, 7 through 17, in which you quote the Delta Vision
10 Blue Ribbon Task Force from 2008.

11 WITNESS STROSHANE: So we're on -- I'm sorry.
12 What page are we on?

13 MR. MIZELL: 59.

14 WITNESS STROSHANE: 59. And can I have the
15 numbers again?

16 MR. MIZELL: 7 through 17 is the large block
17 quote of the Blue Ribbon --

18 WITNESS STROSHANE: Yes, okay. I'd like to
19 read the paragraph ahead and then read the quote, so
20 give me a moment.

21 MR. MIZELL: Certainly. Whenever you're
22 ready.

23 WITNESS STROSHANE: (Examining document.)

24 Okay. I've reviewed it.

25 MR. MIZELL: Thank you.

1 So my question is: Are you aware that this
2 same group found that alternative conveyance in the
3 Delta was needed?

4 WITNESS STROSHANE: Am I aware?

5 I'm sorry. Please restate the question. I
6 couldn't hear the last --

7 MR. MIZELL: Certainly.

8 WITNESS STROSHANE: -- part of it.

9 MR. MIZELL: Are you aware that the Delta
10 Vision Blue Ribbon Task Force in 2008 also found that
11 alternative conveyance in the Delta was needed?

12 WITNESS STROSHANE: I seem to recall that,
13 yes.

14 MR. MIZELL: Thank you.

15 That concludes my cross-examination of the
16 panel.

17 I would like to . . . I would like to make a
18 Motion to Strike some very discrete statements
19 contained in Miss Barrigan-Parilla's testimony.

20 The basis of the motion is scope beyond the
21 key hearing issues or any information related to the
22 key hearing issues.

23 These limited statements are concerning the
24 legislative authorization of the Department of Water
25 Resources to construct the California WaterFix.

1 The legislative authorization for DWR is set
2 forth in California Water Code. It is not subject to
3 review under the Change Petition provisions of the
4 Water Code or the regulations, nor is it listed as a
5 key hearing issue for any part of this hearing.

6 It's the subject of a validation lawsuit and
7 it's properly before the courts to make a determination
8 on that matter.

9 If you would like, it's -- it's three very
10 short phrases.

11 CO-HEARING OFFICER DODUC: Go ahead and read
12 them.

13 MR. MIZELL: RTD-22, Page 3, Line 14.

14 CO-HEARING OFFICER DODUC: Can we go there,
15 please. Page 3, Line 14.

16 (Exhibit displayed on screen.)

17 MR. MIZELL: RTD-22, please.

18 (Exhibit displayed on screen.)

19 WITNESS STROSHANE: Yeah. This is my
20 testimony, not Miss Barrigan-Parilla's. I mean --

21 MR. MIZELL: If we --

22 WITNESS STROSHANE: -- RTD-22.

23 MR. MIZELL: Yeah. One of the tabs is RTD-22,
24 if we pop there, Page 3, Line 14.

25 (Exhibit displayed on screen.)

1 MR. MIZELL: At the beginning of that line,
2 the words "Legislative authorization and."

3 If we go on to Page 4, Line 2.

4 (Exhibit displayed on screen.)

5 MR. MIZELL: The statement evidencing that
6 (reading):

7 ". . . Petition facilities lack
8 legislative authorization."

9 And then if we go to Line 11.

10 (Exhibit displayed on screen.)

11 MR. MIZELL: "Legislative authorization or."

12 And with those three omissions, I believe that
13 I have no further objections with this testimony.

14 CO-HEARING OFFICER DODUC: Miss Robertson,
15 your response.

16 MS. ROBERTSON: We would oppose the Motion to
17 Strike because we don't think it's -- it should be
18 stricken for being beyond the scope of this hearing.
19 We think this is relevant information that should be
20 put before the Board.

21 WITNESS BARRIGAN-PARRILLA: Yeah.

22 CO-HEARING OFFICER DODUC: So you're not
23 asking us to review the legislative authorization.

24 MS. ROBERTSON: No. It's merely information
25 that Miss Barrigan-Parrilla put in her testimony to

1 explain why the Project is not in the public interest.

2 CO-HEARING OFFICER DODUC: Please expand.

3 WITNESS STROSHANE: If I may.

4 This is -- These requests for striking are
5 from passages that had been struck from my Part 1B
6 testimony, which I alluded to earlier today.

7 The purpose of citing the lack of legislative
8 authorization was not for the Hearing Officers to
9 review it, per se.

10 It goes to the issue of due diligence by -- by
11 the Petitioners and whether they have authorization to
12 undertake this Project from the legislature, and
13 whether -- So it raises the question of whether that's
14 needed and whether it's a failure of due diligence. In
15 my opinion, I think it is; in Barbara's opinion as
16 well.

17 WITNESS BARRIGAN-PARRILLA: Exactly.
18 Especially when we went through the revision from BDCP
19 to California WaterFix because that changed how -- what
20 the authority is in terms of the Delta Plan, and
21 there's litigation moving forward there. There are --
22 There's an amendment process.

23 So that's why we raise it as an issue in my --

24 CO-HEARING OFFICER DODUC: As --

25 WITNESS BARRIGAN-PARRILLA: -- testimony.

1 CO-HEARING OFFICER DODUC: As one factor to be
2 considered --

3 WITNESS BARRIGAN-PARRILLA: Yes.

4 CO-HEARING OFFICER DODUC: -- amongst many --

5 WITNESS STROSHANE: That's correct.

6 CO-HEARING OFFICER DODUC: -- concerning the
7 public interest.

8 WITNESS BARRIGAN-PARRILLA: Yes.

9 WITNESS STROSHANE: That's correct.

10 CO-HEARING OFFICER DODUC: And not asking
11 about statute but reviewing it ourselves.

12 WITNESS BARRIGAN-PARRILLA: Correct.

13 WITNESS STROSHANE: Correct.

14 MR. MIZELL: If I may respond.

15 In order to place any weight in statements
16 about existence or non-existence of legislative
17 authority, you would have to make a determination as to
18 whether or not there is legislative authority.

19 I would simply say that there -- as -- as I
20 think we've all stated at this point, there is an
21 ongoing validation lawsuit.

22 Should the Court determine there is no
23 legislative authority, regardless of whether a Water
24 Rights Permit is granted, the Department would be
25 precluded from building it because it wouldn't have

1 legislative authority.

2 I think it would moot out any concern that you
3 might approve a Permit for a Project that cannot be
4 built.

5 So, to to that extent, I don't think that
6 there's any risk of this Board making the determination
7 that somehow overcomes a Court's determination that
8 there's a lack of legislative authority.

9 And to simply go to the weight would require
10 you to make a determination as to whether or not you
11 believe there is a lack of a legislative authority.
12 That would be a determination.

13 MS. ROBERTSON: We would disagree. We don't
14 think you need to make a determination in order to give
15 it weight.

16 Legislative authorization is at issue, as you
17 have just stated, and that is something that
18 Ms. Barrigan-Parrilla has pointed out that you can
19 consider --

20 CO-HEARING OFFICER DODUC: The fact is at
21 issue.

22 MS. ROBERTSON: It's at issue, yeah.

23 WITNESS BARRIGAN-PARRILLA: And there's more
24 than the validation lawsuit. There's the outstanding
25 mitigation and there's the review of EIR process

1 dealing with the amendments as it relates to the Delta
2 Plan. It's not resolved.

3 CO-HEARING OFFICER DODUC: Mr. Jackson.

4 WITNESS STROSHANE: A final word if I might.

5 In my Part 1B testimony, I included discussion
6 of the -- and I don't remember if it's -- if it made
7 its way into the Part 2 testimony of
8 Miss Barrigan-Parrilla.

9 But in my Part 1B testimony, I cited to the
10 Water Board's revocation of the Auburn Dam.

11 And in that decision, there is narrative
12 about -- that -- that in the context of assigning
13 responsibility or -- or culpability, whatever, however
14 phrase -- whatever word you want to put there, of the
15 Bureau to obtain appropriations and authorization of --
16 of the Auburn Dam, the lack of appropriation, for
17 example, which is another concern we had in -- in our
18 test -- in our case, was a factor in the Board finding
19 for revocation because it -- it showed a lack of due
20 diligence on the part of the Bureau on behalf of Auburn
21 Dam.

22 CO-HEARING OFFICER DODUC: I am about to
23 overrule Mr. Mizell's objection.

24 Do you need to weigh in, Mr. Jackson?

25 MR. JACKSON: No. I don't if you're going to

1 overrule it.

2 CO-HEARING OFFICER DODUC: Overruled.

3 And now Miss Morris.

4 MS. MORRIS: I think I said about 20 minutes,
5 and I think I should be able to hold to that.

6 And all my questions are for
7 Miss Barrigan-Parrilla.

8 Am I saying that correctly? I'm so awful at
9 names.

10 WITNESS PACZKOWSKI: No, that's fine. You got
11 it.

12 CROSS-EXAMINATION BY

13 MS. MORRIS: Miss Barrigan-Parrilla, you're
14 testifying here today as an expert; correct?

15 WITNESS BARRIGAN-PARRILLA: Yes.

16 MS. MORRIS: And the NOI that you filed for
17 Restore the Delta identifies you as an expert on public
18 financing; correct?

19 WITNESS BARRIGAN-PARRILLA: No. That --
20 That's not -- I . . .

21 I am an expert witness in that I have worked
22 on the Project since its inception, for 11 years. I
23 track all government processes related to the Project.

24 And . . . in particular, with events that
25 unfolded over this last year, I logged about

1 9,000 miles covering 90 meetings tracking how -- how
2 the Project was advancing.

3 MS. MORRIS: Okay. Mr. Baker, could you
4 please pull up Restore the Delta's Part 2 NOI? Thank
5 you.

6 (Exhibit displayed on screen.)

7 MS. MORRIS: And I think it's the Revised NOI
8 that's applicable here.

9 (Exhibit displayed on screen.)

10 MS. MORRIS: And could you scroll to the
11 attachment?

12 (Exhibit displayed on screen.)

13 MS. MORRIS: Thank you. Right there.

14 And do you see your name listed here, and you
15 identified yourself -- or Restore the Delta -- as an
16 expert and it has you on the topics listed as an expert
17 on public financing; is that correct?

18 WITNESS BARRIGAN-PARRILLA: Yes. Yes. And
19 I'm talking about tracking the public financing
20 covering what is covered through public documents and
21 public meetings.

22 MS. MORRIS: But your opinion -- Your -- Your
23 testimony draws conclusions about public financing and
24 financing plans; does it not?

25 WITNESS BARRIGAN-PARRILLA: That's because I

1 track multiple events and meetings and, therefore, as
2 an observer, on-the-ground observer, with direct
3 experience, I can connect what happens in one
4 particular instance versus another.

5 MS. MORRIS: Okay. Well, let's dig into that
6 a little bit more.

7 Can you please tell me the types of bonds that
8 can be issued by municipalities.

9 WITNESS BARRIGAN-PARRILLA: Municipalities can
10 issue revenue bonds.

11 I am not a bond expert. I am a person who
12 tracks public financing decisions and proposals in
13 context of this Project.

14 MS. MORRIS: I know, and I understand what
15 you're -- I hear you. I do.

16 But, unfortunately, you gave -- you've
17 provided testimony today. And in here, you draw
18 conclusions about different bonds and about the impacts
19 on rate payers. So I have to follow up.

20 WITNESS BARRIGAN-PARRILLA: No, that --

21 MS. MORRIS: It's my job to answer these --
22 ask these questions.

23 WITNESS BARRIGAN-PARRILLA: I'm sorry, but
24 that -- Miss Morris, that is directly from observation
25 of statements made by Water District officials in

1 meetings.

2 MS. MORRIS: Okay. So beyond revenue bonds,
3 are you aware of other types of bonds municipalities
4 issue?

5 WITNESS BARRIGAN-PARRILLA: Municipalities or
6 in terms of water agencies --

7 MS. MORRIS: Yes.

8 WITNESS BARRIGAN-PARRILLA: -- or private
9 public partnerships or JPAs?

10 We are familiar with revenue bonds. We are
11 aware of general obligation bonds. We are also
12 familiar with Willie (phonetic) and WIFIA loans.

13 MS. MORRIS: Okay. And can you tell me the
14 difference between G.O. bonds and revenue bonds.

15 WITNESS BARRIGAN-PARRILLA: General obligation
16 bonds, from what I understand, hit -- The overall
17 budget for an agency that can be backed. Like through
18 a appropriation, a revenue bond is something that an
19 agency can sell specifically as an instrument for a
20 Project.

21 MS. MORRIS: Okay. So I'm not sure I'm
22 following you.

23 Are you talking about what the asset is that's
24 backing those bonds?

25 WITNESS BARRIGAN-PARRILLA: General obligation

1 bonds.

2 Say it's for the state. A general obligation
3 bond is sold. It's raised -- Taxpayers agree to back
4 that bond.

5 If a revenue bond is sold through a
6 municipality, you can . . . How to explain it?

7 Taxpayers may be the guarantors at the back,
8 but in terms of water agencies, they can collect
9 revenues.

10 MS. MORRIS: Okay. And then let's -- let's
11 follow up with something you said earlier today.

12 You said there were potential other bonds,
13 besides G.O. bonds.

14 So, beyond -- And you've already said revenue
15 bonds, and then you gave the example of a different
16 financing tool which was WIFIA loans.

17 Are there others you're aware of?

18 WITNESS BARRIGAN-PARRILLA: In the context of
19 this Project, what has been discussed in front of the
20 public --

21 MS. MORRIS: I'm actually just asking
22 generally in terms of your understanding of financial
23 instruments.

24 WITNESS BARRIGAN-PARRILLA: Okay. I
25 understand what instruments have been discussed that

1 are available to be used in the financial planning of
2 this Project.

3 I do not have myself listed as a financial
4 expert for municipalities or cities.

5 CO-HEARING OFFICER DODUC: If I might
6 interject here because I'm a little confused. Again,
7 engineer, not attorney.

8 What I see from this, Miss Barrigan-Parrilla,
9 is public financing is listed as the subject of your
10 testimony.

11 WITNESS BARRIGAN-PARRILLA: (Nodding head.)

12 CO-HEARING OFFICER DODUC: It is not
13 necessarily, in my mind, from just this table indicate
14 that you are an expert witness on the issue of public
15 financing.

16 Is that where we're getting confused?

17 MS. MORRIS: Yeah. If -- If, in fact, this
18 witness is not an expert on public financing and is a
19 lay witness, which I believe is a more accurate
20 description, that limits what they can rely on to draw
21 their opinions under the Rules of Evidence.

22 And so if -- And what I'm trying to get at is
23 to understand the background of what she looked at and
24 what she's offering opinions or drawing conclusions
25 about.

1 I would make a motion based on the answers to
2 the questions to -- and I'm happy to do this in
3 writing -- to -- She should not be labeled as an expert
4 in public financing --

5 CO-HEARING OFFICER DODUC: Let me -- Let me
6 ask.

7 Are you asserting yourself as an expert
8 witness in public financing?

9 WITNESS BARRIGAN-PARRILLA: An expert witness
10 in public financing? No.

11 An expert in understanding the public
12 financing discussions as they relate to this Project?
13 Yes, under Evidence Code Section 801, based on matter
14 including my special knowledge, skill, experience,
15 training and education perceived by or personally known
16 for the subject at hand.

17 MS. MORRIS: And I would move to strike this
18 evidence -- or this -- portions of this testimony, I'm
19 happy to -- on 801, because she's not -- she should not
20 be offering an opinion as a financial expert.

21 To the extent that she is offering lay
22 testimony, she cannot rely on hearsay documents and
23 draw a conclusion and opinions therefrom.

24 CO-HEARING OFFICER DODUC: Did you have
25 anything to add, Miss Ansley, before I ask

1 Miss Robertson for her response?

2 MS. ANSLEY: Yes. I would like to join --

3 This is Jolie-Anne Ansley for Department of Water
4 Resources.

5 We join the State Water Contractors. I would
6 add -- Distinguishing a new motion, I would add that I
7 would move to strike Miss Barrigan-Parrilla as an
8 expert witness in public financing, that you do admit
9 her testimony as a lay witness.

10 I believe that the witness has testified
11 numerous times over the course of the cross that she
12 does not have specialized experience or knowledge in
13 public financing.

14 I understand that she testified that she has
15 been to many meetings and has herself become personally
16 familiar with having attended public meetings, what she
17 believes is going on with the public financing of the
18 WaterFix, but does not necessarily qualify as someone
19 able to provide expert opinions.

20 So, what I'm asking for specifically is a
21 change in the designation on the Notice of Intent filed
22 by this party, Restore the Delta, so that the proper
23 weight can be afforded to her testimony on public
24 finance even as it pertains to California WaterFix.

25 Thank you.

1 CO-HEARING OFFICER DODUC: Miss Robertson.

2 MS. ROBERTSON: We oppose any Motion to
3 Strike.

4 You know, this similar sets of motions were
5 filed to strike the testimony of Mr. Stroshane back in
6 the Part -- his Part 1 testimony on the -- and on the
7 same basis it was overruled.

8 Here, Miss Barrigan-Parrilla is an expert in,
9 as she said, the public financing of this Project and
10 her testimony should be accepted in that way.

11 And, in any event, there's no basis for
12 striking. It all gets to the weight of her testimony.

13 MS. ANSLEY: And my alternative motion was
14 simply to change her designation in the NOI.

15 She's welcome to provide her understanding
16 from her personal knowledge having attended meetings as
17 to the financing of the California WaterFix.

18 What we are concerned about is her portrayal
19 as an expert with specialized expertise, which is by
20 definition what the expert would be, to provide the
21 Board with specialized testimony for their benefit on
22 public finance.

23 So I do not move to strike necessarily her
24 testimony that we joined in the Motion to Strike. What
25 I am saying is an alternate motion to change her

1 designation on the NOI so that her testimony can be
2 afforded the proper weight in the record for this
3 proceeding but then as we -- if and when we do, move on
4 to future proceedings and appeals.

5 So I think that's a necessity for the record.

6 Thank you.

7 MS. ROBERTSON: I guess I would just again
8 resubmit that the rule for expert testimony here does
9 not need to be . . .

10 The witness doesn't need to be an expert
11 generally in a subject matter in order to provide
12 specific expert testimony about this Project and
13 subjects related do it.

14 So, we think that the -- the motion is based
15 on an incorrect construal of 801.

16 CO-HEARING OFFICER DODUC: Mr. Jackson.

17 MR. JACKSON: Yes.

18 This would be solved by a reading of the
19 Evidence Code Section 801.

20 And in the reading and the case law behind it,
21 it -- it would certainly be apparent that, if -- if you
22 had to have a Ph.D. to be an expert in anything, they
23 wouldn't have mentioned the other four ways to be an
24 expert in specific activities.

25 In terms of education, perhaps she's not an

1 expert.

2 In terms of training, experience, and -- and
3 all of the things that are mentioned as ways to qualify
4 as an expert under 801, it's clear she is.

5 And so CSPA and C-WIN and AquAlliance,
6 believing this to be a very important decision, would
7 like to on the record join in opposition to this
8 motion.

9 If we need to establish rules, we'll take it
10 to court and establish the rules.

11 CO-HEARING OFFICER DODUC: Final words?

12 MS. ANSLEY: I'm good.

13 MS. MORRIS: I would just say that I think
14 there's a distinction between being an expert in a
15 subject matter and being an expert at following,
16 tracking, compiling information, which is why -- And
17 I'm not saying in a court of law.

18 But in a court of law, oftentimes historians
19 are not allowed to testify because all they're doing is
20 compiling information and so they are -- cannot offer
21 opinions.

22 So, again, I would just say that I -- At the
23 very least, I feel that Part 2, Attachment B, should be
24 changed since this witness has said that she is not an
25 expert in public finance.

1 CO-HEARING OFFICER DODUC: Miss --

2 MS. ROBERTSON: And we would just point out
3 what Hearing Officer Doduc pointed out, which is that
4 this doesn't represent her as necessarily a witness in
5 public finance generally.

6 Her testimony involves a discussion of the
7 public financing of this Project, and she bases her
8 testimony on her very specialized knowledge of how
9 public financing in this -- of this Proposed Project is
10 structured.

11 CO-HEARING OFFICER DODUC: Enough. Enough.

12 We've had the discussion. It's on the record.
13 Your motion/objection is overruled/denied.

14 We understand the basis of
15 Miss Barrigan-Parilla's testimony and that her
16 expertise is not in public financing but in more than
17 just compiling but also understanding the various
18 financing and public interest issues associated with
19 this Project.

20 So with that caveat understanding, motion
21 denied.

22 Please proceed.

23 MS. MORRIS: Have you ever participated in a
24 Water District bond issuance?

25 WITNESS BARRIGAN-PARRILLA: No.

1 MS. MORRIS: Have you ever participated in a
2 Water District financing plan?

3 WITNESS BARRIGAN-PARRILLA: When you say
4 "participated" --

5 MS. MORRIS: I mean, have you worked at a
6 Water District or provided consulting services to them?

7 WITNESS BARRIGAN-PARRILLA: No.

8 MS. MORRIS: Same question, same context, in
9 terms of preparing a budgeted for a Water District.

10 WITNESS BARRIGAN-PARRILLA: No. I've never
11 worked at a Water District.

12 MS. MORRIS: Have you ever provided financial
13 advice to a Water District.

14 WITNESS BARRIGAN-PARRILLA: No. I didn't, no.

15 MS. MORRIS: To a city?

16 WITNESS BARRIGAN-PARRILLA: No.

17 MS. MORRIS: To any other municipality?

18 WITNESS BARRIGAN-PARRILLA: No.

19 MS. MORRIS: Are you aware that MWD and Zone 7
20 approved a finance JPA term sheet?

21 WITNESS BARRIGAN-PARRILLA: I am familiar with
22 that.

23 MS. MORRIS: And are you aware that they --
24 both MWD and Zone 7 approved participation in the
25 financed JPA?

1 WITNESS BARRIGAN-PARRILLA: I am.

2 MS. MORRIS: And a JPA as a public agency is
3 subject to the Brown Act Public Records Act request ;
4 correct?

5 WITNESS BARRIGAN-PARRILLA: I do recall that.

6 MS. MORRIS: Looking at Page 28 of your
7 testimony . . . starting Line 10 to 28.

8 (Exhibit displayed on screen.)

9 MS. MORRIS: You're talking about negotiations
10 between Metropolitan in regards to the Delta wetlands
11 Project and the purchase of islands; correct?

12 WITNESS BARRIGAN-PARRILLA: Yes.

13 MS. MORRIS: Would you agree that property
14 negotiations qualify for closed session under the Brown
15 Act?

16 WITNESS BARRIGAN-PARRILLA: I state that in my
17 testimony.

18 MS. MORRIS: And do you agree that DWR did not
19 purchase any of the five islands?

20 WITNESS BARRIGAN-PARRILLA: I did not say that
21 they did in my testimony.

22 MS. MORRIS: I'm -- I'm allowed to ask you
23 opinions beyond your testimony.

24 WITNESS BARRIGAN-PARRILLA: Okay.

25 MS. MORRIS: Are you asserting that DWR

1 purchased any part of the five islands?

2 WITNESS BARRIGAN-PARRILLA: No.

3 MS. MORRIS: And DWR hasn't agreed to manage
4 those islands; have they?

5 WITNESS BARRIGAN-PARRILLA: No.

6 MS. MORRIS: Did DWR authorize the
7 Metropolitan Water District's Board to purchase the
8 five islands?

9 WITNESS BARRIGAN-PARRILLA: No. That's not
10 what's in my testimony.

11 MS. MORRIS: Looking at Page 29 of your
12 testimony on lines --

13 (Exhibit displayed on screen.)

14 MS. MORRIS: -- 3 to 17, Paragraph 71.

15 Are you --

16 WITNESS BARRIGAN-PARRILLA: Sorry. I'm sorry.
17 Where are you? In Paragraph 71?

18 MS. MORRIS: Just generally.

19 WITNESS BARRIGAN-PARRILLA: Okay.

20 MS. MORRIS: Yeah.

21 Are you asserting that Metropolitan Water
22 District did not take an official vote in order to
23 approve the land acquisitions of the five Delta
24 islands?

25 WITNESS BARRIGAN-PARRILLA: No, that's not

1 what I'm asserting.

2 I'm asserting that they were not transparent,
3 communicative . . .

4 I'll leave it there.

5 MS. MORRIS: And in regards to to that same
6 paragraph, was the vote to purchase the five islands in
7 closed session?

8 WITNESS BARRIGAN-PARRILLA: I can't remember
9 if the fi -- I think the final vote was in open
10 session, and I think -- But -- But I will say this:
11 It's --

12 MS. MORRIS: My question was simply, was it
13 voted on in open session?

14 WITNESS BARRIGAN-PARRILLA: Yes, it was.

15 MS. MORRIS: Thank you.

16 And was the vote agendized?

17 WITNESS BARRIGAN-PARRILLA: Oh, yes.

18 MS. MORRIS: And was the Metropolitan
19 discussions that were public and on the vote were they
20 Webcast?

21 WITNESS BARRIGAN-PARRILLA: The Real Estate
22 Committee frequently met in closed session and would
23 report out a very basic statement at the end which
24 would be telecast.

25 From a public perspective and from rate payers

1 that I worked with there, they found the report out
2 non-informative.

3 MS. MORRIS: What rate payers did you work
4 with.

5 WITNESS BARRIGAN-PARRILLA: I worked with rate
6 payers that were members of the Southern California
7 Watershed Alliance, Food and Weather Watch, Sierra Club
8 at that time.

9 MS. MORRIS: And --

10 THE WITNESS: And the -- And various, I think,
11 Restore the Delta members.

12 MS. MORRIS: And I just wanted to follow up on
13 your NOI.

14 Would you consider yourself an expert in any
15 other matters that you listed on your NOI?

16 WITNESS BARRIGAN-PARRILLA: Definitely in
17 terms of environmental justice impacts and communities.

18 And in terms of understanding the public
19 interest, I would say in terms of this Project and
20 observations, yes.

21 MS. MORRIS: You testified earlier that you've
22 been to, I think you said -- Did you say 90,000 miles?

23 WITNESS BARRIGAN-PARRILLA: No.
24 9,000 miles --

25 MS. MORRIS: 9,000.

1 WITNESS BARRIGAN-PARRILLA: -- last year,
2 yeah.

3 MS. MORRIS: So how many -- What -- Which
4 agencies' meetings did you go to?

5 WITNESS BARRIGAN-PARRILLA: Metropolitan Water
6 District, Santa Clara Valley Water District, Westlands
7 Water District, Central Basin Municipal Water District,
8 the City of Long Beach, City of Los Angeles, I
9 think . . . City of Santa Monica.

10 I think those were the meetings that I get,
11 but they were repeated --

12 MS. MORRIS: Right.

13 WITNESS BARRIGAN-PARRILLA: -- meetings last
14 year.

15 MS. MORRIS: So you're pretty familiar -- I'm
16 guessing -- And you can tell me if I'm wrong. I'm just
17 trying to move a lot quickly but I'm happy to back up
18 and lay foundation.

19 You're pretty much familiar with the
20 Metropolitan Board process; are you not?

21 WITNESS BARRIGAN-PARRILLA: I would say fairly
22 well, yes.

23 MS. MORRIS: And they have different
24 committees --

25 WITNESS BARRIGAN-PARRILLA: Yes.

1 MS. MORRIS: -- like the Delta Committee.

2 WITNESS BUCHHOLZ: Yes.

3 MS. ROBERTSON: Isn't it true -- And do you
4 monitor those regularly?

5 WITNESS BARRIGAN-PARRILLA: Yes.

6 MS. MORRIS: Isn't it true that they had
7 multiple -- have had multiple workshops and committee
8 meetings discussing the WaterFix Project?

9 WITNESS BARRIGAN-PARRILLA: Yes, they have.

10 MS. MORRIS: And all of those are Webcast; are
11 they not?

12 WITNESS BARRIGAN-PARRILLA: Yes.

13 MS. MORRIS: I have no further questions.

14 Thank you so much for your time.

15 CO-HEARING OFFICER DODUC: I do not see
16 Miss Meserve here, so Mr. Ruiz.

17 And then Mr. Jackson, appearing twice.

18 CO-HEARING OFFICER MARCUS: We need to get him
19 a hat.

20 MR. RUIZ: Good afternoon. Dean Ruiz for the
21 SDWA parties.

22 I'm thinking half an hour.

23 CO-HEARING OFFICER DODUC: That's what you
24 projected.

25 MR. RUIZ: Do you -- Do you want topics?

1 CO-HEARING OFFICER DODUC: Please.

2 MR. RUIZ: Just a couple questions on your
3 testimony with regard to due diligence, Project
4 financing as it relates to the public interest,
5 beneficiary pays, concepts related thereto, CVP funding
6 for the Project, and the status of the financial
7 evaluations regarding the Project. Those are my basic
8 topics.

9 And we'll need RTD-22, her testimony, please.

10 (Exhibit displayed on screen.)

11 CROSS-EXAMINATION BY

12 MR. RUIZ: Referring you to Page 4 of your
13 testimony, Lines -- starting at Line 19.

14 (Exhibit displayed on screen.)

15 MR. RUIZ: Do you have that?

16 WITNESS BARRIGAN-PARRILLA: Yes, I do.

17 MR. RUIZ: Okay. You say that, generally,
18 it's your opinion that the same level of diligence
19 cannot be attributed to the changed Petition
20 facilities?

21 Do you see that?

22 Lines 19 to 20.

23 WITNESS BARRIGAN-PARRILLA: Yes, yes, yes,
24 yes, yes.

25 MR. RUIZ: What specifically do you mean by

1 that?

2 WITNESS BARRIGAN-PARRILLA: (Examining
3 document.)

4 WITNESS STROSHANE: I'd like to offer to
5 answer that question.

6 WITNESS BARRIGAN-PARRILLA: Yeah.

7 MR. RUIZ: Yes. And I wanted to --

8 WITNESS STROSHANE: The citation in that
9 paragraph is to my Part 1B testimony.

10 Could you repeat the question?

11 MR. RUIZ: Yes.

12 I'm referring you to Line -- Page 4, Lines 19
13 to 22 where it mentions that your opinions are that
14 (reading):

15 ". . . the same level of diligence with
16 regard to putting the SWP and CVP to full
17 use cannot be attributed to the Change
18 Petition facilities."

19 And I'm asking you to explain exactly what --
20 what you mean by that and what the basis of that
21 opinion is.

22 WITNESS STROSHANE: Yeah. The basis of that
23 opinion is that, in my Part 1B testimony, I -- I gave a
24 description of the -- of both of the two large projects
25 in which I argued that they were basically complete;

1 that the facilities that they operate with day in and
2 day out have been in place for many years; and that
3 they have sought and -- to greater or lesser degrees,
4 not so much recently, but to greater or lesser degrees,
5 they have obtained time extension requests from the
6 State Water Board.

7 In my testimony, they . . .

8 I argue that those two projects are complete
9 as of -- as of the submittal of my testimony. And I
10 based that on some statements from published documents
11 by both -- I believe by both Petitioners that indicate
12 that they kind of assume at some level or other that
13 they're complete even though they have, in their time
14 extension requests, said that they're not complete and
15 they want more time to essentially build the Project
16 that is the subject of this proceeding.

17 MR. RUIZ: And is it fair to say that, in your
18 opinion, if DWR doesn't implement the Change Petition
19 facilities with due diligence, that that would be
20 contrary to the public interest?

21 WITNESS STROSHANE: State -- Say the question
22 once more. Sorry.

23 MR. RUIZ: Your opinion that, if DWR doesn't
24 implement CWF or, as you said in your testimony,
25 change -- the Petition for -- the Change Petition

1 facilities with due diligence, that that would be
2 contrary to the preponderate.

3 WITNESS BARRIGAN-PARRILLA: Yes.

4 And -- Because you could end up with a
5 potential -- which is what my case again said -- that
6 if you don't have the financing set up and put in place
7 properly ahead of time, you could have a failure for
8 due diligence to be able to complete the Project, and
9 you could have a potential for putting a water right
10 granted from the Permit hearing into cold storage.

11 MR. RUIZ: Thank you.

12 Referring to Page 9 of your testimony
13 beginning at about Line 9.

14 (Exhibit displayed on screen.)

15 MR. RUIZ: You actually have a header in your
16 testimony there with regard to the beneficiary pays
17 principle.

18 WITNESS BARRIGAN-PARRILLA: Yes.

19 MR. RUIZ: Is it your understanding that State
20 law requires that the beneficiaries of CWF pay in full?
21 Is that your understanding?

22 WITNESS BARRIGAN-PARRILLA: Yes.

23 MR. RUIZ: And do you . . .

24 You also indicate with regard to that
25 testimony, I believe, that -- that, in your view, the

1 Petitioners are taking steps to avoid that principle of
2 the beneficiary-pays-in-full principle.

3 Do you recall that testimony?

4 WITNESS BARRIGAN-PARRILLA: Yes.

5 MR. RUIZ: And what is the basis of your
6 opinion in that regard?

7 WITNESS BARRIGAN-PARRILLA: Well, it's
8 two-fold:

9 It's what happened, which was uncovered with
10 the Inspector General audit of the Central Valley
11 Project Contractors in terms of the Bureau of
12 Reclamation making payments into the Project to DWR on
13 behalf of the CVP Contractors.

14 MR. RUIZ: Okay. And with regard to that, you
15 mentioned a recent state audit.

16 I'd like to have you focus your attention for
17 a moment on Page 13 of your testimony.

18 (Exhibit displayed on screen.)

19 MR. RUIZ: And is it -- With regard to the
20 state audit that you mentioned, do you have an
21 understanding or a belief as to whether or not the
22 State Legislature will, in fact, be convening a joint
23 hearing to address the state audit in more detail?

24 WITNESS BARRIGAN-PARRILLA: They held a
25 hearing in December. I believe there is a hearing

1 coming up that may touch on some of these matters in
2 May.

3 MR. RUIZ: Okay. And when you say "some of
4 these matters," what specifically are you referring to?
5 What's your understanding?

6 WITNESS BARRIGAN-PARRILLA: Relationship of
7 the audit and questions, I believe, regarding DWR
8 positioning in Metropolitan Water District work on Cal
9 WaterFix.

10 MR. RUIZ: Okay. Looking at Page 18 of your
11 testimony --

12 (Exhibit displayed on screen.)

13 MR. RUIZ: -- beginning at about Line -- Well,
14 the bottom of Page 18, and then you also talk about it
15 a little bit on Page 19 and 20.

16 You say that, after four -- over four years of
17 considering numerous BDCP and change facility
18 alternatives, you know of no CVP contract that has
19 committed to shoulder the CVP \$7.5 billion cost.

20 Do you recall that testimony?

21 WITNESS BARRIGAN-PARRILLA: Yes.

22 MR. RUIZ: And here, what are you referring to
23 with regard to the 7.5 billion? What's your assumption
24 of the overall cost of the Project with relation to the
25 \$7.5 billion?

1 WITNESS BARRIGAN-PARRILLA: At the time of my
2 testimony, that was the mathematical percentage of
3 45 percent share. I say 17 billion. I guess it was
4 actually 16.8 billion. So the CVP portion was to be
5 45 percent.

6 And then I have learned since the time of my
7 testimony that that has changed.

8 MR. RUIZ: How so?

9 WITNESS BARRIGAN-PARRILLA: There was a
10 presentation made this past Tuesday at Metropolitan
11 Water District where they are considering moving
12 forward Metropolitan Water District as the lead agency
13 for two different finance JPAs.

14 They're looking at building two-thirds of the
15 Project on the State Water Project side for a 67
16 percent share for a 6,000 cfs tunnel, and that would be
17 a State Water Project JPA that Met is looking at
18 meeting.

19 And then the creation of a secondary JPA, with
20 Met only, offering to finance out the 33 percent share
21 for the Central Valley Project as a second tunnel.

22 So you're looking at a different proportion
23 for the two tunnels. They're considering this
24 presently. It hasn't been approved.

25 They're going to be taking a vote on it next

1 month.

2 MR. RUIZ: Okay. And you said that's based on
3 a recent presentation just recently that the Met made
4 to its Board; correct?

5 WITNESS BARRIGAN-PARRILLA: Yes.

6 MR. RUIZ: Okay. And did you view that
7 presentation?

8 WITNESS BARRIGAN-PARRILLA: I viewed the
9 presentation. I read through the documents.

10 And then some people we work with in Southern
11 California also attended the meeting and shared their
12 thoughts with me.

13 MR. RUIZ: Okay. And I actually was looking
14 at that, and I have a copy of that presentation on the
15 flash drive that I'd like to use as SDWA's next in
16 order, which I think would be 315.

17 And I have just questions on four of those
18 slides I'd like to ask you.

19 If we could put that up at this time.

20 (Exhibit displayed on screen.)

21 MR. RUIZ: Looking at -- This was a California
22 WaterFix Board worksh -- workshop that just occurred
23 earlier this week; correct?

24 WITNESS BARRIGAN-PARRILLA: Yes.

25 MR. RUIZ: And you attended that, or you

1 witnessed that, rather.

2 WITNESS BARRIGAN-PARRILLA: I watched it, yes.

3 MR. RUIZ: I wanted to refer you to -- I had
4 just a question on Slide 9.

5 If we could go to Slide 9.

6 (Exhibit displayed on screen.)

7 MR. RUIZ: And you've seen this slide before;
8 right?

9 WITNESS BARRIGAN-PARRILLA: Yes.

10 MR. RUIZ: And this was one of the slides that
11 was talked about at the Board workshop?

12 WITNESS BARRIGAN-PARRILLA: Yes.

13 MR. RUIZ: Okay. It says there that the
14 midpoint -- Well, it seems to compare a future with and
15 without the California Water Project; correct?

16 WITNESS BARRIGAN-PARRILLA: Yes.

17 MR. RUIZ: And when it talks about a midpoint
18 of 1.3 million acre-feet, what is your understanding as
19 to what that means?

20 WITNESS BARRIGAN-PARRILLA: I understand
21 that -- that that is on average what they believe is
22 flow that they would lose without California WaterFix.

23 MR. RUIZ: That they would lose without it.

24 WITNESS BARRIGAN-PARRILLA: Yes.

25 MR. RUIZ: Okay. And are you aware of -- of

1 what the -- based on the Petitioners -- the Petition
2 Petitioners have placed before the Board, what the
3 yield they're requesting or seeking through the
4 California WaterFix is?

5 WITNESS BARRIGAN-PARRILLA: I want to say
6 that -- Just for Metropolitan Water District?

7 MR. RUIZ: No.

8 WITNESS BARRIGAN-PARRILLA: Oh.

9 MR. RUIZ: I'm talking about for the Petition
10 itself?

11 WITNESS BARRIGAN-PARRILLA: Oh, for the
12 Petition.

13 I can't instantly recall the number.

14 MR. RUIZ: If I were to say -- represent to
15 you that it's on the upwards of 220,000 acre-feet a
16 year, does that refresh your recollection?

17 WITNESS BARRIGAN-PARRILLA: It -- It does.

18 CO-HEARING OFFICER DODUC: Miss Morris.

19 Hold on, please.

20 MR. RUIZ: I'd like to object to this line of
21 questioning. I don't think that a foundation's been
22 laid that she understands where these numbers come from
23 and how they're being used.

24 I think it assumes facts not in evidence.

25 And the comparisons being made here for how a

1 Water District is making a business case based on a
2 reduced baseline of current conditions compared to what
3 is modeled and in front of the Board based on looking
4 at current conditions.

5 This -- And I don't think that foundation's
6 been laid, and it's confusing, and misleading to the
7 record.

8 CO-HEARING OFFICER DODUC: Mr. Ruiz.

9 MR. RUIZ: Yes. No. This is a public
10 document. I'm asking her for her understanding -- and
11 she's reviewed the materials -- her understanding of
12 what the materials and some of the information in here
13 means with regard to her testimony, and with regard to
14 her state of mind with respect to her opinions, because
15 the basis of her opinions or the finer opinions, as I
16 understand them, and those which I'm exploring indicate
17 that because of financial uncertainty, in her view, the
18 Project is -- is -- is against the public interest.

19 And so I'm just exploring that a little bit
20 with these documents which are public.

21 CO-HEARING OFFICER DODUC: Miss Morris.

22 MS. MORRIS: Again, I don't think that the
23 witness has -- has demonstrated that she has knowledge.

24 She didn't put this together. She doesn't
25 know what it's based on. She didn't do the

1 presentation. She may have listened, but she hasn't
2 laid the foundation that she understands the modeling
3 and operating criteria that were used to create this
4 chart.

5 CO-HEARING OFFICER DODUC: Mr. Jackson.

6 MR. JACKSON: If we were in a courtroom, this
7 would be -- we would be requesting you to take judicial
8 notice of this particular document because it is
9 the . . .

10 It is a water management document by a . . .
11 by a municipal water distributor who is attempting to
12 do a Project.

13 The -- Since we're not in a court of law, the
14 standard is even less than that.

15 The standard is: Is it something that, in the
16 formal course of -- in the normal course of business,
17 people are used to relying on?

18 And if this had been brought forward by the
19 Metropolitan, if they were in this hearing, it would be
20 accepted immediately on that ground.

21 And so I don't --

22 CO-HEARING OFFICER DODUC: But, Mr. Jackson,
23 they generated it. They did the --

24 MR. JACKSON: I understand they generated it.

25 It's an official document of the Met and the

1 public is allowed to rely on it in the same way that
2 the courts would be allowed to rely on it under
3 judicial notice.

4 CO-HEARING OFFICER DODUC: Miss Des Jardins.

5 MS. DES JARDINS: Since Miss Morris
6 withdrew -- did not provide any testimony by Patterson,
7 who was the Deputy Director of Metropolitan Water
8 District and was originally in the Notice of Intent to
9 Appear in Part 2, people rely on public statements like
10 this one about what Metropolitan's expectations are
11 about the Project.

12 And I think, to the extent there is a
13 discrepancy, I think it is significant and I think the
14 Board should admit the document and consider it.

15 Thank you.

16 CO-HEARING OFFICER DODUC: Miss Morris.

17 MS. MORRIS: Thank you. I'll be brief. I
18 just wanted to respond to Mr. Jackson.

19 I'm fine if the Board wants to take judicial
20 notice of this document. That's not my issue.

21 The issue is the witness explaining it without
22 any foundation and understanding of it.

23 CO-HEARING OFFICER DODUC: So let's establish
24 that foundation, Mr. Ruiz.

25 MR. RUIZ: Yes. And I'll try to do that

1 again.

2 So, you are aware of what this document --
3 this report is; correct?

4 WITNESS BARRIGAN-PARRILLA: Of the report,
5 yes.

6 MR. RUIZ: And when I say the report, I'm
7 talking on this slide presentation that's before us.

8 WITNESS BARRIGAN-PARRILLA: The slide
9 presentation, yes.

10 MR. RUIZ: And you've reviewed it.

11 WITNESS BARRIGAN-PARRILLA: I've reviewed it.

12 MR. RUIZ: And you witnessed the presentation
13 that Met made to its Board concerning -- concerning
14 these slides --

15 WITNESS BARRIGAN-PARRILLA: Yes.

16 MR. RUIZ: -- and the information therein;
17 correct?

18 WITNESS BARRIGAN-PARRILLA: Yes.

19 MR. RUIZ: And your information, or from your
20 perspective, the slides in here have some relation to
21 your testimony, which are the opinions, which is state
22 of -- your state of mind with regard to your opinions;
23 correct?

24 WITNESS BARRIGAN-PARRILLA: Well, yes. And --
25 And the reason why is, my testimony looks at and gets

1 at the cost share and who is -- who are the
2 beneficiaries that would pay on the Central Water
3 Project side versus the CVP side.

4 And the fact that I do make the claim that
5 there seems to be a problem with beneficiaries
6 paying -- stepping up for the Project.

7 So within this presentation -- and I would
8 have to look or go backyard or forward for the slide --
9 when Metropolitan Water District presented that they
10 are considering building out the entire Project, and
11 that they are looking at making one tunnel larger for a
12 67 percent share for the State Water Project, and
13 leaving that as one Finance JPA, and then --

14 CO-HEARING OFFICER DODUC: Okay. Hold on.
15 Now we're expanding.

16 WITNESS BARRIGAN-PARRILLA: Okay. And --

17 CO-HEARING OFFICER DODUC: Hold on.

18 Miss Morris.

19 MS. MORRIS: I'm so sorry -- I'm so sorry to
20 interrupt you. I just . . .

21 That's a mischaracterization. And, again,
22 the -- this is a water supply analysis, not a caution.
23 I understand how they can be related.

24 But I'm concerned about questions being asked
25 on slides like this without the basis of understanding

1 that the witness understands what criteria used, how it
2 was put together.

3 And so -- And, also, there's no question
4 pending. That was just a discussion going on.

5 MR. RUIZ: I was just trying to lay the
6 foundation --

7 CO-HEARING OFFICER DODUC: Foundation.

8 MR. RUIZ: -- for the questions.

9 I think the witness took my third question as
10 an actual question as opposed to just the foundational
11 question, which is understandable.

12 CO-HEARING OFFICER DODUC: Right.

13 WITNESS BARRIGAN-PARRILLA: All right.

14 CO-HEARING OFFICER DODUC: So what was your
15 question again?

16 MR. RUIZ: My question was: At first -- You
17 first indicated you're familiar with the presentation.

18 WITNESS BARRIGAN-PARRILLA: Yes.

19 MR. RUIZ: You've seen it. You've reviewed
20 it.

21 And then you also saw the testimony -- the
22 presentation itself.

23 WITNESS BARRIGAN-PARRILLA: Yes.

24 MR. RUIZ: I'll just simply, then, ask you:

25 Do these slides, which I want to ask you

1 about, pertains in your testimony and your opinions
2 related thereto.

3 WITNESS BARRIGAN-PARRILLA: Oh, yes.

4 MR. RUIZ: And I would just add that, you
5 know, I don't think the witness needs to have an
6 understanding of the modeling of what's behind these
7 slides.

8 The slides say what they say. And if they're
9 good enough to be presented to the Met Board so that
10 they can understand them, I think this witness,
11 based on her experience, can simply answer some basic
12 questions as to her view of what the slides represent
13 and depict and the information therein related to her
14 testimony, and I only have a question on four slides.

15 CO-HEARING OFFICER DODUC: It is -- It is
16 caveated on the understanding that she does not have
17 the detail background, or how this analysis was done,
18 and how these numbers put together.

19 But it's based on her understanding by being
20 present during the presentation of these slides, and
21 then her interpretation of what was said, what was
22 presented, and how it relates to her testimony.

23 MR. RUIZ: Yes.

24 And to be fair and to be clear, I don't think
25 she was physically there. She was watching it, much

1 like many people are watching this Webcast, so . . .

2 CO-HEARING OFFICER DODUC: And let's also be
3 clear, then, that, Miss Barrigan-Parrilla, you are
4 basing your opinion on the slide being true, and that
5 it represents Met's understanding.

6 WITNESS BARRIGAN-PARRILLA: Yes.

7 CO-HEARING OFFICER DODUC: You're making that
8 assumption; okay?

9 WITNESS BARRIGAN-PARRILLA: Yes.

10 CO-HEARING OFFICER DODUC: But you don't know
11 that for a fact.

12 WITNESS BARRIGAN-PARRILLA: (Shaking head.)

13 CO-HEARING OFFICER DODUC: Okay.

14 MR. RUIZ: All right. Just a couple. So
15 looking at this slide again that's up before you, is it
16 your understanding, based on having viewed the
17 presentation, that the representation here is that
18 there's a difference in the 1.3 million acre-feet on
19 the average, flows -- or water availability between
20 whether or not the CWF is in place or CWF is not in
21 place?

22 WITNESS BARRIGAN-PARRILLA: That is their
23 claim, yes.

24 MR. RUIZ: Okay. And it's also your
25 understanding that the yield requested, or the amount

1 of water requested or sought through this Change
2 Petition is more in the order of a couple hundred
3 thousand acre-feet; correct?

4 WITNESS BARRIGAN-PARRILLA: Yes.

5 MR. RUIZ: Okay. If we could just look at
6 Slide 10.

7 (Exhibit displayed on screen.)

8 MR. RUIZ: There on the right column under
9 the -- it says March of 2018.

10 At the bottom for MWD, it says 410,000
11 acre-feet.

12 Based on your review of this slide and of the
13 presentation that you saw, what is your understanding
14 of what the 410,000 acre-feet represents?

15 WITNESS BARRIGAN-PARRILLA: My understanding
16 is that this is the recalculation with 67 percent of
17 the Project going towards the State Water Project and
18 33 percent going towards the Central Valley Project.

19 And while -- while it is a slide of
20 proportions for water deliveries and how they would be
21 broken up, and then what share of water would end up
22 with Metropolitan Water District, it was also used
23 during the presentation to -- to facilitate a further
24 discussion of financial costs and how finances could
25 be -- or how financial plan could be put together going

1 forward based on these -- this new percentages for the
2 two Projects.

3 MR. RUIZ: Okay. Thank you.

4 Just looking at Slide 14.

5 (Exhibit displayed on screen.)

6 MR. RUIZ: You've seen this slide before;
7 correct?

8 WITNESS BARRIGAN-PARRILLA: Yes.

9 MR. RUIZ: And what is your understanding
10 relative to your testimony thus far as to how this
11 slide -- what is depicted in this slide?

12 WITNESS BARRIGAN-PARRILLA: This was where
13 they started with at California WaterFix, with the
14 55/45 percent split and how bonds would be created to
15 move the Project forward.

16 MR. RUIZ: Okay. And what is the significance
17 of the information in this slide, from your
18 perspective?

19 WITNESS BARRIGAN-PARRILLA: Well, I think
20 it -- it goes back to the . . .

21 This was their starting point for the two
22 Tunnels Project as described in my testimony.

23 It was reviewed for them to go ahead and move
24 forward to compare it to how the new split would be
25 managed for bonds.

1 MR. RUIZ: Okay. Thank you.

2 You are -- In your testimony, you are critical
3 somewhat of what you characterize as a lack of
4 financial analysis thus far for the WaterFix; correct?

5 WITNESS BARRIGAN-PARRILLA: Yes.

6 MR. RUIZ: And since you submitted your
7 testimony, are you aware of any financial analysis done
8 by DW -- by Petitioners or DWR with regard to the
9 WaterFix?

10 WITNESS BARRIGAN-PARRILLA: Well, there was
11 the cost-benefit analysis that was done for the
12 single-tunnel project by Dr. Sunding with the Brattle
13 Group.

14 And behind that, Restore the Delta was the
15 recipient of a PRA request from Metropolitan Water
16 District that goes to the assumptions behind the
17 analysis.

18 MR. RUIZ: Okay. And you reviewed that
19 analysis; correct?

20 WITNESS BARRIGAN-PARRILLA: Yes. The analysis
21 and the PRA documents.

22 MR. RUIZ: All right. And you -- Have you
23 also reviewed or are familiar with Dr. Michael's
24 critique of that report?

25 WITNESS BARRIGAN-PARRILLA: Yes.

1 MR. RUIZ: And based on your perspective, what
2 is lacking or missing from that report?

3 MS. MORRIS: Ob --

4 CO-HEARING OFFICER DODUC: Miss Morris.

5 MS. MORRIS: I'd just object.

6 The question was about Dr. Sunding's report on
7 one tunnel, 6,000 cfs.

8 And -- and the questioner's asking to be
9 compared to Dr. Michael's which was a 9,000 cfs
10 Project, and that seems like irrelevant comparison.

11 WITNESS BARRIGAN-PARRILLA: It's a different
12 comparison.

13 MS. MORRIS: The question --

14 CO-HEARING OFFICER DODUC: Hold on. Hold on.
15 Hold on.

16 Mr. Ruiz.

17 MR. RUIZ: Really, what I want -- My question
18 was, was she aware of any analysis that's been done
19 since the time she submitted her testimony and cost
20 analysis and she's indicated there was a Brattle Group
21 Report related to one tunnel. That really was my
22 question.

23 WITNESS BARRIGAN-PARRILLA: And there was also
24 a response done to the Brattle Group analysis by
25 Dr. Jeff Michael also.

1 CO-HEARING OFFICER DODUC: Yes.

2 MR. RUIZ: Right.

3 CO-HEARING OFFICER DODUC: Okay. That's fine.

4 WITNESS BARRIGAN-PARRILLA: That's al.

5 MR. RUIZ: That was it. Thank you.

6 Based on the recent report -- presentation the
7 Met made to its Board and the information therein, do
8 you feel like the -- that that information increases or
9 decreases, from your perspective, the level of
10 certainty or uncertainty with regard to financing of
11 the California WaterFix?

12 WITNESS BARRIGAN-PARRILLA: I think it
13 decreases the certainty of financing for California
14 WaterFix.

15 And the reason why is: Metropolitan Water
16 District now is evaluating whether to finance a
17 single-tunnel project or to finance a two-tunnel
18 project where they actually do advanced financing on
19 behalf of the CVP.

20 And that's very, I guess, problematic for me
21 in terms of understanding how this would relate to
22 beneficiary pays if they're going to have -- if they're
23 looking at the potential of creating an MWD JPA to
24 build out the CVP share and then create an agreement
25 with the CVP to be reimbursed for those bonds.

1 And then, complicating it even further, there
2 was a vote yesterday by the Los Angeles City Council,
3 directing votes going forward, that Los Angeles would
4 only back a certain percentage of that total funding,
5 that they didn't want to go past a total MWD funding at
6 a 47 percent level.

7 Because the way I understand it from the
8 presentation on Tuesday, Metropolitan Water District is
9 looking at contributing half or -- or being the
10 financial agency behind half of the 67 percent, and
11 then potentially all of that 33 percent in a separate
12 JPA.

13 So they're really putting themselves in a
14 position where they would carry the vast majority of
15 financing for the Project, and then wheel water back to
16 the CVP.

17 So, if -- It's not clear to me, and yesterday
18 when the Los Angeles City Council voted on it from
19 their motion from what I quickly read this morning,
20 there was conflict within that motion as to whether
21 they -- they capped -- they capped but they said they
22 would spend so much on one tunnel. There are even some
23 internal conflicts that they seemed to have within
24 their own motion.

25 So, from the outside, I'm looking at another

1 member agency not exactly lining up with what's being
2 proposed by the Metropolitan Water District Board.

3 So, when I talk about the fact that there's a
4 lack of transparency and that there isn't a clear plan
5 that the public can latch on to and comprehend and that
6 serves public interest and understanding of the
7 Project, it's because these conflicts have not been
8 resolved. They are ongoing.

9 And so it makes discussions even here really
10 difficult because it's not stable. It's a moving
11 target that we are constantly chasing.

12 MR. RUIZ: Thank you.

13 I just have one last question.

14 CO-HEARING OFFICER DODUC: Before you do.

15 Mr. Mizell.

16 MR. MIZELL: Yeah.

17 For the record, I'd like to object for hearsay
18 purposes to that last question.

19 She was recounting what others said from other
20 agencies in public meetings for the truth of the matter
21 asserted.

22 CO-HEARING OFFICER DODUC: So that's noted as
23 a hearsay objection.

24 MR. RUIZ: Just one last question:

25 So, if you could refer just to Slide 9 again

1 real quickly.

2 (Exhibit displayed on screen.)

3 MR. RUIZ: This indicates that -- appears to
4 indicate that, without -- the existing conditions
5 average water capability is 4.7 million acre-feet.

6 Is that what appears to you --

7 WITNESS BARRIGAN-PARRILLA: 4.7 or --

8 MR. RUIZ: -- on the left side.

9 WITNESS BARRIGAN-PARRILLA: -- existing
10 conditions, yes.

11 MR. RUIZ: And the future without Cal WaterFix
12 indicates it's between 3.5 and 3.9 millimeters.

13 WITNESS BARRIGAN-PARRILLA: Correct.

14 MS. AUFDEMBERGE: So Met was presenting to its
15 Board that, without WaterFix, they're going to lose
16 upwards of 2 million acre-feet; correct?

17 WITNESS BARRIGAN-PARRILLA: (Nodding head.)

18 MR. RUIZ: Was there any questions that you
19 recall, or dialogue from Board Members as to why they
20 would lose 1.2 million acre-feet if they don't go go
21 forward with California WaterFix or California WaterFix
22 isn't approved?

23 WITNESS BARRIGAN-PARRILLA: Not for this
24 particular presentation.

25 MR. RUIZ: Okay. That was my question.

1 Thank you.

2 CO-HEARING OFFICER DODUC: Thank you,

3 Mr. Ruiz.

4 Do you need a break?

5 THE REPORTER: (Shaking head.)

6 CO-HEARING OFFICER DODUC: All right. We have

7 Mr. Jackson for Mr. Keeling for 15 minutes, and then

8 Mr. Jackson for Mr. Jackson for 15 minutes, and that's

9 all I have for cross-examination.

10 So we'll take a break after another half an
11 hour, and perhaps it might actually be a go-home break,
12 yes. We'll see. Depending on whether or not there's
13 redirect.

14 Now, Mr. Jackson, since you're asking
15 questions on behalf of Mr. Keeling, let's see if you
16 can do it with Mr. Keeling's style.

17 CO-HEARING OFFICER MARCUS: No.

18 (Laughter.)

19 MR. JACKSON: I have never been a Professor of
20 English literature. I barely passed the class.

21 So style between Mr. Keeling and I is going to
22 be different. I cannot do it.

23 CO-HEARING OFFICER DODUC: The Chair is
24 grateful, I think.

25 MR. JACKSON: The -- I have -- Actually, I'd

1 like to use those slides on the flash drive.

2 Could you put up Slide Number 9.

3 CO-HEARING OFFICER DODUC: I'm sorry.

4 Which -- You mean this one?

5 MR. JACKSON: Yes, that one.

6 (Exhibit displayed on screen.)

7 MR. JACKSON: Thank you.

8 I have some questions for Mr. Stroshane about
9 water supply analysis, which is the topic of this; and
10 some work that he did, which I believe Restore the
11 Delta put in the record --

12 WITNESS STROSHANE: (Nodding head.)

13 MR. JACKSON: -- or is going to put in the
14 record, I guess, is the way it goes here.

15 MS. ROBERTSON: (Nodding head.)

16 MR. JACKSON: It may have gone in in the first
17 round. I don't know.

18 I have a few questions for
19 Ms. Barrigan-Parrilla, and they relate to Slide 14.

20 And I have a few questions for both
21 Mr. Stroshane and Ms. Barrigan-Parrilla that have to do
22 with an Environmental Water Caucus alternative, which
23 is proposed in the record as CSPA-261 and 262. And I
24 think it will be somewhat self-explanatory when we get
25 to it.

1 I have -- As me, what I stayed around for
2 today, before things changed, was some questions for
3 Mr. Mulcahy, and I'd like to keep those to the end
4 because I -- He's having medical problems, I think, and
5 he'll be back.

6 CO-HEARING OFFICER DODUC: So, Mr. Jackson,
7 let me understand that the list of topics, are those
8 just Mr. Keeling's question or both his and yours?

9 MR. JACKSON: The -- The questions to
10 Mr. Stroshane and -- and Miss Barrigan-Parrilla are
11 questions that I discussed with Mr. Keeling --

12 CO-HEARING OFFICER DODUC: Okay.

13 MR. JACKSON: -- because he had another -- he
14 had other work.

15 And they will be for both of us, but that will
16 be his part of it, the 15 minutes --

17 CO-HEARING OFFICER DODUC: Okay.

18 MR. JACKSON: -- that he asked for.

19 CO-HEARING OFFICER DODUC: The reason why I
20 asked is, I wanted to make sure do we put 15 minutes on
21 or 30?

22 MR. JACKSON: It would be easier if you put 30
23 on.

24 CO-HEARING OFFICER DODUC: All right. Let's
25 put 30 on.

1 MR. JACKSON: Since I talked my way out of
2 about three minutes, I --

3 CO-HEARING OFFICER DODUC: We'll give you
4 those three minutes. We'll put 30 on and let you go
5 ahead.

6 MR. JACKSON: Thank you very much.

7 CO-HEARING OFFICER DODUC: For both yourself
8 and Mr. Keeling.

9 CROSS-EXAMINATION BY

10 MR. JACKSON: I think I understand from
11 Mr. Ruiz's questions that this slide is a with- and
12 without-California-WaterFix slide.

13 So, Mr. Stroshane, how does this slide relate
14 to the Petition in this case in terms of how much water
15 everyone assumed was going to be delivered by the
16 Project in excess of what they're getting today? If
17 you know.

18 WITNESS STROSHANE: It's kind of a long
19 question.

20 MR. JACKSON: All right.

21 WITNESS STROSHANE: Could you break it down a
22 little?

23 MR. JACKSON: Sure.

24 There was a Petition by the Bureau and DWR for
25 the California WaterFix that brought us all together.

1 WITNESS STROSHANE: Yes.

2 MR. JACKSON: That Petition, did it have any
3 of this information on Slide -- on Slide 9, to your
4 knowledge?

5 WITNESS STROSHANE: Yes.

6 I recall that there were, for various, like,
7 the No-Action Alternative existing conditions, in the
8 draft and Recirculated Draft EIRs which are the --

9 MR. JACKSON: Yeah. I'm not talking about the
10 EIRs.

11 WITNESS STROSHANE: I understand. But those
12 are the places where I saw numbers that resemble this
13 to some extent.

14 MR. JACKSON: Did you see those numbers in the
15 Petition?

16 WITNESS STROSHANE: Not that I recall.

17 MR. JACKSON: In the Petition, who owned the
18 Project?

19 CO-HEARING OFFICER DODUC: I'm not sure I
20 understand the question.

21 MR. JACKSON: Who was the applicant for the
22 change in point of diversion?

23 WITNESS STROSHANE: My understanding was that
24 both DWR and the Bureau submitted a Change Petition for
25 this proceeding.

1 I don't recall the Petition stating an owner
2 of the facilities.

3 MR. JACKSON: In the course of the changing
4 from BDCP to Cal WaterFix, was there ever an indication
5 that the Metropolitan would own the Project?

6 WITNESS STROSHANE: Not in any formal sense,
7 no. Not that I'm aware of.

8 CO-HEARING OFFICER DODUC: Miss Morris.

9 MS. MORRIS: Just objection:

10 There's nothing on the slide or -- and there's
11 no foundation that suggests that Met thinks they own it
12 or that something has changed. So the question implies
13 facts not in evidence.

14 MR. JACKSON: Well, I -- I think these slides,
15 if I go through every one of them, will pull that
16 together.

17 CO-HEARING OFFICER DODUC: I'm sorry. I don't
18 understand the relevance to the Petition and the key
19 issues that are before us.

20 MR. JACKSON: The Petition assumes that DWR
21 will build and operate the Project.

22 CO-HEARING OFFICER DODUC: The Petition is a
23 Joint Petition by both the Department and -- well, both
24 Departments, State and Federal.

25 MR. JACKSON: But the Federal government is

1 not authorized under their law to own and operate the
2 WaterFix Project.

3 CO-HEARING OFFICER DODUC: I think that's a
4 legal matter that I'm not going to get into.

5 What is before us is a Petition that was
6 jointly filed by the two Departments for the
7 operation -- with a coordinated operation of the CVP
8 and SWP with respect to the WaterFix proposal.

9 MR. JACKSON: That -- I'll take that answer.
10 That's fine.

11 The Metropolitan was not part of that.

12 CO-HEARING OFFICER DODUC: They are not part
13 of the Petition that is before us, correct.

14 MR. JACKSON: Now, Mr. Stroshane, you did at
15 one point in the past a water availability analysis of
16 water that was available for use under Permits within
17 the Central Valley Watershed; did you not?

18 WITNESS STROSHANE: Yes, I did.

19 MR. JACKSON: Would you recount for the Board
20 what you did physically to determine what water was
21 available within the Central Valley system and what
22 water rights were claimed?

23 CO-HEARING OFFICER DODUC: And how is this
24 directed to a key hearing issue?

25 MR. JACKSON: The key hearing issues are

1 public interest, public trust, and unreasonable effects
2 on fish and wildlife.

3 If the water supply and the water rights are
4 not -- are not presently capable of providing water for
5 this Project, it may come out of uncaptured flows that
6 are presently used by fish and wildlife, avian species,
7 Delta watershed interests, and so I believe it to be
8 relevant.

9 CO-HEARING OFFICER DODUC: And what you just
10 asked Mr. Stroshane about in terms of the study he
11 conducted, is that study in the record?

12 MR. JACKSON: That was the question, and he
13 said yes.

14 CO-HEARING OFFICER DODUC: It is?

15 WITNESS STROSHANE: Yeah.

16 CO-HEARING OFFICER DODUC: Where specifically?

17 WITNESS STROSHANE: Allow me a moment.

18 (Examining documents.)

19 WITNESS STROSHANE: It is RTD-131 from my
20 Part 1B testimony.

21 And it was testimony that I think I -- Oh, I
22 alluded to another study I had done on selenium and
23 salinity for a different workshop date for -- to the
24 2012 Water Quality Control Plan early Phase II Workshop
25 process that you folks held in 2012.

1 I submitted written testimony and then gave
2 a -- a PowerPoint presentation subsequently.

3 So that's what Mr. Jackson is referring to,
4 and it's here in RTD-131.

5 CO-HEARING OFFICER DODUC: And perhaps,
6 instead of having him recount the entire study, which
7 is in the record, might we move forward to the
8 conclusions of his study, which I think is where you're
9 going?

10 MR. JACKSON: That would be fine.

11 CO-HEARING OFFICER DODUC: Let's do that.

12 MR. JACKSON: Did you determine in that study
13 what the average precipitation in the Central Valley
14 watershed was?

15 WITNESS STROSHANE: No. I worked with
16 unimpaired runoff information that had been generated
17 by the Department of Water Resources through, I think,
18 about -- I think the time period was 1922 through 2003.
19 So it was an 82-year construct that they had created,
20 that many different researchers use.

21 I used -- I -- The State Water Board had
22 produced its 2012 -- 2010 Delta Flow Criteria Report,
23 and I applied the -- to the Sacramento River Basin the
24 75 percent of unimpaired flow standard, or criterion
25 that the Board had approved in that 2010 report for

1 that riven basin.

2 And then for the San Joaquin River Basin, I
3 applied a 60 percent of unimpaired flow, and there was
4 also a seasonal component to that. I believe it's
5 January to June -- or, no, I think it was November to
6 June for the Sacramento, and it was February through
7 June for the San Joaquin River. Those were the two
8 basins I examined.

9 MR. JACKSON: What were the average -- What
10 was the average flow for those two basins?

11 WITNESS STROSHANE: The unimpaired -- The full
12 unimpaired flow for the Sacramento Basin, as I recall,
13 is about 21 million acre-feet of water, on average.

14 And for the San Joaquin River Basin, it is
15 about 6 -- roughly, give or take -- million acre-feet
16 annually.

17 MR. JACKSON: So less than 30 million
18 acre-feet.

19 WITNESS STROSHANE: Yes.

20 MR. JACKSON: Did you also, as part of that
21 report that is in the record, examine claimed water
22 rights pre-'14 --

23 WITNESS STROSHANE: Yes.

24 MR. JACKSON: -- and post-'14?

25 WITNESS STROSHANE: I looked at riparian. I

1 looked at pre-1914 appropriated water rights.

2 I also looked at a number of adjudicated
3 Reaches of either creek watersheds that are tributary
4 to -- mainly to the Sacramento and the Feather, and
5 looked at their adjudication allocations and did
6 estimates of what their requirements were in terms of
7 the water rights that were being claimed through that
8 sort of collective of water -- adjudicated water.

9 MR. JACKSON: Did you come up with a
10 collective number of claimed water rights.

11 WITNESS STROSHANE: Yes, I did. I don't
12 recall exactly what it is but --

13 MR. JACKSON: Does the figure 152 million
14 acre-feet ring a bell?

15 WITNESS STROSHANE: Yes, it does.

16 And I believe that was -- Yeah, it rings a
17 bell. I don't remember -- I think that's the total for
18 the two basins; am I --

19 MR. JACKSON: I believe that's correct.

20 WITNESS STROSHANE: And then the -- It's
21 coming back to me a little bit.

22 The 100 -- about 120 million acre-feet of
23 claimed water rights are for the Sacramento River
24 Basin. And about, I think it was, 48 or -- it was the
25 difference between the 152 and the 120, so I guess that

1 would be 32 in the -- Yeah, that's right. It was about
2 32 million acre-feet of claimed water rights in the
3 San Joaquin River Basin.

4 MR. JACKSON: Were any of those claims for the
5 Metropolitan Water District of Southern California?

6 WITNESS STROSHANE: No.

7 MR. JACKSON: In -- In looking at this
8 Project, what water is this Project de -- capable of
9 picking up that is not already claimed by someone?

10 WITNESS STROSHANE: I don't know. I'm not
11 sure there is water there for it, if you're going by
12 this -- by the method here.

13 MR. JACKSON: All right. So, let's go back to
14 Slide 9, if we could, from the flash drive.

15 (Exhibit displayed on screen.)

16 MR. JACKSON: So, in this regard, the
17 4.7 million acre-feet in the existing conditions
18 doesn't belong to the Metropolitan Water District; does
19 it?

20 WITNESS STROSHANE: That's correct.

21 MR. JACKSON: Did you make any evaluation in
22 your report about water rights priority of the State
23 Project?

24 WITNESS STROSHANE: I do recall prioritizing
25 by relative seniority from senior -- starting with

1 seniors getting the first claim in any particular river
2 watershed/tributary to Sacramento as well as the
3 Sacramento and, similarly, on the San Joaquin, which
4 also has four large tributaries.

5 I always applied the seniormost claim on that
6 tributary on that river before moving downstream.

7 MR. JACKSON: Who is the largest holder of
8 water rights in the -- in the Central Valley drainage?

9 WITNESS STROSHANE: As I recall -- It's been a
10 little while since I looked at the study so forgive me
11 for the cobwebs.

12 But my recollection is that the U.S. Bureau of
13 Reclamation had the largest claims to water rights, at
14 least on paper, in terms of a volumetric measure.

15 MR. JACKSON: And did they have seniority to
16 the State Project?

17 WITNESS STROSHANE: My recollection is that
18 they do.

19 MR. JACKSON: If one were looking for stored
20 water to effectuate the ability to do the North Delta
21 diversions in the new Cal WaterFix, would not most of
22 the water come from reservoirs already existing?

23 WITNESS STROSHANE: I'm not an operator, but I
24 suspect so.

25 CO-HEARING OFFICER DODUC: Miss Morris.

1 MS. MORRIS: Objection: Calls for
2 speculation; lacks foundation.

3 MR. JACKSON: Shasta Reservoir, the large --
4 is the largest reservoir in the drainage?

5 WITNESS STROSHANE: That's correct.

6 MR. JACKSON: It belongs to?

7 WITNESS STROSHANE: The Bureau of Reclamation.

8 MR. JACKSON: The water coming from the
9 Trinity belongs to?

10 WITNESS STROSHANE: The Bureau of Reclamation.

11 MR. JACKSON: The water in Folsom belongs to?

12 WITNESS STROSHANE: Also the Bureau of
13 Reclamation.

14 MR. JACKSON: The water in New Melones belongs
15 to?

16 WITNESS STROSHANE: Bureau of Reclamation.

17 MR. JACKSON: The water in Friant reservoir on
18 the San Joaquin belongs to?

19 WITNESS STROSHANE: Again, the Bureau of
20 Reclamation.

21 MR. JACKSON: So any . . .

22 Did you identify any new water in your -- in
23 your work available for appropriation.

24 WITNESS STROSHANE: No, I did not.

25 MR. JACKSON: Is Oroville red -- reservoir,

1 which I guess is the only reservoir owned by the state
2 of -- by the Department of Water Resources?

3 WITNESS STROSHANE: Well, it's the largest.
4 There are a few pretty small reservoirs in the Feather
5 River Basin.

6 MR. JACKSON: So assume --

7 CO-HEARING OFFICER DODUC: Hold on.

8 MR. JACKSON: -- hypothetically, and that's --

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

10 MR. JACKSON: Okay.

11 CO-HEARING OFFICER DODUC: Mr. Mizell.

12 MR. MIZELL: Yeah. I'd just like to say
13 objections: Misstates evidence in the record.

14 The Department of Water Resources owns more
15 than the reservoirs that Mr. Jackson was talking about
16 when Mr. Stroshane answered.

17 CO-HEARING OFFICER DODUC: So noted.

18 MR. JACKSON: I hope you're not going to drain
19 my home reservoirs.

20 The -- Could Oroville support -- On its own,
21 if the Bureau was not part of the program, can Oroville
22 supply 4.7 million Board feet -- Board feet. I'm
23 sorry. I'm a logger guy -- acre-feet.

24 CO-HEARING OFFICER DODUC: Miss Morris.

25 MS. MORRIS: Objection: Calls for

1 speculation; lacks foundation.

2 The witness already testified he's not a
3 Project Operator and these are really operational
4 questions.

5 Plus, it assumes that all the water's coming
6 from reservoirs.

7 If he wants to ask a question as a
8 hypothetical. I promise I won't object.

9 MR. JACKSON: That's --

10 CO-HEARING OFFICER DODUC: Sustained.

11 MR. JACKSON: -- that's exactly where I was
12 going.

13 So, hypothetically, if the Bureau is not a
14 part of this Project, can Oroville supply the water to
15 add up to 4.7 million acre-feet?

16 WITNESS STROSHANE: I don't believe so.

17 The Feather Basin, I believe -- I kind of
18 recall that the Feather had a annual unimpaired flow of
19 about 4 million acre-feet, give or take.

20 Oroville has a capacity of about three and a
21 half million acre-feet, but there are -- there are
22 Feather River Settlement Contractors there,
23 particularly along the Feather River area below, like,
24 in Sutter and -- Sutter County and Southern Butte
25 County, where they have sort of the Feather River

1 equivalent of Settlement Contract rights.

2 And I believe Western Canal also gets an
3 allocation off the Feather for which they have
4 agreements with DWR as to how much -- how much they're
5 entitled to on a -- in a typical year.

6 I reviewed those documents for my -- for my
7 study in 2012. Again, I'm not recalling the exact
8 details, but it is in the record for -- for that.

9 When you subtract -- I think -- I think the
10 Settlement Contractors, I seem to recall that their
11 allocation was about approximately, I want to say,
12 550,000 acre-feet, give or take, from the Feather.

13 So if their needs are met every year, if
14 Oroville was hypothetically full every year, then we're
15 talking approximately 2.9 million acre-feet just from
16 the -- from Lake Oroville that -- to which DWR would be
17 entitled to redivert in the Delta somewhere.

18 MR. JACKSON: Could I have Slide 14.

19 (Exhibit displayed on screen.)

20 WITNESS STROSHANE: I'm sorry. My -- My math.

21 Can we return to that? I had the 4.1 but then
22 there's the 75 percent. I was leaving out the
23 75 percent public trust flow in that -- in the
24 Sacramento region.

25 So the number goes even further down without

1 having to do the math to see that.

2 MR. JACKSON: And so the -- A theoretical
3 consideration would be what the outflow was to
4 determine -- to the Bay to determine whether or not
5 Oroville could -- the State Water Project could carry
6 this program by themselves?

7 WITNESS STROSHANE: I'm not sure I understand
8 your question. Sorry.

9 CO-HEARING OFFICER DODUC: Mr. Jackson, I
10 really don't get how this is relevant to the Project
11 that is before us right now.

12 Perhaps it's something that, if Part 3 ever
13 comes to pass, would be relevant then.

14 So I would ask you to move on.

15 MR. JACKSON: All right. Mr. Mulcahy, I'm
16 very sorry for -- for this.

17 I would like to put up Dr. Hankins' testimony
18 in AquAlliance. And, I'm sorry, I -- it will take me a
19 minute to . . .

20 CO-HEARING OFFICER DODUC: Shall we lay the
21 foundation of whether you're familiar with the doctor's
22 testimony?

23 WITNESS MULCAHY: I listened to it yesterday.

24 MR. JACKSON: It's Part 2 testimony.

25 There it is. It would be the PowerPoint 273.

1 (Exhibit displayed on screen.)

2 MR. JACKSON: And could you go to the last
3 page.

4 (Exhibit displayed on screen.)

5 MR. JACKSON: And up maybe one page.

6 (Exhibit displayed on screen.)

7 MR. JACKSON: I think we're going in the wrong
8 direction, but . . .

9 (Exhibit displayed on screen.)

10 MR. JACKSON: Yes.

11 Mr. Mulcahy, are the -- are you familiar with
12 Public Law 936.38?

13 WITNESS MULCAHY: Yes.

14 MR. JACKSON: Are you familiar with Public
15 Law 103-413?

16 WITNESS MULCAHY: Yes.

17 MR. JACKSON: Are you familiar with Fish &
18 Game Code 16000?

19 WITNESS MULCAHY: Yes.

20 MR. JACKSON: Are these promises that were
21 made to the Winnemem Wintu people by the United States
22 and by the State of California?

23 WITNESS MULCAHY: Yes and no.

24 MR. JACKSON: Would you explain the yes part.

25 WITNESS MULCAHY: The yes part is, is that we

1 are Native Americans.

2 Let me go to the no part first.

3 MR. JACKSON: All right.

4 WITNESS MULCAHY: These laws pertain to
5 federally recognized tribes. The Winnemem Wintu is not
6 a federally recognized tribe.

7 And the reason why we're not a federally
8 recognized tribe is when the Shasta Dam was built and
9 completed in 1947, and they had wiped out our
10 historical grounds, our traditional cultural sites, as
11 I testified yesterday, and when they moved the cemetery
12 and put it in the name of the Shasta Lake Reservoir --
13 Shasta Reservoir Indian Cemetery, they did not put it
14 in the name of the Trust for the tribe and the family.

15 In 1978, when the Federal Registrar was
16 implemented, the Bureau of Indian Affairs had the
17 Federal Registrar list the list of recognized --
18 federally recognized tribes.

19 The way that they determined those tribes was:

20 First, they put into -- on the list tribes
21 that had treaties that had been ratified already, so
22 that they were -- they were recognized by treaty.

23 The second thing -- The second tribes that
24 they put on, on the list, is, they went through all of
25 their Trust assets, all the assets that were held in

1 trust, related those to who the people they were held
2 in trust for, whether it was a particular tribe,
3 family, or whatever that was recognized as Native
4 American. Then they went on the list as a federally
5 recognized tribe.

6 And then all the tribes that have come after
7 that have either been by judicial decree, which there's
8 been a few of those, Congressional decree, and there's
9 only been two that have been actually recognized by the
10 Federal acknowledges -- acknowledgment process over 30
11 years.

12 So all those laws up there are basically to
13 protect the rights of federally recognized tribes.

14 We're not a federally recognized tribes --
15 tribe. However, we are a State-recognized tribe. We
16 are listed in the Native American Heritage Commission
17 as a historical tribe.

18 And under AB 52, which means state agencies
19 are to consult with the tribe, in that we should be
20 afforded the same respect as far as rights go, fishing
21 rights, those kind of things. That's how they pertain
22 to us.

23 MR. JACKSON: All right. You described
24 yesterday in your direct testimony the effect that the
25 building of Shasta Dam had had on the Winnemem Wintu

1 people; did you not?

2 WITNESS MULCAHY: Yes, I did.

3 MR. JACKSON: And you are noticed as a witness
4 for Restore the Delta to talk about the environmental
5 justice impacts to California Indian cultural practice;
6 correct?

7 WITNESS MULCAHY: Yes, I am.

8 MR. JACKSON: Are there other Native American
9 people who are in the same cultural position that the
10 Winnemem Wintu are in above the Bureau and -- and State
11 Water Project dams?

12 WITNESS MULCAHY: You have the Millers, which
13 is above Miller dam.

14 There's too many to name.

15 If you go over to the Klamath and the Trinity,
16 that's all BOR. You've got the Karuk, the Yurok, the
17 Hoopa. You have all those.

18 They're not necessarily behind dams but their
19 dams are blocking tribal cultural prophecies. The
20 Salmon and stuff are getting to their resources.

21 You have Pit Rivers that are above all of the
22 PG&E dams and they're also behind Shasta Dam.

23 You have the Winnemem Wintu.

24 If you come down to Folsom Dam, you have
25 Miwok, Maidu all around, Paiute if you go down to . . .

1 Well, I mean, we could go a lot of places
2 here.

3 MR. JACKSON: Well, I know we're short on
4 time --

5 WITNESS MULCAHY: Yes.

6 MR. JACKSON: -- and 30 seconds is pretty
7 short.

8 But in the next four minutes, could I ask four
9 specific questions that relate to the environmental
10 justice impacts on California Indian cultural practice?
11 And I'll call it a day.

12 CO-HEARING OFFICER DODUC: Sure.

13 Miss Robertson, do you have redirect?

14 MS. ROBERTSON: I only have a very short
15 redirect.

16 CO-HEARING OFFICER DODUC: All right.

17 MR. JACKSON: And I'll start with the
18 8 percent of my county that is Native American. The
19 Mountain Maidu.

20 WITNESS MULCAHY: Yes.

21 MR. JACKSON: Are Salmon important in -- in --
22 to the Mountain Maidu?

23 WITNESS MULCAHY: Yes. Salmon are important
24 to Mountain Maidu, Valley Maidu, Valley Miwok, Valley
25 Wintu, all up and -- anywhere a river flowed and the

1 Salmon swam, and the tribe was next to the river,
2 Salmon were important to that tribe.

3 MR. JACKSON: Are Lamprey important to these
4 tribes?

5 WITNESS MULCAHY: Lamprey?

6 MR. JACKSON: Yes.

7 WITNESS MULCAHY: Yes.

8 MR. JACKSON: And how and why?

9 WITNESS MULCAHY: Each tribe has individual
10 spiritual connections to specific spirits in their
11 rivers.

12 The Lamprey carries a special spirit and a
13 special gift to the tribe that's in that area.

14 MR. JACKSON: If the United States government
15 and the -- and the -- and the State of California,
16 hypothetically, were developing a water system in order
17 to solve the problems of Native Americans both on
18 the -- in the Central Valley and in the mountain
19 watersheds around it, would it be important to include
20 fish bypass to restore those cultural values?

21 WITNESS MULCAHY: I believe that it's not only
22 important, it's being required now by NOAA on all of
23 the rim dams based on the 2009 Biological Opinion.

24 And I think that, in California, the
25 Department of Resources (sic) and Proposition 1 is

1 directed to removing obstructions. Or there is money
2 in there to remove obstructions and to create passage
3 for fish because of the importance and the need for not
4 only native traditional cultures to continue and to
5 thrive.

6 But for the fish species who are endangered
7 and threatened all throughout the Central Valley: The
8 winter-run Salmon is endangered -- listed as endangered
9 on both Federal and State Environmental Species Act.
10 The spring-run Salmon is listed as an -- threatened on
11 the Federal and endangered and on the -- on the state.

12 And we can go down the list. Steelhead,
13 Southern Green Sturgeon, Southern Norka, all of these
14 are reliant upon each other and -- Sorry. Go ahead.

15 MR. JACKSON: So if in my 38 seconds, if water
16 development in the State of California would take into
17 consideration the bypass problem, it would improve
18 things for Native Americans and the fish; correct?

19 WITNESS MULCAHY: Correct.

20 I'll go farther, though.

21 MR. JACKSON: Okay. I don't get another
22 question, so go ahead.

23 WITNESS MULCAHY: Not only would it create
24 conditions or improve conditions for Native Americans
25 and the fish, it would also improve the quality of the

1 water.

2 What the -- What the European science is
3 finally catching up with is what the traditional
4 culture has known all along, is that the Salmon and the
5 fish, whether it's the Salmon or the Steelhead or
6 whatever, they help clean the water. They get the
7 impurities out of there.

8 When they go up and they do their spawning and
9 they lay their eggs and then they -- then they give
10 themselves up to the land, those nutrients are put into
11 the river and into the surrounding foliage and into all
12 of the things around there that helps the native -- the
13 watershed thrive.

14 As the watershed thrives, the water becomes
15 more pure and clean because you have more things that
16 take impurities out of there.

17 So if you take the bypasses away, if you
18 restore the Salmon runs, if you get them back to their
19 natural spawning areas, if you stop thinking about
20 almonds and walnuts are the only way to make money in
21 California, because California used to be a Salmon
22 industry. It used to be an \$8 billion-a-year industry.

23 Bring the Salmon back. We can have two
24 economies. We can help both people. We can help the
25 Salmon survive, we can help the natives survive. And

1 we can make cleaner water and we don't need extra
2 developing of more infrastructure, some concrete
3 somewhere else that's going to contaminate or muddy up
4 the water.

5 MR. JACKSON: Thank you. That's my last
6 question.

7 CO-HEARING OFFICER DODUC: Thank you.

8 Miss Robertson.

9 MS. ROBERTSON: So I just have two issues to
10 address on redirect with Miss Barrigan-Parrilla.

11 And they relate to the citation that she
12 provided in her testimony related to statements by
13 Governor Brown. And Miss Barrigan-Parrilla noticed
14 that it was -- She did not cite the correct news
15 article so I just would like to first address that with
16 her.

17 And then the second is just offer(*)ing up her
18 testimony.

19 CO-HEARING OFFICER DODUC: Okay.

20 REDIRECT EXAMINATION BY

21 MS. ROBERTSON: First, Miss Barrigan-Parrilla,
22 do you recall noting that you cited the incorrect news
23 article?

24 WITNESS BARRIGAN-PARRILLA: Yes.

25 MS. ROBERTSON: And those are the citations

1 that you noted in Paragraphs 4 and 45 of your
2 testimony --

3 WITNESS BARRIGAN-PARRILLA: Correct.

4 MS. ROBERTSON: -- is that correct?

5 And have you found the correct citation for
6 that?

7 WITNESS BARRIGAN-PARRILLA: Yes, I have. It's
8 a AP News article, dated June 2nd, 2017, by Ellen
9 Knickmeyer and Scott Smith.

10 MS. ROBERTSON: And you have read that
11 article?

12 WITNESS BARRIGAN-PARRILLA: Yes.

13 MS. ROBERTSON: And you're familiar with all
14 of its contents?

15 WITNESS BARRIGAN-PARRILLA: Yes.

16 MS. ROBERTSON: And you believe that it
17 supports the testimony that you provided in
18 Paragraphs 4 and 45?

19 WITNESS BARRIGAN-PARRILLA: I know it does,
20 yes.

21 MS. ROBERTSON: Okay. So we would like to
22 submit that article into evidence as a revised exhibit
23 that then supports the statements made in her testimony
24 to that effect.

25 CO-HEARING OFFICER DODUC: Have you provided a

1 copy to Petitioners or the other parties?

2 MS. ROBERTSON: We have not, so we -- we're
3 happy to do that.

4 CO-HEARING OFFICER DODUC: Mr. Mizell.

5 MR. MIZELL: Yeah.

6 I'd object on the basis of surprise testimony,
7 late submissions.

8 I think we've seen before where people try and
9 submit corrected exhibits, corrected testimony, and
10 it's on a very rare circumstance when that occurs.

11 CO-HEARING OFFICER DODUC: Is there a reason,
12 Miss Robertson, that you cannot do that during
13 rebuttal?

14 MS. ROBERTSON: We can definitely do that
15 during rebuttal.

16 CO-HEARING OFFICER DODUC: Let's do that. It
17 will be nice and clean.

18 MS. ROBERTSON: Okay. Yeah. Okay.

19 And then my second question for
20 Miss Barrigan-Parrilla is related to the drafting of
21 your testimony.

22 WITNESS BARRIGAN-PARRILLA: Yes.

23 MS. ROBERTSON: And I just wanted to clarify
24 that, as we've noted here -- Or could you explain
25 the -- how your testimony was authored.

1 WITNESS BARRIGAN-PARRILLA: Mr. Stroshane
2 started a draft of my testimony that was not completed.
3 I then took that draft and edited that draft and
4 revised and expanded it.

5 And I believe Mr. Stroshane looked at it
6 again. Then it was given back to me for final
7 revisions and approval in consultation with Trent Orr
8 who was our attorney at that time.

9 MS. ROBERTSON: Correct.

10 So you would consider that you're the final
11 author of your testimony.

12 WITNESS BARRIGAN-PARRILLA: Yes. I'm the
13 final, errors and all.

14 MS. ROBERTSON: Okay. Thank you.

15 CO-HEARING OFFICER DODUC: Thank you.

16 Any recross?

17 MS. MORRIS: I don't have any recross.

18 I do want to lodge an objection:

19 During the course of cross-examination, there
20 was a question as to Miss Parrilla, Paragraph -- I'm
21 sorry -- Barrigan-Parrilla.

22 CO-HEARING OFFICER DODUC: Barrigan-Parrilla.

23 MS. MORRIS: Thank you.

24 And it was a specific question by Mr. Ruiz
25 about her opinion, and she was unable to answer it and

1 Mr. Stroshane answered it.

2 So I'd like to move to strike that opinion
3 testimony because she was, on her own testimony, unable
4 to answer the question and explain what was meant by
5 that specific section.

6 MS. ROBERTSON: And we would object to
7 striking again because, as we've noted, it's not that
8 she -- it's not her opinion, it's not that she was not
9 familiar with the subject matter and hadn't based her
10 testimony on that subject matter.

11 It was that, in the moment, she needed a
12 refreshment of her memory. And due to Mr. Stroshane's
13 familiarity with her testimony, he was able to provide
14 that.

15 CO-HEARING OFFICER DODUC: In any case, that's
16 what panels are for.

17 Motion denied.

18 All right. Does this conclude Restore the
19 Delta's case in chief?

20 MS. ROBERTSON: It does. And we -- Is it
21 appropriate at this time to move all of our exhibits
22 into evidence?

23 CO-HEARING OFFICER DODUC: (Nodding head.)

24 MS. ROBERTSON: So we would like to move the
25 following into evidence:

1 RTD-12, -13, -22, -23, then -122 through -127,
2 -133 through -137, -141, -151, -156 through -194, -196
3 through -199, -247 through -263, -265 through -293,
4 -1000 through -1003, -1005 through -1036, -5, -50,
5 -501, -770 and -771.

6 CO-HEARING OFFICER DODUC: Mr. Mizell.

7 MR. MIZELL: Yes. DWR would object to the
8 entry into evidence of RTD-248, 252 and 261 on the
9 basis that they were not referenced or used by any
10 witness or any testimony, either on direct or on
11 cross-examination.

12 So these are orphan exhibits that don't have
13 any tie-back to the actual testimony given by the
14 witnesses.

15 CO-HEARING OFFICER DODUC: Did we not rule on
16 a similar objection in Part 1?

17 We did. And I believe we allowed those --
18 those exhibits, that it didn't have to be directly
19 mentioned in a witness' testimony.

20 Is this a different set of circumstances,
21 Mr. Mizell?

22 MR. MIZELL: No. I was not recalling that
23 ruling, so I'm sorry.

24 CO-HEARING OFFICER DODUC: We will
25 double-check but I recall that ruling.

1 Was that the only objection, Mr. Mizell?

2 MR. MIZELL: That is my only objection.

3 CO-HEARING OFFICER DODUC: All right.

4 MS. McCUE: Can I clarify one thing? I think
5 you had an RTD-13 and an RTD-13-Revised. Which one are
6 you --

7 MS. ROBERTSON: I apologize. RTD-13-Revised.
8 Thank you.

9 MS. McCUE: Thank you.

10 CO-HEARING OFFICER DODUC: Do you have a
11 question, Mr. Deeringer?

12 MR. DEERINGER: I just -- I was trying to
13 catch those numbers. That was RTD-248, was it -251 and
14 there was one more that I didn't catch. -252?

15 MR. MIZELL: RTD-248, -252, and -261.

16 MR. DEERINGER: Thank you.

17 CO-HEARING OFFICER DODUC: We will note those
18 exhibits.

19 We will move all other exhibits into the
20 record, and staff will check to make sure that my
21 recollection is correct with respect to a previous
22 ruling on similar types of objections.

23

24

25

1 (Restore the Delta Exhibits RTD-5, RTD-12, RTD-13,
2 RTD-22, RTD-23, RTD-50, RTD-122, RTD-123, RTD-124,
3 RTD-125, RTD-126, RTD-127, RTD-133, RTD-134, RTD-135,
4 RTD-136 RTD-137, RTD-141, RTD-151, RTD-156, RTD-157,
5 RTD-158, RTD-159, RTD-160, RTD-161, RTD-162, RTD-163,
6 RTD-164, RTD-167, RTD-168, RTD-169, RTD-170, RTD-171,
7 RTD-172, RTD-173, RTD-174, RTD-175, RTD-176, RTD-177,
8 RTD-178, RTD-179, RTD-180, RTD-181, RTD-182, RTD-183,
9 RTD-184, RTD-185, RTD-186, RTD-187, RTD-188, RTD-194,
10 RTD-196, RTD-197, RTD-198, RTD-199, RTD-247, RTD-249,
11 RTD-250, RTD-251, RTD-253, RTD-263, RTD-265, RTD-266,
12 RTD-267, RTD-268, RTD-269, RTD-270, RTD-271, RTD-272,
13 RTD-273, RTD-274, RTD-275, RTD-276, RTD-277, RTD-278,
14 RTD-279, RTD-280, RTD-281, RTD-282, RTD-283, RTD-284,
15 RTD-285, RTD-286, RTD-287, RTD-288, RTD-289, RTD-290,
16 RTD-291, RTD-292, RTD-293, RTD-501, RTD-771, RTD-1000,
17 RTD-1003, RTD-1005, RTD-1006, RTD-1007, RTD-1008,
18 RTD-1009, RTD-1010, RTD-1011, RTD-1012, RTD-1013,
19 RTD-1014, RTD-1015, RTD-1016, RTD-1017, RTD-1018,
20 RTD-1019, RTD-1020, RTD-1021, RTD-1022, RTD-1023,
21 RTD-1024, RTD-1025, RTD-1026, RTD-1027, RTD-1028,
22 RTD-1029, RTD-1030, RTD-1031, RTD-1032, RTD-1033,
23 RTD-1034, RTD-1035, RTD-1036 received in evidence)

24 MS. ROBERTSON: Thank you.

25 CO-HEARING OFFICER DODUC: And thank you to

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1 all the witnesses for appearing.

2 It's always -- I think I'm always impressed by
3 all the witnesses' perseverance in not only coming but
4 also withstanding all the cross-examination conducted
5 your way.

6 So thank you all very much.

7 Miss Des Jardins.

8 MS. DES JARDINS: This is just some notice.

9 So, bumping PCFFA to April 9th created other
10 issues with witness availability. And so they're
11 trying to figure it out.

12 I also have my witness. David Fries isn't
13 available after the 9th.

14 We may want to switch back. I've been trying
15 to work it out with them on the afternoon, making a
16 bunch of calls, but it's not resolved right now.

17 So we will let you know --

18 CO-HEARING OFFICER DODUC: Fine. Your
19 problem.

20 MS. DES JARDINS: Thank you.

21 CO-HEARING OFFICER DODUC: And, with that, we
22 are adjourned.

23 We will resume at 9:30 on Monday. I believe
24 we're in the Sierra Hearing Room.

25 We will hear from Friends of the River and

1 Sierra Club California, and then EJCW's remaining
2 witnesses.

3 Thank you all.

4 (Proceedings adjourned at 3:45 p.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
16 had and testimony taken;

17 That I am not a party to the action or related to
18 a party or counsel;

19 That I have no financial or other interest in the
20 outcome of the action.

21

22 Dated: April 5, 2018

23

24

25

Candace L. Yount, CSR No. 2737