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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 MEETING ROOM  
  
1001 I STREET  
  
SECOND FLOOR  
  
SACRAMENTO CALIFORNIA  
  
PART 2 REBUTTAL

Friday, August 3, 2018  
9:30 A.M.

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Reported By: Deborah Fuqua, CSR No. 12948  
(a.m. session)  
Candace Yount, CSR No. 2737  
(p.m. session)

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6 Felicia Marcus, Chair and Co-Hearing Officer:  
7 Dorene D'Adamo, Board Member  
8 Staff Present  
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1 APPEARANCES (continued)

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FRED CHOA	
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1 Friday, August 3, 2018 9:30 a.m.

2 PROCEEDINGS

3 CO-HEARING OFFICER DODUC: Good morning,  
4 everyone. Welcome back to the California -- to the  
5 Water Rights Change Petition Hearing for the California  
6 WaterFix project.

7 I am Tam Doduc. To my right is Board Chair  
8 and Co-Hearing Officer Felicia Marcus. I believe we  
9 will be joined shortly by Board Member DeeDee D'Adamo  
10 who will be sitting to the Chair's right. To my left  
11 are Andrew Derringer, Conny Mitterhofer, and Jean  
12 McCue. We are also being assisted by other staff  
13 today.

14 Since it is Friday, I will move quickly  
15 through the usual announcements. If an alarm sounds,  
16 follow the crowd. Secondly, if you want us to hear you  
17 and you want your comments recorded, speak into the  
18 microphone after making sure that it is turned on by  
19 pushing the button and watching for the green lights.

20 And, finally and most importantly, because I  
21 do get annoyed by the little dings and whatnot, please  
22 take a moment and make sure that all your noise-making  
23 devices are on silent, vibrate, do in the disturb, off.

24 All right. Before we begin, are there any  
25 housekeeping matters? Mr. Bezerra.

1           MR. BEZERRA: Yes, thank you very much. Just  
2 an update. Your staff has been doing a commendable job  
3 on getting the Department's modeling files ready for  
4 cross-examination via live results. I've got a little  
5 bit more information to get to them, but I think we'll  
6 able to have that in hand by this afternoon and do  
7 cross-examination by then.

8           CO-HEARING OFFICER DODUC: Excellent. And  
9 that is your happy face that you're showing me, right?  
10 All right.

11           MR. BEZERRA: Yes, thank you.

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

14           Thank you, staff, for working with  
15 Mr. Bezerra.

16           Any other housekeeping matters?

17           (No response)

18           CO-HEARING OFFICER DODUC: All right. Not  
19 seeing any, we will now turn back to Ms. Womack.

20           Ms. Womack, I look forward to a productive,  
21 effective, efficient cross-examination by you today.

22           MS. WOMACK: I do, too. And, you know,  
23 wouldn't it be nice if we -- if it was -- if we had the  
24 efficiency with DWR not changing everything. So I  
25 appreciate that.

1 CO-HEARING OFFICER DODUC: And I would  
2 appreciate that all parties, yourself included, refrain  
3 from commentaries. It is not helpful.

4 MS. WOMACK: Yes.

5 CO-HEARING OFFICER DODUC: And it also does  
6 not help, I think, in building the kind of  
7 communication channels and cooperativeness that I think  
8 we all want in order to work together and find  
9 solutions. So please stick to the focus of your  
10 questions, and let's try to get through this in a  
11 productive manner.

12 MS. WOMACK: I will do my best. I do have  
13 about three and a half more hours of questions.

14 CO-HEARING OFFICER DODUC: It will depend on  
15 how effective your cross-examination is. And so far, I  
16 have to tell you, it has not been. So please try --

17 MS. WOMACK: Okay.

18 GWEN BUCHHOLZ, JOHN BEDNARSKI, FRED CHOA,

19 JASON VOLK and LAURA YOON,  
20 called by the Petitioners as Part 2  
21 Rebuttal Panel 1 witnesses, having  
22 been previously duly sworn, were  
23 examined and testified further as  
24 hereinafter set forth:

25 CROSS-EXAMINATION BY MS. WOMACK (resumed)

1 MS. WOMACK: Let's start with SWRBC-113,  
2 Chapter 19, Figure 19-2C, Mr. Hunt. Thank you.

3 CO-HEARING OFFICER DODUC: And as that is  
4 being pulled up, Ms. Womack, if -- we'd done this  
5 yesterday, and I've lost my notes. I apologize. If  
6 you could please outline again --

7 MS. WOMACK: Yes. I'm on transport- --

8 CO-HEARING OFFICER DODUC: -- the topics  
9 that --

10 MS. WOMACK: Sure. Glad to. I'm on transport  
11 right now. I have about -- a few more questions. I  
12 have noise. I have climate change. I have recreation.  
13 I have the impact of no CCF. I have dredging. I have  
14 power lines --

15 CO-HEARING OFFICER DODUC: I'm sorry. The  
16 impacts of what? Oh, Clifton Court? Okay.

17 MS. WOMACK: Well, no -- of Clifton Court  
18 Forebay. I'm sorry. Yeah, I hate all those little  
19 acronyms.

20 I have dredging. I have a quick power line  
21 question, a south tunnel question, and the control  
22 structure on the -- on -- I guess it's the DMC intake.

23 Okay. So let's see. This can be for Mr. Choa  
24 or Mr. Bednarski.

25 You were talking yesterday, Mr. Bednarski, I



1 believe, about there being three mediation -- three  
2 ways to mitigate problems with Old River Bridge -- or  
3 with the -- Highway 4 from -- basically from Discovery  
4 Bay to Stockton.

5 And so I'd like you to -- you said that you  
6 could go -- one of the ways was to do the -- one of the  
7 ways was to use the bridge at night; is that correct?

8 WITNESS BEDNARSKI: That may be possible. We  
9 haven't fully investigated, but it's a possibility.

10 MS. WOMACK: Are you aware that the bridge is  
11 open right now, from May to October, from 6:00 to 10:00  
12 p.m. -- 6:00 a.m. to 10:00 p.m. and that, from November  
13 1st to April 30th, it's open from 9:00 to 5:00?

14 WITNESS BEDNARSKI: Could you explain? When  
15 you say "open," is that -- does that mean it's open for  
16 vehicular traffic or they just --

17 MS. WOMACK: There is an operator that  
18 opens -- I spoke with the operator last night. So they  
19 have a limited time frame because most people -- very  
20 few boaters go in the middle of the night.

21 WITNESS BEDNARSKI: Yes. If that's the case,  
22 then we would need to work with the agency that  
23 operates the bridge and, if necessary, we would, you  
24 know, need to pay the requisite salaries to --

25 MS. WOMACK: To open?

1           WITNESS BEDNARSKI:  -- have somebody -- yes,  
2 if that was the case, yes, if that was a mediation  
3 measure.

4           MS. WOMACK:  Okay.  Speaking with the bridge  
5 operator last night, they said that the Old River  
6 Bridge is well over a hundred years old and that it  
7 hasn't -- he said it was built around 1900-something,  
8 turn of the century.  It hasn't -- he told me it hasn't  
9 been done.

10          CO-HEARING OFFICER DODUC:  Ms. Womack, you are  
11 not testifying right now.

12          MS. WOMACK:  No, no, no.  But I --

13          CO-HEARING OFFICER DODUC:  So I need you to --

14          MS. WOMACK:  Yes.

15          CO-HEARING OFFICER DODUC:  -- focus on asking  
16 the specific question you would like Mr. Bednarski to  
17 answer.

18          MS. WOMACK:  So, yeah.  I just want to know  
19 what your provisions are for fixing that bridge.

20          WITNESS BEDNARSKI:  Yes.  At the conceptual  
21 level of design, we don't have detailed plans for that.  
22 One of our early investigations -- you know, we've  
23 mentioned that there will be a lot of early  
24 investigations that take place in preliminary design.  
25 We'll be working with Caltrans or the responsible

1 agency for that bridge to determine what needs to be  
2 done so that its operation can meet our needs.

3 MS. WOMACK: How would -- and with the --  
4 you're combining two bridge landings. So how many  
5 round-trip barge trips will there be from the Byron  
6 Tract?

7 WITNESS BEDNARSKI: We have not changed it  
8 from the approved project. And the approved project  
9 included a barge landing on the West Canal for the  
10 Clifton Court Pumping Plant. I would have to -- let's  
11 see.

12 So we had originally identified in the  
13 Biological Opinion 2,185 one-way trips to the Clifton  
14 Court Forebay. So that would be unchanged at the Byron  
15 Tract Forebay. So that's one-way trips, so the --

16 MS. WOMACK: That's one way? I thought --

17 WITNESS BEDNARSKI: Yes.

18 MS. WOMACK: You didn't say roundtrip?

19 I'm --

20 WITNESS BEDNARSKI: No, it's -- we've  
21 clarified that in my testimony as far as the difference  
22 between one-way trips and roundtrips. So. . .

23 MS. WOMACK: So that's one-way trips, and  
24 that's over -- so how many a day does that work out to?

25 WITNESS BEDNARSKI: I believe we identified

1 four trips each day, so -- four roundtrips. So that's  
2 eight trips.

3 MS. WOMACK: Eight bridge openings is what  
4 I'm -- okay. So, now, I have this map up because you  
5 said that a second way to mediate -- to make -- to help  
6 things is to go another route. And so we have the  
7 rivers up and the Western Canal and -- what other route  
8 would you go from the Byron Tract?

9 WITNESS BEDNARSKI: Well, I think I have to  
10 say, at this time, we have not identified specific  
11 other routes. As I've indicated in my testimony, we  
12 would leave that up to the construction contractors.

13 We've identified the Old River traveling from  
14 north to south as a main route. If other routes need  
15 to be identified, then we would identify those in later  
16 stages of the design. There are other canals that come  
17 into that area. I can't say today that -- which one  
18 would be an appropriate alternative.

19 MS. WOMACK: Could we use a pointer, Mr. Hunt,  
20 because I see -- I see where the Byron Tract is.  
21 There's the Old -- the Old -- or Middle River. And  
22 then there's -- you know, going down the Clifton Court  
23 Forebay, there's the Western Canal. There's -- is that  
24 Franks Tract? There's a waterway. I -- I -- I see two  
25 ways.

1 CO-HEARING OFFICER DODUC: What is your  
2 question, Ms. Womack?

3 MS. WOMACK: Well, he says he doesn't know the  
4 way. And I see two ways. I would like to know what  
5 other ways --

6 CO-HEARING OFFICER DODUC: Ms. Womack, he has  
7 answered your question several times in that, in this  
8 conceptual stage that they're in right now, he does not  
9 have the specific answer. I suggest you move on to --

10 MS. WOMACK: Okay.

11 CO-HEARING OFFICER DODUC: -- the more --

12 MS. WOMACK: I'd be glad to.

13 So looking at this, we were talking yesterday  
14 with Mr. Choa about the impact on different segments.  
15 And so you can see from Byron, there's the CCO 5;  
16 there's Alameda 01 and San Joaquin 05.

17 I have a question for Mr. Choa. You only show  
18 the one way on Mountain House Parkway to the 205.  
19 There are two other ways to the 205 that are very  
20 heavily used. There is -- right where it says "Byron  
21 Highway" at the Clifton Court Forebay, there's --

22 CO-HEARING OFFICER DODUC: And, again, what is  
23 your question, Ms. Womack?

24 MS. WOMACK: Well, I want to know why these  
25 routes were not -- not, I guess, tallied because these

1 are heavily used routes.

2 CO-HEARING OFFICER DODUC: What do you mean by  
3 "tallied"?

4 MS. WOMACK: Well, we've shown one way that  
5 traffic's going to be affected, but we haven't -- he  
6 hasn't shown -- for example, there's Mountain House  
7 Road that is right where -- right about where the Byron  
8 Highway is, doesn't even have that on the map. It goes  
9 directly to the 20- -- to the 580 by then, at Altamont  
10 Pass.

11 CO-HEARING OFFICER DODUC: So then are you  
12 able to answer the question?

13 MS. WOMACK: Why wasn't that route included?  
14 It's heavily used.

15 WITNESS CHOA: I'll answer that. The 114  
16 segments evaluated in the transportation study were  
17 identified and reviewed by the agencies. In that case,  
18 it would be -- this figure depicts -- it just shows the  
19 -- so "CT" stands for Caltrans; SJ is San Joaquin  
20 County; and ALA is Alameda County. So they showed the  
21 segments that were identified by the local  
22 jurisdictions and agencies that may be affected by the  
23 California WaterFix project.

24 MS. WOMACK: Okay. So that would be the same;  
25 why, then, you did not do the Byron Highway to Grant

1 Line Road to the 205, which is another heavily used  
2 roadway, because somebody didn't pick it; is that what  
3 you're basically saying?

4 WITNESS CHOA: I'm saying that the roadways  
5 identified are the primary directions of travel for  
6 truck traffic. So those other ones that you referred  
7 to may be for commuters but, again, would not be used  
8 by construction traffic associated with the California  
9 WaterFix project.

10 MS. WOMACK: So this -- okay. All right. All  
11 right. That's fine. Let's see. So while we're on  
12 this, Lindemann and Herdlyn Road are going to be used  
13 for construction control structure on the Delta-Mendota  
14 Canal.

15 CO-HEARING OFFICER DODUC: Is that a question?

16 MS. WOMACK: Well, I'm asking why these roads  
17 haven't been included in the construction.

18 MR. BERLINER: Objection, vague and ambiguous.

19 CO-HEARING OFFICER DODUC: I will agree.  
20 Sustained.

21 MS. WOMACK: The control structure will be  
22 built on the Delta-Mendota Canal. The ways to access  
23 the Delta-Mendota Canal where the control structure has  
24 been placed is either through Herdlyn Road or Lindemann  
25 Road. There will be traffic on this from the trucks.

1           Why hasn't this road been identified?

2           MR. MIZELL:  Objection, assumes facts not in  
3 evidence.

4           CO-HEARING OFFICER DODUC:  We will strike out  
5 the testimonial part of Ms. Womack's question and just  
6 ask Mr. Choa or Mr. Bednarski if you have any  
7 information regarding the selection of routes for  
8 construction of the control structure.

9           WITNESS CHOA:  So as part of the California  
10 WaterFix project, as we discussed yesterday,  
11 Transportation 1A specifically identifies  
12 implementation of site-specific construction management  
13 plans.  Where working with the local agencies, it would  
14 go a much finer level, beyond what was included in the  
15 transportation section to address multiple roadways or  
16 to site-specific locations.  And that's, again,  
17 Transportation 1A.

18           MS. WOMACK:  So you do not have the  
19 construction route for the control structure on the  
20 Delta-Mendota Canal identified as an important route?

21           MR. MIZELL:  Objection, misstates the  
22 witness's testimony.

23           CO-HEARING OFFICER DODUC:  Sustained.

24           Ms. Womack, I suggest you move on to noise  
25 now.  You are running out of time, and you still have



1 other topics you would like to cover. I suggest you  
2 prioritize and get to your most important topics as  
3 soon as possible.

4 MS. WOMACK: Ah, hmm. Okay. Well, I have --  
5 I have a lot of topics to cover. Remember, I didn't  
6 switch this. I don't know why I'm being penalized.

7 CO-HEARING OFFICER DODUC: You are wasting  
8 your time. Please focus.

9 MS. WOMACK: I'm very focused.

10 Mr. Volk, on noise -- Mr. Hunt, if I could  
11 have SWRCB-113, Figure 23A-04. I just have two  
12 questions on this. It's a figure -- so it's a  
13 figure -- a different map.

14 MR. BERLINER: I think we're in the chapter  
15 rather than the appendix. Ms. Womack is looking in the  
16 appendix.

17 MS. WOMACK: Yeah. No, no. It's Figure 23A  
18 but -- it's the figures. Thank you.

19 All righty. So if you go down to where  
20 Clifton Court is -- I don't see Clifton Court there.  
21 Oh, there it is.

22 All right. It's hard to tell, since this  
23 shows the original forebay. But what I'm wondering,  
24 Mr. Volk, is how does the -- how does the noise take  
25 into account empty spaces versus housing projects as

1 far as the travel of sound, especially an empty space  
2 that's kind of -- well, you know, how does that take  
3 into account, the difference between empty and a  
4 densely populated community?

5 MR. BERLINER: I have an objection by what the  
6 definition is of "empty space." Perhaps you're talking  
7 about open space?

8 MS. WOMACK: Oh, that would be an open space.  
9 My farm, basically, at Clifton Court is surrounded by  
10 the forebay walls and Old River and the DMC. So would  
11 there be a difference in how the noise is calibrated  
12 given that it is open space farmland and it's  
13 surrounded by walls? I'm just very curious.

14 WITNESS VOLK: If I could just understand what  
15 you mean by your question. Are you asking would the  
16 sound levels be different --

17 MS. WOMACK: Yes. Would they travel further?

18 WITNESS VOLK: Would they travel further? In  
19 the essence of shield --

20 CO-HEARING OFFICER DODUC: Would you limit  
21 your answer to what would be different based on the  
22 change being proposed in terms of the sound and whether  
23 or not the open space would affect --

24 MS. WOMACK: Surrounded by embankments.

25 WITNESS VOLK: Okay.

1 CO-HEARING OFFICER DODUC: Can I just make it  
2 a little more complicated? Never mind. Just answer.

3 WITNESS VOLK: It's -- yeah. Well, the way  
4 that's phrased, it's a bit difficult phrase. But let  
5 me try and answer the question of how did we model  
6 noise levels and -- so our noise model is basically an  
7 open space model. It does not account for shielding or  
8 terrain. It basically is -- we assume that noise  
9 propagates from a source to a receiver in an open-space  
10 condition.

11 MS. WOMACK: And I noticed something about  
12 nighttime hours. There's something in there in some  
13 color, but mine's all black-and-white.

14 So there won't be -- are we accounting for  
15 noise at night from 10:00 to 7:00 a.m.?

16 WITNESS VOLK: Yes.

17 MS. WOMACK: There's a -- oh, here it is.

18 MR. MIZELL: If you would finish the question?

19 MS. WOMACK: There's an orange -- so nighttime  
20 hours only. So -- oh, I see. It's orange. You know  
21 what? We can just forget about it because I couldn't  
22 see that. They were different. They were just black  
23 and white -- because there doesn't appear to be any  
24 orange. Thank you so much. We'll move on.

25 Mr. Bednarski, climate change.

1           Let's see. Could I have -- oh, SWRCB-113,  
2 Chapter 29-1, Line 23. There we go. Thank you so  
3 much.

4           And it says, ". . .the proposed project and  
5 the approved project would provide resiliency and  
6 adaptation benefits related to addressing combined  
7 efforts of increases in sea level rise and change in  
8 upstream hydrology."

9           So I'm a little confused here by this  
10 statement. Are we -- why do we have the proposed  
11 project and the approved project put together in this?

12           MR. MIZELL: I'm going to object to the line  
13 of questioning on climate change. As you can see in  
14 the first paragraph on this very page, there is no  
15 difference between climate change in the FEIR and the  
16 adopted project versus the Supplemental EIR. So at  
17 this point, it's beyond the scope of rebuttal.

18           CO-HEARING OFFICER DODUC: Sustained.

19           MS. WOMACK: So we're not going to address  
20 that the Clifton Court Forebay doesn't have -- doesn't  
21 meet the DHCCP flood protection criteria? That's part  
22 of the --

23           CO-HEARING OFFICER DODUC: I'm sorry. What  
24 was your question?

25           MS. WOMACK: My question is in -- we're saying

1 that this -- the proposed project and the approved  
2 project are going to apply resiliency and benefits for  
3 the changes in the upstream hydrology. And yesterday,  
4 we heard about how the seas are going to rise; 2017 we  
5 had huge floods.

6 CO-HEARING OFFICER DODUC: What is your  
7 question?

8 MS. WOMACK: My question is is there  
9 resiliency in a structure that failed in 2017, that  
10 being the Clifton Court Forebay?

11 CO-HEARING OFFICER DODUC: Mr. Mizell?

12 MR. MIZELL: Yeah, I'll object to the question  
13 based on an existing structure that's not proposed to  
14 be changed under the California WaterFix, under the  
15 supplemental document.

16 CO-HEARING OFFICER DODUC: Sustained.

17 MS. WOMACK: The -- this is saying right here  
18 that --

19 CO-HEARING OFFICER DODUC: We're not  
20 arguing --

21 MS. WOMACK: -- it's not part of the project.

22 CO-HEARING OFFICER DODUC: -- Ms. Womack. Ask  
23 your next question, please.

24 MS. WOMACK: Well, okay. Let's have 29-1,  
25 Line 35.

1           "The proposed and approved project would also  
2 provide more reliable water supplies which would  
3 provide additional resiliency and adaptability to  
4 increase" -- blah, blah, blah.

5           My question is can you tell me how a water  
6 supply is more reliable if the Clifton Court fails  
7 because it doesn't meet standards?

8           CO-HEARING OFFICER DODUC: Mr. Mizell.

9           MR. MIZELL: Objection, calls for speculation.

10          And also, to reiterate my last objection, goes  
11 beyond the scope of rebuttal for addressing existing  
12 structures that are not proposed to be modified in the  
13 Supplemental EIR.

14          CO-HEARING OFFICER DODUC: Sustained.

15          MS. WOMACK: All righty. Recreation. Could I  
16 have, Mr. Hunt, SWRCB-113, Chapter 15-2, Line 28.

17          Awesome. Okay. And it basically says the  
18 "Construction of the Byron Tract Forebay under the  
19 proposed project would help reduce the impact on  
20 recreation activities on and near Clifton Court  
21 Forebay's south embankment."

22          I would like to know where these -- where the  
23 Department of Water Resources recreation facilities are  
24 on this south embankment. We could put up the -- the  
25 map, perhaps.

1           So my question is, Mr. Bednarski, where --  
2 where are these facilities? So if -- that they're  
3 saying will be saved now.

4           So if I could have, I guess, the map figure  
5 put up again. That's SWRCB-113, Chapter 19, Figure  
6 19-2c. That's a map that pretty well shows it.

7           So south of the Clifton Court Forebay is my  
8 property. Could you tell me where there is -- where  
9 this recreation site is?

10           MR. MIZELL: I'd like to lodge a minor  
11 objection, that the use of the term "facilities" is  
12 ambiguous. And the testimony -- or the document that  
13 Ms. Womack cited to listed it as recreation activities.  
14 So can we just refer to it as activities.

15           MS. WOMACK: Okay. I'd be glad to.

16           Where are the recreation activities on the  
17 Clifton Court Forebay? Because it's supposed to be  
18 something we're keeping.

19           WITNESS BEDNARSKI: My knowledge of that area  
20 is that individuals use that West Canal waterway for  
21 various water sport activities. I've personally  
22 observed them fishing, jet skiing, other things like  
23 that. In the approved project, we had proposed a barge  
24 landing in the northeast corner of Clifton Court; so we  
25 would have been bringing barges down into the

1 West Canal, as I previously discussed in previous  
2 testimony.

3 We are no longer planning that, so I believe  
4 that's why the text was written that way, that we would  
5 not be having any negative impacts --

6 MS. WOMACK: Mr. Bednarski --

7 WITNESS BEDNARSKI: -- in the canals.

8 MS. WOMACK: -- west is not south.

9 WITNESS BEDNARSKI: Well, the West Canal, I  
10 believe, extends from the north of Clifton Court down  
11 to the south, where the intake to the Clifton Court is.  
12 That's to my knowledge.

13 MS. WOMACK: Western Canal is not south of  
14 Clifton Court Forebay.

15 CO-HEARING OFFICER DODUC: Ms. Womack, please  
16 do not argue with the witness.

17 Is there a question you would like to ask?

18 MS. WOMACK: Yes, yes. First of all, we have  
19 to agree what direction is south.

20 CO-HEARING OFFICER DODUC: Ms. Womack, ask  
21 your question.

22 MS. WOMACK: I just -- I would like to know  
23 where is the parking for these activities at south  
24 Clifton Court Forebay?

25 MR. MIZELL: I would lodge an objection that



1 it assumes facts not in evidence, about parking  
2 associated with the aquatic activities Mr. Bednarski  
3 just described. But I believe he may be able to  
4 provide that answer himself.

5 MS. WOMACK: Excuse me, Mr. Mizell. He talked  
6 about the Western Canal. I'm talking about south  
7 Clifton Court.

8 MR. MIZELL: In which case, I'd say asked and  
9 answered. The witness has explained his understanding  
10 of the recreational activities associated with the text  
11 indicated by Ms. Womack.

12 CO-HEARING OFFICER DODUC: He did answer.  
13 Sustained.

14 MS. WOMACK: Where are the bathroom  
15 facilities?

16 CO-HEARING OFFICER DODUC: You do not need to  
17 answer, Mr. Bednarski.

18 Move on, Ms. Womack.

19 MS. WOMACK: You know, I'm just having  
20 difficulty --

21 CO-HEARING OFFICER DODUC: I appreciate that  
22 you are having difficulty, but this is not productive.  
23 It is not helping us to understand your concerns in  
24 this matter. And I suggest you move on.

25 MS. WOMACK: Could I have Clifton Court LP

1 19-33, and I will show you why I'm so concerned.

2 CO-HEARING OFFICER DODUC: As long as you do  
3 it in a manner of addressing a specific question to a  
4 witness based on his rebuttal testimony because this is  
5 not your opportunity to testify or present testimony  
6 for your arguments.

7 MS. WOMACK: Yes. Here is -- Clifton Court  
8 Forebay is also, in other literature -- you know  
9 this -- it's a great place to fish for bass. Here's a  
10 family --

11 CO-HEARING OFFICER DODUC: And your question  
12 is?

13 MS. WOMACK: Is how do you provide for the  
14 safety of these children?

15 CO-HEARING OFFICER DODUC: Mr. Bednarski has  
16 already answered that question with respect to the  
17 change that is being proposed.

18 MS. WOMACK: He has talked about water skiing  
19 on the Western Canal. I am talking about children  
20 crossing my property to go to fish, which is -- I've  
21 been told by DWR many times that that is an okay thing,  
22 to fish on the south bank of the Clifton Court Forebay.

23 These children do not have a place to go to  
24 the bathroom. They don't have a place --

25 CO-HEARING OFFICER DODUC: What is your

1 question, Ms. Womack?

2 MS. WOMACK: I want this to stop.

3 CO-HEARING OFFICER DODUC: No. What is your  
4 question?

5 MS. WOMACK: My question is how -- where is  
6 the parking and where is the bathroom facilities for  
7 these people that go to fish where DWR says they can  
8 fish?

9 CO-HEARING OFFICER DODUC: And that is outside  
10 the scope of what we are focused on for rebuttal.

11 MS. WOMACK. Okay.

12 Okay. Could I have SWRCB 1-4, Line 16, about  
13 creating a new forebay. It says that here -- 113,  
14 please? I'm sorry.

15 CO-HEARING OFFICER DODUC: And this will be  
16 your final question, Ms. Womack.

17 MS. WOMACK: Oh, I have more questions.

18 CO-HEARING OFFICER DODUC: No. This will be  
19 your final question. We have allotted you 60 minutes  
20 for reasonable cross, and that will be all the time you  
21 will have.

22 MS. WOMACK: I've asked for four hours. I  
23 have -- my --

24 CO-HEARING OFFICER DODUC: No.

25 MS. WOMACK: -- my land and my water rights

1 were taken.

2 CO-HEARING OFFICER DODUC: Your request is  
3 denied. Ask your final question.

4 MS. WOMACK: Okay. Thank you. Well, let's  
5 change that, then.

6 Could we put CCLP-11? And then we'll have to  
7 do CCLP-16 because the APN map -- yes.

8 Mr. Bednarski, yesterday, you said that  
9 Clifton Court -- that the land south of Herdlyn Road is  
10 your -- is not Clifton Court's property. You're  
11 incorrect. It is our property.

12 CO-HEARING OFFICER DODUC: What is your  
13 question, Ms. Womack?

14 MS. WOMACK: Well, Mr. Bednarski's control  
15 structure will be on our property. Furthermore --

16 CO-HEARING OFFICER DODUC: Hold on.

17 MS. WOMACK: Okay.

18 CO-HEARING OFFICER DODUC: You again -- you  
19 are testifying. What is your question for  
20 Mr. Bednarski?

21 MS. WOMACK: Why did you say it's not my  
22 property? Have you not done due diligence?

23 CO-HEARING OFFICER DODUC: All right. Stop.

24 Mr. Bednarski, are you able to answer?

25 WITNESS BEDNARSKI: Can we refer back to my

1 testimony, DWR-1212, on Page 6.

2 Starting at Line 38, DWR's commitment in  
3 regards to this subject is that the placement of any  
4 temporary or permanent construction impacts will be  
5 south of the Clifton Court LLP properties. We will  
6 investigate the exact delineation of the property lines  
7 in our upcoming surveying activities that will take  
8 place for the program.

9 And this is DWR's commitment, to be south of  
10 the Clifton Court LLP property so that we do not impact  
11 with either temporary permit or fee-type activities.

12 MS. WOMACK: I would like stricken from the  
13 record where he says that the property is clear. It  
14 isn't clear. He said yesterday that --

15 CO-HEARING OFFICER DODUC: Ms. Womack --

16 MS. WOMACK: -- this property is clear.

17 CO-HEARING OFFICER DODUC: Ms. Womack, that is  
18 his rebuttal testimony. If you wish to refute that,  
19 you may have the opportunity to do so later. Now is  
20 not the time.

21 MS. WOMACK: Okay. Could we have --

22 CO-HEARING OFFICER DODUC: No, we cannot.

23 Your cross-examination is completed.

24 MS. WOMACK: Oh, this is to do with the water  
25 rights.

1 CO-HEARING OFFICER DODUC: No.

2 MS. WOMACK: Okay.

3 CO-HEARING OFFICER DODUC: What we will do --

4 MS. WOMACK: My water rights --

5 CO-HEARING OFFICER DODUC: Ms. Womack --

6 MS. WOMACK: -- are being taken.

7 CO-HEARING OFFICER DODUC: Ms. Womack, then  
8 you should have used the opportunity to address your  
9 most important questions from here.

10 MS. WOMACK: I have --

11 CO-HEARING OFFICER DODUC: Ms. Womack, be  
12 quiet. You may have until noon next Friday to submit  
13 in writing to us and to all the parties your request  
14 for any additional water rights-related questions for  
15 petitioners. Submit those in writing to us by noon  
16 next Friday. That's a week.

17 Petitioners and any other parties, you may  
18 have until noon on Tuesday to respond. We will take  
19 that under consideration and give further direction.

20 MS. WOMACK: My water rights --

21 CO-HEARING OFFICER DODUC: Ms. Womack, you are  
22 done.

23 MS. WOMACK: No, I'm not.

24 CO-HEARING OFFICER DODUC: We are in recess,  
25 thank you. We will return at 10:20.

1 (Recess taken)

2 CO-HEARING OFFICER DODUC: All right. It is  
3 10:20. We are back in session.

4 Is this a short issue? Because I would like  
5 to get to Mr. Jackson for his cross.

6 MS. DES JARDINS: Oh, it's very short.

7 CO-HEARING OFFICER DODUC: Let's identify  
8 yourself, please.

9 MS. DES JARDINS: It's Deirdre Des Jardins,  
10 Group 37. And I just -- Ms. Meserve, with Local  
11 Agencies of the North Delta and Save Our Sandhill  
12 Cranes, would like to do cross-examination -- would  
13 like to swap with me for their cross-examination. I  
14 think there's a camping trip involved.

15 MS. MESERVE: Good morning. I think --

16 CO-HEARING OFFICER DODUC: Most importantly,  
17 where are you going camping?

18 MS. MESERVE: Out to the Lost Coast.

19 CO-HEARING OFFICER DODUC: I'm so jealous.  
20 I've been wanting to backpack the Lost Coast.

21 MS. MESERVE: I know. Well --

22 CO-HEARING OFFICER DODUC: Okay. Go ahead.  
23 Take it.

24 MS. MESERVE: I know. About to start school;  
25 got to run.

1           So I think the way I understand it, the order,  
2 if it's all right with the Hearing Officers, would be  
3 Mr. Jackson, then me, then Deirdre, and I believe that  
4 Snug Harbor has questions, and Michael Brodsky is on  
5 his way as well.

6           CO-HEARING OFFICER DODUC:   Okay.

7           MS. MESERVE:   So. . .

8           CO-HEARING OFFICER DODUC:   Since you're the  
9 only remaining cross-examiners, yes, that would be  
10 fine.

11          MS. MESERVE:   And then Ms. Daly is saying that  
12 North Delta C.A.R.E.S. may have questions, but she's  
13 going to wait until the very end to see if she does.

14          MS. DALY:   Well, unless the other people ask.

15          CO-HEARING OFFICER DODUC:   All right.

16          MS. DALY:   Sure.

17          CO-HEARING OFFICER DODUC:   Mr. Jackson, you  
18 are standing between Ms. Meserve and a camping trip on  
19 the Lost Coast.

20                 He doesn't seem as thrilled for you as I am,  
21 Ms. Meserve.   I'm sorry.

22                 Mr. Jackson, your topics, please.

23                 MR. JACKSON:   My questions will be directed to  
24 Mr. Bednarski predominantly and his team of helpers.  
25 There may be -- there will be a question -- a line of



1 questions addressed to Ms. Buchholz. And I estimated  
2 40 minutes, and I believe that's doable.

3 CO-HEARING OFFICER DODUC: Any specific  
4 topics, please?

5 MR. JACKSON: The topics for Mr. Bednarski  
6 come from DWR-1212, and they are on Page 2 of that  
7 document. And I will be asking questions about the  
8 specific areas covered in his testimony in the order  
9 with which he places them: that's proposed WaterFix  
10 refinements; noise from impact pile driving; air  
11 quality; transportation impacts from construction;  
12 barges and barge landings; adequacy of existing  
13 engineering and field investigations; seismic design  
14 criteria for tunnels; the rebuttal to Randall Neudeck;  
15 the impacts to levees; and the response to Clifton  
16 Court LP.

17 CO-HEARING OFFICER DODUC: All right. Please  
18 proceed.

19 CROSS-EXAMINATION BY MR. JACKSON

20 MR. JACKSON: Good morning, Mr. Bednarski. My  
21 name is Michael Jackson. I represent the California  
22 Sportfishing Protection Alliance, the California Water  
23 Impact Network, and AquAlliance.

24 You indicate on Line 5, starting on Line 4,  
25 that the information presented in your testimony is

1 based on a conceptual level of design, the design  
2 approximately 10 percent complete.

3 You testified in Part 1, did you not?

4 WITNESS BEDNARSKI: Yes, I did.

5 MR. JACKSON: And you testified on the basis  
6 of a conceptual level of design in that hearing?

7 WITNESS BEDNARSKI: That's correct.

8 MR. JACKSON: What has been the change --  
9 changes in the conceptual level of design between Part  
10 1 and today?

11 WITNESS BEDNARSKI: I believe those have been  
12 outlined in my testimony. Would you like me to review  
13 those areas? I presented those in my opening  
14 presentation.

15 MR. JACKSON: Yeah, I mean, is there anything  
16 that is not in the presentation?

17 WITNESS BEDNARSKI: Not to my knowledge.

18 MR. JACKSON: Are you -- you presently have an  
19 estimate of a timeline for moving from a conceptual  
20 level of design until a -- to a preliminary level of  
21 design, which I understand is the next step?

22 WITNESS BEDNARSKI: We are anticipating about  
23 12 months of investigations and studies that will also  
24 include gathering geotechnical information, conducting  
25 survey and mapping activities, and commencing property

1 acquisition activities.

2           Following that 12 -- roughly 12-month time  
3 frame, we would be embarking on preliminary design in  
4 areas that we can do that in.

5           MR. JACKSON: Maybe I didn't understand the  
6 answer.

7           Are there areas that you can do that in and  
8 other areas that you can't yet do that?

9           WITNESS BEDNARSKI: Yes, that is correct,  
10 there are some areas that we can commence preliminary  
11 design relatively quickly. An example would be on the  
12 power lines that will be constructed from roughly Tracy  
13 in the south to Bouldin Island. Preliminary design on  
14 that could probably begin within the next six months;  
15 other areas, we could not complete preliminary design  
16 until we have some of the activities completed that  
17 I've already mentioned to you.

18           MR. JACKSON: In the course of your movement  
19 from conceptual level of design to preliminary level of  
20 design -- and as I remember from your earlier  
21 testimony, that would be about 30 percent engineering  
22 completion when you finish preliminary level?

23           WITNESS BEDNARSKI: It varies. I believe  
24 yesterday I discussed anywhere from 30 to 40 percent we  
25 mentioned. It really depends on the feature that is

1 going into a final design as to where we complete  
2 preliminary design.

3 MR. JACKSON: So I'm going to go through each  
4 of these topics in regard to the distinction between  
5 conceptual level of design and the finishing  
6 preliminary level of design.

7 The first one is that you talk about some  
8 proposed WaterFix refinements, you call them. Are  
9 those all included in the administrative draft of the  
10 supplemental environmental document?

11 WITNESS BEDNARSKI: Yes, they are.

12 MR. JACKSON: Is it possible that between now  
13 and the finishing of preliminary level of design that  
14 there will be other proposed WaterFix requirements?

15 WITNESS BEDNARSKI: It's conceivable that  
16 there could be, yes.

17 MR. JACKSON: Would those include tunnel  
18 routing?

19 WITNESS BEDNARSKI: I would not expect large  
20 deviations from what is shown in the Supplemental  
21 EIR/EIS as far as tunnel routing, unless something is  
22 uncovered in our geotechnical investigations that would  
23 require such a change.

24 MR. JACKSON: What stage of completion is your  
25 geotechnical examination at the present time?

1           WITNESS BEDNARSKI: Again, it's conceptual,  
2 10 percent complete, like we've represented. We have  
3 240-plus investigation sites along the alignment.  
4 We've discussed in our documents a two-phased  
5 investigation that has not started yet; that will allow  
6 us to do preliminary and final design.

7           MR. JACKSON: So it is still possible that  
8 different landowners might be affected by a change in  
9 routes before the end of the preliminary level of  
10 design?

11           WITNESS BEDNARSKI: Again, I would say it's --  
12 it's conceivable. There is a possibility. I do not  
13 want to rule that out. But we are confident, with the  
14 10 percent design complete, that we have identified the  
15 affected parties.

16           MR. JACKSON: What would be the change that --  
17 what would be the additional information gathered  
18 between the 10 percent level of design and the  
19 30 percent level of design? What actually would you do  
20 in that process?

21           WITNESS BEDNARSKI: Well, I believe I've  
22 discussed several of those activities in previous  
23 testimony and also yesterday. But certainly the  
24 geotechnical investigations are significant. There  
25 will also be extensive environmental surveys conducted

1 on each of the properties that we are proposing  
2 facilities on, so those could potentially identify  
3 areas which we now think have been cleared of  
4 endangered species or sensitive habitats that actually  
5 do contain some of those features that would require us  
6 to make those adjustments.

7           There will also be a number of engineering  
8 studies that will be conducted, and some of the studies  
9 may require us to make modifications to specific  
10 facilities.

11           There will also be a series of studies that  
12 will be undertaken on the intakes specifically and in  
13 other areas that will help us refine the concepts that  
14 we have now into more robust concepts that will allow  
15 us to start our preliminary design.

16           So any of those activities could necessitate  
17 us making changes to the footprint, but it's -- you  
18 know, at this point, I could say again it's conceivable  
19 that that could happen. Possible? Yes, but not  
20 planned at this point in time.

21           MR. JACKSON: So for someone interested in  
22 whether or not your project would have an unreasonable  
23 effect on wildlife, are there studies which you know of  
24 now that you will be doing in regard to the potential  
25 changes or refinements in the program between

1 conceptual design and preliminary design?

2 WITNESS BEDNARSKI: I believe that I just --  
3 I've just responded to that question, unless this --  
4 unless you were implying that there were some other  
5 details that I didn't address. I think I was as  
6 thorough as I could be in my response.

7 MR. JACKSON: All right. Let me use a  
8 specific -- is there anything about your changes in  
9 moving from conceptual design to preliminary design  
10 that could potentially provide information on whether  
11 or not any effects of your project would either  
12 increase or decrease the physical habitat effects on  
13 wildlife?

14 MR. MIZELL: I'm going to object as calls for  
15 a large degree of speculation on the part of the  
16 witness.

17 MR. JACKSON: Well, that's the point, is  
18 that -- and I thank Counsel for the objection. It's  
19 speculative at this point to determine whether or not  
20 there's unreasonable effects on fish and wildlife based  
21 on this level of examination.

22 CO-HEARING OFFICER DODUC: I will take that as  
23 your response to Mr. Mizell's objection --

24 MR. JACKSON: Exactly.

25 CO-HEARING OFFICER DODUC: -- rather than an

1 argument.

2 Overruled.

3 Mr. Bednarski, are you able to answer?

4 WITNESS BEDNARSKI: I'll answer as best I can.

5 I believe our approach, from the engineering  
6 standpoint, has been to identify a worst-case set of  
7 circumstances that go with the construction and  
8 operation of the WaterFix facilities.

9 And by taking a worst-case approach, it would  
10 be our assumption at this point that the actual impacts  
11 would be less than what we're disclosing through the  
12 environmental process and to this Board.

13 For example, an item that has been discussed  
14 repeatedly at these hearings is the use of the impact  
15 pile drivers at the intakes. We have disclosed that as  
16 a worst-case potential impact with the expectation  
17 that, when we get the detailed geotechnical  
18 information, we will be able to use a less impactful  
19 pile-driving method. And we've been conscientious  
20 about trying to apply that same approach to all of the  
21 aspects of the WaterFix facilities.

22 MR. JACKSON: The worst case is identified  
23 how?

24 WITNESS BEDNARSKI: Again, the information  
25 that's been provided in the environmental documents



1 represents a worst case for all of the components from  
2 the engineering perspective. I can't speak for some of  
3 the other disciplines that testify at these hearings,  
4 but I can speak for the ones that are involved from the  
5 engineering perspective that we've tried to present  
6 worst-case footprints, worst-case impacts of  
7 construction so that those can be factored into the  
8 environmental mitigation measures.

9 MR. JACKSON: All right. So using that as a  
10 base -- sort of a base answer, it has not yet been  
11 determined whether you will be using impact pile  
12 driving or some other less-worst-case approach?

13 WITNESS BEDNARSKI: At this point in time,  
14 we're assuming that we're using the impact pile  
15 driving.

16 MR. JACKSON: And so if the impact pile  
17 driving has an effect on, for instance, species that  
18 are on the list of either endangered species or --  
19 take, for instance, the black rail, which lives  
20 generally very secretive, lives within one or two feet  
21 of the water column. That information is complete for  
22 you to determine whether or not this is the worst case?

23 WITNESS BEDNARSKI: I would have to refer you  
24 to another panel to respond to how that specific  
25 species has been addressed. But we have presented to

1 that work group the information for the impact pile  
2 driving.

3 MR. JACKSON: And in regard to air quality --  
4 and I'll move through them now a little quicker.

5 In regard to air quality, there's been a  
6 substantial change in your locations for the stacking  
7 of the tunnel material; is that correct?

8 WITNESS BEDNARSKI: Could you -- you used the  
9 term "significant." Could you define that as to where  
10 in the project you think there's been a significant  
11 change?

12 MR. JACKSON: Well, you've moved the location  
13 in your latest iteration of the environmental document  
14 and the conceptual engineering, have you not?

15 WITNESS BEDNARSKI: Yes, there is a difference  
16 between the approved project and the proposed project  
17 that's in the Supplemental EIR/EIS.

18 MR. JACKSON: And one of the changes is that  
19 you're moving -- actually, you're moving into a  
20 different county, aren't you, in terms of where you're  
21 going to stack the 13 1/2 Great Pyramids of Giza?

22 WITNESS BEDNARSKI: Could you be more specific  
23 about that question?

24 MR. JACKSON: Sure. You're down -- you're  
25 using an area that was not looked at for air quality

1 impacts at the new forebay -- or at the new terminal  
2 reservoir.

3 MR. MIZELL: Object as to vague and ambiguous  
4 and assumes facts not in evidence.

5 If Mr. Jackson could please identify the  
6 document on which he's relying to make the statement,  
7 then we can maybe get a more precise answer out of  
8 witnesses.

9 CO-HEARING OFFICER DODUC: Perhaps it would be  
10 helpful if we put up Mr. Bednarski's PowerPoint,  
11 Page 6.

12 MR. JACKSON: Yes. The RTM site that is now  
13 located in -- on Bouldin Island is a new RTM site,  
14 correct?

15 WITNESS BEDNARSKI: The approved project  
16 included an RTM site on Bouldin Island. It was  
17 identified to us that that RTM site was in a wetlands  
18 area. So we have moved that RTM site -- still on  
19 Bouldin Island. We have moved it north on that island  
20 and made some other adjustments to it to avoid  
21 wetlands.

22 So there's not a new RTM site on Bouldin  
23 Island. We've readjusted the footprint of that.

24 MR. JACKSON: What terrestrial species work  
25 was done for the new site?

1           WITNESS BEDNARSKI: I am probably not the  
2 proper person to respond that question. There may be  
3 individuals on some of the subsequent panels that would  
4 refer to that, be able to refer to that.

5           MR. JACKSON: For air quality purposes, is  
6 that in the same air quality management district?

7           WITNESS YOON: You're specifically referring  
8 to the RTM area on Bouldin Island?

9           MR. JACKSON: Yes.

10          WITNESS YOON: And it's still on Bouldin  
11 Island? Incorrect. That is the San Joaquin Valley Air  
12 Pollution Control District.

13          MR. JACKSON: Is that -- is it the same amount  
14 of material in terms of your air quality analysis that  
15 was analyzed in the -- in the actual EIR?

16          WITNESS YOON: I can't speak to the specific  
17 amount of material, but the Supplemental EIR is based  
18 on assumptions for the RTM areas in terms of earthworks  
19 as well as equipment vehicles based on the designs as  
20 they are proposed for the revised project.

21          MR. JACKSON: Is any of that likely to change  
22 in your conceptual design, potentially? Does it have a  
23 potential for change?

24          WITNESS BEDNARSKI: The footprint of the RTM?

25          MR. JACKSON: Yes.

1           WITNESS BEDNARSKI: I believe that would be an  
2 area that we would like to investigate as we get into  
3 preliminary final design. But, again, to disclose the  
4 worst-case impacts, we've identified the footprint  
5 that's shown on this drawing and elsewhere in the  
6 conceptual engineering report.

7           MR. JACKSON: Does the worst-case analysis  
8 include the amount of air quality -- say pm 10 [sic]?  
9 Does that change anything?

10          WITNESS YOON: If --

11          MR. JACKSON: To add more material to the same  
12 place?

13          WITNESS YOON: Well, as Mr. Bednarski  
14 testified, it's our assertion that the assumptions for  
15 the environmental analysis are the worst case in that  
16 they take a maximum-based approach. This is the  
17 maximum amount of material and equipment that are  
18 anticipated. So the impacts and pollutant  
19 concentrations that you see in the environmental  
20 document are representative of a worst-case or a  
21 maximum scenario.

22          MR. JACKSON: Does the -- since the  
23 environmental document doesn't deal with this amount of  
24 material on the site that's being presently  
25 recommended, I guess, and there have been no -- as far

1 as I know, there have been no -- there's been a wetland  
2 analysis but not a terrestrial species analysis, how  
3 can you determine that it's the worst case?

4 MR. MIZELL: Objection, assumes facts not in  
5 evidence, misstates the witness's testimony.

6 CO-HEARING OFFICER DODUC: Mr. Jackson, is  
7 there a reason you're asking that question now instead  
8 of waiting for the next panel? I'm sorry -- the  
9 biologist panel?

10 MR. JACKSON: Yeah, because what I generally  
11 get back is, "We really" -- "We really don't know what  
12 that would" -- "whether or not the mitigation could  
13 include moving" -- "storing less material or moving it  
14 somewhere else or what the effects will be on the  
15 terrestrial species that are wetland dependent."

16 The way you're doing it with the panels -- and  
17 I understand why -- it sort of bounces around. And I  
18 want to get a view of -- you know, we've been going  
19 through -- another example is the operators and the  
20 modelers. And every time we get --

21 CO-HEARING OFFICER DODUC: All right. Fair  
22 enough.

23 Mr. Jackson may ask his questions and you may  
24 defer them if that is appropriate.

25 MR. JACKSON: So is there anything between the

1 10 percent design and the 30 to 40 percent design that  
2 would include an analysis on -- any new analyses that  
3 would be available after you finish preliminary design?

4 MR. MIZELL: Objection, asked and answered.

5 CO-HEARING OFFICER DODUC: Answer it again for  
6 me, since there was an interruption.

7 WITNESS BEDNARSKI: Okay. Since your previous  
8 line of questioning had to do with the RTM, I'll assume  
9 that that's where you're focusing at this point.

10 MR. JACKSON: It's an example.

11 WITNESS BEDNARSKI: I'll focus my answer on  
12 that, then.

13 So as we conduct geotechnical investigations  
14 -- and we will in the areas of the RTM disposal,  
15 disposal area or storage area -- we'll make a -- we'll  
16 revise, if necessary, the footprint for the RTM at that  
17 location based on the underlying ground conditions.

18 If we're able to stack the material higher or  
19 in a different configuration, then we would possibly  
20 make use of that -- those better ground conditions to  
21 do that.

22 Making the change that we have now, we've been  
23 able to propose to stack the RTM a bit higher than we  
24 had been in the south part of the island because we're  
25 anticipating that there's better ground conditions

1 there to support that material and thereby keeping the  
2 footprint relatively the same, even though volume-wise  
3 we are now proposing to bring more RTM to Bouldin  
4 Island, as you appeared to mention in your questioning.

5 MR. JACKSON: So if you determine in moving  
6 from conceptual to preliminary design that there are  
7 flaws in the mitigation strategy that is presently  
8 proposed, what do you intend to do about that?

9 WITNESS BEDNARSKI: Can you describe what  
10 flaws in the mitigation strategy you'd like me to  
11 respond to? That's a pretty general question.

12 MR. JACKSON: I understand it's general.

13 You will be looking at these issues in regard  
14 to unreasonable effects on fish and wildlife, public  
15 trust, legal water users, in some fashion, won't you,  
16 during the evolution from conceptual to preliminary?

17 WITNESS BEDNARSKI: I believe that that is the  
18 process that we have been completing in the conceptual  
19 process. As we've been developing our conceptual  
20 design, we have been working back and forth with our  
21 biologists, aquatics experts, and other environmental  
22 specialists, receiving their feedback on our proposals  
23 for engineering features and have been modifying our  
24 layouts, designs, concepts to address their concerns  
25 that are brought forward to us.



1           So it would be my expectation that that effort  
2 will be complete upon the completion of this Board  
3 hearing process and upon the certification of the  
4 Supplemental EIR/EIS and that those issues have been  
5 identified and addressed through the conceptual  
6 documents and the approved EIR/EIS and the approved  
7 permits that will be issued by this Board and that we  
8 will move ahead with preliminary design based on those  
9 footprints.

10           MR. JACKSON: There are many places in your  
11 testimony in which you talk about future activities.  
12 Some of them include impacts to wetlands, other  
13 sensitive areas. And they seem to hold out the  
14 possibility that there will be future mitigation.

15           Is that the way you understand your process?

16           WITNESS BEDNARSKI: Yes. My understanding is  
17 that DWR is committing to mitigation activities, both  
18 for the footprint mitigation and also for general  
19 environmental mitigation measures. There are probably  
20 others, maybe, on subsequent panels that could get into  
21 that more specifically and more detailed. But, yes,  
22 that is my understanding.

23           MR. JACKSON: Do you have the authority from  
24 DWR to commit, to use your term, to anything?

25           WITNESS BEDNARSKI: I believe that in certain

1 areas, when questions are asked of me, I have made  
2 commitments to this Board and in this forum during my  
3 multiple opportunities to address this Board.

4 MR. JACKSON: Are those commitments in  
5 writing?

6 WITNESS BEDNARSKI: I don't know if DWR has  
7 followed up and documented those in writing, but I have  
8 made verbal commitments in front of this Board on  
9 numerous occasions.

10 MR. JACKSON: Do you work for DWR?

11 WITNESS BEDNARSKI: I am an employee of the  
12 Metropolitan Water District, but I am assigned to work  
13 on this project under direction of DWR, yes.

14 MR. JACKSON: Are you committing the  
15 Metropolitan Water District?

16 WITNESS BEDNARSKI: That is not the purpose of  
17 my addressing this Board at this time.

18 MR. JACKSON: Do you have -- do you have  
19 written authority from the director of DWR --

20 MR. MIZELL: Objection. At this point --

21 MR. JACKSON: -- to make these commitments?

22 MR. MIZELL: -- I'm going to raise an  
23 objection to relevance. Mr. Bednarski is representing  
24 the Department as an expert on this panel. He has  
25 made commitments consistent with the verbiage in the

1 Final EIR/EIS and the Supplemental document.

2 To the extent that his answers try to  
3 elaborate and clarify for the Hearing Officers the  
4 extent of DWR's commitments in that document, I believe  
5 there is written basis for Mr. Bednarski's testimony.

6 If Mr. Jackson is trying to challenge the  
7 accuracy of the witness's testimony, I believe it's  
8 incumbent upon Mr. Jackson to raise a document that we  
9 can then analyze that would refute Mr. Bednarski's  
10 testimony, not to level assertions about his authority.

11 CO-HEARING OFFICER DODUC: Mr. Mizell, I'm  
12 going to interrupt you because this is getting rather  
13 long.

14 Mr. Jackson, let me see if I can provide you  
15 at least my perspective.

16 All the panelists, all the witnesses that are  
17 appearing on behalf of petitioners, when they respond  
18 under oath to questions from other parties, from us,  
19 from their attorneys, I take it as they are responding  
20 on behalf of petitioners. And their responses are in  
21 the transcript. They're in the evidentiary record, and  
22 that's how we will view them, as official responses on  
23 behalf of petitioners.

24 MR. JACKSON: Thank you.

25 Mr. Bednarski, in your testimony on Page 8 of

1 DWR-1212 at Line 7 to 11, you indicate that the  
2 potential noise impacts from pile driving may be  
3 significant and unavoidable; is that correct?

4 WITNESS BEDNARSKI: That's correct.

5 MR. JACKSON: Does that mean that there is no  
6 way you can build this project without having these  
7 noise impacts from pile driving?

8 WITNESS BEDNARSKI: Depending on the results  
9 from the geotechnical investigations, it may be -- we  
10 may be unable to avoid using impact pile driving at  
11 these locations. Hence, we disclosed those as the  
12 worst case.

13 Again, I've discussed DWR's commitment to  
14 utilize non-impact pile-driving methods if we can, and  
15 those will be utilized if we determine through the  
16 geotechnical investigations that we can use those.

17 MR. JACKSON: But as we sit here today, we  
18 have no idea what you're going to use. As you say, on  
19 Line 26 through 28, you're relying on a future  
20 assessment; is that correct?

21 MR. MIZELL: Objection, misstates the  
22 witness's testimony.

23 CO-HEARING OFFICER DODUC: Please repeat your  
24 question, Mr. Jackson.

25 MR. JACKSON: Sure.

1           You describe that the -- on Line 23 that,  
2 despite the conclusion of potential noise impacts are  
3 significant and unavoidable, DWR commits, through you,  
4 correct, to comprehensively evaluate the potential to  
5 use non-impact pile driving once you complete your  
6 comprehensive geotechnical investigation.

7           And you point out on Line 26 that you'll do  
8 that in a future assessment.

9           At what stage of this project are you doing a  
10 future assessment of this problem?

11           WITNESS BEDNARSKI: That future assessment  
12 will start with the geotechnical investigations that  
13 will be beginning, you know, in the near future. I  
14 guess that's about as definite as I can respond.

15           We have already issued requests for  
16 qualifications for geotechnical investigation firms.  
17 We will shortly be evaluating and selecting and  
18 contracting with one or more firms to start that work.

19           It's a little bit unclear as to actually when  
20 they will start that work. But I would suspect by the  
21 new year that work will be underway, and then analysis  
22 of that data will take place. We will then engage  
23 detail designers to look at that information in regards  
24 to the placement of piles for these structures, and an  
25 assessment will be probably made, I would say, within

1 the next 12 to 18 months.

2 MR. JACKSON: It will start within the next 12  
3 or 18 months, or finish?

4 WITNESS BEDNARSKI: That process will take  
5 place over the next 12 to 18 months.

6 MR. JACKSON: So there's no way someone in  
7 Discovery Bay or Hood or any of these communities would  
8 know what the results are going to be, correct?

9 WITNESS BEDNARSKI: I don't think that's a  
10 correct statement.

11 MR. JACKSON: What is incorrect about it?

12 WITNESS BEDNARSKI: That these communities  
13 will not know. They don't know at this point. They  
14 have to assume that it's impact pile driving because we  
15 have disclosed that.

16 I would assume that DWR would provide outreach  
17 opportunities to discuss this subject with the  
18 residents of those communities as we're making  
19 decisions on the specific types of equipment to be  
20 used. And, again, I don't -- we don't -- I don't know  
21 of any specific plans, but I would -- we have talked  
22 about outreaching to the communities through an effort,  
23 and this may well be one of those activities that's  
24 discussed during those outreach encounters.

25 MR. JACKSON: If -- if a homeowner in

1 Discovery Bay or Hood was trying to determine whether  
2 or not the problem was going to be bad enough that they  
3 wanted to sell their property and move, when would they  
4 know the answer to that?

5 WITNESS BEDNARSKI: I've given you a projected  
6 timeline that data will be collected and investigations  
7 will take place. I could not give you a definitive  
8 date today as to when a final determination would be  
9 made, say, at the far north end of the project near  
10 Hood or somewhere in the middle of the project near  
11 Discovery Bay because, as I talked yesterday, a lot of  
12 the work and investigations will depend on critical  
13 path activities and where different features fall along  
14 that critical path.

15 So decisions will be made in order to make  
16 sure that the critical path is maintained. And it's  
17 not the same schedule for every single location, so  
18 it's going to vary. But in summary, probably within  
19 the first three years all of those decisions will be  
20 made.

21 MR. JACKSON: Why is it -- why do you have to  
22 have a permit until these decisions are made?

23 WITNESS BEDNARSKI: My understanding of the  
24 process -- my understanding of the process is that DWR  
25 cannot begin construction of the facilities until we

1 receive the permit from the State Board.  
2 Investigations and design activities, it's my  
3 understanding, can take place prior to receiving that  
4 permit. Hence we plan to commence those activities as  
5 quickly as we can.

6 MR. JACKSON: And so there is nothing that  
7 would require a permit before you finish preliminary  
8 design that you know of?

9 WITNESS BEDNARSKI: That is correct.

10 MR. JACKSON: Is there any information that  
11 would be -- that could potentially be developed about  
12 transportation impacts from construction by finishing  
13 preliminary design before you receive this permit?

14 WITNESS CHOA: Can you restate that? That's a  
15 very broad question.

16 MR. JACKSON: Yeah, I'm trying to do the broad  
17 questions so that I can finish close to that clock.

18 There are unknown transportation impacts, at  
19 this point, from the construction of this project  
20 within the Delta; is that fair to say?

21 WITNESS CHOA: I would not agree with that  
22 statement, based on the 114 segments that were  
23 evaluated as part of the California WaterFix project.

24 MR. JACKSON: And the -- and the barge and  
25 barge landing question, you're still moving them



1 around. Will the geotechnical information give you  
2 anything that would be useful in determining what the  
3 impacts on the people of the Delta would be from  
4 alternative sites or alternative methods?

5 MR. BERLINER: Objection, vague and ambiguous,  
6 compound.

7 CO-HEARING OFFICER DODUC: Mr. Jackson, could  
8 you break that --

9 MR. JACKSON: Sure.

10 CO-HEARING OFFICER DODUC: -- question?

11 We'll -- things are going efficiently and  
12 effectively. So if you need a few more minutes to wrap  
13 up, we will certainly give you that time.

14 MR. JACKSON: Thank you. Then I will unpack  
15 some of this.

16 CO-HEARING OFFICER DODUC: So, Mr. Jackson,  
17 another ten minutes?

18 MR. JACKSON: If that fits your schedule.

19 CO-HEARING OFFICER DODUC: Ms. Meserve's  
20 schedule.

21 MR. JACKSON: Well, we've got to get  
22 Ms. Meserve to the Lost Coast.

23 CO-HEARING OFFICER DODUC: All right.

24 Let's -- we'll give Mr. Jackson --

25 MR. JACKSON: And that will give me at least

1 one favor from her, and I will treasure it.

2 CO-HEARING OFFICER DODUC: All right. Go  
3 ahead, Mr. Jackson.

4 MR. JACKSON: Is the transportation plan set  
5 in stone at this point?

6 WITNESS CHOA: As noted on the SWRCB-111  
7 mitigation measures, Transportation 1A, the statement  
8 about being set in stone is not completely accurate.  
9 There will be subsequent work prior to construction to  
10 implement site-specific construction management plans.

11 MR. JACKSON: So the answer to that was no,  
12 it's not set in stone?

13 WITNESS CHOA: It's -- it is set in terms of  
14 the regional roadways that were evaluated as part of  
15 the 114. But for site-specific, whether it's using a  
16 local Road A or Road B, those have not been set in  
17 stone.

18 MR. JACKSON: In regard to the barges and  
19 barge landings, is the amount of barge traffic at the  
20 present time in a conceptual level set in stone? These  
21 will be the last barge landings?

22 WITNESS BEDNARSKI: To the best of my  
23 knowledge, at this point, the location of barge  
24 landings has been set, yes.

25 MR. JACKSON: Does it make a difference in the

1 setting of the barge landings what effect you'll have  
2 on Highway 4 or Highway 160 or any of the bridges that  
3 are brought up in your testimony?

4 WITNESS BEDNARSKI: The barge landings are the  
5 locations where materials will be unloaded from barges  
6 where there's not a barge landing identified. Yes,  
7 those have all been taken into account, that there are  
8 bridges that operate to get -- to allow the barges to  
9 get down to those locations and that there are  
10 waterways that are deep enough to route barges in those  
11 directions. So from those perspectives, they have been  
12 analyzed.

13 MR. JACKSON: So Highway 4 will have --  
14 will -- as you've designed the project, Highway 4 will  
15 have the bridge raised at various times for barges to  
16 pass?

17 WITNESS BEDNARSKI: That is the expectation.  
18 It's an operable bridge right now, and we're relying on  
19 that operability to allow our barges to pass by, yes.

20 MR. JACKSON: And if something changes and,  
21 say, the old bridges won't do it that often, what are  
22 you going to do?

23 MR. BERLINER: Objection, calls for  
24 speculation.

25 MR. JACKSON: We're in a conceptual approach.

1 CO-HEARING OFFICER DODUC: I understand,  
2 Mr. Jackson.

3 MR. JACKSON: It's all I've got.

4 CO-HEARING OFFICER DODUC: Overruled,  
5 Mr. Berliner.

6 To the extent that you're able to answer,  
7 Mr. Bednarski.

8 WITNESS BEDNARSKI: Well, we would need to  
9 consult with the owners of the bridge, which I believe  
10 is Caltrans. If it's not, then we would need to work  
11 with whoever the owner of that bridge is to get it to  
12 an operable case. If that's not feasible, then we  
13 would have to look at either other waterway routes to  
14 get to that location or we would have to look at other  
15 methods to get our materials and supplies to those  
16 locations.

17 MR. JACKSON: And as you change locations or  
18 operations, is there a potential that a different set  
19 of people would be affected by your project who may not  
20 be in this hearing?

21 WITNESS CHOA: I'll just add that "inoperable"  
22 means that it would be inoperable for all traffic, all  
23 river traffic and not just WaterFix projects. So it  
24 would be a combination of relying on the local agency  
25 -- in this case it would be Caltrans -- to have it

1 operable for all marine navigation in addition to the  
2 incremental amount of barge trips that Mr. Bednarski  
3 discussed which are related to California WaterFix.

4 MR. JACKSON: If the bridge is a bridge rather  
5 than an operable -- other than going up and down to let  
6 barge traffic go by, there's no problem. If the barge  
7 traffic requires the bridge to be raised, there's been  
8 evidence that it could cause a problem. And I'm  
9 wondering when in your conceptual-to-preliminary design  
10 stage we're going to get some answers to that?

11 WITNESS BEDNARSKI: Can you be more specific  
12 about -- you used the phrase "there could be a  
13 problem." What is that problem related to, so we can  
14 respond to it?

15 MR. JACKSON: Well, there was testimony that  
16 you could back up traffic on Highway 4 for a period of  
17 time necessary to lift the bridge, stop traffic, let  
18 the barge pass, lower the bridge, and then the traffic  
19 jam might move or might not if there was another barge  
20 that day.

21 WITNESS BEDNARSKI: I believe Mr. Choa's  
22 analysis has taken those bridge openings into account.  
23 He can probably provide more detail on that.

24 WITNESS CHOA: All right. So the statement  
25 also refers to just normal waterway traffic in addition

1 to barge traffic. And the analysis did take into  
2 account the additional incremental trips for barges and  
3 the amount of time that it would take. And as  
4 discussed in -- yesterday, that could, as part of the  
5 implementation of the project, would be modifying the  
6 times of day that those barge trips would occur, again,  
7 to minimize traffic disruption from barge-related  
8 traffic.

9 MR. JACKSON: Do you know whether or not it  
10 would take more than 20 minutes to interrupt the  
11 roadway for a barge to pass fully loaded with your  
12 tunnel material?

13 WITNESS CHOA: To the best of my knowledge, I  
14 do not. But 20 minutes seems excessive, based on  
15 experience on the amount of time those existing bridges  
16 are lifted, whether it's for other -- other -- whether  
17 it's pleasure craft to other boats using the navigable  
18 waters. But it's more in the range of 5 to 6 minutes  
19 and not as excessive as 20 minutes.

20 MR. JACKSON: The -- these barges fully loaded  
21 are going to be quite different than the majority -- in  
22 terms of height, than the majority of the traffic on  
23 the river, correct?

24 WITNESS BEDNARSKI: Yes, they're significantly  
25 different than pleasure craft, if that's what you're

1 referring to.

2 MR. JACKSON: Yes, sir.

3 So back to the question: Have we determined  
4 how long the traffic would be interrupted on the  
5 roadway to lift these for the barge traffic? I  
6 couldn't find it in the testimony.

7 WITNESS CHOA: To the best of my knowledge, I  
8 believe it was less than 10 minutes. But I would -- I  
9 could -- if Madam Chair would -- during the next break,  
10 I will look if we have any more specific information.

11 MR. JACKSON: Do you have any idea how long  
12 that would back up -- 10 minutes, assuming that was the  
13 case, would back up traffic on Highway 4 between the  
14 I-5 corridor and the East Bay Area?

15 WITNESS CHOA: As part of the California  
16 WaterFix Mitigation Measures, one of the --  
17 Transportation 1B also looks, again, as I further  
18 stated, that changing the time so -- if you're  
19 referring to during commute times versus non-commute  
20 times. So can you be more specific?

21 MR. JACKSON: You want me to be more specific  
22 about how much your barge traffic is going to interrupt  
23 surface transportation? Have you done that analysis?

24 MR. MIZELL: Objection. At this point, the  
25 witness has answered the question to the best of his

1 ability. He has indicated that Mr. Jackson is not  
2 providing him with specific facts to give a precise  
3 answer. If Mr. Jackson cannot provide additional  
4 facts, then I would object on asked and answered.

5 CO-HEARING OFFICER DODUC: Mr. Jackson.

6 MR. JACKSON: I'm not justifying, and I am not  
7 a transportation expert. I will agree to that.

8 I would like to know, though, because clients  
9 of mine are going to be -- potentially have their  
10 commute completely changed if traffic is backing up  
11 regularly.

12 CO-HEARING OFFICER DODUC: Would it be  
13 correct, Mr. Choa, to say that you cannot answer to the  
14 level of specificity that Mr. Jackson is seeking?

15 WITNESS CHOA: Yes, that is correct, Madam  
16 Chair.

17 MR. JACKSON: Call your attention,  
18 Mr. Bednarski, to Page 12 of 1212, at Line 21 to 22 --  
19 23, I think.

20 CO-HEARING OFFICER DODUC: What topic area?

21 MR. JACKSON: This is traffic analysis. It's  
22 just to finish.

23 CO-HEARING OFFICER DODUC: All right. Do I  
24 need to add more time, or --

25 MR. JACKSON: If I can have it.



1 CO-HEARING OFFICER DODUC: Mr. Jackson, so, is  
2 this your final topic area?

3 MR. JACKSON: I've got -- on his list of what  
4 his testimony was -- can we go back to Page 2 of  
5 Mr. Bednarski's testimony?

6 And could you scroll up just a bit -- or down.

7 CO-HEARING OFFICER DODUC: So help me again.  
8 What topic are you on?

9 MR. JACKSON: We just did barges and barge  
10 landings.

11 CO-HEARING OFFICER DODUC: Okay. So you now  
12 have field investigation, seismic, Neudeck, and the  
13 CCLP issue.

14 MR. JACKSON: Correct.

15 CO-HEARING OFFICER DODUC: I'll give you  
16 another ten minutes, and that will be your 60 minutes  
17 max.

18 MR. JACKSON: I'll be as rapid as I can.

19 Mr. Bednarski, are you a seismic engineer?

20 WITNESS BEDNARSKI: No, I am not.

21 MR. JACKSON: Is anybody on the panel?

22 WITNESS BEDNARSKI: I don't believe so.

23 MR. JACKSON: Are you a -- do you have  
24 expertise directly on the levees in the Delta?

25 WITNESS BEDNARSKI: I do not have direct

1 experience with levees in the Delta, no.

2 MR. JACKSON: So your testimony was -- on  
3 those two subjects was basically rebutting Mr. Neudeck  
4 and other experts put on by members of the Delta  
5 community?

6 WITNESS BEDNARSKI: Yes, I believe I presented  
7 it that way in my presentation yesterday, that all of  
8 these areas below the first item were all rebuttal  
9 testimony to what was previously presented in Part 2  
10 testimony by the protestants.

11 MR. JACKSON: Using your rebuttal to  
12 Mr. Neudeck as an example, what makes you better  
13 qualified than Mr. Neudeck to rebut his testimony?

14 CO-HEARING OFFICER DODUC: Hold on. Hold on,  
15 please.

16 Ms. Morris.

17 MS. MORRIS: Thank you. I'd just like to --  
18 Stefanie Morris for State Water Contractors -- object  
19 to this questioning.

20 Mr. Bednarski didn't say he was -- he was  
21 rebutting testimony that Mr. Neudeck provided related  
22 to tunneling, and settlement related to tunneling.

23 In addition to that, as an expert witness,  
24 Mr. Bednarski can rely on information, for example,  
25 related to the seismic issue, which he did attach a

1 report on. And so he's entitled to summarize and rely  
2 on that information as an expert without being an  
3 expert in seismic.

4 CO-HEARING OFFICER DODUC: Mr. Jackson?

5 MR. JACKSON: I understand the objection. It  
6 goes back to the situation that we're running into.  
7 We're at a 10 percent conceptual design. And we're  
8 rebutting each other about stuff that we don't have  
9 geotechnical information about.

10 So I'm just trying to find out where he got  
11 the information to come to the conclusion that there  
12 would be no impacts to levees.

13 CO-HEARING OFFICER DODUC: And then if that is  
14 the question, ask that question.

15 MR. JACKSON: I just did.

16 CO-HEARING OFFICER DODUC: All right.

17 Mr. Bednarski, answer that question.

18 WITNESS BEDNARSKI: I believe we've presented,  
19 through the conceptual engineering report and through  
20 my testimony, the collective data that we have from a  
21 geotechnical perspective along the tunnel alignment. I  
22 have testified in front of this Board on three previous  
23 occasions as to why DWR feels that the data that we  
24 have collected to date is suitable to make conclusions  
25 about the type of tunneling technology that can be

1 successfully used for the California WaterFix.

2 MR. JACKSON: And that's sort of the last set  
3 of questions.

4 Isn't the purpose of moving from conceptual  
5 design to preliminary design to change the "mays" to  
6 "shall"?

7 MR. MIZELL: Objection, vague and ambiguous.

8 CO-HEARING OFFICER DODUC: I think the intent  
9 of the question is clear in that Mr. Jackson is seeking  
10 or asking when there will be more certainty in the  
11 design of the project.

12 Is that correct, Mr. Jackson?

13 MR. JACKSON: Yes.

14 WITNESS BEDNARSKI: I can respond to that by  
15 saying it will be an iterative process over a number of  
16 months. And I've expressed here just a few minutes ago  
17 that it could be up to two to three years from now as  
18 we move into the design stages that all of the aspects  
19 of the California WaterFix engineering components are  
20 completely solidified.

21 But based on our 10 percent design and placing  
22 forth a worst-case scenario for our construction  
23 methodologies, footprints of features, we believe that  
24 we've presented sufficient information for this Board  
25 to make decisions in regards to the permit.

1           MR. JACKSON: And did anyone tell you that the  
2 petition and the information that you've put forward as  
3 a conceptual design would satisfy what the Board and  
4 the public needs?

5           MR. MIZELL: I'm going to object to that as  
6 calling for speculation, asking the witness to put  
7 themselves in the place of the Hearing Officers.

8           The sufficiency of the information as  
9 presented over the course of this hearing, is what the  
10 Hearing Officers get to decide. A witness's opinion as  
11 to whether or not he has been told that he gets to make  
12 that decision is completely irrelevant.

13          CO-HEARING OFFICER DODUC: Mr. Jackson, what  
14 is the value in this?

15          MR. JACKSON: I think the value in this is  
16 that the answers are not specific enough to make the  
17 determination.

18          CO-HEARING OFFICER DODUC: And that's  
19 something that you will argue in your closing briefs.

20          MR. JACKSON: I will.

21          CO-HEARING OFFICER DODUC: And so your  
22 question to Mr. Bednarski?

23          MR. JACKSON: I'm trying to find out whether  
24 or not DWR has been told that this is a sufficient  
25 level of analysis in order to do the mitigations

1 necessary in order -- required by CEQA.

2 CO-HEARING OFFICER DODUC: Told by whom,  
3 Mr. Jackson?

4 MR. JACKSON: By the Board.

5 CO-HEARING OFFICER DODUC: Okay. That would  
6 be a surprise to me.

7 But, Mr. Bednarski?

8 WITNESS BEDNARSKI: I'm not aware of any  
9 conversations between the Board and DWR about the  
10 subjects that Mr. Jackson was just referring to.

11 MR. JACKSON: Ms. Buchholz, have you taken  
12 part in any discussions with the Board or Board staff  
13 in regard to whether or not the testimony put forward  
14 --

15 CO-HEARING OFFICER DODUC: Ms. Morris is  
16 coming up with something to say.

17 MS. MORRIS: I think if he's asking the  
18 question about ex parte communications, he should be  
19 clear about the timing as well. I think we've  
20 exhausted this topic over and over again with Public  
21 Records Act requests and several motions by different  
22 parties in this case.

23 CO-HEARING OFFICER DODUC: She has a valid  
24 point there, Mr. Jackson.

25 Ms. Des Jardins.

1 MS. DES JARDINS: The Hearing Officer has  
2 ruled that Public Records Act requests are not to be  
3 submitted for the record; they're not part of the  
4 record. So that should not be a consideration in  
5 asking questions for the record. Thank you.

6 CO-HEARING OFFICER DODUC: Okay. So noted.

7 Mr. Mizell.

8 MR. MIZELL: Yeah, I'd like to add on to this  
9 discussion briefly.

10 Questions about ex parte communications fall  
11 nowhere within the Supplemental EIR nor the testimony  
12 of any of the panelists on this panel, so then it's an  
13 improper question based on the scope of rebuttal.

14 CO-HEARING OFFICER DODUC: That is a good  
15 point.

16 Mr. Jackson, your response to that.

17 MR. JACKSON: That's not the question I asked.  
18 I'm the wrong person to ask about the response. I've  
19 not -- I'm trying -- I'll just take the ruling.

20 CO-HEARING OFFICER DODUC: I'm sorry. You'll  
21 what?

22 MR. JACKSON: I'll just not argue with you at  
23 the present time.

24 CO-HEARING OFFICER DODUC: Okay.

25 MR. JACKSON: I understood from -- from the

1 regulations that the petition would have this  
2 information in it at the time we started. I'm still  
3 trying to find out why we're going forward on a  
4 permit -- factually why we're trying to go forward on a  
5 permit that's only 10 percent -- only 10 percent of the  
6 information.

7 CO-HEARING OFFICER DODUC: And in that case,  
8 then, I will sustain Mr. Mizell's objection that this  
9 is outside the scope of the rebuttal.

10 MR. JACKSON: Thank you. I'm finished.

11 Oh, Mr. Bednarski, do you know whether or not  
12 any of Clifton Court's property will be taken for this  
13 project?

14 WITNESS BEDNARSKI: Excuse me just a second.  
15 I'm trying to find my previous testimony we talked  
16 about earlier this morning.

17 Can we go to DWR-1212, Page 7, Lines 5  
18 through 7. Is that Page 6? I'm sorry. Did I say it  
19 wrong? Page 6, Lines 5 through 7.

20 To the best of our knowledge, we will not be  
21 requiring acquisition of Clifton Court LLP property.

22 MR. JACKSON: Are you -- in the same way that  
23 you've committed to various things on behalf of DWR,  
24 can you commit at the present time that you will not  
25 take their land?



1 CO-HEARING OFFICER DODUC: That is the  
2 testimony.

3 WITNESS BEDNARSKI: That's correct.

4 MR. JACKSON: Can you commit that DWR will not  
5 interfere with their water right?

6 CO-HEARING OFFICER DODUC: Let's rephrase the  
7 question, Mr. Jackson. And actually thank you for  
8 asking that question about Mr. Bednarski or any of the  
9 witnesses' understanding of what impact, if any, this  
10 proposed change will have on Clifton Court's water  
11 rights.

12 WITNESS BEDNARSKI: I'm sorry. Are you  
13 asking --

14 CO-HEARING OFFICER DODUC: Hold on.

15 Ms. Morris.

16 MS. MORRIS: Thank you.

17 Can you be clear about what we mean by "water  
18 rights"? Because there's another panel perhaps that  
19 would be -- if we're talking about water quality, water  
20 levels, this is not the proper panel. If we're talking  
21 about a diversion point, I'm not sure that it's been  
22 established in the record where the diversion points  
23 for Clifton Court Forebay -- Clifton Court LP are.

24 So I think we need some clarification if we're  
25 going to explore this topic.

1 CO-HEARING OFFICER DODUC: The question is to  
2 a general, I believe, Mr. Jackson. And it's whether or  
3 not these witnesses have adequate information to  
4 answer.

5 MR. JACKSON: Well, if they don't have  
6 adequate information to answer, then the testimony  
7 isn't --

8 CO-HEARING OFFICER DODUC: Mr. Jackson, I'm  
9 asking them whether or not they have information to  
10 answer.

11 Can you answer that question? What would you  
12 need for information as Ms. Morris ascertained?

13 WITNESS BEDNARSKI: Oh, yes. My testimony  
14 specifically is to requiring the acquisition of  
15 property.

16 CO-HEARING OFFICER DODUC: You cannot address  
17 the water rights issue?

18 WITNESS BEDNARSKI: I cannot because I do not  
19 know where those diversion points are. In Part 1  
20 testimony, we spoke specifically about diversion points  
21 located near the intakes in regards to WaterFix  
22 facilities, and we're able to respond to those  
23 specifically. I cannot do that with the Clifton Court  
24 property at this time.

25 CO-HEARING OFFICER DODUC: And none of you can

1 do that. All right. That is good to be established.

2 Thank you, Mr. Jackson.

3 MR. JACKSON: Thank you. I'm finished.

4 CO-HEARING OFFICER DODUC: All right. I'm  
5 sorry, Ms. Daly, did you have something to add?

6 MS. DALY: Barbara Daly, North Delta CARES. I  
7 was just going to offer Mr. Jackson some of my time if  
8 he needed it. So. . .

9 CO-HEARING OFFICER DODUC: He's been very  
10 effective and efficient.

11 MS. DALY: Yes, I just wanted to catch it  
12 before it was over.

13 CO-HEARING OFFICER DODUC: He's standing in  
14 the way of Ms. Meserve and the lost cause -- "lost  
15 cause." Freudian -- Lost Coast.

16 Why don't we take a short break until 11:35.

17 And when we return, Ms. Meserve, do you still  
18 anticipate needing 60 minutes?

19 MS. MESERVE: I think so, yeah. But if we  
20 need to break in the middle.

21 CO-HEARING OFFICER DODUC: No, I think we  
22 would like to complete your cross and then take our  
23 lunch break then.

24 And Mr. Brodsky made a quick appearance and  
25 then he disappeared.

1 MS. MESERVE: He's out in the hallway.

2 CO-HEARING OFFICER DODUC: I guess he would  
3 need an hour, but if someone could check with him or  
4 have him here when we adjourn at -- reconvene at 11:35  
5 to confirm, because I believe we still have about two,  
6 two and a half hours of cross.

7 So with that, we'll take a short break until  
8 11:35.

9 (Recess taken)

10 CO-HEARING OFFICER DODUC: All right. Before  
11 we get to Ms. Meserve, let's do a bit of a time check.

12 Where is Mr. Brodsky?

13 MS. MESERVE: I spoke with him in the hall,  
14 and he said he would like an hour, please.

15 CO-HEARING OFFICER DODUC: All right. So  
16 Ms. Des Jardins is not here, but she had also requested  
17 an hour, and I assume that is still the case. So that  
18 means after Ms. Meserve, meaning after lunch, we will  
19 have --

20 And, Ms. Suard, still 15 minutes?

21 MS. SUARD: Is this on?

22 CO-HEARING OFFICER DODUC: Nope.

23 MS. SUARD: Nikki Suard, Snug Harbor, 15  
24 minutes to maybe 25 minutes at most. It's Mr.  
25 Bednarski, oh, and traffic, too, so. . .

1 CO-HEARING OFFICER DODUC: So let's estimate  
2 about two and a half hours remaining after lunch for  
3 continued cross.

4 At this point do you anticipate any redirect  
5 or any requests for redirect, Mr. Mizell?

6 MR. MIZELL: Any request we have for redirect  
7 will be exceedingly limited. I can't rule it out at  
8 this point, but if we do, it would be very, very  
9 limited.

10 CO-HEARING OFFICER DODUC: All right.  
11 Assuming Ms. Meserve, say, gets done at, say,  
12 12:45-ish, we will then reconvene at 1:45. That will  
13 take us to around 4:00 o'clock, roughly.

14 And, Mr. Mizell, your next panel is quite  
15 large. What was your estimated time for direct?

16 MR. MIZELL: Total estimated time for direct  
17 of the panel is two hours.

18 CO-HEARING OFFICER DODUC: All right.

19 MR. MIZELL: And we can break that up in a  
20 number of ways. About five of the witnesses are going  
21 to be speaking.

22 CO-HEARING OFFICER DODUC: All right. I think  
23 we -- just for your planning purposes, we will need to  
24 break that up because we will not have two hours for  
25 your entire panel today, but I would like to get some

1 of the direct started today.

2 MR. MIZELL: Certainly.

3 CO-HEARING OFFICER DODUC: So I will leave it  
4 to you in terms of which of your panel 2 witnesses you  
5 would like to present first.

6 Mr. Brodsky, welcome.

7 MR. BRODSKY: Good morning, Madam Chair. I  
8 was told I was needed in here, or has it already --

9 CO-HEARING OFFICER DODUC: No, Ms. Meserve  
10 actually took care of you.

11 MR. BRODSKY: Very good. I'll go back in the  
12 hallway, then.

13 CO-HEARING OFFICER DODUC: Any other  
14 housekeeping matters?

15 MR. ALADJEM: Madam Chair, David Aladjem,  
16 Delta Flood Control Group.

17 I will take this -- Mr. Mizell, if we could  
18 break up the panel so that we have perhaps either the  
19 fisheries biologists going first or however we're going  
20 to do this in terms of direct so we get one segment  
21 this afternoon and then another part of it on Monday,  
22 that would be helpful.

23 CO-HEARING OFFICER DODUC: I think that is the  
24 plan. I will leave it to Mr. Mizell to determine how  
25 he wants to divide up his panel.

1 Mr. Jackson.

2 MR. JACKSON: And if Mr. Mizell could report  
3 on that, there's a number of people, lawyers and  
4 witnesses, who are waiting to find out whether or not  
5 they should come. So if we know that the fish people,  
6 for instance, are going to be on --

7 CO-HEARING OFFICER DODUC: We will not get to  
8 cross of them today.

9 MR. JACKSON: Any cross. Okay.

10 CO-HEARING OFFICER DODUC: So I expect people  
11 will be riveted to their webcast.

12 MR. JACKSON: Okay. Thanks.

13 CO-HEARING OFFICER DODUC: Ms. Des Jardins.

14 MS. DES JARDINS: I just wanted to ask, I  
15 presume that the Sac Valley Water Users' motion to have  
16 that panel broken up a little -- it's a very large  
17 panel --

18 CO-HEARING OFFICER DODUC: That motion has  
19 been denied.

20 MS. DES JARDINS: Yeah.

21 CO-HEARING OFFICER DODUC: I believe I said so  
22 yesterday.

23 MS. DES JARDINS: Okay. It's a very large  
24 panel, and I wanted to ask if we could have some extra  
25 time to do cross-examination because I think it's --

1 it's under ten minutes per witness.

2 CO-HEARING OFFICER DODUC: Ms. Des Jardins,  
3 we've been through this many times for all parties.  
4 You have an hour. We will determine if, upon a showing  
5 of good cause, whether or not additional time is  
6 necessary and warranted, as long as the cross is  
7 effective and efficient. That is not something that  
8 I'm going to grant to everybody in advance.

9 MS. DES JARDINS: Thank you.

10 CO-HEARING OFFICER DODUC: That has always  
11 been the case. It has not been changed. It will not  
12 be changed. All right.

13 Ms. Meserve, you are standing between you and  
14 the Lost Cause -- Lost Coast now.

15 MS. MESERVE: I'm my own worst enemy, as  
16 usual.

17 CO-HEARING OFFICER DODUC: Yes. So what are  
18 your topic areas, please?

19 MS. MESERVE: Osha Meserve for Friends of  
20 Stone Lakes and LAND. I also have some questions from  
21 Yolo County. So I have questions for Ms. Buchholz and  
22 also for Mr. Bednarski today, and I guess the folks  
23 assisting Mr. Bednarski.

24 With respect to the Buchholz testimony, it's  
25 really all around groundwater.



1           And then with respect to Mr. Bednarski, I have  
2 some questions around the project modifications in the  
3 Supplemental EIR, impacts on the refuge, also some  
4 traffic questions and air quality questions. I think  
5 that kind of covers it. Oh, and -- yeah, habitat  
6 changes as well, to the extent he's aware of that,  
7 since it was in his testimony.

8           CO-HEARING OFFICER DODUC: Thank you.

9           MS. MESERVE: So I'll go ahead and start with  
10 Ms. Buchholz since Mr. Bednarski would probably like a  
11 rest.

12           CROSS-EXAMINATION BY MS. MESERVE

13           MS. MESERVE: So, let's see. So just to begin  
14 with, Ms. Buchholz, DWR-32 identifies a summary of your  
15 professional qualifications; is that right?

16           WITNESS BUCHHOLZ: That is correct.

17           MS. DES JARDINS: And are you a certified  
18 hydrogeologist?

19           WITNESS BUCHHOLZ: No. I'm a registered civil  
20 engineer.

21           MS. DES JARDINS: And are you a certified  
22 hydrologist?

23           WITNESS BUCHHOLZ: No.

24           MS. DES JARDINS: Do you make findings on  
25 hydrogeology in your rebuttal?

1                   WITNESS BUCHHOLZ: In the -- we -- in my  
2 rebuttal, I reviewed the testimony from Dr. Mehl and  
3 Mr. Lambie and looked at the -- their statements and  
4 their testimony with respect to use of -- in some of  
5 our -- basically use of the information that we  
6 presented from our modeling results and in the  
7 environmental documents.

8                   MS. MESERVE: I believe it was a yes-or-no  
9 question. I think if you make findings on hydrogeology  
10 or hydrology both is what I'm going to ask you. So I  
11 believe it's yes or no.

12                  WITNESS BUCHHOLZ: So my experience -- I have  
13 experience doing hydrologic and hydrogeologic analyses.

14                  MS. MESERVE: So you do make findings on those  
15 subjects?

16                  WITNESS BUCHHOLZ: I was -- I was -- "finding"  
17 is a different word than I would use.

18                  I provided -- I responded to what my opinions  
19 were on the testimony.

20                  MS. MESERVE: And did anyone assist you in  
21 developing the rebuttal testimony with the information,  
22 let's say, on hydrology and hydrogeology?

23                  WITNESS BUCHHOLZ: I reviewed that with my  
24 team that has prepared and worked with me in preparing  
25 modeling results and doing -- conducting the modeling,

1 doing that with respect to the EIR/EIS.

2 MS. MESERVE: And are those persons available  
3 here for cross-examination?

4 WITNESS BUCHHOLZ: They are not. And -- and I  
5 do want to add that this is -- these -- I have had  
6 experience in doing groundwater modeling before. I  
7 didn't do this ground -- conduct this one. I was the  
8 manager of this. So I did review my -- my results with  
9 them to see if they had any difference of opinions, but  
10 that was it.

11 MS. MESERVE: So you -- did you write your  
12 testimony?

13 WITNESS BUCHHOLZ: I did.

14 MS. MESERVE: Moving on, then, to the -- you  
15 assert -- and maybe we could just bring up your  
16 testimony, would probably be helpful, on DWR-1213. And  
17 on Page 1, Line 23, you state that you disagree that --  
18 you believe the monitoring extent is appropriate.

19 When you make that statement, do you mean that  
20 the monitoring wells out to a two-mile extent on either  
21 side of the Sacramento River is sufficient for your  
22 identification of construction and conveyance  
23 operational impacts?

24 WITNESS BUCHHOLZ: That is what I -- what we  
25 meant, and it was based upon the results of our

1 modeling results.

2 MS. MESERVE: Do you know how many wells the  
3 project would install in this four-mile width under  
4 Groundwater Mitigation Measure GW-1?

5 WITNESS BUCHHOLZ: That number will have to be  
6 determined. As we stated in GW-1, Mitigation Measure  
7 GW-1 will first include an in-depth identification of  
8 existing wells. Determination of those wells could be  
9 used as part of the monitoring network, determination  
10 of the continued -- the need for additional monitoring  
11 of wells within that area.

12 MS. MESERVE: And in the location of these  
13 wells, whether they be existing or new, placed by the  
14 project, do you know how far upstream and downstream of  
15 the intakes they might be placed?

16 WITNESS BUCHHOLZ: We did not make that  
17 determination yet. We would need additional  
18 geotechnical information.

19 MS. MESERVE: When would you think that  
20 additional geotechnical information would be available?

21 WITNESS BUCHHOLZ: That would become part of  
22 the preliminary engineering.

23 MS. MESERVE: Would that be reflected in a  
24 future conceptual engineering report or --

25 WITNESS BUCHHOLZ: I don't know if it would be

1 a conceptual engineering report or some other type of  
2 report, but yes. And Mitigation Measure GW-1 commits  
3 to reporting, monthly reporting, to the public with the  
4 results.

5 MS. MESERVE: Do you know how deep the wells  
6 would go below the surface of the ground?

7 WITNESS BUCHHOLZ: That, definitely -- I've  
8 done groundwater monitoring networks before, and that  
9 will depend upon the site-specific geotechnical  
10 information, and it will change up and down the river.

11 MS. MESERVE: And likewise, you wouldn't know  
12 what the well density would be at this point?

13 WITNESS BUCHHOLZ: Not at this time.

14 MS. MESERVE: So how is it that you can  
15 conclude that the monitoring is adequate when there is  
16 in fact no monitoring plan to review and substantiate?

17 WITNESS BUCHHOLZ: As I said, we've based this  
18 upon the modeling results and acknowledge in Mitigation  
19 Measure GW-1 that there may be changes based upon if we  
20 get site-specific information and as we look at the  
21 monitoring data over the years.

22 MS. MESERVE: Would it be more accurate for  
23 that heading on Line 23 to say that the monitoring plan  
24 will be or would be adequate since there is no plan?

25 WITNESS BUCHHOLZ: I'm referring to that -- in

1 that line, I'm referring to the groundwater monitoring  
2 proposed in the approved project, which is the same as  
3 in the proposed project as we outlined in the EIR/EIS.

4 MS. MESERVE: The plan that would be  
5 developed?

6 WITNESS BUCHHOLZ: I was referring to the  
7 information that we've already published in the  
8 EIR/EIS.

9 MS. MESERVE: But just to be clear, there's no  
10 groundwater monitoring plan to date?

11 WITNESS BUCHHOLZ: That is true. There is no  
12 site-specific groundwater monitoring plan, yes.

13 MS. MESERVE: Could we put up, please,  
14 SWRCB-111, which is the Mitigation Monitoring plan, and  
15 on pdf Page 18. It's the GW -- Mitigation Measure  
16 GW-1. And we've been discussing the monitoring plan.

17 Do you know, Ms. Buchholz, how many square  
18 miles would be investigated for figuring out the  
19 location of the wells?

20 WITNESS BUCHHOLZ: I don't have that number  
21 right here at my fingertips at this point.

22 MS. MESERVE: Would you be using a statistical  
23 method to try to locate the monitoring wells?

24 WITNESS BUCHHOLZ: We're going to start -- I  
25 would assume that they would start with -- based on my

1 experience in establishing groundwater monitoring  
2 networks, we would look at existing -- they would look  
3 at existing information with respect to existing  
4 groundwater well logs and geotechnical information.  
5 And also it could change after the initial set of  
6 monitoring for the -- as you're watching the  
7 monitoring, you will see changes within two miles  
8 because there is, as we said in the report, an  
9 interface between the surface water in the Sacramento  
10 River and the groundwater within those two miles, and  
11 we've looked at the changes.

12 One of the reasons of starting the monitoring  
13 network prior to construction is to see how the  
14 groundwater changes just based upon different  
15 hydrologic conditions in the river. So in that  
16 process, you may need to see a different density in  
17 certain areas.

18 MS. MESERVE: And if we could -- your  
19 testimony talks about -- on Page 6, Lines 16 and 17  
20 talks about  
21 17 miles along the Sacramento River and approximately  
22 two miles to the east for monitoring, correct?

23 WITNESS BUCHHOLZ: Right.

24 MS. MESERVE: But thinking back to Mitigation  
25 Measure GW-1, doesn't it say two miles on either side

1 of the river?

2 WITNESS BUCHHOLZ: Yes. I'm not connecting  
3 your statement.

4 MS. MESERVE: Why does your testimony talk  
5 about monitoring only the east side of the river when  
6 the mitigation measure requires monitoring on both  
7 sides of the river?

8 MR. MIZELL: I'd like to object to the  
9 question. It's a bit argumentative. We went over this  
10 distinction yesterday. There is a distinction between  
11 the rebuttal testimony that is responding to particular  
12 arguments raised by other parties and what is contained  
13 with the EIR/EIS, which is a comprehensive document.

14 So to the extent that there's a disconnect, it  
15 may very well be because the rebuttal testimony can  
16 only respond to other parties. And in this case, as is  
17 clear in the context of Ms. Buchholz's statements, it  
18 was responding to Sacramento County Water Agency, who  
19 did not talk about the west side of the river.

20 CO-HEARING OFFICER DODUC: Ms. Meserve, you  
21 were there yesterday for that discussion. Your  
22 response?

23 MS. MESERVE: Well, I guess I'm just trying to  
24 clarify. If it's simply a clarification that, by the  
25 witness's statement on Page 6 of her testimony she



1 doesn't mean to change the language of the mitigation  
2 measure, that would be a useful clarification.

3 CO-HEARING OFFICER DODUC: All right.

4 WITNESS BUCHHOLZ: I do not need to change it.  
5 As Mr. Mizell said, I was responding to a statement  
6 about the groundwater on the east side of the  
7 Sacramento River.

8 MS. MESERVE: Okay. Right. Because looking  
9 at the number of acres listed on Line 17 of your  
10 testimony, that would only be 17 miles for two miles,  
11 not four.

12 So -- but going back to your investigation  
13 process for developing a groundwater monitoring plan,  
14 would that occur on both sides of the river?

15 WITNESS BUCHHOLZ: Yes.

16 MS. MESERVE: Okay. If we could go back to  
17 the SWRCB-111. We've established that the mitigation  
18 requires the -- looking at two miles on either side of  
19 the river. What's the mitigation for the operational  
20 impacts identified in Impact GW-2?

21 MR. MIZELL: I'm going to object to the scope  
22 of the question.

23 The operational criteria are not contained  
24 within Ms. Buchholz's testimony. She is testifying on  
25 groundwater impacts associated with the change in the

1 footprint, and that is a physical construction-based  
2 change as identified in the supplemental. There are no  
3 changes proposed in Supplemental 4 of the operations,  
4 and therefore this question goes beyond the appropriate  
5 scope of rebuttal cross.

6 CO-HEARING OFFICER DODUC: Ms. Meserve?

7 MS. MESERVE: The question -- I mean, there's  
8 a large part of this testimony that said responding to  
9 Mr. Lambie as well as Dr. Mehl's testimony. So that's  
10 where this comes from, not the change in the project  
11 footprint.

12 MR. MIZELL: I think my -- I'm going to  
13 reiterate my objection unless Ms. Meserve can show the  
14 linkage between Ms. Buchholz's testimony and the  
15 question.

16 CO-HEARING OFFICER DODUC: Let's pull up  
17 Ms. Buchholz's testimony.

18 Ms. Meserve, you could make that linkage.

19 MS. MESERVE: Well, the -- basically, from  
20 Page 4 to the end of her testimony is about  
21 characterizing the amount of loss to the subbasins that  
22 has been calculated by different parties to occur over  
23 the course of the operations. So I'm just going back  
24 to what -- based on that testimony, what the mitigation  
25 for operations is.

1 CO-HEARING OFFICER DODUC: The question again,  
2 Ms. Meserve?

3 MS. MESERVE: It was a relatively simple  
4 question, and I could try to move on from it.

5 But yeah, I was just trying to get the witness  
6 to point me toward what the operational mitigation is  
7 for groundwater.

8 CO-HEARING OFFICER DODUC: The operational  
9 mitigation for groundwater.

10 MS. MESERVE: So Impact GW-1 is for  
11 construction. Impact GW-2 is for operation.

12 CO-HEARING OFFICER DODUC: Ms. Buchholz, are  
13 you able to answer?

14 WITNESS BUCHHOLZ: As we moved forward in the  
15 EIR/EIS for GW-2, we also referred back to the  
16 mitigations that we looked at for construction. So  
17 the -- if there were adverse impacts due to the  
18 operation of the project, they would -- we would  
19 continue to use the responses that we included in  
20 Mitigation GW-1 process.

21 MS. MESERVE: And then my question about  
22 Mitigation Measure GW-1 is how long is monitoring  
23 required in Mitigation Measure GW-1?

24 WITNESS BUCHHOLZ: GW-1 is required for five  
25 years after the complete. So it starts through

1 pre-design and continues through design construction so  
2 that we'd have a long enough record especially to see  
3 how does the groundwater month change during different  
4 hydrologic conditions, and could continue -- what we've  
5 stated in various places in the EIR/EIS, it would  
6 continue through five years after construction.

7 MS. MESERVE: And then how long is the project  
8 planned to be operational?

9 WITNESS BUCHHOLZ: The -- I don't have the  
10 specific number that we've assumed for the lifecycle of  
11 the project, so I don't feel comfortable stating a  
12 number that's longer than five years.

13 MS. MESERVE: So is it your understanding that  
14 there's no requirement in the MMRP to monitor beyond  
15 five years?

16 WITNESS BUCHHOLZ: That is true.

17 MS. MESERVE: So in your testimony on Page 5  
18 and then again on Page 7, you characterize the changes  
19 in recharge to the Eastern San Joaquin and South  
20 American Sub-basins as extremely small; is that  
21 correct?

22 WITNESS BUCHHOLZ: That's true.

23 MS. MESERVE: Do you believe there is a -- is  
24 there any mitigation for these groundwater impacts  
25 during -- during operation beyond GW-1 and the five

1 years?

2 WITNESS BUCHHOLZ: Not -- we believe that the  
3 five years was adequate to see whether or not there  
4 would be a change due to the operations of CWF as  
5 compared to conditions in the future without CWF.

6 MS. MESERVE: But to be clear, you and the  
7 experts you were rebutting agree that there would be  
8 some reduction in recharge to both of these groundwater  
9 basins, but there's disagreement as to the amount of  
10 reduction; is that fair?

11 WITNESS BUCHHOLZ: So if we could look at the  
12 bottom of Page 6, Mr. Hunt, on Lines 27, 28 and then  
13 also the beginning of the Page 7 on Line 1.

14 The way we are characterizing this, these  
15 incremental changes are extremely small compared with  
16 the overall groundwater budget and the -- analyzed in  
17 the CVHM-D model and are consistent with changes that  
18 we saw in the CVHMD [sic] model results in the  
19 year-to-year kind of basis.

20 MS. MESERVE: And are you familiar with the  
21 requirements of the Groundwater -- the Sustainable  
22 Groundwater Management Act with respect to preparation  
23 of groundwater sustainability plans?

24 WITNESS BUCHHOLZ: I am generally familiar  
25 with it, but I have never prepared a SGMA document.

1 MS. MESERVE: And under SGMA there's a 20-year  
2 implementation horizon for reaching groundwater  
3 sustainability, correct?

4 WITNESS BUCHHOLZ: I'm generally aware that  
5 that's the number. Yes.

6 MS. MESERVE: And there would be in this  
7 instance, if the project was operated, less groundwater  
8 available to supply the current land uses in both  
9 subbasins, correct?

10 MR. BERLINER: Objection, assumes facts not in  
11 evidence.

12 MS. MESERVE: The testimony admits that there  
13 would be changes in groundwater recharge.

14 MR. BERLINER: Yes. My objection is to the  
15 latter part of the question regarding the impact.

16 CO-HEARING OFFICER DODUC: Ms. Meserve.

17 MS. MESERVE: The impact?

18 CO-HEARING OFFICER DODUC: There's really no  
19 need to ask -- well, I won't say what need, but  
20 rephrase the question, please.

21 MS. MESERVE: Do you agree that under -- in  
22 the implementation period of the project, there would  
23 be less groundwater available to supply current land  
24 uses in both subbasins?

25 MR. BERLINER: Same objection. It's to the

1 last half. I'm not disputing or objecting to the  
2 question as to whether there will be less groundwater.  
3 I'm objecting to the part where the conclusion or the  
4 contention is made that it won't support current  
5 planned uses in both subbasins.

6 MS. MESERVE: I said less water available to  
7 supply current land uses. So I'm not trying to go  
8 beyond that.

9 MR. MIZELL: There's a distinction to be made  
10 between groundwater recharge and what is available. I  
11 believe that's what Mr. Berliner is referring to.

12 Ms. Meserve hasn't made the connection that  
13 the availability of groundwater would change simply  
14 based upon a reduction and, as characterized by Ms.  
15 Buchholz, an extremely small reduction in recharge.

16 CO-HEARING OFFICER DODUC: All right. The  
17 linkage between reduction and land use.

18 MS. MESERVE: I'll move on.

19 CO-HEARING OFFICER DODUC: Yes, please,  
20 Mr. Meserve.

21 MS. MESERVE: Let's see. I'll move on to  
22 Mr. Bednarski, then. Thank you.

23 CO-HEARING OFFICER DODUC: Who is well rested  
24 by now.

25 MS. MESERVE: Very calming to be up there, I'm

1 sure.

2 Let's see. So, let's see. If we could start  
3 out by putting up the SWRCB-113 cover memo.

4 The beginning of your testimony refers to the  
5 changes made from the original approved project and the  
6 proposed changes from the Supplemental EIR. And you  
7 referred to the SWRCB-113 and DWR-1303 for information  
8 about these changes; is that correct? I might need to  
9 give you a page number.

10 WITNESS BEDNARSKI: Are you referring to  
11 Page 2 of my testimony?

12 MS. MESERVE: Yes. Thank you.

13 WITNESS BEDNARSKI: Yes, I do.

14 MS. MESERVE: Yeah. And according to this  
15 cover memo, it states that environmental impacts would  
16 be reduced; is that correct?

17 WITNESS BEDNARSKI: Is there a specific line  
18 that you want me to look at to validate that?

19 MS. MESERVE: Can you go to the full page. It  
20 started toward the bottom. It's the third line up from  
21 the bottom paragraph, reduce impacts of the facility  
22 construction.

23 WITNESS BEDNARSKI: Oh, in that first  
24 paragraph?

25 MS. MESERVE: Yes.



1 WITNESS BEDNARSKI: Yes, that's what it says.

2 MS. MESERVE: So do you -- are -- with respect  
3 to your testimony and your understanding of the revised  
4 project, do you believe that, in all aspects, the  
5 impacts would be reduced from the project revisions?

6 WITNESS BEDNARSKI: I cannot respond to the  
7 term "all." I can respond to the areas that I've  
8 outlined in my testimony, my presentation.

9 MS. MESERVE: Okay. If we could put up the  
10 DWR-1303, please, which is the fact sheet about the  
11 project revisions.

12 And I'm going to ask you to identify for me  
13 where the Stone Lakes Refuge is on this map.

14 WITNESS BEDNARSKI: To the best of my  
15 knowledge, it's identified there with the call-out  
16 towards the top of that page. There's a call-out that  
17 says "Stone Lakes Wildlife Refuge." It's shown in kind  
18 of a teal color.

19 MS. MESERVE: And is it your understanding,  
20 Mr. Bednarski, that that is the refuge boundary?

21 WITNESS BEDNARSKI: That is my understanding.

22 MS. MESERVE: Could we please put up FSL-2,  
23 page 3, which a PowerPoint presented earlier on in this  
24 part. Page 3.

25 I will represent to you this is prepared by

1 the refuge. Does this shape look the same as what we  
2 just looked at?

3 WITNESS BEDNARSKI: There's a number of shapes  
4 on there. Which shape are we looking at?

5 MS. MESERVE: I'm sorry. It's the part  
6 labeled "Stone Lakes National Wildlife Refuge" that has  
7 the green lines on it.

8 CO-HEARING OFFICER DODUC: The area that is  
9 surrounded by dotted lines?

10 MS. MESERVE: That's right.

11 MR. BERLINER: There's no reference on this  
12 map to the WaterFix facilities. Is it possible to get  
13 both pictures on the screen at the same time?

14 CO-HEARING OFFICER DODUC: It would on a Mac.

15 MR. BERLINER: No comment.

16 MS. MESERVE: It's -- the little boxes up on  
17 the right would do that for you probably.

18 CO-HEARING OFFICER DODUC: Could you put both  
19 this and the last on the screen at the same time?

20 MS. MESERVE: If you use the little squares in  
21 the upper right.

22 CO-HEARING OFFICER DODUC: Ms. Morris to the  
23 rescue.

24 MS. MORRIS: He got it. He's minimizing it.

25 MS. MESERVE. And my question is -- I'm just

1 trying to get to whether the correct refuge boundary  
2 map was used. It's a relatively simple point, but it's  
3 pretty important to the refuge.

4 Now you went back. Sorry. Anyway I don't  
5 want to waste everyone's time.

6 Basically, you need to drag the top blue part  
7 and then it doesn't pop out. But it's going to be that  
8 one. Yeah, there you go.

9 So in particular, I guess the easiest part to  
10 see, Mr. Bednarski, is if you look at the southern part  
11 of the refuge, it kicks out all the way to I-5, which I  
12 believe is the gray line on your DWR -- or sorry --  
13 Water Board 113 exhibit. And then it goes all the way  
14 down to past the Intermediate Forebay which is in the  
15 olive green color.

16 So would you agree that the -- just get to the  
17 question -- that the map on 1303 does not include the  
18 entire refuge boundary?

19 MR. BERLINER: I'm going to object. I can't  
20 make head or tails. The scales are different on these  
21 two maps, and it -- they're totally different shapes.

22 MS. MESERVE: We could go to one other map if  
23 you'd like. LAND-3 shows this real well.

24 CO-HEARING OFFICER DODUC: Poor Mr. Hunt. Now  
25 he has to juggle three maps.

1 MS. MESERVE: I know. It's awful.

2 CO-HEARING OFFICER DODUC: This is his  
3 punishment for bringing donuts today.

4 MS. MESERVE: Again, I would point,  
5 Mr. Bednarski, just to thinking about a comparison  
6 between SWRCB-113 and the shape of the refuge boundary,  
7 which is also reflected in this map.

8 WITNESS BEDNARSKI: I would say that the  
9 shapes are different between the two, different shapes.

10 MS. MESERVE: And would you agree that the  
11 areal extent or acres of the 113 map would not be as  
12 large as the acres that are shown in both LAND-3 and  
13 also FSL-2?

14 WITNESS BEDNARSKI: I have no way to make that  
15 determination from this information.

16 MS. MESERVE: I believe you could, but let's  
17 move on. It's kind of obvious.

18 MR. MIZELL: Argumentative.

19 CO-HEARING OFFICER DODUC: Sustained.

20 MS. MESERVE: Okay. Let's take a look at  
21 SJC-330 if we could, which is another map that helps  
22 with the -- going back to the new alignment of the --  
23 and I'm speaking of the alignment of the tunnels  
24 kicking out from the town of Hood.

25 If we could zoom out a little bit from that.

1 There we go.

2 Hood is off to the middle left up there. And  
3 then the new alignment, if you recall, Mr. Bednarski,  
4 would be just to the west of that white line on the  
5 very far left, which is the refuge boundary again.

6 Are you aware that the proposed realignment of  
7 the tunnel puts the tunnel closer to the Stone Lakes  
8 Refuge?

9 WITNESS BEDNARSKI: Yes, I'm aware of that.

10 MS. MESERVE: Were potential new or different  
11 impacts on the Stone Lakes Refuge analyzed in the  
12 Supplemental EIR?

13 WITNESS BEDNARSKI: Can you be more specific  
14 about what those potential impacts might be?

15 MS. MESERVE: For instance, like  
16 hydrogeological impacts on the refuge waters.

17 WITNESS BEDNARSKI: I'll refer to Ms. Buchholz  
18 on that.

19 WITNESS BUCHHOLZ: We did not look at that in  
20 the EIR/EIS. However, it is the same information that  
21 we responded to with respect to the areas near Stone  
22 Lakes in the Part 1 rebuttal and also -- I think we've  
23 compared to Stone Lakes, but certainly other parts of  
24 the EIR/EIS, that area is underlain on the upper layers  
25 above the tunnel, top of pipe, are sandy -- more

1 permeable sandy loams. The clays are in the -- on  
2 the -- underneath the tunnels.

3           And we believe that the placement of the  
4 tunnels at the depths that they're shown in this area,  
5 on this EIR, would not interrupt movement of  
6 groundwater from Snodgrass Slough, specifically, over  
7 towards Stone Lakes.

8           MS. MESERVE: Are you familiar in general with  
9 the water body called South Stone Lakes that is in the  
10 lower left-hand portion of this figure?

11           WITNESS BUCHHOLZ: I'm aware of where it is,  
12 yes.

13           MS. MESERVE: And did you or anyone on the  
14 SEIR team conduct any hydrogeologic analysis regarding  
15 the potential impact to South Stone Lakes from  
16 obstruction from the tunnel?

17           WITNESS BUCHHOLZ: No. As I said, what we  
18 looked at before was specifically -- is the  
19 availability of permeable soils above the top of the  
20 pipe and that we felt that the continued recharge would  
21 continue from the west towards the east, towards that  
22 area.

23           MS. MESERVE: I'm not sure if this maybe goes  
24 back to Mr. Bednarski, but were any changes in noise or  
25 dust in construction-related impacts to the refuge

1 analyzed in the Supplemental EIR due to the project  
2 changes?

3 WITNESS BEDNARSKI: Are there some areas of  
4 specificity that you could give us, which areas you  
5 were concerned that we made modifications to?

6 MS. MESERVE: I think I'm just -- well, I  
7 think I've identified the movement of the tunnel over  
8 towards the refuge. So let's just stick with that  
9 change.

10 WITNESS BEDNARSKI: I don't believe there  
11 would be any change to any of those surface impacts.  
12 The tunnels are approximately 100 to 150 feet below  
13 ground, so -- in that area. There's no shafts or  
14 anything located along that portion of the alignment  
15 that would cause any sort of impacts in the areas that  
16 you were discussing.

17 MS. MESERVE: Moving on to the Swainson's hawk  
18 habitat, I believe you discuss -- that's toward the  
19 back of your testimony, but you talk about the  
20 reduction of impacts to wetlands.

21 Are you -- and that you reduced those impacts  
22 by moving the reusable tunnel material or muck to  
23 different locations; is that correct, in this one  
24 measure?

25 WITNESS BEDNARSKI: That's correct.

1 MS. MESERVE: Are you aware about the  
2 agricultural lands upon which that material would be  
3 placed may provide habitat for Swainson's hawk?

4 WITNESS BEDNARSKI: I am not personally aware  
5 of that, no.

6 MS. MESERVE: Could we please look at  
7 SWRCB-113, Page 12-37. And this is a table that talks  
8 about changes to Swainson's hawk habitat.

9 Has the discrepancy, to your knowledge, in the  
10 value of Swainson's hawk habitat shown -- down where it  
11 says "moderate." Scroll down a little.

12 Have the differences between the loss of  
13 habitat for Swainson's hawk been analyzed, to your  
14 knowledge?

15 WITNESS BEDNARSKI: I would refer these  
16 questions to a different panel. I believe we have some  
17 potential panel experts that could address that, not  
18 the engineering panel.

19 MS. MESERVE: Okay. That would be for  
20 Dr. Earle?

21 WITNESS BEDNARSKI: I assume so. I think he  
22 testified in regards to those issues in Part 2.

23 MS. MESERVE: On air quality, then, you  
24 discuss the -- you respond to Mr. Philley's testimony.  
25 What are your qualifications to provide testimony on



1 air quality?

2 WITNESS BEDNARSKI: I'll refer to Ms. Yoon.

3 MS. MESERVE: If it's just referring to your  
4 SOQ, that's fine.

5 WITNESS YOON: I'll refer you to my SOQ, then.

6 MS. MESERVE: And, Ms. Yoon, are you familiar  
7 with the phenomenon of emissions transporting between  
8 air basins?

9 WITNESS YOON: Yes, I am generally familiar  
10 with pollutant transport.

11 MS. MESERVE: Does the SEIR consider transport  
12 of emissions between air basins, given that this  
13 project is within several air basins?

14 WITNESS YOON: The analysis evaluates  
15 emissions within the three air basins affected by the  
16 proposed project relative to the thresholds that have  
17 been adopted by the local air quality management  
18 districts. Those thresholds are based on new source  
19 review performance offset triggers, which is a  
20 fundamental component of each air district's attainment  
21 strategy. And modeling that's performed by the air  
22 districts confirms that projects in excess of these  
23 thresholds would not conflict with the air basins'  
24 attainment strategy.

25 And the underlying modeling for those

1 thresholds in that attainment strategy accounts for  
2 local existing air quality conditions and factors that  
3 contribute to each respective air basin's attainment  
4 status.

5 MS. MESERVE: But there's no discussion of the  
6 issue of the transport between basins in your analysis  
7 in the SEIR, right?

8 WITNESS YOON: As part of the response to  
9 comments to the final environmental document, the issue  
10 of pollutant transport is discussed with respect to the  
11 air district specials.

12 MS. MESERVE: On the power lines, back to  
13 Mr. Bednarski, if we -- you mention that the changes in  
14 transmission lines -- can you -- let's see. Let's look  
15 at SWRCB Figure 3-1, please. This shows -- and as far  
16 as the power line that's proposed for the Twin Cities  
17 Road corridor, can you show where that is?

18 WITNESS BEDNARSKI: I believe that's the --  
19 say, the orange line that's underneath the Highway 5  
20 designation. It goes east and west, if that's the one  
21 you're referring to.

22 MS. MESERVE: And isn't that the same corridor  
23 as was proposed previously?

24 WITNESS BEDNARSKI: Yes, it is. In my  
25 presentation, I utilized the public document that you

1 showed earlier. And that -- and in my presentation  
2 yesterday, I noted that that change was included in the  
3 addendum to the Final EIR/EIS. So technically it is  
4 not a change that we are making as part of the  
5 Supplemental EIR/EIS, but I included it just to inform  
6 the Board that we had made this change through an  
7 addenda process to the Final EIR to further minimize  
8 impacts of the program, potential impacts.

9 MS. MESERVE: But wasn't that corridor along  
10 Twin Cities Road also part of the project approved in  
11 the Final EIR?

12 WITNESS BEDNARSKI: Yes, it was. As you can  
13 see from this figure, under the approved project on the  
14 left, that corridor is shown; and on the proposed  
15 project, that corridor is also shown. So that goes  
16 back to my explanation that this change was actually  
17 made during the addenda process for the Final EIR/EIS  
18 back in January.

19 I rolled it up into my presentation because I  
20 was using this already prepared public document.

21 MS. MESERVE: But I guess what I'm trying to  
22 get at is that the power line has always been proposed,  
23 as far as I know, even back in 2017 prior to the  
24 addendum, to be along this corridor.

25 So my question is why is this any different?

1           WITNESS BEDNARSKI: Yeah, there is a  
2 distinction that was made prior to the addenda to the  
3 EIR/EIS in January of 2018. WaterFix was going to  
4 construct a new power line that would roughly parallel  
5 the existing power line in that area.

6           Through our discussions with the Sacramento  
7 Municipal Utility District, it became known to us that  
8 we could repurpose their existing power lines, thereby  
9 eliminating the need to create a new power line  
10 corridor through that area. And the use of that  
11 approach was then documented in the addenda to the  
12 Final EIR/EIS.

13           MS. MESERVE: And we discussed already earlier  
14 in Part 2 about the different shape of the power lines  
15 being proposed in this corridor than what is currently  
16 there, correct?

17           WITNESS BEDNARSKI: Yes, we did.

18           MS. MESERVE: I'm going to go to a couple of  
19 traffic questions.

20           With respect to the Byron Tract Forebay, have  
21 you identified which road segments would be impacted by  
22 this new location of the south storage for this  
23 project? Or perhaps it would be Mr. Choa.

24           WITNESS CHOA: One moment, please,  
25 Madam Chair. We're trying to find a good figure to

1 show.

2 Mr. Hunt, can we show the figure from earlier  
3 today, showing the roadway segments? I forget what  
4 the -- what figure number that was.

5 The Figure 19 -- in Figure 19A?

6 MR. MIZELL: Mr. Choa, that would be the  
7 Appendix 19A is what you're looking for?

8 WITNESS CHOA: That's correct.

9 Mr. Hunt, Appendix Figure 19A.

10 MS. MESERVE: That other one was an okay  
11 figure. Doesn't that show it?

12 WITNESS CHOA: Yes.

13 MS. MESERVE: I think we need to scroll up a  
14 little bit.

15 WITNESS CHOA: Scroll up and zoom in a bit  
16 towards the middle of the page.

17 MS. MESERVE: Or I'm sorry. Down.

18 WITNESS CHOA: So. . .

19 MR. MIZELL: Ms. Meserve, your question was  
20 about Byron Tract Forebay; is that correct?

21 MS. MESERVE: That's right.

22 MR. MIZELL: If we scroll to the bottom.  
23 Thank you.

24 WITNESS CHOA: That's 2B, 2B. There we go --  
25 or possibly 2C. There we are. That was the figure

1 from earlier today.

2 So this figure shows, at least in terms of the  
3 regional roadways that would be used, including  
4 roadways in San Joaquin County, Contra Costa County,  
5 and also facilities that are Caltrans. These were all  
6 evaluated as part of the transportation Chapter 19.

7 MS. MESERVE: And in developing the analysis  
8 in the SEIR, did you consult with any local  
9 transportation officials in San Joaquin or the other  
10 counties that would be impacted by the new construction  
11 in Byron Tract Forebay?

12 WITNESS CHOA: Yes, the local agencies were  
13 contacted in terms of segments within their local  
14 jurisdictions that they deemed could be affected by the  
15 California WaterFix Project, including San Joaquin  
16 County, Alameda County, Contra Costa County, and also  
17 Caltrans.

18 MS. MESERVE: For the Supplemental EIR?

19 WITNESS CHOA: Again, the same in terms of  
20 the --

21 MS. MESERVE: Excuse me. Wait. I want to  
22 make sure we're asking the right question here.

23 I'm asking you, with respect to preparation of  
24 the supplement -- the Draft Supplemental EIR, were  
25 additional contacts made with the counties given the

1 different location of impacts using the example of the  
2 new Byron Tract Forebay?

3 WITNESS CHOA: In terms of your question, the  
4 first part is no, they were not contacted because the  
5 purpose of the supplemental was to evaluate the  
6 incremental change in construction-related traffic  
7 compared to the approved project and the revised  
8 project.

9 So they evaluated the same 114 roadway  
10 segments in order to provide a -- results of the  
11 analysis in terms of transportation comparing the  
12 approved versus revised.

13 MS. MESERVE: And then you state on Page 11,  
14 Line 19 that the truck trips would only occur during  
15 off-peak time periods.

16 And my question is what assurances are there  
17 that this would be the case, beyond your testimony?

18 WITNESS BEDNARSKI: Can we pull that page up?  
19 I believe it's Page 11 of DWR-1212.

20 MS. MESERVE: It's going to be 19 through 21,  
21 yes.

22 MR. BEDNARSKI: I think it's identified maybe  
23 starting around Line 18, 17 through 21, there.

24 WITNESS CHOA: So Lines 18 and 19 actually  
25 describe the methodology used in the construction

1 traffic analysis was it assigned the  
2 construction-related traffic to all hours of the day to  
3 determine the potential impacts and then determine --  
4 defining the mitigation measures and even though they  
5 would occur -- only occur during primarily off-peak  
6 time period.

7 So the correct statement would be even though  
8 they would occur during off-peak, we evaluated the same  
9 amount of construction traffic during peak-hour  
10 conditions, which is when commuters and others are  
11 using the roadway as well.

12 MS. MESERVE: What -- is there a requirement  
13 in the MMRP or elsewhere that says that the trips would  
14 primarily occur in off-peak time periods as referenced  
15 in your testimony?

16 WITNESS CHOA: Yes.

17 Mr. Hunt, if you would scroll down to the  
18 bottom -- actually, the next page, Page 12.

19 Actually, it's referring to --

20 Actually, scroll down a little bit more.

21 So as -- on Line -- starting at Line 22, there  
22 are requirements in terms of Mitigation Measure  
23 Transportation 1A, 1B, and 1C as part of implementing  
24 site-specific construction management plans. Some of  
25 those options could include different times of day or



1 -- in terms of when those construction trips would  
2 occur. So, yes, there is.

3 MS. MESERVE: I think I heard you say "options  
4 would include." So that's not a requirement, is it?

5 WITNESS CHOA: It is part of the mitigation --  
6 mitigation measures. So it is a requirement to  
7 implement site-specific construction management plans.  
8 And if it's deemed that it requires using different  
9 times of day, then it is part of the mitigation  
10 measures.

11 MS. MESERVE: We have significant and  
12 unavoidable impacts associated with traffic, however,  
13 don't we, identified in both the Final EIR as well as  
14 the Draft Supplemental EIR?

15 WITNESS CHOA: Yes, that is correct. And  
16 that's why the development of mitigation measures were  
17 prepared as part of the Final EIR and also the  
18 Supplemental EIR.

19 MS. MESERVE: And those mitigation measures  
20 give options, and yet there's no commitment to reduce  
21 to less than significant, correct?

22 WITNESS CHOA: That is correct. That's why  
23 the -- both the Final and the Supplemental identified  
24 significant unavoidable and defined mitigation  
25 measures.

1           MS. MESERVE: On Page 12 of your testimony up  
2 at the top there, you compare the maximum number of  
3 trips in 2024 to the approved project in the fifth --  
4 you compare the eighth year of construction of the  
5 approved project to the fifth year of construction  
6 under the revised project, and you've come up with a  
7 reduction in traffic.

8           Why did you compare different years of  
9 construction?

10           WITNESS CHOA: Mr. Hunt, if you could scroll  
11 up towards the top of this page.

12           Those were -- again, in terms of  
13 transportation for both the approved project and  
14 revised project, we evaluated the highest number of  
15 construction-related traffic. So in terms of the  
16 approved project, it would occur in 2024 with -- as  
17 shown in Line 1 with 6,194 vehicle trips. For the  
18 proposed project, it would occur in 2025 with 4,412  
19 vehicle trips.

20           So in terms of transportation, we were looking  
21 at the maximum number of trips related to CWF  
22 construction traffic. And the reason for that is they  
23 do occur in different times, but it also shows that the  
24 comparison between the proposed project and the  
25 approved project shows a net decrease in trip

1 generation of 1,782 vehicles or approximately 29  
2 percent.

3 MS. MESERVE: So is -- the construction  
4 sequencing or phasing is different in the currently  
5 proposed project than it was previously?

6 WITNESS BEDNARSKI: I believe that's what that  
7 was a result of. We made modifications to the  
8 construction sequencing and scheduling.

9 MS. MESERVE: And going to just very briefly  
10 -- I know this has been gone over a lot about the  
11 consultation with the counties. But looking at the  
12 consultation with Yolo County in particular, which is  
13 referenced on SWRCB-102, 19A, Page 33 that we've been  
14 looking at, is it true that it is a single e-mail  
15 regarding PCI values that was the consulta- -- the full  
16 extent of the consultation with Yolo County on traffic  
17 for this project?

18 WITNESS CHOA: Mr. Hunt, if you can bring that  
19 up. So it's SWRCB-102, Appendix 19A, Pages 22 and 23.  
20 That may not be the same.

21 MS. MESERVE: I have Page 33.

22 WITNESS CHOA: Oh, 33?

23 Page 33, Mr. Hunt.

24 So in response to that question, it was  
25 actually the -- it's how the data was obtained. It was

1 obtained in an e-mail, which is just slightly different  
2 than our interaction or agency outreach in terms of the  
3 request. So the e-mail received back from -- in that  
4 case, it was Yolo County. So it was PCI values were  
5 e-mailed to the project team. So that was the response  
6 to our request for information.

7 MS. MESERVE: And as a traffic professional,  
8 have you ever worked on an infrastructure project of a  
9 greater scale in terms of truck trips and years of  
10 construction than this project?

11 MR. MIZELL: Objection as to relevance.

12 MS. MESERVE: He's the expert opining on --

13 CO-HEARING OFFICER DODUC: Overruled.

14 WITNESS CHOA: I'm not sure in terms of the  
15 magnitude of this project, but I've worked on very  
16 significant major roadway construction projects,  
17 including projects here in Sacramento and up and down  
18 the Central Valley, so. . .

19 MS. MESERVE: What would be another project  
20 that you would think would be of the scale of this  
21 project that you've worked on?

22 WITNESS CHOA: An example would be currently  
23 working on all the improvements or have worked on all  
24 the improvements on I-205 widening in San Joaquin  
25 County, and then also Interstate 80 here, in

1 Sacramento. So -- in terms of multi-year construction  
2 projects with a lot of construction traffic.

3 MS. MESERVE: In your experience with large  
4 construction projects, do you ever see more  
5 consultation with the affected jurisdictions than is  
6 reflected here, for the example, the Yolo example of a  
7 single e-mail?

8 MR. MIZELL: Objection, misstates the  
9 evidence. The witness indicated this is not the full  
10 extent of the interaction with the agencies.

11 MS. MESERVE: There's no further evidence of  
12 anything except a single e-mail. So --

13 MR. BERLINER: The witness testified there was  
14 further --

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

16 Mr. Choa, please answer Ms. Meserve's question  
17 with respect to your understanding of the entirety of  
18 local interactions with -- are you still specific to  
19 Yolo County?

20 MS. MESERVE: Yeah, I think that's a good  
21 example.

22 WITNESS CHOA: Mr. Hunt, would you scroll up  
23 to the title of this.

24 So this is titled "Agencies Contacted  
25 Regarding." This table just shows how we received

1 information via single e-mail. It does not document or  
2 show the extent of our outreach to the agencies in  
3 terms of the CWF project.

4 MS. MESERVE: Are you aware of any other  
5 documentation of the outreach?

6 WITNESS CHOA: I'm not aware that it is  
7 anywhere within the information.

8 MS. MESERVE: So is it your opinion that there  
9 was other outreach that just is not reflected here?

10 WITNESS CHOA: Yes, that is an accurate  
11 statement.

12 MS. MESERVE: Okay. Let's see. Your written  
13 testimony on Page 12, Lines 8 through 10 discusses  
14 using the methodology approved -- that was approved by  
15 the counties.

16 If we could look at Page 34 of Appendix 19A,  
17 please, on Lines 34 and then on Lines 13 and 14, it  
18 states here, "If the rating threshold was below the  
19 threshold stated" -- sorry. You can read Lines 13 and  
20 14. I'm sorry.

21 Regarding that threshold, that would apply to  
22 significant impacts to the pavement condition in Yolo  
23 County, right?

24 WITNESS CHOA: The significant impacts as  
25 shown in Line 13 and 14 would apply to not only Yolo

1 County but all the jurisdictions that were -- that were  
2 included in the transportation chapter.

3 MS. MESERVE: Could we go to -- just scroll to  
4 Page 36 of that, which I think has the Yolo.

5 So you see Line 12 there, where it talks about  
6 if the PCI rating is below 55, that would be a  
7 significant impact?

8 WITNESS CHOA: That is correct. That's what  
9 it states on Line No. 12 on this page.

10 MS. MESERVE: Is it fair to say, then, that  
11 under that methodology, any additional  
12 construction-related trips would constitute a  
13 significant impact to a road with deficient pavement  
14 conditions?

15 WITNESS CHOA: Yes. That's -- as defined by  
16 Yolo County, you need additional traffic,  
17 construction-related traffic with a PCI rating of below  
18 55.

19 MS. MESERVE: But for -- in the SEIR, however,  
20 doesn't it state that the impacts in Yolo County would  
21 be less? We could look at Page 19-35 of the SEIR.

22 I'm very close to being done. Thank you for  
23 your patience.

24 CO-HEARING OFFICER DODUC: Close as in --

25 MS. MESERVE: Five?

1 CO-HEARING OFFICER DODUC: Five minutes?

2 MS. MESERVE: I'll try to.

3 MR. MIZELL: Ms. Meserve, you're looking for  
4 Chapter 19 at this point?

5 MS. MESERVE: Yes. So Chapter 19, Page 35.  
6 I'm sorry. It's of the SWRCB-113. It's the -- I'm  
7 trying to go to what the conclusion was in the  
8 Supplemental EIR, 19-35.

9 So here when we look at Yolo 1 and 2, it --  
10 doesn't it state that there's no impact on a deficient  
11 roadway?

12 WITNESS CHOA: That's what it states on the  
13 column -- at the last column on the right.

14 MS. MESERVE: Right. But there would be  
15 increases of about 500 from a range of about 125 to 564  
16 truck trips on these roadways, wouldn't there be, if we  
17 look at Page 19-28 and those same segments, Yolo 1 and  
18 2, in the far right-hand column?

19 WITNESS CHOA: That is correct, but as it  
20 shows on Column -- 1, 2, 3, 4 -- 5 under LOS, they  
21 operate at level service C, which is acceptable from  
22 Yolo County standards.

23 MS. MESERVE: But don't these segments have  
24 deficient pavement conditions, as we've discussed  
25 before?



1           WITNESS CHOA: I'm sorry. Can we go back to  
2 that last -- we're going back and forth between two  
3 tables.

4           MS. MESERVE: Sorry.

5           MR. MIZELL: I'm going to object the question  
6 as vague and ambiguous.

7           If Ms. Meserve is equating the term  
8 "deficient" to mean a PCI of 55 or below, I think that  
9 definition needs to be laid out on the record.

10          MS. MESERVE: I think there's a clear record  
11 that the pavement conditions are deficient in these two  
12 segments, and there's still an increase in traffic on  
13 the deficient conditions. So what I'm pointing to is  
14 it appears there's an error in the Supplemental EIR.

15          CO-HEARING OFFICER DODUC: So, Mr. Mizell --  
16 Mr. Choa, can you explain -- help me better understand  
17 these two tables and why these two conditions were --  
18 conclusions were reached?

19          WITNESS CHOA: Mr. Hunt, can you go to Page  
20 19-14.

21          Again, the -- the determination of "deficient"  
22 was based on, again, field work and also by myself in  
23 terms of the area, since PCI was unknown per Yolo  
24 County as shown on the bottom of that line and then of  
25 the subsequent -- subsequent page.

1           So -- so it is correct that --

2           CO-HEARING OFFICER DODUC: Can we keep  
3 scrolling, Mr. Hunt? There we go. Okay. All right.

4           MS. MESERVE: So your analysis assumed that  
5 the pavement conditions were deficient, correct?

6           WITNESS CHOA: That is correct, yes.

7           MS. MESERVE: And there would be an increase  
8 of a range of 124 to over 500 for these two segments as  
9 a result of the proposed project, correct?

10          WITNESS CHOA: For Yolo County Segments 02 and  
11 03.

12          MS. MESERVE: That's right. So why does the  
13 Supplemental EIR conclude that there wouldn't be a  
14 significant impact? Or that there -- I'm sorry. To  
15 restate that, that there would be a no-impact  
16 conclusion?

17          CO-HEARING OFFICER DODUC: Was it because it  
18 was under the 680 threshold identified by the County?

19          WITNESS CHOA: I believe that is the case,  
20 Madam Chair. I will need to review this during our  
21 break or --

22          CO-HEARING OFFICER DODUC: No. I'll let you  
23 do it now, please. Actually, if we were to go back to  
24 -- I forgot what page it was, Ms. Meserve. I believe  
25 it was there.

1                   WITNESS CHOA: Mr. Hunt, I believe it was on  
2 Page 28.

3                   MS. MESERVE: The threshold identified by the  
4 County is any increase on a deficient road.

5                   MR. MIZELL: Objection, misstates the  
6 testimony. It indicates any increase on a roadway  
7 identified with a PCI of 51 or greater.

8                   CO-HEARING OFFICER DODUC: So, Mr. Choa, I am  
9 recalling from your previous answer that the reason the  
10 522, 565 and 124 to 310 increase in hourly volume is  
11 considered by you to be not an impact is because it is  
12 below the 680 hourly volume threshold.

13                   WITNESS CHOA: That is correct, Madam Chair.

14                   MS. MESERVE: Madam Chair is a traffic  
15 engineer in addition, it appears.

16                   CO-HEARING OFFICER DODUC: No, I can just read  
17 tables.

18                   MS. MESERVE: All right. We'll leave it at  
19 that. I think it's probably enough. We can,  
20 obviously, address these in comments on the  
21 Supplemental EIR, the discrepancy.

22                   Thank you. That concludes my questions.

23                   CO-HEARING OFFICER DODUC: Thank you,  
24 Ms. Meserve. Enjoy your camping trip. I am deeply  
25 jealous and would like to see photos when you return.

1           MS. MESERVE: I know, all the things we didn't  
2 do. I will note just for the record that I won't be  
3 able to be here on Monday. So I will have questions  
4 for Panel 2. If Panel 2 is still going by Thursday, I  
5 would like to ask those questions. And I will have a  
6 -- my law clerk will be taking assiduous notes on  
7 Monday so that I, hopefully, will be aware of what  
8 occurs. Thank you very much.

9           CO-HEARING OFFICER DODUC: Thank you,  
10 Ms. Meserve. Thank you everyone. We will take our  
11 lunch break and return at 1:50.

12           At this time, Mr. Mizell, do you -- I'm not  
13 requiring you, but do you have any idea that you would  
14 like to share with, in particular, Mr. Jackson of which  
15 witnesses from Panel 3 [sic] you'll be presenting later  
16 today?

17           MR. MIZELL: Depending upon how much time is  
18 available, I can schedule the aquatic biologist to  
19 begin. And if we have a full hour, we will get through  
20 the terrestrial biologist as well. So the way I've  
21 broken it up is I need about 40 minutes for the  
22 aquatics and 20 minutes for the terrestrial.

23           CO-HEARING OFFICER DODUC: All right. Thank  
24 you. With that, we'll see everyone at 1:50.

25           (The luncheon recess was taken at 12:50 p.m.)



1 Friday, August 3, 2018 1:50 p.m.

2 PROCEEDINGS

3 ---000---

4 CO-HEARING OFFICER DODUC: All right. It is  
5 1:50. We are back.

6 And we now turn to Miss Des Jardins for her  
7 cross-examination of this panel.

8 Miss Des Jardins, please begin by providing us  
9 with the topic areas you'll be covering.

10 MS. DES JARDINS: I wanted to ask  
11 Mr. Bednarski a little bit more about his experience  
12 with tunneling projects, and his Statement of  
13 Qualifications.

14 I also wanted to ask about his testimony about  
15 the -- the tunnel boring and about impacts on surface  
16 structures, including the levees.

17 I wanted to ask him about the test -- the  
18 testimony about the tunnel seismic design, and  
19 testimony about the geotechnical conditions for the  
20 tunneling.

21 And also about, let's see, the -- some of the  
22 assumptions for Byron Tract Forebay design and safety  
23 issues, and also about the -- some of the assumptions  
24 for hauling large segments by a truck and by barge --  
25 of tunnel segments by truck and by barge.

1 CO-HEARING OFFICER DODUC: So all your  
2 questions are directed to Mr. Bednarski.

3 MS. DES JARDINS: Yes.

4 CO-HEARING OFFICER DODUC: All right.

5 MS. DES JARDINS: Thank you.

6 CO-HEARING OFFICER DODUC: Mr. Mizell.

7 MR. MIZELL: If I might ask for a little bit  
8 of clarification.

9 So, before lunch, we fielded some questions  
10 about expertise and the relevant background of various  
11 expert witnesses. Miss Des Jardins indicated she  
12 intends to ask those same questions.

13 To what extent are the credentials of  
14 witnesses who have appeared before you in other aspects  
15 and have always remained qualified as expert witnesses  
16 still an open question in rebuttal?

17 I can understand maybe qualification questions  
18 that go to new witnesses, but to the extent that  
19 Mr. Bednarski and Miss Buchholz have appeared before  
20 you multiple times and been questioned on their  
21 expertises, and those have not changed for their  
22 rebuttal testimony, and rebuttal testimony is still  
23 within the purview of their direct, it seems to me a  
24 little bit late and maybe not particularly efficient.

25 So I'm just asking for a little bit of

1 clarification. To what extent are we allowed to  
2 question the expertises of any witness that appears in  
3 rebuttal?

4 CO-HEARING OFFICER DODUC: Miss Des Jardins  
5 will ask her question and we'll deal with her questions  
6 as they come up.

7 To date, the questions with respect to  
8 qualifications have not taken a lot of time. I  
9 consider it part of the foundational for some of the  
10 cross-examination that's taking place, so I don't see  
11 it as a problem to date.

12 If we do get into extensive rehashing of SQOs  
13 (sic) that have not changed since previous questions of  
14 the hearing, then we'll deal with your concern then,  
15 Mr. Mizell.

16 MR. MIZELL: Thank you.

17 CO-HEARING OFFICER DODUC: All right.  
18 Miss Des Jardins, please proceed.

19 MS. DES JARDINS: I would like, first, to  
20 respond -- to have an opportunity to respond to  
21 Mr. Mizell's statement.

22 CO-HEARING OFFICER DODUC: You do not need to  
23 respond because there is nothing to respond to at the  
24 moment.

25 Please go ahead with your questions and if you



1 ask a question to which he objects, then you may  
2 respond.

3 MS. DES JARDINS: Okay. Thank you.

4 CROSS-EXAMINATION BY

5 MS. DES JARDINS: So I would like to go to  
6 Exhibit DWR-17, which is your Statement of  
7 Qualifications.

8 (Exhibit displayed on screen.)

9 MS. DES JARDINS: So let's scroll -- Scroll  
10 out, please, instead of 172 percent.

11 (Exhibit displayed on screen.)

12 MS. DES JARDINS: Scroll -- Scroll down. I  
13 just wanted to look at his current experience.

14 (Exhibit displayed on screen.)

15 MS. DES JARDINS: Yeah. Thank you. That's  
16 fine.

17 So you're listed as the Section Manager for  
18 Water Supply Initiatives; is that correct?

19 WITNESS BEDNARSKI: That's correct.

20 MS. DES JARDINS: So this -- So you're not a  
21 Principal Engineer on that Project?

22 WITNESS BEDNARSKI: I -- At Metropolitan, that  
23 is the classification I hold. It is a higher level  
24 than a Principal Engineer at Metropolitan Water  
25 District.

1 MS. DES JARDINS: It's -- Is it a higher level  
2 in seniority, or is it a -- is it a higher level in  
3 terms of signoff, or does it mean that you are  
4 responsible for the engineering design of the Project?

5 WITNESS BEDNARSKI: I guess it's a higher  
6 level, in response to one of your questions, in  
7 signoff.

8 As a Section Manager, I manage -- I can manage  
9 what we call units of Engineers, teams of Engineers,  
10 and individual Engineers. So, depending on the  
11 organization underneath the section -- Section Manager,  
12 I can either be managing individuals directly or teams  
13 of individuals that would include professionals,  
14 professional Engineers.

15 MS. DES JARDINS: So I wanted to ask you about  
16 your direct engineering experience.

17 So let's go to Page 2.

18 (Exhibit displayed on screen.)

19 MS. DES JARDINS: And this says that you  
20 were -- from '91 to 2000, you were Project Manager and  
21 Engineer on various Water Treatment Plant Projects; is  
22 that correct?

23 WITNESS BEDNARSKI: That's correct.

24 MS. DES JARDINS: So -- So your main  
25 experience as an Engineer for MWD was -- was on Water

1 Treatment Plants?

2 WITNESS BEDNARSKI: I have done -- As my  
3 Statement of Qualifications says, I've done design and  
4 Project Engineering on various Water Treatment Plant  
5 expansions and upgrades, yes.

6 MS. DES JARDINS: So let's -- So let's go to  
7 the -- It also mentions the Inland Feeder Program, and  
8 that did involve a Tunnel Project; correct?

9 WITNESS BEDNARSKI: Yes, it did.

10 MS. DES JARDINS: But you were the Program  
11 Manager for that project.

12 MR. MIZELL: I'm going to enter an objection  
13 here.

14 If we might streamline this, just to cut to  
15 the chase. We're going through Mr. Bednarski's SOQ now  
16 virtually item by item and asking if it's true.

17 These are questions that should have come out  
18 probably in Part 1 when Mr. Bednarski first appeared  
19 before you.

20 CO-HEARING OFFICER DODUC: So,  
21 Miss Des Jardins, please explain why this line of  
22 questioning is relevant in this rebuttal phase.

23 MS. DES JARDINS: Mr. Bednarski is not only  
24 testifying about engineering for the Project, he's  
25 testifying that he feels that he is more qualified than

1 other experts that have testified before you in this  
2 proceeding.

3 And I think, given that testimony, it's good  
4 to look at what his tunnel -- He specifically states  
5 that --

6 CO-HEARING OFFICER DODUC: Hold on,  
7 Miss Des Jardins.

8 MS. DES JARDINS: -- that --

9 CO-HEARING OFFICER DODUC: Miss Des  
10 Jardins . . .

11 MS. DES JARDINS: Thank you.

12 CO-HEARING OFFICER DODUC: Miss Des  
13 Jardins . . .

14 Oh.

15 Mr. Mizell, do you wish to respond before I  
16 rule?

17 MR. MIZELL: I would just mention that I don't  
18 believe that's an accurate statement of Mr. Bednarski's  
19 testimony. He makes no comparative statements as to  
20 his expertise vis-à-vis other witnesses.

21 CO-HEARING OFFICER DODUC: All right. The  
22 objection is sustained.

23 MS. DES JARDINS: Okay.

24 (Pause in proceedings.)

25 MS. DES JARDINS: I would like to go to

1 DWR-1212, Page 18 at Line 13.

2 (Exhibit displayed on screen.)

3 MS. DES JARDINS: So . . .

4 (Pause in proceedings.)

5 MS. DES JARDINS: You -- It -- It states that  
6 the -- Let's . . .

7 I wanted to ask you that you -- you state that  
8 the risk -- you feel that the risk of tunneling in  
9 these conditions is not -- is not high; correct?

10 WITNESS BEDNARSKI: No. That is not the point  
11 of this paragraph.

12 (Pause in proceedings.)

13 MS. DES JARDINS: I'd like to go to Page 19 at  
14 22.

15 (Exhibit displayed on screen.)

16 MS. DES JARDINS: So it states (reading):

17 "All of this material will be  
18 homogenized in the TBM cutter head,  
19 thereby creating ideal conditions for  
20 pressurized face TBMs to operate."

21 And it -- So -- So is -- Isn't this stating  
22 that you feel that the Delta is idealized conditions  
23 for a tunnel-boring machine?

24 WITNESS BEDNARSKI: We believe that the  
25 conditions are appropriate for the pressurized face

1 machines that I've presented in our testimony that we  
2 presented in the Conceptual Engineering Report, yes.

3 MS. DES JARDINS: This goes considerably  
4 beyond that and says that they're ideal.

5 What -- What -- What do you base that on?

6 WITNESS BEDNARSKI: I base that on our  
7 understanding of other projects that these types of  
8 machines have worked in that I presented in, I believe  
9 it was Part 1 rebuttal. We talked about a variety of  
10 different projects.

11 And from our discussions with Tunneling  
12 Contractors that we documented in my testimony here,  
13 and in previous testimony, and the findings that have  
14 been presented by our tunneling contract -- tunneling  
15 consultants that have been attached as attachments to  
16 the Conceptual Engineering Report.

17 MS. DES JARDINS: So, I wanted to ask you  
18 about a specific project.

19 Are you familiar with the Alaskan Way Viaduct  
20 Tunnel?

21 WITNESS BEDNARSKI: Yes, I am.

22 MS. DES JARDINS: And wasn't that project in  
23 similar layers of sand, salts and clays to this  
24 Project?

25 WITNESS BEDNARSKI: I don't believe so.

1 MS. DES JARDINS: How is it different?

2 WITNESS BEDNARSKI: My understanding of that  
3 that project is, the geology was primarily  
4 characterized as glacial till.

5 MS. DES JARDINS: But it was sedimentary  
6 deposits; was it not?

7 WITNESS BEDNARSKI: I do not believe that  
8 glacial till is sedimentary deposits.

9 MS. DES JARDINS: Was it deposits of sand,  
10 salts and clays?

11 WITNESS BEDNARSKI: I have not studied their  
12 geotechnical baseline report. I would not be able to  
13 characterize it other than the characterization that  
14 I've given you.

15 Glacial till includes cobbles and boulders and  
16 other obstructions that we do not expect to find within  
17 the Delta along the tunnel alignment.

18 CO-HEARING OFFICER DODUC: So,  
19 Miss Des Jardins, what is the relevance?

20 MS. DES JARDINS: Are you aware that --

21 CO-HEARING OFFICER DODUC: Miss Des Jardins,  
22 what is the relevance?

23 MS. DES JARDINS: The relevance is that  
24 because of the kind of sedimentary -- Because of the  
25 kind of sand, silt and clay, there was a large sinkhole

1 that formed behind the tunneling-boring machine in the  
2 Alaskan Way Viaduct.

3 CO-HEARING OFFICER DODUC: And?

4 MS. DES JARDINS: I wanted to ask him about  
5 that.

6 CO-HEARING OFFICER DODUC: And?

7 How does it relate here?

8 MS. DES JARDINS: Given that experience, don't  
9 you think that sink -- that there is a risk of  
10 uncontrolled settlement in this Project, in these kinds  
11 of soils?

12 WITNESS BEDNARSKI: I don't believe I've ever  
13 said there's not a risk of that.

14 I believe that I've always presented that  
15 fairly and countered that with saying that we plan to  
16 have a series of Project specifications along with  
17 monitoring programs that would minimize that risk.

18 MS. DES JARDINS: Okay. And -- And one of  
19 those would be settlement monitoring?

20 WITNESS BEDNARSKI: That is correct.

21 MS. DES JARDINS: Okay. Let's go to -- I'd  
22 like to go to Page 25.

23 (Exhibit displayed on screen.)

24 MS. DES JARDINS: And you say --

25 MR. MIZELL: My apologies --



1 MS. DES JARDINS: That (reading):

2 "Mr. Neudeck testified that he is  
3 concerned that a 'prescriptive  
4 specification' for settlement monitoring  
5 has not been developed by DWR . . ."

6 You state on Line 12 that (reading):

7 "DWR represents that preliminary and  
8 final design is the appropriate time to  
9 develop the detailed settlement  
10 specifications . . ."

11 Can you tell me, when you make that statement,  
12 are -- are you personally stating that?

13 MR. MIZELL: Objection as to . . . asked and  
14 answered.

15 We've already gone over Mr. Bednarski's role  
16 as an expert here appearing on behalf of DWR. He's  
17 making his testimony on DWR's behalf, and his personal  
18 beliefs with regard to this I don't believe are  
19 necessarily instructive.

20 CO-HEARING OFFICER DODUC: Where are you going  
21 with this, Miss Des Jardins?

22 MS. DES JARDINS: I would like to know if a  
23 Geotechnical Engineer is representing this, and, if so,  
24 who?

25 CO-HEARING OFFICER DODUC: This is

1 Mr. Bednarski's testimony on behalf of Petitioners.

2 MS. DES JARDINS: And he said it's based on  
3 Engineers in the Project.

4 Who -- Who -- Who, with the requisite  
5 geotechnical qualifications, believes that this is not  
6 the time to develop detailed settlement specifications?

7 CO-HEARING OFFICER DODUC: Mr. Bednarski, was  
8 this a -- This statement that begins on Line 12 and  
9 ends on Line 15, was this a technical decision that was  
10 made?

11 WITNESS BEDNARSKI: Yes. I believe it was a  
12 technical decision made by the Engineering Team that  
13 assembled the Conceptual Engineering Report based on  
14 all of the input that we have received as a team from  
15 various sources during the development of that report.

16 MS. DES JARDINS: And -- And -- And who were  
17 the Geotechnical Engineers on that team who approved  
18 that decision?

19 MR. MIZELL: I'm going to object as to  
20 relevance.

21 Mr. Bednarski is the proffered witness and an  
22 expert and capable of relying upon Technical Reports  
23 such as the CER.

24 CO-HEARING OFFICER DODUC: Sustained.

25 MS. DES JARDINS: Okay. Mr. Bednarski, you

1 cite -- you say (reading):

2 ". . . DWR has committed to

3 monitoring . . . "

4 Line 8 it says (reading):

5 "However, DWR has committed to  
6 monitoring settlement along alignment to  
7 ensure that uncontrolled face loss does  
8 not lead to excessive settlement along  
9 the tunnel alignment."

10 And you referred to SWRCB-111.

11 I'd like to go to SWRCB-111, Page 3-4. Can we  
12 pull that up, please?

13 MS. RAISIS: What was the page again?

14 MS. DES JARDINS: Page-4.

15 (Pause in proceedings.)

16 MS. RAISIS: Sorry.

17 (Pause in proceedings.)

18 MS. DES JARDINS: I apologize.

19 There it is.

20 MR. BERLINER: Top of this page?

21 MS. DES JARDINS: Yes.

22 And at Line 14, it states (reading):

23 "Should geotechnical reports  
24 indicate high settlement risk in certain  
25 areas, pre-excavation ground

1 stabilization . . . will be performed  
2 ahead of the TBM."

3 Is that a fair representation?

4 WITNESS BEDNARSKI: That's what that sentence  
5 says, yes.

6 MS. DES JARDINS: And so this doesn't define  
7 what the areas are; does it?

8 CO-HEARING OFFICER DODUC: Miss Ansley.

9 MS. ANSLEY: Yeah. I'd like to -- I'd like to  
10 make sure the witness is clear.

11 Jumping to Page 3-4, if the witness needs to  
12 see, two pages before it tells you which commitment  
13 we're actually in.

14 I'd like to ask that he be allowed to -- to  
15 make sure that he knows the context of these isolated  
16 sentences, because this is three-quarters the way down  
17 a section of Environmental Commitment.

18 If Mr. Bednarski feels comfortable enough that  
19 he knows exactly what page we're on, then that's fine.  
20 So that would be my objection.

21 MS. DES JARDINS: Respectfully, this is the  
22 exact page he cited.

23 MS. ANSLEY: That's fine. As long as -- I'm  
24 just trying to make sure.

25 MS. DES JARDINS: I presented --

1 CO-HEARING OFFICER DODUC: Enough. Enough.  
2 Enough.

3 Miss Des Jardins, what is your question?

4 MS. DES JARDINS: So I said . . .

5 This addresses the Settlement Monitoring and  
6 Response Program; correct? This is what you cited in  
7 your testimony.

8 WITNESS BEDNARSKI: That's correct.

9 MS. DES JARDINS: And it says -- It says if  
10 they should (reading):

11 ". . . Indicate high settlement risk in  
12 certain areas . . ."

13 I don't see a definition of "areas" here. Is  
14 there a definition of the areas where . . . areas of  
15 concern in this particular MMR?

16 WITNESS BEDNARSKI: I think we used the -- the  
17 sentence to indicate that, in the future, specific  
18 areas along the tunnel alignment could be identified  
19 through the geotechnical investigations that are yet to  
20 be conducted that could show these characteristics, and  
21 that such ground treatment would have to take place.

22 We weren't trying to define where those areas  
23 were at this present time, because we do not know where  
24 those are without the geotechnical investigations that  
25 are forthcoming.

1 MS. DES JARDINS: And this says "high  
2 settlement risk."

3 What about moderate settlement risk?

4 WITNESS BEDNARSKI: I am assuming that, as we  
5 collect this geotechnical information, we will begin to  
6 better understand the potential for settlement along  
7 the entire alignment.

8 And depending upon where and the mag -- where  
9 that settlement occurs and the magnitude of the  
10 settlement at that location, some areas would be at  
11 higher risk.

12 So, for example, crossing underneath the  
13 levee, there could be even small amounts of settlement,  
14 but that could present a high settlement risk overall  
15 to the levee. So that would become a high-priority  
16 area that we would identify and address.

17 There could be other areas where you get  
18 potentially higher levels of settlement in the middle  
19 of farmland, but that may not be designated in the  
20 future as a high settlement risk.

21 We are yet to make those determinations.

22 MS. DES JARDINS: So, I'd like to go to the  
23 Final EIR, Exhibit SWRCB-102, Page 9-288.

24 Chapter 9, Page 9 -- So Chapter 9, Geology and  
25 Seismicity, Page 9-288.

1 I think if you just type in 288.

2 (Exhibit displayed on screen.)

3 MS. DES JARDINS: One more page.

4 (Exhibit displayed on screen.)

5 MS. DES JARDINS: It's the next page.

6 (Exhibit displayed on screen.)

7 MS. DES JARDINS: Yeah, up.

8 (Exhibit displayed on screen.)

9 MS. DES JARDINS: There it is.

10 And around Line . . . 18, you say -- This  
11 discusses risk of settlement. You have an estimate for  
12 settlement.

13 And then on Line 23, it says (reading):

14 "Other facilities that may be  
15 determined to be critical infrastructure  
16 include natural gas pipelines . . . local  
17 electrical -- the proposed East Bay MUD  
18 tunnel, levees, and local electrical  
19 distribution and communication lines."

20 Is -- Is that a correct reading of that  
21 sentence on Line 23?

22 MR. MIZELL: I'm going to object to this line  
23 of questioning. We have not been shown a connection  
24 back to the rebuttal testimony of Mr. Bednarski nor the  
25 Supplemental EIR/EIS.

1           So, as far as I'm aware at this point in time,  
2 this line of questioning about the Final EIR is beyond  
3 the scope of rebuttal.

4           CO-HEARING OFFICER DODUC: Miss Des Jardins,  
5 make the connection, please.

6           MS. DES JARDINS: The -- Specifically, the  
7 MMR . . .

8           Mr. Mizell just argued that the actual  
9 commitments by the Department of Water Resources are in  
10 the Final EIR. And the Final EIR indicates that levees  
11 only may be determined to be critical infrastructure  
12 for evaluation and protection of settlement during  
13 tunneling.

14           And since he's stating that these commitments  
15 are what protect the levees, I wanted to see what those  
16 commitments actually are.

17           CO-HEARING OFFICER DODUC: And how is that  
18 relevant to . . .

19           I just don't -- I just don't see the  
20 connection to the rebuttal.

21           MS. DES JARDINS: He stated that the MMR --  
22 The MMR only says "other areas." It doesn't define it.

23           He's now saying it includes levees. That  
24 is -- That is not -- I -- It is contradictory to . . .

25           It's not clear where and how DWR actually



1 specified that levees would be considered high risk and  
2 would be protected during -- during tunneling.

3 And --

4 CO-HEARING OFFICER DODUC: And what is --

5 MS. DES JARDINS: -- I wanted to ask about  
6 this specific passage because it's --

7 CO-HEARING OFFICER DODUC: And I want to know  
8 how this relates to the change that is reflected in the  
9 Supplemental EIR.

10 MS. DES JARDINS: This is about his rebuttal  
11 testimony that the levees would be protected during  
12 settlement -- during tunneling by future evaluation.

13 And to the extent that the commitment is made  
14 in the MMR and the Final EIR/EIS, I wanted to ask about  
15 the basis of that opinion.

16 CO-HEARING OFFICER DODUC: Mr. Mizell.

17 MR. MIZELL: Yeah. I respond that  
18 Miss Des Jardins is mischaracterizing Mr. Bednarski's  
19 oral testimony in response to an earlier question of  
20 hers.

21 She questioned him on when the additional  
22 geotechnical reports would be produced and how that  
23 would indicate high-risk areas for settlement.

24 Mr. Bednarski said that's yet to be determined  
25 but, for instance, risk is not equated with settlement

1 amount.

2           And so if a small settlement amount -- and I'm  
3 paraphrasing -- was under a levee, it would propose a  
4 high risk.

5           His reference to a levee in a question not  
6 related to the MMRP does not now open the door to any  
7 question, regardless of its scope, on levee settlement.

8           CO-HEARING OFFICER DODUC: Understood now.

9           The objection is sustained.

10          MS. DES JARDINS: All right.

11                   (Pause in proceedings.)

12          MS. DES JARDINS: So I wanted to go to Page 20  
13 at Line 8 of exhibit -- your testimony, Page 20 at  
14 Line 8.

15                   (Exhibit displayed on screen.)

16          MS. DES JARDINS: So, you state here

17 (reading):

18                   "Investigations completed to date by  
19 DWR indicate . . . there is little or no  
20 organic materials at the proposed depth  
21 of the tunnels, and . . . the ground is  
22 actually quite firm (generally stiff to  
23 hard fine soils and dense to very dense  
24 granular soils) at tunnel depth."

25          And you cite the exhibits.

1           So, I wanted to know -- So this cites the  
2 Conceptual Engineering Report; correct?

3           WITNESS BEDNARSKI: That's correct.

4           MS. DES JARDINS: Why doesn't it cite a  
5 Geotechnical Report?

6           WITNESS BEDNARSKI: We have summarized the  
7 data collected through a variety of existing data in  
8 the Conceptual Engineering Report, and we have  
9 presented that information as the basis of making the  
10 recommendations for the WaterFix facilities.

11           MS. DES JARDINS: I wanted to bring up  
12 Exhibit DDJ-312.

13           (Exhibit displayed on screen.)

14           MS. DES JARDINS: Which I assume is one of the  
15 Geotechnical Reports.

16           Let's scroll out, please.

17           (Exhibit displayed on screen.)

18           CO-HEARING OFFICER DODUC: And could we  
19 identify for the record and the witness what this  
20 document is?

21           MS. DES JARDINS: It says (reading):

22                     "Draft Phase 2 Geotechnical  
23 Investigation-Over Water Geotechnical  
24 Data Report-Pipeline/Tunnel option."

25           Do you see this? Is this the kind of

1 information that you reviewed?

2 WITNESS BEDNARSKI: I -- I have seen this  
3 report before, yes.

4 MS. DES JARDINS: Okay. So . . . I'd like to  
5 go to Page ES-10.

6 (Exhibit displayed on screen.)

7 MS. DES JARDINS: And it says (reading):

8 "The main purpose of the Phase 2  
9 geotechnical investigation is to provide  
10 at relevant subsurface information along  
11 the relevant conveyance optional  
12 alignments in support of a preparation of  
13 Environmental Impact Report and  
14 Environmental Impact Statement."

15 Do you see that? It was on Page ES-10.

16 WITNESS BEDNARSKI: I didn't see that  
17 information.

18 MS. DES JARDINS: It was ES-10. It was on  
19 there.

20 CO-HEARING OFFICER DODUC: And so whatever the  
21 purpose of this document is, what is your line of  
22 questioning and how does it relate back to  
23 Mr. Bednarski's testimony?

24 MS. DES JARDINS: I wanted to ask about the  
25 soil tests.

1 MR. MIZELL: And I think, with that  
2 clarification, I'd like to lodge an objection.

3 We've established no connection between a  
4 draft unsigned report from 2011 and the Technical  
5 Reports that Mr. Bednarski mentioned in his response a  
6 moment ago with regard to where the geotechnical  
7 information was summarized.

8 So, unless Miss Des Jardins can draw the  
9 connection, we're not even certain if this report was  
10 what was referenced by Mr. Bednarski in his last  
11 answer.

12 CO-HEARING OFFICER DODUC: Mr. Bednarski, is  
13 this report something you recall reviewing that  
14 contributed to the finding in your testimony?

15 WITNESS BEDNARSKI: It -- It may have been,  
16 but, as Mr. Mizell said, the report shown here is an  
17 unsigned report, and I would think that we would be  
18 referring to final reports. This one does not appear  
19 to be final since it was not signed off.

20 So there is the potential that maybe some  
21 revisions were made to the version we're looking at now  
22 before it was finally signed off. I couldn't --

23 CO-HEARING OFFICER DODUC: All right.

24 WITNESS BEDNARSKI: -- speculate on that.

25 CO-HEARING OFFICER DODUC: We'll keep that

1 caveat in mind --

2 WITNESS BEDNARSKI: Okay.

3 CO-HEARING OFFICER DODUC: -- as

4 Miss Des Jardins asks her --

5 WITNESS BEDNARSKI: Very good.

6 CO-HEARING OFFICER DODUC: -- question.

7 MS. DES JARDINS: I'd like to go to Page --

8 .pdf Page 42, please.

9 (Exhibit displayed on screen.)

10 MS. DES JARDINS: And these are . . .

11 Mr. Bednarski, are you familiar with triaxial

12 tests?

13 WITNESS BEDNARSKI: I am not.

14 MS. DES JARDINS: Are you familiar with soil

15 tests in general?

16 WITNESS BEDNARSKI: Not to the level of detail

17 shown in these tables.

18 MS. DES JARDINS: And so you don't know -- So

19 you don't understand soil strength -- So you don't

20 understand any of the soil strength -- You did not

21 review any of the soil strength data yourself --

22 CO-HEARING OFFICER DODUC: Miss Ansley.

23 MS. DES JARDINS: -- in coming to that

24 conclusion?

25 CO-HEARING OFFICER DODUC: Miss Ansley.

1 MS. ANSLEY: Objection: Lacks foundation in  
2 that we haven't established that this specific data was  
3 the data that Mr. Bednarski, one, even might have had  
4 to answer that for himself.

5 Also mischaracterized what he just said.  
6 Her -- He said that he did not have the level of  
7 specificity with triaxial tests, not that he does not  
8 understand soil strength.

9 So I'd ask her to rephrase that question so  
10 that he gives a clear answer on his depth of  
11 understanding on geotechnical information.

12 CO-HEARING OFFICER DODUC: Actually, he can  
13 answer her question if that is indeed the case.

14 Mr. Bednarski.

15 WITNESS BEDNARSKI: I have a -- I have a  
16 general understanding of soil properties and soil  
17 strengths.

18 Typically, I would rely on the geotechnical  
19 staff that is preparing these reports and making these  
20 recommendations as the basis of what information gets  
21 included in the Conceptual Engineering Report.

22 MS. DES JARDINS: Why was the decision made  
23 not to include any results of the soil tests in the  
24 Conceptual Engineering Report?

25 CO-HEARING OFFICER DODUC: Miss Ansley.

1 MS. ANSLEY: I would say, objection: Asked  
2 and answered.

3 She asked him this, why he cited the figures  
4 he cited, and he answered fully.

5 And I don't want to go into his answer again,  
6 but he answered why he was referencing figures in the  
7 SCER instead of Geotechnical Reports.

8 CO-HEARING OFFICER DODUC: Is your answer --  
9 Is there a different answer, Mr. Bednarski?

10 WITNESS BEDNARSKI: No. We chose to summarize  
11 that information to a summary level and placed that in  
12 the CER.

13 I believe we've provided references to  
14 specific reports with detailed information that we drew  
15 those conclusions from within the CER.

16 MS. DES JARDINS: What -- What page of the CER  
17 is that?

18 Because I didn't see references to specific  
19 soil reports.

20 WITNESS BEDNARSKI: (Searching through  
21 document.)

22 Okay. Can we go to DWR-1304.

23 (Exhibit displayed on screen.)

24 WITNESS BEDNARSKI: Can we go back to  
25 Appendix A?



1 (Pause in proceedings.)

2 (Exhibit displayed on screen.)

3 WITNESS BEDNARSKI: So, starting in this  
4 section, we provide much of the background information  
5 that went into making the conclusions and  
6 recommendations that we have in the CER based on the  
7 geotechnical information that was available at the time  
8 we prepared this document.

9 I'm sorry I don't know what .pdf page this is,  
10 but there is at the back of this Appendix -- Before we  
11 start getting into subsequent appendices, there's a  
12 list of references that were used, somewhere around  
13 Page A-12 of that document.

14 MS. DES JARDINS: Yes, it's on Page A-12.

15 (Exhibit displayed on screen.)

16 WITNESS BEDNARSKI: And then followed by  
17 various . . .

18 MS. DES JARDINS: Let's go to Page A-12  
19 and . . .

20 WITNESS BEDNARSKI: And then going through  
21 to . . . additional appendices in the back.

22 MS. DES JARDINS: Scroll to the first page.  
23 (Exhibit displayed on screen.)

24 MS. DES JARDINS: Let's look at -- Is there a  
25 reference to the Soil Report on the first page of these

1 references? As I looked through it, I don't see one.

2 MR. MIZELL: I'd like to --

3 CO-HEARING OFFICER DODUC: Mr. Mizell.

4 MR. MIZELL: I'd like to request that we  
5 confirm that the witness had finished answering the  
6 previous question about where the references were  
7 contained.

8 MS. DES JARDINS: All right.

9 MR. MIZELL: Mr. Bednarski, were you through?

10 WITNESS BEDNARSKI: Yes.

11 MR. MIZELL: Okay. Thank you.

12 (Pause in proceedings.)

13 MS. DES JARDINS: I see references to the  
14 Delta Risk Management Strategy Report and seismic  
15 source characterizations.

16 I do not see references to any of DWR's  
17 geotechnical. I only see the U.S. Geological Survey  
18 Open File Report which I know did not have soil tests  
19 in it.

20 And it's -- And it's . . .

21 I don't see a reference to a Soil Report or to  
22 anything with Soil Strength Tests.

23 Or anything resembling a Soil Report.

24 (Pause in proceedings.)

25 WITNESS BEDNARSKI: And the question, I guess,

1 to be answered is?

2 MS. DES JARDINS: What -- What were you  
3 basing -- What reports that don't appear to be -- are  
4 you basing your conclusions that the soils at a level  
5 of the tunnels are -- are stiff to hard, and in that  
6 part of your testimony, because I'm not seeing it -- I  
7 mean, I see overview. I'm not seeing -- And I'm  
8 particularly not seeing a report -- Final Report that's  
9 signed by a Geotechnical Engineer or a Geologist.

10 And it has a kind of stamp on it indicating  
11 that, "This is my professional opinion," that would be  
12 used in any construction effort on anything in this  
13 state.

14 (Pause in proceedings.)

15 WITNESS BEDNARSKI: At this time, I'm not  
16 finding a specific reference to that.

17 MS. DES JARDINS: How is any Protestant in  
18 this hearing available to examine the assertion that  
19 the ground is actually quite firm at tunnel depth if  
20 you don't disclose the results of the soil tests?

21 MR. MIZELL: I'm going to object to the  
22 statement as argumentative.

23 Miss Des Jardins has the opportunity to  
24 cross-examine him. Therefore, she can test the  
25 assertions that are contained in Mr. Bednarski's

1 testimony.

2 She's actually raised something that he's  
3 unable to locate at this time in a very large document,  
4 I might add.

5 So if . . .

6 MS. DES JARDINS: Mr. Bednarski --

7 MR. MIZELL: If we want --

8 CO-HEARING OFFICER DODUC: Hold on.

9 MS. DES JARDINS: What is the basis --

10 CO-HEARING OFFICER DODUC: Hold on.

11 MS. DES JARDINS: -- of that assertion.

12 CO-HEARING OFFICER DODUC: Hold on. He has  
13 not finished.

14 MS. DES JARDINS: Okay. Go ahead.

15 MR. MIZELL: Mr. Bednarski has indicated it's  
16 contained in the CER.

17 If the Board would allow, I might reference a  
18 page number that might refresh his recollection to the  
19 document he cited in his testimony.

20 CO-HEARING OFFICER DODUC: Please do.

21 MS. DES JARDINS: Um-hmm.

22 MR. MIZELL: So, Mr. Bednarski, you might look  
23 at the CER Page 4-4, which is Section 4.1.3 of the CER.

24 WITNESS BEDNARSKI: 4.1.3?

25 MR. MIZELL: That seems to summarize, and

1 there are boring log charts at the -- at Figure  
2 four-point -- 4-4, which is Page 4-19.

3 (Pause in proceedings.)

4 MS. DES JARDINS: 4.1.3 -- excuse me -- is  
5 titled "Collection of Additional Geological and  
6 Geotechnical Information."

7 And the boring logs show -- If we could go  
8 there.

9 The boring logs show graphical depictions of  
10 soil classifications. And nowhere on there -- We could  
11 go look but I don't think Mr. Bednarski is claiming  
12 that those have results of tests that would show  
13 whether it was stiff or soft or very stiff.

14 MR. MIZELL: And I wasn't making any assertion  
15 to the contrary.

16 I am simply trying to assist us in the -- in  
17 the time here that Mr. Bednarski either needs to have  
18 time to review the entire CER to find the data or we  
19 can try and help him through it.

20 CO-HEARING OFFICER DODUC: All right.  
21 Miss Ansley.

22 MS. DES JARDINS: This --

23 CO-HEARING OFFICER DODUC: Hold on.

24 Miss Ansley.

25 MS. ANSLEY: Mr. Bednarski has answered the

1 question and the geotechnical information was  
2 summarized in the figures that he relied on.

3 I would suggest a short break because this is  
4 a very long document.

5 Or if Miss Des Jardins is interested in  
6 finding an exact reference to the Geotechnical Reports,  
7 if they are in the CER, it will take him a moment to  
8 flip through a document, either electronically or on  
9 our laptops, or the three-volume paper version.

10 So we're happy to take a little bit of time  
11 if -- if it will help him more fully answer or answer  
12 that it's not there. It's just a lot of pressure for  
13 him to expand his answer now, so . . .

14 CO-HEARING OFFICER DODUC: So,  
15 Miss Des Jardins, what do you intend to do with this  
16 data?

17 MS. DES JARDINS: I would say I am working  
18 with an expert, and we went over both CERs with a  
19 fine-tooth comb to try to find that information. And  
20 we looked in the USGSO --

21 CO-HEARING OFFICER DODUC: So,  
22 Miss Des Jardins --

23 MS. DES JARDINS: -- and we did not find it.

24 CO-HEARING OFFICER DODUC: Miss Des Jardins,  
25 this information you're seeking from Mr. Bednarski, is

1 it critical for the continuation of your  
2 cross-examination right now?

3 Or is it something that he can get back to you  
4 on so that you can proceed with the remainder 17  
5 minutes of your cross-examination?

6 MS. DES JARDINS: I -- There are other  
7 questions that could -- I could do.

8 I -- I would like to know, because it is  
9 there -- it is fundamental to his testimony about risks  
10 of tunneling.

11 CO-HEARING OFFICER DODUC: So what --

12 MS. DES JARDINS: What's the basis of that.

13 CO-HEARING OFFICER DODUC: So,  
14 Miss Des Jardins, I'm going to propose that, after  
15 today, after the break, sometime after he's had a  
16 chance to identify it, that he provide you with that  
17 information.

18 But if it's not critical to the remainder of  
19 your cross-examination, then I suggest you proceed on  
20 to other topics.

21 MS. DES JARDINS: Thank you.

22 Just generally, it's very difficult when  
23 there's references to these very large documents, and  
24 we've searched for things and they're not in there.

25 CO-HEARING OFFICER DODUC: Understood.

1 MS. DES JARDINS: Yeah.

2 So, I'd like to go to Exhibit SWRCB-1212,  
3 Page 23 at Line 2.

4 (Pause in proceedings.)

5 MS. DES JARDINS: I'm sorry. DWR-1212, your  
6 testimony. Apologies. I had a brain freeze there. I  
7 wrote down "SWRCB."

8 CO-HEARING OFFICER DODUC: Would you like a  
9 cookie?

10 MS. DES JARDINS: I think I'll just finish my  
11 cross.

12 DWR -- Let's see. At Line 2 -- Let's go up.  
13 Page 23, Line 2.

14 (Exhibit displayed on screen.)

15 MS. DES JARDINS: So you state on this page  
16 (reading):

17 ". . . DWR correctly identified the basis  
18 of seismic design for the tunnels by  
19 citing the applicable design guideline to  
20 be the DWR Division of Engineering State  
21 Water Project-Seismic Loading Criteria  
22 Report . . ."

23 And so -- So you are asserting that this is  
24 the appropriate report for -- that will determine the  
25 seismic guidelines?



1 WITNESS BEDNARSKI: Is -- Is that a question?

2 MS. DES JARDINS: Yeah.

3 That will determine what seismic criteria are  
4 found.

5 WITNESS BEDNARSKI: No, that is not correct.

6 That paragraph actually is in response to the  
7 statements that I made on the previous page, that  
8 during your cross-examination of -- I believe it was  
9 Mr. Tootle, you were discussing use of the ASCE710  
10 standard as the requirement for seismic design of  
11 tunnels.

12 I believe in my testimony here that we are --  
13 DWR is contending that that is not the correct  
14 reference to use for tunnel design, and referring back  
15 to this DWR standard that was included in the FEIR/EIS.

16 MS. DES JARDINS: I'd like to pull up that  
17 standard.

18 So you state (reading):

19 "This report identifies the  
20 appropriate seismic criteria for the  
21 tunnels is a 1,000-year return period  
22 event or more . . ."

23 Correct?

24 WITNESS BEDNARSKI: That's my recollection of  
25 what's stated in that report.

1 MS. DES JARDINS: Let -- Let's pull it up.  
2 It's in the record. Let's pull up Exhibit DDJ-143.

3 (Exhibit displayed on screen.)

4 MS. DES JARDINS: And I'd like to go to  
5 Page 27. Yeah, .pdf Page 27.

6 (Exhibit displayed on screen.)

7 MS. DES JARDINS: Scroll out a little, please.  
8 It's not easy to read here but it's hard to . . .

9 (Exhibit displayed on screen.)

10 MS. DES JARDINS: And I believe it's at the  
11 bottom.

12 (Exhibit displayed on screen.)

13 MS. DES JARDINS: No. Type in Page 18 and how  
14 it's doing -- Type in Page 18, please.

15 18. Just type in 18 to the .pdf.

16 (Exhibit displayed on screen.)

17 MS. DES JARDINS: There it is. Let's scroll  
18 down to the bottom, please.

19 (Exhibit displayed on screen.)

20 MS. DES JARDINS: Tunnels. This is Section  
21 3.2.3 and the seismic loading report criteria on  
22 tunnels --

23 WITNESS BEDNARSKI: Yes.

24 MS. DES JARDINS: -- that you cite.

25 WITNESS BEDNARSKI: Yes.

1 MS. DES JARDINS: It states (reading):  
2 ". . . Seismic loading criteria that were  
3 used in . . . design of existing SWP  
4 tunnels also have not been found. Many  
5 references" . . .

6 It specifies one (reading):  
7 ". . . Discuss the seismic loading  
8 criteria that could be used for tunnels."  
9 Do you see that? Is that correct?

10 WITNESS BEDNARSKI: Yes, I do see that that  
11 section says that, yes.

12 MS. DES JARDINS: This is the section of the  
13 report discussing tunnels.

14 Where does it say that the minimum criteria is  
15 a recurrent period of a thousand years or more?

16 WITNESS BEDNARSKI: I would -- I have reviewed  
17 that report. I believe there's another section within  
18 that report. I'd have to rook through the different  
19 pages to find out the references they specifically made  
20 to the tunnels.

21 I do recall seeing this section. My  
22 recollection is that there was another section that  
23 actually called that out. Perhaps it was in the  
24 Pipeline section.

25 MS. DES JARDINS: Okay. Well, let's go --

1 MR. MIZELL: If we might bring up the first  
2 page Miss Des Jardins put on the screen.

3 MS. DES JARDINS: Yeah.

4 MR. MIZELL: That's Page 27.

5 (Exhibit displayed on screen.)

6 MS. DES JARDINS: This refers to the American  
7 Society of Civil Engineer standards that you said don't  
8 apply.

9 WITNESS BEDNARSKI: Again, you know, that --  
10 that references to that, yes.

11 But I believe the DWR went to the extent of  
12 setting forth seismic design criteria that was  
13 different from that for their pipeline and tunnel  
14 structures.

15 And I recall that I do remember reviewing  
16 that -- that one section that you just showed that said  
17 it wasn't determined what that should be.

18 But my recollection is that there's another  
19 section that does call that out.

20 MS. DES JARDINS: Let's scroll back up because  
21 let's see what structure this refers to.

22 (Exhibit displayed on screen.)

23 MS. DES JARDINS: "Check Structures."

24 So this is what 3.3.4 --

25 WITNESS BEDNARSKI: Ah. Let's --

1 MS. DES JARDINS: -- Check Structures.

2 WITNESS BEDNARSKI: -- look right above that.

3 MS. DES JARDINS: Yeah.

4 WITNESS BEDNARSKI: Yes. Tunnels. This is  
5 the section that I was referring to.

6 MS. DES JARDINS: Yeah. So I checked  
7 structures and above-ground structure; correct? And  
8 you said that the SCE only applies to above-ground  
9 structures?

10 WITNESS BEDNARSKI: That is my understanding.

11 And now that you brought this page up, this is  
12 the section that I was referring to, 3.3.3, that talks  
13 about (reading):

14 ". . . The recommended criteria shall be  
15 increased to a 1,000-year return period"  
16 for tunnels.

17 MS. DES JARDINS: If the --

18 WITNESS BEDNARSKI: This is the basis of my  
19 statement that's in my testimony on this page.

20 Okay. (Reading):

21 "The seismic loading . . .  
22 evaluation . . . should, at a minimum,  
23 follow the loading criteria . . ."

24 But I wanted to go back up to .pdf Page 3.  
25 It's the Foreward.

1 (Exhibit displayed on screen.)

2 MS. DES JARDINS: Let's scroll back a little,  
3 higher. Somehow when you type in three, it's going to  
4 Page 12.

5 (Exhibit displayed on screen.)

6 MS. DES JARDINS: No. Keep -- Keep going  
7 back.

8 (Exhibit displayed on screen.)

9 MS. DES JARDINS: I believe it's in the  
10 Foreward.

11 (Exhibit displayed on screen.)

12 MS. DES JARDINS: Now I'm not finding it.  
13 Do a search for "starting point."

14 (Exhibit displayed on screen.)

15 MS. DES JARDINS: Oh, there it is, yes.  
16 So it says here (reading):

17 "These guidelines are a suggested  
18 starting point, but do not take the place  
19 of the design engineer's judgment and  
20 additional information . . .  
21 ". . . This report does not prescribe the  
22 procedural . . . process of analyzing the  
23 structure."

24 It's the (reading):

25 ". . . Design engineer's responsibility

1 to select the method of analyses that  
2 best suit the complexity, criticality,  
3 and importance of the facility."

4 Do you see this paragraph? Does it indicate  
5 that these -- these guidelines are mandatory, or are  
6 they just guidelines?

7 WITNESS BEDNARSKI: They use the term  
8 "guidelines," and it's my understanding that that's  
9 what was initially adopted by DWR, the 975 rounded up  
10 to the 1,000-year event, and that's what was in our  
11 2015 CER.

12 MS. DES JARDINS: Okay. And I also wanted to  
13 ask you about the seismic analysis in Appendix M. And  
14 since time is getting short, I wanted to just ask you.

15 Does the seismic analysis consider the tunnel  
16 segment shaft interaction?

17 WITNESS BEDNARSKI: No, it does not.

18 MS. DES JARDINS: And isn't that a significant  
19 issue, because the shafts could be less flexible  
20 because of the concrete pads surrounding?

21 WITNESS BEDNARSKI: Yes, it is. I believe  
22 I've already disclosed that in prior testimony.

23 MS. DES JARDINS: And have you done any  
24 seismic analyses considering the issue of spatial  
25 variation in seismic forces between shafts?

1           WITNESS BEDNARSKI: That is one of the studies  
2 that I mentioned that we will be conducting as we move  
3 into the specialized studies, will be a seismic hazard  
4 analysis along the entire tunnel alignment, along with  
5 developing the seismic hazard criteria for the design  
6 of all of the WaterFix features.

7           MS. DES JARDINS: So -- And, next, I wanted to  
8 ask you about the seismic design.

9           So I assume you're going to design Byron Tract  
10 Forebay to DSOD requirements for seismic hazards?

11          WITNESS BEDNARSKI: Yes, it would.

12          MS. DES JARDINS: But wouldn't the failure of  
13 Clifton Court Forebay in an earthquake be a potential  
14 cause of failure for Byron Tract Forebay as well?

15          WITNESS BEDNARSKI: We would have to analyze  
16 that when we get into preliminary and final design as a  
17 consequence of a Clifton Court failure and its  
18 potential impact on Byron Tract Forebay.

19          MS. DES JARDINS: And would failure of Clifton  
20 Court Forebay from other causes be a potential cause of  
21 failure for Clifton Court Forebay (sic)?

22          MR. MIZELL: Objection: Calls for  
23 speculation; and asked and answered.

24          MS. DES JARDINS: This is an engineering  
25 issue. It has to do with the risk analysis. And risk



1 analyses consider causes of failure for dams. It's  
2 part of the standard practice.

3 CO-HEARING OFFICER DODUC: Mr. Bednarski, I  
4 believe you can answer that using the same answer you  
5 gave for the previous question.

6 WITNESS BEDNARSKI: Yes. Those risk analyses  
7 will be conducted in the future. They're not a part of  
8 the Conceptual Engineering Report.

9 MS. DES JARDINS: So, I'd like to pull up a  
10 copy of Exhibit DDJ-315.

11 (Exhibit displayed on screen.)

12 MS. DES JARDINS: This is a copy of DHCCP  
13 Design Guidelines.

14 And I wanted to ask why this is stamped "Not  
15 for distribution."

16 MS. MORRIS: Objection.

17 CO-HEARING OFFICER DODUC: Miss Morris.

18 MS. MORRIS: Outside the scope of the rebuttal  
19 testimony.

20 This, again, is irrelevant as this was DHCCP  
21 and not California WaterFix. And it's been superseded  
22 by Conceptual Engineering Report that is part of the  
23 record in this hearing.

24 CO-HEARING OFFICER DODUC: So make the linkage  
25 for me, Miss Des Jardins.

1 MS. DES JARDINS: To the extent that this is  
2 proposed to be addressed in future Engineering Reports  
3 and the criteria are specified, I would like to know  
4 why the existing criteria haven't been publicly  
5 distributed. Because it is --

6 CO-HEARING OFFICER DODUC: I do not have the  
7 understanding that this is the existing proposed  
8 criteria.

9 MS. DES JARDINS: Mr. Bednarski, is there a  
10 copy of facility-specific design guidelines?

11 WITNESS BEDNARSKI: To the best of my  
12 knowledge, we have not developed those yet. As the  
13 comment was made previously, the DHCCP is not the  
14 California WaterFix.

15 I am not familiar with when these documents  
16 were produced. However, the development of our design  
17 guidelines would be something we would be doing in the  
18 early stages of our -- our efforts going forward.

19 MS. DES JARDINS: So, are you stating that you  
20 did not have facility-specific design guidelines in  
21 previous -- previously?

22 MS. ANSLEY: Objection: Misstates testimony.  
23 That's not what he was asked.

24 CO-HEARING OFFICER DODUC: And it was -- And  
25 it's outside the scope of rebuttal.

1 Sustained.

2 MS. DES JARDINS: Okay.

3 Okay. The other thing I would like to ask you  
4 is about tunnel segments.

5 Do you -- Do you know the weight of the tunnel  
6 segments?

7 WITNESS BEDNARSKI: I -- I don't recall off  
8 the top of my head. The best I can say is that only  
9 one segment will fit on a California legal truck, so  
10 that would give you an idea of --

11 MS. DES JARDINS: Okay. One --

12 WITNESS BEDNARSKI: -- the size of it.

13 MS. DES JARDINS: One segment.

14 And if only one segment will fit on the truck  
15 and you're not hauling them into Snodgrass Slough, how  
16 much truck traffic is required for the North Delta  
17 intakes?

18 WITNESS BEDNARSKI: I would need to refer to  
19 Mr. Choa and -- for a response on truck traffic.

20 MS. DES JARDINS: Mr. Choa, did you take into  
21 account the fact that only one tunnel segment would fit  
22 on a truck in your truck traffic analysis?

23 WITNESS CHOA: That information was also --  
24 was part of the transportation analysis in the  
25 Chapter 19 for the California WaterFix, yes.

1 MS. DES JARDINS: For Chapter 19 of the  
2 Supplemental or the Final EIR?

3 WITNESS CHOA: For both the Final EIR/EIS and  
4 the Supplemental.

5 MS. DES JARDINS: And -- And so you say that  
6 the segment and -- and . . . the analysis includes the  
7 extra truck traffic from hauling those segments, one  
8 per truck -- one per truck trip.

9 MR. MIZELL: Objection: Asked and answered.

10 We previously went over questions, I believe  
11 yesterday, for quite some time about the interaction  
12 between truck traffic and barge traffic.

13 CO-HEARING OFFICER DODUC: Miss Morris.

14 MS. MORRIS: I'd also -- It also relies on  
15 facts that are not in evidence.

16 MS. DES JARDINS: I think there are facts in  
17 evidence.

18 CO-HEARING OFFICER DODUC: Miss Des Jardins,  
19 are you going on? You have --

20 MS. DES JARDINS: Well, I just wanted to  
21 clarify this, and I would ask for a little bit of extra  
22 time, if needed.

23 I think it's important because there seem to  
24 be a very large number of segments that would be  
25 required for the North Delta intakes.

1 CO-HEARING OFFICER DODUC: And so your  
2 question again is?

3 MS. DES JARDINS: So -- So, the -- So, you are  
4 asserting that the . . . the one -- that the extra  
5 truck traffic trips are factored into the truck traffic  
6 analysis.

7 WITNESS CHOA: I would not characterize it as  
8 "extra."

9 So, truck traffic is a part or included in the  
10 construction traffic analysis.

11 MS. DES JARDINS: Did -- Between -- Between  
12 the -- the Final EIR truck traffic analysis and the  
13 Supplemental EIR, did you specifically add in the extra  
14 truck traffic trips to haul the segments to -- for the  
15 north tunnel intake Reaches? North tunnel Reaches that  
16 were --

17 WITNESS BEDNARSKI: The north tunnel Reaches,  
18 delivery of the segments has always been by truck  
19 traffic.

20 MS. DES JARDINS: Okay.

21 WITNESS BEDNARSKI: The previous analysis  
22 included the barge landing at Potato Slough. That was  
23 not intended for delivery of segments. So any of the  
24 work that was done by Mr. Choa included that number of  
25 trucks that would deliver segments for tunnels --

1 MS. DES JARDINS: Okay.

2 WITNESS BEDNARSKI: -- north -- going north  
3 from there.

4 MS. DES JARDINS: And I saw that your --  
5 your -- you assumed a peak advance rate of about  
6 35 feet per day.

7 Is that roughly . . .

8 WITNESS BEDNARSKI: That's generally correct.  
9 I don't recall the specific number that we used but,  
10 yes, that's what we're estimating.

11 MS. DES JARDINS: And so if you have nine  
12 segments and the rings are 5 feet, it's about 63  
13 segments per day per -- per tunnel?

14 MR. MIZELL: I'm going to object as we don't  
15 have any connection to rebuttal testimony or where in  
16 the Supplemental document we're discussing at this  
17 point.

18 I believe these are general questions related  
19 to the advancement of the tunnel-boring machines, if  
20 I'm understanding the context correctly, and that's --  
21 that's not changing between the Approved Project -- the  
22 Adopted Project, excuse me, and the Supplemental  
23 Project. So --

24 MS. DES JARDINS: I guess I would say also  
25 what about the barge landing that you're eliminating in

1 the South Delta? And are you going to be doing more  
2 trucking because of that and removal of that land?

3 MR. MIZELL: I'm going to object as asked and  
4 answered. Yesterday, we went over the interaction.

5 CO-HEARING OFFICER DODUC: You did.

6 MS. DES JARDINS: What?

7 CO-HEARING OFFICER DODUC: You did.

8 MS. DES JARDINS: Earlier. And so I -- How  
9 many -- If -- If you need about 63 segments per day,  
10 how much would it require -- how many truck trips would  
11 it require for those two Reaches?

12 MR. MIZELL: Objection: Asked and answered.

13 MS. DES JARDINS: I think that it's, like, 126  
14 pickups per --

15 CO-HEARING OFFICER DODUC: All right. Enough.

16 Miss Des Jardins, let's move on.

17 MS. DES JARDINS: Okay. That . . . I think  
18 that . . .

19 (Pause in proceedings.)

20 MS. DES JARDINS: I think that concludes my  
21 testimony (sic). Thank you.

22 CO-HEARING OFFICER DODUC: Thank you.

23 Let us take a break. And when we return --  
24 Let's do a time check.

25 Mr. Brodsky is here. We will resume at 3:15.

1 Mr. Brodsky, you still anticipate needing an  
2 hour?

3 MR. BRODSKY: Yes, ma'am.

4 CO-HEARING OFFICER DODUC: That will take us  
5 to 4:15.

6 Miss Suard, you still anticipate --

7 MS. SUARD: 15 minutes.

8 CO-HEARING OFFICER DODUC: -- 15 minutes.

9 Mr. Mizell, we are not going to get to your  
10 witness today.

11 MR. MIZELL: Okay.

12 CO-HEARING OFFICER DODUC: Let them go home --  
13 him or her go home.

14 MR. MIZELL: Thank you very much.

15 CO-HEARING OFFICER DODUC: All right. We will  
16 return at 3:15.

17 (Recess taken at 2:57 p.m.)

18 (Proceedings resumed at 3:15 p.m.):

19 CO-HEARING OFFICER DODUC: All right. It's  
20 3:15. We're back in session.

21 We have cross-examination by Mr. Brodsky, and  
22 then Miss Suard, and . . . maybe Miss Daly if she is  
23 still around.

24 And for all those just tuning in, we are not  
25 going to get to DWR's second panel today. We will get



1 to them on Monday when we return.

2 Miss Suard.

3 MS. SUARD: Nicki Suard, Snug Harbor.

4 I do believe Miss Daly is going to have some  
5 questions.

6 CO-HEARING OFFICER DODUC: All right.

7 MS. SUARD: Thank you.

8 CO-HEARING OFFICER DODUC: All right. With  
9 that, we will now turn to Mr. Brodsky.

10 MR. BRODSKY: Thank you, Madam Hearing  
11 Officer.

12 Michael Brodsky on behalf of Save the  
13 California Delta Alliance.

14 And --

15 CO-HEARING OFFICER DODUC: And, Mr. Brodsky,  
16 while your voice is crystal clear to me, I don't  
17 believe your microphone is on.

18 MR. BRODSKY: Is that better?

19 CO-HEARING OFFICER DODUC: (Nodding head.)

20 MR. BRODSKY: Michael Brodsky on behalf of  
21 Save the California Delta Alliance.

22 And I'll just quickly run through a preview of  
23 my cross-examination topics as is our custom.

24 So, first, I wanted to ask Mr. Bednarski  
25 regarding his testimony about the elimination of the

1 Snodgrass Slough Barge Landing. That should be very  
2 brief.

3           And then, second, I want to ask Mr. Bednarski  
4 about the changes to the Bouldin Island facility, first  
5 with regard to impacts on the Tower Park Resort, and  
6 then, second, about changes to the location of the  
7 barge dock, as those may impact the anchorages in  
8 Potato Slough.

9           Then I wanted to ask Mr. Bednarski about his  
10 rebuttal testimony regarding noise, particularly with  
11 regard to the pile driving at the intakes.

12           And then I have questions for Mr. Bednarski  
13 about his calculations of the number of barge trips  
14 that will be required in his rebuttal testimony.

15           And then, finally, I wanted to touch briefly  
16 on Mr. Bednarski's testimony in his rebuttal about the  
17 changes at the Town of Hood.

18           CO-HEARING OFFICER DODUC: (Nodding head.)

19                           CROSS-EXAMINATION BY

20           MR. BRODSKY: Okay. So, first, good  
21 afternoon, Mr. Bednarski.

22           WITNESS BEDNARSKI: Good afternoon.

23           MR. BRODSKY: With regard to the Snodgrass  
24 Slough Barge Landing, it's my understanding your  
25 testimony on Page 3 at Lines 21 to 26, that this barge

1 landing is being eliminated.

2 WITNESS BEDNARSKI: That is correct.

3 MR. BRODSKY: And that -- Could we take a look  
4 at ADFCIR Mapbook, Sheet -- M15-4, Sheet 2. I believe  
5 that's SWRCB-113.

6 (Pause in proceedings.)

7 MR. BRODSKY: M15-4 is at the very bottom  
8 there.

9 (Exhibit displayed on screen.)

10 MR. BRODSKY: And Sheet 2.

11 (Exhibit displayed on screen.)

12 MR. BRODSKY: Yeah, there.

13 And so this area where we see forebay and  
14 spillway and Twin Cities Road, CRE 113, that's where  
15 the barge landing was formerly located?

16 WITNESS BEDNARSKI: That's correct.

17 MR. BRODSKY: And then just down the page from  
18 that, we see the Delta Meadows River Park, and  
19 Snodgrass Slough is there.

20 And the idea was to eliminate the need for  
21 barges to come up Snodgrass Slough and through that  
22 Delta Meadows River Park area?

23 WITNESS BEDNARSKI: That's correct.

24 MR. BRODSKY: Okay. And could we look at  
25 Exhibit SCDA-73.

1 (Exhibit displayed on screen.)

2 MR. BRODSKY: And on the right there, that's a  
3 photograph of Upper Snodgrass Slough Anchorage that we  
4 just looked at in map form.

5 And then if we scroll down the page --

6 (Exhibit displayed on screen.)

7 MR. BRODSKY: -- there's the Meadows Slough  
8 Anchorage.

9 And so, basically, what I'm understanding is  
10 that you've listened to our concerns and we can now  
11 depend on barges, shall we say, not barging through  
12 these two anchorages.

13 WITNESS BEDNARSKI: That is correct.

14 MR. BRODSKY: And so you would have no  
15 objection to a condition -- a Permit condition that  
16 said no CWF barge traffic on the Mokelumne River or  
17 Snodgrass Slough.

18 MR. MIZELL: I'm going to object along the  
19 lines of -- Asking a witness to agree to a Permit term  
20 and condition is -- is not the role of the witness.  
21 He's here to testify about his testimony and provide  
22 information to the Board as to what's contained in --  
23 in the evidence.

24 MR. BRODSKY: Okay. May I rephrase it?

25 CO-HEARING OFFICER DODUC: Please do.

1 MR. BRODSKY: So do you -- Based on our  
2 conversation just now, do you see any reason  
3 operationally why a Permit condition prohibiting barge  
4 traffic on Snodgrass Slough and the Meadows Slough  
5 would interfere with construction or operation of CWF?

6 WITNESS BEDNARSKI: In regards to Snodgrass  
7 Slough, I don't have any reason to believe that there  
8 would be any negative consequences from such a Permit  
9 requirement if that was issued.

10 But, again, we'd have to look at that.

11 MR. BRODSKY: And how about in the Mokelumne  
12 River?

13 WITNESS BEDNARSKI: I am hesitant to make a  
14 broad-sweeping statement like that.

15 I don't -- We have not set conditions yet for  
16 the Contractors, as far as where they can move  
17 equipment, and I don't at this moment know what else  
18 might be affected by saying that.

19 MR. BRODSKY: Okay. Could we go to SCDA-72.

20 (Exhibit displayed on screen.)

21 MR. BRODSKY: Is it possible -- Can I -- Is  
22 there a cursor I can use on this or . . .

23 (Pause in proceedings.)

24 MR. BRODSKY: No? Okay.

25 So the Mokelumne River is the -- Well, there

1 are two dashed lines going vertically. The one on the  
2 right is Mokelumne River. We were previously showing  
3 that as a barge route on our exhibit to reach the  
4 Snodgrass Slough Barge Landing that's been eliminated,  
5 moving from the San Joaquin River up the Mokelumne  
6 River to Snodgrass Slough.

7           What other reason would there be for barges to  
8 travel on the Mokelumne River the if Snodgrass Slough  
9 Landing's been eliminated?

10           WITNESS BEDNARSKI: So I mentioned in my  
11 testimony on Page 3, Lines 23 through 25, that the  
12 revision will eliminate water traffic related to the  
13 Project -- that would be the CWF and the waterways of  
14 Snodgrass, Georgiana Sloughs, as well as North  
15 Mokelumne River. So --

16           MR. BRODSKY: Well, that is the North  
17 Mokelumne River that I'm picturing there.

18           WITNESS BEDNARSKI: That's where we are  
19 making -- That's where we've stated in my testimony  
20 that we will be eliminating water traffic.

21           MR. BRODSKY: Okay. So if your testimony  
22 states you're eliminating water traffic on Mokelumne,  
23 North Fork of Mokelumne River, Snodgrass Slough and  
24 Georgiana Slough, you can't see any reason why that  
25 shouldn't be a Permit condition, operationally or

1 construction-wise; can you?

2 WITNESS BEDNARSKI: I don't know that I am the  
3 person to make the determination about what should be a  
4 Permit condition. I'm just stating that we do not plan  
5 to use either of those three waterways for barge  
6 traffic.

7 MR. BRODSKY: Okay. Well, we'll ask for a  
8 Permit condition. I think we've covered as much as we  
9 can.

10 Perhaps there will be some procedure for meet  
11 and confer on Permit conditions based on testimony in  
12 the record at some point. We can cover that.

13 CO-HEARING OFFICER DODUC: Meet and confer as  
14 you may wish --

15 MR. BRODSKY: Yeah.

16 CO-HEARING OFFICER DODUC: -- but we are -- We  
17 have been open to proposed Permit conditions --

18 MR. BRODSKY: Okay.

19 CO-HEARING OFFICER DODUC: -- during this  
20 entire hearing.

21 MR. BRODSKY: All right. Thank you.

22 Let's move to Bouldin Island.

23 And, so, in your rebuttal testimony, DWR-1212,  
24 at Pages 8 to 9 -- Lines 8 to 9, you state that the  
25 muck dump is being reconfigured to avoid wetland

1 impacts, I believe.

2 WITNESS BEDNARSKI: Yes. I refer to it as RTM  
3 storage locations.

4 MR. BRODSKY: Okay. Can I ask you: Isn't it  
5 true that, in the tunnel boring industry, the standard  
6 term of reference for the material that's excavated by  
7 tunnel-boring machines is tunnel muck?

8 WITNESS BEDNARSKI: Some -- Some Projects  
9 refer to it as that. We do not.

10 MR. BRODSKY: Okay. All right. So . . . you  
11 refer to -- In your testimony, you refer to the  
12 refinements as being summarized on DWR-1303. And I'd  
13 like to take a look at DWR-1303.

14 (Exhibit displayed on screen.)

15 MR. BRODSKY: And if we could scroll down the  
16 page where it talks about Bouldin Island.

17 (Exhibit displayed on screen.)

18 MR. BRODSKY: And -- There.

19 And the . . . So you're -- On the right-hand  
20 side, the second box from the bottom says, it  
21 (reading):

22 "Reduces wetland impacts by over  
23 100 acres on Bouldin Island; reduces  
24 potential impacts to Delta navigation and  
25 recreational opportunities."



1 Have I read that correctly?

2 WITNESS BEDNARSKI: That's correct, that's  
3 what you read.

4 MR. BRODSKY: Yeah.

5 So I want to ask you: Isn't it true that it  
6 actually increases the impacts on Delta recreational  
7 opportunities rather than reducing them?

8 WITNESS BEDNARSKI: I don't believe that's the  
9 opinion of the Project.

10 MR. BRODSKY: Okay. I'd like to take a look,  
11 then, direct your attention, and I'm not sure if our  
12 projectionist can do this or not, but put two maps up  
13 at the same time?

14 CO-HEARING OFFICER MARCUS: Yes, we can.

15 (Laughter.)

16 MR. BRODSKY: SWRCB-102, Mapbook M15-4,  
17 Sheet 4.

18 (Exhibit displayed on screen.)

19 MR. BRODSKY: So if you click on Volume 1  
20 there.

21 (Exhibit displayed on screen.)

22 MR. BRODSKY: And then go down to Chapter 15.

23 (Exhibit displayed on screen.)

24 MR. BRODSKY: And then there's the Mapbook  
25 figures.

1 (Exhibit displayed on screen.)

2 MR. BRODSKY: And then you have to scroll in a  
3 ways to get to M15-4.

4 (Exhibit displayed on screen.)

5 MR. BRODSKY: Okay. So that sheet in the  
6 middle of the page --

7 Could we blow that up a little bit?

8 (Exhibit displayed on screen.)

9 MR. BRODSKY: Okay. So the kind of gold  
10 hatched area there indicates the extent of the muck  
11 dump in the Approved Project; is that correct?

12 WITNESS BEDNARSKI: That's correct. That's  
13 the RTM storage area in the Approved Project.

14 MR. BRODSKY: Okay. And then north of the  
15 muck dump area, there's a gold dot with the label  
16 "Terminous."

17 Do you see that?

18 WITNESS BEDNARSKI: Yes. Near the Highway 12  
19 Bridge?

20 MR. BRODSKY: Right.

21 WITNESS BEDNARSKI: Is that -- Yeah.

22 MR. BRODSKY: Yeah.

23 And the legend, if we go down to the bottom,  
24 we can see the scale --

25 (Exhibit displayed on screen.)

1 MR. BRODSKY: -- of what -- Oops.

2 In the very lower right is the scale showing  
3 the distance of 6,000 feet.

4 WITNESS BEDNARSKI: Yes, I agree.

5 MR. BRODSKY: Okay. And, then, so then if we  
6 scroll back up to see the dump and its relationship to  
7 Terminous, it looks like that's -- it's about a mile  
8 away from the Terminous label or so, roughly, would you  
9 say?

10 WITNESS BEDNARSKI: I'll accept your  
11 characterization.

12 MR. BRODSKY: Okay. And then if we could go  
13 to -- and I don't know if it's possible to have them  
14 both on the screen at the same time -- SWRCB-113,  
15 Mapbook M15-4, Sheet 3.

16 (Exhibit displayed on screen.)

17 MR. BRODSKY: Oh, good. That's blown up  
18 nicely.

19 If you could, yeah, scroll down a little bit.

20 (Exhibit displayed on screen.)

21 MR. BRODSKY: And we can see there that the  
22 extent of the dump now has changed. It now extends all  
23 the way up to Terminous there; is that correct?

24 WITNESS BEDNARSKI: Yes, it does extend up to  
25 Terminous.

1 MR. BRODSKY: Okay. Very good.

2 And then I'd like to take a look at SWRCB-113,  
3 Page 15-3.

4 And this is the Administrative Draft  
5 Supplemental Environmental Impact Report that discusses  
6 any environmental impacts of the changes to the Project  
7 from the Approved Project to the Proposed Project;  
8 is -- is that correct?

9 WITNESS BEDNARSKI: That's what this title --  
10 That's what this chapter is entitled, yes.

11 MR. BRODSKY: Okay.

12 (Exhibit displayed on screen.)

13 MR. BRODSKY: And if we could blow it up so we  
14 can see Lines 34 to 38.

15 (Exhibit displayed on screen.)

16 MR. BRODSKY: And that says (reading):

17 "Placement of RTM on Bouldin Island  
18 would not directly impact recreation at  
19 the Tower Park Marina Resort as there  
20 would be no in-water activity and the  
21 Tower Park Marina Resort does not require  
22 access to Bouldin Island. Negative  
23 effects on recreation from introduction  
24 of noise and light in the vicinity of the  
25 marina may occur, however, the views from

1 the marina are not expected to change  
2 because the Bouldin Island levees would  
3 block views of the RTM storage area."

4 Have I read that correctly?

5 WITNESS BEDNARSKI: Yes.

6 MR. BRODSKY: Isn't that incorrect, though?

7 The levee will not block the views from Tower Park  
8 Resort of the RTM storage area. That's a mistake;  
9 isn't it?

10 WITNESS BEDNARSKI: I'm not aware that it's a  
11 mistake.

12 MR. BRODSKY: Okay. Let's take a look at  
13 SCDA-317.

14 (Exhibit displayed on screen.)

15 MR. BRODSKY: Do you recognize what's depicted  
16 in this photograph?

17 WITNESS BEDNARSKI: I believe it's the marina  
18 that's near Highway 12.

19 MR. BRODSKY: Is it the Tower Park Resort?

20 WITNESS BEDNARSKI: I'll accept your  
21 characterization that it is.

22 MR. BRODSKY: Okay. Let's take a look at  
23 SCDA-318.

24 (Exhibit displayed on screen.)

25 MR. BRODSKY: And if we could zoom in a little

1 bit on the signs on that gray building there.

2 (Exhibit displayed on screen.)

3 MR. BRODSKY: Can you read that that says,  
4 "Tower Park Resort, Terminous, California"?

5 WITNESS BEDNARSKI: Yes, it does.

6 MR. BRODSKY: Okay. And do you see that the  
7 deck of the resort area there is elevated above the  
8 water?

9 WITNESS BEDNARSKI: Yes, it does appear to be.

10 MR. BRODSKY: Okay. And could we look at S --  
11 Can we zoom back out?

12 (Exhibit displayed on screen.)

13 MR. BRODSKY: And do you see there that, on  
14 the right, there's a statue of Yogi Bear next to an ice  
15 cream parlor?

16 WITNESS BEDNARSKI: Yes.

17 MR. BRODSKY: You recognize that as Yogi.

18 WITNESS BEDNARSKI: Generally speaking.

19 MR. BRODSKY: Generally speaking.

20 You have or at one time had young children.

21 WITNESS BEDNARSKI: Yes.

22 MR. BRODSKY: Okay. Gotcha.

23 CO-HEARING OFFICER DODUC: Yes. Mr. Brodsky,  
24 that does not mean only those who have young children  
25 would recognize Yogi.

1 MS. DES JARDINS: Objection: This is beyond  
2 the scope of rebuttal.

3 MR. BRODSKY: I stand corrected.

4 And then on the left there, you may not be  
5 able to read it but maybe we could -- Well, Let's go to  
6 SCDA -- That's what? 318? Let's go to SCDA-320.

7 (Exhibit displayed on screen.)

8 MR. BRODSKY: Okay. I'm going to represent to  
9 you that this is a photograph taken from the deck we  
10 just saw looking across the slough on to Bouldin  
11 Island.

12 Isn't it true in that photograph you can  
13 clearly see Bouldin Island over the levee?

14 WITNESS BEDNARSKI: It does appear that way,  
15 yes.

16 MR. BRODSKY: And if my representation to you  
17 is -- is accurate, then you would be able to see the  
18 muck dump from the Tower Park Resort.

19 WITNESS BEDNARSKI: Based on the  
20 representations you made, it does appear that way.

21 MR. BRODSKY: Okay. So it appears that the  
22 ABSEIR conclusion that there will be no visual impact  
23 on Tower Park Resort from moving the muck dump is based  
24 on a mistaken assumption; isn't it?

25 WITNESS BEDNARSKI: I'm -- I'm not sure if,

1 from an engineering perspective, whether, you know,  
2 that is providing some sort of visual obstruction.

3           We will change -- You know, as we -- as we  
4 fill that area with the RTM, it may change some of the  
5 areas that are green to brown. I'm not sure that  
6 that's providing an obstruction anywhere along the  
7 sight lines.

8           MR. BRODSKY: Well, it said --

9           WITNESS BEDNARSKI: You'll be able to see the  
10 material as it's being placed in there, yes.

11           MR. BRODSKY: But the ABSEIR said you couldn't  
12 see it because the levee would block the visual sight  
13 line, and that's just a mistake. People make mistakes;  
14 right? That's just a mistake. You can see over the  
15 levee.

16           WITNESS BEDNARSKI: From that particular  
17 vantage point, it does appear that you can see over the  
18 levee, yes.

19           MR. BRODSKY: Okay. Thank you.

20           Okay. Now I'd like to go to SCDA-324.

21           (Exhibit displayed on screen.)

22           MR. BRODSKY: Oh, that's, I think, three  
23 dash -- Yeah, 352-4.

24           (Exhibit displayed on screen.)

25           MR. BRODSKY: Okay. I'm going to represent to



1 you that this is a photograph of the beach at the Tower  
2 Park Resort.

3 And are you able to recognize that there are  
4 small children on that beach?

5 WITNESS BEDNARSKI: Yes.

6 MR. BRODSKY: And to SCDA-325.

7 (Exhibit displayed on screen.)

8 MR. BRODSKY: And another view of the beach,  
9 again, recognizing that there are small children there?

10 WITNESS BEDNARSKI: Yes.

11 MR. BRODSKY: Okay. And SCDA-327.

12 (Exhibit displayed on screen.)

13 MR. BRODSKY: And I'm going to represent to  
14 you this is a Google Earth image with the Tower Park  
15 Resort on the right, and the hatched lines represent  
16 the location of the muck dump or, as you call it, RTM  
17 storage.

18 Does that orientation appear to be accurate  
19 from what we looked at on your Mapbooks?

20 WITNESS BEDNARSKI: It generally does, yes.

21 MR. BRODSKY: Okay. Let's go to SCDA-328.

22 (Exhibit displayed on screen.)

23 MR. BRODSKY: So this is a Google Earth shot  
24 showing the children's beach approximately 350 feet  
25 from the muck dump.

1           Can you understand that the resort operator  
2 would be concerned and have questions about this  
3 change, moving the muck dump on to his doorstep and  
4 right across the slough from this children's beach?

5           MR. MIZELL:  Objection:  Relevance as to  
6 Mr. Bednarski's knowledge of and concern held by the  
7 resort operator.

8           I'd also like to lodge an objection as to an  
9 argument in the exhibit that purports to claim facts  
10 that are not in evidence at this time, referencing the  
11 toxic materials label on the RTM site.

12          MR. BRODSKY:  I -- I think I can defend the  
13 toxic label with a question mark by asking  
14 Mr. Bednarski:

15           Can you say for sure that none of the  
16 excavated material will have any hazardous materials in  
17 it?

18          WITNESS BEDNARSKI:  To the best of my  
19 knowledge, the preliminary testing that we've done has  
20 not shown any, but I have not read that report  
21 recently.  There could be something in there, so, yeah,  
22 I can't say with -- with assurance.

23          MR. BRODSKY:  Okay.

24          MR. MIZELL:  I'd like --

25          CO-HEARING OFFICER DODUC:  Hold on.

1 MR. BRODSKY: The question, sir --

2 CO-HEARING OFFICER DODUC: Hold on.

3 MR. MIZELL: I'd like to renew my objection  
4 and move to strike the label over the RTM site in the  
5 exhibit.

6 MR. BRODSKY: Mr. Bednarski just --

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

8 I'm sorry. What are you moving to strike?

9 MR. MIZELL: The reference to toxic materials.

10 MR. BRODSKY: May --

11 CO-HEARING OFFICER DODUC: All right.

12 MR. BRODSKY: -- I answer?

13 Mr. Bednarski just testified that, out of the  
14 40 miles of twin 40-foot diameter bore tunnel, he could  
15 not testify with certainty that there would be no  
16 hazardous material at all coming out of those tunnel  
17 bores.

18 CO-HEARING OFFICER DODUC: And --

19 MR. BRODSKY: And that label has a question  
20 mark on it.

21 CO-HEARING OFFICER DODUC: I was going to say  
22 that that label has a question mark.

23 So objection overruled or motion denied.

24 MR. BRODSKY: Thank you.

25 Okay. Now, as to the objection about the

1 resort owner's concerns, I do believe that's -- that's  
2 well in bounds by looking at SWRCB-102, Appendix 3B.

3 CO-HEARING OFFICER DODUC: Actually, before  
4 you go there, unless you are going there to ask your  
5 next line of questioning, Mr. Brodsky, I'm now  
6 overruling Mr. Mizell's prior objection with respect to  
7 relevance.

8 MR. BRODSKY: Okay. So my -- The question,  
9 then, was -- Let me read it back to you. We've gotten  
10 off track here a little bit.

11 Can you understand that the resort operator  
12 would be concerned and have questions about the  
13 placement and movement of the muck dump right across  
14 the slough from his resort and children's beach?

15 WITNESS BEDNARSKI: I could understand a  
16 potential concern.

17 MR. BRODSKY: Okay. Thank you.

18 And then can we still go to Appendix 3B.  
19 That's SWRCB-102, Appendix 3B.

20 Boy, this is taking longer than I thought.

21 CO-HEARING OFFICER DODUC: Actually, you're  
22 moving at quite a good pace, Mr. Brodsky.

23 MR. BRODSKY: Thank you.

24 Is it useful?

25 CO-HEARING OFFICER DODUC: It is.

1 MR. BRODSKY: You'll let me know if it becomes  
2 unuseful.

3 CO-HEARING OFFICER DODUC: I will try to not  
4 refrain myself.

5 MR. BRODSKY: Okay. And 3B, Page 3B-102.

6 (Exhibit displayed on screen.)

7 MR. BRODSKY: And there at Lines -- If you can  
8 blow it up a little bit at Lines 6 to 8.

9 Oh, let's scroll up just to the previous page  
10 first.

11 (Exhibit displayed on screen.)

12 MR. BRODSKY: And that label on the section  
13 we're about to read is "Temporary Storage Area  
14 Determination."

15 Is it your understanding that refers to the  
16 tunnel muck dumps, or RTM areas as you call them?

17 WITNESS BEDNARSKI: I believe it's called out  
18 there in the first line of that -- of that first  
19 paragraph there on Line 19, yes.

20 MR. BRODSKY: Okay. Thank you.

21 And, then, can we scroll down to the next page  
22 at Lines 6 to 8.

23 (Exhibit displayed on screen.)

24 MR. BRODSKY: And that bullet point there that  
25 starts at Line 6, can you read that?

1 CO-HEARING OFFICER DODUC: To himself.

2 MR. BRODSKY: Aloud.

3 WITNESS BEDNARSKI: Do you want that in the  
4 record?

5 CO-HEARING OFFICER DODUC: No.

6 WITNESS BEDNARSKI: Okay.

7 CO-HEARING OFFICER DODUC: Let him just read  
8 it and then you may ask your question, Mr. Brodsky.

9 MR. BRODSKY: Okay.

10 (Pause in proceedings.)

11 WITNESS BEDNARSKI: Yes, I've read that.

12 Thank you.

13 MR. BRODSKY: Okay. And it says that  
14 (reading):

15 "Landowner concerns and preferences  
16 will be considered in . . ."

17 Determining where the muck dumps are going to  
18 go; right?

19 WITNESS BEDNARSKI: That's what it says, yes.

20 MR. BRODSKY: And have you consulted with the  
21 Tower Park Resort?

22 WITNESS BEDNARSKI: Not at the present time.

23 MR. BRODSKY: Do you think it would be prudent  
24 to do so?

25 WITNESS BEDNARSKI: I think, as I've

1 previously testified today, that refinements to the  
2 Project footprint will be made in preliminary and final  
3 design, and that I think that would be the appropriate  
4 time to make such adjustments to address specific  
5 concerns that are raised about the Project.

6 MR. BRODSKY: Okay. It's my understanding  
7 that the Supplemental Draft EIR comment period -- maybe  
8 Mr. Mizell may help me with this -- that closes in  
9 mid-to-late September; is that correct?

10 MR. MIZELL: I wouldn't want to make a  
11 representation at this time. It might not be accurate.

12 MR. BRODSKY: So, we're in -- The  
13 Administrative Draft Supplemental EIR's been released  
14 for public comment. Best of my recollection, it's  
15 sometime in September that that closes.

16 So wouldn't it be appropriate to consult with  
17 the land -- Now, while you're hearing public comments,  
18 wouldn't this be the time to consult with the land  
19 owner to see what he thinks about your proposed  
20 changes, he or she?

21 WITNESS BEDNARSKI: I believe the approach  
22 would be for us to receive the comment and then respond  
23 to the comment through the process.

24 I -- I'm not the expert in that area, but  
25 that's why we have a comment period on these documents.

1 And we do make revisions as we have in the past based  
2 on comments that we receive.

3 MR. BRODSKY: Well, when do -- What do you  
4 understand the timing to be as to when this landowner  
5 concerns bullet point and consulting with landowners,  
6 when will that occur?

7 MR. MIZELL: Objection: Asked and answered.

8 CO-HEARING OFFICER DODUC: Could you be more  
9 specific, Mr. Bednarski, in terms of a timing? Would  
10 it be before or after September if September is indeed  
11 when the comments are due?

12 WITNESS BEDNARSKI: I believe if we receive a  
13 comment -- you know, I would have to check on the exact  
14 process -- but we would at that time be willing to meet  
15 with an individual or -- and discuss potential  
16 revisions to what we've shown in the Draft Supplemental  
17 EIR/EIS.

18 CO-HEARING OFFICER DODUC: So it would be  
19 after official comments are submitted, if they're  
20 submitted.

21 WITNESS BEDNARSKI: Yeah. If they are  
22 submitted, we would respond to those in whatever form  
23 is appropriate --

24 MR. BRODSKY: Okay.

25 WITNESS BEDNARSKI: -- whether that's meetings



1 or just making the changes.

2 MR. BRODSKY: Let me ask it this way:

3 In order for that to be meaningful, consult  
4 with landowners, wouldn't that consultation have to  
5 occur before you issue a Record of Decision on the --  
6 on this -- on the -- now it's not administrative  
7 anymore -- on the Supplemental Draft EIR?

8 Don't you have to talk to him before you make  
9 up your mind; right?

10 WITNESS BEDNARSKI: I don't know that that's  
11 the only point that revisions could be made to the  
12 Project.

13 We -- I talked earlier today about the  
14 potential to make revisions to footprints and things  
15 like that based on other factors, and this may be one  
16 that could take place after that Record of Decision is  
17 made.

18 But certainly now, while we're in the public  
19 comment period, this would be the appropriate time for  
20 us to receive that feedback and possibly make those  
21 changes now in the Final Supplemental EIR/EIS.

22 MR. BRODSKY: And so you -- Based on  
23 consultation with the landowner at the appropriate  
24 time, you'd consider pulling that dump back from his  
25 resort quarter mile, half mile, mile; is that correct?

1           WITNESS BEDNARSKI: I'm not going to make that  
2 type of a determination sitting here today. But we  
3 would be willing to discuss that with them and see what  
4 would be appropriate to address the concerns.

5           MR. BRODSKY: So, in the past, the Hearing  
6 Officers have ordered DWR to meet, I believe, with  
7 Miss Womack and with others.

8           I think it would be appropriate -- I could do  
9 it through a motion -- to order DWR to meet with this  
10 landowner as it's described in the -- in the EIR within  
11 30 days.

12          CO-HEARING OFFICER DODUC: Response,  
13 Mr. Berliner or Mr. Mizell?

14          MR. BERLINER: I think that, frankly, is an  
15 inappropriate request at this time. We have many, many  
16 landowners that are going to have various issues. If  
17 we had to meet with all of them in the next 30 days we  
18 wouldn't be able to get anything done.

19          Mr. Bednarski's outlying what the plan is,  
20 typical of construction projects, especially of  
21 something of this magnitude. You can't address every  
22 question up front.

23          And he's clearly indicated that they're going  
24 to meet and the landowner will have the opportunity to  
25 provide that input and appropriate adjustments will be

1 made.

2           We don't know what the landowner's going to  
3 say. We don't -- I mean, there's more that we don't  
4 know than we do know.

5           So, it seems to me it's very premature, given  
6 how long this construction project's going to take, and  
7 the plans that have to be entered into, as  
8 Mr. Bednarski testified earlier, with the contractors.  
9 So there's ample time to address that.

10           CO-HEARING OFFICER DODUC: Miss Morris.

11           MS. MORRIS: I would just add that it's a bit  
12 premature to request within 30 days. There's no  
13 urgency for these meetings to occur.

14           The tunneling material that's going to be  
15 placed in these areas hasn't been -- We can't start  
16 tunneling. We won't start tunneling for who knows how  
17 long, but we'd have to have at least this permit and  
18 certainly we have conceptual design. There has to be  
19 final design before we can even begin tunneling.

20           So there's no urgency for these meetings to  
21 occur and there's plenty of time for them to occur.

22           CO-HEARING OFFICER DODUC: Response,  
23 Mr. Brodsky?

24           MR. BRODSKY: Yeah. Could we take a look at  
25 SCDA-327 as we discuss this?

1 (Exhibit displayed on screen.)

2 MR. BRODSKY: So the Tower Park -- That entire  
3 area on the right is the Tower Park Resort. That's the  
4 largest resort area in the Delta. There's a trail --  
5 They've recently invested millions of dollars in  
6 upgrading and adding the water park.

7 There's a trailer park there. There's laser  
8 tag, hay rides, all kinds of things, and caters to  
9 families with children. It's basically the flagship  
10 resort of the Delta.

11 In my view, before that preliminary decision  
12 was made, you know, that Fish and Wildlife got after  
13 them because the muck dump was covering up wetlands and  
14 they told them to move it, and they have the order --  
15 they have the ability to boss them around like.  
16 There's no -- We have nobody to boss them around in  
17 terms of rec -- impacts on recreation except you.

18 And I think at that time, when they had to  
19 move it to avoid those wetlands, they should have  
20 considered this resort and they didn't.

21 And once that record -- The Governor is  
22 hell-bent to get this thing approved. And the minute  
23 this Board issues a Permit, he's going to start  
24 construction.

25 And time is of the essence. And for any

1 discussion consultation meaningful, it's got to be done  
2 soon while they can still change it. Once that Record  
3 of Decision's entered on the Supplemental EIR, they're  
4 not going to change anything.

5 CO-HEARING OFFICER DODUC: All right.

6 MR. BRODSKY: And so I -- I would -- It's  
7 not -- They can't meet with everybody but this is a big  
8 deal, and going out there spending two hours talking to  
9 the landowner is not that much of a hardship.

10 CO-HEARING OFFICER DODUC: Are there any  
11 responses before we take this under consideration?

12 Miss Morris?

13 MR. BRODSKY: Does Mr. Brodsky represent Tower  
14 Park? I'm unclear who his clients are.

15 And, also, how do we even know that this owner  
16 is open to having these discussions or available.

17 CO-HEARING OFFICER DODUC: Let's not do a  
18 back-and-forth.

19 Mr. Mizell.

20 MR. MIZELL: Yes. I'd like to -- I'd like to  
21 correct the record.

22 Mr. Brodsky just stated that we did not  
23 consider the Tower Park Resort and, yet, in his  
24 questioning, he pointed to locations in the document  
25 where we actually did consider the Tower Park Resort.

1           He may disagree with the conclusions drawn,  
2 but to assert that we did not consider it is not what's  
3 reflected in the record and the evidence.

4           Additionally, we're drawing a confusing  
5 equality between the closure of public comments on the  
6 Supplemental Draft EIR and the Record of Decision.  
7 They are not one and the same.

8           There's a period of consideration that will go  
9 on for the comments received on the Draft Supplemental  
10 EIR/EIS, and a Final Supplemental EIR/EIS will have to  
11 be developed before the RD is issued.

12           So, to Mr. Brodsky's point about the urgency,  
13 there is still time through the process identified in  
14 the CEQA process to receive the comments of the Tower  
15 Park Resort should they be concerned as Mr. Brodsky  
16 asserts, consider those comments, and address them  
17 before the final SED is approved.

18           CO-HEARING OFFICER DODUC: All right. Thank  
19 you. We'll take that under consideration.

20           MR. BRODSKY: Okay. I'd like to move on next  
21 to your testimony that the movement -- relocating the  
22 barge dock on Bouldin Island will reduce impact on  
23 boaters.

24           And I'd like to take a look at SWRCB-102,  
25 Mapbook M15-4, Sheet 4.

1 (Pause in proceedings.)

2 MR. BRODSKY: Yeah.

3 (Exhibit displayed on screen.)

4 MR. BRODSKY: It's the page before that one.

5 Or, no, I'm sorry, I think you have the right  
6 one.

7 (Exhibit displayed on screen.)

8 MR. BRODSKY: No. I guess it is the one  
9 before that.

10 (Exhibit displayed on screen.)

11 MR. BRODSKY: This must not be M15. That's  
12 M15-1. We need to go to M15-4. These mapbooks are a  
13 little confusing.

14 (Exhibit displayed on screen.)

15 MR. BRODSKY: Yeah, there. If we could blow  
16 that up.

17 (Exhibit displayed on screen.)

18 MR. BRODSKY: So let's scroll down a little  
19 bit.

20 (Exhibit displayed on screen.)

21 MR. BRODSKY: At the left -- lower left  
22 portion of the muck dump, there's an arrow calling out  
23 Barge Unloading Facility.

24 Am I seeing that correctly?

25 WITNESS BEDNARSKI: That's correct.

1 MR. BRODSKY: And that was the former location  
2 of the barge dock.

3 WITNESS BEDNARSKI: That's correct.

4 MR. BRODSKY: And then you moved it around the  
5 corner there; is that correct?

6 WITNESS BEDNARSKI: That is correct.

7 MR. BRODSKY: And so then if we could go to  
8 SWRCB-113, Mapbook M15-4, Sheet 3, you see the new  
9 location.

10 (Exhibit displayed on screen.)

11 MR. BRODSKY: I think it's going to be the  
12 prior sheet.

13 (Exhibit displayed on screen.)

14 MR. BRODSKY: This must be . . .

15 (Exhibit displayed on screen.)

16 MR. BRODSKY: There it is, yeah.

17 And so, then, that -- we can see that that --  
18 as we saw before -- that the muck area's been  
19 reconfigured and the barge dock's been moved around the  
20 corner; correct?

21 WITNESS BEDNARSKI: That's correct.

22 MR. BRODSKY: And was the idea to move it to a  
23 wider part of the slough where it would have less  
24 impact on recreational boating?

25 WITNESS BEDNARSKI: We have received feedback



1 during my cross-examination in Part 2 with concerns  
2 that: One, the water was shallow in that location  
3 where we previously had it; and, two, that it was a  
4 relatively narrow section there and that the barge  
5 landing and the docking of barges would potentially  
6 disrupt recreational traffic.

7           So we moved the landing to an area that we  
8 felt was both deeper water and also afforded a wider  
9 channel area there so that the two activities could  
10 coexist.

11           MR. BRODSKY: Okay. Can we take a look at  
12 SCDA-326.

13           (Exhibit displayed on screen.)

14           MR. BRODSKY: It's kind of dark on the  
15 projected screen, but do you have a screen in front of  
16 you at your desk?

17           WITNESS BEDNARSKI: No, I do not. But I  
18 viewed your exhibits on my own computer so I know what  
19 you're pointing to there.

20           MR. BRODSKY: Okay. So you can see that there  
21 are a series of islands there where it's been moved to  
22 that don't show on the -- on the mapbooks; is that  
23 correct?

24           WITNESS BEDNARSKI: There's a series of  
25 islands there. I'm not sure that they don't show on

1 the mapbooks. I thought there were traces of those  
2 shown on the mapbooks.

3 But, regardless, I know that there are some --  
4 some vegetated areas there.

5 MR. BRODSKY: Okay. In any case, there's a  
6 series of islands or vegetated areas there.

7 And I'd like to, then, take a look -- The  
8 label there on the exhibit is -- calls out the  
9 "Bedrooms" Delta Anchorages, which I'm going to  
10 represent to you is what the locals call this area and  
11 that it's a very popular anchorage spot.

12 And I'd like to show you some of the boats at  
13 anchor in SCDA-310 through 316. If we could just  
14 quickly flip through those.

15 (Exhibits displayed on screen.)

16 MR. BRODSKY: Thank you.

17 Looks like a pretty peaceful place; doesn't  
18 it?

19 WITNESS BEDNARSKI: When those photos were  
20 taken, it looked peaceful, yes.

21 MR. BRODSKY: And isn't this why we eliminated  
22 the barge dock at Snodgrass Slough because we didn't  
23 want to disturb this kind of thing?

24 MR. MIZELL: Objection: Calls for facts not  
25 in evidence; mischaracterizes the witness' former

1 testimony.

2 MR. BRODSKY: Did we eliminate the barge dock  
3 at Snodgrass Slough to stop barging through this kind  
4 of thing?

5 CO-HEARING OFFICER DODUC: Barging through  
6 what kind of things?

7 MR. BRODSKY: Peaceful anchorages.

8 WITNESS BEDNARSKI: That was not the entire  
9 reason that we eliminated the barge landing at  
10 Snodgrass Slough.

11 We looked at the types of equipment deliveries  
12 that would be needed to be dropped off at that location  
13 and determined that we did not need barges to deliver  
14 those materials.

15 So, while we had disclosed originally the  
16 Snodgrass Slough Barge Landing again as a worst-case,  
17 we did not have a specific list of materials or  
18 equipment that would be delivered there.

19 So, instead, we will make all of those  
20 deliveries by road. That is not the case with the  
21 Bouldin Island Barge Landing.

22 MR. BRODSKY: So you're basically saying that  
23 even though not disturbing peaceful anchorages is a  
24 factor, that, as far as Bouldin Island, that factor is  
25 not sufficient enough to override your need to use this

1 facility.

2 CO-HEARING OFFICER DODUC: Objection,  
3 Miss Morris? I see you coming up.

4 MS. MORRIS: Yeah. The question's  
5 argumentative. And, also, it's really outside the  
6 scope as to whether this is peaceful or not.

7 This was -- The testimony was about the barge  
8 landings and removing them and it wasn't about the  
9 reasons why was the construction and engineering behind  
10 that.

11 MR. BRODSKY: The testimony says the reason  
12 for moving -- a benefit of moving the barge landing is  
13 to reduce the impact on recreational navigation. We  
14 looked at that exhibit that said just that.

15 CO-HEARING OFFICER DODUC: I'm going to  
16 sustain the objection on the argumentative portion.

17 If you would like to rephrase the question,  
18 Mr. Brodsky, you may do so.

19 MR. BRODSKY: Why can't you put the barge  
20 landing somewhere else so it's not interfering with  
21 peaceful anchorages?

22 WITNESS BEDNARSKI: We've attempted to strike  
23 a balance between the use of barge landings to provide  
24 materials and equipment supplies to the Project with  
25 potential recreational impacts, and have attempted to

1 respond to prior comments that were made in other parts  
2 of this proceedings as to where we might be disrupting  
3 things, and have now come up with a configuration not  
4 just for the barge landing but for our operations on  
5 Bouldin Island where this barge landing fits in well  
6 and coordinates with that work.

7           And we've made adjustments from -- since the  
8 Part 2 hearings to address the comments that were  
9 raised at that point in time. And without further  
10 engineering analysis, I -- I can't make a determination  
11 whether there's another suitable location around  
12 Bouldin Island for a barge landing.

13           MR. BRODSKY: Have you gone out here and  
14 looked at this physically?

15           WITNESS BEDNARSKI: Yes, I have.

16           MR. BRODSKY: Okay. Let's move on to the next  
17 topic, which is noise.

18           Okay. In your testimony, DWR-1212, on Page 8  
19 at Lines 21 to 22. I'd like to take a look at that.

20                           (Pause in proceedings.)

21           MS. RAISIS: What was the page?

22           MR. BRODSKY: The page is Page 8, Lines 21 to  
23 22.

24                           (Exhibit displayed on screen.)

25           MR. BRODSKY: And that says that (reading):

1           "DWR concluded that the impacts due  
2           to pile-driving noise at the intakes  
3           would therefore be significant and  
4           unavoidable."

5           Have I read that correctly?

6           WITNESS BEDNARSKI: That is correct.

7           MR. BRODSKY: And that is your testimony.

8           WITNESS BEDNARSKI: Yes.

9           MR. BRODSKY: And that's your understanding of  
10          what the EIR concludes?

11          WITNESS BEDNARSKI: Yes, that's my  
12          understanding.

13          MR. BRODSKY: Okay. Then I'd like to take a  
14          look at DWR-1024.

15          (Exhibit displayed on screen.)

16          MR. BRODSKY: At Page 6.

17          (Exhibit displayed on screen.)

18          MR. BRODSKY: This is testimony of  
19          Mr. Rischbieter.

20          Page 6, Lines 12 to 13.

21          (Exhibit displayed on screen.)

22          MR. BRODSKY: And that -- His testimony says  
23          (reading):

24                         "However, the impacts specifically  
25                         related to construction of the intakes

1 would be less than significant."

2 MR. MIZELL: Objection.

3 CO-HEARING OFFICER DODUC: My understanding,  
4 Mr. Brodsky, just from looking at this, is that the  
5 previous sentence refer to impacts on recreation.

6 MR. BRODSKY: Okay. We can -- If you want to  
7 take up some more time, we can look at his  
8 cross-examination, because the -- the sentence  
9 says, "The impacts specifically related to construction  
10 of the intakes would be less than significant,"  
11 referring to all impacts from the intakes.

12 WITNESS BEDNARSKI: I believe in Part 2, he  
13 testified with a special emphasis on recreation  
14 impacts. That's my recollection.

15 CO-HEARING OFFICER DODUC: So is your question  
16 specific to recreation impacts?

17 MR. BRODSKY: My question is to see how he can  
18 explain that one DWR witness is saying that  
19 construction of the intakes have -- do not have  
20 significant impacts and the other DWR witness says that  
21 they do.

22 MS. MORRIS: Stefanie Morris. Objection:

23 This misconstrues the evidence in the record.  
24 This clearly -- Mr. Rischbieter's testimony is talking  
25 about construction on recreation and it cites to

1 Recreation chapter in the Final EIR/EIS.

2           And Mr. Bednarski's testimony's clearly  
3 talking about noise impacts.

4           CO-HEARING OFFICER DODUC: Yes. That's my  
5 understanding, Mr. Brodsky.

6           MR. BRODSKY: And is it your -- your opinion  
7 that noise has no impact on recreation?

8           CO-HEARING OFFICER DODUC: I believe they are  
9 classified as different types of impacts. I'm not  
10 being -- I'm not a CEQA expert, but that's my  
11 understanding.

12           Mr. Bednarski?

13           WITNESS BEDNARSKI: That's my understanding  
14 also, though I agree with you I'm not a CEQA expert,  
15 either.

16           MR. BRODSKY: So your explanation is, then,  
17 that Mr. Rischbieter was referring only to recreation  
18 and you're referring to noise and those are two  
19 different things.

20           CO-HEARING OFFICER DODUC: Miss Morris.

21           MS. MORRIS: Again, objection: This is  
22 outside the scope of this witness' rebuttal testimony.

23           CO-HEARING OFFICER DODUC: Sustained.

24           MR. BRODSKY: How is it outside the scope? He  
25 testified specifically about the significance of the



1 impacts of construction of the intakes.

2 CO-HEARING OFFICER DODUC: On --

3 MR. BRODSKY: And I'm asking him to --

4 CO-HEARING OFFICER DODUC: -- noise.

5 MR. BRODSKY: I'm sorry?

6 CO-HEARING OFFICER DODUC: On noise. Now

7 you're asking him about recreation.

8 MR. BRODSKY: Okay. Let's move on.

9 In your testimony, DWR-1212, Page 9.

10 (Exhibit displayed on screen.)

11 MR. BRODSKY: Lines 8 to 9.

12 Is that Page 9?

13 MS. RAISIS: Yes, sir, it is.

14 MR. BRODSKY: Okay. Can we go back up? Thank

15 you.

16 (Exhibit displayed on screen.)

17 MR. BRODSKY: It says there -- I guess it's at

18 Line 7 to 8 (reading):

19 "Mr. Salter indicated that in his  
20 professional judgment, additional actions  
21 could be taken by DWR to minimize the  
22 potential impacts to the adjacent  
23 communities from impact-driven piles but  
24 offered nothing specific or additional to  
25 what DWR has already committed to do."

1           Isn't it true that Mr. Salter's testimony was  
2 the way to reduce the noise was to use non-impact  
3 methods?

4           WITNESS BEDNARSKI: I believe we've also  
5 disclosed that in my testimony on several occasions,  
6 that that would be a way to reduce the noise impacts  
7 would be to use non-impact pile-driving techniques,  
8 yes. So we are in agreement with that.

9           MR. BRODSKY: Okay. And what would prevent  
10 you -- What would prevent the use of non-impact  
11 methods?

12           MR. BERLINER: Objection: Asked and answered  
13 earlier today.

14           CO-HEARING OFFICER DODUC: Sustained.

15           MR. BRODSKY: In your testimony, you state  
16 that you're going to do further geotechnical  
17 exploration to determine whether non-impact methods are  
18 feasible.

19           WITNESS BEDNARSKI: That's correct.

20           MR. BRODSKY: Now, what are the criteria that  
21 you're going to use to -- to judge whether or not  
22 they're feasible?

23           WITNESS BEDNARSKI: I'm not going to purport  
24 to be an expert in this area, but depending on the  
25 characteristics of the ground, whether they would be

1 suitable for driving the sheet piles with a vibratory  
2 method, or perhaps using drilled and cast-in-place  
3 piles.

4           We would need to review the data collected in  
5 those future geotechnical investigations and make a  
6 determination whether we could use these methods to  
7 replace impact pile driving.

8           MR. BRODSKY: But, specifically, what would  
9 the criteria be? With the discovery of clay soil or  
10 sand soil? What exactly would you find?

11           WITNESS BEDNARSKI: Again, I'm not going to  
12 purport to be a Geotechnical Engineer to make those  
13 specific decisions. I would be relying on our team of  
14 engineers to do that and their recommendations as to  
15 whether the ground would be suitable for that.

16           MR. BRODSKY: Isn't it true that you have  
17 enough information already to know that non-impact is  
18 quite feasible?

19           CO-HEARING OFFICER DODUC: Mr. Berliner.

20           MR. BERLINER: We dealt with this quite a bit  
21 in Part 1 of this proceeding. We had Mr. Bednarski and  
22 Mr. Valles testifying about the differences between  
23 pile driving and impact and non-impact pile driving.

24           And there was -- We probably discussed this  
25 for at least an hour, if not more, during Part 1.

1 So asked and answered.

2 CO-HEARING OFFICER DODUC: Ms. Morris.

3 MS. MORRIS: It's also argumentative.

4 CO-HEARING OFFICER DODUC: Actually, that was  
5 the objection I was thinking.

6 MR. BRODSKY: It's true that we discussed it  
7 before, but Mr. Bednarski saw fit to put a page or so  
8 about "We're going to do everything we can to try to  
9 use non-impact methods" again in his rebuttal  
10 testimony, so it's fair game for cross-examination  
11 because he's included it again.

12 CO-HEARING OFFICER DODUC: To a limited  
13 degree.

14 And I sustain Miss Morris' objection to your  
15 last question being argumentative.

16 (Pause in proceedings.)

17 MR. BRODSKY: Why don't you have the experts  
18 here who can answer these questions?

19 MR. MIZELL: Objection: Both argumentative;  
20 and, again, as Mr. Berliner stated, nothing's changed  
21 between the Project that was adopted under the FEIR and  
22 was discussed at length in Part 1 about the difference  
23 between impact and vibratory hammers and the  
24 Supplemental EIR/EIS.

25 So I now raise the objection as beyond the

1 scope of appropriate rebuttal.

2 CO-HEARING OFFICER DODUC: All right. Hold  
3 on.

4 This actually is an area that you had a  
5 question on.

6 CO-HEARING OFFICER MARCUS: Yes, I had a  
7 question about this. I'll just ask it.

8 And if you can't -- It sounds like you may not  
9 be able to answer it.

10 But just because the issue's come up, I'm  
11 familiar with construction, I'm familiar with tunneling  
12 equipment, all that. I'm not a pile-driving expert on  
13 it.

14 But I was -- I was hoping that you could give  
15 an example of the kind of thing that the geotech would  
16 be looking for so that just folks have a sense of what  
17 it is that might make it suitable or unsuitable.

18 If you don't know, you don't know, but I think  
19 it's a question that people -- It's left unanswered in  
20 this repeated refrain over time.

21 WITNESS BEDNARSKI: Right.

22 CO-HEARING OFFICER MARCUS: If you could  
23 eliminate it, I think it would be helpful to a lot of  
24 people. If you can't, you can't.

25 WITNESS BEDNARSKI: Yeah. I'm not sure that I

1 can shed any more light on it other than that, in  
2 conditions where there would be pervasive sands, it  
3 would be difficult to construct drilled cast-in-place  
4 piles because, as we would be excavating the material,  
5 it's my understanding the sands would tend to run in  
6 and fill those. So those could be present some  
7 difficulties.

8           In areas where there would be very dense  
9 materials, it may be difficult to use the vibratory  
10 method to press those sheet piles down into the soil.  
11 I don't know what the limits are but there would be  
12 probably some limits on the denseness of the material.

13           So, again, in order to once again present the  
14 worst case, you know, we've fallen back on these  
15 impact-driven piles.

16           You know, I think the -- I do believe the  
17 expectation is there that, when we collect more data,  
18 that we'll be able to move on to something else. But  
19 when put on the spot and say, "Can you commit to that,"  
20 and Mr. Brodsky did that to me in Part 2 in his  
21 cross-examination, I cannot in all good conscience do  
22 that. And we will have to rely on the upcoming  
23 geotechnical investigations and the experts that we'll  
24 have on our team to make that final determination.

25           CO-HEARING OFFICER MARCUS: That's actually

1 helpful.

2 CO-HEARING OFFICER DODUC: Mr. Brodsky, I  
3 suggest you move on.

4 MR. BRODSKY: All right.

5 I just would like to ask one more question.

6 Mr. Storesund and -- testified that there was  
7 enough information that it was feasible now. He  
8 presented a letter from Malcolm Drilling Company that  
9 said they were confident there's enough information  
10 that it was feasible now.

11 Would you be willing to meet with them to  
12 develop criteria? They offered to meet with you.

13 CO-HEARING OFFICER DODUC: I suggest you two  
14 take that offline.

15 WITNESS BEDNARSKI: Yeah.

16 MR. BRODSKY: Okay. Let's go to the next  
17 topic.

18 (Pause in proceedings.)

19 MR. BRODSKY: In your testimony, you  
20 acknowledged that Mr. Salter concluded that you  
21 understated the noise that would result from impact  
22 pile driving; is that correct?

23 WITNESS BEDNARSKI: I don't believe that was  
24 the intention of my testimony.

25 I believe that my testimony was attempting to

1 indicate that there was a difference in the levels of  
2 noise from our estimate to the levels that he was  
3 estimating.

4 MR. BRODSKY: And the estimate in the EIR and  
5 what you used was 102 decibels for impact pile driving;  
6 is that correct?

7 WITNESS BEDNARSKI: That's correct.

8 MR. BRODSKY: And Mr. Salter's conclusion was  
9 that the noise level would be 115 decibels.

10 WITNESS BEDNARSKI: That's my recollection,  
11 yes.

12 MR. BRODSKY: And is it your understanding  
13 that decibel scales are logarithmic?

14 WITNESS BEDNARSKI: I am going to refer  
15 further questions on noise to Mr. Volk here.

16 WITNESS VOLK: Decibel scales are logarithmic,  
17 correct.

18 MR. BRODSKY: And -- And the difference  
19 between 102 and 115 decibels, 115 is roughly four times  
20 louder; is that correct?

21 WITNESS VOLK: Roughly four times louder?

22 Just comparing the two numbers you're talking  
23 about is objective impression of a noise level. It's  
24 roughly twice as loud, I would say. About 10 decibels  
25 is about a doubling of loudness, subjectively.



1 MR. BRODSKY: So it's a lot louder; is that  
2 correct?

3 WITNESS VOLK: If you want to characterize it  
4 that way.

5 MR. BRODSKY: Okay. And you referred  
6 Mr. Bednarski to the FTA Manual that you based your  
7 assumption of pile-driving noise level on; is that  
8 correct?

9 WITNESS VOLK: We used the FTA Manual, which  
10 is the Federal Transit Administration Guidance Manual,  
11 which also includes guidance for assessment of  
12 construction noise.

13 MR. BRODSKY: And the piles here that we're  
14 talking about are 48-inch-diameter steel piles; is that  
15 correct?

16 WITNESS BEDNARSKI: I believe that's correct.

17 MR. BRODSKY: And isn't it true the FTA Manual  
18 has no specific calculation for 48-inch-diameter steel  
19 piles?

20 WITNESS VOLK: It does not.

21 MR. BRODSKY: Okay. And Mr. Salter did three  
22 separate calculations to come up with 115 decibels  
23 specifically for 48-inch-diameter steel piles; is that  
24 correct?

25 WITNESS BEDNARSKI: I -- I don't recall his

1 specific testimony.

2 MR. BRODSKY: Okay. We can take a look at it.

3 CO-HEARING OFFICER DODUC: Mr. Brodsky, we did  
4 take quite a bit of time going through all the various  
5 documents. I recognize you probably didn't build that  
6 into your time estimate.

7 How much additional questioning do you have  
8 for these witnesses?

9 MR. BRODSKY: There's quite a bit. I want to  
10 cover the barge trips.

11 Let's see, we're on noise. The barge trips,  
12 the elimination of the Clifton Court Forebay Landing.  
13 And then on Hood, Hood will only be about five minutes.

14 CO-HEARING OFFICER DODUC: So your estimate  
15 is?

16 MR. BRODSKY: I would say 20 minutes each for  
17 the barge trips and the Clifton Court Forebay, each, 20  
18 minutes each, and 10 minutes to finish this up on the  
19 noise.

20 CO-HEARING OFFICER DODUC: Miss Suard,  
21 Miss Daly, if I might ask you to come up.

22 And given that you have been patiently waiting  
23 all day and have very limited cross-examination, what  
24 topic areas do you have?

25 MS. SUARD: Is this on?

1 CO-HEARING OFFICER DODUC: And, specifically,  
2 do you have any questions for Miss Buchholz?

3 MS. SUARD: Nicki Suard with Snug Harbor.

4 My questions are going to be for  
5 Mr. Bednarski.

6 CO-HEARING OFFICER DODUC: All right.

7 MS. SUARD: And it's regarding barge landings  
8 and transportation -- barges and transportation North  
9 Delta.

10 CO-HEARING OFFICER DODUC: And you're still  
11 estimating around 15 minutes.

12 MS. SUARD: Yes. I will try and be very  
13 efficient because it's a very focused area.

14 CO-HEARING OFFICER DODUC: All right.

15 Miss Daly.

16 MS. DALY: Barbara Daly, North Delta

17 C.A.R.E.S.

18 And my testimony and the questioning --  
19 cross-examination is really short. I'm willing to give  
20 my hour to Mr. --

21 CO-HEARING OFFICER DODUC: You're not giving  
22 your hour. It doesn't work that way.

23 MS. DALY: Yeah. Okay. Well, I'm willing to  
24 withdraw my time and then you may decide what you do  
25 with my time.

1 Thank you.

2 CO-HEARING OFFICER DODUC: I was going to  
3 suggest to Mr. Brodsky, since we will not be completing  
4 his cross-examination today, given his -- given his  
5 time estimate, that we allow the two of you to conduct  
6 your cross-examination.

7 And if you do not have any questions for  
8 Miss Buchholz, unless there's redirect, she will not  
9 have to come back on Monday.

10 MR. BRODSKY: I think that would be a good  
11 idea, and then I can focus my questions a little bit  
12 over the weekend and it might be a little shorter.

13 CO-HEARING OFFICER DODUC: Bless you,  
14 Mr. Brodsky.

15 MR. BRODSKY: So why don't I step down now and  
16 let them come up and I'll come back Monday morning.

17 CO-HEARING OFFICER DODUC: Let's do that.

18 WITNESS VOLK: Can I just say --

19 CO-HEARING OFFICER DODUC: Mr. Volk.

20 WITNESS VOLK: -- I'm not available Monday to  
21 attend the hearing.

22 CO-HEARING OFFICER DODUC: Then Mr. Bednarski  
23 will be out of luck.

24 Mr. Mizell, do you have redirect for  
25 Miss Buchholz?

1 MR. MIZELL: I do not.

2 CO-HEARING OFFICER DODUC: You do not.

3 MS. MORRIS: Wait.

4 If Mr. Volk is unavailable on Monday, it makes  
5 sense that Mr. Brodsky would finish his  
6 cross-examination related to noise because neither of  
7 the --

8 CO-HEARING OFFICER DODUC: That's a good  
9 point.

10 MR. BRODSKY: I think we could to do that.

11 CO-HEARING OFFICER DODUC: Okay. So, let me  
12 clarify.

13 Miss Buchholz, there are no additional  
14 cross-examination for Miss Buchholz and there is no  
15 redirect of Miss Buchholz, so we thank you,  
16 Miss Buchholz, and you are no longer required to  
17 return --

18 WITNESS BUCHHOLZ: Thank you.

19 CO-HEARING OFFICER DODUC: -- at least on  
20 Monday.

21 Mr. Brodsky, you still have remaining  
22 questions on noise?

23 MR. BRODSKY: Yes. Let's try to get that done  
24 quickly.

25 CO-HEARING OFFICER DODUC: And, Miss Suard, no

1 questions on noise.

2 MS. SUARD: No, no questions on noise.

3 CO-HEARING OFFICER DODUC: And, Miss Daly, no  
4 questions on noise.

5 MS. DALY: (Shaking head.)

6 CO-HEARING OFFICER DODUC: All right. Let's  
7 very quickly --

8 MR. BRODSKY: All right.

9 CO-HEARING OFFICER DODUC: -- finish up on  
10 noise.

11 MR. BRODSKY: All right. So let's take a look  
12 at SCDA-65.

13 (Exhibit displayed on screen.)

14 MR. BRODSKY: And Page 4.

15 (Exhibit displayed on screen.)

16 MR. BRODSKY: Lines 8 to 13.

17 (Exhibit displayed on screen.)

18 MR. BRODSKY: I must have a bad note there.  
19 I'll take a look here.

20 MS. RAISIS: This is Page 4, Mr. Brodsky.

21 MR. BRODSKY: Yes. Page 4.

22 (Exhibit displayed on screen.)

23 MR. BRODSKY: And there, it says that  
24 Mr. Salter reviewed measured data from steel piles  
25 which was measured at a 50-foot distance in one

1 instance 113 decibels, another instance 114 decibels,  
2 and another instance, 115 decibels for 36-inch-diameter  
3 steel piles.

4 Is that correct what his testimony says?

5 CO-HEARING OFFICER DODUC: Miss Morris?

6 MS. MORRIS: The testimony -- Is he asking if  
7 it's true --

8 MR. BRODSKY: No. Just what it says.

9 MS. MORRIS: -- substantively or -- Thank you.

10 MR. BRODSKY: Just did I read it correctly?

11 WITNESS VOLK: Yes, that's what it says.

12 MR. BRODSKY: Okay. And then if we can take a  
13 look at Page 3, Lines 19 to 20.

14 (Exhibit displayed on screen.)

15 MR. BRODSKY: And Mr. Salter says he's -- "We  
16 have performed an analysis on the pile size, pile type,  
17 and energy delivered from the impact hammer."

18 Is that correct? Have I read that correctly?

19 WITNESS VOLK: Yes, that's what it says.

20 MR. BRODSKY: Okay. And then . . . at

21 SCDA-65, Page 4, Lines 14 to 15.

22 (Exhibit displayed on screen.)

23 MR. BRODSKY: And Mr. Salter reports from the  
24 U.S. Fish and Wildlife Service Manual (reading):

25 "When conducting an in-air noise

1           assessment involving impact driving of  
2           hollow steel piles, U.S. Fish and  
3           Wildlife Service currently recommends  
4           assuming a noise level of 115 decibels .  
5           . . for 30-inch piles."

6           Have I read that correctly?

7           WITNESS VOLK: Well, I see the term "Lmax"  
8           there.

9           MR. BRODSKY: Um-hmm. Does that hold some  
10          significance to you?

11          WITNESS VOLK: Well, the maximum noise level  
12          of the measurement of the pile driving, yeah.

13          MR. BRODSKY: Okay. And so Mr. Salter has  
14          recited three different methods he used specifically  
15          aimed at the type of piles that are being used on CWF.  
16          Not whether you agree with it or not but that's what  
17          he's put forth here; is that correct?

18          CO-HEARING OFFICER DODUC: Before you object,  
19          Miss Ansley:

20          Mr. Brodsky, you're asking these questions  
21          because Mr. Bednarski and Mr. Volk, for that matter, is  
22          rebutting Mr. Salter's testimony.

23          MR. BRODSKY: Correct. And they disputed that  
24          the 115-decibel level is correct, and their basis for  
25          disputing it is reference to the FTA Manual.



1 CO-HEARING OFFICER DODUC: All right. Just so  
2 I understand.

3 MR. BRODSKY: Right.

4 CO-HEARING OFFICER DODUC: And, Miss Ansley,  
5 what is your objection?

6 MS. ANSLEY: I think my objection here is that  
7 Mr. Brodsky is misrepresenting this. These numbers  
8 come from different measurements but all from the same  
9 manual by the Washington State Department of  
10 Transportation.

11 So I'm going to object that he's  
12 mischaracterizing Mr. Salter's testimony about three  
13 methods. I don't think there's any foundation for  
14 that.

15 CO-HEARING OFFICER DODUC: Miss Morris.

16 MS. MORRIS: I would -- I also would just  
17 object.

18 I believe this is outside the scope, because  
19 if you look at the testimony, what Mr. Bednarski has  
20 put in his testimony is that he's just refuting that  
21 DWR underestimated the noise. And he's simply saying  
22 that they used the FTA Guidance Manual from 2006 and  
23 then assessed that data in accordance with Federal,  
24 State and local plans and policies and regulations.

25 So I don't believe he's disputing the exact

1 point that Mr. Brodsky is now questioning.

2 MR. BRODSKY: Well, okay. Well, let's ask  
3 that.

4 Do you have any reason to dispute that  
5 Mr. Salter's estimate that 115 dBA is correct?

6 WITNESS VOLK: Well, I reviewed the document  
7 that you're referring to from Washington State  
8 Department of Transportation.

9 As I recall, the level that I saw was  
10 114 decibels. So it is in the document if that's your  
11 question.

12 MR. BRODSKY: Well, but Miss Morris said you  
13 weren't just -- we don't need to do this because you're  
14 not disputing that exact figure of 115, so . . .

15 CO-HEARING OFFICER DODUC: He wasn't until you  
16 asked him that question, Mr. Brodsky.

17 And you got an answer.

18 MR. BRODSKY: Okay. Just to make sure I  
19 understand:

20 You're not disputing that 115 is a -- a good  
21 estimate of the noise that'll come from CWF pile  
22 driving.

23 CO-HEARING OFFICER DODUC: Miss Ansley.

24 MS. ANSLEY: Objection: Misstates the  
25 testimony.

1           Mr. Volk was simply affirming that he has  
2 reviewed the Washington Department of Transportation's  
3 estimate of the noise levels.

4           CO-HEARING OFFICER DODUC: And it was 114.

5           MS. ANSLEY: That's right.

6           And Miss Morris' objection was more that it's  
7 beyond the scope of what was said here.

8           What is said here was merely confirming where  
9 the DWR's estimate of pile-driving impact noise levels  
10 came from.

11           So whether we're now getting into a debate  
12 over which number is correct, what the testimony  
13 actually confirms is where our estimate and which  
14 manual was used by the DWR, not whether the 114 was an  
15 estimate made by the Washington State.

16           CO-HEARING OFFICER DODUC: All right.

17           MR. BRODSKY: So, do I understand that the  
18 intent of your testimony is not to dispute Mr. Salter's  
19 number of 115 dBA?

20           CO-HEARING OFFICER DODUC: But to emphasize  
21 the number that was used by DWR.

22           WITNESS BEDNARSKI: That's correct. That's  
23 the purpose of writing this section up.

24           CO-HEARING OFFICER DODUC: All right.

25           MR. BRODSKY: Okay. Let's move on.

1 CO-HEARING OFFICER DODUC: Mr. Brodsky, Let's  
2 move on. Declare a victory and move on, Mr. Brodsky.

3 MR. BRODSKY: Let's let some other people have  
4 a chance and we'll come back with the other issues  
5 Monday morning.

6 CO-HEARING OFFICER DODUC: And you're done  
7 with noise. So Mr. Volk does --

8 MR. BRODSKY: Correct.

9 CO-HEARING OFFICER DODUC: -- not have to  
10 return, unless there is redirect.

11 MR. BERLINER: (Shaking head.)

12 CO-HEARING OFFICER DODUC: All right.

13 MR. MIZELL: No, not for Mr. Volk.

14 CO-HEARING OFFICER DODUC: Mr. Volk, thank  
15 you.

16 WITNESS VOLK: Thank you.

17 (Pause in proceedings.)

18 MS. SUARD: So Nicki Suard with Snug Harbor  
19 Resorts LLC.

20 And I would like to -- I'm going to just be  
21 talking about barge landings and specifically focus on  
22 DWR-1212, Mr. Bednarski. And actually it's -- it has  
23 to do with transportation, whether it's by boat or by  
24 land.

25 So it will -- I may refer to DWR-1316, but it

1 really depends on timing. I will try and go fast.

2 CROSS-EXAMINATION BY

3 MS. SUARD: So, referring to your testimony  
4 on -- Mr. Bednarski, on Pages 15 and 16 regarding barge  
5 travel specifically on Sacramento River.

6 If you -- Do you need the lines?

7 Should I just go ahead and ask the questions?

8 WITNESS BEDNARSKI: Go ahead and ask the  
9 questions.

10 You said on Page 15 my reference is to barge  
11 traffic on the Sacramento River?

12 MS. SUARD: Yes.

13 WITNESS BEDNARSKI: Yes. I see that.

14 MS. SUARD: Okay. So you have -- It's 15 and  
15 16. You -- 15 -- Page 15, Lines 16 to 21 refer to the  
16 bridges on the Sacramento River in which -- and  
17 referenced larger bridges and smaller bridges.

18 On Page 16, it's Line 1's -- 1 through 11 that  
19 I will be asking questions of.

20 In -- In previous parts of this hearing, you'd  
21 never specified exactly where those -- which rivers in  
22 the North Delta were going to be used. I don't recall,  
23 at least, that you said the Sacramento River.

24 Is -- Is that the decision at this point in  
25 time, that the barges will go underneath the Rio Vista

1 Bridge and then go up the Sacramento River to the  
2 intakes' locations; is that correct?

3 WITNESS BEDNARSKI: I don't believe -- I don't  
4 recall that I had not stated that before, but, yes,  
5 that is our -- our plan at this point, yes.

6 MS. SUARD: Were any other routes considered  
7 that were less invasive to the 15 marinas and RV Parks  
8 along that route?

9 WITNESS BEDNARSKI: To get to which locations?

10 MS. SUARD: All three intakes could be reached  
11 by barge by two other routes.

12 WITNESS BEDNARSKI: Oh. I'm not aware of  
13 that.

14 We -- Like I said, we selected a route for  
15 examination as part of the EIR/EIS process. I think we  
16 acknowledged that the Contractors may find other  
17 routes, and that's why we said it would be difficult to  
18 be definitive.

19 But for the purposes of the EIR/EIS, we  
20 identified the bridges and this route, yes.

21 MS. SUARD: So would it be possible that, if  
22 it was shown a different route was less detrimental to  
23 all the marinas and RV Parks for recreation in the  
24 North Delta, such as going up the Sacramento ship  
25 channel and then coming down to the intake sites,

1 wouldn't that be a -- a better route to consider?

2 WITNESS BEDNARSKI: I would -- I would not say  
3 no to that. I would say that that would be a  
4 possibility that we would consider.

5 MS. SUARD: So the route is not really  
6 specified yet, then. That's -- That's what you're  
7 saying.

8 WITNESS BEDNARSKI: Well, we needed to -- As  
9 Mr. Choa identified roadway segments that were  
10 potentially going to be impacted, we needed to identify  
11 some waterways that we would presumably have bridge  
12 openings that would affect road traffic. So these were  
13 the ones that were handed to our transportation  
14 experts.

15 And so, by doing that, that kind of de facto  
16 selected a route -- a waterway route to do that. So  
17 that's what we -- that's what we've done.

18 MS. SUARD: Okay. I -- I heard today that all  
19 the North Delta tunnel sections will be coming by land  
20 instead of waterway; is that correct?

21 One -- Each tunnel section fits on a truck; is  
22 that correct?

23 WITNESS BEDNARSKI: Well, it depends on the  
24 size of the tunnel that's being bored as to whether  
25 it's one. When I made that reference, it was for the

1 40-foot diameter tunnels.

2 We also have smaller tunnels, a 28-foot  
3 diameter tunnel. I don't know specifically, but we may  
4 be able to place more than one segment on a truck for  
5 those ones. Those are in the north of the Delta.

6 MS. SUARD: Will any tunnel sections be coming  
7 by barge into the North Delta?

8 WITNESS BEDNARSKI: I believe there is the  
9 possibility and we disclosed it, although I don't . . .

10 Let me put it this way. As far as our truck  
11 traffic goes, all of the tunnel segments at Intake 1,  
12 because that's the other location that we plan on  
13 driving tunnel from will be brought in by truck. We're  
14 not planning to barge tunnel segments to that location.  
15 That would be the only exception.

16 MS. SUARD: Okay. So -- And each of those  
17 tunnel sections are being installed on the east side of  
18 the Sacramento River; is that correct?

19 WITNESS BEDNARSKI: That's correct.

20 MS. SUARD: Okay. Does it -- Would it be  
21 reasonable to have a requirement that all tunnel  
22 sections arrive only on east side roads, then, not  
23 impact west of the Sacramento River roads?

24 CO-HEARING OFFICER DODUC: Mr. Berliner.

25 MR. BERLINER: Objection to the extent that



1 Miss Suard is suggesting a permit term.

2 CO-HEARING OFFICER DODUC: Sustained.

3 Can you rephrase that, Miss Suard?

4 MS. SUARD: Let's see. That's hard.

5 CO-HEARING OFFICER DODUC: Actually,  
6 Mr. Brodsky did it. Were you listening when he  
7 reframed his question?

8 MS. SUARD: I listened to a lot of what he  
9 said but I wasn't sure how -- how that worked. I . . .

10 Would it be reasonable to assume or request  
11 that tunnel sections that are going to be installed on  
12 the east side of the Sacramento River use east side  
13 roadways to get to the location?

14 CO-HEARING OFFICER DODUC: Mr. Berliner.

15 MR. BERLINER: Same objection.

16 CO-HEARING OFFICER DODUC: Miss Suard, we  
17 would welcome any suggested Permit conditions from you  
18 or any other parties. You do not need to seek  
19 Petitioners' opinion on what those potential Permit  
20 conditions might be.

21 MS. SUARD: Okay. I would like to request  
22 a --

23 CO-HEARING OFFICER DODUC: At the proper  
24 time --

25 MS. SUARD: Okay.

1 CO-HEARING OFFICER DODUC: -- I assume, which  
2 will be in your closing briefs, if not earlier, you may  
3 make proposed Permit terms and conditions.

4 MS. SUARD: Thank you.

5 Okay. So, going back to these barges going up  
6 the Sacramento River.

7 What will be on those barges? You -- You  
8 quantified a certain number of barge trips pretty  
9 clearly. What will be on those barges if it's not  
10 tunnel sections?

11 WITNESS BEDNARSKI: So for those locations, it  
12 would be equipment and materials to support the  
13 construction of the intakes.

14 So, for example, it could be the sheet piles.  
15 It could be the equipment that would be used to drive  
16 the sheet piles in the river. It could be equipment  
17 used to drive the impact pile drivers.

18 You know, there's equipment that is staged off  
19 of the water to construct the intakes and, primarily,  
20 that would be the type of equipment that would be  
21 brought up the Sacramento River to those locations.

22 MS. SUARD: Are you aware that there are  
23 low -- very shallow barges that could transport  
24 equipment which would not require opening of three or  
25 four bridges?

1           WITNESS BEDNARSKI: That would be our desire,  
2 would be for our Contractors to use the types of  
3 equipment that didn't continuously require the opening  
4 of those bridges.

5           But we have disclosed the potential for those  
6 bridges to be opened to allow this marine traffic to go  
7 by.

8           MS. SUARD: Okay. Has there been any  
9 contingency plans for -- in the case of the barge  
10 hitting one of these bridges and doing damage?

11           I'm speaking about the smaller bridges, so  
12 this is Isleton Bridge, Walnut Grove Bridge,  
13 Paintersville Bridge, potentially Freeport Bridge,  
14 depending on how you guys are coming and going.

15           MR. MIZELL: I'm going to object to this line  
16 of questioning.

17           The contingency plans that may or may not be  
18 in place for the use of barges would be consistent  
19 between the Final EIR and Supplemental EIR.

20           At this point, it's not within the scope of  
21 the Supplemental, nor is it within the testimony of  
22 Mr. Bednarski, so it's improper cross-examination.

23           MS. SUARD: Actually, Mr. Bednarski said on  
24 Page 15 of his testimony, "With these revisions" -- He  
25 was talking about this new revision where they have

1 actually specified Sacramento River. And there are  
2 specifications of how many trips.

3 I'm trying to understand what's on those  
4 barges, actually. How many barges will be going up and  
5 down Sacramento River?

6 CO-HEARING OFFICER DODUC: Okay. So now I'm  
7 confused, because that was a different question I  
8 thought I heard you ask to which Mr. Mizell objected.

9 MS. SUARD: About the depth?

10 CO-HEARING OFFICER DODUC: No.

11 Okay. Miss Suard, let's go back. What is the  
12 question for Mr. Bednarski?

13 MS. SUARD: Okay. Let's back up a little bit.

14 How many barge trips are anticipated to go up  
15 and down the Sacramento River during the building of  
16 the intakes?

17 WITNESS BEDNARSKI: I don't believe that's  
18 been specifically identified. We've identified the  
19 potential for that. I'm not sure that we have a  
20 specific count on the number of locations.

21 MS. SUARD: Do you have a rough estimate?

22 WITNESS BEDNARSKI: No.

23 MS. SUARD: Two times a day? 20 times a day?  
24 200 times a day? No rough estimate?

25 WITNESS BEDNARSKI: Well, certainly, it would

1 be less than at the areas that we're delivering tunnel  
2 segments to.

3           So we quantified that, through the Biological  
4 Opinion process, that those tables have been set so  
5 forth. So, you know, I -- I don't have a clear number.

6           We've identified that, though, as a potential  
7 impact to allow us the possibility of making those  
8 deliveries by water to those locations.

9           MS. SUARD: Oh, okay.

10           Have you been on the Sacramento River around  
11 the Walnut Grove area?

12           MR. MIZELL: Objection as to relevance.

13           MS. SUARD: Mr. Bednarski's testifying about  
14 barge transportation on the Sacramento River, and I'm  
15 asking this question because the width of the  
16 Sacramento River in a particular location would  
17 indicate there could be pretty substantial damage in  
18 that area.

19           MR. MIZELL: And --

20           CO-HEARING OFFICER DODUC: Mr. Mizell.

21           MS. SUARD: Okay. I --

22           MR. MIZELL: I would go back to the previous  
23 objection about beyond the scope.

24           Mr. Bednarski has talked about total barge  
25 trips. He's not talked about safety plans or damage.

1           Those would be similar to the discussion of  
2 barge trips in the previous document and not modified  
3 by virtue of this panel.

4           CO-HEARING OFFICER DODUC: All right.  
5 Mr. Bednarski, would it be fair to say that you are not  
6 able at this time to provide any further specifics with  
7 respect to the questions Miss Suard is asking you?

8           WITNESS BEDNARSKI: Other than that I've  
9 driven up Highway 160 along the Sacramento River, so I  
10 have observed it from land.

11           But I'm not aware of the specific locations  
12 that she is referring to that -- that we may  
13 conceivably cause damage to.

14           MS. SUARD: Has anybody -- Who's going to make  
15 the decision from DWR of the barge travel?

16           MR. BERLINER: Again, this is beyond the scope  
17 of his testimony and would have been the same answer  
18 with the prior document as it is with this document.

19           CO-HEARING OFFICER DODUC: Are you able to  
20 answer, Mr. Bednarski?

21           WITNESS BEDNARSKI: I'm not able to answer  
22 that question, if there's, you know, a higher level at  
23 DWR that would make -- make that call or not.

24           You know, we would probably determine that  
25 during preliminary and final design as we're working

1 out all the details on the intake construction, because  
2 that's what this type of traffic was meant to support,  
3 especially in those areas that I already discussed,  
4 like driving the sheet pile to set up the coffer dam  
5 and things like that.

6 MS. SUARD: How many of the -- There's roughly  
7 15 marinas and RV Parks that will be impacted by barge  
8 traffic on the Sacramento River.

9 How many of those marinas and RV Parks have  
10 been contacted to provide input?

11 CO-HEARING OFFICER DODUC: Mr. Mizell.

12 MR. MIZELL: Yeah. I'm objecting again as  
13 beyond the scope.

14 Contacting -- The public outreach efforts are  
15 not either within the scope of John Bednarski's  
16 testimony or particularly relevant to the question of  
17 barge travel analysis, which is the line of questioning  
18 that Miss Suard is pursuing here.

19 So, beyond the scope. That's all I've got at  
20 the moment.

21 CO-HEARING OFFICER DODUC: At this point, I  
22 don't know, Miss Suard, that there's anything further  
23 Mr. Bednarski can add.

24 MS. SUARD: It's sort of the point. We still  
25 don't have enough information.

1 CO-HEARING OFFICER DODUC: And this is not the  
2 time for you to make an argument.

3 MS. SUARD: Okay. Let's see.

4 (Pause in proceedings.)

5 MS. SUARD: I'm going to go back. This is  
6 more of road traffic.

7 I wanted to understand if one tunnel section  
8 goes on each truck -- And this is, like, a 40-foot bed  
9 truck; is that right?

10 WITNESS BEDNARSKI: I made reference to what  
11 they refer to as a California legal truck. That means  
12 it has enough axles to meet the loading requirements  
13 on -- on a typical highway. So it's like a normal  
14 truck carrying a normally distributed load through --  
15 through the axles that it has.

16 So what -- Again, as I mentioned earlier, for  
17 the 40-foot tunnel, it's estimated that one California  
18 legal truck will carry one segment at a time.

19 I mentioned also earlier in the -- your  
20 questioning, we have the 28-foot diameter tunnels which  
21 are primarily in the north portion of the Project.  
22 There could be multiple tunnel segments on a California  
23 legal truck in that case.

24 MS. SUARD: Okay. Thank you.

25 Will --



1 (Timer rings.)

2 MS. SUARD: -- any of those trucks -- I'll  
3 go -- Will any of those trucks be going down State  
4 Route 84?

5 WITNESS CHOA: As part of the transportation  
6 section of the -- for the Final EIR and the  
7 Supplemental, those number of construction-related  
8 truck traffic was evaluated on SR 84.

9 MS. SUARD: Okay. And it's my understanding  
10 that State Route 84 has a length limit for recreational  
11 vehicles of no longer than 40 feet.

12 Doesn't that apply to construction traffic as  
13 well?

14 MR. MIZELL: I'm going to lodge an objection:  
15 Again, beyond the scope.

16 As Mr. Choa just mentioned, this analysis --  
17 this traffic analysis for State Route 84 is identical  
18 between the FEIR and the Supplemental document, so  
19 there's no change being proposed, which means it's  
20 beyond the scope of rebuttal.

21 MS. SUARD: Okay. That -- That's fair on  
22 that.

23 I guess I would like to ask more of a -- It's  
24 more of a logic question.

25 If the tunnel sections are going to be

1 installed on the east side of the Sacramento River, why  
2 are they being transported around the westside of the  
3 Sacramento? Doesn't that mean it has to cross a  
4 bridge?

5 MR. BERLINER: Objection: Compound question;  
6 also, argumentative.

7 CO-HEARING OFFICER DODUC: It is  
8 argumentative, but I don't believe it's a compound  
9 question.

10 Mr. Choa, are you able to answer?

11 WITNESS CHOA: Yes.

12 So, in addition to State Route 84, we also  
13 routed construction-related traffic on to I-5. So we  
14 actually have two options to access the north area,  
15 Interstate 5 and State Route 84, depending on where,  
16 again, the origin of those truck trips are coming from.

17 CO-HEARING OFFICER DODUC: Miss Suard, how --

18 MS. SUARD: What -- What bridge --

19 CO-HEARING OFFICER DODUC: How much  
20 questioning do you have? We do have a hard stop at.

21 MS. SUARD: Two.

22 CO-HEARING OFFICER DODUC: 5:00.

23 MS. SUARD: Two.

24 CO-HEARING OFFICER DODUC: All right.

25 MS. SUARD: What bridge will be used? If

1 you -- If trucks go down State Route 84, will they be  
2 crossing the Freeport Bridge or the Paintersville  
3 Bridge or Walnut Grove Bridge?

4 WITNESS CHOA: In terms of saving time, it's  
5 on -- on Page 14 of DWR-1212. We actually identify in  
6 terms of both the -- the Paintersville Bridge and --

7 MS. SUARD: Okay. I missed that.

8 It will be Paintersville.

9 WITNESS CHOA: That's correct, yes.

10 MS. SUARD: Okay. So I'm shifting over.

11 It's -- really refers to DWR-1316 and it's --

12 WITNESS BEDNARSKI: Excuse me. Can I provide  
13 a clarification on that?

14 MS. SUARD: Sure.

15 WITNESS BEDNARSKI: In my testimony, we were  
16 referring to only going as far north as the  
17 Paintersville Bridge as it pertained to barges.

18 There would be no need for them to go as far  
19 north as that Freeport Bridge because Intake Number 2  
20 is south of the Freeport Bridge.

21 So I think Mr. Choa's probably correct in his  
22 original assumptions that traffic coming down  
23 Highway 84 could cross over at Freeport or the  
24 Paintersville Bridge, depending on which intake those  
25 deliveries were being made to by road, which is -- you

1 know, that's a different situation than if you have  
2 barges coming up from the south.

3 MS. SUARD: Okay. Thank you.

4 WITNESS BEDNARSKI: Just a clarification.

5 MS. SUARD: And just to clarify, too: If --  
6 If you went up the Sacramento ship channel and then  
7 came down the Sacramento River, you would only open one  
8 bridge and that's Freeport.

9 CO-HEARING OFFICER DODUC: And is there a  
10 question there?

11 MS. SUARD: No. We're just clarifying.

12 So DWR-1316, it was referred to regarding  
13 Page 15.

14 You said that DWR avoided active gas wells,  
15 and there was a map that went up.

16 And I'm not going to go through the whole  
17 thing, but I would like Mr. Bednarski to take a look at  
18 Snug Harbor's SHR-704, -705, -706 and -708. And,  
19 specifically, these are data provided by Department of  
20 Conservation.

21 There are many more active gas wells than your  
22 maps portrayed. And in the interest in safety for  
23 reference for the Board, I'd like to look at, for  
24 example --

25 CO-HEARING OFFICER DODUC: And --

1 MS. SUARD: -- 708.

2 I'm going to ask a question.

3 CO-HEARING OFFICER DODUC: Yes.

4 MS. SUARD: Okay. I'll ask a question.

5 SHR-708 is an Excel spreadsheet I downloaded  
6 from Department of Conservation.

7 It is a list of all the active gas wells in  
8 California. And you can scroll down and find -- please  
9 find one of the highlighted counties.

10 There are many, many wells -- active gas  
11 wells, capped, standing wells, many, many of them.  
12 They're -- They're listed by their GPS coordinates and  
13 you're -- When you --

14 CO-HEARING OFFICER DODUC: And your question?

15 MS. SUARD: Was this utilized in making the  
16 DWR map for active gas wells in the line of the  
17 tunnels?

18 CO-HEARING OFFICER DODUC: Are you able to  
19 answer based on this Excel spreadsheet that you are now  
20 seeing for the first time?

21 WITNESS BEDNARSKI: You stated that it came  
22 from which -- which agency or which --

23 MS. SUARD: Department of Conservation,  
24 California Department of Conservation, the DOGG --  
25 DOGGR. Yeah, DOGGR.

1 WITNESS BEDNARSKI: Yeah. I believe that's  
2 the same database that we consulted. I think I called  
3 that out in our testimony here.

4 CO-HEARING OFFICER DODUC: You did and you  
5 testified to that --

6 WITNESS BEDNARSKI: Yes.

7 CO-HEARING OFFICER DODUC: -- previously.

8 WITNESS BEDNARSKI: Right.

9 So if this is from that same agency, then,  
10 yes, this is the database that we consulted.

11 MS. SUARD: Okay. I just want to make sure  
12 because I don't want anybody to get blown up just so  
13 I'm referring to these.

14 That's it. That's all I have.

15 CO-HEARING OFFICER DODUC: Miss Daly, you have  
16 seven minutes.

17 MS. DALY: And one question.

18 CO-HEARING OFFICER DODUC: And one question.  
19 All right.

20 MS. DALY: Everything else is covered.  
21 Thanks.

22 This is just a clarification question. I  
23 think it was just answered incorrectly.

24 Barbara Daly, North Delta C.A.R.E.S.

25 CO-HEARING OFFICER DODUC: I don't believe

1 it's on.

2 MS. DALY: There we go. Barbara Daly, North  
3 Delta C.A.R.E.S.

4 CROSS-EXAMINATION BY

5 MS. DALY: Hello late in the day Friday.

6 Sorry. But I only have one question, Mr. Bednarski.

7 You were answering a question to Nicki about  
8 taking tunnel sections north. And you referred to  
9 you're not transporting any tunnel sections to  
10 Intake 1.

11 That confused me and caught -- caught my ear.

12 What did you mean by that?

13 WITNESS BEDNARSKI: Yeah. I believe that was  
14 in regards to, or in reference to, barge traffic --

15 MS. SUARD: To Intake 1.

16 WITNESS BEDNARSKI: -- to Intake Number 1.

17 MS. DALY: Where is Intake Number 1?

18 WITNESS BEDNARSKI: I mean -- I'm sorry --  
19 Intake 2.

20 Intake 2. I misspoke.

21 MS. DALY: Did you -- You meant --

22 WITNESS BEDNARSKI: We don't have an Intake  
23 Number 1.

24 WITNESS BEDNARSKI: We used to have five  
25 intakes. Now we have --

1 MS. DALY: That's right.

2 WITNESS BEDNARSKI: So if I said Intake 1, I  
3 meant Intake 2. That's the first one, most --  
4 northernmost intake. Thank you for catching that.

5 MS. DALY: Thank you for correcting it.

6 Okay. Thank you. That's all I have.

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

9 WITNESS BEDNARSKI: It's been a long day.

10 CO-HEARING OFFICER DODUC: Yes, it has been.

11 Unless there's any housekeeping matter, we  
12 will adjourn until Monday at 9:30.

13 We will be back in this room with the  
14 exception of Miss Buchholz and Mr. Volk.

15 Thank you.

16 (Proceedings adjourned at 4:55 p.m.)

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