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BEFORE THE  
CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

CALIFORNIA WATERFIX WATER )  
RIGHT CHANGE PETITION HEARING )

JOE SERNA, JR. BUILDING  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY  
COASTAL HEARING ROOM  
1001 I STREET  
SECOND FLOOR  
SACRAMENTO, CALIFORNIA

PART 2 REBUTTAL

Friday, August 31, 2018

10:00 a.m.

Volume 50

Pages 1 - 95

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

Utilizing Computer-Aided Transcription

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APPEARANCES

CALIFORNIA WATER RESOURCES BOARD

Division of Water Rights

Board Members Present:

Tam Doduc, Co-Hearing Officer  
Felicia Marcus, Chair & Co-Hearing Officer

Staff Present:

Dana Heinrich, Senior Staff Attorney  
Jean McCue

PART 2 REBUTTAL

For Petitioners:

California Department of Water Resources:

James (Tripp) Mizell  
Thomas Berliner

The U.S. Department of the Interior:

Amy L. Aufdemberge, Esq.

1 APPEARANCES (Continued)

2 FOR PROTESTANTS AND INTERESTED PARTIES:

3 For Local Agencies of the North Delta, et al.:

4 Osha Meserve

5 For State Water Contractors:

6 Stefanie Morris

7 For Sacramento Valley Water Users The City of,  
8 Roseville, Sacramento Suburban Water District, San Juan  
9 Water District, The City of Folsom, and Yuba County  
10 Water Agency:

11 Ryan Bezerra

12 For Sacramento Regional County Sanitation District and  
13 City of Stockton:

14 Kelley Taber

15 For The County of Yolo:

16 Osha Meserve

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

21 Dean Ruiz

22 For County of San Joaquin, et al.:

23 Thomas H. Keeling

24 For Solano County and Contra Costa County:

25 Stephen Siptroth

For City of Antioch:

Matthew Emrick

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I N D E X (Continued)

For Save the California Delta Alliance:

Dean Ruiz for Michael Brodsky

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

Chris Shutes

For California Water Research:

Deirdre Des Jardins

For Clifton Court, L.P.:

Suzanne Womack  
Matthew Emrick

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1 Friday, August 31, 2018

10:00 a.m.

2 PROCEEDINGS

3 ---000---

4 CO-HEARING OFFICER DODUC: Good morning,  
5 everyone. Welcome back to this hearing on the  
6 California WaterFix Project Water Rights Change  
7 Petition.

8 I am Tam Doduc. To my right is Board Chair  
9 and Co-Hearing Officer Felicia Marcus. To . . . my  
10 left are Dana Heinrich and Jean McCue.

11 I see all familiar faces so I'm going to skip  
12 all the announcements, except always check to make sure  
13 you're not going to be annoying me this morning and  
14 turn all your -- I'm sure you can find other ways to  
15 annoy me, but for now, please take a moment and turn  
16 all your noise-making devices to silent, vibrate, do  
17 not disturb.

18 All right. The schedule for today is: First  
19 we'll hear from the parties regarding the requests on  
20 surrebuttal.

21 And then we have one final cross-examination  
22 to be completed, and that is Miss Morris' continuation  
23 of her cross-examination of Mr. Burke.

24 So, before we get to you all, let me give you  
25 a little bit of -- hopefully a little bit of additional

1 instructions that will hopefully make this morning's  
2 discussion productive and efficient.

3 First of all, as you all know by now, the  
4 decisions on surrebuttal, scope, timing, all that is a  
5 discretionary decision on our behalf, but we do want to  
6 hear from you. We want to hear what you believe are  
7 the important topics that should be covered in  
8 surrebuttal.

9 I would ask, however, that, as you present  
10 your request today, please try to put yourself in our  
11 shoes and provide, if you can, specifics on why you  
12 believe addressing that particular surrebuttal topic is  
13 important to us as we consider this Petition and, in  
14 particular, considering the key issues for Part 2.

15 So it would be to your advantage if you could  
16 articulate that very clearly and concisely.

17 Secondly, Mr. Berliner asked yesterday about  
18 timing. We'll hear from you today, we'll take under  
19 consideration your requests, and we also have some  
20 cleanup things to do with respect to rebuttal exhibits.  
21 And so I expect that we'll try to get a ruling out with  
22 respect to surrebuttal as soon as possible, but I will  
23 say right now that you do -- you do not -- Well, you'll  
24 be hopefully working on other things, but you can be  
25 assured that surrebuttal will not begin -- if we were

1 to allow surrebuttal -- until, at the earliest,  
2 September I believe it's 17th. Yes.

3 The earliest surrebuttal would begin -- should  
4 we grant requests for surrebuttal, would be  
5 September 17th. All right?

6 So, what I will do today is, I will call the  
7 parties up, or at least call your group number. And at  
8 that time, I'll ask you --

9 (Cell phone ringing.)

10 CO-HEARING OFFICER DODUC: -- to present  
11 your -- or state only your request for surrebuttal.

12 And I'm hearing noises. Why am I hearing  
13 noises?

14 (Pause in proceedings.)

15 CO-HEARING OFFICER DODUC: Who is that?

16 MR. BERLINER: (Pointing across the room.)

17 MS. MESERVE: Mr. Berliner threw me under the  
18 bus.

19 (Laughter.)

20 MR. BERLINER: I wanted to start the morning  
21 with a little entertainment.

22 CO-HEARING OFFICER DODUC: Ah. Well, you  
23 should -- you should be glad today is Friday and I'm in  
24 a good mood.

25 All right. I will ask you to come up and



1 present your request with respect to surrebuttal.

2           And, again, if you can emphasize or at least  
3 provide some explanation in your request with respect  
4 to why addressing that particular topic is important to  
5 us in considering the Petition, in considering the key  
6 issues for Part 2, that would be very helpful.

7           Also, it would be very helpful is, if you  
8 could cat -- what is the word?-- categorize your  
9 topics. As I, and I think you all know, the scope for  
10 Part 2 rebuttal, which, by the way, would be the sole  
11 focus of your surrebuttal request, falls into a few  
12 categories.

13           First category is, of course, that -- the key  
14 hearing issues for Part 2.

15           Second category would be the Administrative  
16 Draft of the Supplemental EIR/EIS that was released.

17           And the third category, I believe, is -- and  
18 I -- I will have to check. But we did allow for  
19 revisiting Part 1 issue to the extent that it was  
20 responsive to testimony presented in Part 2.

21           So those, in my mind, are the three main  
22 categories for subjects that were covered in rebuttal  
23 that you are allowed to address in surrebuttal.

24           So, as you make your specific requests for  
25 topics that you want to address, and the rebuttal

1 testimony to which it is directed, if you could be  
2 clear in categorizing where that falls. It will just  
3 help us keep track of your requests.

4 What Hearing Officer Marcus and I will do  
5 after today is, we will meet to discuss those requests  
6 and try to get a ruling out as soon as possible.

7 We will not have the benefit of a transcript,  
8 so, to the extent that you can be as clear, concise and  
9 help us in organizing our thoughts today, that would  
10 really help things move along.

11 I think -- Oh. And then, finally, one other  
12 thing:

13 I know how much attorneys love to argue. And  
14 engineers, too, to a certain level.

15 But let me just say right now that, for the  
16 purposes of surrebuttal requests, we are taking  
17 requests. We are not -- We're not going to be opening  
18 the floor up for oppositions to other parties' requests  
19 for surrebuttal, so do not go there.

20 When you come up, use your time to present  
21 your request for surrebuttal, to present your arguments  
22 for why you believe it's important for us as Hearing  
23 Officer to consider those issues.

24 And, to the extent that you can, help us  
25 categorize the topic you are requesting surrebuttal on.

1 But do not take that time to argue against another  
2 party's request. That is not productive.

3 All right. I know that's a lot, but if I  
4 could have provided it to you sooner, I would. I  
5 thought all of this last night when I should have been  
6 sleeping, so -- but I hope it will be helpful.

7 So, with that, are there any questions before  
8 I turn to the first party, who would be the Department  
9 of Water Resources.

10 Miss Meserve.

11 MS. MESERVE: I think this may concern other  
12 people as well so I just bring it up as a general  
13 matter.

14 At the time that our rebuttal testimony was --  
15 well, this -- the Admin Draft Supplemental EIR was  
16 released just before our rebuttal testimony was due  
17 and, subsequent to that, the Draft EIR -- Public Review  
18 Draft SEIR went out.

19 That still is not part of this hearing record,  
20 but it should be, I believe. That's what the public is  
21 reviewing and, indeed, comments are due on that on  
22 September 17th.

23 So I would like to ask if there's a way that  
24 we -- that the Board could put the true Draft -- Public  
25 Review Draft Supplemental EIR into this record so that

1 we can have that as what we're dealing with.

2           There are some differences. I know there were  
3 two appendices that were missing from the Admin Draft  
4 SEIR that's posted, and I don't -- There was never a  
5 red line provided, either.

6           So, probably none of us have had a chance to  
7 actually compare the two documents to see what is  
8 different, and they may only be minor. But I think, at  
9 this point, given that that's the operative document  
10 that describes what the current iteration of the  
11 progress is, we shouldn't be working anymore with the  
12 Admin Draft SEIR.

13           So I'd ask that some accommodation be made to  
14 try to improve the record on that point.

15           CO-HEARING OFFICER DODUC: Thank you,  
16 Miss Meserve.

17           We'll note that, and perhaps Mr. Mizell might  
18 address that.

19           But, in any case, we will include that in our  
20 ruling -- if necessary, in our ruling letter with  
21 respect to surrebuttal.

22           All right. Mr. Mizell, on behalf of the  
23 Department. Is this on behalf of the Department and --  
24 well, both departments? Are you making this request?

25           MR. MIZELL: It appears so.

1 CO-HEARING OFFICER DODUC: All right.

2 MR. MIZELL: If you would like, I -- I would  
3 just say with regard to the -- the Draft Supplemental,  
4 the Department would not oppose bringing that into the  
5 record.

6 I don't have much more of an opinion than that  
7 given it did come out after the due date for rebuttal  
8 testimony. We did not attempt to move it into the  
9 record because we did not feel that that would have  
10 been well received.

11 But, certainly, if the parties to this hearing  
12 are amenable, we also believe that it would be a  
13 helpful thing to have in the Administrative Record.

14 CO-HEARING OFFICER DODUC: All right.

15 MR. MIZELL: In -- My comments on -- on  
16 surrebuttal will be rather short in light of, Hearing  
17 Officer Doduc, your -- your comments just now.

18 The Department does not feel that there's new  
19 substantial information that would compel surrebuttal.

20 I'm happy to elaborate, but I want to be very  
21 cognizant of the direction you just gave not to argue  
22 against -- against surrebuttal.

23 CO-HEARING OFFICER DODUC: All right.

24 Miss Morris, on behalf of the State Water Contractors.

25 MS. MORRIS: At this point in time, the State

1 Water Contractors do not think that surrebuttal is  
2 necessary.

3 It seems like there hasn't been any new  
4 information. Several of the topics that were covered  
5 in Part 1 were also covered in Part 2, that we're  
6 recirculating other issues. So we are not requesting  
7 any surrebuttal at this time.

8 CO-HEARING OFFICER DODUC: Is Group 4 here? I  
9 don't see Mr. O'Hanlon.

10 (Pause in proceedings.)

11 CO-HEARING OFFICER DODUC: Group 5 -- I'll  
12 read the name just in case you've forgotten --  
13 Westlands, although I don't see them here, either.

14 (Pause in proceedings.)

15 CO-HEARING OFFICER DODUC: 6, Coalition for a  
16 Sustainable Delta.

17 (Pause in proceedings.)

18 CO-HEARING OFFICER DODUC: All right. 7. I  
19 see Mr. Bezerra.

20 Are you here on behalf of the entire Group 7,  
21 Mr. Bezerra? I --

22 MR. BEZERRA: I'll say two things.

23 CO-HEARING OFFICER DODUC: Okay.

24

25

1 MR. BEZERRA: My particular clients are not  
2 proposing any surrebuttal.

3 I don't believe any of the rest of the  
4 American River Agencies are proposing surrebuttal.  
5 And, as far as I know, no one else from Group 7 is  
6 proposing surrebuttal.

7 But that's as far as I know as to the rest of  
8 Group 7.

9 CO-HEARING OFFICER DODUC: Thank you,  
10 Mr. Bezerra.

11 In any case, if they're not here, then they  
12 have missed their chance to make their request.

13 Number 8, Tehama-Colusa Canal.

14 (Pause in proceedings.)

15 CO-HEARING OFFICER DODUC: North Delta Water  
16 Agency, Number 9.

17 (Pause in proceedings.)

18 CO-HEARING OFFICER DODUC: Number 10, City of  
19 Brentwood, Reclamation District 800 and a bunch of  
20 other districts.

21 (Pause in proceedings.)

22 CO-HEARING OFFICER DODUC: No?  
23 11, the Water Forum.

24 (Pause in proceedings.)

25 CO-HEARING OFFICER DODUC: 12, County of

1 Colusa.

2 (Pause in proceedings.)

3 CO-HEARING OFFICER DODUC: 13, Sacramento  
4 Regional.

5 MS. TABER: Good morning, Chair Doduc. Kelley  
6 Taber on behalf of Sacramento Regional County  
7 Sanitation District.

8 Regional San requests the opportunity to  
9 present surrebuttal in response to a portion of  
10 Dr. Chilmakuri's testimony.

11 That's DWR-1217. His Opinion 6C that begins  
12 on Page 18, I believe it's Line 7 and continues through  
13 Page 25, approximately Line 15 of his testimony.

14 This portion of his test -- rebuttal testimony  
15 addresses impacts to the Sacramento Regional Wastewater  
16 Treatment Plant operations, and we believe this is a  
17 public interest issue that's relevant to Part 2.

18 Dr. Chilmakuri's testimony was not based on  
19 the information that Regional San provided him about  
20 its operations and, therefore, it contained and was  
21 based on a fundamental error in assumptions regarding  
22 the effluent discharge from the Treatment Plant. And  
23 Regional San needs to be able to respond to that for  
24 the record.

25 CO-HEARING OFFICER DODUC: All right. Thank



1 you, Miss Taber. Concise and clear. Love it.

2 Number 14, County of Yolo.

3 MS. MESERVE: Good morning. Osha Meserve on  
4 behalf of County of Yolo this morning.

5 Mr. Pogledich couldn't be here today.

6 Yolo County would like to respond to issues  
7 that were brought up in cross-examination on roadway  
8 issues.

9 New changes in the Supplemental EIR reduced  
10 the amount of mitigation that would be provided for  
11 certain roadway impacts in Yolo County. So this is a  
12 public interest consideration that's important to Yolo  
13 County.

14 In order to prepare -- Depending on how the  
15 relationship of the Supplemental EIR is -- is -- is  
16 ruled upon in terms of how we can prepare surrebuttal,  
17 we would definitely need the transcript in order to  
18 determine exactly what would be appropriate in  
19 surrebuttal.

20 But this issue was brought up and it's very  
21 important to Yolo County to be able to respond to in  
22 this hearing.

23 CO-HEARING OFFICER DODUC: Let me make sure I  
24 understand, Miss Meserve.

25 And I encourage staff, as well as Chair

1 Marcus, to also ask any clarifying questions because  
2 this is our only opportunity to try and understand your  
3 request.

4 So, are you -- Am I to understand correctly  
5 that the evidence or testimony to which Yolo is  
6 proposing to rebut is in the transcript and there's not  
7 a particular exhibit to which they can cite at this  
8 time?

9 MS. MESERVE: Well, I believe Mr. Bednarski  
10 was the witness that DWR put forth to talk about  
11 roadway issues that were in response to case in chief  
12 Part 2.

13 And, so, Mr. Pogledich had redeveloped a  
14 series of questions to look into the fact that certain  
15 impacts were determined in the SEIR to be less than  
16 significant and not require mitigation that had  
17 previously been significant and required mitigation.

18 So that's the area of concern that Yolo County  
19 has and would like the opportunity to prepare a brief  
20 surrebuttal testimony about.

21 CO-HEARING OFFICER DODUC: All right. Thank  
22 you, Miss Meserve.

23 East Bay MUD.

24 (Pause in proceedings.)

25 CO-HEARING OFFICER DODUC: 17, San Joaquin

1 River Exchange Contractors Water Authority.

2 (Pause in proceedings.)

3 CO-HEARING OFFICER DODUC: 18.

4 (Pause in proceedings.)

5 CO-HEARING OFFICER DODUC: 19. Miss Meserve?

6 (Pause in proceedings.)

7 CO-HEARING OFFICER DODUC: I think you have  
8 22; don't you?

9 MS. MESERVE: Yeah. I have kind of two  
10 buckets of requests, one that goes with Friends of  
11 Stone Lakes and one that goes with Group 19.

12 CO-HEARING OFFICER DODUC: Let's just focus on  
13 Group 19 for now, please.

14 MS. MESERVE: Yes.

15 CO-HEARING OFFICER DODUC: It will help us  
16 stay organized.

17 MS. MESERVE: Yeah. Okay.

18 So, with respect to the groundwater testimony  
19 presented by Ms. Buchholz, LAND et al. would like to  
20 prepare a -- a response to that.

21 There are significant issues in terms of  
22 the -- the adequacy of mitigation in the particular for  
23 long-term groundwater implications of lowering the --  
24 reducing the wetted area of the Sacramento River  
25 significantly, as was discussed in testimony.

1           So, again, I think we -- we want to see the  
2 transcripts from the cross-examination of  
3 Miss Buchholz.

4           But there is material that we believe requires  
5 a response in order to fully vet the public interest  
6 considerations and, in particular, the effect of  
7 surface water diversions on groundwater and  
8 sustainability under SGMA for the entities that are  
9 affected by the dewatering of the Sacramento River.

10           With respect to the -- another issue that was:  
11 The witnesses were Bednarski and Valles from DWR.

12           We would like the opportunity to respond to  
13 new information in the 2018 -- July 2018 CER, which  
14 apparently changes the approach to the -- the  
15 construction and operation of the fish screens, which  
16 was brought up in cross-examination of Mr. Bednarski  
17 and Valles.

18           It appears the fish screens would be much less  
19 effective than previously thought. That's new  
20 information.

21                           (Pause in proceedings.)

22           MS. MESERVE: Sorry. One moment.

23           Also, with respect to Mr. Greenwood and sort  
24 of combined with the testimony we heard in the last  
25 panel from DWR about the argument for natural flow

1 versus unimpaired flow.

2 I think there's still issues in Mr. Greenwood  
3 and the other fish testimony that need to be responded  
4 to and actually apply those concepts to the proposed  
5 diversions so that we could understand how that view of  
6 the flows would change the habitat and the  
7 reasonable -- what DWR claims are reasonable  
8 protections for fish.

9 And . . . I'll leave it at that for -- for  
10 now.

11 But I would say that, like Part 1, I think we  
12 have significant new information that's been brought up  
13 in the course of this hearing. Some of that's because  
14 of the changes to the Project that have been brought  
15 about by the Petitioners in the course of the hearing  
16 and late in Part 2 indeed.

17 So, in particular, with the decision of the  
18 Petitioners to not address flows, which is a key  
19 hearing issue in their case in chief for Part 2, but to  
20 only address that in rebuttal instead I think makes it  
21 very necessary that -- that Petitioner -- Protestants  
22 would have an opportunity to respond to that  
23 information.

24 And the -- In addition, the Supplemental EIR  
25 does have information and some of the

1 cross-examination, like I mentioned, does reveal  
2 additional issues with that.

3           And then the CER, which is a technical  
4 document that's thousands of pages long, was just put  
5 into the record, I believe, yesterday but, you know,  
6 we've had only for a month or so.

7           And I think there's some significant changes  
8 to the Project that are shown in that, that Protestants  
9 should have an opportunity to respond to and I provided  
10 one example of that with the fish screens.

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

13           And that was on behalf of Mr. Daniel Wilson as  
14 well; right?

15           MS. MESERVE: Correct.

16           MS. McCUE: Can I ask one question?

17           CO-HEARING OFFICER DODUC: Sure.

18           MS. McCUE: Were all those -- the testimony  
19 you talked about, were any of them in written testimony  
20 or was it all in the transcript?

21           MS. MESERVE: I think it's both, actually.

22           I think the main witnesses I'm talking about  
23 from DWR are Buchholz and Bednarski, Valles, Greenwood,  
24 Hutton and Hanson.

25           But there's also issues that came up within

1 the scope of cross-examination that -- that add some  
2 color to that.

3 MS. McCUE: Thank you.

4 CO-HEARING OFFICER DODUC: While not  
5 required -- This is -- Well, not directly only at you,  
6 Miss Meserve.

7 While not -- While not required, if you can  
8 cite a particular . . . section of the testimony --  
9 written testimony to which you are requesting rebuttal,  
10 like Miss Taber did, it would be extremely helpful.

11 All right. 21, Mr. Ruiz.

12 MR. RUIZ: Good morning. Dean Ruiz for the  
13 South Delta Water Agency parties, Group 21.

14 We are requesting surrebuttal with respect to  
15 Dr. Chilmakuri's testimony, which is DWR-1217.

16 His last opinion, which I believe is Opinion 6  
17 or 7 -- I'm not sure -- His last opinion pertains to  
18 Tom Burke's salt-loading analysis with regard to the  
19 South Delta.

20 Dr. Chilmakuri asserts that Mr. Burke's  
21 salt-loading analysis is fundamentally incorrect and  
22 incomplete such that it cannot be relied upon. That  
23 relates to key -- key hearing issues in Part 2 with  
24 regard to public trust and public interest.

25 But it also relates to continued key hearing

1 issue from Part 1 with regard to harm to legal users of  
2 water, particularly in this case agricultural users and  
3 agricultural production.

4 And Part 2 witnesses for DWR, though they  
5 didn't specifically address ag, they continued to  
6 assert that salt -- salinity impacts and issues in the  
7 South Delta were insignificant or not of concern with  
8 respect to the preferred CWF H3 scenario.

9 So, based on that and the continued,  
10 obviously, pervasive issue of salinity in the South  
11 Delta and the Delta overall from this Project, we  
12 request surrebuttal accordingly.

13 CO-HEARING OFFICER DODUC: Thank you,  
14 Mr. Ruiz.

15 City of Stockton, 22.

16 (Pause in proceedings.)

17 CO-HEARING OFFICER DODUC: 23, Stockton East.

18 (Pause in proceedings.)

19 CO-HEARING OFFICER DODUC: 24, North  
20 San Joaquin Water Conservation District.

21 (Pause in proceedings.)

22 CO-HEARING OFFICER DODUC: And County of  
23 San Joaquin.

24

25



1 MR. KEELING: Good morning. Tom Keeling for  
2 the San Joaquin County Protestants.

3 We request surreply testimony which we think  
4 is needed to rebut new information provided in the DWR  
5 witnesses' far-ranging attack on the Board's 2010 Flow  
6 Criteria Report and recommendations as they impact the  
7 Project.

8 And, in particular, not to be outdone by  
9 Miss Taber, this rebuts --

10 CO-HEARING OFFICER DODUC: Competition between  
11 attorneys is a beautiful thing to see.

12 MR. KEELING: Well, she's tough competition.  
13 -- in particular to rebut District Attorney  
14 Hanson's testimony, DWR-1223 at Pages 3, Lines 1  
15 through 13, and Pages 7, Line 2 through Page 26,  
16 Line 28.

17 And Dr. Hutton's testimony, DWR-1224, at  
18 Page 2, Line 16 through Page 3, Line 19, and Page 4,  
19 Line 18 through Page 34, Line 11.

20 And, finally, Dr. Acuña, DWR-1211 at Page 2,  
21 Line 24 through Page 12, Line 12.

22 In addition, and as part of that request for  
23 surreply, we would -- we think it's necessary also  
24 because new studies were advanced by these three  
25 witnesses to critique the 2010 Flow Criteria Report.

1           The report itself is in evidence. But the  
2 evidence that was submitted in support of the 20 --  
3 2010 Criteria Report was not -- is not in this -- this  
4 proceeding. So, as part of that, we would be  
5 introducing the documents that support 2010 Flow  
6 Criteria Report.

7           Second -- and this is very closely akin to  
8 Miss Meserve's request -- we believe that surrebuttal  
9 is necessary to rebut propositions and new information  
10 in the July 18, 2018, CER.

11           And I should -- I should point out that this  
12 is really a public interest issue having to do with  
13 Public Works whereas my first request was more in the  
14 public trust category. Sorry I omitted that.

15           Obviously, this is a new -- this is completely  
16 new information that our public resource people, as the  
17 Regional San people, are currently reviewing.

18           I don't expect this to be very extensive but I  
19 wanted a place maker there because they're in the  
20 process of reviewing it now.

21           And that's it.

22           Thank you very much.

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

25           Group 25, Solano and Contra Costa.

1 MR. SIPTROTH: Good morning. Stephen Siptroth  
2 for Contra Costa County and Solano.

3 We propose surrebuttal testimony by Dr. Denton  
4 from a few different areas.

5 The first is the impacts of the WaterFix  
6 Project as modeled without a January-August minimum  
7 flow requirement at Rio Vista. And that goes to  
8 Mr. Reyes' technical memo, DWR-1222, and his testimony  
9 in Part 2 -- rebuttal testimony in Part 2.

10 The second area would be to provide  
11 surrebuttal testimony related to Dr. Hutton's  
12 testimony.

13 The subject is showing historical variation in  
14 Delta outflow and Fall X2 as a function of the  
15 Sacramento 40-30-30 Water Year Index.

16 If you need me to go into details on either of  
17 these, I can. But that --

18 CO-HEARING OFFICER DODUC: Only to the extent  
19 that you feel why it's important for us that you --  
20 Well, some of it is kind of obvious, but if you want to  
21 provide just a little bit of --

22 MR. SIPTROTH: Sure.

23 CO-HEARING OFFICER DODUC: -- detail.

24 MR. SIPTROTH: Yeah.

25 So, Dr. Hutton's rebuttal testimony is

1 DWR-1224-Revised.

2 He claimed that there's been no long-term  
3 change in Delta outflow since 1968 and no corresponding  
4 changes to Fall X2. But plotting -- plotting as a  
5 function on which 40-30-30 would show impacts.

6 The third area involves inconsistencies  
7 between CWF H3+ and WaterFix Operating Criteria in  
8 DWR-1143-Second Revision.

9 Contrary to DWR's statement in 1143, CWF H3+  
10 modeling assumptions are not consistent with the  
11 Adopted Project criteria. For example, the Rio Vista  
12 flows Delta Cross Channel operations are subject  
13 matters that we would address in surrebuttal testimony.

14 The impact of not having a January-to-August  
15 Rio Vista flow requirement also relates to an offramp  
16 in a Settlement Agreement with CCWD, and so, you know,  
17 that's implicated as well.

18 One of the WaterFix Mitigation Measures  
19 depends on the Settlement Agreement between DWR and  
20 CCWD but without a Rio Vista flow requirement, the  
21 requirements of that Settlement Agreement cannot be  
22 met.

23 The last area would be to provide surrebuttal  
24 testimony related to Dr. Chilmakuri's testimony.  
25 DWR-1127, particularly, his opinions which start on

1 Page 2 of 1127.

2 And our surrebuttal testimony would be focused  
3 on the fact that the most likely version of WaterFix is  
4 not representative of -- of the future Project. For  
5 example, an SWP-only Project.

6 And problems with CWF H3+ modeling and the  
7 expert's opinion drawn from the CWF H3 model study are  
8 called into question.

9 Those are the areas.

10 CO-HEARING OFFICER DODUC: Thank you.

11 MR. SIPTROTH: I have one housekeeping matter.  
12 Will you entertain those after you go through the rest  
13 of the groups, or would you like me to raise it?

14 CO-HEARING OFFICER DODUC: Let's wait.

15 MR. SIPTROTH: Okay. Thank you.

16 CO-HEARING OFFICER DODUC: Thank you.

17 And please remind me if I forget.

18 MR. SIPTROTH: Thank you.

19 CO-HEARING OFFICER DODUC: Mr. Emrick, City of  
20 Antioch.

21 MR. EMRICK: Thank you.

22 Matthew Emrick for City of Antioch.

23 One area of proposed surrebuttal would be in  
24 reply to Dr. Chilmakuri, DWR-1217, Opinion 5, and  
25 specifically Pages 12 and 13 of his testimony where he

1 critiques Dr. Paulsen.

2 We'd like a chance to show that his critique  
3 is correct (sic) and not based on . . . facts in the --  
4 and -- and proper analysis.

5 Okay?

6 CO-HEARING OFFICER DODUC: Thank you.

7 28.

8 (Pause in proceedings.)

9 CO-HEARING OFFICER DODUC: 29?

10 (Pause in proceedings.)

11 CO-HEARING OFFICER DODUC: 30?

12 MR. RUIZ: Good morning again.

13 Michael Brodsky and California Delta Alliance  
14 requests surrebuttal. He can't be here so he asked me  
15 to read a statement.

16 First topic relates to non-impact methods for  
17 intake foundations.

18 On cross-examination during Part 2 rebuttal  
19 phase, Mr. Bednarski testified that he believed  
20 conditions could be uncovered by further geotechnical  
21 exploration that would show driven piles to be feasible  
22 but drilled piers not to be feasible at the intake  
23 locations.

24 Delta Alliance expert Dr. Rune Storesund will  
25 testify on surrebuttal as follows:

1           First, all limitations are overwhelmingly that  
2 drill piers can be used for intake foundations at the  
3 currently indicated location.

4           Second, in the event some highly unusual  
5 conditions were disclosed by further geotechnical  
6 investigation, there is no condition that would make  
7 drill piers infeasible but would still allow the use of  
8 impact-driven piles.

9           Dr. Storesund will testify that there is,  
10 therefore, no justification for delaying the binding  
11 commitment to use non-impact methods for all foundation  
12 supports.

13           The Board should include a permit condition  
14 requiring the use of non-impact methods for foundation  
15 supports at the intakes.

16           Dr. Storesund will explain the existing  
17 information related to the geotechnical setting near  
18 the intake location in support of his testimony.

19           The second topic he has here pertains the  
20 barge routes.

21           Mr. Bednarski's Part 2 rebuttal written  
22 testimony, which is DWR-1212, stated that barge impacts  
23 due to bridge openings could be managed and minimized  
24 by (reading):

25           ". . . Scheduling barge traffic/bridge

1 traffic openings to occur during off-peak  
2 vehicular traffic conditions or during  
3 tidal conditions that provide sufficient  
4 clearance for barges or rugs (sic) to  
5 pass under the bridges without requiring  
6 that the bridges themselves be open."

7 And that's -- close quote. And that's  
8 apparently Mr. Bednarski's direct quote at DWR-1212,  
9 Page 16, Lines 8 through 11.

10 Delta Alliance will present surrebuttal from  
11 Frank Morgan and other witnesses that tugs and barges  
12 cannot fit under Delta bridges at low tide, and the  
13 existing CWF operating hours do not allow for  
14 scheduling to avoid traffic impacts.

15 Delta Alliance surrebuttal testimony will  
16 provide for a plan to limit barge landings to the  
17 San Joaquin River only, and barge traffic to the  
18 San Joaquin River and Sacramento Rivers only with no  
19 barge traffic on other Delta waterways.

20 This will show how scheduling and managing  
21 barge traffic could actually minimize impacts in  
22 contrast to Mr. Bednarski's testimony.

23 The California Delta Alliance requests  
24 surrebuttal -- surrebuttal opportunity accordingly.

25 CO-HEARING OFFICER DODUC: Thank you,



1 Mr. Ruiz.

2 Mr. Shutes, on behalf of Group 31.

3 MR. SHUTES: Good morning.

4 Chris Shutes on behalf of the California  
5 Sportfishing Protection Alliance, California Water  
6 Impact Network, and AquAlliance.

7 CSPA, et al., would like the opportunity to  
8 present surrebuttal primarily centered around DWR --  
9 Exhibit DWR-1143-Second Revised and the testimony of  
10 the witnesses who presented it.

11 This would include both what DWR included in  
12 DWR-1143-Revised and relevant and misleading omissions  
13 that would potentially affect permit conditions.

14 This would go to key hearing issues 3-A  
15 unreasonable Effects, 3-D Delta Flow Criteria, and four  
16 public interest.

17 CO-HEARING OFFICER DODUC: Thank you,  
18 Mr. Shutes.

19 32, Restore the Delta.

20 (Pause in proceedings.)

21 CO-HEARING OFFICER DODUC: 33?

22 (Pause in proceedings.)

23 CO-HEARING OFFICER DODUC: 34.

24 (Pause in proceedings.)

25 CO-HEARING OFFICER DODUC: 35, NRDC.

1 (Pause in proceedings.)

2 CO-HEARING OFFICER DODUC: 37, Miss Des  
3 Jardins.

4 MS. DES JARDINS: I -- Good afternoon (sic).

5 CO-HEARING OFFICER DODUC: Miss Des Jardins,  
6 if you would be more comfortable, do you want to take a  
7 seat?

8 MS. DES JARDINS: Oh, sure, that would work.

9 CO-HEARING OFFICER DODUC: I hate to see  
10 people abusing their backs.

11 MS. DES JARDINS: Okay.

12 CO-HEARING OFFICER DODUC: You're welcome to  
13 take a seat.

14 MS. DES JARDINS: Oh, up here. Oh, that would  
15 be great.

16 (Pause in proceedings.)

17 MS. DES JARDINS: So, with respect to  
18 testimony about impacts to fish and wildlife, I'd like  
19 to -- there was extensive testimony presented by  
20 Hanson, Acuña and Grimaldo. And I'd specifically like  
21 to rebut their testimony on entrainment and salvage  
22 calculations.

23 And Paul Hutton's testimony on Delta outflow  
24 and Delta outflow trends.

25 And testimony by Walter Bourez on feasibility

1 and impacts of meeting Delta Outflow Criteria.

2 Then with respect to proposed operations and  
3 proposed impacts, I'd like to address the testimony on  
4 the float analysis in the Supplemental EIR, which was  
5 on cross, and DWR-1143-Revised.

6 And there is also some new information on  
7 proposed operations of the Byron Tract Forebay  
8 operation in the 2018 Conceptual Engineering Report.

9 And I'd like to address that also in  
10 connection with the written testimony in DWR-1217 of  
11 Chilmakuri:

12 Opinion 2, the exports not expected to be  
13 greater than the No-Action Alternative;

14 Opinion 3, CWF not expected to impact  
15 North-of-Delta carryover storage conditions;

16 Opinion 4, not expected to Lake Oroville  
17 carryover storage conditions.

18 And Wilder has Opinion 4 about the Shasta  
19 carryover restore -- carryover storage requirements;

20 And Opinion 5, carryover storage requirements  
21 are -- are unnecessary.

22 And there are extensive new information in the  
23 2018 Conceptual Engineering Report which was referenced  
24 in Mr. Bednarski's testimony. It was not available  
25 when rebuttal testimony was being prepared.

1           As well as Chapter 3 of the Supplemental EIR  
2 and Chapter 10 on soils.

3           And we'd like to rebut Bednarski's written  
4 testimony on -- address -- on south tunnels and canal;  
5 barges and barge landing; adequacy of existing  
6 engineering and field investigation; and ES4  
7 construction considerations -- that's the section in  
8 the new Conceptual Engineering Report -- seismic design  
9 criteria for tunnels; and Appendix M of the new  
10 Conceptual Engineering Report; rebuttal to Neudeck's  
11 concerns about impacts on levee, including settlement  
12 monitoring and tunneling during times of high waters;  
13 impacts to levees; and also responses to  
14 cross-examination questions, including hydrogen sulfide  
15 and hazard evaluations.

16           In addition, we'd like to address new  
17 information that Bouldin Island is at 99 percent  
18 design.

19           In Earle's testimony on impacts to bird  
20 species, specifically Swainson's Hawk, Tricolored  
21 Blackbird and Black Rail, Page 21 and Page 8, and  
22 specifically mitigation for impacts on those species.

23           Thank you.

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

1           Group 38.

2                   (Pause in proceedings.)

3           CO-HEARING OFFICER DODUC: 39?

4                   (Pause in proceedings.)

5           CO-HEARING OFFICER DODUC: 40?

6                   (Pause in proceedings.)

7           CO-HEARING OFFICER DODUC: 41?

8                   (Pause in proceedings.)

9           42?

10                   (Pause in proceedings.)

11           CO-HEARING OFFICER DODUC: Your turn,

12 Miss Womack, 43.

13           MS. WOMACK: Can we sit up here?

14           CO-HEARING OFFICER DODUC: (Nodding head.)

15           MS. WOMACK: Thank you.

16           MR. EMRICK: I think for Clifton Court, we'd  
17 like to suggest four topic areas for possible rebuttal.  
18 Then Miss Womack will fill in some specifics.

19                   One is -- The first one will be impacts, that  
20 we just learned about during cross-examination, to  
21 Clifton Court Forebay's diversion point, which is in  
22 the Delta-Mendota . . .

23           MS. WOMACK: Clifton Court L.P.

24           MR. EMRICK: Clifton Court L.P. diversion  
25 point that's in the Delta-Mendota Canal.

1           There is -- We'll also talk about an existing  
2 contract agreement that could make relocation of that  
3 difficult.

4           We would talk about the impacts or lack of  
5 analysis in the CER with respect to Clifton Court  
6 Forebay.

7           CO-HEARING OFFICER DODUC: Is that still on  
8 the first topic, or is that the second topic?

9           MR. EMRICK: Second topic. I'm sorry.

10          CO-HEARING OFFICER DODUC: Help us keep track,  
11 Mr. Emrick.

12          MR. EMRICK: Yes.

13          And then Number 3 would be the Supplemental  
14 EIR. Again, impacts or lack of analysis with respect  
15 to impacts to Clifton Court Forebay.

16          And --

17          MS. WOMACK: Clifton Court.

18          MR. EMRICK: Clifton Court, yes.

19          MS. WOMACK: He keeps saying Clifton, yeah.

20          MR. EMRICK: Thank you.

21          And, then, I think, in general, we would want  
22 to address the answers -- this is Number 4 -- the  
23 answers that were provided in response to CCLP's  
24 written questions to DWR.

25          So those are the general topics, and then

1 Ms. Womack had some specifics that she was going to  
2 discuss with the Board.

3 CO-HEARING OFFICER DODUC: Are these  
4 additional topics?

5 MR. EMRICK: These would fit within these four  
6 categories, I believe.

7 MS. WOMACK: Yeah. Well, there's actually --  
8 Its -- It's just slight -- slight things that I think  
9 are important.

10 CO-HEARING OFFICER DODUC: Keep in mind,  
11 please, that we're not asking that you present your  
12 arguments --

13 MS. WOMACK: Oh, absolutely.

14 CO-HEARING OFFICER DODUC: -- today.

15 MS. WOMACK: Absolutely.

16 I just -- We want to -- There seems to be a  
17 huge problem with there being the CVP and SWP, what it  
18 consists of. And in the CER, we're told it's . . .

19 Anyway, we want -- we want to be able to  
20 examine -- In the CER, we're told, say, the CVP  
21 consists of the Tracy Fish Facility and Jones' and  
22 obviously the intake and Mr. Bednarski's answers, I  
23 have -- saying I'm outside of the CVP.

24 So, clear examples of what is the CVP, what is  
25 the SWP. Because I'm finding -- It's very confusing,

1 so --

2 CO-HEARING OFFICER DODUC: I'm sorry.

3 MS. WOMACK: Yes.

4 CO-HEARING OFFICER DODUC: Now I'm starting to  
5 get confused.

6 MS. WOMACK: Yes.

7 CO-HEARING OFFICER DODUC: Make sure I  
8 understand.

9 Please keep in mind that surrebuttal, the  
10 request that you are making, is the request for you to  
11 present evidence. This is not the opportunity to ask  
12 others.

13 MS. WOMACK: Yes. I'd like to present  
14 evidence that both -- There's -- There's two different  
15 opinions of what these Projects are.

16 Sorry. Let me rephrase that.

17 A second thing is, I want to be able to . . .

18 Let's see. How do I . . .

19 What would be the best way to say that without  
20 this being -- Well, what's the best way to accommodate  
21 that?

22 MR. EMRICK: You want to talk about the fact  
23 that -- that either the CER or the Supplemental EIR  
24 provide any analysis about how you'll be impacted by  
25 the south tunnel control structure.



1 MS. WOMACK: No, and also -- Also, though, I  
2 want to discuss -- Apparently, this whole reason for  
3 this south control structure is because they -- the  
4 canal that was going to be on my land.

5 And I want to look at that because the canal  
6 is not on my land. They're -- They're changing --  
7 They're oper -- They're changing their construction to  
8 a very expensive south tunnel, 1.6 miles of south  
9 tunnels and control structure, based on the fact that  
10 they don't want to take my land.

11 And I want to look at that carefully, because  
12 I don't believe that's the case. I -- I don't know,  
13 so --

14 CO-HEARING OFFICER DODUC: So you will be  
15 presenting testimony --

16 MS. WOMACK: Yes.

17 CO-HEARING OFFICER DODUC: -- to show  
18 otherwise.

19 MS. WOMACK: Yes. Yeah. Thank you.

20 CO-HEARING OFFICER DODUC: Thank you.

21 MS. WOMACK: Are we good to go?

22 MR. EMRICK: I'm sorry. Is there anything  
23 else?

24 MS. WOMACK: Well, this -- Yeah.

25 As long as Mr. Bednarski's answers to his

1 questions are -- And what I ask --

2 CO-HEARING OFFICER DODUC: Wait. We received  
3 your motion with respect to the written answer that DWR  
4 provided.

5 We are still reviewing it. It was quite a  
6 lengthy --

7 MS. WOMACK: Yes, it is.

8 CO-HEARING OFFICER DODUC: -- submission from  
9 you. So it is not something we have forgotten.

10 MS. WOMACK: But I ask that, if we do  
11 surrebuttal, we don't strike this in between because  
12 I -- I -- I have this (indicating). I have his  
13 answers.

14 If it's -- If you strike it between now and  
15 surrebuttal, then it changes. Then do they do a  
16 do-over?

17 CO-HEARING OFFICER DODUC: So -- I'm sorry.

18 So, at this time, are you withdrawing your  
19 submission and then relying on the answer that was  
20 provided from DWR?

21 MS. WOMACK: I have no idea. I'll ask my  
22 legal.

23 MR. EMRICK: No, we are not.

24 CO-HEARING OFFICER DODUC: Okay. So that  
25 means that we will -- we'll provide as much

1 clarification as we can in our ruling letter with  
2 respect to surrebuttal.

3 MS. WOMACK: Thank you.

4 MR. EMRICK: Thank you very much.

5 CO-HEARING OFFICER DODUC: 44, Grasslands.

6 (Pause in proceedings.)

7 CO-HEARING OFFICER DODUC: 45, County of  
8 Sacramento.

9 (Pause in proceedings.)

10 CO-HEARING OFFICER DODUC: 46.

11 (Pause in proceedings.)

12 CO-HEARING OFFICER DODUC: 47.

13 (Pause in proceedings.)

14 CO-HEARING OFFICER DODUC: 48 is, I believe,  
15 associated with Miss Meserve, or at least 47 and 48.

16 MS. MESERVE: Good morning again.

17 With respect to Friends of Stone Lakes, Save  
18 Our Sandhill Cranes, and Environmental Council of  
19 Sacramento, they would be looking to respond to new  
20 information in the testimony of Dr. Earle, primarily,  
21 and that's DWR-1219.

22 The -- With -- Beginning -- There is some  
23 noise information in that testimony with which we  
24 disagree in terms of the frequency of noise and the  
25 background noise conditions. And that's, I believe, on

1 Pages 6 and 7 of Earle's testimony.

2 In addition, with respect to the Black Rail,  
3 there's some opinions presented in the Earle testimony  
4 with respect to bird strike and there never was any  
5 analysis of -- particular analysis of bird strike for  
6 this fully protected species and we would like to  
7 respond to that.

8 In addition, there's -- I need to review,  
9 obviously, the materials and the transcripts, but there  
10 may be a desire to respond on the Red-Winged Blackbird  
11 treatment in various documents given that that's now a  
12 threatened species.

13 And, then, with respect to the Greater  
14 Sandhill Crane, and back to the Earle testimony.

15 There were characterizations about the  
16 population being on decline. We -- We don't agree with  
17 that and we'd like to rebut that. They're, in fact,  
18 doing well now, without the Project obviously.

19 So -- Then, also, there's an issue regarding  
20 timing of roost site development. That would be the  
21 mitigation that were mentioned on Pages 11 and  
22 thereafter in the Earle testimony that we would like to  
23 respond to.

24 In addition, there were issues with the  
25 transmission lines, which are discussed in the Earle

1 testimony, and also came up in cross-examination of  
2 Earle and Bradbury with respect to what the design of  
3 the transmission lines actually is and what's different  
4 from what is there now.

5 And we would like to respond to some of the  
6 allegations about the effectiveness of collocation in  
7 particular with reference to the current design, which  
8 hasn't been easy to determine.

9 Also, there was some cross-examination of  
10 Dr. Earle regarding the effectiveness of  
11 cross-examination, and I would be looking at that issue  
12 as well to possibly address in terms of the terrestrial  
13 species.

14 On the issue of the 1143-Second Revised, which  
15 I meant to mention earlier with respect to the flows --  
16 bypass flows and how that -- This is a separate issue  
17 from Earle.

18 Sorry.

19 Moving on to a second topic.

20 We would like to address what the effect of  
21 the minimum bypass flows may be on fish and in  
22 combination with the increased incidence of HABs in  
23 those fall months that were focused on in  
24 cross-examination of various witnesses, including Chris  
25 Shutes, and it's also addressed in Greenwood's

1 testimony.

2 But we believe there's a -- there's a  
3 significant issue with respect to what happens in the  
4 fall months with HABs. And so I'd be looking to  
5 address the testimony, the exhibit, and then the  
6 cross-examination that relates to that.

7 And I just want to emphasize with respect to  
8 these requests that, because a lot of the topics derive  
9 from the transcript, I think we definitely can begin to  
10 prepare surrebuttal now based on the testimony and our  
11 notes from the proceedings.

12 None of the Proponents have the real-time  
13 transcript. And so I think if there was some way that  
14 even an unofficial transcript could be provided to the  
15 parties, then that could expedite, you know, our  
16 ability to focus in on what would be proper  
17 surrebuttal.

18 We tried to take good notes during the  
19 hearing, but, you know, they're only so accurate.

20 And then we think -- In addition, with respect  
21 to surrebuttal, that the kind of testimony that I've  
22 proposed and that has been proposed here, I think,  
23 would be helpful to the Board in determining  
24 appropriate permit conditions should the Permit be  
25 granted.

1           And I think getting down to some of these  
2 specifics and very focused on these things are the  
3 kinds of things where there's still some unanswered  
4 questions, unresponded-to issues that hopefully would  
5 help -- assist the Board in especially, obviously,  
6 focusing on Part 2 issues with protecting the public  
7 interest, fish and wildlife, and public trust.

8           Thank you.

9           CO-HEARING OFFICER DODUC: Thank you,  
10 Miss Meserve.

11           And thank you also for bringing up again that  
12 issue of the transcript. I had a note here to at least  
13 try to address that.

14           First of all, this has been a unique  
15 proceeding. But I will remind everyone that, typically  
16 in a Water Rights Hearing, we go from case in chief to  
17 rebuttal and then, as appropriate, to surrebuttal  
18 without stopping in between for a break to wait for the  
19 transcript and all that.

20           So, I'm not making any commitment at this  
21 time, though I appreciate and do recognize that having  
22 the transcript will be helpful to all parties, and the  
23 Hearing Team, for that matter.

24           But, as you said, Miss Meserve, I strongly  
25 encouraged everyone to start preparing your materials

1 based on the notes that you have, because should we  
2 grant surrebuttal, chances are very good that they are  
3 going to resume fairly -- fairly quickly.

4 And my understanding is that the transcript  
5 will not be available -- let me rephrase that -- should  
6 be available no later than 15 days from tomorrow.

7 So we will make it available as soon as we  
8 can, but I cannot make any guarantees that you will  
9 have them before we begin surrebuttal.

10 A reminder, however, that the DVDs -- the  
11 DVDs? The videos --

12 MS. McCUE: The videos.

13 CO-HEARING OFFICER DODUC: Yeah. The Webcast,  
14 not the DVDs.

15 The Webcast -- The videos of the Webcast are  
16 posted and should be completed by next week. So, if  
17 not transcript, then you will have the pleasure of  
18 viewing all these hours of rebuttal testimony and cross  
19 all over again via those videos.

20 I have 49 and 50 left, and I don't see them  
21 there.

22 So that completes the order of parties.

23 I have one question for Mr. Mizell, and then  
24 there was that one housekeeping matter that we need to  
25 address.



1 Mr. Mizell, when will the Final SEIR be done?

2 MR. MIZELL: Given the dynamic nature of that  
3 process, I would want to check with Mr. Brockton, and I  
4 can maybe have an answer for you before we break for  
5 the day. So maybe after the cross of Mr. Burke.

6 CO-HEARING OFFICER DODUC: Thank you. That  
7 would be helpful.

8 Okay. Housekeeping matters.

9 MR. SIPTROTH: Stephen Siptroth --

10 CO-HEARING OFFICER DODUC: I did not forget  
11 you.

12 MS. WOMACK: Thank you. Thank you for  
13 remembering.

14 Just a small item.

15 We reviewed the February 21st, 2017, ruling  
16 and didn't see SWRCB-22 as being moved into the record.

17 Will that be moved -- Will that exhibit be  
18 moved into the record? It's the water right decision  
19 1629.

20 CO-HEARING OFFICER DODUC: We will look into  
21 it.

22 MS. WOMACK: Okay.

23 CO-HEARING OFFICER DODUC: I don't have the  
24 answer off the top of my head.

25 MR. SIPTROTH: So, then, I'll take this

1 opportunity to request that it be moved into the  
2 record.

3 We may rely on that. It may have relevant  
4 information that we may rely on to suggest permit terms  
5 in our closing brief.

6 CO-HEARING OFFICER DODUC: All right. We'll  
7 make a note of that. Thank you.

8 Miss Meserve.

9 MS. MESERVE: One other item.

10 Yesterday, DWR moved a number of exhibits into  
11 evidence orally, and I was wondering if we could have a  
12 written copy of that for that same reason as what was  
13 just brought up so that -- Many of the exhibits may  
14 have been used on cross and could be submitted as such  
15 if DWR didn't submit them, which I think -- So I would  
16 like to have a written version of which exhibits DWR  
17 moved into evidence.

18 CO-HEARING OFFICER DODUC: And, Mr. Mizell,  
19 would that be different than your list of exhibits  
20 that's posted?

21 MS. MESERVE: It is different. That's why I'm  
22 asking.

23 I was not writing fast enough.

24 MR. MIZELL: I did not request to move into  
25 evidence exhibits that had been superseded by changed

1 copies.

2 So, if you look at our Exhibit Index, that  
3 would include the originals of many of the redacted  
4 copies and --

5 CO-HEARING OFFICER DODUC: A revised index  
6 would be helpful, Mr. Mizell.

7 MR. MIZELL: Certainly.

8 CO-HEARING OFFICER DODUC: Thank you.  
9 Any other housekeeping matters?

10 MS. DES JARDINS: Dierdre Des Jardins.

11 I just -- It would be helpful to know what the  
12 timeframe for your decision on surrebuttal might be,  
13 because obviously there isn't a great deal of time to  
14 prepare surrebuttal.

15 CO-HEARING OFFICER DODUC: You'll get it when  
16 you get it.

17 MS. DES JARDINS: Okay. Thank you.

18 CO-HEARING OFFICER DODUC: Not to be flippant,  
19 because I recognize it's important to all of you, but I  
20 can't sitting here say when it is. We will obviously  
21 discuss it, and we will get it out as soon as we can.

22 All right. If there's nothing else, what I'd  
23 like to do is take a short break while Mr. Burke and  
24 Miss Morris get set up, and so we will return at  
25 10:00 -- I'm sorry -- at 11:10.

1 (Recess taken at 10:58 a.m.)

2 (Proceedings resumed at 10:11 a.m.):)

3 CO-HEARING OFFICER DODUC: It is 10:11. We're  
4 back.

5 And Mr. Burke, thank you for rejoining us  
6 today.

7 Ms. Morris, please begin.

8 MS. MORRIS: Thank you.

9

10 Thomas Burke,

11 called as a witness by the Central Delta  
12 Water Agency and South Delta Water  
13 Agency, having previously been duly  
14 sworn, was examined and testified further  
15 as follows:

16 CROSS-EXAMINATION RESUMED BY

17 MS. MORRIS: Good morning.

18 Mr. Burke, in SDWA-323-Second Revised,  
19 Page 19, Figure 8, you show a map with cross-sections  
20 labeled MR-1 through MR-8, representing the new  
21 bathymetry data collected on behalf of SDWA on Middle  
22 River; correct?

23 WITNESS BURKE: That's correct.

24 MS. MORRIS: And I'd like to hand out to you a  
25 map that you provided to me that is marked DWR-1406,

1 Page 1.

2 And, actually, Mr. Mizell, if you could give  
3 all three copies to the witness.

4 So, if you can mark -- I'm going to ask him to  
5 mark it and then we can collect it.

6 Could you please mark in the red pen  
7 Mr. Mizell handed you where you believe the DSM-2  
8 cross-sections you used to compare your new bathymetry  
9 is located.

10 WITNESS BURKE: I didn't actually draw the  
11 DSM-2 cross-sections out on a map. What I did was, I  
12 measured the distance from the upstream node to where  
13 our cross-sections were located, and looked at that as  
14 a percentage of the total distance of that particular  
15 channel Reach that we're looking at.

16 MS. MORRIS: Right.

17 WITNESS BURKE: That creates a percentage of  
18 the total distance of the channel.

19 You can go directly to the DSM-2 input file  
20 and look down through until you find the closest  
21 cross-section to that.

22 MS. MORRIS: Yeah. That's what we're going to  
23 do.

24 But what I'm asking you to do right now, is --  
25 From your -- If I understand what you did from the memo

1 that you provided, which I marked as DWR-1407, is, you  
2 started from -- looking at DWR-1406, .104, the DSM-2  
3 node, and you moved up about 60 percent of the channel,  
4 and that is where the bathymetry section you looked at;  
5 correct?

6 And what I'm asking you to do is mark it  
7 approximately in the red pen on the maps that I've  
8 handed you.

9 MR. RUIZ: And I'm objecting to that.

10 Mr. Burke did not prepare a map with respect  
11 to his testimony. He's explained what he did to  
12 calculate his figures and what he did to come up with  
13 the locations that he used in the cross-sections.

14 He didn't do a map. And to ask him to do a  
15 map now to test his opinions is inappropriate. It's --  
16 That's not the way this has gone and that's not what  
17 the purpose of this was for. It's highly prejudicial  
18 and inappropriate.

19 CO-HEARING OFFICER DODUC: Ms. Morris.

20 MS. MORRIS: Yes. I'm willing to walk through  
21 this, and we can take much longer.

22 But that is exactly what he did. And I'm  
23 asking for an approximate location, because if you look  
24 at what's provided, nowhere in this evidence nor in his  
25 map does he provide the location of the DSM-2 channel

1 geometry that he's comparing this to.

2 And, so, I'm asking for him to mark an  
3 approximate location on that map, and the record will  
4 reflect that it's an approximate location, so that we  
5 can use that as a basis to walk through the rest of the  
6 cross-examination.

7 CO-HEARING OFFICER DODUC: My understanding,  
8 Mr. Burke -- and please correct me if I'm wrong -- is  
9 that you're not able to do that because that's not the  
10 approach you used.

11 WITNESS BURKE: Graphically identifying the  
12 cross-section on a map wasn't the approach that I used,  
13 no. I used the actual percentage of distance  
14 downstream that our cross-sections were from the  
15 beginning of that river Reach and looked that up in the  
16 input table from the DSM-2 model to determine where  
17 that was to see what the closest cross-section would  
18 be.

19 CO-HEARING OFFICER DODUC: Mr. Ruiz's  
20 objection is sustained.

21 You're asking him to provide something that's  
22 outside of his rebuttal testimony.

23 MS. MORRIS: Okay.

24 CO-HEARING OFFICER DODUC: Miss Morris, it  
25 goes to weight.

1           You demonstrate what he has not provided and  
2 you may make arguments with respect to weighing that  
3 evidence in your closing briefs.

4           MS. MORRIS:   Okay.

5           Looking at Figures 9 through 11 as an example  
6 of your testimony, they show comparison of the new  
7 bathymetry against the DSM-2 cross-section.  They --  
8 Specifically, those are labeled MR-1, MR-2 and MR-7;  
9 correct?

10          MR. RUIZ:  And just for the record, you're  
11 referring to the 323-Second Revised; correct?

12          MS. MORRIS:  Correct.

13          WITNESS BURKE:  That's correct.

14          MS. MORRIS:  And looking at what -- If we  
15 could pull up DWR-1406, which is Page 1, the same map  
16 that . . .

17                 Would you like a hard copy?

18          WITNESS BURKE:  Yes, please.

19          MS. MORRIS:  And this is a map you provided to  
20 Mr. Ruiz this week and was later provided to me;  
21 correct?

22          WITNESS BURKE:  That's correct.

23          MS. MORRIS:  And the map shows in black the  
24 locations of the 2018 --

25          CO-HEARING OFFICER DODUC:  Hold on,



1 Miss Morris.

2 CO-HEARING OFFICER MARCUS: Can we see it,  
3 too.

4 MS. MORRIS: Yeah. I'm so sorry. I get  
5 excited and forget.

6 (Pause in proceedings.)

7 MS. McCUE: Is it on that list? Do you have a  
8 number?

9 MS. MORRIS: It's in the -- what I handed you  
10 this morning. So this is -- You need 1400 but 1406 and  
11 7 and 8 are on the flash drive I handed you this  
12 morning.

13 (Pause in proceedings.)

14 MS. MORRIS: Under "Burke cross."

15 (Exhibit displayed on screen.)

16 MS. MORRIS: There you go.

17 Okay. Now that everybody has 1406, Page 1.

18 Mr. Burke, this is a map that you prepared and  
19 provided to Mr. Ruiz this week; correct?

20 WITNESS BURKE: That's correct.

21 MS. MORRIS: And it shows where you located  
22 the DSM-2 Nodes 104 and 105 in contrast to -- I'm  
23 sorry -- and those are shown in black dots, in contrast  
24 to the cross-sections that you looked at for providing  
25 your testimony -- your opinions and your testimony;

1 correct?

2 WITNESS BURKE: That's correct.

3 MS. MORRIS: And could you please ex --  
4 explain to me the methodology that you used to locate  
5 the DSM-2 nodes on what's been marked as DWR-1406,  
6 Page 1.

7 WITNESS BURKE: Sure.

8 The first thing we need to understand when  
9 we're looking at where these cross-sections may lie is  
10 that the cross-sections in the South Delta are spaced  
11 out very far. Typically, there's only two or three  
12 cross-sections per mile, often only one cross-section  
13 per mile.

14 MS. MORRIS: I'm really sorry to interrupt,  
15 but I have very specific cross-examine on where the  
16 cross-section locations are.

17 This question was specifically the methodology  
18 for locating the nodes on the map, not the actual DSM-2  
19 bathymetry questions that Mr. Burke -- and I'm not  
20 trying to be rude, but I just -- that wasn't my  
21 question.

22 MR. RUIZ: Well --

23 CO-HEARING OFFICER DODUC: Mr. Burke, it  
24 was -- Was that your way to try to explain what  
25 Miss Morris is asking for?

1           WITNESS BURKE: I think I misunderstood  
2 Miss Morris. I thought she was talking about locating  
3 the cross-sections, and she was talking about locating  
4 the nodes.

5           CO-HEARING OFFICER DODUC: So let's try again,  
6 please.

7           MS. MORRIS: Sure.

8           Could you please explain on DWR-1406 how you  
9 lo -- how you located the DSM-2 Nodes 104 and 105 on  
10 what's been marked as DWR-1406.

11           WITNESS BURKE: I located those nodes based on  
12 the publicly available DSM-2 node map. They call it a  
13 grid map, actually, on DWR's website.

14           We then took that node map and we stretched it  
15 out and tried to conform it to a GIS database that we  
16 have of the Delta trying to locate where each one of  
17 these nodes would lie within the overall framework of  
18 the Delta channel system.

19           And then once we had it lined up, the Delta  
20 channels, then we used that as a location point for the  
21 Delta nodes.

22           We also then compared that location with other  
23 DWR websites that have actual Delta node and channel  
24 lengths located on maps with aerial photographic  
25 backgrounds to verify whether or not we had got these

1 locations correctly.

2 MS. MORRIS: Okay. And that was the same  
3 methodology you used for -- even though you didn't  
4 provide maps for it -- for the rest of the locations in  
5 your testimony; correct?

6 WITNESS BURKE: That's correct.

7 MS. MORRIS: Using Middle River and the map we  
8 have as an example, do you agree that, in order to  
9 locate the closest DSM-2 cross-section to the area you  
10 surveyed, it's important that the location of the two  
11 DSM-2 nodes be accurately located on the map?

12 WITNESS BURKE: That's correct.

13 MS. MORRIS: And the same would be true for  
14 other locations in your testimony?

15 WITNESS BURKE: That's correct.

16 MS. MORRIS: In terms of how you were -- Do  
17 you -- how you -- the methodology you explained and you  
18 said you cross-referenced GIS database, are the dots  
19 shown on 104 and 105, are those -- are those  
20 georeferenced?

21 WITNESS BURKE: Yes, they are.

22 MS. MORRIS: In your August 29th, 2018,  
23 memo -- Which I've marked as DWR-1407.

24 If we could pull that up.

25 (Exhibit displayed on screen.)

1 MS. MORRIS: You state that -- And scroll down  
2 just to the bottom of that page.

3 (Scrolling through document.)

4 MS. MORRIS: You state that you chose the  
5 cross-section that was closest to the 2018 bathymetric  
6 survey site; correct?

7 WITNESS BURKE: That's correct, because we  
8 wanted to compare it to the survey that we collected.

9 MS. MORRIS: And looking at DWR-1407, Page 2,  
10 Table 1.

11 (Exhibit displayed on screen.)

12 MS. MORRIS: If I could direct your attention  
13 to all the sections that are marked MR-1.

14 For the Middle River comparison, you looked at  
15 one input on Channel 126 in DSM-2; correct?

16 WITNESS BURKE: That's correct.

17 MS. MORRIS: And that input shows that the  
18 distance is .613; correct?

19 WITNESS BURKE: That's correct.

20 MS. MORRIS: And I'm -- For the rest of the  
21 purposes of my question, I'm going to reference to that  
22 as 126-.613 because there's multiple cross-sections in  
23 that channel and I'm going to be discussing them with  
24 you.

25 So will you --

1 WITNESS BURKE: Sure.

2 MS. MORRIS: -- understand, if I say 126-.613,  
3 that we're referring to the information you provided in  
4 your table?

5 WITNESS BURKE: Yeah. There's only three  
6 cross-sections available, one at the beginning, one at  
7 the end, and this one, which is relatively in the  
8 middle, so I'll understand that.

9 MS. MORRIS: Okay. Great.

10 So if we go back to DWR-1406, Page 1 -- I'm  
11 sorry. I'm going to -- Let me go . . .

12 The input -- If I went to the DSM-2 lookup  
13 table, the input .613, that's -- that's the distance;  
14 correct?

15 WITNESS BURKE: That's the percentage of the  
16 total channel length for that particular segment.

17 This is Channel 126. And so that  
18 cross-section is .613 of the total channel length from  
19 the upstreammost node.

20 MS. MORRIS: Okay. So if we could go back to  
21 DWR-1406.

22 (Exhibit displayed on screen.)

23 MS. MORRIS: And that .613 is what you --  
24 percentage of the channel length is what you used to  
25 locate the DSM-2 bathymetry cross-section; correct?

1           WITNESS BURKE: That's correct.

2           MS. MORRIS: And, again, that's the percent of  
3 the total channel segment length.

4           WITNESS BURKE: That's correct.

5           MS. MORRIS: So, for us non-technical  
6 people -- And I understand this is not exactly precise.

7           But if we look at this map and we see Channel  
8 105 to 104, we would then -- I'm sorry -- Nodes 105 to  
9 104, we would go to 104 and we would move approximately  
10 16 percent up the length of that channel to locate the  
11 cross-section; correct?

12           (Continued on next page, nothing omitted.)

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1 (Transcription resumed by  
2 Deborah Fuqua, CSR #12948;  
3 nothing omitted)

4 MS. MORRIS: And I'm -- would -- can you tell  
5 me if you think that your moving up approximately  
6 60 percent would locate the cross-section in DSM-2 you  
7 compared somewhere within the scattered dots of --  
8 sorry, the scattered cross-sections MR-1 through MR-8?

9 WITNESS BURKE: It would be generally in  
10 within that area.

11 MS. MORRIS: Okay. And in your August 29th,  
12 2018 memo marked DWR-1407, you stated that you chose  
13 the cross-section that was closest to the 2018  
14 bathymetric survey site, correct?

15 WITNESS BURKE: That's correct.

16 MS. MORRIS: Did you know that DSM-2 grid maps  
17 show the approximate location of the nodes and, in  
18 order to get the actual locations, you have to use the  
19 CSDP software?

20 WITNESS BURKE: I know that they show the  
21 approximate location of the nodes, and I also know,  
22 giving the other two nodes that are available for this  
23 particular channel section, there was nothing else that  
24 was even close to where this cross-section was. We  
25 weren't using the exact distance as anything that we'd



1 used to calculate. We were only trying to find  
2 relatively which of the three cross-sections available  
3 was the most appropriate to use for comparison.

4 MS. MORRIS: So you would -- so in your  
5 opinion, it's the most appropriate analysis to use the  
6 cross section that's located closest to the new  
7 bathymetry data you collected, correct?

8 WITNESS BURKE: That's correct.

9 MS. MORRIS: Okay. And if we could go to  
10 DWR-1406, if you could go straight to Page 3, please.

11 Great. And this is a map --

12 MR. RUIZ: Hold on a second. I don't know  
13 that we have that.

14 MS. MORRIS: I can give you a copy, but it's  
15 on the screen, and I'm going to give you a little bit  
16 of background here.

17 So this map was created by DWR engineers using  
18 the CSDP software. It shows the correct locations of  
19 the DSM-2 nodes 104 and 105 in white, and it also shows  
20 the locations in red of Mr. Burke's SDWA-105 and 104  
21 locations he identified.

22 MR. RUIZ: I'm going to object to that and ask  
23 that to be stricken. She's testifying when she  
24 indicates it shows the correct nodes and the correct  
25 locations. That's not what the purpose of this is.

1 She's got -- that's not background. That's testimony  
2 in a statement of fact.

3 CO-HEARING OFFICER DODUC: It goes to weight;  
4 we won't consider it testimony.

5 Ms. Morris -- I mean, Ms. Meserve.

6 MS. MESERVE: I would also object that, yeah,  
7 the details of how this map was derived and what it's  
8 based on and what went into it are not provided to the  
9 witness. So I don't see how he can respond to it.

10 CO-HEARING OFFICER DODUC: We don't even know  
11 what her question is yet, people. Chill.

12 MS. DES JARDINS: I would join in the  
13 objection to testimony by an attorney who is not an  
14 expert.

15 CO-HEARING OFFICER DODUC: You know, if she  
16 just threw it out and asked him the question without  
17 providing an explanation, you would be objecting, too.  
18 So, overruled. Let her ask her question.

19 MS. MORRIS: And, again, I think it's  
20 important to understand attorneys can ask -- can  
21 provide context, but it's not evidence because you  
22 can't appropriately cite to it. So if anyone cites to  
23 this, I would be disappointed.

24 CO-HEARING OFFICER DODUC: Yes.

25 MS. MORRIS: Okay. All right. Back to the

1 map.

2 So this, again, is DWR engineers -- as  
3 Mr. Herrick suggested in the morning, yesterday morning  
4 we could do, and, now that we have this, we did do. We  
5 created this map using the CSDP software, which is what  
6 DSM-2 uses to locate channel nodes as well as  
7 bathymetry cross-sections. And so this map shows --  
8 what is in white is the DWR mapped node using CSDP, and  
9 it also shows Mr. Burke's nodes in red.

10 And if we could cascade the windows, I just  
11 want to give a little bit of context here so that we  
12 can look at where we are on the two maps.

13 It's under 14 -- you have to open 1406, Page 1  
14 in a separate window. And we can -- well, we can --  
15 you have this first map, 1406, Page 1.

16 CO-HEARING OFFICER DODUC: Try right-clicking  
17 it, and seeing if you can open it in the -- go back to  
18 your -- go back to your directory. Try right-clicking  
19 it and see if you can open it.

20 Is there a --

21 MS. MORRIS: Okay. I think we can just use  
22 the hard copies. And if we need to figure it out  
23 later, we can take a minute. So let's just focus here.

24 Mr. Burke, just to give reference, looking at  
25 the 1406, Page 1, can you see the sort of bump-out in

1 the -- it's about the top one-third page, right under  
2 105 on your map. Do you see that sort of, like,  
3 bump-out and --

4 WITNESS BURKE: I see a little oxbow there.

5 MS. MORRIS: Oxbow, thank you. And then if  
6 we're looking at the map of Page 3 of 1406, do you see  
7 that that's approximately halfway down the page, that  
8 oxbow?

9 WITNESS BURKE: First of all, I don't know  
10 exactly how this map was constructed, and you can't  
11 verify the location of these points that they've put on  
12 here.

13 But I do know that the points that we've  
14 identified on our map, 1406, Page 1, are in conformance  
15 with the published maps that DWR has published and made  
16 available.

17 MS. MORRIS: That wasn't my question. So,  
18 again, I would just direct you to, if you can locate  
19 for me, is the oxbow on Page 3 of 1406 roughly under  
20 the red dots SDWA-105?

21 MR. RUIZ: And I'm going to lodge another  
22 objection. This is outside the scope of his rebuttal  
23 testimony. He's already indicated how he went about  
24 this. This is beyond what he testified to. He's  
25 explained what he did.

1           This, in fact, makes the argument -- further  
2 argument for surrebuttal, although they didn't request  
3 surrebuttal. This is an inappropriate test of an  
4 expert's testimony that hasn't been done like this in  
5 this proceeding or allowed in this proceeding to date,  
6 and I object to the use of this map.

7           He's indicated what he's done. And he has no  
8 basis or background to understand this map at this  
9 point in time.

10           The analysis for it hasn't been provided, and  
11 the background analysis, as explained by counsel, is  
12 insufficient. It needs to come from an expert through  
13 testimony.

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

16           Let's hear from anyone else who wished to join  
17 in before we turn back to Ms. Morris.

18           MS. DES JARDINS: I do join in this. To the  
19 extent that this is information that's different than  
20 DWR's published maps, it would need to be presented by  
21 an expert, and the locations and the methodology for  
22 the locations would need to be available.

23           I don't think that presenting some dots on a  
24 map without expert testimony authenticating how they  
25 were done has any evidentiary value.

1 CO-HEARING OFFICER DODUC: Response,  
2 Ms. Morris.

3 MS. MORRIS: So, again, I would have done this  
4 in my original cross-examination had this witness  
5 provided the location of the --

6 CO-HEARING OFFICER DODUC: Before you go  
7 there, Ms. Morris, you're missing the point of  
8 Mr. Ruiz' objection, I believe.

9 Even if he was able to answer your question at  
10 that time, I believe Mr. Ruiz would still object,  
11 should you bring up the same line, that it would be  
12 outside the scope.

13 Is that correct, Mr. Ruiz?

14 MR. RUIZ: That is correct.

15 CO-HEARING OFFICER DODUC: So address to me  
16 the issue of why is this, in your opinion, within the  
17 scope of Mr. Burke's rebuttal testimony?

18 MS. MORRIS: Mr. Burke is asserting in his  
19 rebuttal testimony that DSM-2 inaccurately -- is  
20 inaccurate because of the bathymetry section. He is  
21 basing that on a comparison of a cross-section in DSM-2  
22 which is not the correct cross-section, which I'm about  
23 ready to show. And because he didn't use the one that  
24 was closest to the cross-section, it actually is  
25 significantly different in the depth. And his maps are

1 incorrect, his figures are incorrect, and therefore his  
2 calculations would change.

3 So it goes directly to his analysis in the  
4 rebuttal testimony. And I'm happy to say that the  
5 map -- he can -- you know, he can assert that he may  
6 not agree with it, but I'm using it for demonstrative  
7 purposes, just like everyone else has throughout this  
8 proceeding, to effectively cross-examine this witness.

9 CO-HEARING OFFICER DODUC: Any additional  
10 response, Mr. Ruiz?

11 MR. RUIZ: Yes. It's the same response. It  
12 is outside the scope of what he did and what his  
13 testimony provides. She can ask him about his  
14 testimony, but to bring a map like this in prepared by  
15 her experts, this is -- this is surrebuttal testimony  
16 and goes to weight.

17 It is not appropriate cross-examination. It's  
18 not within the scope of his rebuttal testimony.

19 CO-HEARING OFFICER DODUC: Well, she is  
20 allowed the opportunity to challenge his basis and his  
21 conclusion as part of her cross-examination.

22 MR. RUIZ: She can do that. And -- but these  
23 maps being represented that they're done by an expert  
24 that he hasn't seen before -- his analysis has been  
25 provided well in advance; she has the right to question

1 him on this.

2 He has not seen these maps. He does not  
3 under- -- doesn't know the basis of them, and there's  
4 no backup for them. And they cannot be backed up  
5 without expert testimony. So I think they're  
6 inappropriate for use in cross-examination at this  
7 juncture.

8 CO-HEARING OFFICER DODUC: So, Ms. Morris, I'm  
9 going to use your favorite ruling in your benefit this  
10 time in that we'll apply that to the weight of her  
11 cross.

12 MS. MORRIS: Okay.

13 CO-HEARING OFFICER DODUC: Proceed,  
14 Ms. Morris.

15 MS. MORRIS: Thank you. I kind of forgot  
16 where we were, but we -- oh, we were locating the -- so  
17 the oxbow -- if we -- now we have both maps next to, so  
18 we can see the oxbow on 1406, which is roughly up at  
19 the top third of the page versus the oxbow on Page 3 of  
20 1406, which is roughly in the middle of the page,  
21 correct?

22 WITNESS BURKE: The oxbow's moved down to the  
23 middle of the page on 1403 -- 1406, Page 3, yes.

24 MS. MORRIS: Okay. And then just trying to  
25 get in context, if we move directly under the oxbow on



1 Page 3, there's a road. And it's hard to see the  
2 bridge, but that's the bridge where roughly upstream  
3 and downstream you took new -- the new bathymetry --  
4 collected the new bathymetry data, correct?

5 MR. BAXTER: That's correct.

6 MS. MORRIS: Okay. Looking at Page 3 of 1406,  
7 do you agree that the locations identified as Nodes 105  
8 and 104 by you, the red dots, are not the same as the  
9 nodes plotted by the DWR engineers with CSDP?

10 WITNESS BURKE: I can't verify whether or not  
11 the dots that are -- that I didn't create have been  
12 drawn correctly. But I do agree that they differ.

13 MS. MORRIS: Okay. I didn't ask if they were  
14 correct, just if they were different.

15 And in fact the -- the red dots are  
16 approximately a hundred thousand [sic] feet away from  
17 the locations identified by the CSDP in the white,  
18 correct?

19 WITNESS BURKE: No, I would disagree we that.

20 MS. MORRIS: Okay. How many feet would you  
21 say? I was just using the scale at the bottom.

22 WITNESS BURKE: I think you said "a hundred  
23 thousand feet."

24 CO-HEARING OFFICER DODUC: Yes, you did.

25 MS. MORRIS: Oh, a thousand. A thousand feet.

1 Sorry.

2 WITNESS BURKE: It appears that the red dots  
3 are about -- the lower red dot, anyway, is about a  
4 thousand feet upstream of 104.

5 MS. MORRIS: And then the second dot is  
6 SDWA-105, the red dot compared to the white is a little  
7 bit more than a hundred thousand feet? Did I say -- a  
8 thousand feet. I like big numbers today.

9 A thousand feet. Sorry.

10 WITNESS BURKE: It's a little more than a  
11 thousand feet, correct.

12 MS. MORRIS: Okay. And you previously agreed  
13 that it's important that the DSM-2 nodes be accurately  
14 located on the map in order to locate the DSM-2  
15 cross-section, correct?

16 WITNESS BURKE: That's correct.

17 MS. MORRIS: And if we could look at Page 2 of  
18 1406. Yeah, perfect.

19 This, again, for reference, is a map -- is the  
20 map that was created by DWR engineers. And it shows in  
21 yellow the two cross-sections from DSM-2 and the  
22 locations using the CSDP software. And I think we  
23 agreed that, in talking about these cross-sections,  
24 that we would refer to --

25 MR. RUIZ: Counsel, can you slow down a

1 second. We don't -- he needs that in front of him. He  
2 can't see that very well. We don't have -- we don't  
3 have Page 2.

4 MS. MORRIS: We're getting you a hard copy.

5 Okay. Now that you have it in front of you,  
6 the yellow sections are what DWR -- the yellow  
7 highlights are what DWR engineers plotted as the  
8 cross-section locations using CSDP.

9 You previously testified, based on your memo  
10 marked DWR-1407, that the DSM-2 input info you used for  
11 Channel 126 was mark at Point 613 distance, correct?

12 WITNESS BURKE: That's correct.

13 MS. MORRIS: And do you see on the map that  
14 the DSM-2 bathymetry cross-section shown as  
15 126, dash 0.613, the first yellow highlighted  
16 cross-section is located over 12- -- 1,200 feet away  
17 from your 2018 bathymetry cross-section?

18 WITNESS BURKE: I can't verify that with this  
19 scale of map.

20 MS. MORRIS: Well, the scale is on the bottom.  
21 So if you need to take a minute and look at the scale  
22 and use the yellow highlighted line to calculate how  
23 far it is from -- I would guess you would want to use  
24 MR-8, I'll give you a minute to do that.

25 WITNESS BURKE: So you want me to get the

1 distance from 0.221 cross-section to MR-8?

2 MS. MORRIS: No, I wanted to look at the one  
3 that you actually used in yours, which is 0.613. So if  
4 you could tell me that distance. Or I -- I said  
5 approximately 1,200 feet away, but. . .

6 WITNESS BURKE: That's roughly correct.

7 MS. MORRIS: So based on this map and the  
8 location that DWR plots from the DSM-2 cross-section,  
9 Cross-Section 126 dash 0.613 is not the closest  
10 cross-sections to the 2018 bathymetry data you  
11 collected, correct?

12 WITNESS BURKE: If these are all plotted  
13 correctly. And we cannot verify that they're plotted  
14 correctly.

15 MS. MORRIS: Assuming that they are, with the  
16 understanding that you haven't looked at it?

17 WITNESS BURKE: Okay. Assuming that they are,  
18 under this condition, the 0.221 cross-section looks  
19 very -- closer to our cross-sections than the 0.613.

20 MS. MORRIS: Great. But the 0.221  
21 cross-section is not the one that you used to compare  
22 your new bathymetry data to and draw your opinions, is  
23 it?

24 WITNESS BURKE: Not according to the DSM-2  
25 bathymetry map that was published by DWR, no.

1 MS. MORRIS: Right. Do you understand that  
2 the map, that DSM-2 node map that's on the DWR website  
3 is not geo-referenced? It's approximate locations just  
4 to show the nodes?

5 WITNESS BURKE: It doesn't say anything on  
6 there that it's approximate locations. It says these  
7 are the node locations.

8 MS. MORRIS: So you don't know one way the  
9 other?

10 WITNESS BURKE: If it's off by thousands of  
11 feet, it's not identified in the map as such.

12 MS. MORRIS: If we could pull up DWR-1400.  
13 It's our new favorite DSM-2 input table. I'm becoming  
14 much too familiar with it.

15 It's in the other folder that you had from two  
16 Fridays ago. Yep, DWR. Okay.

17 And then if you could again, Mr. Burke -- we  
18 looked at this last time, so I don't want to lay a big  
19 foundation. But this is the DSM-2 input file, correct?

20 WITNESS BURKE: That's correct.

21 MS. MORRIS: And if we go again, Mr. Hunt, to  
22 XSECT\_LAYER, that's going to put us at the location of  
23 the DSM-2 bathymetry inputs, correct?

24 WITNESS BURKE: That's correct.

25 MS. MORRIS: Okay. If we can pause here.

1           And then, we have to do a little bit of scrolling,  
2           so I apologize. So we need to look for Channel 126,  
3           Mr. Hunt. And it doesn't go in order. So there's two  
4           sections we're going to look for. So if you could  
5           scroll until -- keep going. You're going to scroll for  
6           a while.

7           I do have this information in a separate  
8           exhibit, but I fear that we should probably just look  
9           at this exhibit to be -- so there's no objections.

10           It's -- you're getting close. Whoops. Stop.  
11           Okay. And if you could highlight the 126. Yeah,  
12           perfect.

13           Mr. Burke, this is the bathymetry data that  
14           you extracted from DSM-2 and used. And we can see that  
15           because we can look at the second column, "Distance,"  
16           0.613 to identify that, correct?

17           WITNESS BURKE: That's correct.

18           MS. MORRIS: Okay. Then I just want to note  
19           that the lowest point, if we look at the first column  
20           of 126, is negative 5.199, correct?

21           WITNESS BURKE: That's correct.

22           MS. MORRIS: So that would be the lowest point  
23           that you would have plotted in your figures. But we  
24           have to account for the datum change that you did, and  
25           so the -- we would have to add 2.3 feet to that to get

1 to your second revised plots on your figures, correct?

2 WITNESS BURKE: Yeah. DWR is not using the  
3 DWR datum in this particular version of the model. So  
4 you had to add 2.3 feet to correct it to bring it up to  
5 the actual DWR datum.

6 MS. MORRIS: Got it.

7 Okay. And then, Mr. Hunt, we have to go  
8 scrolling again for the next 126. It's weird that  
9 they're out of order, but it has to do with -- I don't  
10 know -- location or something. So you have to keep  
11 going, past. Okay. We should be getting close now.  
12 Okay. Stop.

13 If you could highlight the -- 126 -- yeah.

14 So these are actually, Mr. Burke, these  
15 highlighted cross-sections, these are actually the  
16 bathymetry data for the other two sections in DSM-2,  
17 correct, for Channel 126?

18 WITNESS BURKE: This channel -- this file that  
19 you're reviewing here looks a little different than the  
20 file I'm looking at. I'm not sure if you're using the  
21 data input file for Version 8.06. I think this is for  
22 DSM-2 Version 8.1 because in the file that I have, all  
23 the channel cross-sections for River Section 126 are  
24 together as a group.

25 The fact that they're not together as a group

1 here shows that it is a different file that I was  
2 using.

3 MS. MORRIS: Okay. But if we look at your  
4 data for the first cross-section, it's actually what  
5 you plotted, correct?

6 WITNESS BURKE: I haven't been able to plot  
7 what you have on the screen, so I can't say for sure.

8 MS. MORRIS: Well, let's look at 126, the  
9 first section. The first four inputs are for  
10 0.221?

11 WITNESS BURKE: That's correct.

12 MS. MORRIS: And that --

13 MR. RUIZ: Hold on. For the record, I need to  
14 object. If Mr. Burke's indicated, as he has, that the  
15 datum and the look-up data that he used is not the same  
16 data that's here, then we're -- this is not productive,  
17 and he hasn't seen this before. And it's different  
18 than what he used, and it would be -- it's  
19 inappropriate at that point, and I would object to the  
20 questions accordingly.

21 CO-HEARING OFFICER DODUC: Ms. Morris.

22 MS. MORRIS: He already testified that this is  
23 what he used earlier, the same exhibit last time I  
24 crossed, that this is what he used to extract the data.

25 CO-HEARING OFFICER DODUC: Hold on, before you



1 continue on that line of argument.

2 Do you still maintain that, Mr. Burke, given  
3 that you did not have the chance to see the entire  
4 document when you first made that assertion?

5 WITNESS BURKE: I'm sorry. I'm not sure what  
6 the question is.

7 CO-HEARING OFFICER DODUC: Is it still -- is  
8 it still your feeling that this is the data source that  
9 you used for your analysis?

10 WITNESS BURKE: It doesn't appear to be the  
11 same data file that I used. I think this may be for a  
12 later version of the DSM-2 model than was being used in  
13 this hearing.

14 MS. MORRIS: Well, I'd like to -- I don't  
15 believe that it is, so I'd like to continue with the  
16 assumption that it is the correct DSM-2 input. And I  
17 have only a few more questions about this section.

18 MR. RUIZ: And, again, if she wants to -- that  
19 gets into very incomplete hypotheticals. He's  
20 testified this is not the same data that he used,  
21 so. . .

22 MS. MORRIS: I can actually -- it would take  
23 me more time, but I can go back up, and I can get the  
24 file name at the top. So if we scroll -- can we --

25 CO-HEARING OFFICER DODUC: Go get the file

1 name.

2 MS. MORRIS: Can we copy and paste this? I  
3 have it in another name, but I don't want -- I can also  
4 use the data from the first cross-channel to show that  
5 it is what he used to plot it, if we need to do that,  
6 because it matches if you do the conversion.

7 MR. RUIZ: If she wants to argue later on that  
8 it's not what he used to plot it, that's her choice.  
9 He's testified and he's testifying that it's not what  
10 he used. So she's not going to be able to show --  
11 convince him of that otherwise. That's argument for  
12 closing brief or surrebuttal.

13 CO-HEARING OFFICER DODUC: So let's give her  
14 this one chance.

15 And, Mr. Burke, if this is not familiar to  
16 you, if this -- you don't believe this is the file you  
17 used, then you may say so.

18 MS. MORRIS: Can you go to 120- -- go back to  
19 the first XSECT Section 126. The very first one.

20 Okay. Right there, 6.13, which is what you  
21 plotted, Mr. Burke. So -- here's a calculator if you  
22 need it.

23 CO-HEARING OFFICER DODUC: Hold on before you  
24 start punching numbers in.

25 I thought this exercise was to determine or at

1 least help Mr. Burke determine whether or not this is  
2 the data file that he used.

3 MS. MORRIS: Right. So what I'm doing is I'm  
4 looking at the 126, the cross-section he used, and I'm  
5 going to compare it to what he graphed, and I'm going  
6 to show that this is what he used.

7 CO-HEARING OFFICER DODUC: But that's not --  
8 that's not the concern he raised with respect to this  
9 table.

10 Mr. Burke, I -- repeat what you said about how  
11 in the data set you used -- so I won't put words in  
12 your mouth, but why you believe this is not the same.

13 MS. MORRIS: Maybe I can --

14 CO-HEARING OFFICER DODUC: No.

15 MS. MORRIS: I might be able to do this  
16 faster.

17 CO-HEARING OFFICER DODUC: No. No, no.

18 Mr. Burke.

19 WITNESS BURKE: As I recall, when I went  
20 through this file to put this information together, the  
21 three cross-sections that are contained within  
22 Channel 126 were grouped together as a set so that you  
23 could see all three at one time.

24 Here, they show that Cross-Section 613 is  
25 separated from the other two cross-sections, which

1 means this file may not be the same one that I was  
2 using. The data may be the same in it. I couldn't  
3 verify that. But the file itself appears to be a  
4 little different.

5 MS. MORRIS: So, Mr. Burke, I'm trying to do  
6 this the easiest way possible. But what was the date  
7 of the Version 8.0.6 file that you used?

8 WITNESS BURKE: I don't recall what the date  
9 was on there.

10 MS. MORRIS: If you look at the top of this  
11 document -- and I will represent to you that this is  
12 the correct version; it's dated 20090715, which would  
13 be the older version, correct?

14 WITNESS BURKE: It's possible. I'd to have  
15 take a look at the files to see.

16 MS. MORRIS: I'd like to ask -- continue to  
17 ask my questions, then, about the second cross-sections  
18 because --

19 MR. RUIZ: And I would object. There's  
20 various data. He's indicated clearly that this does  
21 not appear to be the same data that he looked at. So  
22 asking questions about data within that is -- is  
23 baseless. And it's objectionable, and it shouldn't be  
24 allowed.

25 If she wants to argue again, later on, that

1 she thinks he used the wrong data, the wrong locations,  
2 then she can do so. But this is, again, asking him to  
3 go off hypotheticals based on data within a table that  
4 he's indicated he didn't use as part of his testimony  
5 and that he hasn't seen before because it's different  
6 than what he does recall using.

7 CO-HEARING OFFICER DODUC: The objection is  
8 sustained.

9 Ms. Morris, we have given you a lot of  
10 latitude on this. And you have established enough for  
11 the record that you may argue -- whether we believe he  
12 used the correct -- you can argue the appropriate  
13 weight to give his analysis in your closing brief.

14 MS. MORRIS: But I'd like to -- then I would  
15 like to request surrebuttal on this -- on this witness  
16 particular and this issue because -- and I'm trying to  
17 be -- concisely, because this witness did not provide  
18 this data or the justification for how he did his  
19 analysis, I have to do this.

20 If I -- I have to walk through this to show  
21 that his analysis is incorrect. And by not allowing me  
22 to do this, I'm not effectively able to show that his  
23 calculations --

24 CO-HEARING OFFICER DODUC: Ms. Morris --

25 MS. MORRIS: -- are incorrect. And this is

1 not a legal argument that I can make in the closing  
2 brief because I would not have the opportunity to put  
3 the evidence on the record to show that it's incorrect.

4 CO-HEARING OFFICER DODUC: Ms. Morris, we will  
5 add your request to those of the other parties with  
6 respect to surrebuttal. But unless you have other  
7 lines of questioning --

8 MS. MORRIS: I do.

9 Mr. Burke, assuming that the locations that  
10 DSM-2 cross-sections -- let me strike that.

11 Looking at 1406, Page 3 -- Page 2, if the  
12 bathymetry data in 0.221 is -- shows that the elevation  
13 is higher than the bathymetry data in  
14 0.613, wouldn't that change your calculations?

15 MR. RUIZ: I'm going to object as an  
16 incomplete hypothetical that's -- it would have to  
17 be -- to answer that, it'd have to be based on the same  
18 data, using the same data, what we just discovered he  
19 doesn't have knowledge of; that's a different table.

20 And this is based on nodes and maps prepared  
21 by DWR's witnesses that he hasn't had a chance to see  
22 or verify. And it's coming in from experts that aren't  
23 testifying, so it's an incomplete hypothetical and  
24 lacks foundation.

25 CO-HEARING OFFICER DODUC: Do you wish to

1 respond?

2 MS. MORRIS: I think I've given him enough  
3 information to answer the question.

4 CO-HEARING OFFICER DODUC: Are you able to  
5 answer the question, Mr. Burke, with any sort of  
6 certainty?

7 WITNESS BURKE: Could you repeat the question,  
8 please?

9 MS. MORRIS: If the channel elevation in  
10 Cross-Section 0.221 is higher than the elevation in  
11 Cross-Section 0.613, would it affect your calculations  
12 that you've made on Page 17 and 18 of  
13 SDWA-323 2nd Revised?

14 WITNESS BURKE: I would have to have more  
15 information than just the elevation itself. I would  
16 have to look at the elevation of all the points that  
17 define the cross-section, look at the width of those  
18 points apart from each other to see how that would  
19 change the cross-sectional area as compared to the  
20 survey data we had at that location.

21 MS. MORRIS: So same question, if you looked  
22 at all those points and it was actually raised up from  
23 the section in 0.613, it would affect your calculation,  
24 correct?

25 MR. RUIZ: Objection, incomplete hypothetical.

1 It's been asked and answered. And it's vague and  
2 ambiguous as to "raised up" and looking at all the  
3 sections.

4 CO-HEARING OFFICER DODUC: Did it make sense  
5 to you, Mr. Burke, because it certainly didn't make  
6 sense to me. But, if you are able to answer it. . .

7 WITNESS BURKE: It kind of made sense, but --

8 CO-HEARING OFFICER DODUC: All right.

9 WITNESS BURKE: -- there's not information  
10 there for me to be able to make an assessment based on  
11 what she's asking.

12 MS. MORRIS: Mr. Burke, I need some help  
13 understanding how you calculated the numbers on Page 17  
14 and 18 of your testimony about the flow area. And so  
15 can you please provide to me how you made that  
16 calculation or point to me where in your testimony I  
17 can find that?

18 MR. RUIZ: Objection. This recross, bringing  
19 him back, was for the limited purpose of trying to  
20 ascertain or supposedly trying to ascertain the  
21 locations or how he came up with the cross-section  
22 locations relative to the DSM-2 data he compared  
23 relative to the survey data.

24 This kind of question is far outside of that  
25 and inappropriate, and I object to it.



1 CO-HEARING OFFICER DODUC: Ms. Morris.

2 MS. MORRIS: So I'm going to ask a couple more  
3 questions related to the other cross-sections that  
4 weren't provided and their maps weren't provided here.  
5 And this is information that I would need to be able to  
6 understand based on where -- which cross-section he  
7 used in order to be able to provide surrebuttal  
8 testimony on this topic.

9 CO-HEARING OFFICER DODUC: No. Our  
10 understanding, and Mr. Ruiz is correct, is that we  
11 allowed the additional cross based on the materials  
12 that he provided in his e-mail to you. Is this still  
13 within that scope?

14 MS. MORRIS: Yes, because I couldn't  
15 understand how he did the calculation without  
16 understanding where -- the location of the  
17 cross-section that he was comparing it to and whether  
18 or not it was correct.

19 And that's how he used the -- he used a  
20 comparison of the DSM-2 cross-section to the other  
21 sections to calculate the flow area. And I'm trying to  
22 ascertain that.

23 MR. RUIZ: Sounds like she's trying to ask  
24 questions about locations he didn't provide, which is  
25 clearly outside of the scope of his testimony.

1           The fact that she might not be able to  
2 understand his testimony, that's -- squares up with a  
3 lot of us with respect to these experts. You don't  
4 just get to come in and ask them why they didn't  
5 provide this what they didn't -- you don't get to go  
6 there.

7           It's outside the scope and way beyond what we  
8 agreed to or was ruled on in terms of why we came back.

9           CO-HEARING OFFICER DODUC: Ms. Meserve.

10          MS. MESERVE: I would just add that -- I'm not  
11 for certain, but I believe this question was asked and  
12 answered the first time that Mr. Burke appeared in this  
13 part of the hearing.

14          CO-HEARING OFFICER DODUC: The objection is  
15 sustained.

16          MR. MIZELL: I would renew the objection.  
17 Mr. Ruiz's response clearly misinterprets the evidence.  
18 The question is related to location squarely within  
19 tables contained within Mr. Burke's testimony. It is  
20 within the evidence, and to assert otherwise  
21 misrepresents Mr. Burke's evidence.

22          CO-HEARING OFFICER DODUC: Hold on, hold on.

23          The table as provided in -- I forget the  
24 exhibit number now --

25          MS. MORRIS: 1407.

1 CO-HEARING OFFICER DODUC: -- 1407, can we  
2 bring 1407 up.

3 So, Ms. Morris, again, explain to me.

4 MS. MORRIS: So he only shows -- in order  
5 understand how -- I don't need to understand his  
6 testimony, but it really goes to how did this expert  
7 put together and what was their analysis. And it's --  
8 it wasn't provided in his testimony, the location of  
9 the cross-section and how -- what his calculation is or  
10 how he verified the cross-sections, compared with the  
11 surface areas, and then made his calculation.

12 So what I'm trying to do is understand, in  
13 MR-1 through MR-8, which his testimony, if you go back  
14 to, it only shows three cross-sections of those eight.  
15 And I'm trying to understand, then, how I can ascertain  
16 how he came to his opinion about this -- and  
17 calculations without having that additional  
18 information.

19 And I can make an offer of proof. I have -- I  
20 want to pull up what he provided for the bathymetry  
21 data for 2018 and ask some questions that to show that  
22 no expert that I can hire can ascertain how he  
23 calculated this based on the information that was  
24 provided in his testimony.

25 And so it's not -- my argument isn't I need to

1 understand his testimony; it's that he hasn't provided  
2 the basis for how he came to those opinions or the work  
3 or shown his work.

4 CO-HEARING OFFICER DODUC: And we have spent a  
5 tremendous amount of time with you establishing that.  
6 So why do you need to go into further detail beyond  
7 what you've already established in order to argue in  
8 your closing brief with respect to the weight of the  
9 testimony that he provided and the lack of bases, in  
10 your opinion, that he provided to support that analysis  
11 and conclusion? Doesn't this go to weight?

12 MS. MORRIS: No, because if I need to provide  
13 surrebuttal, I need to be able to understand how he did  
14 his analysis so our experts can redo it with -- what  
15 they believe to be the correct cross-sections to show  
16 that it's significantly lower, which is what I was  
17 trying to establish earlier. And then maybe I  
18 wouldn't need to go back and do that.

19 But I -- it's not possible to argue -- I mean,  
20 I can argue in my closing brief that he didn't provide  
21 the data. But that's not evidence. That's an  
22 argument.

23 And I want to put evidence on the record to  
24 show why the analysis isn't sufficient or lacking or  
25 incorrect. And that is evidence that has to be brought

1 out through cross-examination.

2 CO-HEARING OFFICER DODUC: Anything to add  
3 before we take a break, Mr. Ruiz?

4 MR. RUIZ: Yes. All of the data that he uses  
5 in his report. And she doesn't, you know, want to  
6 accept that. She argues it's not -- it's not  
7 sufficient, then she can argue that. Argue that all  
8 day long.

9 But this is -- this cross-examination is  
10 nothing but argument and screams for, you know,  
11 surrebuttal, if anything. It's just, it's  
12 inappropriate cross-examination. We're way beyond the  
13 point of what we came back for.

14 CO-HEARING OFFICER DODUC: All right. Let's  
15 take a short break.

16 (Recess taken)

17 CO-HEARING OFFICER DODUC: We are back in  
18 session.

19 Your objection, objections, I can't remember  
20 now how many of them there were, are sustained.

21 Ms. Morris, you do not need to fully  
22 understand Mr. Burke's methods to question the basis in  
23 your closing briefs as well as to provide your own  
24 expert testimony with respect to how you believe that  
25 analysis should have been conducted.

1           You have had plenty of time to conduct cross  
2 of Mr. Burke, and unless there is a different line of  
3 questioning that is still within the scope of the  
4 additional testimony he provided -- are there?

5           MS. MORRIS: Yes.

6           CO-HEARING OFFICER DODUC: Let's --

7           MS. MORRIS: I have one more normal-person  
8 question.

9           CO-HEARING OFFICER DODUC: All right.

10          MS. MORRIS: I have to think very carefully.  
11          Mr. Burke, on Page 17 and 18 of your  
12 testimony, can you please -- the calculations that you  
13 provide, can you please tell me where in your testimony  
14 or exhibits I can find the calculation or the formula  
15 for those? And I'm asking because -- that's the  
16 question.

17          MR. RUIZ: And the objection is that's outside  
18 of the scope of what we returned for. That is  
19 questioning and data -- information that was subject to  
20 cross-examination the first two-plus hours he was here.

21          CO-HEARING OFFICER DODUC: And how,  
22 Ms. Morris, would you respond to that?

23          MS. MORRIS: Because the location of the  
24 cross-section -- and I have a number of questions on  
25 this that I'm skipping.

1           The location of the cross-section that's  
2 nearest would change that formula. And I'm trying to  
3 ascertain, again, where it is so that I can look at  
4 what portion he used and use that in closing briefs as  
5 well as potentially any surrebuttal.

6           MR. RUIZ: That's the same line of  
7 questioning. It's just tried it a different way. It's  
8 the same line of questioning, so I object to it. And,  
9 as she said, she can use it in closing briefs.

10           CO-HEARING OFFICER DODUC: To the extent,  
11 though, that Mr. Burke can answer it, it would be  
12 helpful. So, overruled, Mr. Ruiz.

13           WITNESS BURKE: Are you referring to the  
14 Line 23, when we talk about flow areas roughly two to  
15 three times larger?

16           MS. MORRIS: I'm referring to that as well as  
17 Page 18, Line 5, when you talk about the actual flows.

18           WITNESS BURKE: Okay. My estimation of the  
19 two to three times larger for the DSM-2 cross-sections  
20 versus the actual cross-sections came from a visual  
21 observation of the plots that are contained in  
22 Figures 9, 10, and 11.

23           MS. MORRIS: So there's no formula?

24           WITNESS BURKE: There's no formula for that,  
25 no, because each cross-section was a little different.

1 MS. MORRIS: So if you used a different  
2 cross-section that was closer to your actual bathymetry  
3 data, this testimony would potentially be different,  
4 correct?

5 MR. RUIZ: Objection, it's an incomplete  
6 hypothetical.

7 CO-HEARING OFFICER DODUC: Sustained.

8 MS. MORRIS: I have no further questions.

9 CO-HEARING OFFICER DODUC: Is there any  
10 redirect, Mr. Ruiz, just based on this limited scope?

11 MR. RUIZ: There is no redirect.

12 CO-HEARING OFFICER DODUC: All right. Have we  
13 asked you to move your exhibits into the record?

14 MR. RUIZ: Yes, you did.

15 CO-HEARING OFFICER DODUC: Thank you.

16 MR. RUIZ: Actually, you asked me to do it in  
17 writing, which I did --

18 CO-HEARING OFFICER DODUC: Okay.

19 MR. RUIZ: -- a couple days ago.

20 CO-HEARING OFFICER DODUC: All right. Thank  
21 you, Mr. Burke.

22 WITNESS BURKE: Thank you.

23 CO-HEARING OFFICER DODUC: Is there any other  
24 matter that we need to address before we adjourn? Oh,  
25 joy.



1 MS. DES JARDINS: This is just -- but I wanted  
2 to request what the procedure is for requesting a  
3 substantive correction to the hearing transcripts.

4 CO-HEARING OFFICER DODUC: Why don't you deal  
5 with the court reporter.

6 MS. DES JARDINS: Yeah, there's one of the  
7 hearing transcripts we just discovered has an error.  
8 And I wanted to know what -- what the procedure would  
9 be for requesting a correction.

10 CO-HEARING OFFICER DODUC: Why don't you deal  
11 with the court reporter.

12 MS. DES JARDINS: Okay. Thank you.

13 CO-HEARING OFFICER DODUC: Mr. Mizell.

14 MR. MIZELL: Yes. Earlier you asked for an  
15 update on the final supplemental.

16 CO-HEARING OFFICER DODUC: Oh, yes.

17 MR. MIZELL: Given the complexities -- thank  
18 you.

19 Given the complexities of the interaction  
20 between the State and the Federal processes on the two  
21 halves of the environmental documents, my safest  
22 estimate today would be early December.

23 CO-HEARING OFFICER DODUC: Early December?

24 MR. MIZELL: That's subject to a wide set of  
25 variety -- you know, variation, just depending upon how

1 the two halves of the petitioners work out their  
2 environmental documentation.

3 I can try and give updates to the service list  
4 as I receive them, if that -- if that is helpful to  
5 you.

6 CO-HEARING OFFICER DODUC: Do you wish to ask  
7 your question?

8 MS. HEINRICH: And is the Department  
9 planning -- or I guess petitioners collectively  
10 planning on offering the Final Supplement into evidence  
11 once it's completed?

12 MR. MIZELL: I believe that would be at the  
13 pleasure of the Hearing Officers.

14 CO-HEARING OFFICER DODUC: All right. Thank  
15 you all. Thank you all for your efficient conduct  
16 during the rebuttal phase.

17 You've given us much to think about and  
18 deliberate, and we will get back to you as soon as we  
19 can with respect to surrebuttal. But be prepared to go  
20 quickly if we do indeed grant surrebuttal.

21 So with that, thank you all. Have a good  
22 holiday and weekend and enjoy the next two weeks  
23 without WaterFix hearing.

24 Thank you. We're adjourned.

25 (Proceedings adjourned at 12:16 p.m.)

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STATE OF CALIFORNIA            )  
  )    ss.  
COUNTY OF MARIN                )

I, DEBORAH FUQUA, a Certified Shorthand Reporter of the State of California, do hereby certify that the foregoing proceedings (Pages 59 through 93) were reported by me, a disinterested person, and thereafter transcribed under my direction into typewriting and which typewriting is a true and correct transcription of said proceedings.

I further certify that I am not of counsel or attorney for either or any of the parties in the foregoing proceeding and caption named, nor in any way interested in the outcome of the cause named in said caption.

Dated the 10th day of September, 2018.



DEBORAH FUQUA  
CSR NO. 12948

1 State of California )  
2 County of Sacramento )

3

4 I, Candace L. Yount, Certified Shorthand Reporter  
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9 That I took down in machine shorthand notes all  
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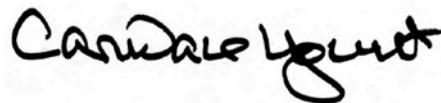
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