

Board Meeting  
**STATE WATER RESOURCES CONTROL BOARD**  
STATE OF CALIFORNIA

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***Subject:***  
**Consider Adoption of Proposed**  
**Water Quality Control Plan for the**  
**San Francisco Bay/Sacramento-San Joaquin Delta Estuary**

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Held in  
744 F Street Auditorium  
Sacramento, California

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**Monday, May 22, 1995**  
**10:00 a.m.**

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A L I C E B O O K  
CERTIFIED SHORTHAND REPORTER  
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COLUMBIA, CALIFORNIA 95310

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1 MONDAY, MAY 22, 1995, 10:00 A.M.

2 --o0o--

3 MR. CAFFREY: Good morning. Welcome to this  
4 proceeding.

5 This is the day that the Board will consider adoption  
6 during this meeting of the Bay-Delta Water Quality Plan.

7 I am John Caffrey, Chairman of the State Water  
8 Resources Control Board.

9 Let the record show that a full quorum of the Board  
10 is present here today.

11 We have, by way of introduction, to my far left are  
12 Board members Marc Del Piero and next to him Vice Chair Mary  
13 Jane Forster. To my immediate right is Board Member James  
14 Stubchaer and next to Mr. Stubchaer is Board Member John  
15 Brown.

16 And at the far right end of the dais is our Executive  
17 Director, Mr. Walt Pettit.

18 Good morning to you all.

19 This is the time and place for the Board meeting to  
20 consider adoption of the Water Quality Control Plan for the  
21 San Francisco Bay-Sacramento-San Joaquin Delta estuary.

22 Shortly, staff will make a presentation that will  
23 include the introduction of some changes in the plan, the  
24 Environmental Report and the responses to comments.

25 Later, staff will respond to some of today's

1 comments.

2 Any party who wishes to comment orally on the plan  
3 before the Board takes the vote, must fill out a blue card  
4 and give it to Ms. Marche' at the front table -- she is ill  
5 today, so you might try Andy Sawyer over here. The blue  
6 card looks like this. You all know what they are. You've  
7 filled them out before.

8 We will limit the time for each oral comment to ten  
9 minutes. This is a voting meeting and we are not taking  
10 evidence this morning.

11 At the moment we have 12 cards and I will read them  
12 shortly so we get an idea of what order we are going to take  
13 you in.

14 I would like to remind you that since this is a Board  
15 meeting and we have completed the hearing, we will not be  
16 accepting any new evidence today. Therefore, your comments  
17 must be limited to arguments concerning the hearing record.

18 Before we hear our staff presentation, let me not  
19 forget to introduce the staff at the table over here. To my  
20 far left is Mr. Tom Howard. Next to Mr. Howard is Barbara  
21 Leidigh, one of our attorneys in this matter; and next to  
22 Ms. Leidigh is Jerry Johns, who is with the Bay-Delta Unit;  
23 and on the table to my right is Board Assistant Chief  
24 Counsel, Andy Sawyer, who is joining us today.

25 With that then, let me ask Mr. Tom Howard to give us

1 a presentation, and while Mr. Howard is coming up, let me  
2 read the names of the 12 cards that I have. We will take  
3 the names in the order that the cards were submitted:

4 Dan Nomellini

5 Kenneth Robbins

6 John Herrick

7 Alex Hildebrand

8 Perry Herrgesell

9 Patrick Wright

10 Patrick Porgans

11 Jeanne Zolezzi

12 Gary Bobker

13 Jim Chatigny

14 David Anderson

15 Kevin Haroff, or whatever designee is chosen to speak  
16 for the Urban Joint Water Users.

17 Good morning, Mr. Howard.

18 MR. HOWARD: Good morning, members of the Board.

19 As you might recall, we started this process about 13  
20 months ago, in April of 1994. Prior to last December, the  
21 Board held six workshops and the staff held three separate  
22 workshops. Throughout the process, the Board encouraged  
23 participants to try to come to agreement regarding  
24 appropriate standards, and we were all very pleased in  
25 December of 1994 when the Principles for Agreement were

1 signed in which many of the participants agreed on  
2 appropriate standards.

3 And at the same time, the Board released its draft  
4 plan on that same date, December 15, 1994, and an  
5 Environmental Report was released shortly thereafter.

6 A hearing was held in February and we received a  
7 number of comments. Based on those comments, we redrafted  
8 the plan, the Environmental Report and we prepared responses  
9 to the comments. Those documents were all released 10 to 15  
10 days ago, and copies of them are available outside.

11 Also outside, we prepared an errata to the response  
12 to comments, an errata to the plan and addendum to the  
13 Environmental Report, and also, a draft resolution for the  
14 Board's consideration for adoption of the plan.

15 The errata to the response to comments was made at  
16 the request of the law firm of Neumiller & Beardsley  
17 representing Stockton East Water District. They objected to  
18 the fact that in the response to comments at two points we  
19 state that the biological opinion for Delta smelt required  
20 releases from New Melones to meet San Joaquin River flow  
21 requirements; and in actuality, the biological opinion  
22 requires the Bureau to provide the flows, but it doesn't  
23 specify where those flows are supposed to originate.

24 Consequently, we put together the very brief errata  
25 that you have before you to clarify that point.

1           An errata to the plan was also prepared. That has  
2 three purposes; one, to clear up a couple of typographical  
3 errors.

4           The second is that it makes the standards for Suisun  
5 Marsh consistent with the recommendation we received, a  
6 joint recommendation from the Department of Fish and Game  
7 and the Department of Water Resources, the Bureau of  
8 Reclamation and the Suisun Resource Conservation District.

9           It was always our intent upon receiving a joint  
10 recommendation of this nature to adopt standards consistent  
11 with that recommendation, but in the transcription of those  
12 recommendations in our redraft of the plan, a couple of  
13 errors were made, and so, we have corrected them at this  
14 point.

15           The addendum, which was just handed out, and I  
16 apologize for the tardiness of it, but the photocopy machine  
17 broke down and we were working up to the last minute to get  
18 it completed. It summarizes the CEQA findings the Board is  
19 making upon adoption. Originally we intended to incorporate  
20 that into the resolution, but after its preparation, it  
21 became clear that it is probably more appropriately a part  
22 of the Environmental Report.

23           So, we prepared an addendum to the report for that  
24 purpose.

25           The last thing that's available outside is the draft

1 resolution for adoption of the plan. Naturally at present,  
2 the Board staff is recommending that the Board approve the  
3 resolution which adopts the plan, the Environmental Report  
4 and response to the comments with the errata and the  
5 addendum.

6 That's all the comments I wanted to make.

7 Does the Board have any questions?

8 MR. CAFFREY: Thank you, Mr. Howard.

9 Are there questions of Mr. Howard at this point by  
10 the Board members?

11 I am having a little difficulty seeing up and down  
12 the dais, so, if I miss you raising your hand, just holler  
13 out, please.

14 Mr. Howard, we will ask you to return and make more  
15 comments after we hear from those who have filled out cards  
16 today.

17 MR. HOWARD: All right, thank you.

18 MR. CAFFREY: Let's begin with Mr. Nomellini. Please  
19 come forward, sir. Good morning.

20 MR. NOME LLINI: For the record, my name is Dante John  
21 Nomellini. I am one of the attorneys for the Central Delta  
22 Water Agency.

23 I appreciate the opportunity to go first. It hardly  
24 ever happens.

25 First of all, we appreciate the effort to get the

1 modeling review of the impacts of these particular  
2 objectives on agricultural water quality in the interior of  
3 the Delta. We are a little bit concerned with the results  
4 and it does look to us like it is coming late in the game  
5 and there are no indicated changes in the plan related to  
6 that information, but it does present very clearly the need  
7 to define agricultural criteria, which we know is not a part  
8 of this proceeding, but the need to define it over a broader  
9 number of months other than the period April 15 through  
10 August 15.

11           The second point I would like to make is that the  
12 interrelationship of water quality planning and water rights  
13 has not been adequately maintained in this process. I think  
14 it is because the Principles for Agreement had two  
15 components. One was to try and set up criteria to protect  
16 fish and wildlife on which we really have not presented  
17 evidence and arguments as to whether or not those are right  
18 or wrong, but the second part of it was to try and maintain  
19 a certain level of exports, and although your staff has  
20 integrated throughout the documentation disclaimers, somehow  
21 this thing is totally separated from the water rights aspect,  
22 we do not think, of course, that the separation exists.

23           There are a number of points that highlight it in the  
24 proposed plan which we think are unfortunate and  
25 inappropriate. They are in the footnotes, footnotes 22, 24,

1 25 and 26, and they delegate the authority to change the  
2 export levels based on recommendations of the Operations  
3 Committee.

4           We think the Operations Committee, under the  
5 Principles for Agreement, should simply be able to make a  
6 recommendation. We think that if there's any objection, it  
7 should come back to this Board and we think it is essential  
8 to the process that you do something with that, and I  
9 realize it's not printed that way, but that's, we think, a  
10 very bad delegation and it happens to be one of the  
11 principle issues that deal with water rights or flows.

12           There's a serious question in our mind as to whether  
13 or not this particular plan is simply in furtherance, and I  
14 am going to use the term a *rubber stamp*, of the Principles  
15 for Agreement of the deal. It smells like that. Every feel  
16 you get is that it is tied -- there are lots of references  
17 still in the document of Principles for Agreement and it  
18 really should stand independently of the Principles for  
19 Agreement.

20           And we have that big problem with the way in which  
21 the Implementation Plan is focused on New Melones that we  
22 think it violates the watershed protection statute. We  
23 think that's in here. It is hard for you to segregate it  
24 out. It is kind of like unringing the bell.

25           We would like to note that and we recognize that

1 water rights proceedings are going to go forward, but  
2 depending upon when you act on water rights matters, we  
3 could be living with implementation of this plan for a  
4 three-year period or something like that without a tangible  
5 basis for straightening out the legal issues.

6 So, anyway, those are my comments and I thank you for  
7 the opportunity to present them.

8 MR. CAFFREY: We thank you very much, Mr. Nomellini.  
9 We do understand your concerns.

10 Are there any questions of Mr. Nomellini at this  
11 point?

12 All right, thank you, sir.

13 Next is Kenneth Robbins representing the San Joaquin  
14 Tributaries Agencies.

15 Good morning, sir.

16 MR. ROBBINS: Good morning.

17 I, too, appreciate being allowed to go early. We  
18 have a 12 o'clock automobile leaving for Merced and we will  
19 be able to make it now.

20 I am here representing Merced Irrigation District as  
21 well as the San Joaquin Tributaries Agencies. I am  
22 appearing on behalf of the Tributaries which include  
23 Modesto, Turlock, Oakdale and South San Joaquin as well as  
24 Merced Irrigation District.

25 My comments today are directed at the proposed flows

1 in the San Joaquin at Vernalis.

2 As the Board knows, the footnotes to those prescribed  
3 flows simultaneously allow the State and Federal Projects  
4 to export 100 percent of the three-day running average  
5 prescribed for the San Joaquin River at Vernalis. Those  
6 proposed standards never addressed the obvious linkage  
7 between the San Joaquin flows and exports, but rather, state  
8 that these flows are for the protection of smelt and salmon.

9 We challenge the staff to point to any evidence  
10 justifying the flow standards for salmon. For Delta smelt,  
11 the justification then seems to be that the high flows are  
12 necessary to go past the pumps in order to separate the  
13 smelt from the pumps.

14 Our position is that the project should, therefore,  
15 be responsible for mitigating that effect. The Board has in  
16 its records ample statements and documentation from our  
17 member agencies on the San Joaquin that demonstrate the San  
18 Joaquin River water rights are the most senior rights in the  
19 system certainly, and the export permits are among the most  
20 junior.

21 Moreover, the evidence is overwhelming, as the Board  
22 has long known, that the operation of these projects is the  
23 defining cause of the deleterious effects on fish caused by  
24 water diversions.

25 The staff to the Board has repeatedly stated that

1 issues of water rights, of whose uses will be impacted for  
2 benefits of fish will be deferred until the later water  
3 rights hearing; however, in adopting these flow  
4 requirements, a subsidy has been created.

5           The Board has pre-empted this process and directly  
6 dedicated senior water rights to the service of junior water  
7 rights. It is not an answer to say that later hearings will  
8 determine with exactness on who in the San Joaquin will bear  
9 the burden of the subsidy.

10           By determining in advance that there will, in fact,  
11 be a subsidy as a flow standard at Vernalis, the Board has  
12 gone beyond prescribing standards to protect fish, to  
13 enacting contributions for export. The linkage between the  
14 Vernalis flows and the export of 100 percent of those flows  
15 is not a product of scientific coincidence.

16           Rather, it seems to be a provision for export at the  
17 expense of the rightholders on the San Joaquin River.

18           Finally, on a related matter, the December 15, 1994,  
19 agreement which the Board here is otherwise implementing,  
20 calls for the construction of an Old River barrier. This  
21 plan, by contrast, calls only for the study of that barrier,  
22 despite the protests of our group and some of the parties to  
23 that agreement that it should, in fact, be constructed now.  
24 Absence of the barrier merely feeds the San Joaquin flows  
25 and the fish directly into the export pumps.

26           In summary, we would object to the adoption of the

1 proposed standards because in the guise of water quality  
2 standards, it is an overt subsidy of the export projects.

3 Such an action is not only unsupported and unwise,  
4 but is legally deficient for the following reasons:

5 Enacting flow contributions from the San Joaquin for  
6 the benefit of the export is beyond the scope of the notice  
7 of hearing. Merely couching a water allocation action in  
8 the guise of standards is not enough. These standards  
9 both prescribe and inexorably require water rights  
10 reallocation in the guise of the adoption of water quality  
11 standards.

12 Enacting flow contributions on senior rightholders to  
13 protect exports is a taking of water rights without  
14 compensation, in violation of the United States and the  
15 California Constitutions.

16 The proposed standards and export subsidy are in  
17 violation of the area of origin statutes, which were  
18 designed as a guarantee to senior water rightholders that  
19 the kind of action this Board is proposing would never  
20 occur.

21 The record does not support that these flows are  
22 required to protect salmon at all or to protect Delta smelt  
23 except to try to push them past the pumps, according to the  
24 biological opinion. The projects, however, must mitigate  
25 their own effects. The proposed action is thus arbitrary,

1 capricious and without evidence in your record.

2           The record and the broker deal you are asked to  
3 impose, both call for the construction and operation of the  
4 Old River barrier. Absence of the barrier merely feeds the  
5 fish you are trying to protect directly into the pumps, for  
6 inevitable and devastating destruction.

7           The water rightholders on the San Joaquin were  
8 completely excluded from the negotiations which led to the  
9 agreement you are asked to now enact. Small  
10 surprise that the plan calls for the contribution of our  
11 senior water rights, which were passed down to us over the  
12 last hundred years for the use of interests that, unlike us,  
13 were represented at the table, specifically the exporters.

14           It is not enough to say that these issues will be  
15 deferred to the water rights hearings. By that time, the  
16 staff and the exporters will insist that the standards and  
17 its built-in subsidy are a given; that is to say, they have  
18 hardened up.

19           The Board is respectfully asked not to enact this  
20 thinly disguised subsidy, and to address this matter now. A  
21 flow standard at Vernalis should not be adopted without  
22 further study.

23           The San Joaquin Tributaries Agencies and its members  
24 will welcome and participate in a dialogue with the Board's  
25 staff and others so that such standards as are adopted

1 reflect good science and good sense.

2 That's sort of the bad news. The good news is that  
3 the dialogue has started. I hope it bears fruit, but we  
4 would encourage you not to act on the standards today.

5 MR. CAFFREY: Thank you, Mr. Robbins.

6 Any questions from the Board?

7 I'm sorry, I didn't mean to exclude staff. Any  
8 questions by staff?

9 All right, thank you, sir.

10 MR. ROBBINS: We do have copies of the statement for  
11 anybody that would like a copy.

12 MR. CAFFREY: Thank you.

13 Next is John Herrick.

14 MR. HERRICK: Mr. Chairman, I believe Alex would like  
15 to go before me.

16 MR. CAFFREY: Fine.

17 Mr. Hildebrand, good morning, sir.

18 MR. HILDEBRAND: Good morning. Mr. Chairman and  
19 members of the Board, I would like to express some of the  
20 same views you just heard, but in a little different manner.

21 First, let me acknowledge that the redraft is  
22 significantly improved over the earlier draft in response to  
23 comments, and we very much appreciate that.

24 However, we believe that there are still a number of  
25 points where the plan would be more defensible if you

1 reconsidered the language in various places.

2           The plan, on page 28, only states that the USBR  
3 intends to provide the Vernalis flows rather than it shall  
4 provide them. That is a step in the right direction;  
5 however, the Board should not permit this shift of water for  
6 fish flows prior to a water rights determination without  
7 stipulating restraints on how it may be accomplished.

8           Appendix 2, page 32, says:

9           *Water users are responsible for mitigating the*  
10           *effects of their own diversions.*

11           Then, on page 78, it is acknowledged that the flows  
12 could be provided from the San Luis Reservoir, they can also  
13 be obviously provided by circulating the water from the DMC  
14 down the river and then redivert it to the DMC.

15           It is, therefore, clear that the Central Valley  
16 Project is responsible for mitigating its own impacts on  
17 both river flow and quality, and also, that it has the means  
18 to do so without impacting superior water rights and without  
19 any new facilities.

20           The plan should make it clear that the Bureau must do  
21 so and must not shift this obligation to others either by  
22 reducing protection of the Vernalis water quality standard  
23 or by reducing protection of the superior water rights in  
24 the watershed and South Delta.

25           Furthermore, public trust flows should come first

1 from holders of junior water rights.

2           The Environmental Report acknowledges that New  
3 Melones cannot provide Vernalis flows while also meeting  
4 water quality standards and other obligations of the  
5 facility.

6           This obligation of the Central Valley Project to  
7 mitigate its own impacts has been obscured by the pretense  
8 that the Vernalis flows are required solely for ESA  
9 protection of Delta smelt and by implication that they can,  
10 therefore, appropriately be provided at the expense of other  
11 obligations of the New Melones facility and other upstream  
12 parties.

13           The biological opinion was rewritten as dictated by  
14 the December 15 agreement to be a combination of a smelt and  
15 salmon opinion. The previous smelt opinion only required  
16 large San Joaquin flows when Delta smelt were found to be in  
17 the South Delta channels and that was frequently not the  
18 case.

19           At all other times they are for San Joaquin salmon.  
20 They are not for Sacramento winter-run salmon because  
21 Vernalis flows can be 100 percent exported and Vernalis  
22 flows, therefore, won't repel salmon coming across the  
23 Delta.

24           The statement on page 28 designated Vernalis flows  
25 will be supplied as *required for Delta smelt*, is, therefore,

1 invalid.

2           The Board should not be a party to a misrepre-  
3 sentation that confuses the issue and destroys the  
4 credibility of future biological opinions.

5           The statement on page 29 that the fish flows will  
6 assist in meeting salinity objectives is simply not true.  
7 The net effect of the fish flows is to shift to spring flow  
8 the water that's needed in the summer for water quality  
9 control, unless the flows are provided from the DMC.

10           The spring flow is far more needed for quality  
11 control whereas the summer flow is not. Furthermore, the  
12 shift reduces agricultural return flows that help provide  
13 summer dilution.

14           I previously have given you some figures on the  
15 magnitude and the importance of those return flows. The  
16 plan should be corrected either to acknowledge this impact  
17 or to require that the flows be provided from the DMC.

18           Appendix 2 on page 71 condones the use of a 70,000  
19 acre-foot cap on New Melones quality releases by alleging  
20 that control of drainage from the Central Valley Project  
21 west side service area will make this amount adequate.  
22 However, the plan does not require that drainage control.

23           The plan should either require the necessary drainage  
24 control or stipulate New Melones water quality releases  
25 cannot be limited to a 70,000 acre-foot cap unless and until

1 the drainage control is sufficient to meet 70,000 acre-feet  
2 adequate for that purpose.

3 Appendix 2 on page 19 refers to SDWA's request that  
4 the plan should state that salinity standards may not be  
5 violated in order to provide Vernalis fish flows. The  
6 response declined to do this on the basis that this would  
7 nullify the flow objectives under some conditions, the fish  
8 flow objectives, and would establish a priority between fish  
9 flows and downstream water rights.

10 This is an invalid response. The flows can be met  
11 with releases from DMC and mitigation of CVP salinity flow  
12 impacts. The plan should stipulate that compliance with the  
13 quality standards should not and need not be impacted by the  
14 provision of fish flows.

15 We urge you to reconsider these points and we think  
16 your plan will be far more defensible if you address them.

17 Thank you.

18 MR. CAFFREY: Thank you very much, Mr. Hildebrand.

19 Questions by Board members?

20 Anything from staff?

21 Thank you, sir.

22 Mr. Herrick, good morning.

23 MR. HERRICK: Good morning. Thank you, Mr. Chairman.

24 My name is John Herrick. I am representing the South  
25 Delta Water Agency.

1           We would like to join the comments that have been  
2 given already this morning. I will be as brief as I can.

3           We believe the Board continues to put off addressing  
4 the salinity and drainge problems of the San Joaquin River.  
5 Salt intrusion from agricultural dainage is virtually the  
6 sole cause of elevated salinity in the Sourthern Delta. We  
7 do not feel that this plan or the Central Valley Regional  
8 Board's basin plan go as far as required by law in  
9 addressing this issue.

10           The plan is supposed to establish measures which will  
11 contribute to the protection of beneficial uses. This plan  
12 doesn't incorporate any specific measures that will be  
13 instituted in the water rights phase to address the salinity  
14 problem. Rather, it only lists future actions that should  
15 be done to address this issue.

16           We would like to reaffirm our previous testimony and  
17 arguments and that of the Stockton East Water District with  
18 regard to this issue.

19           The plan justifies the export limits by stating that  
20 they are included to protect the habitat of estuarine-  
21 dependent species by reducing the entrainment at the pumps.  
22 That's on page 15 of the plan and on page VIII-5 of the  
23 Environmental Report.

24           The report goes on to say restricted exports and  
25 reduced pumping should affect habitat conditions. That is

1 the justification for including export limits. However,  
2 footnotes 22, 24 and 25 to the fish and wildlife objectives  
3 specifically authorized the Ops Group to adjust the export  
4 rate amounts so that there's no net water supply cost  
5 annually. That's on page 21.

6 To us, this means that there is no specific limit on  
7 the exports and the exports are justified by being a limit  
8 on current levels to prevent further entrainment. This  
9 suggests the export limits are not a decrease to provide  
10 protection against entrainment.

11 The plan should specifically address entrainment at  
12 the pumps and examine the amounts of exports that may be  
13 available during the water rights phase, or at least clarify  
14 how no net loss of water provisions addresses the  
15 entrainment issue.

16 I would like to point out that the ability of the Ops  
17 Group to increase export amounts does, in fact, coincide  
18 with the times of the year that the fish flows are supposed  
19 to be appearing.

20 The comments on page 127 of the comments states that  
21 the Ops Group needs to have a formal structure and  
22 procedure. The Board's response to that in that document is  
23 that this issue need not be addressed until the water rights  
24 phase.

25 However, since there is a petition currently before

1 the Board to change the water rights permits of DWR and the  
2 U. S. Bureau of Reclamation, we are faced with that  
3 situation right now. The petition requests the Operations  
4 Group be given this same authority before the water rights  
5 phase; hence, we believe the plan should clarify that until  
6 the water rights phase is completed, all parties must  
7 operate according to existing permits or the controlling  
8 law, and the Operations Group will have no authority until  
9 they are constituted and directed to proceed according to  
10 the Rules of Government.

11 The authorizing statutes for this whole process  
12 require that there be established objectives to protect  
13 beneficial uses and those objectives must take into  
14 consideration reasonable use, public trust and statutory  
15 principles pertaining to water rights.

16 By allowing in the plan or at least recognizing an  
17 interim or partial implementation by the U. S. Bureau of  
18 Reclamation, the Board is not insuring the interplay of  
19 protections that the plan is supposed to carry out.  
20 Therefore, we believe that the plan should either not  
21 mention any interim implementation or it should state that  
22 although the parties to the Principles for Agreement intend  
23 to implement the objectives during the three-year interim,  
24 any such actions must be pursuant to existing permit  
25 conditions or subject to requested permit changes, and can

1 only be done in ways that will not adversely affect other  
2 listed beneficial uses; otherwise, the interim implementa-  
3 tion will affect beneficial uses as is clarified by the  
4 handout we received this morning.

5 The plan contemplates sales to be allowed to  
6 contribute to other flows. We believe that any sales must  
7 be examined so that the water used for the sale was not  
8 dependent, was not a factor in other beneficial uses before  
9 the sale, so that we believe that any sales should not  
10 adversely affect given beneficial uses.

11 Finally, I would like to clarify -- I talked to the  
12 staff last week. On the plan itself there is a confusion  
13 between the export limits of 100 percent of the Vernalis  
14 flow or 35 percent of the inflow.

15 My understanding now is that those interlap, and the  
16 smaller, the lesser of the two would control.

17 I think the plan should clarify that just so it is  
18 clear.

19 That's all I have to say. Thank you very much. We  
20 appreciate the efforts that you are making.

21 MR. CAFFREY: Thank you very much, Mr. Herrick,  
22 appreciate your appearing.

23 Any questions from Board or staff?

24 Thank you.

25 Perry Herrgesell from the Department of Fish and

1 Game.

2 Good morning, Dr. Herrgesell.

3 MR. HERRGESELL: Good morning, Chairman Caffrey and  
4 Board and staff.

5 Thanks for the opportunity to address you briefly  
6 today on the Department's position on this plan.

7 For the record, I am Perry Herrgesell, Chief of the  
8 Department's Bay-Delta Division in Stockton.

9 As I said, I want to just briefly give you the  
10 Department's perspective regarding the Water Quality Control  
11 Plan for the San Francisco Bay-Sacramento-San Joaquin  
12 estuary.

13 As you know, the foundation for this plan was laid  
14 through the extraordinary efforts of many individuals, both  
15 within the State and Federal Governments, the environmental  
16 community and the water community, and as with most products  
17 developed through consensus, however, the accord which came  
18 before the plan today really does not represent the ideal  
19 for any particular interest, but it does represent progress,  
20 progress that has far too long eluded us, but indeed, this  
21 Water Quality Control Plan and the accord that contributed  
22 to it are major accomplishments representing some giant  
23 steps forward for all of us.

24 However, we shouldn't lose sight of the fact that  
25 although these steps are giants, they are indeed just the

1 first step and that the task ahead to reach a long-term  
2 solution will be an arduous one and must be undertaken with  
3 the same spirit of consensus and cooperation that has led to  
4 your announcement today regarding the plan.

5           The Department supports the Board's adoption of this  
6 Water Quality Control Plan and is committed to continuing  
7 its participation and its cooperative implementation by the  
8 Cal-Fed process, through the so-called Operations Group that  
9 meets monthly, and through the upcoming water rights process  
10 that you will initiate later this year.

11           As a trustee for California's fish and wildlife  
12 resources, the Department is charged with a continuing  
13 responsibility to protect our natural resources and the  
14 responsibility of that cannot and has not been, by the way,  
15 completely discharged through this process. We look forward  
16 to working with all parties to insure that California's fish  
17 and wildlife resources receive the maximum benefit possible  
18 under the conditions of this plan.

19           We are confident that the accomplishments represented  
20 by the accord and your proposed action today is historic for  
21 California.

22           Still, the plan's actual benefits to the Bay-Delta  
23 resources and our trustee obligations to them will remain  
24 unknown for the near future.

25           While we are hopeful that this plan, in conjunction

1 with Category 3 efforts supported by the water community,  
2 which we are working with diligently, we are hoping that  
3 will yield the desired benefits for all interests.

4 We believe it is prudent to reiterate our view,  
5 however, that comprehensive re-evaluation and possible  
6 redirection may be in order when the Board undertakes its  
7 1998 triennial review. I assume that is the date three  
8 years from now.

9 Because it represents another vital component of our  
10 effort to fix the Delta, the Department also looks forward  
11 to working closely with the Cal-Fed Bay-Delta program as it  
12 seeks to develop a comprehensive strategy to address the  
13 long-term integrity of the estuary's biological resources  
14 while yet serving other beneficial uses as well.

15 The uncertainties that confront us in the Bay-Delta,  
16 the often conflicting needs of various species and the  
17 difficult timing issues relating to instream and user  
18 requirements all require vigilance as we move forward  
19 together in our efforts to assure the biological  
20 attainability of the estuary while appropriately serving the  
21 water needs of all Californians.

22 Thank you. That is all I have today.

23 MR. CAFFREY: Thank you very much, sir.

24 Are there questions from Board members?

25 Anything from staff?

1 Thank you, Dr. Herrgesell.

2 Patrick Wright, U. S. EPA, and I understand, Mr.  
3 Wright, that you will be speaking on the entirety of the  
4 Club Fed this morning?

5 Good morning and welcome.

6 MR. WRIGHT: Good morning, Mr. Chairman and members  
7 of the Board.

8 I am Patrick Wright from the Regional Administrative  
9 Office of EPA in San Francisco.

10 On behalf of the federal agency members of the Club  
11 Fed, U. S. EPA is pleased to be here this morning to comment  
12 on the final Water Quality Control Plan being considered for  
13 adoption by the Board today.

14 We commend the Board for its open and collaborative  
15 effort it has undertaken in developing and considering this  
16 plan, both before and after the Bay-Delta accord was signed  
17 last December.

18 We believe that this collaborative process provides a  
19 solid foundation for future efforts to address water quality  
20 and management issues in California. We also think that  
21 both the framework agreement and the December accord  
22 demonstrate the importance of a strengthened State-Federal  
23 partnership.

24 As you know, despite our occasional differences over  
25 our respective roles and authorities of the State and

1 Federal Governments, at EPA we have always defined success  
2 in terms of State adoption of approvable standards. And  
3 that's why we are especially pleased to be here today to say  
4 that based on our preliminary analysis of the Board's  
5 proposed Water Quality Plan, EPA Region 9 fully expects to  
6 be able to recommend that the Administrator approve the final  
7 plan under Section 303 of the Clean Water Act.

8 Finally, I want to thank both you and your staff for  
9 your commitment to this process over the past several years.

10 A couple of quick comments:

11 First, we note that the Bay-Delta accord includes  
12 agreements covering many aspects of the Bay-Delta water  
13 system. In particular, the accord called for substantial  
14 measures to address a number of non-flow parameters  
15 affecting the Bay-Delta designated uses, the so-called  
16 Category 3 measures.

17 As you know, we have not made as much progress as we  
18 had anticipated in securing additional funding for these so-  
19 called Category 3 measures.

20 The federal agencies believe that these measures are  
21 essential to the ultimate protection of the designated uses  
22 of the Bay-Delta waters. Without these measures, which were  
23 an integral part of the Bay-Delta accord, we think it will  
24 be more difficult for the State Board to conclude that fish  
25 and wildlife uses are adequately protected.

1           We are pleased that the Board recognizes these  
2 concerns in the final plan and we urge you to exercise your  
3 leadership to assure that these measures will, in fact, be  
4 implemented as envisioned in the accord.

5           Secondly, I want to note briefly that the federal  
6 agencies and their State counterparts have been discussing a  
7 possible modification to one of the footnotes in the plan,  
8 the footnote on page 22, footnote 27, which discusses the  
9 operation of the Delta cross channel gates.

10           The footnote now contained on that page states that  
11 the gates will be closed for a period of 14 days. The Cal-  
12 Fed agencies have been discussing whether or not it would be  
13 appropriate to give the Operations Work Group a little more  
14 flexibility on this requirement, and so, we put together  
15 some draft language that your staff has that we would like  
16 you to consider.

17           We think that a little bit more flexibility would  
18 support the real-time operations approach that we are all  
19 vigorously trying to implement right now, and we also think  
20 it will be consistent with the accord that was signed last  
21 December.

22           In line with that, let me add that we recognize the  
23 concern that was expressed earlier by Mr. Nomellini and  
24 others about the operation of the Ops Group. You will note  
25 footnote 22 clarifies that all the recommendations of the

1 Ops Group are subject to the discretion and approval of the  
2 Executive Director of the Board, and we would certainly  
3 support expanding that language where appropriate to other  
4 footnotes in other parts of the plan to clarify the  
5 importance of the Board's role in the governing of the Ops  
6 Group.

7 Finally, let me just add that the federal agencies  
8 and the State agencies look forward to working with the  
9 Board together as it moves toward the next stage of Bay-  
10 Delta protection.

11 As you know, we have come a long way from the  
12 sometimes adversarial relationship that once existed between  
13 the State and Federal Governments on these and other issues,  
14 and we think it is not a coincidence that progress has  
15 accelerated under the leadership of this present Board.

16 Your success in facilitating the success of both this  
17 agreement, the Mono Lake accord and others demonstrates, we  
18 think, that a strong State-Federal partnership and more  
19 collaborative approach with the State Board community can be  
20 effective and we look forward to working with you in  
21 building upon this success, not only on the long-term  
22 process but across the full spectrum of water use in  
23 California.

24 Thank you.

25 MR. CAFFREY: Thank you very very much, Mr. Wright.

1           Mr. Howard, I presume we will be hearing from you on  
2 some of these comments at the end of the presentation, so I  
3 won't ask you right now about the language Mr. Wright has  
4 suggested, but we will talk about it a little bit later.

5           Thank you very much.

6           Are there questions from Board members at this time  
7 of Mr. Wright?

8           Anything from staff?

9           Thank you, again, Patrick.

10          Mr. Porgans, Patrick Porgans. Good afternoon, Mr.  
11 Porgans.

12          MR. PORGANS: Good morning, members of the Board.

13          For the record, I am Patrick Porgans. I am an  
14 independent government regulatory specialist and I am also  
15 publisher of the Public Trustee. I am here as a member of  
16 the public.

17          Without going into all the background and my  
18 involvement in this process, you know I have been before you  
19 guys on a few occasions, and essentially stated my position,  
20 and that's all on the record.

21          Almost all the information I have brought before this  
22 Board I received from the Public Records Act or the Freedom  
23 of Information Act, so it is not my opinion. My opinion is  
24 worthless.

25          At any rate, my wife keeps reminding me of that fact.

1           Anyway, moving on here, I want to make some general  
2 comments first. My review of the plan indicates that the  
3 plan fails to adequately address many of the significant  
4 issues that I and others have raised during the course of  
5 these proceedings, and it fails to adequately address the  
6 reasonable use issues, the agricultural drainage water  
7 problems, the related water issues, and compliance with the  
8 terms and conditions of existing permits.

9           The plan and the EIR are written in a manner that  
10 makes it very difficult to understand. It's equally  
11 perplexing whether this was done intentionally or  
12 inadvertently, and I want Mr. Howard and others to realize I  
13 appreciate the level of pressure that was placed on them and  
14 I recognize because of the time restraints that may have  
15 been a factor.

16           But with that said, I suggest a rewrite. For  
17 example, you know, early on in the EIR it mentioned the  
18 importance of the 1984-1992 period, the base period in  
19 determining impacts on striped bass. However, in Chapter 8,  
20 page 35, it places great emphasis on the dependency on the  
21 operational study number instead of the base period, making  
22 it difficult for me to comprehend the full adverse impacts  
23 associated with the species that we are talking about.

24           The plan does not provide adequate information on the  
25 cumulative impacts. You notice how I am using *adequate* a

1 lot. I don't want to come out and say it doesn't at all  
2 because I think that would be undermining the staff's  
3 efforts here.

4 I have stated in previous hearings the plan was  
5 primarily orchestrated by the vested interests, in  
6 particular, the Department of Water Resources, long-term  
7 friends of mine, and the Bureau of Reclamation, and to some  
8 degree the environmental groups.

9 Neither the plan nor the EIR provides specific  
10 assurance that it will provide these levels of protection to  
11 protect the long-term viability of the estuary. The draft  
12 EIR did not contain water quality analysis, although the  
13 final one does, but it put me in a difficult position  
14 because the final is done and I am not getting a chance to  
15 respond to it; I mean, just verbally.

16 It is unclear whether compliance with water quality  
17 standards are voluntary or mandatory. Historically the  
18 record shows that we have had a difficult time getting the  
19 boys over at the Department of Water Resources and the  
20 Bureau to comply with these regulations and I don't want to  
21 leave out my friend, the Bureau, because you know we realize  
22 that they had significant violations of the Vernalis  
23 standard under D-1422 during the drought period.

24 As a matter of fact, it got to the point where they  
25 said they were not going to meet it anymore.

1           As a member of the public, I was forced to file a  
2 public trust lawsuit back on December 7, 1993, and someone  
3 said it would go down in infamy. I want to point out that  
4 since that time, we have not had one water quality violation  
5 of D-1485, not one. That all my be coincidental. Who  
6 knows?

7           My point being that these agencies can, when they  
8 take the initiative, comply with the law and I appreciate  
9 that. I really do.

10           The plan and the EIR before me are fundamentally  
11 flawed because the demands are based on inflated demands  
12 that have yet to occur. You know, that 6.9 and 7 million  
13 acre-feet, I don't see that happening yet.

14           Essentially, the base case is not properly defined.  
15 The plan and most of the basis for the data contained  
16 therein were generated by our friends at the Bureau and DWR.

17           In the interim, there are many unresolved issues that  
18 are directly and indirectly related to this particular plan.

19           You know, on April 18, we all remember the Department  
20 of Water Resources and the Bureau came over asking for  
21 relaxation of the conditions in D-1485. Of course, I was  
22 there to protest that request because, you know, I said  
23 these guys have plenty of time to come over here and get  
24 permission to request relaxation and they waited until the  
25 last minute; and just like Mr. Howard pointed out, he is

1 working this morning, his Xerox machine broke down and he is  
2 running over here with the data. The man has been working  
3 hard.

4 I am the type of guy that I feel like when things  
5 are this important we need to plan these things. We are not  
6 making decisions here for ourselves. We are making  
7 decisions for our children and their children, and I feel  
8 that, you know, Mr. Howard running over here like that, I  
9 mean, I know he is in shape but the point being that I don't  
10 feel that we have to put that kind of stress on the man.

11 Sorry, Mr. Howard, if I am sounding too personal, but  
12 I am like that.

13 Now, what's happened since December and the April  
14 18th meeting? The Department of Water Resources and the  
15 Bureau sent this Board a letter on May 1 essentially saying  
16 that if you can't approve the petition requested on April  
17 18, I believe it was under condition 3, then give us a  
18 condition 6, and so, this way, you know, in the end they are  
19 going to be in compliance and if they are out of compliance,  
20 they will be relieved of that problem because there will be  
21 relaxation in the standard.

22 I wish I had a condition 6 for everything I purchased  
23 in my life.

24 At any rate, as an alternative, they are either  
25 circumventing or negating the ultimate requirement to comply

1 with the law, and I just don't think that's right.

2           Excuse me, strike that. It's not right.

3           Once again, I look at myself as a member of the  
4 public trying to keep up with all of these issues and it is  
5 very difficult because I have other responsibilities that I  
6 need to keep up with.

7           In my review of the data, it appears and it was  
8 stated earlier, that this plan essentially does facilitate  
9 the principles for the agreement. There is no question in  
10 my mind about that and, unfortunately, what we have here is  
11 a situation where when the Department of Water Resources and  
12 the Bureau comes back in and they say to us, let's make  
13 D-1485 consistent with the Principles for Agreement, I have  
14 another offer for them. Let's make the agreement consistent  
15 with D-1485. That was a water rights decision that was done  
16 in the daylight.

17           Mr. Wright mentioned this was such an open process.  
18 I take total exception to that. It is not an open process.  
19 I wasn't involved and I know other people that weren't  
20 involved, especially the county of origin, especially the  
21 people from the county of origin were omitted from the  
22 process, the consensus-building process.

23           Okay, then there's another issue. Back in March I  
24 sent a letter over to the Corps of Engineers and I was  
25 concerned that it appeared, in looking at the Department of

1 Water Resources' data, that the Bureau had pumped more water  
2 at the Banks pumping plant than is allowed under their  
3 nationwide permit. There was some question as to the  
4 interpretation, as to whether or not, in fact, they were  
5 exceeding the take in the amount of water that they were  
6 allowed to take, but now the Corps is taking the position  
7 -- it appears they have, and I have that letter here, until  
8 the Department can prove otherwise.

9           So, we are here taking more water out of the system  
10 than allowed under certain conditions and in certain months,  
11 and we have this question as to who is right and wrong. I  
12 mean, these are issues that have gone on for decades.

13           In closing, I wanted to reflect on some of the South  
14 Delta people's concerns about the agricultural drainage  
15 problem. As you know, this Board is holding a hearing on  
16 the evaporation ponds problem down in Tulare Lake. That  
17 hearing is scheduled for Thursday and Friday, so I will see  
18 everybody again, and I will try to wear a different suit.

19           Then, on Friday, I am going to have to be in two  
20 places at once. I also have to be down in Fresno before the  
21 Regional Water Quality Control Board at 8:15 in the morning  
22 to provide information on the discharge of the agricultural  
23 drainage from the San Luis drain.

24           So, all of these issues in and by themselves,  
25 standing by themselves may not present a major problem.

1 Cumulatively, they are the issues and in my review of the  
2 data, it doesn't appear that this particular report  
3 addressed those issues in the way that I believe they should  
4 have been.

5           And lastly, I question the whole use of reasonable  
6 use of water and based on my review of the data, it appears  
7 they are going to be taking more water, they are going to be  
8 irrigating land that causes toxic problems. This condition  
9 has not been resolved, and you know that I explained to you  
10 that I was going to come in and file a complaint against  
11 both of the operators. I gave them an extra week to see if  
12 they would change things in the valley, so I am ready to do  
13 that now.

14           The last thing I want to mention to you is that I  
15 also mentioned about the cross-valley canal exports. I  
16 filed a complaint against the operators for unauthorized  
17 diversions. I hope to have something done about that, then  
18 maybe I can get back to the Water Quality Control Plan, once  
19 I get these details out of the way.

20           So, this issue here, as far as I am concerned, is  
21 just the doorway to open up things for the Peripheral Canal,  
22 and I take exception to the Department of Fish and Game's  
23 statement. I have done a complete review of the Department  
24 of Fish and Game's history, and quite frankly, I am appalled  
25 at their inability to protect the public trust resources of

1 the Bay-Delta.

2 So, my recommendation to this Board is that they do  
3 not adopt this particular plan at this time, that we go back  
4 and include many of the concerns that I have raised and  
5 others, and that we try to take a more comprehensive  
6 approach to the problem and come up with real answers to  
7 real problems so we can avoid protracted litigation.

8 Thank you, Mr. Chairman.

9 MR. CAFFREY: Thank you very much, Mr. Porgans.

10 Any questions from Board members?

11 Anything from staff?

12 Thank you very much, sir.

13 Jeanne Zolezzi representing Stockton East Water  
14 District.

15 Good morning and welcome.

16 MS. ZOLEZZI: Thank you and good morning to you.

17 For the record, I am Jeanne Zolezzi, general counsel  
18 for Stockton East Water District and I would hope that I do  
19 get it into the record that at least I think my opinion is  
20 worth something, but we will see if Alice puts that in  
21 there.

22 MR. CAFFREY: I saw her do it.

23 MS. ZOLEZZI: The State Board has obviously, or at  
24 least the staff, made minor changes in the plan that  
25 attempts to present the plan as an isolated document as has

1 been mentioned before without interaction to activities  
2 going on around it.

3 In the opinion of the Stockton East Water District  
4 board, the State Board, if it adopts this plan, appears to  
5 be washing its hands of all responsibility for or authority  
6 over the operators of the two largest water projects in the  
7 State of California.

8 To say that the Bureau of Reclamation is required to  
9 make flow releases in the plan to comply with the Endangered  
10 Species Act is simply preposterous. We would agree with the  
11 statements made by John Herrick and the South Delta Water  
12 Agency earlier, that the biological opinion does not require  
13 the flows that are in the Principles for Agreement or in  
14 this plan.

15 We must remember that what the biological opinion for  
16 Delta smelt for 1995 does is assume compliance with the  
17 principles. Basically, the project and the stakeholders  
18 told the U. S. Fish and Wildlife Service that we will be  
19 operating in this manner.

20 Given that assumption -- the Fish and Wildlife  
21 Service said that there will be no jeopardy. There is not a  
22 Delta smelt opinion directing the projects to operate in  
23 that manner and we must not forget that.

24 In any event, we are disappointed that the State  
25 Board has not taken notice of the liberty that the U. S.

1 Bureau of Reclamation is taking with its water rights  
2 permits for the New Melones project. To say that this Board  
3 is not directing anyone to do anything in compliance with  
4 the plan, but at the same time that it cannot take any  
5 action if someone is implementing this plan or implementing  
6 the principles, appears to us to be disingenuous.

7           The plan itself acknowledges implementation. As also  
8 mentioned earlier, there are references again and again in  
9 the plan and the environmental document that the U. S.  
10 Bureau of Reclamation and the Department of Water Resources  
11 may be voluntarily complying with the flows required by this  
12 plan, or through some boot-strapping may be doing so in  
13 compliance with the Endangered Species Act.

14           Because of this acknowledgement in the plan, we agree  
15 again with the South Delta Water Agency that there must be  
16 something further said in the plan; either leave all  
17 references out as to implementation, or if those references  
18 are made, you must go further and also include a warning,  
19 and the language that was referenced earlier appears to us  
20 to be acceptable, that if the operators of the two largest  
21 projects in the state are going to implement this plan even  
22 if it is voluntary, they must do so in accordance with law,  
23 in accordance with area of origin protection and in  
24 accordance with the specific terms and conditions of their  
25 permits.

1           Nevertheless, we have been directed in the response  
2 to comments that the appropriate place to proceed with our  
3 complaints that we have made previously is through a water  
4 rights proceeding, and we will attempt to initiate one.

5           Finally, I have two technical points:

6           The first is the statement made by Mr. Nomellini of  
7 the Central Delta Water Agency about the authority of the  
8 Operations Group and particularly Mr. Wright referenced that  
9 somehow the final review of the Executive Director provide  
10 sufficient oversight that we should all be comfortable with  
11 that process.

12           It does not, for two reasons:

13           The first is the decision of the Ops Group takes  
14 effect immediately and it can be set aside within ten days  
15 if it is objected to by the Executive Director. That  
16 doesn't give us great comfort.

17           The second, and I think the most important problem is  
18 that we are not given notice of this, again behind-the-doors  
19 decision that the Ops Group makes and the Executive Director  
20 reviews. There is no public input, there is no opportunity  
21 for legal users of water who may be injured by this change  
22 to give comments to the Executive Director. That must be  
23 addressed.

24           The final point is, again, and we have made it in the  
25 record, the Environmental Report is not a sufficient

1 document for CEQA purposes for the reasons that we placed in  
2 the record previously and I won't go into here. Approval of  
3 the plan today by this Board would be a violation of the  
4 California Environmental Quality Act and we would, again,  
5 urge you to go back and prepare a correct CEQA document.

6 That's all I have. Thank you.

7 MR. CAFFREY: Thank you very much, Ms. Zolezzi.

8 Any questions from Board members?

9 Anything from staff at this time.

10 Thank you very much for being here.

11 Gary Bobker of the Bay Institute. Good morning, Mr.  
12 Bobker, and welcome.

13 MR. BOBKER: Thank you, Mr. Caffrey and members of  
14 the Board.

15 For the record, I am Gary Bobker, policy analyst for  
16 the Bay Institute of San Francisco.

17 I had made some written comments available for the  
18 Board members and staff. Much of what is in those comments  
19 are areas in the Draft Water Quality Control Plan where we  
20 disagree with the way that the plan or objectives are  
21 characterized, and I have already made statements both in  
22 writing and verbally as to the substance in the past on the  
23 Bay-Delta responses to comments, and I am not going to go  
24 through them here again.

25 I would just note that we continue to have

1 disagreement about some of that language.

2           What I do want to focus on is one sort of major point  
3 just about the plan in general, and then some specific  
4 comments as to two particular areas in the plan and language  
5 therein.

6           First of all, our support for this Water Quality  
7 Control Plan has always been premised on the fact that we  
8 consider it to be an interim measure, that it will, in  
9 conjunction with a number of other necessary initiatives,  
10 result in improved conditions in the estuary for some  
11 species at some times, but it doesn't fully discharge the  
12 Board's obligations under the Clean Water Act, public trust  
13 and antidegradation statutes to completely protect the  
14 beneficial uses. That is something that we have said to the  
15 Board before.

16           The Board doesn't agree with that characterization.  
17 I am simply going to insist that to us it is an important  
18 recognition.

19           It also ties into some other things as to how we  
20 characterize the plan, and the intent of the signatories to  
21 the December 15, 1994, Principles for Agreement was never to  
22 suggest that the level of protection that was contained in  
23 that plan was the complete deal and end-all water quality  
24 protection.

25           There has always been recognition among all the

1 parties that we need to go further.

2           There has also been historic commitment by this Board  
3 and the State of California to a much greater level of  
4 protection than seems to be premised in this plan, of  
5 course, referring to the language in D-1485 as to offsetting  
6 project impacts. I believe that that approach is still  
7 valid.

8           The Racanelli decision criticized the Board for  
9 limiting its consideration to project operations, and also,  
10 reminded the Board that its primary charge was, in fact, to  
11 protect beneficial uses, but I would suggest that somewhere  
12 in that plan you need to reaffirm your commitment to that  
13 basic approach of D-1485.

14           I have suggested some language. It is not very  
15 eloquent, but it simply reaffirms the long-term objective of  
16 the underlying principle of D-1485 which was that water  
17 quality should be at least as good as levels which would  
18 have been available had the State and Federal projects not  
19 been constructed, obviously, with the proviso that this must  
20 assure reasonable protection of beneficial uses and that  
21 degradation of water quality by non-project users is also  
22 protected against, and I urge you to include this or similar  
23 language that reasserts the Board's long-term commitment and  
24 allows for guidance for future water rights and water  
25 quality proceedings.

1           That's the general comments I wanted to make.

2           Specifically, most of the comments, specific comments  
3 that I have made on the plan and on the Environmental Report  
4 had to do with the overall framework of the plan and with,  
5 of course, aquatic resource and habitat issues, and that's  
6 been our major concern.

7           One place that we didn't offer comments in the past  
8 was on the part of the plan that characterizes the San  
9 Joaquin Valley dainage program. I have had a chance since  
10 the final draft was circulated to talk to members of the  
11 Citizen's Advisory Committee on the implementation of that  
12 program as well as with Dr. Terry Young of the Environmental  
13 Defense Fund, and with others who have been involved in that  
14 drainage issue, and I want to offer some discussion where  
15 the plan could elaborate a little on the drainage program,  
16 or is inconsistent with the drainage program.

17           Three specific recommendations:

18           One was that in the discussion of source control on  
19 page 30, and there the plan supports the implementation of  
20 efforts to do source control through reduction of drainage  
21 and through land retirement; the specific recommendations  
22 only deal with the reduction of drainage, and we think you  
23 should simply add at this point a recommendation that the  
24 Department of Water Resources and the Bureau, through their  
25 respective land retirement programs, retire lands.

1           The land retirement programs, the San Joaquin Valley  
2 Drainage Relief Act program and the Central Valley Project  
3 Improvement Act land retirement program have not as yet  
4 resulted in any retirement of land. That's an important  
5 part of the drainage program package in the 1990 management  
6 plan.

7           Secondly, there is discussion on page 32 of the  
8 discharges to the San Joaquin River. We generally don't  
9 have a problem with the way that the plan discusses the need  
10 to have controlled discharges to the river and it talks  
11 about how the dilution capacity should be used.

12           We don't necessarily take issue with that. We think  
13 it needs to be clarified that you are not suggesting that  
14 flows be released specifically for dilution purposes or that  
15 flows that are specifically directed to environmental  
16 enhancement be used when calculating dilution capacity.

17           We also point out that when looking at dilution  
18 issues, that because agricultural drain water contains  
19 bioaccumulative substances like selenium concentrations, a  
20 base standard for meeting water quality objectives as the  
21 plan states on that page should include setting limits along  
22 mass loading.

23           My final comment on the drainage plan is on page 32  
24 and page 33, the discussion of out-of-valley disposal of  
25 salts. That section is inconsistent with the drainage

1 program.

2           The Draft Water Quality Control Plan is recommending  
3 that the Bureau proceed now with consideration of language  
4 for out-of-valley disposal. The drainage program, the 1990  
5 Management Plan, specifically found that; number one, no  
6 decision needed to be made for decades really on out-of-  
7 valley disposal and that in any case before any out-of-  
8 valley exports or salt removal program was considered, that  
9 the recommended plan needed to be in place because that was  
10 going to help determine what the final solution was, so we  
11 strongly recommend that this section be removed from the  
12 plan as being inconsistent with the recommendations of the  
13 drainage program.

14           That program spent something like 50 million dollars  
15 and 6 years to come up with its recommendations. I would be  
16 very loathe to see you alter those recommendations without  
17 giving it the time that it deserves.

18           My final comment has to do -- there are a number of  
19 areas where you clarify things in a very helpful way. One  
20 of them was in your discussion of the habitat  
21 recommendations, and the effort under way with the so-called  
22 Category 3 program and mentioned if a funding for that  
23 program is not forthcoming, that you would consider whether  
24 legislation or other measures were necessary, if it would be  
25 helpful if there was some determination of when that needs

1 to occur.

2 Obviously, the habitat recommendations are a part of  
3 the success of this plan as a component of the comprehensive  
4 management package. If the efforts for implementation of  
5 these recommendations don't move ahead in some timely  
6 fashion, obviously, that threatens the success of this plan  
7 in protecting beneficial uses.

8 So, I urge you to put in some recognition that this  
9 has to be done in a timely fashion.

10 That concludes the comments that I wanted to make.  
11 Thank you.

12 MR. CAFFREY: Thank you, Mr. Bobker.

13 Are there questions by Board members? Staff?

14 Thank you for being here.

15 Mr. Chatigny representing the Delta Tributaries.

16 Good morning, sir.

17 MR. CHATIGNY: Good morning. I am Jim Chatigny,  
18 General Manager of the Nevada Irrigation District, but this  
19 morning I am here speaking in the first part as Chairman of  
20 the Delta Tributary Agencies Committee.

21 As you know, we have been involved in the hearings  
22 since early 1987. We have submitted to you all the  
23 documents that we have been able to produce. There are 30  
24 agencies that are in the DTAC group. We are primarily all  
25 upstream users.

1           We know that you are aware of the ongoing  
2 negotiations between what is referred to as the Ag CUWA  
3 group and the upstream users which could avoid subsequent  
4 water right implementation proceedings for the quality  
5 objectives which you intend to adopt.

6           We, again, must remind you that the State, Federal,  
7 Ag CUWA accord of December 15 was announced without  
8 consensus approval of the remaining two-thirds of the  
9 agricultural, M&I, recreation and hydroelectric developers  
10 in the Central Valley, and again, Delta Tributary Agencies  
11 Committee represents 30 of those agencies.

12           Not one of us was able, or was invited or was a  
13 participant in this consensus.

14           As you see in our reports, we have some six million  
15 acre-feet of water available for uses within our service  
16 areas. The amount of agricultural and other economic  
17 benefits are many many fold to that and, again, we were not  
18 involved in any way in the consensus.

19           We, again, urge you to be mindful of reasonable and  
20 beneficial uses of water of all of our member agencies so  
21 that you will not in the subsequent water rights hearings  
22 deviate from the California water right priority system in  
23 favor of this share of the pain concept that some exporters  
24 claim is required because of the Racanelli decision.

25           DTAC would, again, like to once more reaffirm its

1 statement of the principles for these proceedings that we  
2 adopted in 1991, that the State Board should recognize and  
3 follow area of origin and watershed protection principles.  
4 The State Board should recognize the unique impacts of Delta  
5 water exports and require those exporters to mitigate their  
6 adverse environmental impacts, and consistent with those  
7 first two principles, the State Board must rely on the  
8 priority system to allocate the responsibility of the Bay-  
9 Delta water quality objectives and flow requirements.

10           And the municipal and domestic uses should receive no  
11 special preference in this allocation of responsibility to  
12 maintain Bay-Delta water quality objectives and the flow  
13 requirements.

14           Again, if the Board feels constrained to take some  
15 action today, we urge its action be advisory and subject to  
16 further review and final adoption in connection with the  
17 next phase of these proceedings in order to insure full  
18 compliance with CEQA and the full balancing of the standards  
19 to be adopted along with the water supply, economic,  
20 environmental and social impacts.

21           We trust that in the next phase all these matters  
22 will be seriously considered and recognized by you in taking  
23 a global approach to setting these water quality objectives  
24 despite receiving what we are sure are very difficult  
25 political pressures from various interest groups.

1           If I may now put on my Nevada Irrigation District cap  
2 and bring some specifics to this -- on the addendum that we  
3 received this morning under Chapter 14 of the Environmental  
4 Report on page 13, you talk about mitigation measures and  
5 findings, and it is essential that the Board now adopt a  
6 Water Quality Control Plan to serve as the basis for future  
7 regulatory measures that will protect the fish and wildlife  
8 uses of the estuary.

9           The plan is essentially an early step in establishing  
10 adequate protections of the estuary. Down a little bit  
11 further it says: *Actions which could mitigate or avoid the*  
12 *significant effects on the environment are primarily within*  
13 *the responsibility and jurisdiction of local water purveyors*  
14 *and managers, and have been or can and should be adopted by*  
15 *these entities.*

16           The decisions made by local water purveyors, and  
17 these are quotes, *when they allocate the remaining water*  
18 *supplies will determine if the adverse effects occur.* And  
19 then, on page 14 there is a list of 11 items under these:  
20 *Mitigation measures, urban water conservation, ag water*  
21 *conservation, groundwater management, water transfers, et*  
22 *cetera.*

23           The first two, the District has some ability to do,  
24 the Nevada Irrigation District. We have an urban water  
25 conservation plan. We use the best management practices.

1           We also have an agricultural water conservation plan  
2 and we have utilized that for quite a few years.

3           We do not have groundwater management. We have no  
4 groundwater. Water transfers, I guess I should repeat again  
5 what I offered over in the Convention Center probably six  
6 years ago, that the District was willing at that time to  
7 transfer waters on a gravity basis from our foothills to the  
8 valley if the Board, in turn, would provide the reciprocal  
9 of giving us water when we are short of water. I got no  
10 answer then.

11           Obviously, that is still there. We still make that  
12 offer.

13           On reclamation, we do reclaim a little bit of water  
14 from the two sewage plants of Nevada City and Grass Valley.  
15 Grass Valley now is trying to charge us for that water. I  
16 don't think we are going to pay for it, but they are trying  
17 to charge us for it.

18           The next one is the one that really bothers us and  
19 this is the mitigation fund, and in parenthesis, including a  
20 mitigation credits program. To provide for a mitigation  
21 fund would mean that we would have to raise our water rates  
22 and I think I would have a very difficult time convincing  
23 the customers in the Nevada Irrigation District that we  
24 should raise water rates in order to provide a mitigation  
25 fund to do the restoration within the Delta.

1           Most of our people believe that charity begins at  
2 home, and I do, too. We cannot use the Central Valley  
3 Project or the State Water Project point of diversion, we  
4 have no upstream storage such as the Los Banos Grande, and  
5 so on and so forth.

6           The South Delta program does not fit, the purchase of  
7 Delta islands does not work, nor the long-term Delta  
8 solution.

9           So then, go over to page 15 under mitigation  
10 measures and findings, that last sentence in that last  
11 paragraph:

12           *Therefore, the benefits of providing protection*  
13           *for fish and wildlife uses in the estuary*  
14           *outweigh any significant environmental effects*  
15           *that could occur due to implementation of the*  
16           *plan.*

17           The people in Nevada County, the Board members and  
18 staff of Nevada Irrigation District, would have a very  
19 difficult time trying to subscribe to that sentence in that  
20 paragraph, and I don't believe I could ever change the mind  
21 of the people within the Nevada Irrigation District that  
22 they should give up all of these things in light of working  
23 towards the Delta until we have taken care of the public  
24 trust within the Nevada Irrigation District and have met all  
25 the needs that are already required within our Irrigation

1 District.

2 And with that, thank you very much.

3 MR. CAFFREY: Thank you, Mr. Chatigny.

4 Are there questions from Board members?

5 Anything from staff?

6 David Anderson with the Department of Water  
7 Resources.

8 Good morning, sir, welcome.

9 MR. ANDERSON: Good morning, Mr. Chairman and members  
10 of the Board.

11 My name is David Anderson with the Department of  
12 Water Resources. The Department of Water Resources supports  
13 the adoption of the Board's May 1995 Draft Water Quality  
14 Control Plan for the Bay-Delta estuary with the errata that  
15 have been published, and also, with Patrick Wright's  
16 clarification on the cross channel gate operations.

17 We believe that the plan is a proper exercise of the  
18 various authorities conferred by the Water Code upon the  
19 Board to establish planning objectives not only for water  
20 quality, but for flow and diversion, and it is properly  
21 supported by the May 1995 Environmental Report which we also  
22 recommend be adopted by the Board.

23 Much has been said today about the relationship  
24 between the December 15, 1994, Principles for Agreement and  
25 the Board's current Bay-Delta planning effort.

1           We certainly agree with the Board in its response, I  
2 believe, to the Central Delta Water Agency that the  
3 principles did not and could not bind the Board to a  
4 particular planning outcome. At the same time, we strongly  
5 support the Board's looking to the Principles as the policy  
6 cornerstone for its plan for the estuary. The Principles  
7 supply what has been sorely wanting in our most recent  
8 Delta efforts of bringing together a reconciliation and  
9 synthesis of the disparate and often competing policies that  
10 apply to individual aspects of Delta water use.

11           The views of public agencies charged with the overall  
12 use and protection of the estuary, as well as the views of  
13 those interested in water supply and environmental uses of  
14 the estuary are critical to the development of such a  
15 significant element of California water policy, whether that  
16 be accomplished through formal legislative processes or  
17 through other less formal, though no less compelling  
18 consensus processes.

19           We believe that the Board would be greatly remiss  
20 were it not to use the Principles for Agreement as an  
21 essential sort of policy for its planning effort. We do  
22 wish to acknowledge and commend the substantial efforts of  
23 the Board to foster an environment conducive to producing  
24 consensus as well as the very significant efforts of the  
25 Board staff in putting these difficult documents together so

1 quickly and responding to the comments and concerns of all  
2 the parties.

3 Thank you.

4 MR. CAFFREY: Thank you very much.

5 Any questions from the Board and staff?

6 Thank you, sir.

7 The final card is from Kevin Haroff. Good morning,  
8 sir, and welcome.

9 MR. HAROFF: Good morning, Mr. Chairman and members  
10 of the Board.

11 My name is Kevin Haroff with the law firm of Morrison  
12 and Foerster, which represents Santa Clara Valley Water  
13 District.

14 I have been asked to make a brief general statement  
15 today on behalf of the Joint California Water Users which  
16 are different groups of water agencies serving more than  
17 two-thirds of the State's urban population and a substantial  
18 portion of its irrigated farm land.

19 The Joint California Water Users commend the State  
20 Board on its efforts to develop and finalize the proposed  
21 Water Quality Control Plan. The plan is an important step  
22 in the implementation of a comprehensive ecosystem  
23 protection program for the Bay-Delta.

24 Moreover, we appreciate the substantial work that has  
25 been done by the Board and by staff since its February 23

1 hearing on the draft plan.

2           The Joint Users group submitted detailed comments on  
3 that draft and we want to acknowledge the thoughtfulness  
4 that went into the preparation of responses to our comments  
5 and to the comments submitted by others.

6           While not all of our suggestions have been taken up  
7 in the response to comments, we believe that the plan has  
8 benefited materially from the public comment process.

9           The Joint Water Users support the Board's adoption of  
10 the water quality and operational standards contained in the  
11 plan and we look forward to continuing to work to insure  
12 their implementation in the future.

13           Finally, I would like to take this opportunity to  
14 note that while you have been doing your job in issuing the  
15 plan, the Joint Water Users have been doing their job as  
16 well. You will recall that one of the provisions of the  
17 December 1994 Bay-Delta accord called upon the Joint Water  
18 Users to sponsor the development of a detailed plan of  
19 implementation or so-called Category 3 measures to address  
20 non-flow factors as part of the comprehensive Bay-Delta  
21 protection program.

22           The accord also called for the Category 3  
23 Implementation Plan to be finalized by the time your Board  
24 issued the Water Quality Control Plan.

25           Consistent with this direction, a proposed Category 3

1 Implementation Plan has been prepared through an effort that  
2 involved representatives not only from the Joint Water  
3 Users, but also, from Cal-Fed, the environmental community  
4 and the fishery community.

5 A final review draft of the text of the  
6 Implementation Plan was made available at Cal-Fed's public  
7 session meeting last Thursday, May 18. Copies of the  
8 complete document were mailed out on Friday, and you should  
9 be receiving your copy today.

10 A great deal of work went into the preparation of the  
11 Category 3 Implementation Plan just as a great deal of  
12 effort went into the preparation of the Water Quality  
13 Control Plan. We applaud all parties who have contributed  
14 to that effort and we look forward to continuing progress on  
15 all fronts in the development of a comprehensive program of  
16 action to protect the Bay-Delta ecosystem.

17 Thank you.

18 MR. CAFFREY: Thank you, Mr. Haroff.

19 Are there questions from Board members?

20 Anything from staff?

21 Thank you, sir. We look forward to your  
22 recommendations.

23 MR. HAROFF: Thank you very much.

24 MR. CAFFREY: That completes the cards.

25 I think now we should turn back to Mr. Howard to hear

1 his comments.

2 MR. HOWARD: There were lots of comments and I tried  
3 to jot them down, but I am not a scribe, so Barbara over  
4 here is going to -- to the extent I forget any comments --  
5 try to remind me so we can get an answer to everything.

6 I think that if anyone believes that I haven't  
7 adequately answered their comments, I would invite them to  
8 stand up and tell me what I have forgotten to say or  
9 forgotten to respond to, and I will take a stab at that  
10 juncture.

11 The first person that came up was Mr. Nomellini from  
12 the Central Delta Water Agency. I think one of the concerns  
13 was that footnotes 22, 24, 25 and 26 are inappropriate in  
14 that the Board has delegated to the Ops Group some of the  
15 decisions that in their opinion should remain only with the  
16 Board.

17 In putting the delegation together, the Board tried  
18 to, the staff tried to provide well defined parameters in  
19 which the Operations Group had to make decisions; that is,  
20 there isn't, in our opinion, simply a statement that the  
21 Operations Group can do most anything it wants. Instead,  
22 there was an attempt to define a box, if you will, and set a  
23 limit to which the project Operations Group could make  
24 decisions, and to the extent that the box seemed to us quite  
25 large, and footnotes -- I think 22 and 24, we then had a

1 backup decision based on the Executive Director's review of  
2 those recommendations from the Operations Group.

3           Consequently, we felt the limits that the Operations  
4 Group had to operate within were sufficiently defined that  
5 beneficial uses would be protected within the confines of  
6 those limits.

7           To the extent the Board might disagree with that,  
8 then, of course, the recommendations could be changed  
9 regarding the Operations Group's discretion. But that was  
10 our opinion.

11           MR. JOHNS: If I could just add, the principal  
12 purpose of the flexibility was better protection for fish  
13 and wildlife, so we are looking at flexibility that, instead  
14 of rigid operation, would provide that kind of flexibility,  
15 provided that that would not cause problems with other uses.

16           MR. CAFFREY: Mr. Del Piero.

17           MR. DEL PIERO: What, in terms of the staff  
18 recommendations, was anticipated as to the appeal process  
19 that would be involved if someone were dissatisfied?

20           MR. HOWARD: Since we had clearly defined limits as  
21 to the parameters under which decisions would be made, we  
22 felt there was sufficient control from the Board's  
23 perspective.

24           MR. DEL PIERO: Who in staff recommended it's an  
25 absolute delegation?

1           MR. HOWARD: With respect to a couple of objectives,  
2 of course, other ones are subject to review by the Executive  
3 Director, but yes, for example, one of them is the operation  
4 of the Delta cross channel gates and the Operations Group  
5 can decide when within a certain number of days to open and  
6 close the gates.

7           However, you know, it is supposed to be a defined  
8 quantity of time in which the gates are opened and closed.  
9 Those are the kinds of limits that are placed on -- there's  
10 no provision in the plan presently before the Board to  
11 review those decisions.

12           MR. CAFFREY: Please proceed, Mr. Howard.

13           MR. HOWARD: Another one raised by Mr. Nomellini is  
14 they believe it is appropriate for year-round objectives to  
15 be placed for agriculture in the Central Delta. They  
16 correctly identified that wasn't a subject of this  
17 proceeding, but, of course, I think that in the next review  
18 it will probably be appropriate to take up agricultural  
19 objectives as they weren't discussed in this particular  
20 proceeding.

21           Our review of modeling results indicated there  
22 shouldn't be any violation of the existing objectives based  
23 on DWRSIM. There are objectives for agriculture in the  
24 Central Delta only from April through August, I believe, and  
25 there are some possible problems, especially in December and

1 January in very dry years, and the Board might want to take  
2 that up on the next review of the draft plan.

3 Those were the only two I had for Mr. Nomellini. Was  
4 there anything else, Barbara?

5 MS. LEIDIGH: That is all I have.

6 MR. NOMELLINI: Are you going to focus on comments?

7 MR. CAFFREY: I am a little concerned about having an  
8 adversarial debate which borders on holding another hearing.  
9 I appreciate Mr. Howard's desire to get into some discourse  
10 if it is needed, but I am a little concerned if we start  
11 debating the issues all over again -- go ahead.

12 MR. NOMELLINI: On that procedural issue of review,  
13 what we are suggesting is not that you eliminate the  
14 Operations Group flexibility, but that you clearly establish  
15 a notice requirement and then an opportunity to bring it --  
16 a clear right when there is a dispute from any interested  
17 party to bring it back to the Board. That doesn't eliminate  
18 -- we are not suggesting you take that flexibility away.  
19 Maybe in 100 percent of the cases or 99 percent, there would  
20 never be a need for a procedural review, and I just don't  
21 think you address that aspect.

22 You focus in on the flexibility. I don't think  
23 anybody was trying to take the flexibility away because you  
24 need that to make it work.

25 What harm is there in having a review right and a

1 notice to interested parties?

2 MR. HOWARD: I think the principal problem is one of  
3 time. The purpose of the Operations Group is to be able to  
4 make real-time decisions right now. For example, there is a  
5 lot of biological monitoring going on in the Delta for the  
6 purpose of analyzing the ability to make real-time  
7 decisions.

8 A couple of days ago, a lot of salmon smolts were  
9 seen entering the head of Old River because the hatchery had  
10 made some releases downstream, and the purpose of the  
11 Operations Group is to be able to say today we see a large  
12 number of smolts entering the head of Old River, it is  
13 appropriate to cut back pumping for the protection of those  
14 smolts.

15 If we incorporate a review in the protest, the smolts  
16 will have long ago been entrained into the pumps by the time  
17 the Board has a chance to meet.

18 So, the decisions are really based on the concept of  
19 real time and if the Board thinks it is appropriate to try  
20 and manage the fishery on a real-time basis, a lengthy  
21 review process is not going to be workable.

22 MR. CAFFREY: Thank you, Mr. Howard, and thank you,  
23 Mr. Nomellini. I appreciate your clarification.

24 Proceed.

25 MR. HOWARD: The next comments were made by Kenneth

1 Robbins of the San Joaquin Tributaries Agencies. I think  
2 one of the first things he said was he challenged the Board  
3 to find anything in the record that supported the flows that  
4 were required for the benefit of salmon.

5 I really believe that the record is really replete  
6 with data that has been collected that indicates that the  
7 flows on the San Joaquin affect salmon smolt escapement.  
8 For example, it has been well established for a long time  
9 that escapement two and a half years later is dependent on  
10 flows on the San Joaquin. Whenever we saw very high flows  
11 on the San Joaquin, we saw very good escapement. Whenever  
12 there were low flows in the San Joaquin, there was very poor  
13 escapement.

14 In addition, the U. S. Fish and Wildlife Service has  
15 put together a couple of models. Those models have been  
16 questioned as to their statistical validity, but a number  
17 of work groups all agreed that the parameters that they were  
18 defining; that is exports, temperature and flows on the San  
19 Joaquin, were, in fact, the factors that affect salmon smolt  
20 survival.

21 Also, we received a submittal, I believe it was from  
22 -- it might have been the Stanislaus River Council that did  
23 a rather lengthy set of regression analyses showing that of  
24 the two factors that principally affect smolt survival on  
25 the San Joaquin River, flows and exports, that flows are the

1 factor that more strongly defined survival on the river.

2 In addition, there have been work groups for years on  
3 the San Joaquin dealing with this issue and they have all  
4 agreed that flows on the San Joaquin are a principal factor  
5 to the smolt survival, and I believe their record is very  
6 clear on all that.

7 They did say the projects are causes of reductions  
8 and I don't think anyone disagrees that exports are a large  
9 factor in the salmon smolt survival. It is just that flows  
10 are also a substantial factor.

11 They recommend that the plan require construction of  
12 the Old River barrier. We have in the plan recommended  
13 construction of an Old River barrier. In addition, in the  
14 Principles for Agreement, the projects have committed to  
15 construct it.

16 The problem that we had in requiring it was that in  
17 the last couple of years, I guess it was last year, they did  
18 construct it and the Fish and Wildlife Service required them  
19 to pull it out early because of the fact that there seemed  
20 to be an increase in the capture of Delta smelt, and so,  
21 until it is very clearly defined that the Old River barrier  
22 is appropriate to protect all of the estuary resources, we  
23 thought it would be appropriate to include it as a  
24 recommendation to evaluate it, and then perhaps in the water  
25 rights proceeding or in the next triennial review, to

1 require its construction and operation.

2 But at present, it seems a bit premature.

3 Those were the two principal issues that I think were  
4 technical issues that required addressing.

5 Was there anything else, Barbara?

6 MS. LEIDIGH: It looks like Mr. Robbins --

7 MR. ROBBINS: Just one comment based upon Mr.  
8 Howard's comments, and we weren't quite sure from staff --  
9 are we to assume then that the record from D-1630 has been  
10 incorporated into the record for this proceeding?

11 MR. HOWARD: Well, we have not specifically  
12 incorporated the record. We had incorporated many of the  
13 references is D-1630 in our Environmental Report. All of  
14 what we perceived to be the record at present is; number  
15 one, the items that were submitted to the Board during  
16 workshops; number two, all of the items that were referenced  
17 in our Environmental Report; and number three, all of the  
18 comments that were received from the participants after the  
19 February 23 hearing, plus, of course, all the oral testimony  
20 at workshops and hearings.

21 That was our perception of the record, but the Board  
22 can augment that any way it wants.

23 MR. ROBBINS: But not specifically all the testimony  
24 that was received in 1630?

25 MR. HOWARD: Not unless it was addressed in the

1 Environmental Report.

2           The next was Alex Hildebrand representing South Delta  
3 Water Agency. His recommendation is that the Board should  
4 stipulate how the flows should be accomplished.

5           In the response to comments I know we got a bit  
6 repetitive. We kept saying this is one of the factors that  
7 should be considered in the water rights proceeding, and it  
8 just seems as though where the flows should come from on the  
9 San Joaquin River are appropriately a water rights process.

10           He recommends that they come from the Delta-Mendota  
11 Canal and there's nothing that presently keeps the Bureau of  
12 Reclamation from providing those flows from any source it  
13 wants, whether it be Friant, Stanislaus or bringing the  
14 Sacramento River water around from the San Luis Reservoir  
15 and then into the San Joaquin River to meet the flow  
16 requirements.

17           And that, of course, is something I think the Board  
18 should look at during the water rights proceeding. It  
19 doesn't seem as though we should be specifying location of  
20 where these flows should be coming from until a water rights  
21 proceeding in which testimony is given and received.

22           He points out that the previous biological opinion  
23 had lower flows for Delta smelt. That's true. That  
24 biological opinion, when it was redrafted, raised the flows  
25 for Delta smelt to coincide with those that had been

1 discussed for salmon protection. I presume their opinion  
2 was that, you know, the joint protection of salmon and Delta  
3 smelt was appropriate.

4 He objects to the fact that we are saying as required  
5 for Delta smelt on page 28 of the draft plan. My  
6 recollection is that we were referring to the biological  
7 opinion at that point. The biological opinion does provide  
8 these flows in the protection of Delta smelt and we were  
9 simply citing that as a fact.

10 He objects to the statement that spring flows will  
11 help to meet salinity standards. He says that statement is  
12 incorrect because, after all, if we provide these spring  
13 flows, there will be insufficient water in New Melones to  
14 meet salinity requirements in the summer.

15 The plan doesn't presuppose any source for the flows.  
16 I presume if the Board adopts flow standards for the San  
17 Joaquin River and a salinity standard, the intent is to try  
18 to meet them and we concur that if all of the standards have  
19 to come out of the Stanislaus, then it will not be possible  
20 to meet all the standards.

21 Consequently, it would seem appropriate in a water  
22 rights proceeding in order to insure that all the standards  
23 are met to allocate flows in such a way that the water is  
24 actually available. So, his comment presupposes that the  
25 flows all come out of the Stanislaus. I think that is an

1 issue for the water rights proceeding.

2 Was there anything else from Alex, Barbara?

3 MS. LEIDIGH: No.

4 MR. HOWARD: There's also here that the control of  
5 drainage will make 70,000 acre-feet adequate. In the  
6 modeling studies we went ahead and said to make the model  
7 runs with the maximum water release of 70,000 acre-feet for  
8 salinity control on the San Joaquin, specifically the  
9 salinity standard at Vernalis.

10 There's a very long history associated with the 70,000  
11 acre-foot limit. It goes back quite a ways before D-1422.

12 The Board has never adopted a cap on the flow  
13 requirements to meet the salinity standard on the San  
14 Joaquin. However, I believe it was sometime back in the  
15 sixties, long ago, I researched this and found an answer,  
16 but there was something in the early sixties where there was  
17 an agreement among the Bureau and some other parties that  
18 salinity control -- the other parties is not including the  
19 Board -- would be limited to 70,000 acre-feet.

20 When the Board adopted D-1422, they acknowledged that  
21 agreement, but they did not include that 70 thousand cap.

22 However, in most operation studies that have ever  
23 been conducted, the Department has continued to impose a  
24 70,000 acre-foot cap because that was largely what the  
25 Bureau told them was their intention regarding operating on

1 the San Joaquin and the Stanislaus.

2 We decided it would probably be appropriate to  
3 continue that cap because it is the Board's intention to try  
4 to at least -- I understand it is the Board's intention to  
5 try to control agricultural drainage to the extent feasible  
6 and, therefore, the amount of water that is necessary is  
7 going to be dependent on the controls that are imposed.

8 And it, therefore, seems like it was a rather  
9 arbitrary decision whether you said make it all up with flow,  
10 or instead, impose an arbitrary cap. We propose the cap  
11 just because of the issue of salinity control through other  
12 measures as well.

13 But it is true that there are other assumptions that  
14 could have been made, any number of other assumptions that  
15 could have been made.

16 He has also asked us to make a statement that water  
17 quality for salinity control have priority over the flow  
18 standards on the San Joaquin, I presume over this interim  
19 period, before the water rights proceeding.

20 It is our opinion that that would to some extent  
21 nullify the standards. It would then be something that EPA  
22 or others who might be reviewing these standards would have  
23 to look at when they decided whether to approve them.

24 So, we didn't think it was appropriate at this  
25 juncture to prioritize the standard and say one type of

1 standard takes priority over another.

2           In our response to comments, I think we said that we  
3 assume that the Board, when they decide to implement the  
4 plan, will look at the available water supply and if the  
5 available water supply doesn't match the standard, at that  
6 point it might be necessary to prioritize the standard, but  
7 it doesn't seem appropriate at this point before we have  
8 even looked at the sources of water that are going to be  
9 used to meet the standards.

10           That was another -- Barbara, was there anything else?

11           MS. LEIDIGH: I think that covered Mr. Hildebrand's  
12 comments.

13           Mr. Herrick was next.

14           MR. HOWARD: Mr. Herrick representing the South Delta  
15 Water Agency.

16           Well, he recommended a formal structure for the  
17 Operations Group. Our response and response to comments is  
18 that the Board should certainly consider that in a water  
19 rights proceeding, so that, again, until the Operations  
20 Group is actually operating under the authority of the Board  
21 through a water rights decision, our specifying its  
22 particular function in structure is a bit premature.

23           We presume that over the next couple of years as they  
24 work to implement the Principles for Agreement, not the  
25 Water Quality Control Plan, that there's going to be some

1 discussion about the structure and function of the group.

2 In fact, that has been brought to the agenda of the  
3 Operations Group once and it is an ongoing discussion there  
4 about how exactly they should configure themselves to make  
5 decisions, and in a water rights proceeding we will bring  
6 that before the Board to ask whether or not they want to  
7 provide more definition to the structure and function of  
8 that group.

9 They also said that the plan should not mention  
10 interim implementation or state that such implementation  
11 should not affect rights. I presume that in that they are  
12 talking about interim implementation with respect to the  
13 South Delta Water Agency, I mean with respect to the San  
14 Joaquin River flows.

15 Our intention on discussing the fact that there's  
16 going to be some interim implementation of the San Joaquin  
17 River flows is what we are trying to say is that the Board  
18 in the plan states that there is going to be a review of  
19 those objectives prior to adopting them into a plan and, of  
20 course, you can't review them to see whether they are  
21 adequate until they have actually been implemented for a  
22 while, and we simply note the Bureau intends to implement  
23 them because they have made that statement in the Principles  
24 for Agreement, and that presumably we will get some data.

25 Unfortunately, we won't be getting any this year

1 because the flows are so high we can't really see the  
2 effects of the standards. But if we get some data, then we  
3 would be able to bring some additional information about it  
4 to the Board, about the appropriateness of those standards,  
5 and therefore, all we were doing in the plan was  
6 acknowledging that the interim implementation would be  
7 occurring.

8           They also asked us to condition water sales or  
9 transfers. I presume they should be conditioned so that  
10 beneficial uses are protected. We have a recommendation in  
11 the plan or in the Environmental Report regarding sales of  
12 water.

13           Again, the Board right now has -- all of these  
14 transfers come, or at least a large fraction of these  
15 transfers come to the Board and during that process the  
16 Board has in the past tended to condition some of these  
17 water transfers, and that's the appropriate time to do so if  
18 conditions are necessary.

19           I think there really are very specific conditions with  
20 particular transfers, and the Board is going to have to look  
21 at conditioning those transfers during the time they propose  
22 to adopt them.

23           The last comment was that on the San Joaquin River  
24 from April 14 to May 15, there seemed to be two standards;  
25 one 35 percent of Delta inflow and the other 100 percent of

1 San Joaquin River flow. Because there are two standards, it  
2 always seems, I guess, obvious that both standards apply  
3 and, therefore, the one that is the lower is the one that  
4 has to be operated to.

5           The comment of Mr. Herrick was that we should clarify  
6 that. I am not sure clarification is necessary, but if the  
7 Board wants to clarify that, we could include a clause in  
8 one of the footnotes that says the least of these or the  
9 more restrictive of these two standards applies. Whenever  
10 you have two standards that are simultaneous in effect, it  
11 seems obvious the more restrictive one applies. Otherwise,  
12 you would be violating that standard.

13           Anything else, Barbara?

14           MS. LEIDIGH: I think that's all.

15           MR. HERRICK: Could I ask for clarification? I am  
16 not sure I am on the same track on interim implementation.  
17 You said the Board may later but not now, have to prioritize  
18 the objectives or beneficial uses, but the point I was trying  
19 to make is by recognizing that there will be interim  
20 implementation by the Bureau, is the Board recognizing that  
21 somebody else will be prioritizing those and that will  
22 necessarily affect the different objectives.

23           Can the Bureau then choose to release more water now  
24 for fish flows and come up short for the summer water  
25 quality flow?

1           MR. HOWARD: Well, the standard that is in effect  
2 right now is 500 parts per million -- well, actually the  
3 standard is .7 EC and 1 EC, if the Board chooses to adopt  
4 this at Vernalis.

5           And insofar as I am aware, the Bureau, you know, is  
6 required to meet these flows. At the same time, they have  
7 an agreement to try to meet this water quality with flow  
8 releases from New Melones. At the same time, the Bureau has  
9 an agreement in which they state they will try to meet the  
10 fish flows.

11           There's nothing that eliminates their responsibility  
12 to meet the water quality standards.

13           The reality, of course, is that in the past there  
14 hasn't been sufficient water in many cases to meet all the  
15 salinity requirements, and at that time, my understanding is  
16 that the approach taken by the Bureau is to meet the South  
17 Delta Water Agency and other water users in the basin, and  
18 try to work out some sort of agreement.

19           I would believe that that would be the same process  
20 the Bureau would use at this time if they found themselves  
21 in the same bind; that is, they couldn't meet all of their  
22 commitments out of New Melones.

23           In the past the Board has not specifically objected  
24 to this type of agreement process, nonetheless, the result  
25 has been that occasionally the New Melones standards are

1 violated and there hasn't been much in the way of concern  
2 expressed by many people because the agreements that have  
3 been reached among the water users have been adequate for  
4 their purposes.

5           So, I guess my answer is that standards are still in  
6 effect. The Bureau is required to meet them. If there is  
7 some problem, I presume the Bureau will meet with all the  
8 interested parties and try to work out an agreement, and if  
9 an agreement can't be worked out, then I presume a petition  
10 could be filed with the Board.

11           MR. HILDEBRAND: A clarification question.

12           Last year, for example, the Bureau bought 50,000  
13 acre-feet of ag water and let it down for fish, thereby  
14 diminishing the return flows available in the summer. They  
15 did that without change of place and purpose of use. They  
16 did it without coming to the Board for permission to do  
17 that.

18           Did I interpret your remark a little bit ago to say  
19 that is not going to be allowed for them to do that sort of  
20 thing without coming to the Board? They have proposed to do  
21 it again this year.

22           MR. HOWARD: Well, I don't know any particulars about  
23 the transfer. I don't know if that transfer is within the  
24 Board's jurisdiction.

25           Jerry, do you know anything about that?

1           MR. JOHNS: I would hope, based on past practices the  
2 Bureau would try to work with the parties as they move  
3 foward.

4           MR. HILDEBRAND: This business of working with the  
5 parties worked fine when everybody knew that we were short  
6 of water for all purposes. Now all of a sudden we are in a  
7 different position where you are going to take water away  
8 from one purpose for another, so you don't short one purpose  
9 more than you do short another. That's the thing we are  
10 beginning to be faced with and it isn't clear to us why just  
11 because it is for fish they should be able to change the  
12 purpose of use without coming to the Board.

13           If it were a change of purpose of use for something  
14 other than fish, you would have to come to the Board, I  
15 think clearly, and they circumvent this whole business  
16 through some oversight on the priority as to who gets the  
17 water.

18           MR. CAFFREY: I think the Bureau has a comment here.

19           MR. RENNING: I don't want to get into a debate with  
20 Mr. Hildebrand, but what he has been saying is  
21 mischaracterizing what happened last year, and I truly don't  
22 think the discussion of that transfer, the action that took  
23 place at that time is appropriate for this proceeding.

24           MR. CAFFREY: I see our counsel nodding in the  
25 affirmative.

1 Thank you all for your comments.

2 We will ask Mr. Howard to proceed.

3 MR. HOWARD: The next comments were made by Perry  
4 Herrgesell of the Department of Fish and Game -- we  
5 appreciate the support for the plan but that seemed to be  
6 pretty much the extent of his comments.

7 The next comments came from Patrick Wright,  
8 representing Club Fed. I think Patrick expressed again  
9 support for the plan but he also recommended a change in  
10 footnote 27, and that has to do with operation of the Delta  
11 cross channel gates from May 21 through June 15.

12 We have gone through several permutations on this  
13 one. Let me give you a little bit of history.

14 The Principles for Agreement said that the gates may  
15 be closed for four days during each week, the idea being  
16 that they would presumably be closed during weekdays and  
17 remain open for recreational boating traffic.

18 We originally put that in but then changed it because  
19 it wasn't a regulatory requirement in our minds to just say  
20 that they may operate the gates. We might just as well not  
21 say anything since, of course, they may operate the gates at  
22 their discretion as long as it is within the standards.

23 We then changed it to say well, okay, close them for  
24 14 days for protection of fish, which approximately  
25 represents 4 days closed and 3 days open that the

1 recommendation from the Principles for Agreement had in it.

2 Now we have another recommendation from the Club Fed  
3 agencies saying that variations in the number of days, and I  
4 will just read the recommendation since we didn't have  
5 enough copies for everyone. It maintains the existing  
6 footnote and then says:

7 *Variations in the number of days of gate*  
8 *closure are authorized if agreed to by the*  
9 *Operations Group established under the*  
10 *framework agreement. Variations shall result*  
11 *from recommendations from agencies for the*  
12 *protection of fish resources including actions*  
13 *taken pursuant to the State and Federal*  
14 *Endangered Species Act. The process for*  
15 *approval of variations shall be similar to that*  
16 *described in footnote 22.*

17 Again, this is a delegation to the Ops Group to allow  
18 real-time operation of the Delta cross channel gate  
19 operation for the benefit of fish and at the same time  
20 trying to take into account concerns for other species that  
21 might be present, and also, for water quality in the Central  
22 Delta, which may suffer when the Delta cross channel gates  
23 are closed.

24 Consequently, we have no particular objection to the  
25 footnote as provided by the Club Fed agencies. It is

1 largely a policy issue on the part of the Board respecting  
2 how much flexibility they want to provide for the Operations  
3 Group.

4 MR. CAFFREY: We are taking a look at it now.

5 Why don't you proceed.

6 MR. DEL PIERO: Excuse me, before you go on, where is  
7 the reference here?

8 MR. HOWARD: Footnote 22 says process for approval --

9 MR. DEL PIERO: I'm sorry, okay.

10 MR. HOWARD: Footnote 22 refers to that process.

11 MR. DEL PIERO: Okay, fine.

12 MR. CAFFREY: Why don't you go ahead.

13 MR. HOWARD: Okay, the first specific comment of  
14 Patrick Porgans, he said that page 34, Chapter 8 has -- I  
15 think I understood him to say the base period for the  
16 striped bass index doesn't use the 1984 to 1992.

17 I double checked again and the 1984 to 1992 period is  
18 the period that was used for the striped bass models.

19 In addition, in the same graph we used the 71 years  
20 of hydrology for comparison, so I think the comment is  
21 incorrect, but perhaps I misunderstood. If I did, I ask  
22 Patrick to point that out when I am done here.

23 He claims that the demands are based on inflated  
24 demands in the base case and, therefore, the base case is  
25 not properly defined.

1           We disagree with that. Demands in the model and  
2 analysis are variable demands. It ranges from 5.9 million  
3 acre-feet to 6.9 million acre-feet. The wetter it gets the  
4 lower the demand is. That is approximately what you will be  
5 seeing from the projects this year. It's around the upper 5  
6 million acre-foot range.

7           This particular demand was developed with the  
8 Department to reflect what we believe to be existing demands  
9 on the system and all the model runs, both for water supply  
10 and fishery impacts were run using that demand; we believe  
11 it was appropriate.

12           I think a large concern of Mr. Porgans is that the  
13 Environmental Report simply does not address the major  
14 issues. In the Environmental Report we tried to cover all  
15 of the water supply and fishery issues that we were aware  
16 of.

17           I encourage Mr. Porgans to point out the specifics  
18 that he thinks were not covered, but we believe we covered  
19 everything that we could reasonably perceive due to  
20 implementation of the plan.

21           Those were the couple of things I had for Mr.  
22 Porgans.

23           Was there anything else, Barbara?

24           MS. LEIDIGH: No.

25           MR. PORGANS: Let's go back to the demands. Mr.

1 Howard makes reference to the demand issue and in my  
2 particular situation, I have pointed out to the Board and I  
3 did submit comments where I said that these demands are  
4 over-inflated, and the reason I think is that Mr. Howard is  
5 depending to some degree on DWR's data and I don't know if  
6 he is depending upon the Bulletin 160 projections. I know  
7 that issue had been brought up.

8 Did you use the 160 projections demand?

9 MR. HOWARD: No.

10 MR. PORGANS: What we are suggesting here is that  
11 historically the demands that DWR has put out for water  
12 demands in the future have always been over-estimated. The  
13 Bulletin 160 series shows us that.

14 So, the estimated 5.9 million to 6.9 million demand  
15 as far as we are concerned based upon historical  
16 projections, is over-inflated.

17 I haven't received information contrary to that other  
18 than data that has been put out by the Department and the  
19 other water project operators.

20 I don't believe that those demands take into  
21 consideration taking land out of production, you know, over  
22 the long period of time, land retirement, which was part of  
23 that Rainbow Report. I don't know if those issues have been  
24 factored in as other issues relating to changes that are  
25 occurring in Congress regarding crop subsidies and

1 reductions and revisions in farm policies.

2 All of those factors would have to be considered in  
3 relationship to what the demand is.

4 MR. HOWARD: I think it is important to clearly  
5 define what demand is; that is, how it is used in an  
6 operation study. Demands are requests; that is, the  
7 contractors have contracts with the Department and the  
8 Bureau. They make certain requests for water and the  
9 Department and the Bureau have agreed to try to deliver  
10 those requests through contractual agreements.

11 MR. CAFFREY: Excuse me, Mr. Howard. I do not intend  
12 nor do I think the Board members intend for this to be kind  
13 of a debate between you and Mr. Porgans. What this is, is  
14 an opportunity for the staff to clarify for the Board their  
15 reaction to the responses from the parties who are here  
16 today, and then, we will give, as we have been, the  
17 particular party a very brief time to comment at the end.

18 MR. PORGANS: I appreciate that.

19 MR. CAFFREY: The back-and-forth discussion is  
20 somewhat problematic because we are not in a hearing. We  
21 are trying to get to a point where we decide whether we are  
22 going to act.

23 MR. PORGANS: I appreciate that. Let me suggest that  
24 -- let's just take this year, for example, in terms of  
25 demands. I am sorry I have to make this point, but it just

1 goes to show that the demands that they are talking about  
2 are questionable.

3 In December the Department of Water Resources'  
4 contractors were asking somewhere in the area of about 3.9  
5 million or 4 million -- I don't have the figure off the top  
6 of my head. They turned around in January and changed that  
7 figure, dropped it down and now I think the figure, unless  
8 somebody can give me the figure, is about 2.5 or 2.6  
9 million.

10 These figures are so variable and it has so much  
11 dependence upon what the climatological conditions are and  
12 the ability of the contractors to pay, so I take exception  
13 with the way those numbers were used. They are manipulating  
14 the numbers.

15 MR. CAFFREY: Mr. Howard, will you complete your  
16 comments on Mr. Porgans.

17 MR. HOWARD: Again, demands in this instance are not  
18 based on some assessment of the actual physical needs of the  
19 contractors, they are based on the request of the  
20 contractors and they are required to try to provide those  
21 contract requests.

22 To clarify a bit, when this whole process started,  
23 the Department was running a demand of 7.1 million acre-feet  
24 at the 1991 level of development. It was our opinion, and  
25 we worked with federal agencies and the Department, that

1 that level of demand was probably not appropriate because of  
2 our knowledge that the demands changed with respect to the  
3 hydrology. The wetter it got, the lower the demand.

4           Consequently, we worked with George Barnes of the  
5 Department of Water Resources, and he looked at historical  
6 requests and came up with a sliding scale where the demand  
7 actually changes each year based on the hydrology of that  
8 year. The wetter it is, the lower the demand. The demand  
9 fluctuates from 5.9 to 6.9 million acre-feet and we felt  
10 that this was a much more accurate representation of the  
11 demand and it's what we used in the report.

12           We concede that, of course, in any particular year,  
13 this was the fourth wettest year in history, there are areas  
14 that are not going to be asking for water.

15           We are not able to model those demands exactly, we  
16 recognize that. But this was our best effort at generating  
17 a demand that actually reflected the hydrology.

18           MR. CAFFREY: Does that close your comments on Mr.  
19 Porgans' statement?

20           MR. HOWARD: Yes.

21           MR. CAFFREY: Mr. Porgans, very briefly.

22           MR. PORGANS: First of all, the way the system is set  
23 up, you can't force 7 million acre-feet of water through it.  
24 That was brought out in DWR's own document going back to  
25 1976.

1           The next issue I want to talk about, and I believe  
2 that if we look at the checklist that's contained in the  
3 Environmental Report, I believe it is the '66 issues that we  
4 checked off, and half of them were yes and maybe in terms of  
5 impacts.     So, those issues have not been adequately  
6 addressed as far as I am concerned.

7           The last and most important issue I raise, and I  
8 don't see where it is addressed, was the reasonable use of  
9 water. I question whether, in fact, it is prudent to take  
10 water from the counties and area of origin and put it down  
11 into the valley where we have known toxic problems with  
12 drainage. I question the issue of taking water from the  
13 counties and area of origin, which is counterproductive to  
14 what the Delta Protection Act says, and using that water to  
15 make up for water that both projects have failed to provide  
16 to meet standards.

17           I mean, the projects essentially are saying, we want  
18 you counties and areas of origin to meet standards, but  
19 historically during drought years especially, they didn't  
20 provide the water that they are required to provide to meet  
21 standards.

22           So, those issues as far as I am concerned, Mr.  
23 Howard, unless I overlooked them, were not addressed.

24           Now, the last issue with regard to the striped bass,  
25 I almost have to read the text it is so perplexing. This is

1 from Chapter 8, page 35.

2 MR. CAFFREY: Mr. Porgans, I will give you one more  
3 minute because we do understand your points and you have  
4 raised them before.

5 MR. SAWYER: Just to take a moment to put this in  
6 context, the purpose of this portion of the proceeding is to  
7 allow the staff to respond to the significant environmental  
8 issues raised in the previous comments.

9 The reason we are allowing the previous commenters to  
10 speak is to identify issues that we overlooked and forgot to  
11 respond to, not to follow up on every comment or to disagree  
12 with the staff's analysis, so if you have a comment on  
13 something Mr. Howard overlooked, you should respond to that.  
14 That is the kind of comment that is appropriate.

15 MR. PORGANS: Thank you very much for clarifying  
16 that.

17 My comment would be I don't see where this particular  
18 report took into account the issues that I raised in  
19 relationship to taking water from areas of origin to supply  
20 to areas where we have toxic problems.

21 Now, the last thing, just for a point of  
22 clarification on that striped bass, if this is in order, the  
23 way I read this, we talked about the two issues, the '84 to  
24 '92 period, and we talked about the operation studies.

25 When you concluded in this report, did you use the

1 '84 to '92 period to show the impacts, the actual impacts  
2 that would occur to stiped bass, and if so, are they lower  
3 or higher than the operational studies?

4 MR. CAFFREY: I believe Mr. Del Piero has a question.

5 MR. DEL PIERO: Mr. Porgans, you held up a document,  
6 a publication of DWR on how much water you can put through  
7 the system. What is that document?

8 MR. PORGANS: The document is Phase 2, Alternative  
9 Courses of Action to Provide Delta Protection and Adequate  
10 Water Supplies for California.

11 MR. DEL PIERO: What is the date on that?

12 MR. PORGANS: 1976.

13 MR. DEL PIERO: Is there a reference number so I can  
14 go get it?

15 MR. PORGANS: I can make a copy available to you.

16 But in summary, it was saying the Delta water  
17 conveyance system capacity is inadequate to meet presently  
18 contracted SWP and CVP export demands in the year 2000.

19 MR. DEL PIERO: I would appreciate it if I can get a  
20 copy of that.

21 MR. CAFFREY: Mr. Howard, please proceed.

22 MR. PORGANS: Thank you, Mr. Chairman.

23 MR. CAFFREY: Thank you, Mr. Porgans.

24 MR. HOWARD: Was there something else I was supposed  
25 to say about Patrick?

1           MR. CAFFREY:    You are supposed to go to Jeanne  
2 Zolezzi now, if you have anything to add about what she  
3 said.

4           MS. ZOLEZZI:    Thank you.

5           MR. DEL PIERO:   That was a good recovery, Mr.  
6 Chairman, real good.

7           MR. HOWARD:    Well, I guess most of her comments were  
8 legal.    There was one comment I saw that said that the  
9 biological opinion assumes compliance with the principles.  
10 It is true the way the biological opinion is written that  
11 the projects notify the fishery agency what their presumed  
12 operation is, what their intended operation is, and then the  
13 biological opinion says, well, based on that operation, will  
14 there be jeopardy or will there not be jeopardy, and in this  
15 case, the projects told the fishery agency that they were  
16 going to operate to the Principles for Agreement; and the  
17 fishery agency responded by saying, if you operate to the  
18 Principles for Agreement, there is no jeopardy.

19           Our opinion is that that means that the projects,  
20 unless they reinitiate consultation, are required to operate  
21 to    the Principles for Agreement.    Therefore, the plan  
22 says that the Bureau intends to provide the flows on the San  
23 Joaquin River, which strikes us as an accurate statement.

24           Also, I guess there is a recommendation that we  
25 include a warning in the plan to the extent that the Bureau

1 implements the San Joaquin River flows, they must do so in  
2 compliance with the law and area of origin statutes. I  
3 presume that the Bureau is required to operate in compliance  
4 with the law.

5           Such a warning seems redundant to me, but, of course,  
6 the Board is welcome to incorporate such a comment into the  
7 draft plan.

8           They believe the Executive Director oversight is  
9 inadequate because I presume there's this water -- there is  
10 this automatic implementation. Again, the principal issue  
11 here is, do we have real-time operation or do we not?

12           If real-time operation is appropriate, then some sort  
13 of facilitator decision making has to be incorporated into  
14 the plan, into the water rights decision. That was our  
15 intent in drafting the plan as it is presently drafted, and  
16 the Board has emphasized where the real-time operation is  
17 appropriate.

18           I think most of the fishery agencies, or all of the  
19 fishery agencies and most of the participants believe that  
20 some type of real-time operation is necessary and  
21 appropriate for protection of fishery resources.

22           MR. JOHNS: If I could add a comment, also the  
23 Operations Group currently has about 60 people that  
24 represent a real good cross-section of both environmental  
25 and water supply people in the state and people have

1 concerns about the type of activities that either are going  
2 on or are being discussed.

3 I would encourage them to attend those meetings to  
4 make sure their concerns are heard and evaluated carefully.

5 Also, the way this is currently worded, the Board has  
6 up to ten days to respond to a concern here -- of course,  
7 they could act more quickly than that, so hopefully, we  
8 would be giving them directions to follow the proceedings in  
9 the Operations Group, and my guess is we would bring that  
10 back to the Executive Director and have him discuss the  
11 matter with the Board if appropriate, and the Executive  
12 Director could act much more quickly than within ten days  
13 since we follow these very cloely.

14 MR. HOWARD: Let's see. The next comments were made  
15 by Gary Bobker. Gary provided a number of comments that are  
16 duplicative of comments we have already -- I presume the  
17 Board has it in front of them -- the comments were  
18 duplicative of the comments we responded to in the responses  
19 to comments.

20 However, he did include three additional recommenda-  
21 tions that we haven't previously seen.

22 On page 30, under Source Control, he recommends that  
23 the Board include a statement that the Department, through  
24 the San Joaquin drainage program, and the Bureau, through  
25 the Central Valley Project Improvement Act land retirement

1 program, should acquire and cease irrigation of lands with  
2 high priority drainage problems.

3 I don't really recall, but I believe there is some  
4 legislation to that effect and there doesn't seem to be  
5 necessarily any problem with incorporating that statement.

6 I believe it would be purely a policy direction from  
7 the Board whether they should provide any recommendation  
8 that the Department and the Bureau should acquire and cease  
9 irrigation on lands having drainage problems, and I think  
10 that's your discretion.

11 Staff has no recommendation on the statement.

12 MR. CAFFREY: I trust somebody is keeping a list of  
13 these discretionary items that staff has no recommendation  
14 on. We have had about four now.

15 Please proceed, Mr. Howard.

16 MR. HOWARD: On page 32, recommend that the  
17 following sentences or similar language should be added at  
18 the end of the first paragraph *in the section*:

19 *However, no flows should be released to the*  
20 *river specifically for dilution purposes nor*  
21 *should releases for environmental enhancement*  
22 *purposes be included in the calculation of*  
23 *dilution capacity.*

24 *In addition, if agricultural drainage water*  
25 *contains selenium and other bioaccumulative*  
26 *substances which persist in the environment,*

1           *upper limits should be placed by the Central*  
2           *Valley Regional Water Quality Control Board on*  
3           *low discharges to the river.*

4           To a great extent, flows in rivers have always been  
5 used, the assimilative capacity has been used to provide  
6 dilution for pollutants of one kind or another. It is not a  
7 beneficial use. However, the reality is that as long as  
8 there is assimilative capacity, the Board has in the past  
9 allowed discharge of waste to a water body.

10           This particular statement would seem to say that that  
11 would not be appropriate in this instance. It would seem to  
12 fly in the face of regular Board practice.

13           In addition, the statement regarding bioaccumulative  
14 substances and that loads should be placed on discharges to  
15 the river, the Regional Board does adopt water quality  
16 objectives. It has adopted water quality objectives for  
17 selenium and other bioaccumulative substances.

18           I presume their objectives take into account past  
19 loading and concentration effects. Consequently, I don't  
20 really see the need for this particular recommendation being  
21 incorporated into the draft plan.

22           Unless I am overridden by Walt or Jerry, I would say  
23 we recommend not adopting that particular recommendation.

24           And the last recommendation regards the out-of-valley  
25 disposal of salts, and it basically says that we should

1 remove that recommendation about out-of-valley disposal of  
2 salts.

3           It is true that the San Joaquin Valley drainage  
4 program focused on interim implementation measures necessary  
5 to protect the San Joaquin River and maintain agricultural  
6 activity. However, it seems clear from my perspective that  
7 minus an agricultural drain, that we are slowly poisoning  
8 the San Joaquin Valley, and that doesn't seem appropriate.

9           The Board should, in my opinion, maintain the  
10 recommendation that is presently in the draft plan, that the  
11 Bureau should proceed with out-of-valley disposal of salts.  
12 At least they should proceed with a re-evaluation of the  
13 out-of-valley disposal of salts and move forward with  
14 permits and construction as appropriate.

15           MR. CAFFREY: All right.

16           MR. BOBKER: Independent of the issue of our  
17 disagreement over the interim level of protection, it was  
18 our recommendation today that the Board adopt today some  
19 sort of long-range goal or objective for this and future  
20 water rights proceedings.

21           I submit this in the context of the D-1485  
22 recommendations, but as I said, some sort of long-range  
23 program.

24           MR. HOWARD: In our response to comments, we got a  
25 recommendation from BCDC making the same comment, and we

1 responded to them in the response to comments.

2 My recollection is that our opinion is that the plan  
3 as drafted is very similar to the type of recommendation  
4 that was in D-1485 that Gary is citing. In D-1485 we said  
5 we had an overall goal of mitigating the effect of the  
6 projects. However, in D-1485 it also said that the  
7 standards that were in that were not adequate to do that and  
8 that, in fact, what was needed was a long-term solution.

9 Now this was in '78 and here we are in '95 and we are  
10 saying the same thing. We think that the standards as  
11 drafted are reasonable, that we need to have some long-term  
12 goals, that those long-term goals should probably be worked  
13 out through the long-term process that is being developed  
14 through a multi-agency effort, and I don't think it is  
15 necessarily appropriate for us to limit it to mitigating  
16 project impacts. Perhaps it would be more appropriate to go  
17 beyond that.

18 What we have said in the draft plan at present is  
19 that we think the plan provides reasonable protection  
20 considering the present configuration and that we recommend  
21 a long-term solution be developed, and in our response to  
22 comments we said that the ultimate goal should be developed  
23 through that process as well.

24 It's not real clear what that ultimate solution might  
25 be and it is not clear what is an achievable goal until that

1 ultimate solution is put forth, and therefore, we think it  
2 should be left to that particular forum at present.

3 Let's see, Jim Chatigny from Nevada Irrigation  
4 District.

5 MR. DEL PIERO: I have a question in regard to the  
6 out-of-valley disposal of salts. I have looked through  
7 here. Is there some identified solution that I have somehow  
8 missed here as to a disposal site?

9 The reason I ask the question, it is all well and  
10 good but there are some locations that are statutorily  
11 prohibited to be considered as disposal areas for that salt.

12 MR. HOWARD: Yes, Monterey Bay.

13 MR. DEL PIERO: That's right, Monterey Bay, so I am  
14 asking the question whether or not we wish to take into  
15 consideration if we are going to have this provision in  
16 here, whether we are going to also acknowledge what the  
17 current status of the law is.

18 MR. HOWARD: Well, the only place that I am aware of  
19 that it is statutorily prohibited to have a discharge of  
20 drainage is Monterey Bay.

21 What we have recommended in the draft plan is that  
22 the Bureau re-evaluate, and we use the term re-evaluate  
23 because, in fact, that has been evaluated quite a bit  
24 already, the completion of the drain and, of course, the  
25 location of the discharge.

1           There are what appear to be two obvious locations;  
2 one being somewhere in the Western Delta, the other being  
3 the Pacific Ocean.

4           I would point out at this point that there is a  
5 process ongoing through a group of agencies in the San  
6 Francisco Bay system to have an exchange of -- it's a rather  
7 convoluted exchange process, where the effluent from a  
8 wastewater treatment plant is pumped into the valley to  
9 provide for irrigation water after being tertiary treated,  
10 that in return they get some of the freshwater supplies that  
11 were going to be provided to the agricultural area.

12           And another thing that has been loaded on is to also  
13 use the same right-of-way to bring agricultural drainage and  
14 discharges through the City of San Francisco's Pacific  
15 outfall four miles off shore. That's certainly another  
16 alternative that would be considered in the re-evaluation  
17 process.

18           So, there are several options.

19           The next set of comments was provided by Jim Chatigny  
20 representing DTAC and Nevada Irrigation District.

21           He asked the Board to be mindful of all reasonable  
22 and beneficial uses of all waters, including waters in the  
23 area of origin.

24           I believe that comment was responded to in the  
25 response to comments, that, in fact, the Board would

1 certainly be mindful of all those uses when it makes a  
2 decision regarding allocation of responsibility to meet the  
3 standards.

4 He asks us to follow area of origin statutes and I  
5 presume the Board will also follow all applicable laws in  
6 the water rights proceedings.

7 And that municipal and industrial uses be given  
8 special preference, again, a water rights proceeding issue.

9 He recommends that this action should be advisory  
10 only.

11 Staff doesn't agree with that recommendation. It  
12 does seem as though it is appropriate at this point to adopt  
13 a Water Quality Control Plan.

14 He also went through the options that were available  
15 to Nevada Irrigation District to mitigate for any water  
16 losses that might occur from NID.

17 I guess the only thing I can say to all that is it  
18 does seem premature to get too concerned about the loss of  
19 area of origin prior to a water rights proceeding.

20 Obviously, one of the options that is available to  
21 the Board in deciding responsibility to meet the standards  
22 to maintain the status quo is to continue to require the  
23 Bureau and the Department to be solely responsible for  
24 meeting Delta standards.

25 And also, with respect to specific mitigation

1 measures, as we have tried to make clear, it does seem as  
2 though we are going to have to get into more detail in  
3 mitigation measures in the water rights proceeding if the  
4 Board's intent is to try to minimize the adverse effects of  
5 many of these standards.

6 I guess he also disagrees with the last statement  
7 regarding overriding considerations. Specifically, with  
8 respect to NID's water, he doesn't believe there would be  
9 overriding considerations.

10 However, if the Board does not believe that there  
11 aren't overriding considerations under CEQA, then it  
12 wouldn't be appropriate to adopt the plan. So that's a  
13 decision that will have to be made by the Board.

14 The last few comments were made by David Anderson and  
15 --

16 MR. CAFFREY: I'm sorry. Bill Baber.

17 MR. BABER: Mr. Howard, let me comment, if I could,  
18 just briefly.

19 In Jim Chatigny's comments made on behalf of DTAC, he  
20 submitted a letter of about four pages earlier this morning.  
21 All of you were given copies, I presume.

22 During a hearing, and I am not sure you have had a  
23 chance to review the letter, but from the way these  
24 proceedings are going now and looking at the resolution  
25 adopting the Water Quality Control Plan, I am presuming it  
26 might be your Board's intent to adopt the resolution right

1 after these comments are completed, and if that's the case,  
2 one of the suggestions in DTAC's response, the written  
3 response on page 4 in the last paragraph, is that if it is  
4 your intention to take some action other than simply deem  
5 these hearings advisory and wait until the water rights  
6 hearing before you adopt an order, and I presume that is  
7 your intention -- Mr. Howard said that just a few moments  
8 ago.

9 MR. CAFFREY: We are only dealing with the Water  
10 Quality Plan today.

11 MR. BABER: Then, is it your intention to adopt the  
12 Water Quality Plan today?

13 MR. CAFFREY: I can't tell whether or not we are  
14 going to adopt it today. We are going to consider adopting  
15 it today.

16 MR. BABER: But I see your draft resolution for  
17 adoption and so what I would suggest, at the least you have  
18 two bullets for adopting the Water Quality Plan, your draft  
19 resolution on page 3, and I would add a third, and just for  
20 the benefit of Barbara over there, I will recite it and then  
21 Alice can take it down.

22 It would read as follows, and this is suggested by  
23 DTAC, and it's also, I think, supported by comments from Ken  
24 Robbins, the San Joaquin-Delta Trib group, Jeanne Zolezzi,  
25 Stockton East group on the CEQA problem.

1           Okay. The bullet would read:

2           *That the statute of limitations, upon any*  
3           *challenge of the State Board's adoption of the*  
4           *Bay-Delta Plan, will not commence to run until*  
5           *after adoption of a water rights decision, and*  
6           *that any duty to request a reconsideration of*  
7           *the State Board's decision or any other*  
8           *procedural prerequisite to bringing litigation,*  
9           *will not commence to run until after the water*  
10          *rights decision.*

11          The intent here isn't to say here is another lawyer,  
12 we are going to run into litigation. The intent here is to  
13 perhaps avoid some litigation if it is your intent to adopt  
14 the Water Quality Control Plan in accordance with this draft  
15 resolution, and that's the basis of our comment from DTAC.

16          MR. CAFFREY: Any comments from our attorneys?

17          MS. LEIDIGH: Yes. First of all, there is no statute  
18 of limitations that I am aware of on litigation against the  
19 Water Quality Control Plan.

20          Second, there is a statute of limitation with respect  
21 to actions under CEQA and that would have to be filed  
22 within, I believe, a 30-day period for this type of  
23 document.

24          I don't know that adopting a resolved point in the  
25 resolution would have any effect on that statute operating.

1 MR. CAFFREY: Your recommendation is to adopt Mr.  
2 Baber's suggestion?

3 MS. LEIDIGH: No.

4 MR. BABER: May I comment --

5 MR. CAFFREY: Very briefly, we are not debating.

6 MR. BABER: I understand that.

7 You have heard comments from at least two interest  
8 groups here today that CEQA is violated by acting and  
9 adopting a Water Quality Plan today. That kicks off the  
10 statute of limitations. That could kick off a lawsuit  
11 within 30 days.

12 We can avoid all that by simply conveying in your  
13 order that you are mooting the statute of limitations until  
14 the water rights decision. I mean, it's simple. We avoid  
15 litigation.

16 What's the problem?

17 MR. CAFFREY: Thank you, sir. We appreciate your  
18 points.

19 Do either counsel wish to comment any further on this  
20 matter?

21 MR. SAWYER: I concur on the recommendation not to  
22 adopt an open-ended extension of the statute of limitations.  
23 I don't know if we can do it. It certainly is not a good  
24 idea to do it.

25 MR. CAFFREY: Thank you, Mr. Baber, for your offer.

1 Does that conclude your comments?

2 MR. HOWARD: I thought it was concluded; however,  
3 Barbara tells me there is more to come.

4 I have some written comments from the Sierra Club.

5 MR. SAWYER: Mr. Howard, I believe those are from the  
6 Sierra Legal Defense Fund on behalf of several parties.

7 MR. HOWARD: Yes, they are.

8 There are a couple of technical comments I will  
9 respond to and then Barbara will respond to a legal comment.

10 On No. 2 on their page 2, it says:

11 *The draft plan's narrative water quality*  
12 *project objective for salmon protection appears*  
13 *to be less protective than either the State or*  
14 *Federal anti-degradation policies. These*  
15 *policies require protection of fishery levels*  
16 *extant of '68 and '75 respectively.*

17 We disagree with that, in that the anti-degradation  
18 policy requires protection of fishery levels at some  
19 historical period.

20 The reason for that agreement is that the anti-  
21 degradation policy requires protection of water quality.  
22 However, there are many factors that affect fisheries, some  
23 of them not related to water quality.

24 For example, there has been a lot of testimony  
25 regarding the effect of ocean fishing on salmon populations

1 and the anti-degradation policy was not intended to regulate  
2 ocean fishing or provide for regulation of ocean fishing.

3           There are a large number of other factors, introduced  
4 species and other things which the anti-degradation policy  
5 was never meant to cover and, therefore, we don't think that  
6 the comment correctly identifies the requirement of the  
7 anti-degradation policy.

8           No. 3 says the draft plan's proposed export limit of  
9 65 percent from July through January could allow freshwater  
10 diversions to exceed by a substantial margin the historic  
11 export levels during this period. The environmental impact  
12 of this potential increase in freshwater diversions has  
13 never been studied.

14           This statement is correct. If they export at the 65  
15 percent inflow level, it will in many cases exceed the level  
16 at which exports occurred in the past. This is documented  
17 in the Environmental Report. The purpose for the standard  
18 is to provide an upper limit of exports.

19           I think the problem with the comment is that it  
20 focuses on one particular standard and doesn't look at all  
21 of the standards together.

22           The purpose of the percent inflow standard was  
23 largely to restrict exports in the spring. The net effect  
24 of that is to push exports into the fall and then we place  
25 an upper cap on that. So, therefore, if you are going to

1 evaluate the effect of these standards, you have to look at  
2 the full package. You can't look at one particular element  
3 of the standards and say this renders the standards  
4 inadequate.

5 We believe the full package of protection is  
6 reasonable. If the only standard was the 65 percent inflow  
7 from July through January, then we would agree, or I would  
8 agree that the standards would probably be inappropriate.  
9 But in combination, we think the standards are reasonable.

10 No. 4, the draft plan's management regime for the San  
11 Joaquin River does not adequately protect its fish and  
12 wildlife beneficial uses. The proposed level of diversion  
13 of 100 percent of Vernalis flow does not in and of itself  
14 appear to assure adequate fishery transport during the April  
15 to May period, and could expose fish to unacceptable levels  
16 of entrainment.

17 A couple of points:

18 Number one, that the proposed 100 percent standard  
19 associated with Vernalis flow is more restrictive than the  
20 existing project operations. That is, we expect to have  
21 lower levels of export than occurred historically during  
22 this period. The purpose is to increase protection. It may  
23 not be the end-all of the issue, but it does provide  
24 increased protection.

25 Also, I would say that the proposed level of 100

1 percent of Vernalis flow, I would agree it does not in and  
2 of itself appear to assure adequate fishery transport. We  
3 have also included high San Joaquin River flows during the  
4 same period for the purpose of insuring adequate transport.

5           So that, again, this is looking at a single standard  
6 and claiming that it is not adequate. I think, again, you  
7 have to look at the whole suite of protections in order to  
8 determine whether or not something provides adequate  
9 protection, and our opinion -- or my opinion is that the  
10 package as formulated provides such protection.

11           Barbara was going to comment on the legal issues  
12 raised in the letter.

13           MS. LEIDIGH: Yes. The comment also pointed out that  
14 the commenter just received the last draft of the  
15 Environmental Report and that he felt that the Board could  
16 not adopt the plan until 45 days after the Board had sent  
17 it out. That is incorrect. The 45-day period he is  
18 referring to is the 45 days when the draft report was first  
19 made available in January and the 45-day period ran to March  
20 10.

21           We sent out a letter on January 17 that made the  
22 Environmental Report available to the parties and satisfied  
23 that requirement.

24           MR. HOWARD: Let's see if I can summarize this.

25           MR. CAFFREY: Just a minute.

1           MR. SAWYER: Just a couple of questions. I didn't  
2 hear you specifically respond to Kevin Haroff. Did he raise  
3 any issues not covered by the response you already gave?

4           MR. HOWARD: All right, which one was his?

5           MR. SAWYER: The Joint Water Users.

6           MR. HOWARD: He and Dave Anderson, the two last, in  
7 my opinion, did not raise any issues that needed a response.

8           MR. SAWYER: Have you seen the written comments from  
9 the Delta Tributary Agencies Committee?

10          MR. HOWARD: I have a copy over there but I haven't  
11 read them yet. I just received them.

12          MR. SAWYER: Are there any other written comments we  
13 received too late to respond to?

14          MR. JOHNS: There is one comment contained in DTAC's  
15 written comments that we haven't had a chance to respond to  
16 yet. It deals with the idea of the Board considering the  
17 beneficial uses in the DTAC member agencies' areas as  
18 beneficial uses in the Water Quality Control Plan.

19                 Would you like to respond to that?

20          MR. HOWARD: To a certain extent, we had a comment of  
21 that nature in response to comments that said that the Board  
22 is obliged to consider their beneficial uses. Our response,  
23 I believe, was that the Board acknowledges the beneficial  
24 uses, they are not Delta beneficial uses. We were looking  
25 at a description of the beneficial uses of water within the

1 Delta, legal boundaries of the Bay-Delta, and it would seem  
2 inappropriate to start adding up water outside the legal  
3 boundaries of the Bay-Delta as beneficial uses for a Water  
4 Quality Control Plan dealing only with the Delta.

5 So, I would not recommend adoption of beneficial uses  
6 of upstream waters for a plan that is exclusive to the  
7 Delta.

8 MR. SAWYER: Does that cover all the written  
9 comments?

10 MR. JOHNS: That we are aware of, yes.

11 MR. CAFFREY: Does that cover it?

12 MR. HOWARD: Do you want me to summarize this?

13 MR. CAFFREY: I think not. I think we have a pretty  
14 good understanding of the issues. I was thinking perhaps it  
15 might be wise now to have some discussion with the Board  
16 members.

17 The matter is now before us and what is the pleasure  
18 of the Board in this regard?

19 Could I have Mr. Del Piero's attention? I know he is  
20 busy down there, but I don't want him to miss this.

21 MR. SAWYER: Would you like the staff to go over the  
22 specific changes to the plan?

23 MR. CAFFREY: I think we may get to that, but let's  
24 see what we have got up here on the basis of our own notes.

25 Mr. Del Piero, I was just telling the other Board

1 members and the audience that the matter is now before us  
2 for action on the proposed Bay-Delta Water Quality Control  
3 Plan and I was asking for comments, or what is the pleasure  
4 of the Board.

5 MR. DEL PIERO: I have three points that I would like  
6 to comment on that were raised by Mr. Howard as issues that  
7 staff had no recommendation to the Board on, but they have  
8 to be resolved as policy issues.

9 First of all, in regard to -- and I forget who the  
10 commenter was, but the desire to have it expressly stated  
11 that in the event there are two standards, the most  
12 restrictive applies. I think simply from the standpoint of  
13 clarity, Mr. Chairman, it would be appropriate to have that  
14 incorporated in.

15 MS. LEIDIGH: I recommend that we not take a water  
16 rights action in this water quality --

17 MR. DEL PIERO: Excuse me. That could be construed  
18 as a water rights action?

19 MS. LEIDIGH: Oh.

20 MR. DEL PIERO: I would agree with that also, but  
21 that's not what I am talking about.

22 Mr. Howard, do you know what I am talking about?

23 MR. HOWARD: You are talking about from April 15 to  
24 May 15 there are two export restrictions that are  
25 simultaneous in effect. One export restriction says that

1 exports should not exceed 35 percent of Delta inflow. The  
2 other export restriction says that exports shall not exceed  
3 100 percent of the San Joaquin River inflow.

4 Your recommendation, I take it, is that we clarify  
5 one of those or both of those, that the more restrictive of  
6 the two applies.

7 MR. DEL PIERO: And currently the way it is written  
8 that is, I think, what the express intent of the staff was.  
9 Simply clarifying that language makes life a lot easier in  
10 response to that concern.

11 MR. CAFFREY: Why don't you give us the other two,  
12 Mr. Del Piero.

13 MR. DEL PIERO: There is another one but, frankly,  
14 it's slipped my mind. I was trying to sit here and draft  
15 language, but let me just reference the second paragraph on  
16 page 33.

17 I would suggest, Mr. Chairman, that after the first  
18 sentence --

19 MR. CAFFREY: This is on page 33 of the plan?

20 MR. DEL PIERO: Yes. After the first sentence, I  
21 would suggest, Mr. Chairman, we add this language:

22 *No alternative for the disposal of drain salts*  
23 *prohibited by State law at the time of the*  
24 *adoption of this plan shall be considered as*  
25 *part of this process.*

1           MR. SAWYER: Mr. Chairman, I am a little concerned  
2 with that. There is case law that has required the Bureau  
3 under NEPA, under the National Environmental Protection Act,  
4 to consider alternatives that would require legislation.

5           You could get the Bureau in a kind of catch-22. The  
6 Federal law requires them as part of the National  
7 Environmental Protection Act evaluation process to consider  
8 something that they know they would have to seek change in  
9 legislation for, and at the same time we are telling them  
10 don't consider that.

11          MR. DEL PIERO: Mr. Chairman, I don't know that  
12 there's anything that we do that constrains the U. S. Bureau  
13 of Reclamation as to what they can evaluate. So, if they  
14 choose to evaluate that and pursue the modification of State  
15 law as it is, although the last time I checked, this is a  
16 State agency and one of the things we do is not only to  
17 uphold the law and the Constitution of the State, but also,  
18 the laws of the State.

19          The current law of the State prohibits discharge into  
20 a certain area and I would think the Board members would be  
21 very reluctant to be giving direction to anybody to pursue  
22 alternatives that are clearly within the prerogative of the  
23 Legislature, not this Board.

24          MR. CAFFREY: Let me ask a question. Is this a  
25 superfluous statement inasmuch as that is currently the law?

1           Mr. Sawyer, what would happen if the law changed at a  
2 later date? Are we bound to the current law at the time we  
3 adopted the plan?

4           MR. SAWYER: There are two issues. One is the  
5 decision, the implementation, and that, of course, will be  
6 bound by the law in effect.

7           But the language I have heard had to do with, and  
8 perhaps I misunderstood, the study of alternatives, and my  
9 concern was, I don't think we can or should tie the Bureau's  
10 hands to preclude alternatives from being considered, those  
11 that may require legislation.

12          MR. CAFFREY: Thank you.

13          MR. DEL PIERO: Mr. Sawyer, I simply disagree. I  
14 think giving direction to anybody to study an alternative  
15 that the State Legislature has determined to be  
16 inappropriate and which Governor Deukmejian signed into law  
17 strikes me as being an unbelievable waste of time and the  
18 public's money.

19          MR. CAFFREY: Thank you.

20          Mr. Del Piero, do you have a third?

21          MR. DEL PIERO: I didn't make a note on it. It is a  
22 minor issue.

23          MR. CAFFREY: All right, thank you.

24          Anything else from the Board members?

25          Nothing else. Okay, the matter is now before us.

1 MR. HOWARD: Can I raise an issue? We also have a  
2 recommendation from the Club Fed agencies regarding a change  
3 in the --

4 MR. DEL PIERO: That is it.

5 MR. HOWARD: -- Delta cross channel date operation  
6 from May 21 through June 15 to provide more flexibility in  
7 the operation through the Operations Group. Specific  
8 language was proposed. I can read that to you again, if you  
9 like.

10 MR. CAFFREY: I think we have read it.

11 MR. DEL PIERO: So long as it allows for an appeal of  
12 the decision of the Operations Group to our Executive  
13 Director, I have no problem with it. I looked at the  
14 language and it appears to be so, so unless someone tells me  
15 differently, I have no objection to having that language  
16 incorporated.

17 MR. CAFFREY: I don't think I had any objection when  
18 I saw it.

19 What is your recommendation, by the way, on that?

20 MR. HOWARD: Our recommendation is to adopt the  
21 language recommended by the Club Fed agencies.

22 MR. CAFFREY: In other words, to accept the change?

23 MR. HOWARD: Yes.

24 MR. CAFFREY: You had something else?

25 MR. HOWARD: Yes, Mr. Del Piero raised the issue of

1 clarifying about the two export restrictions. One does not  
2 supersede the other.

3 I could recommend language in footnote 22 to be  
4 incorporated after the first sentence that would say:

5 *This export restriction does not supersede the*  
6 *export restriction of 35 percent of Delta*  
7 *inflow. The more restrictive of these two*  
8 *objectives applies from April 15 to May 15.*

9 MR. CAFFREY: All right. Do you understand the  
10 language?

11 MR. HOWARD: There was one more that was raised by  
12 the Bay Institute on which I made no recommendation. I  
13 haven't heard anything from your Executive Director or from  
14 others. The Bay Institute, on page 30, recommends the  
15 following statement be included at the end of the second  
16 paragraph, so in DWR through the San Joaquin Valley drainage  
17 relief program and the USBR through the Central Valley  
18 Project Improvement Act land retirement program should  
19 acquire and cease irrigation of lands with high priority  
20 drainage problems.

21 If you don't have a copy of it --

22 MR. CAFFREY: We have a copy.

23 What is your recommendation?

24 MR. HOWARD: Well, I guess I don't have one, so  
25 perhaps Mr. Pettit or Mr. Johns has a recommendation you

1 might want to consider.

2 MR. PETTIT: Mr. Chairman, I think you are going  
3 to be dealing with that issue as a result of the follow-up  
4 the Region 5 basin plan amendment that you approved recently  
5 and which has also been challenged.

6 You instructed the Regional Board to look at the  
7 drainage issue in more detail and come back to you with  
8 specific plans for improving the salinity regime at  
9 Vernalis.

10 I have had some discussion with the Regional Board  
11 staff already and I think they are on the verge of giving  
12 you a proposal, so I would defer to that process rather than  
13 adding the language in this one.

14 MR. CAFFREY: All right, sir, thank you.

15 Again, I will state for about the fourth time, the  
16 matter is before us. I hope there is nothing else that  
17 somebody forgot to tell us about.

18 What is the pleasure of the Board with regard to the  
19 plan?

20 Mr. Brown.

21 MR. BROWN: I have heard fully the concerns now  
22 several times from the people in the San Joaquin County area  
23 and DTAC. Their participation may have been limited in this  
24 phase of the plan. I hope that the follow-up phase, the  
25 next review of the water rights, that they will have more

1 involvement and their concerns will be fully addressed.

2           It was stated earlier by, I think, Mr. Herrgesell,  
3 that this plan is not perfect but it is a positive step and  
4 I concur in that statement.

5           MR. CAFFREY: Mr. Stubchaer.

6           MR. STUBCHAER: I am ready to make a motion, but I  
7 don't want to squelch any comments.

8           I recognize this has been a long and difficult  
9 process. Not all the parties are going to be satisfied in a  
10 process such as this. I think much progress has been made  
11 by many of the parties working together under the framework  
12 agreement and the fact that this plan is before us does  
13 represent that as much consensus as it has does represent an  
14 historic moment.

15           I recognize there are still issues to be addressed  
16 during our water rights hearing, and also, as Mr. Pettit  
17 mentioned during the Regional Board's continuing water  
18 quality process.

19           And at the risk of paraphrasing Churchill, I  
20 recognize if the Board adopts this plan, it is the end of  
21 the Bay-Delta controversy. However, I would like to think  
22 that it is the end of the beginning and that we are at the  
23 beginning of the process that might lead to a satisfactory  
24 long-term protection for the Bay-Delta process.

25           Therefore, I would like to move adoption of the

1 resolution which adopts the Bay-Delta plan that is before us  
2 with two modifications; that is, the clarification on which  
3 standard applies, and also, the change or the addition to  
4 footnote 27 proposed by EPA.

5 MR. CAFFREY: It has been moved by Mr. Stubchaer and  
6 I think we are all very familiar with the two accommodations  
7 or adjustments he is suggesting.

8 Is there a second?

9 MS. LEIDIGH: Point of clarification.

10 MR. CAFFREY: Yes, Ms. Leidigh.

11 MS. LEIDIGH: Does that include the errata and  
12 addendum that we put on for the environmental document?

13 MR. STUBCHAER: Yes.

14 MR. CAFFREY: Yes, it does.

15 MR. STUBCHAER: It's the resolution I am moving.  
16 It's in the resolution or the resolution will be amended to  
17 include that.

18 MR. CAFFREY: We have a motion. Is there a second?

19 MS. FORSTER: Second.

20 MR. CAFFREY: Seconded by Ms. Forster.

21 Is there discussion on it?

22 MR. DEL PIERO: Mr. Chairman, I would move to amend  
23 the motion to add the language I referenced on the second  
24 paragraph on page 33.

25 MR. CAFFREY: All right, relative to Morro Bay?

1 MR. DEL PIERO: Monterey Bay.

2 MR. CAFFREY: What is the procedure here?

3 MR. DEL PIERO: I would be happy, Mr. Chairman,  
4 rather than the general language, I would be happy to make  
5 it specific to Monterey Bay legislation if that satisfies  
6 the other Board members as to what the alternatives are.

7 MR. CAFFREY: I think you are requesting of Mr.  
8 Stubchaer whether or not he is willing to modify his motion;  
9 is that correct?

10 MR. DEL PIERO: I am asking him if he will accept it.  
11 If he won't, I will make a formal motion to amend.

12 MR. STUBCHAER: I would suggest making the amendment  
13 and we will vote on the amendment.

14 MR. DEL PIERO: Okay, I will so move.

15 MR. CAFFREY: Let me make sure I understand. Mr.  
16 Sawyer is our parliamentarian by my anointment right now.

17 Are we suggesting then that we take a vote on whether  
18 or not to amend the motion?

19 MR. SAWYER: An amendment as suggested by Board  
20 Member Del Piero and you can --

21 MR. CAFFREY: All right, let's ask Mr. Del Piero to  
22 make a specific or suggest a specific --

23 MR. DEL PIERO: I will move this amendment. If this  
24 is not successful, I intend to offer an additional motion to  
25 amend and then that will be the end of this, if neither one

1 passes.

2           The first one is the generalized language:  
3           *No alternative for disposal of drain salts*  
4           *prohibited by State law at the time of adoption*  
5           *of this plan shall be considered a part of this*  
6           *evaluation process.*

7           MR. CAFFREY: That is the motion. Could you repeat  
8 that one more time, Mr. Del Piero?

9           MR. DEL PIERO: *No alternative for disposal of*  
10           *drain salts prohibited by State law at the time*  
11           *of adoption of this plan shall be considered as*  
12           *part of this evaluation process.*

13           MR. CAFFREY: It has been moved that we make an  
14 amendment to the motion.

15           Is there a second? I will second it as a courtesy  
16 to Mr. Del Piero.

17           Is there discussion?

18           MR. DEL PIERO: There has been a long history of an  
19 attempt to insure that the problems of salt contamination of  
20 water quality that is generated out of the San Joaquin  
21 Valley for a variety of reasons are not passed on to other  
22 geographic areas of the state, particularly the coast.  
23 There has been bipartisan support to that position for  
24 decades.

25           Not only has there been bipartisan support for that,

1 Mr. Chairman, but in the mid-1980s the Legislature at that  
2 time adopted the statute. It was signed by George  
3 Deukmejian and codified to expressly prohibit the disposal  
4 of San Joaquin Valley salts in the Monterey Bay area  
5 expressly because of recognition of the significant  
6 environmental resources in that area.

7           Furthermore, one of the findings made at the time  
8 that then Senator Wilson, now Governor Wilson, chose to  
9 support the establishment of the Monterey Bay National  
10 Marine Sanctuary, one of the findings made by the Federal  
11 Government was the protection of those waters, those  
12 environmental resources in the Monterey Bay, allowed for the  
13 designataion of the Monterey Bay National Marine Sanctuary  
14 is because of the attention paid to it by the State  
15 Legislature and by the Governor, then Deukmejian.

16           There is a long history, as I indicated, of both  
17 bipartisan support, support by previous governors and  
18 current governors, and legislators, both former and current  
19 in regard to this issue.

20           It seems to me that even though we acknowledge that  
21 there is a problem in terms of salts in the San Joaquin  
22 Valley, that it is beyond the authority or the prudent  
23 action of this Board to be giving direction to anybody to  
24 pursue the consideration of an alternative that in a state  
25 like California where there is rarely consensus among all of

1 the competing parties, virtually everyone has agreed that is  
2 a bad idea.

3 MR. CAFFREY: Mr. Sawyer.

4 MR. SAWYER: I just want to clarify my concern with  
5 this over, I think, a completely different point than Mr.  
6 Del Piero's reasons for raising it.

7 My concern is solely with the words *no consideration*  
8 *shall be given* in the context of the paragraph because the  
9 paragraph directs the Bureau to evaluate certain things, and  
10 although I think we have the authority to direct the Bureau  
11 to evaluate things, I don't think we have the authority to  
12 tell the Bureau not to evaluate things.

13 If the language were slightly changed, I would have  
14 no legal concern and it would be a policy decision on which  
15 I would make recommendations. Instead of saying no  
16 consideration shall be given, the language says something  
17 like the Board will not approve, then my concern would be  
18 erased.

19 MR. DEL PIERO: Mr. Chairman, let me offer this  
20 modification then to the language. There is currently the  
21 word *shall* -- change that to *should* and that would give the  
22 same direction to the U. S. Bureau of Reclamation as the  
23 initial sentence does.

24 The first sentence reads: The U. S. Bureau of  
25 Reclamation should re-evaluate -- it is not mandatory, and

1 that is probably indicative of the fact we cannot give  
2 direction to the Bureau of Reclamation. We can simply make  
3 a suggestion.

4 If the language in my amendment were changed to have  
5 the same verb as this, it would read:

6 *No alternative disposal of drain salts*  
7 *prohibited by State law at the time of adoption*  
8 *of this plan should be considered as part of*  
9 *this evaluation process.*

10 MR. STUBCHAER: Mr. Chairman, I think I could  
11 support that if you would omit the word at the top of the  
12 adoption of this plan, why not, in accordance with State  
13 law?

14 MR. DEL PIERO: Well, I have no problem with that  
15 except given the way this is incorporated in here, it  
16 appears to be an open-ended invitation to go back and  
17 attempt to modify the discharge in Monterey Bay. It is a  
18 bad idea.

19 It's been argued long and hard by a variety of folks  
20 and I don't think we ought to be providing an opportunity  
21 for someone to reopen that door.

22 MR. STUBCHAER: It just seems to me if the  
23 Legislature changes the law, the door is open and we should  
24 just work in accordance with the law, and then I can support  
25 the amendment with that change.

1           MR. CAFFREY: Well, as a practical matter, if they  
2 change the law subsequent to this decision, we are not going  
3 to violate the law. I think Mr. Stubchaer's suggestion is a  
4 good one because that doesn't bind us up in some other kind  
5 of consideration of what does current law mean when there  
6 are further actions of the Legislature in the future.

7           MR. DEL PIERO: As I said, Mr. Chairman, the concern  
8 that I have is that it appears to be an open invitation to  
9 revisit the issue of discharging into the Monterey Bay.

10          MR. CAFFREY: I think it would be easier for me to  
11 vote for it, Mr. Del Piero, if you were to accept Mr.  
12 Stubchaer's suggestion.

13          MR. DEL PIERO: I appreciate that, Mr. Chairman. I  
14 guess the real concern I have is whether or not that  
15 achieves the protection to the Monterey Bay National Marine  
16 Sanctuary.

17                 There has been a tremendous amount of cooperation  
18 here in trying to resolve the issue with the Delta and the  
19 issue with the San Joaquin Valley and water supply. The  
20 question is whether or not it's the cheapest alternative.  
21 That's my concern.

22                 The way the language is written here, whether or not  
23 it constitutes an opening of the door, an open invitation to  
24 seek the most economically feasible alternative, which, in  
25 fact, is direct piping to the ocean. If you take a look at

1 the paragraph in its entirety, you will understand my  
2 concern.

3 MR. CAFFREY: We need to deal with the specifics of  
4 the matter. Before I go any further with that, let me see  
5 what Mr. Brown has to say.

6 MR. BROWN: Are you referring specifically to  
7 Monterey Bay, period?

8 MR. DEL PIERO: That is the way the statute reads.  
9 The reference is to the Monterey Bay area. It is a specific  
10 geographic designation in the statute itself.

11 MR. BROWN: I don't think you want to go ahead at  
12 this point in time with the dynamics in the field, with  
13 changes in science, whether it is reverse osmosis or ion  
14 exchange, or whatever it is, and place too much of a  
15 limitation upon what the Bureau can and should do.

16 Obviously, suitability is primary not only to the  
17 receiving water but to the San Joaquin Valley, or wherever  
18 the salt might be disposed, and then the second step is  
19 economic feasibility on whatever long-term options, if,  
20 indeed, there are any that might meet those two tests has to  
21 be evaluated, and I think that would probably be the process  
22 that the Bureau of Reclamation will pursue, so I am not sure  
23 it is our responsibility to tell them what they can and  
24 should not do on that.

25 They will have to meet that test themselves and the

1 interested parties would have to be agreeable to it, but if  
2 you are wishing to add something to our plan here that  
3 specifically limits that involvement to the best of our  
4 ability and still within our legal rights to do so on  
5 Monterey Bay, I can support that.

6 I don't see Monterey Bay being opened up as disposal  
7 of salts, but again, that should be something taken up by  
8 the Bureau of Reclamation, I believe.

9 MR. DEL PIERO: Mr. Chairman, let me --

10 MR. CAFFREY: Ms. Forster.

11 MS. FORSTER: I was trying to understand what Andy  
12 was saying about it could not be in that paragraph. Can a  
13 paragraph be added that State law now protects the Monterey  
14 Bay sanctuary from the discharge of salt from the San  
15 Joaquin Valley, and the Board would then add a sentence  
16 saying the Board would uphold this State law and the Board  
17 would not support any changes in that protection for the  
18 sanctuary.

19 MR. SAWYER: Certainly.

20 MS. FORSTER: Would that be easier?

21 MR. SAWYER: That is another way of saying the State  
22 law currently prohibits discharge of saltwater to Monterey  
23 Bay and it is not the intent of this plan to open up that  
24 alternative to consideration.

25 MR. DEL PIERO: If either of the Board members are

1 prepared to accept the language just articulated by Mr.  
2 Sawyer, I am prepared to accept that as an amendment. That  
3 is merely a statement of what the law is and a statement  
4 that the Board doesn't intend one way or the other by this  
5 statement --

6 MR. CAFFREY: I think I have a problem with it  
7 because I still don't know how it affects the future.

8 Go ahead, Mr. Sawyer, and read that language again,  
9 or did you take it down?

10 MR. SAWYER: I did not take it down.

11 MR. CAFFREY: Alice, would you read the language,  
12 please.

13 (The reporter read the statement as follows:  
14 Can a paragraph be added that State law now  
15 protects Monterey Bay sanctuary from the  
16 discharge of salt from the San Joaquin Valley  
17 and the Board would then add a sentence saying  
18 the Board would uphold the State law and the  
19 Board would not support any changes in the  
20 protection of the sanctuary.)

21 MR. SAWYER: I think my comment reasonably follows  
22 that. I can ask Alice to repeat it or paraphrase it.

23 MR. CAFFREY: Why don't you paraphrase it.

24 MR. SAWYER: Current State law prohibits the  
25 discharge of San Joaquin Valley agricultural drainage water

1 to the Monterey Bay and it is not the intent of this plan to  
2 reopen consideration of that issue.

3 MR. DEL PIERO: And if the Bureau wishes to re-  
4 evaluate that and make a recommendation to this Board, it is  
5 not this Board that is making the recommendation.

6 MR. STUBCHAER: That is different than what was said  
7 before.

8 MR. CAFFREY: Will you accept that language?

9 MR. DEL PIERO: I am prepared to accept that.

10 MR. CAFFREY: Mr. Stubchaer.

11 MR. STUBCHAER: Just a question. If there is a  
12 change in State law in the future, would this wording  
13 preclude the Bureau from acting on the laws that may be in  
14 the future?

15 MR. SAWYER: No.

16 MR. CAFFREY: Okay, is that your motion, Mr. Del  
17 Piero?

18 MR. DEL PIERO: Yes. Actually, if Mr. Stubchaer  
19 accepts the amendment, I don't need to go through that.

20 MR. CAFFREY: Would you accept that?

21 MR. STUBCHAER: With the consent of the second, yes.

22 MR. CAFFREY: Does the second consent?

23 MS. FORSTER: Yes.

24 MR. CAFFREY: The second consents. The matter is now  
25 before us with a motion and a second. I think we should

1 have a roll call and I think, Mr. Sawyer, I am about to  
2 elect you as roll caller unless there is somebody else who  
3 falls to that privilege.

4 MR. SAWYER: Mr. Del Piero.

5 MR. DEL PIERO: Aye.

6 MR. SAWYER: Ms. Forster.

7 MS. FORSTER: Aye.

8 MR. SAWYER: Mr. Brown.

9 MR. BROWN: Aye.

10 MR. SAWYER: Mr. Stubchaer.

11 MR. STUBCHAER: Yes.

12 MR. SAWYER: Mr. Caffrey.

13 MR. CAFFREY: Aye.

14 The vote is unanimous. The Bay-Delta Water Quality  
15 Plan is adopted.

16 Let me also now say that we thank you all for your  
17 participation. It has been a long arduous road and you will  
18 be hearing from the Board in the very near future about what  
19 the schedule is for the summer with regard to taking up the  
20 water rights proceeding for the Bay-Delta.

21 We hesitate to say this, and don't hold me to it, but  
22 when you look at the amount of time that we need, and that  
23 we need to give you proper and adequate notice, I would say  
24 that we would be back out in the public with our public  
25 proceedings on water rights circa early August.

1           We will have notices out for you in that regard as  
2 soon as we possibly can.

3           Thank you all very much for your attendance.

4           (The meeting was adjourned.)

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REPORTER'S CERTIFICATE

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This is to certify that I, ALICE BOOK, a Certified Shorthand Reporter, was present during the Board meeting of the STATE WATER RESOURCES CONTROL BOARD, STATE OF CALIFORNIA, held in Sacramento, California, on May 22, 1995;

That as such I recorded in stenographic writing the proceedings held in the matter of: Consider Adoption of Proposed Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary.

That I thereafter caused my said stenographic writing to be transcribed into longhand typewriting and that the preceding 129 pages constitute said transcription;

That the same is a true and correct transcription of my said stenographic writing for the date and subject matter hereinabove described.

Dated: May 29, 1995



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ALICE BOOK