

STATE WATER RESOURCES CONTROL BOARD

CONSIDERATION OF A PETITION OF THE  
SAN JOAQUIN RIVER GROUP AUTHORITY  
(MERCED IRRIGATION DISTRICT AND MODESTO IRRIGATION  
DISTRICT AND TURLOCK IRRIGATION DISTRICT) FOR APPROVAL OF  
A LONG-TERM TRANSFER INVOLVING A CHANGE  
IN THE PLACE AND PURPOSE OF USE OF WATER

WEDNESDAY, APRIL 23, 2003  
9:00 A.M.

JOE SERNA CAL/EPA BUILDING  
COASTAL HEARING ROOM  
SACRAMENTO, CALIFORNIA

REPORTED BY:

ESTHER F. SCHWARTZ  
CSR NO. 1564

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SACRAMENTO, CALIFORNIA

WEDNESDAY, APRIL 23, 2003, 9:00 A.M.

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CHAIRMAN BAGGETT: Good morning. Welcome to the hearing on the petition of the San Joaquin River Group Authority for approval of a long-term transfer involving change of place and purpose of use of water involving Merced Irrigation District, Modesto and Turlock Irrigation, pursuant Water Code 1707 and 1735, et seq.

The petitioners propose to transfer up to 47,000 acre-feet of water. The purpose of the proposed transfer is to conduct the Vernalis Adaptive Management Plan, VAMP, experiments.

This hearing is being held in accordance with the Notice of Public Hearing dated November 7, 2002, and the December 24th, 2002 Notice of Postponement and Rescheduling of Hearing.

I am Art Baggett, Chair of State Water Board. I'm here with my colleague Gary Carlton; staff counsel, Barbara Leidigh; Ernie Mona, staff engineer; and Diane Lawson, environmental scientist.

The purpose of this hearing is to receive evidence that will assist the State Water Resources Control Board in determining whether and under what conditions to approve the petition for long-term transfer filed by

1 Merced Irrigation District, Turlock and Modesto Irrigation  
2 Districts. This hearing will afford the parties who have  
3 filed notice of intent to appear to present relevant oral  
4 testimony, studies and other evidence that addresses  
5 following key issues:

6 One, would the petitioned changes unreasonably  
7 affect any legal user of water or result in substantial  
8 injury to any legal user of water?

9 Two, would the petitioned changes unreasonably  
10 affect fish, wildlife or other instream beneficial uses of  
11 water?

12 Three, are the purposes of the petitioned changes to  
13 preserve or enhance wetlands habitat, fish and wildlife  
14 resources or recreation in or on the water?

15 Four, if the State Board approves the petitioned  
16 changes, what terms and conditions will best develop,  
17 conserve and utilize in the public interest the water  
18 subject to the change?

19 Five, would the petitioned changes increase the  
20 amount of water each of the petitioners is entitled to  
21 use?

22 And six, will the petitioned changes otherwise meet  
23 the requirements of Division 2 of the Water Code?

24 After the hearing record is closed, Board staff will  
25 prepare a proposed order for consideration by the Board.

1 After the Board adopts an order, any person who believes  
2 that the order is in error will have 30 days within which  
3 to submit a written petition for reconsideration by the  
4 Board.

5 At this time I ask Barbara to cover procedural  
6 issues and introduce staff exhibits.

7 MS. LEIDIGH: Thank you.

8 A Court Reporter is present, and she will prepare a  
9 transcript of the proceeding. Anyone who wants a copy of  
10 the transcript must make separate arrangements with the  
11 Court Reporter.

12 The items listed as staff exhibits in the letter  
13 dated April 1, 2003, that was sent to the hearing  
14 participants are offered in evidence by reference as staff  
15 exhibits. If there are no objections to not reading it, I  
16 will dispense with reading the list of items and simply  
17 offer that list into evidence.

18 Are there any objections?

19 CHAIRMAN BAGGETT: Any objections to the list?

20 If not, they will be entered into evidence.

21 MS. LEIDIGH: Thank you.

22 CHAIRMAN BAGGETT: Before we begin the  
23 evidentiary presentations, we will hear from any speakers  
24 who wish to make non-evidentiary policy statement.

25 Are there any? I don't have any blue cards.

1           Now we will move to the evidentiary portion of the  
2 hearing. Before hearing the participants' cases in chief,  
3 we will hear opening statements from any participants who  
4 have not submitted direct testimony and do not intend to  
5 present a case in chief. Then we will hear from the cases  
6 in chief, and the order will be the San Joaquin River  
7 Group Authority, South Delta Water Agency, Central Delta  
8 and R.C. Farms, and Stockton East Water District.

9           We will begin with each case in chief. Participants  
10 may make an opening statement, briefly summarizing the  
11 objectives of the case, the major points the proposed  
12 evidence is intended to establish and the relationship  
13 between major points and key issues.

14           Before testifying, witnesses should identify the  
15 written testimony as their own and affirm that it is true  
16 and correct. Witnesses should summarize the key points in  
17 their written testimony and should not read their written  
18 testimony into the record. Direct testimony will be  
19 followed by cross-examination by participants and hearing  
20 officers and staff. Redirect testimony, and  
21 recross-examination will be limited to the scope of the  
22 redirect testimony and will be permitted after that.  
23 After all the cases in chief are completed, the  
24 participants may present rebuttal evidence.

25           Participants are encouraged to be efficient in

1 presenting their case and cross-examination. The  
2 participants' presentations will be subject to the  
3 following time limitations as agreed to in the prehearing:  
4 All opening statements will be limited to 20 minutes for  
5 each party. Oral presentations of direct testimony of  
6 each witness will be limited to 20 minutes, not to exceed  
7 two hours for all witnesses presented by a participant.  
8 Cross-examination will be limited to one hour per witness  
9 or panel of witnesses. More may be allowed if a showing  
10 can be made. More time will be allowed.

11 Oral closing arguments are not going to be a part of  
12 this proceeding. Any opportunity provided will be through  
13 written closing briefs. At this point I invite all the  
14 parties to make their appearances, the participants.  
15 State your name, address and who you represent for the  
16 Court Reporter.

17 San Joaquin River Group.

18 MR. O'LAUGHLIN: Good morning. Tim O'Laughlin,  
19 O'Laughlin and Paris, LLP, 2571 California Park Drive,  
20 Suite 210, Chico, California 959- -- is it 28? I don't  
21 know. You know it better than I do.

22 CHAIRMAN BAGGETT: South Delta Water Agency,  
23 Alex Hildebrand and Lafayette Ranch.

24 MR. HERRICK: John Herrick for South Delta and  
25 the other two named parties, 4255 Pacific Avenue, Stockton

1 California 95207.

2 CHAIRMAN BAGGETT: Central Delta and R.C.  
3 Farms, Incorporated.

4 MR. NOMESELLINI: Dante John Nomellini with  
5 Nomellini, Grilli & McDaniel, Professional Law  
6 Corporation, 235 East Weber Avenue, Stockton, California  
7 95202, ZIP.

8 One point of procedure, Mr. Chairman. One of my  
9 witnesses cannot be available until 3:00. So instead of  
10 the order of presentation, it might be well to put Central  
11 Delta after Stockton East, so we can bring them up as a  
12 panel. Otherwise I could have two witnesses and then  
13 bring the other witness up.

14 CHAIRMAN BAGGETT: Is there any objection to  
15 that?

16 We will accommodate and so change the order.  
17 Stockton East.

18 MS. HARRIGFELD: Good morning. Karna  
19 Harrigfeld here for Stockton East Water District. Herum  
20 Crabtree Brown. My address is 2291 West March Lane, Suite  
21 B100, Stockton, California 95207.

22 CHAIRMAN BAGGETT: I will now administer the  
23 oath. Will those persons planning to testify in these  
24 proceedings, please stand and raise your hand.

25 (Oath administered by Chairman Baggett.)

1                   CHAIRMAN BAGGETT: Are there any opening  
2 statements from participants who will not be presenting a  
3 case in chief?

4                   With that, we will start with the testimonies. San  
5 Joaquin River Group, MR. O'LAUGHLIN.

6                   ---oOo---

7                   DIRECT EXAMINATION OF SAN JOAQUIN RIVER GROUP AUTHORITY  
8                   BY MR. O'LAUGHLIN

9                   MR O'LAUGHLIN: Morning, Chairman, Board Member  
10 Carlton, Barbara. Tim O'Laughlin, San Joaquin River Group  
11 Authority. I think since we have been here once before on  
12 a similar matter in regards to D-1641 and the 110,000  
13 acre-feet change petitions that were previously offered, I  
14 am going to not have an opening statement, but go directly  
15 to our testimony.

16                  In regard to the testimony, basically what we are  
17 going to do is have three of the witnesses affirm their  
18 testimonies. It is rather short. There is no reason to  
19 summarize it. It was less than two paragraphs, I think.  
20 We are going to spend some more time on Mr. Steiner and  
21 the hydrology and the hydrology behind the 47,000  
22 acre-feet.

23                  That appears to us to be the crux of the matter in  
24 regards to the change petition. I will ask very briefly,  
25 though, from the other witnesses, starting with Chuck

1 Hanson.

2 Dr. Hanson, do you affirm that the testimony that  
3 you provided as San Joaquin River Group Authority No. 2  
4 and the Exhibits 2A, 2B, 2C, D and E are true and correct  
5 copies of your testimony?

6 DR. HANSON: I do.

7 MR. O'LAUGHLIN: Mr. Walt Ward, from the  
8 Modesto Irrigation District, do you affirm that the  
9 testimony that you give as San Joaquin River Group  
10 Authority 3 and 3A is a true and correct copy of your  
11 testimony?

12 MR. WARD: I do.

13 MR. O'LAUGHLIN: Mr. Ted Selb, from Merced  
14 Irrigation District, do you affirm that San Joaquin River  
15 Group Authority Exhibit No. 4 and 4A are true and correct  
16 copies of your testimony?

17 MR. SELB: I do.

18 MR. O'LAUGHLIN: Thank you.

19 What I would like to do is to have Mr. Dan Steiner,  
20 who presented San Joaquin River Group Authority's Exhibits  
21 No. 1, 1-A, 1-B, 1-C and 1-D -- do you affirm that is a  
22 true and correct copy of your testimony, Mr. Steiner?

23 MR. STEINER: I do.

24 MR. O'LAUGHLIN: Mr. Steiner, can you briefly  
25 summarize the overheads.

1                   CHAIRMAN BAGGETT: Are you going to be there  
2 for overheads?

3                   MR. O'LAUGHLIN: We are going to, if possible,  
4 leave him over here for overheads. There is a mike there  
5 for him.

6                   Mr. Steiner will then summarize his testimony for  
7 the Board and parties, please.

8                   MR. STEINER: Thank you, MR. O'LAUGHLIN.

9                   This testimony focuses on the potential hydrologic  
10 affect of providing on occasion the extra 47,000 acre-feet  
11 of water for the VAMP target test flows. At times up to  
12 157,000 acre-feet are required to satisfy a test point for  
13 VAMP. Previously we have discussed and testified and  
14 presented information on the first 110,000 acre-feet of  
15 water to be provided by SJRGA members. This testimony  
16 focuses on extra 40,000 -- 47,000 acre-feet that may be  
17 required in any particular year.

18                   This testimony stems from an analysis that supports  
19 the EIR/EIS for the provision of this extra 47,000  
20 acre-feet on occasion. That document was completed in  
21 2001. My summary testimony will go directly to the  
22 results of the analysis. My written testimony has  
23 significant information about the protocols of the VAMP  
24 and how it works hydrologically in the system. You can  
25 find that information in the written testimony.

1           Let me first direct your attention to Pages 29 and  
2   30 of my exhibit, SJRGA-1.

3           CHAIRMAN BAGGETT: We have hard copies up here.

4           MR. O'LAUGHLIN: We have hard copies.

5           CHAIRMAN BAGGETT: I assume all parties have  
6   hard copies.

7           MR. O'LAUGHLIN: That is correct.

8           MR. STEINER: This is Page 29 of my written  
9   testimony. What this is is a table that exhibits a  
10  71-year trace of the VAMP test in terms of the hydrology  
11  study. And if you direct your attention to the next -- to  
12  the right-hand column, you will find that there is a  
13  couple of numbers that are thousands of acre-feet, how  
14  much water is provided in any particular year out of this  
15  hydrologic study for the VAMP experiment from the SJRGA  
16  members.

17           And the issues to be discussed is that on occasion  
18  there will be a requirement in excess of 110,000 acre-feet  
19  required for the VAMP experiment. In terms of numbers,  
20  this is in context that there is a VAMP requirement for  
21  supplement flow in this historical trace of simulated  
22  years. Between 58 and 72 percent of the years, there is a  
23  need for extra water from the group to make water for the  
24  VAMP experiment. It ranges from zero to about 157,000  
25  acre-feet.

1           If you were to track down the number of occasions  
2           that occur in that 71-year simulation of the years that  
3           needed water in excess of 110,000 acre-feet, I direct your  
4           attention to Page 17 of my testimony. And this is a table  
5           out of that testimony which illustrates that depending on  
6           if VAMP were to occur in April or if it were to occur in  
7           May, you are going to see that you need water in excess of  
8           a 110,000 acre-feet seven or eight times out of the 71  
9           years of historical trace. That equates to around 10  
10          percent of the time this would only occur.

11          The water required is shown in the far right column  
12          of information, and that is the water that we are  
13          discussing with this hydrologic analysis. It ranges from  
14          a very negligible up to almost 47,000 acre-feet of water.

15          The next step to run is the actual analysis with  
16          those supplement requirements in the hydrologic study.  
17          The base study was essentially run with the 110,000  
18          acre-feet scenario to where that was the water that is  
19          committed under the SJRGA at this time. We then ran the  
20          analysis with the extra 47,000 acre-feet provided, if  
21          necessary. And this column, this table is from Pages 31  
22          and 32 of my written testimony.

23          Table 5 is illustrated on the screen at this point,  
24          which is the April scenario if VAMP were to be performed  
25          during that month. And what we have is the eight

1 instances. In this case it is the April scenario where  
2 there are seven instances of supplement water being  
3 required. We ran two different scenarios: One the water  
4 was to be provided totally from the Tuolumne River and the  
5 other scenario was the water was being provided from the  
6 Merced River. That is the difference of the upper portion  
7 of the table and the lower portion of the table.

8           You will find in the first column the water  
9 provided, which have matched that previous page of  
10 information, and what I have done is explained or  
11 described in this table the water provided, what its  
12 impact was upon the storage at the associated reservoir,  
13 that being New Don Pedro Reservoir and Exchequer, the  
14 impacts that it had upon the immediate stream, which would  
15 have been the Tuolumne River regarding the New Don Pedro  
16 Reservoir or Exchequer, or the Merced River for the  
17 Exchequer operation, the absolute differences in flows  
18 that are occurred when there was a change in operation in  
19 the river due to providing the extra 47,000.

20           For instance, it would have the increase in flow  
21 during April of 1944, and this was the absolute change  
22 that went from the 2,100 cfs up to 2,200 cfs. And  
23 conversely, when the reservoir recovered its storage, it  
24 was from a result of a decrease in flow in a subsequent  
25 month, during February 1945, and the absolute change in

1 river flows during that instance.

2 I also chased out whether there was impact to the  
3 New Melones operation and what the ultimate impact was to  
4 Vernalis flows.

5 As seen in this chart, the impact providing the up  
6 to 47,000 acre-feet of additional flow, normally almost  
7 without exception, occurred from it being released from  
8 storage during the month of VAMP operation being either  
9 April or May and was recovered in a subsequent year, maybe  
10 the immediate year following or several years later, from  
11 a decrease in flood control releases at the reservoir.  
12 This is illustrated by another exhibit that I have.

13 This is taken from one of the illustrations from the  
14 previous table. It is for --

15 MR. O'LAUGHLIN: This graph is not in your  
16 exhibits. We have a handout. This is a demonstrative  
17 exhibit. It summarizes the testimony that is already in  
18 his testimony, but just provides it graphically so we can  
19 see it a little better.

20 CHAIRMAN BAGGETT: Pass them out to the  
21 parties.

22 MR. STEINER: To chase you backwards, to find  
23 out where it comes from. This is taking an example from  
24 Table 6 from my written testimony. It is the 40,000  
25 acre-feet operations associated with May 1939 on the

1 Merced River.

2 MR. NOMELLINI: Mr. Hearing Officer, Mr.  
3 Chairman, should we identify this in the record so that we  
4 have a -- I imagine make it an exhibit of some kind.

5 MR. O'LAUGHLIN: If you'd like, we will  
6 identify it as an example of potential hydrologic effects  
7 of providing VAMP releases in excess of 110,000 acre-feet.  
8 And if you will mark it San Joaquin River Group Authority  
9 Exhibit 1-E.

10 CHAIRMAN BAGGETT: Thank you.

11 MR. STEINER: I have shown various pieces of  
12 information from the hydrologic analysis. All this  
13 information is in the written testimony. It is displayed  
14 in graphical form to help ease you through the discussion  
15 of the mechanics of how the extra 40,000 acre-feet in this  
16 particular month trickled through the operation analysis.  
17 These are all essentially a hydrograph. And each month of  
18 this period that I am illustrating is represented by a set  
19 of bars. We are going from October water year 1939  
20 through September of water year 1940 or '41.

21 A little context has to be provided first in that  
22 the upper block of information is the operation that is  
23 occurring for the 110,000 acre-feet portion of VAMP.  
24 Again, you wouldn't be getting to supplement water unless  
25 you needed all the first 110,000 acre-feet first. What we

1 are doing is tracing through the provision, for instance,  
2 the October flow under the SJRGA which is not part of the  
3 discussion today. It is provided in October. The Merced  
4 River recovers from November flows that were in excess of  
5 minimal requirement.

6 We then move on to the first VAMP experiment in this  
7 hydrologic sequence which is May of 1939 to where Merced  
8 is providing probably close to 55,000 acre-feet under its  
9 share of 110,000 acre-feet under basic VAMP experiment  
10 protocols. And again, this traffic up here is the Merced  
11 River operation, what we are showing.

12 As you move along after the VAMP experiment, the  
13 Merced River is operating at minimum flows. Thereafter,  
14 until you come to the next October when VAMP puts out  
15 supplemental water through the SJRGA. We move on into the  
16 following year there where some excess flows in the Merced  
17 River. And there was a deficit in storage in the New  
18 Exchequer Reservoir due to the previous releases of stored  
19 water. This is where they recover some of their water  
20 back into the storage during these excess events in the  
21 river.

22 We move on into the following year's May operation.  
23 Again, this is not a greater than 110,000 acre-feet.  
24 Merced is putting out its share of water for the VAMP  
25 experiment in that year. We go through then go through

1 the cycle again to where we end up recovering storage into  
2 Merced Reservoir whenever there excess of -- excess flows  
3 above minimum flow requirement. They would be recapturing  
4 those flows.

5 We then move into October. That third we again put  
6 out the October flows for Merced. We put out -- we then  
7 recover due to this year being somewhat wet in nature.  
8 Instead of making large flood releases there will be some  
9 diminished flood releases to recover rest of the storage  
10 in Exchequer Reservoir.

11 The illustration we are providing here is in 1939.  
12 The original 110,000 acre-feet of water for the VAMP  
13 experiment was not adequate to make the full test point  
14 for the VAMP experiment. And this chart, the second  
15 chart, illustrates when the additional 47,000 or up to  
16 47,000 acre-feet would be provided. In May of 1939 they  
17 needed an additional 40,000 acre-feet to make the full  
18 test point. And this chart illustrates -- the bars on the  
19 left represent the previously shown Merced River as it was  
20 affected by the first 110,000 acre-feet.

21 The bar on the right in orange illustrates that  
22 there is an additional amount of water provided when you  
23 tried to make the full test point with the up to 47,000  
24 acre-feet of water. This would equate to the 47,000  
25 acre-feet, this increment above the left bar.

1           The affect of providing the extra 47- or in this  
2 case the extra 40,000 in 1939 is that you await until --  
3 again with all the river operations being at minimum  
4 flows, at minimum obligations, that you will have to wait  
5 until you get to a surplus condition again to recapture  
6 some of those flows back into storage. So this 40,000  
7 acre-feet of additional release from storage from Merced  
8 is going to be recaptured subsequently by again reducing  
9 the flood flows or the flows that are in excess of minimum  
10 obligation in later period or years. This is shown to be  
11 done during 1940 and finally ultimately in 1941 water  
12 years.

13           The third chart is illustrating the storage trace of  
14 Exchequer Reservoir during all three different operations.  
15 The first bar represents the no VAMP operation. The  
16 second bar illustrates the storage that occurs under the  
17 110,000 acre-foot operation, and the third bar illustrates  
18 the operation with the additional incremental 40,000  
19 acre-feet.

20           Again, the storage starts to be effective between  
21 the 110- case and the extra 47,000 case in the month of  
22 additional release. That would have been May of 1939 and  
23 it gets recovered in later periods when there were surplus  
24 flows previously in the river.

25           The bottom two graphics are just illustrating other

1 two components to be watching to see if there is a  
2 hydrologic affect on the rest of the river since I first  
3 checked to see if there is an impact on the New Melones  
4 operation since it is intrinsically linked to water  
5 quality and flows at Vernalis. In this particular case,  
6 as in almost all the cases of these seven or eight  
7 exceptions, there is no impact on the New Melones because  
8 there was no downstream requirement being affected by the  
9 change operation from the Merced River.

10 The bottom graphic finally shows the last step at  
11 Vernalis. It should show and it does the fact that the  
12 difference between the 110- case and the extra 47,000 case  
13 is a blip of additional water during May of 1939. That is  
14 the water provided by Merced to satisfy the entire VAMP  
15 flow, and that would trace across to the VAMP flow,  
16 experiment flow, which I believe is 5,700 cfs for this  
17 particular experiment. And then the only other impact you  
18 see at Vernalis is when you see the recovery of Exchequer  
19 Reservoir in the subsequent years.

20 That is the end of my testimony.

21 MR. O'LAUGHLIN: We have concluded with our  
22 direct testimony.

23 CHAIRMAN BAGGETT: Cross-examination. We will  
24 hear from Mr. Herrick, South Delta.

25 ----oOo----

1 CROSS-EXAMINATION OF SAN JOAQUIN RIVE GROUP AUTHORITY

2 BY SOUTH DELTA WATER AGENCY

3 BY MR. HERRICK

4 MR. HERRICK: Thank you, Mr. Chairman. John  
5 Herrick for South Delta Water Agency. I would like to  
6 start with Mr. Ward and Mr. Selb, please.

7 Mr. Selb, you're familiar with the operations of the  
8 reservoir on the Merced River; is that correct?

9 MR. SELB: That is correct.

10 MR. HERRICK: And as part of those operations,  
11 you have certain criteria that determine whether or how  
12 much water you can store or release; is that correct?

13 MR. SELB: That is correct.

14 MR. HERRICK: And as a part of D-1641 and prior  
15 water right hearings, certain permit changes were put on  
16 the permits for Merced Irrigation District; is that  
17 correct?

18 MR. SELB: That's correct.

19 MR. HERRICK: And those permit changes allowed  
20 the district to provide portions of the San Joaquin River  
21 Agreement flows; is that correct?

22 MR. SELB: That's correct.

23 MR. HERRICK: Those permit conditions put  
24 limitations on when recovery of water provided from that  
25 reservoir could be made; is that correct?

1 MR. O'LAUGHLIN: I'm going to object. That  
2 calls for a legal conclusion on behalf of the witness.  
3 Outside the scope of his testimony. It calls for expert  
4 opinion in regards to what D-1641 does or doesn't require  
5 of the Merced Irrigation District.

6 MR. HERRICK: Mr. Chairman, I would say that  
7 doesn't call for a legal conclusion. I am trying to find  
8 out what actual limitations on the operations he is doing  
9 in response to the permit conditions that were set forth  
10 in D-1641.

11 CHAIRMAN BAGGETT: Rephrase the question.

12 MR. HERRICK: Mr. Selb, are you aware that  
13 D-1641 contained limitations on the permits for Merced  
14 dealing with when refill operations to make up for water  
15 released for the San Joaquin River Agreement?

16 MR. O'LAUGHLIN: Once again, it is implied  
17 within the question that there is a certain requirement  
18 for D-1641. If he wants to inquire what the operation  
19 limitations that Mr. Selb knows about, I don't have a  
20 problem with that.

21 CHAIRMAN BAGGETT: Mr. Herrick, try one more  
22 time. I would sustain that objection.

23 MR. HERRICK: Mr. Selb, you are aware that  
24 D-1641 changed the permit conditions for Merced Irrigation  
25 District?

1 MR. SELB: Yes, that is correct.

2 MR. HERRICK: I'm going to read from Page 169  
3 of D-1641 to see if you are familiar with that.

4 Okay?

5 MR. SELB: Okay.

6 MR. HERRICK: On Page 169 of D-1641 for certain  
7 licenses for Merced Irrigation District condition number  
8 three says:

9 At times when the USBR is releasing water  
10 from New Melones Reservoir for the purpose  
11 of meeting the Vernalis salinity objective  
12 or when standard permit Term 91 is in  
13 effect or when salinity objectives at  
14 Vernalis are not being met, licensee shall  
15 not replenish, one, stored water or  
16 foregone diversions provided for the  
17 April-May pulse flow for the October flow  
18 at Vernalis, or, two, water transferred to  
19 the USBR pursuant to the SJRGA period.

20 (Reading)

21 Are you familiar with that provision?

22 MR. SELB: Yes, I am.

23 MR. HERRICK: In your operation of the dams on  
24 the Merced, how do you implement that limitation?

25 MR. SELB: That limitation has yet to be

1 developed.

2 MR. HERRICK: If and when you forego -- if and  
3 when you are trying to refill previous releases for San  
4 Joaquin River Agreement, what investigation do you make to  
5 make sure that any of those conditions in that permit term  
6 I just read are or are not in effect?

7 MR. SELB: Look at the condition with or  
8 without VAMP.

9 MR. HERRICK: Do you do an investigation at  
10 that time to see whether or not New Melones is releasing  
11 water for water quality?

12 MR. SELB: I have not to this time.

13 MR. HERRICK: Have you received any directions  
14 from your Board of Directors or somebody else to do that  
15 investigation?

16 MR. SELB: No, I have not.

17 MR. HERRICK: Mr. Ward, I would like to ask you  
18 the same questions. Would you like me to go through the  
19 background, I will, but the question is: Are there any  
20 investigations you do for the Tuolumne River to see  
21 whether or not at times of refill New Melones is making  
22 releases for water quality?

23 MR. WARD: No, I have not.

24 MR. HERRICK: Have you received any directions  
25 or recommendations from Board of Directors or somebody

1 else asking you to make such investigations?

2 MR. WARD: No, I haven't.

3 MR. HERRICK: Mr. Ward, one of the requirements  
4 for the operations of the dam -- I am just to say the dam  
5 on the Merced. I don't mean to label anything -- is the  
6 FERC requirement; is that correct?

7 MR. SELB: Are you addressing Mr. Ward?

8 MR. HERRICK: I'm sorry. Mr. Selb.

9 MR. SELB: Could you repeat the question,  
10 please.

11 MR. HERRICK: One of the limitations on the  
12 operations of the dam on the Merced River that you are  
13 associated with is the FERC requirement; is that correct?

14 MR. SELB: That's correct.

15 MR. HERRICK: And FERC stands for Federal  
16 Energy Regulatory Commission; is that correct?

17 MR. SELB: That's correct.

18 MR. HERRICK: FERC issued a permit for the  
19 operation of the dam; is that correct?

20 MR. SELB: A license, that's correct.

21 MR. HERRICK: That license itself has terms and  
22 conditions limiting operations; is that correct?

23 MR. SELB: That's correct.

24 MR. HERRICK: One of those terms and conditions  
25 is fishery flow releases; is that right?

1 MR. SELB: That is correct.

2 MR. HERRICK: Mr. Selb, does the FERC agreement  
3 contain flexibility as to when the FERC required fishery  
4 flows are released?

5 MR. O'LAUGHLIN: I am going to object. This  
6 has been going on for about ten minutes. If you read  
7 Mr. Selb's testimony, it is very limited. It is in his  
8 opinion no reductions in water deliveries to MID customers  
9 or result in making instream changes to downstream.

10 So, I mean, we are talking about FERC, we are  
11 talking everything else, except the direct testimony of  
12 Mr. Selb. So I object. This is all irrelevant. I was  
13 waiting for some connection; I haven't seen it yet.

14 CHAIRMAN BAGGETT: Sustained. That was the  
15 scope of his direct and written testimony.

16 MR. HERRICK: I don't get an opportunity to  
17 comment?

18 Well, Mr. Ward and Mr. Selb are testifying to  
19 Mr. Steiner's monitoring results, modeling results and  
20 water deliveries and how that affects their operations.  
21 It is perfectly appropriate to go through the existing  
22 operational requirements that they have and how they are  
23 complying with them to see whether or not what they are  
24 actually doing does indeed confirm what Mr. Steiner says  
25 will happen pursuant to modeling.

1                   CHAIRMAN BAGGETT: I think your questions are  
2 going far afield of the testimony of Mr. Steiner. You're  
3 asking for information beyond what they provided in their  
4 written testimony and what Mr. Steiner testified to.

5                   I would sustain that. The question should be on  
6 what they testified to and on their exhibits. That is  
7 what we all stipulated to in the prehearing.

8                   MR. HERRICK: I appreciate that, Mr. Chairman.  
9 When I get to Mr. Steiner, his answers will be, "I am not  
10 an operator." These are the operators. And I think it is  
11 implicit in the testimony, if not specific, that their  
12 operations confirm Mr. Steiner's model. And that's the  
13 definite check on whether or not they are improving or  
14 making a showing no harm to legal users is that, in fact,  
15 their operations confirm what the modeling is showing.

16                  MR. O'LAUGHLIN: Here is the crux of the issue.  
17 All they did was they reviewed -- as it says in their  
18 testimony, they reviewed the change in storage and based  
19 on that, as operators of the system, they said there was  
20 not going to be any change in deliveries to MID landowners  
21 and/or any change and they will continue to make all  
22 instream flows required from Exchequer.

23                  If he wants to ask if FERC flows are required? Yes,  
24 they are. Are you going to meet them? Yes, we are. I  
25 don't have a problem with that. But other than that,

1     testifying about what is in the model, go ahead and ask  
2     Dan, he's here. I mean, the suppositions in the model are  
3     not -- you're assuming that everything that is in the  
4     model, they told them to put it in the model. If you want  
5     to attack the model, attack the modeler.

6             CHAIRMAN BAGGETT: I would sustain that. And  
7     rephrase your questions with that ruling.

8             MR. HERRICK: Mr. Chairman, I am not sure I am  
9     following your objection. I am sure there will be an  
10    objection if I am not.

11            MR. O'LAUGHLIN: You think?

12            CHAIRMAN BAGGETT: Continue.

13            MR. HERRICK: Mr. Selb, in the EIR for the VAMP  
14    flows, the San Joaquin Agreement, there is a description  
15    of the criteria for the operation of CVP facility, and it  
16    doesn't appear for operation of your facility in the  
17    Merced. I want to see if that is a generally correct  
18    statement with regard to your facilities, too. If you  
19    don't mind, I will read it to you. This is SJRGA-1  
20    Exhibit B, and I am reading from Page 3-11.

21            MR. O'LAUGHLIN: 3-11.

22            MR. HERRICK: 3-11, Page 3-11. The paragraph  
23    says:

24            The U.S. Army Corps of Engineers is  
25    responsible for determining flood control

1 operational requirements at most CVP  
2 reservoirs. If CVP reservoir storage  
3 exceeds COE requirements, water must be  
4 released at rates of flow defined in the  
5 COE's flood control manuals. These  
6 manuals require lower reservoir storage  
7 levels in the fall in anticipation of  
8 inflow from winter precipitation to avoid  
9 excess releases at the end of summer.  
10 Releases in excess of minimum flow  
11 requirements made over the course of the  
12 summer such that reservoir storage levels  
13 are at or below maximum flood control  
14 levels in the fall. (Reading)

15 MR. O'LAUGHLIN: Objection. I am sorry, are  
16 you done?

17 MR. HERRICK: I am done reading that.

18 MR. O'LAUGHLIN: I object. A, it is outside  
19 the scope of his testimony. And, B, there has been no  
20 proper foundation laid that, in fact, that Exchequer is a  
21 CVP reservoir. So on both of those counts, I object.

22 MR. HERRICK: Introductory the question was  
23 this was for CVP. I was going to ask, as I asked him  
24 before, I am going to see if this applies to his  
25 operations, too, under Corps restrictions.

1 CHAIRMAN BAGGETT: Goes to the foundation.

2 MR. O'LAUGHLIN: On that basis.

3 CHAIRMAN BAGGETT: Answer.

4 MR. HERRICK: Mr. Selb, do you understand what  
5 I read?

6 MR. SELB: I understand and I assume that is  
7 applicable to the CVP operation project. As counsel has  
8 pointed out, New Exchequer is not a CVP project.

9 MR. HERRICK: Does New Exchequer have similar  
10 restrictions under its Corps permit?

11 MR. O'LAUGHLIN: Objection. Vague and  
12 ambiguous as to similar.

13 CHAIRMAN BAGGETT: Sustained.

14 MR. HERRICK: Mr. Selb, does New Exchequer have  
15 requirements to avoid excess releases at the end of  
16 summer, releases in excess of minimum flow requirements  
17 being made over the course of the summer such that the  
18 reservoir storage levels are at or below maximum flood  
19 control levels in the fall?

20 MR. SELB: Yes.

21 MR. HERRICK: Mr. Ward, same question to you  
22 with regard to the operation of New Don Pedro.

23 MR. WARD: Could you repeat the question.

24 MR. HERRICK: I am asking whether or not New  
25 Don Pedro has Corps of Engineers restrictions on its

1 releases of water in order to meet fall flood control  
2 levels.

3 MR. WARD: Yes.

4 MR. O'LAUGHLIN: Objection. That is not what  
5 the question was originally, and that is not the same in  
6 Page 3-11. It is not the same question.

7 MR. HERRICK: The witness answered, but I will  
8 restate the question.

9 CHAIRMAN BAGGETT: Please.

10 MR. HERRICK: That I read earlier, Mr. Ward,  
11 said to avoid excess releases at the end of summer  
12 releases in excess of minimum flow requirements are made  
13 over the course of the summer such that reservoir storage  
14 levels are at or below maximum flood control levels in the  
15 fall.

16 MR. WARD: Yes.

17 MR. HERRICK: So it is, I will say, typical in  
18 the operation of New Don Pedro that in order to meet flood  
19 control, reservoir space releases are made at different  
20 times of the year?

21 MR. O'LAUGHLIN: Objection. Vague and  
22 ambiguous as to typical.

23 CHAIRMAN BAGGETT: I would sustain. Could you  
24 clarify?

25 MR. HERRICK: Mr. Ward, in the operation of New

1 Don Pedro are releases made to evacuate flood control  
2 storage space during the course of the year?

3 MR. WARD: Would you repeat that, please?

4 MR. HERRICK: Mr. Ward, in the operation of New  
5 Don Pedro are flood control releases in order to evacuate  
6 flood control storage space made during the course of the  
7 year?

8 MR. WARD: Yes.

9 MR. HERRICK: What is the time period during  
10 which those release can be made?

11 MR. O'LAUGHLIN: I am going to object. I have  
12 been sitting here listening to this for an additional five  
13 minutes, and there is no -- there hasn't been a connection  
14 made to the testimony that has been offered. We are  
15 talking about FERC flows, Army Corps of Engineers, and it  
16 is not relevant to the direct testimony that was  
17 submitted.

18 CHAIRMAN BAGGETT: I would sustain the  
19 objection. And we have agreed to, parties stipulated to  
20 going to, the testimony of these witnesses and not  
21 everything in the scope of their knowledge. You had an  
22 opportunity during discovery and early in the process to  
23 get these questions. And they aren't brought by  
24 testimony. We are getting far beyond the field of what  
25 the testimony has been.

1                   MR. O'LAUGHLIN:  If I may, Chairman, I would  
2     like to add on that.

3                   MR. HERRICK:  He ruled in your favor, I  
4     believe, Mr. O'Laughin.

5                   MR. O'LAUGHLIN:  I would like to add on to  
6     that, because if this is going to be ongoing during the  
7     day.  Because the purpose of conducting discovery was that  
8     we could get the questions done and asked, we could  
9     prepare rebuttal testimony and bring in rebuttal testimony  
10    for the witnesses so we can expedite this hearing process.

11                  If they wanted to do this, they had a chance.  They  
12    took the deposition -- I just want to make you aware.

13                  CHAIRMAN BAGGETT:  I think that is just what I  
14    stated, but not quite so lengthy.  A little more brevity.  
15    You've gotten the ruling.

16                  Mr. Herrick, any questions on the testimony?  I  
17    assume you have a few for the other witness.

18                  MR. HERRICK:  I will move on to Mr. Hanson,  
19    Mr. Chairman.

20                  Mr. Hanson, in your testimony you state that the  
21    water provided pursuant to this petition will provide --  
22    will help preserve and enhance fisheries.

23                  Is that correct?

24                  DR. HANSON:  That's correct.

25                  MR. HERRICK:  Would that be fisheries on the

1 Merced River, the Tuolumne River and the San Joaquin  
2 River?

3 DR. HANSON: We do have coordination among the  
4 tributaries as well as the San Joaquin River. So the  
5 answer would be yes.

6 MR. HERRICK: Could you explain to us the  
7 purpose of this pulse flow?

8 DR. HANSON: The purpose of the -- I don't  
9 refer to it as pulse flow. The purpose of the VAMP flow  
10 is to provide hydrologic conditions within the Lower San  
11 Joaquin River to facilitate the outmigration of juvenile  
12 fall-run chinook salmon. It's developed with the  
13 framework of an experimental test, but one of its primary  
14 objectives is to provide improved habitat conditions,  
15 improved survival for naturally produced fish within the  
16 tributaries. The coordinated hydrologic operations that  
17 operates in combination with the installation of the head  
18 of Old River Barrier and seasonal reductions in state and  
19 federal water project exports to further promote the  
20 survival of juvenile salmon emigrating from the San  
21 Joaquin system.

22 MR. HERRICK: Is this pulse flow to assist in  
23 transporting those outmigrating smolts past the place  
24 where Old River breaks off of the San Joaquin River?

25 DR. HANSON: That is part of its purpose.

1                   MR. HERRICK: It is also to aid in transporting  
2 those outmigrating smolts past channels in the Delta where  
3 they might be pulled towards the export pumps?

4                   DR. HANSON: That is also part of its purpose.

5                   MR. HERRICK: Would the outmigrating smolt be  
6 better protected if the terms and conditions in the permit  
7 changes contemplated here protected that water from use  
8 until it went beyond the export pumps?

9                   MR. O'LAUGHLIN: Objection. Calls for a legal  
10 conclusion and outside the scope of his testimony.

11                   MR. HERRICK: Mr. Chairman, I asked if it's  
12 better protected not if it had anything to do with the  
13 law.

14                   CHAIRMAN BAGGETT: Overruled. Continue.

15                   DR. HANSON: One of the purposes of the VAMP  
16 test is to evaluate the relationship between San Joaquin  
17 River flows and exports at state and federal water  
18 projects, and we are in the process of developing the  
19 information necessary to look at those relationships.  
20 Without more knowledge of what those diversions and how  
21 their operations might occur, it is a difficult question  
22 to answer. But that is part of the purpose of the VAMP  
23 program.

24                   MR. HERRICK: But the protection of the fish is  
25 just not through downstream to Vernalis; it is past

1 Vernalis; is that correct?

2 DR. HANSON: Our goal is to provide improvement  
3 protection for these fish all the way through the Lower  
4 San Joaquin River the Delta and out to the coastal ocean  
5 conditions.

6 MR. HERRICK: Are you familiar with the  
7 D-1641's limitations on exports during, I will say, the  
8 April-May pulse period?

9 DR. HANSON: I am in general, yes.

10 MR. HERRICK: Are you aware that D-1641 allows  
11 for 100 percent -- exports of 100 percent of the San  
12 Joaquin River flow?

13 DR. HANSON: I am aware of that as well as  
14 other conditions, such as the Biological Opinion issued by  
15 the Fish & Wildlife Service.

16 MR. HERRICK: You anticipate my next question.

17 There are other principles that work which then  
18 limit that 100 percent export number; is that correct?

19 DR. HANSON: That's correct.

20 MR. HERRICK: One of them being the Biological  
21 Opinion; is that correct?

22 DR. HANSON: That is correct.

23 MR. HERRICK: The other being the VAMP  
24 agreement itself?

25 DR. HANSON: Yes.

1                   MR. HERRICK: Are you aware that D-1641 allows  
2                   make-up pumping later in the year for water exports  
3                   forgone during the pulse periods?

4                   MR. O'LAUGHLIN: Objection. Outside the scope  
5                   of testimony. Actually, this was already dealt with in  
6                   D-1641.

7                   CHAIRMAN BAGGETT: I would sustain.

8                   MR. HERRICK: Mr. Chairman, if I may comment,  
9                   please.

10                  CHAIRMAN BAGGETT: Sure.

11                  MR. HERRICK: Mr. Hanson is describing benefit  
12                  to the fisheries due to the additional water going down  
13                  the river during the pulse flow. That additional water  
14                  then also becomes extra make-up water later in the year.  
15                  I want to ask him whether or not in his evaluation of the  
16                  benefits he's taken into consideration possible detriment  
17                  due to additional pumping to make up that loss pumping.

18                  I think that is perfectly within his testimony and  
19                  perfectly appropriate.

20                  CHAIRMAN BAGGETT: I would sustain. His  
21                  testimony wasn't an interpretation of 1641 or his reading  
22                  of it. That is the question you are going to ask. It's  
23                  hypothetical. That is -- you consider that. But you are  
24                  asking -- I think before anticipating the objection -- for  
25                  his interpretation and impacts of other portions of that

1 order.

2 That is not in the scope of this hearing. That is  
3 not part of his direct testimony.

4 MR. HERRICK: Mr. Chairman, I think the  
5 objection has misstated the question. The foundation of  
6 the question is that D-1641 has certain limitations and  
7 certain benefits. The question is the effects on the  
8 fisheries.

9 But the foundational part is whether or not he knew  
10 there are a hundred percent export and later make-up  
11 pumping and stuff like that. I don't think the question  
12 has anything to do with legal interpretation of D-1641.  
13 The question asks him whether he's analyzed potential  
14 detriment to fish when he says the release of extra water  
15 is a benefit to fish. I think that is perfectly  
16 appropriate.

17 MR. O'LAUGHLIN: May I comment? Actually it  
18 isn't. Because Mr. Herrick has made the leap in faith  
19 that any water, the 47,000 acre-feet, if it was additional  
20 to the system, is, in fact, characterized as extra make-up  
21 water. I see no testimony by Mr. Hanson or any of our  
22 other witnesses testifying that it, in fact, that water is  
23 make-up water and would have to be pumped later. There is  
24 no foundation laid and no testimony to that effect. And  
25 it is clearly outside the scope of what Mr. Hanson has

1 testified to.

2 MR. HERRICK: Mr. Chairman, that is just wrong.  
3 Anything that is a foundational question is to see if he  
4 examined it as part of his conclusion can be stated as  
5 outside his testimony or interpretation of whatever it is.  
6 But that is how you get to a question, to see if he's  
7 analyzed these effects. You lay the foundation, D-1641.  
8 We don't have somebody testify to what D-1641 means before  
9 I can ask him questions on limitations therein as they  
10 affect his analysis. That doesn't make sense.

11 MR. O'LAUGHLIN: That is based on your reading  
12 of D-1641, that, in fact, the 47,000 acre-feet of water if  
13 it were to flow down to the river is, in fact, extra  
14 make-up water, John. I mean that hasn't been established  
15 foundationally.

16 MR. HERRICK: That is legal argument for  
17 closing brief.

18 CHAIRMAN BAGGETT: I would -- let's rephrase  
19 your question. Try it again.

20 MR. HERRICK: Mr. Hanson, hypothetically if the  
21 additional flows at Vernalis that result from this  
22 petition allow for additional export pumping later in the  
23 year, with that hypothetical, have you taken that into  
24 consideration when you made your conclusion that the  
25 additional flow will help fisheries?

1 DR. HANSON: I did take that into  
2 consideration. I have participated on the data assessment  
3 team, the DAT, which is a forum that allows for periodic  
4 evaluation of the biological data, real time monitoring  
5 data, for example, both on the state and federal water  
6 project export salvage facilities, but also information on  
7 fish movement within the tributaries.

8 We use that information to look for opportunities  
9 where, if make-up water pumping is required, it can be  
10 done in a seasonal period of having its minimal biological  
11 effects. So we are trading off opportunities to enhance  
12 fisheries during the most sensitive periods and making up  
13 water pumping in your hypothetical example during other  
14 seasonal periods where that increased export would have  
15 less biological impact.

16 So within the context of the existing decision  
17 making process, the coordination among the resource  
18 agencies and the water agencies, that become part of the  
19 fabric that, as a biologist, we all look at when making  
20 those judgments.

21 MR. HERRICK: Thank you.

22 I will move on to Mr. Steiner now.

23 Mr. Steiner, you performed the modeling to support  
24 the San Joaquin River Agreement also; is that correct?

25 MR. STEINER: That's correct.

1 MR. HERRICK: Your testimony refers to that  
2 modeling; is that correct?

3 MR. STEINER: That's correct.

4 MR. HERRICK: I note in your testimony that you  
5 made for the current modeling include Oakdale Irrigation  
6 District, OID, South San Joaquin Irrigation District, SSJ,  
7 taking their full allocations; is that correct?

8 MR. STEINER: I believe that is incorrect.

9 MR. HERRICK: By incorrect you are referring to  
10 South San Joaquin taking less than their full allocation?

11 MR. STEINER: That's correct.

12 MR. HERRICK: What happens to that full  
13 allocation when it is not taken?

14 MR. STEINER: It stays in New Melones as part  
15 of the overall operation of the Stanislaus River.

16 MR. HERRICK: Does it stay in an account for  
17 South San Joaquin or does it get put back in, I will say,  
18 the pot, general storage?

19 MR. STEINER: It goes back to the pot.

20 MR. HERRICK: If they do not take their full  
21 300,000 acre-foot allocation, anything they don't take  
22 becomes available for other allocations the following  
23 year?

24 MR. STEINER: Or subsequent years under the  
25 Interim Operations Plan.

1 MR. HERRICK: Is that true for Oakdale  
2 Irrigation District in your modeling?

3 MR. STEINER: The Oakdale assumption has the  
4 full use of the 300,000 acre-foot entitlement.

5 MR. HERRICK: You did an investigation before  
6 you did this modeling just to determine what the criteria  
7 and uses and facts supporting the model were?

8 MR. STEINER: For the South San Joaquin portion  
9 I had done an analysis, yes. For the Oakdale it was given  
10 to me that the assumption would be full use of 300,000  
11 acre-feet.

12 MR. HERRICK: You did no verification whether  
13 or not absent the San Joaquin River Agreement Oakdale  
14 Irrigation District would receive its 300,000 acre-feet  
15 each year?

16 MR. O'LAUGHLIN: Objection. Receive or use?

17 MR. HERRICK: Be delivered to.

18 MR. STEINER: I did not do an analysis of  
19 whether there should be a lesser delivery number.

20 MR. HERRICK: Mr. Steiner, your modeling takes  
21 into consideration the Interim Operations Plan for New  
22 Melones?

23 MR. STEINER: That's correct.

24 MR. HERRICK: Could you basically describe what  
25 that plan is?

1                   MR. STEINER:  If I could direct you to Page 10  
2                   of my written testimony, SJRGA-1.  Is very much summary,  
3                   it was a negotiated allocation of waters from New Melones  
4                   based on a trigger or an index which was based on  
5                   carryover storage at the end of February plus projected  
6                   inflow to the reservoir over the rest of the year.  On  
7                   Page 10 of my testimony you see how that index relates to  
8                   allocation of water supplies to all users of the system,  
9                   except for Oakdale and South San Joaquin which still  
10                  operate under their settlement agreement with the Bureau.

11                  MR. HERRICK:  As part of that, you also modeled  
12                  -- as part of the modeling you also included a sale to  
13                  Stockton East Water District; is that correct?

14                  MR. STEINER:  Yes.  I tried to capture the  
15                  existing institutional commitments that have been made on  
16                  the river at the time I ran the analysis.

17                  MR. HERRICK:  Getting back to the Interim  
18                  Operations Plan, that plan depending on -- is it correct  
19                  to say that that plan, depending on inflow to the  
20                  reservoir and existing storage, determines allocations for  
21                  various uses?

22                  MR. STEINER:  That is correct.

23                  MR. HERRICK:  One of those uses is water  
24                  quality.  By that I mean water quality as measured at  
25                  Vernalis.  Is that correct?

1                   MR. STEINER: That is correct. That is what  
2 that bucket is for.

3                   MR. HERRICK: One of the releases made from New  
4 Melones is to meet a water quality standard at Vernalis;  
5 is that correct?

6                   MR. STEINER: That's correct.

7                   MR. HERRICK: Based on prior testimony from the  
8 D-1641 hearings, you indicated that that allocation for  
9 water quality is insufficient in some years to meet the  
10 Vernalis standard; is that correct?

11                  MR. STEINER: In some years.

12                  MR. HERRICK: I think we have established that  
13 the Interim Operations Plan is the baseline of operations  
14 in your current modeling; is that correct?

15                  MR. STEINER: It is the baseline upon which the  
16 San Joaquin River Group Authority's contribution towards a  
17 test flow is established. It does not require that the  
18 Bureau operate to the Interim Operations Plan.

19                  MR. HERRICK: It is not a requirement; it is a  
20 modeling assumption?

21                  MR. STEINER: Yes, a calculation device,  
22 correct.

23                  MR. HERRICK: That's true for both the modeling  
24 you have done for this proceeding as well as the modeling  
25 you did for the San Joaquin River Agreement; is that

1 correct?

2 MR. STEINER: That's correct.

3 MR. HERRICK: Mr. Steiner, are you aware of  
4 whether or not the Bureau is operating to the Interim  
5 Operations Plan this year?

6 MR. STEINER: This particular year they operate  
7 to it with exceptions.

8 MR. HERRICK: Is that a no?

9 MR. O'LAUGHLIN: No, that is his answer.

10 CHAIRMAN BAGGETT: Let's let the witness  
11 answer.

12 MR. HERRICK: I can ask for clarification.

13 MR. STEINER: To a large extent they're  
14 operating to the IOP. They have exceptions for this year  
15 on how they are operating.

16 MR. HERRICK: Do those exceptions allocate  
17 additional water to any purpose?

18 MR. STEINER: I have heard that the Bureau  
19 states that they will meet the water quality objective at  
20 Vernalis, and it appears there will be in excess of the  
21 allocation that would have occurred under the IOP.

22 MR. HERRICK: Mr. Steiner, does that then mean  
23 that there will be an additional use of water or release  
24 of water that year than what was contemplated under the  
25 Interim Operations Plan?

1                   MR. O'LAUGHLIN: I am going to object again.  
2 This is talking about operations for this year and not  
3 tying it into any testimony by Mr. Steiner in regards to  
4 the San Joaquin River Agreement. The operations of New  
5 Melones has nothing to do with the 47,000 acre-feet of  
6 water. So I don't see the relevance.

7                   MR. HERRICK: Well, we could number the  
8 numerous pages in Mr. Steiner's testimony where he  
9 compares what happens on the Stanislaus if we wanted to do  
10 that. But, of course, it is perfectly appropriate to  
11 check the underlying assumptions and bases of his  
12 modeling.

13                   CHAIRMAN BAGGETT: Overrule. But subject to  
14 the extent -- could you rephrase it, being more specific  
15 in terms of year. I think that was one of the objections.  
16 So rephrase the question.

17                   Overrule the objection.

18                   MR. HERRICK: Mr. Steiner, is the Bureau  
19 releasing additional water for water quality this year?

20                   MR. STEINER: They have not yet.

21                   MR. HERRICK: Do you understand whether or not  
22 they -- do you have an understanding of whether or not  
23 they plan to?

24                   MR. STEINER: I understand they plan to.

25                   MR. HERRICK: That additional release of water,

1 does that -- would that change your modeling if that was  
2 taken into consideration?

3 MR. STEINER: It would be very specific. In  
4 terms of the 47,000 acre-feet, it may not change the  
5 results at all.

6 MR. HERRICK: If the Bureau does not operate  
7 according to the Interim Operations Plan, what level of  
8 certainty or reliability could we give to your modeling as  
9 an indication of what the effects of the petition might  
10 be?

11 MR. STEINER: As far as conclusions, very  
12 little effect.

13 MR. HERRICK: That is based upon what,  
14 Mr. Steiner?

15 MR. STEINER: Based on if this year is used as  
16 an example of how they deviate from the Interim Operations  
17 Plan.

18 MR. HERRICK: Mr. Steiner, I didn't ask you  
19 what this year's change would do. I asked whether or not  
20 the Bureau, abiding by the Interim Operations Plan, would  
21 lend you any reliability in your modeling as an indication  
22 of what will happen in the future?

23 MR. STEINER: You have not established what  
24 that deviance -- I have nothing to measure that against.

25 MR. HERRICK: Would you agree if we don't know

1 what the changes are in that plan, it would be very  
2 difficult to model the effects of the petition?

3 MR. STEINER: That would be very difficult.

4 MR. HERRICK: Mr. Steiner, in your testimony --

5 CHAIRMAN BAGGETT: Can we take a break? Have  
6 you got --

7 MR. HERRICK: This would be a good time. I  
8 don't have that much more, but I have a little more,  
9 certainly.

10 MR. O'LAUGHLIN: That is fine with me.

11 CHAIRMAN BAGGETT: Let's take a five-minute  
12 recess.

13 (Break taken.)

14 CHAIRMAN BAGGETT: Back on the record.

15 We are cross-examining Mr. Steiner. Mr. Herrick.

16 MR. HERRICK: Thank you, Mr. Chairman.

17 Mr. Steiner, could you turn to Page 13 of your  
18 testimony, please.

19 At the bottom of that page you discuss what happens  
20 to certain OID water in your model; is that correct?

21 MR. STEINER: That's correct.

22 MR. HERRICK: What you describe happening is  
23 that the amount of water that OID doesn't take as a  
24 delivery, that amount fluctuates during the year, that  
25 amount of water then is subsequently -- I am reading from

1 Page 14 -- certainly allocated to fishery uses.

2 Do you see that?

3 MR. STEINER: ACTually, that mischaracterizes  
4 what is occurring. OID under their 300,000 acre-foot  
5 assumed entitlement in these studies, 15,000 of that under  
6 the SJRGA hands back into Reclamation's hands and then  
7 also the OID portion of the Stanislaus 22,000 acre-foot  
8 commitment to VAMP, any of their share that is not used in  
9 a particular year also lands back into Reclamation's  
10 hands.

11 MR. HERRICK: What I am trying to clarify is  
12 the statement that you say and it is assumed to be  
13 subsequently allocated to fishery uses.

14 MR. STEINER: Is because currently my  
15 understanding of their operation of that turn-back water  
16 occurs to the fishery resource.

17 MR. HERRICK: Correct me if I am wrong.  
18 Although it could go back into the pot, the practice --  
19 the current practice of the Bureau is to make that  
20 available for fishery uses; is that correct?

21 MR. STEINER: That is correct. Right now my  
22 understanding is that they direct to put that water  
23 one-to-one down the river at some time or another. If  
24 they did not do that, it would land back into the pot.

25 MR. HERRICK: That is a change from your

1 modeling of the San Joaquin River Agreement assumptions;  
2 is that correct?

3 MR. STEINER: The very early modeling of the  
4 San Joaquin River Agreement.

5 MR. HERRICK: When you say very early, just to  
6 clarify that. Isn't that assumption used in the exhibit,  
7 SJRGA Exhibit 1, the environmental report for the San  
8 Joaquin River Agreement?

9 MR. STEINER: Is that the 110,000 acre-feet?

10 MR. HERRICK: Yes.

11 MR. STEINER: I believe that is the slight  
12 difference from what I did in the most recent modeling.

13 MR. HERRICK: In that previous modeling,  
14 because of that use of the water, by throwing it back in  
15 the pot at New Melones you actually concluded in your  
16 modeling that New Melones storage carryover increased due  
17 to the San Joaquin River Agreement; is that correct?

18 MR. STEINER: It had that effect until it  
19 spilled out again.

20 MR. HERRICK: We now know that the Bureau's  
21 practices of releasing that water for fishery uses makes  
22 that assumption incorrect; is that right?

23 MR. STEINER: It makes it a little flawed.

24 MR. HERRICK: The assumption is incorrect; is  
25 that correct?

1                   MR. STEINER: The assumption is incorrect. The  
2 results on hydrology are not significant.

3                   MR. HERRICK: You did talk about in the  
4 modeling of the San Joaquin River Agreement the benefit  
5 associated with increased carryover storage in New  
6 Melones; did you not?

7                   MR. STEINER: I may have. It's been a long  
8 time since I reviewed that document.

9                   MR. HERRICK: Those increased benefits were  
10 that there would be more allocations for all uses from New  
11 Melones?

12                   MR. STEINER: I believe it would have been very  
13 small in terms of allocations because that table that I  
14 showed you on Page 10 reacts very sluggishly to increase  
15 in water supply.

16                   MR. HERRICK: Now you are telling us in this  
17 current testimony that there isn't an increase in  
18 carryover storage and, therefore, benefits, but that there  
19 should be a decrease in carryover storage; is that  
20 correct?

21                   MR. STEINER: No. It would be essentially a  
22 wash in the newer studies.

23                   MR. HERRICK: A wash between what and what?

24                   MR. STEINER: Between the end of storage in the  
25 original 110- studies, all the water that was turned back

1 from Oakdale may not have been reallocated back out until  
2 it spilled. In these studies, it would work correctly, it  
3 should almost be a wash; the water turned back, instead of  
4 being diverted to Oakdale now goes down to the river.

5 MR. HERRICK: That is based on the assumption  
6 that it all would have been diverted to Oakdale in the  
7 absence of any of those programs?

8 MR. STEINER: That's correct.

9 MR. HERRICK: Mr. Steiner, in your direct  
10 testimony you passed out a new exhibit. Would you get  
11 that, please. I believe it has been labeled SJRGA-1E; is  
12 that correct?

13 MR. STEINER: If this is the exhibit that is on  
14 the screen, yes.

15 MR. HERRICK: Now if you will bear with me here  
16 as I try to go over what you said. You were comparing  
17 that or you were giving that as a graphic example of your  
18 testimony, especially your testimony on Page 31; is that  
19 correct, or is it 32?

20 MR. STEINER: It would have been an example of  
21 Page 32 which was the May VAMP illustration.

22 MR. HERRICK: And you submitted this new  
23 exhibit as a graphic representation of when and how much  
24 refill would affect flows on the Merced River or the  
25 Stanislaus and San Joaquin; is that correct?

1                   MR. STEINER: It is an illustration if Merced  
2 were to provide the supplemental 40,000 acre-feet, that is  
3 up to 47,000 acres in any particular year, how it would  
4 trickle through the hydrologic sequence following it.

5                   MR. HERRICK: Your comparison of that  
6 information was part of the basis on which you concluded  
7 either minimal or no effects resulting from these changes;  
8 is that right?

9                   MR. STEINER: I put my impacts in terms of  
10 hydrology. I worry about the word "impacts." I can  
11 explain the hydrologic impacts that happens on the river.

12                  MR. HERRICK: You did not then author the EIR  
13 that concluded insignificant impacts?

14                  MR. STEINER: My hydrologic studies fed into  
15 the environmental analysis.

16                  MR. HERRICK: In your analysis of the changes  
17 in flows resulting from the refill operations, did you  
18 take into consideration any water right holders who may  
19 have licenses or permits of an earlier priority than  
20 either the Merced or Tuolumne?

21                  MR. STEINER: None explicitly.

22                  MR. HERRICK: When you show a decrease in flow  
23 in any particular month for refill operations, you made no  
24 conclusion as to whether or not that water might be needed  
25 or used by downstream diverters that may have a higher

1 priority than the applicants here?

2 MR. STEINER: There is still water in the  
3 river. And whether that diminish of flow made a  
4 difference, I do not know.

5 MR. HERRICK: The same thing with regard to  
6 export pumping, did you make any analysis of how changes  
7 in the river would affect -- changes in the rivers would  
8 affect any export pumping downstream from the two  
9 tributaries?

10 MR. STEINER: I did not carry the analysis that  
11 far.

12 MR. HERRICK: Mr. Steiner, on Page 32 of your  
13 testimony, which is that table from which you just made  
14 the graph, you have noted the decreases in flows resulting  
15 from the petition for changes and this example under the  
16 May VAMP condition; is that correct?

17 MR. STEINER: Correct.

18 MR. HERRICK: Did you make any comparison as to  
19 whether or not decreases in stream flows might affect any  
20 riparian uses downstream?

21 MR. STEINER: Not explicitly.

22 MR. HERRICK: When you say not explicitly, did  
23 you do something implicitly?

24 MR. STEINER: No. But there is water still in  
25 the river in these studies, and it is an incremental

1       diminishment of flows during times when the Merced River  
2       or the Tuolumne River was running in excess of their  
3       minimal obligations.

4               MR. HERRICK: Do you know did your modeling  
5       take into account any releases from the Merced or Tuolumne  
6       for downstream uses, and by downstream I mean not on those  
7       tributaries?

8               MR. STEINER: The model is constrained at this  
9       point for those two reservoirs to be meeting their local  
10      requirements. And in the case of Merced, those  
11      requirements are modeled below the diversion point on the  
12      Tuolumne River is below at La Grange.

13              MR. HERRICK: There is nothing in your modeling  
14      that examines whether or not the natural flow of the  
15      system needs to be passed through those dams to provide  
16      for downstream needs; is that correct?

17              MR. STEINER: Not unless it is apparent in  
18      those minimum requirements that I have established in the  
19      model.

20              MR. HERRICK: It is your understanding that  
21      those minimum requirements have to do with tributary needs  
22      rather than San Joaquin River or Delta needs?

23              MR. STEINER: That's correct.

24              MR. HERRICK: I will just clarify, excepting,  
25      of course, a VAMP flow measured at Vernalis?

1                   MR. STEINER: Correct. VAMP is an overlay of  
2 this entire model.

3                   MR. HERRICK: Did you attempt to discover any  
4 of those other needs if indeed they do exist for diverters  
5 on the San Joaquin or in the South Delta?

6                   MR. STEINER: I did not do any of that  
7 analysis.

8                   MR. HERRICK: Is there a reason why you did  
9 not?

10                  MR. STEINER: It was not within the scope of my  
11 work.

12                  MR. HERRICK: Were you involved in the answers  
13 to letters, comment letters to the environmental document  
14 prepared for this transfer?

15                  MR. STEINER: I may have been. I just cannot  
16 recall.

17                  MR. HERRICK: I am asking, do you recall  
18 whether or not that --

19                  MR. STEINER: For the extra 47,000 acre-feet?

20                  MR. HERRICK: Yes.

21                  MR. STEINER: I believe I would have been  
22 involved. I just can't remember at this point to what  
23 extent I was involved.

24                  MR. HERRICK: You wouldn't remember whether  
25 that comment about the downstream needs were raised?

1 MR. STEINER: I cannot recall.

2 MR. HERRICK: Mr. Steiner, on Page 13 of your  
3 testimony, again it is talking about the Oakdale  
4 Irrigation District water, and on the first full paragraph  
5 there, correct me if I am wrong, it is talking about how  
6 the provision of OID water for the VAMP flow is made up in  
7 reduced deliveries to OID; is that correct?

8 MR. STEINER: Restate it, please.

9 MR. HERRICK: On Page 13 it says:  
10 If the OID VAMP water is released at  
11 Goodwin, OID's diversion is reduced by an  
12 equal amount during the following  
13 September and October. (Reading)

14 MR. STEINER: That is what I wrote and that is  
15 what I assumed in the model.

16 Mr. HERRICK: What was the basis of your  
17 assumption that OID was taking deliveries of that amount  
18 in September and October in the absence of the VAMP?

19 MR. STEINER: It's been the modeling  
20 assumption. There is a diversion assumption in this  
21 modeling that there was sufficient water in  
22 September, October, and upon guidance from the district.  
23 That is how I implemented it in the model, that a VAMP was  
24 provided, that is where their reduction in the diversion  
25 out of the 300,000 would occur.

1                   MR. HERRICK: That information was provided by  
2 the district? That was my question. How did you get that  
3 assumption?

4                   MR. STEINER: The assumption was provided by  
5 the district.

6                   MR. HERRICK: Would that be similar for the  
7 other two tributaries which are mentioned later in your  
8 testimony and also described a time period during which  
9 deliveries would be decreased in order that the VAMP water  
10 would be made up?

11                   MR. STEINER: The other two tributaries, and  
12 this is falling back to two to three years ago modeling,  
13 they did not have very many reductions, if any, in their  
14 diversions. It is not -- the other tributaries are not  
15 akin to the assumptions for this. There is usually  
16 sufficient water in the reservoir to make that delivery,  
17 and that their reductions in delivery are more year-type  
18 oriented.

19                   MR. HERRICK: Mr. Steiner, in your testimony  
20 you do note a couple of occasions when the petition for  
21 changes do result in an effect on New Melones releases for  
22 water quality; is that correct?

23                   MR. STEINER: Try again, Mr. Herrick, I'm  
24 sorry.

25                   MR. HERRICK: Your testimony does include a

1 couple of instances whereby the petition for changes do  
2 result in an effect on New Melones releases for water  
3 quality; is that correct?

4 MR. STEINER: That's correct.

5 MR. HERRICK: The first question is: Do those  
6 changes require in your modeling, anyway, require  
7 additional water quality releases above and beyond what  
8 the Interim Operations Plan would have that year?

9 MR. STEINER: There was a shift when the water  
10 quality -- the modeling indicated that there would have  
11 been a shift of when the water quality release was made  
12 from New Melones due to the hydrologic effect of providing  
13 an extra 47,000 acre-feet or some portion thereof.

14 MR. HERRICK: But no instances of increased  
15 need for water quality releases?

16 MR. STEINER: There was increased need for  
17 water quality release in an instance.

18 MR. HERRICK: Could you please explain how  
19 providing the additional flow in the pulse flow period  
20 causes that effect on New Melones that we just talked  
21 about?

22 MR. STEINER: Let me put back on the screen  
23 Table 6, which is Page 32 of my written testimony. This  
24 was a condition of the May 1984 example which came from  
25 one of the Tuolumne River scenarios or providing the extra

1 water. And this has to do with when that reservoir would  
2 have recovered its release for the May 1984 example. And  
3 as shown in Table 6, there is a column called the Delta  
4 impact to track you through a discussion of how the water  
5 recovered.

6 The water provided in May of 1984, which increases  
7 releases to the river, subsequently in April 1985 is one  
8 of the months in which there was extra water on the  
9 Tuolumne River, above minimum requirements that would have  
10 been held back in the reservoir instead of release to fill  
11 the deficit created previously. In that particular April  
12 of 1985 that reduction in release down the Tuolumne River  
13 happened to coincide with a drier condition on the San  
14 Joaquin River in which case the Delta operation would have  
15 been required to make a slightly larger increase to dilute  
16 the water at Vernalis to bring it within standard.  
17 That is one of those illustrations, Mr. Herrick, when a  
18 refill might have caused an event at New Melones.

19 MR. HERRICK: How did your model decide when  
20 and what flood releases would be diminished in order to  
21 recover the lost water?

22 MR. STEINER: The model attempts to recover as  
23 much water into the reservoir as possible at the earliest  
24 opportunity.

25 MR. HERRICK: Are you aware of any requirement

1 or operating procedures on the Tuolumne and Merced Dams  
2 which effectuate your assumptions in your model?

3 MR. STEINER: Please rephrase the question.

4 MR. HERRICK: Are you aware of whether or not  
5 the operations of the dams are a reflection of what you  
6 have modeled?

7 MR. STEINER: By observation of their  
8 operations and general experience I have myself on  
9 reservoir operations storing water in the reservoir is one  
10 of the highest priorities for carryover. So it would be  
11 consistent with my modeling.

12 MR. HERRICK: Is it your understanding that the  
13 operators have criteria which direct them to make releases  
14 at certain times of the year in order to preserve flood  
15 storage space?

16 MR. STEINER: I am aware of that, yes.

17 MR. HERRICK: Are you aware of any flexibility  
18 as to when they need to make releases in order to meet  
19 those requirements?

20 MR. STEINER: I am aware there was flexibility  
21 of how you get to the end result of maintaining flood  
22 control space.

23 MR. HERRICK: Hypothetically, if you needed X  
24 amount of flood control space by October 1st, and the  
25 flexibility would be that the operators could make

1 releases at any time in the summer in order to meet that  
2 October 1st, is that sort of flexibility taken into  
3 account in your modeling?

4 MR. STEINER: Yes, it is.

5 MR. HERRICK: How is it taken into account?

6 MR. STEINER: It is within my modeling  
7 established by creating target storages during the summer,  
8 levels that you would not want to be above. So that you  
9 don't push all of the extra water above the envelope to  
10 the last moment. And so that when the model sees you are  
11 approaching or at that target storage during the summer,  
12 it will try to release discretionary flow above minimum  
13 requirements.

14 MR. HERRICK: Your model does assume that the  
15 earliest point possible flood releases will be decreased  
16 in order to make up the storage?

17 MR. STEINER: That is a different question.  
18 Didn't track where you were going with that.

19 MR. HERRICK: I thought you just said that,  
20 yes, your model assumes that in order to maximize storage  
21 at the earliest point possible, the flood control releases  
22 would be decreased in order to make up for the released  
23 water.

24 MR. STEINER: That period occurs during the  
25 springtime as they are filling. The question about the

1 summer discretion is after the fill cycle, heading into  
2 the fall.

3 MR. HERRICK: I didn't understand. Because my  
4 earlier question dealt with making discretionary releases  
5 during the summer in order to make a fall evacuation goal.  
6 Do you recall that?

7 MR. STEINER: Yes. I recall the discussion.

8 MR. HERRICK: How does your model treat  
9 discretionary summer releases for that purpose?

10 MR. STEINER: They would have reduced  
11 discretionary summer releases if there was a hole to fill  
12 or -- but if you did not have a flood control constraint,  
13 as far as having that same relation -- in a year, which  
14 there are many, that you are already below the flood  
15 control envelope in the fall, there would be no summertime  
16 discretion release in the model.

17 MR. HERRICK: I understand, but that wasn't my  
18 question. My question is: If they are trying to meet a  
19 fall goal, in other words, they have to evacuate more  
20 water, how does your model treat those potential releases  
21 in the summer to meet that fall goal?

22 MR. O'LAUGHLIN: Asked and answered. He said  
23 the reservoir established in his model had controlling  
24 points. When the controlling points were met, then the  
25 water was released.

1 CHAIRMAN BAGGETT: Sustained.

2 MR. HERRICK: Mr. Steiner, in SJRGA-2, which is  
3 the 2001 annual technical report.

4 MR. O'LAUGHLIN: Which one?

5 MR. HERRICK: 2001.

6 MR. O'LAUGHLIN: 2001.

7 MR. HERRICK: On Page 16, in talking about the  
8 Tuolumne River, it says:  
9 However, in late February 2001,  
10 precautionary flood control releases were  
11 made in excess of 7,700 acre-feet.

12 (Reading)

13 Are you familiar with this document?

14 MR. STEINER: I was at one time.

15 MR. HERRICK: You didn't have any part in  
16 producing it then?

17 MR. STEINER: Yes, I did. It is just that it  
18 is a couple years ago.

19 MR. HERRICK: When it says precautionary flood  
20 control releases, is that a distinction between some other  
21 kind of flood control release and a mandatory?

22 MR. STEINER: I don't know what the authors had  
23 in mind.

24 MR. HERRICK: I have no further questions.

25 CHAIRMAN BAGGETT: Mr. Nomellini.

1 CROSS-EXAMINATION OF SAN JOAQUIN RIVE GROUP AUTHORITY

2 BY CENTRAL DELTA WATER AGENCY

3 BY MR. NOME LLINI

4 MR. NOME LLINI: Dante John Nomellini for  
5 central Delta parties.

6 First, Mr. Hanson, in your testimony, which if I  
7 have it right, is a one-pager?

8 DR. HANSON: Correct.

9 MR. NOME LLINI: You state:

10 It is my opinion that such water may,  
11 therefore, preserve and enhance the  
12 fishery resources of the Merced River,  
13 Tuolumne River and San Joaquin River.  
14 Since it is my opinion such supplement  
15 water may preserve and enhance fisheries  
16 resources, it is also my opinion that such  
17 supplement water will not result in  
18 unreasonable adverse effects on chinook  
19 salmon and other fishery resources or  
20 habitat within the tributaries or  
21 downstream in the Delta. (Reading)

22 MR. O'LAUGHLIN: You left out the word  
23 "significant."

24 MR. NOME LLINI: Will not result in  
25 significant unreasonable adverse effects

1           on chinook salmon and other fishery  
2           resources or habitat within the  
3           tributaries downstream within the Delta.

4           (Reading)

5           Do you recall that being your testimony?

6           DR. HANSON: I do.

7           MR. NOMELLINI: Are you basically saying that  
8           more water is better for fish?

9           DR. HANSON: More water under managed  
10          conditions. By that I mean the seasonal timing of  
11          releases and protection of temperature and other issues is  
12          generally better for fish.

13          MR. NOMELLINI: In your conclusion or in your  
14          opinion that it will not result in significant  
15          unreasonable adverse effects on chinook salmon and other  
16          fishery resources or habitat, did you take into  
17          consideration whether or not water be available to meet  
18          fishery requirements in subsequent years, be they dry  
19          years?

20          DR. HANSON: Not explicitly, although that has  
21          certainly been a subject of the planning and integration  
22          between the biological studies as part of VAMP and the  
23          hydrologic studies as part of VAMP. I did not explicitly  
24          look at carryover storage water availability in subsequent  
25          years as part of that.

1 MR. NOME LLINI: In reaching your opinion have  
2 you concluded that the D-1641 requirements will be met in  
3 future years, albeit dry, critical years?

4 MR. O'LAUGHLIN: Objection. Vague and  
5 ambiguous as to D-1641 requirements. The order was, I  
6 believe, 182 pages, so which one is he talking about.

7 CHAIRMAN BAGGETT: Sustained.

8 Could you clarify?

9 MR. NOME LLINI: Are you familiar with the  
10 fishery protective requirements in D-1641?

11 MR. O'LAUGHLIN: Objection. Vague and  
12 ambiguous as to fishery protection.

13 CHAIRMAN BAGGETT: Overruled.

14 DR. HANSON: In general, yes.

15 MR. NOME LLINI: With regard to those  
16 requirements are you assuming as a basis for your opinion  
17 that water will be made available on the San Joaquin River  
18 insufficient quantities in the future to meet those  
19 requirements?

20 MR. O'LAUGHLIN: Objection. Vague and  
21 ambiguous as to those requirements. I mean, table three,  
22 which are fish flow requirements, have a numerous set of  
23 fishery flow requirements. Which ones are we talking  
24 about? There are fall flows. There's --

25 MR. NOME LLINI: If the question is directed to

1 me, Mr. Chairman, I'm talking about all the fishery  
2 requirements in D-1641 as they pertain to the San Joaquin  
3 River.

4 MR. O'LAUGHLIN: I will object because it is  
5 outside the scope of the hearing. This is for 47,000  
6 acre-feet of supplement water during the spring pulse flow  
7 period. The spring pulse flow period is in Table No. 3.  
8 I don't deny that, but so is X2 flows and everything else.

9 CHAIRMAN BAGGETT: If the question is are you  
10 generally familiar with, I think the witness can answer.

11 MR. NOMESELLINI: I am asking the basis of his  
12 opinion, Mr. Chairman, which think I am entitled to do.

13 MR. O'LAUGHLIN: The question, Mr. Chairman,  
14 was are those requirements going to be met in all years in  
15 all types on the San Joaquin River. So that's far outside  
16 the scope of his testimony which is limited to the 47,000  
17 acre-feet during the spring pulse flow period. It is not  
18 talking about X2 flows coming from New Melones which are  
19 required under D-1641.

20 CHAIRMAN BAGGETT: Mr. Nomellini, I would --  
21 rephrase your question. Make it more specific.

22 MR. NOMESELLINI: Mr. Hanson, in formulating your  
23 opinion that such supplement water will not result in  
24 significant unreasonable adverse effects on chinook salmon  
25 and fishery resources or habitat within the tributaries or

1 downstream within the Delta, what assumptions have you  
2 made with regard to the ability of the operators of the  
3 various symptoms to meet the fishery requirements in  
4 D-1641?

5 DR. HANSON: In looking at the available  
6 information we looked at a couple different sources. We  
7 looked at some of the results of the hydrologic modeling  
8 that evaluated how operations would affect the upstream  
9 storage and flows within the river. We looked at the  
10 coordinated operations that occurred between the  
11 tributaries and the San Joaquin River each year as part of  
12 the development of the VAMP hydrology, in terms of  
13 coordinating the downstream need at Vernalis with the  
14 upstream tributary requirements. I am generally familiar  
15 with the various additional requirements that are imposed  
16 on operations within the tributaries such as the FERC  
17 agreement and some of the other stipulations, as well as  
18 generally familiar with the biological opinions that have  
19 an affect on fisheries flows and operations both within  
20 the tributaries as well as downstream within the Delta.  
21 We took that body of information collectively in forming  
22 the basis for that conclusion.

23 MR. NOMELLINI: What assumption did you make,  
24 if any, with regard to compliance with D-1641 fishery  
25 requirements?

1 DR. HANSON: I don't think that we looked  
2 specifically at individual compliance with the D-1641  
3 requirements. We generally assumed that through the  
4 operations those kinds of conditions would be met.

5 MR. NOMELLINI: Then you would agree that you  
6 assumed that those requirements would be met? Is that  
7 your testimony today?

8 DR. HANSON: In general, yes.

9 MR. NOMELLINI: Now is it your understanding  
10 that the water, the 47,000 acre-feet of water that is part  
11 of the proceedings today, would be used for a double-step  
12 requirement in the VAMP?

13 DR. HANSON: That is correct.

14 MR. NOMELLINI: Is it your conclusion that the  
15 double-step would benefit fisheries?

16 DR. HANSON: The double-step was built into  
17 VAMP for two purposes. One was to benefit fisheries  
18 directly. Those fisheries that are -- those fish that are  
19 released from the Merced hatchery as well as the fish  
20 produced on the various tributaries. And in addition, it  
21 provided us an opportunity to generate additional valuable  
22 data point in terms of the framework of the flows and  
23 export conditions that we have as part of the VAMP  
24 experiment. So it served both benefits.

25 MR. NOMELLINI: Let me give you a hypothetical.

1 If you had your choice of using 47,000 acre-feet from the  
2 Tuolumne or the Merced to meet the double-step requirement  
3 or to provide minimum flows in the San Joaquin River at  
4 Vernalis, which would you choose?

5 MR. O'LAUGHLIN: I will just object to one  
6 small portion. That is minimum flows in the San Joaquin  
7 River. I don't know what that means.

8 MR. NOMELLINI: Minimum flows in the San  
9 Joaquin River that would be above 2,000 but not greater  
10 than 3,000 cubic feet per second.

11 DR. HANSON: So my choices would be to make a  
12 double-step or in your hypothetical example to meet a 2-  
13 or 3,000 cfs minimum flow at Vernalis?

14 MR. NOMELLINI: Correct. For fishery purpose.

15 DR. HANSON: I think in order to make that  
16 determination, in general, what I would look at is what  
17 the hydrologic conditions have been within the basin not  
18 only during that year but in the previous years, the  
19 numbers of fish that are being produced within the  
20 tributaries, the level of protection that would be  
21 required for those fishing during their outmigration.  
22 Generally, I think -- it is difficult to say where you  
23 would get the best biological benefits, but in general  
24 minimum protections in dry years are an important feature  
25 on the San Joaquin River system, and that would be

1 probably where I would first focus my attention.

2 MR. NOMELLINI: It is true, is it not, that the  
3 double-step occurs in a year when hydrologically it is  
4 fairly good water flows to begin with?

5 DR. HANSON: Generally, the double-step  
6 condition occurs when there have been good flows in the  
7 past. There has been good storage and good opportunities  
8 for doing that double-step.

9 MR. NOMELLINI: You would agree that it is  
10 unlikely in that case that there would be a critical need  
11 for water for fish; is that correct?

12 DR. HANSON: It would be unlikely, but I  
13 wouldn't completely rule it out.

14 MR. NOMELLINI: With regard to the minimum flow  
15 requirements you would agree that it is more likely under  
16 those kind of conditions when we are faced with minimum  
17 flow requirements in the San Joaquin that the condition of  
18 fishery would be more critical?

19 DR. HANSON: Generally, the hydrologic  
20 conditions within the tributaries during the spawning  
21 period, during egg incubation, during juvenile rearing,  
22 would have been more critical.

23 MR. NOMELLINI: Thank you very much.

24 Mr. Steiner. Tables 5 and 6 of your testimony, I  
25 believe they are Pages 31 and 32, I have a couple

1 questions related to those. Maybe you can put them up on  
2 the screen.

3 MR. STEINER: Which one would you like?

4 MR. NOMELLINI: Why don't we go with Table 5.  
5 I acknowledge that I have no ability to get that up on the  
6 screen for you, Mr. Chairman.

7 CHAIRMAN BAGGETT: I have it here.

8 MR. NOMELLINI: Taking Table 5 -- and thank you  
9 very much for putting it on the screen. Primarily for the  
10 audience.

11 In your table you have shown for various years the  
12 impact on stream flow resulting from the additional 47,000  
13 acre-feet coming from either New Don Pedro Reservoir or  
14 New Exchequer; is that correct?

15 MR. STEINER: Except it is not always 47,000  
16 acre-feet. It's up to 47,000.

17 MR. NOMELLINI: Up to 47,000 acre-feet. If we  
18 look under the column that says stream impact, starting at  
19 the top, which would be New Don Pedro, April 1944, 6,000,  
20 acre-feet out of the potential 47,000 would be applied.

21 Is that what that shows?

22 MR. STEINER: That's correct.

23 MR. NOMELLINI: It would increase flows in  
24 April of 1944; is that correct?

25 MR. STEINER: That's correct.

1                   MR. NOMELLINI: It would reduce flows in  
2 February of 1945?

3                   MR. STEINER: That is a correct reading.

4                   MR. NOMELLINI: Would you agree that when there  
5 are reduced flows on the river system that there is  
6 potentially an impact on the water quality of the San  
7 Joaquin River at Vernalis?

8                   MR. STEINER: Doing the math, there could be a  
9 change in water quality at Vernalis.

10                  MR. NOMELLINI: Did you make any analysis as to  
11 the impact of the reduced flows on Tables 5 and 6 on water  
12 quality at Vernalis?

13                  MR. STEINER: It's in the results of my  
14 analysis.

15                  MR. NOMELLINI: What does it show with regard  
16 to water quality impacts below or better than the water  
17 quality objectives at Vernalis?

18                  MR. STEINER: Doing the math, the water quality  
19 if you removed water from the east side, it would lead to  
20 a higher concentration at Vernalis, but within standards.

21                  MR. NOMELLINI: So that although the standards  
22 were being met, except where you've shown there was a  
23 problem, there would be greater salinity concentrations at  
24 Vernalis resulting from reduced flows in the given months  
25 shown on your table?

1 MR. STEINER: Mathematically that could occur.  
2 It could be the difference from going to 150 TDS to 260  
3 TDS.

4 MR. NOMELLINI: Do you have any reason to  
5 believe, you say mathematically, that that wouldn't be the  
6 logical result of reducing flow from the tributaries?

7 MR. STEINER: That would be the result.

8 MR. NOMELLINI: That would be logical that you  
9 would expect that, correct?

10 MR. STEINER: Correct.

11 MR. NOMELLINI: With regard to the decrease in  
12 flows in February, for example, of 1945, was there any  
13 analysis that you performed as to how such a reduction in  
14 flow would affect the meeting of flow requirements, other  
15 flow requirements, in the San Joaquin River other than the  
16 Vernalis fish flow requirement?

17 MR. STEINER: It would have resulted out of an  
18 analysis. I would have known whether it affected meeting  
19 the Vernalis flow requirement.

20 MR. NOMELLINI: You are aware, are you not,  
21 that there is some problem meeting the standards in, I  
22 think it was, February the current year? Are you familiar  
23 with that?

24 MR. STEINER: Yes, I'm aware of that.

25 MR. NOMELLINI: Correspondence?

1           Is it correct a decrease in flow that would result  
2           from the application of the 47,000 acre-feet under your  
3           tables could aggravate that problem for the Bureau?

4           MR. STEINER:  If there was not a meeting of the  
5           standard, it would have aggravated the situation.

6           MR. NOMELLINI:  Last question or couple of  
7           questions.  Your analysis has taken the hydrology of the  
8           past and applied it in the sequence that it had occurred  
9           in the past; is that correct?

10          MR. STEINER:  That's correct, but levelized in  
11          terms of existing facilities, existing or current  
12          institutional requirements.

13          MR. NOMELLINI:  Do you have any concern that  
14          the modeling does not accurately -- excuse me, let me  
15          withdraw that.

16          Do you have any concern that modeling has not been  
17          done with regard to testing the situation with regard to  
18          water in storage versus a reoccurrence of a series of dry  
19          years out of the historical sequence?

20          MR. STEINER:  I don't understand the question.

21          MR. NOMELLINI:  Let me try it differently.  
22          Have you tested your analysis of the impacts of the  
23          particular water transfer being considered here by  
24          applying a series of dry years intermittently throughout  
25          the historical process in order to test the ability of the

1 system to react to a series of dry years that did occur in  
2 the same sequence as historical?

3 MR. STEINER: I have not tried to fabricate a  
4 different sequence other than what nature has dealt us in  
5 the past.

6 MR. NOMELLINI: In your opinion is adequate  
7 water in the San Joaquin system available to meet the  
8 D-1641 water quality standards?

9 MR. O'LAUGHLIN: Objection. Adequate is vague  
10 and ambiguous. San Joaquin River system is.

11 CHAIRMAN BAGGETT: Sustained.

12 Could you please restate?

13 MR. NOMELLINI: Do you understand that there is  
14 a problem that has been expressed by the Bureau with  
15 regard to their ability to meet the D-1641 water quality  
16 standards?

17 MR. O'LAUGHLIN: Objection. Calls for hearsay.

18 CHAIRMAN BAGGETT: Overruled.

19 Answer to the best of your ability.

20 MR. O'LAUGHLIN: Then I am going to object that  
21 it calls for a legal conclusion as well as to what  
22 obligation the Bureau does or doesn't have vis-a-vis  
23 D-1641.

24 CHAIRMAN BAGGETT: Restate.

25 MR. NOMELLINI: I asked for his understanding.

1 Obviously, he's not a lawyer. Even if he was a lawyer,  
2 his legal conclusions would be subject to a lot of  
3 questions anyway. It goes to the weight of what his  
4 understanding is of the situation. I didn't ask for a  
5 legal opinion.

6 CHAIRMAN BAGGETT: Overruled.

7 Answer.

8 MR. STEINER: As a matter of conclusion,  
9 observing and running these studies regarding the Bureau  
10 of Reclamation's operation on the Stanislaus, given that  
11 the IOP itself in terms of allocations, everyone did not  
12 get what they wanted and that the system does not meet  
13 everyone's objectives all the time, then I would conclude  
14 that the system as currently configured and operated is  
15 not adequate to meet everybody's and everything's needs on  
16 the San Joaquin River.

17 MR. NOMELLINI: All right.

18 CHAIRMAN BAGGETT: Continue.

19 MR. NOMELLINI: With regard to your studies,  
20 you have assumed that New Melones would be operated to the  
21 Interim Operations Plan; is that correct?

22 MR. STEINER: That's correct.

23 MR. NOMELLINI: That plan is not being  
24 implemented today, is it?

25 MR. STEINER: It is being implemented with

1 exception.

2 MR. NOMELLINI: Would you agree it is being  
3 implemented as you modeled it?

4 MR. STEINER: Correct.

5 MR. NOMELLINI: And would you agree that the  
6 Interim Operations Plan as you modeled it would not  
7 provide for meeting the D-1641 standards in the San  
8 Joaquin River?

9 MR. O'LAUGHLIN: Objection. Vague and  
10 ambiguous as D-1641 standards.

11 CHAIRMAN BAGGETT: Please clarify.

12 MR. NOMELLINI: You understand what D-1641  
13 standards are?

14 MR. STEINER: Yes, I do.

15 MR. NOMELLINI: You understood my question? I  
16 presume there is no ambiguity with regard to that, is  
17 there?

18 MR. STEINER: No, there is not.

19 MR. NOMELLINI: May I ask the question again?

20 CHAIRMAN BAGGETT: Yes.

21 MR. NOMELLINI: With regard to your modeling  
22 and your assumption of the Interim Operations Plan for New  
23 Melones, would you agree that the Interim Operating Plan  
24 for New Melones does not provide for meeting the D-1641  
25 standard?

1 MR. STEINER: It does not meet it in all  
2 circumstances.

3 MR. NOME LLINI: Do you have any opinion as to  
4 what the impact of the 47,000 acre-feet transfer would be  
5 if we had an operating plan on the San Joaquin River that  
6 would meet the D-1641 standard?

7 MR. STEINER: I do not know what that plan  
8 looks like.

9 MR. NOME LLINI: In fact, you know that no such  
10 plan exists; is that correct?

11 MR. STEINER: Not to my knowledge.

12 MR. NOME LLINI: Thank you.

13 No further questions.

14 CHAIRMAN BAGGETT: Stockton East Water  
15 District.

16 MR. O'LAUGHLIN: Before they start I would like  
17 to move into evidence, please, my exhibits.

18 CHAIRMAN BAGGETT: We have one last party.

19 ---oOo---

20 CROSS-EXAMINATION OF SAN JOAQUIN RIVE GROUP AUTHORITY

21 BY STOCKTON EAST WATER DISTRICT

22 BY MS. HARRIGFELD

23 MS. HARRIGFELD: Karna Harrigfeld on behalf of  
24 Stockton East Water District.

25 Good morning, Mr. Steiner. My questions are focused

1 at you this morning. I'll go quickly through some of the  
2 ones that have already been touched upon.

3 CHAIRMAN BAGGETT: Appreciate that.

4 MS. HARRIGFELD: In your written testimony you  
5 indicate that the modeling for the petition is assumed on  
6 the Stanislaus River being operated in accordance with the  
7 IOP, correct?

8 MR. STEINER: That's correct.

9 MS. HARRIGFELD: Could you turn to Page 10 of  
10 your testimony. And you briefly touched about this, but I  
11 would like for you to walk through real briefly how an  
12 allocation of water supply occurs under the IOP. For  
13 instance, if the New Melones storage plus inflow was 2.4  
14 million acre-feet, can you run through how the allocations  
15 would work along that line?

16 MR. STEINER: If the example is 2.4 million  
17 index, you would go to the table on Page 10 and working  
18 with that line that says New Melones storage plus inflow  
19 ranges between 2,000,000 and 2,500,000, and all of the  
20 numbers to the right are essentially a linear  
21 interpellation of the index between the low point.

22 For instance, on the 2,000,000 to 2,500,000 line the  
23 fishery allocation ranges from 125,000 acre-feet to  
24 345,000 acre-feet. 2,400,000 occurs somewhere between  
25 those two index points. You will do a linear

1     interpellation between the 125- and 345,000 acre-foot  
2     number and find that year's allocation. The same holds  
3     true for other allocations for water quality that the  
4     Delta release which would be established as zero. That is  
5     the X2 requirement at Vernalis. And the CVP contractors  
6     get between zero and 59,000, again on a linear  
7     interpellation.

8                   MS. HARRIGFELD: You previously testified in  
9     response to a question from either John or Dante that --  
10    it was Mr. Herrick -- that the IOP acts sluggish to an  
11    increase in carryover storage?

12                   MR. STEINER: Or inflow. It is not essentially  
13    a one-to-one relationship. If you get one acre-foot more  
14    into the system, it doesn't necessarily dole it back out a  
15    whole one acre-foot.

16                   MS. HARRIGFELD: For instance, if the carryover  
17    storage was 2.499 as opposed to 2.5, that makes a  
18    significant difference in the CVP contractor allocations,  
19    does it not?

20                   MR. STEINER: Because it has that stair step  
21    effect, yes.

22                   MS. HARRIGFELD: If there was, in fact, 2.5  
23    million acre-feet in storage, the CVP contractors would be  
24    allocated 90,000 acre-feet as opposed to 59,000 acre-feet,  
25    a 31,000 acre-foot difference?

1                   MR. STEINER:  If the index were to cross that  
2 point.

3                   MS. HARRIGFELD:  If the Bureau doesn't operate  
4 the Stanislaus River in accordance with the IOP, would  
5 your modeling results change?

6                   MR. STEINER:  As far as the obligation the San  
7 Joaquin River Group to provide flows for VAMP, it will  
8 not.  It was written into the agreement that way; that is  
9 our basis contractually.

10                  MS. HARRIGFELD:  With respect to the associated  
11 impacts to Stanislaus River operations and obligations,  
12 the modeling could change if the IOP is not adhered to?

13                  MR. STEINER:  It will probably change the  
14 result at Vernalis.  It may not necessarily affect the  
15 tributary operations.

16                  MS. HARRIGFELD:  It would impact the associated  
17 results and impacts to the New Melones?

18                  MR. STEINER:  That is correct.

19                  MS. HARRIGFELD:  If the Bureau operates outside  
20 of the IOP and releases water for one or more purpose,  
21 whether it be Bay-Delta or for water quality, would that  
22 result potentially in a reduction to other uses authorized  
23 under the IOP?

24                  MR. STEINER:  If you were to change the  
25 allocations, other than what they were in IOP, than that

1 answer is, yes, it could change. Again, it is a  
2 hypothetical. Are you going to change one or all of them?  
3 One could compensate for another.

4 MS. HARRIGFELD: So releases in excess of what  
5 it is allocated can impact future allocations?

6 MR. STEINER: That's correct, under the current  
7 IOP.

8 MS. HARRIGFELD: To the best of your knowledge,  
9 is the Bureau operating in accordance with the IOP?

10 MR. STEINER: This year they've stated that  
11 they may operate outside of the IOP.

12 MS. HARRIGFELD: Meaning what?

13 MR. STEINER: They've indicated that they may  
14 release water for water quality purpose in excess of the  
15 allocation under the IOP.

16 MS. HARRIGFELD: Do you know how much water  
17 they are anticipating?

18 MR. STEINER: I don't recall the number.

19 MS. HARRIGFELD: In Stockton East Water  
20 District Exhibit No. 7, correspondence from Chet Bowling  
21 in response to our Touhy request includes a report which  
22 shows the amount of water that they are proposing to  
23 release for water quality.

24 Do you have a copy?

25 MR. STEINER: I do not have a copy in front of

1 me.

2 MR. O'LAUGHLIN: That's the April 22, 2003  
3 letter, Karna?

4 MS. HARRIGFELD: That is correct.

5 On the last page of that report that was submitted  
6 by the Bureau: Stanislaus River forecasted operations for  
7 2003, if you look under the 90 percent exceedance, it  
8 shows that the water quality allocation would be 76 and  
9 the water quality estimated needs is 113.

10 MR. STEINER: I follow you.

11 MS. HARRIGFELD: So with respect to this year,  
12 I won't pretend to do the math off the top of my head, the  
13 Bureau of Reclamation is operating outside of the IOP by  
14 releasing that additional amount of water for water  
15 quality?

16 MR. STEINER: That would be my conclusion under  
17 this document, if that occurs.

18 MS. HARRIGFELD: To the best of your knowledge  
19 did the Bureau of Reclamation operate in accordance with  
20 the IOP last year?

21 MR. STEINER: I seem to recall that they had a  
22 February problem; it may have been the previous year. I  
23 cannot recall. As far as I know, they operated according  
24 to the IOP.

25 MS. HARRIGFELD: With the potential for some

1 sort of variation for additional releases --

2 MR. STEINER: I get my years confused. I just  
3 can't recall.

4 MS. HARRIGFELD: Moving on to Page 17 of your  
5 testimony, you state at the bottom:

6 The amount of storage reduction incurred  
7 in any year equals the amount of  
8 supplement water provided. In most  
9 instances the additional water released is  
10 recovered in storage in the following year  
11 by a reduction in releases that would  
12 otherwise be in excess of the minimum  
13 Tuolumne flow requirement. In a couple  
14 instances recovery does not occur for  
15 several years. (Reading)

16 MR. O'LAUGHLIN: What page are you on, again?  
17 Seventeen is two graphs.

18 MS. HARRIGFELD: I'm sorry, 18. It is under  
19 Tuolumne River Providing Supplemental Flow, under that  
20 header. It begins the fourth line down in that paragraph,  
21 the amount of storage reduction in any given year, that  
22 language, you are familiar with that?

23 MR. STEINER: Yes, I wrote it.

24 MS. HARRIGFELD: How is a reduction in release  
25 that would otherwise be in excess of minimum Tuolumne

1 River flows be accomplished? What are you saying about  
2 that?

3 MR. STEINER: That on the tributaries, they  
4 have a minimum requirement to be released. On the  
5 Tuolumne it is the FERC flows. And in particular years  
6 you may be having a flood control release which exceeds  
7 that minimum requirement. And that is an example of a  
8 flow in excess of minimum requirements.

9 MS. HARRIGFELD: Is it -- when you wrote this  
10 were you implying that the reduction in release would only  
11 occur when you are talking about flood control release,  
12 reduction of flow releases occurring in flood control  
13 operations?

14 MR. STEINER: That is typically the reaction on  
15 these.

16 MS. HARRIGFELD: In other instances you have a  
17 reduction in release of discretionary flows?

18 MR. STEINER: I don't believe in the extra  
19 47,000 acre-feet scenario there were any reductions in  
20 summer flows.

21 MS. HARRIGFELD: What time period does this  
22 reduction in release occur in?

23 MR. STEINER: It would be anywhere coming  
24 October through June, the filling cycle, the winter  
25 filling cycle.

1 MS. HARRIGFELD: October through June is your  
2 filling cycle?

3 MR. STEINER: Or flood control.

4 MS. HARRIGFELD: During the time in which we  
5 have these reductions in releases, there is a reduction in  
6 flow in both the Tuolumne and the San Joaquin River?

7 MR. STEINER: It depends on which scenario you  
8 chose of where the 47,000 was being provided. Could have  
9 happened on the Merced or could have happened on the  
10 Tuolumne.

11 MS. HARRIGFELD: Whatever scenario.

12 If recovery usually occurs the following year, does  
13 that mean that the water released for VAMP is the water  
14 that is first recovered?

15 MR. STEINER: Not necessarily. It is a matter  
16 of your operation. It is already driven by demands and  
17 all the other requirements. It won't necessarily be  
18 within the context of these studies. Demands are fixed.  
19 That the water recovered in the 47,000 acre-foot scenario  
20 is obviously for incremental VAMP water. Whether it's  
21 first or last in the normal operation of the reservoir,  
22 the model doesn't care.

23 MS. HARRIGFELD: If recovery does not occur for  
24 several years, does that mean that there will be sustained  
25 reduction in releases?

1 MR. STEINER: No. The reduction or releases  
2 only occur when you finally get to a month when there is a  
3 release in excess of minimum requirements. Otherwise, the  
4 same flow will be met.

5 MS. HARRIGFELD: How is water quality affected  
6 by these reductions in releases?

7 MR. STEINER: In overall, as I was just asked a  
8 little while ago, if you are going to remove in a  
9 particular month the fresher side of water, which is the  
10 east side supplies, it will have less fresher water at  
11 Vernalis, so the concentration would be high given  
12 everything else stays static.

13 MS. HARRIGFELD: The associated reduction in  
14 flow you previously mentioned didn't trigger any  
15 violations of flow standard at Vernalis through your  
16 modeling in this study?

17 MR. STEINER: In the result tables there was  
18 one instance to where water quality was not met in the  
19 47,000 acre-foot case incrementally because of up to  
20 47,000 acre-foot operation.

21 MS. HARRIGFELD: So all of those modeling  
22 results assumed that the Vernalis flow objective is met?

23 MR. STEINER: The flow objective which is the  
24 February --

25 MS. HARRIGFELD: February through June

1 period.

2 MR. STEINER: They are being met as much as  
3 they can under the IOP and the original 110,000 acre-foot  
4 scenario. The extra 47,000 acre-foot analysis did not  
5 make any additional instances of not meeting that  
6 standard.

7 MS. HARRIGFELD: But that was assuming that the  
8 Stanislaus River was operating in accordance with the IOP,  
9 with no deviations?

10 MR. STEINER: That's correct. And the IOP does  
11 not always meet the standard.

12 MS. HARRIGFELD: In your modeling results that  
13 are in Table 5 and Table 6, when we talk about Vernalis  
14 impact or Delta impact, if Delta isn't meeting that  
15 standard, that then is not reflected in --

16 MR. STEINER: The flow standards, the X2  
17 standard at Vernalis, no, it is not indicated in here  
18 because the operation with the extra 47,000 did not  
19 increase or decrease the number of times the Bureau either  
20 met or did not meet that standard.

21 MS. HARRIGFELD: Moving on to your testimony in  
22 the paragraph below that begins with, for the April  
23 supplement flow setting. You indicate that:

24 The change in the flow regime within  
25 Tuolumne River system does not affect

1 operations of the Merced or the  
2 Stanislaus. Changes within the model  
3 Tuolumne River flow regime occur during  
4 periods when the Stanislaus River  
5 operations are not controlled by Vernalis  
6 flow or quality objective. (Reading)

7 So when did the changes in flow regime occur on the  
8 Tuolumne?

9 MR. STEINER: Go to Table 5 as is on the  
10 screen. If you look at the upper half of the table, that  
11 is the Tuolumne scenario providing the up to 47,000. The  
12 third column over indicates the changes on the Tuolumne  
13 River. You also see there will be an increase in April  
14 which is what purpose of the extra water was, and then the  
15 decreases are showing how it trickles either the immediate  
16 year or years following.

17 MS. HARRIGFELD: So the decrease flow occurs  
18 during February of 1945 in the first instance.

19 MR. STEINER: For the 1944 operation.

20 MS. HARRIGFELD: In February there are two  
21 standards that are actually controlling. There is the  
22 water quality standard for agricultural beneficial uses  
23 and there is also the X2 flow standards. So I don't  
24 understand your testimony when you say that the changes in  
25 the flow regime occur during periods when the Stanislaus

1 River operations are not controlled by flow or water  
2 quality. The standard is existing during that period?

3 MR. STEINER: That's right. But since I have  
4 no Delta impact listed in the next two columns over, I  
5 would have to verify with looking at the analysis. But  
6 since I have no change in Delta for the water quality,  
7 there must not have been a controlling Delta release for  
8 water quality in that month, otherwise I would have had a  
9 change in the release from New Melones, unless the bucket  
10 of water ran out the previous year.

11 And for the X2 standard I can't tell you without  
12 looking at the analysis of whether the system was meeting  
13 that standard all by itself. Or was this a year of less  
14 than 2,400,000 when there was no allocation to X2  
15 standards in New Melones.

16 MS. HARRIGFELD: You can't tell without  
17 reviewing your analysis for any specific year?

18 MR. STEINER: That's correct.

19 MS. HARRIGFELD: If it is a year, let's  
20 hypothetically say February '45 is a year when, you know,  
21 X2 is at 20 40, or whatever the number, if Delta had  
22 allocated zero, you show no Delta impact because there is  
23 an allocation for Bay-Delta of zero?

24 MR. STEINER: That could have been the result.

25 MS. HARRIGFELD: So the fact that the Bureau of

1 Reclamation has been told by the State Board that they  
2 have to meet the standard, there could be an impact?

3 MR. STEINER: There would have been an  
4 aggravation of having additional deficit, not meeting the  
5 standard.

6 MS. HARRIGFELD: Would your opinion on impacts  
7 to New Melones and Stanislaus River change if the Bureau  
8 doesn't operate in accordance with the IOP?

9 MR. STEINER: That is a big question. I don't  
10 know what is operating in which other manner. I can't  
11 describe what my opinion on what this would be without  
12 specifics of what that alternative plan is.

13 MS. HARRIGFELD: Presuming as they have done in  
14 both 2002 and 2003, they are operating outside of the  
15 allocations, meaning there was no water allocated for  
16 Bay-Delta purposes last year and they released anywhere  
17 from 20- to 30-, to 40,000 acre-feet for Bay-Delta  
18 purposes, even though the allocation was zero and this  
19 year their allocation is 70-something, and they are  
20 actually releasing 113-, so based on the -- in your  
21 opinion would Stanislaus River impacts be impacted by the  
22 change in the flow regime, that is increased allocations  
23 for one or more purposes?

24 MR. STEINER: I lost track of the question,  
25 Karna. I'm sorry.

1 MS. HARRIGFELD: If the Bureau doesn't operate  
2 in accordance with the IOP and makes more water available,  
3 for various purposes, that impacts the modeling results  
4 for Stanislaus River?

5 MR. STEINER: That would be correct.

6 MS. HARRIGFELD: And turning to Page 19 of your  
7 testimony, you indicate in that first full paragraph on  
8 Page 19 that:

9 For the May supplemental water setting  
10 modeling indicates that the Stanislaus  
11 River operations may be affected by the  
12 recovery of New Don Pedro Reservoir  
13 storage in one instance; in this instance  
14 the reduction in releases from the  
15 Tuolumne during April of '85 results in an  
16 increase release in New Melones for water  
17 quality objective. (Reading)

18 So this increase release in April for New Melones is  
19 required of the recovery occurring on the Tuolumne?

20 MR. STEINER: That is what the results showed.

21 MS. HARRIGFELD: Once again, you don't know if  
22 these reduction in flows will cause an exceedance or  
23 inability to meet the flow standards?

24 MR. STEINER: I would have to look harder at  
25 the analysis, at the results.

1 MS. HARRIGFELD: In your written testimony in  
2 the last sentence in that paragraph you say:

3 Due to the limited amount of water being  
4 available for water quality releases in  
5 the modeling year 1985 under the New  
6 Melones Interim Op Plan, this April water  
7 quality release came at the expense of  
8 being able to fully meet water quality  
9 objectives in the following July.

10 (Reading)

11 So the water quality objectives at Vernalis were not  
12 met in July under this scenario because the Bureau had no  
13 water allocated for or the Bureau had used up their water  
14 quality allocation under the IOP?

15 MR. STEINER: That's correct.

16 MS. HARRIGFELD: If the Bureau elected to meet  
17 the water quality objectives at Vernalis in July with  
18 releases from New Melones, which in your data suggested  
19 the 13,000 acre-foot additional release, this would have  
20 the potential to reduce allocations the following year for  
21 the various IOP purposes?

22 MR. STEINER: If they strayed from the IOP  
23 limit, correct.

24 MS. HARRIGFELD: I have some similar questions  
25 for the Merced River providing supplemental water. I

1 won't go into them because you have pretty much answered  
2 those with respect to the reductions in releases, so let  
3 me go to a couple other general questions.

4 Moving to Table 5, which appears to be favor the  
5 right table of everyone. Just to clarify once again and  
6 get it clearly on the record, your model only assumes that  
7 releases to meet the flow standard are allocated under  
8 IOP, meaning that if New Delta has a zero allocation, then  
9 zero water is made to be the flow standard?

10 MR. STEINER: Correct.

11 MS. HARRIGFELD: I would like to turn your  
12 attention to Figures 2A -- Pages 35 to 42. In looking at  
13 2A, 2B, 2C and 2D, the New Don Pedro Reservoir storage  
14 impacts, what is the total acre-foot impact associated  
15 with the operations today? You show various graphs, but  
16 you don't tell us what the impact is.

17 MR. STEINER: Today? This is a --

18 MS. HARRIGFELD: From the operations in '99,  
19 2000, 2001, 2002.

20 MR. STEINER: They would be associated in terms  
21 of the Tuolumne River with their contribution towards the  
22 VAMP experiment. Each year is cumulative. There could be  
23 no larger than -- each year's individual could be no  
24 larger than their contribution towards the VAMP  
25 experiment. Are you asking --

1 MS. HARRIGFELD: What is the number? Do you  
2 have a number, what the cumulative storage impact, is  
3 there one?

4 MR. STEINER: There is one running right now  
5 from previous years, and I believe the cumulative, let's  
6 say, existing deficit in New Don Pedro Reservoir is along  
7 the lines of 14,000 acre-feet. It is in the report, the  
8 2002 annual report of the VAMP experiment.

9 MS. HARRIGFELD: In looking at Figure 3A  
10 through 3B what is the storage impact for New Exchequer  
11 cumulative? If you need to look, it's the 2002 annual  
12 report.

13 MR. STEINER: I don't want to venture. I don't  
14 want to misstate the magnitude or it is in the 2002  
15 report. You can try to get it graphically off this page.

16 MS. HARRIGFELD: I would like to point you to  
17 Stockton East Water District Exhibit No. 3, which the  
18 final page of that exhibit is a handout that was given at  
19 one of the VAMP SJRGA meetings, which shows the cumulative  
20 impact of 107,730 acre-feet.

21 Does that sound correct?

22 MR. STEINER: It sounds -- just from my  
23 graphic, it seems to prove that point, yes. I wouldn't  
24 want to get it down to the last acre-foot, but it appears  
25 on my graph as showing about a hundred thousand acre-feet

1 impact.

2 MS. HARRIGFELD: Does the deficit in particular  
3 on the Merced and New Exchequer, does that appear anywhere  
4 in any of your modeling results, that type of significant  
5 hole in the reservoir?

6 MR. STEINER: I would have to look. But, yes,  
7 it could very well appear in the modeling.

8 MS. HARRIGFELD: Clearly, it will take several  
9 years, more than one year --

10 MR. STEINER: Not necessarily.

11 MS. HARRIGFELD: -- to recover?

12 MR. STEINER: Not necessarily. One good bumper  
13 year would take care of it.

14 MS. HARRIGFELD: How would the refilling to  
15 fill those various holes in the future years impact water  
16 quality and flow and operations of New Melones, in light  
17 of the fact that there is a 107,000 foot deficit?

18 MR. STEINER: It could be a range of potential  
19 impacts ranging from zero impact to some amount, and it  
20 would have to be at the time specific. I can't estimate  
21 what it will be. All you could do is review the analysis  
22 and see what it might be on a comparable situation.

23 MS. HARRIGFELD: Will the annual report that  
24 you folks are required to submit to the State Board  
25 document that?

1 MR. O'LAUGHLIN: Just a small correction. You  
2 say you folks.

3 MS. HARRIGFELD: SJRGA.

4 MR. O'LAUGHLIN: The San Joaquin River Group  
5 Authority is not required to submit a report. The report  
6 is required by DWR and the United States Bureau of  
7 Reclamation.

8 CHAIRMAN BAGGETT: Restate the question.

9 MS. HARRIGFELD: The annual reports that are  
10 prepared that are attached to your -- I don't have them  
11 with me, are required by the Bureau?

12 MR. O'LAUGHLIN: They are required under D-1641  
13 of the --

14 CHAIRMAN BAGGETT: Let the witness answer. Ask  
15 the witness a question.

16 MS. HARRIGFELD: Clarification makes the  
17 process shorter. Will any of the modeling or any of the  
18 results, tabulations that are prepared and submitted to  
19 State Board identify the associated impacts for making up  
20 that water in future years?

21 MR. STEINER: I know that the report will at  
22 least illustrate when the water has been regained in the  
23 reservoirs. The extent of impact analysis is not in my  
24 jurisdiction of stating what will be in the report.

25 MS. HARRIGFELD: It certainly could be in the

1 report?

2 MR. STEINER: I expect it could be. I am not  
3 the author of the report.

4 MS. HARRIGFELD: But you are a contributor to  
5 the report?

6 MR. STEINER: That's correct.

7 MS. HARRIGFELD: Just a couple of questions.  
8 The modeling for this petition for providing supplemental  
9 47,000 acre-feet of additional water, in your modeling you  
10 have it coming either totally from Merced or completely  
11 from the Tuolumne, and you have it either coming  
12 completely in April or completely in May.

13 What happens or is there any significant effect if  
14 the modeling -- in your modeling if the origination is  
15 split between the Tuolumne and the Merced?

16 MR. STEINER: I think the conclusions have  
17 bounded extremes that could occur.

18 MS. HARRIGFELD: So splitting it among April  
19 and May which has traditionally been done?

20 MR. STEINER: The results would fall somewhere  
21 between April and May results.

22 MS. HARRIGFELD: You would not anticipate that  
23 there would be any additional impacts to New Melones by  
24 water being made available from the Merced or the Tuolumne  
25 or splitting it up through April or May?

1           MR. STEINER: It would be different than either  
2 that I modeled, but the conclusion would be the same.

3           MS. HARRIGFELD: Essentially these are the  
4 bookends and everything falls in between?

5           MR. STEINER: That is what I tried to capture.

6           MS. HARRIGFELD: How does the Bureau of  
7 Reclamation coordinate operations with the Tuolumne and  
8 Merced tributaries during the VAMP period? And if you  
9 can't answer that maybe --

10          MR. STEINER: Yes, I can.

11          MS. HARRIGFELD: You're laughing.

12          MR. STEINER: Can I object? Outside of my  
13 scope of testimony.

14          CHAIRMAN BAGGETT: Just so state.

15          MR. STEINER: There is a coordination team that  
16 is meeting. In fact, making phone calls every morning or  
17 periodically in the mornings, right now coordinating the  
18 releases. A process that starts about in February.

19          MS. HARRIGFELD: The Bureau of Reclamation then  
20 during the VAMP period is aware of what reservoir storage  
21 is and inflow and outflow and you're coordinating all of  
22 those releases amongst the tributary groups and the Bureau  
23 to manage for that flow at Vernalis?

24          MR. STEINER: The focus may not be on the  
25 detail of the individual tributaries, but at least they

1 know flow and are now coordinating what the resultant  
2 water in the river is.

3 MS. HARRIGFELD: Is this coordination done  
4 outside of the VAMP period?

5 MR. STEINER: I can't speak to whether the  
6 Bureau of Reclamation keeps ongoing discussions with the  
7 tributaries during the off VAMP season.

8 MS. HARRIGFELD: Are you aware of how daily  
9 operations at New Don Pedro and New Exchequer are reported  
10 to other state agencies?

11 MR. STEINER: I know how I acquire the records  
12 off the CDEC system.

13 MS. HARRIGFELD: The reports and daily  
14 operations of New Exchequer, New Don Pedro are reported to  
15 CDEC and are available on the Internet?

16 MR. STEINER: That's correct.

17 MS. HARRIGFELD: That is all I have.

18 CHAIRMAN BAGGETT: Thank you.

19 Redirect?

20 MR. O'LAUGHLIN: No, the San Joaquin River  
21 Group Authority and Modesto Irrigation District and Merced  
22 Irrigation District and the Turlock Irrigation District  
23 have no redirect.

24 I would like to move into evidence now exhibits, San  
25 Joaquin River Group Authority's 1, 1A through 1E, 2, 2A

1 and B, 2A through E, 3 and 3A, 4 and 4A.

2 CHAIRMAN BAGGETT: No objection. They are  
3 moved into evidence, hearing none.

4 MR. O'LAUGHLIN: Thank you.

5 CHAIRMAN BAGGETT: Thank you.

6 Now we are at South Delta. First let's try to get  
7 through the opening and a short lunch. We really think we  
8 are going to get done today? Have to keep moving.

9 Let's take a couple-minute recess and we will have  
10 Mr. Herrick.

11 (Break taken.)

12 CHAIRMAN BAGGETT: Back on the record. South  
13 Delta.

14 MR. HERRICK: Thank you, Mr. Chairman. My name  
15 is John Herrick, representing South Delta Water Agency and  
16 the two other protestants, together with that agency.

17 It is our position that we are moving in the wrong  
18 direction, and this is the latest example of that. And  
19 the reason I say that is the situation on the San Joaquin  
20 River and in the South Delta is actually getting worse,  
21 but new actions which exacerbate those are continually  
22 being proposed and approved. We will get to whether or  
23 not we believe the modeling accurately reflects the  
24 situation. But it is our position that the support for  
25 these actions is now clearly based upon false premises,

1 and that is that the Bureau of Reclamation can and has  
2 unilaterally decided it's not going to operate under the  
3 assumptions for all the modeling, then we simply don't  
4 know what the effects are.

5 The action proposed today is a combination of  
6 things. It shifts the timing of flows down the San  
7 Joaquin. It allows the upstream dam operators to trap  
8 more water than they need and then use it and sell it.  
9 And it allows them to transfer water that does not result  
10 from a decrease in consumptive use. Each of those three  
11 things necessarily has downstream effects.

12 Based on my brief comments of the deficiencies in  
13 the modeling, we don't know what the effects are  
14 specifically, but we know what they are in general. We  
15 know that when you change flows, you affect water quality  
16 and water availability for those downstream.

17 Now we don't have any rules as to when the shifts  
18 can be made, except those that exist in prior orders, such  
19 as D-1641. And it is currently before the Board through  
20 letters, but that the various agencies before you today  
21 did what they were not supposed to do, they recovered the  
22 water they released for VAMP. They recovered that at  
23 times when they weren't supposed to. Now, that will play  
24 out. That is what the ultimate Board decision is. But  
25 that is the exhibit that Ms. Harrigfeld referenced earlier

1       which is that the upstream agencies recovered water when  
2       New Melones was making releases. It is not allowed.

3               So there is no monitoring system. It requires  
4       those of us downstream to monitor the daily operations  
5       upstream in order to police this. Now we do see they are  
6       using flood waters, not their own waters, so that the  
7       water in storage that they will have to release, that will  
8       have to be released because it is not theirs for  
9       consumptive use. It's water for flood control purposes.  
10      They are changing when they use that water and charging  
11      for it.

12             There's been no discussion of consumptive use being  
13      decreased. And that is very important on a system that is  
14      already overcommitted. We know that the New Melones  
15      cannot meet, not only its contractual obligations, but it  
16      is permit obligations. It cannot meet those.

17             And so when you have a system, then, that is already  
18      overcommitted and yet you let somebody make transfers that  
19      are not the result of a decreasing consumptive use, you  
20      are simply reallocating that shortage. Now they've argued  
21      that that shortage reallocation is a minor one, but we are  
22      arguing that it is a combination of all the years of minor  
23      changes. And we see that the modeling has different  
24      assumptions now and, in fact, hides the modeling effects.  
25      If we had modeled the implementation of the San Joaquin

1 River Agreement with the hope of this extra flow instead  
2 of modeling them incrementally, Interim Operations Plan,  
3 San Joaquin River Agreement, now this extra thing, instead  
4 of having this impact of just that incremental change, we  
5 would have seen all of the impacts.

6 Since we don't have that, I think that the  
7 petitioners' evidence will not constitute the adequate  
8 showing that they need to do. What we show is that  
9 existing harm that I have been complaining about. And  
10 that is each year, not just sometime, but in each year the  
11 diverters in the South Delta either do not have sufficient  
12 water, do not have sufficient water height or have poor  
13 quality to their detriment.

14 You will note that absent from the analysis of  
15 Mr. Steiner was any sort of dealings with the three  
16 internal Delta water quality standards. He checked the  
17 Vernalis standards, but not the three internal Delta  
18 standards. Those are obligations on the Bureau and the  
19 state. Those are modeled under the D-1641, do not meet  
20 any, and yet we are going to reallocate flows again.

21 The other issue that comes into being is when you  
22 reallocate more water to the pulse flow in the spring, you  
23 then create the possibility, and, in fact, probability,  
24 that the make-up pumping later in the year will be  
25 increased by that amount. Because, as we know from

1 D-1641, and Alex Hildebrand's testimony touches on this,  
2 D-1641 allows a hundred percent exports of the Sacramento,  
3 too. D-1641 allows the exporters to take 100 percent of  
4 the San Joaquin River when they export because they have  
5 other limitations, biological opinions, VAMP agreement.  
6 They get to make that up later. That is why we have these  
7 gentlemen on here because when you make that pumping up  
8 later the pumping effects later affect other people. And  
9 so when you have additional 47,000 acre-feet, at most,  
10 additional flows in spring, you have an additional 47,000  
11 acre-foot of export pumping some other time of the year.  
12 That's certainly not been analyzed, and it is our  
13 position, based upon the existing ongoing harm, that  
14 without regulation or forced avoidance of that, you will  
15 simply increase the damage to these gentlemen.

16 With that I would like to proceed. And I will take  
17 a chair there one second, please.

18 ----oOo---

19 DIRECT EXAMINATION OF SOUTH DELTA WATER AGENCY

20 BY MR. HERRICK

21 MR. HERRICK: I would like to start with  
22 Mr. Thurl Pankey. He is at the far left there.

23 And, Mr. Pankey, is South Delta 1 a true and correct  
24 copy of your testimony for this hearing?

25 MR. PANKEY: Yes, it is.

1 MR. HERRICK: Mr. Pankey, your testimony  
2 references South Delta, 2, 3 and 4 and 6 and 7, which are  
3 the title documents for the various landowners presented  
4 here. Is that correct?

5 MR. PANKEY: That's correct.

6 MR. HERRICK: Those documents, according to  
7 your testimony, were gathered through your normal sources  
8 as a title officer; is that correct?

9 MR. PANKEY: That's correct.

10 MR. HERRICK: I don't mean to delay or not  
11 delay, I think that is sufficient. Mr. O'Laughlin and I  
12 talked yesterday about getting him in out. I don't know  
13 if MR. O'LAUGHLIN has a few cross-examination questions or  
14 not.

15 CHAIRMAN BAGGETT: Any cross-examination?

16 MR. O'LAUGHLIN: Just a couple.

17 ---oOo---

18 CROSS-EXAMINATION OF SOUTH DELTA WATER AGENCY

19 BY SAN JOAQUIN RIVER GROUP AUTHORITY

20 BY MR. O'LAUGHLIN

21 MR. O'LAUGHLIN: Mr. Pankey, in regards to  
22 South Delta Water Agency Exhibit No. 1, basically what you  
23 did is you did a title search and pulled the documents for  
24 the various landowners that will be presented here today;  
25 is that correct?

1 MR. PANKEY: That's correct.

2 MR. O'LAUGHLIN: You haven't made and are  
3 offering no opinion as to whether or not these lands are  
4 riparian; is that correct?

5 MR. PANKEY: That's correct.

6 MR. O'LAUGHLIN: You did not read or review any  
7 of the documents to render such an opinion; is that  
8 correct?

9 MR. PANKEY: That's correct.

10 MR. O'LAUGHLIN: Do you have any opinion during  
11 your title search as to whether or not any of those lands  
12 had a pre-1914 water right?

13 MR. PANKEY: No, no opinion on that.

14 MR. O'LAUGHLIN: Also in regard to that fact,  
15 you have no opinion as to whether or not these parties  
16 have post-1914 water rights; is that correct?

17 MR. PANKEY: That's correct.

18 MR. O'LAUGHLIN: That would be the same as to  
19 whether or not any of the parties listed, whether they be  
20 the Thorsen Ranch, The Augusta Bixler Farms property, the  
21 Hildebrand Ranch, R.C. Farms, Inc., or Rudy M. Mussi  
22 Investment, LLP, as to whether or not they have a riparian  
23 right; is that correct?

24 MR. PANKEY: That's correct.

25 MR. O'LAUGHLIN: I have no further questions.

1 CHAIRMAN BAGGETT: Mr. Nomellini.

2 MR. NOMELLINI: No questions.

3 CHAIRMAN BAGGETT: Ms. Harrigfeld.

4 Any redirect?

5 MR. HERRICK: No. I would like to ask the  
6 Board's permission if we can excuse Mr. Pankey.

7 CHAIRMAN BAGGETT: There is no further  
8 questions.

9 MR. O'LAUGHLIN: I have no further questions.

10 CHAIRMAN BAGGETT: Thank you.

11 MR. PANKEY: Thank you.

12 CHAIRMAN BAGGETT: You are now excused.

13 ---oOo---

14 CONTINUED DIRECT EXAMINATION OF SOUTH DELTA WATER AGENCY

15 BY MR. HERRICK

16 MR. HERRICK: I will start with Mr. Robinson on  
17 my far left.

18 Mr. Robinson, is South Delta Exhibit No. 8 a true  
19 and correct copy of your testimony here today?

20 MR. ROBINSON: Yes, it is.

21 MR. O'LAUGHLIN: Mr. Chairman, if I may at this  
22 time. I would like to object both to, since we are going  
23 to do this, might as well do them all at once. I want to  
24 object to the testimony of South Delta Water Agency  
25 Exhibit No. 8, which is the testimony of Jerry Robinson,

1 South Delta Water Agency Exhibit No. 10, which is the  
2 testimony of Richard Pellegrini. I hope I said that right.  
3 I'm sorry if I mispronounced it. I will deal with the  
4 testimony of Mr. Hildebrand later in a different  
5 objection.

6 The testimony, in our view, of both Mr. Robinson and  
7 Mr. Pellegrini is irrelevant, does not go to the change  
8 petition, specifically describes situations that have  
9 occurred in the last several years. While those  
10 situations we do not doubt have occurred, their  
11 applicability to this change petition is not set forth in  
12 their document, nor is it set forth in any other document  
13 drawn by South Delta Water Agency exhibit. On that basis,  
14 then, there is no relevancy to the change petition at hand  
15 based on the testimony of these two landowners.

16 MR. HERRICK: Mr. Chairman, if I may.

17 CHAIRMAN BAGGETT: Yes.

18 MR. HERRICK: What South Delta is attempting to  
19 show here is the existing conditions of certain diversions  
20 in the South Delta and that existing condition, including  
21 shortages of water, poor quality and insufficient water  
22 height for diversion purposes. Each of those individuals  
23 has permitted rights and/or riparian rights.

24 Mr. Hildebrand's testimony ties that to the hearing  
25 in that Mr. Hildebrand testifies that changes in flows,

1 pursuant to the petition, will result in other occurrences  
2 and, therefore, will exacerbate or contribute to a harm  
3 that these diverters will have.

4 Mr. O'Laughlin's objection suggests that examples of  
5 potential harm cannot be put forth until that harm occurs.  
6 That, of course, is not correct. What we are trying to  
7 show in this proceeding is injury to legal users, and it  
8 is a prospective thing because the petition has not been  
9 granted. We are trying to show how that may or will  
10 occur, in our opinion. And he is certainly allowed to try  
11 to rebut that connection or attack it when we make it.  
12 But their testimony is certainly not irrelevant. It is  
13 the basis upon which the harm Mr. Hildebrand testifies to  
14 will occur.

15 MR. O'LAUGHLIN: The problem with that, though,  
16 is in what the testimony is being offered for is that they  
17 are taking current situations in the Delta and equating  
18 them to what the harm is from the 47,000 acre-foot of  
19 change petition that is being proffered here. And the  
20 problem is there is nothing within the testimony stated  
21 here that, in fact, the conditions that exist in the Delta  
22 that are described in these statements by Mr. Robinson or  
23 Mr. Pellegrini are, in fact, caused by the 47,000 acre-foot  
24 of supplemental water.

25 So the problem is there is a disconnect between or

1 there is no nexus being drawn between current conditions  
2 in the Delta and the 47,000 acre-foot. In fact, in the  
3 depositions they agreed that they knew of no connections.  
4 So given that, what we are talking about here is a purely  
5 hypothetical. I have no problem with Mr. Hildebrand  
6 describing situations that may occur in the future based  
7 on his opinion. But that is taking current situations and  
8 facts and making them into an opinion.

9 CHAIRMAN BAGGETT: So we might as well deal  
10 with all our objections at once, because your objections  
11 to Mr. Hildebrand are going to be pivotal, so you want to  
12 state those objections so we can get it all on the table.

13 MR. O'LAUGHLIN: I would object to Pages 1, 2,  
14 3 --

15 CHAIRMAN BAGGETT: Starting with "my name is"?

16 MR. O'LAUGHLIN: Yes, with my name is. And  
17 Page 6.

18 CHAIRMAN BAGGETT: Grounds.

19 MR. O'LAUGHLIN: Relevancy. What happens in  
20 Pages 1, 2 and 3 and 6 is while it's a lovely review of  
21 what Mr. Hildebrand's beliefs are in regards to a wide  
22 variety of issues that currently exist in the San Joaquin  
23 Valley and in the Delta, they have absolutely no  
24 applicability to the change petition that is being  
25 proffered here today.

1 CHAIRMAN BAGGETT: Mr. Herrick and  
2 Mr. Nomellini is pacing.

3 MR. NOME LLINI: I would like to be heard on the  
4 motion that is stated.

5 CHAIRMAN BAGGETT: Mr. Nomellini and back to  
6 Mr. Herrick.

7 MR. NOME LLINI: Mr. Chairman, I think that the  
8 testimony of the San Joaquin River Group Authority itself  
9 has shown the connection between the proposed 47,000  
10 acre-feet of supplemental water being provided in the VAMP  
11 and flows in the river. They show the increased flows at  
12 certain times; they also show the decreases.

13 We have established already by the testimony that  
14 the decrease flows affect water quality. The testimony of  
15 these witnesses, like the testimony of Central Delta  
16 witnesses will show you what water quality does in terms  
17 of the farming practices. It would seem to me that  
18 Mr. O'Laughlin's argument is one of the weight of the  
19 evidence rather than the relevance, and that we should go  
20 forward with the testimony and, of course, the debate, the  
21 cross-examination would establish what -- would help the  
22 Board establish what weight they want to give. We  
23 shouldn't spend too much time on this matter.

24 CHAIRMAN BAGGETT: Mr. Herrick.

25 MR. HERRICK: Briefly, Mr. Chairman.

1 Mr. O'Laughlin respectfully is just plain wrong. If there  
2 were not examples of harm under existing conditions, then  
3 Mr. Hildebrand's analysis of decrease in quality of water  
4 or availability would simply be hanging in the air and not  
5 be connected to a potential injury to a legal user. To  
6 the contrary, though, Mr. Hildebrand's testimony, to take  
7 an example, says that if we have a further decrease in  
8 water coming into the system or an increase in pumping  
9 during those times in which Mr. Pellegrini cannot irrigate,  
10 that will exacerbate the existing problem and constitute  
11 harm.

12 So that is the only way one can present harm to the  
13 Board under this statute.

14 CHAIRMAN BAGGETT: Last rebuttal,  
15 Mr. O'Laughlin.

16 MR. O'LAUGHLIN: I have nothing further to add.

17 CHAIRMAN BAGGETT: I think I would allow the  
18 testimony to come in. I think it is percipient evidence.  
19 We take it on the grounds we have three nonexperts and one  
20 previously determined by this Board to be an expert,  
21 Mr. Hildebrand in prior proceedings. I think the  
22 background information certainly is relevant.

23 I'd overrule the motion. Please continue. I don't  
24 think, editorially, it is going to call for lengthy  
25 presentation here in your case in chief. You have

1 material; here. I think given the weight this is to be  
2 considered. I don't think we have an hour and a half of  
3 direct.

4 With that, please proceed.

5 MR. HERRICK: With that caution, thank you,  
6 Mr. Chairman.

7 Mr. Robinson, your testimony includes Attachments A  
8 and B; is that correct?

9 MR. ROBINSON: Yes.

10 MR. HERRICK: Mr. Salmon, next door to you,  
11 your testimony -- the testimony before you is South Delta  
12 No. 21; is that correct?

13 MR. SALMON: That's correct.

14 MR. HERRICK: Is that a true and correct copy  
15 of your testimony for this proceeding?

16 MR. SALMON: That's correct.

17 MR. HERRICK: In your testimony you reference  
18 South Delta 17, 18, 19 and 20; is that correct?

19 MR. SALMON: That's correct.

20 MR. HERRICK: Mr. Pellegri, the testimony  
21 before you is South Delta No. 10; is that correct?

22 MR. PELLEGGRI: Yes, it is.

23 MR. HERRICK: Is that a true and correct copy  
24 of your testimony before this hearing?

25 MR. PELLEGGRI: Yes.

1 MR. HERRICK: Your testimony includes and  
2 references to South Delta 22, 23 and 24; is that correct?

3 MR. PELLEGRINI: That's correct.

4 MR. HERRICK: Mr. Hildebrand, your testimony is  
5 No. 5; is that correct?

6 MR. HILDEBRAND: Correct.

7 MR. HERRICK: Is that a true and correct copy  
8 of your testimony before this hearing?

9 MR. HILDEBRAND: It is.

10 MR. HERRICK: Mr. Hildebrand, your testimony  
11 references South Delta 6, 7, 9, 11, 12, 13, 14, 15, 16,  
12 and 17; is that correct?

13 MR. HILDEBRAND: That's correct.

14 MR. HERRICK: To save time, I will just ask Mr.  
15 Hildebrand to briefly summarize the points in his  
16 testimony and I will let the other three gentlemen's  
17 testimony be available for cross-examination.

18 Mr. Hildebrand, would you please summarize.

19 MR. HILDEBRAND: Yes. I won't read all of my  
20 testimony.

21 CHAIRMAN BAGGETT: Thank you.

22 MR. HILDEBRAND: But my analysis indicates that  
23 absent adequate meaningful conditions, and we could  
24 suggest such conditions, if you wish, the affect of  
25 granting the petition will be to further deplete the

1 quantity of water flowing into the South Delta from the  
2 San Joaquin River during times when water quality and  
3 quantity are already less than adequate for riparian and  
4 other rights.

5 We have to look at this in a cumulative basis as  
6 mentioned before. You can't just look at '97 without  
7 recognizing what's already gone before it in the way of  
8 this depletion, which has led to this overcommitment that  
9 we have to address. The operation in the CVP decreases  
10 the flow in a below normal year and more in wetter years  
11 at Vernalis by 375,000 acre-feet during the period of from  
12 April through September.

13 The CVP and State Water Project export pumps also  
14 artificially alter the natural flow patterns in the Delta  
15 causing reverse flows in some channels which causes and  
16 exacerbates those zones where there is no directional  
17 know. The result is the accumulation and concentration of  
18 salts which originate from upstream. The export pumps  
19 also draw down the height of the water and the depth of  
20 the water in the South Delta such that existing diversion  
21 facilities sometimes cannot function properly at all.

22 The CV with the help of the State Water Project also  
23 delivers Delta waters to the CVP service area in the San  
24 Joaquin Valley. This water is applied to agricultural  
25 lands and wetlands where the plants consume most of the

1 water, those concentrating the salts. Drainage from these  
2 areas returns to the San Joaquin River, sometimes in  
3 concentrations reaching ten times the level set downstream  
4 for agricultural uses.

5 The CVP operates New Melones Dam and its permits.  
6 Therefore, requires it to make releases to maintain the  
7 water quality objective for agricultural beneficial uses  
8 at Vernalis. D-1641 recognized the Bureau's  
9 responsibility for the salinity problem on the river and  
10 must justify their requirement on New Melones.

11 Up until recently the Bureau operated New Melones  
12 under its Interim Operation Plan which determined the  
13 amounts of water for each obligation pursuant to yearly  
14 flow to storage. That is why IOP is called with the base  
15 case for D-1641 as well as the San Joaquin River Agreement  
16 and the subject petition.

17 However, the Bureau guarantees to the Board at that  
18 time that despite what it says in the IOP, they wouldn't  
19 comply with the Vernalis salinity standard, which is not  
20 required by the IOP. And the Bureau is now deviating from  
21 the plan. They have been discussed and are not going to  
22 do the plan as presented originally. They say they will  
23 comply with the Vernalis standard this year even though it  
24 takes quite a bit more water than IOP allows. In effect,  
25 we have no longer any multi-year operating plan from the

1 Bureau.

2           Consequently any and all analyses of the effects of  
3 the SJRGA on this petition are incomplete at best. In  
4 recent years, as indicated by SDWA's other testimony,  
5 submitted testimony herein, there has been ongoing harm to  
6 local diverters. That is what these gentlemen are going  
7 to attest to, and I can also regarding my own operations.

8           Water level problems are experienced in Old River and  
9 Middle River and responsibility for these problems appears  
10 to lie with the Bureau which draws down the low tide,  
11 limiting the local diverters' ability to irrigate. Last  
12 year low levels were experienced in Tom Paine's slough as  
13 well.

14           What happens is that when the inflow of San Joaquin  
15 River to the South Delta becomes less than the required  
16 depletion within the South Delta, there is insufficient  
17 water for those diversions unless we bring water in from  
18 the export side up through the barriers which is  
19 installed. And that works all right as long as the high  
20 tide is high enough and long enough duration so you can  
21 fill the channels up to the high tide level and then the  
22 diverters can operate on that captured water during the  
23 low tide. But as we shift the export pump rates to the  
24 summertime, export at a higher rate, what is happening is  
25 that the state takes water into Clifton Court in high

1 tide. So they decapitate the high tide, both in elevation  
2 and in duration.

3 And we did finally last June and July have the  
4 situation arise which is what we have been apprehensive  
5 about and which will clearly happen more often in the  
6 future when we go dry. We can't capture enough high tide  
7 water to make up for this reduction in flow of San Joaquin  
8 coming into the Delta. So it is this depletion of flow  
9 into the Delta which is a very serious thing.

10 I won't go through in greater detail. I gave it in  
11 the written testimony on that. You can read that if you  
12 will.

13 The State Water Project operates the intake of  
14 Clifton Court Forebay and the three different regimes and  
15 each of these avoid the low tide already decapitated by  
16 the CVP, but takes water at different times in relation to  
17 the high tide.

18 Moving on, now turning to the effects which will  
19 follow from granting the Merced petition. Generally the  
20 petition continues the same practices previously approved  
21 by the Board. Upstream diverters storing more water than  
22 they need for their own consumptive use and shifting the  
23 timing of the flows they control to summer, to spring and  
24 to fall. The situation was approved for the SJRGA as part  
25 of 1641. The EIR for the subject petition again relies on

1 the EIRs for 1641 and SJRGA as a base case. Even though  
2 the New Melones IOP no longer represents the existing  
3 situation.

4 So the problem comes not at the time they release  
5 water that is taken out of storage, but at the time they  
6 refill that storage. And there are times when they can  
7 refill it as they have been able to recently with the wet  
8 years with water from flood releases, but even there the  
9 flood release must be of a magnitude such that it takes  
10 care of all the downstream benefits and actually becomes  
11 an excess outflow to the Bay. We can have flood releases  
12 on any one of the tributaries at times when that is not  
13 excess water, water which would be used downstream for  
14 various purposes, not only for our local diversions, for  
15 exports, for pump and transfer requirements, for the X2  
16 outflow, et cetera.

17 So unless there is excess to all those needs, it is  
18 not an excess water. They are not then increasing the  
19 available water supply to make it possible to provide  
20 these VAMP flows. I say under those conditions when they  
21 do have excess, fine. If the permit was conditioned on  
22 saying they could only fill up at those times when it is  
23 excess of the needs for the overcommitted system, then we  
24 have no problem.

25 There is no such provision. In fact, it's been

1 clear from testimony today and from their written  
2 testimony that what they do is that they refill a  
3 reservoir whenever the inflow of the reservoir exceeds  
4 their needs on the tributary and their required FERC  
5 releases on the tributary. That doesn't mean it is excess  
6 to the system as a whole. It doesn't even -- you can have  
7 excess from one tributary and the very adjacent tributary  
8 is still short.

9 So there is no way that they can refill this without  
10 depleting the flow at some point in time later on unless  
11 they can fill it with excess water that is actually excess  
12 to the whole system. And they are not under their  
13 proposal required to do that. In fact, they don't intend  
14 that is not part of the modeling.

15 As regards to the effects of all this on the water  
16 quality in New Melones, you have heard testimony already  
17 that if they decrease the flow at Vernalis by less -- high  
18 quality water out of the tributary, since we are still  
19 only getting this draining out of the west side CVP  
20 service area, it means that they don't get the dilution  
21 for that salt and the salinity rises. Whether it rises  
22 above the allowable limit at Vernalis is not the whole  
23 question. We have, as mentioned, these downstream water  
24 quality conditions that's required by the Board and the  
25 degradation of water quality from Vernalis on down to

1 those other points, such as the Brand Bridge location, is  
2 increased and the flow is decreased. So it is probably  
3 now not feasible anymore in a practical manner to meet  
4 those internal things without the barriers. If you have  
5 the barriers and have adequate flow at Vernalis you can  
6 meet them. So this diminishing flow affects the  
7 downstream water quality.

8           What's happened now is when these low flow  
9 conditions if you don't have the barriers is the salt load  
10 from CVP comes down to the river and it gets drawn up  
11 through Old River and Grant Line Canal by the drawdown of  
12 the export pumps and is actually reexported down the  
13 Delta-Mendota Canal right back down the valley. So you  
14 are hanging up several hundred thousand acre-feet of water  
15 in the overall water system. And if we don't have enough  
16 flow at Vernalis it's very difficult to avoid that unless  
17 you shut down the export pumps, and nobody really wants to  
18 do that.

19           So that is the main thrust of my testimony. As I  
20 say, it would be possible to have permit conditions if it  
21 only permitted them to refill at times that it would not  
22 hurt us and then we wouldn't have to object to it. But as  
23 it is now, it would clearly and seriously cause a problem.  
24 It is an overcommitted system. You cannot release more  
25 water for fish at one time without less water for these

1 other needs at another time. And you have to look not  
2 only at its effect on the water quality but even if the  
3 Bureau meets the water quality, if they are forced to meet  
4 it by taking water away from pre-1914 water right holders  
5 or other superior rights, that isn't right either. So I'm  
6 open to any questions.

7 CHAIRMAN BAGGETT: Any other -- we are ready to  
8 break for lunch.

9 Anything else, Mr. Herrick?

10 MR. HERRICK: That is all for our case in  
11 chief.

12 CHAIRMAN BAGGETT: Let's recess for an hour and  
13 we will come back with cross-examination.

14 (Luncheon break taken.)

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AFTERNOON SESSION

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CHAIRMAN BAGGETT: Back on the record with Mr. O'Laughlin's cross-examination of South Delta Water Agency witnesses.

MR. O'LAUGHLIN: Mr. Chairman, I want to confirm that I have one hour for my panel.

CHAIRMAN BAGGETT: Correct.

MR. O'LAUGHLIN: Thank you.

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CROSS-EXAMINATION OF SOUTH DELTA WATER AGENCY

BY SAN JOAQUIN RIVER GROUP AUTHORITY

BY MR. O'LAUGHLIN

MR. O'LAUGHLIN: I will start with Mr. Robinson first.

Mr. Robinson, photos on Attachment D are dated in October of 1999; is that correct?

MR. ROBINSON: Yes.

MR. O'LAUGHLIN: Do you know how much water was released in 1999 under the San Joaquin River Agreement?

MR. ROBINSON: No.

MR. O'LAUGHLIN: Do you know how much water was released in the year 2000 by the San Joaquin River Agreement?

MR. ROBINSON: No.

1 MR. O'LAUGHLIN: 2001?

2 MR. ROBINSON: No.

3 MR. O'LAUGHLIN: 2002?

4 MR. ROBINSON: No.

5 MR. O'LAUGHLIN: Looking at the photos, in  
6 October of 1999, can you tell me what the San Joaquin  
7 River index was for the year 1999?

8 MR. ROBINSON: No.

9 MR. O'LAUGHLIN: Can you tell me what export  
10 pumping rates were in October 1999?

11 MR. ROBINSON: No.

12 MR. O'LAUGHLIN: Do you know if in October of  
13 1999 the members of the San Joaquin River Group Authority  
14 who had made water available in that year were refilling  
15 in October of 1999?

16 MR. ROBINSON: I don't know.

17 MR. O'LAUGHLIN: Do you know if in the year  
18 1999 if water quality at Vernalis was violated?

19 MR. ROBINSON: I don't know.

20 MR. O'LAUGHLIN: Do you know if water quality  
21 standards for Vernalis were violated in year 2000?

22 MR. ROBINSON: I don't know that.

23 MR. O'LAUGHLIN: 2001?

24 MR. ROBINSON: No.

25 MR. O'LAUGHLIN: 2002?

1 MR. ROBINSON: No.

2 MR. O'LAUGHLIN: Do you know how much water was  
3 being diverted by landowners along Middle River in October  
4 of 1999 when these photos were taken?

5 MR. ROBINSON: No.

6 MR. O'LAUGHLIN: Do you know what the maximum  
7 diversion rate of the landowners along Middle River is?

8 MR. ROBINSON: No.

9 MR. O'LAUGHLIN: Has any siltation occurred in  
10 Middle River since October of 1996?

11 MR. ROBINSON: Probably. It seems like after  
12 the flood of January '97, it seemed like there was more  
13 sand in Middle River.

14 MR. O'LAUGHLIN: When was the last time that  
15 you are aware of that the portion of Middle River was  
16 dredged?

17 MR. ROBINSON: Which portion?

18 MR. O'LAUGHLIN: The portion where you're  
19 located.

20 MR. ROBINSON: I don't know that.

21 MR. O'LAUGHLIN: In 1999 did you have  
22 sufficient quantities of water to divert to irrigate your  
23 75 acres at Lafayette Ranch?

24 MR. ROBINSON: Yes.

25 MR. O'LAUGHLIN: Is that the same for the year

1 2000?

2 MR. ROBINSON: Yes.

3 MR. O'LAUGHLIN: The same for 2001?

4 MR. ROBINSON: Yes.

5 MR. O'LAUGHLIN: And 2002?

6 MR. ROBINSON: Yes.

7 MR. O'LAUGHLIN: Now in regards to the proposed  
8 change of petition is there anything in regards to making  
9 additional 47,000 acre-feet of water available in certain  
10 years in the springtime for pulse flows for fish that  
11 causes an impact to your farming operation at Lafayette  
12 Ranch?

13 MR. ROBINSON: I don't know. Can't answer  
14 that.

15 MR. O'LAUGHLIN: Do you know if Merced  
16 Irrigation District is responsible for meeting water  
17 quality standards at Vernalis?

18 MR. ROBINSON: I don't.

19 MR. O'LAUGHLIN: Have you reviewed any of the  
20 protocols for power production at Exchequer?

21 MR. ROBINSON: No.

22 MR. O'LAUGHLIN: Have you reviewed any of the  
23 protocols for power production at New Don Pedro?

24 MR. ROBINSON: No.

25 MR. O'LAUGHLIN: Would it be safe to say that

1 you're assuming that water that otherwise would have been  
2 the 47,000 acre-feet that was released in the spring would  
3 have come down later in the summer, but you have no actual  
4 direct knowledge of that; is that correct?

5 MR. ROBINSON: Right.

6 MR. O'LAUGHLIN: Thank you, Mr. Robinson.

7 Before I leave, when is the -- the 75 acres, when is  
8 the -- when do you start your diversions for irrigation,  
9 generally?

10 MR. ROBINSON: Generally, probably in March,  
11 April. It could be, though, any month of the year.

12 MR. O'LAUGHLIN: When is the maximum time of  
13 your irrigation diversions for your ranch at Lafayette?

14 MR. ROBINSON: Probably late May, June, July  
15 and August.

16 MR. O'LAUGHLIN: Were you present when  
17 Mr. Steiner was testifying here earlier this morning?

18 MR. ROBINSON: Yes.

19 MR. O'LAUGHLIN: If water is released in one  
20 year and then is captured by subsequent storage in  
21 December, January and February, what impact does that  
22 cause your ranch at Lafayette?

23 MR. ROBINSON: I wouldn't know.

24 MR. O'LAUGHLIN: Mr. Pellegrini, did I say that  
25 correctly?

1 MR. PELLEGGRI: Yes.

2 MR. O'LAUGHLIN: In your testimony on South  
3 Delta Water Agency No. 10, you state in the summer of 2001  
4 you experienced low water levels in the early summer at  
5 Tom Paine Slough.

6 Do you see that in the third paragraph, Page 1?

7 MR. PELLEGGRI: Yes.

8 MR. O'LAUGHLIN: Can you tell me what months  
9 you define as early summer?

10 MR. PELLEGGRI: Early summer is mid March,  
11 April.

12 MR. O'LAUGHLIN: In your deposition, I will  
13 read the transcript to you, on Page 10 you stated in Line  
14 21 in response to a question:

15 Question: You said you experienced low  
16 water levels in early summer. Can you  
17 tell what months you define as the early  
18 summer?

19 Answer, Line 4: Mid May through July.

20 (Reading)

21 Are you now changing your statement?

22 MR. PELLEGGRI: I didn't quite understand the  
23 question.

24 MR. O'LAUGHLIN: Let's try again. The  
25 statement says in early summer. Do you agree that early

1 summer is defined by you as mid May through July?

2 MR. PELLEGRINI: Yes.

3 MR. O'LAUGHLIN: Thank you.

4 Do you know what the flows in the San Joaquin River  
5 were at Vernalis for the time period mid May through July  
6 2001?

7 MR. PELLEGRINI: No.

8 MR. O'LAUGHLIN: Do you know if there were any  
9 violations of the 1995 Water Quality Control Plan  
10 standards for water quality at Vernalis from mid May to  
11 July 2001?

12 MR. PELLEGRINI: No.

13 MR. O'LAUGHLIN: Do you know if there were any  
14 violations of the 1995 Water Quality Control Plan for the  
15 time period of May through July 2001?

16 MR. PELLEGRINI: No.

17 MR. O'LAUGHLIN: You say that the water levels  
18 were lower at Tom Paine Slough or lower than normal. Can  
19 you define for me what is normal?

20 MR. PELLEGRINI: Normal is just by looking at the  
21 level in the slough.

22 MR. O'LAUGHLIN: Do you have any stage gauge at  
23 that location to actually measure or quantify the amount?

24 MR. PELLEGRINI: No, I don't.

25 MR. O'LAUGHLIN: Isn't it correct, you just

1 basically went out and took a peek and looked at it and  
2 eyeballed it?

3 MR. PELLEGRINI: Yes.

4 MR. O'LAUGHLIN: Do you know how much water is  
5 released by the San Joaquin River Group Authority members  
6 for the San Joaquin River Agreement for pulse flow in  
7 2001?

8 MR. PELLEGRINI: No.

9 MR. O'LAUGHLIN: Do you know if at the time  
10 that you were experiencing low water levels in the summer  
11 of 2001 that any member of the San Joaquin River Group  
12 Authority that had made water available for the spring  
13 pulse flow was refilling?

14 MR. PELLEGRINI: No.

15 MR. O'LAUGHLIN: Do you know what the exports  
16 were pumping during the time period of mid May through  
17 July in the summer of 2001?

18 MR. PELLEGRINI: No.

19 MR. O'LAUGHLIN: Do you know if the ag barriers  
20 were in during that time period?

21 MR. PELLEGRINI: No, I do not.

22 MR. O'LAUGHLIN: Can you tell me how much less  
23 water you diverted in that year due to low water levels?

24 MR. PELLEGRINI: I don't know.

25 MR. O'LAUGHLIN: Do you have a meter on your

1 well?

2 MR. PELLEGRINI: No, I don't.

3 MR. HERRICK: Just for clarification. Not a  
4 well, point of diversion.

5 MR. O'LAUGHLIN: Thank you. Pump.

6 CHAIRMAN BAGGETT: Thank you.

7 MR. O'LAUGHLIN: In 2001 are you aware of any  
8 operations at Merced Irrigation District that would have  
9 caused your water levels to be lower than what they had  
10 historically been?

11 MR. PELLEGRINI: No.

12 MR. O'LAUGHLIN: Are you aware of any  
13 operations at Modesto or Turlock Irrigation District or  
14 New Don Pedro that would lead you to believe that they  
15 caused your low water level elevations in 2001?

16 MR. PELLEGRINI: No.

17 MR. O'LAUGHLIN: Would the responses to those  
18 questions be the same for 2002?

19 MR. PELLEGRINI: Yes.

20 MR. O'LAUGHLIN: Have you ever heard of the San  
21 Joaquin River Agreement?

22 MR. PELLEGRINI: Until today, no.

23 MR. O'LAUGHLIN: Do you know what the 1999  
24 Water Quality Control Plan for spring pulse flow is?

25 MR. PELLEGRINI: No.

1 MR. O'LAUGHLIN: Do you know what the San  
2 Joaquin River basin index was for the year 2001?

3 MR. PELLEGRINI: No.

4 MR. O'LAUGHLIN: Do you know what it was for  
5 the year 2002?

6 MR. PELLEGRINI: No, I don't.

7 MR. O'LAUGHLIN: Do you know if the ag barriers  
8 were in from June through July in the year 2002?

9 MR. PELLEGRINI: No.

10 MR. O'LAUGHLIN: Do you know what the export  
11 rate was in 2002? From June -- I want to get this correct  
12 -- in June through July 20th of 2002?

13 MR. PELLEGRINI: Will you repeat that?

14 MR. O'LAUGHLIN: Do you know what the export  
15 levels were for June through July 20th of 2002?

16 MR. PELLEGRINI: No.

17 MR. O'LAUGHLIN: Do you know if water quality  
18 was being met at Vernalis in June through July of 2002?

19 MR. PELLEGRINI: No.

20 MR. O'LAUGHLIN: Do you know if any of the fish  
21 flows were being met from June through July of 2002 at  
22 Vernalis?

23 MR. PELLEGRINI: No, I don't.

24 MR. O'LAUGHLIN: Have you ever found out what,  
25 in fact, caused the problems at Tom Paine Slough in the

1 year 2001 or 2002?

2 MR. PELLEGRINI: No.

3 MR. O'LAUGHLIN: How is it that this petition,  
4 this change petition of 47,000 acre-feet, will impact low  
5 water levels at Tom Paine Slough?

6 MR. PELLEGRINI: I don't know.

7 MR. O'LAUGHLIN: Do you know if there is a  
8 problem with siltation at Tom Paine Slough?

9 MR. PELLEGRINI: We have minimal siltation in  
10 different areas.

11 MR. O'LAUGHLIN: Do you have weed control in  
12 Tom Paine Slough?

13 MR. PELLEGRINI: No.

14 MR. O'LAUGHLIN: Do you know how many people  
15 divert off Tom Paine Slough?

16 MR. PELLEGRINI: That is a reclamation  
17 district.

18 MR. O'LAUGHLIN: How much water is diverted in  
19 a maximum capacity from Tom Paine Slough?

20 MR. PELLEGRINI: I don't know.

21 MR. O'LAUGHLIN: You state in your testimony  
22 that there was a shortfall to the district in regards to  
23 not enough water being available; is that correct?

24 MR. PELLEGRINI: Yes.

25 MR. O'LAUGHLIN: Do you know how much that

1 short fall was in acre-feet?

2 MR. PELLEGGRI: No, I don't.

3 MR. O'LAUGHLIN: You identified that there was  
4 a problem in 2001 and then, again, the problem was in the  
5 summer of 2002. What was done between noticing this  
6 problem in 2001 and having it reoccur in 2002 to ensure  
7 you wouldn't have low water levels in Tom Paine Slough?

8 MR. PELLEGGRI: Nothing.

9 MR. O'LAUGHLIN: My next examination will be of  
10 Mr. Salmon.

11 Mr. Salmon, you state in your testimony that since  
12 approximately 1999 the summer water levels along Old River  
13 adjacent to the Thorsen Ranch have been lower than they  
14 have been in the past.

15 Is there a stage reading at which you can ascertain  
16 that?

17 MR. SALMON: I divert by siphon, and it's  
18 becoming increasingly difficult for my siphons to reach  
19 the water to siphon the water out of the river.

20 MR. O'LAUGHLIN: But in response to my  
21 question: Is there a gauge or stage at which you can  
22 quantify the lower water levels at adjacent to Thorsen  
23 Ranch?

24 MR. SALMON: Can you repeat. It's not that I  
25 don't understand, I don't hear you. Can you speak up a

1 little bit, please.

2 MR. O'LAUGHLIN: Now that's a first. For three  
3 years I've been coming here, and that is a first. Yes.

4 In regards to the Thorsen Ranch is there a stage or  
5 gauge in the river that can quantify the water levels  
6 along Old River?

7 MR. SALMON: No.

8 MR. O'LAUGHLIN: Do you know what the San  
9 Joaquin River Agreement is?

10 MR. SALMON: No.

11 MR. O'LAUGHLIN: Do you know how much water was  
12 released in the year 2000 by members of the San Joaquin  
13 River Group Authority to meet the spring pulse flow?

14 MR. SALMON: No, I do not.

15 MR. O'LAUGHLIN: Since your testimony goes from  
16 1999 to 2002, would your answer be the same for 2001?

17 MR. SALMON: Yes, sir.

18 MR. O'LAUGHLIN: For 2002?

19 MR. SALMON: Yes.

20 MR. O'LAUGHLIN: Do you know what the San  
21 Joaquin River Basin Index was in year 2000?

22 MR. SALMON: No, I do not.

23 MR. O'LAUGHLIN: Do you know what it was in  
24 2001?

25 MR. SALMON: No.

1 MR. O'LAUGHLIN: 2002?

2 MR. SALMON: No, sir.

3 MR. O'LAUGHLIN: You say in your testimony that  
4 water levels have dropped. Do you know what the pumping  
5 -- the export pumping rates were in July of 2000?

6 MR. SALMON: No, I do not.

7 MR. O'LAUGHLIN: Do you know -- generally now  
8 to 2001, do you know what the export pumping rights were  
9 in the summer of 2001?

10 MR. SALMON: No.

11 MR. O'LAUGHLIN: 2002?

12 MR. SALMON: No, sir.

13 MR. O'LAUGHLIN: Have you ever tried to  
14 quantify or identify the impacts of export pumping on your  
15 lower water levels?

16 MR. SALMON: No.

17 MR. O'LAUGHLIN: Have you tried to quantify  
18 what the impact would be of having an additional 47,000  
19 acre-feet of water not be available in the South Delta  
20 during the summertime period?

21 MR. SALMON: No.

22 MR. O'LAUGHLIN: Do you know how many  
23 diversions there are upstream on Old River before your  
24 diversion point?

25 MR. SALMON: No.

1                   MR. O'LAUGHLIN: Do you know what the capacity  
2 of the upstream diversions are on Old River?

3                   MR. SALMON: No, I do not.

4                   MR. O'LAUGHLIN: Do you know what the hydraulic  
5 capacity is of Old River at Thorsen Ranch?

6                   MR. SALMON: No, I do not.

7                   MR. O'LAUGHLIN: Do you know how many acres are  
8 irrigated from diversions from Old River?

9                   MR. SALMON: No, I do not.

10                  MR. O'LAUGHLIN: Has there been siltation where  
11 your siphons have been located since October of 1996?

12                  MR. SALMON: Yes.

13                  MR. O'LAUGHLIN: What impacts did the tidal  
14 barriers have on your ability to divert water from Old  
15 River?

16                  MR. SALMON: They reduce the flow that comes  
17 down the river.

18                  MR. O'LAUGHLIN: In fact, your diversion is  
19 below the tidal barrier; is that correct?

20                  MR. SALMON: That's correct.

21                  MR. O'LAUGHLIN: Do you remember what has more  
22 of an impact on your diversions, is it the tidal barriers  
23 or the export pumping?

24                  MR. SALMON: I can't really tell you which  
25 ones, but I would be guessing I would think that the pumps

1 would probably have since I am closer.

2 MR. O'LAUGHLIN: Did you suffer any damages in  
3 2002 after DWR installed additional pumps?

4 MR. SALMON: Those booster pumps that they put?

5 MR. O'LAUGHLIN: Yes.

6 MR. SALMON: It helped. I got through the low  
7 water with those.

8 MR. O'LAUGHLIN: Are you aware of any water  
9 quality violations at Vernalis for the year 2000?

10 MR. SALMON: No.

11 MR. O'LAUGHLIN: 2001?

12 MR. SALMON: No, sir.

13 MR. O'LAUGHLIN: 2002?

14 MR. SALMON: No.

15 MR. O'LAUGHLIN: When is the time of year when  
16 you begin to divert water for irrigation?

17 MR. SALMON: It depends on my crop rotation.

18 MR. HERRICK: We're talking about the Thorsen  
19 Ranch?

20 MR. O'LAUGHLIN: Thorsen Ranch, yes.

21 MR. SALMON: Depends on my crop rotation. But  
22 it's usually March, maybe some February, but March  
23 usually. March, April.

24 MR. O'LAUGHLIN: Do you know if you had a  
25 salinity problem at this ranch much prior to 1999?

1 MR. SALMON: No.

2 MR. O'LAUGHLIN: No, you don't know if there  
3 was a problem or, no, there wasn't a problem?

4 MR. SALMON: I do not know if there was a  
5 problem or not.

6 MR. O'LAUGHLIN: Do you know if any of the  
7 parties to the San Joaquin River Group Authority were  
8 refilling in the summer of 2002 when you were presented  
9 with low water problems at Thorsen Ranch?

10 MR. SALMON: No, I do not.

11 MR. O'LAUGHLIN: Have you reviewed any  
12 protocols for power production at New Don Pedro Reservoir?

13 MR. SALMON: No.

14 MR. O'LAUGHLIN: At Exchequer Reservoir?

15 MR. SALMON: No, sir.

16 MR. O'LAUGHLIN: Do you know what the minimum  
17 instream flows --

18 (Building speaker interruption.)

19 CHAIRMAN BAGGETT: Back on the record.

20 Continue.

21 MR. O'LAUGHLIN: Thank you.

22 CHAIRMAN BAGGETT: Try again.

23 MR. O'LAUGHLIN: Mr. Salmon, do you know what  
24 instream flow requirements are for New Don Pedro?

25 MR. SALMON: No, I do not.

1                   MR. O'LAUGHLIN: Do you know what the instream  
2 flow requirements are for Exchequer?

3                   MR. SALMON: For what?

4                   MR. O'LAUGHLIN: Exchequer Reservoir.

5                   MR. SALMON: No, I do not.

6                   MR. O'LAUGHLIN: Mr. Hildebrand, did you  
7 perform any analysis to look at information provided by  
8 Mr. Steiner to see if, in fact, water that has been stored  
9 or refilled when conditions were -- let me rephrase that.

10                   Did you review Mr. Steiner's testimony prior to  
11 today?

12                   MR. HILDEBRAND: Yes.

13                   MR. O'LAUGHLIN: Would you agree with me that  
14 if, in fact, Modesto, Merced and Turlock are refilling in  
15 times when the Delta is in excess that there is no impact  
16 to South Delta Water Agency landowners?

17                   MR. HILDEBRAND: No. As I explained during the  
18 deposition, depends on whether the excess derives at least  
19 in part from the San Joaquin River. You are going to have  
20 a situation where there is an excess flow that derives  
21 entirely from the Sacramento, and the San Joaquin could  
22 still be in a deficiency.

23                   MR. O'LAUGHLIN: Let me read the question and  
24 the response on Page 10 of your depo, Line 2:

25                   Question: In other words, I'm assuming by

1           your statement, not necessarily the case,  
2           that if we could agree that refilling  
3           Merced, Modesto and Turlock, or refilling  
4           in times when the Delta is in excess that  
5           there is no impact to South Delta Water  
6           Agency?

7           Answer: Yeah. I would agree with that.  
8           But they don't appear to examine whether  
9           indeed that is also the case or whether  
10          they are being refilled at times when it  
11          is not excess to the entire Central  
12          Valley.           (Reading)

13          Do you remember that, Mr. Hildebrand?

14                 MR. HILDEBRAND: Yes, but you're taking that  
15          out of context.

16                 MR. O'LAUGHLIN: Have you reviewed -- have you  
17          done any analysis to determine whether or not when, in  
18          fact, the modeling done by Mr. Steiner showed refills  
19          occurring that there was impacts to downstream people  
20          within South Delta Water Agency?

21                 MR. HILDEBRAND: Would you repeat that,  
22          please?

23                 MR. O'LAUGHLIN: I am asking that in times when  
24          the Delta is in excess and the upstream entities are  
25          refilling, have you done an analysis to determine if, in

1 fact, there is an impact to landowners within South Delta  
2 Water Agency?

3 MR. HILDEBRAND: I haven't made analysis of a  
4 specific situation like that, but as we've discussed  
5 before, we haven't analyzed the general situation. And  
6 the general situation is that, as discussed earlier today,  
7 the San Joaquin River system as a whole is overcommitted.  
8 Consequently, if at any time you refill when the water, if  
9 it were not used for refill, would be meeting downstream  
10 requirements, up to the point of excess outflow, then it's  
11 impacting somebody.

12 MR. O'LAUGHLIN: That is what I am asking you.  
13 Have you done any analysis to determine specifically what  
14 downstream impacts would occur by the refilling by either  
15 Modesto, Merced or Turlock of their reservoirs in the time  
16 period depicted by Mr. Steiner's testimony?

17 MR. HILDEBRAND: We can't do that because we  
18 don't have any protocol as to when you are going to make  
19 those refills.

20 MR. O'LAUGHLIN: Do you know what the  
21 downstream requirements would be during those time  
22 periods?

23 MR. HILDEBRAND: Not off the top of my head,  
24 but we know what the requirements are.

25 MR. O'LAUGHLIN: Let's take a situation in

1     which water is released, the 47,000 acre-feet is released,  
2     from New Don Pedro Reservoir in the spring, minimum  
3     instream flows are met from New Don Pedro Reservoir, full  
4     allocations are made to the landowners that year. What,  
5     if any, impact would occur to South Delta Water Agency in  
6     the summer of that year by those actions?

7                   MR. HILDEBRAND:  If the -- if you have water  
8     that is in excess of the needs within the Tuolumne  
9     tributary, but they are not excess to the needs for water  
10    quality, for public trust, for exports downstream, for  
11    pre-1914 rights, et cetera, then there is an impact.

12                   MR. O'LAUGHLIN:  Well, no, we will go back  
13    through this again.  Let's take the example again.

14                   In the springtime --

15                   (Building speaker interruption.)

16                   CHAIRMAN BAGGETT:  Back on the record.

17                   MR. O'LAUGHLIN:  Have you reviewed the  
18    testimony of Mr. Ward and Mr. Selb?

19                   MR. HILDEBRAND:  No.

20                   MR. O'LAUGHLIN:  In both of their testimonies  
21    they state that they will meet instream flow requirements  
22    downstream from their reservoirs.

23                   Are you aware of that?

24                   MR. HILDEBRAND:  Within the tributary, yes.

25                   MR. O'LAUGHLIN:  Now they also say they are

1 going to meet the demand of their landowners for  
2 irrigation in that year in both Modesto, Merced and  
3 Turlock.

4 Are you aware of that?

5 MR. HILDEBRAND: That is obvious. Their Board  
6 of Directors would get fired if they didn't.

7 MR. O'LAUGHLIN: Having realized that they are  
8 going to meet downstream instream uses and they are going  
9 to provide irrigation demands to their landowners in a  
10 year in which the 47,000 acre-feet is released downstream  
11 in the April-May pulse flow period, what impact would that  
12 have on South Delta Water Agency in that summer?

13 MR. HERRICK: I would object as an incomplete  
14 hypothetical. I think we need to discuss the hypothetical  
15 hydrology for that year in order for Mr. Hildebrand to  
16 give an opinion. It would certainly depend on flows in  
17 other places.

18 CHAIRMAN BAGGETT: Could you restate the  
19 hypothetical?

20 MR. O'LAUGHLIN: There is three criteria. One  
21 is, is that instream flows are being released downstream  
22 from New Don Pedro and Exchequer, full allocations are  
23 being made to those landowners and the 47,000 acre-feet of  
24 additional water is released in the April-May pulse flow  
25 period. What impact does the 47,000 acre-feet of release

1 have on South Delta Water Agency in the summertime?

2 MR. HILDEBRAND: If the release derives from a  
3 reduction of storage, the impact won't arise until you  
4 refill it. It won't arise at the time you release it.

5 MR. O'LAUGHLIN: Are you aware if there have  
6 been any violations to the Vernalis water quality  
7 standards since the year 2000?

8 MR. HILDEBRAND: I'm pretty sure there have,  
9 but off the top of my head I can't say exactly when.

10 MR. O'LAUGHLIN: In fact, you provided in your  
11 testimony a chart showing violations, what you claim to be  
12 violations, in April; is that correct?

13 MR. HILDEBRAND: That's correct. We  
14 ascertained during the deposition that we were all a  
15 little bit uncertain as to just what the Bureau criterion  
16 were for that table.

17 MR. O'LAUGHLIN: So as you sit here right now,  
18 you are not aware of any other violations other than those  
19 that were proffered in South Delta Water Agency Exhibit --  
20 excuse me for just a second, have to find it -- 15; is  
21 that correct?

22 MR. HILDEBRAND: What year did that occur?

23 MR. HERRICK: Not 15.

24 MR. O'LAUGHLIN: Sorry, I misnumbered it.

25 MR. HERRICK: I apologize for not having it.

1 MR. O'LAUGHLIN: I will get it.

2 Are you aware that under D-1641 that the CVP is  
3 required to meet salinity standards at vernalis?

4 MR. HILDEBRAND: Yes, but they don't always do  
5 it.

6 MR. O'LAUGHLIN: Are you also aware under  
7 D-1641 that the CVP is required to meet the South Delta  
8 salinity standards?

9 MR. HILDEBRAND: Internal standards?

10 MR. O'LAUGHLIN: Yes.

11 MR. HILDEBRAND: The Board established those  
12 standards, but it hasn't enforced them. So from a legal  
13 point of view I'm not sure exactly where we stand on that.  
14 The fact is they are repeatedly violated, and that the  
15 degree and frequency of violation is influenced by the  
16 magnitude of the inflow to the South Delta.

17 MR. O'LAUGHLIN: Are you aware, Mr. Hildebrand,  
18 in fact, under D-1641 the requirement to meet the salinity  
19 requirements at Vernalis are not limited slowly to the  
20 permits at New Melones Reservoir for the CVP; is that  
21 correct?

22 MR. HILDEBRAND: Would you say that again?

23 MR. O'LAUGHLIN: In your testimony -- let me  
24 ask it another way.

25 Do you understand that in D-1641 that the

1 requirements of the CVP to meet Vernalis salinity  
2 standards are not limited solely to the permits held at  
3 New Melones Reservoir?

4 MR. HILDEBRAND: I am not aware of any other  
5 provision for meeting that other than the requirement that  
6 the dilution water be released from New Melones to meet  
7 it.

8 MR. O'LAUGHLIN: Have you reviewed any of the  
9 protocols for power production at New Don Pedro?

10 MR. HILDEBRAND: No, I don't think it is any  
11 defined manner.

12 MR. O'LAUGHLIN: Have you reviewed any of the  
13 protocols for power production at Exchequer Reservoir?

14 MR. HILDEBRAND: Same answer.

15 MR. O'LAUGHLIN: Do you have any understanding  
16 or idea of how power is produced by Modesto and Turlock at  
17 New Don Pedro Reservoir?

18 MR. HILDEBRAND: General concept, yes. But  
19 Mr. Steiner mentioned in his testimony that on occasion  
20 the result of the VAMP test was to produce less power.

21 MR. O'LAUGHLIN: Are you aware if in the  
22 testimony that has been presented by Mr. Steiner if, in  
23 fact, there were any violations of downstream instream  
24 releases below New Don Pedro Reservoir?

25 MR. HILDEBRAND: Within the tributary?

1 MR. O'LAUGHLIN: Yes, within the tributary.

2 MR. HILDEBRAND: No, I don't know.

3 MR. O'LAUGHLIN: Would that answer be the same  
4 for Merced Irrigation District at Exchequer?

5 MR. HILDEBRAND: Yes.

6 MR. O'LAUGHLIN: Let's go back to water quality  
7 for a minute. Looking at South Delta Water Agency Exhibit  
8 No. 9, which is the April 2002 and April 2001 electrical  
9 conductivity. Is this the document that you are relying  
10 upon for your belief that, in fact, there were water  
11 quality violations at Vernalis in those years?

12 MR. HILDEBRAND: In this particular year we run  
13 in the business that we discussed during the deposition  
14 that because the Board permitted the EC to be running  
15 average and because the EC requirement changes on the  
16 first of April, that it enables them to not meet the EC on  
17 a shorter term basis in the early part of May and then  
18 take advantage of the pulse flow low salinity flows that  
19 come later on to overbalance that so they meet the average  
20 for the month.

21 I don't think that was the intent of the whole  
22 thing. The idea was in certain months of the year we were  
23 to have one EC on average and other months another EC.  
24 But the way it was done enabled them to slop this over and  
25 give us a bad deal on the first half of May or first part

1 of pulse flow period and then take advantage of the pulse  
2 flow to offset it later to.

3 So the detriment we get from the high EC from the  
4 earlier period is overbalanced in terms of the damage to  
5 crops by having better quality than we need later on. So  
6 it's part of the fact the way the thing is done is  
7 certainly not what intention was in establishing those  
8 standards.

9 MR. O'LAUGHLIN: In fact, it's your opinion, in  
10 fact, that the salinity standards established by the State  
11 Water Resources Control Board are, in fact, inadequate,  
12 correct?

13 MR. HILDEBRAND: Pardon me. Would you say that  
14 again?

15 MR. O'LAUGHLIN: It is your opinion, isn't it,  
16 that the salinity standards established by the State Water  
17 Resources Control Board in the 1995 Water Quality Control  
18 Plan are, in fact, inadequate?

19 MR. HILDEBRAND: They are somewhat inadequate  
20 from our point of view, particularly in our regard to the  
21 quality of the water in March and October for orchard  
22 irrigations, 'cause they only look at alfalfa and beans.  
23 They didn't look at the tree crops. But in any event, I  
24 believe that this thing you point to in this particular  
25 chart is indeed a violation. It's certainly a violation

1 of the intent. May not be a violation from a lawyer's  
2 point of view, that I say lawyers are strange people.

3 MR. HERRICK: Move to strike.

4 CHAIRMAN BAGGETT: Is this an adverse witness?

5 MR. O'LAUGHLIN: In regards to South Delta  
6 Water Agency Exhibit No. 7, I believe it is, you talked  
7 about a 375,000 acre-foot reduction.

8 Do you remember that in your testimony?

9 MR. HILDEBRAND: Yes, I do.

10 MR. O'LAUGHLIN: Looking at that chart, can you  
11 tell me what the impacts for Friant would be in a dry year  
12 at Vernalis from April through September?

13 MR. HILDEBRAND: In a dry year the impact from  
14 April through September is only 6- or 7,000 acre-feet on  
15 an average dry year. However, by the same token when  
16 flows are that low, a large VAMP flow is a big increment.  
17 So that it is more significant than it would be in a year  
18 when you have a larger flow.

19 MR. O'LAUGHLIN: Do you know what the San  
20 Joaquin River index was for the year 2002?

21 MR. HILDEBRAND: No, I don't keep track of the  
22 index. I keep track of flow.

23 MR. O'LAUGHLIN: Do you know what the index was  
24 for the San Joaquin River Basin for 2001?

25 MR. HILDEBRAND: I don't know. But it was --

1 in 2001 I believe it was indexed to a modestly dry year.  
2 But these comparisons we've been talking about here today  
3 are not representative because, as I think I mentioned  
4 earlier, we have had major floods in '97 and '98. So the  
5 dams were all full. The soils are saturated. And '99 and  
6 2000 were roughly average years. They didn't draw that  
7 down. Then we came along with 2001, and it was  
8 technically a dry year, although not terribly dry, and we  
9 were still riding on the benefit of those previous wet  
10 years.

11 If you had a situation where 2001 had followed some  
12 dry years, we'd be in bad shape.

13 MR. O'LAUGHLIN: Do you know -- I hesitate to  
14 ask, but do you know what the San Joaquin River Basin  
15 index is for the year 2003?

16 MR. HILDEBRAND: I don't know whether it's even  
17 been established yet, may have been. But even if it was  
18 established in March, April's been a strange month. So I  
19 don't know what it would be now.

20 MR. O'LAUGHLIN: When normally are the ag  
21 barriers installed in the South Delta?

22 MR. HILDEBRAND: They are normally installed by  
23 the 15th of April, prior to the pulse flow

24 MR. O'LAUGHLIN: Have you done any analysis to  
25 determine if, in fact, an additional 47,000 acre-feet of

1 water was released in the April-May pulse flow period if  
2 it would be, in fact, trapped and used behind the tidal  
3 barriers for reasonable and beneficial use in South Delta?

4 MR. HILDEBRAND: Well, let me expand on my  
5 previous answer.

6 MR. O'LAUGHLIN: Please do.

7 MR. HILDEBRAND: The Head of Old River Barrier  
8 was put in for protection of fish, not for the protection  
9 of agriculture. It is put in before this pulse flow  
10 starts which typically is April 15th to May 15th.

11 Now when they put that in, it tends to dewater our  
12 downstream channels. So they also are now required to put  
13 in the Middle River and Old River tidal barriers, Old  
14 River near Tracy, to maintain some water levels in those  
15 channels. And then they are required to let water through  
16 the Head of Old River Barrier, not completely close that,  
17 in order to maintain downstream flow below that. Now when  
18 the flows are fairly adequate, that is all right. But if  
19 the flow is below, as it may be this year, sometimes also  
20 have to add the Grant Line Barrier and close it while Head  
21 of Old River Barrier is in, otherwise we are dewatered.

22 If they put it in, you don't have to let near as much  
23 water through the Head of Old River Barrier, anyway. So  
24 the situation at the moment is that our local diversions  
25 still aren't very high. DWR modeling forecasts that we

1 can get by without completely closing the Grant Line  
2 Barrier this early, although it is certainly going to be  
3 necessary sooner than later. But the other three barriers  
4 are in, the Head of Old River Barrier and the Middle River  
5 Barrier and the one on Old River near the DMC pumps.

6 MR. O'LAUGHLIN: My question is more specific.  
7 Have you, in fact, done analysis to determine if this  
8 47,000 acre-feet of water would be trapped behind the ag  
9 barriers and used for beneficial use or would it be excess  
10 to the Delta and be outflow?

11 MR. HILDEBRAND: You have to give me a specific  
12 hydrologic situation. I can't answer that as a general  
13 question.

14 MR. O'LAUGHLIN: Have you done any analysis of  
15 the pre-VAMP operations at Exchequer as opposed to the  
16 post VAMP operation at Exchequer?

17 MR. HILDEBRAND: I don't know whether you would  
18 call it an analysis, but I'm aware for example that, if my  
19 memory is correct, that in one earlier year the Bureau  
20 paid the Merced people to generate power in the spring  
21 when it was worth less and in order to shift water from  
22 summer to spring. We have Steiner's testimony that the  
23 times they generate less power are to provide the VAMP,  
24 which is what you'd logically expect. The tributaries are  
25 being paid to release water in the spring. And the way to

1 get that is to have less water released in the summer.  
2 That is what happens on a general scale.

3 To come down to a specific situation you have to  
4 define it more accurately.

5 MR. O'LAUGHLIN: What I am asking you is your  
6 opinion is that by releasing water in the spring less  
7 water is, therefore, available in the San Joaquin River  
8 system below New Don Pedro or Exchequer in the summertime  
9 than what would have occurred without this release of  
10 47,000 acre-feet; is that correct?

11 MR. HILDEBRAND: It's correct that at the time  
12 that you make the refill, unless the refill is from truly  
13 excess water that is excess to the whole system.

14 MR. O'LAUGHLIN: If New Don Pedro or Exchequer  
15 are not refilling in the summertime, then it would not  
16 have an impact on your summer irrigation; is that correct?

17 MR. HILDEBRAND: At the same moment, but these  
18 things are cumulative.

19 MR. O'LAUGHLIN: What evidence do you rely upon  
20 for the fact that either at New Don Pedro or Exchequer  
21 water prior to the San Joaquin River Agreement was  
22 historically released in summertime below those reservoirs  
23 for purely power production?

24 MR. HILDEBRAND: I don't have extensive study  
25 to bolster that, but seems pretty obvious if they have a

1 lot of water excess of the needs of the tributaries and  
2 they are not being paid to let it out or for fish in the  
3 spring, they are going to let it out when the power is  
4 worth the most, and it's worth the most in the summer.

5 MR. O'LAUGHLIN: Thank you, Chairman, Board  
6 Member. I am done with my cross-examination.

7 CHAIRMAN BAGGETT: Thank you.

8 Mr. Nomellini.

9 MR. NOME LLINI: No cross.

10 CHAIRMAN BAGGETT: Stockton East.

11 There is no cross-examination.

12 Is there any redirect?

13 MR. HERRICK: Yes, sir. Just briefly, please.

14 ----oOo----

15 REDIRECT EXAMINATION OF SOUTH DELTA WATER AGENCY

16 BY MR. HERRICK

17 MR. HERRICK: Mr. Pellegri, in answer to a  
18 question about barrier operations I believe you said you  
19 didn't know whether they were in place in the summers 2001  
20 and 2002.

21 Do you recall those answers?

22 MR. PELLE GRI: Yes.

23 MR. HERRICK: In fact, do you know whether or  
24 not the barriers were in -- the tidal barriers were in  
25 operation during the times you complained low water levels

1 in Tom Paine Slough during 2002?

2 MR. PELLEGGRI: Yes. I remember the barriers  
3 were in.

4 MR. HERRICK: Would that be the same answer for  
5 2001?

6 MR. PELLEGGRI: Yes.

7 MR. HERRICK: In 2001 I believe your testimony  
8 says that you didn't notice any significant interference  
9 with diversions; is that correct?

10 MR. PELLEGGRI: That's correct.

11 MR. HERRICK: Is that the reason you didn't  
12 take any actions to try to cure the situation in that  
13 year?

14 MR. PELLEGGRI: Right.

15 MR. HERRICK: Mr. Robinson, you answered a  
16 couple questions about the affect of the export pumps on  
17 water levels in Middle River.

18 Do you recall that?

19 MR. ROBINSON: Yes.

20 MR. HERRICK: Do you have any information  
21 whether or not the export pumps do affect water levels in  
22 Middle River?

23 MR. ROBINSON: I thought the Bureau and the  
24 state had done some sort of a study. Alex had been  
25 complaining for years and years, showed that each thousand

1 cubic feet per second made a difference of a tenth of a  
2 foot in the -- off of the high tide in the area of Middle  
3 River in that area, maybe even more widespread in the  
4 Delta.

5 MR. HERRICK: Mr. Robinson, do you recall  
6 answering a question with regards to siltation in Middle  
7 River?

8 MR. ROBINSON: Yes.

9 MR. HERRICK: There was another question with  
10 regard to dredging in Middle River?

11 MR. ROBINSON: Right.

12 MR. HERRICK: Do you have any knowledge as to  
13 whether or not siltation or the raising of the stream  
14 bottom has anything to do with the height of the water  
15 level?

16 MR. ROBINSON: I don't think it does. I think  
17 it has more affect on the low tide. It is still on the --  
18 the water level even on the high tide is below normal.  
19 You are not going to get the efficiency out of your  
20 pumping station that you normally would.

21 MR. HERRICK: Mr. Robinson, is the height of  
22 the water in the channel a function of the stream bottom  
23 or a function of tides and inflows?

24 MR. ROBINSON: I would think tide and inflows.

25 MR. HERRICK: Mr. Salmon, you answered some

1 questions about diversions upstream of your Thorsen Ranch  
2 portion on Old River.

3 Do you recall that?

4 MR. SALMON: Yes.

5 MR. HERRICK: Would you agree when the tidal  
6 barriers are installed and operating, your diversion is  
7 isolated from any diversions upstream on Old River; is  
8 that correct?

9 MR. SALMON: Repeat that again, please.

10 MR. HERRICK: Let me rephrase that. If someone  
11 is diverting on Old River upstream of the barrier, and the  
12 barrier is operating, that diversion has no affect on the  
13 water level at your position at your diversion point on  
14 Old River; is that correct?

15 MR. SALMON: That's correct.

16 MR. HERRICK: MR. HILDEBRAND, you answered a  
17 question or two about South Delta Exhibit No. 9.

18 You recall that?

19 MR. HILDEBRAND: Yes.

20 MR. HERRICK: If I may, that has two charts,  
21 one for April 2001 and one for April 2002; is that  
22 correct?

23 MR. HILDEBRAND: Yes.

24 MR. HERRICK: At the bottom of the page it says  
25 30-day accumulated mean and 30-day average mean columns

1 are 30-day runnings, except for April 1st and September  
2 1st where they do not go back 30 days; is that correct?

3 MR. HILDEBRAND: That's right.

4 MR. HERRICK: Is it your understanding that the  
5 water quality objective for agricultural beneficial uses  
6 at Vernalis from April through September is a 30-day  
7 running average?

8 MR. HILDEBRAND: Yes.

9 MR. HERRICK: And so according to this chart,  
10 would you conclude that the Bureau did not meet the  
11 standard during those initial days of both those months  
12 for those two years?

13 MR. HILDEBRAND: That is my opinion. It  
14 depends on whether you actually intend to let them go  
15 beyond the closing dates between two different standards,  
16 and I don't think they did. From those charts you can't  
17 tell.

18 MR. HERRICK: Wouldn't it be reasonable to  
19 expect that prior to April 1st the average was higher than  
20 the seven EC requirement?

21 MR. HILDEBRAND: Yes.

22 MR. HERRICK: So if you did take those prior  
23 days and average them into April 1st, you could still come  
24 up with a higher average, would you not?

25 MR. HILDEBRAND: Say that again.

1                   MR. HERRICK:  If you average the prior 30 days,  
2                   from April 1st and those numbers are higher than .7 EC,  
3                   then you would, in fact, half an average higher than 7 EC,  
4                   wouldn't you?

5                   MR. HILDEBRAND:  Oh, yes.

6                   MR. HERRICK:  MR. HILDEBRAND, you were asked a  
7                   question about whether or not the 47,000 acre-feet, if  
8                   released during the pulse flow, might be trapped behind  
9                   the tidal barriers.

10                  Do you recall that?

11                  MR. HILDEBRAND:  Yes.

12                  MR. HERRICK:  During the pulse flow period,  
13                  isn't the Head of Old River Barrier installed?

14                  MR. HILDEBRAND:  Yes.  Therefore, it probably  
15                  would not be trapped.

16                  MR. HERRICK:  Whether or not it is trapped, it  
17                  would then move farther downstream of the main stream of  
18                  the San Joaquin; is that correct?

19                  MR. HILDEBRAND:  That's correct.

20                  MR. HERRICK:  That water would then be  
21                  available to many uses, including potentially Delta  
22                  outflow; is that correct?

23                  MR. HILDEBRAND:  That and also maintaining the  
24                  dissolved oxygen standard in the ship channel which can't  
25                  be met without an adequate inflow to the ship channel.  So

1 this depletion of San Joaquin River flow affects us, but  
2 it also effects the capability of meeting the dissolved  
3 oxygen standard, which is a Board standard in the ship  
4 channel. You can't meet it if you don't have an adequate  
5 minimum inflow.

6 MR. HERRICK: That is all I have, Mr. Chairman.  
7 With that I would --

8 CHAIRMAN BAGGETT: Any recross, Mr. O'Laughlin?

9 MR. O'LAUGHLIN: None.

10 MR. O'LAUGHLIN: Mr. Nomellini.

11 MR. NOMELLINI: None.

12 CHAIRMAN BAGGETT: None from any of the  
13 parties, South Delta or Central Delta.

14 MR. HERRICK: I would then move to have South  
15 Delta Exhibits 1 through 24 admitted into evidence,  
16 please.

17 CHAIRMAN BAGGETT: Mr. O'Laughlin.

18 MR. O'LAUGHLIN: Once again we'd like to renew  
19 our objection to South Delta Water Agency No. 8 and No. 10  
20 and No. 21 as well as portions of MR. HILDEBRAND's  
21 testimony. Clearly based on cross-examination it is  
22 evident there is absolutely no linkage between the  
23 testimony that is being proffered and the 47,000 acre-foot  
24 petition.

25 MR. HERRICK: I would just respond to that. I

1 believe Mr. Hildebrand's testimony sets forth how the  
2 existing problems in the Delta would be exacerbated, and  
3 thus cause additional harm and thus be relevant to the  
4 question of whether or not the proposed change could  
5 affect legal users of water.

6 CHAIRMAN BAGGETT: I will overrule the  
7 objection as stated earlier. We will allow the testimony  
8 and give it the weight which is appropriate and useful  
9 background information.

10 With that, we will allow the evidence in. There is  
11 no other objections.

12 MR. HERRICK: Thank you, Mr. Chairman.

13 CHAIRMAN BAGGETT: Take a -- we will move on.  
14 We have one witness. This panel is dismissed. We will go  
15 with Stockton East Water District.

16 MS. HARRIGFELD: Karna Harrigfeld on behalf of  
17 Stockton East Water District. I would like to make a  
18 brief opening statement, and then we have Kevin Kauffman  
19 as our one witness.

20 Stockton East Water District's Central Valley  
21 Project water surface contract is with the United States  
22 Bureau of Reclamation for water from New Melones.  
23 Stockton East signed a memorandum of understanding with  
24 the San Joaquin River Group Authority supporting the San  
25 Joaquin River Agreement. That support, however, did not

1 include actions that would have a direct and adverse  
2 affect on our water supplies.

3 Throughout the development of the MOU as well as in  
4 the State Board proceedings, culminating in D-1641,  
5 Stockton East expressed concerns that the implementation  
6 of the SJRGA would adversely impact the amount of water  
7 allocated to us under the CVP contract.

8 In Decision 1641 the State Board concluded, and I  
9 quote:

10 Under certain hydrologic and operating  
11 scenarios, implementation of the SJRGA in  
12 conjunction with the IOP formula could  
13 cause February end of month storage to be  
14 lower than it would without the SJRGA,  
15 resulting in lower allocations to the CVP  
16 contractors of New Melones. (Reading)

17 The State Board further concluded in Decision 2002  
18 that, quote:

19 Modeling indicates that in the absence of  
20 the condition and few years of records the  
21 approved changes could significantly  
22 reduce the amount of water that the Bureau  
23 would make available to its water supply  
24 contractors from the New Melones project.  
25 (Reading)

1           As a result in D-1641 the long-term changes to  
2 Merced Irrigation District, Modesto and Turlock Irrigation  
3 District there was a condition imposed upon those permits.  
4 And the condition reads as follows:

5           At times when the Bureau is releasing  
6 water from New Melones for the purpose of  
7 meeting Vernalis salinity objective or  
8 when standard permit Term 93 is in effect  
9 or when salinity objectives at Vernalis  
10 are not being met, the licensee shall not  
11 replenish, one, stored water or foregone  
12 diversions provided during the April and  
13 May pulse flow, or the October target flow  
14 at Vernalis.       (Reading)

15           And that is the case of Merced River.

16           And water transfer to the Bureau pursuant  
17 to the SJRGA.     (Reading)

18           We refer to this as the refill condition. The  
19 purpose of this condition is to protect the junior water  
20 right holders of the Bureau from the effects of the  
21 long-term changes in the water rights Merced, Modesto and  
22 Turlock.

23           Getting to today's petition, Stockton East's filed a  
24 protest to the petition. We agreed to withdraw the  
25 protest provided that the condition was imposed as part of

1 this proceeding. We notified the State Board on May 24th  
2 of our intent to withdraw because the petitioners have  
3 agreed to include that condition.

4 Since the correspondence, we have raised issues with  
5 State Board with respect to the refill condition and  
6 compliance with that. The purpose of our case in chief is  
7 to demonstrate that, first of all, we are a legal user of  
8 water. We have also included an additional letter --  
9 several additional letters that go to the issue that we  
10 have with respect to the 2003 operations. The information  
11 is not going to prove or disprove that issue. That is  
12 going to be resolved outside these proceedings, but it  
13 provides evidence that there is a lack of communication  
14 among the operators and shows that there is potential that  
15 we are being impacted.

16 So that is essentially my opening statement.

17 Kevin -- Mr. Kauffman didn't get sworn in.

18 (Oath administered by Chairman Baggett.)

19 ----oOo----

20 DIRECT EXAMINATION OF STOCKTON EAST WATER DISTRICT

21 BY MS. HARRIGFELD

22 MS. HARRIGFELD: Kevin, Mr. Kauffman, is  
23 Stockton East Water District Exhibit No. 001 a true and  
24 correct copy of your testimony today?

25 MR. KAUFFMAN: Yes, it is.

1 MS. HARRIGFELD: Please proceed with a brief  
2 summary.

3 MR. KAUFFMAN: Thank you, Karna.

4 I will be brief. You have my testimony before you.  
5 I intend to cite a few of the exhibits and then get on  
6 with any questions.

7 Exhibit 3 is a true and correct copy of the letter  
8 sent by Stockton East to the State Board concerning  
9 certain releases that the Bureau began making in January  
10 of this year to meet the Vernalis water quality objective.  
11 Stockton East is questioning whether continuing diversions  
12 to storage should be continued to be made by licensees of  
13 Merced, Modesto and Turlock Irrigation Districts at issue  
14 here today because the Bureau is making releases for water  
15 quality as shown in the attached letter.

16 Exhibit 4 of my testimony is a letter from the State  
17 Board to Merced, Modesto and Turlock Irrigation Districts  
18 responding to the information Stockton East provided and  
19 requested additional information from these agencies.  
20 These letters show that there is no mechanism in place for  
21 the water agencies to communicate to one another. And it  
22 took filing a complaint by SEWD, or Stockton East Water  
23 District, to the State Board to ensure that the water  
24 rights of Stockton East are protected by the condition  
25 imposed by your Decision 1641.

1           The purpose of my testimony today is to provide a  
2           brief background on Stockton East Water District and its  
3           water supply from the Stanislaus River. Stockton East  
4           Water District is a water district created by special act.  
5           We are located in San Joaquin County. The district has a  
6           contract with the U.S. Bureau of Reclamation for water  
7           service from the New Melones Project on the Stanislaus  
8           River for both agricultural and municipal and industrial  
9           purposes. Our contract is attached as Exhibit 5.

10           The Stockton East Water District constructed a  
11           conveyance system which we call The New Melones Conveyance  
12           System to deliver water from the Stanislaus River to our  
13           agricultural users within the district and to the  
14           district's drinking water treatment plant. Stockton East  
15           Water District has repeatedly requested water from the  
16           Bureau of Reclamation since completion of those facilities  
17           in 1993. The Bureau of Reclamation has not made a full  
18           delivery to Stockton East as requested since 1993.

19           Exhibit 6 attached to my testimony is the New  
20           Melones Interim Operations Plan. That sets forth how  
21           allocations are made to various uses of water.  
22           Allocations under the Interim Operating Plan are made  
23           based upon February end of month storage plus March  
24           through September forecasted inflow to New Melones  
25           Reservoir. Consequently storage is a critical factor in

1 determining contractual allocations.

2 And thank you for listening.

3 CHAIRMAN BAGGETT: Cross-examination,  
4 Mr. O'Laughlin. Questions?

5 MR. O'LAUGHLIN: Yes, thank you.

6 ---oOo---

7 CROSS-EXAMINATION OF STOCKTON EAST WATER DISTRICT

8 BY SAN JOAQUIN RIVER GROUP AUTHORITY

9 BY MR. O'LAUGHLIN

10 MR. O'LAUGHLIN: Mr. Kaftan, does Stockton East  
11 Water District hold a post 1914 water right on the  
12 Stanislaus River?

13 MR. KAUFFMAN: Yes, it does.

14 MR. O'LAUGHLIN: What post 1914 water right  
15 does Stockton East Water District have from the Stanislaus  
16 River? Can you give me the permit number, the application  
17 number or the license number that is held by Stockton  
18 East?

19 MR. KAUFFMAN: Yes. There is no application.  
20 There are currently applications on the Stanislaus River.  
21 There are no existing permits or licenses to Stockton East  
22 Water District, but the right talk brought up previously  
23 the contract agreement with the U.S. Bureau of  
24 Reclamation.

25 MR. O'LAUGHLIN: Does Stockton East Water

1 District have a pre-1914 water right from the Stanislaus  
2 River?

3 MR. KAUFFMAN: No.

4 MR. O'LAUGHLIN: Does Stockton East Water  
5 District claim a riparian right from the Stanislaus River?

6 MR. KAUFFMAN: No.

7 MR. O'LAUGHLIN: In fact, the only right that  
8 Stockton East claims is a contractual right with the  
9 United States Bureau of Reclamation to receive water from  
10 the New Melones Project; is that correct?

11 MR. KAUFFMAN: That's correct.

12 MR. O'LAUGHLIN: Have you read Judge Candee's  
13 decision in the D-1641 case?

14 MS. HARRIGFELD: I'll object.

15 MR. O'LAUGHLIN: I am just asking if he read  
16 it.

17 MS. HARRIGFELD: I think that is definitely out  
18 of the scope of his direct testimony and not --

19 MR. O'LAUGHLIN: Absolutely not because he said  
20 he was a legal user of water. So we are going to explore  
21 a legal user of water.

22 MS. HARRIGFELD: Well, a legal user of water is  
23 a legal term.

24 MR. O'LAUGHLIN: Well, he said it. I didn't.

25 CHAIRMAN BAGGETT: If the witness is familiar

1 with it, answer with your knowledge. He's not an  
2 attorney. If not, so state.

3 MR. O'LAUGHLIN: Absolutely.

4 CHAIRMAN BAGGETT: Answer the question.

5 MR. KAUFFMAN: No. I have not read it.

6 MR. O'LAUGHLIN: What is your definition of  
7 legal user of water?

8 Chairman, I don't mind conferences, but if she's  
9 going to testify, she should be sworn in. If he's going  
10 to testify, then he should be sworn in.

11 MR. NOMELLINI: We didn't do that to Timmy.

12 MR. KAUFFMAN: I think I was already sworn.

13 CHAIRMAN BAGGETT: To the extent an engineer  
14 can answer it. Within your area of expertise, answer to  
15 that extent.

16 MR. KAUFFMAN: I am not an attorney. I don't  
17 understand the legal use of the term "legal user of  
18 water."

19 MR. O'LAUGHLIN: When you used it in your  
20 testimony, you didn't know what you were talking about; is  
21 that correct?

22 MR. KAUFFMAN: No. I think I probably used the  
23 term in my testimony to make a point and to define the  
24 fact that we had a contract with the Bureau of Reclamation  
25 to use water on the Stanislaus River. Not as an attorney,

1 but as a manager of the water district.

2 CHAIRMAN BAGGETT: Thank you.

3 MR. O'LAUGHLIN: Thank you.

4 I have no further questions.

5 CHAIRMAN BAGGETT: Mr. Herrick.

6 MR. HERRICK: Thank you, Mr. Chairman. I will  
7 be very brief.

8 ----oOo----

9 CROSS-EXAMINATION OF STOCKTON EAST WATER DISTRICT

10 BY SOUTH DELTA WATER AGENCY

11 BY MR. HERRICK

12 MR. HERRICK: Mr. Kauffman, you mentioned in  
13 your testimony that Stockton East constructed facilities  
14 to bring water from the Stanislaus to your agricultural  
15 customers and then to your treatment plant; is that  
16 correct?

17 MR. KAUFFMAN: Yes, that is correct. The New  
18 Melones system is a system of canals and tunnels totaling  
19 about \$65,000,000 worth of improvements. These facilities  
20 were completed in 1993. The facilities serve both our  
21 district and the Central San Joaquin Water Conservation  
22 District, which has a CVP contract on New Melones as well  
23 in the amount of 80,000 acre-feet per year.

24 MR. HERRICK: When those facilities were  
25 completed, did the Bureau supply the contractors you

1 mentioned with water? The two contractors being Stockton  
2 East and Central San Joaquin.

3 MR. KAUFFMAN: Right. What we call the east  
4 side contractors of CVP. This was prior to my time with  
5 the district. As you recall, I became the general manager  
6 of the Stockton East Water District in July of 1999. But  
7 my understanding is that the request occurred as early as  
8 1993, but were denied until 1995.

9 MR. HERRICK: The request for delivery of water  
10 for '95 was fulfilled?

11 MR. KAUFFMAN: Yes. The Bureau supplied the  
12 defined contractors with 8,600 acre-feet of water.

13 MR. HERRICK: Has the Bureau supplied those  
14 contractors of water since 1995?

15 MR. KAUFFMAN: Yes. The combined CVP  
16 contractors on the east side have received water in the  
17 range of 8,600 acre-feet to 57,800 acre-feet. Last year  
18 the combined delivery was 15,500 acre-feet. And this year  
19 the allocation is zero.

20 MR. HERRICK: Is it your understanding that  
21 your allocation this year is zero, but other CVP  
22 contractors are allocated 60 percent or in excess of that?

23 MR. KAUFFMAN: That is my understanding.

24 MR. HERRICK: I have no further questions.

25 CHAIRMAN BAGGETT: Mr. Nomellini.

1 Is there any redirect?

2 MS. HARRIGFELD: No.

3 I would like to move our exhibits, Stockton East  
4 Exhibits 001 through 007 into evidence.

5 CHAIRMAN BAGGETT: Any objection?

6 MR. O'LAUGHLIN: Yes.

7 CHAIRMAN BAGGETT: MR. O'LAUGHLIN.

8 MR. O'LAUGHLIN: I would like to object to  
9 Stockton East Water District Exhibit 007 and Stockton East  
10 Water District 004 as being hearsay evidence, irrelevant  
11 and outside the scope of the hearing.

12 MR. HERRICK: What exhibits?

13 MR. O'LAUGHLIN: I objected to Stockton East  
14 Water District Exhibit No. 4, correspondence from the  
15 State Board to the petitioners, and Stockton East Water  
16 District 007, correspondence from Chet Bowling regarding  
17 New Melones Reservoir ops.

18 MS. HARRIGFELD: With respect to Exhibit No. 4,  
19 as I understand it the State Water Resources Control Board  
20 staff exhibits include any and all files of the licensees.  
21 I would presume since our original letter, No. 3, and  
22 original letter No. 4 is a response, that they are already  
23 in the administrative record.

24 With respect to Exhibit No. 7, as you know, the  
25 Bureau of Reclamation would not submit to jurisdiction

1 here. I made what is called a Touhy Request of them.  
2 They indicated that it would be unduly burdensome to  
3 provide someone. So in the alternative they submitted  
4 this, quote, public record for inclusion. It is, one,  
5 highly relevant because it demonstrates a number of  
6 things. First of all, it demonstrates that New Melones is  
7 not being operated in accordance with the IOP this year.  
8 Secondly, it demonstrates that there is no communication  
9 between the trib group and also the Bureau when they are  
10 making releases for water quality.

11 CHAIRMAN BAGGETT: I guess, as I recall, didn't  
12 counsel for San Joaquin River Authority use that same  
13 document with his witness?

14 MR. O'LAUGHLIN: No.

15 MS. HARRIGFELD: I presented it and asked  
16 questions about it during that testimony.

17 MR. O'LAUGHLIN: That is correct. She asked  
18 questions about that document. But I'm objecting to that  
19 document. It is hearsay. The party who drafted the  
20 document is not here for cross-examination.

21 Your rules afford us the opportunity to provide  
22 cross-examination of witnesses. And there is a difference  
23 here because, if Mr. Kaftan was relying upon it for his  
24 opinions and conclusions as an expert, I could see as  
25 hearsay that it would be allowed to come in. However, it

1 is being offered for the truth of the matter asserted and,  
2 therefore, it is hearsay and we haven't had the chance to  
3 cross-examine Mr. Bowling on the points made in the  
4 letter.

5 MS. HARRIGFELD: Two points. First of all, it  
6 is not hearsay because there are a number of exceptions to  
7 the hearsay rule. One of those being the record of a  
8 public employee, Evidence Code 1280. Second of all, the  
9 State Board and the hearing officer is given pretty broad  
10 latitude with respect to your ability to take official  
11 notice of official acts of the United States. I presume a  
12 letter written on U.S. Department of Interior letterhead  
13 would be an official act, and according to 648.2 of the  
14 Code of Civil -- or the CC&Rs would be admissible under  
15 either one of those.

16 CHAIRMAN BAGGETT: Let me rule on the first two  
17 State Board letters. They are, as you noted, in the file,  
18 and we can take them on our motion. They have already  
19 been included by our previous submittals. Those two I  
20 will allow in.

21 The third one, the Bureau letter, do you have  
22 anything further?

23 MR. O'LAUGHLIN: It doesn't fall under any  
24 exception because it is not a public document. It doesn't  
25 fall under the public documents exception. No one is here

1     testifying on behalf of the Bureau that it is, in fact, a  
2     public document normally generated in the course and scope  
3     of the public documents request. So that is out.

4             And the second one is that she claims that it is an  
5     official public document of the Bureau. We have no way of  
6     knowing that. Just because the letter is written on  
7     Bureau stationery doesn't mean that it is an official act  
8     of a public --

9             MS. HARRIGFELD: It was an official act when I  
10    had to go through the Touhy process. And as I understand  
11    it, that specific request is of the Secretary of the  
12    Interior.

13            CHAIRMAN BAGGETT: Under the rules of this  
14    Board, as you know, the hearsay rules are -- we don't have  
15    79 exceptions. We will allow the evidence. We'll take it  
16    in and give it the weight it is afforded. Although this  
17    is a copy, I assume we can get --

18            MS. HARRIGFELD: I would be happy to provide  
19    the original once I receive it. I got the fax copy  
20    yesterday.

21            CHAIRMAN BAGGETT: With that, we will allow the  
22    evidence in.

23            Take a break or do you want to go, start with Central  
24    Delta? It's your witness.

25            MR. NOMELLINI: Mr. Chairman, I am missing one

1 witness. If you would allow me to bring the two that I  
2 have here present up, do my opening statement, go as far  
3 as we can with the panel that I have and then bring my  
4 third witness when he arrives.

5 CHAIRMAN BAGGETT: Let's take a break to ten  
6 till. Allow you to get the witness you have ready. So  
7 seven minutes, and then we will start with what you've  
8 got.

9 We are in recess.

10 (Break taken.)

11 CHAIRMAN BAGGETT: We are back on the record.  
12 The last case in chief, Central Delta, Mr. Nomellini.

13 MR. NOMELLINI: Dante John Nomellini for  
14 Central Delta parties. I would like to make a brief  
15 opening statement.

16 The situation on the San Joaquin River has, in our  
17 view, for a number of years been crying out for a total  
18 and meaningful solution of some kind. During the course  
19 of the D-1641 hearings when the San Joaquin River  
20 Agreement was a subject, we asked the State Board to  
21 require the Bureau that they submit a plan as to how they  
22 intended to meet not only the flow requirements but the  
23 water quality requirements on the San Joaquin River and,  
24 of course, including the VAMP requirements associated with  
25 fish.

1           The evidence submitted by the Bureau showed that  
2           their modeling, based on whatever the assumptions were  
3           that they had for all the modeling that they did and I  
4           assume the State Board modeling supported that, would  
5           result in innumerable violations of the salinity standards  
6           at Vernalis. So we made a big issue out of that and, in  
7           fact, it is still an issue in litigation that remains from  
8           D-1641.

9           The State Board, instead of taking the modeling,  
10          relied on assurances from the Bureau representatives that  
11          they would meet these requirements. They would meet the  
12          water quality requirements. They would meet the flow  
13          requirements. And it sounded fairly strong to the Board.  
14          Sounded stronger to the Board than it did to us, of  
15          course, because we look with a jaundiced eye at some of  
16          the agencies, rightfully or wrongfully. But, in any  
17          event, the Board relied on that and said that if in five  
18          years you are not meeting these requirements then you give  
19          us a report.

20          Now we have seen, and I think the record has and  
21          some of our exhibits have, that recent correspondence from  
22          the Bureau where their commitment is seemed to soften  
23          substantially. And what we have before you today is part  
24          of a water transfer package. There are a lot of transfers  
25          that have been approved on the San Joaquin River system.

1 We have the San Joaquin River Agreement and all the  
2 transfers associated with that and now we are adding  
3 47,000 for the double-step. And they're asking for a  
4 permanent transfer.

5 So we suggest that it is not in the public interest  
6 to approve permanent transfers without going back and  
7 getting a handle on how we are going to operate San  
8 Joaquin River system to meet the standards. You're either  
9 going to have to change the standards because they are not  
10 being met or you're going to have to come up with some  
11 kind of plan to meet them. We know that each one of these  
12 commitments involves a reallocation of water.

13 The people on the tributaries, the San Joaquin River  
14 Group Authority and the applicants here today are meeting  
15 all of their consumptive needs in the district plus they  
16 have this extra water. And this extra water either has to  
17 be needed at sometime for the beneficial use or they  
18 shouldn't be entitled to it. Otherwise they are just  
19 adding to their water supply which transfer positions do  
20 not allow or it is needed sometime in the future. So the  
21 crunch time is coming.

22 These systems are fairly complex. They are hard to  
23 analyze. They are hard to model. The computer models are  
24 just tools we can use to get a comparative result and get  
25 an idea what is happening. But we know that when we add a

1 demand on the system and we don't reduce consumptive use  
2 or we don't identify a way to develop more yield, we are  
3 just taking more water out of the system. We know this  
4 system on the San Joaquin is short. And I don't know,  
5 nobody's come up with a plan. I don't pretend to have the  
6 plan or the solution of the problem. But somebody out to  
7 have the plan before we keep -- as a prerequisite to us  
8 going forward and ratifying additional demands on the  
9 system.

10           If you qualified or conditioned that transfer so  
11 that it was only the result of a savings in consumptive  
12 use, then in our view, and our view is a little different  
13 than South Delta's, our view is that it should be tied to  
14 consumptive use. Because if you just played around with  
15 the refilling, I don't know how we control that. It is  
16 very difficult to tell because these people operate these  
17 reservoirs without any regard to the needs downstream.  
18 They operate according to criteria that is imposed on them  
19 and when it is vacant and water comes down they sell it.  
20 And somebody would have to adjudicate the whole system.  
21 And we've been thinking about it. We don't like the idea,  
22 but we may have to adjudicate the system in order to get a  
23 handle on that. But I don't think the Board wants the  
24 equivalent of an adjudication in order to decide on a  
25 transfer.

1           We think it is very important that you properly  
2           condition it so it doesn't require a lot of policing.  If  
3           we once get a plan from the Bureau as to how they are  
4           going to operate the system, then we can get a handle  
5           better on what the impacts are and what the results would  
6           be from any one of these transfers.  But these analyses  
7           that you are dependent on and we're reacting to are all  
8           based on the IOP for New Melones, the Interim Operation  
9           Plan, which didn't meet the standards to begin with, and  
10          is not the plan that is being followed by the Bureau  
11          today.  The question is:  What is the plan?

12          We have a one-year outline of how they are going to  
13          operate.  This doesn't tell us what they are going to do  
14          in the future.  So how can you evaluate a permanent  
15          transfer with environmental analysis based on an IOP that  
16          clearly is not going to be the pattern for the future.  
17          So, what is it?  And then what is your analysis of the  
18          impact of this transfer based on that?

19          So we would ask that it be conditioned.  Of course,  
20          conditioning on consumptive use doesn't tell us about the  
21          whole picture, but I think it would go a long ways towards  
22          making sure that we don't suffer any harm.

23          If there is an interim position, I don't know if you  
24          are going to approve it for one year at a time or whatever  
25          the given application, but to approve a permanent

1 transfer means it doesn't come back before the Board in  
2 any respect. So if we find out that the Bureau has some  
3 screwy plan, you're going to get it too it, I think. We  
4 don't know what the judge's decision is ultimately going  
5 to be in D-1641. We may very well have the Board look  
6 into this issue in more detail. And we think it would be  
7 improper to approve permanent transfers until you know  
8 what you've got in terms of the San Joaquin River.

9 I think you do know today that you cannot rely on  
10 you misinterpreted the representation by the Bureau as to  
11 their commitment to meet the requirements. They have been  
12 saying they are going to make a good faith effort. And it  
13 is probably even weaker than that. It just depends what  
14 happens at the time and the pressure from the fishery  
15 agencies. We don't like the idea of continually going  
16 forward.

17 We have a couple of other technical heartaches with  
18 these proposed -- with the transfer. We've raised it  
19 before. One is, as we understand the condition on the  
20 permits granted by the Board, that there isn't supposed to  
21 be profiteering on sales to public entities of water based  
22 on rights issued by the Board. And we've raised that. In  
23 other words, if you're going to get a permit from the  
24 Board and a license, you have a standard condition in  
25 there, and I believe it is in the permits and licenses

1 involved here, that says under the statutes, the 1392 and  
2 1629, it says no value shall be attributed to the rights  
3 granted by the Board in excess of the filing fee paid. As  
4 we argue it, water belongs to the people. State Board is  
5 allocating the people's water. When it comes back to the  
6 people, the public entity, they are not supposed to profit  
7 on it because it is their water, anyway. That is  
8 disputed.

9 Now, with regard to our position and the San Joaquin  
10 River Group Authority, we have an exhibit that was  
11 produced by San Joaquin River Group Authority that we have  
12 agreement, I believe, between counsel to provide that to  
13 the Board subject to the relevancy question.

14 Mr. O'Laughlin will contend that it is not relevant  
15 because that law doesn't have any application to these  
16 permits. But we think that is a legal issue and,  
17 therefore, we are going to offer this exhibit to the Board  
18 at some stage in the proceeding, and maybe now would be  
19 the time, that shows what the price is that they are  
20 selling the water for under the San Joaquin River Group  
21 Authority agreement.

22 So with that, that brings my opening statement to a  
23 close. And I would like to if the Chairman will allow to  
24 embrace this exhibit issue to the extent that the Board  
25 wants to and MR. O'LAUGHLIN wants to interpose his

1 relevancy objection.

2 Just for the record I would like to offer Central  
3 Delta Water Agency 8, which is represented by the San  
4 Joaquin River Group Authority to be the prices paid to  
5 them for the water purchased by the Bureau. I am going to  
6 offer it.

7 CHAIRMAN BAGGETT: Are you familiar with the  
8 exhibit?

9 MR. O'LAUGHLIN: Oh, yes. In fact, in our  
10 discovery process, this was requested by the Central Delta  
11 Water Agency, and we produced it. I have no objection to  
12 its authenticity or the truth of the matter asserted  
13 therein. However, there is a large relevancy question.  
14 In the hearing notice for this hearing there was no such  
15 issue raised in regards to the transfers, in regards to  
16 prices paid for water. We think it is entirely  
17 irrelevant, outside the scope of the hearing. And with  
18 that I will leave it.

19 MR. NOMEILLINI: In our protest submitted on the  
20 application for transfer we raised the issue, and we  
21 believe that the Board should take into consideration a  
22 violation of the water right permit or potential violation  
23 of the permit when considering whether or not to allow the  
24 transfer. We also think the Board's duty in terms of the  
25 public interest is to evaluate whether a transfer of this

1 type should be conditioned so that such an illegal profit  
2 would not be allowed as a party of the transfer. So we  
3 think there is twofold basis.

4 MR. O'LAUGHLIN: One last thing for  
5 clarification so everybody is fully informed. This issue  
6 was raised in the RCRC litigation specifically, and Judge  
7 Esgro has ruled and denied this claim. I don't see that  
8 we need to go back and reinvent the wheel in this case  
9 when we've already got one going in another Superior Court  
10 action in another matter.

11 MR. NOMELLINI: I don't think that's a correct  
12 representation of the litigation. Bit if we do have to  
13 give you evidence of litigation, we ought to bring the  
14 documents.

15 Anyway, we are offering this stipulated to as to  
16 authenticity and challenged as to relevance.

17 CHAIRMAN BAGGETT: Let's proceed and we will  
18 deal with it with the rest of your exhibits at the end of  
19 your case.

20 Proceed with your case.

21 MR. NOMELLINI: Mr. Chairman, Mr. Sharp has  
22 not yet been sworn.

23 (Oath administered by Chairman Baggett.)

24 ----oOo----

25 //

1 DIRECT EXAMINATION OF CENTRAL DELTA WATER AGENCY

2 BY MR. NOMELLINI

3 MR. NOMELLINI: First, Mr. Mussi, could you  
4 state for the record your full name.

5 MR. MUSSI: My name is Rudy Mario Mussi.

6 MR. NOMELLINI: Mr. Mussi, is Central Delta  
7 Water Agency No. 5 a true and correct copy of your  
8 testimony?

9 MR. MUSSI: Yes, it is.

10 MR. NOMELLINI: Mr. Sharp, could you state for  
11 the record your full name.

12 MR. SHARP: Kurt B.L. Sharp.

13 MR. NOMELLINI: Mr. Sharp, is Central Delta  
14 Water Agency 4 a true and correct copy of your testimony?

15 MR. SHARP: Yes.

16 MR. NOMELLINI: What I would like to do very  
17 briefly, have Mr. Herrick put up on the overhead a couple  
18 of the exhibits. We are going to be very brief on it.  
19 The written testimony is there. We bring these witnesses  
20 to the Board for two purposes. To indicate that they are  
21 legal users of water and for the Board to understand how  
22 salinity impacts their farming operation.

23 First, Mr. Sharp, looking at the exhibits on the  
24 board --

25 MR. O'LAUGHLIN: I have an objection.

1 Basically, this is cumulative or redundant or previous  
2 testimony that's already been offered by South Delta Water  
3 Agency. We are going to go through the same litany of  
4 questions and responses. There is probably no dispute  
5 among anybody here in this hearing room that there is a  
6 problem with salinity in the San Joaquin River and in the  
7 South Delta.

8 If they wish, I'll stipulate to that fact. But I  
9 don't think that adding these two witnesses to that course  
10 is going to really mean anything meaningful in regards to  
11 this specific change petition.

12 CHAIRMAN BAGGETT: Is there going to be  
13 anything to add?

14 MR. NOMELLINI: If he's going to stipulate to  
15 it, that's it. We have the legal user issue. I thought  
16 we'd show you where the properties are located and how the  
17 salinity in the field is, their particular locations in  
18 the field that have salt problems now that will get  
19 aggravated.

20 Are you going to stipulate to that?

21 MR. O'LAUGHLIN: I will stipulate that they may  
22 have problems in regard to salinity in their waters,  
23 salinity in their soils. Whether or not they're a legal  
24 user of water we'll hash out in regards to the closing  
25 brief.

1 I understand that testimony has been submitted by  
2 them. I'm not going to challenge that. I'll challenge  
3 that in regard to my briefing about whether or not they  
4 are legal users.

5 MR. NOMELLINI: With that, I'll make the  
6 witnesses available for cross-examination.

7 CHAIRMAN BAGGETT: You want to testify to the  
8 veracity of their exhibits?

9 MR. NOMELLINI: We had them do that already.  
10 We'll submit them for cross-examination.

11 MR. O'LAUGHLIN: None.

12 CHAIRMAN BAGGETT: That is fine.

13 Mr. O'Laughlin, do you have any cross?

14 MR. O'LAUGHLIN: None. Thank you.

15 CHAIRMAN BAGGETT: Mr. Herrick.

16 MR. HERRICK: No.

17 CHAIRMAN BAGGETT: Stockton East Water District  
18 has none.

19 MR. NOMELLINI: I will move for introduction at  
20 this time of Central Delta Water Agency 4 and Central  
21 Delta Water Agency 5, Central Delta Water Agency 6 and  
22 Central Delta Water Agency 7.

23 MR. O'LAUGHLIN: You might want to include 1.

24 MR. NOMELLINI: That was going to come in with  
25 Tom Zuckerman.

1 CHAIRMAN BAGGETT: You still have a witness.

2 MR. NOME LLINI: I have one witness left.

3 CHAIRMAN BAGGETT: No problem.

4 MR. O'LAUGHLIN: No objection.

5 CHAIRMAN BAGGETT: Any objection?

6 Eight we will resolve before the end of the day.

7 That is 2 through 7 is no objection. They are admitted

8 in.

9 MR. O'LAUGHLIN: Exhibits 4 through 7.

10 CHAIRMAN BAGGETT: Is that correct, Mr.

11 Nomellini?

12 MR. NOME LLINI: If I may ask through the Chair,

13 I am waiting for Mr. Zuckerman, do you have any problem

14 with his testimony being admitted? Is there any objection

15 to having that introduced?

16 MR. O'LAUGHLIN: Yeah.

17 CHAIRMAN BAGGETT: I would rather wait until we

18 have the witness.

19 MR. O'LAUGHLIN: He is different.

20 CHAIRMAN BAGGETT: Four through 7 are done.

21 Do you have any redirect?

22 MR. NOME LLINI: No redirect.

23 CHAIRMAN BAGGETT: Your witnesses are excused.

24 Thanks.

25 At this point it appears we are in recess until

1 Mr. Zuckerman --

2 MR. O'LAUGHLIN: Well, there are one or two  
3 things we can do here. One is I can move to have the  
4 matter closed on direct, in which case Mr. Zuckerman would  
5 be out. I don't want to do that.

6 CHAIRMAN BAGGETT: I won't allow you to do  
7 that. Continue.

8 MR. O'LAUGHLIN: I know. I got the game. The  
9 second thing is in order to expedite this thing and get  
10 done today at a reasonable hour, if the parties don't  
11 mind, I have two rebuttal witnesses. They are prepared.  
12 We have their testimony. I can put those two witness on.  
13 And then if Mr. Zuckerman shows up after they are done or  
14 there is other rebuttal testimony, we will fit them in and  
15 finish today.

16 CHAIRMAN BAGGETT: Any objection?

17 If not, let's do it. This panel is excused. We  
18 will do rebuttal testimony from San Joaquin River Group  
19 Authority.

20 MR. O'LAUGHLIN: Mr. Chairman, on behalf of the  
21 San Joaquin River Group Authority and Modesto Irrigation  
22 District, Turlock Irrigation District, and Merced  
23 Irrigation District, we have prepared rebuttal testimony.  
24 One of them has been marked San Joaquin -- I'm sorry for  
25 my illegible handwriting -- San Joaquin River Group

1 Authority No. 5. That is the testimony of Robert M. Nees.  
2 It is 5A, and you will see there are two exhibits  
3 attached, Exhibit A and Exhibit B. The second one is the  
4 San Joaquin River Group Authority Exhibit No. 6, the  
5 rebuttal testimony of Ted Selb on behalf of the Merced  
6 Irrigation District.

7 Probably the quickest way to do this is that the  
8 testimony is very short and rather than summarize it, it  
9 probably would be best if they read it into the record.  
10 So if we can I would like to start with San Joaquin River  
11 Group Authority No. 5, Mr. Nees.

12 ----oOo----

13 REBUTTAL TESTIMONY

14 DIRECT EXAMINATION BY SAN JOAQUIN RIVER GROUP AUTHORITY

15 BY MR. O'LAUGHLIN

16 MR. O'LAUGHLIN: Mr. Nees, you were here  
17 earlier this morning and were sworn in; is that correct?

18 MR. NEES: That is correct.

19 MR. O'LAUGHLIN: Proceed.

20 MR. NEES: I am the Assistant General Manager  
21 for the water resources and regulatory affairs for the  
22 Turlock Irrigation District. I have held that position  
23 since 1995 and been a TID employee since 1979. My  
24 qualifications are attached.

25 TID is 68.46 percent owner of the Don Pedro Project

1 on the Lower Tuolumne River. Modesto Irrigation District  
2 owns the remaining 31.54 percent. TID is the Don Pedro  
3 manager and it's in charge of the operation and  
4 maintenance of the project. The water resources  
5 administration, for which I am general manager, is  
6 responsible for TID's water operation and maintain TID's  
7 Don Pedro Project's water records.

8 My testimony is intended to correct any  
9 misunderstanding by the South Delta Water Agency and the  
10 Central Delta Water Agency that provisions of the VAMP  
11 supplemental water would result in a shifting water used  
12 for power production at Don Pedro Powerhouse in the summer  
13 to the spring and that summer power water is released into  
14 the Tuolumne River below La Grange Dam.

15 The water is released from the Don Pedro Reservoir  
16 through the Don Pedro Powerhouse. There is a MAP  
17 attached, Exhibit B, that demonstrates the  
18 characterizations of the operation. Water is released  
19 from Don Pedro Reservoir through the Don Pedro Powerhouse  
20 to generate power for use by the districts. The  
21 districts' irrigation seasons are normally from March to  
22 October of each year. The districts are required to  
23 provide minimum instream flows year-round in the Tuolumne  
24 River below LaGrange Dam in accordance with their Federal  
25 Energy Regulatory Commission license for the Don Pedro

1 Project.

2 Under the U.S. Corps of Engineers reservoir  
3 regulation for flood control manual for the Don Pedro  
4 Project, Don Pedro Reservoir should not normally operate  
5 above elevation 801.9 feet above sea level from October 7  
6 of each year to April 27. The reservoir space from 801.9  
7 to elevation 830 is reserved for flood control purposes.  
8 Don Pedro Reservoir's flood control reservation is shown  
9 graphically in the testimony of Daniel B. Steiner, Figure  
10 Set 2A, 2B and 2C. In general, releases below La Grange  
11 Dam between 3,000 cfs and 9,000 cfs must be approved by  
12 the Corps of Engineers. Releases in excess of 9,000 cfs  
13 are set by the Corps of Engineers.

14 Depending upon the Don Pedro Reservoir elevation and  
15 the projected Tuolumne River inflow to the reservoir, the  
16 districts could be making releases below La Grange Dam in  
17 excess of the FERC minimum instream flows during January,  
18 February, March or April to try to keep the reservoir  
19 level below the elevation below 801.9 until April 27th,  
20 and during August or September to bring the reservoir down  
21 to a level 801.9 by October 7th.

22 During the above periods the districts may be  
23 required to make what are termed preflood releases, 9,000  
24 cfs or less, in order to comply with the 801.9 elevation  
25 requirement. However, if the districts are making

1     preflood releases, the hydrologic conditions in San  
2     Joaquin Basin are such that the water quality objectives  
3     at Vernalis is being met. Except when preflood releases  
4     are required to be made, the districts have agreed as a  
5     water conservation measure to divert at La Grange Dam into  
6     their canal systems any Don Pedro Powerhouse water  
7     releases above the required minimum instream flow.

8             TID's Turlock Lake and MID's Modesto Reservoir allow  
9     the districts to reregulate excess power releases diverted  
10    into their respective canal systems. These off-stream  
11    regulation reservoirs, coupled with the normal water  
12    diversion allow the districts to conduct power peaking  
13    operations during the summer without releasing water below  
14    La Grange Dam in excess of the minimum instream flow.

15            In conclusion, with or without the additional 47,000  
16    acre-feet of supplemental water for VAMP that would be  
17    released in the spring, water released for power  
18    production by the districts at Don Pedro Powerhouse during  
19    the summer would not be released below La Grange Dam  
20    except for the minimum instream flows unless the districts  
21    need to make preflood releases to get down to elevation  
22    801.9 by October 7th. During the summer if no preflood  
23    release were required, the districts would not be  
24    releasing any water below La Grange Dam in excess of the  
25    minimum instream flows.

1           The provision of supplemental water would not result  
2           in a shift of water release downstream of La Grange Dam  
3           from the summer to the spring.

4           MR. O'LAUGHLIN: Thank you, Mr. Nees.

5           Mr. Selb, would you briefly read your testimony as  
6           well. It is only about a page and a half.

7           MR. SELB: This rebuttal testimony is to  
8           provide clarification of the general operation of New  
9           Exchequer Reservoir or Lake McClure, and to address the  
10          change and lack thereof of downstream flows in the Merced  
11          River as a result of the San Joaquin River Agreement.

12          The primary purposes of New Exchequer Dam and Lake  
13          McClure is irrigation and flood control. Power production  
14          and recreation also are purposes of the project, however,  
15          these purposes are purely incidental to irrigation and  
16          flood control.

17          With these purposes in mind, Merced makes releases  
18          from Lake McClure to meet minimum downstream flow  
19          requirements only. These minimum requirements include  
20          instream fishery flows, and flows to meet the needs of the  
21          Cowell Agreement parties, pursuant to a 1926 Merced County  
22          Superior Court decision, No. 4479.

23          Merced releases no water in excess of these  
24          requirements plus operational flows to assure compliance  
25          unless it is dictated by flood control requirements set by

1 the U.S. Army Corps of Engineers. These requirements  
2 called for storage in Lake McClure to be no greater than  
3 674,600 acre-feet on October 31 of each year.

4 Assuming hydrologic conditions exist that would  
5 require Merced to make releases in excess of its needs and  
6 the requirements identified above, Merced has the  
7 discretion as to when the additional releases are made.  
8 Under these conditions, Merced would release this water to  
9 optimize power production while meeting the flood control  
10 requirements. These releases would likely occur during  
11 the peak power production need of July through September.

12 These hydrologic conditions are infrequent and  
13 represent time periods when significant quantities of  
14 water are in the system, including the Sacramento-San  
15 Joaquin Delta.

16 Merced has and will release additional water from  
17 Lake McClure in order to generate a pulse flow above those  
18 flows which would have been present without agreement.  
19 These additional releases can be characterized as either,  
20 one, reoperation or, two, release of previously stored or  
21 potentially stored water.

22 The reoperation water would be the bypass of inflow  
23 occurring during the pulse flow period that would have  
24 otherwise been stored in the absence of the agreement and  
25 released during subsequent months. This reoperation water

1 or bypass of inflow may result in fewer excess releases in  
2 the later months. As described above, these occurrences  
3 are infrequent and occur during wetter runoff conditions  
4 when ample water is available to all users. This  
5 reoperation water is used to generate the pulse flow  
6 pursuant to the agreement will result in no water supply  
7 or carryover storage impact to Merced. The end of season,  
8 October 31st, storage would be the same with or without  
9 the operations under the agreement.

10 Seasonal power generation price impacts may occur as  
11 a result of moving these additional releases from the  
12 later period to the spring months for pulse flow purposes.

13 The water being released during the spring flow --  
14 excuse me, spring pulse flow may alternatively occur as a  
15 release from storage or from inflows that would have been  
16 stored which would result in the end of season storage  
17 being less than the U.S. Corps of Engineers' required  
18 flood control level and a storage level which would have  
19 occurred absent the agreement.

20 Under these conditions no change to downstream flows  
21 will occur because, as described above, Merced would have  
22 been operating to minimum downstream flow requirements.  
23 Possible water supply impacts may occur as a result or  
24 providing this additional release for pulse flows.

25 In many years the additional release by Merced to

1 generate the pulse flows required under the agreement will  
2 be a combination of reoperation, storage release or bypass  
3 of inflow that would have been stored.

4 In conclusion, in those years no change in  
5 downstream Merced River flows will occur as a result of  
6 the agreement. In some wetter years Merced River flows  
7 will be slightly reduced during the July through September  
8 period. This discretionary time of these releases will be  
9 exercised bypassing of inflow to meet the flow  
10 requirements of the agreement.

11 MR. O'LAUGHLIN: Thank you very much, Mr. Selb.

12 CHAIRMAN BAGGETT: Any other rebuttal  
13 testimony?

14 MR. O'LAUGHLIN: No, there is no other.

15 CHAIRMAN BAGGETT: Is there cross-examination  
16 based on these two submittals?

17 ----oOo----

18 CROSS-EXAMINATION OF SAN JOAQUIN RIVER GROUP AUTHORITY

19 BY SOUTH DELTA WATER AGENCY

20 BY MR. HERRICK

21 MR. HERRICK: Thank you, Mr. Chairman. John  
22 Herrick for the South Delta Water Agency.

23 Mr. Nees, are you familiar with Stockton East  
24 Water District's Exhibit No. 4, which includes a letter  
25 from the State Water Resources Control Board to the

1 General Managers of Merced Irrigation District, Modesto  
2 Irrigation District and Turlock Irrigation District, dated  
3 February 14th, 2003?

4 MR. O'LAUGHLIN: Outside the scope of the  
5 direct testimony. I don't see what a refill criteria  
6 letter has to do with summertime operations. And I  
7 thought when we went to the prehearing that we were going  
8 to be really strict about this requirement that we are not  
9 going to go back in and open up cans of worms and stick to  
10 rebuttal testimony.

11 CHAIRMAN BAGGETT: Especially in rebuttal. I  
12 would sustain the objection. Very narrow issues raised.

13 MR. HERRICK: May I comment?

14 CHAIRMAN BAGGETT: Sure.

15 MR. HERRICK: The testimony describes how and  
16 when refill occurs with regard to --

17 MR. O'LAUGHLIN: No, it doesn't.

18 CHAIRMAN BAGGETT: Let counsel continue.

19 Mr. Herrick.

20 MR. HERRICK: The testimony talks about when  
21 the flood control releases -- excuse me, it talks about  
22 the power generation releases do or do not affect water  
23 flowing down in summer months. The exhibit offered by  
24 Stockton East Water District shows how the districts are  
25 potentially not abiding by the current limitation as to

1 when they should refill water. I would say it is  
2 relevant.

3 CHAIRMAN BAGGETT: It might be relevant, but it  
4 is not permissible under the rules. Even traditional  
5 rules of this Board on rebuttal testimony, you are limited  
6 to that scope of that testimony, and that is not in here.

7 So I will sustain the objection.

8 MR. HERRICK: Mr. Selb, your testimony under  
9 number five, which is Page 2, talks about reoperation  
10 water would bypass the inflow occurring during the pulse  
11 flow.

12 Do you see that?

13 MR. SELB: Yes, I do.

14 MR. HERRICK: When you're saying reoperation  
15 water, you're saying reoperation for the purpose of what  
16 at the time?

17 MR. SELB: Reoperation is referred to as  
18 reoperating the project, if you will, in moving water that  
19 would have normally been released later in the year into  
20 the spring, would be an example of reoperation.

21 MR. HERRICK: So we are talking about  
22 generating the pulse flow; is that correct?

23 MR. SELB: That can be correct, yes.

24 MR. HERRICK: Number four of your testimony  
25 talks about how Merced will release water for the pulse

1 flow; is that correct?

2 MR. SELB: That is correct.

3 MR. HERRICK: We are not just talking about  
4 power generation releases in the summer; is that correct?

5 MR. SELB: That is correct.

6 MR. HERRICK: Mr. Selb, are you familiar with  
7 Mr. Steiner's modeling that was presented earlier today?

8 MR. SELB: I believe I testified that I  
9 reviewed that document, correct.

10 MR. HERRICK: To your knowledge, did  
11 Mr. Steiner's testimony model reoperation as a method of  
12 Merced applying -- Merced providing pulse flow?

13 MR. SELB: I believe it did.

14 MR. HERRICK: Under number five you state:

15 As described above these occurrences are  
16 infrequent and occur during wetter runoff  
17 conditions when ample water is available  
18 to all users. This reoperation water is  
19 used to generate the pulse flow pursuant  
20 to the agreement and will result in no  
21 water supply or carryover storage impact  
22 to Merced. (Reading)

23 Do you see that?

24 MR. SELB: Yes, I do.

25 MR. HERRICK: What analysis have you done with

1 regard to the occurrences you referenced, these  
2 occurrences are infrequent, what analysis have you done  
3 with regard to those occurrences in relation to barrier  
4 operations in the South Delta, if any?

5 MR. SELB: I have done none.

6 MR. HERRICK: Have you done any analysis with  
7 regard to these occurrences as they may relate to water  
8 levels in the South Delta?

9 MR. SELB: I have not.

10 MR. HERRICK: Have you done any analysis with  
11 regard to those occurrences as they relate to water  
12 quality in the South Delta?

13 MR. SELB: I have not.

14 MR. HERRICK: Mr. Selb, under number three of  
15 your testimony on the second page, it says:

16 The Merced has the discretion as to when  
17 the additional releases are made. Under  
18 these conditions Merced would release this  
19 water to optimize power production while  
20 meeting the flood control requirements.

21 (Reading)

22 Do you see where it says that?

23 MR. SELB: Yes, I do.

24 MR. HERRICK: And you say that these releases  
25 would likely occur during the peak power production of

1 July through September; is that correct?

2 MR. SELB: That is correct.

3 MR. HERRICK: Is it correct to say then that  
4 the normal releases of July through September might be  
5 changed as to when they would occur under the discretion  
6 given to Merced regarding releases?

7 MR. O'LAUGHLIN: Objection. Vague and  
8 ambiguous as to normal. In the context of this.

9 MR. HERRICK: I can restate. I thought it was  
10 clear.

11 CHAIRMAN BAGGETT: Please restate.

12 MR. HERRICK: Certainly.

13 Mr. Selb, these releases would likely occur during  
14 the peak power production need of July through September.  
15 Do you see where it says that?

16 MR. SELB: Yes, I do.

17 MR. HERRICK: And that is talking about -- you  
18 used the word "normal" as -- do you understand what I mean  
19 if I say typical power production releases through that  
20 period?

21 MR. O'LAUGHLIN: No, that is a misstatement  
22 because the testimony -- I object -- because the testimony  
23 is, and this is what I was concerned about. These  
24 releases that are conferred in Paragraph 3 on Page 2 are  
25 talking about when Merced has to get down to its flood

1 control requirements of 674,600 acre-feet by October 31st  
2 of each year, that is what it is -- that is not normal.

3 In fact, the testimony is these hydraulic conditions  
4 are infrequent and represent times -- are infrequent, so  
5 they are not normal.

6 MR. HERRICK: I understand the distinction he  
7 is making. I thought I was clear that in paragraph three  
8 we are talking about those releases.

9 If you don't like the way I characterize it, we  
10 should certainly clarify that I am talking about those  
11 releases made in order to meet flood storage requirements.

12 MR. O'LAUGHLIN: I have no problem with that.

13 MR. HERRICK: Mr. Selb, would it be fair then  
14 to say that those releases, which we just explained, when  
15 necessary are made between July through October and may be  
16 moot in time under Merced's discretion?

17 MR. SELB: That is correct.

18 MR. HERRICK: Mr. Nees, similarly in your  
19 testimony on Page 2 of the last paragraph, you talk about  
20 similar releases in order to meet flood storage  
21 requirements; is that correct?

22 MR. NEES: Releases are only made if we are  
23 going to infringe upon flood control space.

24 MR. HERRICK: According to your testimony, and  
25 I will try not to misstate it, those may occur in January,

1 February, March or April, and then you later say and  
2 during August or September; is that correct?

3 MR. NEES: That is correct.

4 MR. HERRICK: Do you have any discretion as to  
5 when those releases are made or is there a set schedule  
6 during those months what to do?

7 MR. NEES: There is some discretion.

8 MR. HERRICK: Mr. Nees, has anybody directed  
9 the operators of -- I apologize, Mr. Chairman.

10 Has anybody directed the operators of the New Don  
11 Pedro facilities, I will say, to comply with released  
12 schedules modeled by Mr. Steiner as part of the method by  
13 which the 47,000 acre-feet would be provided?

14 MR. NEES: I am not sure I understand that  
15 question.

16 MR. HERRICK: Mr. Steiner modeled certain  
17 events trying to show when and what effects would result  
18 from the provision of 47,000 acre-feet, up to 47,000  
19 acre-feet, and the resulting refill that amount.

20 Do you recall that?

21 MR. NEES: He has modeled it.

22 MR. HERRICK: Does your staff or whoever might  
23 be involved in the operation have any criteria by which  
24 they would actually act in accordance with the assumptions  
25 made in Mr. Steiner's model?

1 MR. NEES: To release part of the 47,000?

2 MR. HERRICK: When releases would be made and  
3 when refills would occur.

4 MR. NEES: There's been nothing that I know of  
5 discussing possible refill.

6 MR. HERRICK: If I may, the same question,  
7 Mr. Selb, if you understand it.

8 MR. SELB: Please restate the question.

9 MR. HERRICK: Mr. Steiner modeled certain  
10 assumptions. Mr. Steiner did modeling which included  
11 certain assumptions with regard to when the 47,000  
12 acre-feet might be provided and when the refill of that  
13 might occur.

14 Do you recall that?

15 MR. SELB: Yes, I do.

16 MR. HERRICK: Has there been any directions or  
17 criteria given to the operators on the Merced in order  
18 that their operations would reflect the assumptions made  
19 in Mr. Steiner's model?

20 MR. SELB: I believe the assumptions that were  
21 made in Mr. Steiner's model were based on the actual  
22 operating criteria that the district operates the project,  
23 which drove assumptions in his model.

24 MR. HERRICK: My earlier question dealt with  
25 certain amount of discretion that might exist. Do you

1 recall that?

2 MR. SELB: Yes.

3 MR. HERRICK: To your knowledge, is the  
4 discretion exercised by Merced operators reflective of the  
5 modeling assumptions by Mr. Steiner?

6 MR. O'LAUGHLIN: Objection. Vague and  
7 ambiguous as to discretion as to when. Are we talking  
8 about power releases in the summer now or --

9 CHAIRMAN BAGGETT: Sustained. Can you clarify?

10 MR. HERRICK: I have no further questions.

11 CHAIRMAN BAGGETT: Mr. Nomellini.

12 ---oOo---

13 CROSS-EXAMINATION OF SAN JOAQUIN RIVER GROUP AUTHORITY

14 BY CENTRAL DELTA WATER AGENCY

15 BY MR. NOME LLINI

16 MR. NOME LLINI: Dante John Nomellini for  
17 Central Delta parties. Just a couple questions.

18 First, Mr. Selb, in reading your testimony and  
19 listening to you testify, is it true that the transfer in  
20 question for the Board here, the 47,000 acre-foot  
21 transfer, with regard to that transfer, if the releases  
22 made for that transfer are made from water in flood  
23 encroachment, that you agree that that water would have  
24 been released during the peak power production need of  
25 July through September rather than in the spring?

1 MR. O'LAUGHLIN: Objection. Vague and  
2 ambiguous.

3 CHAIRMAN BAGGETT: Answer to the -- I will  
4 overrule.

5 MR. SELB: I really didn't understand the  
6 question.

7 MR. NOMELLINI: The rebuttal testimony is being  
8 offered to contradict, I think, South Delta's testimony,  
9 not Central Delta, that flows are being shifted from the  
10 summer power production peak to the pulse flow period by  
11 reason of this transfer, the 47,000 acre-feet.

12 If I read your testimony, and I am asking, is it  
13 your testimony that only if the flow comes from flood  
14 control encroachment is it true that there is a shift  
15 between releases that would have been made July through  
16 September for power and instead are now being made for the  
17 pulse flow?

18 MR. SELB: Not necessarily.

19 MR. NOMELLINI: Let's go to your testimony,  
20 Paragraph 3 and look at -- it's the next page. The page  
21 after the numbered paragraph, and it is the same language  
22 I think Mr. Herrick did. I am not going to dwell on it.  
23 It says:

24 These releases would likely occur during  
25 the peak power production need of July

1                   through September.       (Reading)

2                   Aren't those releases from the flood encroachment in  
3 order to get it down to the proper level?

4                   MR. SELB:   That's correct.

5                   MR. NOMELLINI:  Aren't you testifying that  
6 under this transfer in some years those are the releases  
7 that are going to be used to provide the 47,000 acre-feet  
8 under this transfer?

9                   MR. SELB:  I'm sorry, I still don't understand  
10 the question.

11                   MR. NOMELLINI:  Would you agree that there are  
12 some of the flows, some of the water being transferred for  
13 the 47,000 acre-feet, that would have been released in  
14 July through September for power production purposes if  
15 this proposed transfer doesn't go through?

16                   MR. SELB:  Yes.

17                   MR. NOMELLINI:  Are those releases the ones  
18 that are being made to evacuate the flood space in the  
19 reservoir?

20                   MR. SELB:  Yes.

21                   MR. NOMELLINI:  Are there any others that also  
22 fall in that category?

23                   MR. SELB:  No.

24                   MR. NOMELLINI:  Do you have any idea what  
25 proportion comes out of flood control encroachment versus

1 bypass flow?

2 MR. SELB: No.

3 MR. NOMELLINI: No analysis?

4 MR. SELB: No.

5 MR. NOMELLINI: Your testimony is that South  
6 Delta's testimony is partially incorrect?

7 MR. SELB: Yes.

8 MR. NOMELLINI: But not wholly incorrect?

9 I will withdraw that question.

10 CHAIRMAN BAGGETT: Thank you.

11 MR. NOMELLINI: Sorry for that.

12 CHAIRMAN BAGGETT: Argument.

13 MR. NOMELLINI: I agree.

14 Mr. Nees, same series of questions. Aren't you  
15 saying that if it comes out of the flood control  
16 encroachment that those releases would have occurred later  
17 in the summer rather than in the spring?

18 MR. NEES: No. To answer that question you  
19 have to realize that most flood releases take place in the  
20 spring. There are few years where Don Pedro has  
21 prereleases in the late summer to get under that mark  
22 again as we go back into the flood control. You've got to  
23 also remember that Don Pedro has only filled in its  
24 30-year history about four times. This does not happen  
25 very frequently.

1                   MR. NOMELLINI: Let's stipulate for the purpose  
2 of this next question that it is infrequent. But is it  
3 your testimony that in those infrequent events when there  
4 is a flood control encroachment, that water is going to be  
5 taken out of that flood control encroachment for this  
6 spring pulse, and absent that spring pulse it would have  
7 been released in the summer?

8                   MR. NEES: I can't say that with any certainty,  
9 no.

10                  MR. NOMELLINI: Calling your attention to Page  
11 3 of your testimony, second to the last -- I guess the  
12 last paragraph before your signature there, third line  
13 down, it says, the second line:

14                  Water released for power production by the  
15                  districts at Don Pedro Powerhouse during  
16                  the summer would not be released below La  
17                  Grange Dam except for minimum instream  
18                  flows unless the district needs to make  
19                  preflood releases to get down to elevation  
20                  801.9 by October 7th.           (Reading)

21                  With regard to that testimony, what you're saying  
22 there is nothing about power production but what amount of  
23 the water would actually get down the river that might  
24 affect conditions in the Delta; is that what your  
25 testimony is?

1           MR. NEES:  If the reservoir were still riding  
2           high at the end of the summer and we had to get down below  
3           the start of the flood control space, then we would  
4           release flows.  But there is a big difference between that  
5           and the spring.  A lot of things happen in between.  So I  
6           can't say with certainty that we would be releasing in the  
7           summer water that -- if we participate in the 47,000  
8           acre-feet of supplemental supply, that we would not be  
9           releasing in the summer.

10           MR. NOMELLINI:  You've made no -- there is not  
11           enough certainty in this allocation process in order to do  
12           that analysis; is that what you are saying?

13           MR. NEES:  There is no certainty.  You would  
14           have to see the individual year by year to see how that  
15           returns.

16           MR. NOMELLINI:  Thank you.

17           CHAIRMAN BAGGETT:  Thank you.

18           Stockton East Water District.

19                                   ---oOo---

20           CROSS-EXAMINATION OF SAN JOAQUIN RIVER GROUP AUTHORITY

21                                   BY STOCKTON EAST WATER DISTRICT

22                                   BY MS. HARRIGFELD

23           MS. HARRIGFELD:  Karna Harrigfeld for Stockton  
24           East Water District.

25           Mr. Nees, I want to make sure I understand what you

1 are saying here on Page 2 of your testimony. You indicate  
2 that in the last full paragraph on that page, second line  
3 down:

4 The districts could be making releases  
5 below Grange Dam in excess of the FERC  
6 minimum instream flows during January,  
7 February, March or April to keep the  
8 reservoir levels below 801.9 and during  
9 August and September to bring it down to  
10 801.9. (Reading)

11 By making water available for the 47,000 acre-feet  
12 supplement water, does this reduce the amount of water or  
13 the time in which you would make those preflood releases  
14 in January, February, March and April?

15 MR. NEES: No. I don't believe that you could  
16 conclude that.

17 MS. HARRIGFELD: When you say if the districts  
18 are making preflood releases, the hydrologic conditions in  
19 the San Joaquin Basin are such that the water quality  
20 objective at Vernalis is being met.

21 Is the flow objective at Vernalis being met also?

22 MR. NEES: I think what that statement is  
23 intended to convey is the fact that in those years there  
24 is less water in the system. It assumed that it is being  
25 met.

1 MS. HARRIGFELD: You can't say for certain that  
2 the flow objective at Vernalis is much greater than in dry  
3 times.

4 Mr. Selb, Paragraph 6, which I think is on Page 3 of  
5 your testimony, you say:

6 That water being released during spring  
7 pulse flow may alternatively occur as a  
8 release from storage or from inflows that  
9 would have been stored which result in the  
10 end of the season storage being less than  
11 the required flood control level.

12 (Reading)

13 In your opinion, when would this water be refilled?  
14 Would you refill that water that is vacant from storage  
15 first the following year?

16 MR. SELB: I would say yes.

17 MS. HARRIGFELD: If you didn't make any water  
18 available for the 47,000 acre-feet supplement, would you  
19 be spilling at this time period?

20 MR. O'LAUGHLIN: Objection. Vague and  
21 ambiguous as to this time period.

22 CHAIRMAN BAGGETT: Please clarify.

23 MS. HARRIGFELD: You indicated that when you  
24 make water available for the spring pulse flow, the  
25 additional 47,000, that there would be less at the end of

1 the season. I guess my question would be if you made zero  
2 water available during the spring pulse flow there would  
3 have a potential to be in flood control operations?

4 MR. SELB: I don't understand that question.

5 MS. HARRIGFELD: Let me move on, then.

6 The last sentence in the paragraph says:

7 Possible water supply impacts may occur as  
8 a result of providing this additional  
9 release for pulse flow. (Reading)

10 What water supply impacts are you talking about?

11 MR. SELB: If you don't mind let me reread my  
12 testimony.

13 MS. HARRIGFELD: Sure.

14 MR. SELB: I understand I wrote this testimony,  
15 but I am drawing a blank as to that water supply impact.  
16 My apologies.

17 MS. HARRIGFELD: There would not be any water  
18 supply impact, then, you don't know -- are you talking  
19 about water supply impact to other water users?

20 MR. SELB: Let me take the time again.

21 MS. HARRIGFELD: Sure.

22 MR. SELB: I'm sorry, I really don't recall.

23 MS. HARRIGFELD: So that statement would not be  
24 accurate, then?

25 MR. O'LAUGHLIN: No, he said he can't recall.

1 CHAIRMAN BAGGETT: He answered the question.  
2 Continue.

3 MS. HARRIGFELD: So possible water supply  
4 impacts may occur as a result of providing this additional  
5 release for pulse flows. In your original testimony you  
6 contradict yourself because you indicate in your original  
7 testimony, SJRGA-4, that it is my opinion that no  
8 reduction in water deliveries to Merced landowners would  
9 occur by making supplemental water available.

10 MR. O'LAUGHLIN: Objection. That is not a  
11 question; that is a statement. And secondly, he's already  
12 testified that he can't remember what he meant by water  
13 supply impacts in this exhibit.

14 CHAIRMAN BAGGETT: Sustained. Can you rephrase  
15 your comment as a question?

16 MS. HARRIGFELD: If I could just have a minute  
17 to read through this.

18 Clarifying -- one final question clarifying the  
19 previous question that I had asked. The water being  
20 released during the spring pulse flow period may be  
21 released from your stored water, correct?

22 MR. SELB: That's correct.

23 MS. HARRIGFELD: If you make a water release  
24 from stored water, that water wouldn't be available for  
25 spill if you become flood encroached, correct?

1 MR. SELB: That question to me is  
2 contradictory. I don't understand.

3 MS. HARRIGFELD: So if the water isn't in your  
4 reservoir, then you wouldn't have to fill it?

5 MR. SELB: Define the word "spill" for as you  
6 are using it in your sentence.

7 MS. HARRIGFELD: You would not be required to  
8 evacuate that water from storage if it wasn't there?

9 MR. SELB: Again, I'm not following your  
10 question.

11 MS. HARRIGFELD: If it wasn't there and if the  
12 water was released under this agreement, the zero to  
13 47,000 acre-feet, it wasn't in storage because you  
14 released it under this agreement during the spring pulse  
15 flow, there is an opportunity under -- that water is gone.  
16 So in the future, the following year, be in the reservoir  
17 for potential releases or spilling?

18 MR. O'LAUGHLIN: Objection. Incomplete  
19 hypothetical, doesn't give the hydrologic conditions under  
20 which it does.

21 CHAIRMAN BAGGETT: Sustained. Rephrase it.  
22 Shorter questions.

23 MS. HARRIGFELD: When you release water from  
24 storage, you indicate here in your testimony that would  
25 result in the end of season storage being less. Is that

1 correct?

2 MR. SELB: That is correct.

3 MS. HARRIGFELD: Thank you.

4 CHAIRMAN BAGGETT: Any redirect of either of  
5 your witnesses?

6 MR. O'LAUGHLIN: No.

7 CHAIRMAN BAGGETT: Would you like to --

8 MR. O'LAUGHLIN: I would like to move into  
9 evidence San Joaquin River Group Authority Exhibit No. 5  
10 and 5A, which is Mr. Nees' curriculum vitae, and Exhibit  
11 B, which is a representation map of how the New Don Pedro  
12 system operates.

13 CHAIRMAN BAGGETT: Any objection?

14 If not they are admitted.

15 MR. O'LAUGHLIN: San Joaquin River Group  
16 Authority Exhibit No. 6 I would like to move into  
17 evidence, that exhibit minus the last sentence of  
18 Paragraph No. 6. Since Mr. Selb was unable to testify to  
19 it, clearly it is not evidence. So I move to strike that  
20 sentence and otherwise admit that testimony.

21 MR. NOMELLINI: I object to the deletion. I  
22 would ask that the entire document be taken into evidence.  
23 We have the testimony and cross-examination that goes with  
24 it, meaning the credibility of that portion of the  
25 statement.

1 CHAIRMAN BAGGETT: MR. O'LAUGHLIN.

2 MR. O'LAUGHLIN: No, none.

3 CHAIRMAN BAGGETT: If you want to offer your  
4 exhibits without that sentence, I will accept it as their  
5 exhibit. With that comment that the sentence as noted by  
6 Mr. O'Laughlin is removed, the exhibits is admitted.

7 MR. O'LAUGHLIN: Thank you.

8 CHAIRMAN BAGGETT: As we are moving along.  
9 Does Central Delta have any rebuttal -- I mean South  
10 Delta. Does South Delta have any rebuttal?

11 MR. HERRICK: No, Mr. Chairman.

12 CHAIRMAN BAGGETT: Stockton East Water District  
13 rebuttal witnesses?

14 MS. HARRIGFELD: No.

15 CHAIRMAN BAGGETT: Now.

16 MR. NOME LLINI: I have my witness.

17 CHAIRMAN BAGGETT: Last witness of Central  
18 Delta and then we will do rebuttal if you have any and  
19 make a ruling on the exhibit.

20 MR. NOME LLINI: We are going to make it.

21 CHAIRMAN BAGGETT: We will make it; you have 20  
22 minutes. I don't know, we have an hour to cross. Depends  
23 on the objections.

24 MR. NOME LLINI: Mr. Zuckerman has not been  
25 sworn, Mr. Chairman.

1 (Oath administered by Chairman Baggett.)

2 ---oOo---

3 DIRECT EXAMINATION OF CENTRAL DELTA WATER AGENCY

4 BY MR. NOMELLINI

5 MR. NOMELLINI: Mr. Zuckerman, could you state  
6 for the record your full name.

7 MR. ZUCKERMAN: Thomas M. Zuckerman,  
8 Z-u-c-k-e-r-m-a-n.

9 MR. NOMELLINI: Is Central Delta Water Agency  
10 No. 3 a true and correct statement of your qualifications?

11 MR. ZUCKERMAN: Yes.

12 MR. NOMELLINI: Is Central Delta Water Agency  
13 Exhibit 2 --

14 MR. O'LAUGHLIN: Excuse me, Chairman. I would  
15 like to object to the offering of his testimony. Once  
16 again, it is redundant testimony. Secondly, it is  
17 cumulative testimony. Third, while it is a very nice,  
18 general discussion of conditions in the Delta  
19 specifically, it has no direct testimony or evidence in  
20 regards to the 47,000 acre-foot change petition that is in  
21 front of the Board at this time.

22 MR. NOMELLINI: I would respond simply that I  
23 think that goes to the weight, the specific connection  
24 between water flow and water quality has been established,  
25 and I would suggest that we go forward with the

1 testimony.

2 CHAIRMAN BAGGETT: I would overrule I guess  
3 with caution that I think we do have a lot of this in the  
4 record and as redundancy of the oral.

5 MR. NOMELLINI: In terms of redundancy.  
6 Mr. Chairman --

7 CHAIRMAN BAGGETT: But I will allow on the  
8 record the testimony, but just keep that in mind on your  
9 oral.

10 MR. NOMELLINI: We can do.

11 Mr. Zuckerman, is Central Delta Water Agency 2 a true  
12 and correct copy of your testimony?

13 MR. ZUCKERMAN: Yes.

14 MR. NOMELLINI: Is Central Delta Water Agency 1  
15 a correct map of the Central Delta Water Agency?

16 MR. ZUCKERMAN: Yes.

17 MR. NOMELLINI: With that, Mr. Chairman,  
18 Mr. Zuckerman is available for cross.

19 CHAIRMAN BAGGETT: Mr. O'Laughlin.

20 ---oOo---

21 CROSS-EXAMINATION OF CENTRAL DELTA WATER AGENCY

22 BY SAN JOAQUIN RIVER GROUP AUTHORITY

23 BY MR. O'LAUGHLIN

24 MR. O'LAUGHLIN: Mr. Zuckerman, on Page 3 of  
25 your testimony you opine that releasing water for fish in

1 the spring and fall is reducing summer flow and depleting  
2 reservoir storage. Let's talk about reducing summer flow.

3 What evidence do you have that making water available  
4 for the spring pulse flow is, in fact, reducing summer  
5 flow in the San Joaquin River?

6 MR. ZUCKERMAN: Well, the best evidence of it  
7 that I have in my mind today is the study that was done or  
8 the presentation that was made by the Bureau of  
9 Reclamation indicating that their ability to meet the  
10 Vernalis standards at all times in all years is impaired  
11 by other flow obligations that they become committed to in  
12 the San Joaquin River system.

13 MR. O'LAUGHLIN: But my question was  
14 specifically water that is made available under the San  
15 Joaquin River Agreement to meet the spring pulse flow, can  
16 you tell me what facts that you have today that that  
17 reduces summer flow.

18 MR. ZUCKERMAN: I don't have real specific  
19 information, but it's intuitive in my mind that when there  
20 is water, finite amount of water available, in the storage  
21 reservoirs and from flow in the tributary rivers and that  
22 water is released earlier in the year than it would  
23 otherwise have been, but for the commitments made and paid  
24 for in the San Joaquin River Agreement, that the ability  
25 to make releases of flow from those reservoirs

1 cumulatively during the summer months can be impaired.

2 MR. O'LAUGHLIN: What evidence are you relying  
3 upon or any document that the instream flow of releases  
4 below New Don Pedro Reservoir have not been complied with  
5 by Modesto Irrigation District or Turlock Irrigation  
6 District during the summer months?

7 MR. ZUCKERMAN: I don't believe I testified to  
8 that.

9 MR. O'LAUGHLIN: What about Exchequer, are  
10 there -- is there any evidence that Merced Irrigation  
11 District is not meeting its instream flow releases below  
12 Exchequer in the summertime?

13 MR. ZUCKERMAN: I wouldn't be a source of that  
14 information.

15 MR. O'LAUGHLIN: How is it that by making water  
16 available for the VAMP or the San Joaquin River Agreement  
17 if instream flow releases are met in every year there is  
18 now less water being released by these districts in the  
19 summertime?

20 MR. ZUCKERMAN: My testimony is to what happens  
21 in the San Joaquin River flows generally as they come into  
22 the Delta. And my testimony is not upon the specifics  
23 that you have asked me about.

24 MR. O'LAUGHLIN: I renew my objection again on  
25 relevance of his testimony. If he can testify about the

1 change petition but could only testify generally as to  
2 conditions in the San Joaquin River, why are we here?

3 CHAIRMAN BAGGETT: Overruled for the same  
4 reason stated previously. They keep the oral testimony  
5 brief; it is written.

6 MR. O'LAUGHLIN: Thank you.

7 CHAIRMAN BAGGETT: We will allow it in.

8 MR. O'LAUGHLIN: Have you reviewed the  
9 testimony of Walt Ward in this matter?

10 MR. ZUCKERMAN: No, I have not.

11 MR. O'LAUGHLIN: Have you reviewed the  
12 testimony of Mr. Selb in this matter?

13 MR. ZUCKERMAN: No, I haven't.

14 MR. O'LAUGHLIN: Have you reviewed the  
15 testimony of Mr. Steiner in this matter?

16 MR. ZUCKERMAN: No.

17 MR. O'LAUGHLIN: Are you under any  
18 understanding as to whether or not the water quality  
19 requirements at Vernalis have been met in the year 2000?

20 MR. ZUCKERMAN: Specifically in the year 2000?

21 MR. O'LAUGHLIN: Yes.

22 MR. ZUCKERMAN: No, I am not. I haven't made  
23 any specific reference to that.

24 MR. O'LAUGHLIN: In 2001?

25 MR. ZUCKERMAN: No. There is some information

1 presented as exhibits to my testimony, and I would stand  
2 by the flow data that is in there, but I am not here to  
3 tell you whether the flow standards have or have not been  
4 met. What I am here to talk about is the fact that I  
5 don't think we are taking a careful enough look to what  
6 the cumulative effect of these transfers and actions and  
7 sales of water that have been placed on the San Joaquin  
8 River system is on the downstream areas that are relying  
9 heavily upon that water either instream or for beneficial  
10 use pursuant to prior vested water rights.

11 MR. O'LAUGHLIN: Have you compared the  
12 historical operations of the power facilities at New Don  
13 Pedro both pre and post San Joaquin River Agreement?

14 MR. ZUCKERMAN: No, I have not.

15 MR. O'LAUGHLIN: Have you compared the  
16 historical operations of the power facilities at Exchequer  
17 both pre and post San Joaquin River Agreement?

18 MR. ZUCKERMAN: No, I have not.

19 MR. O'LAUGHLIN: As you sit here today, do you  
20 know if there has been any change in the operations at  
21 either New Don Pedro or Exchequer the way power is  
22 generated at those facilities, at those facilities? I  
23 will leave it at that for right now.

24 MR. ZUCKERMAN: I don't know specifically. I  
25 am familiar with what the intent or what the contents of

1 the San Joaquin River Agreement are. In fact, there may  
2 be a potential impact upon how those power releases are  
3 handled.

4 MR. O'LAUGHLIN: As you sit here today, do you  
5 know if there have been any change in the operating  
6 criteria at either New Don Pedro or Exchequer in regards  
7 to the way the power is generated at those facilities?

8 MR. ZUCKERMAN: No, I do not.

9 Parenthetically, I don't think that my testimony  
10 does say that I do.

11 CHAIRMAN BAGGETT: Continue with any other  
12 questions.

13 MR. O'LAUGHLIN: In your testimony you talk on  
14 Page 6 that the Bureau is required to present a plan.

15 Do you see that?

16 MR. NOMELLINI: Where are you referring to?

17 MR. O'LAUGHLIN: It says on Page 6:

18 Without plan from the Bureau showing how  
19 they intend to comply with the San Joaquin  
20 River flow and water quality standards.

21 (Reading)

22 See that?

23 MR. ZUCKERMAN: Would you restate your  
24 question? I don't think it characterizes my testimony  
25 correctly.

1           MR. O'LAUGHLIN: Are you aware of the fact that  
2 under D-1641 the Bureau's required to prepare a plan to  
3 comply with San Joaquin River flow and water quality  
4 standard?

5           MR. ZUCKERMAN: If you go up to the bottom of  
6 Page 5 of my testimony, it states:

7           During the D-1641 proceeding, Central  
8 Delta Water Agency requested that the  
9 State Water Resources Control Board  
10 require the Bureau submit a plan showing  
11 how they intend to meet their commitment,  
12 that they would meet the Vernalis  
13 standard.     (Reading)

14          And so forth. And the request was denied, and that  
15 is the extent of my knowledge on that subject.

16          MR. O'LAUGHLIN: In fact, isn't it your  
17 understanding that in D-1641 that the State Water  
18 Resources Control Board required the Bureau to meet the  
19 water quality standards at Vernalis; is that correct?

20          MR. ZUCKERMAN: That was my understanding of  
21 it, yes.

22          MR. O'LAUGHLIN: Are you under any  
23 understanding that Merced Irrigation District is required  
24 to meet water quality requirements at Vernalis under  
25 D-1641?

1 MR. ZUCKERMAN: I don't know that.

2 MR. O'LAUGHLIN: Do you know if either Modesto  
3 Irrigation District or Turlock Irrigation District are  
4 required to meet water quality requirements at Vernalis?

5 MR. ZUCKERMAN: I don't believe so. I think  
6 the Bureau took on that burden in the 1641 proceedings.

7 MR. O'LAUGHLIN: In fact, isn't it correct, Mr.  
8 Zuckerman, that the Bureau in regards to its CVP operation  
9 took on both the Vernalis and the South Delta salinity  
10 standard for all permits and licenses of the CVP; isn't  
11 that correct?

12 MR. ZUCKERMAN: I believe that is correct.

13 MR. O'LAUGHLIN: As you understand it, the  
14 Bureau has complete discretion to use either San Luis  
15 Reservoir, Friant, Delta-Mendota Canal or other points in  
16 order to meet the salinity standard in the South Delta; is  
17 that correct?

18 MR. ZUCKERMAN: I wouldn't characterize it as  
19 complete discretion, no. Those are tools that they have,  
20 that they have other obligations that they are required to  
21 meet specific to those facilities as well.

22 MR. O'LAUGHLIN: Are you aware of any -- are  
23 you aware -- you say in here about the New Melones Interim  
24 Operations Plan; is that correct?

25 MR. ZUCKERMAN: What was the question?

1                   MR. O'LAUGHLIN: Are you aware of the New  
2 Melones Interim Operations Plan?

3                   MR. ZUCKERMAN: Yes.

4                   MR. O'LAUGHLIN: Are you aware of the fact that  
5 this year the Bureau is going -- is planning to release  
6 water greater than that amount currently allocated under  
7 the New Melones Interim Operations Plan in order to meet  
8 water quality at Vernalis?

9                   MR. ZUCKERMAN: I can't say that I know that,  
10 no.

11                   MR. O'LAUGHLIN: In fact, that would be one of  
12 the tools available to the Bureau in order to meet water  
13 quality at Vernalis; is that correct?

14                   MR. ZUCKERMAN: Yes.

15                   MR. O'LAUGHLIN: In regards to Exhibit C, the  
16 October 28, 2002 letter, are you aware of the response  
17 letter from Celeste Cantu to Mr. Rogers in regards to his  
18 letter of October 28th, 2002?

19                   MR. ZUCKERMAN: I don't have a specific  
20 recollection of that, no. I'd be happy to look at it if  
21 you wanted to talk to me about it.

22                   MR. O'LAUGHLIN: In paragraph -- on Page No. 7,  
23 the second paragraph, you state it is patently  
24 unreasonable to use high quality tributary water to  
25 provide springtime fish flows at Vernalis. Is that your

1 objection to the 1995 Water Quality Control Plan?

2 MR. ZUCKERMAN: I don't believe that the water  
3 quality control plan specifies where the Bureau is  
4 supposed to get the water from to meet the standard. It  
5 is my opinion that given the value of the water that is  
6 behind some of those eastern stream reservoirs that that  
7 is not the best way to solve that problem. It takes -- as  
8 I said elsewhere in the testimony, it diminishes the  
9 Bureau's ability to serve the needs of other uses  
10 downstream that would be best served by the conservation  
11 and terrible use of those high quality waters.

12 MR. O'LAUGHLIN: You would agree, in fact, that  
13 there is a standard for the spring pulse flow set forth in  
14 the 1995 Water Quality Control Plan, correct?

15 MR. ZUCKERMAN: What I am most familiar with is  
16 the one that is set forth in the San Joaquin River  
17 Agreement itself, which I don't think is exactly the same  
18 as the one that is in the water quality control plan.

19 MR. O'LAUGHLIN: Where, in your opinion, would  
20 water come to meet these spring pulse flows set forth in  
21 the 1995 water quality control plan if it didn't come from  
22 the parties to the San Joaquin River Agreement?

23 MR. ZUCKERMAN: I think you went over a pretty good  
24 list earlier of opportunities that the Bureau would have  
25 to make water releases to meet those flows.

1 MR. O'LAUGHLIN: On Page 8 of your testimony  
2 you state:

3 That the proposed transfers will further  
4 deplete that water supply available to  
5 meet minimum water quality. (Reading)

6 How is it that the proposed transfers will deplete  
7 the water supply available to meet water quality if, in  
8 fact, instream flows below the reservoirs are met under  
9 all conditions?

10 MR. ZUCKERMAN: Well, I think below the dam  
11 instream flows you are talking about are related to the  
12 San Joaquin River Agreement or something of that nature.  
13 What we are principally concerned about is the ability of  
14 the Bureau, which it has indicated it has some inability  
15 to accomplish, to meet the flows at Vernalis and the water  
16 quality requirements there.

17 MR. O'LAUGHLIN: Those requirements are at New  
18 Melones. In this paragraph you refer specifically to Don  
19 Pedro Reservoir and Lake McClure.

20 So how is it that the proposed transfers will  
21 deplete the water supply available to meet minimal water  
22 quality if, in fact, they are releasing them in an amount  
23 required for instream flows below the reservoirs?

24 MR. ZUCKERMAN: It's an indirect response. I  
25 apologize for that. But if there is less flow coming from

1 the tributaries that the Bureau does not have dams on or  
2 control, different times during the year, then it will be  
3 incumbent upon the Bureau to find water from facilities  
4 that it does control, and if it doesn't have those flows  
5 in storage they are going to have a tough time meeting the  
6 objectives. And they've indicated that to my satisfaction  
7 in the letter that is attached as an exhibit to my  
8 testimony.

9 MR. O'LAUGHLIN: In regards to that paragraph,  
10 you referred to the last years of a six- or seven-year  
11 drought. What drought time period are you referring to  
12 under the historical record?

13 MR. ZUCKERMAN: I don't, as we sit here, recall  
14 exactly which period Figures 4-1, 4-2, 4-3 and 4-4 of the  
15 EIS were referring to. But I suppose I can figure that  
16 out if I had some time to go back and look at it.

17 MR. O'LAUGHLIN: In fact, under those figures,  
18 4-1, 4-2, 4-3 and 4-4, the minimum instream flows were met  
19 under those hydrologic conditions; isn't that correct?

20 MR. ZUCKERMAN: You know, as I sit here, I  
21 can't really respond to that question. I apologize, but I  
22 am not sufficiently fresh on that information to be able  
23 to talk about it without some further study.

24 MR. O'LAUGHLIN: Doesn't, in fact, those  
25 figures, 4-1, 4-2, 4-3 and 4-4, show that, in fact, the

1 depletions that are created are, in fact, recaptured in  
2 later years?

3 I will withdraw the question. I have no further  
4 questions.

5 CHAIRMAN BAGGETT: Thank you.  
6 South Delta.

7 MR. HERRICK: No cross.

8 CHAIRMAN BAGGETT: Stockton East Water  
9 District, do you have any cross?

10 Any redirect -- recross, I mean. No recross.

11 Exhibits.

12 MR. NOMELLINI: I move we move into evidence  
13 Central Delta Water Agency 1, 2, and 3.

14 CHAIRMAN BAGGETT: Objection.

15 MR. O'LAUGHLIN: None.

16 CHAIRMAN BAGGETT: If not, they will be  
17 admitted.

18 We still have the outstanding issue of Exhibit 8, I  
19 believe.

20 MR. NOMELLINI: Central Delta Water Agency  
21 Exhibit 8.

22 CHAIRMAN BAGGETT: I will sustain the  
23 objection. I deny admission. I think on a few grounds.  
24 One, it was clearly not a noticed issue of this hearing,  
25 the cost and that issue. If there is, in fact, an alleged

1 violation of law or terms of the order of this Board,  
2 there is an appropriate method to deal with that, and that  
3 is file an enforcement petition with this Board, and we  
4 will give it due consideration. If, in fact, it is a  
5 legal or violation of the permit term you're alleging for  
6 this hearing, they may have been something of interest in  
7 a policy statement, but not as an evidentiary submittal.  
8 So I am denying the admission of that.

9 So no more rebuttal testimony. Just schedule for  
10 closing briefs.

11 (Discussion held off record.)

12 CHAIRMAN BAGGETT: Back on the record.

13 June 27th the closing briefs will be due by, in  
14 close of business at noon on June 27th.

15 MR. O'LAUGHLIN: I have one request. I think  
16 given the recent briefing that we've experienced, I  
17 initially had not requested a rebuttal brief and I don't  
18 want to spend a lot of time on this but I think we need to  
19 set in place, if necessary, something like a five-page  
20 rebuttal, no more than a five-page rebuttal brief due  
21 within five days after the original briefing. Because  
22 after going through the recent briefing schedule and what  
23 happened, there was some issues that were raised that were  
24 not fully briefed and addressed by all the parties.

25 No more than five pages and no more than five days

1 later, if that is acceptable to the parties. I want to  
2 keep it brief. I don't want reopeners.

3 CHAIRMAN BAGGETT: I would say in this case  
4 that we would make it July 11th, which is two weeks.

5 MR. NOMELLINI: I would make it 15 days.

6 Did you say five pages?

7 MR. O'LAUGHLIN: No more than.

8 MR. NOMELLINI: How many pages are we going to  
9 have in our original brief?

10 MR. O'LAUGHLIN: Hopefully, since we've done  
11 this thing about five times already, it won't be many. We  
12 can just refer to all of our --

13 CHAIRMAN BAGGETT: I would say let's -- three  
14 weeks is fine if there is no rush. Make it on the 18th of  
15 July. No more than ten pages for rebuttal.

16 MR. O'LAUGHLIN: My understanding is the  
17 original opening brief is that we are trying to -- there  
18 is no page limit, but we are trying to remain as succinct  
19 and to the point.

20 CHAIRMAN BAGGETT: Appreciated by the Board  
21 Members and staff.

22 I think if it is helpful to the parties, certainly  
23 helpful to the Board Members and Hearing Officer, to try  
24 to put a few questions out which we are most interested  
25 in. So within the next month we will send out -- when we

1 send out a letter memorializing what we just agreed to we  
2 will attach a list of questions that we find of highest  
3 import to us in making our decision.

4 MR. NOMELLINI: I apologize for my witness  
5 being late, though he looks nicely tanned and rested.

6 CHAIRMAN BAGGETT: If there is nothing else to  
7 come before us, we will close the record of this hearing.

8 (Hearing concluded at 4:15 p.m.)

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1 REPORTER'S CERTIFICATE

2

3

4 STATE OF CALIFORNIA )  
5 COUNTY OF SACRAMENTO ) ss.

6

7

8 I, ESTHER F. SCHWARTZ, certify that I was the  
9 official Court Reporter for the proceedings named herein,  
10 and that as such reporter, I reported in verbatim  
11 shorthand writing those proceedings;

12 That I thereafter caused my shorthand writing to be  
13 reduced to printed format, and the pages numbered 5  
14 through 241 herein constitute a complete, true and correct  
15 record of the proceedings.

16

17 IN WITNESS WHEREOF, I have subscribed this  
18 certificate at Sacramento, California, on this 3rd day of  
19 May, 2003.

20

21

22

23

24

25

\_\_\_\_\_  
ESTHER F. SCHWARTZ  
CSR NO. 1564