

1 APPEARANCES

2 CALIFORNIA WATER RESOURCES BOARD

3 Division of Water Rights

4 Board Members Present:

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

7 Staff Present:

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

11 PART 2

12 For Petitioners:

13 California Department of Water Resources:

14 James (Tripp) Mizell
15 Jolie-Anne Ansley

16 The U.S. Department of the Interior:

17 Amy L. Aufdenberge, Esq.

18 INTERESTED PARTIES:

19 For California Water Research:

20 Deirdre Des Jardins

21 For Sacramento County Water Agency, Glenn-Colusa
22 Irrigation District, Biggs-West Gridley Water District,
23 Carmichael Water District as well as Placer County
24 Water Agency and the County of Sacramento:

25 Aaron Ferguson

1 APPEARANCES (Continued)

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

11 Osha Meserve

12 For San Luis & Delta-Mendota Water Authority:

13 Daniel J. O'Hanlon

14 For California Sportfishing Protection Alliance (CSPA):

15 Chris Shutes

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

20 Dean Ruiz, Esq.

21 For County of San Joaquin, San Joaquin County Flood
22 Control and Water Conservation District, and Mokelumne
23 River Water and Power Authority:

24 Thomas H. Keeling

25 For Restore the Delta:

26 Tim Stroshane

27 For Save the California Delta Alliance:

28 Michael Brodsky

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I N D E X

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1 Thursday, March 8, 2018 9:30 a.m.

2 PROCEEDINGS

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4 (Proceedings resumed at 9:30 a.m.:)

5 CO-HEARING OFFICE DODUC: Good morning

6 everyone. It is 9:30.

7 Welcome back to this Water Right Change

8 Petition hearing for the California WaterFix Project.

9 I am Tam Doduc. With me to my right is Board
10 Chair and Co-Hearing Officer Felicia Marcus. To my
11 left are Andrew Deeringer, Conny Mitterhofer and Jean
12 McCue. We're being assisted today by Miss Perry,
13 Mr. Hunt, and Miss Gaylon.

14 Since I see some -- actually at least one new
15 face, please take a moment right now and identify the
16 exit closest to you.

17 In the event of an emergency, an alarm will
18 sound. We will evacuate using the stairs, not the
19 elevator, down to the first floor and meet up in the
20 park across the street.

21 If you're not able to use the stairs, please
22 flag down one of the orange fluorescent-colored
23 clothing-wearing people in the hallway -- say that
24 fast -- and they will direct you into a protective
25 area.

1 Secondly, this hearing is being recorded and
2 Webcast, so please always speak into the microphone and
3 begin by stating your name and affiliation.

4 Our court reporter is here with us and we will
5 make arrangements for the transcript to be available on
6 our website after the conclusion of Part 2. If you
7 would like to get it sooner, please make your
8 arrangements directly with the court reporting service.

9 Finally, and as always most importantly,
10 especially for the newcomers and the repeat
11 offenders -- Miss Aufdemberge -- please take a moment
12 and make sure that all your noise-making devices are
13 turned to silent, vibrate, do not disturb.

14 Check.

15 I see the two biggest offenders are checking.
16 Very good.

17 All right. Housekeeping matters before we get
18 started today.

19 A -- An update on -- I think I had earlier
20 announced that we will try to make a final copy of the
21 February 28th transcript available to parties by
22 March 7th. This was in response to a request from
23 Miss Nikkel in order for her to file a written
24 objection on Mr. Obegi's cross-examination.

25 I have an update on that. At this time, we

1 now expect to post this transcript for February 28th on
2 or around March 21st, not March 7th as we earlier
3 indicated. We will notify the service list when it is
4 posted.

5 Let me also note for the record that I
6 received a -- I think you all did -- a request for
7 cross-examination by Mr. Porgans for this panel, so we
8 will add Mr. Porgans to the list, and he has requested
9 60 minutes.

10 Oh. One other sort of heads-up for you all.
11 You all may know that this weekend is -- What is it?
12 Daylight Saving or one of the others?

13 CO-HEARING OFFICER MARCUS: It is?

14 CO-HEARING OFFICE DODUC: Yes. So we're
15 springing ahead an hour, so what you think is 9:30 will
16 actually be 10:30, so be sure you show up on time.

17 Are there any other announcements from the
18 staff?

19 Happy International Wednesday. And for all
20 the men who support and care for us, thank you.

21 All right. Any other housekeeping matter?

22 Mr. Mizell.

23 MR. MIZELL: Yes, thank you. Tripp Mizell,
24 DWR.

25 I was hoping to get either confirmation or

1 clarification.

2 It's my understanding that the exhibits that
3 we've been seeing coming from other parties on the
4 cross-examination exhibits, that is not their
5 submission of exhibits into evidence but simply their
6 submission of the exhibits used and that if the -- if
7 the other parties choose to transmit those into
8 evidence, that would be done upon the completion of
9 their cases in chief, and that would be the appropriate
10 point in time when we would file objections, if there
11 are any.

12 CO-HEARING OFFICE DODUC: Let's do that.

13 MR. MIZELL: Thank you.

14 CO-HEARING OFFICE DODUC: And Miss Des Jardins
15 has been sitting up front. I don't know if she's just
16 trying to get a better view or if she has an issue.
17 Thank you for waiting.

18 MS. DES JARDINS: I was in contact with
19 Mr. Porgans. He's still having health issues. He's
20 not sure he'll make it. I offered to ask questions of
21 the expert and he did designate me to ask questions for
22 him in the event he can't make it.

23 It did not work out to try to submit written
24 objections -- written questions because DWR made and
25 sustained objections to Mr. Porgans' written

1 submissions, and I believe Mr. Porgans will have some
2 further comments on -- on that, a request to the Board.

3 CO-HEARING OFFICE DODUC: I don't believe
4 anyone can make and sustain their own objections.

5 We did receive DWR's reply and objections to
6 Mr. Porgans' written questions for Panel 2. We are in
7 the process of reviewing that.

8 Did we set a timeline for other people to
9 respond to those objections?

10 Actually, I thought we gave Mr. Porgans and
11 everyone else a chance to respond to that.

12 MR. DEERINGER: I believe we sent it downline
13 for DWR. We didn't say anything one way or the other
14 about other parties responding.

15 CO-HEARING OFFICE DODUC: I -- I -- Okay. I
16 stand corrected. I thought we were giving Mr. Porgans
17 and other parties at least -- So when did the response
18 come in? Friday -- I'm sorry -- Tuesday at 5 p.m.?

19 Okay. So let's give Mr. Porgans and any other
20 parties who wish to comment on DWR's response and
21 objections till 5 p.m. tomorrow, which is Friday, to
22 respond.

23 MS. DES JARDINS: Thank you.

24 And, yes, some of the questions were
25 reformulated after making objections and subsequently

1 weren't answered.

2 CO-HEARING OFFICE DODUC: Yes. I saw their
3 submission.

4 MS. DES JARDINS: Thank you.

5 CO-HEARING OFFICE DODUC: You do not need to
6 go into it right now.

7 So, Miss Des Jardins, since you're up here --
8 I might have to turn to counsel to help me with this
9 one.

10 But if I remember correctly, you are -- you
11 are bringing a witness in to help you conduct
12 cross-examination? I believe we had -- At least our
13 notice said something to the effect that only
14 designated parties and those who are designated as
15 representing those parties may conduct
16 cross-examination but that we might recognize special
17 experts on an offer of proof.

18 So I just want to clarify.

19 MS. DES JARDINS: Dr. Earle (sic) is also
20 testifying in this and has -- in this matter. He's the
21 Conservation Chief --

22 CO-HEARING OFFICE DODUC: Not this Dr. Earle?

23 MS. DES JARDINS: I mean -- sorry -- Dr. David
24 Fries.

25 Not enough coffee.

1 Dr. David Fries is the Conservation Chair for
2 the San Joaquin County Audubon Society; has birded in
3 the San Joaquin Delta for at least 20 years; has done
4 surveys which were the basis -- participated and done
5 surveys the basis of which were published studies.

6 And his Statement of Qualifications is
7 available. And he's testifying on bird impacts in the
8 case in chief.

9 He also has some questions for Dr. Earle on
10 his assessment of impacts to avian species.

11 CO-HEARING OFFICE DODUC: Let me turn to
12 Mr. Deeringer and get some clarity on the process that
13 we need to follow.

14 MR. DEERINGER: This is just for my own
15 clarification:

16 Dr. Priest is it?

17 MS. DES JARDINS: David Fries --

18 MR. DEERINGER: Fries.

19 MS. DES JARDINS: -- F-R-I-E-S. And he's been
20 preparing here and preparing his cross-examination for
21 several days.

22 MR. DEERINGER: Okay. And it is
23 cross-examination and not testimony that he would be
24 providing; correct? Or she?

25 MS. DES JARDINS: I have counseled him and he

1 can only ask questions. He's not -- He's -- He's an
2 expert. He's not -- I myself have been trained very
3 well by DWR's witnesses and DWR's attorneys in the kind
4 of questions to be asked and I will be assisting
5 Dr. Fries.

6 MR. DEERINGER: And, I'm sorry, one more time:
7 Where did you say the Statement of
8 Qualifications can be found?

9 MS. DES JARDINS: I will -- I need -- I would
10 need to look up on my exhibits the exact number, but it
11 is in my Exhibit List. It says, "Statement of
12 Qualifications of" --

13 MR. DEERINGER: Okay.

14 MS. DES JARDINS: -- "David Fries."

15 CO-HEARING OFFICE DODUC: That's fine. We
16 will take a look at it.

17 MS. DES JARDINS: And as far as my own
18 participation as an expert for Dr. -- for Patrick
19 Porgans --

20 CO-HEARING OFFICE DODUC: You have established
21 those credentials.

22 MS. DES JARDINS: I have?

23 CO-HEARING OFFICE DODUC: We do not need to go
24 into that.

25 MS. DES JARDINS: I do have a Statement of

1 Qualifications on file.

2 CO-HEARING OFFICE DODUC: We will -- We will
3 look at Dr. Fries' Statement of Qualifications. I --

4 At this time, Mr. Mizell, do you have any
5 objections?

6 MR. MIZELL: No.

7 CO-HEARING OFFICER DODUC: All right. Yes?

8 MR. FERGUSON: Good morning. Aaron Ferguson.

9 CO-HEARING OFFICE DODUC: Is your microphone
10 on?

11 MR. FERGUSON: Good morning. Aaron Ferguson,
12 Glenn-Colusa Irrigation District.

13 I just have a quick clarification on when
14 parties that cross-examine should be moving their
15 exhibits in evidence if they don't have a case in
16 chief.

17 CO-HEARING OFFICE DODUC: Ah. Towards the
18 end. Towards the end of Part -- Towards the end of the
19 completion of all the cases in chief --

20 MR. FERGUSON: Okay.

21 CO-HEARING OFFICER DODUC: -- in Part 2. We
22 will make an announcement for submission of
23 cross-examination exhibits.

24 MR. FERGUSON: Okay. Thank you.

25 CO-HEARING OFFICE DODUC: You guys are just

1 testing my memory after a few days off.

2 Speaking of testing memories, we have
3 Ms. Meserve who will conclude her cross-examination in
4 15 minutes or so.

5 MS. MESERVE: I shall try.

6 I had another housekeeping matter regarding a
7 couple of other cross-examinations.

8 CO-HEARING OFFICER DODUC: Okay. Before you
9 do, let me run through my list just to make sure
10 everyone has the same understanding.

11 After Miss Meserve, we'll have Mr. Shutes,
12 then Mr. Ruiz.

13 MS. MESERVE: Yes. Mr. Ruiz will be here.

14 CO-HEARING OFFICE DODUC: Will be here.

15 So then after Mr. Ruiz, now that my -- my
16 order has all been messed up, we will get to Group 32,
17 Restore the Delta; right? We'll go in that order.

18 MS. MESERVE: Madam Chair --

19 CO-HEARING OFFICE DODUC: Unless there's
20 another change.

21 MS. MESERVE: I don't think it changes what
22 you just said.

23 Mr. Brodsky from Group 30, Save the California
24 Delta Alliance, is on his way here and requested that
25 he be allowed to go after -- He can get here by

1 lunchtime, I believe.

2 So if perhaps he could go sometime after
3 Restore the Delta. He's Group 30.

4 CO-HEARING OFFICER DODUC: Okay. And how much
5 time has he estimated?

6 MS. MESERVE: I believe it's about 45 minutes.

7 CO-HEARING OFFICE DODUC: We'll tell him
8 that's all you committed him to.

9 MS. MESERVE: Yes. Thank you.

10 CO-HEARING OFFICER DODUC: All right. I think
11 that does it.

12 All right. No other housekeeping matter?

13 We will now turn to Miss Meserve.

14

15 Chris Earle,

16 Doug Rischbieter,

17 and

18 John Bednarski

19 called as witnesses by the Petitioners,
20 having previously been duly sworn, were
21 examined and testified further as follows:

22

23 CROSS-EXAMINATION RESUMED BY

24 MS. MESERVE: Good morning.

25 When we concluded on Monday, I wasn't quite

1 through my time with -- my questions with Dr. Earle and
2 so I will resume where I left off and attempt to do it
3 within 15 minutes.

4 Let's see. So I wanted to first go to the
5 issue of the electrical transmission lines.

6 If we could show from the thumb drive FSL-48.

7 (Exhibit displayed on screen.)

8 MS. MESERVE: We talked a bit but didn't get
9 into the detail, Dr. Earle, about the -- there would be
10 some new transmission lines and some modifications to
11 existing lines that would be required to provide energy
12 for -- for this Project; is that right?

13 WITNESS BEDNARSKI: I believe --

14 WITNESS EARLE: Yes, that's correct.

15 WITNESS BEDNARSKI: Yeah, and I can provide
16 some detail to that.

17 In the south portion of the Project from Tracy
18 substation northwards to Bouldin Island, there will be
19 a new transmission line that will be constructed. A
20 portion of that will be permanent and a portion of that
21 will be temporary.

22 Then in the north, SMUD will be
23 constructing -- actually reestablishing an existing
24 line to be able to carry the power that we need for our
25 Project for WaterFix.

1 So no new alignment of these lines will be
2 strung through an existing alignment that SMUD has in
3 that area.

4 MS. MESERVE: Now, the picture I have here in
5 FSL-48 is a picture of the existing east-west
6 distribution line on Lambert Road, which I believe is
7 one of the existing corridors that power is planned to
8 be provided.

9 Can Dr. Earle or Mr. Bednarski confirm that?

10 WITNESS BEDNARSKI: Yes, I believe that is the
11 corridor that will be repurposed for WaterFix and for
12 the existing SMUD -- SMUD needs.

13 MS. MESERVE: And in order to provide the
14 69 KV of power for the tunnel boring machine, these
15 lines would be changed from dual circuit -- to a dual
16 circuit 69 KV distribution line with a 12 KV
17 underbuild; isn't that right?

18 WITNESS BEDNARSKI: That -- That's my
19 understanding. Two 69 KV lines, one especially for the
20 purposes of WaterFix, one for SMUD's purposes and then
21 an underbuild of 12 KV, yes.

22 MS. MESERVE: So just -- So here's the picture
23 of what it looks like now in that particular alignment.

24 And if we can scroll down to the next page --

25 (Exhibit displayed on screen.)

1 MS. MESERVE: -- I have an example of that
2 configuration which is a pole with several, I would
3 say, layers of lines in order to create the
4 distribution lines plus the underbuild.

5 I guess, Mr. Bednarski, does that look like
6 something like what we might see along Lambert Road?

7 WITNESS BEDNARSKI: I -- I believe that's a --
8 a fairly close representation from what we've seen,
9 yes.

10 MS. MESERVE: And now turn . . .

11 And just to confirm, Mr. Bednarski: That's a
12 lot more transmission -- a lot more lines on the poles
13 than in the picture I showed on Page 1 of the existing
14 alignment; isn't that correct?

15 WITNESS BEDNARSKI: The count -- If you count
16 up the number of lines that are there on this picture,
17 yes, it's more than what was on the previous picture.

18 MS. MESERVE: And now turning to Dr. Earle.

19 With this new configuration, would you think
20 that the additional lines on the poles would pose
21 additional risks and blockages to birds attempting to
22 fly through this area?

23 WITNESS EARLE: My review of the literature so
24 far does not indicate that this question has really
25 been investigated.

1 But I think it's worth noting that the
2 literature does indicate that approximately 80 percent
3 of all bird strikes on power lines occur on the ground
4 wire. This is the wire that's at the very top of
5 that -- that assemblage of wires that are shown in this
6 photograph.

7 And, in fact, it's -- it's -- it's nearly
8 invisible because of the fact that it's a substantially
9 smaller diameter than the conductor wires we see. The
10 birds find it hard to see as well.

11 So, you could argue that -- that the fact that
12 there are more wires here indicates that there's a
13 greater risk of -- of collision. And -- and the
14 pine -- the line is longer -- or is taller, rather,
15 than the existing 12.5 kilovolt line.

16 But, at the same time, you could also argue
17 that this line is considerably more visible from a
18 distance than the existing 12-kilovolt line.

19 But, as I say, I'm not aware of any existing
20 literature that allows us to distinguish the risk
21 associated between the two lines.

22 MS. MESERVE: We'll come back to the
23 visibility issue.

24 On Page 16, Dr. Earle, Line 26 of your
25 testimony, you use the term "flush."

1 (Exhibit displayed on screen.)

2 MS. MESERVE: What -- How would you define the
3 term "flushing" in the context of a bird like the
4 Greater Sandhill Crane?

5 WITNESS EARLE: Lines 25 to 27, I state
6 (reading):

7 "Direct light from automobile
8 headlights has been observed to cause
9 Cranes to flush from their roost and it
10 is thought that they may avoid roosting
11 in areas subject to artificial lighting."

12 In this usage, the word "flush" indicates that
13 the Cranes may leave their roost while they're
14 occupying it, typically during nighttime hours.

15 MS. MESERVE: And if we could show from the
16 thumb drive FSL-42. This is -- And go to Figure 4.7-2.

17 (Exhibit displayed on screen.)

18 MS. MESERVE: This is the figures from the
19 ITP, SWRCB-107. And I just want to show --

20 If you could scroll town to 4.7-2, and
21 maybe --

22 (Exhibit displayed on screen.)

23 MS. MESERVE: That's it right there, and maybe
24 pan out a tiny bit.

25 (Exhibit displayed on screen.)

1 MS. MESERVE: And I just want to show
2 Dr. Earle: This is sort of a -- This was done for
3 Swainson's Hawk because they are a covered species
4 under the ITP, which the Crane is not, as we discussed
5 last time.

6 But this shows quite a bit of construction
7 activity. And the impacted foraging habitat is that
8 lighter yellow area for at least the Swainson's Hawk.

9 So, is this sort of a -- Would you agree this
10 is an example of the kinds of disturbances that birds
11 such as Sandhill Cranes would be exposed during the
12 extended construction period that's proposed?

13 WITNESS EARLE: I would agree that this is a
14 map of impacted modeled foraging and nesting habitat
15 for Swainson's Hawk.

16 Swainson's Hawk and Sandhill Cranes, of
17 course, use habitat quite differently.

18 MS. MESERVE: I'm trying to show this for an
19 example of the types of disturbances in the area.

20 So, if you -- As you've put in your testimony,
21 Sandhill Cranes are sensitive to disturbance like
22 noise, light, human activity. You mentioned
23 headlights.

24 So if this construction area led to those
25 things, that would potentially cause flushing, for

1 instance, of a Crane; correct?

2 MS. ANSLEY: Objection.

3 We're looking at a -- I'm -- I'm sorry. I'd
4 gone to the last line.

5 We're looking at a figure that shows Swainson
6 Hawk and impact. Is there any foundation laid that
7 there is a roosting area of Sandhill Cranes in this --
8 the area depicted on this map?

9 CO-HEARING OFFICE DODUC: Miss Meserve.

10 MS. MESERVE: We would have to go back to the
11 Crane maps, but I -- I will represent that, yes,
12 there -- the Refuge has worked very hard to build up
13 a -- a lot of -- to build a population of Sandhill
14 Cranes, and that's right adjacent to here.

15 So I'm just using this picture to show the
16 types of disturbances. And maybe it's best to not
17 focus on the modeled Swainson's Hawk habitat and just
18 the disturbance part of the picture, which is the
19 locations of the intakes and roads, and et cetera.

20 CO-HEARING OFFICE DODUC: Dr. Earle, based on
21 your familiarity and expertise, do you have cause to
22 question Miss Meserve's assertion?

23 Are you able to answer her question based on
24 this graphic?

25 WITNESS EARLE: I can answer her question

1 without regard for this graphic.

2 CO-HEARING OFFICE DODUC: Let's do that.

3 MS. MESERVE: (Nodding head.)

4 WITNESS EARLE: By reiterating what it states
5 in my testimony, that we identify the potential that
6 sound and light and activity associated with
7 construction of the Project would have the potential to
8 affect the behavior of Sandhill Cranes, including
9 behaviors such as flushing from nighttime roosts, and
10 that Avoidance and Minimization Measure 20 Greater
11 Sandhill Crane described in the Mitigation, Monitoring
12 and Reporting Plan contains numerous provisions
13 intended to avoid or minimize the risk that this could
14 occur.

15 MS. MESERVE: Let's go ahead and look at that
16 briefly, Dr. Earle. And that's -- I've put the excerpt
17 of AMM20 in FSL-47.

18 And it -- Looking at --

19 (Exhibit displayed on screen.)

20 MS. MESERVE: -- for instance, Page 4-35 of
21 that, would you agree that all of the measures,
22 Dr. Earle, that are discussed to reduce effects from
23 construction, like noise and light, are limited by
24 feasibility caveats in the requirements listed here.

25 (Exhibit displayed on screen.)

1 WITNESS EARLE: If you'll give me a moment.

2 I'm reviewing the text.

3 MS. MESERVE: Perhaps scrolling up on the page
4 will be helpful.

5 (Exhibit displayed on screen.)

6 MS. MESERVE: For instance, "Minimize pile
7 driving."

8 WITNESS EARLE: Yes, that's actually a good
9 example.

10 That -- That is not qualified. It states that
11 DWR will do these things, does not refer to doing them
12 as convenient or to the extent practicable.

13 Also, I should note that pile driving for the
14 most part will be limited to occur during the improved
15 end water work season, which is primarily during the
16 summer months when Greater Sandhill Cranes are not
17 going to be present.

18 MS. MESERVE: Isn't that construction period
19 also limited, though, to the extent feasible? It's not
20 a requirement to go from only September to March for
21 those activities?

22 WITNESS EARLE: Actually, for the pile-driving
23 minimization here, I'm not seeing where it says "to the
24 extent feasible."

25 MS. MESERVE: Actually, Dr. Earle, I was

1 referring to the construction season.

2 WITNESS EARLE: Which line is that?

3 MS. MESERVE: That's going to be on 4-32. I
4 apologize.

5 (Exhibit displayed on screen.)

6 CO-HEARING OFFICE DODUC: What line,
7 Miss Meserve, on 4-32?

8 WITNESS EARLE: If you're referring to --

9 CO-HEARING OFFICE DODUC: On Line 9 and 10?

10 MS. MESERVE: Yeah, I believe it is. Sorry.

11 Timing (reading):

12 ". . . Will be minimized during
13 the . . . wintering season to the extent
14 practicable . . ."

15 WITNESS EARLE: Then, yes, I agree that is
16 what it states.

17 MS. MESERVE: So it's possible that the
18 construction season might overlap with the wintering
19 Crane season.

20 WITNESS EARLE: I think it's reasonably
21 certain that it would. Most of these Avoidance and
22 Minimization Measures might be unnecessary in that
23 case.

24 For instance, measures such as encouraging the
25 Cranes to relocate to location of the winter roost

1 would not be necessary if construction impacts were not
2 a factor.

3 MS. MESERVE: And let's go back, if we could,
4 to the picture of the markers.

5 Madam Chair, I'm afraid -- I am doing my best,
6 but I'm going to need a little bit more time.

7 CO-HEARING OFFICE DODUC: Yes. We are moving
8 from documents to documents.

9 MS. MESERVE: Right. And I will try to
10 minimize the delays associated with that.

11 So, going back to the -- the Figure FSL-48,
12 let's talk a little bit about the flight diverters
13 that's discussed in your testimony, for instance, on
14 Page 9, Line 6.

15 You mention installing (reading):

16 ". . . Flight diverters . . . to . . .
17 diminish collision risks is a widely
18 implemented strategy . . ."

19 Now, if we scroll down to the next page of
20 this --

21 (Exhibit displayed on screen.)

22 MS. MESERVE: -- I have got a picture of a
23 bird diverter from Staten Island that's existing.

24 And then if we could scroll down a little bit
25 more --

1 (Exhibit displayed on screen.)

2 MS. MESERVE: -- here's one that's broken on
3 Staten Island.

4 And then there's one other kind that I saw
5 there -- if you scroll to the very next page, please --
6 that is more like this.

7 (Exhibit displayed on screen.)

8 MS. MESERVE: Can you tell me what kind of
9 bird diverters are intended to be installed?

10 WITNESS EARLE: As I stated in my testimony,
11 this is an area of ongoing technological development.
12 A wide variety of bird diverters are currently being
13 used. Additional types may be available by the time
14 the proposed action occurs.

15 The bird diverters selected to be used will be
16 done so with review and approval of the California
17 Department of Fish and Wildlife.

18 MS. MESERVE: And that would be in the context
19 of AMM20, not the conditions of the ITP?

20 WITNESS EARLE: That is provided for in AMM20.

21 MS. MESERVE: And you testify on Page 12,
22 Line 6, that you expect that the diverters would reduce
23 collisions by 60 percent.

24 And -- But if it reduced mortality by
25 60 percent, that would still mean Cranes could be taken

1 at times; correct?

2 MR. MIZELL: Objection: This is a line of
3 questioning we went over on Friday, so I'm going to
4 object as asked and answered.

5 CO-HEARING OFFICE DODUC: Miss Meserve, we did
6 go over this.

7 MS. MESERVE: Okay.

8 CO-HEARING OFFICE DODUC: And since you're out
9 of time, how much additional time do you anticipate
10 needing now?

11 MS. MESERVE: I think I can wrap it up in
12 another 15 minutes.

13 CO-HEARING OFFICE DODUC: Let's give you those
14 15.

15 MS. MESERVE: Okay.

16 And when you refer to the Attachment 5J.C we
17 looked at on Monday about the effectiveness of bird
18 diverters, are you relying on the Brown and Drewien
19 study that's cited in the 5J.C?

20 WITNESS EARLE: 5J.C has been introduced in
21 evidence, and I believe that Brown and Drewien is the
22 only source cited therein.

23 However, there have been additional studies
24 performed since that time, including work performed in
25 the Delta. In fact, there have been many studies.

1 There is a (sic) substantial literature on this topic.

2 So there is additional evidence not yet
3 introduced that supports the 60 percent reduction for
4 power line diverters in the Delta.

5 MS. MESERVE: And what study is that?

6 WITNESS EARLE: There's a study by Yee,
7 et al., in 2006. I -- I don't recall the complete
8 citation. I can get it for you.

9 MS. MESERVE: We could go ahead and look at
10 that, it's SOSC-59 in the exhibit index of the Water
11 Board.

12 Are you familiar with the Yee study's
13 statement that it's the first study in California to
14 look at bird collisions?

15 WITNESS EARLE: I've not reviewed that study
16 recently and so asking me about specific phrases within
17 it is -- I'll -- I'll have to say that I would have to
18 review it in greater detail.

19 MS. MESERVE: If we could go to Page 27 of
20 that study, which is --

21 CO-HEARING OFFICE DODUC: Hold on,
22 Miss Meserve.

23 MS. MESERVE: I'm sorry.

24 CO-HEARING OFFICE DODUC: We're still trying
25 to find that study.

1 MS. MESERVE: Oh, it's -- Sorry. It's SOSC,
2 Save Our Sandhill Cranes, which is at the bottom of the
3 index.

4 (Exhibit displayed on screen.)

5 MS. MESERVE: There you go.

6 And it's . . . It's 59 is the Yee study, I
7 believe, that Dr. Earle is referencing.

8 And I would like to go, please, to .pdf

9 Page 41 --

10 (Exhibit displayed on screen.)

11 MS. MESERVE: -- of that study to look at
12 something which -- in there.

13 (Exhibit displayed on screen.)

14 MS. MESERVE: The -- It may be difficult, but
15 would you just in general, apart from the -- Well, I'll
16 give you a chance to look at that.

17 CO-HEARING OFFICE DODUC: You might want to
18 blow it up.

19 MS. MESERVE: It's a little small.

20 (Exhibit displayed on screen.)

21 MS. MESERVE: So we're looking at that first
22 paragraph.

23 There are difficulties, Dr. Earle, in actually
24 finding the result of bird collisions that these
25 studies have been grappling with.

1 Would you agree?

2 MR. MIZELL: I'm going to object.

3 Mr. -- or Dr. Earle -- Sorry, Dr. Earle.

4 Dr. Earle just indicated that if you could
5 question about specific conclusions within this study,
6 he would need additional time to read and assess it.

7 So, to the extent he's being asked to agree to
8 a specific conclusion, I believe it's already been
9 asked and answered.

10 CO-HEARING OFFICE DODUC: Miss Meserve, are
11 you asking him whether he agrees or whether he sees
12 that statement?

13 MS. MESERVE: I am asking whether he agrees
14 with the caveats that the researchers have expressed
15 with some of the difficulties determining the actual
16 number of deaths due to bird strikes.

17 CO-HEARING OFFICE DODUC: Are you able to
18 answer, Dr. Earle, without further analysis?

19 WITNESS EARLE: If you are referring to the
20 caveats that are stated in the first paragraph of the
21 text here, I would agree that such concerns are often
22 noted in studies of bird collision with power lines.

23 It is in the nature of such studies that they
24 tend to underestimate the full extent of injuries and
25 fatalities due to the fact, for instance, that if a

1 bird is -- is merely injured and can fly away, there's
2 a high -- high probability that it will not be
3 recovered even though it may die as a result of the
4 collision.

5 In most cases -- in almost all cases -- there
6 is no way to ascertain the bias that's introduced to
7 the study by this factor, and this does represent a
8 source of uncertainty.

9 MS. MESERVE: And -- And that is, in large
10 part, just as a practical matter, because it's
11 difficult to find the carcasses of injured or killed
12 birds; is that correct?

13 WITNESS EARLE: That is one potential source
14 of bias. It's of less consequence when you're talking
15 about a large bird like Sandhill Crane. The risk also
16 varies depending upon the type of vegetation that the
17 bird may be falling into and, frankly, with regard to a
18 variety of factors.

19 MS. MESERVE: And aren't opportunistic
20 scavengers also often responsible for taking away the
21 evidence?

22 WITNESS EARLE: This can occur depending upon
23 the site. It depends upon what the -- what the
24 potential scavengers are and how frequently surveys are
25 performed for the carcasses, and possibly upon other

1 factors.

2 MS. MESERVE: And in -- in the Delta -- In
3 this area of the Delta, would you be concerned about
4 scavengers such as coyotes?

5 WITNESS EARLE: As I indicated, it depends
6 upon the site, and it depends upon the frequency of
7 carcass surveys.

8 MS. MESERVE: So going back to the --
9 the . . . I think what you expressed is a known take
10 standard in your testimony.

11 We spoke on Monday about the -- the program to
12 monitor the effectiveness.

13 And would you agree that the challenges in
14 monitor -- that there may be challenges in monitoring
15 effectiveness due to the issues listed in the Yee
16 study?

17 WITNESS EARLE: I would agree that Yee
18 indicate that they found such challenges.

19 I would note that a monitoring proposal
20 specific to compliance with the performance standard
21 for the California WaterFix would be developed and
22 negotiated in collaboration with California Department
23 of Fish and Wildlife and that process has not yet
24 occurred; therefore, no techniques or protocol have yet
25 been designated.

1 MS. MESERVE: And, again, that would be in the
2 context of the environmental commitment AMM20, not the
3 ITP, which is a permit from Fish & Game; is that
4 correct?

5 WITNESS EARLE: That would be in the context
6 of the performance standards stated on the first page
7 of IMM20 (sic). I quote (reading):

8 "No take, as defined by Section 86
9 of the California Fish & Game Code, of
10 Greater Sandhill Crane associated with
11 the (sic) new facilities."

12 MS. MESERVE: And if we could look briefly at
13 SDWA -- this is back in the main South Delta Water
14 Agency -- 141.

15 And this is a map from the Economic
16 Sustainability Plan.

17 SDWA -- I'm sorry. It's going to be at South
18 Delta Water Agency 141. So that is Group 20? Yeah,
19 21. Thank you.

20 And it's 141.

21 And this is a -- On Page -- .pdf Page 18 --
22 (Exhibit displayed on screen.)

23 MS. MESERVE: -- of the Economic
24 Sustainability Plan.

25 And there's a map here, and I just want to

1 touch on this briefly again because we didn't get to it
2 last time. It's on .pdf Page 18.

3 (Exhibit displayed on screen.)

4 MS. MESERVE: This is a map that shows what
5 the Delta Protection Commission thought were areas of
6 high probability of urbanization within the -- the
7 Delta -- within the legal Delta.

8 And just looking at this map, and you can see
9 there's one little red area up northeast of the main
10 project disturbance area we've been talking about
11 today.

12 But in general, would you agree, Dr. Earle,
13 that the threat of urbanization within the Delta does
14 not appear from this map to be great?

15 WITNESS EARLE: Could we see the legend on
16 this map?

17 (Exhibit displayed on screen.)

18 WITNESS EARLE: I see this -- that this map
19 states a low to moderate probability of urbanization
20 over the great majority of the Delta.

21 MS. MESERVE: And you are aware that the Delta
22 Protection Commission, the Delta Stewardship County --
23 Council and the five county General Plans have very
24 protective policies for agricultural Delta lands.

25 Is that your understanding?

1 WITNESS EARLE: I am aware that such policies
2 exist. As to how protective they are, I would say
3 that's a subjective determination.

4 MS. MESERVE: But on this map, it was
5 considered low to moderate.

6 WITNESS EARLE: I do not know that this map is
7 intended as a graphical representation of those
8 policies. I have not reviewed this document.

9 MS. MESERVE: Now, just wrapping up here.

10 Generally, you've opined -- for instance, on
11 Page 17 of your testimony -- that you believe that
12 protection and restoration of Greater Sandhill Crane
13 habitat will improve the overall condition of Greater
14 Sandhill Crane habitat in the Delta; is that correct?

15 WITNESS EARLE: That's correct.

16 MS. MESERVE: And yet you acknowledge there's
17 probably 14 years of construction in general from this
18 Project?

19 WITNESS EARLE: I believe that's the -- the
20 approximate overall time frame for construction.

21 I would note that construction that has a
22 potential to affect Greater Sandhill Cranes and their
23 habitat is probably a fraction of that.

24 MS. MESERVE: And, in addition, you're aware
25 that almost 600 acres of wetlands and waters of the

1 U.S. are proposed to be filled, some of which would be
2 within the Greater Sandhill Crane habitat, by this
3 Project?

4 WITNESS EARLE: I have not seen the precise
5 quantification of the wetlands that are proposed to be
6 filled and of the mitigation acreage proposed in
7 compensation for that.

8 I consider it likely, though, that some of
9 those wetlands are potentially used by Sandhill Cranes.

10 MS. MESERVE: And, in your experience from a
11 U.S. Army Corps of Engineers permitting and mitigation
12 perspective, if there were replacement wetlands, they
13 wouldn't necessarily be in the same area; would they?

14 WITNESS EARLE: There is room for negotiation
15 in siting a mitigation wetlands in general established
16 under Section 404 of the Clean Water Act.

17 I am not aware of the status of the siting
18 effort for the mitigation.

19 However, as noted in -- in my discussion of
20 AMM20, and in my testimony, and in discussion of
21 mitigation for impacts on the Stone Lakes National
22 Wildlife Refuge, mitigation is intended to be cited to
23 provide benefit to Stone Lakes National Wildlife Refuge
24 which presumably indicates a high probability that
25 mitigation for impacts occurring on the Refuge will be

1 sited on lands either in the existing Refuge lands or
2 lands approved for future addition to the Refuge.

3 MS. MESERVE: But the Project does not have a
4 Corps Permit for fill yet; does it?

5 WITNESS EARLE: I believe you're correct.

6 MS. MESERVE: Nor has it completed the NEPA
7 review that would be a condition precedent to that
8 permit; correct?

9 WITNESS EARLE: You seem to be implying that
10 mitigation for impacts to Greater Sandhill Crane is
11 irrevocably tied to the 404 Permit. It is not.

12 It would be less expensive for DWR, if they
13 could do so, but if 404 mitigation is sited in areas
14 unsuitable for the Greater Sandhill Crane, then
15 additional mitigation would have to be provided as
16 specified in AMM20.

17 MS. MESERVE: And . . . so you don't know
18 where the mitigation for the 404 will be.

19 WITNESS EARLE: The best of my knowledge, that
20 determination has not yet been made.

21 MS. MESERVE: And you don't know, either,
22 where the mitigation that is described in AMM20
23 actually will be; do you?

24 WITNESS EARLE: Apart from the commitments as
25 specified with regard to Stone Lakes National Wildlife

1 Refuge, no. To the best of my knowledge, no specific
2 site has yet been selected.

3 MS. MESERVE: And are you aware of Stone Lakes
4 National Wildlife Refuge itself ever indicating that it
5 in any way supports construction of this Project?

6 MR. MIZELL: Objection: Relevance.

7 The agreement or disagreement of Stone Lakes
8 Wildlife Refuge really has no bearing on the testimony
9 of Dr. Earle. He has not alluded to any sort of
10 agreement, as far as I'm aware, in his testimony.

11 CO-HEARING OFFICE DODUC: But I'm curious as
12 to whether he's aware.

13 WITNESS EARLE: I have not --

14 (Timer rings.)

15 WITNESS EARLE: -- personally reviewed
16 documents or participated in conversations with
17 Managers representing Stone Lakes --

18 CO-HEARING OFFICE DODUC: You do not know.

19 WITNESS EARLE: -- that indicates any approval
20 or disapproval of the Project.

21 MS. MESERVE: And are you aware of any
22 environmental organizations in general encouraging
23 construction of this Project for purposes of protecting
24 Sandhill Cranes?

25 WITNESS EARLE: I am not.

1 MS. MESERVE: No further questions.

2 Thank you.

3 CO-HEARING OFFICE DODUC: Thank you,
4 Miss Meserve.

5 We will now ask Mr. Shutes to come up.

6 And as Mr. Shutes is coming up, let me put
7 Group 4 and 5 out of their misery.

8 I have an estimated six and three-quarter
9 hours of cross-examination remaining for this panel.
10 Even if we are extremely efficient and move quickly and
11 don't take as much time as estimated, I still will
12 project that we will not get to you today.

13 MR. O'HANLON: Thank you.

14 CO-HEARING OFFICE DODUC: But we will get to
15 you tomorrow.

16 Thank you for your patience.

17 CO-HEARING OFFICE DODUC: Welcome back,
18 Mr. Shutes.

19 MR. SHUTES: Good morning. I'm Chris Shutes
20 of the California Sport Fishing Protection Alliance.

21 The issues that I wish to discover -- discuss
22 today all have -- are questions for Dr. Earle. They
23 concern: The structure of the Adaptive Management
24 Plan; the relation of the Adaptive Management Plan for
25 California WaterFix to existing Adaptive Management

1 Plans; the effectiveness of existing Adaptive
2 Management Plans; initial operations of the California
3 WaterFix; public participation in the Adaptive
4 Management Plan for California WaterFix; and the role
5 of the State Water Board in the Adaptive Management
6 Plan for California WaterFix.

7 CO-HEARING OFFICER DODUC: All right. Before
8 you begin, please note that I would like to give the
9 court reporter a break around 11:00 o'clock, no later
10 than 11:00, so when there's an appropriate time in your
11 questioning, we'll take a break.

12 MR. SHUTES: Very well.

13 I do think that I have about an hour and a
14 half's worth of questions. We'll start with an hour
15 and see how it goes. If we can move through this
16 quickly, my time will be shorter.

17 CO-HEARING OFFICE DODUC: It's our standard
18 practice to put the -- the limit up there and then,
19 upon an offer of proof and demonstrated cause, we there
20 will give you additional time.

21 MR. SHUTES: Very well.

22 CROSS-EXAMINATION BY

23 MR. SHUTES: Good morning, Dr. Earle.

24 Dr. Earle, on which Adaptive Management
25 Implementation Committees do you currently sit?

1 WITNESS EARLE: I am on none of them.

2 MR. SHUTES: Have you ever been on an Adaptive
3 Management Implementation Committee that produced
4 quantifiable improvements in fish populations?

5 WITNESS EARLE: I have not been.

6 MR. SHUTES: Could we please pull up
7 Attachment 5 to the ITP, the Adaptive Management Plan.
8 That's Exhibit State Water Board 107. And let's start
9 at the title page, please.

10 While we're doing that: Dr. Earle, is -- is
11 Attachment 5 to the ITP the most current version of the
12 Adaptive Management Plan for the California WaterFix?

13 (Exhibit displayed on screen.)

14 WITNESS EARLE: Yes, it is.

15 MR. SHUTES: Dr. Earle, wouldn't it be fair to
16 say that this Adaptive Management Plan is essentially a
17 concept paper?

18 WITNESS EARLE: The prior version used the
19 word "framework."

20 I think that the authors of this plan would
21 agree that further revision is likely to occur prior to
22 implementation.

23 MR. SHUTES: So it would be fair to say that
24 many of the specifics of implementing the plan have yet
25 to be worked out.

1 MR. MIZELL: Objection: Misstates the answer.

2 MR. SHUTES: Would it be fair to say that the
3 specifics of implementing this plan -- many of the
4 specifics have yet to be worked out?

5 WITNESS EARLE: The plan is overseen by the
6 Interagency Implementation and Coordination Group, the
7 IIACG, which we've discussed before. And the early
8 tasks assigned to that group include developing an
9 implementation approach.

10 MR. SHUTES: Very good.

11 Could we please pull up .pdf Page 12 of the
12 Adaptive Management Plan, please.

13 (Exhibit displayed on screen.)

14 MR. SHUTES: There we are.

15 And could we scroll down so that a we can see
16 the caption to this figure?

17 (Exhibit displayed on screen.)

18 MR. SHUTES: Dr. Earle, the model -- This
19 model portrays real-time operations as part of adaptive
20 management; does it not?

21 WITNESS EARLE: It does not.

22 MR. SHUTES: Could you elaborate on why you
23 think it does not?

24 WITNESS EARLE: As stated in the caption of
25 the figure, it says (reading):

1 "Describing the multiple time-scales
2 of adaptive management . . ."

3 That to me does not mean that every process
4 represented in this figure is part of the Adaptive
5 Management Program.

6 As I related in my testimony, real-time
7 operations is a high-time-frequency activity that
8 provides valuable input to adaptive management
9 decisions.

10 MR. SHUTES: So when you're talking about the
11 multiple time-scale -- When the -- When this figure
12 discusses the multiple time-scales of adaptive
13 management, some of those multiple time-scales do not
14 include a time-scale that is part -- that -- that
15 encompasses real-time operations; is that correct?

16 WITNESS EARLE: As I stated in my testimony,
17 the Real-Time Operations Program, which is currently
18 conducted and would be continued under California
19 WaterFix, feeds into the Adaptive Management Program.
20 It provides input.

21 But changes in the Real-Time Operations
22 Program would not be enacted through the Adaptive
23 Management Program.

24 MR. SHUTES: Could we please pull up State
25 Water Board Exhibit 104, the Biological Assessment,

1 Appendix 3.H, to get a clearer version of this
2 particular model, please.

3 That --

4 CO-HEARING OFFICE DODUC: Thank you.

5 MR. SHUTES: That one is very hard to read.

6 (Exhibit displayed on screen.)

7 MR. SHUTES: I believe it's on .pdf Page 4.

8 (Exhibit displayed on screen.)

9 MR. SHUTES: This appendix -- There we are.

10 And if we could focus in on the top portion of
11 this, please.

12 So, Dr. Earle, is it your testimony that the
13 groups --

14 (Exhibit displayed on screen.)

15 MR. SHUTES: There we are.

16 -- listed at the top of this figure, the
17 American River Group, the Delta Operations for
18 Salmonids and Sturgeon Working Group, et cetera, have
19 no role in the Adaptive Management Program?

20 WITNESS EARLE: First, I would like to note
21 that this is not the same document that we were looking
22 at a moment ago. This is an earlier draft of that
23 document.

24 I will say, though, to the best of my
25 knowledge, this particular graphic was not changed

1 between those two drafts.

2 I am not familiar with the operations of each
3 of the groups that are listed here that feed into the
4 real-time operations process. The -- The conduct of
5 real-time operations was addressed by Mr. Aaron Miller
6 in Panel 2.

7 And so I cannot categorically say that none of
8 these groups would have any input to adaptive
9 management decisions.

10 MR. SHUTES: So, would you have any awareness
11 whether or not the Water Operations Management Team
12 that is mentioned a number of times in the ITP, or
13 Decision Agency Managers, have rejected, watered down,
14 or delayed implementation of the explicit
15 recommendations of these Technical Teams?

16 WITNESS EARLE: It sounds to me as if that's a
17 question about real-time operations and, as I've
18 indicated, I'm not prepared to discuss that topic. The
19 Real-Time Operations Program was addressed by Aaron
20 Miller during Panel 2.

21 MR. SHUTES: And regarding specific questions
22 that have to do with the Sacramento River Temperature
23 Task Force, is it also your -- do you also maintain
24 that these do not have any overlap or have any bearing
25 on Adaptive -- the Adaptive Management Program?

1 MR. MIZELL: Objection: Asked and answered at
2 this point.

3 Dr. Earle stated twice now he can neither
4 confirm nor deny the participation of those two groups
5 that Mr. Shutes is going line by line through.

6 CO-HEARING OFFICE DODUC: But -- I -- I'll
7 sustain the objection.

8 But, Dr. Earle, perhaps you can help me and
9 perhaps -- and Mr. Shutes also understand.

10 I appreciate that there's a difference between
11 real-time operations and adaptive management. But
12 those two efforts must be connected, as you yourself
13 have said.

14 There is input from real-time operations into
15 the adapt -- adaptive management process. And the
16 groups which Mr. Shutes is asking about provide input
17 into real-time operations.

18 So to the extent that -- that you can, that
19 you are familiar with it, perhaps you can help all of
20 us better understand that connection between -- the
21 interaction between real-time operations and the groups
22 participating in that effort, and the overall adaptive
23 management process.

24 WITNESS EARLE: Very well.

25 To the best of my knowledge, the Adaptive

1 Management Program as set forth in this document does
2 not prescribe an active role for any of those groups.

3 However, as you've noted, those groups are
4 instrumental in collecting information that could be
5 important to adaptive management decisions.

6 It is, therefore, not unreasonable to suppose
7 that the IICG would have occasion to call upon those
8 groups for their data and their insight in adaptive
9 management decisions.

10 The Adaptive Management Program, presented in
11 this document in its latest form does include in
12 principal the collaborative processes for working with
13 other groups involved in fisheries management in the --
14 in the area affected by the California WaterFix.

15 But it does not contain any specifications
16 regarding how that collaboration would occur. This is
17 one of the areas that would be subject to further
18 deliberation and decisions by the IICG once the process
19 was initiated.

20 MR. SHUTES: So, Dr. Earle, isn't it fair to
21 say, however, that these groups, such as the Sacramento
22 River Temperature Task Force, have a role in
23 implementing the adaptive management decisions that are
24 made by the different adaptive management agencies?

25 WITNESS EARLE: It is my understanding that

1 the operations of the real-time operations groups are
2 not subject to the Adaptive Management Program, in
3 which case they would not be implementing those
4 decisions.

5 CO-HEARING OFFICE DODUC: But if the Adaptive
6 Management Program result in changes on the
7 requirements to which operation must meet, then there
8 is that -- that do look.

9 WITNESS EARLE: That sounds to me like a
10 reasonable presumption.

11 But the subject has not, to my knowledge, been
12 addressed in discussions about how the Adaptive
13 Management Program would be implemented.

14 MR. SHUTES: I think -- I have some questions
15 related to the -- to the activities of the Sacramento
16 River Temperature Task Force. I think I may come back
17 to those after we talk about some of the other Adaptive
18 Management Programs that exist and the implementation
19 of some of those decisions by that Task Force.

20 CO-HEARING OFFICE DODUC: (Nodding head.)

21 I don't know to what extent Dr. Earle can
22 answer questions about those --

23 MR. SHUTES: It's very possible that he can't.
24 In that case, he can simply say that he doesn't know.

25 Dr. Earle, wasn't the implementation of CALFED

1 programs predicated on adaptive management?

2 WITNESS EARLE: I'm sorry to say I was not
3 around during the CALFED period, but I have heard that
4 adaptive management was proposed as an element of that
5 program.

6 MR. SHUTES: Isn't it true that the Adapt --
7 the Vernalis Adaptive Management Program was an
8 Adaptive Management Program of the Central Valley
9 watershed?

10 WITNESS EARLE: I believe it was intended to
11 be such.

12 MR. SHUTES: Dr. Earle, isn't the Interagency
13 Ecological Program with its 15-project Work Teams a
14 program to facilitate adaptive management by
15 participating agencies?

16 WITNESS EARLE: That is one objective of the
17 IAP.

18 MR. SHUTES: Aren't the Collaborative
19 Management Team and Collaborative Science and Adaptive
20 Management Program Policy Group part of an existing
21 Adaptive Management Program?

22 WITNESS EARLE: Yes, they are.

23 MR. SHUTES: Isn't adaptive management an
24 integral part of the Anadromous Fisheries Restoration
25 Program and its Final Restoration Plan?

1 WITNESS EARLE: I am not familiar with that
2 program.

3 MR. SHUTES: Isn't adaptive management an
4 integral component of the National Marine Fisheries
5 Service's Restoration Plan for listed Central Valley
6 Salmon, Steelhead and Green Sturgeon?

7 WITNESS EARLE: I believe it is.

8 MR. SHUTES: Dr. Earle, isn't it true that
9 during the lifespan of each of these Adaptive
10 Management Plans, at least those with which you're
11 familiar, the abundance and diversity of Delta and
12 Central Valley fisheries has declined?

13 WITNESS EARLE: I have not actually reviewed
14 data that would allow me to make that determination.

15 I think I would agree that those issues have
16 continued to be a point of concern and controversy in
17 the area.

18 MR. SHUTES: Could we pull up CSPA
19 Exhibit 232, please.

20 CSPA-232 was submitted as a supporting exhibit
21 for the testimony of Mr. Jennings in Part 2 of the
22 WaterFix.

23 It's California Sport Fishing Protection
24 Alliance, Group 31.

25 (Exhibit displayed on screen.)

1 MR. SHUTES: And can we scroll down to the
2 next page, please.

3 (Exhibit displayed on screen.)

4 MR. SHUTES: That's fine.

5 Dr. Earle, this graphic summarizes the Summer
6 Townt Survey Delta Smelt Abundance Indices from 1959
7 to 2017. And the inset shows indices from 2007 to
8 2017.

9 Wouldn't it be fair to say that this graphic
10 demonstrates a decline in the abundance of Delta Smelt
11 over the time period shown?

12 MR. MIZELL: Objection.

13 CO-HEARING OFFICE DODUC: Mr. Mizell.

14 MR. MIZELL: The question goes to aquatic
15 biology.

16 Dr. Earle is here to testify about terrestrial
17 biology and the adaptive management process. That does
18 not involve making conclusions as to effects to aquatic
19 biology but, rather, the process of how agencies
20 interact in the Adaptive Management Program.

21 CO-HEARING OFFICE DODUC: Mr. Shutes.

22 MR. SHUTES: Dr. Earle has represented that
23 the Adaptive Management Program will reasonably be part
24 of a . . . overall program that reasonably protects
25 Delta fisheries.

1 I think it's reasonable to ask, since we've
2 already established that many of the elements of the
3 existing -- of the proposed California WaterFix
4 Adaptive Management Plan rely on elements that already
5 exist in all -- other programs.

6 I think it's reasonable to ask how those
7 programs have done up till now and -- and if . . .

8 CO-HEARING OFFICE DODUC: Mr. Shutes, I -- I
9 agree it's reasonable to ask. I don't know whether or
10 not it is within this expert's -- this witness'
11 expertise to answer those questions, but I will
12 overrule it and allow you to ask.

13 Dr. Earle, you can only answer to the best of
14 your ability.

15 WITNESS EARLE: I don't think it's necessary
16 to have a Ph.D. in biology to know that there are fewer
17 Delta Smelt out there now than there were in the 1970s.

18 MR. SHUTES: Thank you.

19 And -- And would you say the same thing is
20 true for different runs of Central Valley Chinook
21 Salmon?

22 I can provide a graphic if you wish.

23 WITNESS EARLE: That's fine.

24 I would agree that historic values for those
25 runs are higher than they are currently.

1 MR. SHUTES: Going back to, say, the '60s or
2 '70s, to -- to get a better sense of what you mean by
3 "historic"?

4 WITNESS EARLE: The -- The -- The record
5 that's available.

6 MR. SHUTES: Thank you.

7 Could we go back to Figure -- Well, let's go
8 back to the figure from the Biological Assessment.

9 And, Dr. Earle, if there are discrepancies
10 between that figure and the figure in the Adaptive
11 Management Program, the ITP, I'd ask you to point those
12 out.

13 I simply can't read the Figure 5-1 in the
14 Adaptive Management Conceptual Model.

15 (Exhibit displayed on screen.)

16 MR. SHUTES: So looking at this -- this
17 version of the model, is it correct that -- that you
18 were one of the authors of the Biological Assessment
19 Adaptive Management Plan?

20 WITNESS EARLE: I'm not sure what document
21 you're referring to.

22 MR. SHUTES: There was . . .

23 This document.

24 WITNESS EARLE: It is incorrect.

25 MR. SHUTES: Okay. Thank you.

1 There are a number of feedback loops in this
2 conceptual model; are there not?

3 WITNESS EARLE: I believe that's the intent of
4 the -- the circular arrows, especially if we scroll
5 down a little farther on the graphic.

6 MR. SHUTES: And -- And we could do that and
7 maybe -- I don't think we need the level of detail. We
8 can pan out a little bit, please.

9 (Exhibit displayed on screen.)

10 MR. SHUTES: Does any of the feedback loops in
11 this figure indicate any public process for review or
12 comment on monitoring results or on any proposed
13 changes in operations criteria that agencies might
14 consider in adaptive management?

15 WITNESS EARLE: (Examining document.)

16 Can we zoom in a little more on the bottom
17 third of the picture?

18 (Exhibit displayed on screen.)

19 WITNESS EARLE: I would say that if a public
20 input process exists, it exists only to the extent that
21 it is accounted for by the actions of any of these
22 collaborating groups.

23 I am not certain whether such a program might
24 occur through the -- the actions of the Delta Science
25 Program or through the Interagency Ecological Program.

1 MR. SHUTES: Do any of these feedback loops
2 indicate that study might result in revising the Water
3 Right Permits for the California WaterFix?

4 WITNESS EARLE: As I indicated in my
5 testimony, any such changes, if recommended by the
6 IICG, would be addressed in Phase IV of the adaptive
7 management process and would be subject to the standard
8 en -- environmental regulation compliance processes
9 that are already in place.

10 MR. SHUTES: The standard . . .
11 Can you explain what you mean by those last --

12 WITNESS EARLE: Depending on the scope of the
13 change proposed, it might be validated under CEQA,
14 NEPA, California ESA.

15 MR. SHUTES: But, to your knowledge, it would
16 not go back --

17 WITNESS EARLE: State water regulation.

18 MR. SHUTES: State water -- What do you mean
19 by "state water regulation"?

20 WITNESS EARLE: Such as the Permit Application
21 process we're involved in at the moment.

22 MR. SHUTES: Can you show me anyplace in this
23 figure or in the document where it mentions a return to
24 the State Water Board to review the changes in
25 operations criteria?

1 MR. MIZELL: Objection: Asked and answered.

2 This is an area we covered fairly extensively
3 on Monday, and the witness just provided an answer to
4 that very question in his last answer.

5 MR. SHUTES: He provided a very general
6 answer, but he did not provide a specific answer. I
7 didn't see one.

8 CO-HEARING OFFICE DODUC: Dr. Earle, is there
9 a citation?

10 WITNESS EARLE: No. As I've stated in my
11 prior testimony, this document does not address the
12 role of the State Water Board in the adaptive
13 management process.

14 MR. SHUTES: Thank you.

15 I'd like to take an example. Could we please
16 turn to the ITP itself, State Water Board Exhibit 107.

17 (Exhibit displayed on screen.)

18 MR. SHUTES: And I'd like to turn first to the
19 bottom of Page 178 .pdf. I think the pagination is the
20 same --

21 (Exhibit displayed on screen.)

22 MR. SHUTES: -- for .pdf and otherwise.

23 The bottom of the page, please.

24 (Exhibit displayed on screen.)

25 MR. SHUTES: And scrolling up to the . . .

1 (Exhibit displayed on screen.)

2 MR. SHUTES: What we're looking at here is the
3 general rules for the pulse -- post-pulse operations
4 for North Delta Diversion Intake Bypass Flows.

5 And if we scroll down to Page 179, the table
6 tells us --

7 (Exhibit displayed on screen.)

8 MR. SHUTES: -- that these bypass levels are
9 yet to be determined based on various -- on several
10 factors; is that correct?

11 WITNESS EARLE: That appears to be what the
12 table says.

13 MR. SHUTES: So let's scroll now to the --
14 Page 182 at the top of the page, Sub Table A entitled
15 "Post-Pulse Operations for NDD Intake Bypass Flows."

16 (Exhibit displayed on screen.)

17 MR. SHUTES: Just below the introductory
18 boxes, the table shows Level 1, 2 and 3 post-pulse
19 operations.

20 Do you see that?

21 WITNESS EARLE: Yes, I see that.

22 MR. SHUTES: And isn't it true that
23 Petitioners and the fisheries agencies have not yet
24 determined when each of these levels would apply?

25 WITNESS EARLE: I do not know if that is the

1 case or not.

2 MR. SHUTES: Let's scroll down to Page 182, in
3 the middle of the page.

4 (Exhibit displayed on screen.)

5 MR. SHUTES: And in the middle of the page, it
6 sort of -- A little higher, please. I'm having trouble
7 following.

8 (Exhibit displayed on screen.)

9 MR. SHUTES: There it is.

10 December 1 to April 30th. So that's the time
11 period that the table immediately below is dealing
12 with.

13 And if we could scroll down to the top of the
14 following page, please.

15 (Exhibit displayed on screen.)

16 MR. SHUTES: A little farther.

17 (Exhibit displayed on screen.)

18 MR. SHUTES: There we go.

19 Where it says 20,000 cfs.

20 So, as I read this table -- and please correct
21 me if I'm wrong -- it shows different flow requirements
22 for weather Level 1, 2 or 3 is in effect when the
23 Sacramento River flow is 20,000 cfs or greater.

24 Under Level 1, the bypass flow would be 18,400
25 cfs plus 30 percent of the amount over 20,000 cfs;

1 correct?

2 MR. MIZELL: Objection: These questions are
3 going to an interpretation of a table that has not been
4 identified as being a part of the Adaptive Management
5 Program, which is what Dr. Earle is here to discuss.

6 He's being asked to confirm values that sit in
7 an aquatics biology conditions table. This was asked
8 of Dr. Wilder and Dr. Greenwood fairly thoroughly on
9 Panel 2.

10 And unless we can see a connection to the
11 Adaptive Management Program, I would say asked and
12 answered in Panel 2 and out of the scope of testimony
13 for Dr. Earle to --

14 CO-HEARING OFFICE DODUC: I would remind
15 Mr. Mizell that cross-examination may go beyond the
16 scope of a witness' testimony as long as it's relevant
17 to a key hearing issue before us.

18 Mr. Shutes.

19 MR. SHUTES: And I believe I will connect this
20 up in a couple of questions.

21 CO-HEARING OFFICE DODUC: Thank you.

22 Overruled.

23 WITNESS EARLE: If Mr. Shutes is asking me do
24 I read the numbers on the table, then the answer is
25 yes.

1 If he's asking me what they signify, the
2 answer is I don't recall.

3 MR. SHUTES: I'm not asking you what they
4 signify biologically. I'm simply asking what -- about
5 the different values that are represented in this
6 table.

7 CO-HEARING OFFICE DODUC: Mr. Shutes, I think
8 it would be helpful to me if you could repeat your
9 question.

10 MR. SHUTES: Yes.

11 So, let's take it one step further. And --
12 And under Level 1, if we assume a flow of 20,000 cfs --
13 and I'll give you a minute to do the math -- under
14 Level 1, the allowed diversion would be 1600 cfs; would
15 it not?

16 MR. MIZELL: Objection: The table speaks for
17 itself.

18 CO-HEARING OFFICE DODUC: And Mr. Shutes?

19 MR. SHUTES: I am not sure that it does speak
20 for itself. I'm simply asking to verify the value at
21 that particular flow level.

22 WITNESS EARLE: Well, could we scroll back up
23 and take a look at the -- the title of the table and
24 the headings of the columns?

25 MR. SHUTES: Sure.

1 (Exhibit displayed on screen.)

2 MR. MIZELL: To the extent that this question
3 is simply asking Dr. Earle to do the mathematics as
4 described in the table, the table speaks for itself.
5 And I would ask under just an efficiency of questioning
6 standpoint that we forego mathematical exercises and
7 get to the substance of the questioning.

8 CO-HEARING OFFICE DODUC: I will --

9 MR. SHUTES: All right. I will --

10 CO-HEARING OFFICER DODUC: -- sustain.

11 MR. SHUTES: -- represent to you, Dr. Earle,
12 that under Level 1, at 20,000 cfs, flow in the
13 Sacramento River, provided that this element was
14 controlling, the allowed diversion would be 1600 cfs
15 and that, under Level 3, the allowed diversion would be
16 7,000 cfs.

17 CO-HEARING OFFICE DODUC: And your question
18 is?

19 MR. SHUTES: So, first, depending on how the
20 Adaptive Management Team writes the rules and how the
21 Operations Team applies them, the difference in North
22 Delta diversions in the December-through-April time
23 period, when Sacramento River flow is 20,000 cfs, and
24 North Delta bypass flows were controlling, it could be
25 greater than 5,000 cfs.

1 Is that not correct?

2 MR. MIZELL: I'm going to object.

3 WITNESS EARLE: I believe that is not correct.

4 My understanding is that these are the water
5 operations criteria. There is no element of adaptive
6 management here. These are the proposed criteria.

7 Changes to these criteria could occur through
8 adaptive management. None have yet been proposed. And
9 if they were proposed, they would be subject to review
10 under applicable regulation.

11 MR. SHUTES: Let's refer back to Dr. Earle's
12 testimony, DWR-1014, and pull up Page 6, please.

13 (Exhibit displayed on screen.)

14 MR. SHUTES: And let's please go to Page 6,
15 Lines 12 through 14.

16 (Exhibit displayed on screen.)

17 MR. SHUTES: Dr. Earle, this portion of your
18 testimony refers to the four phases of adaptive
19 management and Phase 1 is Plan; isn't that correct?

20 WITNESS EARLE: That is correct.

21 MR. SHUTES: And doesn't your testimony say
22 that (reading):

23 "Initial operation and research
24 priorities are set through an Operations
25 Plan and a Science Plan."

1 WITNESS EARLE: That is what it says.

2 MR. SHUTES: And that (reading):

3 "These plans will set water supply
4 expectations, clarify operational needs,
5 and address uncertainties."

6 WITNESS EARLE: That is what it says.

7 MR. SHUTES: So, aren't some of the
8 operational needs and initial operation that are going
9 to be clarified during this element of the Adaptive
10 Management Plan the determination about whether -- at
11 what times phases -- what did we call them? -- Level 1,
12 2 or 3 operations would be applied to the North Delta
13 diversion flow criteria that we just reviewed?

14 WITNESS EARLE: I am not aware of any content
15 of the Adaptive Management Plan that states that as
16 being part of its proposed content.

17 MR. SHUTES: Dr. Earle, you just represented
18 that the initial operations were set by that table.

19 Isn't it true that some aspects of those
20 initial operations have yet to be determined?

21 WITNESS EARLE: I am not specifically aware of
22 any.

23 MR. SHUTES: Do you know -- Can you tell me
24 today when Level 1, Level 2 or Level 3 post-pulse flow
25 operations would be governing in the time period from

1 December through April as far as --

2 CO-HEARING OFFICE DODUC: Mr. Mizell.

3 MR. MIZELL: Yes. I'm going to object.

4 Again, this is not -- At this point, asked and
5 answered.

6 The degree to which the initial operating
7 criteria that Mr. Shutes is asking about apply or not
8 has already been answered by Dr. Earle that it is
9 different and distinct from the Adaptive Management
10 Program. That's what he just answered.

11 So to continue to repetitively ask a question
12 as to Dr. Earle, his understanding of when Levels 1, 2
13 or 3 apply I think it's been asked and answered.

14 CO-HEARING OFFICE DODUC: Mr. Shutes, I'm --
15 I'm -- I'm trying to understand where you're going so
16 that we might all benefit.

17 And I would have to agree with Mr. Mizell that
18 there's very little specificity that -- that Dr. Earle
19 can go into with respect to various conditions and
20 timings.

21 If that's where you are trying to point out,
22 then that, I think, is fairly obvious.

23 MR. SHUTES: So I -- Let's -- Let's take a
24 step back.

25 Is that determination of when those different

1 elements would apply part of the Adaptive Management
2 Program when the different levels for North Delta
3 diversions would apply? Is that part of the Adaptive
4 Management Program?

5 MR. MIZELL: And that question's been asked
6 and answered.

7 CO-HEARING OFFICE DODUC: Just answer it
8 again, Dr. Earle.

9 WITNESS EARLE: To the best of my knowledge,
10 it is not. That is part of the management of the
11 Project, not the adaptive management.

12 MR. SHUTES: So, who and when is that -- Who
13 is going to make that determination and when they are
14 going to -- when are they going to make is, so far as
15 you know?

16 WITNESS EARLE: I have -- I -- I do not know
17 what the management of the Project is.

18 I'm prepared to discuss adaptive management,
19 but your question does not address adaptive management,
20 and I do not know the answer.

21 MR. SHUTES: Very well. Let's move on.

22 Dr. Earle, the Adaptive Management Plan in the
23 ITP does contemplate the possible reinitiation of
24 consultation in some circumstances; does it not?

25 WITNESS EARLE: Reinitiation of Consultation

1 is a possible consequence of an adaptive change.

2 MR. SHUTES: And the Biological Opinions also
3 contemplate this; is that not true?

4 The Biological Opinion for California WaterFix
5 also contemplates the possibility of reinitiating
6 consultation; does it not?

7 WITNESS EARLE: I . . .

8 We could go through the exercise of finding
9 where in the Biological Opinion it says that, but I
10 have fairly high confidence that both of the Biological
11 Opinions do state the possibility of Reinitiation of
12 Consultation at some point.

13 Whether they specifically identify adaptive
14 management as a possible trigger of reinitiation, I'm
15 not certain.

16 MR. SHUTES: Okay. And -- And you've already
17 testified that, under some circumstances, different
18 actions by -- under adaptive management would trigger
19 the need for NEPA or CEQA; is that correct?

20 WITNESS EARLE: That is correct.

21 MR. SHUTES: And can you tell us where you
22 think -- what level of . . . of change would require
23 review under NEPA or CEQA?

24 MR. MIZELL: I'm going to object.

25 The degree to which a decision requires NEPA

1 or CEQA be conducted is a legal conclusion, and that
2 would be determined by the agencies making the
3 action -- taking the action and not here in this
4 hearing by Dr. Earle.

5 CO-HEARING OFFICE DODUC: Mr. Shutes.

6 MR. SHUTES: However, Dr. Earle is here as an
7 expert on adaptive management. I mean, this does come
8 up in Adaptive Management Programs whether or not NEPA
9 or CEQA must be triggered, and it goes to
10 accountability.

11 At what point is there some opportunity for
12 some kind of public input? And at what -- And where is
13 the -- Where is the dividing line between something
14 that's strictly internal to the managing agencies and
15 something that goes outside them?

16 CO-HEARING OFFICE DODUC: Overruled.

17 Dr. Earle.

18 WITNESS EARLE: The Adaptive Management
19 Program as specified in this document does not identify
20 specific triggers for initiating compliance with other
21 laws and regulations.

22 Those would presumably be identified through
23 the same process that the same agencies currently use
24 to identify the need for such changes.

25 MR. SHUTES: Dr. Earle, on Monday, you

1 referred to Condition 6.b in the NMFS Biological
2 Opinion which discusses funding for adaptive
3 management.

4 Do you remember that?

5 WITNESS EARLE: Yes.

6 MR. SHUTES: Could we please pull up State
7 Water Board Exhibit 106 and I'm looking for .pdf
8 Page 1196.

9 (Exhibit displayed on screen.)

10 MR. SHUTES: There we are.

11 (Exhibit displayed on screen.)

12 MR. SHUTES: Can you scroll down to the very
13 bottom of the page, please.

14 (Exhibit displayed on screen.)

15 MR. SHUTES: Very bottom.

16 (Exhibit displayed on screen.)

17 MR. SHUTES: We're on Page 1200. I need 1196
18 .pdf version. My apologies.

19 CO-HEARING OFFICE DODUC: We are -- Sorry?

20 (Co-Hearing Officers confer.)

21 CO-HEARING OFFICER DODUC: We're on 1196.

22 MR. SHUTES: We're on 1196 the page number but
23 not the .pdf number.

24 CO-HEARING OFFICE DODUC: Oh.

25 MR. SHUTES: And I found that it's more

1 convenient for the -- moving through this to -- to
2 reference the .pdf page number.

3 (Exhibit displayed on screen.)

4 MR. SHUTES: There we go.

5 So, the second-to-the-last line reads

6 (reading):

7 "Actual funding may be higher or

8 lower than this estimate."

9 Do you see that, Dr. Earle?

10 WITNESS EARLE: I do see that.

11 MR. SHUTES: So, isn't it, in fact, accurate
12 to say that this condition of the Biological Opinion is
13 more a budget than a specific funding mandate?

14 WITNESS EARLE: I think that, to have an
15 accurate representation, we need to scroll on to the
16 following page.

17 (Exhibit displayed on screen.)

18 WITNESS EARLE: And continue down to the end
19 of Term and Condition 6.b, final paragraphs.

20 (Exhibit displayed on screen.)

21 WITNESS EARLE: Where it identifies that

22 (reading):

23 ". . . Reclamation and DWR" are required

24 to "develop a funding strategy that

25 clearly identifies responsible parties

1 and levels of annual and total program
2 funding consistent with the above
3 identified funding needs for
4 implementation of the AMP starting in
5 2019. That (sic) shall include" these
6 "for the first five years . . . lesser
7 detail for subsequent (sic)
8 studies . . ."

9 And then in the final paragraph, identifies
10 that they shall (reading):

11 ". . . Submit annual updates to the
12 strategy" with an additional "detailed
13 funding strategy for five years post
14 submission date."

15 This continues throughout the duration of the
16 Adaptive Management Program.

17 I regard that as -- as a firm financial
18 commitment.

19 MR. SHUTES: And isn't it true that the
20 numbers that are laid out in this document and the --
21 any specific funding numbers are yet to be negotiated
22 among the different agencies?

23 WITNESS EARLE: To the best of my knowledge,
24 no irrevocable commitments to particular funding levels
25 have yet been negotiated between the agencies.

1 MR. SHUTES: Dr. Earle, how many years of
2 operation do you expect it will require to detect
3 significant -- statistically significant changes in the
4 biological response of Longfin Smelt from the operation
5 of the State Water Project and Central Valley Project
6 with California WaterFix facilities online?

7 MR. MIZELL: Objection: This calls for a very
8 direct biological conclusion.

9 Again, Dr. Earle is a terrestrial biologist.
10 This was appropriately brought before Dr. Greenwood and
11 Dr. Wilder.

12 CO-HEARING OFFICE DODUC: To the extent you
13 can answer, Dr. Earle.

14 WITNESS EARLE: I regret to say that I'm not
15 sufficiently familiar with biology of the Longfin Smelt
16 to make a prediction even if I knew how such studies
17 would be designed and conducted.

18 MR. SHUTES: And would that be true for any of
19 the other fish species that may be part of the Adaptive
20 Management Program?

21 WITNESS EARLE: Yes, that would.

22 MR. SHUTES: What I'm trying to get to is --
23 is the length of time it will take to go from Plan to
24 Adapt. And we don't really have a . . .

25 You know, I -- I had thought that Dr. Earle

1 would be the best -- as the adaptive management expert
2 the best authority to opine on that length of time.

3 CO-HEARING OFFICE DODUC: Can you offer any
4 opinions on that, Dr. Earle?

5 WITNESS EARLE: Let's see.

6 You were specifically asking how long it would
7 take to see a response in Longfin Smelt population --

8 MR. SHUTES: To start, yes.

9 WITNESS EARLE: -- or Delta Smelt population?

10 MR. SHUTES: Yes.

11 WITNESS EARLE: I'm afraid that, for that
12 species, I cannot.

13 Now, I will note that there have been some
14 studies that are identified in the Adaptive Management
15 Program that, for instance, identify specific
16 performance standards for survival of Salmonids moving
17 past the intakes. This is a -- This is a relatively
18 measurable parameter, although even that will be
19 difficult.

20 You know, for something like that, it's --
21 it's a time-scale of years as opposed to decades.

22 But, for most of -- of the fishery studies,
23 the work to design the study has not yet been performed
24 and -- and so it's totally speculative to -- to say
25 when there might be results.

1 CO-HEARING OFFICE DODUC: Mr. Shutes, we need
2 to take a break.

3 MR. SHUTES: Okay.

4 CO-HEARING OFFICER DODUC: All right. We will
5 return at 11:15.

6 MR. SHUTES: I do not have a lot of time left.

7 (Recess taken at 11:00 a.m.)

8 (Proceedings resumed at 11:15 a.m.):

9 CO-HEARING OFFICER DODUC: All right. We're
10 back.

11 All right. It's 11:15. We're back, and
12 before we get to Mr. Shutes, a couple of housekeeping
13 matters before I forget.

14 For planning purposes, next week, on Monday,
15 we will be taking a later than usual but longer lunch
16 break. So we will take -- we will take our lunch break
17 on Monday from 1:00 to 2:30 where we will convene in
18 closed session.

19 And on Wednesday, we will adjourn for the day
20 earlier than usual. We will adjourn at 1 o'clock on
21 Wednesday, 1 o'clock or thereabouts, depending on -- on
22 how things go.

23 And then one other housekeeping matter.

24 We received a request from the South Delta
25 water agencies parties to move Dante John Nomellini

1 from Panel 2 to Panel 4.

2 Are there any objections to that?

3 MR. MIZELL: (Shaking head.)

4 CO-HEARING OFFICE DODUC: Not seeing any --

5 Oh, are you objecting Mr. Keeling? No?

6 Is somebody objecting?

7 MR. RUIZ: Actually, there's a bit of a

8 clarification at this point.

9 The real issue is, he's not available Monday
10 or Tuesday. Panel 4 --

11 CO-HEARING OFFICE DODUC: We won't get to --

12 MR. RUIZ: I under --

13 CO-HEARING OFFICER DODUC: -- him Monday or
14 Tuesday.

15 MR. RUIZ: Well, I would prefer -- He doesn't
16 really fit in Panel 4, as we look at it further, so if
17 he's not going to be gotten to Monday or Tuesday, then
18 there isn't going to be a problem.

19 CO-HEARING OFFICER DODUC: All right. And I
20 think that also applies to the request from EBMUD as
21 well in terms of timing.

22 MR. FERGUSON: Yeah. Aaron Ferguson, County
23 of Sacramento.

24 I've been in contact with -- with John and
25 East Bay MUD, and he just wanted to request that you

1 possible resolve the request. I know there's an
2 outstanding objection to their request in terms of the
3 order. And then Sac Regional has a request in as well.

4 So I guess we just wanted some resolution to
5 those requests so folks know kind of the order going
6 forward.

7 CO-HEARING OFFICE DODUC: With respect to
8 EBMUD's request, DWR did submit an objection but
9 offered an alternative. I have not heard back from
10 EBMUD.

11 MR. FERGUSON: They're amenable to the -- to
12 the suggestion . . . by DWR.

13 CO-HEARING OFFICER DODUC: All right. And
14 given the pace at which we're going, does that time
15 conflict still exist for EBMUD? Because apparently it
16 no longer exists for Mr. Ruiz's witnesses.

17 Why don't --

18 MR. FERGUSON: Yeah.

19 CO-HEARING OFFICE DODUC: Why don't EBMUD look
20 into that and get back to us.

21 MR. FERGUSON: And clarify. Okay.

22 Yeah, I knew I would get myself in trouble
23 with all these machinations.

24 In terms of the Sac Regional proposal as well
25 to try to get Dr. Paulsen on for Sac Regional,

1 San Joaquin Tributaries and Antioch in a consolidated
2 manner over a day or two, that's something they're
3 interested in.

4 CO-HEARING OFFICE DODUC: Did we not already
5 rule on that? I thought we did.

6 Was that something that we ruled on . . .

7 MR. DEERINGER: I think we would have to
8 double-check whether we've addressed that request so --

9 MR. FERGUSON: Okay.

10 MR. DEERINGER: -- for now, I guess we -- we
11 should probably treat it as still under consideration
12 until we confirm that.

13 MR. FERGUSON: Okay. Thank you.

14 CO-HEARING OFFICE DODUC: But it would not be
15 inconsistent, because that's what we tried to do in
16 Part 1 with respect to Dr. Paulsen's testimony.

17 MR. MIZELL: And that -- that is the change
18 that DWR had been consulted on and agreed with.

19 CO-HEARING OFFICE DODUC: I thought so.

20 But we will double-check.

21 MR. FERGUSON: Okay. Thanks.

22 CO-HEARING OFFICE DODUC: Mr. Keeling,
23 Miss Meserve, are you about to switch orders again?

24 MR. KEELING: No. Ms. Meserve and I have
25 witnesses in that first cluster of the next group.

1 That -- That would be the first of the four panels for
2 Sacramento County, LAND, San Joaquin County, et al.

3 I'm watching pretty carefully how you're
4 managing the schedule, and I know it's a challenge
5 for -- for the Hearing Officers, it's a challenge for
6 our witnesses.

7 Based on what we're seeing right now, and all
8 the witnesses are saying, "When? When? When?", my
9 sense is that we should tell them show up Monday
10 morning but if -- if -- if -- if the Hearing Officers
11 have a different view, we'd -- we'd like to know it
12 because . . .

13 CO-HEARING OFFICE DODUC: I will know better
14 after tomorrow. We'll see how fast --

15 MR. KEELING: Well, after -- My -- My question
16 is whether they need to show up tomorrow.

17 CO-HEARING OFFICE DODUC: I doubt if they need
18 to show up tomorrow because we still have the entirety
19 of Group 4, 5, and 44 to go through.

20 So I don't -- Actually, we still have -- we
21 may still have cross-examination and potential redirect
22 examination and recross of this panel.

23 MR. KEELING: So --

24 MS. MESERVE: So we could check back.

25 MR. KEELING: So we could check back, but --

1 but I -- I would like to be able to tell them, "You
2 don't need to show up until Monday."

3 CO-HEARING OFFICE DODUC: I have to show up
4 Monday.

5 MR. KEELING: No. My witnesses, that they --
6 they need to show up -- not -- not need to show up
7 tomorrow.

8 CO-HEARING OFFICE DODUC: I am not giving you
9 any guarantees right now, Mr. Keeling.

10 MR. KEELING: All right. Thank you.

11 MR. FERGUSON: All right. If I might, I did
12 get an e-mail from John.

13 He says he's okay with the no Contra
14 Costa/East Bay MUD switch as long as Ben can come back
15 later if that really was an issue in terms of his --

16 MR. MIZELL: (Nodding head.)

17 MR. FERGUSON: Okay. Which is, I think, what
18 you suggested, Hearing Officer.

19 CO-HEARING OFFICE DODUC: So we are accepting
20 DWR's suggestion.

21 MR. FERGUSON: Yes.

22 CO-HEARING OFFICE DODUC: Regardless of when
23 EBMUD may come up.

24 MR. FERGUSON: I think that's -- that's
25 correct.

1 CO-HEARING OFFICE DODUC: Do not change their
2 mind later.

3 MR. FERGUSON: Okay.

4 CO-HEARING OFFICE DODUC: Miss Des Jardins.

5 MS. DES JARDINS: Yeah. I've been in touch
6 with Patrick Porgans, and he thinks he is unlikely to
7 make it for cross.

8 And I just -- wasn't clear if the Chair had
9 approved Mr. Porgans' request that I be able to do
10 cross-examination.

11 CO-HEARING OFFICE DODUC: I don't actually
12 have a request from Mr. Porgans that you conduct cross
13 for him.

14 MS. DES JARDINS: He e-mailed it to CWF
15 hearing last night.

16 MR. DEERINGER: That request came in, I think,
17 yesterday; right?

18 MS. DES JARDINS: Yeah.

19 MR. DEERINGER: Pretty recently?

20 MS. DES JARDINS: Yeah.

21 MR. DEERINGER: Okay.

22 CO-HEARING OFFICE DODUC: All right. Looks
23 like this will indeed be a fun day.

24 Yes, Miss Des Jardins, you may conduct
25 Mr. Porgans' cross-examination.

1 MS. DES JARDINS: Thank you for the
2 clarification.

3 CO-HEARING OFFICER DODUC: All right.
4 Mr. Shutes.

5 MR. SHUTES: Thank you very much.

6 Dr. Earle, we were discussing the length of
7 time to detect biological response. And in your last
8 response, you offered an opinion about the length of
9 time that it would take to de -- detect a certain
10 response among Salmonids; is that correct?

11 WITNESS EARLE: That's correct.

12 MR. SHUTES: And so that we -- So that I gain
13 clarity about exactly what you were referring to, could
14 you reprise your response about the length of time and
15 what you're referring to specifically in -- in terms of
16 what -- what would be detected or detectable among
17 Salmonids, please, for clarity.

18 CO-HEARING OFFICE DODUC: Mr. Mizell.

19 MR. MIZELL: Thank you.

20 For the clarity of the record, could we have
21 the question repeated so that the answer and question
22 are in close proximity in the transcript?

23 MR. SHUTES: The question was: How many years
24 of operation do you expect it will require to detect
25 significantly -- statistically significant changes in

1 the biological response of Longfin Smelt from operation
2 of the State Water Project and the Central Valley
3 Project with California WaterFix facilities in line?

4 Dr. Earle did not have a response about Smelt
5 but offered an answer on Salmonids.

6 WITNESS EARLE: I believe I noted that the
7 Adaptive Management Program, as well as the -- the
8 Biological Opinions and the Incidental Take Permit,
9 identify certain studies that would be done to
10 ascertain baseline conditions prior to operation of the
11 North Delta intakes and to ascertain performance have
12 the North Delta intakes.

13 And among those is a study of survivorship of
14 Smelts -- or not Smelts, sorry -- Schmaltz swimming by
15 the intakes. And I indicated that a time-scale of
16 years would be required to ascertain that.

17 MR. SHUTES: Thank you.

18 And to detect population-level effects on
19 Salmonids from the operation of California WaterFix
20 facilities, it's reasonable to think it would take
21 longer than just those couple of years; is that
22 correct?

23 WITNESS EARLE: I do not know that any studies
24 to measure that specifically have yet been designed or
25 that there are any expectations for their performance;

1 therefore, I do not know.

2 MR. SHUTES: Okay. So could we please pull up
3 Page 4 of the Adaptive Management Plan in the
4 Incidental Take Permit. I believe that's State Water
5 Board Exhibit 107, Attachment 5.

6 (Exhibit displayed on screen.)

7 MR. SHUTES: And if we could turn to .pdf
8 Page 4, please.

9 (Exhibit displayed on screen.)

10 MR. SHUTES: So this refers to the Phase 4
11 Adapt portion of the Adaptive Management Plan.

12 And it discusses agency or agencies with final
13 decision-making authority.

14 Do you see that?

15 WITNESS EARLE: Yes.

16 MR. SHUTES: Dr. Earle, the final
17 decision-making authority in response to whether to
18 adopt or reject an adaptive management adjustment
19 proposal regarding operations criteria for the State
20 Water Project and Central Valley Project with the
21 California WaterFix in place, that final
22 decision-making authority lies with the State Water
23 Board: Does it not?

24 WITNESS EARLE: I . . . am not sure of the
25 scope of the -- the respective agencies, so I -- I

1 cannot answer that question yes or no.

2 MR. BEZERRA: Thank you.

3 Can we please turn to Page 10.

4 (Exhibit displayed on screen.)

5 MR. SHUTES: And if we scroll down into the

6 Decision-Making part.

7 (Exhibit displayed on screen.)

8 MR. SHUTES: A little farther, please.

9 (Exhibit displayed on screen.)

10 MR. SHUTES: I'm sorry. I lost my reference.

11 (Exhibit displayed on screen.)

12 MR. SHUTES: Yes.

13 In the fifth line of the Section 4.1, it reads

14 (reading):

15 "The Five Agencies commit to working

16 through the collaborative process" -- and

17 so forth -- "to reach consensus on

18 operational decisions . . ."

19 Do you see that sentence?

20 WITNESS EARLE: Yes, I do.

21 MR. SHUTES: Dr. Earle, if the agencies with

22 decision-making authority, as they're referred to here,

23 or those at the appropriate levels of officials for

24 each agency need to decide whether to adopt or reject

25 an adaptive management adjustment proposal that

1 requires a tradeoff between protection of fish and
2 water supply, on what basis will the agencies make a
3 decision?

4 MR. MIZELL: Objection: Calls for a legal
5 conclusion asking Dr. Earle to specify the standards by
6 which an unspecified regulatory agency would make a
7 determination in their jurisdiction.

8 CO-HEARING OFFICE DODUC: It's not
9 unspecified. I believe he's asking about the five
10 agencies involved and, as a matter of process, whether
11 or not Dr. Earle knows what that decision-making
12 process might be.

13 Is that correct, Mr. Shutes?

14 MR. SHUTES: Absolutely.

15 CO-HEARING OFFICE DODUC: Overruled.

16 WITNESS EARLE: That basis is not, to my
17 knowledge, specified anywhere in the Adaptive
18 Management Program, and I do not know what basis they
19 would use.

20 MR. SHUTES: Thank you.

21 Dr. Earle, with all the different adaptive
22 management . . . processes and studies going on . . .
23 at any given time in the -- in the operation -- as part
24 of the operation or part of the implementation of the
25 California WaterFix, how are informed members of the

1 public or the State Water Board supposed to know -- how
2 would -- How will they know whether at any given time
3 the -- the Projects are in compliance with their
4 Permits?

5 WITNESS EARLE: I'm . . . not sure it's for
6 the members of the public to make that determination.

7 Information intended to support compliance
8 with the Permits with which I'm at least somewhat
9 familiar, the Biological Opinions and the Incidental
10 Take Permit are specified in the terms and conditions
11 of those respective Permits, and -- and identify
12 information that's to be provided to the agencies and
13 when it is to be provided.

14 As to the -- the larger question of how
15 interested individuals are going to be aware of the --
16 the activities and the proposals of the Adaptive
17 Management Program, this information is primarily going
18 to be conveyed through the annual Operations Plan and
19 Science Plan, which will be public documents.

20 MR. SHUTES: So, as far as the implementation
21 of the Adaptive Management Plan is concerned, the
22 general public would be unlikely to know over the
23 course -- during the course of the year how that was
24 being applied but, rather, would need to wait for an
25 Annual Report at the end of the year; is that correct?

1 WITNESS EARLE: Those reports are specified in
2 the Adaptive Management Program as presented here and,
3 consequently, represent the limited commitment.

4 Now, I am aware that, in discussions about
5 formulation of the Adaptive Management Program, there
6 is an awareness that the program needs to be more open
7 and available to the public.

8 And I believe there's an intent that there
9 would be a website and that particular studies
10 performed under the Adaptive Management Program would
11 publish their results, that there might even be a data
12 clearinghouse for access to monitoring data.

13 But these details of program implementation
14 have not been finalized at this time.

15 MR. SHUTES: Thank you.

16 I have one last set of questions. It relates
17 to the Incidental Take Permit itself. And I'd like to
18 pull that up and scroll to Page 87, please.

19 State Water Board Exhibit 107.

20 (Exhibit displayed on screen.)

21 MR. SHUTES: And if you'd scroll down a little
22 on Page 87 to where it says, "Drought procedures,"
23 please.

24 (Exhibit displayed on screen.)

25 MR. SHUTES: Up a little more, please. Sorry.

1 (Exhibit displayed on screen.)

2 MR. SHUTES: Let's go back to Page 86.

3 (Exhibit displayed on screen.)

4 MR. SHUTES: Sorry. There.

5 There, it says -- We discussed drought

6 procedures.

7 If we'd please scroll down to the bottom of

8 the page and to the top of Page 87.

9 (Exhibit displayed on screen.)

10 MR. SHUTES: Dr. Earle, this section calls for

11 convening representatives of the Five Agencies plus the

12 State Water Board -- and I assume that would be

13 staff -- on October 1 of any year when the preceding

14 year was critically dry or dry in either the Sacramento

15 or San Joaquin watershed; doesn't it?

16 WITNESS EARLE: I did not see text that

17 identified specific watersheds. Is that on the

18 previous page?

19 MR. SHUTES: Let's scroll down a little

20 farther, please.

21 (Exhibit displayed on screen.)

22 MR. SHUTES: To the next page perhaps.

23 (Exhibit displayed on screen.)

24 MR. SHUTES: Nope. Back to the top.

25 (Exhibit displayed on screen.)

1 MR. SHUTES: There we are.

2 And if we scroll down, it's there at the top
3 of the next page.

4 (Exhibit displayed on screen.)

5 MR. SHUTES: The watersheds are specified in
6 Footnote 12, so if we could scroll down to Footnote 12.

7 (Exhibit displayed on screen.)

8 MR. MIZELL: I'd like to lodge an objection.

9 It's not been established that Dr. Earle is
10 familiar with this portion of the ITP, nor that it
11 relates to an Adaptive Management Program.

12 MR. SHUTES: I'll connect it up to adaptive
13 management. The question is about adaptive management,
14 not the implementation of this.

15 CO-HEARING OFFICER DODUC: All right. Let's
16 hold off for now, Mr. Mizell.

17 WITNESS EARLE: I agree with your statement of
18 the content of the text.

19 MR. SHUTES: Pardon?

20 WITNESS EARLE: I agree with your statement of
21 the context of the text.

22 MR. SHUTES: Very good.

23 So, my question is: If there are changes made
24 by the State Water Board or other agencies pursuant to
25 this drought sort of exception and the -- this -- such

1 takes place over more than one year, how will studies
2 under -- being undertaken in adaptive management
3 account for this perturbation -- these exceptions, as
4 you will -- to normal operating rules if those studies
5 are multiyear studies?

6 WITNESS EARLE: The Adaptive Management Plan
7 does not specify a strategy for adapting to the drought
8 compliance procedures. To the best of my knowledge,
9 there has been as yet no discussion of procedures to do
10 so.

11 MR. SHUTES: Very good.

12 That completes my cross-examination.

13 CO-HEARING OFFICE DODUC: Thank you,
14 Mr. Shutes.

15 Mr. Reyes (sic).

16 And we will take our lunch break upon the
17 completion of Mr. Reyes' (sic) cross-examination.

18 MR. RUIZ: Dean Ruiz --

19 CO-HEARING OFFICER DODUC: Ruiz. Sorry.

20 MR. RUIZ: That's all right.

21 CO-HEARING OFFICER DODUC: I'm getting names
22 mixed up.

23 MR. RUIZ: Dean Ruiz for the South Delta Water
24 Agency parties.

25 I have some questions for Dr. Earle on

1 adaptive management, not surprisingly.

2 I've been here for most of the questioning and
3 tried to listen, so I'll tried to eliminate as much
4 repetition as -- as possible.

5 CROSS-EXAMINATION BY

6 MR. RUIZ: Dr. Earle, good afternoon.

7 I don't believe I heard an answer to this
8 question earlier. It think it was one of your first
9 couple day -- your first day of testimony, I believe.

10 In respect to cross-examination, you stated
11 that -- something to the effect that the State Board's
12 involvement with the Adaptive Management Program would
13 depend on the specific action being proposed.

14 Do you remember that?

15 WITNESS EARLE: Yes.

16 MR. RUIZ: Based on your professional
17 experience, what's an example of an action that would
18 trigger the Board's involvement?

19 WITNESS EARLE: I'm afraid my -- my knowledge
20 of the Board's responsibilities is such that I can't
21 with high confidence give you an example of such an
22 action.

23 MR. RUIZ: Well, my question is -- is more
24 related not necessarily -- You know, you've been an
25 expert in terms of what the Board's jurisdiction is but

1 relative to your knowledge with regard to the Adaptive
2 Management Program.

3 Is there -- Does that help you at all or . . .

4 WITNESS EARLE: Well, to give you an example
5 of the range of things that could be contemplated under
6 the Adaptive Management Program:

7 There could be proposals to change the water
8 operations criteria that are specified in Permits and
9 authorizations that are issued to the Project, at least
10 some of which are subject to State Water Board review.
11 And any such changes would -- would trigger a Water
12 Board review.

13 Similarly, any changes that potentially
14 conflicted with existing water quality criteria, or
15 with provisions of Decision 1641, would trigger a -- a
16 State Water Board engagement.

17 On the other hand, a decision to initiate a
18 study, or initiate a monitoring program, or a decision
19 that involved management that didn't affect water
20 resources, such as of a terrestrial species habitat
21 mitigation, would probably not trigger engagement by
22 the State Water Board.

23 MR. RUIZ: Thank you.

24 Referring to Page 4, Line 4, of your
25 testimony, which is DWR-1014.

1 If we can pull that up.

2 (Exhibit displayed on screen.)

3 MR. RUIZ: Line 4. Page 4, Line 4.

4 You say in there that "Adaptive management" --

5 You state your opinion. You say (reading):

6 "My opinions are as follows."

7 And the first one I focused on, you say

8 (reading):

9 "Adaptive management and monitoring

10 program is likely to have beneficial

11 outcomes for fish and wildlife species in

12 the Delta."

13 And I -- I -- I know there's been some

14 questioning around this, but I don't have a specific

15 understanding of exactly what you mean by "beneficial

16 outcomes" with regard to fish species in the Delta.

17 What do you mean by that?

18 WITNESS EARLE: My stated rationale for that

19 opinion is that adaptive management is recommended in

20 the Delta Plan as a means of managing natural

21 resources, including fish populations, in the Delta,

22 and that it is required by the Incidental Take Permit

23 and by both the NMFS and Fish and Wildlife Service

24 Biological Opinions as a necessary element of

25 management of the -- their respective covered species,

1 including the fish.

2 And also that past critical reviews of
3 fisheries management in the Delta, such as by the Delta
4 Science Plan and the National Research Council, have
5 identified adaptive management as a necessary element
6 of any strategy for management of fish resources in the
7 Delta going forwards.

8 MR. RUIZ: And -- And would your answer be the
9 same with regard to wildlife species in the Delta?

10 WITNESS EARLE: Generally speaking, yes, with
11 the sole qualifier that, for most of the species that
12 are treated in the environmental documents we've been
13 talking about, no specific adaptive management needs
14 are yet identified.

15 MR. RUIZ: And your -- your opinion that you
16 just -- we just talked about regarding beneficial
17 outcomes, as you just indicated, are based on your
18 review and knowledge of the various documents that you
19 reference in your testimony; correct?

20 WITNESS EARLE: Correct.

21 MR. RUIZ: You haven't prepared an actual
22 analysis of specifically how adaptive management will
23 result in beneficial outcomes relative to the CDF
24 (sic); have you?

25 WITNESS EARLE: No, I have not.

1 MR. RUIZ: Are you aware of any detailed
2 analysis or any written analysis other than your
3 testimony and the documents you refer in your -- to --
4 in your testimony -- you refer to in your testimony
5 that analyze how the Adaptive Management Program will
6 result in beneficial outcomes in the Delta relative to
7 the California WaterFix?

8 WITNESS EARLE: I have not.

9 MR. RUIZ: When you say that the Adaptive
10 Management Program is likely to result in beneficial
11 outcomes for fish and wildlife species in the Delta,
12 over what specific timeframe are you talking about?

13 WITNESS EARLE: I'm not referring to a
14 specific timeframe.

15 MR. RUIZ: Is there a . . . specific era that
16 you're referring to?

17 WITNESS EARLE: As I've indicated in my
18 testimony, the Adaptive Management and Monitoring
19 Program would initiate once the Project had received
20 its authorizations and would continue for the duration
21 of the Project.

22 Activities that are interrelated with the
23 Adaptive Management and Monitoring Program, such as
24 habitat protection and monitoring the effectiveness of
25 restored and protected habitat, would potentially

1 continue for an even longer period.

2 MR. RUIZ: What's your understanding or your
3 assumption as to what constitutes the timeframe for the
4 Project?

5 WITNESS EARLE: At least 30 years.

6 MR. RUIZ: Beginning when?

7 WITNESS EARLE: Beginning when the Project
8 receives authorizations allowing it to go ahead with
9 construction.

10 MR. RUIZ: And have you made any assumptions
11 relative to your opinions as to when that would be?

12 WITNESS EARLE: I -- I think for -- for a
13 working date, it's assumed it will occur sometime
14 during calendar 2018.

15 MR. RUIZ: Okay. And that's -- that's --
16 that's something you relied on or assumed as part of
17 the -- the opinions you've reached in your analysis;
18 correct?

19 WITNESS EARLE: No. No, I wouldn't say I've
20 relied upon it.

21 If the -- If approval of the Project were
22 delayed by a year or two, I don't think that would
23 alter the expectations regarding the -- the
24 effectiveness of the program.

25 MR. RUIZ: Okay. I had a question, but Mr. --

1 Mr. Shutes asked this so I'm just going to ask it a
2 little bit different way.

3 Mr. Shutes was asking you a little bit ago
4 about final decision-making authority in terms of who
5 makes the final decisions in terms of whether to adopt
6 an AMP proposal after CWF's in place.

7 Do you remember that?

8 WITNESS EARLE: Yes.

9 MR. RUIZ: And I believe you said you
10 weren't -- you didn't know at this point. You were
11 uncertain.

12 Is that a fair assessment of your response?

13 WITNESS EARLE: I believe my response was
14 that, what it states in the Adaptive Management
15 Program, which is that the implementation be the
16 responsibility of the agency or agencies that have
17 direct authority over the action.

18 MR. RUIZ: Okay. And the agencies that you
19 referred to in your testimony, the Five Agencies, two
20 of those are DWR and the Bureau of Reclamation; right?

21 WITNESS EARLE: That's correct.

22 MR. RUIZ: If it turned out that either DWR or
23 the Bureau of Reclamation had ultimate decision-making
24 authority as to whether or not specific Adaptive
25 Management Program proposals should be adopted, would

1 that change or affect your opinion as to whether or not
2 the Adaptive Management Program is likely to result in
3 beneficial outcomes for fish and wildlife species in
4 the Delta?

5 WITNESS EARLE: I may have omitted to mention
6 this earlier, but the -- the decision process
7 identified in the Adaptive Management Program relies
8 upon consensus in the decision-making by the Five
9 Agencies; that there is a recognition that consensus
10 may on occasion fail. And in those cases, there's a
11 dispute resolution process involved as well that
12 elevates it to the local heads of the respective
13 agencies.

14 But given that -- that a consensus has been
15 reached prior to the implementation of an action by any
16 single agency or agencies, then, no, it does not reduce
17 my confidence that the solutions recommended by the
18 IICG would be implemented.

19 MR. RUIZ: I appreciate that.

20 My question was more specifically, if it
21 turned out that either of the -- either the Bureau of
22 Reclamation or DWR ended up with the ultimate
23 decision-making authority with respect to an adaptive
24 management proposal, would that affect your confidence
25 in your opinion that adaptive management is reasonably

1 beneficial -- will result in a reasonably beneficial
2 outcome?

3 WITNESS EARLE: No, it would not.

4 MR. RUIZ: I just want to ask you real
5 quickly.

6 Look at Page 6 of your testimony, Lines 4
7 through 5.

8 (Exhibit displayed on screen.)

9 MR. RUIZ: Okay. You say that (reading):
10 ". . . The AMP . . . will . . . reduce
11 uncertainty and improve the performance
12 of water operations."

13 Forgive me if this was -- if this was gone
14 through. I didn't see that anybody got into this.

15 What -- What exactly do you mean by "the
16 performance of water operations"?

17 WITNESS EARLE: I do not exactly mean
18 anything. This is either a direct quote or a
19 paraphrase from the -- the introductory chapter of the
20 Adaptive Management Program. As such, it is its -- it
21 is the program's stated intent.

22 MR. RUIZ: Well, what is your understanding of
23 what "the performance of water operations" means, that
24 term?

25 WITNESS EARLE: Day-to-day operation of the

1 Project. Apart from that, I do not have any specific
2 expectations about what they mean, for instance, by the
3 term "performance."

4 MR. RUIZ: Okay. Referring you to Page 8 of
5 your testimony beginning at Line 9.

6 (Exhibit displayed on screen.)

7 MR. RUIZ: Do you have that page up, frame,
8 Dr. Earle?

9 WITNESS EARLE: Yes.

10 MR. RUIZ: You discuss in there (reading):

11 ". . . The need to identify triggers of
12 thresholds of performance -- triggers or
13 threshold in . . . performance that
14 mandate an AMP response."

15 What's an example of a triggered -- of a
16 trigger for an endangered species that would --
17 would -- would require or trigger an AMP response?

18 WITNESS EARLE: I do not recall that the
19 Adaptive Management Program in its current formulation
20 specifies any triggers.

21 But one that we've often discussed as an
22 example is the requirement to maintain 95 percent
23 Schmaltz survival past the North Delta intakes.
24 Evidence that -- that such a performance standard was
25 not being met would potentially trigger an adaptive

1 management response.

2 There would be discussion between the Five
3 Agencies as to how frequent or prolonged departures
4 from -- from a performance criteria might have to be in
5 order to trigger a response. I believe that remains
6 an -- an unresolved question.

7 MR. RUIZ: Any other -- Any other triggers?

8 WITNESS EARLE: Well, yes. It depends upon
9 what the situation that -- that calls for an adaptive
10 management response might be.

11 But as I've stated, no specific triggers have
12 yet been identified.

13 MR. RUIZ: Appreciate that.

14 Taking you -- Referring you to Page 7 of your
15 testimony at Line 15.

16 (Exhibit displayed on screen.)

17 MR. RUIZ: And I'm -- I'm focused on the third
18 bullet there at Line 15 and . . .

19 Mr. Shutes was asking you some questions
20 pertaining to, as I understood them, your view as to
21 how long it would take to get to garner statistically
22 significant data with regard to some of these studies
23 and evaluations that the AMP will be involved in.

24 Do you recall that?

25 WITNESS EARLE: Yes.

1 MR. RUIZ: And I'm not going to take you
2 through all of that again.

3 But what I'm wondering is: What is your
4 timeframe or your assumption with regards to a
5 timeframe as to when a final design must be completed
6 for the CWF facilities?

7 WITNESS EARLE: Well, I might note that
8 Mr. Shutes' question concerned long-term performance of
9 overall population status of entire species. This
10 bullet actually addresses specific pre-construction
11 studies.

12 Most of these studies referred to in this
13 bullet are actually modeling exercises. There are some
14 laboratory studies, and there are some studies that
15 involve collection of field data, that have prescribed
16 periods of time associated with them.

17 In general, we're looking at periods of one to
18 three years for completion of these studies.

19 MR. RUIZ: And you indicate that you have made
20 an assumption that the Project would be commenced
21 sometime in 2018, did you say?

22 WITNESS EARLE: I was asked about the
23 timeframe for implementation of the Adaptive Management
24 Plan. And I noted that, as a working assumption, we
25 could say that it started in 2018, but if it started at

1 a later date, that would not substantially alter the
2 expectations for performance of the Adaptive Management
3 Program.

4 MR. RUIZ: If a study that you just referred
5 to takes three years, how do you reconcile that with
6 the assumption that the Project would be commenced in
7 2018 or even 2019?

8 WITNESS EARLE: The vast majority of the
9 Project has nothing to do with these studies. For
10 instance, tunnel boring is going to take something on
11 the order of eight years.

12 WITNESS BEDNARSKI: Yeah. Maybe I can add --
13 Sorry. Maybe I can add some detail here.

14 On our present construction -- well, design
15 and construction schedule, we've allocated, as
16 Dr. Earle said, one to three years of studies once the
17 Project is authorized to receive.

18 Specifically in this area around the North
19 Delta intakes, our schedule allows that amount of time
20 before we commence preliminary design in order to have
21 the North Delta intakes online and ready for operation
22 by the time the rest of the facilities are also
23 completed.

24 So, the construction of the North Delta
25 intakes actually lags the start of construction for the

1 other facilities on the WaterFix to take into account
2 these studies that will be conducted.

3 MR. RUIZ: Thank you.

4 The way up here, I was listening and I heard
5 somebody ask you a question about the anadromous fish
6 program.

7 I think my question's a little bit different,
8 and that is: Is it a goal of the California WaterFix
9 AMP -- or Adaptive Management Program -- to meet the
10 CVPIA fish Delta requirements, if you know?

11 WITNESS EARLE: To the best of my knowledge,
12 that has not been adopted as an explicit goal.

13 MR. RUIZ: Do you know why it hasn't been
14 adopted as such?

15 WITNESS EARLE: I do not.

16 MR. RUIZ: Dr. Earle, as the expert proffered
17 by the Petitioners for the adaptive management aspect
18 of this Project, based on your professional opinion and
19 experience, what are the biggest challenges in your
20 mind for the successful imple -- implementation of the
21 Adaptive Management Program for California WaterFix?

22 WITNESS EARLE: That's an interesting
23 question.

24 I think I would probably have to review it at
25 some length to identify the biggest ones from the

1 smaller ones.

2 MR. RUIZ: What about identifying in your view
3 challenges in general to implement -- to successfully
4 implemen -- implementation?

5 WITNESS EARLE: Certainly one of the major
6 near-term challenges is identification of the
7 appropriate management structure for the Adaptive
8 Management Program, including the mechanism of
9 information sharing and collaboration with all of the
10 other groups active in the Delta that are performing
11 the same or very similar work.

12 MR. RUIZ: Anything else?

13 WITNESS EARLE: No.

14 Given the -- Given the funding assurances and
15 the existence of performance standards, I would say
16 that -- that once a sound management structure is in
17 place, it has a better chance to succeed than -- than
18 any prior adaptive management effort in the area.

19 MR. RUIZ: Thank you.

20 No further questions.

21 CO-HEARING OFFICE DODUC: Thank you, Mr. Ruiz.

22 When we return from our -- is my microphone --
23 my -- our lunch break, we will have cross-examination
24 by Restore the Delta, then Save the California Delta
25 Alliance, then Miss Des Jardins.

1 We will return at 1 o'clock.

2 (Lunch recess at 11:56 a.m.)

3 * * *

4 Thursday, March 8, 2018 1:00 p.m.

5 PROCEEDINGS

6 ---000---

7 (Proceedings resumed at 1:00 p.m.):

8 CO-HEARING OFFICE DODUC: It is 1 o'clock.

9 Welcome back.

10 Before we get to Mr. Stroshane, I believe,

11 Miss Suard, you have a request.

12 MS. SUARD: Thank you.

13 Nicki Suard with Snug Harbor.

14 I did make a request to go ahead of

15 Miss Des Jardins, and she did agree to that. She's

16 somewhere out there.

17 So I believe that would be after Mr. Brodsky,

18 if he comes?

19 CO-HEARING OFFICE DODUC: That is correct.

20 MS. SUARD: Okay.

21 CO-HEARING OFFICE DODUC: We are so granting

22 your request.

23 After Mr. Stroshane, we will have Mr. Brodsky,

24 and then Miss Suard.

25 MS. SUARD: Thank you.

1 CO-HEARING OFFICE DODUC: Any other
2 housekeeping matters?

3 All right. All yours.

4 MR. STROSHANE: Thank you.

5 Panel, my name is Tim Stroshane. I'm a policy
6 analyst with Restore the Delta.

7 My questions are primarily for Dr. Earle.

8 And you do like to be called Dr. Earle; is
9 that . . .

10 WITNESS EARLE: That's -- That's fine.

11 MR. STROSHANE: Very good.

12 My subjects are -- The substantive subjects
13 that I plan to deal with are: Selenium management;
14 Giant Garter Snake protection; and the relationship of
15 those two substantive areas to Water Rights Permit
16 conditions and the Adaptive Management Program. Hence,
17 my reasons for addressing my questions to Dr. Earle.

18 CO-HEARING OFFICE DODUC: Thank you.

19 It's always very helpful when you give me an
20 idea of where you're going so I can make the
21 connections.

22 MR. STROSHANE: Well, I'm -- I'm new at this,
23 and doing that introduction myself actually helps me
24 think through my ad lib --

25 CO-HEARING OFFICER DODUC: Thanks.

1 MR. STROSHANE: -- as best I can.

2 And, so, I want to ask Miss Gaylon to please
3 bring up SWRCB-102, and go to Appendix 3B, "B" as in
4 "boy."

5 And I believe go to Page -- Oh, I'll wait.

6 Sorry.

7 I think it's in the Final EIR's Volume I that
8 I found it in.

9 (Exhibit displayed on screen.)

10 MR. STROSHANE: And I would ask that you go
11 to -- I believe it's .pdf Page 3 -- or, rather, .pdf
12 Page 71, which should be Page 3B-70.

13 (Exhibit displayed on screen.)

14 MR. STROSHANE: Yeah, that looks about right.
15 It has the heading on it I'm looking for.

16 If you could scroll down to the bottom of the
17 page just a little bit.

18 (Exhibit displayed on screen.)

19 MR. STROSHANE: That's good. Nope.

20 (Exhibit displayed on screen.)

21 MR. STROSHANE: There.

22 I just want to point out, for the -- the
23 record, that this describes in part that restoration
24 projects will cause potentially significant "increases
25 in bioavailable selenium." So I'm just trying to lay a

1 little bit of context here for this.

2 The next page, please.

3 (Exhibit displayed on screen.)

4 MR. STROSHANE: And I believe there's mention
5 on this page -- I'm sorry. I didn't -- I didn't write
6 down the line numbers, so I apologize.

7 But I am interested in just a brief question
8 about -- whoops -- about -- excuse me -- AMM27, which
9 is a selenium management avoidance and mitigation
10 measure.

11 My understanding is that this AMM27 -- Scroll
12 down just a little bit.

13 (Exhibit displayed on screen.)

14 MR. STROSHANE: No? Okay. Well, let's just
15 leave aside that page for the time being.

16 CROSS-EXAMINATION BY

17 MR. STROSHANE: My understanding is that this
18 AMM27 would address selenium monitoring and management,
19 and would seek to reduce selenium concentrations and
20 loading in -- Well, actually, let me ask this as a
21 question.

22 Would the AMM27 -- And I'm afraid I'm assuming
23 you're familiar with it.

24 Are you familiar with AMM27?

25 WITNESS EARLE: I mean --

1 MR. STROSHANE: Which deals with selenium
2 management.

3 WITNESS EARLE: We could pull it up and look
4 at it.

5 MR. STROSHANE: Okay.

6 WITNESS EARLE: Would that help?

7 MR. STROSHANE: Yeah. Let's -- Let's try
8 going, then, to this same document, Page -- .pdf
9 Page 155 --

10 (Exhibit displayed on screen.)

11 MR. STROSHANE: -- which is Page 3B-154.

12 Scroll up just a little bit to the previous
13 page because that's where --

14 (Exhibit displayed on screen.)

15 MR. STROSHANE: Okay. Thank you.

16 And this passage contains the elements of
17 AMM22 -- 27. So if you wouldn't mind just taking a
18 brief read of that.

19 WITNESS EARLE: (Examining document.)

20 Very well.

21 MR. STROSHANE: Okay. Thank you.

22 Would -- Would AMM27 seek to reduce selenium
23 concentrations and loading flowing to the Delta or
24 would it decrease -- would it instead decrease
25 available organic material from restoration activities

1 that could potentially combine with bioavailable
2 selenium in Delta waters?

3 WITNESS EARLE: AMM27, insofar as it has
4 beneficial outcomes, would be implemented at individual
5 restoration sites. It would have no influence on the
6 hydrodynamic changes in selenium concentration in Delta
7 waters resulting from water operations.

8 MR. STROSHANE: Thank you.

9 Does -- Let's see. Next page, please.

10 (Exhibit displayed on screen.)

11 MR. STROSHANE: So is -- Am I correct in
12 understanding that AMM27 does not address the potential
13 for increased bioavailable selenium due to facility --
14 position of facilities operations -- initial operations
15 or other Operational Criteria?

16 WITNESS EARLE: That's correct.

17 MR. STROSHANE: Okay. On this page, Lines 12
18 through 14, it states -- With your indulgence, I would
19 like to just read that paragraph into the record.

20 It states (reading):

21 "Water operations could result in an
22 increase in the ratio of the
23 contributions to the Delta from
24 San Joaquin River relative to the
25 Sacramento River, leading to overall

1 increased selenium loading to the Delta,
2 and specifically the South Delta."

3 The -- Okay. Let's move on to Page -- I'm
4 sorry -- bottom of this page --

5 (Exhibit displayed on screen.)

6 MR. STROSHANE: -- and lines roughly 30 to 35.
7 I have a couple of questions about this paragraph on
8 water operations.

9 WITNESS EARLE: (Examining document.)

10 MR. STROSHANE: If you would go ahead and just
11 read that paragraph and then let me know when you're --

12 WITNESS EARLE: Yes. I've read it.

13 MR. STROSHANE: Okay. Very good.

14 Can you indicate, with regard to the
15 construction period of the tunnels Project and with
16 reference to the Adaptive Management Program, about
17 when the AMM27 commitment by DWR -- or the
18 Petitioners -- to prepare a Comprehensive Selenium
19 Monitoring Program could or would be completed or
20 implemented or -- Yeah. Let's just say completed.

21 WITNESS EARLE: To the best of my knowledge
22 that action has not yet been scheduled. As stated
23 here, it would have to occur before implementation of
24 water operations.

25 Water operations would not occur before

1 completion of the Project, which, as we mentioned
2 before today, would be approximately 14 years after
3 Project initiations.

4 MR. STROSHANE: Thank you.

5 With regard to Lines 32 through 34 of this
6 same paragraph, it states (reading):

7 "This program will include reporting
8 on a yearly basis, at a minimum to state
9 and federal regulators, as well as
10 dissemination for public use on the
11 BDC . . . Implementation Office website."

12 I was perplexed by the reference to the BDCP
13 Implementation Office and somehow governing the
14 Selenium Monitoring and Management Plan when, my last
15 understanding, we do not have BDCP in front of us. We
16 have the California WaterFix project.

17 So, is that a typo or is -- is there another
18 organization that is asso -- will be associated or
19 is -- has been as associated with WaterFix that will --

20 WITNESS EARLE: I --

21 MR. STROSHANE: -- fulfill that role?

22 WITNESS EARLE: -- think it's safe to say that
23 you found a typo.

24 MR. STROSHANE: Oh.

25 WITNESS EARLE: And currently the California

1 WaterFix, the precise structure for implementation of
2 the plan is not yet clear. And I would say this type
3 of monitoring would likely, but not certainly, be under
4 the jurisdiction of the office in charge of the
5 adaptive management process.

6 MR. STROSHANE: What is -- What would be --
7 the name of that office be? Do you know at this time?

8 WITNESS EARLE: At this point, it's simply
9 called the -- the Adaptive Management Program.

10 MR. STROSHANE: Okay. Okay. What is -- You
11 and Mr. Shutes were going back and forth a little this
12 morning about something called the IICG, and I hadn't
13 picked up on that.

14 WITNESS EARLE: The IICG is the Interagency
15 Implementation and Coordination Group, and that is
16 the -- the -- the -- the lead group within the Adaptive
17 Management Program composed of representatives of each
18 of the agencies and the Water Contractors that makes
19 recommendations on adaptive management actions.

20 MR. STROSHANE: Okay. So if I understand that
21 explanation, the Adaptive Management Program is kind of
22 an umbrella term, and IICG is under that umbrella? Am
23 I correct on that?

24 WITNESS EARLE: IICG is at the top of the
25 organizational chart for that umbrella.

1 MR. STROSHANE: Of that umbrella.

2 WITNESS EARLE: Yes.

3 MR. STROSHANE: But it's under the Adaptive
4 Management Program or it's just the --

5 WITNESS EARLE: They -- They --

6 MR. STROSHANE: -- the topmost --

7 WITNESS EARLE: They supervise the Adaptive
8 Management Program.

9 MR. STROSHANE: Okay. Thank you. I
10 appreciate that explanation.

11 This same passage -- Actually, I have another
12 question about that.

13 So, at this point, as far as you know, will
14 all adaptive management activities with respect to
15 selenium management be dependent on post-restoration
16 activities?

17 Perhaps "dependent" is not the right word
18 there. Or --

19 WITNESS EARLE: At this time, no adaptive
20 management activities have been identified in
21 connection with selenium. This references monitoring
22 activities.

23 Now, I talk about this a little bit in my --
24 in my testimony.

25 Much of the monitoring that occurs under the

1 California WaterFix would be under the auspices of the
2 Adaptive Management Program, not necessarily all of it.

3 This is -- This is kind of one of those gray
4 area types of monitoring because, to a large degree,
5 this serves a particular purpose with regard to water
6 quality compliance and, consequently, it -- it's not
7 necessarily something that feeds into adaptive
8 management directly.

9 So, as I say, to the best of my knowledge, no
10 administrative structure has yet been set up to
11 specifically state where in the WaterFix government
12 structure this requirement would be addressed.

13 MR. STROSHANE: Is what you say also true for
14 initial operations of the Project for actual, you know,
15 water diversions and all kind of that stuff?

16 WITNESS EARLE: I do not know what DWR's
17 contemplating with regard to that.

18 MR. STROSHANE: Okay. Thank you.

19 I think there's probably a better way to ask
20 this question. Let me start with it and then we can
21 tweak it a little bit.

22 But I -- I have here: If aquatic as distinct
23 from soil- or sediment-based bioavailable accum --
24 selenium increases, will there be any adaptive
25 management science studies for selenium related to and

1 potentially applied to water operations for upstream
2 source control?

3 I'm asking, essentially, is there a trigger
4 that has been identified yet for this type of study?

5 WITNESS EARLE: I do not believe that a
6 trigger has been identified yet.

7 MR. STROSHANE: Okay. My final question on
8 this subject -- or final questions.

9 Could we please go to SWRCB-107.

10 (Exhibit displayed on screen.)

11 MR. STROSHANE: And I'm looking for
12 Appendix 3.H.

13 This is an appendix on adaptive management as
14 contained in the Incidental Take Permit.

15 And I don't have a page citation at this
16 point. I apologize.

17 I make the observation that I searched for
18 "adaptive" -- for "selenium" in this Adaptive
19 Management Program, and I could find -- nor could I
20 find any selenium-related studies that -- that address
21 selenium in relation to any incidental take issues or
22 adaptive management in general.

23 And perhaps -- So I ask, I guess, with
24 reference -- But we don't need to go back to it.

25 But with reference to Appendix 3B from the

1 Final EIR that we were just going over, do you -- Is it
2 your understanding whether the selenium management
3 program mentioned in Appendix 3B would be incorporated
4 into the Permit conditions adapt -- in other words --
5 Let me -- Let me make one more statement before I
6 launch into the question. I apologize.

7 It's my recollection and understanding that,
8 from a letter that the Department of Water Resources
9 wrote to the State Water Board about this hearing back
10 on, I believe it was, September 8th, they stated in
11 there that Adaptive -- the Adaptive Management Program
12 was part of the Permit conditions.

13 Am I correct on that?

14 I'd ask counsel. Do you guys remember that?

15 MS. ANSLEY: Do you have a copy of that
16 letter?

17 MR. STROSHANE: I don't, offhand. I would
18 have to really search for it.

19 CO-HEARING OFFICE DODUC: Well, the letter
20 aside, if the question is, is adaptive management part
21 of the Project being proposed, that has been
22 answered -- asked and answered multiple time and it's
23 yes.

24 MR. STROSHANE: Okay. Thank you.

25 Then my question from -- that follows from

1 that is:

2 Will a selenium management program, therefore,
3 be incorporated into -- that was referenced in
4 Appendix 3B and we were just discussing -- will it be
5 incorporated into the Permit conditions of the Adaptive
6 Management Program at this stage? Is that a DWR
7 proposal that you are aware of?

8 WITNESS EARLE: The Adaptive Management
9 Program as it is set forth in the -- the authorizing
10 documents -- in this case I think you're referring to
11 Attachment 5 to the Incidental Take Permit -- does not
12 represent any scientific uncertainties regarding
13 selenium that need to be addressed through adaptive
14 management.

15 MR. STROSHANE: Okay. Thank you.

16 That's all for selenium management.

17 Giant Garter Snake. And you're a terrestrial
18 biology; am I correct?

19 WITNESS EARLE: Yes.

20 MR. STROSHANE: Yeah. So . . . my goal with a
21 few of the citations here is to just establish some
22 foundation to connect with the Adaptive Management
23 Program of the proposed action and to refresh Panel 3
24 members who might not be able to address my questions,
25 but I'll -- I'll give this a shot.

1 Could you, Ms. Gaylon, please bring up
2 SWRCB-3, and go to Chapter 12.

3 This passage refers the reader from the RDE --
4 the Recirculated Draft Environmental Impact Report --
5 to BDCP as concerns Giant Garter Snake matters.

6 CO-HEARING OFFICE DODUC: Which document?

7 MR. STROSHANE: This is the Recirculated Draft
8 EIR document --

9 CO-HEARING OFFICER DODUC: Okay.

10 MR. STROSHANE: -- and it's Chapter 12.

11 The page reference is Page 207, and I'm afraid
12 I don't know the .pdf number of that. 207 in
13 Chapter 12.

14 (Exhibit displayed on screen.)

15 MR. STROSHANE: And my reference might also be
16 to the nonred-lined version of that file, but let's see
17 what comes up.

18 (Exhibit displayed on screen.)

19 MR. STROSHANE: That's -- Okay. That's 207.

20 Okay. Looks like we're in Giant Garter Snake
21 territory, so to speak.

22 Lines 1 to 5, so up at the top of that page.

23 (Exhibit displayed on screen.)

24 MR. STROSHANE: And it makes reference to a
25 plan, and I believe that plan is the Bay-Delta

1 Conservation Plan, and it includes numerous commitments
2 to various avoidance and mitigation measures.

3 And it -- it makes reference to -- as I said
4 earlier -- to BDCP and to the Recirculated Draft EIR's
5 Appendix D to change substance or revisions to BDCP.

6 So we can now leave that and go to SWRCB-5,
7 Appendix 3.C as in "cat."

8 And I think I may have uncovered another typo,
9 and I want to alert folks to this.

10 (Exhibit displayed on screen.)

11 CO-HEARING OFFICE DODUC: Page number?

12 MR. STROSHANE: Actually, the -- the typo is
13 in another reference but we'll come to that eventually.

14 Page -- I'm looking for Table 3.C-1 and,
15 again, I apologize for not having a page citation, but
16 it's -- it's pretty early in the document.
17 Table 3.C-1.

18 (Exhibit displayed on screen.)

19 MR. STROSHANE: Okay. So this is the Summary
20 of the Avoidance and Minimization Measures that was
21 referred to in the RDEIR as an agreement to come -- if
22 memory serves -- that we are in BDCP right now. But
23 this is an appendix of the Bay-Delta Conservation Plan.

24 So if you would scroll down just a little ways
25 in this table to AMM16.

1 And this --

2 (Exhibit displayed on screen.)

3 MR. STROSHANE: Yeah, there it is.

4 It reads (reading):

5 "During the project planning phase,
6 identify suitable aquatic habitat
7 (wetlands, ditches, canals) in the
8 Project footprint. Conduct
9 preconstruction surveys and implement
10 protective measures."

11 Dr. Earle, are you aware of any potential
12 Giant Garter Snake studies that would be applicable
13 during initial operations at this time?

14 MS. ANSLEY: Can I make a --

15 MR. STROSHANE: Sure.

16 MS. ANSLEY: Maybe this is ambiguous.

17 Are you asking whether AMM16 is in the
18 Final EIR? We're looking back at the BDCP. Are you
19 asking --

20 MR. STROSHANE: Oh, I'm -- I'm going to come
21 back. Let me just --

22 MS. ANSLEY: Okay.

23 MR. STROSHANE: Instead of being coy about
24 it --

25 MS. ANSLEY: That's fine. Just so the

1 record's clear.

2 CO-HEARING OFFICE DODUC: Hold on. One at a
3 time.

4 MR. STROSHANE: I'll just say that the --
5 that, you know, later document -- If we go back to 102,
6 which is the -- either the Final EIR or one of the
7 biological -- Is it the Final EIR?

8 MR. MIZELL: (Nodding head.)

9 MS. ANSLEY: (Nodding head.)

10 MR. STROSHANE: Okay. Thank you.

11 This particular AMM and AMM17 for the Western
12 Contrail appear to be missing; okay? They were deleted
13 somehow.

14 And it skips from AMM15 to 18. And we -- I
15 can show you that. I have an exact reference for it
16 and can show you that.

17 MS. ANSLEY: Okay. I think I -- I'll withdraw
18 an objection as long as we're making clear what
19 documents we're looking at.

20 MR. STROSHANE: This particular document is
21 BDCP. And the reason that I went there is because I
22 couldn't find it in the Final EIR/EIS because of the
23 typo. So I wanted to have this descript -- brief
24 description to refer to.

25 MS. ANSLEY: (Nodding head.)

1 MR. STROSHANE: Okay. Okay. So I -- I've
2 summarized that AMM16.

3 Could we go back now to SWRCB-3, which is the
4 Recirculated Draft EIR/EIS.

5 (Exhibit displayed on screen.)

6 MR. STROSHANE: And this time go to Appendix
7 "D" as in "dog."

8 (Exhibit displayed on screen.)

9 MR. STROSHANE: And let's -- I'd like to go to
10 Page D.3-81.

11 (Exhibit displayed on screen.)

12 MR. STROSHANE: And I believe 81 just
13 establishes this as a . . .

14 (Exhibit displayed on screen.)

15 MR. STROSHANE: Okay. Let's -- Could we go to
16 Page -- now Page D.3-82. Sorry for the errand there.

17 (Exhibit displayed on screen.)

18 MR. STROSHANE: And I'm interested in Lines 1
19 through 4 on D.3-82.

20 So maybe this . . .

21 Yeah. Can you go back up just to the bottom
22 of the previous page.

23 (Exhibit displayed on screen.)

24 MR. STROSHANE: Well, okay.

25 So this -- This Appendix deals with

1 substantive revisions to the Bay-Delta Conservation
2 Plan.

3 My recollection, from preparing my
4 questions -- And I'm sorry to say that I may have
5 written down the wrong citation somehow.

6 But the -- That appendix, Appendix D, dealt
7 with substantive revisions to the Bay-Delta
8 Conservation Plan.

9 The specific passage that I thought I was
10 getting to states that (reading):

11 "Avoidance and mitigation
12 measures . . . are (sic) not intended to
13 conserve the covered species . . ."

14 So, again, egg on my face.

15 But this is a rough quote of the passage that
16 I thought I was getting to.

17 The specific passage states that (reading):

18 "Avoidance and mitigate --
19 minimization measures . . . are (sic) not
20 intended to conserve the covered
21 species" -- such as Giant Garter Snake --
22 "but to minimize incidental take of the
23 species."

24 And that (reading):

25 "AMMs are" -- and I quote but not

1 from this passage apparently -- ". . .
2 better treated as another element of the
3 overall conservation strategy."

4 And since this is from the Appendix D, it is
5 referring, I presume, to Bay-Delta Conservation Plan
6 when it states that.

7 Let's move on from this, please.

8 CO-HEARING OFFICE DODUC: Perhaps, before you
9 move on --

10 MR. STROSHANE: Yeah.

11 CO-HEARING OFFICER DODUC: -- what was your --
12 we can search for -- What -- Give -- There was a phrase
13 that you read --

14 MR. STROSHANE: Yeah.

15 CO-HEARING OFFICE DODUC: -- and it had the
16 term "alternative"?

17 I'm looking for a key phrase upon which we
18 could --

19 MR. STROSHANE: Well, how about we search
20 on -- on the phrase "substantive" -- No. This . . .

21 How about we search on the phrase "are not
22 intended to conserve the covered species."

23 CO-HEARING OFFICE DODUC: And while that
24 search is going on:

25 Dr. Earle, are you familiar with AMM16, 17,

1 and how that is being addressed in the most recent
2 versions of the --

3 WITNESS EARLE: Yes, I am.

4 CO-HEARING OFFICER DODUC: -- adaptive
5 Management Plan?

6 WITNESS EARLE: I'm familiar with proposals
7 for avoidance and minimization for these species in the
8 California WaterFix.

9 CO-HEARING OFFICE DODUC: And could you
10 explain to us how that is being addressed.

11 WITNESS EARLE: Yes. It's -- Details on those
12 AMMs are presented in the Mitigation Monitoring
13 Reporting Program, Exhibit SWRCB-111, I think about
14 Page 300 of the .pdf.

15 And these represent the -- the final terms as
16 negotiated with the -- the responsibility agencies.
17 The Giant Garter Snake is listed as a -- as a
18 threatened species by both the U.S. Fish and Wildlife
19 Service and the CDFW.

20 MR. STROSHANE: Miss Gaylon, could you add to
21 the search string that you search on the phrase
22 "conserve the covered species," and then try searching
23 that as well.

24 (Exhibit displayed on screen.)

25 MR. STROSHANE: No. This would be to add to

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1 that earlier search string you had.

2 MS. GAYLON: I did, but it wasn't there.

3 CO-HEARING OFFICER DODUC: Actually, there you
4 go.

5 MR. STROSHANE: Yeah.

6 See, I told you it was there. It's 3-91 so I
7 must have made a typo myself. My apologies.

8 Okay. Now that we've found that and
9 established that I was not imagining that passage, I'd
10 like to move on to Appendix 3.C of BDCP, so back --

11 CO-HEARING OFFICE DODUC: Now that we have
12 found it, what was the question?

13 MR. STROSHANE: Oh, the question -- I'm sorry.
14 The question -- We can go back.

15 CO-HEARING OFFICE DODUC: Please.

16 MR. STROSHANE: The question was -- Well,
17 actually, no. I just wanted to show that, that it --
18 that the -- these avoidance and miti -- minimization
19 measures in BDCP dealt with conservation -- not
20 conservation of the covered species but to minimize
21 incidental take only.

22 CO-HEARING OFFICE DODUC: And Mr. Mizell is
23 about to voice an objection that the purpose of
24 cross-examination is to ask questions of the witness,
25 not just to present your own testimony.

1 So I would hope that you are bringing up the
2 citations as foundation --

3 MR. STROSHANE: They are.

4 CO-HEARING OFFICER DODUC: -- for the question
5 and --

6 MR. STROSHANE: That's my intent.

7 CO-HEARING OFFICE DODUC: On that basis, let's
8 continue.

9 MR. STROSHANE: Thank you for your
10 forbearance.

11 CO-HEARING OFFICE DODUC: Hey, thank me, not
12 him.

13 MR. STROSHANE: No. Thank you for your
14 forbearance.

15 CO-HEARING OFFICE DODUC: Right. You're
16 welcome.

17 MR. STROSHANE: But you were preempting him,
18 so I . . . wanted to make sure Mr. Mizell was included.

19 Okay. If we could --

20 CO-HEARING OFFICE DODUC: Me first,
21 Mr. Stroshane.

22 MR. STROSHANE: If we could go back,
23 Miss Gaylon, to SWRCB-5, so BDCP.

24 And, again, to -- to -- this time, to

25 Page 3.C-47.

1 And, again, I'm attempting to establish some
2 foundation on this.

3 (Exhibit displayed on screen.)

4 MR. STROSHANE: This is -- should be a
5 description of AMM16, a more detailed description.

6 (Exhibit displayed on screen.)

7 MR. STROSHANE: Okay. Thank you.

8 So, this specific passage states that
9 "Avoidance and minima -- minimization measures" -- I'm
10 sorry.

11 This description summarizes measures to avoid
12 or minimize disturbance to Giant Garter Snake habitat
13 relating to construction activities, project footprint,
14 exclusion fencing and pre-construction surveys.

15 So, again, I'm -- I'm giving everyone here
16 some context for what this AMM deals with with -- with
17 con -- as concerns the Giant Garter Snake.

18 Okay. And I'm -- I think I'm now entering the
19 realm of questions.

20 Please, Ms. Gaylon, go to SWRCB-102,
21 Appendix 3B.

22 (Exhibit displayed on screen.)

23 MR. STROSHANE: And there is a table similar
24 to that in BDCP in this. I think try Table 3.C -- or
25 Table 3.B-1. I believe that is the one that summarizes

1 the -- a list of the avoidance and minimization
2 measures.

3 (Exhibit displayed on screen.)

4 MR. STROSHANE: Okay. Let's try -- That's the
5 environmental commitment. So if you could . . . Or --
6 I'm sorry I'm not better prepared. It's been a bad
7 week.

8 I'm looking for a table that was -- that has,
9 you know, AMM1, AMM2, AMM3.

10 So let's try 3B-2. Sorry for the wild goose
11 chase.

12 CO-HEARING OFFICE DODUC: Does anyone know
13 what table that might be in?

14 WITNESS RISCHBIETER: The slider bar on the
15 left may have a list of tables towards the end of it.
16 I might recognize the title.

17 MR. STROSHANE: Or search on the search string
18 "avoidance and minimization measures."

19 WITNESS RISCHBIETER: I apologize.

20 MR. STROSHANE: Let's try this citation --
21 (Exhibit displayed on screen.)

22 CO-HEARING OFFICE DODUC: We have it.

23 MR. STROSHANE: -- Page 3B -- Oh, okay. Let's
24 scroll down just a little ways.

25 (Exhibit displayed on screen.)

1 MR. STROSHANE: And this is where you can see
2 the typo I was referring to earlier. There's AMM15 and
3 then AMM18, so 16 and 17 are missing. And this, again,
4 is from the Final EIR/EIS. When I saw that, I got
5 concerned.

6 But if we go down now to Page 3B as in
7 "boy"-126.

8 (Exhibit displayed on screen.)

9 MR. STROSHANE: Thank you.

10 This description of AMM16 is similar to that
11 in the original BDCP Appendix 3C.

12 This description also summarizes measures to
13 avoid or minimize disturbance to GTS habitat related to
14 construction activities, project footprint, exclusion
15 of fencing and pre-construction surveys.

16 So my first question to you, Dr. Earle, is:
17 What is the time range in the development schedule of
18 the proposed action when AMM -- M16's elements would
19 occur, to the best of your knowledge?

20 WITNESS EARLE: If you're asking when AMM
21 would be implemented, it would be throughout the period
22 of construction when activities are performed within
23 potential habitat for the species.

24 MR. STROSHANE: Okay. Are you familiar with
25 avoidance and mitigation -- minimization measures

1 specific to GGS, to the Giant Garter Snake? If I asked
2 you a couple of questions about effectiveness, are
3 you -- are you able to comment on those?

4 WITNESS EARLE: I suppose you could try asking
5 the questions.

6 MR. STROSHANE: I'll try asking the questions.
7 How is exclusion fencing for Giant Garter
8 Snake accomplished?

9 WITNESS EARLE: I'm not familiar with standard
10 field procedures for that.

11 MR. STROSHANE: Okay. Do you know anything
12 about how effective it is as a strategy for protecting
13 Giant Garter Snake during construction activities?

14 WITNESS EARLE: I'm not aware of studies that
15 have been performed to evaluate that. And I would
16 additionally note that that requirement is in here at
17 the request of the fish and wildlife agencies.

18 MR. STROSHANE: Okay. My next question is:
19 Are there any avoidance and mitigate -- minimization
20 measures or other -- or specific other mitigation
21 measures intending to protect Giant Garter Snake
22 individuals from effects or impacts of North Delta
23 intake water diversion operations once the Project is
24 up and running?

25 WITNESS EARLE: The subject of whether

1 entrainment or an analogous impact might result to
2 Giant Garter Snakes was discussed with the fish and
3 wildlife agencies.

4 They agree that it is extremely unlikely that
5 a large flowing body of water such as the Sacramento
6 River would constitute habitat for the species. It is
7 far more widely found in wetlands, irrigation ditches,
8 other still or very slowly flowing bodies of water.

9 MR. STROSHANE: Okay. Miss Gaylon, could you
10 please bring up SWRCB-104, and go to Figure 6.6-1.

11 So we're going to the 2016 July Biological
12 Assessment.

13 (Exhibit displayed on screen.)

14 MR. STROSHANE: And this is . . . This is
15 the mapbook of Giant Garter Snake modeled habitat
16 impact.

17 This is, of course, a broad scale map,
18 Dr. Earle, but one question I have for you is:

19 How do you interpret -- By looking at this
20 map, how do you interpret the extent of aquatic and
21 terrestrial Giant Garter Snake habitat in this first
22 map? And this is, like, the first of 36 larger-scale
23 maps, but this is, like, the summary map.

24 WITNESS EARLE: I interpret it as synonymous
25 with the modeled habitat as shown on these maps and

1 included in the GIS information that they represent.

2 The description of modeled habitat appeared
3 initially in the Bay-Delta Conservation Plan. It was
4 subsequently revised.

5 I believe one of the appendices to this BA
6 that we're looking at right here contains the . . .
7 more formal formulation of modeled habitat for this
8 species.

9 Additionally, there may have been some minor
10 changes to the habitat model that occurred after this
11 July 2016 document. If so, they should be documented
12 in the Final EIR/EIS.

13 MR. STROSHANE: Can you tell me what the
14 factors were or are that went or go into the modeling
15 of this habitat? Can you tell us?

16 WITNESS EARLE: If -- If you want to know
17 that, we would pull up the full description of the --
18 of the habitat model which, as I recall, is fairly
19 lengthy.

20 MR. STROSHANE: And I wasn't asking to do
21 that. I was asking if you -- if you know the --

22 WITNESS EARLE: No. I cannot recount for you
23 all of the factors that appear in the habitat model.

24 MR. STROSHANE: Okay.

25 WITNESS EARLE: It relies primarily on things

1 like the presence of wetlands and the crop types that
2 are being managed.

3 MR. STROSHANE: Okay. What about the presence
4 or absence of irrigation ditches and things like that?
5 Are those wetlands?

6 WITNESS EARLE: Well, that would be a type of
7 wetland, yes.

8 MR. STROSHANE: Okay. Yes. Okay.

9 Miss Gaylon, would you please bring up
10 RTD-198, which, if my citation is correct, should be
11 the Giant Garter Snake Recovery Plan from 2017.

12 (Exhibit displayed on screen.)

13 MR. STROSHANE: Yes. Yay!

14 CO-HEARING OFFICE DODUC: And a picture.

15 MR. STROSHANE: Find the Giant Garter Snake in
16 that picture.

17 Okay. So I'd like to go to Figure 10, which
18 is on Page Roman Numeral II-11.

19 (Exhibit displayed on screen.)

20 MR. STROSHANE: And there we are. Thank you.

21 This is a map of the Recovery Unit for the
22 Delta Basin of the U.S. Fish and Wildlife Service.

23 Dr. Earle, does a Recovery Unit -- In your --
24 In your knowledge and experience as a terrestrial
25 biologist, does the Recovery Unit that is defined by

1 U.S. Fish and Wildlife Service in a plan like this,
2 does it cover the extent of critical habitat for the
3 Recovery Plan's subject species?

4 I'm -- I'm asking kind of a broad question
5 about -- This is an example of the broad question I'm
6 asking.

7 In your experience, does the Fish and Wildlife
8 Service designate its Management Units to coincide
9 with --

10 WITNESS EARLE: There is no --

11 MR. STROSHANE: -- recovery?

12 WITNESS EARLE: There is no direct
13 correspondence between critical habitat and the
14 demarcation of Recovery Units.

15 But, you know, generally, it's -- it's true
16 that if there is this designated critical habitat,
17 there's a lot of it in Recovery Units.

18 MR. STROSHANE: Okay. Thank you.

19 Okay. My final exhibit to subject Miss Gaylon
20 to is back to SWR -- I think it's back to -- but,
21 anyway, SWRCB-107, Appendix 3.H again.

22 CO-HEARING OFFICE DODUC: Where might we find
23 that?

24 MR. STROSHANE: Oh, there's no 3.H in this
25 one?

1 WITNESS EARLE: Could I ask if you're trying
2 to find the Adaptive Management Program?

3 MR. STROSHANE: Yes, I am.

4 WITNESS EARLE: That's Attachment 5.

5 MR. STROSHANE: Oh, thank you.

6 (Exhibit displayed on screen.)

7 MR. STROSHANE: Yes, that -- that's it.

8 Thank you, Dr. Earle.

9 I searched this document on the string "Giant
10 Garter Snake" and found no results.

11 Can you direct me, Dr. Earle, to any adaptive
12 management scientific research program for the proposed
13 action that includes any study descriptions that
14 address the critical habitat needs of Giant Garter
15 Snake at this time?

16 WITNESS EARLE: Neither of the wildlife
17 agencies identified any scientific uncertainties
18 regarding Project impacts to Giant Garter Snake that
19 would warrant adaptive management as a -- as a
20 technique.

21 CO-HEARING OFFICE DODUC: What does that mean?

22 WITNESS EARLE: It means there's no proposed
23 studies of adap -- through adaptive management of Giant
24 Garter Snake at this time.

25 CO-HEARING OFFICE DODUC: And what -- what do

1 they mean by they have identified no scientific
2 uncertainty?

3 WITNESS EARLE: Well, the primary purpose of
4 adaptive management is to resolve scientific
5 uncertainties.

6 The -- The fish and wildlife agencies were, I
7 would infer, sufficiently satisfied with the -- the
8 conservation measures that were put forth for the Giant
9 Garter Snake; that they felt a high confidence that the
10 species within its habitat would be adequately
11 protected by implementing those measures.

12 MR. STROSHANE: Thank you.

13 My final question, Dr. Earle:

14 To the best of your knowledge, does the
15 Petitioners' case in chief -- Department of Water
16 Resources -- include any suggested Permit conditions
17 concerning mitigation of impacts to Giant Garter Snake
18 or contributions to species recovery during either the
19 construction period or the water operations period?

20 WITNESS EARLE: If Mr. Stroshane is suggesting
21 that DWR has offered Permit conditions to the Water
22 Board, I am not aware of them.

23 MR. STROSHANE: No further questions.

24 CO-HEARING OFFICE DODUC: Thank you,
25 Mr. Stroshane.

1 I don't see Mr. Brodsky.

2 Miss Meserve, you promised me Mr. Brodsky
3 would be here. I'm docking you.

4 MS. MESERVE: He was en route --

5 MR. RUIZ: He was en route from Discovery Bay
6 an hour or so, and hour and a half ago, so he should be
7 here any -- any moment.

8 CO-HEARING OFFICE DODUC: We'll proceed with
9 Miss Suard then.

10 Everyone, stand up, stretch. Looks like we
11 have a few minutes.

12 Is this a technical difficulty? Will it take
13 more time?

14 MS. SUARD: No. She's just saving it.

15 CO-HEARING OFFICER DODUC: Okay.

16 MS. SUARD: But if you want to take a break,
17 that's fine.

18 CO-HEARING OFFICE DODUC: Nope. We'll take a
19 break around 2:30.

20 Between 2:15 and 2:30, or whenever the court
21 reporter says she wants a break.

22 All right. Miss Suard, your topic areas that
23 you will be covering.

24 MS. SUARD: I'm -- My main questions will be
25 for Mr. Bernarski (sic). Sorry. I have to do this.

1 Can you please turn --

2 WITNESS BEDNARSKI: Sure.

3 MS. SUARD: Okay. No. I've got that.

4 But Mr. Rishebiter (phonetic) -- Is that how
5 you say it?

6 CO-HEARING OFFICE DODUC: Oh, let me. Let me.
7 Rischbieter.

8 MS. SUARD: Rischbieter.

9 WITNESS RISCHBIETER: Yes, thank you.

10 MS. SUARD: So I will try to . . .

11 CO-HEARING OFFICE DODUC: And Dr. Earle can
12 rest for a little bit.

13 MS. SUARD: Yeah. No, it may be Dr. Earle
14 might pipe in on something, but it's those two that I
15 will try and get the names right.

16 I'm going to be asking -- I'm focused on
17 recreation, of course. And since both of you have in
18 your testimony discussion not just of boating
19 recreation but other aspects of recreation, that will
20 be my focus.

21 Also, appropriate flow criteria for recreation
22 in general, which hasn't really been discussed a lot,
23 and I'm concerned about that, so . . .

24 I will just -- It's going to be a combination
25 of both you.

1 And to speed up this process, I made a slide
2 set, and each one of those slides refers to a document
3 that's already in record. Most of them are my own
4 documents or maps that are already online, but just to
5 make it easier, I -- you know, so we could speed
6 through it.

7 And I can talk fast sometimes so, if I talk
8 too fast, let me know.

9 Okay. So could we turn on the slide, please.

10 (Exhibit displayed on screen.)

11 MS. SUARD: Okay.

12 CROSS-EXAMINATION BY

13 MS. SUARD: So, I -- I thought it might be
14 helpful in case you are not aware of who I am:

15 I own a marina and RV Park in the North Delta
16 on Steamboat Slough. And I've been around the Delta a
17 very long time and actually interacted with persons
18 from Bay-Delta Conservation Plan and CALFED and . . .
19 other agencies for quite a few years.

20 So I feel like I have the understanding of --
21 of flows from a -- a real-life perspective instead of
22 computer modeling. And I live it in -- in my job, my
23 business. I boat it.

24 So, I would like to start by just asking each
25 one of you how many times you've been on a boat in the

1 Delta.

2 WITNESS EARLE: Once. Well, maybe more, but
3 certainly once.

4 MS. SUARD: Okay.

5 WITNESS BEDNARSKI: I've not been on a boat in
6 the Delta.

7 WITNESS RISCHBIETER: I would estimate I've
8 been on a boat in the Delta more than a dozen times,
9 probably less than two dozen times.

10 MS. SUARD: Good. I would assume so, since
11 your -- your background with Bay-Delta Conservation
12 Plan would indicate you've been involved with
13 restoration Projects; right?

14 Is that correct, Mr. Rischbieter?

15 WITNESS RISCHBIETER: I -- I have not
16 personally been involved to any great extent with
17 Restoration Projects in the Delta.

18 MS. SUARD: Okay. Okay. So . . .

19 I'm going to -- Can we go -- Okay. I'd better
20 start with this.

21 I am -- This -- This first slide on the left
22 is a photo of, actually, Snug Harbor on Steamboat
23 Slough.

24 Are -- Are -- Mr. Rischbieter, are you
25 familiar with Steamboat Slough?

1 WITNESS RISCHBIETER: I believe I have been on
2 Steamboat Slough many years ago, but I would say my
3 main familiarity is just from its general location on a
4 map.

5 MS. SUARD: Okay. Would you agree that it's
6 one of the natural waterways of the Delta?

7 WITNESS RISCHBIETER: I'm not personally
8 familiar with which waterways are natural features and
9 which have been modified by dredging and other
10 activities.

11 MS. SUARD: Okay. That's fair.

12 On -- On the right side is actually a screen
13 print of SHR-6 that you can see online, and there's
14 actually the entire scanned bunch of pages from that
15 1906 survey. And it talks about the lowest water flows
16 on Sacramento River and Steamboat Slough.

17 Can you read that, or does it need to be
18 enlarged more?

19 WITNESS RISCHBIETER: No. I'm . . .

20 (Exhibit displayed on screen.)

21 WITNESS RISCHBIETER: I might barely be able
22 to read it, with it great difficulty. It's not --

23 MS. SUARD: Okay. I'll --

24 WITNESS RISCHBIETER: -- terribly clear.

25 MS. SUARD: -- read it for you. And just for

1 reference, Sacramento River below the mouth of the
2 American River as follows, and they're looking at the
3 dryest time period when they're considering planning
4 for water conveyance.

5 And the lowest flow in September is
6 7,820 cubic feet per second.

7 Can you read that?

8 WITNESS RISCHBIETER: I don't see exactly
9 where -- which paragraph you're looking at.

10 MS. SUARD: Okay. So, again, it's the graphic
11 to the right.

12 WITNESS RISCHBIETER: Yes.

13 MS. SUARD: And right at the top, there's a --
14 a summary of it, and it says (reading):

15 "Alternate flow observation
16 7,377 cubic feet per second at
17 Courtland."

18 Do -- Can you read that part?

19 MS. ANSLEY: Can I ask for a clarification?

20 What book is this again --

21 MS. SUARD: This --

22 MS. ANSLEY: -- because I don't recall.

23 MS. SUARD: Okay. So, this is a Sacramento
24 River survey from 1908, and it's a series of maps and
25 surveys.

1 And I actually have the series, and I had it
2 all scanned, and people can read it online. It's just
3 not all of them were put up.

4 But this information was put up.

5 MS. ANSLEY: And do we know who conducted the
6 survey?

7 MS. SUARD: We can go online and research.
8 It -- It -- It -- All that information is online.

9 This is the official survey. The Federal
10 government did this.

11 MS. ANSLEY: I'd -- I'd like to lodge for the
12 record a timely objection as to hearsay as to the
13 contents of that book.

14 CO-HEARING OFFICE DODUC: So noted.

15 MS. SUARD: I would also like to note that I
16 brought this same one up in the first phase, so this is
17 not a -- This one was already submitted in the first
18 phase.

19 So can we go to the next page, please.

20 (Exhibit displayed on screen.)

21 MS. SUARD: So, just for reference, since I'm
22 getting the impression you aren't familiar with
23 Steamboat Slough, and this is important because of the
24 recreation aspect.

25 Steamboat Slough was written up in a lot of

1 historic books.

2 And do any of you recognize any of the
3 graphics?

4 Like, could you enlarge it so the -- it
5 emphasizes the lower right.

6 (Exhibit displayed on screen.)

7 MS. SUARD: Well, it kind of doesn't look so
8 clear when it's enlarged.

9 Does -- Does that look familiar to you?

10 MR. MIZELL: I'm going to object.

11 We're being asked to say whether or not the
12 witnesses are familiar with what look like line
13 sketches, pencil sketches, that have no established
14 relevance as to their testimony, no established
15 relevance as to California WaterFix.

16 MS. SUARD: I'm trying --

17 CO-HEARING OFFICE DODUC: So, Miss Suard, take
18 a moment before you ask your question to sort of
19 identify, describe what it is --

20 MS. SUARD: Okay.

21 CO-HEARING OFFICER DODUC: -- what you're
22 showing.

23 MS. SUARD: If we can reduce it back down.

24 (Exhibit displayed on screen.)

25 MS. SUARD: What we're looking at is -- is

1 excerpts from one of the first books written about
2 traveling in California, and it included traveling in
3 the Delta region.

4 That particular writing -- writer, Mr. James
5 Hutchings, covered -- spent two weeks in the Delta, and
6 talks about Steamboat Slough, talks about the
7 Sacramento River, what it looks like.

8 And, actually, these graphics, particularly
9 the fish graphic on -- on the upper right, and the
10 Steamboat Slough and Sacramento River on the lower
11 right, often show up in Bay-Delta Conservation Plan
12 graphics in the past.

13 So I --

14 CO-HEARING OFFICER DODUC: And --

15 MS. SUARD: -- thought --

16 CO-HEARING OFFICE DODUC: And just for -- for
17 the record and for all of us, your purpose in bringing
18 this up and your line of questioning is related --

19 MS. SUARD: This relates --

20 CO-HEARING OFFICE DODUC: Let me finish.

21 -- is related to the key hearing issues in
22 Part 2 how?

23 MS. SUARD: I am establishing that recreation
24 has been an important part of the Delta since we became
25 a state.

1 CO-HEARING OFFICE DODUC: Excellent. Thank
2 you, Miss Suard.

3 MS. SUARD: And I'd like to refer to
4 SHR-2-2112.

5 And there are many pages of the excerpt and
6 the link to where you can find this online as well,
7 because the whole book is online.

8 Okay. Could we go to the next page, please.

9 (Exhibit displayed on screen.)

10 MS. SUARD: And I'll go faster.

11 And, again, I am giving a little bit of
12 history of recreation on Steamboat Slough. And then
13 I'm going to be asking you questions about it; okay?

14 MS. ANSLEY: I --

15 CO-HEARING OFFICE DODUC: It's a test,
16 gentlemen. Be prepared.

17 MS. ANSLEY: I would like to, for the record,
18 lodge an objection to the witness providing testimony
19 that's not directly needed for an answer.

20 I understand she feels like she's giving a
21 history of Steamboat Slough, but I believe somewhere in
22 there is a line between setting up a question and
23 providing testimony to the record.

24 CO-HEARING OFFICE DODUC: So let's -- let's
25 get to your question, Miss Suard.

1 MS. SUARD: Okay. On this particular graphic
2 right here . . .

3 I'm going to have trouble with Mr. Risch --
4 Mr. -- Again, your name, sir? Risch . . .

5 WITNESS RISCHBIETER: Rischbieter.

6 MS. SUARD: Rischbieter.

7 Do you -- The -- The picture that has more
8 color to it, do you recognize that there are a lot of
9 trees there?

10 Can you . . .

11 WITNESS RISCHBIETER: The two pictures that
12 have color have trees.

13 Is there a particular one?

14 MS. SUARD: Okay. And one of the pictures
15 says -- The top one on the left, can you read that? It
16 says (reading):

17 "Sea Scouts Steamboat Slough in the
18 1970s."

19 Can you read that one?

20 WITNESS RISCHBIETER: You say it's "Sea
21 Scouts" at the beginning? I'll --

22 MS. SUARD: Yeah.

23 WITNESS RISCHBIETER: I'll accept that it says
24 that, yeah.

25 MS. SUARD: Okay. So you recognize there's a

1 lot of trees; right? Is that what you said?

2 WITNESS RISCHBIETER: I do see trees in the
3 background of the shoreline, yes.

4 MS. SUARD: Okay. Thank you.

5 And the upper right, there is another
6 photographic, and it says (reading):

7 "Snug Harbor in the 1980's."

8 And does it appear to be trees in the
9 background there?

10 WITNESS RISCHBIETER: That one I can read
11 quite clearly, and -- but the resolution of the
12 background behind the building, I will assume it's
13 trees, but without the skyline, I'm not 100 percent
14 sure.

15 MS. SUARD: Okay. Yeah. Well, there's the
16 darkness behind it.

17 Can we go to the next slide, please.

18 (Exhibit displayed on screen.)

19 MS. SUARD: Okay. Now, do . . .

20 This is a map of the Delta from -- This is the
21 Hal Schell map, and I'm going to use this sort of as a
22 reference. I --

23 Mr. Berdnarski (sic), in your testimony -- I
24 believe it's your testimony -- you talked about eight
25 facil -- recreation facilities that were going to be

1 impacted, but your testimony then really talked about
2 down by Clifton Court Bay.

3 Could you point out on this map which North
4 Delta facilities might be impacted by WaterFix
5 construction or operation.

6 WITNESS BEDNARSKI: I -- I guess I'm -- what
7 I'm most familiar with is where our facilities would be
8 potentially located in the future as -- as opposed to
9 where existing recreational facilities would be.

10 And perhaps the one that you might be
11 referring to would be our proposed barge landing at
12 Snodgrass Slough, which I think is -- you had
13 referenced that in sort of the north end of the Delta.

14 MS. SUARD: Okay. So that is -- Okay. That
15 could be one of the positions we can talk about. Okay.

16 WITNESS BEDNARSKI: Yeah.

17 MS. SUARD: You talk about barges going on
18 Snodgrass Slough.

19 How are they going to get to Snodgrass Slough?

20 WITNESS BEDNARSKI: I believe we talked about
21 that when I was on Panel 1.

22 And my recollection is that my response was
23 that that would -- that hasn't been determined at this
24 point, since we're only in conceptual design, and the
25 exact routing would be primarily left up to the

1 Contractors and probably their Subcontractors that
2 would be operating the barges.

3 MS. SUARD: Okay. You -- You also said that
4 these barges were going to be rather large; right?

5 Wasn't there a reference to the width of the
6 waterways would be 500 feet and so these barges would
7 not impact transportation on -- by boat?

8 WITNESS BEDNARSKI: Yes.

9 MR. MIZELL: Objection.

10 WITNESS BEDNARSKI: Well . . .

11 CO-HEARING OFFICE DODUC: Mr. Mizell.

12 MR. MIZELL: I believe it misstates the
13 witness' testimony from Panel 1.

14 And if it's phrased as a question, I would
15 like additional specificity. So I'd object under vague
16 and ambiguous.

17 We're not sure which portion of the river
18 she's indicating is 500 feet.

19 CO-HEARING OFFICE DODUC: Miss Suard, verify,
20 please.

21 MS. SUARD: Okay. So Snodgl -- Snodgrass
22 Slough is a fairly narrow waterway in the North Delta,
23 above Locke, and that's where they're proposing a
24 forebay. And that I know of, without dredging, there
25 is not a 500-foot-wide waterway leading up to that

1 area.

2 So I'm just asking: Where is this wide
3 waterway to reach Snodgrass Slough?

4 WITNESS BEDNARSKI: I -- I think what you
5 might be referring to in my testimony was a reference
6 to actually near the intakes on the Sacramento River.

7 If you want to go to my testimony -- I don't
8 know if that's necessary. But we did say the river is
9 approximately five to 700 feet wide, and the reference
10 was specifically to the Sacramento River there.

11 I'm just reviewing my testimony, and I don't
12 see right off the top here that we make any references
13 to the width of Snodgrass Slough.

14 With that noted, we do know that there are a
15 number of different sizes of these barges that could
16 potentially be used. And it would be, again, the barge
17 operator's prerogative to use a barge size that would
18 be appropriate for that -- that size of a channel.

19 We have disclosed that we would make sure that
20 we would leave portions of the waterway open, even
21 while the barging operation is in place, so that
22 passage could take place around that area.

23 So, I'm assuming in that location the barges
24 would have to be relatively small --

25 MS. SUARD: Okay.

1 WITNESS BEDNARSKI: -- to accommodate the
2 channels in that area.

3 MS. SUARD: I'm going sort of out of order of
4 what I planned, but that probably doesn't matter.

5 You -- I had first interacted with you a
6 little bit at that Industry Day on December 6th, 2017.

7 Is -- Is it -- Have you picked the General
8 Contractor yet?

9 WITNESS BEDNARSKI: No, we have not.

10 MS. SUARD: Is there still a plan to have all
11 the -- the -- the tunnel sections built all at once
12 with six or seven Tunnel Contractors? Is there still
13 that plan?

14 WITNESS BEDNARSKI: I -- I think what I
15 presented at that meeting was that, at points of the
16 construction, we would have all of the tunnels being
17 worked on at the same time.

18 We will not be starting all of them at the
19 same time, but there will be sufficient overlap in
20 their durations that, yes, during the midpoint of
21 construction, all of the tunnels will be under
22 construction.

23 MS. SUARD: So is -- Does that mean that all
24 those 9700 barge back and forth . . .

25 If you want me to go to the number that you --

1 I think you're the one who provided the number of
2 barges' travel.

3 Could that -- Instead of that being spread
4 over 11 years, could that be condensed into five years
5 or something so there's less long-term impact on the
6 Delta?

7 WITNESS BEDNARSKI: Yeah. Maybe -- Maybe it
8 would help to go to my testimony. It's DWR-1022,
9 Page 5.

10 I -- I think you kind of hit it on the head
11 there.

12 MS. SUARD: Yup. It's Page 5, Line 19.

13 WITNESS BEDNARSKI: Right.

14 (Exhibit displayed on screen.)

15 WITNESS BEDNARSKI: So there, starting on
16 Line 15, we talk about 5900 barge trips for the segment
17 liners from the ports.

18 And then down on Line 18, we talk about --
19 well, 17 and 18 -- we talk about four round-trips per
20 day for up to five and a half years.

21 And that was really meant to describe the
22 overall impact of barge traffic to the Delta as a
23 whole, not to just a specific area but, you know, in
24 relation to the entire traffic volume in the Delta.

25 MS. SUARD: Thank you.

1 So where would these barge traveling times
2 initiate from?

3 WITNESS BEDNARSKI: Well, they're -- There's
4 several different areas that the -- that the materials
5 could be coming from, and we've identified -- Let me
6 see. I believe that's in my testimony also, if I can
7 find the correct passage.

8 (Examining document.)

9 MS. SUARD: I don't --

10 WITNESS BEDNARSKI: We identified the -- the
11 San Francisco/Oakland area, Antioch, and Stockton as --
12 as the three primary areas.

13 MS. SUARD: Okay. Thank you.

14 Have you done an analysis about the impact to
15 traffic for every bridge that has to be opened for the
16 barges to come up into the North Delta?

17 WITNESS BEDNARSKI: I . . . I . . . I
18 believe that was in our traffic analysis overall. I
19 don't -- I don't know if I have an exact call-out for
20 where that is, but we do have a Barge Management Plan
21 and a -- traffic mitigation measures that we've
22 committed to.

23 MS. SUARD: Okay. I'm going to come back to
24 that issue because I -- I do have that in mind,
25 but . . .

1 Can we go back to my graphic.

2 (Exhibit displayed on screen.)

3 MS. SUARD: Sorry. And go to Page 5.

4 (Exhibit displayed on screen.)

5 MS. SUARD: So . . . Let's see. Which one of
6 you talked about it? I think it's Mr. Rischbieter.

7 You -- You talked about recreation in general.

8 If you need the references where, you talked about it
9 Line 23, Page 1; Line 2, Page -- Page 2, Line 2; and --
10 and several other places in -- in your testimony.

11 So I'm going to refer to -- to -- to some of
12 that.

13 You talked about -- But the main focus was
14 boating recreation.

15 But do you recognize that there's a lot of
16 other recreation in the Delta; is that correct?

17 WITNESS RISCHBIETER: It is correct that I
18 recognize that there's a lot of other recreation in the
19 Delta.

20 I don't believe it's accurate to characterize
21 my testimony as primarily focusing on boating
22 recreation. At least, I did mention on -- in my
23 testimony approximately 211 different recreation
24 facilities in the Delta that were identified in the
25 EIR/EIS, and a range of types of those recreation

1 facilities, as well as a diversity of activities that
2 both land-based and water-based recreationists engage
3 in in the Delta.

4 So I did give a summary that was much broader
5 than just boating.

6 MS. SUARD: Okay. Thank you.

7 So where -- Who -- Who gave you that list of
8 200 recreation facilities?

9 WITNESS RISCHBIETER: It was developed by the
10 authors of Chapter 15 of the Final EIR.

11 MS. SUARD: Okay. Did -- Did it include all
12 the marinas and RV Parks in the Delta?

13 WITNESS RISCHBIETER: Yes. As I referenced in
14 my testimony, the types of those 211 facilities fall
15 into seven -- several -- seven general categories, and
16 those include: Marinas; developed fishing access
17 sites; managed hunting areas; established boat ramps;
18 established trailheads; campgrounds; and wind surfing
19 access points.

20 MS. SUARD: Okay. So there -- there's other
21 type of recreation. There's biking trails.

22 Was that included in consideration of impacts?

23 WITNESS RISCHBIETER: Yes. I summarize it
24 here as trailheads, but it is recognized that bicycling
25 occurs on roads and other areas.

1 MS. SUARD: Okay. So does the word
2 "trailheads" include the agra tourism that's -- that's
3 very big in the North Delta? Probably all over the
4 Delta but I'm more familiar with North Delta.

5 Did you analyze impacts to agra tourism from
6 the traffic from WaterFix?

7 WITNESS RISCHBIETER: The -- Chapter 15 in the
8 EIR/EIS summarized approximately 12 different impacts
9 from the construction and operation of Cal WaterFix.

10 And as far as the agra tourism and things like
11 Legacy communities, those were summarized in my
12 testimony as far as the popular activities in the
13 Delta, including sightseeing, walking . . .

14 MS. SUARD: And -- And your assessment was,
15 there's unavoidable impacts; is that right?

16 WITNESS RISCHBIETER: I wouldn't characterize
17 it as my assessment.

18 But I reviewed and was involved in the
19 development of both the Draft and Final EIR -- or --
20 excuse me -- Chapter 15 of the Final EIR/EIS, and I did
21 concur with the findings therein.

22 There were two or three of those 12 impacts
23 which -- After mitigation, there were still some
24 significant impacts.

25 MS. SUARD: So what type of mitigation are

1 you -- are you talking about? Is that the
2 transportation mitigation?

3 MS. ANSLEY: Can we seek a point of
4 clarification here?

5 I would like -- I think we're -- We need to be
6 more specific about what impacts we're talking about to
7 orient the witness and, of course, what mitigation
8 you're talking about specifically.

9 MS. SUARD: Okay. So I'm -- I'm asking about
10 the landside recreation.

11 You know, there's been a lot of talk about the
12 boating recreation. But impacts to transportation are
13 equally as important because if people cannot get to
14 the farms, farm stands, that is an impact that I don't
15 believe has been covered.

16 So I'm -- I'm asking you if you believe that
17 has been analyzed, and you believe there's mitigation
18 sufficient to protect the interests in the Delta.

19 WITNESS RISCHBIETER: The -- The impacts that
20 you're asking about are discussed to some degree in
21 Chapter 15, the recreation chapter. But that chapter
22 includes numerous references to the transportation
23 chapter.

24 I am familiar that mitigation measures for
25 transportation impacts are included in the EIR. I

1 don't recall exactly which chapter that is, but it
2 includes things like mitigation measure trends 1A, 1B,
3 1C, which address both boat traffic and road traffic.

4 MS. SUARD: Okay. So, I mean, I actually have
5 in my slide set some of what you're talking about, but
6 I'm just going to keep going because we probably will
7 get to that.

8 I . . . I'm going to ask just a couple sort
9 of yes-or-no questions.

10 In your opinion, will the WaterFix Project
11 enhance recreational opportunities in the Delta, as in
12 improving the quality of rather than simply attempting
13 to maintain the status quo via the reasonable
14 protection standard?

15 And, so, if yes, how will the Project enhance
16 the Delta recreation?

17 WITNESS RISCHBIETER: I'm not aware that there
18 is an objective in the Project Description or an
19 objective for recreation enhancement.

20 It is recognized in the -- Chapter 15 of the
21 EIR/EIS that some recreation res -- recreation-related
22 resources like Delta fisheries may have long-term
23 benefits after the implementation of Cal WaterFix.

24 MS. SUARD: Oh, okay. So you're saying "no"
25 to the enhancement question.

1 So, doesn't the coequal goals of the Delta
2 Reform Act require the WaterFix Project to enhance
3 recreation values in the Delta as the Water Code 85020?

4 MR. MIZELL: I'm going to object at this point
5 to the relevance of the Delta Reform Act and the
6 coequal goals when it comes to protection of
7 recreational beneficial uses that are more
8 appropriately in front of you in this hearing.

9 I would say that the Delta Stewardship Council
10 has its own purview and its own process through which
11 they can consider compliance with the Delta Reform Act
12 and the coequal goals.

13 CO-HEARING OFFICE DODUC: Given Miss Suard's
14 outline of her topic areas before she began her
15 cross-examination, I'm wondering, Miss Suard, if you're
16 not trying to link this to the appropriate Delta Flow
17 Criteria to protect recreation.

18 If that's not the case, then --

19 MS. SUARD: Yes. I -- I -- I guess you could
20 say that I am doing that, because I -- I am going to go
21 on and talk about appropriate flows.

22 So maybe we can move on from that question.

23 CO-HEARING OFFICE DODUC: Let's do that.

24 MS. SUARD: Okay. So I'm going to refer to
25 this Slide 5 of 30, and I wanted to -- Well, we -- we

1 talked about it. There's more than just boating
2 recreation. There's more than just fishing recreation.

3 When doing the analysis for Bay-Delta
4 Conservation Plan, or WaterFix, was there a recognition
5 and an assessment of how many less recreation users
6 there would be during the temporary construction
7 period?

8 WITNESS RISCHBIETER: I'm not aware that there
9 was a survey done for the EIR to estimate recreation
10 user days in the Delta.

11 MS. SUARD: So how would one assume there
12 isn't significant impact if that wasn't assessed?

13 WITNESS RISCHBIETER: As I stated a moment
14 ago, the EIR clearly states two or three impacts for
15 which there are impacts to the quality of recreational
16 opportunities at certain sites, but it is not
17 quantified in terms of recreation days.

18 MS. SUARD: Okay. Okay. I'm -- If we could
19 go to Page 7. We've gone past --

20 (Exhibit displayed on screen.)

21 CO-HEARING OFFICE DODUC: And just a heads-up,
22 Miss Suard.

23 MS. SUARD: Yeah.

24 CO-HEARING OFFICE DODUC: I need to give the
25 court reporter a break around 2:30.

1 MS. SUARD: Okay. Okay. So going directly to
2 the question you -- you almost said for me.

3 Have you determined an amount of outflow in
4 the Sacramento River that would be required to protect
5 the recreation opportunities and values in the Delta
6 beyond what the H3+ proposal is -- is proposing for
7 flow? I think.

8 WITNESS RISCHBIETER: I'm -- I'm not clear
9 exactly. Could you please repeat the question?

10 MS. SUARD: Have you or the WaterFix team
11 determined the amount of outflow for the Sacramento
12 River in Steamboat Slough that would be required to
13 protect the recreational opportunities and values that
14 we have -- we had prior to 2010? Let me put it that
15 way.

16 WITNESS RISCHBIETER: I have not --

17 MS. ANSLEY: Objection -- Wait.

18 Objection: Relevance as to 2010 in terms of
19 impacts of the WaterFix. The recreational values
20 before 2010?

21 CO-HEARING OFFICE DODUC: Miss Suard.

22 MS. SUARD: I -- I think there -- Well, you
23 know, I'll take out the year.

24 CO-HEARING OFFICER DODUC: Okay.

25 CO-HEARING OFFICER MARCUS: Good.

1 MS. SUARD: Yeah.

2 WITNESS RISCHBIETER: I have not done an
3 analysis of the flow patterns in any specific channel.
4 I have relied on the testimony of the modelers to the
5 degree that there are modeling results of flow in some
6 parts of the Delta.

7 MS. SUARD: Okay. Would you agree that
8 increased salinity levels in the Delta would adversely
9 impact current recreational opportunities in the Delta?

10 For example, if -- if there's reduced fresh
11 water in the West Delta, would that reduce fresh water
12 fishing? And would that be considered an impact to
13 recreation?

14 MS. ANSLEY: Objection: Compound.

15 The first part of the question asks about
16 salinity levels in the Delta, which is vague as to
17 location.

18 The second part has a specific hypothetical.
19 I'm happen to have him answer in turn.

20 MS. SUARD: Okay. Would you agree that
21 increased salinity levels in the Delta could adversely
22 impact current recreational Delta opportunities?

23 MR. MIZELL: Objection: Vague and ambiguous
24 as to what degree the salinity levels are going to be
25 impacted in her hypothetical.

1 CO-HEARING OFFICE DODUC: Miss Suard.

2 MS. SUARD: Okay. Salinity levels increase
3 even 10 percent compared to current level. Would that
4 have a negative impact, particularly on boating, in
5 your opinion?

6 And we'll -- we'll -- we'll go -- we'll talk
7 about the West Delta, because the Delta is a huge
8 place. So let's talk about down by Antioch, you know,
9 in that area.

10 WITNESS RISCHBIETER: I still find the
11 hypothetical slightly vague.

12 But per your example, I would not agree that,
13 if salinity increased from 2 parts per thousand to 2.2
14 parts per thousand, that that would necessarily have
15 any significant impact on recreation.

16 MS. SUARD: Okay. Would you consider -- If
17 the water increased to closer to brackish level, what,
18 3 or 3.5, would that be considered brackish level
19 water?

20 WITNESS RISCHBIETER: With my limited
21 familiarity of water quality ranges, I know that
22 "brackish water" is a very broad term that encompasses
23 a wide range between nearly fresh and nearly salt ocean
24 water.

25 So without more information as to the

1 activities at a site or resources at site, I'm afraid
2 I -- I can't answer your question.

3 MS. SUARD: Okay. Are you familiar with the
4 different costs -- the differences in costs for
5 maintenance of a boat that sits in the water for a year
6 if it's sitting in fresh water versus brackish water
7 versus salt water? Are you familiar with the
8 difference of that?

9 WITNESS RISCHBIETER: I am familiar that the
10 costs of maintenance and cleaning of a boat that's
11 moored in salt water can be higher than one moored in
12 fresh water. I have not owned a boat in a number of
13 years.

14 MS. SUARD: Okay. Would you agree that, since
15 you're familiar with, you know, that's the case, the --
16 the increased costs for boats if they're in less than
17 fresh water, would you agree that it makes sense that
18 the marinas where those boats stay would also have
19 increase in costs?

20 WITNESS RISCHBIETER: Yes. I just didn't want
21 my testimony to interpret that I know how much that
22 increase of cost is proportionally.

23 MS. SUARD: That's fine.

24 Would you agree that increase occurrence of
25 harmful algae blooms could adversely impact current

1 recreational opportunities in the Delta?

2 WITNESS RISCHBIETER: I am aware that, in
3 waters where harmful algae blooms have occurred, that
4 recreation is sometimes restricted.

5 MS. SUARD: Okay. Do you -- Do you anticipate
6 that lower water -- fresh water flow might create
7 increased incidences of algae blooms in the West Delta
8 or anywhere in the Delta?

9 MR. MIZELL: Objection.

10 At this point, the question has crossed over
11 into the microcystis analysis and water quality
12 testimony that was presented in cross-examining Panel 2
13 and has gone away from recreation testimony.

14 CO-HEARING OFFICE DODUC: Miss Suard, can you
15 bring it back?

16 MS. SUARD: Yes.

17 If there's algae blooms in the water, it is
18 unsafe for people to recreate in that water and so,
19 then, that is recreation dollars that are lost.

20 And then, also, there's huge increase for the
21 marina because, if it happens to be in a marina, then
22 they -- they have a loss of income.

23 Plus, they have to find ways to legally clear
24 that water, if there are ways, or wait for Department
25 of Water Resources to have their people come and treat

1 it, and that can take two years.

2 So it is a -- a pretty substantial impact to
3 recreation.

4 It also impacts -- Would you -- I'm going to
5 ask -- This is a question:

6 If -- If -- If you had a home with a dock that
7 had a million-dollar value, what do you think would
8 happen to your home if the waterway in front had algae
9 blooms? What would be the value of that area?

10 MS. ANSLEY: Objection: Incomplete
11 hypothetical; calls for speculation.

12 Is she asking for a -- a change -- actual
13 change in value or . . .

14 Is she asking if she thinks that microcystis
15 might just impact the value of the home?

16 MS. SUARD: That's a perfect way of phrasing
17 it.

18 Do you think harmful algae blooms would impact
19 the value of waterfront homes in the West Del -- Delta
20 because they would -- it would no longer be swimmable?

21 MS. ANSLEY: Again, calls for speculation;
22 outside the expertise of Mr. Rischbieter, but okay.

23 CO-HEARING OFFICE DODUC: I think
24 Mr. Rischbieter can speculate as to whether or not
25 impact on recreation might impact property value.

1 WITNESS RISCHBIETER: Frankly, I was going to
2 say that I don't know, in part, because there's many
3 other factors that go into the value of property, and
4 many other factors, such as duration, that go into
5 assessing the impact of a disturbance event.

6 MS. SUARD: Okay. I'm -- I'm going to now
7 refer to some of these documents I brought up. And --

8 CO-HEARING OFFICE DODUC: It -- Actually,
9 Miss Suard, it sounds like you're about to start off on
10 a -- a new line of questioning.

11 MS. SUARD: Yes.

12 CO-HEARING OFFICE DODUC: Then let's take our
13 break now and we will return at 2:45.

14 (Recess taken at 2:29 p.m.)

15 (Proceedings resumed at 2:45 p.m.):)

16 CO-HEARING OFFICE DODUC: All right. It is
17 2:45. We're resuming.

18 And let's just acknowledge that it -- that one
19 Miss Gaylon can do the job of three staff people, it
20 appears. Thank you.

21 Are there any housekeeping matter before we
22 return to Miss Suard?

23 Miss Meserve, I see that Mr. Brodsky happen
24 made a liar out of you and is indeed here.

25 MS. MESERVE: Hallelujah.

1 I just wanted to check back with you. I have
2 some panelists who are concerned about tomorrow, and I
3 apologize for --

4 CO-HEARING OFFICE DODUC: I understand.

5 MS. MESERVE: -- bugging you about it.

6 But, just from my little informal poll here,
7 I -- I believe it's very unlikely that you would be
8 able to hear from the LAND panel tomorrow.

9 CO-HEARING OFFICE DODUC: Pray tell, what are
10 you learned from your informal poll?

11 I'm serious. I was going to ask if Group 4,
12 5, and was it 44, are still here can give me estimates.
13 Yup. Four, five and 44, in terms of how long their
14 direct might take.

15 They're not even here.

16 MS. MESERVE: I'm not clear on direct. I
17 mean, I'm guessing an hour direct for each of the two
18 panels for Westlands and for --

19 CO-HEARING OFFICE DODUC: And do you have
20 intel on cross?

21 MS. MESERVE: My -- My informal poll told me
22 about four to five hours cross on Westlands, and I'm
23 not sure on GWD. I'm sure of at least one hour of
24 cross on GWD.

25 CO-HEARING OFFICE DODUC: And does that

1 include Petitioners' cross?

2 MS. MESERVE: And that does not in -- I
3 actually didn't poll Petitioners.

4 CO-HEARING OFFICER DODUC: All right. Since
5 it is Friday, and if we are -- since you were true to
6 your word about Mr. Brodsky's appearance, I will trust
7 you on your informal polling, Miss Meserve, and say
8 that we will not get to your witnesses tomorrow.

9 MS. MESERVE: Thank you. I appreciate that.
10 I'll let them know.

11 CO-HEARING OFFICER DODUC: Please do more
12 informal polling. It's very helpful.

13 All right. Any other housekeeping matter?

14 Again, just a reminder: On Monday, we will
15 take a late but longer lunch from 1:00 to 2:30, and on
16 Wednesday, we will adjourn early, around 1:00 -- We'll
17 work through lunch but will adjourn around 1 p.m. or
18 thereabouts.

19 Okay. Miss Suard, back to you.

20 MS. SUARD: Okay. So we're back to Page 7 of
21 graphics.

22 And I do want to point out again that these
23 graphics are parts of SHR evidence that was already
24 previously uploaded, and I'm just bringing these up so
25 it's quick.

1 So, on the map on the right, it -- it shows
2 the water quality compliance points; is that correct?

3 Mr. Rischbieter.

4 WITNESS RISCHBIETER: Could we enlarge it a
5 little bit? It appears to show --

6 MS. SUARD: I'm sorry. The map on the left
7 first is . . .

8 (Exhibit displayed on screen.)

9 MS. ANSLEY: Can you tell us the source of
10 this map?

11 MS. SUARD: This is from the State Water
12 Resources Control Board Bay-Delta Estuary Monitoring
13 Stations.

14 And I think, if you -- you lower it down a
15 little bit, I think that is -- comes from --

16 (Exhibit displayed on screen.)

17 MS. SUARD: Well, let's go up.

18 (Exhibit displayed on screen.)

19 MS. SUARD: It came from the 2006 --

20 MS. ANSLEY: Okay. I see that.

21 MS. SUARD: Yeah. So to Bay-Delta Plan.

22 So does that look like the Compliance
23 Stations? There has been discussion about water
24 quality at Compliance Stations; correct?

25 WITNESS RISCHBIETER: There has been such

1 testimony.

2 The map is entitled, "Monitoring Stations."

3 I'm personally not certain whether every Monitoring
4 Station is a compliance point.

5 MS. SUARD: Okay. That -- That's very fair.

6 Do you -- Do you know if there's an assumption
7 that, if there's water compliance at Rio Vista, that
8 means there's water com -- water compliance north of
9 Rio Vista?

10 In other words, water compliance between the
11 two -- between Rio Vista, like, in Freeport. Would --
12 Is there an assumption that everything in between there
13 is in compliance?

14 MR. MIZELL: Objection: Vague and ambiguous
15 as to the use of an assumption.

16 Maybe Miss Suard can specify: Is she talking
17 about modeling assumptions or some other assumption
18 that we have yet to talk about in here?

19 MS. SUARD: I -- I don't really speak modeling
20 very well, so when I ask questions, I'm asking about
21 real-life situations.

22 To your knowledge, if -- if there's compliance
23 with the water quality designations at Rio Vista, is
24 there an assumption with the Bay-Delta Conservation
25 Plan, with the DWR, you know, planners that water

1 quality north of Rio Vista on Steamboat Slough, Cache
2 Slough, Sacramento River, will also be in compliance?

3 MR. MIZELL: Objection.

4 CO-HEARING OFFICER DODUC: Are you able to
5 answer? Is it something that is -- something you
6 looked at in preparing your testimony?

7 WITNESS RISCHBIETER: My answer was to be that
8 I do not personally know. It's not within the realm of
9 my expertise.

10 MS. SUARD: Okay. Can we go to the other map,
11 please. Just slide on over.

12 (Exhibit displayed on screen.)

13 MS. SUARD: Is this a map you might recognize?

14 It's -- It's bench habitat sites from the
15 Bay-Delta Conservation Plan.

16 WITNESS RISCHBIETER: Are you asking about the
17 map on the right?

18 MS. SUARD: Yes.

19 WITNESS RISCHBIETER: I do not recognize that
20 map.

21 MS. SUARD: Were you involved with any of the
22 restoration actions in the Delta?

23 WITNESS RISCHBIETER: I -- No. My testimony
24 is that I was involved in the development of Chapter 15
25 of the EIR/EIS.

1 MS. SUARD: Sir, were you involved in it at
2 all?

3 WITNESS EARLE: Yes. I'm -- I had some
4 involvement with bench habitat analysis.

5 MS. SUARD: The analysis, or the planning,
6 or . . .

7 WITNESS EARLE: Also the planning.

8 MS. SUARD: Okay. What -- Has -- To -- To
9 your knowledge, has there been any followup to look at
10 the effectiveness of these bench tests?

11 WITNESS EARLE: The bench habitat refers to a
12 variety of Projects that were implemented mostly with
13 NMFS cooperation, mostly over the period since about
14 2001, to pull back levees and establish shallow water
15 habitat suitable for Salmonid rearing and -- and, in
16 some cases, cover habitat at low elevations in
17 otherwise levied channels.

18 And it was -- There has been a lot of
19 monitoring that's been performed on those. It's --
20 It's a fairly well-established restoration technique,
21 fairly widely used.

22 The reason that it was analyzed in the BDCP is
23 because the -- the effect of the North Delta diversions
24 on flows would be such as to reduce the amount of time
25 that that bench habitat would be inundated.

1 And, consequently, the channel margin habitat
2 enhancement that's proposed to benefit fish, which is
3 primarily intended as mitigation for the direct effects
4 of constructing the North Delta diversion, also
5 includes some additional restoration mileage to
6 compensate for the lost function associated with this
7 bench habitat.

8 MS. SUARD: Thank you.

9 So, do you recognize the dots that say 10,
10 seven, six, three?

11 WITNESS EARLE: I do not.

12 MS. SUARD: Can we blow it up more?

13 (Exhibit displayed on screen.)

14 MS. SUARD: 10, seven, six and three. I'll
15 just represent those are on Steamboat Slough. Those
16 are on -- along the banks of Ryer island and Grand
17 Island in Steamboat Slough.

18 So, to your knowledge, has anyone analyzed the
19 impacts to recreation from those bench habitat tests?

20 WITNESS EARLE: To my knowledge, I'm not aware
21 of any such analysis.

22 MS. SUARD: Okay. Thank you.

23 Can we go to the next page, please.

24 (Exhibit displayed on screen.)

25 MS. SUARD: Are you -- Do either of these maps

1 look familiar to you?

2 And, again, these relate to the Yolo Bypass
3 area and restoract -- restoration actions ongoing.

4 So, would you recognize either of these? And
5 could you describe what -- Like, the map on the right,
6 I think, is a pretty good map of the Cache/Yolo
7 complex, and you can see where it comes from, from
8 water@ca.gov/environmentalservices.

9 Does this look familiar to you, these actions?

10 WITNESS EARLE: For --

11 MS. SUARD: Either of you?

12 WITNESS EARLE: For my part, the -- the map on
13 the left doesn't look at all familiar.

14 The map on the right itself does not look
15 familiar but, in the BDCP, we included a similar map
16 identifying a variety of restoration actions, both
17 completed and planned, in the Yolo Bypass.

18 I believe that some of those were the same
19 actions that are shown on this map. However, there has
20 not been any followup work on that since the California
21 WaterFix has no effects in the Yolo Bypass.

22 MS. SUARD: Okay. So, to your knowledge, was
23 there any assessment about impacts to recreation from
24 the -- managing Liberty Island as a reservoir?

25 MR. MIZELL: Objection: Assumes facts not in

1 evidence; and relevance.

2 The witness has now explained how these maps
3 are: First, not familiar to him; and, second, not
4 related to components of the California WaterFix.

5 As to the facts not in evidence, there's been
6 no evidence presented that there is such a thing as a
7 Liberty Island Reservoir.

8 CO-HEARING OFFICER DODUC: Miss Suard?

9 MS. SUARD: It -- It is called a -- a
10 reservoir. I don't know the name of it. It's called a
11 reservoir in DSM-II. That's what the schematic calls
12 that area. It is a flooded area that is over 10 feet
13 deep and about 50,000 acres so DSM-II calls it a --

14 CO-HEARING OFFICER DODUC: And --

15 MS. SUARD: -- reservoir.

16 CO-HEARING OFFICER DODUC: And your question
17 is?

18 MS. SUARD: My question is: Has there been
19 any followup assessment of impacts to recreation from
20 that particular Bay-Delta Conservation Plan project?

21 MR. MIZELL: And I'll renew my objection:
22 These are not components of the California WaterFix.

23 So to the extent that she's asking about
24 analysis being conducted for components of -- at the
25 Yolo Bypass and Cache Slough complex that exists today

1 that were deposed in other processes, that is not what
2 these witnesses here -- are here to testify about.

3 They're here to --

4 CO-HEARING OFFICER DODUC: How does it --

5 MR. MIZELL: -- about Cal WaterFix.

6 CO-HEARING OFFICER DODUC: How does it tie in,
7 Miss Suard, to issues before us?

8 MS. SUARD: I am trying to understand the
9 effects of flow from -- reduced flows because of
10 proposed WaterFix flows, because this whole area is
11 hydrodynamically connected. And what happens on one
12 side of Steamboat Slough impacts the other side.

13 So --

14 CO-HEARING OFFICER DODUC: All right .

15 MS. SUARD: -- that's why I'm asking.

16 CO-HEARING OFFICER DODUC: All right. I will
17 allow the questioning, but I don't know that these
18 witnesses know the answer. And they, of course, will
19 say so --

20 MS. SUARD: Okay.

21 CO-HEARING OFFICER DODUC: -- if they do not.

22 MS. SUARD: I -- I can move on. I just -- I
23 would have assumed, with the background, that there
24 would be more knowledge of -- of what's happening on
25 that side of the Delta.

1 Can we go to the next page, please.

2 (Exhibit displayed on screen.)

3 MS. SUARD: So this one should be easier.

4 So this -- On the left is DWR-1034.

5 And was that your -- Whose -- What -- Whose
6 graphic was this? Which one of you had spoken about
7 this before?

8 MR. MIZELL: The record should reflect, this
9 is Mr. Miller's exhibit, and he is not on Panel 3.

10 MS. SUARD: Okay. Then I will -- Let's go to
11 the right side.

12 DWR-1143 is something fairly new that was
13 submitted by DWR, and it is Operations Criteria.

14 What -- Were any of you help -- involved in
15 developing this Operations Criteria?

16 Mr. Berdnarski (sic)?

17 WITNESS BEDNARSKI: No.

18 MS. SUARD: No?

19 WITNESS RISCHBIETER: No.

20 WITNESS EARLE: No.

21 MS. SUARD: Do you have any idea who did?

22 Any --

23 WITNESS EARLE: Generally speaking, people
24 that were present in Panel 2 were closely involved with
25 that process.

1 MS. SUARD: Okay. Okay. Can we go to the
2 next slide, please.

3 (Exhibit displayed on screen.)

4 MS. SUARD: Now, the next couple ones are --
5 are just going to be really easy ones. These are
6 graphics that I developed, and we can have -- I -- I'm
7 just going to ask questions and say "would you agree."

8 CO-HEARING OFFICER DODUC: Miss -- Miss Suard,
9 I would encourage you to focus on what you believe to
10 be the most critical question because I see that you're
11 only a Slide 10 of 30.

12 MS. SUARD: Oh, because they -- they go really
13 fast.

14 CO-HEARING OFFICER DODUC: Really fast.

15 MS. SUARD: Okay. Okay. I -- I'm going to
16 make the statement:

17 (Reading):

18 "Over the last 10 years, it is --
19 the Delta has been left with a computed
20 surplus or what is left behind from the
21 export pumps and the new North of . . .
22 diversion intakes."

23 Would you agree with that statement?

24 MR. MIZELL: Objection.

25 I don't believe --

1 CO-HEARING OFFICER DODUC: Your objection is?

2 MR. MIZELL: That there are no facts in
3 evidence to support this statement. It should be asked
4 as a hypothetical.

5 Also, I -- I would say that this is a
6 discussion about current conditions, I'm supposing,
7 based upon that statement, which, again, doesn't go to
8 the impacts of the California WaterFix.

9 Vague and ambiguous as to what the questioner
10 means as "computed surplus left behind" and what river
11 course she's speaking of.

12 MS. SUARD: I -- I'm going to withdraw that,
13 but I -- I am -- I would like to emphasize:

14 This is a water hearing and we're talking
15 about impacts to recreation. And if you don't have
16 enough water, you don't have recreation. So, current
17 flows are important to consider.

18 So, let's -- I'd like to go to -- Let's --
19 Let's go to the next page because I may have gotten --

20 (Exhibit displayed on screen.)

21 MS. SUARD: No. Keep going, please.

22 (Exhibit displayed on screen.)

23 MS. SUARD: Keep going.

24 (Exhibit displayed on screen.)

25 MS. SUARD: And that's a reference to us

1 again.

2 Next one, please.

3 (Exhibit displayed on screen.)

4 MS. SUARD: Okay. Let's go one more.

5 (Exhibit displayed on screen.)

6 MS. SUARD: So, again, these are -- And these
7 are going to be quick ones.

8 Do you -- Do you, Mr. Berdnarski (sic), since
9 you're going to be overseeing dock and -- dock work, do
10 dock builders build docks so that they'll be floating
11 on mud or floating on water?

12 WITNESS BEDNARSKI: I -- To the best of my
13 knowledge --

14 Oh, I'm sorry. Were you going to --

15 MS. ANSLEY: No. My fault.

16 But assumes facts not in evidence that he is
17 actually supervising dock work.

18 MS. SUARD: My understanding is, he's
19 overseeing the whole Project, and that includes having
20 docks or barge -- barge landings made.

21 Will those bard land -- barge landings be on
22 mud or will they be on water?

23 MS. ANSLEY: I'll let Mr. Bednarski clarify
24 his scope of his duties as -- in the construction of
25 the Cal WaterFix.

1 WITNESS BEDNARSKI: So I'm familiar with the
2 work done that we've done so far to the conceptual
3 engineering level, so I can answer from that
4 perspective with the finer detail will be developed
5 during preliminary and final design.

6 We've identified that there's several options
7 of the way these barge landings could be set up. Some
8 of them would be, like, the sheet pile installation.
9 Others would be different types of piles driven into
10 the -- into the -- into the waterways to support the
11 dock. Others could be just floating docks that would
12 be -- would be anchored in an appropriate measure.

13 So not all of them would require, you know,
14 driving piles, if that's what your question surrounded.
15 Some of them may be -- They may just be requiring the
16 barge operator to pull up and drop some temporary spuds
17 into the -- into the water there to secure the barge
18 while it's there and then it would go away.

19 MS. SUARD: Thank you.

20 WITNESS BEDNARSKI: So there's a variety of
21 methods that could be used.

22 MS. SUARD: Okay. I was being a little bit
23 more general.

24 Will they be -- Will -- Will those barges --
25 Sorry.

1 Will the docks be on mud or will they be on
2 water?

3 WITNESS BEDNARSKI: Oh. We -- We have a
4 couple different approaches there if I'm -- if I'm
5 understanding your question correctly.

6 Some of them will be in the water such that a
7 barge could pull up to that while still being in the
8 water.

9 And then I think the other option that we have
10 is that there would be some type of a ramp landing, if
11 that's appropriate in that location, that they would
12 actually come right up to the beach and then drop the
13 opening to the barge and be able to unload equipment
14 that way.

15 So there's, again, a couple different methods
16 that have been identified as options, and we haven't
17 determined which will be appropriate in each location
18 yet.

19 MS. SUARD: Okay. Okay. Thank you.

20 WITNESS BEDNARSKI: But for the purposes of
21 the EIR, we have identified the most environmentally
22 impactful and then come up with mitigation measures for
23 that approach, so anything would be no more impactful
24 than what we've identified, and probably less than
25 that.

1 MS. SUARD: Okay. And -- And the EIR/EIS
2 talked about them being left there permanently; is that
3 correct?

4 WITNESS BEDNARSKI: That -- That is not
5 correct.

6 MS. SUARD: Okay.

7 WITNESS BEDNARSKI: They would be part of
8 temporary construction. They would be removed at the
9 end of whatever the construction activity is that
10 they're supporting.

11 MS. SUARD: Okay. I'm . . . I thought I read
12 otherwise.

13 Okay. So, just more general.

14 Is -- Is -- Again, back to sufficient flows,
15 because this is a -- we're supposed to be talking about
16 flow criteria.

17 Do you -- In your opinion, all three of you,
18 does this look like sufficient flow on the Sacramento
19 River to protect boating and marinas?

20 MS. ANSLEY: Objection: Vague and ambiguous.

21 MS. SUARD: Oh, at this location on the
22 Sacramento River in Walnut Grove.

23 MS. ANSLEY: I don't know that we know what
24 the flows are at that point, so she's asking us to look
25 visually and speculate. I --

1 CO-HEARING OFFICER DODUC: I -- I have --

2 MS. ANSLEY: I guess it's vague and ambiguous
3 and speculative.

4 CO-HEARING OFFICER DODUC: I would have to
5 agree, Miss Suard.

6 MS. SUARD: Does this look like sufficient
7 flow to allow boats to float?

8 MS. ANSLEY: Objection.

9 I mean, is she asking about passage or,
10 like . . .

11 I guess they can answer does it look like
12 sufficient flow to float any boat, but that's also
13 speculative and vague and ambiguous.

14 CO-HEARING OFFICER DODUC: Sustained.

15 MS. SUARD: Okay. Is it normal for water flow
16 to be so low that boats in a dock are sitting on mud,
17 in your opinion?

18 MS. ANSLEY: Objection as to "normal."

19 Vague and ambiguous as to time.

20 Scope. Location. Is it normal?

21 CO-HEARING OFFICER DODUC: Let me try this:

22 Mr. Rischbieter or Mr. Bednarski, in analyzing
23 impacts to recreation, did you have any -- did you have
24 in mind any threshold with respect to flows or water
25 level that you would consider to be impacting

1 recreation?

2 Or is that too broad? Does it depend too much
3 on specific locations in the Delta?

4 I think we're trying to find -- At least what
5 I -- I think Miss Suard is trying to find is: What is
6 that -- that threshold, that, in your analysis, would
7 identify a potential impact to recreation?

8 WITNESS RISCHBIETER: My --

9 (Timer rings.)

10 WITNESS RISCHBIETER: My analysis of the
11 modeling data as it relates to flow and water stage, I
12 didn't see any modeling results that were outside the
13 range of natural variation that occurs in different
14 water years and different tide periods in the Delta.

15 So, with respect to these pictures, there
16 certainly is ample width in the channel that's depicted
17 for boat passage, but I can't speak to the depth that's
18 depicted and what limitation on vessel size might be
19 there, but . . .

20 Does that answer your question?

21 CO-HEARING OFFICER DODUC: Thank you.

22 MS. SUARD: Thank you.

23 I -- Okay. Let me -- Next picture, please.

24 CO-HEARING OFFICER DODUC: Now, you have --

25 (Exhibit displayed on screen.)

1 MS. SUARD: It's just a few more.

2 CO-HEARING OFFICER DODUC: All right.

3 MS. SUARD: Okay. So --

4 CO-HEARING OFFICER DODUC: 13 more slides.

5 MS. SUARD: If -- No. I'm -- I'm not going

6 through all of those.

7 This is a -- an aerial photo, drone photo, of

8 a restoration project over at Liberty Island and

9 locally we call it the Water Hyacinth Nursery.

10 Does this look like an -- an appropriate use

11 of restoration water?

12 MS. ANSLEY: Just as a point of clarification:

13 You identified this as Liberty Island but the picture

14 says --

15 MS. SUARD: Sorry. Prospect.

16 MS. ANSLEY: Okay.

17 MS. SUARD: I'm sorry. Sorry. Prospect

18 Island, a recent restoration site.

19 But I think I have to withdraw it because they

20 said they're not familiar; is that right?

21 Are any of you familiar with what's happening

22 at Prospect?

23 WITNESS BEDNARSKI: (Shaking head.)

24 MS. SUARD: Nope. Okay. Let's move on.

25 Okay.

1 CO-HEARING OFFICER DODUC: And how many more
2 slides will you be going through?

3 MS. SUARD: One, two, three, four.

4 CO-HEARING OFFICER DODUC: All right. Four
5 slides.

6 MS. SUARD: Okay. And a map.

7 CO-HEARING OFFICER DODUC: Let's try and get
8 the four slides done in about . . .

9 MS. SUARD: Okay. Thank you.

10 CO-HEARING OFFICER DODUC: Five minutes?

11 MS. SUARD: Okay. And there -- there's one
12 happen, too, but . . .

13 CO-HEARING OFFICER DODUC: One map. Okay.

14 MS. SUARD: This next one.

15 In -- In your opinion, is this sufficient flow
16 to protect recreation?

17 The photo on the right shows a marina full of
18 Egeria Densa and other floating water weeds. The photo
19 on the lower left shows, I think -- I believe that's
20 Water Hyacinth. This is representative of impacts from
21 low flow in 2015.

22 In your opinion, is this sufficient flow in --
23 in the North Delta to protect recreation?

24 MS. ANSLEY: I would say -- Objection. There
25 are -- Objection. We don't -- It assumes a ton of

1 facts in (sic) evidence. I'm not sure we know where
2 that right photo is.

3 But there are a lot of factors that influence,
4 as we've heard testimony in this proceeding, I guess
5 these will be algal blooms or plant growth that
6 would -- So asking if these are sufficient flows to
7 create these conditions assumes a ton of facts in
8 evidence and that you're holding other factors
9 constant. So I --

10 CO-HEARING OFFICER DODUC: Sustained.

11 MS. ANSLEY: Okay. Thank you.

12 MS. SUARD: Okay. Can we go to the next page,
13 please.

14 (Exhibit displayed on screen.)

15 MS. SUARD: So the three photos on the left,
16 this is at Snug Harbor, and I'm -- I -- Is this . . .

17 Do any of you feel that there has been
18 sufficient flows on Steamboat Slough to protect
19 recreation on Steamboat Slough, given the type of
20 damage that's happening currently?

21 MR. MIZELL: Objection: Assumes facts not in
22 evidence; as well as vague and ambiguous.

23 We're unaware of the tidal conditions, what
24 type water year we're talking about.

25 And, again, these would go to existing

1 conditions and not to the impacts proposed or
2 anticipated under California WaterFix.

3 CO-HEARING OFFICER DODUC: Sustained.

4 MS. SUARD: Would . . .

5 Oh, gosh. I'm not sure how I should ask it so
6 I won't keep going.

7 Next one, please.

8 (Exhibit displayed on screen.)

9 MS. SUARD: So I'm getting much more specific.

10 This is existing conditions a few days ago on
11 Lower Steamboat Slough at Snug Harbor.

12 And March, right after a good rain, the water
13 levels were so low that it broke our boat launch area
14 dock -- that's the lower right -- and split the Boards
15 for one of our cover berths because it was so low, they
16 were sitting on mud.

17 And I'm asking: Is this sufficient flow in
18 the North Delta to protect recreation?

19 MR. MIZELL: I'm going to object: Again,
20 assuming facts not in evidence; and it goes to existing
21 conditions and not the impacts of the California
22 WaterFix.

23 MS. SUARD: The California WaterFix is -- is
24 about flows, and we're analyzing impacts to recreation.

25 And this is an example showing there's

1 insufficient flows.

2 MR. MIZELL: And this is an illustrative
3 example of existing conditions.

4 CO-HEARING OFFICER DODUC: As existing
5 condition. Understood.

6 Sustained.

7 MS. SUARD: Hmm.

8 Could we -- I believe it's Slide 28. If we
9 could go down -- We just have to go to other slides.

10 (Exhibit displayed on screen.)

11 MS. SUARD: Okay. So this is for
12 Mr. Berdnarski (sic).

13 At that Industry Day meeting on December 6th,
14 it was announced that DWR was going to start meeting
15 with potential Contractors the following day and start
16 collecting their references. However, online, it says
17 that it starts December 2018.

18 So could you clarify if this process started
19 in 2017? And is it going on now, or will it start next
20 year?

21 WITNESS BEDNARSKI: So the -- the event held
22 in December of last year was to start the process to
23 procure the services of consultants to do the design
24 work or to otherwise staff the office that will be
25 leading the California WaterFix implementation effort.

1 We were not holding that meeting to talk to
2 Construction Contractors. That is -- That process is
3 still a ways away.

4 First, we need to secure the services of the
5 firms that will design it and help us plan and manage
6 the efforts. So that's what all of these activities
7 here are indicating, is the procurement of consulting
8 services to do design work or other support services to
9 the office.

10 MS. SUARD: So -- Thank you.

11 But did the process start in 2017 or 2018?

12 WITNESS BEDNARSKI: We did issue a series of
13 RFQs late last year, in December.

14 So, yes, this process that is shown up there
15 has started with those ones at the very top have been
16 advertised.

17 MS. SUARD: Could we go one slide back,
18 please.

19 (Exhibit displayed on screen.)

20 MS. SUARD: So, Mr. Berdnarski (sic), do you
21 know a person named S. Valles?

22 WITNESS BEDNARSKI: Yes, I do.

23 MS. SUARD: And who's that person?

24 WITNESS BEDNARSKI: Sergio Valles.

25 MS. SUARD: Okay. Does he work for

1 Metropolitan Water District?

2 WITNESS BEDNARSKI: He is a Metropolitan
3 employee like I am, but he's been assigned to support
4 the California WaterFix.

5 MS. SUARD: Okay. Thank you.

6 So, I -- I did find this online, and I did a
7 right click of the .pdf so we can see when it was first
8 created. And you'll see it was created in 20 --
9 July 7th, 2016.

10 Do you see that where it says that?

11 WITNESS BEDNARSKI: Yes, I do.

12 MS. SUARD: Okay. And, then, over towards the
13 left, the -- it -- it calls for starting the barge
14 landings, like, January 1st, 2018.

15 Was there a presumption that you would already
16 have had the Permits by this time?

17 WITNESS BEDNARSKI: I -- I would assume, at
18 the time that he made that schedule back in the middle
19 of 2016, that he was using the assumption that all of
20 the preparatory work and Permits and permissions would
21 have been received to support -- support that schedule.

22 Clearly, that schedule is not current at this
23 point in time and would need to be revised to reflect
24 current conditions.

25 MS. SUARD: Okay. Thank you.

1 Do you have a timeframe for when the -- you
2 know, the constr -- construction starts, not the
3 planning part, but the construction? You know, whether
4 it's barges, barge landings, coffer dams, anything. Do
5 you know when that starts?

6 WITNESS BEDNARSKI: Some of the early
7 activities that we will be projecting as far as
8 construction work would involve working on the power
9 provisions on both the North Delta and the South Delta
10 to provide power at an early point to the different
11 locations.

12 Barge landings would probably -- And I'm --
13 I'm trying to recollect here. But I believe we're
14 going to leave that as a responsibility to the Tunnel
15 Contractors as to whether they need a barge landing in
16 a specific location that has been cleared through the
17 EIR/EIS. So tunnel contracting will probably not start
18 for three years from now.

19 We'll --

20 MS. SUARD: Have --

21 WITNESS BEDNARSKI: -- be going through a
22 design process and then a prequalification process with
23 the Contractors, and then an advertisement process.

24 And then only after that would we be awarding
25 a contract. And, then, if and when they choose to use

1 the barge site that we've cleared, they would then be
2 free to develop that, beginning the development and the
3 permitting process for that.

4 MS. SUARD: And how many Tunnel Contractors do
5 you anticipate contracting with?

6 WITNESS BEDNARSKI: I would -- Again, rough
7 numbers: Four to seven, depending on how the work is
8 actually broken up in the final plans and
9 specifications.

10 MS. SUARD: And could they all be working
11 together all at the same time?

12 WITNESS BEDNARSKI: Yes. There is a -- a time
13 during the middle of the Project -- we spoke about that
14 a little bit earlier -- where all of the tunneling work
15 would be going on simultaneously.

16 The way we schedule to lay it out now is that
17 they would be starting on about six-month intervals
18 from each other.

19 So we'd advertise and award a tunnel contract,
20 and then we'd have to go through another advertisement,
21 prequalification process, so the next one would be
22 scheduled to start no sooner than six months after the
23 one preceding it.

24 So they'll be having staggered starts but, as
25 you can see, since these are multiyear contracts, they

1 will be overlapping with each other at some point in
2 time.

3 MS. SUARD: And even with all this
4 overlapping, it'll -- does it still take 11 years of
5 this temporary impact?

6 WITNESS BEDNARSKI: The -- The tunneling is
7 expected to take 10 to 11 years, yes, with all the
8 different Reaches, with the 73 and a half miles of
9 tunneling to be done on this Project, yes.

10 MS. SUARD: Have -- Has any other Project ever
11 considered 10 years a temporary impact?

12 Any other Project you've worked on?

13 WITNESS BEDNARSKI: I don't have personal
14 knowledge of how other projects have classified their
15 construction impacts.

16 I can only say that there are Projects that
17 last, you know, five to 10 years, but I don't know how
18 they classify the impacts as to whether they're
19 temporary or what -- whatever.

20 MS. SUARD: Okay. I just -- One more
21 question, and it's -- it's on the transportation
22 impacts.

23 I did read the EIR/EIS and all that, more
24 the -- more on the Bay-Delta Conservation Plan draft
25 documents.

1 And the transportation routes in the North
2 Delta, particularly State Route 84, was identified as
3 one of the routes for construction trucks; wasn't it?

4 WITNESS BEDNARSKI: I'm going to show my
5 ignorance here.

6 Does State Route 84 have a name like --

7 MS. SUARD: Jefferson Boulevard.

8 WITNESS BEDNARSKI: Okay. I'm not -- I'm
9 sorry. I'm not familiar with that one in particular.

10 MS. SUARD: That's a main route in West
11 Sacramento. And it was marked on the maps as being one
12 of the transportation routes.

13 The reason why I bring that up that one is
14 because it has a weight and length limit on it.

15 WITNESS BEDNARSKI: (Nodding head.)

16 MS. SUARD: So, are the trucks for
17 construction length and weights going to also abide by
18 those weight limits and length limits?

19 WITNESS BEDNARSKI: The --

20 MR. MIZELL: I'm going to object --

21 WITNESS BEDNARSKI: Oh, I'm sorry.

22 MR. MIZELL: -- as to asked and answered.

23 He indicated he is not familiar with the
24 Jefferson Boulevor -- Boulevard State Route.

25 CO-HEARING OFFICER DODUC: But in general,

1 Mr. Bednarski -- in general -- will the trucks comply
2 with the various restrictions regarding loading as
3 applicable to the roads that they are transversing?

4 WITNESS BEDNARSKI: Yes, they will.

5 CO-HEARING OFFICER DODUC: Thank you.

6 MS. SUARD: That's it.

7 Thank you.

8 CO-HEARING OFFICER DODUC: Thank you,
9 Miss Suard.

10 And let me clarify something:

11 You were asking these witnesses a lot of
12 questions about existing conditions, to which
13 Mr. Mizell objected.

14 I sustained the objection because they did
15 not -- At least my understanding based on
16 Mr. Rischbieter said was, they did a comparison between
17 the post-Project and existing condition and analyzed
18 that -- that difference, I guess, if you will.

19 But I noticed in your case in chief, you will
20 be discussing existing condition, and I would encourage
21 you to do so, because existing condition is relevant to
22 the key hearing issues before us. It is relevant to
23 our consideration of flow criteria.

24 So I didn't want to dissuade you from that
25 line of evidence, simply because of the nature of these

1 witnesses' testimony.

2 MS. SUARD: Thank you. And I do plan to do
3 that.

4 CO-HEARING OFFICER DODUC: All right.

5 MS. SUARD: Thank you.

6 CO-HEARING OFFICER DODUC: Mr. Brodsky.

7 Does the court reporter need a quick break?

8 THE REPORTER: No.

9 CO-HEARING OFFICER DODUC: No. She's good.
10 All right.

11 Everyone can stand up and stretch while
12 Mr. Brodsky's coming up.

13 And I am so going to tease Mr. Hunt, Mr. Perry
14 (sic) and Mr. Baker.

15 MR. BRODSKY: Hi.

16 CO-HEARING OFFICER DODUC: Mr. Brodsky,
17 welcome back. We haven't seen you in awhile.

18 MR. BRODSKY: Thank you. Nice to see you
19 again.

20 CO-HEARING OFFICER DODUC: Yes.

21 MR. BRODSKY: Michael --

22 CO-HEARING OFFICER DODUC: You -- You couldn't
23 have timed it for a Friday so I can see your colorful
24 casual shirts?

25 MR. BRODSKY: Next time.

1 CO-HEARING OFFICER DODUC: I look forward to
2 it.

3 MR. BRODSKY: Michael Brodsky on behalf of
4 Save the California Delta Alliance, and I'll be
5 focusing on recreation today.

6 And I hope to finish in one hour or less
7 and --

8 CO-HEARING OFFICER DODUC: Actually,
9 Miss Meserve only asked for 45 minutes for you.

10 MR. BRODSKY: Is that what she asked? Well,
11 let's try to do it in 45 minutes, then --

12 CO-HEARING OFFICER DODUC: Yeah.

13 MR. BRODSKY: -- and see how it goes.

14 CROSS-EXAMINATION BY

15 MR. BRODSKY: Mr. Rishebiter (phonetic). Am I
16 pronouncing that correctly?

17 WITNESS RISCHBIETER: Rischbieter.

18 MR. BRODSKY: Rischbieter. Thank you very
19 much.

20 So I would like to call attention to your
21 testimony, DWR-1024, where you refer to the --

22 (Exhibit displayed on screen.)

23 MR. BRODSKY: -- impacts on recreation from
24 construction as temporary.

25 And that would be at Page 6, Lines 15 to 17.

1 (Exhibit displayed on screen.)

2 MR. BRODSKY: And you -- you emphasize that.

3 You say, quote:

4 "Again, it is important to note that
5 these significant and unavoidable effects
6 are from construction, and not operation,
7 and thus are temporary."

8 Isn't it true that your characteration --
9 characterization of the significant and unavoidable
10 effects as temporary is a mischaracterization and, in
11 fact, the effects are permanent and long-term?

12 MR. MIZELL: Objection: Misstates the
13 witness' testimony.

14 CO-HEARING OFFICER DODUC: Sustained.

15 Rephrase your question, Mr. Brodsky.

16 MR. BRODSKY: I -- I did not misstate his
17 testimony. I'm quoting him here.

18 Again, this is a quote from his testimony.

19 MS. ANSLEY: I highly doubt he characterized
20 his own testimony as a mischaracterization.

21 CO-HEARING OFFICER DODUC: Correct.

22 MR. BRODSKY: No, no.

23 Okay. You misunderstood me, then; all right?

24 Let try it.

25 CO-HEARING OFFICER DODUC: Try it again .

1 CO-HEARING OFFICER MARCUS: We all did.

2 MR. BRODSKY: Thank you.

3 Isn't it true that calling the effects
4 temporary is a mischaracterization and, in fact, the
5 significant and unavoidable effects are permanent and
6 long-term, not temporary?

7 WITNESS RISCHBIETER: Some of the effects
8 referenced there are long-term, but I would not agree
9 that they are permanent.

10 My citation there comes from Page 15-275 of
11 the EIR/EIS. And the EIR/EIS makes distinction between
12 significant and insignificant, permanent and temporary,
13 and short-term and long-term. And many of those
14 temporary impacts, some are determined short-term, some
15 are termed long-term.

16 MR. BRODSKY: Um-hmm.

17 WITNESS RISCHBIETER: I believe that's a
18 distinction there.

19 MR. BRODSKY: Right. So 15-275 is
20 Alternative 4, which is not the Project before the
21 Board here. We're -- We're discussing Alternative 4A.

22 So if we could see SWRCB-102 at Page 15-469.

23 (Exhibit displayed on screen.)

24 MR. BRODSKY: So I'd like to read from
25 Lines 26 to 29, quote:

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1 "Construction of . . .
2 Alternative 4A intakes and related water
3 conveyance facilities would result in
4 permanent and long-term (i.e., lasting
5 over 2 years) impacts on well-established
6 recreational opportunities and
7 experiences in the study area because of
8 access, noise, and visual setting
9 disruptions that could result in loss of
10 public use."

11 So isn't it correct that the construction
12 impacts lasting over two years are, in fact, permanent
13 and long-term, not temporary?

14 WITNESS RISCHBIETER: That is not how I read
15 that parenthetical. The "lasting over two years"
16 applies to the terminology long-term. "Permanent" is a
17 different time concept.

18 MR. BRODSKY: Isn't it correct that the -- it
19 is -- it is a mischaracterization to con -- call
20 construction impacts that last over two years
21 "temporary"?

22 As a matter of law, under CEQA, those impacts
23 are considered to be permanent and long-term, not
24 temporary.

25 Would you agree with that?

1 MR. MIZELL: Objection: At this point, he's
2 calling for a legal conclusion.

3 Also -- I'd also object to it as asked and
4 answered. Mr. Rischbieter has indicated what his
5 interpretation is and, to the extent that Mr. Brodsky
6 disagrees with that, he is entitled to such
7 disagreement but he can put that on in his case in
8 chief.

9 CO-HEARING OFFICER DODUC: Sustained.

10 MR. BRODSKY: Let's go on to the next
11 question.

12 Isn't it true that construction activities
13 will last up to 13 and a half years in some areas and
14 will result in long-term reduction of recreational
15 opportunities?

16 WITNESS RISCHBIETER: The number that I was
17 recalling was up to 11 years, as I recall reading it in
18 various parts of Chapter 15.

19 That notwithstanding, the second part of your
20 question, it is true that Chapter 15 differentiates
21 between short-term and long-term impacts.

22 MR. BRODSKY: Okay. I'd li -- I'd like to
23 call up the relevant portion of the EIR so we can read
24 it, which would be SWRCB-102 at Page 15-265.

25 (Exhibit displayed on screen.)

1 MR. BRODSKY: And that would be . . . Lines 4
2 to 5.

3 I'd like to read from that. Quote:

4 "Overall, construction and
5 geotechnical exploration may occur
6 year-round and last from 2.5 to 13.5
7 years at individual construction
8 sites . . . or areas and in-river
9 construction would be primarily limited
10 to June 1 through October 31 each year,
11 which would result in . . . long-term
12 reduction of recreational opportunities
13 and experiences."

14 Do you disagree with that?

15 WITNESS RISCHBIETER: I agree that that's what
16 it says, yes.

17 MR. BRODSKY: Okay. Thank you.

18 The FEIR states, as I just read to you, that
19 in -- in-river construction would occur from June 1 to
20 October 31.

21 As I understand it, that seasonal limitation
22 is due to the need to protect certain fish species.

23 Do I understand that correctly?

24 WITNESS EARLE: Yes, that is accurate.

25 MR. BRODSKY: Okay. And -- But isn't it true

1 that June 1 to October 31, where construction
2 activities will be concentrated, is the summer boating
3 season, so that need to protect fish increases impacts
4 on recreational boating.

5 WITNESS RISCHBIETER: The summer boating
6 season is -- part of it is within that period, yes.

7 MR. BRODSKY: And isn't it true that the --
8 the concentration -- the need to protect the fish
9 species which is imposed by U.S. Fish and Wildlife
10 Service and NMFS, which is shifting the bulk of your
11 construction activity to the summer months, then
12 results -- although it protects fish, it results in an
13 increase in impacts to recreational boating.

14 Do -- Do you understand that?

15 WITNESS RISCHBIETER: I understand that the
16 construction activities will have an impact on
17 recreational boating.

18 WITNESS BEDNARSKI: I think the one
19 clarification that I'd like to make is that this is --
20 My understanding is, the limitation is in-water
21 construction and particularly the areas of the three
22 North Delta diversions that would be expected to take
23 place during one to three seasons at the most. It
24 would not be extending over 13 and a half years or
25 other -- some other extended period of time.

1 And it's possible that we could get all of
2 that work done in one season, and so there would not be
3 any other disruption to recreation other than a
4 slightly narrow channel along Sacramento River at those
5 locations.

6 WITNESS EARLE: It also may be worth noting
7 that that restriction does not apply to barge traffic,
8 which would be distributed throughout the year.

9 MR. BRODSKY: Do you agree that in-water
10 construction has an impact on recreational boating?

11 WITNESS RISCHBIETER: There are some types of
12 in-water construction activities that could have an
13 impact on recreational boating.

14 MR. BRODSKY: And do you agree that those
15 in-water activities that could have an impact on
16 recreational boating will have more of an impact on
17 recreational boating if they take place in the summer
18 as opposed to if they took place at other times of the
19 year?

20 WITNESS RISCHBIETER: Could --

21 MR. BRODSKY: May I rephrase my own question?

22 WITNESS RISCHBIETER: Please.

23 MR. BRODSKY: Do you agree and understand that
24 most boating activity -- recreational boating activity
25 in the Delta takes place during the summer months?

1 WITNESS RISCHBIETER: I agree there's more
2 boating activity in Delta channels -- recreational
3 boating activity -- during the summer -- summer months,
4 and with some degree also in spring.

5 MR. BRODSKY: Okay. All right. I -- I
6 think -- Let's move on.

7 Isn't it true that construction impacts on
8 boating are so widespread and long-lasting that some
9 Delta marinas will be driven out of business?

10 MR. MIZELL: Objection: Assumes facts not in
11 evidence; calls for speculation.

12 CO-HEARING OFFICER DODUC: Mr. Brodsky.

13 MR. BRODSKY: In your opinion -- You've
14 drafted the testimony here about what the degree of
15 impacts on recreation will be, and -- and you studied
16 recreation.

17 And so I'm asking you, in your opinion, will
18 the construction impacts on recreational boating be
19 severe enough to drive some marinas out of business?

20 And if you don't know, you can say you don't
21 know.

22 WITNESS RISCHBIETER: I do not --

23 CO-HEARING OFFICER DODUC: Overruled,
24 Mr. Mizell.

25 WITNESS RISCHBIETER: Yeah. I do not know.

1 I'm aware that some marinas have gone out of
2 business in past years as well.

3 MR. BRODSKY: Okay. I'm asking specifically,
4 though: As a result of these construction activities
5 from WaterFix will be so severe that they'll drive some
6 marinas out of business. And I'd like to call your
7 attention to SWRCB-102 at Page 16-168.

8 MR. MIZELL: I'm going to object as asked and
9 answered. That's the same question that
10 Mr. Rischbieter just answered.

11 CO-HEARING OFFICER DODUC: Let's pull up the
12 document, since Mr. Brodsky is referring to it.

13 (Exhibit displayed on screen.)

14 MR. MIZELL: To the extent that he's asking a
15 question about Chapter 16, Mr. Rischbieter has
16 indicated, based on previous questions, that he was
17 only involved in the development of Chapter 15.

18 MR. BRODSKY: I'm speaking directly to impacts
19 on recreation, which happen to be mentioned in
20 Chapter 16.

21 There are some things in Chapter 15 that cross
22 back and forth and this citation here at Lines 3 to 5
23 says, quote (reading):

24 ". . . Recreation-dependent businesses
25 including marinas and recreational supply

1 retailers may not be able to economically
2 weather the effects of multiyear
3 construction activities and may be forced
4 to close as a result . . ."

5 CO-HEARING OFFICER DODUC: I'm sorry. Where
6 is that?

7 MR. BRODSKY: That is at Line -- 16-168,
8 Lines 3 to 5.

9 CO-HEARING OFFICER DODUC: I see it now.
10 Thank you.

11 MR. BRODSKY: You've looked at the impacts on
12 recreation.

13 Do you -- Do you disagree with that or have an
14 opinion as to whether that's correct or not?

15 WITNESS RISCHBIETER: Can we scroll up to --
16 perhaps to the previous page and let me see what the
17 impact is in Chapter 16, because I was not involved in
18 the development of Chapter 16.

19 (Exhibit displayed on screen.)

20 MR. BRODSKY: It's "Socioeconomic Impacts"
21 is -- is the title of the chapter.

22 WITNESS RISCHBIETER: I -- I know the -- I
23 understand the title of the chapter. That was a CEQA
24 conclusion that was related to an impact on --
25 summarized on the previous page.

1 And now that I have the context, could you
2 please just ask the question again?

3 MR. BRODSKY: So let me read it again.

4 The quotation is (reading):

5 ". . . Recreation-dependent businesses
6 including marinas and recreational supply
7 retailers may not be able to economically
8 weather the effects of multiyear
9 construction activities and may be forced
10 to close as a result . . ."

11 Do you agree with that or have any opinion as
12 to whether that's an accurate assessment of the impacts
13 on recreation?

14 WITNESS RISCHBIETER: As the document says, I
15 agree that that is conceivably a possibility.

16 MR. BRODSKY: Thank you.

17 All right. Someone mentioned their -- I
18 believe it might have been Dr. Earle -- that
19 construction activity at the intakes would last three
20 years, but it's actually seven years.

21 So my question: Isn't it true that the most
22 constructioned -- most concentrated construction
23 activities at the intakes will last seven years?

24 And apparently there's a disagreement on that,
25 so let me ask for SCDA-83.

1 (Exhibit displayed on screen.)

2 MR. BRODSKY: And that's the Biological
3 Assessment Construction Schedule.

4 If we could scroll down a little bit.

5 (Exhibit displayed on screen.)

6 MR. BRODSKY: And then blow -- blow up there.

7 (Exhibit displayed on screen.)

8 MR. BRODSKY: You'll see that that's from 2022
9 to 2029, which is seven years.

10 MR. MIZELL: Can we identify if this is the
11 initial BA or the Revised BA?

12 MR. BRODSKY: This is . . .

13 I -- I believe it's the re -- Revised BA.

14 If we could go back to the cover sheet, it
15 should say there.

16 (Exhibit displayed on screen.)

17 MR. BRODSKY: And -- And scroll down.

18 (Exhibit displayed on screen.)

19 MR. BRODSKY: We could probably -- At the
20 bottom of the page, I think we can . . .

21 (Exhibit displayed on screen.)

22 MR. BRODSKY: This is the Revised BA, to the
23 best of my knowledge.

24 Is it -- Is it your -- Is it your testimony
25 that that seven years is not accurate as shown here?

1 WITNESS BEDNARSKI: No. I do believe that
2 seven years is -- is accurate.

3 I think you might have misinterpreted my
4 comment about three years when I stated that there
5 could be three seasons of in-water construction work to
6 set up the coffer dams. That's what that reference to
7 was using the number 3.

8 I believe seven years sounds appropriate for
9 all three intakes to make without inspecting the
10 schedule closer.

11 MR. BRODSKY: Okay. So let me -- let me skip
12 ahead a little bit since you've mentioned that.

13 So, you're pointing out that there may --
14 maybe there's intense activity but the in-water
15 construction may only be three seasons, is what you're
16 calling to my attention?

17 WITNESS BEDNARSKI: Yes. We have a limited
18 window to work in-water to install the coffer dam. We
19 have some expectation that that could be done in one
20 season, but no longer than three seasons, depending on
21 how the contracts are let and the availability of
22 Construction Contractors to do that work.

23 MR. BRODSKY: Okay. I'd -- I'd like to not
24 skip ahead too much and come back to those coffer dams
25 and the pile driving and the impacts that are resulting

1 from that at those intakes.

2 But before I jump ahead to that, let me call,
3 Mr. Rischbieter, back to your attention to your
4 testimony, at Page 6 of your testimony.

5 (Exhibit displayed on screen.)

6 MR. BRODSKY: Which is DWR-1024.

7 And at Lines 12 to 13, you say, quote:

8 ". . . Impacts . . . related to
9 construction of the intakes would be less
10 than significant," end quote.

11 And you cite for that the FEIR at Page 15-267.

12 Do I understand that correctly?

13 WITNESS RISCHBIETER: Yes, that is on those
14 lines of my testimony.

15 MR. BRODSKY: Okay. Let's take -- I'd like to
16 take a little closer look at that and go to that page.
17 That's SWRCB-102 at Page 15-267.

18 (Exhibit displayed on screen.)

19 MR. BRODSKY: And at Lines 30 to 31, it says,
20 quote:

21 "Therefore, as a whole, these
22 impacts are considered significant and
23 unavoidable. However, the impacts
24 related to construction of the intakes
25 would be less than significant," end

1 quote.

2 And it's my understanding you're -- you're
3 drawing from that last sentence there.

4 WITNESS RISCHBIETER: I am, as well as the
5 preceding sentence, which are in the context of my
6 testimony that there are mitigation measures and
7 Environmental Commitments included in CWF H3+ that
8 reduce these impacts.

9 But due to the dispersed effects of recreation
10 experience across the Delta, it's not certain that the
11 mitigation would release -- reduce the level of these
12 impacts to less than significant in all instances.

13 MR. BRODSKY: Right.

14 WITNESS RISCHBIETER: It also goes to your
15 previous question.

16 MR. BRODSKY: So it's my understanding,
17 however, that this sentence that was in Alternative 4
18 at Page 15-267, "the impacts related to construction of
19 the intakes would be less than significant," that
20 that's been changed, and that the EIR is no longer of
21 that conclusion for Alternative 4A, and that that
22 sentence has been deleted.

23 And I'd like to show you that at SWRCB-102,
24 Page 15-469.

25 (Exhibit displayed on screen.)

1 MR. BRODSKY: And at Lines 26 to 28 -- and
2 we've already read this -- this says the (reading):

3 "Construction of . . . Alternative 4
4 intake -- 4A intakes and related
5 con . . . facilities would result in
6 permanent and long-term . . . impacts on
7 well-established recreational
8 opportunities and experiences in the
9 study area . . ."

10 And then if we . . . go down to the bottom
11 there, the CEQA Conclusion at Lines 36 to 37, it says
12 (reading):

13 "Therefore, these impacts are
14 considered significant and unavoidable."

15 And that last sentence that used to be there
16 for Alternative 4 that said "the impacts related to
17 construction of the intakes would be less than
18 significant," that sentence has been removed.

19 So it's my understanding that, as develop --
20 as Alternative 4A was developed, that the drafters of
21 the EIR decided that that was not accurate to say that
22 impacts from construction of the intakes would be less
23 than significant, and they decided that they would be
24 significant, and that's what it says in Alternative 4A.

25 Do I understand that correctly? Or maybe I

1 don't.

2 WITNESS RISCHBIETER: Can we go to -- scroll
3 up several pages to where Alternative 4A is introduced.

4 (Exhibit displayed on screen.)

5 WITNESS RISCHBIETER: I'm sorry. I don't have
6 an exact page number, but I believe I -- there's --

7 (Exhibit displayed on screen.)

8 WITNESS RISCHBIETER: Yes. Let's zoom in
9 there.

10 (Exhibit displayed on screen.)

11 WITNESS RISCHBIETER: I had read that -- at
12 Lines 22 to 24 there, that (reading):

13 "The extent of . . . permanent
14 displace" --

15 Well, that's not it.

16 I'm sorry. Can we go back to the page that
17 you cited?

18 MR. BRODSKY: So, in Alternative 4, where the
19 limiting sentence was, that was back at . . .

20 WITNESS RISCHBIETER: And I'd like to know
21 impact rec dash number that related.

22 Was it REC-1?

23 MR. BRODSKY: They're both REC-2.

24 WITNESS RISCHBIETER: REC-2.

25 All right. Can we go back to the page we just

1 had at the beginning of that section?

2 (Exhibit displayed on screen.)

3 WITNESS RISCHBIETER: And there's Impact

4 REC-1. Can we scroll to Impact REC-2.

5 (Exhibit displayed on screen.)

6 WITNESS RISCHBIETER: This is what I was

7 looking for. And Lines 5 through 6 is the extent of

8 the long-term reduction of recreation experiences

9 within the Delta as a result of construction under

10 Alternative 4A would be the same as described for

11 Alternative 4.

12 And with -- Having considered that, my

13 conclusion didn't change, and I do not know the

14 document author's reason for omitting that sentence.

15 MR. BRODSKY: Okay. I mean, it was my

16 understanding that they were backing -- backing off and

17 they were saying, "Well, we're not going to claim

18 construction of the impact -- of the intakes are less

19 than significant."

20 And your interpretation is that they are still

21 claiming that impacts from intake construction are less

22 than significant.

23 MS. ANSLEY: Asked and answered. He just

24 answered that.

25 MR. BRODSKY: I'm sorry. I didn't -- I didn't

1 really quite follow it. I wasn't trying to badger the
2 witness.

3 If you wouldn't mind having --

4 MS. ANSLEY: She can read back the answer, the
5 court reporter.

6 MR. BRODSKY: Okay.

7 CO-HEARING OFFICER DODUC: That's what I
8 understood Mr. Rischbieter to say.

9 MR. BRODSKY: Okay. Very good.

10 Anything you want to correct?

11 WITNESS RISCHBIETER: I believe I stated my
12 answer correctly and completely.

13 MR. BRODSKY: Okay. Thank you.

14 So let me ask to have what we just discussed
15 as your conclusion.

16 Isn't it true that construction activities
17 would be so widespread and intense that boaters will
18 perceive the Delta as closed for construction, causing
19 a substantial number of boaters to permanently abandon
20 the Delta and move their boating activities elsewhere,
21 such as one of California's many recreational lakes?

22 MR. MIZELL: Objection: Assumes facts not in
23 evidence based on an assertion only by the questioner.
24 If he could identify a document that states that
25 impact.

1 MR. BRODSKY: I'm asking his opinion. I'm --
2 I'm -- We've identified numerous places in the EIR
3 where it says there will be permanent and long-term
4 losses of recreational opportunities.

5 And we've identified places in the EIR where
6 it says that those impacts will be so severe that some
7 marinas will be forced to close.

8 And I'm asking the expert, in his opinion,
9 could that result in a -- in a significant number of
10 boaters simply considering the Delta closed for
11 construction, abandoning it, and taking their
12 recreation elsewhere?

13 In your opinion, if you have one.

14 CO-HEARING OFFICER DODUC: Overruled,
15 Mr. Mizell.

16 MR. MIZELL: And I'm going to object as to
17 speculative.

18 He's asking our witness to speculate as to
19 what the general population --

20 CO-HEARING OFFICER DODUC: Mr. Mizell.

21 MR. MIZELL: -- would believe under a
22 hypothetical.

23 CO-HEARING OFFICER DODUC: Mr. Mizell,
24 overruled.

25 Your witnesses are well qualified to say they

1 do not know and they cannot speculate.

2 WITNESS RISCHBIETER: I believe that scenario
3 is completely speculative and, no, I -- I don't have an
4 opinion. I don't agree -- I don't agree that large
5 numbers of boaters will abandon the Delta.

6 MR. BRODSKY: Thank you.

7 Okay. Let me move on.

8 Mr. Bednarski's testimony states that there'll
9 be seven barge landings placed along the tunnel route
10 about 4 to 9 miles apart and assumes 9400 barge trips
11 over the construction period.

12 Mr. Bednarski cites the EIR mapbook Figures
13 M3-4 for barge landing locations.

14 And I would like to take a look at mapbook
15 Figure M3-4, Sheet 11 of 15. That's in Chapter 3 of
16 the EIR.

17 (Exhibit displayed on screen.)

18 MR. BRODSKY: So then Sheet 11 -- You've got
19 to scroll down a bit.

20 (Exhibit displayed on screen.)

21 WITNESS BEDNARSKI: I believe you need to go
22 to Alternative 4. This is a different alternative
23 here, I believe.

24 MR. BRODSKY: Right, yeah. The mapbooks are a
25 little bit --

1 WITNESS BEDNARSKI: Yeah, right.

2 MR. BRODSKY: -- a little bit hard to navigate
3 sometimes.

4 WITNESS BEDNARSKI: You're in the right
5 document. There's just a separate tab you need to open
6 it'll take you to.

7 That tab on the left.

8 (Exhibit displayed on screen.)

9 MR. BRODSKY: Yes. That's M3-1 and what we
10 need is M3-4.

11 (Exhibit displayed on screen.)

12 MR. BRODSKY: So it needs to scroll down a
13 ways further.

14 WITNESS BEDNARSKI: Right.

15 (Exhibit displayed on screen.)

16 MR. BRODSKY: Got it. Bingo.

17 Okay. So -- So, you can see the barge landing
18 that's depicted in gray hatch at the upper right corner
19 of Clifton Court Forebay.

20 And the -- the logo is down at the bottom that
21 shows that that -- that gray hatching -- Right where
22 you see the two red lines of the tunnels coming into
23 the forebay there, that's -- that's also a barge
24 landing at that point.

25 MS. ANSLEY: Is that a question or is he

1 characterizing --

2 MR. BRODSKY: Do you agree that I'm reading
3 the map correctly?

4 WITNESS BEDNARSKI: That's correct.

5 MR. BRODSKY: Okay. Now, if we could just
6 scroll up to the top of that Sheet 11.

7 (Exhibit displayed on screen.)

8 MR. BRODSKY: Right there.

9 And you'll see Highway 4 there.

10 And then over on the left side of the page,
11 you see the corner of a developed area/neighborhood
12 there, and that -- that's Discovery Bay.

13 And that's -- I'm representing to you that
14 that's Discovery Bay and that that's Highway 4 -- it
15 does show Highway 4 on the map -- and that there's a
16 bridge there crossing Old River where Highway 4 crosses
17 Old River.

18 So, isn't it true that, for the barges to
19 reach that barge landing that we just identified, they
20 will have to cross under that bridge on Highway 4
21 there?

22 WITNESS BEDNARSKI: That's correct.

23 MR. BRODSKY: And that bridge will -- That's a
24 drawbridge that will have to open each time that the --
25 a barge crosses under it.

1 WITNESS BEDNARSKI: That -- That's correct, to
2 the best of my knowledge, yes.

3 MR. BRODSKY: Okay. And . . .

4 Isn't it true that that barge traffic causing
5 those additional bridge openings there will cause
6 adverse impacts on road traffic on Highway 4? Each
7 time that bridge opens, that's going to stop traffic.

8 WITNESS BEDNARSKI: I agree with your second
9 statement that, each time the bridge opens, the traffic
10 will stop, yes.

11 MR. BRODSKY: And do you agree that that'll
12 cause an adverse impact on road traffic?

13 WITNESS BEDNARSKI: I believe we've identified
14 a number of mitigation measures in the EIR/EIS to
15 address those, so I would not necessarily classify it
16 as adverse each time that the bridge opens.

17 MR. BRODSKY: Okay. I'd like to go to --
18 Well, okay. Let's -- Let's -- Let's work our way to
19 that.

20 So you identified seven barge landings --
21 Mr. Bednarski identified seven barge landings.

22 And isn't it true that access to those other
23 barge landings throughout the Delta will cause the
24 necessity for opening other drawbridges throughout the
25 Delta each -- each time a barge passes?

1 WITNESS BEDNARSKI: I -- I don't know the
2 exact configuration of each of those locations. But
3 where the barge would require that, then, yes, the
4 bridge would have to be opened.

5 So I -- I don't want to give a blanket
6 response that, in every single case, that -- that is
7 the case, but, you know, obviously, it would be
8 necessary if the barge is higher than the bridge
9 clearance.

10 MR. BRODSKY: Okay. All right. So, let's
11 take a look.

12 Your testimony says there'll be seven barge
13 landings. Actually, though, for impact purposes, I
14 think we should assume eight barge landings because
15 there's an eighth barge landing contemplated at Intake
16 Number 2?

17 And we can see that if we turn to SCDA-103.

18 (Exhibit displayed on screen.)

19 MR. BRODSKY: And if we scroll down to
20 Page 151.

21 (Exhibit displayed on screen.)

22 MR. BRODSKY: And at -- Underneath the bullet
23 points there, the first full paragraph says (reading):

24 "In addition to the seven barge
25 landing locations described above,

1 Reclamation and its partners have
2 indicated that an additional barge
3 landing location was identified by the
4 applicant during consultation and may be
5 built at the contractor's discretion on
6 the Sacramento River at NDD Intake
7 Number 2."

8 WITNESS BEDNARSKI: Yes. I believe, in that
9 particular location, that we have abandoned the
10 call-out for a specific barge landing to be built at
11 that location; that it has been identified that barges
12 can dock there next to the coffer dams once they're
13 constructed, but we have not provided a footprint for a
14 barge landing at that location.

15 MR. BRODSKY: Okay. Thank you for clarifying
16 that.

17 So, it is the case, though, that -- that
18 barges will travel up the Sacramento River to the
19 intake site and conduct activities without the
20 construction of a new barge landing.

21 WITNESS BEDNARSKI: That has been identified
22 as a possibility based on the Contractor's discretion.

23 MR. BRODSKY: So, for purposes of impacts,
24 it's something the Contractor can do if he wants to --
25 if he or she wants to do it.

1 For purposes of impacts, shouldn't we assume
2 that that will occur?

3 WITNESS BEDNARSKI: I --

4 MR. BRODSKY: Or may occur.

5 WITNESS BEDNARSKI: Yes. I -- I -- I don't
6 disagree with that.

7 MR. BRODSKY: Okay. So --

8 WITNESS BEDNARSKI: But it's not a barge
9 landing like the ones that would be constructed at the
10 other locations. I want to make sure that that's
11 clear.

12 MR. BRODSKY: So I understand it wouldn't be
13 the pile-driving construction at the landing but it
14 would be a barge arrival and departure site, a barge
15 use --

16 WITNESS BEDNARSKI: That --

17 MR. BRODSKY: -- site.

18 WITNESS BEDNARSKI: That's correct.
19 Potentially.

20 MR. BRODSKY: Potentially. Got it. Thank
21 you.

22 So if we could go to SCDA-72.

23 CO-HEARING OFFICER DODUC: And as that's being
24 pulled up, let me check with the court reporter.

25 Are you doing okay?

1 THE REPORTER: Um-hmm.

2 (Exhibit displayed on screen.)

3 CO-HEARING OFFICER DODUC: Let me check with
4 Mr. Brodsky.

5 You still estimate needing -- How much time do
6 you still anticipate reading?

7 MR. BRODSKY: I should finish in that time
8 that's on the clock there.

9 CO-HEARING OFFICER DODUC: Then if I may ask,
10 Miss Des Jardins, instead of starting with you and
11 breaking your cross-examination, might I suggest
12 Mr. Ferguson, who only estimated about half an hour of
13 cross-examination, to go after Mr. Brodsky.

14 Any objections to that?

15 MS. ANSLEY: No.

16 MS. DES JARDINS: Okay. That's okay.

17 CO-HEARING OFFICER DODUC: All right. Okay.
18 Let's plan on that, then.

19 MR. BRODSKY: Okay. Very good.

20 CO-HEARING OFFICER DODUC: We do have a hard
21 stop at 5:00 so we will stop then.

22 MR. BRODSKY: I'll be done before that, then.
23 Shall we continue?

24 CO-HEARING OFFICER DODUC: Yes, please.

25 MR. BRODSKY: Okay. So let me just -- Before

1 I point out what I was going to point out on the map,
2 if we could scroll down to that bottom of that page.

3 (Exhibit displayed on screen.)

4 MR. BRODSKY: So, we've got a picture of a
5 tugboat and a barge there. And there was some
6 discussion earlier, people asking how big are the
7 barges and how big are the tugboats.

8 And the -- the barge size identified in the
9 NMFS BiOp, which is -- We don't need to turn to it
10 right now, but it's SCDA-103 at Page 52.

11 The barge size identified was from 200 to
12 250 feet long by 50 feet wide. And the tugboat size
13 was identified as 65 to 100 feet long by 35 feet wide.
14 And that was at Page 154 of the NMFS BiOp.

15 And we believe that that is a proportionally
16 reasonably accurate representation.

17 MS. ANSLEY: I want to object to the amount of
18 testifying that's going on. He just read a number of
19 exhibits in evidence into the record and characterized
20 them.

21 If there's a question: One, I don't -- I
22 didn't catch exactly what the problem is with this
23 document that's on the screen.

24 But if there's a question, he's able to ask
25 the witness foundational questions and he's able, then,

1 to ask whatever question is the end point.

2 But what I've heard for the last half an hour
3 is a lot of characterizations and -- and references to
4 evidence.

5 MR. BRODSKY: Okay. I --

6 MS. ANSLEY: And then --

7 MR. BRODSKY: -- can go to each document --

8 CO-HEARING OFFICER DODUC: Hold on.

9 MR. BRODSKY: -- and read from it.

10 CO-HEARING OFFICER DODUC: Hold on.

11 MS. ANSLEY: That's --

12 CO-HEARING OFFICER DODUC: Miss Ansley, thank
13 you for pointing that out, but I -- but it's my
14 experience that all attorneys do that.

15 So, Mr. Brodsky --

16 CO-HEARING OFFICER MARCUS: Before we send out
17 that point can be taken.

18 CO-HEARING OFFICER DODUC: All attorneys
19 participating in this hearing so far.

20 Mr. Brodsky, if there is a specific question
21 relating to this figure, why don't you go ahead and ask
22 it.

23 MR. BRODSKY: Would you agree that that's a
24 reasonable -- not precisely accurate but a reasonable
25 characterization of a 250-foot-by-50-foot barge with a

1 65-foot-by-35-foot tugboat pushing it?

2 MS. ANSLEY: The photo.

3 MR. BRODSKY: Yes.

4 MS. ANSLEY: Would he -- The photo as a
5 reasonable -- Okay. On the bottom --

6 MR. BRODSKY: Rough characterization.

7 WITNESS BEDNARSKI: I'll agree to rough
8 characterization.

9 MR. BRODSKY: Okay. Now, back to what I was
10 getting at here. That was a -- an -- all an aside.

11 If we could -- We've been talking about
12 tugboats and barges every day. Everybody says, they
13 don't know, they don't know, so I just was trying to
14 get some information so people had something in mind.

15 If we could scroll up.

16 (Exhibit displayed on screen.)

17 MR. BRODSKY: Okay. So the dotted red lines
18 there are our characterization. We're representing to
19 you that those are barge routes.

20 And so, for example, there's a dotted red line
21 going up the Sacramento River and passing by Rio Vista
22 there, which would be a route that a barge would take
23 if it were to go up the Sacramento River to get to this
24 barge location at Intake Number 2.

25 CO-HEARING OFFICER DODUC: And --

1 MR. BRODSKY: Would you agree that that's a
2 reasonable assumption of the way a barge would travel?

3 MR. MIZELL: Objection: The witness has
4 already testified as to the extent of his knowledge of
5 the barge routes that will be used in the Project. He
6 did it when he was a part of Panel 1 and again in
7 response to the questions by Miss Suard just a few
8 minutes ago, or I guess a little bit longer than that.

9 So asked and answered.

10 CO-HEARING OFFICER DODUC: Is there a -- Is
11 there any additional insight you can share with respect
12 to this issue?

13 WITNESS BEDNARSKI: Just that the route that
14 was described, from our perspective, is one of probably
15 several potential routes that could be used. It
16 wouldn't be the only one.

17 CO-HEARING OFFICER DODUC: So could this be a
18 potential route?

19 WITNESS BEDNARSKI: It could be a potential
20 route that a Contractor would select. I -- I couldn't
21 tell you --

22 CO-HEARING OFFICER DODUC: But you don't know.

23 WITNESS BEDNARSKI: -- that would be the
24 route.

25 MR. BRODSKY: Okay. And if a -- if a barge

1 were to travel up the Sacramento River past Rio Vista,
2 the -- the Rio Vista Bridge would have to open to let
3 it through; is that correct? If you know.

4 WITNESS BEDNARSKI: I -- I don't know.

5 MR. BRODSKY: Okay. So I'd like to take a
6 look at SCDA-102.

7 (Exhibit displayed on screen.)

8 MR. BRODSKY: Page 19-232.

9 (Exhibit displayed on screen.)

10 MR. BRODSKY: And this is from the EIR, and
11 there at Lines 28 to 29 -- 27 to 29, it says (reading):

12 "There is 135 feet of open air
13 clearance at the Antioch . . . bridge and
14 144 feet at the Rio Vista Bridge, and
15 additional raising of drawbridges in the
16 study area would not be required," end
17 quote.

18 To your knowledge, isn't that just flatly
19 mistaken, to say that there's 144 feet of clearance at
20 the Rio Vista Bridge?

21 WITNESS BEDNARSKI: I don't have any knowledge
22 as to what the clearance is at that bridge.

23 MR. BRODSKY: Okay. And I'd like to go to --
24 If we could scroll down to the next page.

25 (Exhibit displayed on screen.)

1 MR. BRODSKY: Continue on to the last page of
2 this document.

3 (Exhibit displayed on screen.)

4 MR. BRODSKY: There.

5 This is BDCP -- BDCP Construction Traffic
6 Impact Analysis.

7 And at Line 11, it says (reading):

8 "The following were additional key
9 assumptions relevant to the traffic
10 operations analysis."

11 And then the bullet point at Line 17 says
12 (reading):

13 "Barge traffic will not require
14 additional raises of the SR 12 bridge."

15 Have -- Have I read that correctly?

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

17 MR. BRODSKY: And if that 144 feet of
18 clearance stated earlier is mistaken and raises of the
19 SR 12 bridge would be required, then this key
20 assumption would be wrong; would it not?

21 MR. MIZELL: Objection: The witness has
22 indicated that he doesn't have any knowledge of the
23 clearance -- open air clearance previously discussed by
24 Mr. Brodsky.

25 MR. BRODSKY: It's a hypothetical question of

1 an expert.

2 It's an: If that 144 feet is wrong and that
3 bridge would have to be raised to allow a barge to go
4 under it, then this key assumption would be wrong. If
5 you have an opinion.

6 CO-HEARING OFFICER DODUC: Overruled.

7 WITNESS BEDNARSKI: If the bridge has to be
8 raised to allow barge traffic, then it would appear
9 that that -- that bullet point is not correct.

10 MR. BRODSKY: Okay. Thank you.

11 All right. And then if we could go back to --
12 to SCDA-104.

13 (Exhibit displayed on screen.)

14 MR. BRODSKY: And this is for either of you
15 who -- or both who is most knowledgeable.

16 This is but one of the pages of the mapbook
17 that's depicting one of the larger muck dumps and
18 staging areas on Bouldin Island.

19 Do you recognize that as being a correct
20 characterization of this document?

21 WITNESS BEDNARSKI: Yes. That's called an
22 RTM, or reusable tunnel material storage area, yes.

23 MR. BRODSKY: Okay. And then I see there
24 Highway 12 and there's a new cloverleaf truck turnout
25 being proposed for construction to access that

1 construction area.

2 Do I understand that correctly?

3 WITNESS BEDNARSKI: That's correct. If
4 that's -- If that cloverleaf is necessary, then, yes,
5 we're clearing a footprint for that for the
6 Final EIR/EIS.

7 MR. BRODSKY: Okay. And that -- So trucks
8 would then access that area from Highway 12.

9 WITNESS BEDNARSKI: Yes.

10 MR. BRODSKY: Okay. And so those -- those --
11 Some of those trucks accessing that area would cross
12 over that drawbridge that we see to the left of the
13 page there going over the Mokelumne River.

14 WITNESS BEDNARSKI: I -- It would depend on
15 where they're bringing their loads from.

16 It could be from the -- from off of I-5, which
17 is to the right of that drawing. I -- I don't have
18 enough information to be able to confirm that your
19 question is correct.

20 MR. BRODSKY: Okay. Okay. I'd like to turn
21 now to another subject, the pile-driving noise at the
22 intakes which we touched on awhile ago.

23 And so if we could turfs to SCDA-67.

24 (Exhibit displayed on screen.)

25 MR. BRODSKY: So this is a depiction of the

1 location of Intake Number 2 that we produced there.

2 And our Acoustical Engineer use an assumption
3 of 115 dBA at 50 feet for the impact pile driving that
4 was described in the documents. Your EIR uses an
5 assumption of 102 decibels, so there's a disagreement
6 among experts there.

7 But my question is that we have provided
8 engineering testimony, and we even provided a bid to
9 you, which I'll show you, for an alternative
10 construction method that would involve no impact pile
11 driving called CFA piles.

12 And there is a question coming.

13 In the EIR, it says you can -- you're going to
14 consider these CFA piles but you need to do more
15 geotechnical exploration before you know if that's
16 feasible.

17 My question is: What is it you would find in
18 this geotechnical exploration that would rule out these
19 CFA piles?

20 WITNESS BEDNARSKI: I assume that you're
21 referring to these piles that are the concrete that's
22 cast into drilled holes.

23 Is that what you're referring to? I think I
24 saw some of your direct or your comments that you made
25 on the -- on the Project, and it had to do with the

1 technique where you would drill a hole and then fill
2 that with concrete so as to avoid a -- a . . . a
3 hammered pile; is that --

4 MR. BRODSKY: Right. That -- that is correct.

5 WITNESS BUCHHOLZ: Yes.

6 MR. BRODSKY: We -- We got you a bid from
7 Malcolm Drilling here --

8 WITNESS BEDNARSKI: Right.

9 MR. BRODSKY: -- for -- I believe it was \$250
10 a lineal foot.

11 And he's describing it as -- (reading):

12 "To address community concerns about
13 noise and to achieve an efficient, highly
14 productive and vibration-free
15 installation, we recommend the use of CFA
16 piles rather than driven piles. CFA
17 piles are also commonly called auger
18 cast, augered cast in place piles, ACIP,
19 or auger pressure-driven piles."

20 That's -- That's the type of pile.

21 And is there -- In other words, why can't we
22 make a commitment just to use those now and do away
23 with this whole issue?

24 WITNESS BEDNARSKI: We would like to make that
25 commitment, but at the risk of having that commitment

1 now at this early stage of -- of conceptual design
2 being incorrect and then having to come back and having
3 to use driven piles, we felt the most appropriate
4 methodology to use now was to disclose that, worst
5 case, we would use driven piles.

6 But we have identified in numerous places in
7 the Final EIR/EIS that it is our hope that we can use
8 other types of methodologies, like the ones that you
9 have mentioned there, and that we'll be able to reach
10 that conclusion early on in the stages of geotechnical
11 exploration in the preliminary design. And that would
12 be our hope that we could use these drill piles or
13 perhaps press-in type piles or vibratory piles as a way
14 to avoid the driven piles.

15 Those are our approach of -- of last course.

16 MR. BRODSKY: So -- So the question from my
17 Engineer was: Well, we can't think of anything they
18 can find in geotechnical exploration that would make
19 this type of pile infeasible.

20 So what I'm asking you is: What is it -- You
21 would go in geotechnically and you would explore, and
22 you'd find clay, or you'd find rock.

23 Or what is it you would find that would say:
24 Okay. These -- These auger-cast piles aren't practical
25 to use?

1 WITNESS BEDNARSKI: Yeah. The -- The
2 expertise for the geotechnical investigations is not
3 mine. We have other people on our team that would be
4 able to answer that question specifically.

5 But I could say we had desires to do the full
6 ex -- exploration that probably would have ruled out
7 the use of driven piles early on, but we could not get
8 that work done.

9 And so in order to -- to keep our options
10 open, if there's a worst-case situation, we have
11 developed the specifications in the EIR/EIS to cover
12 that worst-case impact with the expectation that it
13 will in most cases be less than that.

14 We're optimistic, but we just felt this was
15 the appropriate way to go.

16 MR. BRODSKY: Why weren't you able to do the
17 full exploration?

18 WITNESS BEDNARSKI: I think there were a
19 variety of reasons that people are probably familiar
20 with here associated with this Project.

21 In some areas, we could not get access to
22 properties to do the explorations that we had needed.

23 MR. BRODSKY: Is -- Is there a way that you
24 can get to this conclusion before -- before the end
25 of -- We're going to ask for a permanent commit --

1 condition that this pile driving not be aloud and that
2 you'd be required to use these kind of piles.

3 Is there a way you can become comfortable with
4 that before the end of these hearings?

5 WITNESS BEDNARSKI: I -- I don't expect that
6 that will happen. We are just now issuing the RFP for
7 the geotechnical investigations. That is one of our
8 very earliest activities, is to get that work underway
9 so that we can make those determinations.

10 MR. BRODSKY: But you do agree that the pile
11 driving is a negative impact and that it's desirable to
12 avoid that by using alternative methods.

13 WITNESS BEDNARSKI: I agree that it has the
14 impacts that you -- you discuss here as far as it's
15 noisy, it causes vibration, and I believe the DWR would
16 look to the opportunity to use another methodology.

17 MR. BRODSKY: Okay. Let me -- Thank you very
18 much for that.

19 Let me -- Let me go back to a couple other
20 questions that I skipped over, miscellaneous here.

21 And there was questions asked earlier about
22 microcystis. I didn't really fully understand a clear
23 question and answer so I'd like to ask a clear question
24 and answer, which is:

25 Isn't it true that operations of the Project

1 will cause increased levels of microcystis in backwater
2 areas of the Delta with low circulation, such as
3 Discovery Bay, and this will be a significant adverse
4 long-term impact on recreation, including swimming?

5 MR. MIZELL: Objection: This is a topic that
6 was properly before Panel 2 as to operations as well as
7 the water quality specialists and microcystis experts
8 we had on that panel.

9 Secondly, the question, again, assumes facts
10 not in evidence.

11 And I'd like to raise a standing objection to
12 the way in which these questions are being
13 characterized, asserting a number of facts that have
14 never been presented.

15 CO-HEARING OFFICER DODUC: I will sustain your
16 objection with respect to the details that were covered
17 in Panel 2.

18 But I caught the very last segment of
19 Mr. Brodsky's question which tagged on the issue of
20 impact to recreation.

21 I believe Mr. Rischbieter had already
22 addressed it earlier, but let's go ahead and answer
23 that again in terms of your analysis and your opinion,
24 did the formation of harmful algal blooms --

25 MR. BRODSKY: Microcystis specifically.

1 CO-HEARING OFFICER DODUC: -- or microcystis
2 impact recreation?

3 WITNESS RISCHBIETER: I recall the earlier
4 question referred to property values.

5 CO-HEARING OFFICER DODUC: Ah.

6 WITNESS RISCHBIETER: If this one -- I -- I do
7 believe -- I do recall answering that, in waters where
8 microcystis has occurred in recent years, that it has
9 interfered with existing recreational activities at a
10 number of sites around the state.

11 MR. BRODSKY: You know, I -- I did -- I tried
12 to ask this question about microcystis impact on
13 recreation in Part 1 and you disallowed it and said it
14 had to go in Part 2. So that's why I'm asking it now.

15 CO-HEARING OFFICER DODUC: I'm not saying you
16 can answer.

17 MR. BRODSKY: Okay.

18 CO-HEARING OFFICER DODUC: In fact, I actually
19 asked him to answer it.

20 MR. BRODSKY: So what I -- Ju -- Just to
21 clarify:

22 Will this Project, will California WaterFix,
23 make the microcystis problem as it affects recreation
24 in the Delta worse?

25 In your opinion, if you have one.

1 WITNESS RISCHBIETER: My opinion is no. And
2 my opinion was based on the testimony of -- given a
3 couple weeks ago on -- by Panel 2 that discussed water
4 quality and microcystis.

5 And what I took away from there was, no, that
6 it was not likely to do that.

7 MR. BRODSKY: Okay. Thank you.

8 Okay. Then I'd like to go, Mr. Bednarski,
9 to -- And I know this has been covered but I didn't get
10 a clear answer.

11 Your statement that recreational boat traffic
12 at the intake sites was low.

13 That was in your testimony at Page 4 on Line 6
14 to 7.

15 WITNESS BEDNARSKI: Yes, that's what my
16 testimony states.

17 MR. BRODSKY: And to our -- Our experience is
18 completely different than that, that is -- that is a
19 bottleneck; it's a critical passage for recreational
20 boating.

21 So what I'd like to ask you is: What do you
22 base your statement that recreational boating traffic
23 at the location of the intakes is low? What do you
24 base that on?

25 WITNESS BEDNARSKI: I -- I believe we answered

1 this a day or two ago.

2 But I -- I refer to this section, SWRCB-102,
3 the document, and then the -- the section that's --
4 that's cited here.

5 I think there's a quotation in there that
6 states that the boat traffic is low in that area and so
7 I refer -- I, you know, refer to that statement.

8 MR. BRODSKY: Right. And so I read that in
9 the EIR. And I just found on bald statement in the EIR
10 without reference to any study, or data, or
11 information.

12 Are you aware of any underlying data or
13 evidence to back up that conclusion in the EIR that --
14 that boat traffic is low at that area?

15 WITNESS BEDNARSKI: I know that some data has
16 been collected in the past. I don't know if it's part
17 of the record.

18 But, again, I refer to, you know, this portion
19 of the EIR/EIS for my conclusion there that it was low.

20 MR. BRODSKY: Is there any way we can identify
21 where this source of infor -- This is a conclusion in
22 the EIR. It's being stated by experts. It's
23 important.

24 Is there any way we can identify what DWR's
25 source of that conclusion is?

1 WITNESS RISCHBIETER: If I may, I answered on
2 Monday a very similar question.

3 I believe it was in 2010, give or take a year,
4 a boat traffic study was undertaken during the
5 preparation of the EIR for the BDCP.

6 DWR has a memorandum from a consultant that
7 describes the results of a boat traffic study which was
8 focused on roughly 10 discrete locations around the
9 Delta, including in the vicinity of the intakes on the
10 Sacramento River.

11 That study was quantitative but characterized
12 the results in terms of low, medium and high traffic.
13 So that is where the -- this conclusion came from in
14 the EIR.

15 And it -- That document resides in the
16 Administrative Record for the BDCP, but it is not part
17 of the EIR.

18 MR. BRODSKY: Is there a way we can get access
19 to that? Is there a way you could identify it for us
20 in a way that we could look at it? Other than looking
21 through 200,000 pages of BDCP.

22 Would -- Would DWR be willing to do that, to
23 produce that document? Or a citation?

24 Anybody.

25 CO-HEARING OFFICER DODUC: Does anyone know

1 where it is off the top of your head?

2 WITNESS BEDNARSKI: I don't know where it
3 resides.

4 MR. MIZELL: It's in the Administrative Record
5 to the Final EIR/EIS.

6 CO-HEARING OFFICER DODUC: Is there a
7 terminology Mr. Brodsky might use to do the search?

8 MR. MIZELL: I can certainly ask the EIR/EIS
9 Team if there's an easy way to locate it.

10 CO-HEARING OFFICER DODUC: Thank you.

11 MR. BRODSKY: Thank you very much.

12 That concludes my questions. Thank you.

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

15 You still okay, Candace?

16 THE REPORTER: Um-hmm.

17 CO-HEARING OFFICER DODUC: All right.

18 Mr. Ferguson.

19 MR. FERGUSON: Mr. Brodsky covered some of my
20 questions, so I hope to shorten things up.

21 CO-HEARING OFFICER DODUC: Excellent.

22 MR. FERGUSON: Good afternoon. Aaron Ferguson
23 on behalf of the County of Sacramento.

24 I'm going to ask Mr. Rischbieter and
25 Mr. Bednarski a few questions, if I might.

1 CROSS-EXAMINATION BY

2 MR. FERGUSON: So, Mr. Rischbieter, your
3 education and experience is in fisheries biology; is
4 that correct?

5 WITNESS RISCHBIETER: I do have experience in
6 fisheries, yes.

7 MR. FERGUSON: Okay. And in your -- your work
8 experience with respect to recreation has dealt
9 primarily with the State Water Project reservoirs; is
10 that correct?

11 WITNESS RISCHBIETER: In large part, yes,
12 through my career at DWR.

13 It's -- Also it's involved recreation
14 facilities outside the SWP engagement.

15 MR. FERGUSON: Okay. Is it fair to say that
16 experience is primarily focused -- been focused on
17 water-related recreation?

18 Or water-dependent activities?

19 WITNESS RISCHBIETER: Yes, I think that would
20 be -- that would be right, recognizing that some
21 recreation activities are directly water-dependent and
22 some of them are enhanced by the proximity of water.

23 MR. FERGUSON: Okay. So do you have any
24 qualifications that you -- you could point out that
25 would qualify you to give expert opinions with respect

1 to land-based recreation, for example, at wildlife
2 preserves?

3 WITNESS RISCHBIETER: I'm familiar with many
4 properties that are classified as State wildlife areas
5 and Wildlife Refuges. I'm familiar with activities
6 that go on at what you call land-based --

7 MR. FERGUSON: Okay.

8 WITNESS RISCHBIETER: -- focused sites like
9 that.

10 MR. FERGUSON: And are these sites that were
11 at some of these reservoirs where you've done work
12 or . . .

13 WITNESS RISCHBIETER: There are State
14 recreation areas and State wildlife areas associated
15 with several of the facilities on the State Water
16 Project from Lake Oroville to Lake Perris.

17 MR. FERGUSON: Okay. So, Mr. Rischbieter, on
18 Page 2 of your testimony --

19 If we could bring that up.

20 (Exhibit displayed on screen.)

21 MR. FERGUSON: -- at Line -- at Line 2 --
22 well, Line 1 and 2, you state (reading):

23 "My testimony demonstrates that
24 constructing and operating CWF facilities
25 associated with the change in the point

1 of diversion for CWF will reasonably
2 protect recreation."

3 Do you see that language?

4 WITNESS RISCHBIETER: Yes, I do.

5 MR. FERGUSON: What do you mean by the phrase
6 "CWF will reasonably protect recreation"?

7 WITNESS RISCHBIETER: The actual phrase is
8 (reading):

9 ". . . Operating CWF facilities
10 associated with the change in point of
11 diversion of CWF will reasonably protect
12 recreation."

13 MR. FERGUSON: Okay. Fair enough.

14 What do you mean by the phrase "will
15 reasonably protect recreation"?

16 WITNESS RISCHBIETER: It's my understanding
17 that that is what the Board is -- will be evaluating,
18 is whether -- in this Part 2 of the hearing, is whether
19 Cal WaterFix H3+ as proposed will be reasonably
20 protective of recreation and fish and wildlife.

21 MR. FERGUSON: Okay. Miss Gaylon, would you
22 mind bringing up the Hearing Notice for this proceeding
23 on -- on Page 12. It's the October 30th Hearing
24 Notice. It's not going to be under the exhibits. It's
25 going to be under the main page.

1 (Exhibit displayed on screen.)

2 MR. FERGUSON: And go to Page 12.

3 (Exhibit displayed on screen.)

4 CO-HEARING OFFICER DODUC: It's been a long
5 time since I saw this.

6 MR. FERGUSON: So I'd -- I'd just like to
7 focus your attention -- that's good, thank you -- on 3,
8 3a and 3b where the question -- These are the key
9 hearing issues.

10 Are you familiar with these?

11 WITNESS RISCHBIETER: I recall --

12 MR. FERGUSON: For Part 2.

13 WITNESS RISCHBIETER: I recall skimming this
14 sometime ago so --

15 MR. FERGUSON: Okay. Okay. I'm just
16 trying -- I want to get some clarification from you on
17 your use of "reasonably protect" versus how this is
18 drafted here.

19 So you see in Number 3, for example, the
20 question is (reading):

21 "Will the changes proposed in the
22 Petition unreasonably affect fish and
23 wildlife or recreational uses of water,
24 or other public trust resources?"

25 Do you see that?

1 WITNESS RISCHBIETER: Yes.

2 MR. FERGUSON: So when we look at the
3 question, will the changes unreasonably affect
4 recreational uses of water, in your mind, is that the
5 same standard as whether the Project will reasonably
6 protect recreation?

7 WITNESS RISCHBIETER: Yes. I would agree
8 that, in my case, that I used the word "reasonably" as
9 an antonym for "reasonable."

10 MR. FERGUSON: Okay. So your testimony, you
11 had in your mind your -- when you evaluate the impacts,
12 you -- these standards are synonymous --

13 WITNESS RISCHBIETER: Yes.

14 MR. FERGUSON: -- with the ones that you used.

15 WITNESS RISCHBIETER: Yes.

16 MR. FERGUSON: In --

17 WITNESS RISCHBIETER: I don't see any conflict
18 in there.

19 MR. FERGUSON: On -- Okay. Thank you.

20 On so on Page 2, Lines 7 and 8, of your
21 testimony --

22 (Exhibit displayed on screen.)

23 MR. FERGUSON: -- you indicate that you, in
24 addition to a number of other documents there, relied
25 on additional studies of Delta and upstream recreation.

1 Have you identified those studies in your
2 testimony?

3 Or are they exhibits that DWR has submitted
4 or . . .

5 WITNESS RISCHBIETER: I -- I meant that,
6 generally, there's . . .

7 My Statement of Qualifications indicates that
8 I've done some recreation surveys in the past in the
9 Delta. I was trying to indicate that I have
10 familiarity with the types of recreation activities
11 that occurred in the Delta.

12 So those -- That sort of knowledge informed
13 my -- some of my premises and my conclusions.

14 MR. FERGUSON: Okay. So you probably had in
15 mind that -- the work that you've done drafting certain
16 studies?

17 WITNESS RISCHBIETER: Yes. Conducting surveys
18 of recreation as to various locations.

19 MR. FERGUSON: Okay. So, in your testimony,
20 you evaluate the potential operational effects of the
21 WaterFix on recreational opportunities in upstream
22 reservoirs; correct?

23 WITNESS RISCHBIETER: I included the analysis
24 of the effects on the operation -- the -- the -- the
25 effects of Cal WaterFix H3+ impacts on the operation

1 compared to the No-Action Alternative, as testified to
2 by the modelers, both in reservoirs upstream and the --
3 the rivers downstream, some rivers.

4 MR. FERGUSON: Okay. So on -- On Page 7 of
5 your testimony, at Lines --

6 (Exhibit displayed on screen.)

7 MR. FERGUSON: -- 10 and 11, you state that
8 (reading):

9 "Regionally, CWF H3+ operation will
10 not cause a significant change in
11 reservoir or lake elevations."

12 Do you see that language.

13 WITNESS RISCHBIETER: Yes. I believe that
14 came from the EIR/EIS.

15 MR. FERGUSON: So when -- On -- On your
16 testimony at Page 4 on Lines 22 through 24, you state
17 that (reading):

18 "Ultimately CWF H3+" -- excuse me --
19 ". . . end-of-September storage levels
20 were consistent with the NAA."

21 Correct?

22 WITNESS RISCHBIETER: Both end of May and end
23 of September, yes.

24 MR. FERGUSON: Okay. So when you were making
25 this statement on Page 7 about operation not causing a

1 significant change, were you relying on this sort of
2 modeling output that you describe on Page 4?

3 WITNESS RISCHBIETER: Yes. I've looked at the
4 figures that were made part of the testimony of the
5 modelers.

6 MR. FERGUSON: Okay. So, for your assessment
7 of impacts on recreational opportunities on upstream
8 reservoirs, are you relying solely on the analysis in
9 Chapter 15 in the Final EIR?

10 In conjunction with the models and the
11 modeling data.

12 MS. ANSLEY: Objection.

13 And he also referenced in the beginning his
14 additional experience in the Delta and whatever backs
15 up his Statement of Qualifications.

16 CO-HEARING OFFICER DODUC: I'm sorry. So your
17 objection is?

18 MS. ANSLEY: Misstates --

19 CO-HEARING OFFICER DODUC: He obviously --

20 MS. ANSLEY: -- his testimony.

21 CO-HEARING OFFICER DODUC: -- answered that
22 question.

23 MS. ANSLEY: -- and is asking --

24 Excuse me?

25 Maybe I got that wrong. Misstates his

1 testimony and is vague and ambiguous.

2 CO-HEARING OFFICER DODUC: Mr. Ferguson.

3 MR. FERGUSON: I wasn't trying to restate his
4 testimony. I'm just asking what he's relied on, but I
5 can -- Fair enough. I can drop the word "solely."

6 For your assessment of impacts on upstream
7 reservoirs, are you relying on the analysis in
8 Chapter 15 of the -- the EIR?

9 WITNESS RISCHBIETER: Essentially, yes. There
10 is the Chapter 15. The impacts that the reservoirs are
11 analyzed in terms of thresholds and significance
12 and . . . Yeah.

13 With the case of the upstream reservoirs that
14 are the subject of my testimony, Folsom, Shasta,
15 Oroville, that is true.

16 MR. FERGUSON: And Chapter 15 contains that --
17 these reservoir elevation thresholds, correct, which
18 signify a level at which certain recreational
19 opportunities are -- would be compromised or reduced;
20 correct?

21 WITNESS RISCHBIETER: Yeah. That -- That is a
22 fair summary, in large part. It is availability of
23 boat ramps and boat access to the reservoir surface.

24 MR. FERGUSON: Okay. So are you familiar with
25 the elevation threshold at Folsom Lake of which these

1 opportunities are impacted?

2 WITNESS RISCHBIETER: Not specifically. But
3 it is listed in the Chapter 15 of the EIR/EIS as -- to
4 define thresholds of significance.

5 MR. FERGUSON: Okay. Can we actually look at
6 Chapter 15 and then Table 15-9, which is on Page 15 --
7 It's on -- Excuse me. It's on Page 15-59.

8 (Exhibit displayed on screen.)

9 MR. FERGUSON: I got the page wrong. Sorry.
10 Oh, it might be the next page. Excuse me.

11 (Exhibit displayed on screen.)

12 MR. FERGUSON: There we go.

13 So Table 15-9. Do you see that table?

14 WITNESS RISCHBIETER: Yes.

15 MR. FERGUSON: And you see the threshold there
16 for Folsom Lake at 405 feet being the --

17 WITNESS RISCHBIETER: When the marine -- When
18 the marina closes, yes.

19 MR. FERGUSON: Okay. Great.

20 So in -- in assessing whether a change in
21 reservoir elevations would cause a significant impact
22 on recreation, are you relying on the threshold from
23 the EIR that essentially specifies (reading):

24 ". . . Effects on water-dependent . . .
25 recreation activities . . . are

1 considered substantial . . . if there
2 would be a 10 percent or greater . . .
3 reduction in the frequency of the
4 facility availability."

5 WITNESS RISCHBIETER: Yeah. I was relying on
6 the CEQA conclusion in the EIR, as well as some of the
7 modeling results that showed the -- the difference in
8 future -- under future operations being similar to
9 No-Action Alternative; that those differences in
10 elevation were related to climate change and . . .
11 Yeah.

12 So, yes, I -- I relied on both . . . both
13 sources in forming my conclusion.

14 MR. FERGUSON: Okay. So you've -- Well, okay.
15 Let me start by rephrasing it.

16 So for the CWF H3+ modeling results on
17 reservoir elevations, you've looked at those results
18 independently in preparing your testimony?

19 WITNESS RISCHBIETER: At one time or another,
20 I saw those outputs, and I believe that they are
21 consistent with the EIR.

22 MR. FERGUSON: Okay. Okay. So, in your
23 opinion, is a 10 percent reduction in the frequency of
24 recreational facility availability appropriate for
25 analyzing whether this -- the change in point of

1 diversion that's proposed will unreasonably affect
2 recreational uses of water?

3 WITNESS RISCHBIETER: Can we look at the place
4 in the document again where it states that the
5 threshold of significance was 10 percent.

6 MR. FERGUSON: Sure. It's at Page 15-63, the
7 first bullet.

8 (Exhibit displayed on screen.)

9 MR. FERGUSON: Next page.

10 (Exhibit displayed on screen.)

11 MR. FERGUSON: There we go, right at the top.

12 It starts on Line 2 (reading):

13 "For the purposes of this
14 analysis . . ."

15 WITNESS RISCHBIETER: Right. Okay.

16 MR. FERGUSON: Let me repeat the question.

17 WITNESS RISCHBIETER: I thought it was a
18 reason -- a reason -- a reasonable approach in the EIR
19 that represents, I believe, an 82-year period of
20 hydrologic record which was the basis for the modeling.

21 And the analysis is for the number of years
22 under various operational scenarios in which reservoir
23 levels are affected beyond that threshold level,
24 so . . .

25 MR. FERGUSON: Okay. Well, this is the

1 standard used in the EIR, so I'm asking you to maybe
2 kind of step back and think about the key hearing issue
3 as it relates to recreation and ask:

4 Is a 10 percent reduction in recreational
5 facility availability an appropriate threshold for
6 thinking about unreasonable effects on recreational
7 uses of water? Which is one of the questions for this
8 hearing. In your opinion, is that a reasonable
9 threshold?

10 WITNESS RISCHBIETER: In my opinion, it is
11 reasonable, and I believe it's not atypical to use that
12 value.

13 MR. FERGUSON: What do you base that opinion
14 on?

15 WITNESS RISCHBIETER: Other EIRs, other
16 studies of -- of . . .

17 MR. FERGUSON: That you're familiar with or
18 that you've helped draft or . . .

19 WITNESS RISCHBIETER: That I've read in the
20 past.

21 MR. FERGUSON: Okay. So can we go to Page 7
22 of your testimony --

23 (Exhibit displayed on screen.)

24 MR. FERGUSON: -- Lines 11 through 14.

25 You see that, where you stated (reading):

1 "When . . . compared to existing
2 conditions, there is a change in SWP/CVP
3 reservoir elevations but this will not
4 result in substantial reductions in
5 water-based recreation opportunities and
6 experiences at North-of-Delta reservoirs
7 attributable to CWF H3+."

8 Then you state (reading):

9 " This is because, in most cases,
10 these changes in SWP/CVP reservoir
11 elevations are . . . attributable to sea
12 level rise and climate change."

13 You see that language?

14 WITNESS RISCHBIETER: Yes, I see that, and
15 that's what I was trying to recall without referring to
16 it directly in my answer to you a moment ago.

17 MR. FERGUSON: Okay. So can we go back to
18 Chapter 15, please.

19 (Exhibit displayed on screen.)

20 MR. FERGUSON: And then Page 478.

21 (Exhibit displayed on screen.)

22 MR. FERGUSON: I think it's the next page,
23 Table 15-22.

24 (Exhibit displayed on screen.)

25 MR. FERGUSON: There we go.

1 Are you familiar with this table,

2 Mr. Rischbieter?

3 WITNESS RISCHBIETER: I've seen it before,

4 yes.

5 MR. FERGUSON: Okay. So for the -- for . . .

6 This is a table -- correct? -- that's

7 summarizing the years of reduced reservoir recreation

8 opportunities for Alternative 4A; is that correct?

9 WITNESS RISCHBIETER: It looks like that's how
10 it's entitled, yes.

11 MR. FERGUSON: Okay. So in Table 15-22, under

12 "Existing Conditions" for Folsom, the recreation

13 threshold at Folsom Lake is exceeded 22 out of 82

14 years, is that correct, in the existing condition?

15 WITNESS RISCHBIETER: I see that as the first

16 line under the headings in the table, yes.

17 MR. FERGUSON: The first column there? Yeah,

18 the first line. Excuse me.

19 WITNESS RISCHBIETER: First line and first

20 column.

21 MR. FERGUSON: Okay. So under Alternative 4A,

22 early long-term, do you see that line, the next row

23 down?

24 WITNESS RISCHBIETER: Yes. The --

25 MR. FERGUSON: Okay. The recreation threshold

1 is exceeded 36 times; correct?

2 WITNESS RISCHBIETER: That's what's modeled
3 and estimated there, yes.

4 MR. FERGUSON: So when we -- when we compare
5 that to the existing condition, there's 14 additional
6 instances with the Project; correct?

7 WITNESS RISCHBIETER: Compared to the existing
8 condition, that is the difference.

9 The previous line comparing it to the
10 No-Action Alternative, the difference is three.

11 MR. FERGUSON: Okay. So, in -- in your
12 testimony, you -- you -- you did indicate on Page 7
13 that, in most cases, the changes in elevations are
14 primarily attributable to sea level rise and climate
15 change; correct?

16 WITNESS RISCHBIETER: Yes. That was my
17 take-away from my interactions with the modelers.

18 MR. FERGUSON: Okay. So you don't have a --
19 You haven't evaluated this data independently to know
20 whether and in what case -- know whether -- in certain
21 circumstances whether it's climate change or whether
22 it's the Project; is that correct?

23 WITNESS RISCHBIETER: I have not independently
24 evaluated the modeling results, but I've evaluated the
25 results that are reported in the table that I

1 understand to be the output of the modelers.

2 MR. FERGUSON: Okay. So you -- You can't tell
3 us that these additional 14 instances are attributable
4 to climate change or the Project; is that correct?

5 WITNESS RISCHBIETER: I can tell you that that
6 is my understanding based on the answers I've received
7 from the modelers explaining it.

8 And it may be listed, and it may be stated in
9 the document in Chapter 15. I am not sure. I would
10 have to go through a reading of the book or search for
11 that term.

12 MR. FERGUSON: All right. In -- In your
13 opinion, are there ways you can determine whether it's
14 the Project triggering these threshold violations or
15 whether it's climate change?

16 WITNESS RISCHBIETER: My -- My comparison is
17 between the Operational Scenario H3+ and the No-Action
18 Alternative.

19 MR. FERGUSON: Then, in your mind --

20 WITNESS RISCHBIETER: The No -- The No-Action
21 Alternative has -- does have a significant difference
22 between the existing conditions in this -- as reported
23 in this table.

24 MR. FERGUSON: So you don't see a way to
25 potentially separate out climate change from Project

1 impacts in an analysis like this.

2 MS. ANSLEY: Objection: Asked and answered.

3 He just said he compared Alternative 4A -- was
4 just asked that -- Alternative 4A and the No-Action
5 Alternative.

6 Now, maybe he did go on, if you would like
7 more details in that comparison, but that was his
8 answer.

9 CO-HEARING OFFICER DODUC: If you were asked
10 to independently evaluate the effect of climate
11 change . . . without talking to the operators and the
12 modelers, I should say, would you have any idea of what
13 to do --

14 WITNESS RISCHBIETER: No. I'm not qualified
15 to do that.

16 CO-HEARING OFFICER DODUC: Okay.

17 MR. FERGUSON: Okay. Thanks for shortcutting
18 it.

19 CO-HEARING OFFICER DODUC: That's my job,
20 Mr. Ferguson.

21 MR. FERGUSON: That should be my job,
22 but . . .

23 Well, let me -- let me move on.

24 So, in your testimony, you acknowledge that
25 construction of CWF will have significant and

1 unavoidable effects on recreation sites in the Delta;
2 correct?

3 WITNESS RISCHBIETER: Per my testimony, which
4 is based on the conclusions of the EIR/EIS, there are
5 impacts of construction of CWF H3+, and there are
6 mitigation measures to try to avoid and reduce those
7 impacts.

8 But the conservative conclusion was, because
9 of the extent, the number of locations of those impacts
10 is likely not possible to fully mitigate them and
11 that's why the CEQA conclusion was -- It was concluded
12 that they were significant and unavoidable.

13 MR. FERGUSON: Okay.

14 WITNESS RISCHBIETER: To the --

15 MR. FERGUSON: A couple of these cites are --
16 are the Consumnes River Preserve and Stone Lakes
17 Refuge; correct?

18 WITNESS RISCHBIETER: Consumnes River Preserve
19 is one of the sites that has direct impacts, I believe.

20 Stone Lakes is one of the six where there are
21 indirect impacts, as I recall the summary in the EIR
22 for Alternative 4A.

23 MR. FERGUSON: The conclusion is that the
24 impacts are significant and unavoidable for both;
25 right?

1 If you need to -- At -- Your testimony at
2 Lines -- at Page 5, Lines 27 and 28, say that there are
3 significant and unavoidable effects on recreation
4 resources at eight sites.

5 WITNESS RISCHBIETER: Okay. Yes. Thank you.

6 MR. FERGUSON: And you refer to Table 15-15
7 so . . .

8 WITNESS RISCHBIETER: Right.

9 MR. FERGUSON: Correct?

10 WITNESS RISCHBIETER: Yes. Thank you.

11 MR. FERGUSON: So the EIR states that the
12 construction and geotechnical exploration may occur
13 year-round and last from 2 1/2 to 13 1/2 years at
14 certain sites near these recreation sites; correct?

15 WITNESS RISCHBIETER: That -- I believe that's
16 a passage in -- from the EIR -- Chapter 15 of the EIR
17 of the 13 1/2 years, yes, as I was corrected earlier.
18 Thank you.

19 MR. FERGUSON: Okay. Yeah, that's -- Excuse
20 me. You did go over a little bit of this with
21 Mr. Brodsky.

22 And, then, elsewhere, I think you also went
23 over the passage where it indicates that construction
24 of the Alternative 4A intakes from related facilities
25 could result in permanent and long-term impacts on

1 recreational opportunities; correct?

2 MS. ANSLEY: Is -- Is that a question?

3 MR. FERGUSON: Do you recall that statement
4 from the EIR?

5 WITNESS RISCHBIETER: I mean, yes. We --

6 MR. FERGUSON: Okay.

7 WITNESS RISCHBIETER: -- went through it
8 earlier and I believe parsed the words a little bit.

9 MR. FERGUSON: So, are you familiar with --
10 Excuse me.

11 Yet in your -- in your testimony --
12 correct? -- you say that the effects on these various
13 recreational facilities are only for construction and,
14 therefore, temporary; correct?

15 WITNESS RISCHBIETER: Yes, I did make that
16 statement.

17 MR. FERGUSON: Okay.

18 WITNESS RISCHBIETER: And I believe it occurs
19 also in the -- Chapter 15 of the EIR.

20 MR. FERGUSON: Okay. Are you familiar with
21 what the EIR calls "reasonable tunnel material"?

22 WITNESS RISCHBIETER: To some degree, yes.

23 MR. FERGUSON: Okay. And do you know whether
24 the EIR, you know, classifies the -- the excavation and
25 piling of this material as temporary or permanent?

1 WITNESS RISCHBIETER: Mr. Bednarski may be
2 able to elaborate a bit, but I do recall reading that
3 there are some areas where it is temporary.

4 MR. FERGUSON: Are there some areas where it
5 might be permanent or considered a permanent impact?

6 WITNESS BEDNARSKI: Yes. I believe the way
7 that we characterized the disposition in the EIR/EIS is
8 that that is the -- the permanent location for the --
9 you know, the depositing of this material.

10 MR. FERGUSON: Okay. Well, with that
11 knowledge, Mr. Rischbieter, would you still contend
12 that these -- all the construction impacts are
13 temporary as it relates to the impacts that -- Excuse
14 me. Let me strike that.

15 With Mr. Bednarski's clarification, would you
16 still agree with your statement that the impacts to
17 recreational facilities associated with the
18 construction in the area of the intakes and the
19 tunnels, for example, with Consumnes and Stone Lakes,
20 would you still agree with your statement that they're
21 all temporary impacts?

22 WITNESS BEDNARSKI: Maybe I could interject
23 here for a moment.

24 I -- I don't recall that there's any areas
25 where we're placing this material that's currently a

1 recreational area that would be impacted by the
2 placement of the material in that location.

3 I believe we've identified three or four
4 different locations and, by and large, they're mostly
5 existing agricultural areas that I -- I don't know. I
6 leave it up to you to classify that, whether it's
7 recreational or not, but --

8 MR. FERGUSON: But there are some sites that
9 are immediately adjacent to these facilities; correct?

10 WITNESS RISCHBIETER: Mr. Bednarski may be
11 able to answer that question. But it was my
12 understanding that -- Based on the conclusion in the
13 EIR that there is no loss of long-term recreation
14 facility -- no permanent displacement of recreation
15 facilities, I believe that is Impact REC-1 which was
16 found to be less than significant.

17 MR. FERGUSON: Well, would you agree that the
18 value of these -- for example, these preserves depends
19 in a great deal upon the quiet, natural and undisturbed
20 aural and visual character of the area? Is -- Is that
21 part of the experience, in your mind?

22 WITNESS RISCHBIETER: Yes. And the EIR -- And
23 I acknowledge, that visual and noise disturbances are
24 one of the impacts to recreational activities.

25 MR. FERGUSON: So even though there won't be

1 permanent dislocation, there still could be permanent
2 impacts to the recreation experiences at these
3 facilities; correct?

4 WITNESS RISCHBIETER: Not from noise. And I'm
5 not aware of examples of visual disturbance that are
6 permanent at existing recreational sites.

7 WITNESS BEDNARSKI: And then just --

8 MR. FERGUSON: Maybe I misunderstood your --

9 WITNESS BEDNARSKI: Oh, I'm sorry.

10 MR. FERGUSON: -- answer that you just gave me
11 right before you answered that question.

12 I thought you had identified some visual and
13 aural impacts that you . . .

14 Had you not?

15 WITNESS BEDNARSKI: I did, as does the EIR,
16 that relates to construction activities.

17 MR. FERGUSON: Is -- Is the placement of this
18 reasonable tunnel material not a construction activity?

19 WITNESS RISCHBIETER: Yes. But as far as
20 the -- what I've taken from the EIR analysis and the
21 analysis of the specific sites, that there will not be
22 a permanent loss of recreational facilities once the
23 Project's complete.

24 MR. FERGUSON: "Complete" meaning
25 construction's complete.

1 WITNESS RISCHBIETER: Yes.

2 MR. FERGUSON: I can be done in 10 minutes.

3 CO-HEARING OFFICER DODUC: Did you say 10
4 minutes?

5 MR. FERGUSON: Five minutes, please?

6 CO-HEARING OFFICER DODUC: Five is better,
7 yes.

8 MR. FERGUSON: Okay. Okay. Let me jump over
9 to Mr. Bednarski and just cover a couple of points.

10 So on Pages 3 through 5 of your testimony, you
11 focus on the fact that impacts to navigation due to
12 barge trips and landings will be temporary; correct?

13 WITNESS BEDNARSKI: That's correct.

14 MR. FERGUSON: And you rely on the discussion
15 in the EIR for this opinion; is that correct?

16 WITNESS BEDNARSKI: I believe that -- Yes, I'm
17 referring to the EIR/EIS and the mitigation measures
18 that we plan to have in place, if that's -- if that's
19 what you're getting at.

20 MR. FERGUSON: So the EIR states the impacts
21 from intake and barge unloading facilities would last
22 for about five years; is that correct?

23 WITNESS BEDNARSKI: Yes.

24 MR. FERGUSON: I think you restated that in
25 your testimony.

1 WITNESS BEDNARSKI: That's our estimation,
2 yes.

3 MR. FERGUSON: Okay. And the EIR concludes
4 that this navigation impact would be significant and
5 unavoidable; correct?

6 WITNESS BEDNARSKI: I -- You'd have to point
7 me to that part of the EIR that says --

8 MR. FERGUSON: Okay.

9 WITNESS BEDNARSKI: -- it's a significant
10 impact at the intakes.

11 I -- I don't believe I make that statement in
12 my testimony; do I?

13 MR. FERGUSON: Okay. Well, excuse me if I
14 characterized that as part of your testimony.

15 Can we bring up real quickly Page 275 of
16 Chapter 15?

17 (Exhibit displayed on screen.)

18 MR. FERGUSON: And then Line 33.

19 So that -- that paragraph -- Is that 275?

20 CO-HEARING OFFICER DODUC: Next page, I think.

21 (Exhibit displayed on screen.)

22 MR. FERGUSON: So that paragraph discusses --
23 Oh, excuse me.

24 So Line 33, the conclusion is (reading):

25 "The impact would be significant and

1 unavoidable."

2 I'll represent that paragraph -- and we can
3 back up a little bit -- talks about, at the top -- Can
4 you scroll up a little bit, please, Miss Gaylon?

5 (Exhibit displayed on screen.)

6 MR. FERGUSON: Look at Line 8, please,
7 Mr. Bednarski.

8 (Reading):

9 "Impacts from intake and barge
10 unloading facilities . . . would last
11 approximately five years and include
12 obstruction and delays to boat passage
13 and navigation, "et cetera.

14 WITNESS BEDNARSKI: I see that, yes.

15 MR. FERGUSON: So, in your opinion, is that
16 conclusion that these sorts of impacts described in
17 this paragraph, including the barge-related impacts and
18 navigation, are considered significant and unavoidable?

19 WITNESS RISCHBIETER: Can we scroll down to
20 the bottom of that paragraph?

21 (Exhibit displayed on screen.)

22 WITNESS BEDNARSKI: It looks like they're --
23 they're -- they're talking about a number of different
24 areas in addition to the -- to the intakes there and
25 then they wrap that all together.

1 So I don't know that they're signif -- they're
2 specifically calling out that the impact at the intakes
3 is significant and unavoidable.

4 But when you add perhaps the Head of Old River
5 Gate in there with some potential delays and some other
6 things like that, maybe altogether.

7 But I don't know that -- I -- I didn't write
8 this section, so whether it's cumulative of adding all
9 of those location's together they come to that
10 conclusion or whether it's just one area, I -- I -- I
11 couldn't tell you.

12 MR. FERGUSON: Okay. But do you have any --
13 You don't have any reason to disagree with this
14 paragraph, assuming it -- even if it was -- if it was
15 cumulatively analyzed in terms of the barge impacts to
16 navigation. You don't have any reason to disagree that
17 it's --

18 WITNESS BEDNARSKI: Not with the entire
19 paragraph. And if that's the conclusion that they
20 made, you know, that would be appropriate, but then we
21 have all these mitigation measures that have been
22 listed there following that.

23 MR. FERGUSON: Okay. So --

24 WITNESS EARLE: If I may interject.

25 I note that this paragraph is referring to

1 BDCP.

2 Are we indeed looking at impacts for
3 Alternative 4A?

4 MR. FERGUSON: Well, this is -- This is
5 Alternative 4 which you referred back to if you read
6 Alternative 4A.

7 So, yes, I believe that's right. We had that
8 discussion previously with Mr. Rischbieter.

9 All I'm trying to establish is, do you guys --
10 Mr. Bednarski, do you acknowledge that the EIR in terms
11 of barge impacts to navigation, recreation indicates
12 that the impact is significant and unavoidable?

13 I think you provided me an answer.

14 WITNESS BEDNARSKI: I -- Well, I don't -- I
15 don't know that -- Well, again, you've added now in the
16 barges. I -- I'm not sure that I necessarily agree
17 with that, that there were a number of things going on
18 here in this paragraph, as to, you know, the erection
19 of coffer dams and things like that.

20 So I -- I don't necessarily agree just
21 singling out the barges if that's what you were
22 suggesting.

23 MR. FERGUSON: Okay. So, with this sort of
24 significant and unavoidable impact to navigation
25 occurring over five years, would you consider this to

1 be an unreasonable -- unreasonable impact --

2 (Timer rings.)

3 MR. FERGUSON: -- on recreational uses of
4 water?

5 WITNESS RISCHBIETER: As I restated --

6 MR. FERGUSON: I'm going back to the
7 hearing -- the key hearing issue.

8 This is, again, the EIR's conclusion. Would
9 you, in your opinion, consider this an unreasonable
10 effect on recreational uses of water?

11 WITNESS RISCHBIETER: No. As per my
12 testimony, I believe that the mitigation measures that
13 are in place, especially at the location of the
14 construction of the intakes, do reasonably protect the
15 recreational beneficial uses.

16 MR. FERGUSON: I have one last question, if I
17 might. Then --

18 CO-HEARING OFFICER DODUC: You have --

19 MR. FERGUSON: -- I'll be done.

20 CO-HEARING OFFICER DODUC: It is 4:58, so --

21 MR. FERGUSON: Okay. So, real quick,
22 Mr. Bednarski.

23 On Page 5, Lines 15 through 21 of your
24 testimony --

25 (Exhibit displayed on screen.)

1 MR. FERGUSON: -- I believe you cite to the
2 Incidental Take Permit and Biological Assessment to
3 support your point that the increase in barge traffic
4 is small relative to the existing marine traffic in the
5 Delta.

6 WITNESS BEDNARSKI: Yes, that is correct.

7 MR. FERGUSON: Okay. So I -- I linked two of
8 the barge sites in Sacramento County; correct? One at
9 Snodgrass Slough and then perhaps what I just heard to
10 be this location at the intake --

11 WITNESS BEDNARSKI: Right.

12 MR. FERGUSON: -- which is not actually a
13 barge landing site but it could be a barge end point.

14 WITNESS BEDNARSKI: Parking spot, yes.

15 MR. FERGUSON: Yes.

16 So has the CWF analyzed the im -- the impacts
17 from barge traffic within these areas specifically
18 compared to existing marine traffic in the area where
19 these barges will actually land?

20 WITNESS BEDNARSKI: Are you -- You're
21 referring to, were those two areas specifically
22 analyzed --

23 MR. FERGUSON: Yes.

24 WITNESS BEDNARSKI: -- separate from the
25 others or . . .

1 MR. FERGUSON: Well, you make the broad
2 statement that the numbers of barge trips, in your
3 testimony that you identify, are small relative to
4 marine traffic in the Delta, but that's a very -- the
5 Delta is very large.

6 So I'm -- I'm asking the number of trips that
7 you identify, are these small relative to the existing
8 traffic in the area at the locations where the barges
9 will actually drive up to?

10 WITNESS BEDNARSKI: I -- I would conclude,
11 yes, because if we can pull up that part -- Oh, we
12 already have it. Yeah, you have my testimony there.

13 We talk about, on Line 17 there (reading):
14 ". . . Averaging approximately four
15 round-trips per day for up to five . . .
16 years."

17 And if that's spread out over the Delta, then,
18 you know, I would conjecture a guess that it's less
19 than one barge trip per day is going to any one of
20 those two sites that you -- you just mentioned. In
21 context with the other traffic there, then I would
22 conclude that that's low.

23 CO-HEARING OFFICER DODUC: And we need to wrap
24 up.

25 MR. FERGUSON: Okay. Thank you.

1 CO-HEARING OFFICER DODUC: It is after 5:00.

2 Apologies to the AV guys.

3 We are adjourned for the day. We will return
4 at 9:30 in the morning.

5 Quickly.

6 MR. BEZERRA: Yes, very quickly.

7 I just would like to get a reminder of when
8 responses to Miss Des Jardins' objections to the
9 modeling are -- are due.

10 CO-HEARING OFFICER DODUC: Well, they get
11 5 p.m. Monday.

12 MR. BEZERRA: Thank you.

13 CO-HEARING OFFICER DODUC: All right.

14 (Proceedings adjourned at 5:01 p.m.)

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1 State of California)
2 County of Sacramento)

3

4 I, Candace L. Yount, Certified Shorthand Reporter
5 for the State of California, County of Sacramento, do
6 hereby certify:

7 That I was present at the time of the above
8 proceedings;

9 That I took down in machine shorthand notes all
10 proceedings had and testimony given;

11 That I thereafter transcribed said shorthand notes
12 with the aid of a computer;

13 That the above and foregoing is a full, true, and
14 correct transcription of said shorthand notes, and a
15 full, true and correct transcript of all proceedings
16 had and testimony taken;

17 That I am not a party to the action or related to
18 a party or counsel;

19 That I have no financial or other interest in the
20 outcome of the action.

21

22 Dated: March 11, 2018

23

24

25

Candace L. Yount, CSR No. 2737