

1
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BEFORE THE
CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

CALIFORNIA WATERFIX WATER)
RIGHT CHANGE PETITION HEARING)

Staff note: Strikeouts made
pursuant to Hearing Officers'
Rulings

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

Thursday, April 19, 2018
9:30 a.m.

Volume 30
Pages 1 - 277

Reported By: Candace Yount, CSR No. 2737
(A.M. Session)
Deborah Fuqua, CSR No. 12948
(P.M. Session)

Computerized Transcription

1 APPEARANCES

2 PART 2

3 For Petitioners:

4 California Department of Water Resources:

5 James (Tripp) Mizell
6 Jolie-Anne Ansley

7 INTERESTED PARTIES:

8 For City of Antioch:

9 Matthew Emrick

10 For California Sportfishing Protection Alliance (CSPA),
11 California Water Impact Network (C-WIN), and
12 AquAlliance:

13 Michael Jackson

14 For Clifton Court, L.P.:

15 Suzanne Womack
16 Sheldon Moore

17 For The Environmental Justice Coalition for Water,
18 Islands, Inc., Islands, Inc., Local Agencies of the
19 North Delta, Bogle Vineyards/Delta Watershed Landowner
20 Coalition, Diablo Vineyards and Brad Lange/Delta
21 Watershed Landowner Coalition, Stillwater
22 Orchards/Delta Watershed Landowner Coalition, Brett G.
23 Baker and Daniel Wilson, SAVE OUR SANDHILL CRANES,
24 Friends of Stone Lakes National Wildlife Refuge, The
25 County of Yolo:

Osha Meserve

For Pacific Coast Federation of Fishermen's
Associations and Institute for Fisheries Resources:

Alexis E. Krieg

For California Water Research:

Deirdre Des Jardins

I N D E X

1			
2	CLIFTON COURT L.P. WITNESSES	PAGE VOL.	
3			
	WOMACK, SUZANNE		
4	MOORE, SHELDON (Witnesses Sworn)	10 30	
5	Direct Examination By Narrative	10 30	
	Cross-examination by Mr. Emrick	37 30	
6	Cross-examination by Mr. Jackson	43 30	
7	PACIFIC COAST FEDERATION OF FISHERMEN'S ASSOCIATION'S AND INSTITUTE FOR FISHERIES RESOURCES':		
8	WITNESSES	PAGE VOL.	
9	ORONA, BRITTANI (Witness Sworn)		
10	Direct examination by Ms. Krieg	54 30	
11	NORTH DELTA C.A.R.E.S.:		
	WITNESSES	PAGE VOL.	
12			
	MOTLOW, JAMES		
13	DALY, BARBARA SUARD, NICOLE		
14	(Witnesses Sworn)	60 30	
	PRUNER, MARK		
15	(Witness Sworn)	66 30	
	Direct examination by Ms. Meserve	67 30	
16	Cross-Examination by Ms. Ansley	118 30	
	Cross-Examination by Mr. Jackson	130 30	
17	Cross-Examination by Ms. Des Jardins	141 30	
18			
19			
20			
21			
22			
23			
24			
25			

	I N D E X (Continued)	
	PACIFIC COAST FEDERATION OF FISHERMEN'S ASSOCIATIONS, et al. AND INSTITUTE FOR FISHERIES RESOURCES':	
	EXHIBITS	PAGE VOL.
1		
2		
3		
4	PCFFA-85	59 30
5	PCFFA-86	59 30
6	PCFFA-87	59 30
7	PCFFA-88	59 30
8	PCFFA-89	59 30
9	PCFFA-90	59 30
10	PCFFA-91	59 30
11	PCFFA-92	59 30
12	PCFFA-93	59 30
13	PCFFA-94	59 30
14	PCFFA-95	59 30
15	PCFFA-96	59 30
16	PCFFA-97	59 30
17	PCFFA-98	59 30
18	PCFFA-99	59 30
19	PCFFA-100	59 30
20	PCFFA-101	59 30
21	PCFFA-102	59 30
22	PCFFA-103	59 30
23	PCFFA-104	59 30
24	PCFFA-105	59 30
25		

	I N D E X (Continued)	
	PACIFIC COAST FEDERATION OF FISHERMEN'S ASSOCIATIONS, et al. AND INSTITUTE FOR FISHERIES RESOURCES':	
	EXHIBITS (Continued)	
	PAGE	VOL.
1		
2		
3		
4	PCFFA-106	59 30
5	PCFFA-107	59 30
6	PCFFA-108	59 30
7	PCFFA-109	59 30
8	PCFFA-110	59 30
9	PCFFA-111	59 30
10	PCFFA-112	59 30
11	PCFFA-113	59 30
12	PCFFA-114	59 30
13	PCFFA-115	59 30
14	PCFFA-116	59 30
15	PCFFA-117	59 30
16	PCFFA-118	59 30
17	PCFFA-119	59 30
18	PCFFA-120	59 30
19	PCFFA-121	59 30
20	PCFFA-122	59 30
21	PCFFA-123	59 30
22	PCFFA-124	59 30
23	PCFFA-125	59 30
24	PCFFA-126	59 30
25		

I N D E X (Continued)			
PACIFIC COAST FEDERATION OF FISHERMEN'S ASSOCIATIONS, et al. AND INSTITUTE FOR FISHERIES RESOURCES':			
EXHIBITS (Continued)		PAGE	VOL.
PCFFA-127		59	30
PCFFA-128		59	30
PCFFA-129		59	30
PCFFA-130		59	30
PCFFA-131		59	30
PCFFA-132		59	30
PCFFA-133		59	30
PCFFA-134		59	30
PCFFA-135		59	30
PCFFA-136		59	30
PCFFA-137		59	30
PCFFA-138		59	30
PCFFA-139		59	30
PCFFA-140		59	30
PCFFA-141		59	30
PCFFA-142		59	30
PCFFA-143		59	30
PCFFA-144		59	30
PCFFA-145		59	30
PCFFA-146		59	30
PCFFA-147		59	30

1		I N D E X (Continued)	
2 PACIFIC COAST FEDERATION OF FISHERMEN'S ASSOCIATIONS,			
3 et al. AND INSTITUTE FOR FISHERIES RESOURCES':			
3 EXHIBITS (Continued)		PAGE VOL.	
4	PCFFA-148	59	30
5	PCFFA-149	59	30
6	PCFFA-150	59	30
7	PCFFA-151	59	30
8	PCFFA-152	59	30
9	PCFFA-153	59	30
10	PCFFA-154	59	30
11	PCFFA-155	59	30
12	PCFFA-156	59	30
13	PCFFA-157	59	30
14	PCFFA-158	59	30
15	PCFFA-159	59	30
16	PCFFA-160	59	30
17	PCFFA-161	59	30
18	PCFFA-162	59	30
19	PCFFA-163	59	30
20	PCFFA-164	59	30
21	PCFFA-165	59	30
22	PCFFA-166	59	30
23	PCFFA-167	59	30
24	PCFFA-168	59	30
25			

1 I N D E X (Continued)

2 PACIFIC COAST FEDERATION OF FISHERMEN'S ASSOCIATIONS,
et al. AND INSTITUTE FOR FISHERIES RESOURCES':

3 EXHIBITS (Continued) PAGE VOL.

4 PCFFA-169 59 30

5 PCFFA-170 59 30

6 PCFFA-171 59 30

7 PCFFA-172 59 30

8 PCFFA-173 59 30

9 PCFFA-174 59 30

10 PCFFA-175 59 30

11 PCFFA-198 59 30

12 PCFFA-199 59 30

13 PCFFA-200 59 30

14 PCFFA-201 59 30

15

16 (continued)

17

18

19

20

21

22

23

24

25

1	EXHIBITS (continued)		
2			
	NORTH DELTA C.A.R.E.S.:		
3	EXHIBITS	PAGE	VOL.
4	NDC-2-1	163	30
5	NDC-2-2	163	30
6	NDC-2-5	163	30
7	NDC-2-6	163	30
8	NDC-2-7	163	30
9	NDC-2-8	163	30
10	NDC-2-9	163	30
11	NDC-2-19	163	30
12	NDC-2-20	163	30
13	NDC-2-25	163	30
14	NDC-2-26.1	163	30
15	NDC-2-26.2	163	30
16	NDC-2-26.3	163	30
17	NDC-2-26.4	163	30
18	NDC-2-27(1-9)	163	30
19	NDC-2-29(1-3)	163	30
20			
21			
22			
23			
24			
25			

1 Thursday, April 19, 2018 9:30 a.m.

2 PROCEEDINGS

3 ---000---

4 CO-HEARING OFFICER DODUC: Good morning
5 everyone. It is 9:30.

6 Welcome back to this Water Right Change
7 Petition hearing for the California WaterFix Project.

8 I am Tam Doduc. To my right is Board Chair
9 and Co-Hearing Officer Felicia Marcus. To my left is,
10 for the moment, Andrew Deeringer, who will be joined by
11 Conny Mitterhofer. We are also being assisted today by
12 Miss Gaylon.

13 A couple of quick usual announcements:

14 Please take a minute and identify the exit
15 closest to you. In the event of an emergency, an alarm
16 will sound. We will evacuate using the stairs down to
17 the first floor and meet up in the park across the
18 street.

19 It's possible that we may also have a drill
20 today. If so, please stay in your seats and wait for
21 the instructions that will come from the speakers to
22 determine whether or not we need to evacuate.

23 Secondly, this hearing is being recorded and
24 Webcast, so please speak into the microphone after
25 ensuring that it is on and begin by stating your name

1 and affiliation for the record.

2 Our court reporter is back with us. Thank
3 you, Candace. If you would like a copy of the
4 transcript sooner than at the completion of Part 2,
5 please make your arrangements directly with her.

6 Finally and most importantly, since it's been
7 several days since we were last together, please take a
8 moment and make sure all your noise-making devices are
9 on silent, vibrate, do not disturb.

10 Okay. I have some housekeeping matters that I
11 need to address, and then I'll ask if anyone else has
12 any others.

13 First of all, we sent out a ruling letter
14 yesterday. I understand there was some people who said
15 they did not receive a copy of it.

16 My understanding is, we sent it to everyone
17 that was on the Service List, so I'm not sure what's
18 going on, but we will check and, in any case, we will
19 make sure it's posted online.

20 And, Mr. Emrick, if you haven't had a co --
21 received a copy from now -- by now from some of your
22 colleagues, then come to me and I'll give you a copy.

23 MR. EMRICK: I appreciate that. Thank you.

24 CO-HEARING OFFICER DODUC: Secondly, we have
25 received a couple of requests.

1 First of all, let's -- Regarding the schedule
2 today. I believe it was Miss Meserve who sent in a
3 request with respect to the order today. Miss Meserve,
4 your request is granted.

5 So, my understanding of the order today is we
6 will begin with Clifton Court. We will then finish up
7 PCFFA with Miss Orona. We will then go to North Delta
8 C.A.R.E.S, to Snug Harbor, and then Mr. Porgans.

9 Second request we received was from NRDC
10 regarding reasonable accommodation for Dr. Rosenfield
11 starting on Monday. And, yes, that request is granted.

12 We appreciate Dr. Rosenfield's participation
13 and wish him well in his recovery, and we certainly
14 will make those accommodations for him.

15 Second request was from -- Another request was
16 from Delta Alliance in response to our ruling
17 yesterday.

18 Mr. Brodsky requested that they present case
19 in chief testimony and exhibits as submitted rather
20 than what was specified in our ruling yesterday. That
21 request is granted as well.

22 We did not intend to impose a short-term major
23 effort on Mr. Brodsky and his -- his witnesses' part to
24 revise their testimony for tomorrow.

25 So, yes, Mr. Brodsky, apologies, and your

1 request to present testimony as submitted is granted.

2 We also received requests from Miss Suard
3 regarding her testimony today.

4 Miss Suard requested five minutes for an
5 Opening Statement. However, she did not submit a
6 written Opening Statement as we required of all
7 parties. So her request for time to present an Opening
8 Statement today is denied.

9 She also requested 60 minutes to present her
10 case in chief. That request is also denied for now.

11 It is our standard practice that each witness
12 receive 20 minutes to summarize their case in chief,
13 and we will then consider additional requests for time
14 based on effectiveness, efficiency, and demonstration
15 of good cause.

16 We also just received a request from
17 Mr. Porgans to, again, provide an Opening Statement.
18 And, again, he did not submit a written Opening
19 Statement as required, so that request is denied.

20 That's all I have; right?

21 MR. DEERINGER: (Nodding head.)

22 CO-HEARING OFFICER DODUC: Does anyone else
23 have housekeeping matter?

24 Mr. Jackson.

25 MR. JACKSON: Yes.

1 CO-HEARING OFFICER DODUC: We gyped you with
2 that one. I think the -- the on switch is on top of
3 the microphone.

4 MR. JACKSON: Okay.

5 CO-HEARING OFFICER DODUC: I think you
6 slide -- Does the button slide?

7 MR. JACKSON: Thank you.

8 CO-HEARING OFFICER MARCUS: More comfortable.

9 MR. JACKSON: Call a woman when you need
10 something done.

11 The . . . The Dr. Whitelaw saga.

12 CO-HEARING OFFICER DODUC: Oh, yes.

13 MR. JACKSON: I would like to move him back to
14 Tuesday with the rest of my panel.

15 He went back into the hospital for a cleaning
16 up of an inflammation on his pacemaker, and the doctor
17 doesn't want him to fly until Sunday.

18 CO-HEARING OFFICER DODUC: All right.

19 Dr. Whitelaw --

20 MR. JACKSON: So we'll bring him in on Sunday,
21 and bring him in on Tuesday, if that's all right.

22 I did talk to Ms. Ansley and Mr. Mizell and
23 they indicated they had -- graciously indicated they
24 had no objection.

25 CO-HEARING OFFICER DODUC: All right. We will

1 so move Dr. Whitelaw.

2 And, Miss Womack, I believe the listening --
3 the reasonable accommodation you requested has been set
4 up right there where that monitor --

5 WITNESS WOMACK: Right. Should we move there?

6 CO-HEARING OFFICER DODUC: -- is for your
7 father.

8 Yes.

9 WITNESS WOMACK: Okay.

10 CO-HEARING OFFICER DODUC: Miss Meserve.

11 MS. MESERVE: Good morning. Osha Meserve for
12 LAND and other parties.

13 I was able to pull down the ruling off of the
14 website last night after I received Mr. Brodsky's
15 e-mail.

16 And I wanted to just very briefly request that
17 the Hearing Officers request a tiny bit of additional
18 clarification from DWR with respect to the status of
19 their Project.

20 And, in particular, I think it would be
21 appropriate to request status information with respect
22 to the phased alternative, in addition to the other
23 what DWR called refinements that were distributed at
24 the end of last month in the form of a handout of a
25 table that Mr. Mizell had compiled.

1 And the reason I'm asking for that is because,
2 as described in the LAND, et al., motion and elsewhere,
3 the phased alternative would have different
4 on-the-ground construction and footprint impacts, as
5 well as different operational impacts, and would have
6 to go by a different operational scenario.

7 So -- And I also understand the Administrative
8 Draft of the Supplemental EIR/EIS has been provided to
9 certain responsible agencies already. So it is not a
10 question mark -- I mean, I don't know whether they
11 intend to pursue that, but they have begun reviewing it
12 and they are circulating an Admin Draft to certain
13 agencies and I don't know if the Water Board is among
14 those.

15 But, to me, I think it's very logical that,
16 for the same reasons that are expressed in the ruling,
17 that the parties and the Hearing Officers need to know
18 what the Project that's being petitioned are. That
19 would also apply to the phased alternative.

20 So it would seem appropriate for DWR to update
21 tomorrow, or if you want to give them more time if they
22 should so request it, when they would have those
23 details about what it is they're requesting.

24 Thank you.

25 CO-HEARING OFFICER DODUC: Thank you,

1 Miss Meserve.

2 We do know what is before us in terms of the
3 Petition submitted by Petitioners.

4 What I believe you're asking for is an update
5 on whether or not Petitioners have made any decisions
6 or plan to make any changes to their Petition based on
7 the staged or phased implementation approach.

8 Mr. Mizell.

9 MR. MIZELL: Yeah. Tripp Mizell, DWR.

10 I can answer that question right now, if you'd
11 like, and double-check with the Project Team to see if
12 I'm incorrect.

13 But it is my understanding that the Department
14 has not made any decision to proceed with a staged
15 construction approach of the California WaterFix.

16 There is an Administrative Draft Supplemental
17 EIR that was circulated previously. However, that was,
18 I believe, several days ago, if not, you know, more
19 than a week.

20 And in the time between the circulation of
21 that Supplement -- that Administrative Draft and now,
22 other things have occurred. So I would -- I would say
23 that, at this point in time, the Department is not
24 choosing to proceed with a staged construction
25 approach.

1 And I will check with the Project Team but I
2 believe that's our -- our position at the moment.

3 CO-HEARING OFFICER DODUC: Let me make sure I
4 understand.

5 You are choosing not to proceed with staged
6 implementation, or you have not made a decision?

7 MR. MIZELL: I will leave it at we have not
8 made a decision. I believe that it is the former, but
9 I will check with the Project Team and --

10 CO-HEARING OFFICER DODUC: And confirm.

11 MR. MIZELL: -- get an answer that's more
12 certain.

13 CO-HEARING OFFICER DODUC: Okay. Any other
14 questions?

15 All right. Any other housekeeping matter?

16 If not, then, Miss Womack and Mr. Moore, I
17 will ask you to please stand and raise your right
18 hands.

19 WITNESS MOORE: (Reading off monitor.)

20 Raise your right hand. Yes, happily.

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Suzanne Womack

and

Sheldon Moore,

called as witnesses by Clifton Court

L.P., having been duly sworn, were

examined and testified as follows:

CO-HEARING OFFICER DODUC: Thank you very

much.

All right.

WITNESS WOMACK: You're swearing again.

DIRECT EXAMINATION

WITNESS WOMACK: All right, dad. So go for

it.

WITNESS MOORE: Well, I'm here today, not

happy to be here. Unhappy because I shouldn't be here.

I shouldn't have to be here.

But I've been in the Delta there for more
years than most of your ages, so before you were born.

This already -- Anyway, I can never figure
out -- We had a very tranquil Delta when I moved into
that area and, all of a sudden, with the water
resources, when they dropped in the pumping capacity of
15,000 second feet, it killed me.

And the thing is, nobody ever said there

1 was -- I've never seen a study on what 15,000 second
2 feet out of the canal system that normally would --
3 There were diversions, maybe 50, 60 second feet. And
4 nothing was said.

5 They drop it in. And I told them, "You're
6 damaging me." Nobody cares.

7 I've been hundreds of thousands of dollars
8 worth of damage done. Nobody cares.

9 And it's the principle of the thing. That
10 somebody could come -- The State can come in and take
11 my rights and go away with them.

12 This farm was farmed in 1889 -- before 1889.
13 It has -- It had water rights that go back to -- They
14 want to take the water rights. They physically took my
15 banks. It's -- It's a -- It's a disaster.

16 The only reason I'm still here is because I
17 spent thousands and hundreds of thousands on levees. I
18 know what to do. I know if I'm -- If a flood is
19 coming, I mean, it's too late to start.

20 Anyway, I just say -- And I'm -- I'm just --
21 I'm very disappointed in the State of California.

22 That's all I've got to say.

23 WITNESS WOMACK: Thank you.

24 And thank you for letting him speak.

25 My father gets very upset. He was raised in

1 Lodi during the depression. He was taught integrity,
2 take responsibility for your actions, and don't harm
3 others.

4 He fished in the Delta as a boy. It was
5 clear. There was no mud.

6 He's been a farmer since 1957. That's 61
7 years. And farming is about time and money. Timing is
8 the difference between failure and success.

9 In 1961, he agreed to a lifetime lease on his
10 father-in-law's farm at Clifton Court. He was the
11 President of Reclamation District 802, which was the 10
12 farms at Clifton Court.

13 And, like he said, they took 50 cfs. You know
14 what that means as an Engineer, and you all know
15 because you've been doing this so darn long.

16 The only water movement -- I'm sorry.

17 The Clifton Court had dirt riverbanks that
18 were dredged from the river soil, and it was easy to
19 maintain the sloping banks that were dirt. The only
20 water movement was the natural tides. Water was
21 obtained through the 30-foot floodgate.

22 Reclamation District 802 was drained from an
23 old steam engine pump, a price pump, that was
24 ecologically friendly. It was a farming community.
25 The farms were powered as much as they had been since

1 the 1880s. There was really very little difference.

2 CO-HEARING OFFICER DODUC: Miss Womack.

3 WITNESS WOMACK: Yes. I'm trying to set a
4 base.

5 CO-HEARING OFFICER DODUC: But Mr. Mizell is
6 at the microphone.

7 WITNESS WOMACK: Oh, I'm so sorry.

8 CO-HEARING OFFICER DODUC: We need to let him
9 speak.

10 MR. MIZELL: Yes.

11 I'd just like to seek some clarification
12 maybe.

13 Miss Womack -- Or I should say Clifton Court
14 L.P. submitted revised testimony, and there's no
15 information within that testimony about the diversion
16 point of their farm and the cfs, nor the structure
17 through which they divert water.

18 I'm going to try and be very judicious with my
19 objections, as per your desire, but I'd like it very
20 much if we could stay within bounds of the written
21 testimony so that I don't have to stand up -- stand up
22 and object frequently.

23 WITNESS WOMACK: Absolutely, Mr. Mizell.

24 On Page 2, the second paragraph added
25 (reading):

1 "She too has seen the devastation
2 brought by dropping down State and
3 Federal pumping plants that pump 15,000
4 cfs (nearly 10 billion gallons of water)
5 a day at Clifton Court where no more than
6 50 cfs was . . . pumped."

7 The diversion points had to -- were changed
8 from a floodgate, absolutely. This is just the
9 history.

10 In '67, the State condemned and took Clifton
11 Court, leaving just a part of our farm. Our world
12 changed forever. I didn't know in '67 that I'd be
13 condemned -- my father didn't know he'd be condemned
14 for life.

15 (Reading):

16 "I'm 86 years old. It's difficult
17 for me to comprehend that, in the past 51
18 years, the water agencies have never
19 acknowledged the damage that their
20 projects inflicted on our property and
21 ignore the problems that continued to
22 this day.

23 "I come here today displeased that
24 our government agency foisted on me and
25 my operations ongoing damages caused by

1 the poorly engineered Clifton Court
2 Forebay that dropped a 15,000 cfs pumping
3 system which can pump 365 days a year
4 into an area without doing anything to
5 our surrounding areas.

6 "The agencies executed inverse
7 condemnation on my property. The right
8 to hold private property is a basic right
9 that's an essential part of our country.

10 "I have no right to damage your
11 property and you have no right to damage
12 mine. Can you or I allow our government
13 to be dishonest with you?"

14 Dad, can you?

15 WITNESS MOORE: What?

16 WITNESS WOMACK: Oh, he can't hear. I
17 cannot -- He can't hear -- I'm sorry -- he's so upset.

18 (Reading):

19 "The California WaterFix implies
20 that something is broken and needs
21 fixing. They got that right.

22 "We've witnessed for 50 years how
23 the SWP and CVP ignored problems and
24 pleas for help and restitution. The
25 death of fish and wildlife, the loss of

1 clean river water and the deterioration
2 of the recreational areas as a result."

3 My father became a reluctant levee expert
4 because the SWP and CVP didn't fix the damage their
5 pumping caused to our levee.

6 (Reading):

7 "Our levee would have failed had we
8 not fixed it three times. There were no
9 thoughts to our public safety.

10 "Reclamation District 802 maintained
11 the levees for Clifton Court."
12 My father was part of that. He was President.

13 (Reading):

14 "Farmers use heavy trucks on levees
15 only for a few short weeks during summer
16 harvest, not year-round.

17 "During the building of the Clifton
18 Court Forebay, they used heavy trucks
19 year-round. They had to complete the
20 project. They ran the trucks even during
21 flood stage in the river. They refused
22 to stop. They wrecked the levees and the
23 public roads. No one cared. No one in
24 charge -- And there's no one in charge to
25 reason with. And this is what will

1 happen again.

2 "Middle of the night during flood
3 stage, you're not going to get somebody
4 to stay stop. This happened during one
5 of -- one year, about one, maybe one and
6 a half years of construction.

7 "Think now how 10 and a half years
8 of thousands of heavy trucks will affect
9 the small Delta towns.

10 "My grandfather wrote checks for
11 52,000 to Dutra in 1970 for rocking."
12 It was actually through November, so from
13 August through November.

14 In January -- And my father spent two months,
15 August and September, working with his workers to redo
16 the levees on the levee side. Nobody paid him for
17 this.

18 (Reading):

19 "In January '71, the State gave my
20 father-in-law \$15,000 for levee repairs.
21 I know you've heard this before, but
22 think about it. Think of what a deal
23 they got. Think of what a deal the State
24 Contractors got. We collect" --
25 Well, I won't go on.

1 (Reading):

2 "Since then, we've had to rock two
3 more times. I was talking" --
4 Well, I won't go -- I won't go off track.

5 Again, we've been forced to -- He's -- Again,
6 my father was forced to spend his time, his money,
7 arranging people to come fix the levees that were
8 damaged and to help -- and to protect public interest.

9 Unable to -- They were -- He's been unable to
10 enjoy recreation on those rivers, the very rivers he
11 grew up fishing on, because he doesn't have the time or
12 the money.

13 As a levee expert, my father immediately
14 noticed problems with the levees once the pumping began
15 year-round, and when they increased to 15,000 cfs.

16 Dad, could you -- could you describe what a
17 reverse flow -- what it looks like when they're pumping
18 15,000 cfs, since you've seen it so often.

19 WITNESS MOORE: Well, you get water going in
20 one direction 24 hours a day.

21 WITNESS WOMACK: And what -- what direction is
22 that?

23 WITNESS MOORE: Toward the pumps.

24 WITNESS WOMACK: Is --

25 WITNESS MOORE: Because it raises and lowers,

1 but it's always in one direction.

2 WITNESS WOMACK: So there aren't -- Are there
3 tides like there were beforehand?

4 WITNESS MOORE: Well, the tides are there but
5 not -- the flow is -- they're trying to --

6 WITNESS WOMACK: There's not --

7 WITNESS MOORE: The tides have to affect in
8 more than my area. The -- And the flow is toward the
9 pumps.

10 WITNESS WOMACK: So there's no tidal flow
11 shifting. It's just the one way toward the pumps.

12 WITNESS MOORE: It's just one muddy mess.
13 Mud.

14 WITNESS WOMACK: Mud. Yeah.

15 (Reading):

16 "This is not to say that the SWP and
17 CVP did not spend lots of money trying to
18 fix their mistakes. They restructured
19 the CCF, the DM and -- the Clifton Court
20 Forebay, and the DMC.

21 "They reroaked -- They rocked
22 Clifton Court Forebay embankments once
23 the concrete-treated base, the CTB,
24 failed.

25 "CVP rocked the DMC next to our

1 property and raised the height of the
2 canal to accommodate more water. There
3 were lots of changes.

4 "Although DWR did not pay for
5 rocking our levees, we know DWR spent
6 14 million in 1990 dredging out the
7 Clifton Court Forebay and rocking
8 Victoria Island. We know they spent over
9 3 million dredging the silt from the
10 rivers and marina in early 2000.

11 "We don't know why DWR did not fix
12 our damages or how they chose who to
13 ignore. We know we were not given equal
14 treatment.

15 "DWR spent much more in the last 50
16 years however -- on other projects.
17 However, DWR refused our Public Record
18 Act request and so we don't have that
19 information.

20 "Neither agency has come on our
21 property to examine our levee damage in
22 the last 50 years. That's how much they
23 care.

24 "They dropped the -- the pumping in
25 with a promise to take 5,000 cfs during

1 flood times. They upped the pumping by
2 the sleight of hand. It now takes
3 15,000. They never looked at our levee.

4 "Again, their lack of care put the
5 problem on our shoulders, our time, our
6 money to solve problems they caused.

7 "We had no time left for our
8 recreation.

9 "CWF will continue at times to pump
10 50,000 -- 15,000 cfs at Clifton Court
11 Forebay. Old River will continue its
12 reverse flow when they're pumping.

13 "Our levee damage continues every
14 day water is pumped DWR -- in the DWR SWP
15 and Department of Interior CVP. They
16 never engineered our levee to accommodate
17 this excessive pumping.

18 "The California WaterFix has no
19 plans to fix this, our ongoing abuse that
20 creates a public safety hazard for our --
21 They have no plans to fix the public
22 safety hazard.

23 "Why does the California WaterFix,
24 DWR, SWP and the Department and CVP,
25 expect private citizens to pay for the

1 damage caused by the operations of their
2 facilities?

3 "If they can spend six --
4 \$17 billion on tunnels, why can't they
5 fix our damage -- our damages? Why does
6 our public safety not matter?"

7 That was my father. I go to my voice.

8 I grew up at Clifton Court and, in 1967, when
9 I was eight years old, my life changed forever. The
10 State took away all of our neighbors, but worse than
11 that, they took away my father. He couldn't farm most
12 of his land that first year or two because they took
13 away his water and his drainage system.

14 He had to relevel his fields. He had to redo
15 everything. It was a very expensive and intensive job.
16 He had to research. He had to do. Nobody from the
17 State did this.

18 And he still had to pay the three workers who
19 lived at the ranch because their families depended on
20 us. We're a community.

21 He cut -- DWR cut off his livelihood and
22 depended on him to fix the mess they made.

23 I remember months spent engineering new water
24 drains in '67, '68, '69, and drainage systems based on
25 the information DWR provided.

1 5,000 cfs pumping at the Clifton Court Forebay
2 during flood times. That was it. And it was -- Flood
3 times were the winter.

4 Before they cut --

5 CO-HEARING OFFICER DODUC: Miss Womack, please
6 hold on.

7 WITNESS WOMACK: Oh.

8 CO-HEARING OFFICER DODUC: Mr. Mizell.

9 WITNESS WOMACK: Oh, I'm so sorry.

10 MR. MIZELL: Yes.

11 I'd like to object to the statements regarding
12 drainage. I have not been able to find that anywhere
13 in her testimony.

14 WITNESS WOMACK: Oh, I'm sure I have that
15 drainage somewhere.

16 CO-HEARING OFFICER DODUC: Why don't --

17 WITNESS WOMACK: But it's --

18 CO-HEARING OFFICER DODUC: -- we just note
19 that --

20 WITNESS WOMACK: Oh, thank you.

21 CO-HEARING OFFICER DODUC: -- for the record
22 and allow Miss Womack to continue.

23 WITNESS WOMACK: You know, I have drainage
24 somewhere in this whole thing. I also have the DWR --
25 you know, all the documents I've submitted.

1 Thank you so much.

2 Once the water system was complete -- that
3 took a year and a half -- he had to turn his attention
4 to our dirt slope levees which had been damaged by the
5 heavy dirt-filled trucks that raced by our house on a
6 non-stop basis for several years to build the forebay.

7 He set up with Dutra to reengineer our mile of
8 levees. As I recall, he spent the months of August,
9 September, maybe in October in 1970 working on the
10 levee side with his men as Dutra worked on the river
11 side. It was something that seared into my brain, as I
12 was 10 at that point.

13 Again, no one paid him for his work or his
14 workers' work. He didn't get a cent from the date
15 until January 1971. That's four years.

16 He didn't have crop some of the years. He had
17 to put in -- My grandfather had to -- as the landowner,
18 had to put in expensive systems.

19 But my father had to take care of his workers
20 and had to do all of that work supervising.

21 I don't -- I don't think -- What's --
22 What's -- What's oversimplified here is how much work
23 it is to set up engineering, have people come in, redo
24 levees. My dad made it look like it wasn't that hard.

25 I've been doing the work for the last four or

1 five years, and it's hard work. It's very hard work.

2 He had a lifetime lease with my grandfather,
3 and he got compensated for 10 years of his lifetime
4 lease as if -- for that -- for -- for starting again.
5 But they set the lease prices from 1961 in 1971.

6 However, you know, my father would have been
7 fine with this condemnation and damages and the money
8 he got. He would have been fine with that if DWR's
9 information had been truthful. Truthful. But it
10 wasn't.

11 Looking back, it's easy to see that inverse
12 condemnation began in '71. At the time, we didn't know
13 that.

14 My father was busy establishing a second farm
15 that replaced the condemned acreage. No suitable land
16 was nearby so he was forced to drive a mile, have a
17 second set of workers and equipment.

18 He was so busy, we rarely saw him. There was
19 no more time to teach us fish or boating. It was left
20 to my mother to get us out in order to be on the river
21 or fishing.

22 Our life was changed forever by 1967. And it
23 didn't go away in '71.

24 Once the SWP and CVP began pumping 5,000 cfs
25 each, had more and more problems -- we had more and

1 more problems from both agencies. It's not just DWR.
2 But instead of fixing the problems, they increased the
3 SWP pumping to 10,000 cfs.

4 In 1970, the problems increased when they cut
5 the -- the -- 1970 was the time of Prop 13. They cut
6 maintenance. They cut 24-hour security.

7 They were -- We were directly affected, yet we
8 had not help -- we had no help for damages. We were
9 ignored.

10 Part of the problem is the revolving door of
11 who's in charge at both Projects. For Director --

12 Oh, I should have changed. I meant to ask you
13 to change it. I had -- In November, there were three
14 Directors, now there's four Directors at DWR in the
15 last year. And I believe I'm on my fifth person at
16 Delta Field Division, though I've been told I can't
17 contact them anymore.

18 I have no idea who's in charge of the Tracy
19 fish facility because nobody contacts us, even though
20 we're right there. They're our neighbors. They're our
21 only neighbors.

22 The problems have been made worse by a lack of
23 institutional memory and knowledge, especially
24 regarding simple maintenance that would stop so many of
25 our huge problems.

1 In March 2017, Clifton Court was suddenly
2 closed for emergency repairs by intake damage that
3 could result in failure that was caused by excess
4 pumping.

5 Could I have Clifton Court L.P. 32, please,
6 up.

7 (Exhibit displayed on screen.)

8 WITNESS WOMACK: And if you could scroll down
9 to the next page. That's just the service.

10 (Exhibit displayed on screen.)

11 WITNESS WOMACK: This -- This is -- I was very
12 concerned about seepage. This was 2/14/17.

13 This was -- This was in response -- This is
14 two weeks before they started noticing they had enough
15 problems to shut down Clifton Court Forebay.

16 I have a seepage problem. And if you'll
17 notice here . . .

18 Let's see. Where do I want to get to?

19 Second paragraph (reading):

20 "Specifically DWR staff inspected

21 our pump station that is near your

22 property and identified as 'Seep 6.'"

23 It's not. It's Pump 6. It's not a seepage
24 pump. It's a water surface pump. It's a toe drain.

25 (Reading):

1 "The inspection found that the seep
2 pump, the seep well, and the
3 standing . . . water within our seep
4 basin is fully operational . . .
5 Therefore, you don't have a problem.
6 If we go -- And if you'd scroll down one more.
7 (Exhibit displayed on screen.)

8 WITNESS WOMACK: She shows us how we don't
9 have a problem.

10 You can see the intake there. And just --

11 WITNESS MOORE: Do you have a laser?

12 WITNESS WOMACK: Yeah, I do have a laser,
13 because, dad, you could point out some things here.
14 You know, you do want to get information. This is part
15 of this.

16 Could you -- Yeah. Could you -- Okay. So
17 this is the intake (indicating).

18 This is called the apron; right? The whole
19 apron failed. There was scouring on both sides.

20 This part here (indicating) failed, which you
21 say, oh, it's not that -- it's kind of far from where
22 we are. But you know what? There's sand in here.
23 This is the sandbelt is. The sand is just along here
24 (indicating). We have old pictures we can show there.

25 This is what -- This is where we had our

1 problem (indicating). This is where Seep 6 is
2 (indicating). She even calls it Seep 6.

3 It's not a seepage pump. It's a -- It's a toe
4 drain for water that comes off -- off the things.

5 So I have somebody -- I could have -- I
6 started talking in January about problems. Think what
7 we could have stopped.

8 And I know this is off the mark but, I'm
9 sorry, but this is what I deal with all the time.

10 And -- And I can't talk to Delta Field
11 Division anymore because I get angry. Would you get
12 angry? Of course, you would. My goodness.

13 Nobody -- Okay. And also -- So here we go.
14 Let's do a little bit more. Here's the intake
15 (indicating). Here's our levee (indicating).

16 CO-HEARING OFFICER DODUC: Miss Womack, let's
17 not do a little bit more.

18 WITNESS WOMACK: Well, but --

19 CO-HEARING OFFICER DODUC: I gave you a little
20 bit of leeway to go off your testimony.

21 WITNESS WOMACK: Thank you so much.

22 CO-HEARING OFFICER DODUC: Let's go back now.

23 WITNESS WOMACK: Back to my testimony, yeah.

24 Let's see. I believe this is back in.

25 No one was -- And no one asked to check our

1 levees once the failure of the dam at the Clifton Court
2 Forebay due to the risk caused by excessive pumping.
3 Somehow it's a magical line. It just -- just happens
4 there.

5 Since the Petitioners freely admit that the
6 destruction of fish and wildlife is caused by excessive
7 pumping at Clifton Court, it seems obvious you would
8 first fix both the pumping system and the forebay.

9 Since -- They're still going to be pumping
10 15,000 cfs. We don't know exactly. We know in the
11 summer, they will. We don't know exactly because they
12 won't tell us. A good part of the year is what I say.

13 Very little information about what pumping
14 will be like with three intakes at Sacramento. There's
15 no assurance that, once the new intakes pump 9,000,
16 they will only pump 6,000 cfs at Clifton Court -- at
17 the pumps at Clifton Court.

18 The California WaterFix says they only have
19 5 percent of the plan done, "And trust us." Is this
20 1967 all over again?

21 What sort of fix spends \$17 billion bringing
22 freshwater from Sacramento but doesn't fix the 1960
23 technology pumping at Clifton Court?

24 Water quality. When Clifton Court is pumping
25 15,000 cfs, our water quality is affected. Our pumps

1 clog.

2 In just last month, I had -- our farmyard
3 water has gone out three times. It's clogged down,
4 because I know we're pumping a lot.

5 We've had to repair all the time. No time for
6 fishing. No time for my tenants to fish.

7 During the summer, our ditches are caked with
8 mud from the salty water caused by the pumping at
9 15,000 cfs. Our pumps frequently burn out.

10 We know taking 9,000 cfs up in Sacramento will
11 change our water quality. We expect brackish water.
12 We don't know, though. I don't know if anybody really
13 knows.

14 Our farm and tenants and fish -- Our farm, our
15 tenants, and the fish they fish are dependent on fresh
16 water.

17 Conclusion: At the beginning of these
18 hearings, the Petitioners told us that California
19 WaterFix would take our prosperous farm -- and I wrote
20 this in November -- and justly compensate us for our
21 losses.

22 They suggested that, since we would be
23 condemned and compensated for our losses, we would not
24 really have any damages. However, I said, their past
25 record speaks for itself. We have no reason to trust

1 the California WaterFix will take all of our farm. Oh,
2 my gosh. We'll see.

3 They took part of our land in the 1960s, and
4 for about the last 20 years, our property has been
5 under threat of condemnation for -- from CALFED on.

6 We've had countless meetings. We've wasted so
7 much time. I guess that's why I just have to tell you:
8 We're tired of wasting time.

9 Clifton Court L.P. believes that DWR and the
10 SWP and Department of Interior and the CVP's refusal to
11 accept responsibility for the damage their actions and
12 operations cause is indicative of how they will run the
13 California WaterFix.

14 They will depend on someone else to fix the
15 damage they caused to levees during construction.

16 They will depend on someone else to fix levee
17 damage by their pumping.

18 They'll disregard the public safety risk, as
19 they have with us, that they're causing.

20 They will ignore water quality problems their
21 pumping causes.

22 They'll ignore the hyacinth that's drawn to
23 the pumping.

24 Is it too much to ask that the public who
25 lives on the great rivers of the Delta be allowed to

1 enjoy a peaceful life?

2 My whole purpose in taking part in these
3 hearings was to be able to look the Board, DWR, DOI,
4 State Water Contractors, in the eye and ask: Isn't 51
5 years of condemnation enough?

6 Who is the next eight-year-old whose family
7 will be condemned by your actions?

8 A life -- I should be able to right now in my
9 retirement enjoying a life filled with boating,
10 fishing, kayaking, and enjoying nature and
11 contemplating?

12 And I'm here to tell you, I'm not. I'd like
13 my problems solved.

14 I know you can't change the California
15 WaterFix, necessarily, but you can sure put things in
16 place so that they don't harm . . .

17 Oh, gosh, there's so many families. We're not
18 the only family really affected here. There's so many
19 families.

20 And I say this from the bottom of my heart:
21 Don't hurt anybody else. Don't crush anymore eight
22 year olds and take their father away. It's just wrong.

23 Thank you so much.

24 Okay. We have to stay.

25 CO-HEARING OFFICER DODUC: Did Mr. Moore have

1 something to add?

2 WITNESS WOMACK: Did you want to say something
3 else?

4 WITNESS MOORE: Yes.

5 WITNESS WOMACK: Oh.

6 WITNESS MOORE: Just last week, I noted the
7 L.A. Times said the water -- they should be getting the
8 water by desalinization rather than through the canal.
9 That's what the Los Angeles Times said.

10 So they could have something right there.

11 CO-HEARING OFFICER DODUC: All right.

12 WITNESS WOMACK: What do I do next?

13 CO-HEARING OFFICER DODUC: Cross-examination.

14 WITNESS WOMACK: Okay. We have to wait here
15 and they're going to ask us questions.

16 WITNESS MOORE: Oh, questions.

17 WITNESS WOMACK: Now, this could take -- My
18 father's going to have to read it if it's --

19 (Mr. Moore speaks to Ms. Womack.)

20 WITNESS WOMACK: No.

21 Because he gets intimidated. That's why I
22 read his testimony.

23 CO-HEARING OFFICER DODUC: Mr. Mizell.

24 MR. MIZELL: Yes. Tripp Mizell, DWR.

25 I don't have any questions. I only have one

1 objection to lodge for the record.

2 If we could bring up the Revised Part 2
3 testimony, CCLP-42.

4 (Exhibit displayed on screen.)

5 MR. MIZELL: So the first paragraph of Page 1,
6 please.

7 CO-HEARING OFFICER DODUC: Page 1?

8 MR. MIZELL: Yeah.

9 (Exhibit displayed on screen.)

10 MR. MIZELL: So this would be Lines 4, 5 and 6
11 of that first paragraph.

12 It starts, "Frank Massoni," and completes at
13 the end of -- I guess at the end of the paragraph.

14 I'm going to object on grounds of hearsay.

15 Other than that, no cross-examination.

16 CO-HEARING OFFICER DODUC: All right.

17 WITNESS WOMACK: Okay. So, dad, they want to
18 object to this.

19 I'm sorry. I'm just trying to get in the
20 record that I'm talking to him.

21 They -- They think your Frank Massoni thing is
22 hearsay because apparently, I guess, the -- I guess,
23 the pumps never clogged.

24 And then they put in the -- It was after they
25 clogged that they put in the -- We used to call it the

1 fish screen but now it's the Tracy fish facility.

2 CO-HEARING OFFICER DODUC: Miss Womack --

3 WITNESS WOMACK: They want to object to this
4 because --

5 CO-HEARING OFFICER DODUC: Miss Womack --

6 WITNESS WOMACK: -- it's hearsay.

7 WITNESS MOORE: Hearsay!

8 WITNESS WOMACK: It never happened.

9 CO-HEARING OFFICER DODUC: Mr. Moore,
10 Miss Womack, they are allowed to lodge a hearsay
11 objection.

12 We do consider hearsay testimony in our
13 proceedings, but it may not be the only avenue upon
14 which we depend for our decision-making.

15 So, he is allowed to note the objection. We
16 will note it. We will review it. But we're certainly
17 not ruling it out right now just on the basis of
18 hearsay.

19 WITNESS WOMACK: And there will, of course, be
20 a history of all this in Department of Interior's DMC.

21 CO-HEARING OFFICER DODUC: Right.

22 WITNESS MOORE: Can I ask a question?

23 CO-HEARING OFFICER DODUC: What?

24 WITNESS MOORE: Could I ask a question?

25 Mr. Mizell, he's protesting. Where does he

1 get all his knowledge? How does he know more than I
2 do? How does he do that?

3 CO-HEARING OFFICER DODUC: He's not arguing
4 your knowledge, Mr. Moore. All right.

5 WITNESS MOORE: Where is he?

6 CO-HEARING OFFICER DODUC: Mr. Emrick.

7 MR. EMRICK: Yeah. I was wondering if I could
8 ask just a couple of real quick questions on
9 cross-examination.

10 CO-HEARING OFFICER DODUC: All right.

11 MR. EMRICK: Thank you.

12 Matthew Emrick for City of Antioch.

13 CROSS-EXAMINATION BY

14 MR. EMRICK: Again, Matthew Emrick for City of
15 Antioch.

16 I just had a couple of questions.

17 Your property is located reasonably close to
18 River's End Marina; is that correct?

19 WITNESS WOMACK: Absolutely. It was Del's
20 Boat Harbor. We used to have the sign on our island
21 until the sign fell down, because the island was taken
22 by all the -- most of the island was taken by the swift
23 river.

24 MR. EMRICK: And you're familiar that there
25 are a number of houses that people live in at River's

1 End Marina; is that correct?

2 WITNESS WOMACK: There -- There's quite a few
3 homes there in the center section, as well as there's a
4 few islands nearby that have homes.

5 MR. EMRICK: The levee that you were showing
6 us on the map between your property and the Clifton
7 Court Forebay, I think you've referred to that in your
8 testimony before as a dam.

9 WITNESS WOMACK: Well, it is. We didn't know
10 that till recently.

11 MR. EMRICK: There is no setback levee or
12 setback dam associated with that portion of Clifton
13 Court; is there?

14 WITNESS WOMACK: No. In the '70s, there
15 was -- there was -- there was seepage problems, of
16 course, once the CTB failed. And they fixed the
17 northern part, and it's only recently it's come to
18 light that they fixed the northern part. I believe
19 they put a canal in.

20 They never put in a canal to catch their
21 water. It's some sort of drainage canal that would
22 catch like you normally would do, or a cutoff wall,
23 despite us asking for it.

24 MR. EMRICK: And I think, in your testimony
25 today, you mentioned that you've been under threat of

1 condemnation for 20 years?

2 WITNESS WOMACK: Well, we started with the --
3 That was CALFED.

4 It's so hard to remember all these names. I
5 know we started about -- '99, we started. And, you
6 know, gosh, five hours here, 10, five hours here,
7 meeting with people.

8 "Oh, yes, we're going to do this."

9 "And, oh, we're not going to do this."

10 And then there's something in between, some
11 sort of clean water, and then the BDCP, and then we met
12 with people for the BDCP in '12, I believe it was. I'd
13 have to get my notes out. And that turned into --

14 CO-HEARING OFFICER DODUC: You're going way
15 beyond Mr. Emrick's question.

16 WITNESS WOMACK: Oh, I'm sorry.

17 MR. EMRICK: Thank you.

18 And, then, finally, with respect to the threat
19 of condemnation that you were talking about.

20 Has anybody from Department of Water Resources
21 told you at any time that the reason they're not
22 addressing your specific issues with respect to
23 seepage, the levee, and other issues you've discussed,
24 because they intend to condemn your property?

25 WITNESS WOMACK: You know, they don't respond

1 to us very well.

2 You saw the letter from Amber saying, "Oh, you
3 don't have a seepage problem," and then the -- then the
4 dam fails. The intake fails, right where we had the
5 seepage problem.

6 They -- We send letters. We ask -- We really
7 don't get --

8 CO-HEARING OFFICER DODUC: Miss Womack, so the
9 answer to Mr. Emrick's question is "no"?

10 WITNESS WOMACK: They -- They just have not
11 really -- Well, they -- I would say -- I'm sorry.

12 Could you repeat the question?

13 MR. EMRICK: Sure.

14 I'm asking you specifically whether anybody
15 from Department of Water Resources has told you that
16 they are not responding to your requests for repairs or
17 maintenance because they intend to condemn your
18 property?

19 WITNESS WOMACK: No, they haven't. They just
20 haven't -- They haven't responded.

21 MR. EMRICK: Okay. That's all I have.

22 Thank you.

23 WITNESS WOMACK: Thank you.

24 CO-HEARING OFFICER DODUC: Thank you,
25 Mr. Emrick.

1 WITNESS WOMACK: We're good. Well --

2 CO-HEARING OFFICER DODUC: Hold on.

3 WITNESS WOMACK: Oh.

4 MR. JACKSON: Yeah. I was -- I've got a few
5 questions on cross.

6 CO-HEARING OFFICER DODUC: How many questions?

7 MR. JACKSON: There's . . . three areas that
8 I'm interested in.

9 One has to do with the . . . nature of the
10 land before 1852 in terms of what they had found on the
11 land in terms of indian . . . artifacts.

12 The second line of questions would be sort of
13 some past is prologue and delve into a little bit of
14 how people in the area of the new Project may be
15 affected given the experience that these folks have
16 had.

17 And the third line of questions has to do
18 with . . . whether or not they would be affected by the
19 changes that showed up in the Clifton Court design for
20 the future.

21 I don't know how much you're going to let me
22 do that given that that may be in the next phase, but I
23 think there is some questions that are relevant to the
24 present program.

25 CO-HEARING OFFICER DODUC: And make that

1 direct connection for me in terms of how these lines
2 are relevant to Part 2 issues.

3 MR. JACKSON: They're relevant to Part 2
4 issues because the location of the changes that have
5 been suggested might change this testimony.

6 Because it looks to me like they're moving on
7 to land in another -- in another direction from
8 their -- from their farm, and I'd --

9 CO-HEARING OFFICER DODUC: So --

10 MR. JACKSON: -- like to --

11 CO-HEARING OFFICER DODUC: -- let's save that
12 for the subsequent step that we'll be exploring.

13 MR. JACKSON: All right.

14 CO-HEARING OFFICER DODUC: And the first two
15 items, how are they related to Part 2 issues?

16 MR. JACKSON: They're related to Part 2 issues
17 in -- in regard to the issues that are involved:
18 Effects on fish and wildlife, effects on public trust,
19 and effects on the public interest.

20 CO-HEARING OFFICER DODUC: 15 minutes?

21 MR. JACKSON: Yes.

22 CO-HEARING OFFICER DODUC: All right,
23 Mr. Jackson.

24 WITNESS WOMACK: He's going to ask us some
25 questions.

1 CROSS-EXAMINATION BY

2 MR. JACKSON: Miss Womack, your -- your
3 testimony indicated the location of your land --

4 WITNESS WOMACK: Yes.

5 MR. JACKSON: -- in relation to Clifton Court;
6 is that correct?

7 WITNESS WOMACK: Yes. It's quite -- I -- I --
8 Yes. It's -- Yes.

9 MR. JACKSON: In regard to . . .

10 Well, were you here when Dr. Hankins
11 testified?

12 WITNESS WOMACK: Yes, I was.

13 MR. JACKSON: Are you aware that the location
14 that we're talking about in the original Clifton Court
15 and in the new redesigned Clifton Court is land that
16 the Miwok lived on for 10,000 years?

17 WITNESS WOMACK: Yes. We're -- We're very
18 aware of -- of the origins there.

19 My -- And it's -- You have to understand. To
20 answer this, I have to give a little background.

21 John Hurd in about the turn of the century had
22 this big dredging machine that made levees and dried up
23 kind of the swampland.

24 And where the peat was, where we grew our
25 asparagus, was a lot of that swampland. And we called

1 it swampland. I'm sure it was wonderful for the Native
2 Americans because, in that area that is now underwater
3 that was bulldozed in the '60s, we found bowls. We
4 found lots of bowls of things.

5 Not some -- Not where we are because our land
6 was -- you wanted to be right next to where the -- all
7 the clams, were, and the ferry shrimp. That was what
8 the Native Americans used that area for. So it's
9 definitely part of the Clifton Court Forebay.

10 But, like I said, my father was also very
11 careful being raised in the depression and he saved
12 many artifacts that we would love to move on to him.

13 So I'm very aware of the indian tribes. I'm
14 not sure exactly which tribes but, you know, this --
15 this was clearly -- And in history books, there's talk
16 of the tribes out at Clifton Court.

17 MR. JACKSON: Do you -- In the course of your
18 time and your father's time at Clifton Court, did you
19 find those artifacts on the land where Clifton Court is
20 today?

21 WITNESS WOMACK: Yes. That's where -- When my
22 father put in the asparagus beds, he found a lot on
23 that.

24 MR. JACKSON: Do you still have some of that?

25 WITNESS WOMACK: Oh, absolutely. They're --

1 They're won -- You can't -- You have to treasure them.
2 And I -- You know, who to give them the to is a very
3 hard thing. We would love to.

4 I talked with my sisters and I, we would love
5 to be able to give them to the appropriate tribes.

6 MR. JACKSON: To your knowledge, has anyone
7 from DWR or the Bureau of Reclamation done surveys of
8 your land or any of the land in the area to determine
9 whether or not there are artifacts?

10 WITNESS WOMACK: DWR has never cared a rip.

11 In our area, we have never found -- And you
12 have to trust us for this. But in our area, we have
13 never found.

14 Like I said, there was more of a marsh --
15 marsh peat land where, on the other side of -- There
16 was a canal -- And I can show you. There was a canal
17 that cut through Clifton Court that was our discharge
18 drain where a lot of sand was that was on the other
19 side of that, where -- where the artifacts were found.

20 MR. JACKSON: You also indicated that -- that
21 during the time in which you were having seepage
22 problems --

23 WITNESS WOMACK: Yes.

24 MR. JACKSON: -- that it was because of, I
25 think you said, sand? A sand area?

1 WITNESS WOMACK: Maybe my father -- You know,
2 I'm not the farmer. My father . . .

3 Dad, could you talk about the sandbar?

4 WITNESS MOORE: What?

5 WITNESS WOMACK: Could you talk about the
6 sandbar and the problems with the seepage from the
7 sandbar?

8 WITNESS MOORE: Oh, yeah.

9 Why they -- When they condemned the property,
10 they -- they mined -- We have what we call the ridge
11 out there, the sand ridge, and they took all this sand
12 out to line the whole interior of the -- of the new
13 forebay.

14 And the problem was that, when they did that,
15 they didn't put a cutoff wall in, because -- So it
16 created a bunch of channels under there that come into
17 my property today, and they cause groundwater to come.
18 So it's very, very bad.

19 WITNESS WOMACK: Dad, when you say they lined
20 it with sand, they didn't line the forebay with sand.

21 WITNESS MOORE: They used CVT.

22 WITNESS WOMACK: So concrete --

23 WITNESS MOORE: CV -- CTV -- CT -- interior
24 base.

25 WITNESS WOMACK: Made from the sand.

1 WITNESS MOORE: They used the sand. The
2 concrete was from -- They used the sand, so -- each one
3 of them.

4 But in mining that, they opened up veins. And
5 every time they dredged the levee -- the forebay now --
6 they would get a lot of sailboats just inside the gate.
7 They dredge and they need more water.

8 WITNESS WOMACK: Or from the natural, from the
9 floods.

10 WITNESS MOORE: From the ground --

11 WITNESS WOMACK: Yeah.

12 WITNESS MOORE: -- more seepage.

13 WITNESS WOMACK: Yeah.

14 MR. JACKSON: To your knowledge, has DWR taken
15 core drillings on your land adjacent to Clifton Court
16 Forebay?

17 WITNESS WOMACK: On our land.

18 They were drilling something on January 10th,
19 I think. I have a picture of a drill. But -- I don't
20 know if it's a drill or not. But they were drilling
21 something.

22 I can submit that in the next part. I have
23 the drill right here, right at the intake (indicating).
24 I think that's a drill.

25 You know, I don't know. Maybe it's not a

1 drill. It just is a big -- They were doing something.

2 They haven't drilled on our land, though.

3 They -- They -- They don't come on our land. They

4 just -- They don't care.

5 MR. JACKSON: In the course of your . . . time

6 from . . .

7 I believe the CALFED program began sometime in

8 1998.

9 WITNESS WOMACK: I think we were contacted

10 maybe '99.

11 We heard from our neighbors first, that they

12 were going to be contacting us about '98. And about

13 '99, we started getting -- We had a -- My parents had

14 about four or five meetings, five-hour meetings. They

15 wasted about 20 hours of their time.

16 Bought a place up in Lincoln because they were

17 going to have to move. They did a lot of things

18 because they were -- it was going to happen.

19 MR. JACKSON: And in the time that CALFED

20 either was replaced by BDCP --

21 WITNESS WOMACK: I think --

22 MR. JACKSON: -- there were --

23 WITNESS WOMACK: -- there was something in

24 between. There was another Save the Water something.

25 I mean, they were -- they're always trying to fix.

1 MR. JACKSON: Maybe Duke's Ditch?

2 WITNESS WOMACK: Pardon?

3 MR. JACKSON: Duke's Ditch?

4 WITNESS WOMACK: Maybe. I -- You know, I lose
5 track of the names.

6 But it -- There's always something to fix
7 Clifton Court because we're killing all these fish and
8 making the water so filthy.

9 MR. JACKSON: The -- In that time period,
10 from -- Let's start with CALFED and moving on to today.

11 WITNESS WOMACK: Yes.

12 MR. JACKSON: Have you ever tried to sell your
13 property?

14 WITNESS WOMACK: You know, we're kind of under
15 a -- We -- We have plans. We have all kinds of plans
16 for our property, but we haven't been able to move
17 forward with anything with this threat of condemnation.

18 MR. JACKSON: And so that particular threat,
19 you believe, has caused you . . . diminution in your --
20 in your property value?

21 WITNESS WOMACK: Yeah. It -- Yes.

22 MR. JACKSON: Do you see any reason that it
23 would be different, for the next 17 years or so that it
24 would take to build this Project, for the people in the
25 North Bay or the Central -- or in the -- excuse me --

1 in the North Delta, or the people in the Central Delta,
2 or the people in the South Delta, who are about to
3 experience your experience for the last 50 years?

4 WITNESS WOMACK: Well, it looks oddly the
5 same. We're building something without -- We're
6 hurrying something through, like they did with the
7 Clifton Court Forebay, to beat the environmental, so
8 they wouldn't have to comply. That was hurried
9 through. It wasn't well engineered.

10 Now we've got another Project not very --
11 5 percent but, you know, people that actually build for
12 a living say you'd never get away with that. You
13 can't -- You know, it's not safe.

14 We're doing the same darn thing again, and now
15 we're going to do 17 years. A year and a half killed
16 us.

17 MR. JACKSON: I have no further questions.

18 CO-HEARING OFFICER DODUC: Thank you,
19 Mr. Jackson.

20 And with all that friendly cross, I don't
21 believe redirect is necessary.

22 Thank you, Miss Womack.

23 WITNESS WOMACK: Thank you so much.

24 CO-HEARING OFFICER DODUC: Thank you,
25 Mr. Moore.

1 All right. If -- Candace, you're okay with
2 going on another half an hour?

3 THE REPORTER: Um-hmm.

4 CO-HEARING OFFICER DODUC: Let's go ahead and
5 have PCFFA bring up their remaining witness.

6 Oh, I'm sorry. Miss Womack, I forgot
7 something. Please come back.

8 MS. WOMACK: Okay. Yes.

9 CO-HEARING OFFICER DODUC: At this time, would
10 you like to move your exhibits into the record?

11 MS. WOMACK: Absolutely. Thank you so much.

12 CO-HEARING OFFICER DODUC: Objections?

13 MS. WOMACK: Oh. Yeah, I thought so.

14 MR. MIZELL: I'd like to just get some
15 clarification.

16 In your January 4th ruling, you struck a
17 number of paragraphs from the testimony.

18 There's an associated Exhibit CCLP-40 -- four
19 zero -- and I'd just like to get clarification if that
20 was also struck or if I need to lodge an objection to
21 it being entered?

22 CO-HEARING OFFICER DODUC: We will look into
23 it. Do you wish to log objection for the record right
24 now?

25 MR. MIZELL: That would be fine.

1 CCLP-40. Objection it's having been removed
2 from her testimony in the January 4th ruling.

3 Thank you.

4 CO-HEARING OFFICER DODUC: We will review
5 that.

6 MS. WOMACK: And can I say that -- Can I --

7 CO-HEARING OFFICER DODUC: Please.

8 MS. WOMACK: I think it just shows public
9 interest, public trust. And I would like all exhibits
10 I've put in left in.

11 Thank you so much.

12 CO-HEARING OFFICER DODUC: All right. We will
13 review it.

14 Miss Meserve.

15 MS. MESERVE: Yeah.

16 Just to clarify that I think that there's been
17 prior rulings on the fact that an exhibit does not need
18 to be specifically referenced if it is relevant.

19 And I believe that exhibit is relevant
20 so . . .

21 CO-HEARING OFFICER DODUC: As long as it's not
22 subject to the striking ruling that we issued earlier,
23 which I believe was the basis of Mr. Mizell's
24 objection.

25 MR. MIZELL: Yes. I'll just be very clear.

1 It's not because it wasn't referenced. It's
2 because I was reading the January 4th ruling in a
3 specific way, so it is based on your January 4th
4 ruling.

5 CO-HEARING OFFICER DODUC: We will review that
6 ruling.

7 And, Miss Orona, while we're getting
8 everything in place, please raise your right hand.

9

10 Brittani Orona,
11 called as a witness by the Pacific Coast
12 Federation of Fishermen's Associations,
13 et al., having been duly sworn, were
14 examined and testified as follows:

15 CO-HEARING OFFICER DODUC: Thank you.

16 How much time do you anticipate needing
17 for . . . direct?

18 MS. KRIEG: Let's just put up the 20 minutes.
19 I don't think I'll use it all.

20 CO-HEARING OFFICER DODUC: All right. And at
21 this time, what is the estimate for cross?

22 MS. ANSLEY: At this time, depending on
23 whether anything changes during her direct testimony,
24 which I obviously do not anticipate, I do not have any
25 questions.

1 But I'm going to reserve five minutes in case
2 I have one followup question.

3 CO-HEARING OFFICER DODUC: All right. Let's
4 see if we might complete this before taking our morning
5 break.

6 MS. KRIEG: Good morning.

7 DIRECT EXAMINATION BY

8 MS. KRIEG: Miss Orona, is PCFFA --

9 CO-HEARING OFFICER DODUC: Actually, please --

10 MS. KRIEG: Oh.

11 CO-HEARING OFFICER DODUC: -- bring the
12 microphone -- Actually, you might want to use the other
13 microphone. That one seems to be missing the puffy
14 piece.

15 MS. KRIEG: Might explain a lot.

16 Good morning.

17 Miss Orona, is PCFFA-196 a true and correct
18 copy of your testimony?

19 WITNESS ORONA: Yes.

20 MS. KRIEG: Do you have any corrections to
21 make to this?

22 WITNESS ORONA: No.

23 MS. KRIEG: And is PCFFA-192 a true and
24 correct copy of your qualifications?

25 WITNESS ORONA: Yes.

1 MS. KRIEG: Thank you.

2 Can you please summarize your testimony for
3 the record.

4 WITNESS ORONA: Thank you.

5 Thank you for allowing me to testify today.
6 I'm sorry I could not be at the meeting on Monday.

7 My name is Brittani Orona, and I am an
8 enrolled member of the Hoopa Valley Tribe.

9 And I'm here in my capacity as a Ph.D. student
10 in Native American studies at U.C. Davis to testify for
11 PCFFA on the cultural and -- the cultural and
12 traditional impacts of a water diversion on the Trinity
13 River and the Klamath River Basin.

14 As a Hoopa Tribal member, I have spent my
15 whole life going to the Klamath River Basin and
16 participating in ceremonies along the river.

17 The Hupa, Yurok and Karuk people of the
18 Klamath River depend on that water basin to sustain our
19 traditional and cultural life.

20 And what that means is that we still fish
21 along the river. We fish Salmon, Lamprey, Trout, many
22 different species of fish, as well as perform our
23 ceremonies next to or near the Trinity or the Klamath
24 River.

25 And so some of these ceremonies include the

1 World Renewal Dances, the Brush Dances. And World
2 Renewal Dances encompass the Jump Dance, the Brush
3 Dance -- sorry -- the Jump Dance, the Boat Dance. And
4 the Boat Dance is performed on the water, so we have
5 boats that go up and down the river system as we are
6 dancing.

7 And during those ceremonies and in our
8 day-to-day life, we depend on Salmon to sustain us,
9 both physically and culturally.

10 And what I mean by that is that we and the
11 river and Salmon people along the Trinity and Klamath
12 River view ourselves as that river system. We cannot
13 separate who we are from that system, and if anything
14 impacts it, it impacts us.

15 So we have an interrelate-- interfamilial --
16 family relationship with Salmon, as well as the natural
17 environment around us.

18 The Klamath River system and the Trinity River
19 system supports the area around it, and water
20 diversions from that area heavily impact Salmon runs as
21 well as traditional life of the Hupa, Yurok and Karuk
22 people.

23 And, so, as a -- We are obviously modern
24 people, and we testify in front of hearings, or we
25 work, and we -- but we still depend on the river system

1 to sustain us as Hupa, Yurok, and Karuk people.

2 And so that reciprocal relationship means that
3 we depend on being able to fish and eat and gather in
4 the same way that we have been doing since the
5 beginning of time.

6 And that means -- That -- So we still set net,
7 do fishnets, dip nets. We still smoke Salmon, do -- do
8 everything that our ancestors have done since we have
9 been here since the beginning of time immemorial.

10 So, when that is taken away, health impacts --
11 When that is taken away and we have to depend on --
12 Sorry, I'm shuffling my papers just a little bit.

13 When that is taken away and we have to depend
14 on western diets to sustain us, it causes high rates of
15 diabetes, unhealthy weight gain and vitamin
16 deficiencies.

17 And I'm depending on the report by Kari Marie
18 Norgaard on western diet rates in the -- on the Karuk
19 Reservation.

20 So the estimated diabetes rate for the Karuk
21 Tribe is 21 percent, nearly four times the U.S.
22 National -- the U.S. National Average.

23 The estimated rate of heart disease for the
24 Karuk Tribe is 39.6 percent, three times the U.S.
25 average.

1 And Norgaard connects this with the loss of
2 traditional foods and the ability to gather in the same
3 way that we have been gathering.

4 And so the cultural and the health impacts on
5 the Trinity River have been impacted by previous
6 diversions from our water source.

7 And so that actually, basically, sums up my
8 testimony.

9 And I want to thank you for having me with
10 you.

11 Thank you.

12 CO-HEARING OFFICER DODUC: Thank you very
13 much.

14 Miss Ansley, no cross?

15 MS. ANSLEY: (Shaking head.)

16 CO-HEARING OFFICER DODUC: Any other cross?

17 At this point, this does, I believe, complete
18 PCFFA's case in chief.

19 MS. KRIEG: It does.

20 CO-HEARING OFFICER DODUC: Do you wish to move
21 your exhibits into the record?

22 MS. KRIEG: I do.

23 At this time, I would like to move in all of
24 PCFFA's Part 2 exhibits except for . . . PCFFA-176
25 through 191 and PCFFA-197, which would be the exhibits

1 that go with the testimony we did not present.

2 CO-HEARING OFFICER DODUC: All right. Any
3 objections?

4 So moved.

5 (Pacific Coast Federation of Fishermen's Associations
6 and Institute for Fisheries Resources' Exhibits
7 PCFFA-85 through PCFFA-175, PCFFA-198 through
8 PCFFA-201 received in evidence)

9 CO-HEARING OFFICER DODUC: Thank you.

10 Please extend our thanks to Mr. Volker as
11 well.

12 MS. KRIEG: Thank you so much.

13 CO-HEARING OFFICER DODUC: All right. Let's
14 go ahead and take our morning break while North Delta
15 C.A.R.E.S. gets set up for their case in chief.

16 We will return at 10:50.

17 (Recess taken at 10:38 a.m.)

18 (Proceedings resumed at 10:50 a.m.):

19 CO-HEARING OFFICER DODUC: All right. It is
20 10:50. We are back in session.

21 If I might ask all three witnesses to please
22 stand and raise your right hand.

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James Motlow,
Barbara Daly,
and
Nicole Suard,

called as witnesses by North Delta
C.A.R.E.S., having been duly sworn, were
examined and testified as follows:

CO-HEARING OFFICER DODUC: Thank you. Be
seated.

Miss Meserve.

MS. MESERVE: Good morning.

I'll be assisting North Delta C.A.R.E.S. this
morning in presenting their case in chief.

CO-HEARING OFFICER DODUC: Okay. And,
Miss Ansley, why are you here?

MS. ANSLEY: Yes.

So Jolie-Anne Ansley, Department of Water
Resources.

At the beginning, we have some objections to
the testimony of Miss Suard that we think are more
appropriate to lodge up front as opposed to during or
after her testimony.

CO-HEARING OFFICER DODUC: All right.

MS. ANSLEY: We have two main issues with

1 Miss Suard's testimony which, as far as we know, is
2 NDC-2-19. It's only two pages long.

3 Up front, we would like to say there are a
4 number of sentences that state what she will focus on.
5 We would like to lodge an objection to any evidence
6 that's outside the scope of her direct testimony here
7 and what she may add.

8 You know, we are unable to interpret that but,
9 because of past experience, I lodge an objection here
10 to anything that is beyond the language that follows
11 those sentences that start each and every paragraph
12 saying what her testimony will focus on or will
13 address.

14 And, then, on the second and final page,
15 second-to-last paragraph, Miss Suard rep -- says that
16 she may utilize portions of the following string of
17 exhibits. It's the last sentence there.

18 CO-HEARING OFFICER DODUC: Um-hmm.

19 MS. ANSLEY: A number of those exhibits have
20 been struck or withdrawn, so we, of course, object to
21 the use of those in North Delta C.A.R.E.S.' case in
22 chief. These were not submitted by North Delta
23 C.A.R.E.S.

24 One of them has a link that is not functional.
25 I believe that is 2-104, SHR-2-104.

1 And, then, as to a couple of other exhibits
2 which I can name:

3 SHR-2-103 is a PowerPoint, I believe, from a
4 U.C. Davis presentation.

5 SHR-2-115, -245 and -251 are large
6 compilations of maps and exhibits, sometimes with
7 underlying or commentary, sometimes with no underlying
8 or commentary.

9 And when someone references just portions of
10 exhibits that they may use, we do not have advanced
11 notice of what we are even talking about in those
12 presentations.

13 And I believe that, in the February 21st,
14 2017, ruling -- which I will want to address at more
15 length with Miss Suard's case in chief -- the Board was
16 quite clear in the submission of these kind of lengthy
17 compilations of maps, exhibits, photos, into sort of a
18 presentation PowerPoint form where specific slides are
19 not referenced or even explained.

20 So, those are the basis for my objections up
21 front. There are two parts.

22 Obviously, the first is not to stray beyond
23 the direct testimony; and the second is utilization of
24 those exhibits that are cited -- cited generally but we
25 don't know what portions will be relied on at the

1 bottom of Page 2.

2 CO-HEARING OFFICER DODUC: Thank you for
3 voicing that.

4 I noticed similar issues, both in this
5 testimony as well as in your case in chief for Snug
6 Harbor.

7 Miss Meserve, do you have an explanation to
8 provide? We did go through this effort -- even though
9 you were not helping Miss Suard at the time, I believe
10 Mr. Keeling was so we'll blame him since he's not
11 here -- with the issue of being very specific in her
12 direct written testimony and that it be -- that it
13 contains all relevant facts to which she will be then
14 summarizing in her oral testimony.

15 WITNESS SUARD: Can I -- Whoops.

16 I'd like to explain where those slide sets
17 came from. They are complete side -- slide sets from
18 presentations I have done in the past.

19 And much like there's documents that were --
20 are presented here where everybody referred to just one
21 page of that document, those are slide sets that are
22 available online that I --

23 CO-HEARING OFFICER DODUC: I --

24 WITNESS SUARD: -- refer to.

25 CO-HEARING OFFICER DODUC: I understand,

1 Miss Suard.

2 I think there -- At least for me, in reading
3 your testimony, both here as part of North Delta
4 C.A.R.E.S. as well as in your own case in chief, it is
5 making concrete linkage between what is specifically
6 detailed in your written testimony and those exhibits.

7 MS. MESERVE: And, if I just might add in
8 here.

9 Miss Suard and I have been working on this
10 over the past few days, and I believe that the concerns
11 that were voiced should be addressed in what we intend
12 to present.

13 CO-HEARING OFFICER DODUC: Okay.

14 MS. MESERVE: And either at the end or during,
15 if we get off of what the Board has ordered and what
16 Miss Ansley is referring to, then, certainly, we could
17 raise that, but we are aware of those issues.

18 I think what Miss Suard is expressing with
19 respect to the slides is that she does wish to submit
20 those into evidence. She understands, however, that,
21 with respect to a lot of the details within there, if
22 that's not reflected in her testimony, she won't be
23 intending to discuss that detail.

24 And then we would expect, if they are admitted
25 into evidence, that any issues with respect to the

1 content and, obviously, the Hearing Officers and Board
2 would be, you know, looking at the weight of that
3 material, as it always does.

4 CO-HEARING OFFICER DODUC: All right. We'll
5 note your objection, Miss Ansley. We'll proceed.

6 Miss Suard, I -- I know you know this, that
7 it's, you know, not just in response to Miss Ansley's
8 objection, and her concern about her cross, but it's
9 also very important for us in reviewing your testimony,
10 your exhibits, and in considering them appropriately
11 and providing the appropriate weight to them, that we
12 understand those linkages between your exhibit, and
13 that your testimony, written as well as oral, is as
14 clear as possible in presenting your arguments and in
15 presenting your, you know, proposals.

16 So it's for our benefit as much as it is,
17 perhaps, for Miss Ansley and the Department.

18 WITNESS SUARD: I will do my best to be very
19 on -- on topic.

20 CO-HEARING OFFICER DODUC: And before we
21 begin, did -- did your fourth witness arrive?

22 And, if so, I will administer the oath to him
23 as well.

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Mark Pruner,

called as a witness by North Delta
C.A.R.E.S., having been duly sworn, was
examined and testified as follows:

CO-HEARING OFFICER DODUC: Thank you.

CO-HEARING OFFICER MARCUS: Will you ask him
if his tie is a Cal Berkeley tie and that's why he's
wearing it?

CO-HEARING OFFICER DODUC: My fondness for Cal
Berkeley is well known by now.

WITNESS PRUNER: This tie was -- Mark Pruner.
This tie was not selected with this hearing in
mind. I just like the tie.

Thank you for asking.

CO-HEARING OFFICER DODUC: Just don't wear red
and white.

MS. MESERVE: Everyone will be safe; right?

CO-HEARING OFFICER DODUC: Yes.

All right. Miss Meserve, we'll now turn it
over to you.

MS. MESERVE: Okay.

CO-HEARING OFFICER DODUC: I'm sorry. Before
we do.

Are we anticipating 20 minutes per witness?

1 MS. MESERVE: Yes. I think it will ultimately
2 be a little less than that, but we can start with that.

3 CO-HEARING OFFICER DODUC: We'll start with
4 that.

5 MS. MESERVE: And so we'll be starting with
6 Miss Daly today.

7 DIRECT EXAMINATION BY

8 MS. MESERVE: And, Miss Daly, is NDC-2-1 a
9 true and correct copy of your testimony?

10 WITNESS DALY: When I was going through it the
11 last couple of days, I saw a few errors in it, just
12 typos and simple words that might need to be changed.

13 So, other than that, it's basically correct.

14 MS. MESERVE: Would you like to go ahead and
15 note those clarifications for the record now?

16 WITNESS DALY: Could I submit a . . .

17 What do you call it? A --

18 MS. MESERVE: An errata?

19 WITNESS DALY: An errata.

20 MS. MESERVE: If it's a typographical stuff, I
21 believe that would be acceptable.

22 WITNESS DALY: It's just typos.

23 CO-HEARING OFFICER DODUC: Miss Ansley, was
24 there an issue?

25 MS. ANSLEY: Is there a copy for opposing

1 counsel? Because I do have an issue with it being in
2 her written form. When I don't have the written form,
3 I would then prefer it actually be read into the
4 record.

5 WITNESS DALY: (Handing document to counsel.)

6 MS. ANSLEY: Oh, is that an extra copy?

7 WITNESS DALY: Yes, but it doesn't have the
8 changes on it yet.

9 MS. ANSLEY: I do have a copy of your
10 testimony.

11 WITNESS DALY: Oh.

12 MS. ANSLEY: I meant the errata version.

13 WITNESS DALY: Oh, no. I don't have that yet.

14 MS. ANSLEY: So, yes, I would rather have it
15 also read into the record, then, so we can note it on
16 the copy as we're looking at it.

17 MS. MESERVE: Yes, let's read it into the
18 record.

19 CO-HEARING OFFICER DODUC: Yes. Let's read it
20 into the record.

21 MS. MESERVE: Please go ahead.

22 WITNESS DALY: Okay. Thank you.

23 And I have -- As I do this, I do have a slide
24 presentation. Would it be all right if I --

25 MS. MESERVE: Yeah. Let's do the corrections

1 first, Miss Daly.

2 WITNESS DALY: Oh. They're -- Oh, you want
3 them one --

4 CO-HEARING OFFICER DODUC: Just go ahead.

5 WITNESS DALY: -- at a time?

6 MS. MESERVE: Yes. Just go ahead and read
7 them off.

8 WITNESS DALY: I don't have line numbers.

9 MS. MESERVE: Then you just go by page and --

10 WITNESS DALY: Okay.

11 MS. MESERVE: -- paragraph number, please.

12 WITNESS DALY: All right. At the top

13 (reading):

14 "I, Barbara Daly, speaking on behalf
15 of the public group North Delta
16 C.A.R.E.S."

17 So there's the word "speaking" there.

18 And then if you scroll down.

19 (Exhibit displayed on screen.)

20 WITNESS DALY: All -- It starts with

21 (reading):

22 "All the Delta Legacy towns are to
23 be recognized and protected. It is
24 required by the -- the policies of the
25 Delta Plan and the Delta Reform Act of

1 2009."

2 So the word "policies" before "Delta Plan."

3 At the bottom, where it says (reading):

4 ". . . Sutter's Fort" -- last line --

5 "where my own and many of the local

6 children," instead of "mine."

7 Next page, third paragraph.

8 (Exhibit displayed on screen.)

9 WITNESS DALY: (Reading):

10 ". . . National Historic Register and it

11 opens five museums . . ."

12 Oh, and just before above that, where it says,

13 "settlers lives," I believe there should be an

14 apostrophe, "settlers'."

15 Sorry.

16 MS. MESERVE: It's okay. Go ahead.

17 WITNESS DALY: The fourth paragraph (reading:)

18 ". . . would congregate to translate

19 languages, settle disputes, and

20 socialize . . ."

21 Take out the word "find socialize."

22 Do you see that?

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

24 WITNESS DALY: Next paragraph (reading):

25 ". . . Supplies, and fuel, and

1 marinas . . ."

2 And that should be a lower case "M."

3 Then the last paragraph. I don't know if I
4 need to say "before Mayor Kevin Johnson's declaration."
5 Maybe I should say prior -- "past Mayor Kevin Johnson's
6 declaration" for there.

7 And then the last sentence (reading):

8 ". . . They drive along the winding river
9 roads."

10 Instead of "wining river roads."

11 Let's see if I have any on this next page.

12 I think that one's okay.

13 Unless somebody else caught something that I
14 didn't. Is that --

15 MS. MESERVE: Excellent.

16 WITNESS DALY: Thank you.

17 MS. MESERVE: Okay. Thank you.

18 And then your qualifications are in NDC-2-2;
19 correct?

20 WITNESS DALY: Correct.

21 MS. MESERVE: And, then, can you go ahead and
22 just summarize real briefly your qualifications for
23 this testimony.

24 WITNESS DALY: Yes.

25 I guess for this hearing, the most important

1 qualification would be as North Delta C.A.R.E.S.
2 Community Organization Co-Chair, North Delta C.A.R.E.S.
3 Action Committee.

4 I've been doing that since 2009 and have
5 had -- Well, I shouldn't -- I shouldn't explain; right?

6 So, I'm also the owner of a business in the
7 Delta, a tourism business. And I have a bus, a
8 14-passenger bus, that I take people to all the Legacy
9 towns. And I created a map (indicating) of all the
10 Legacy towns, so I know the area very well.

11 I've lived there for 25 years. My Post Office
12 Box and address is in Clarksburg.

13 Vice-Chair of the Delta Protection Commission
14 Advisory Committee. And I also did their leadership
15 program a year or two ago.

16 Treasurer/Director on the California Delta
17 Chambers of Commerce and Visitors Bureau.

18 And half owner of the Das Cliff House Marina
19 in Rio Vista.

20 MS. MESERVE: And, then, as you were
21 mentioning, Ms. Daly, you have created a compilation of
22 your pictures, which are NDC-2-26.1, .2, .3 and .4,
23 that we would request just be shown in the background
24 as you give your testimony, if that would be
25 acceptable, without -- She won't be adding anything to

1 the pictures other than what's already in her
2 testimony.

3 And then if you could just go ahead and
4 summarize your testimony, Miss Daly.

5 WITNESS DALY: Yes.

6 In the beginning of my testimony, I talk about
7 living in -- in the North Delta, and raising my
8 children there, and receiving notification in 2009
9 about the BDCP. I really wasn't aware of it until
10 then.

11 And so I -- Because of raising my children and
12 living there for 25 years, this has become my whole
13 community. And it's not just the Town of Clarksburg.
14 It's the region of the Delta, all these little towns.

15 The California Delta's a unique place,
16 distinguished by its diverse geography, vibrant natural
17 resources, rich agricultural heritage, and its Legacy
18 communities.

19 The people of the Delta envision a future
20 where these unique Delta qualities are recognized and
21 honored, including the attributes of the Delta's
22 historic towns.

23 The California WaterFix and its components
24 will literally destroy these qualities and attributes
25 and cause undue hardship on the people there.

1 There's 11 Legacy towns. Nine of them are in
2 the North Delta. These are the ones I take the tours
3 to; namely, Freeport, Clarksburg, Hood, Courtland,
4 Locke, Walnut Grove, Ryde, Isleton and Rio Vista. And
5 the pictures are of these towns.

6 All the Delta Legacy towns are to be
7 recognized and protected. It is required by the
8 policies of the Delta Plan and the Delta Reform Act of
9 2009.

10 Why? Because these towns are pivotal in the
11 formation of California's early history.

12 As the 49ers came over land, the other half of
13 the miners came by boat, and they began their journey
14 to the gold fields in the San Francisco Bay.

15 These people are called Argonauts. And they
16 took schooners up the Sacramento River to the newly
17 formed settlement of Sacramento and -- and they settled
18 these little towns.

19 Old Sacramento was their destination -- was a
20 destination where they would purchase their mining
21 supplies before they head into the gold fields.

22 Another related tourist attraction is Sutter's
23 Fort, where my own and many of the local children visit
24 to learn about early California history.

25 The Sacramento River was the I-5 of its day.

1 And after the Chinese laborers finished the railroads
2 across the country, they stayed on to build the levees,
3 to reclaim the rich Delta soil for farming.

4 This historical and rich agricultural place is
5 now in danger of being destroyed through proposed
6 construction of water outtakes and tunnel construction.

7 The Legacy communities of Clarksburg, Hood and
8 Courtland are in direct line with the construction of
9 the California WaterFix Project.

10 Walnut Grove and Locke are also examples of
11 the earliest settlements in California along the
12 Sacramento River. They offer interesting looks into
13 our State's earliest settlers' lives with the town of
14 Locke being on the National Historic Register. And it
15 opens five museums to tourists, and I take them there
16 often, and many of the buildings in Walnut Grove are
17 also built in the 1850s.

18 But the area does not just depend on its
19 most-central neighbors of Locke and Walnut Grove to
20 bring in tourists. To the south, Isleton has recently
21 had its Chinese roots acknowledged and supported by the
22 restoration of the Bing Kong Tong building, a place
23 where the early Chinese would congregate to translate
24 languages, settle disputes and socialize with their
25 friends.

1 In addition, Rio Vista has two museums, and I
2 take many visitors to the area, to the Dutra Museum of
3 Dredging. The people really love that.

4 Here's where a tourist or student will learn
5 about how the Delta levees were built in the 1870s, and
6 this is where -- meaning Rio Vista -- Humphrey the
7 Humpback Whale got lost in 1985.

8 All of the businesses of the Delta are related
9 and interdependent, whether supported by the
10 agriculture industry or the recreation/tourism
11 industry.

12 Fishing guides and boaters depend on the
13 marinas for supplies and fuel -- and fuel. And marinas
14 without food services rely on local food markets or
15 restaurants to serve visitors.

16 Most brick-and-mortar businesses depend on
17 visitors and tourists spending time and money in the
18 Delta.

19 The businesses involved in recreation and
20 tourism have been on the rise in the Delta. This is
21 partly due to the increasing number of wineries and
22 wine-tasting venues in the Clarksburg area where the
23 water intake farthest to the north is planned.

24 New tourism businesses have been developing to
25 accommodate the interest in local farming. Much of it

1 is brought to the forefront by Prior Mayor Kevin
2 Johnson's declaration that Sacramento is the
3 farm-to-fork capital of America, I believe, not
4 California.

5 I'll change that.

6 Clarksburg was settled in 1850, the year
7 California became a state. It is a short 15-mile drive
8 from our State Capitol and offers wine tasting at close
9 to 30 venues now, with more being added every year.

10 New maps of the region have been designed to
11 help tourists find their way to visit the Delta,
12 whatever their interest may be: History, bird
13 watching, wine tasting, museum hopping, Mayberry-type
14 communities and, of course, the view of the Sacramento
15 River as they drive along the winding river roads.

16 And I brought three of these maps today
17 (indicating). One is a caricature map, a really fun
18 map; the travel guide that I created; and also the farm
19 trail guide.

20 Protecting the Delta and all it has to offer
21 is important. In 2009, I joined a grassroots effort
22 called North Delta C.A.R.E.S., Community Area Residents
23 for Environmental Stability.

24 We're concerned about DWR -- Department of
25 Water Resources -- interest in taking the water from

1 this area, the Sacramento River, to deliver it to other
2 parts of the state.

3 I don't believe any of us here in the Delta
4 have ever denied that people need water to drink and
5 their crops need water to grow.

6 We want the best choices made for the whole
7 state. And we want our futures to be fair and
8 equitable.

9 The research we have done on the BDCP, the
10 EIR/EIS documents, and the Delta Plan lead us to
11 believe that adaptive management is too questionable
12 and that sacrificing one farming region for another is
13 not fair and equitable State policy.

14 We take exception that the EIR/EIS did not
15 take recreational expenditures in the Delta into
16 account when it created the environmental review as a
17 State.

18 Quote (reading):

19 "Changes in employment and increases
20 associated with changes in recreation
21 expenditures were not established using a
22 regional IMPLAN model because direct
23 changes in recreational expenditures have
24 not been quantified."

25 The value of this region to the State of

1 California goes way beyond being a hub of water
2 transfers.

3 Construction of the proposed intakes and
4 underground conveyance would adversely impact
5 well-established recreational tourism opportunities
6 because of impaired access, noise, and visual setting
7 disruption. People do not go into a construction zone
8 to relax, recreate or have a glass of wine.

9 Historical ambience will be bulldozed, and old
10 buildings will fall from the shaking caused by heavy
11 trucks and pile-driving movement.

12 I'm not an expert on what fish love, but I
13 think they are pretty sensitive to this kind of
14 heavy-duty construction next to the levees where they
15 have swam for many, many years.

16 This Delta area would become cut off from
17 people, fish and wildlife.

18 Personally, I have created a tour business
19 that takes people through the Delta to visit the Legacy
20 towns and to enjoy the restaurants, museums and the
21 wineries of the Delta.

22 I have taken tourists to all the Legacy
23 communities, and I can speak to all the aspects of this
24 experience.

25 Approving this Petition by DWR and USBR and

1 the aspects of its construction would be in direct
2 conflict with the Delta Reform Act and the Delta Plan,
3 which state that (reading):

4 "The water supply reliability and
5 the ecosystem restoration shall be
6 achieved in a manner that protects and
7 enhances the unique cultural,
8 recreational, natural resource and
9 agricultural values of the Delta as an
10 evolving place."

11 A first step toward protecting the Delta is to
12 reduce the risk to people, property, and State
13 interest.

14 We, the people of North Delta C.A.R.E.S.,
15 request that you deny the Petitioners' requests in this
16 hearing.

17 Thank you.

18 MS. MESERVE: Thank you, Miss Daly.

19 And now we'll move on to Miss Suard.

20 Miss Suard, is NDC-2-19 a true and correct
21 copy of your written testimony?

22 WITNESS SUARD: Yes, it is.

23 MS. MESERVE: And if we could please pull that
24 up.

25 There's a couple of minor corrections we need

1 to make to that as well; isn't that right --

2 WITNESS SUARD: Yes --

3 MS. MESERVE: -- Miss Suard?

4 WITNESS SUARD: -- that's correct.

5 MS. MESERVE: Okay. Just to -- For
6 efficiency, I'll read those off and you affirm if those
7 are correct.

8 On the last paragraph of Page 1, there are two
9 references to BDCP that should be replaced with the
10 word "other"; is that correct?

11 WITNESS SUARD: That's correct.

12 MS. MESERVE: Okay. And, then, going to
13 Page 2, if you would, please --

14 (Exhibit displayed on screen.)

15 MS. MESERVE: -- the third -- the third full
16 paragraph on Page 2 also references BDCP, and that
17 should also be replaced with the word "other."

18 WITNESS SUARD: Correct.

19 MS. MESERVE: And then, last, also on Page 2,
20 the second line of the very last paragraph, the word
21 "into" should be replaced with the word "and"; correct?

22 WITNESS SUARD: That's correct.

23 MS. MESERVE: Okay. And then, Miss Suard,
24 just pertaining back to the comments you heard from
25 Ms. Ansley earlier.

1 I know there is a list of exhibits on the
2 second page there, just on that second-to-bottom
3 paragraph.

4 You've submitted an updated identification
5 list yesterday.

6 Were there any additional exhibits from that
7 list that you are withdrawing at that -- at this time
8 or is that correct for now?

9 WITNESS SUARD: We -- I believe it's SHR-2-23
10 won't be needed. -2-36 and -2-38 are -- are not
11 needed.

12 MS. MESERVE: Okay. Thank you for making that
13 clarification.

14 And then, Miss Suard, is NDC-2-4 a true and
15 correct copy of your Statement of Qualifications?

16 WITNESS SUARD: Yes. But I don't know that
17 that's shown online.

18 It would be a duplicate, at least last time I
19 checked, which was this morning. It's the same thing
20 as SHR-109.

21 MS. MESERVE: It looks like it may be under
22 2-1.

23 We shall clarify that point in the evidence
24 submission, because I'm not sure we can right now.

25 Let's see. Well, just to begin with,

1 Miss Suard --

2 CO-HEARING OFFICER DODUC: Hold on a second,
3 please, with the questioning.

4 Miss Ansley.

5 MS. ANSLEY: Yes.

6 Before she starts, I see that she is knocking
7 out exhibits that have been struck or withdrawn.

8 I'd like some clarification on SHR-2-101,
9 which I believe also had been withdrawn. And we just
10 tried to check against the most recent XLS that she
11 called up -- or that she filed yesterday.

12 So 101, 2-101.

13 MS. MESERVE: That is struck out in the index
14 submitted yesterday.

15 WITNESS SUARD: So, my Statement of
16 Qualifications is SHR-109 rather than duplicate the
17 Statement of Qualifications.

18 MS. MESERVE: So I believe in response to your
19 issue, Miss Ansley, that the Exhibit Index is showing
20 2-101 struck out also, so that should also be stricken
21 from this paragraph here on the second page of
22 Ms. Suard's testimony.

23 CO-HEARING OFFICER DODUC: Correct.

24 MS. MESERVE: Okay. Thank you.

25 And now, going back to you, Miss Suard.

1 With respect to -- What is your background and
2 experience for providing this testimony today for North
3 Delta C.A.R.E.S.?

4 WITNESS SUARD: I am a life -- lifelong boater
5 in California. Actually, I'm a fourth generation
6 boater in California.

7 And I first visited the Delta, the North Delta
8 in particular, as a Sea Scout. In my high school years
9 I was in Sea Scouts, and on Ship 618, and we would do
10 competitions up in Alameda area.

11 And then we would, then, for a week come into
12 the Delta, and there would be many Sea Scout ships that
13 would be on Steamboat Slough. We kind of would -- The
14 cove near Hogback or Set Acre. And all the Sea Scouts
15 would hang around Hogback Park on Steamboat Slough, and
16 did that for about 35 years that I know of.

17 When my husband and I finished our
18 education -- we were from Southern California -- and we
19 wanted to get to Northern California. And so when we
20 finished our respective educations, we relocated to
21 Northern California.

22 And we -- Our vacations were spent driving
23 around to the different lakes of California and pulling
24 a ski boat with us. And I sail but I also learned to
25 do power boating. So we were campers, and we love

1 boating. Our favorite place, though, continued to be
2 the Delta.

3 So, by 1997, we decided to invest in one of
4 the older classic Delta marinas. It's been called Snug
5 Harbor since the 1950s. And I decided it would be more
6 fun to run a marina than to do the type of law I had
7 been practicing. And even though I'm still an
8 attorney, you know, I decided I wanted to be outdoors
9 more.

10 And so I -- We purchased this marina and began
11 a rehab of a beautiful waterfront facility in the North
12 Delta on Steamboat Slough off Ryer Island.

13 MS. MESERVE: And then tell me, Miss Suard:

14 How long have you been an informal ambassador
15 to the Delta?

16 WITNESS SUARD: I've always had an interest in
17 California history. And, you know, very early on, I
18 got involved with the Delta Chambers. And I would
19 offer boat rides to anybody and everybody who wanted to
20 see the Delta from the water.

21 And so I ended up being the go-to person for
22 the Delta Chambers. I would get a call and say, "Can
23 you give this person a ride?" "Can you give this
24 person a ride?"

25 And I gave rides to writers like Hal Schell

1 and people from all the different newspapers that were
2 doing articles about Delta boating, including from the
3 Sacramento Bee and SF Chronicle.

4 TV shows ended up come knocking, like
5 California Gold, and shows that still show online. So
6 it's kind of fun to look back at those.

7 I also started giving -- When I became more
8 aware of what was going on, I became aware of issues
9 with the veracity or the correctness of some of the
10 reports that were being published. This was as early
11 as 2005 and because I collect maps and history books.

12 And I had an interest with Hal Schell. He was
13 going to write a book on Delta history.

14 He and I would go visit some of the museums.
15 And I would give boat rides and -- to media people but
16 also to Agency people who were interested in seeing the
17 Delta from the water.

18 I mean, the current Director of DWR, I gave
19 several boat rides to. Mostly in the North Delta, but
20 I would also go to the West Delta and Mokelumne River.
21 And that area is so gorgeous, of course, there.

22 I did not boat down to Tracy and that area or
23 south of Stockton, so I can't say I've been on every
24 waterway of the Delta. I've been on most.

25 I -- I also had the opportunity to -- We had

1 seaplanes that berthed at Snug Harbor for a couple of
2 years. And also one of my neighbors has Ultralight.

3 And so when media wanted to go up in the air,
4 Which is the best way to understand the magnitude of
5 issues related to the Delta because it's very -- it's
6 huge, and its issues are different depending on where
7 you're flying.

8 And so I was able to arrange for many people
9 to be able to have aerial view of the Delta, as well as
10 I got to go up in the seaplanes a lot, too, and take
11 pictures.

12 I did -- I don't know if you want me to do it
13 now but I -- I brought some of the books, my collection
14 of maps and books.

15 This (indicating) happens to be the 1908
16 Survey of the Sacramento River. This was done in
17 preparation for the irrigation plan and for defining
18 where it should be -- what were the flows and where it
19 should be dredged.

20 The -- The -- The maps --

21 MS. MESERVE: Sorry. Let's just make clear
22 that you have some books that are available that are
23 not --

24 WITNESS SUARD: Okay.

25 MS. MESERVE: -- necessarily part of the

1 record or being submitted, but they're available to the
2 convenience of the parties here in the room that, if
3 they would like to review them, they may find them
4 interesting.

5 WITNESS SUARD: Okay. You say that so much
6 better than me.

7 MS. MESERVE: Okay.

8 CO-HEARING OFFICER DODUC: Nicely done,
9 Miss --

10 WITNESS SUARD: Yes.

11 CO-HEARING OFFICER DODUC: -- Meserve.

12 MS. MESERVE: Okay. So let's -- let's go
13 back.

14 So you do collect maps. Was there anything
15 else you had about -- that's within your testimony
16 regarding your map collection?

17 WITNESS SUARD: Yes.

18 Because I have a -- Some people might take a
19 nerdy interest in maps and history.

20 I really started paying attention when I was
21 reviewing professional documents distributed by,
22 particularly, Department of Water Resources, but some
23 of the other agencies.

24 And they were incorrect regarding Delta Island
25 names, waterway names, flood history, just basic

1 really-easy-to-correct information.

2 And so I would start writing letters. And I
3 have spent thousands of hours and spent many, many
4 hours writing letters to different agencies saying --
5 And I try to be polite. I try to say, "Okay."

6 I go to the person who made the mistake and
7 say -- and try to do it quietly, and say, "You know,
8 this is a little bit of a problem, you know. Ryer
9 Island did not flood three times in the last hundred
10 years. It didn't flood at all in the last hundred
11 years and you made a mistake. Could you correct it?"

12 So, I -- I would do that. Some of the agency
13 persons would respond and make corrections. They might
14 hide their corrections. And others would either ignore
15 me or make the correction but not admit they made that
16 mistake.

17 And so, therefore, other persons utilizing
18 that data would continue to use the wrong data.

19 MS. MESERVE: And, Miss Suard, did you start
20 preparing some of your own maps to -- to correct that?

21 WITNESS SUARD: Well, I would scan the
22 historical maps and provide those scans as proof of
23 what is the correct information.

24 I would gather all the old reports on that
25 particular issue, like flood history in California,

1 summarize all of those and show why -- Dreams Port
2 (phonetic) as an example -- was incorrect and how that
3 impacted the outcome of that report.

4 So, yes, I did try to provide this
5 information, make it public. And books like the one I
6 picked up, those maps were scanned, accepted by
7 archive.org and are available to the public so that,
8 you know -- Otherwise, you'd have to go to the Library
9 of Congress to go see these.

10 So it's available to the public, and I thought
11 that was important. I was trying to help.

12 MS. MESERVE: Okay. And now moving on in your
13 testimony.

14 How do you believe that DWR has ongoing
15 actions that are affecting Delta businesses and people?

16 WITNESS SUARD: From my personal experiences
17 and as a marina owner -- well, it's a marina, auto park
18 and some rental cabins -- I have seen over the last at
19 least 10 years that, besides the incorrect publication
20 about -- by DWR and other agencies, the incorrect
21 information about Delta history and Delta location,
22 I -- I also felt that there were maps that were being
23 published that were making it difficult for persons
24 wanting to travel in the North Delta, actually find out
25 where it was, and particularly my business.

1 I actually have some examples if anybody
2 wanted to see that.

3 And I -- I also felt like the -- the -- the
4 flows, how -- the management of flows in the Delta by
5 DWR and USBR, the water flows were impacting waterways,
6 that the road traffic flow by Caltrans or their
7 Subcontractors were -- was having a negative impact on
8 recreation.

9 And not just marinas. I'm not just talking
10 about that. But you've got wine-tasting locations,
11 you've got RV Parks, the small town restaurants, the
12 stores.

13 All these traditional Delta events all were
14 showing a decline while all these activities were being
15 done in the Delta under, you know, names like
16 restoration or . . .

17 Well, I'll leave it at restoration.

18 And I -- I'm bringing this up because I've
19 been experiencing a lot of hindrances to the business
20 for -- by DWR actions for the last 10 years. And I
21 believe it's just going to be worse and it'll be worse
22 for be everybody else.

23 Because Steamboat Slough has been a -- a test
24 area for CALFED actions, and it impacted us. So what
25 happens when all the businesses in -- anywhere along

1 the pathway of the . . . road and waterway traffic for
2 WaterFix, it will impact everybody, which I don't
3 believe was adequately covered in the EIR/EIS.

4 MS. MESERVE: Now, what are your specific
5 concerns about barge wakes during construction of the
6 proposed tunnels and intakes?

7 WITNESS SUARD: If -- If we were allowed to
8 bring a photo, I would. I don't know if -- if there's
9 a --

10 MS. MESERVE: I think that you have referred
11 to SHR-2-51, and there's a map that you wanted to show
12 on that.

13 WITNESS SUARD: I think it might expedite
14 things to just go to the photo but --

15 MS. MESERVE: Yeah.

16 WITNESS SUARD: Sorry. I'm --

17 MS. MESERVE: Is that on 2-51? 2-251. I'm
18 sorry.

19 And this is referenced later in her testimony.
20 She just wants to show an example of it with a picture.

21 WITNESS SUARD: It would be Page 18, I
22 believe.

23 MS. MESERVE: That's 2-251.

24 (Exhibit displayed on screen.)

25 MS. MESERVE: Page 18, please.

1 (Exhibit displayed on screen.)

2 WITNESS SUARD: And I just want to use this
3 photo to help describe my concern with barge traffic.

4 This is a photograph of a low tide on the
5 Sacramento River in Walnut Grove. This is actually
6 the -- the west side.

7 And this is after a high-flow winter. And
8 the -- the flows on the Sacramento River are so low
9 that boats at dock are sitting on mud. And docks are
10 never designed to sit on mud, and -- You know, they
11 usually design them so the boats will be out in the
12 water.

13 Well, I use this photo to explain what
14 happens. When you have a very large barge -- And I
15 can't say that WaterFix gave very much description
16 about the sizes of the barge. But they did express
17 that the tunnel sections were so heavy that they
18 couldn't come by road.

19 CO-HEARING OFFICER DODUC: All right.

20 Miss Suard --

21 WITNESS SUARD: Yes.

22 CO-HEARING OFFICER DODUC: -- let me interrupt
23 you, because Miss Ansley has been waiting.

24 Miss Ansley.

25 MS. ANSLEY: Yes.

1 I do object to some of this earlier -- the --
2 Going back to the February 21st, 2017, ruling by the
3 Board, I do have a problem with her pulling up this
4 picture and adding to what's written in her testimony.

5 I do not necessarily have a problem with this
6 picture. I do have a problem with not identifying
7 which picture we were going to testify about with
8 reference to her testimony.

9 She references this slide show, which I cannot
10 off the top of my head remember how many pages it is.
11 I think it's over 20 pages.

12 So, not knowing in advance what she's going
13 for testify with this picture, nor that she was going
14 to use this picture, is one problem.

15 But the other problem is, I believe when she
16 first called it up, she started making representations
17 about what these flows are and what they meant, which
18 is different than generally using an illustrative guide
19 for her example of barge traffic.

20 So that was not at all clear.

21 And I apologize, but I think this goes
22 directly to the heart of the problem that you were
23 identifying in your February 21st, 2017.

24 So, if she would read from her testimony, I do
25 not mind this being on the screen. I've noted this

1 down that this is one of the slides that she is using
2 with this testimony.

3 I do have a problem with her earlier
4 statements regarding what this figure represents in
5 terms of DWR flows.

6 Thank you.

7 MS. MESERVE: And --

8 CO-HEARING OFFICER DODUC: So, Miss Meserve --

9 MS. MESERVE: -- I think that was the extent.
10 I think that she just got a little excited.

11 CO-HEARING OFFICER DODUC: And expanded upon.

12 MS. MESERVE: Yeah. If we could -- I think --
13 Do you have any -- I think if -- We can try to -- I
14 understand the objection and I think we're trying to
15 comply with it.

16 Miss Suard has a lot of information she's
17 trying to share but --

18 WITNESS SUARD: Okay. I was --

19 MS. MESERVE: -- we need to just stick with --
20 You do have some information about the dangers of low
21 tides, and if we could stick with that.

22 CO-HEARING OFFICER DODUC: And, Miss Suard,
23 I -- I appreciate your knowledge. And I -- The reason
24 we're going through this is, one, to help us, but also
25 to help you in preparing rebuttal and other testimony

1 you might want to give in this proceeding to come; that
2 it is very important, as you've heard by now several
3 times, to be very clear and detailed in your direct
4 testimony.

5 And that helps all of us.

6 WITNESS SUARD: Yes, ma'am.

7 CO-HEARING OFFICER DODUC: Yeah.

8 WITNESS SUARD: So I'm -- I'm just going to --
9 I thought a visual --

10 MS. MESERVE: What was your recommendation? I
11 think you talked about low tides, so let's just go
12 to -- What -- What do you recommend with respect to
13 barge traffic with respect to the --

14 WITNESS SUARD: Can -- Can I explain barge --
15 You know, my testimony, written testimony, is when a
16 barge, however wide it is, heavy laden with tunnel
17 section, it's going upriver when the tide is low and
18 the tide is going out.

19 Even if it's just going one knot, the issue is
20 the water displacement. And it can create, like, a
21 wake that can slam against the -- the -- the . . .
22 river here (indicating), right in this location, on
23 both sides.

24 If a barge was going upriver to the intakes
25 which all three are upriver of this photograph, that

1 could do so much damage to those boats and to the
2 docks. And I didn't read anywhere where this kind of
3 impact was considered.

4 I did ask questions of the DWR's --

5 MS. MESERVE: Miss Suard, you need to stick to
6 your testimony.

7 WITNESS SUARD: Okay.

8 MS. MESERVE: Let's -- You have good
9 information in here. Let's -- Let's describe that.

10 WITNESS SUARD: So, I recommended that the
11 barge travel be limited to when it -- Basically, my
12 goal is safe travel, and that it be limited to, like,
13 going with the tide or not be allowed to travel in --
14 in low tides, because that is when those wakes and
15 impacts to boats are greater.

16 CO-HEARING OFFICER DODUC: And I see it in
17 your written testimony.

18 Thank you.

19 MS. MESERVE: And, then, moving on.

20 What, in your view, are the implications of
21 what you see as restoration experiments by DWR?

22 WITNESS SUARD: So, from my own observations,
23 from DWR and California Fish and Wildlife, restoration
24 experiments have been going on in the North Delta,
25 particularly on the Sacramento River, Sutter Slough,

1 Steamboat Slough, Miner Slough and Georgiana Slough.

2 And these -- these restoration projects, I --
3 I do realize that some of them are intended for the
4 fish migration studies.

5 But they -- The way that they've been
6 conducted, they have caused risk to boaters and
7 caused -- caused waterside flooding at high-flow times,
8 which resulted in bank and levee damage.

9 And, to me -- This is from personal
10 experience. I believe that this shows DWR and its
11 consultants have demonstrated a lack of concern for
12 human safety, and that's in the recent past. This is
13 over the last five to 10 years.

14 I -- I think it's reasonable to assume that
15 if -- that's how they're treating us now in the Delta,
16 that there -- that USBR and DWR consultants are going
17 to do the same thing if WaterFix is built, unless
18 specific restrictions are -- are enforced by an
19 independent agency, you know, something is set up to
20 protect us.

21 MS. MESERVE: And, then, with respect to
22 recreation, do you believe that the current levels of
23 recreation in the Delta are accurately reflected in the
24 reports by DWR and other State and Federal agencies?

25 WITNESS SUARD: No, I -- I don't. And . . .

1 Let's see what it's referred to.

2 I'll read my testimony.

3 I believe that the Delta recreation reports,
4 as reflected in some of the . . . other witness
5 testimonies, are not correct.

6 And I believe that the methods DWR used, and
7 other State agencies, reduce -- have used -- reduced
8 the recognition of Delta as a recreation designation,
9 and especially during the CALFED planning and
10 implementing years.

11 And I feel like this is what we might expect
12 from DWR and USBR again. Instead of promoting the
13 Delta as a place and for its recreation, we're just
14 kind of being ignored.

15 This refers to published reports, all of which
16 I do have copies of, and -- but, in particular, in
17 2007, through the Delta Vision Process, it recognized
18 that -- A study from that process recognized that there
19 was 12 to 14 million boating and fishing visitors per
20 day in the Delta.

21 More recent reports substantially reduce that
22 number. And I think that it's possible that reduction
23 in -- in uses is because of the impacts to boating
24 recreation that have been going on under --

25 MS. MESERVE: So you're -- And you're

1 referring now to Exhibit 2-21F, which is at the bottom
2 of that paragraph; is that correct?

3 WITNESS SUARD: That's correct.

4 MS. MESERVE: Okay.

5 WITNESS SUARD: That is 2-21F. And I can
6 point out the pages.

7 MS. MESERVE: That's fine. I think we can
8 move on unless there's --

9 MS. ANSLEY: I'm sorry. I don't see -- This
10 is Jolie-Anne Ansley, Department of Water Resources.

11 I don't see 2-21F. I am aware of that exhibit
12 in her case in chief, but in this testimony in that
13 paragraph, I don't see 2-21F.

14 CO-HEARING OFFICER DODUC: I don't see it,
15 either, Miss Meserve.

16 MS. ANSLEY: And I do not see a reference to
17 the Delta Vision Report.

18 So I would ask that the reference to the Delta
19 Vision report be struck.

20 MS. MESERVE: Okay. Yeah. I'm -- I think I'm
21 looking at different copies here. I was going back and
22 forth.

23 CO-HEARING OFFICER DODUC: Yeah. The copy I
24 have does not mention that particular exhibit.

25 MS. MESERVE: I think she submitted the report

1 as one of her exhibits. So I think at this point she
2 would probably submit that as evidence, but perhaps the
3 discussion of it wouldn't have been proper.

4 WITNESS SUARD: I don't mind removing the word
5 "Delta Vision" but I do wish to submit that document.

6 CO-HEARING OFFICER DODUC: Has that document
7 already been submitted?

8 MS. MESERVE: Yes, it has.

9 CO-HEARING OFFICER DODUC: Okay.

10 MS. ANSLEY: The document has been admitted as
11 part of Snug Harbor Resorts. I object to its
12 submission by North Delta C.A.R.E.S.

13 I'm happy to address it again when we get to
14 Miss Suard's case in chief. But I am objecting to its
15 submission, if that's what's implied -- I'm a little
16 confused -- with North Delta C.A.R.E.S. which is a
17 separate party.

18 CO-HEARING OFFICER DODUC: Let's -- Is
19 there -- I -- Let's leave the document with Snug
20 Harbor.

21 MS. MESERVE: I think that would be fine,
22 yeah. Given that it's not cited in the submitted
23 testimony, that would probably make the most sense.

24 CO-HEARING OFFICER DODUC: Yes.

25 Mr. Jackson.

1 MR. JACKSON: Yes. This is not specific to
2 this particular argument.

3 But there have been a number of rulings on
4 evidence that's already submitted into the record that
5 you don't have to refer to each and every document in
6 your written testimony if, in fact, it is information
7 that you used to compose your written testimony.

8 CO-HEARING OFFICER DODUC: I understand that,
9 Mr. Jackson. That was not --

10 MR. EMRICK: And I don't understand how this
11 differs.

12 CO-HEARING OFFICER DODUC: Mr. Jackson, the
13 concern here was that Miss Meserve referenced an
14 exhibit that actually was not referenced in
15 Miss Suard's testimony for North Delta C.A.R.E.S. but
16 is actually a Snug Harbor exhibit.

17 So chill. We're good. Let's move on.

18 WITNESS SUARD: I just quoted it is what I
19 did.

20 CO-HEARING OFFICER DODUC: Yes.

21 MS. MESERVE: Okay. Excellent.

22 Okay. So last question:

23 Do you believe that too much water is already
24 being diverted for export from the Delta?

25 WITNESS SUARD: Yes.

1 I really believe Water Boards should
2 immediately reduce the amount of water allowed to be
3 diverted from the Sacramento River Watershed and the
4 Delta by at least 35 percent until such time as Delta
5 surface water quality and also groundwater quality
6 recuperates from the degradation that has already --
7 that has been charted over the last eight to 10 years
8 by excessive diversions.

9 Water Board has allowed the diversion of
10 excessive fresh flows from the Sacramento River
11 Watershed during both drought and wet times, basically
12 suspending the Delta into a 10-year drought.

13 I believe the damage to the Sacramento River
14 Watershed trees, native fish species, groundwater are
15 due in large part to the fact Water Board has allowed
16 the mismanagement of flows, leaving only calculated
17 surface flows for the Delta.

18 MS. MESERVE: Thank you, Miss Suard.

19 We will now be moving on to Mr. Pruner.

20 Good morning, Mr. Pruner. Is NDC-2-5 a true
21 and correct copy of your testimony?

22 WITNESS PRUNER: With some corrections that I
23 believe are typographical in nature, it is.

24 MS. MESERVE: Okay. Do you wish to make any
25 of those --

1 WITNESS PRUNER: Can we --

2 MS. MESERVE: -- corrections --

3 WITNESS PRUNER: Move --

4 MS. MESERVE: -- on the record?

5 WITNESS PRUNER: If we could move first to the
6 Statement of Qualifications and a typographical
7 correction there first, if that --

8 MS. MESERVE: That's going --

9 WITNESS PRUNER: -- pleases the panel.

10 MS. MESERVE: -- to be 2-6, please.

11 (Exhibit displayed on screen.)

12 WITNESS PRUNER: Very good.

13 My address is P.O. Box 3, not P.O. Box 2.

14 And with that correction, that exhibit stands,
15 and I ask the panel to accept that into the record, if
16 it would, please.

17 CO-HEARING OFFICER DODUC: Not at this time.

18 WITNESS PRUNER: Very good.

19 MS. MESERVE: At the end.

20 And then with respect to 2-5?

21 WITNESS PRUNER: Moving to 2-5. This was
22 submitted earlier.

23 As of today, it's fair to say that I've lived
24 in Clarksburg for over 20 years. Line 1 after the word
25 "for" before the word "20" please insert the word

1 "over."

2 Paragraph 2, Line 2, "501-c-3" is not
3 customarily identified in that manner. It should be
4 the number 501 open paren small C close paren open
5 paren number three close paren.

6 Continuing on that line, after the phrase
7 "school house," it should say "in Clarksburg,"
8 capital C.

9 Same paragraph, Line 3, "the house is located
10 adjacent to" -- it should say -- strike the "a." It
11 should say "the Sacramento River levee."

12 Continuing on the same line, after the
13 reference to 3/8ths of a mile, the word "upriver"
14 should be added. And then after the word "from," of
15 course, "Lewiston Intake Number 2." The word
16 "Lewiston" added before the phrase "Intake Number."

17 I'd also like to add that the school is on
18 stilts, so that would be a change -- I'm sorry.

19 Same paragraph, Line 2, after the word
20 "school," it should be "on stilts." Or "schoolhouse,"
21 I'm sorry, "on stilts." So it would be Line 3, not
22 Line 2, as new words two and three in that line.

23 Then in Paragraph 2, Line 2, after the word
24 "belief" add the word "and" -- words "and observation."

25 CO-HEARING OFFICER DODUC: That would be

1 Paragraph 3.

2 WITNESS PRUNER: Excuse me. Thank you.

3 Paragraph 3, Line 2.

4 So it reads "my belief and observation."

5 Same paragraph, Line 3, third word from the
6 end of the line says "message." That should be the
7 word "mission."

8 CO-HEARING OFFICER DODUC: Okay.

9 WITNESS PRUNER: Thank you very much.

10 Those are the changes I would submit that I
11 believe are --

12 CO-HEARING OFFICER DODUC: Okay.

13 WITNESS PRUNER: -- typographical in nature.

14 MS. MESERVE: Thank you, Mr. Pruner.

15 Would you like to just go ahead and quickly
16 summarize your testimony.

17 WITNESS PRUNER: Yes.

18 Primarily sitting as a Chair of the Clarkburg
19 (sic) Fire Protection District, which is a unit of
20 local government, which is, I believe, the most
21 connected organ of local government to the residents,
22 businesses, agriculture, and folks and interest in the
23 Delta, being the first responders, and being
24 responsible for geographical area, approximately
25 35,000 acres in size, which runs along the, what,

1 eastern boundary of Yolo County, directly across the
2 river, at the river, from proposed Intake -- Intakes 2,
3 3 and 5.

4 And I would ask that the technician add --
5 Please place up on the screen LAND-3 for illustration.

6 CO-HEARING OFFICER DODUC: And your testimony
7 actually does not reference anything else but Intake 2.

8 WITNESS PRUNER: It doesn't. That exhibit
9 does reference Intake Number 2.

10 MS. ANSLEY: I'm sorry, but this exhibit is
11 not referenced in his testimony. The description,
12 which I already lost track of, was not in his
13 testimony.

14 His testimony is all of four paragraphs long.
15 So I object, obviously, to anything that goes outside
16 the scope of what is written here.

17 WITNESS PRUNER: Very good.

18 CO-HEARING OFFICER DODUC: Sustained.

19 WITNESS PRUNER: Is LAND-3 in evidence before
20 the Board? I believe it is.

21 CO-HEARING OFFICER DODUC: Is it in your
22 testimony?

23 WITNESS PRUNER: Yes, I did not -- I did not
24 specifically reference that.

25 I just want to ask that something in evidence

1 before the Board for illustration purposes be put up.

2 CO-HEARING OFFICER DODUC: As long as what you
3 say about it is from your testimony.

4 WITNESS PRUNER: That -- Of course, that'll
5 happen.

6 (Exhibit displayed on screen.)

7 WITNESS PRUNER: So looking at LAND-3, Intake
8 Number 2 is identified there as the first intake
9 identified there on the river, and the schoolhouse,
10 which I indicate is 3 -- approximately 3/8ths of a mile
11 upriver, is just south of that right blob there that's
12 on LAND-3, for illustration.

13 So my experience and observation as Chair of
14 the local entity, the Clarksburg Fire Protection
15 District, responsible being first responders. We are
16 first responders that, with the construction impacts
17 admitted to by the Department of Water Resources in
18 terms of traffic and noise and other environmental
19 factors, that we would be called on, as we should be,
20 to address accidents and to respond to medical and
21 other emergencies that fall within our geographic
22 jurisdiction.

23 Having familiarity with the call record over
24 the last few years, we've --

25 CO-HEARING OFFICER DODUC: Is "call record"

1 specifically mentioned in your written testimony?

2 WITNESS PRUNER: No, ma'am. It's implied in
3 my written testimony.

4 And I'm happy to help the Hearing Officer see
5 where that's implied if that's necessary.

6 CO-HEARING OFFICER DODUC: Let's stick with
7 what is specifically written in your testimony.

8 WITNESS PRUNER: Very good.

9 Given the scope of the Project, it's the
10 position and professional belief and observation of the
11 District, and myself in particular, that the sign --
12 the impacts brought -- visited upon the District by the
13 Project would -- are material and significant -- just
14 to reiterate that again -- and would increase the --
15 the burden on the District significantly.

16 The State has not offered mitigation. The
17 State has not offered payment. The State has not
18 offered assistance, nor have they recognized the
19 validity of our repeated comments and evidence
20 introduced to support the conclusions that I'm
21 presenting before you today.

22 CO-HEARING OFFICER DODUC: Miss Ansley.

23 MS. ANSLEY: Yeah. I would be happy to either
24 have Mr. Pruner read his testimony, because it's so
25 short, into the record, and then I would have no reason

1 at all, obviously, to object to his testimony, or I'm
2 happy to stipulate to the admission of his testimony
3 without oral testimony.

4 CO-HEARING OFFICER DODUC: I believe he's done
5 with his oral testimony. At least, he was on the last
6 paragraph with that strenuous . . .

7 WITNESS PRUNER: I was answering the question
8 that was posed to me with no objection from the State.
9 At least I didn't hear an objection.

10 I understand the late objection being offered
11 now.

12 MS. MESERVE: So, Mr. Pruner, let's move on to
13 this last part of your testimony about Clarksburg and
14 the township.

15 WITNESS PRUNER: The -- The schools, the
16 church, the clubs, the library, and the other social
17 groups, the garden clubs, et cetera, would be
18 materially affected in a negative way by the noise,
19 traffic, air quality, and other construction activities
20 that the State has admitted to and are being forced
21 upon the Clarksburg community.

22 And it is true that the Project Proponents
23 have proposed nothing to mitigate or compensate for
24 those adverse negative impacts, which would -- I think
25 I'm saying -- this is fairly obvious but let me be

1 clear -- would have significant detrimental harmful --
2 perhaps we don't know what that means yet because we
3 don't have experience -- but maybe killing -- the
4 deadening impact on that community, so . . .

5 MS. MESERVE: Thank you, Mr. Pruner.

6 WITNESS PRUNER: Thank you, ma'am.

7 MS. MESERVE: Moving on to Mr. Motlow, if we
8 could, now.

9 Good morning. Is NDC-2-7 a true and correct
10 copy of your testimony?

11 WITNESS MOTLOW: Yes, it is.

12 MS. MESERVE: And is NDC-2-8 a true and
13 correct copy of your Statement of Qualifications?

14 WITNESS MOTLOW: Yes, it is.

15 MS. MESERVE: And before you summarize your
16 testimony, could you just briefly describe your
17 qualifications for providing it today.

18 WITNESS MOTLOW: My primary qualifications are
19 that I live in Locke, have lived there throughout the
20 1970s, and I'm the co-author of the book Bitter Melon.

21 MS. MESERVE: And that was Bitter Melon;
22 right?

23 WITNESS MOTLOW: Bitter Melon, correct.

24 MS. MESERVE: And if you could go ahead and
25 summarize your testimony, then.

1 WITNESS MOTLOW: Sure.

2 If it's all right, I would like to read it
3 because I think it's short enough and it says to the
4 heart of the matters.

5 I'm the co-author of the book Bitter Melon,
6 Inside America's Last Rural Chinese Town, which is this
7 here (indicating), which features oral histories and my
8 photographs of the residents of Locke.

9 Bitter Melon was named by the Commonwealth
10 Club as the best California history when published in
11 1988 and is now in its sixth printing.

12 I lived in Locke for most of the 1970s and was
13 fortunate enough to return in 2010. Today, it is my
14 community and my home.

15 Thousands of visitors come from all over the
16 country, the State, the nation and the world to come to
17 Locke each year.

18 As a home to the Chinese who built our
19 railroads, who built our levees, who planted the pear
20 trees up and down the Delta, it holds a unique place in
21 the hearts and memories of Chinese people in California
22 and is deeply important place for all of Californians,
23 whatever their background.

24 In 1882, the Chinese -- the U.S. Congress
25 passed the Chinese Exclusion Act, the only law in

1 America's history that specify -- specify -- okay --
2 forbid the immigration of people based exclusively on
3 race.

4 The Sacramento-San Joaquin Delta was one of
5 the few western sites where Chinese escaped violence,
6 though not the impact of this law.

7 Many came to the town of Locke. Locke was
8 established in 1915 on land rented from the Estate of
9 Sacramento furniture dealer George Locke.

10 Almost 100 years later, after fighting for
11 decades, the residents of Locke were finally able to
12 own the land beneath their homes.

13 Today, Locke is a place where the past is
14 actively remembered. It's a kind of living museum
15 where thousands come each and every year to experience
16 the vital history that is as relevant today as it was a
17 century ago.

18 Groups from a variety of historical and
19 cultural organizations sponsor tours of Locke almost
20 every week of the year.

21 We're proud that Main Street Locke is on the
22 National Register of Historical Landmarks, Number 65 of
23 145 for all of California, and on the National Register
24 of Historical Places, and that the California State
25 Parks has a museum at one end of Main Street.

1 It's hard to imagine anyone could disagree
2 that Locke is a place worthy of preservation and
3 protection.

4 But recently, I found out about a Proposed
5 Project called Through-Delta Conveyance. This Project
6 and the construction of the intakes and fish screens it
7 involves poses a threat to Locke that cannot be
8 overstated.

9 This construction, 24 hours a day, seven days
10 a week, for literally years will effectively destroy
11 Locke. 100-year-old buildings will fall. The heavy
12 truck traffic would make getting in and out of Locke
13 nearly impossible, to say nothing of the noise from the
14 pile driving.

15 People will stop coming to Locke. The town
16 will die. The precious history would be lost forever.
17 And it can never be replaced.

18 To support these concerns, I started a
19 Petition in 2017. This was a flier (indicating) that I
20 put together to have people sign (reading):

21 "No Intakes! No Fish Screens! Save
22 Locke, Save Walnut Grove, Save the Delta!
23 we do not support the actions of the
24 Delta Stewardship Council and their 'Dual
25 Conveyance' and 'Through-Delta

1 Conveyance' plans."

2 There are now over 1200 signatures with more
3 coming in every day. And I would like to submit copies
4 of these petitions as part of my testimony.

5 MS. MESERVE: Thank you.

6 That concludes the direct testimony for North
7 Delta C.A.R.E.S.

8 CO-HEARING OFFICER DODUC: Thank you.

9 Any cross?

10 MS. ANSLEY: Jolie-Anne Ansley for the
11 Department of Water Resources.

12 Very limited, maybe 15 minutes at most.

13 CO-HEARING OFFICER DODUC: All right. Anyone
14 else?

15 MS. DES JARDINS: Dierdre Des Jardins.

16 Half an hour.

17 CO-HEARING OFFICER DODUC: Mr. Jackson.

18 MR. JACKSON: CSPA and C-WIN and AquAlliance
19 have about 15 minutes.

20 CO-HEARING OFFICER DODUC: Okay. So that's
21 about an hour.

22 I suggest that we take our lunch break and,
23 when we return, we'll begin with cross-examination.

24 Before we do, though, I have a question for
25 Mr. Motlow.

1 Why is it that the peanut butter tastes so
2 good at Al the Wop's?

3 (Laughter.)

4 WITNESS MOTLOW: Because it goes so well with
5 the steaks.

6 (Laughter.)

7 CO-HEARING OFFICER DODUC: And the chicken.
8 And it went well with the chicken.

9 WITNESS MOTLOW: It went well with the
10 chicken. Okay.

11 CO-HEARING OFFICER DODUC: With that, we will
12 return at 1 o'clock. Thank you.

13 WITNESS MOTLOW: Thank you.

14 (Lunch recess at 11:59 a.m.)

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1 AFTERNOON SESSION

2 ---o0o---

3 Reported by

4 Deborah Fuqua

5 CSR #12948

6 ---o0o---

7 (Whereupon, all parties having been
8 duly noted for the record, the
9 proceedings resumed at 1:00 p.m.)

10 CO-HEARING OFFICER DODUC: All right, it is
11 1:00 o'clock. Welcome back, everyone.

12 At this time, we'll turn it over to Ms. Ansley
13 and Mr. Mizell for their cross.

14 Brief outline of topics, please.

15 MS. ANSLEY: The couple questions I have,
16 maybe two or one for each witness, is really just the
17 basis for the citation that they are relying on. It's
18 not of any particular -- off their testimony.

19 CO-HEARING OFFICER DODUC: Okay.

20 JAMES MOTLOW, BARBARA DALY,

21 MARK PRUNER, NICOLE SUARD

22 called as Panel 1 witnesses for Group 37,
23 North Delta C.A.R.E.S., having been
24 previously duly sworn, were examined
25 and testified as is hereinafter set

1 forth:

2 CROSS-EXAMINATION BY MS. ANSLEY

3 MS. ANSLEY: So good afternoon. My name is
4 Jolie-Anne Ansley for the Department of Water
5 Resources. And I only just have a couple questions for
6 some of you. I believe I can start with Ms. Daly.

7 There are no page numbers, but if you could
8 look at Page 3 of your testimony which is NDC-2-1, and
9 you have testimony about halfway down page about old
10 buildings will fall from the shaking. Do you see that
11 testimony?

12 WITNESS DALY: Yes.

13 MS. ANSLEY: And you provide no cite for that
14 testimony?

15 WITNESS DALY: Right.

16 MS. ANSLEY: What impact analysis are you
17 relying on that old buildings will fall from the
18 shaking?

19 WITNESS DALY: When I did the -- I don't know
20 if I can turn right to it, but I did put exhibits in
21 the testimony of the comments on the EIR/EIS the
22 recirculated draft. And in there, the citation is -- I
23 believe it was a noise decibel that said 100 -- at this
24 rate, might have been 60 or something like that. I
25 can't remember who wrote that a long time ago.

1 Buildings that are a hundred years old or more will
2 crumble -- my words "crumble" but something to that
3 effect. They will fall.

4 MS. ANSLEY: I'm sorry. Are you done?

5 WITNESS DALY: Yes.

6 MS. ANSLEY: It's your recollection that was
7 in the recirculated DEIR or in the comments?

8 WITNESS DALY: It was in it. But it was a
9 mathematical computation you had to make. It said
10 that -- you know, you had to go to the table, and it
11 said -- it gave you the computation of how many
12 decibels it would be. And then in another place in the
13 Draft -- or Recirculated Draft, it said, at these
14 decibels, 100-year old buildings will fall.

15 MS. ANSLEY: But you don't provide that cite
16 here in your testimony?

17 WITNESS DALY: I included the exhibit of
18 the -- of the comments.

19 MS. MESERVE: And I believe that would be
20 Exhibit NDC2-25.

21 WITNESS DALY: Oh, thank you, yes. Is that
22 what you're looking for?

23 MS. ANSLEY: And these are North Delta
24 C.A.R.E.S. comments to the R-DEIR?

25 WITNESS DALY: Yes.

1 MS. ANSLEY: Can you show me where in your
2 testimony you cite to NDC --

3 WITNESS DALY: I said I didn't cite it. But I
4 just -- I included the exhibits.

5 MS. ANSLEY: And then my next questions are
6 for Ms. Suard.

7 Looking at your testimony, do you have a copy
8 there in front of you, NDC-2-19?

9 WITNESS SUARD: Yes. Yes, I do. Yes, ma'am,
10 I do.

11 MS. ANSLEY: And you testified that management
12 of flows by the DWR, USBR -- you testified earlier
13 today was having a negative impact or a decline on
14 recreational businesses in the Delta.

15 Do you see that testimony at the bottom of the
16 first page?

17 WITNESS SUARD: I broke up my testimony
18 between subject matters, so let me get to that first.

19 MS. ANSLEY: We can bring that up on the
20 screen as well if it goes faster, NDC-2-19, and if you
21 look at the bottom paragraph on that page. So this is
22 all I'm referring to. Do you see that testimony on the
23 last paragraph?

24 WITNESS SUARD: Yes, I see the testimony.

25 MS. ANSLEY: And today in oral testimony, you

1 characterize that as a decline. Do you recall that?

2 WITNESS SUARD: Yes. I say having negative
3 impact on area recreation businesses.

4 MS. ANSLEY: Are you basing that on any
5 economic analysis or study?

6 WITNESS SUARD: I -- yes. I'm also basing it
7 on testimony that I heard during this WaterFix hearing
8 from other parties about, you know, other economic
9 studies. I'm also basing it on a lot of my review of
10 the Dream's report studies that were then published.
11 So that's what it's based upon. I didn't give a quote
12 exactly on that one. The one study I did refer to was
13 that 21F.

14 MS. ANSLEY: Which study, excuse me, did you
15 refer to?

16 WITNESS SUARD: The one document I did refer
17 to was 21F.

18 MS. ANSLEY: No, I'm sorry. That's not in
19 your testimony for North Delta C.A.R.E.S.

20 Can you point me to where --

21 WITNESS SUARD: Sorry.

22 MS. ANSLEY: -- to the testimony you relied
23 on in this -- can you point me to any testimony for
24 economic impacts that you rely on in this testimony?

25 WITNESS SUARD: Economic impact reports that I

1 reviewed that resulted in my comments are -- there was
2 a study done, let's see, in the '70s by DWR. I
3 reviewed that. And that was about Delta recreation.

4 I reviewed a study -- I think it was 1998. I
5 do have copies of all of this, and they're actually
6 online as well.

7 I reviewed a study done that ended up being
8 part of the Dream's report that pretty much ignored the
9 existence of a lot of marinas and the value thereof in
10 the Delta. I reviewed an economic impact report. I
11 think it was through the Delta Stewardship Council, of
12 which I did comment because it seemed to devalue
13 recreation in the Delta.

14 And then I compared it to the document that
15 was from the Delta Vision Group and then was reviewed
16 at that Delta Stewardship Council meeting that I went
17 to.

18 So I reviewed a lot of different documents.

19 MS. ANSLEY: But those documents, none of
20 which are cited in this testimony; is that correct?

21 WITNESS SUARD: Correct.

22 MS. ANSLEY: You're not testifying for North
23 Delta C.A.R.E.S. as an expert; is that correct?

24 WITNESS SUARD: I am a -- no. I'm just, you
25 know, one of those common sense citizens.

1 MS. ANSLEY: Okay. And as a lawyer, it's your
2 understanding that it is only experts that can rely on
3 expert material?

4 WITNESS SUARD: A lot of what I just listed to
5 you were not necessarily produced by experts. But some
6 of the reports were utilized. So I can't tell you the
7 white paper that was produced by someone on behalf --
8 Mr. Mitchell or something like that. I don't know that
9 that would be counted as an expert.

10 I'm not here as an attorney for North Delta
11 C.A.R.E.S. I'm here as a citizen with a lot of
12 experience related to water and water flows and damages
13 to businesses in the Delta. So I'm's not here as an
14 attorney.

15 MS. ANSLEY: No, I understand that. I just
16 assumed you would have knowledge, as an attorney, as to
17 the difference between an expert witness and a lay
18 witness.

19 MS. MESERVE: I think that's already been --

20 CO-HEARING OFFICER DODUC: Let's move on,
21 please.

22 MS. ANSLEY: Looking at Page 2 of your
23 testimony, you then have a paragraph that states, "My
24 testimony on behalf of North Delta C.A.R.E.S." -- they
25 all start that way.

1 It's the second full paragraph that talks
2 about recreation [sic] experiments and salmon
3 migration. Do you see that paragraph?

4 CO-HEARING OFFICER DODUC: You mean
5 "restoration experiments"?

6 MS. ANSLEY: Oh, restoration experiments and
7 salmon migration. Thank you.

8 Do you see that paragraph? I just want to
9 make sure you're oriented to your testimony.

10 WITNESS SUARD: I'm reviewing my notes on that
11 one.

12 Yes.

13 MS. ANSLEY: And you go on to say that, "DWR
14 and CF&W" -- do you see that sentence -- "have in the
15 past caused risks to boaters"?

16 WITNESS SUARD: Yes, California Fish and
17 Wildlife, I believe the name has changed now, but, you
18 know, I believe that's what it is.

19 MS. ANSLEY: That's my first question, making
20 sure I understood what CF&W was. You provide no
21 citation to any evidence of risks to boaters from
22 environmental restoration, do you?

23 WITNESS SUARD: No. But if you'd like me to
24 describe some, I'd be happy to.

25 MS. ANSLEY: No. What I want to know is if

1 you cite to any evidence of any reports or any --
2 anything other than your person experience in this
3 testimony regarding risks to boaters.

4 WITNESS SUARD: My testimony is a summary of
5 my experiences, as I stated there. And no, I did not
6 give details on some of that. But I would be happy to,
7 if you'd like to hear about it.

8 MS. ANSLEY: And then my final questions are
9 for Mr. Pruner. I'm looking at your testimony,
10 NDC-2-5. Do you have a copy there in front of you? We
11 can also bring that up on the screen if you'd like.

12 Mr. Pruner, you also do not cite to any
13 evidence of impacts from the California WaterFix; is
14 that correct?

15 WITNESS PRUNER: That's incorrect.

16 MS. ANSLEY: And could you point to me what
17 documents you are citing to or what analysis you are
18 citing in this testimony?

19 WITNESS PRUNER: Your question was when do
20 I -- what do I cite or refer to in support of my
21 testimony. And that is my observation, which I clearly
22 indicated I've observed facts that support each of the
23 conclusions that I stated.

24 MS. ANSLEY: So these are based on your
25 personal knowledge?

1 WITNESS PRUNER: They're based on my personal
2 knowledge including my observations, and my experiences
3 and the facts that I've observed on the ground for over
4 20 years and further developed as the Chair of the
5 Clarksburg Fire Protection District, meeting every
6 single month and reviewing reports and looking at
7 incidents correlating those with increased traffic and
8 other impacts visited upon us by DWR and other
9 governmental entities.

10 MS. ANSLEY: Has the -- has North Delta
11 C.A.R.E.S. or the Clarksburg Fire District Board --
12 Clarksburg Fire District, have they performed any
13 independent analysis of traffic impacts on the -- of
14 the California WaterFix? Has there been any modeling
15 done?

16 WITNESS PRUNER: That's such a complex
17 question and multiple -- let me try to unpackage your
18 question.

19 So if your -- let me take a part of your
20 question. Has the Clarksburg Fire Protection District
21 participated in or commissioned traffic studies? The
22 answer is yes.

23 MS. ANSLEY: Are those traffic studies
24 submitted here as evidence?

25 WITNESS PRUNER: Those traffic studies are not

1 submitted as evidence, but they are part of my
2 observation and belief and summarized in my testimony
3 at NDC-2-5.

4 MS. ANSLEY: But you do not cite them here
5 into the record for our review?

6 WITNESS PRUNER: That's correct. The study
7 I'm thinking of was produced after my testimony was
8 submitted.

9 MS. ANSLEY: And do you likewise have any
10 analysis or cite to any analysis of impacts of noise
11 from the California WaterFix?

12 WITNESS PRUNER: Yes.

13 MS. ANSLEY: But that has not been submitted
14 here in support of your testimony?

15 WITNESS PRUNER: That's incorrect.

16 MS. ANSLEY: Oh, I'm sorry. Which was the
17 exhibit for that?

18 WITNESS PRUNER: I'll refer you back to
19 Paragraph 3 Line 2, my testimony is based on my
20 observations and personal information, the facts I've
21 observed on the ground as a percipient witness. It is
22 further fleshed out in SWRCB-104, Page 3-23. And the
23 other admissions by the Department that I believe are
24 in the record before this hearing.

25 MS. ANSLEY: I'm sorry. I don't see anywhere

1 in your testimony where you cite to SWRCB-104.

2 WITNESS PRUNER: That's correct. So let me
3 state it again, Ms. Ansley, when you're ready.

4 MS. ANSLEY: I'm ready. I'm looking at 104.
5 Please go ahead. I'm sorry.

6 WITNESS PRUNER: My testimony is based on what
7 I observed and what I personally know. And included
8 within the scope of what I've observed and what I know,
9 as an example, is your own evidence, to which I gave
10 you the cite.

11 MS. ANSLEY: Okay. And I believe we've looked
12 that up, that what you're referring to is the
13 Biological Assessment, SWRCB-104 is the Biological
14 Assessment.

15 WITNESS PRUNER: Again, as an example, yes,
16 that's right. That's an example.

17 MS. ANSLEY: Okay. But as an expert witness,
18 you provide here no specific cites to testimony or
19 evidence that you are relying on other than -- I
20 understand what you're saying -- your personal
21 observation having reviewed documents; is that correct?

22 WITNESS PRUNER: So you said something that I
23 think is factually incorrect in your question. You
24 said -- you've identified me as an expert witness. Are
25 you now classifying me as an expert witness for the

1 purpose of helping me answer the question?

2 MS. ANSLEY: Well, I'm sorry. I'm relying on
3 the notice of intent that was submitted by North Delta
4 C.A.R.E.S., which I believe you were the only person
5 identified as an expert witness.

6 WITNESS PRUNER: Okay. So I just want to be
7 clear. You're asking me as in my capacity, an expert
8 witness, is that correct, this question?

9 MS. ANSLEY: I can repeat my question.

10 CO-HEARING OFFICER DODUC: Please do,
11 Ms. Ansley.

12 MS. ANSLEY: As an expert witness in your
13 testimony here, which is NDC-2-5, you provide no
14 citation to any evidence or analysis to -- in support
15 of your conclusions regarding construction noise,
16 traffic, or groundwater level decreases; is that
17 correct?

18 WITNESS PRUNER: That is incorrect. We
19 covered this ground before. I'll repeat it. It may be
20 helpful.

21 CO-HEARING OFFICER DODUC: Let's not.

22 MS. ANSLEY: I think I'm fine. I have my
23 answer.

24 CO-HEARING OFFICER DODUC: Thank you,
25 Ms. Ansley.

1 MS. ANSLEY: And that would be my all my
2 questions for this panel.

3 CO-HEARING OFFICER DODUC: Mr. Jackson.

4 CROSS-EXAMINATION BY MR. JACKSON

5 MR. JACKSON: If it's all right with the
6 Chair, I'll direct my questions to the panel as a
7 whole, and I think it will shorten it some. And
8 whichever one of them feels like they've got an answer
9 that they're interested in, I'd appreciate the
10 information.

11 CO-HEARING OFFICER DODUC: Thank you,
12 Mr. Jackson.

13 And I believe Mr. Jackson estimated 15
14 minutes.

15 MR. JACKSON: My first set of questions will
16 be about Water Code Section 85054 and the understanding
17 of these folks. And it is -- just for the Board's
18 edification, it's on NDC-2-1, Barbara Daly's testimony.
19 And it would be Page 3 of that testimony, in the second
20 to last paragraph. Thank you.

21 Ms. Daly, you indicate in the third sentence
22 of the second to last paragraph that you believe that
23 the petition for DWR and USBR and the aspects of this
24 construction would be in direct conflict with the Delta
25 Reform Act.

1 What do you base that on?

2 WITNESS DALY: I base that on the experiences
3 that I've had in reading the EIR/EIS and all of the
4 threats to the culture and the recreation, the
5 agriculture, and the natural resource values of the
6 Delta. And if it is a mandate that these be -- that
7 the water reliability be achieved in a manner that
8 protects and enhances these and actually the WaterFix
9 threatens them, that's why I say it's in conflict if
10 they don't -- they can't go together. It cannot be
11 achieved by doing the WaterFix.

12 MR. JACKSON: So do you believe that the
13 project protects the unique cultural values of the
14 Delta?

15 WITNESS DALY: No.

16 MR. JACKSON: Do you include the cultural
17 values of Native Americans who live in that area?

18 WITNESS DALY: Yes.

19 MR. JACKSON: Do you consider that this
20 protects the cultural values of, for instance, the
21 history of Locke?

22 WITNESS DALY: No.

23 MR. JACKSON: Do you believe that it protects
24 present cultural values of subsistence fishers?

25 WITNESS DALY: No.

1 MR. JACKSON: Do you believe that it protects
2 the existing cultural values of the 500,000 acres of
3 farmland in the Delta?

4 WITNESS DALY: No.

5 MR. JACKSON: Do you believe it protects
6 recreational boating?

7 WITNESS DALY: No.

8 MR. JACKSON: Do you believe that it protects
9 recreational fishing?

10 WITNESS DALY: No.

11 MR. JACKSON: Do you believe that it protects
12 recreational bird watching?

13 WITNESS DALY: No.

14 MR. JACKSON: Do you believe that it protects
15 the natural resources of the largest estuary on the
16 West Coast of the Americas?

17 WITNESS DALY: Sadly, no.

18 MR. JACKSON: Do you believe that it protects
19 the groundwater in the Delta?

20 WITNESS DALY: No.

21 MR. JACKSON: Do you believe that it
22 affects -- or protects the water quality in the Delta?

23 WITNESS DALY: No.

24 MR. JACKSON: Now, the Delta Reform Act talks
25 about protection, and you've answered those questions.

1 Does it do anything to enhance the various unique
2 cultural, recreational, natural resources and
3 agricultural values of the Delta?

4 WITNESS DALY: I haven't read any mitigation
5 that enhances it, no. It tries to do trade-offs, but
6 that does nothing to enhance it.

7 MR. JACKSON: There's been a lot of testimony,
8 much of it by you and by others, about, for instance in
9 the third paragraph -- go up just a little bit. Thank
10 you.

11 You have a term here that says that the
12 intakes and the underground conveyance would adversely
13 impact well-established recreational and tourism
14 opportunities. And then you quote some reason that you
15 come to that conclusion.

16 Do these well-established recreation and
17 tourism opportunities at the present time have, in your
18 mind, a potential to enhance the Delta as an evolving
19 place?

20 WITNESS DALY: Yes.

21 MR. JACKSON: And what are some of those
22 things that you believe would enhance the Delta as an
23 evolving place?

24 WITNESS DALY: Well, one things that comes to
25 mind, not thinking too long or hard about it, is that

1 the California WaterFix has brought a lot of attention
2 to the Delta. And people -- one of the things -- a lot
3 of the people in California and outside of California,
4 too, don't know about the Delta. And so it's really
5 created kind of a buzz or a stir, you know. What is
6 this Delta? We didn't know this Delta was there.

7 So it's been getting a lot of advertising, you
8 might say. So the tourism could be -- could evolve
9 into more of an historical landmark in California. And
10 the recreation is definitely a wonderful bonus.
11 It's -- the waterway is in the -- bird watching of the
12 estuary is getting more and more attention. So it
13 would evolve into becoming more of an attraction for
14 people to learn about.

15 WITNESS SUARD: Can I enter -- answer one
16 question, too?

17 MR. JACKSON: Sure.

18 WITNESS SUARD: I have observed over the last
19 ten years that the Delta in particular and actually
20 Sacramento River and the San Joaquin River keeping
21 being erased from maps from California and in
22 particular, Department of Water Resources, when -- I
23 actually have a disk that shows what they currently
24 have online. When they talk about their water
25 conveyance facilities, they eliminate reference to the

1 Delta. They split it up and make it look like it might
2 be one little river. So it would really enhance the
3 Delta so stop erasing it from maps.

4 WITNESS DALY: Thank you, Nicky. I would
5 probably bring in five maps that do that.

6 WITNESS MOTLOW: Excuse me. Could I add a
7 little bit to that?

8 MR. JACKSON: Certainly.

9 WITNESS MOTLOW: Specifically for Locke, since
10 we -- the State has implemented the Boarding House
11 Museum, we've seen the sheer number of people coming to
12 Locke increase. And that was typified yesterday, in
13 fact, by a group from Sacramento coming by bus, a total
14 of I believe 45 of them that I gave a tour to that were
15 part of a horticulture group from Sacramento. And
16 that's very indicative that -- for Locke.

17 Locke is now becoming a focal point for
18 bringing people to the Delta as a whole. So I just
19 wanted to add that.

20 WITNESS DALY: Dr. Benedetti, who testified
21 here a few days ago, I'm taking him and almost 50
22 people in a couple of weeks to Locke and other places,
23 Rio Vista, to the Dutra Museum, and places of interest
24 that he's teaching in his class at Sac State.

25 WITNESS SUARD: Can I say one more thing about

1 the maps? I'm sorry.

2 Request that NOAA correct the -- the nautical
3 maps that show all the marinas and all the boat ramps,
4 more than 100 of them in the Delta region, for some
5 reason, around 2005, NOAA dropped all but ten of the
6 marinas, which really creates a misunderstanding if
7 anybody -- a boater wants to come to the Bay and Delta
8 and they see very few marinas on that list, and there
9 is no explanation why they did that.

10 So it's not just DWR. There are other
11 Delta -- other agencies that are erasing the existence
12 of the Delta, and that needs to stop.

13 MR. JACKSON: Mr. Pruner, is Clarksburg and
14 incorporated city?

15 WITNESS PRUNER: No.

16 MR. JACKSON: And having -- and what county is
17 it in?

18 WITNESS PRUNER: Yolo.

19 MR. JACKSON: And Yolo County testified in
20 regard to traffic problems caused by the WaterFix?

21 WITNESS PRUNER: No, not exactly. But let me
22 recharacterize that if I may. The Fire District
23 requested and obtained from Yolo County a traffic study
24 of traffic patterns on and off the Freeport Bridge. In
25 addition, we keep track of every single incident

1 related to increased traffic from the Freeport Bridge
2 north, bypassing construction and log jams and traffic
3 jams on Interstate 5.

4 We can correlate some incidents and accidents,
5 some with serious consequences, to the increased
6 traffic.

7 MR. JACKSON: Now traffic increase is
8 commensurate with the traffic study. Is that going to
9 interfere are the Clarksburg Fire Department's response
10 times?

11 WITNESS PRUNER: It will -- I can't predict
12 the future and say what it will and will not do with
13 regard to response times. But I can say for a
14 certainty, based on the evidence we have and my own
15 observation and knowledge over many years of being
16 deeply involved with the operations, management of the
17 district, that the increased traffic of the type, the
18 quantity, the typing of vehicles and loads, et cetera,
19 and the frequency will have a direct impact on the
20 service load of the district.

21 Whether our response times are impacted
22 will -- yet to be seen. I hope not. We have excellent
23 response times, but I hope not.

24 MR. JACKSON: Do you -- does the Clarksburg
25 Fire Department run ambulances?

1 WITNESS PRUNER: No, we contract out or refer
2 out to AMR for ambulance services, but we provide
3 emergency medical on-scene response, short of the
4 actual ambulance or the helicopter taking folks to an
5 acute care facility.

6 MR. JACKSON: And --

7 WITNESS DALY: Can I add something to Yolo and
8 Clarksburg?

9 MR. JACKSON: Sure.

10 WITNESS DALY: The recreation Chapter 15,
11 Page 52 states that the Yolo County General Plan has
12 Policy 9.14 that says it's going to establish
13 Clarksburg as a gateway entry for visitors to the Delta
14 region seeking agricultural tourism, ecotourism, and
15 recreational opportunities. So it's a policy in
16 Yolo County's General Plan.

17 MR. JACKSON: So do you consider that then to
18 be something that is compatible with the WaterFix
19 program?

20 WITNESS DALY: No, I don't because, if you go
21 into the noise chapters, the visual and aesthetic
22 chapters, it talks about that the sensitive receptors
23 such as the Delta High School will be highly impacted
24 by the noise. And the visual disturbances will greatly
25 detract from the tourism opportunities in Clarksburg.

1 MR. JACKSON: If I could, I have one more
2 question.

3 On Page 2 of your testimony NDC-2-1 at the
4 second to last paragraph -- is that Page 2?

5 WITNESS DALY: No.

6 That's it.

7 MR. JACKSON: Right, yeah. You indicate in
8 the last paragraph that over the last decade or -- you
9 don't use "decade," but you indicate that the
10 businesses involved in recreation and tourism have been
11 on the rise in the Delta. And you mention wineries,
12 wine tasting.

13 Has the wine industry developed along the
14 Sacramento River in the last couple of decades to be
15 larger and more robust than it was in the past?

16 WITNESS DALY: Oh, yes, very much.

17 MR. JACKSON: Has that -- I'm used to Napa
18 Valley and Sonoma valley. Has that sort of evolved, to
19 use the term in Water Code Section 85054?

20 WITNESS DALY: Perfect. Yes, as an evolving
21 place, there are more sweet little wine tasting rooms
22 tucked away in different little sloughs. And Bogle
23 Winery tasting is out there. And, yes, it has evolved
24 to that.

25 MR. JACKSON: If there were -- hypothetically,

1 if there were an increase in truck traffic and
2 construction and noise and all of that, would that
3 interfere with that evolution, in your opinion?

4 WITNESS DALY: Most certainly, yes. People
5 would choose Lodi.

6 MR. JACKSON: Ms. Suard, do you agree with
7 that?

8 WITNESS SUARD: I'm sorry. Would you repeat
9 the question.

10 MR. JACKSON: Do you believe that the
11 evolution of the wine industry along the Sacramento
12 River would be impacted?

13 WITNESS SUARD: Oh, absolutely, yes, due to
14 traffic. People wouldn't be able to get there, either
15 by boat or by vehicle.

16 MR. JACKSON: And Mr. -- Molow?

17 WITNESS MOTLOW: Motlow.

18 MR. JACKSON: Motlow.

19 WITNESS MOTLOW: Yes.

20 MR. JACKSON: Has there been an increase in
21 visitation of Locke by Chinese Americans?

22 WITNESS MOTLOW: Yes, Mainland Chinese are
23 coming over to Locke in greater and greater numbers,
24 particularly through the San Francisco Cultural Society
25 there as well as the Chinese San Francisco Historical

1 Society. They sponsor regular groups to come to Locke.
2 So the answer to your question is yes for the Bay Area
3 as well as from Sacramento.

4 We have Chinese organizations that come out to
5 Locke on a regular basis. And on May 12th, in fact,
6 Locke is having its Asian Spring Festival, which is a
7 yearly event that attracts people from not only the
8 Chinese community but also all other Californians as
9 well.

10 MR. JACKSON: Thank you, sir.

11 That's all my questions.

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

14 Ms. Des Jardins.

15 CROSS-EXAMINATION BY MS. DES JARDINS

16 CO-HEARING OFFICER DODUC: And your topic
17 areas, Ms. Des Jardins?

18 MS. DES JARDINS: My topic areas are about the
19 timing of the construction, a question about specific
20 facilities impacts, about -- about trucks, truck
21 impacts, and questions about exhibits they cite, and
22 some questions about emergency preparedness and
23 possible construction accidents.

24 All right. So could we please bring up
25 Exhibit -- my name is Deirdre Des Jardins with

1 California Water Research.

2 Mr. Pruner, I wanted to ask you -- could we
3 bring up Exhibit SWRCB-104, Page 3-23.

4 Mr. Pruner, I believe you cited this as
5 informing your understanding of noise impacts, correct?

6 MS. MESERVE: We'll just have to wait one
7 second while we bring that up.

8 MS. DES JARDINS: Yes, Page 23, please. It's
9 3-23. There it is. Let's scroll up to the top,
10 please. Yeah, and it's right there. There's a list
11 of -- so I believe this is the timing of construction.
12 This is -- Exhibit SWRCB-104 is the Biological
13 Assessment and this is a description of the timing of
14 the proposed actions.

15 Is it your understanding, Mr. Pruner, that
16 things like site work, ground improvement, borrow fill,
17 dispose soils, dewatering, and so on can be done any
18 time of the day or night?

19 WITNESS PRUNER: That's my understanding from
20 the petitioners' record, yes. They've admitted --
21 they've admitted those risks and those facts, yes.

22 MS. DES JARDINS: And barge operations as well
23 can be at any time of the day or night?

24 WITNESS PRUNER: It's my understanding that
25 the proponents have admitted these assertions, yes.

1 I'm not independently commenting that those are true or
2 not true. I'm just saying those are admissions in the
3 record.

4 MS. DES JARDINS: And the rest of the panel,
5 is that also confirming your concerns about noise and
6 traffic impacts --

7 WITNESS DALY: Yes.

8 MS. DES JARDINS: -- could potentially be
9 continuous?

10 WITNESS MOTLOW: Yes, it is.

11 WITNESS DALY: Yes.

12 MS. DES JARDINS: And -- so I'd like to pull
13 up ECOS-10, please. So you guys didn't cite any
14 particular study, but this was introduced by another
15 party, and I wanted you to look at it for a minute.

16 Let's scroll out a little so we can actually
17 see.

18 Can you guys all see the study? Can you look
19 at it for a minute.

20 CO-HEARING OFFICER DODUC: First of all, let's
21 establish what is it.

22 MS. DES JARDINS: This is a map of North Delta
23 truck volume permitting, an estimation for WaterFix
24 project construction.

25 And I was going to say, have you guys seen

1 these kinds of estimates of traffic impacts?

2 CO-HEARING OFFICER DODUC: Hold on.

3 (Interruption in proceedings)

4 CO-HEARING OFFICER DODUC: All right.

5 Ms. Ansley, did you have an objection?

6 MS. ANSLEY: I do. I believe that this lacks
7 foundation. This is an analysis done not by the DWR
8 but by another party. And none of these witnesses
9 answered the question of whether or not they were
10 familiar with this study, how it was conducted and just
11 generally how this -- these numbers were calculated.

12 CO-HEARING OFFICER DODUC: Hold on a minute.
13 I don't know that they had the chance to respond. So
14 let's give them the chance to respond with respect to
15 are any of you familiar with this study, how it was
16 conducted?

17 WITNESS SUARD: I'm familiar with the study
18 and this particular map in particular.

19 CO-HEARING OFFICER DODUC: All right.

20 MS. DES JARDINS: And --

21 WITNESS PRUNER: Mark Pruner. For the Fire
22 District.

23 Contrary to Ms. Ansley's assertion, I was
24 never asked about this map particularly. I am familiar
25 with the data in the map and generally the map itself.

1 CO-HEARING OFFICER DODUC: And,
2 Ms. Des Jardins, proceed with your questions.

3 MS. DES JARDINS: Okay. So -- can we zoom in
4 a little to where it says "Locke," "Walnut Grove."

5 And so -- let's -- and so does this not show a
6 significant amount of truck traffic on Twin Cities
7 Road, Ms. Suard?

8 WITNESS SUARD: Yes, it does, as well as the
9 other roads basically coming off of Highway 5. I was
10 more focused on the State Route 84. And actually, I
11 was bothered about the study because it didn't continue
12 84 as it does and actually didn't talk about the
13 impacts to Ryer Island and the use of the two ferries
14 which are very much impacted when there is an accident
15 on 84 or 160 or 12 or any of those areas.

16 MS. DES JARDINS: Does -- well, let's focus
17 first on lock and Walnut Grove. Does it also show a
18 significant amount of trucks on 160, Highway 160?

19 MS. MESERVE: Objection, vague. Maybe if you
20 can scroll down and ask specifically --

21 MS. DES JARDINS: Yeah, so let's --

22 MS. MESERVE: I think it's a little --

23 CO-HEARING OFFICER DODUC: One at a time for
24 the court reporter, please.

25 MS. DES JARDINS: Let's scroll up so we can

1 look at the color code. So Ms. Suard, does it show 6.8
2 trucks per minute on Twin Cities Road?

3 WITNESS SUARD: Yes, it does, as well as
4 Walnut Grove Road.

5 MS. DES JARDINS: And 10.3 trucks per minute,
6 is that on Highway 160 north of Locke in Walnut Grove?

7 WITNESS SUARD: Yes, Highway 160 on the east
8 side. Some people refer to 160 on the west side as
9 well. You can see that north of Walnut Grove. This
10 green line often is referred to 160 as well. State
11 route 84 refers to 10.3 trucks. We're talking huge
12 trucks, the maximum length and width trucks, probably,
13 per minute. And that is a main access route for many
14 vacationers coming into the North Delta.

15 MS. DES JARDINS: And based on the timing of
16 construction, do you think it might continue throughout
17 the night?

18 WITNESS SUARD: That's what it says. So you
19 were -- it was mentioned about impacts to the wineries.
20 That is a main access route for a lot of the wineries
21 and, in fact, goes right by Bogle, which is, you know,
22 an international winery now.

23 There's an access road to Sugar Barge -- or
24 Sugar Mill right there and a couple other -- Wilson
25 Winery. So it actually -- you know, it's very clear;

1 nobody is going to go recreating or doing a, you know,
2 day travel to go wine tasting when you're in between
3 10.3 trucks per minute.

4 MS. DES JARDINS: Ms. Daly, how would this
5 affect your bus tour business?

6 WITNESS DALY: I don't believe I'd be able to
7 continue. That's a major stop with all of my Delta
8 tours is Locke. And it also -- this is kind of going
9 off to a little side note here, but if I may read from
10 the Final EIR about this segment you're talking about
11 and how much it's also going to increase the noise
12 levels for the people who live there? May I just take
13 a moment?

14 MS. DES JARDINS: Yes.

15 WITNESS DALY: This is from the noise chapter,
16 23, Page 194.

17 And it says, "During intake construction,
18 segments of State Route 160 between Freeport Bridge and
19 Walnut Grove Bridge," which is where Twin Cities Road
20 lies, right between them, "would be temporary realigned
21 around intake construction sites. As a result, future
22 project noise levels will further increase at
23 residences located near intake sites. Under
24 Alternative 4A, noise levels and receivers near
25 realigned segments of State Route 160 would increase by

1 up to 3 dBs in addition to the noise increase shown in
2 Table 2363. The increase in noise levels would exceed
3 the project threshold for traffic noise and would be
4 considered adverse."

5 MS. DES JARDINS: Do you -- are some of the
6 houses -- a lot of the houses, are they fairly old and
7 have poor noise protection?

8 WITNESS DALY: Yes, especially in that area.
9 That's right where Locke is. And Locke was a hundred
10 years old in 2015.

11 MS. DES JARDINS: Mr. Motlow, isn't there a
12 lot of, like, tours? You described people coming to
13 tour Locke for cultural reasons. Wouldn't this impact
14 them?

15 WITNESS MOTLOW: This would destroy Locke. I
16 am unfamiliar with this map. I'm unfamiliar with this
17 data until I just see it here.

18 Seeing this draws me to the conclusion that
19 this is the end of Locke. This goes through, Locke
20 ceases to exist, simply because of the lack of
21 opportunity for people to get to it as well as us, who
22 are residents there, to even be able to live there.

23 We are currently petitioning the Department of
24 Public Works that applied to get two stop signs put
25 into Locke because of the recent increase in simply

1 automobile traffic because it's looked at as a quick
2 way to get from I-5 to I-12 -- to Highway 12.

3 So if this truck traffic is to happen, I
4 would, as a resident of Locke, would find it almost
5 nearly impossible to get into the town or out of the
6 town simply because it is so -- this amount of truck
7 traffic would make it impossible.

8 So -- and the conclusion I would draw from
9 that is that is that all this work to preserve Locke
10 would be for naught because it would be destroyed.

11 MS. DES JARDINS: Mr. Pruner, how would this
12 kind of traffic impact your fire department's ability
13 to respond.

14 WITNESS PRUNER: Sorry. I'm listening to the
15 alarm and looking at the call log, see what I could
16 glean.

17 MS. DES JARDINS: How would this affect your
18 department's ability to respond?

19 WITNESS PRUNER: I think pretty clearly it
20 would and dramatically so. I can tell you that when
21 our primary medical unit turns out, that, if it has to
22 follow or navigate around trucks at Jefferson Boulevard
23 in particular, one every six minutes approximately,
24 that would materially reduce -- or increase, excuse me,
25 our response time.

1 And related to that, you know, as a an expert,
2 I can clearly say that looking at the standards in
3 Water Code Section 85054, the second sentence, which is
4 accompanied by the Water Section 85020B, that the
5 petitioners are required to act in a manner that
6 enhances -- propose a project that enhances and
7 protects the cultural values, et cetera. The Delta's
8 an evolving place, and having a viable, responsive,
9 timely, adequate, and professional fire district/fire
10 department is absolutely foundational to every single
11 one of those statutory and mandatory requirements,
12 which the petition in its current form fails to meet
13 that standard.

14 MS. DES JARDINS: Mr. Pruner, was the local
15 fire department ever given any information about the
16 potential risks of explosions from tunneling near gas
17 wells in the Delta?

18 WITNESS PRUNER: No.

19 MS. DES JARDINS: Was the local fire district
20 ever informed that there are a lot of gas wells near
21 Locke and Walnut Grove?

22 WITNESS PRUNER: No, but I have to just
23 indicate that our district boundaries do not include
24 Locke or Walnut Grove. Those are serviced by other
25 volunteer fire districts.

1 MS. DES JARDINS: I would like to ask you
2 about -- so can we pull up Exhibit DWR-212, please.
3 And I'd like to go to Page 155. And so let's -- let's
4 zoom out a little.

5 And let me tell you what this is.

6 So this is a map of known gas wells in the
7 Delta region. And the purple dots are gas wells.
8 Could you see that?

9 WITNESS PRUNER: Yes. Could I ask that the
10 map be blown up?

11 MS. DES JARDINS: Yeah. So let's go ahead and
12 zoom in and go to where -- and if you can see --

13 WITNESS PRUNER: Can I ask that the map be
14 scrolled down -- the other direction.

15 MS. DES JARDINS: Let's scroll back up a
16 little -- yeah. Zoom in a little more, please.

17 So that's the intakes, and there's Hood. And
18 let's go ahead and scroll down a little please. And
19 then it's almost hidden by the purple dots, but you can
20 see Walnut Grove. And I believe -- yeah, right there,
21 and Locke.

22 So there's a number of fairly active -- of gas
23 wells that the tunnel alignment goes through. Were you
24 ever informed or are you aware -- was your district
25 ever informed of this as a potential risk from

1 tunneling?

2 WITNESS PRUNER: We were not informed of the
3 wells that you just described in the Walnut Grove and
4 Locke area because we wouldn't be normally. That's not
5 part of our district, and we're not responsible for
6 that area. There are wells that I know of and I can
7 see on the map --

8 MS. DES JARDINS: Where's --

9 WITNESS PRUNER: -- further north. Ask the
10 map be scrolled -- scrolled down?

11 MS. MESERVE: Toward Clarksburg, please.

12 WITNESS PRUNER: Yes, go north. Thank you.

13 So those purple dots reflect known gas wells.

14 So the question is did the project proponents or
15 petitioners here inform us of those gas wells and the
16 impact on those gas wells because of the project? The
17 answer is no.

18 MS. DES JARDINS: So let's go to -- I'd like
19 to go to Page 156, please, of the -- let's scroll back
20 out. And let's -- yeah, zoom out.

21 So are you aware that the mitigation -- if you
22 can read under Section 13.2.4, "Future studies will
23 identify the minimum allowable distance between the
24 wells and tunnel excavation." Were you aware of -- so
25 they didn't discuss that as -- that they're planning to

1 just do a future study?

2 WITNESS PRUNER: Correct. They did not
3 approach us to give us that information. That
4 information, as you can see, is in DWR-212 at Page 156.
5 They left it up to us to try to find that on our own.
6 That's correct.

7 MS. DES JARDINS: Does that give you any
8 confidence that the final tunnel alignments is going to
9 avoid gas wells?

10 WITNESS PRUNER: No.

11 MS. DES JARDINS: I'd like to go to Page 215.
12 And let's zoom out a little. I have to find the thing
13 on the page -- and scroll down, please.

14 So if you can read under 24.3, "Preliminary
15 Construction Tasks," on the last paragraph, it says,
16 "to minimize site impacts and comply with permit
17 requirements, DWR is required to develop safety plans,
18 site utilization plans, traffic control plans," et
19 cetera.

20 So does it give you confidence that DWR will
21 eventually develop a safety plan?

22 WITNESS PRUNER: No. The reason is I'm
23 familiar with generally what those standards are. Many
24 times a project proponent, when a proponent develops a
25 safety plan, those safety plans focus primarily with

1 on-site risks. Generally -- and they're safety plans
2 that focus on what you do on-site when you're on the
3 property, and then they contain generic information
4 when you're off-site.

5 This particular project is so unique that the
6 typical safety plan would not encompass the risks that
7 I testified exist.

8 MS. DES JARDINS: And what about the traffic
9 control plan and impact? Does it give you confidence
10 that they'll develop some kind of traffic control plan
11 that won't adversely impact your fire district's
12 ability to respond?

13 WITNESS PRUNER: No. I say that because
14 having some knowledge of traffic control plans and
15 other plans referred to in the last paragraph of the
16 page in front of us, 215, they do not typically --
17 those plans as prepared by DWR and other State entities
18 do not address the real-life risks that their project
19 causes off site.

20 So that would be -- we would have on site
21 responsibilities, of course, if there's an accident, an
22 injure. We would be call on to assist if it happened
23 within our district. Part of the project would be in
24 our district a little bit in Yolo County, across the
25 river from the three proposed intakes.

1 But the plans that I see and the history with
2 the Department so far does not give me confidence they
3 would address our concerns.

4 MS. DES JARDINS: And Nicky and Barbara, does
5 the promise to develop a traffic control plan in the
6 future, does that give you any confidence that the kind
7 of impacts would be addressed?

8 (Interruption in proceedings)

9 WITNESS SUARD: No.

10 CO-HEARING OFFICER DODUC: And that should be,
11 knock on wood, the only drill today.

12 MS. DES JARDINS: Funny that we're talking
13 about fire when. . .

14 Okay right. So Ms. Daly, do you think these
15 traffic control plans would address impacts? Do you
16 have any confidence they would address impacts on tour
17 businesses like yours?

18 WITNESS DALY: No.

19 MS. DES JARDINS: And Mr. Motlow, do you have
20 any confidence that this traffic control plan would
21 address the kind of impacts you're describing on the
22 city of Locke?

23 WITNESS MOTLOW: No.

24 MS. DES JARDINS: And I'd like to bring up
25 Exhibit DDJ-141. Go to Page 164.

1 But Mr. Pruner, were you ever informed that
2 outside reviewers were very concerned about DWR
3 tunneling through gas wells?

4 MS. ANSLEY: Vague and ambiguous as to
5 "outside reviewers." I don't know if she means other
6 protestants or if she means some sort of independent
7 reviewers.

8 MS. DES JARDINS: Let's go to DDJ-141. There
9 we go. And let's pull up -- it's Page 164. And let's
10 scroll down, please.

11 And it says --

12 MS. MESERVE: Objection, vague. Can you lay
13 some foundation.

14 MS. DES JARDINS: So this is --

15 MS. MESERVE: I can't --

16 (Reporter interruption)

17 MS. DES JARDINS: So you would not have seen
18 this because this -- Mr. Pruner, because this was not
19 published. This is "2010 Initial Analysis and
20 Optimization Of Tunnel Options." It did have a --
21 there -- it was sent for outside review.

22 This section refers to the outside reviewers
23 recommended the tunnel alignment avoiding active or
24 idle gas wells.

25 CO-HEARING OFFICER DODUC: Okay. Let's stop.

1 MS. DES JARDINS: Yeah.

2 CO-HEARING OFFICER DODUC: Who are these
3 outside reviewers?

4 MS. DES JARDINS: There was a panel, it said,
5 of outside reviewers of the tunnel engineering. And
6 this refers to one of their concerns.

7 CO-HEARING OFFICER DODUC: Ms. Ansley.

8 MS. ANSLEY: Yeah, I'm going to object as
9 lacks foundation because this witness has testified
10 that he's familiar with this review, who these
11 reviewers are, what this panels is. All we have is
12 Ms. Des Jardins' characterizations on which he's now
13 going to answer questions.

14 I suppose she could set it up as a
15 hypothetical, but as it stands right now, the questions
16 lack foundation as to this witness's knowledge.

17 CO-HEARING OFFICER DODUC: Mr. Pruner, are you
18 familiar with this document?

19 WITNESS PRUNER: Let me just think for a
20 minute. I have seen a number of, DHCCP docs early on
21 before they came out. And I'm familiar with the
22 concepts here. I see the "initial reviewers," that
23 phrase is a defined term with a specific meaning. And
24 I assume the questioner means to incorporate the
25 definition within the document of what those folks --

1 who they are. And I presume that --

2 CO-HEARING OFFICER DODUC: Well, let's do
3 this. Ms. Des Jardins, perhaps if you could go ahead
4 and ask your question, we might better understand how
5 appropriate it is.

6 MS. DES JARDINS: Well, if there was --
7 basically this is a public safety issue. And I'm
8 asking the Fire Department, who is the local expert on
9 fire risks, and --

10 CO-HEARING OFFICER DODUC: Tell me what you
11 want to ask him.

12 MS. DES JARDINS: Well, one of the
13 recommendations here was that, since DWR has neither
14 designed nor constructed a project that passes through
15 a gas field or near existing gas wells, that a
16 petroleum engineering consultant with experience in the
17 installation of gas wells be hired to advise DWR and
18 the DHCCP.

19 CO-HEARING OFFICER DODUC: And the question
20 is?

21 MS. DES JARDINS: As a firefighter and
22 somebody with -- you know, would you think that that
23 was -- also be a good idea?

24 WITNESS PRUNER: Yes.

25 MS. DES JARDINS: Would you think that

1 particularly evaluating the risks of tunneling through
2 the kind of density of wells that you saw in that map,
3 that it would be important?

4 WITNESS PRUNER: The answer is yes, it would
5 absolutely be important and in fact included within the
6 statutory mandate of this body and all bodies looking
7 at the project ascribing Water Code Section 85054 and
8 85020B that those precautions must be taken.

9 MS. DES JARDINS: Ms. Suard, you testified
10 earlier that you felt that the Department of Water
11 Resources didn't necessarily adequately take into
12 account risks to Delta inhabitants, did you not?

13 WITNESS SUARD: I did. And in particular, I
14 was concerned about drinking water wells that were not
15 showing in the maps of -- of the WaterFix. And I'd
16 actually commented on that for -- earlier names of the
17 project called CalFed and Bay-Delta Conservation Plan
18 and all that because I had noticed and had personal
19 experience with the problem of wells.

20 Now, this one talks about DOGGR doesn't
21 necessarily guarantee the accuracy of the gas wells.
22 Well, the same thing is true regarding drinking water
23 wells. I know that Water Board is doing a really good
24 job of trying to correct some of the information.

25 There's, you know, a great website -- I think

1 it's going to be huge for the California water -- that
2 is locating wells. But the fact is WaterFix drafters
3 did not consider other than a few wells -- did not
4 investigate or find any of those wells.

5 And those are humans that have drinking water
6 that are going to be impacted by this. So that's not
7 about the gas wells, but that's interesting. They hit
8 one of those gas wells, they could blow up an island.

9 MS. DES JARDINS: So Ms. Suard, this said,
10 with respect to gas well coordinates, that DWR should
11 conduct a survey to determine their exact location.
12 Would you think that would be important?

13 WITNESS SUARD: I do think that would be
14 important, and I'd like to point out an example.

15 MacDonald Island flooded I believe in 1982
16 because they were doing some work and they accidentally
17 hit a line. And the island then -- a levee broke. So
18 it was a big deal back then. And I believe
19 historically they had -- Mr. Pike -- Dr. Pike talked
20 about that one.

21 And so there really should be a survey and,
22 you know, reassess exactly how many people's wells and
23 gas wells are going to be impacted by this.

24 MS. DES JARDINS: And Mr. Pruner, do you feel
25 as well that doing a preliminary survey for where the

1 gas wells are, getting exact locations, would be
2 important?

3 WITNESS PRUNER: Absolutely fundamental, yes.

4 MS. DES JARDINS: And what about --

5 CO-HEARING OFFICER DODUC: You're about to run
6 out of time, Ms. Des Jardins.

7 MS. DES JARDINS: Yeah, one final question,
8 which is what about the recommendation of the tunnel
9 alignment avoid any active or idle gas wells? Would
10 you think that would be important?

11 WITNESS PRUNER: I think it would be
12 fundamental from a public life, fire, and safety
13 perspective, yes.

14 MS. DES JARDINS: When you, as a fire district
15 or someone commenting on the BDCP and the proposed
16 alignment, was this kind of information about
17 recommendations that the tunnel avoid active gas wells
18 provided?

19 WITNESS PRUNER: No.

20 MS. DES JARDINS: Would you have -- would you
21 have strongly seconded that recommendation?

22 WITNESS PRUNER: Yes.

23 MS. DES JARDINS: And would that be from a
24 public safety standpoint?

25 WITNESS PRUNER: Yes. And I speak for the

1 district. This isn't about me, but the district would
2 have strongly seconded that recommendation, yes.

3 MS. DES JARDINS: So you were not able to
4 exercise your responsibilities as the local fire
5 district who's, in some sense, the local -- someone who
6 oversees local fire hazards?

7 WITNESS PRUNER: Yes.

8 CO-HEARING OFFICER DODUC: Thank you.

9 Any redirect, Ms. Meserve?

10 MS. MESERVE: No.

11 CO-HEARING OFFICER DODUC: Thank you all very
12 much.

13 At this point do you wish to move exhibits
14 into the record for North Delta C.A.R.E.S.?

15 MS. MESERVE: Yes, I do. I'll just quickly
16 list them. There's not all that many.

17 We have the --

18 CO-HEARING OFFICER DODUC: You don't have to
19 list them.

20 MS. MESERVE: I think the exhibit index is
21 correct.

22 CO-HEARING OFFICER DODUC: There are not that
23 many of them.

24 Any objections?

25 (No response)

1 CO-HEARING OFFICER DODUC: They are so moved.

2 (North Delta C.A.R.E.S. Exhibits NDC-2-1,

3 NDC-2-2, NDC-2-5 through NDC-2-9,

4 NDC-2-19, NDC-2-20, NDC-2-25, NDC-2-26.1

5 through NDC-2-26.4, NDC-2-27[1-9],

6 NDC-2-29[1-3] and NDC-2-30 admitted

7 into evidence)

8 CO-HEARING OFFICER DODUC: And Ms. Daly, thank

9 you for those pictures.

10 WITNESS DALY: Glad you enjoyed them.

11 (Discussion off the record)

12 WITNESS SUARD: Can I take a break?

13 CO-HEARING OFFICER DODUC: Oh, yes. That's

14 right. Ms. Suard needs to take a break. All right.

15 Why don't we take a short break, and we'll return at

16 2:20.

17 (Recess taken)

18 CO-HEARING OFFICER DODUC: It is 2:20, and we

19 are back in session.

20 Returning now to Snug Harbor, Ms. Meserve,

21 Ms. Suard, I expect there will be some corrections you

22 were going to make to Ms. Suard's testimony? Because

23 it does reference exhibits that have been removed or

24 withdrawn.

25 MS. MESERVE: Yes, I think to save -- I

1 believe that the current index that was submitted
2 yesterday by Ms. Suard should correct -- should
3 correctly reflect what she intends to submit as her
4 evidence.

5 CO-HEARING OFFICER DODUC: Unfortunately, her
6 testimony still contains citations to some of the
7 exhibits that have either been withdrawn or never
8 submitted.

9 MS. MESERVE: Mm-hmm. So I mean, I think to
10 the extent those are cited within the testimony, I
11 think they could be ignored. I mean, I could read
12 through the ones that are crossed out on the index, if
13 that would be helpful. There's not that many. And
14 that way -- I don't know how you'd like to go through
15 it.

16 CO-HEARING OFFICER DODUC: I'm not sure
17 either. Does counsel have a proposal?

18 MS. MESERVE: Is that your concern as well,
19 Ms. Ansley?

20 MS. ANSLEY: That, and I have a couple
21 discrete other objections.

22 CO-HEARING OFFICER DODUC: Well, let's address
23 this one first because I'm a bit concerned about the
24 testimony referring to exhibits that are either not in
25 the record or that -- well, not in the record.

1 MS. MESERVE: Exactly. So I think -- I mean,
2 I think it's fair to say that, if there is -- for
3 instance, let's just take an example, SHR-2-16, if that
4 is referenced here in the testimony, I think that
5 should be stricken, and we could submit a correct
6 showing that change, if that would be clearer for the
7 record.

8 Like for instance, I'm looking a 2-16, and I
9 don't see it cited here.

10 CO-HEARING OFFICER DODUC: Exactly.

11 MS. MESERVE: So I don't think any change
12 needs to be made regarding that. She's crossed out
13 2-23 in addition.

14 CO-HEARING OFFICER DODUC: I guess I did the
15 opposite. I went through her testimony, and whenever
16 she cites an exhibit to her testimony, I tried looking
17 for that exhibit and could not find it.

18 MS. MESERVE: Okay.

19 CO-HEARING OFFICER DODUC: So however we fix
20 it, we should fix it.

21 WITNESS SUARD: There were some exhibits that
22 for some reason when you click on it, like, I think
23 2-104, it says an error message. And I don't know why
24 that is. And, you know, we'll have to remove that. I
25 don't know why that's there. It's not really crucial

1 anyway, so.

2 MS. ANSLEY: I do have a list of the exhibits
3 where the links don't work as well as one of my
4 separate objections. I can happily read off the
5 numbers of which exhibits we were unable to access.
6 Those would be SHR-2-25, 2-26, 2-31, and 2-104. And we
7 did do our best to -- oh, and there is one additional
8 one as well.

9 But we did our best to not put in that list
10 things that had already been withdrawn. And I do have
11 one more link that is a separate objection, so I'll
12 rest on that list of the links that didn't work when
13 you click them.

14 CO-HEARING OFFICER DODUC: And I -- never
15 mind.

16 MR. DEERINGER: So before I weighed in, it
17 looks like Ms. Ansley was going to weigh in on this
18 first issue of exhibits that are cited in the testimony
19 but don't appear in the exhibit identification index or
20 elsewhere. But before I weighed in, I wanted to give
21 Ms. Ansley a chance to speak to that issue if she had
22 anything.

23 MS. ANSLEY: This would -- these are -- we're
24 speaking specifically now about things that are
25 withdrawn or ruled out in the testimony? I'm sorry.

1 MR. DEERINGER: Cited in the testimony but
2 either have been stricken, withdrawn, or for other
3 reasons don't appear the record. I think right at this
4 time, the Hearing Officers and I are trying to
5 ascertain how to deal with that issue.

6 MS. ANSLEY: I mean, I think for clarity of
7 the record, I think that the numbers should be stricken
8 from the testimony itself so that, in later times, we
9 know which exhibits are -- we know which exhibits are
10 in this testimony and which are not referenced in this
11 testimony.

12 And I don't think that that would be a large
13 amount of work because, frankly, they're usually
14 referred to in fairly large ranges. For example, in
15 one page, all Part 2 exhibits are referred to.

16 So I guess because this testimony is so
17 difficult to read, I would prefer an errata version
18 telling me which exhibits we're dealing with, but of
19 course that will be now after the fact. I just assume
20 that today, she will not to any refer to any withdrawn
21 or stricken exhibits in her oral presentation.

22 CO-HEARING OFFICER DODUC: Let's assume that.

23 MS. MESERVE: That's the intent, yes.

24 CO-HEARING OFFICER DODUC: Next objection?

25 MS. MESERVE: I couldn't find my pen when you

1 were reading off that first list of about four things.

2 If you could read that --

3 MS. ANSLEY: I can. So that would be an
4 objection just to evidence. But there were four
5 exhibits that we found that the links were not working.
6 And they are SHR-2-25, SHR-2-26, SHR-2-31, and
7 SHR-2-104. And I had planned to save that for
8 evidentiary objections. I have a number -- what I have
9 is objections to the testimony. But I'm happy to say
10 now --

11 CO-HEARING OFFICER DODUC: Let's do -- let's
12 do that, Ms. Ansley.

13 MS. ANSLEY: Okay. So to the testimony, I'd
14 like to lodge three main objections. The first is that
15 I'd like that lodge an objection to the incorporation
16 by reference of SHR-2-17. This occurs at Page 1,
17 Line 20 of the testimony.

18 If you look at SHR-2-17, these are
19 characterizations and excerpts from documents that are
20 not referenced by exhibits. They are often without
21 conclusions or -- commentary, I guess. And not all of
22 the excerpts in SHR-2-17 are used in the testimony.

23 So what we have is a very confusing document,
24 SHR-2-17, that sort of hangs out of context. And I
25 guess the most problematic part to the Water Board

1 would be I guess the references to documents are not
2 clear as to which documents they're actually
3 referencing. I will say that it took a couple days of
4 my staff attorney's time to figure out where all of
5 these cites came from.

6 And that's a work product for us, but I
7 believe that this is not a document that reasonable
8 persons could rely on because they do not know what
9 documents any of these bullet points came from. Even
10 though they say "Chapter 4," or "EIR/EIS" -- and if I
11 need to, I can run through this on cross-examination --
12 you are still unclear or unaware of what documents are
13 being referenced. So I do not feel like this is a
14 reasonable evidence for the Board to rely on under
15 Government Code 11513.

16 CO-HEARING OFFICER DODUC: And that would be
17 SHR-2-17.

18 MS. ANSLEY: Yes, which is apparently is
19 trying to be incorporated as a whole, which is also
20 frowned upon, into here testimony. So I do have a
21 problem with that incorporation. That's the first of
22 my three objections.

23 CO-HEARING OFFICER DODUC: And then your next
24 one?

25 MS. ANSLEY: I next have a problem -- a

1 similar problem occurs, if you look at SHR-2-11
2 Revised, which would be the errata testimony submitted
3 on 1/11/18 --

4 CO-HEARING OFFICER DODUC: Mm-hmm?

5 MS. ANSLEY: It suffers from the same problem
6 where you have citations, some of which are to the same
7 excerpts in SHR-2-17, but again we are provided with no
8 exhibits numbers whatsoever to which versions of an
9 environmental document or even in many cases which
10 document. And again, my staff took a couple days to
11 run down what these exhibits are.

12 And again, if I needed to, I can run through
13 these on cross-exam. But I would move to strike this
14 testimony because it is not reliable in the sense that
15 anyone reading it can determine which documents these
16 come from.

17 And so that would be the basis of my second
18 objection, would be the lack of identifying exhibit
19 numbers for these documents. And I do believe the
20 Water Board staff will have a very difficult time,
21 based on our own experience, figuring out where any of
22 those cites are.

23 CO-HEARING OFFICER DODUC: Your third
24 objection?

25 MS. ANSLEY: And my third objection is the

1 document -- and I do have some cites, but the document
2 then does refer to other --

3 CO-HEARING OFFICER DODUC: Which document?

4 MS. ANSLEY: Oh, excuse me. The testimony,
5 revised testimony.

6 CO-HEARING OFFICER DODUC: SHR-2-11 Errata.

7 MS. ANSLEY: Yes. It does itself also refer
8 to "other exhibits that may or may not use." And we
9 suffer from the same problem, saying, you know, "I may
10 refer to these exhibits or portions of these exhibits."
11 And, again, a lot of these are compilations or large
12 presentations that we don't have any idea what is
13 actually being referred to.

14 And the most problematic of those, of course,
15 is Page 3, Lines 32 to 33 where her errata version
16 refers to all Part 2 exhibits. So she says, "SHR-2-21F
17 through SHR-2-261 are offered and will be referred to
18 as necessary."

19 So that kind of language -- I can go through
20 and make the cites for where that occurs. But
21 problematically, it makes it difficult to discern what
22 exactly the conclusions and bases for the conclusions
23 are for this testimony.

24 So we did have a lot of -- normally I would
25 not have a lot of questions on this sort of testimony;

1 I don't believe there's a lot of conclusions in here.
2 But the work that went into trying to figure out what
3 the basis for these assertions are was a great deal of
4 work and, if necessary, will require a lot of
5 cross-examination.

6 So I would like to move to strike most of this
7 testimony on the grounds that it's not reliable and
8 reasonable information that the Board can rely on for
9 those three reasons.

10 CO-HEARING OFFICER DODUC: Ms. Meserve, your
11 response?

12 MS. MESERVE: Sure. Starting with the last
13 one first, I believe in the direct testimony today,
14 we're not going to be referring to that full range or
15 expecting to discuss in detail that full range. So I
16 think, hopefully, Ms. Ansley's concerns regarding that
17 would not be brought to bear today.

18 CO-HEARING OFFICER DODUC: So Ms. Meserve, are
19 you proposing that only exhibits that Ms. Suard
20 referred to in her oral testimony today will be
21 submitted into the record?

22 MS. MESERVE: I think that there's a little
23 bit -- I mean, I think she had a lot of exhibits that
24 he relied on in preparing her testimony. And I believe
25 she would like to submit all those that are listed in

1 her revised list as testimony. But I don't believe
2 that Ms. Suard is asking to discuss in detail any
3 exhibits that aren't discussed in detail in her direct
4 testimony submitted in the fall, if that makes any
5 sense.

6 So for instance, she's not going to be picking
7 some number in between 21F and 261 and trying to
8 discuss that in detail today. But I believe she would
9 like to submit the entire exhibit index as revised. So
10 I think that's in alignment with the directions we
11 received on evidentiary issues here.

12 MS. ANSLEY: I would like to add that I'm
13 mindful of the Board's direction on exhibits that are
14 not referenced in testimony. However, the Board did
15 say that this is not a free for all.

16 You cannot submit evidence into the record
17 that, in the Board's words, were either
18 self-authenticating or had an indicia of reliability.
19 And a great deal of these exhibits are compilations,
20 I'll say, of charts, pictures, graphs, some with
21 annotations or modifications, some without.

22 And without sponsoring testimony for those
23 particular types of exhibits, we really don't know the
24 purpose and genesis of those exhibits. It's a little
25 bit different than putting a study or a DWR bulletin or

1 record that we all know why it's self-authenticating
2 into the record. It's -- these are actual exhibits
3 created by Ms. Suard. And if she does not provide
4 sponsoring testimony, then we do not know what their
5 demonstrated relevance is. So I think there is a
6 difference per the direction of the Board in simply
7 estimating all evidence into the record.

8 MS. MESERVE: I think if there are specific
9 questions regarding the compilations -- you know, I
10 don't intend to burden DWR overly, but I mean, I think
11 if there are specific questions that go to the
12 reliability or the relevance, then that's really
13 something that shall be dealt with on cross-exam if
14 they care go into that, otherwise --

15 CO-HEARING OFFICER DODUC: All right, all
16 right. Enough.

17 Ms. Des Jardins, make it quickly, please.

18 MS. DES JARDINS: I just wanted to say as far
19 as what's described in Ms. Suard's written testimony, I
20 went through it. I did not have trouble locating her
21 exhibits or examining them or understanding what they
22 were meant to depict. It did not take me days.

23 I would -- did not, when she described a range
24 of exhibits and it wasn't described in detail, I didn't
25 go look at those. I just -- but for the substance of

1 her testimony, I found it relatively easy to identify.
2 And I know that she -- I believe she included those
3 probably because she, you know -- it has been an issue
4 to include what you're -- the evidence that your
5 testimony is based on. And I found it easy to follow.

6 CO-HEARING OFFICER DODUC: All right. All
7 right, enough.

8 MS. MESERVE: May I --

9 CO-HEARING OFFICER DODUC: No.

10 MS. MESERVE: The other two --

11 CO-HEARING OFFICER DODUC: No.

12 Ms. Ansley, I'm going to request that you
13 submit in writing your motion to your three objections
14 that you have verbally --

15 MS. ANSLEY: To her testimony --

16 CO-HEARING OFFICER DODUC: -- in writing.

17 MS. ANSLEY: To her testimony specifically.

18 I'd be happy to that. Can we have a deadline
19 of Monday?

20 CO-HEARING OFFICER DODUC: Monday noon.

21 MS. ANSLEY: That would be fine. And then --
22 we'll deal with exhibits later.

23 CO-HEARING OFFICER DODUC: Yes.

24 Ms. Meserve, you may have until Wednesday noon
25 to respond.

1 MS. MESERVE: And then I can add, I believe,
2 Ms. Suard, if you can just confirm, we had discussed
3 you already included the portions of 2-17 within your
4 testimony that you intended to rely on. So therefore
5 you are willing to withdraw 2-17; is that correct?

6 WITNESS SUARD: Yes, in the sense that, you
7 know, by withdrawing 2-17, I do refer to it a couple
8 times. And the purpose of 2-17 --

9 CO-HEARING OFFICER DODUC: All right. We are
10 not going to spend further time trying to dissect this.
11 We will wait for Ms. Ansley to formally submit her
12 objection, motion to strike, and for you to then
13 respond to it so we can take it under consideration.

14 But for now, please proceed with the
15 summarizing of your testimony, Ms. Suard.

16 MS. MESERVE: Okay. And now we will endeavor
17 to do this in the 20 minutes, so we may need a few more
18 minutes. But we will move things along here. Thank
19 you.

20 NICOLE SUARD,
21 called as a witness by Snug Harbor
22 Resorts LLC, having been previously
23 duly sworn, was examined and testified
24 as hereinafter set forth:

25 ///

1 DIRECT EXAMINATION BY MS. MESERVE

2 MS. MESERVE: Ms. Suard, is SHR-2-11 Revised a
3 true and correct copy of your written testimony?

4 WITNESS SUARD: Yes, it is.

5 MS. MESERVE: And --

6 CO-HEARING OFFICER DODUC: Ms. Meserve, just
7 so that we are correct on the record, it actually is
8 identified as 211 Errata. At least that's what I have.

9 MS. MESERVE: Okay. My copy must say that.
10 I'm sorry.

11 2-11 Errata, Ms. Suard?

12 WITNESS SUARD: Yes, that's correct.

13 MS. MESERVE: Thank you. And let's see. I'm
14 just going to go through a couple of questions to
15 elucidate the information in summary form from your
16 testimony.

17 You've already discussed today your background
18 with respect to the preparation of the North Delta
19 C.A.R.E.S. testimony. Was there anything you wanted to
20 add to that and that you didn't already mention with
21 respect to your preparation of the Snug Harbor
22 testimony?

23 WITNESS SUARD: I -- just the fact that I --
24 do -- I use investigative equipment to test water
25 quality, and you know drones and underwater cameras

1 because I felt that there was a lot of reports that
2 didn't seem accurate. So I've actually gotten pretty
3 technical about some of the equipment I use for
4 investigating.

5 MS. MESERVE: And then somewhat related to
6 that, do you think that site-specific information is
7 important for this hearing?

8 WITNESS SUARD: Absolutely. And I said it in
9 Phase 1. And I -- I did actually quote Mr. Mizell and,
10 actually, Ms. McGinnis from the June 23rd, 2017. I
11 actually paraphrased what they said. But if anybody is
12 interested, it's Page 37, Line 15 to 23. And that's
13 Ms. McGinnis. And Page 38, Lines 6 and 7 and Page 41,
14 this is Mr. Mizell. Page Number --

15 MS. MESERVE: Ms. Suard, let's not cite to
16 something we don't get cited.

17 WITNESS SUARD: Okay.

18 MS. MESERVE: You agree with DWR on this
19 point?

20 WITNESS SUARD: Yes, that locations are
21 important. Mr. Mizell said it. Locations are
22 important. And that has been my point. If the
23 WaterFix drafters ignored impacts to some areas where
24 logically common sense would say there would be
25 impacts, they didn't do adequate assessment. So

1 impacts are important and locations are important.

2 MS. MESERVE: And then which activities
3 associated with project construction are you concerned
4 about occurring 24 hours a day, seven days a week?

5 WITNESS SUARD: I am concerned for the whole
6 Delta-wide, the ground movement, the constant traffic,
7 the disposal of soil. I'm concerned with the
8 dewatering that was described. Even though we weren't
9 given great details, it was described. Dredging and
10 rip-rap placement, and actually the leaching from that
11 dredging and rip-rap. Barge operations, they talked
12 about that. Pile driving, that's a noise and vibration
13 issue. And so -- and I do cite where I got that
14 information from.

15 MS. MESERVE: And then do you have any
16 additional comments you wanted to make about your
17 opinion that too much water is already being diverted
18 from the Sacramento River in the Delta?

19 WITNESS SUARD: Yes. I -- I base my opinion
20 that too much water is being diverted from the
21 Sacramento River area in particular in the Delta
22 overall, based on my observance of water flows and the
23 changes of water flows and based on a lot of studies
24 of -- that showed inconsistent information on flows.

25 MS. MESERVE: And then what is your background

1 that informed your testimony with respect to freshwater
2 and drinking water?

3 WITNESS SUARD: Well, first of all, I run a
4 marina with a public drinking water system. And since
5 about 2010 there has been a measurable marked decline
6 in the water quality. And I did a lot of research and
7 found that I wasn't the only one. And there is a lot
8 of changes going on in the Delta.

9 Besides that, I have had probably 25 or 30
10 years' interest in the importance of fresh drinking
11 water for everyone in the whole world. And on my own,
12 I have done a lot of studying, taken college courses,
13 and I've gone to a lot of different places and studied.

14 I know, it's just an interest.

15 And I've gone to a lot of countries where they
16 have -- drought is a way of life. I've gone to
17 countries where -- you know, the tropical countries.
18 And they have a lot of rainfall, and yet they have
19 water problems, in particular, places like Honduras and
20 Haiti, and kind of analyzed because, you know, it's a
21 big issue medically and just for human comfort to have
22 enough fresh drinking water. So it is a really big
23 issue worldwide.

24 So I didn't just look at what's going on in
25 California. I think that there's a lot we lose from

1 ignoring history and looking at countries like Israel
2 and how they dealt with water.

3 So I've done a lot of studying way beyond
4 California on this issue. And I try to look at the
5 bigger picture. I really understand that this Board
6 has a huge responsibility. California is a big state.
7 And it goes beyond just, you know, the Delta as my
8 interest. It's a worldwide interest.

9 MS. MESERVE: And then what's your experience
10 with respect to recreation in the Delta?

11 WITNESS SUARD: I -- I -- from my experience
12 and from giving boat rides to different agency people,
13 I don't feel like the documents as they're written
14 reflect that WaterFix proponents in particular
15 understand the flow of land, that means traffic and how
16 people get around, and the flow of water traffic in the
17 Delta. And particularly with respect to recreation,
18 those waterways are all connected and boaters don't
19 just go sit on their boat. They go from place to
20 place. And when you cause barriers to that boating,
21 that impacts recreation. So barges going up and down
22 the Sacramento River is going to impact recreation, the
23 whole barge route, whichever routes they finally do
24 determine they're going to take. So I'm really
25 concerned about that, obviously.

1 It impacts -- it's not just isolated place,
2 just like the roads. We talk about these roads leading
3 to the tunnel and intake locations, but every single
4 road leading to it is impacted. So that's what I meant
5 by flow of traffic and water flow.

6 MS. MESERVE: And in keeping with the barge
7 topic just a second -- I know you discussed it earlier
8 for North Delta C.A.R.E.S., but is there an example you
9 wanted to mention with respect to safety and the
10 barges?

11 WITNESS SUARD: Yes, I just wanted to mention
12 that -- it's actually at Page 2 of my testimony --
13 where I at one point observed a very large barge or
14 ship going up the Sacramento ship channel. And in a
15 ski boat you can -- it was going very slow. It
16 probably was going 1 knot. But it was displacing
17 water, and it caused a big underwater wake, like a
18 little tsunami. And it -- for me, on a ski boat, we
19 were a couple people, we could jump the wake, and we
20 were fine.

21 Some of the fishermen -- a dad with a son is
22 what it appeared to be because we were a little away --
23 just kind of hugged along the rock side, it was on the
24 east side of the Sacramento ship channel because
25 they're out there fishing. And it -- the boat driver

1 did not intend this. And I'm sure that the guy in the
2 fishing boat didn't realize it. They got thrown up on
3 the rocks. And we made sure they were okay and all
4 that.

5 But that's the type of thing that could happen
6 along the whole barge route if it's going up the
7 Sacramento River anywhere above Rio Vista along Old
8 River Sacramento and main stem Sacramento or if they
9 come up Steamboat Slough, which is, you know, the
10 shorter route going up to the intakes where they're
11 going to be built. They're not wide enough to handle
12 that kind of wake. And we will see that kind of
13 damage. So I'm concerned about that.

14 And along with that, we've noticed that
15 there's definitely less flow in the Delta. On my
16 Line 41 on Page 2, I expressed that. It's not just the
17 barges going back and forth, but there's been such low
18 flows, we've been suspended in drought flows for quite
19 a few years -- I'd say since 2010. And if there's not
20 a guarantee of high enough flows to not keep everything
21 sitting on the mud and then having these big barges
22 going by causing wakes, it's just going to be huge
23 damage to the boats and the marinas. So that's a big
24 concern from personal experience.

25 MS. MESERVE: And then what were your concerns

1 about the safety of recreational boaters in the
2 vicinity of those intakes if they were constructed?

3 WITNESS SUARD: I listened to the testimony as
4 much as I could, you know, what DWR said, what the
5 WaterFix expert said and all that. And they talk about
6 cofferdams, I think it was, 50 feet out into the water
7 for those intakes. And that's taking away at least a
8 third of the width of the river around there.

9 Then they say they're going to have, you know,
10 buoys out to keep the boaters away from that. Well,
11 that's going to -- those have to be five-mile-an-hour
12 zone. They have to be no-wake zones just for the
13 safety of the boaters.

14 And actually, you know, there's going to be
15 barge traffic going back and forth. There's going to
16 be all kinds of construction traffic that's probably
17 going to be happening from the water, maybe other than
18 the barge, based on the description.

19 And those five-mile-an-hour -- if it's not
20 five-mile-an-hour, there are risks to everybody. And
21 if it is five miles an hour, no-wake zones, which is
22 more descriptive, no wake, that means nobody will boat
23 between Walnut Grove and, you know, north of those
24 proposed intakes because it's really a pain to go that
25 slow all the time, especially if you want to take your

1 kids waterskiing.

2 MS. MESERVE: And then is it your
3 understanding that, if the North Delta diversions were
4 to operate, the flows on Steamboat Slough would be
5 reduced?

6 WITNESS SUARD: Yes, and that was specifically
7 stated or shown by DWR itself in documents they
8 provided. And here, I do refer to a couple documents.
9 But I crossed out 2-13. It didn't get uploaded in
10 time, so that was crossed out.

11 SHR-2-21F. That is a recreation memorandum
12 that I referred to because I wanted the Board to see
13 that yes, there's 14 -- so Page 3 of that. We don't
14 have to go to it quickly, but there's 14 million boater
15 users per year in the Delta. And I don't believe the
16 WaterFix proponents considered that and, you know, how
17 at least -- well, I'm not going to say something I
18 didn't say -- write on that.

19 So I'm just at this point in time just
20 referring to that particular document.

21 And then lower on Page 37, I referred to
22 SHR-2-251, which is a slide set of photos and examples
23 of impacts from actually suspending us in low flow
24 drought period. Basically I -- if you get a chance and
25 you want to look at those, impacts from low flows are

1 drastic and impacts from high flows are drastic.

2 So on Page 2-221F if you looked at Page 3, 4,
3 6 and 12 that -- and 14 would be informative. SHR --
4 well we're not going to take the time to go look at
5 these because we don't have time.

6 MS. MESERVE: Well, we already looked at
7 Page 8 of 2-251 regarding low flows.

8 WITNESS SUARD: Page 18

9 MS. MESERVE: Page 18 I'm sorry.

10 CO-HEARING OFFICER DODUC: Hold on.

11 Ms. Ansley.

12 MS. ANSLEY: Yeah, I definitely have a problem
13 with now identifying specific page numbers, but
14 specifically to SHR-2-251, now telling us which slides
15 are of any importance to this testimony. This
16 testimony just said that these are the slides that may
17 be used in this testimony.

18 So I do recall the one slide we looked at
19 earlier today from 2-251. It is -- you know, it is a
20 larger presentation, one of more than ten in this
21 exhibit set. So I'm just lodging an objection to now
22 telling us what the import of any of those slides is.

23 CO-HEARING OFFICER DODUC: You may include it
24 in your written objection/motion.

25 WITNESS SUARD: Can I say something? If we --

1 CO-HEARING OFFICER DODUC: You may include it
2 in your reply to the written motion and objection.

3 WITNESS SUARD: Okay. I would be going
4 through all of those if we had time.

5 MS. MESERVE: And then did you want to
6 comment, Ms. Suard, about your impression about whether
7 DWR has been responsible in managing flood flows?

8 WITNESS SUARD: I -- I would like to respond
9 about that. Let's see. That's 260? Just a second.
10 Well, I think we don't have time for photos. Yes, I
11 believe that DWR, and I assume it's USBR too, are not
12 responsible with managing flows in the Delta. And I --
13 I'm using -- I'm putting my own business out as an
14 example, on -- let's see what page, Page 3 Line 39 to
15 about 47.

16 I -- I want to express that DWR's method for
17 dealing with Oroville flows was to dump on the Delta.
18 And it caused record floods on places like Snug Harbor.
19 And it was a very sudden high rise. If you look at the
20 gauges and flows, it was very drastic. It directly
21 related to the Oroville spill. And I have all the
22 records from how many times.

23 This particular property does sometimes have
24 high water where it will come up and get wet on a lot
25 of the property at high tide when there's a very high

1 rain year. And that used to happen about once every
2 ten years, whenever we had those really, really wet
3 years.

4 But this one caused by the Oroville spill, we
5 had high water standing on the property for more than
6 three weeks, and that caused so much damage to our
7 water system, to our trees, financial damages because
8 everybody had to leave. I had to pay for my staff to
9 stay in hotels.

10 So basically, you know, I'm just giving this
11 as an example. This is how DWR treats us. We don't
12 count. We didn't get any calls saying hey watch out
13 there's water coming down. Luckily people in the Delta
14 do communicate with each other, and we were able to get
15 everybody out. That was a huge risk. And I just felt
16 like this is just an example of who we're talking about
17 that's going to be managing this tunnel, building the
18 tunnel and then -- well, I don't know who they're going
19 to have build the tunnel.

20 But their way of dealing with flood flows in
21 the Delta is to just dump the risk on somebody else
22 just like WaterFix would change the risk to somebody
23 else.

24 MS. MESERVE: And then what about your
25 concerns about Delta roads if the tunnels were

1 constructed? Did you have any other comments on that?

2 WITNESS SUARD: Well, yeah we already got
3 asked about that. But I was familiar with that map
4 that was presented. Because part of the problem with
5 that map was that it made State Route 84 stop over by
6 Prospect Island. And actually it goes all the way down
7 to the bottom of Ryer Island and then there's a ferry
8 and that's still State Route 84.

9 MS. MESERVE: Ms. Suard, your testimony --

10 WITNESS SUARD: Okay. All right.

11 MS. MESERVE: Do you believe that Caltrans
12 would be able to effectively assist with the management
13 of construction traffic if the tunnels were
14 constructed?

15 WITNESS SUARD: No. And I say that because
16 well, here we had to cross out evidence No. 2-104
17 because it isn't upload. But there's a couple other
18 evidence information provided.

19 And my experience with Caltrans is that they
20 have not been very responsive and not very helpful with
21 traffic flow in the Delta. And there has been many,
22 many times when there have been, you know, 10 feet or
23 50 feet of pavement is being repaved and Caltrans has
24 signs and they create a diversion around the Delta.
25 And they don't think that a two-hour diversion around

1 other roads in the Delta makes any difference to a
2 recreation traveler. But it does.

3 And I'd like to point out that there's three
4 Caltrans districts in the area of the Delta that we're
5 talking about. And you have to deal with every single
6 one of them and try and get them to coordinate on -- on
7 what happens on, you know, confusing the routes or
8 directing traffic. I did provide one example. I think
9 it's 115. And that was a -- well, I'm not -- you can
10 look at it.

11 It was an example of what Caltrans did to my
12 customers on a Memorial Day weekend where a strip of 84
13 was stripped down. They were going to repave it.
14 There were big signs, big electronic signs saying "take
15 this detour." They were crisscrossed through a
16 farmer's property. And they had to drive -- these are
17 big RVs pulling boats, mind you, 40-foot RVs pulling a
18 boat. And then they were made to drive along Merit
19 Island levees and then they end up at the Miner Slough
20 Bridge.

21 And most of those customers were terrified.
22 Those were rocky roads, and there was no reason for
23 because a little bit further, Caltrans had said oh,
24 never mind. You can go through. But the big
25 electronic sign said you have to detour.

1 MS. MESERVE: I think if we could have another
2 ten minutes, we could get through the summary, please?

3 CO-HEARING OFFICER DODUC: How much -- what
4 additional topics do you need to cover?

5 MS. MESERVE: We have some material about the
6 connection of the waterways, the concerns with modeling
7 as it relates to flows, the need for independent
8 monitoring, some opinions about how the screens would
9 work and access to Ryer.

10 CO-HEARING OFFICER DODUC: Some of the topics
11 are new, but some have been covered, so I would
12 encourage you to move quickly through those that have
13 already been covered by others. Focus on the ones that
14 are particular to Ms. Suard's interest and expertise.

15 MS. MESERVE: Thank you. So could you comment
16 Ms. Suard on your opinion, your description of how all
17 the waterways in the Delta are connected?

18 WITNESS SUARD: Yes. They are physically
19 connected. And when water is diverted from one area,
20 it affects the next waterway. If there is extra water
21 flow in one waterway, it's going to flow into the other
22 one.

23 So water quality impacts I'm concerned about,
24 and I keep saying, suspend us in a permanent drought.
25 That's based on the WaterFix information that says

1 below those three intakes that would be 5,000 cubic
2 feet per second to be spread out between five rivers,
3 basically, well, rivers -- four rivers and Delta Cross
4 Channel.

5 And that, you know, how much water does that
6 leave in -- that whole north area Delta for the
7 farmers, for their intakes and for the boating and all
8 the freshwater needs for the aquifers and for, you
9 know, the fish and all that.

10 I believe it's absolutely insufficient amount
11 of a, quote, bypass flows or leftover flows whatever
12 it's going to be called. It is absolutely insufficient
13 if you look at the history. And that's why I brought
14 in one of the books because it talks about measuring
15 the flows before there were any projects.

16 And DWR is talking about leaving less flow on
17 Steamboat Slough than there were even in historic
18 times, in drought times. But they're going to suspend
19 us in that drought flow time. That's what they're
20 talking about doing.

21 MS. MESERVE: And then with respect to
22 operations, why do you believe that independent
23 monitoring and reporting would be necessary if this
24 project was operated?

25 WITNESS SUARD: Okay. So this is a really big

1 topic. My experience is that DWR and its consultants
2 in particular have not been very accurate about
3 reporting flows, inflows and outflows, outflows to the
4 Delta.

5 And I've been trying to pay attention to that.
6 And when I, you know, felt like there was a problem
7 with something, I would go to whoever had written the
8 report. And instead of saying, "Okay, we'll do an
9 errata," whatever, they just changed the document.

10 These are public documents in final form.
11 They simply changed them. I've already introduced that
12 in Part 1.

13 CO-HEARING OFFICER DODUC: Yes.

14 WITNESS SUARD: It is Part 1. And I'm
15 concerned that these flow gauges don't seem to be
16 accurate, and I could give examples of it. And it
17 seems to me what we're doing here is the people who
18 want the water is DWR, meaning Metropolitan Water
19 District, so they want the water. So they have the
20 least interest in being accurate on the flows and the
21 accounting.

22 I'm talking about water accounting. I don't
23 believe there's been accurate accounting, I don't
24 believe this Delta inflow index that they've been using
25 to say how much they can take, I don't believe that's

1 correct.

2 I believe that totally independent agency
3 should be installing and monitoring and reporting those
4 flows and the information. And it could be, you know,
5 North Delta Water Agency or the Water Board totally --
6 and not put it in the hands of DWR or Metropolitan
7 Water District or anyone who benefits from those
8 numbers being inaccurate. And --

9 MS. MESERVE: And then with respect to the
10 lower flows, what were the specific concerns you had
11 about Snug Harbor from those types of low flows?

12 WITNESS SUARD: Okay. From my personal
13 experience, these very low flows does damage to my
14 docks because the docks were not designed to sit on
15 mud. And when we've experienced these very unusual low
16 flows, the docks sit on mud. And then, when the tide
17 rises, the floats get pulled off, and then we lose our
18 floats.

19 And same thing as I've described for Walnut
20 Grove. Our -- we have boats -- and we're talking about
21 the Steamboat Slough side. I'm not even talking about
22 the Walnut Grove side. Steamboat Slough side, you have
23 such low flows, during recreation months -- okay?
24 There's a period of recreation -- the flows have been
25 so low that boats sit on docks. And my customer might

1 come the first time, might come the second time; next
2 time they're going to go somewhere else because you
3 don't really want to berth your boat on mud.

4 MS. MESERVE: And then from your perspective,
5 do you think that the North Delta proposed screens at
6 the intakes would function to protect migrating salmon?

7 WITNESS SUARD: No, I don't know. And I
8 cannot find a study that says that these new types of
9 screens -- which screens work. I've asked a lot of
10 fish scientists. I wasn't able to get up here when I
11 could have asked that.

12 I took it upon myself to get a very expensive
13 underwater camera system. I got portable sonar
14 equipment because I wanted to know that because I'm
15 seeing a huge decline in salmon on the Sacramento River
16 at the same time as all these new types of fish screens
17 are being built, including the one at Freeport.

18 So I went along with others. I've taken some
19 other riders out too and tried to use underwater
20 cameras to see what is happening to the little fish on
21 all those fish screens. And I think I described it
22 before, there's this wiper. What are they wiping off?
23 I'm concerned that there's actually being damage done
24 to the fish, and that might be causing a decline in the
25 salmon migration survival.

1 So I just -- where's the report that the big
2 huge thing up at Red Bluff that was working? I haven't
3 seen that. I don't see follow-up reports showing their
4 work.

5 MS. MESERVE: Do you believe the necessary
6 specifics have been provided regarding the ability to
7 ensure continuing access to Ryer Island and the Delta
8 waterways in general during the extended proposed
9 construction period?

10 WITNESS SUARD: I believe that impacts to Ryer
11 Island and Steamboat Slough have been ignored in the
12 Bay-Delta Conservation Plan, which is what I actually
13 refer to, and CalFed. There were analysis of what
14 actually are the impacts to places like Snug Harbor and
15 Hidden Harbor and along Steamboat Slough. But WaterFix
16 hasn't done that.

17 Given DWR's history with how they treat the
18 people in the Delta, no, I don't think it's been
19 analyzed at all and the specifics of this location has
20 not been -- they haven't been forthright in discussing
21 impacts here.

22 MS. MESERVE: Thank -- unless there's anything
23 else you'd like to add, Ms. Suard, that concludes the
24 direct.

25 WITNESS SUARD: Other than if we want to take

1 the time to do pictures, but they don't want to take
2 that time, so never mind.

3 MS. MESERVE: Sounds like we are we're trying
4 to move things along.

5 CO-HEARING OFFICER DODUC: Estimate of
6 cross-examination for Ms. Suard -- I also, while you're
7 up, Ms. Ansley, would like to get to get an estimate
8 for your cross-examination of Mr. Porgans.

9 MS. ANSLEY: So for Ms. Suard, because the
10 motions are still pending, I'm going to need 40 to 45
11 minutes. And I'm going to endeavor to compress that as
12 much as possible.

13 But what I'm going to do is I'm going to ask
14 for the -- I'm going to confirm what my understanding
15 is of where these numbers come in her direct testimony.
16 So I'm not going off scope, but I'm going to try and do
17 the best I can to get that done in 40 to 45 minutes.

18 CO-HEARING OFFICER DODUC: And your estimate
19 of cross-examination for Mr. Porgans?

20 MR. MIZELL: Ten minutes maximum.

21 CO-HEARING OFFICER DODUC: All right. Other
22 cross-examination for Ms. Suard, I'm trying to
23 determine whether we can get to Mr. Porgans today. I
24 don't want him to sit there and wait if we're not able
25 to.

1 MS. DES JARDINS: I would have maybe half an
2 hour, possibly less, for Ms. Suard.

3 CO-HEARING OFFICER DODUC: Mr. Jackson?

4 MR. JACKSON: Twenty minutes.

5 CO-HEARING OFFICER DODUC: If all that time is
6 correct, we are looking at 95 minutes to an hour and a
7 half, so essentially 3:00, 4:00, pretty close to 5:00.

8 Mr. Porgans, I thank you for coming. I don't
9 want you to have to wait on the chance that we are
10 unlikely to get to you today. Unless -- what is -- are
11 there any other cross-examination for Mr. Porgans
12 besides DWR?

13 MR. JACKSON: Not for me.

14 CO-HEARING OFFICER DODUC: Because if at all
15 possible, perhaps Mr. Porgans -- if we can complete
16 Mr. Porgans within the next two hours, and then
17 Ms. Suard you could come back tomorrow for your
18 cross-examination?

19 MS. MESERVE: Yeah, the one complicating
20 factor is I have a meeting tomorrow at 9:30 that I need
21 to go to. And I wanted to try to complete assisting
22 Ms. Suard. And one other detail, maybe -- I did confer
23 further with Ms. Suard just now, and she was willing to
24 withdraw the 17, SHR-2-17, which is a stand-alone
25 exhibit. I don't know if that helps Ms. Ansley reduce

1 her amount of cross-exam.

2 CO-HEARING OFFICER DODUC: Ms. Ansley, does
3 that help if --

4 MS. ANSLEY: I apologize. We were conferring
5 about Mr. Porgans and trying to shorten time. Could
6 you repeat that again? I'm sorry.

7 MS. MESERVE: Certainly. I was just saying I
8 conferred further with Ms. Suard, and she is willing to
9 withdraw SHR-2-17. I think at this point, she would
10 like to leave her intact. But as a separate exhibit we
11 don't need to submit 2-17, if that helps reduce your
12 cross-exam scope.

13 MS. ANSLEY: It does not reduce my cross-exam
14 scope. 2-17, I'm happy to agree to withdraw. 2-17, I
15 do not agree to waive any objections to what remains in
16 her testimony.

17 CO-HEARING OFFICER DODUC: All right.

18 Ms. Des Jardins.

19 MS. DES JARDINS: I actually have a fairly
20 lengthy cross-exam for Mr. Porgans so -- 40 minutes.

21 CO-HEARING OFFICER DODUC: All right. And
22 Ms. Meserve you still have -- if we are able to begin
23 earlier, like at 8:00 o'clock tomorrow?

24 MS. MESERVE: Yeah, I could do that.

25 Ms. Suard is saying she's done it by herself before and

1 she probably could do it again. So I was just trying
2 to assist her. So I'll leave it to you how to do
3 things.

4 I don't want to make it more difficult for
5 Mr. Porgans either because he was gracious enough to
6 let us try to go first.

7 CO-HEARING OFFICER DODUC: So let's hear from
8 Mr. Porgans.

9 MR. PORGANS: Thank you. The situation is --

10 CO-HEARING OFFICER DODUC: Sorry. Could we
11 turn on the microphone, please, for Mr. Porgans?

12 Yes, thank you.

13 MR. PORGANS: Forgive me you. Thank you. Can
14 you hear me now?

15 CO-HEARING OFFICER DODUC: Yes.

16 MR. PORGANS: I don't mind coming back
17 tomorrow. I just have to let you know, I'm in the
18 sleep deprivation mode. There's only -- 38 hours I
19 didn't sleep. I've only had two hours.

20 CO-HEARING OFFICER DODUC: So would you prefer
21 to come back tomorrow, that way you can go home and
22 hopefully get some rest?

23 MR. PORGANS: Yeah, that would be helpful.

24 CO-HEARING OFFICER DODUC: Let's do that.

25 MR. PORGANS: That would be helpful the other

1 thing is could you give me an estimated time when I can
2 come back here.

3 CO-HEARING OFFICER DODUC: We will begin with
4 you in the morning.

5 MR. PORGANS: That would be at what time?

6 CO-HEARING OFFICER DODUC: That would be at
7 9:30.

8 MR. PORGANS: Okay. Well, I appreciate that.
9 And thank you very much.

10 CO-HEARING OFFICER DODUC: Thank you,
11 Mr. Porgans for your forbearance with us.

12 MR. PORGANS: Than you very much also.

13 CO-HEARING OFFICER DODUC: All right. With
14 that, then, we will proceed with Ms. Suard's
15 cross-examination by DWR, by Mr. Jackson, and then by
16 Ms. Des Jardins. And we hope to complete her today.

17 If you have to come back tomorrow, Ms. Suard
18 you will go after Mr. Porgans.

19 WITNESS SUARD: That's fine.

20 CO-HEARING OFFICER DODUC: Mr. Porgans.

21 MR. PORGANS: Can I make a comment? Thank you
22 so much. If it's possible, she can go before me
23 because that would give me a little more time.

24 CO-HEARING OFFICER DODUC: At this time, we
25 don't know yet whether we would be done with Ms. Suard

1 today.

2 MR. PORGANS: Okay. So how would I find that
3 out?

4 MS. MESERVE: One of us can e-mail you,
5 Mr. Porgans, about how we end up today.

6 MR. PORGANS: Okay. That's good. Then this
7 way, I'll have a better idea. It's usually between
8 4:30 and 5:00 o'clock I go to bed.

9 CO-HEARING OFFICER DODUC: I wonder, though,
10 now that we've raised this complication, if Porgans'
11 appearing tomorrow will then cause issues for
12 Mr. Brodsky and his witnesses.

13 What was your estimated cross-examination for
14 Mr. Brodsky?

15 MS. ANSLEY: Oh, Mr. Brodsky, he has more than
16 one panel?

17 CO-HEARING OFFICER DODUC: He has four
18 witnesses tomorrow and two on Monday.

19 MS. ANSLEY: Oh, that's right. It's extremely
20 limited. It's not more than 20 minutes.

21 CO-HEARING OFFICER DODUC: Okay. I think we
22 can do both Mr. Porgans' and Mr. Brodsky's first panel
23 tomorrow, assuming that there isn't too many friendly
24 cross. Thank you.

25 MR. JACKSON. At some point, I'd like to talk

1 about this friendly cross. I'm trying to --

2 CO-HEARING OFFICER DODUC: Be helpful.

3 MR. JACKSON: -- to prepare my own case. I
4 mean, I use other people's witnesses to do that, just
5 like DWR does. There's no --

6 CO-HEARING OFFICER DODUC: You're eating up
7 Ms. Suard's time.

8 MR. JACKSON: Okay. I just -- I don't want it
9 to be seen as attempting to fix other people's
10 problems. It's actually my case I'm working on.

11 CO-HEARING OFFICER DODUC: All right.

12 Ms. Ansley.

13 CROSS-EXAMINATION BY MS. ANSLEY

14 MS. ANSLEY: So the two sort of general topics
15 I'm going to explore, I have just a couple of
16 questions, I went back and reviewed Part 1, regarding
17 Ms. Suard's qualifications because she has listed
18 herself as an expert witness for herself. And then --
19 and that will be pretty brief.

20 And then I am going to walk through her
21 testimony, which is SHR-11 Errata. And I'm going to
22 confirm my understanding of where she's getting
23 specific numbers and facts regarding the California
24 WaterFix impacts. There may be one or two questions in
25 there that I've interposed, but they will also be to

1 whatever the basis is for a conclusion. There may be
2 some foundational questions to make sure that she and I
3 are on the same page about what was being analyzed in
4 the scenarios that she cites.

5 So I'm not going to go off her testimony, but
6 I'm going to walk through it and confirm that I know
7 where these numbers come from.

8 CO-HEARING OFFICER DODUC: All right.

9 And Debbie are you okay going to about 4:00
10 o'clock?

11 THE REPORTER: Yes. Thank you.

12 MS. ANSLEY: Good afternoon, Ms. Suard. I'm
13 sure you know, I'm Jolie-Anne Ansley for the Department
14 of Water Resources.

15 You've disclosed yourself as an expert
16 witness; is that correct?

17 WITNESS SUARD: I'm an expert at Snug Harbor
18 Resorts LLC business.

19 MS. ANSLEY: Anything else?

20 WITNESS SUARD: No, I actually don't consider
21 myself much of an expert in anything else. I'm just a
22 citizen that does a lot of research. A percipient
23 witness we would call it.

24 MS. ANSLEY: So for the clarity of the record,
25 you would like to qualify yourself as an expert on Snug

1 Harbor Resorts LLC and its recreation business?

2 WITNESS SUARD: And impacts to that business,
3 yes.

4 MS. ANSLEY: But as to the other topics listed
5 on your NOI or in your testimony, you would like to
6 consider yourself a lay witness?

7 WITNESS SUARD: A percipient witness yes.

8 MS. ANSLEY: Then I don't have any further
9 questions regarding qualifications.

10 Do you have a copy of your testimony, your
11 errata testimony in front of you?

12 WITNESS SUARD: I do. I need to say that I
13 kind of broke it up between the questions, so it would
14 be helpful if you refer to which page and what line
15 number. That would be helpful.

16 MS. ANSLEY: I can do that as well. We can
17 call up SHR-2-11 so that you can point to the screen
18 and --

19 WITNESS SUARD: Dash 11, errata.

20 MS. ANSLEY: Errata yeah. That way you can
21 look at the version in front of you or, as well, we can
22 point to the screen and make sure that there's no
23 confusion about where I'm looking.

24 Starting on Page 2 of your testimony, I'm
25 going to begin at your topic that says -- on Line 9,

1 that says "North Delta Water Conveyance Facilities
2 Components." And it's on the screen, or do you see
3 that in front of you?

4 WITNESS SUARD: I do.

5 MS. ANSLEY: And I want to ask a couple
6 foundational questions. I understand that you've been
7 monitoring this program and, before it, the BDCP for
8 quite some time; is that correct?

9 WITNESS SUARD: I have, all the way back to
10 CalFed.

11 MS. ANSLEY: Okay.

12 WITNESS SUARD: And I've been saving all the
13 documents.

14 MS. ANSLEY: And there have been many levels
15 of environmental review; is that correct?

16 WITNESS SUARD: Yes.

17 MS. ANSLEY: And you are aware that there is a
18 Final EIR/EIS that was issued in July of 2017; is that
19 correct?

20 WITNESS SUARD: Yeah, and then you recently
21 did an amendment to that.

22 MS. ANSLEY: I believe the last adopted
23 EIR/EIS was in July of 2017; is that your
24 understanding?

25 WITNESS SUARD: Yes, and I have a copy of a

1 slight amendment to it already. Well, actually not to
2 that. It's regarding what you guys are doing with the
3 electric.

4 MS. ANSLEY: And are you referring to -- just
5 to make sure we're on the same page, are you referring
6 to the chart and figure that was sent by DWR to the
7 service list regarding modifications or revisions to
8 the project facility?

9 WITNESS SUARD: No. But I can pull -- I have
10 the copy of what I'm referring to. I might be saying
11 it wrong, but you could pull it up if you like.

12 MS. ANSLEY: Maybe I have a clarifying
13 question. Is it an amendment to the power lines that
14 went out a couple months ago?

15 WITNESS SUARD: Yes.

16 MS. ANSLEY: Okay. I just wanted to make sure
17 I'm clear on what versions we're talking about.

18 Looking at Page 2, Line 9 through Line 19, I'm
19 going to try to do this by section, but that's because
20 I'm trying to move quickly. If you need me to break
21 things down, you'll let me know.

22 Do you see Line 15, where it talks about
23 intake pumping plants?

24 WITNESS SUARD: Yes.

25 MS. ANSLEY: So it is my understanding that

1 this language that's quoted here comes from the March
2 2013 admin draft of the BDCP DEIR, Draft EIR; is that
3 correct?

4 WITNESS SUARD: I -- yes, that's probably
5 true. And what I did was a clicked on the links from
6 the WaterFix website as I refer to back on my Page 1,
7 Line 11. And then you click on that, and then you
8 click on where it referred to the Bay-Delta
9 Conservation Plan because WaterFix is a portion of
10 that.

11 And then I went back further to see -- and I
12 did that because Bay-Delta Conservation Plan documents
13 did actually specify impacts to Steamboat Slough, lower
14 Steamboat Slough and actually did talk about Inn Harbor
15 and Snug Harbor, showed them on maps. So those
16 documents actually did talk about impacts.

17 And I need to say that that was for 9,000
18 cubic feet per second, planned. And when you are down
19 river from whatever is taking away the water, the
20 impacts are the same. It doesn't matter if there's
21 intakes -- one intake taking 9,000 cubic feet per
22 second or three intakes taking it. What counts is how
23 much water you're taking because that affects my water
24 flow and my water quantity and my water quality.

25 So I went back to look at further documents,

1 all of which are linked on you guys's website.

2 MS. ANSLEY: Okay. I think that much of that
3 answer was non-responsive to my question. I was merely
4 trying to confirm that the section there is what we
5 think is a quote from the 2013 draft, admin draft, of
6 the BDCP DEIR. So I'm taking that to mean that your
7 answer is a yes, that that is where that information
8 comes from?

9 WITNESS SUARD: I clicked so many times, I
10 can't say if it's a 2013 or if it was the subsequent
11 one. I could go back and trace that if you like.

12 CO-HEARING OFFICER DODUC: So the answer is
13 you don't know?

14 ~~WITNESS SUARD: I don't know exactly which~~
15 ~~version it was. I do know the general content as it~~
16 ~~refers to impacts to Steamboat Slough with you taking~~
17 ~~9,000 cubic feet of flow from us.~~

18 MS. ANSLEY: Can I move to strike that as
19 non-responsive, please?

20 CO-HEARING OFFICER DODUC: Yes.

21 MS. ANSLEY: Let's look at Page 1 of your
22 testimony you just pointed to, Lines 10 to 11. And I
23 would appreciate it -- my time is sort of running down,
24 so I would appreciate responsive answers and let your
25 own attorney clarify or expand on what you feel needs

1 to be expanded.

2 Here you say, "My testimony focuses on the
3 Biological Assessment." And then you provide a link to
4 the proposed action for the BA. That is not the same
5 thing as the Draft EIR/EIS, is it?

6 WITNESS SUARD: It is not. But that proposed
7 action also talked about taking --

8 CO-HEARING OFFICER DODUC: Let's stick to
9 answering just the question that is asked.

10 WITNESS SUARD: It's not the same.

11 MS. ANSLEY: Okay. And so going back to
12 Page 2 and sort of keeping my flow of topics here, are
13 you aware of -- so when we look at these cites that say
14 "EIR/EIS," sitting here today, do you know which
15 version of the EIR or any environmental review,
16 starting with admin draft -- let's back up.

17 You're aware there was an admin draft to the
18 BDCP Draft EIR/EIS in 2013; is that correct?

19 WITNESS SUARD: I'm aware that -- I'm not
20 going to say dates because I'm not in front of the
21 documents.

22 MS. ANSLEY: That's fine. Okay. But you're
23 aware there was an admin draft?

24 WITNESS SUARD: Yes, several versions yes.

25 MS. ANSLEY: And then after point, there was

1 issued for public comment and review a Draft EIR/EIS
2 for the BDCP; is that correct?

3 WITNESS SUARD: That's correct. I commented
4 on it.

5 MS. ANSLEY: And then after that point, there
6 was a Recirculated Draft EIR/SEIS. Do you recall that?

7 WITNESS SUARD: Yes.

8 MS. ANSLEY: And then leading up to July 2017,
9 when there was the adopted Final EIR/EIS -- or EIR; is
10 that correct?

11 WITNESS SUARD: Yes.

12 MS. ANSLEY: Okay. So we can agree that
13 there's a number of levels of environmental documents
14 that are out there that go back some years in time?

15 WITNESS SUARD: Yes.

16 MS. ANSLEY: Okay. And as you sit here today,
17 on Page 2 Lines 9 through 19, I believe your answer was
18 that you can't recall which EIR/EIS document that you
19 are citing?

20 WITNESS SUARD: I think it may have been a
21 draft for 2013, just from some references -- other
22 references I have. Again, my point is it doesn't
23 matter which draft, really to me. What matters is how
24 much flow you're taking.

25 MS. ANSLEY: If you look at Line 15, where it

1 talks about intake pumping plants, is it your
2 understanding that the intakes continue to have pumping
3 plants at the location of the intakes?

4 WITNESS SUARD: When I was listening to the
5 testimony of the WaterFix experts, I believe that there
6 was talk of pumping plants. And then I do believe
7 there was a revision to that. So there -- you know,
8 but -- you know, they keep changing their minds, so I
9 don't know if the latest revision will have pumping
10 plants or not. So I don't know if that's going to
11 happen or not.

12 And you notice I didn't talk about pumping
13 plants in my testimony here.

14 MS. ANSLEY: But that is what you say on
15 Line 15. You say -- you're listing facilities; is that
16 correct?

17 WITNESS SUARD: Those are screen prints of
18 portions of information.

19 MS. ANSLEY: Okay.

20 Looking down on your topic of "River Barges,"
21 you also, on Line 26, cite Chapter 4, Page 4 through
22 11. Can you now here recall whether that is -- whether
23 this information comes from the March 2013 admin draft
24 of the BDCP EIR?

25 WITNESS SUARD: I do believe this covers -- it

1 is very similar to -- I don't remember which draft it
2 comes from. It's probably the 2013. And I do believe
3 it's very similar to what was described for WaterFix.

4 MS. ANSLEY: Is it your understanding that the
5 admin draft of the BDCP Draft EIR is not an exhibit in
6 this proceeding?

7 WITNESS SUARD: I believe that the links --
8 well, maybe not the admin draft; maybe the final
9 drafts. The links on the website still lead to you the
10 admin draft.

11 MS. ANSLEY: Are you referring to the
12 California WaterFix website versus the hearing website
13 for this proceeding?

14 WITNESS SUARD: Not California WaterFix. As I
15 said on Page 1, again, I use the capitalsolutions.com
16 Client Data, California WaterFix because they are the
17 ones who drafted everything. And then later on,
18 California WaterFix made up their own website. So --
19 two different websites.

20 And then for the water hearing, there's also
21 the documents that -- and in the water hearing website
22 it does refer back to the Bay-Delta Conservation Plan
23 documents.

24 MS. ANSLEY: Is it your understanding that
25 documents have been marked here by both the DWR and the

1 State Water Board itself, their staff -- that the
2 versions of the environmental review documents have
3 been marked as exhibits in this proceeding?

4 WITNESS SUARD: Yes, but -- as I've said
5 before, earlier versions of this same plan to divert
6 water from the Sacramento River had more detail about
7 impacts than the current version does.

8 MS. ANSLEY: Is it your understanding that the
9 BDCP project was later changed to become the California
10 WaterFix?

11 WITNESS SUARD: I've seen the project change
12 its name many times, so, yes. But that doesn't mean
13 the Bay-Delta Conservation Plan -- it's kind of like
14 split, right? It went into WaterFix and EcoRestore.
15 But that doesn't mean it doesn't exist.

16 MS. ANSLEY: And is it your understanding that
17 the facilities and operational criteria have changed
18 over time, since 2013?

19 WITNESS SUARD: Yes, I've definitely listened
20 and I actually read quite a bit of the testimony of the
21 WaterFix -- testimony of the WaterFix persons that were
22 brought up by DWR. And you know, that was very
23 helpful.

24 But I've also seen that DWR and USBR and some
25 of these agencies change their mind. Freeport's one of

1 those examples. Every time an EIR is issued, then they
2 do a supplemental. Just like they did for WaterFix,
3 the supplemental on the electric. It's already in play
4 right now.

5 MS. ANSLEY: If you could look at Page 3,
6 Lines 9 through 17. And here you cite specific flows
7 and flow reductions compared to existing conditions.
8 Do you see that testimony?

9 WITNESS SUARD: Yes.

10 MS. ANSLEY: It's my understanding you got
11 these numbers from the Draft BPCP plan, which I believe
12 is SWRCB-5 in this proceeding. Is that where these
13 numbers come from?

14 WITNESS SUARD: Yes. I had quite a bit of
15 dealings with Bay-Delta Conservation Plan in the draft
16 and then commented on it. And my concern was how low
17 that version of the plan to divert Sacramento River
18 water -- it was reducing flows into Steamboat Slough
19 and Sutter Slough. And actually, that version of the
20 plan I had an opportunity to meet with the current
21 director of DWR to discuss the impacts.

22 So this is the 2013 version of what they were
23 saying would be flows on Steamboat Slough.

24 MS. ANSLEY: But this is not an impact
25 analysis for California WaterFix Alt 4A H3+?

1 WITNESS SUARD: No. I repeatedly asked for
2 that, and you didn't provide it. It's just similar
3 flows to what you're talking about.

4 MS. ANSLEY: Looking on Page 4, your section
5 on roads and transportation, which would be Lines 8
6 through 23, it's my understanding, and I'm seeking your
7 confirmation, that all of these citations are to the --
8 again, to the 2013 admin draft of the BDCP DEIR; is
9 that correct?

10 WITNESS SUARD: Okay. I'm sorry, I -- I'm not
11 sure that I provided oral testimony to that
12 particular --

13 MS. MESERVE: Remind me to ask you about it.

14 WITNESS SUARD: Okay.

15 So on my -- let's go to that. Yeah, okay.

16 MS. ANSLEY: And I apologize. That question
17 goes on through Page 5 Line 7. My understanding is
18 that all of these cites for EIR/EIS transportation
19 Chapter 19 come from the admin draft issued in 2013 for
20 the BDCP DEIR.

21 Is that your understanding as well?

22 WITNESS SUARD: Yes, I believe that. And we
23 didn't talk about that one because I actually have no
24 problem with deleting from Line 8 to the end of the
25 page, I believe.

1 MS. ANSLEY: It's my understanding that you
2 are withdrawing SHR-2-17, but you are keeping your
3 testimony. So I understand the reference to it, but
4 are you keeping Lines 9 through -- Page 4, Lines 9
5 through Page 5, Line 7?

6 WITNESS SUARD: Well, through the end of the
7 page -- I haven't looked at Page 5 yet. I think that
8 other people have testified about transportation, and
9 it will be testified about, so --

10 (Reporter interruption)

11 WITNESS SUARD: I said that other people have
12 testified about impacts to transportation, and I have
13 too. So I don't know that that particular one is
14 necessary to be there.

15 MS. ANSLEY: It's not my call.

16 CO-HEARING OFFICER DODUC: So are you moving,
17 Ms. Meserve, is your witness moving to strike lines --
18 would be what?

19 MS. ANSLEY: Page 4, Line 9 through Page 5,
20 Line -- I was only going through 7 because that's the
21 end of her citation she has. That's only on the topic
22 group, Line 21 on Page 5.

23 MS. MESERVE: She's not striking her
24 testimony. I think -- I'm not even sure, since it was
25 going to be briefed on Monday, whether this was within

1 the material that Ms. Ansley wanted to bring a motion
2 to strike. But, you know, if --

3 MS. ANSLEY: That motion to strike wasn't
4 brought by me. That was brought by Ms. Suard. I'm
5 seeking merely to confirm my understanding of where
6 this stuff comes from.

7 CO-HEARING OFFICER DODUC: Ms. Suard started
8 to say something about how other people have covered
9 transportation so that this does not need to be in
10 there. And I took that to mean that Ms. Suard was
11 moving to strike portions of her testimony.

12 MS. MESERVE: I think she was anticipating
13 that that was something that DWR wanted to strike. So
14 I would just say I think the part that's important to
15 Ms. Suard is the part where she begins on Page 5 on
16 Line 9 about her own observations.

17 WITNESS SUARD: And I specifically said
18 Line 9 -- or I said 8 or 9 to the bottom of the page.
19 That's it. I didn't say --

20 MS. MESERVE: I think we can just hold that
21 if -- I don't think we need to do anything about it
22 right now.

23 WITNESS SUARD: I was just trying to make it
24 easier for all of you guys. Less to read, right?

25 CO-HEARING OFFICER DODUC: So does that mean

1 you are removing Lines 9 through the end of the page?

2 MS. MESERVE: I think at this time we wouldn't
3 be -- I think if -- in response to some motion to
4 strike from DWR, we could potentially do that. But I
5 don't think -- it sounds like there's just questions,
6 Ms. Ansley's asking about where this came from. And I
7 think that's what's going on.

8 CO-HEARING OFFICER DODUC: All right.

9 WITNESS SUARD: This is one of the documents
10 I've used to form my opinion that's on Page 5.

11 MS. ANSLEY: I'm sorry. Which line are you
12 referencing now? My questions were -- it is my
13 understanding that, when you're saying "EIR/EIS" in the
14 transportation section of your testimony, that these
15 citations specifically come from the March 2013 admin
16 draft of the BDCP DEIR/EIS.

17 WITNESS SUARD: Again, I don't know if it was
18 March 2013.

19 MS. ANSLEY: I'm sorry, the admin draft.

20 WITNESS SUARD: It was a draft that I reviewed
21 pretty thoroughly, whereas I can't say I read every
22 word of WaterFix. I more listened to the testimony and
23 saw the presentations.

24 MS. ANSLEY: Okay. And you realize that the
25 reason I'm asking is because the language in the admin

1 draft, the administrative draft, may not be the same,
2 nor the analysis the same as the Final EIR/EIS that has
3 been adopted by the DWR?

4 WITNESS SUARD: I realize, yes, the language
5 might be different. But the goal is the same, take the
6 water away from the Sacramento River.

7 MS. ANSLEY: Well, let's look at the next
8 section, which is your topic on Page 5, Lines 24
9 through 44. And here you give specific impacts on
10 flows. And the topic that you've put on Line 24 is
11 Georgiana Slough/DCC, which is the Delta Cross Channel,
12 and Delta Flows. Do you see that testimony?

13 WITNESS SUARD: Mm-hmm, yes. Sorry.

14 MS. ANSLEY: And it is my understanding that
15 the two cites that you've put there on Line 34 and then
16 on Line 43, which are the sources for this testimony or
17 these facts, are from the BDCP plan, the Draft BDCP
18 plan; is that correct?

19 WITNESS SUARD: Yes. And I would like to
20 point out Line 29. And it talks about 5,000 cubic feet
21 of flow left after the pumps. Same project.

22 MS. ANSLEY: And is it -- and is it your
23 understanding that the -- well, strike that.

24 So looking at Line 27 and 28, do you see there
25 where you say 3,750 thousand [sic] acre-feet flow?

1 WITNESS SUARD: Yes, I see the line.

2 MS. ANSLEY: And is for the existing
3 conditions? Do you see that?

4 WITNESS SUARD: Yes, I do.

5 MS. ANSLEY: Is it your understanding that
6 that's for a modeling scenario called EBC2, which is an
7 existing conditions scenario use expressly for the
8 BDCP?

9 WITNESS SUARD: No. Actually, that isn't my
10 understanding. But again, it was Line 29 that struck
11 me, that you changed the name of the project, but it's
12 really the same project.

13 MS. ANSLEY: I'm sorry. My question was to
14 your cite on Line 27 specifically. You cite, "The
15 average" --

16 (Reporter interruption)

17 MS. ANSLEY: I'm sorry. "The average annual
18 diversions into the DCC and Georgiana Slough were about
19 3,750 thousand acre-feet," [sic]. Do you see that
20 testimony specifically?

21 WITNESS SUARD: I do, and it does not refer to
22 where that came from.

23 MS. ANSLEY: That -- so my understanding is
24 I'm asking you where did that number come from and what
25 modeling scenario was that? And I was trying to help

1 you out because I believe that is the EBC2 modeling
2 scenario. Does that help you?

3 WITNESS SUARD: Again, this is a screen print
4 from a summary, and I don't know which model that was
5 from.

6 MS. ANSLEY: So as you sit here today, you're
7 not aware of what modeling scenarios these flow numbers
8 come from?

9 MS. MESERVE: Asked and answered.

10 MS. ANSLEY: I don't believe --

11 CO-HEARING OFFICER DODUC: Let's just confirm
12 that. Ms. Suard, yes?

13 WITNESS SUARD: I was not aware.

14 CO-HEARING OFFICER DODUC: Okay.

15 Is there a typo on Line 28? Is there a
16 missing zero?

17 MS. ANSLEY: I believe it's 3,150, is my
18 memory of that testimony.

19 CO-HEARING OFFICER DODUC: You're not
20 testifying.

21 MS. ANSLEY: No, I'm not testifying.

22 CO-HEARING OFFICER DODUC: Ms. Suard?

23 WITNESS SUARD: Excuse me?

24 CO-HEARING OFFICER DODUC: Line 28?

25 Never mind. Let's move on.

1 Next question, Ms. Ansley.

2 MS. ANSLEY: And let me see if I can short-cut
3 this. I'm trying to go by section.

4 Looking at your next section of testimony,
5 which starts at the bottom of Page 25, starts out
6 "Delta flows" starting on Line 46, do you see that?

7 WITNESS SUARD: Yes.

8 MS. ANSLEY: And running through Page 6, Line
9 26. It is my understanding that these -- all of these
10 bolded cites are also from the Draft BDCP plan; is that
11 correct?

12 WITNESS SUARD: The bolded one and the
13 citation references are. Then you referred to a couple
14 lines that are my own writing.

15 MS. ANSLEY: Of course. I mean the bolded
16 cites to Chapter 5. Can -- I'm just looking to
17 short-cut this so I don't have to ask about each one.

18 My understanding is that all of these
19 references to Chapter 5 and Chapter 5(c) are from the
20 Draft BDCP plan. Is that your understanding too?

21 WITNESS SUARD: Yes.

22 MS. ANSLEY: And do you have a memory -- I
23 know you don't remember the date for the admin draft,
24 but do you recall that the BDCP draft plan was issued
25 in 2013?

1 WITNESS SUARD: You know, there's been a lot
2 of variations. You keep referring to 2013.

3 MS. ANSLEY: I do.

4 WITNESS SUARD: I think there were earlier
5 drafts too. I think I -- you know, I don't want to be
6 set to a certain year. It's more the issue. It is the
7 content -- the content isn't -- it doesn't matter when
8 something was written. It is -- this is a hearing
9 about taking water off the Sacramento River. And the
10 data provided is what's important.

11 MS. ANSLEY: If you look at Line 10, Page 6,
12 do you see where you say, "Restoration of 65,000 acres
13 of tidal marsh which is CM4," do you see that?

14 WITNESS SUARD: Yes, I believe that's changed.

15 MS. ANSLEY: Yes, that would be my question.
16 Is it your understanding that that is no longer part of
17 the California WaterFix project?

18 WITNESS SUARD: Yes, that's part probably part
19 of EcoRestore. It's probably already been done.

20 MS. ANSLEY: Starting at Line 28 on Page 6,
21 you begin to talk about BDCP levee maintenance. And
22 from my review of your testimony and your cites for all
23 of that section, which ends on Page 7, Line 38, aside
24 from the references to your own exhibits, the bolded
25 references to Chapter 5 are all from the Draft BDCP

1 plan; is that correct?

2 WITNESS SUARD: Yes. I don't -- yes.

3 MS. ANSLEY: Okay. And these would include
4 Lines 14 through 29 on Page 7, which are specific flows
5 and proposed Fremont Weir modifications; is that
6 correct?

7 WITNESS SUARD: Yeah, we -- I did not talk
8 about basically Page 7 and 8 because they really didn't
9 quite apply anymore. Like, Fremont Weir is not a
10 project related to WaterFix. That was related to
11 what's now called EcoRestore. But under Bay-Delta
12 Conservation Plan it was a project.

13 MS. ANSLEY: Is there a reason why you
14 included it in your Part 2 testimony in a hearing on
15 the California WaterFix specifically?

16 WITNESS SUARD: Yes, that relates to how DWR
17 manages flood flows because opening that weir puts more
18 water into the Yolo Bypass and because Liberty Island
19 is operating as a reservoir now.

20 That's like a bathtub that's full. Then you
21 put more water in it, the bathtub overflows, and it
22 makes the water flow -- that project impacts Steamboat
23 Slough because it backs up on us. So these weir
24 projects that change the flows and put more flow onto
25 the west side of the Delta, it is an impact to us.

1 And I also believe that takes away flow from
2 the North Delta.

3 MS. ANSLEY: But we are agreeing that these
4 numbers in this project are not part of the California
5 WaterFix?

6 WITNESS SUARD: It's not, at this point in
7 time, your current version of it.

8 MS. ANSLEY: If you look at Line 31 where you
9 reference EBC2 late long term, do you know what I mean
10 by "late long-term"?

11 WITNESS SUARD: Are you talking about -- which
12 page?

13 MS. ANSLEY: Page 7, Line 31, where you cite
14 duration of floodplain inundation and these would be an
15 impact result; you cite to EBC2 late long-term as well
16 as ESO late long-term?

17 WITNESS SUARD: Yes, I do have problems
18 with -- again, this isn't part of WaterFix -- the
19 increase of flows into Yolo Bypass. Ever since they
20 started doing that, that's when my flood impacts
21 started increasing.

22 An area that would get high water once ever
23 ten years now gets it every 2.8 years, ever since they
24 started doing that project.

25 MS. ANSLEY: Is it your understanding that

1 EBC2 and ESO are modeling scenarios that were never
2 implemented by the BDCP California WaterFix?

3 WITNESS SUARD: No, I'm not talking about
4 modeling. I don't want to talk about the modeling.
5 And I don't even remember the initials of that model.

6 MS. ANSLEY: But they're cited here in your
7 testimony. Is there a reason why you cited a
8 comparison between modeling scenarios in your testimony
9 if you don't want to talk about modeling?

10 WITNESS SUARD: I made a mistake. I guess. I
11 didn't realize -- I did some in the screen-type stuff.
12 And I am not familiar enough with that particular model
13 to talk about it.

14 MS. ANSLEY: Would you like to withdraw
15 Lines 30 to 32 of your testimony?

16 WITNESS SUARD: I'm going to confer with
17 Osha -- Ms. Meserve, and I'd -- I'd just like this to
18 keep going. And if you want to object to that, that's
19 fine.

20 MS. ANSLEY: I think I'd like to move
21 references to modeling scenarios in this testimony, if
22 she's stating here and now that she has no
23 understanding of the modeling scenarios that she is
24 citing to or the impact analysis that she is citing to,
25 all of which, according to the work that we did at my

1 firm, all of which is from modeling scenarios and
2 outdated environmental review that are not the project
3 here before the Board.

4 So I would actually make that motion to strike
5 all flow impact analysis, in particular, things that
6 were -- that reference modeling scenarios that are not
7 even part of the California WaterFix.

8 CO-HEARING OFFICER DODUC: I'm going ask that
9 you, again, put that in writing as part of your
10 motion/objection. At this point, you're amassing quite
11 a long list. So let's just get them all in one place.

12 MS. ANSLEY: That's fine. I'll move on. And
13 I'm seeing how fast can I do this.

14 You do not have a complete copy of your
15 testimony before you?

16 WITNESS SUARD: I do, but I chopped it up into
17 questions. I do have the page numbers and the line
18 numbers, but I was really focusing on what I said
19 rather than the other document.

20 MS. ANSLEY: Are the documents you cite here
21 support for the things you said?

22 WITNESS SUARD: Documents I cite where?

23 MS. MESERVE: Objection vague.

24 WITNESS SUARD: I don't know where.

25 MS. ANSLEY: The documents you cite in your

1 testimony, SHR-2-11 Errata.

2 WITNESS SUARD: Can you show me where you are
3 on this page, or are you on this page?

4 MS. ANSLEY: I'm sorry. You had just said
5 that you want to talk about the things that you wrote
6 and not necessarily documents you cite. So I'm just
7 confirming --

8 WITNESS SUARD: No, I didn't say that --

9 MS. ANSLEY: Sorry.

10 WITNESS SUARD: -- if that's what came across.
11 What question do you have?

12 MS. ANSLEY: I will move on to your next
13 topics. I was hoping to -- if you have your testimony
14 in front of you, I was hoping to confirm that these
15 next couple of pages, which all discuss impacts of
16 operations on salinity and flow, I was hoping to
17 confirm that all of this, references to these chapters
18 that are bolded, are the BDCP plan.

19 I can do that --

20 WITNESS SUARD: First of all, I do have my
21 testimony in front of me.

22 MS. ANSLEY: Oh, great. So Page 7, Line 40
23 through Page -- Page 11, Line 6. My understanding is
24 that all of these references to chapters come from the
25 Draft BDCP plan; is that correct? And maybe we can

1 just short-cut --

2 MS. MESERVE: Objection, misstates witness's
3 testimony. It's too many pages.

4 WITNESS SUARD: Yes, too many pages.

5 MS. ANSLEY: Okay.

6 WITNESS SUARD: And in between there, I do
7 make references. And I do have my own words in my own
8 testimony.

9 MS. ANSLEY: Does it help if I say what I'm
10 talking about is, in your testimony, it appears to me
11 that you have bolded references that you intend to make
12 to other documents besides your SHR exhibits?

13 WITNESS SUARD: No, not necessarily. If I
14 did, it was not intended. However, I do see -- let's
15 see, Page 10, Line 33 and 34, that may be a bolding.
16 And if it was, I didn't intend that.

17 MS. ANSLEY: That's not bolded in my
18 testimony.

19 WITNESS SUARD: Okay.

20 MS. ANSLEY: I'm happy to go back. Looking at
21 your Page 7 topic, "Water Surface," you provide a
22 paragraph that starts, Lines 41 through 48, that
23 provides impacts of tidal restoration. Do you see
24 that?

25 WITNESS SUARD: Yes.

1 MS. ANSLEY: And my understanding is that
2 Chapter 5 referenced on Lines 37 through 48 is the BDCP
3 draft plan; is that correct?

4 WITNESS SUARD: Yes, and it also -- those --
5 those references or that action is a combination of
6 WaterFix and EcoRestore together is really what that
7 would be.

8 MS. ANSLEY: Is it your understanding that the
9 amount of tidal restoration has varied over time under
10 California WaterFix since it was split away from BDCP?

11 WITNESS SUARD: Yes, I do recognize that
12 things keep changing.

13 MS. ANSLEY: And that the impacts or the
14 amounts listed on Lines 41 through 48 do not
15 necessarily reflect the amount of tidal restoration
16 under California WaterFix; is that correct?

17 WITNESS SUARD: Again, it has changed several
18 times, so this may not. But it can change again. And
19 I was concerned about surface water impacts because
20 I've been experiencing impacts from restoration actions
21 under CalFed or Bay-Delta Conservation Plan or
22 EcoRestore whatever you want to call it.

23 There are changes going on in the Delta that
24 are affecting how the flows are going and hydrodynamics
25 of my area of the Delta. And it's caused damage to my

1 property.

2 So, you know, just because WaterFix doesn't --
3 isn't necessarily talking about that, that is an
4 example of some of those actions are going on right
5 now. And they're being done with the approval, I
6 guess, of DWR. And it impacts.

7 MS. ANSLEY: So your testimony is intended to
8 show an impact that does not distinguish between the
9 BDCP, EcoRestore, the California WaterFix, or other
10 programs being implemented by the DWR?

11 MS. MESERVE: Objection, mistates Ms. Suard's
12 testimony.

13 MS. ANSLEY: She's free to answer to her
14 understanding. I'm trying to understand as well.

15 CO-HEARING OFFICER DODUC: Ms. Suard?

16 WITNESS SUARD: Can you restate the question.
17 I wasn't sure --

18 MS. ANSLEY: Sure. My understanding of what
19 you're just saying is that your testimony intended to
20 show an impact to your property that does not
21 distinguish between the BDCP, the EcoRestore, the
22 California WaterFix, or other programs such as
23 restorations being implemented by the DWR; is that
24 correct?

25 WITNESS SUARD: I didn't state it that way,

1 but I did say you can call it EcoRestore, you can call
2 it WaterFix, Bay-Delta Conservation Plan, or CalFed.
3 The end result, if you reduce the flows on the
4 Sacramento River, it impacts everyone downstream, no
5 matter what you call it.

6 And the -- you know, examples of mitigation,
7 the restoration actions do not account for damages from
8 the WaterFix. That -- that would be an example of what
9 I believe they would call mitigation. But those --
10 those actions can cause damage too.

11 MS. ANSLEY: I'm sure I need another 20
12 minutes.

13 CO-HEARING OFFICER DODUC: All right.

14 MS. ANSLEY: I am trying to --

15 CO-HEARING OFFICER DODUC: I know.

16 MS. ANSLEY: -- get through.

17 Is it your understanding that these are
18 separate projects, the California WaterFix and the
19 EcoRestore now?

20 WITNESS SUARD: Yes, I do. And it's a name
21 game. You just change the names, still the same game.

22 MS. ANSLEY: And they will be subject to
23 different approvals and permitting?

24 WITNESS SUARD: Yes.

25 MS. ANSLEY: And that we are here today

1 working on a petition for the California WaterFix
2 change and planned diversion; is that your
3 understanding?

4 WITNESS SUARD: Yes, I definitely understand
5 what this WaterFix hearing is about.

6 MS. ANSLEY: And is it your understanding that
7 the impacts that you are listing here for flow on water
8 surface on Pages 7 carrying over onto 8, what you're
9 citing is impacts from tidal restoration in the Draft
10 BDCP; is that correct?

11 WITNESS SUARD: No. So the draft -- it's
12 correct it's Draft BDCP. But the impacts that they
13 refer to for Steamboat Slough and Sutter Slough were
14 not just because of tidal restoration. It was also
15 because of diversion of Sacramento River leaving us
16 with lower flows, which would increase salinity.

17 And the Bay-Delta Conservation Plan actually
18 provided information and graphics on that, which I have
19 tried to include, that clearly stated that salinity
20 would increase, contrary to what your witnesses said.

21 MS. ANSLEY: And is it your understanding that
22 the FEIR that we both agreed was adopted in July 2017
23 looked at the impacts of tidal restoration under
24 California WaterFix specifically?

25 MS. MESERVE: Objection, vague. What

1 alternative are we talking about?

2 MS. ANSLEY: We will always be talking about,
3 in this case, CWF H3+ Alt 4A.

4 WITNESS SUARD: I --

5 MS. MESERVE: Objection, misleading. That
6 wasn't even included in the Final EIR.

7 MS. ANSLEY: Alt 4A was included in the Final
8 EIR.

9 MS. MESERVE: H3+ was not --

10 MS. ANSLEY: And it --

11 CO-HEARING OFFICER DODUC: Hold on.

12 WITNESS SUARD: I don't believe --

13 CO-HEARING OFFICER DODUC: Stop.

14 Ms. Suard?

15 WITNESS SUARD: She asked a question. I don't
16 believe the -- the volume of restoration that DWR was
17 proposing before is included in WaterFix specifically.
18 It's included in other actions, but not in -- I think
19 that's what you were asking me.

20 Were you asking me if -- you know -- okay.

21 I'm not sure what you were asking.

22 MS. ANSLEY: Is it your understanding that CWF
23 Alt 4A H3+ is the project currently proposed to the
24 Board?

25 WITNESS SUARD: Yes. But I do believe you can

1 change it again.

2 MS. ANSLEY: Is it your understanding that --
3 and we were looking at a section of your testimony that
4 talks about tidal restoration; is that true?

5 WITNESS SUARD: Yes.

6 MS. ANSLEY: Is it your understanding that
7 there is a certain amount of tidal restoration proposed
8 as part of CWF H3+?

9 WITNESS SUARD: I did not thoroughly review
10 what WaterFix talks about tidal restoration. I just
11 know I'm being left with impacts from the work that's
12 already being done on Steamboat Slough.

13 MS. ANSLEY: Is it your understanding that the
14 California WaterFix has not yet been implemented?

15 WITNESS SUARD: No, that's not my
16 understanding because there is work for California
17 WaterFix already starting in the Delta. So what do you
18 mean by "not yet implemented"?

19 MS. ANSLEY: That this Board has not approved
20 the North Delta intakes and that the operational
21 criteria and the restoration programs of the California
22 WaterFix have not yet been implemented?

23 WITNESS SUARD: Okay. The electrical work has
24 been implemented. So wouldn't that be starting? I
25 went to the Industry Day. They're already hiring

1 contractors. That's implemented to me.

2 So have they broken ground on the tunnel? I
3 don't know. But I do see the electrical work already
4 starting because it's impacting me.

5 MS. ANSLEY: Is it your understanding that any
6 tidal restoration work has happened under the
7 California WaterFix H3+?

8 MS. MESERVE: Objection, misleading, there's
9 no tidal restoration in CWF.

10 MS. ANSLEY: That's actually not true.
11 There's 1,828 acres of it.

12 CO-HEARING OFFICER DODUC: Hold on.

13 MS. MESERVE: It's mitigation --

14 CO-HEARING OFFICER DODUC: Hold on.

15 Ms. Suard, are you able to answer the
16 question?

17 WITNESS SUARD: I am not aware of tidal
18 restoration related to WaterFix. I'm only aware of
19 what's been happening on Steamboat Slough. And there
20 has been tidal restoration going on. There has been
21 under Bay-Delta Conservation Plan. And Bay-Delta
22 Conservation Plan is related to WaterFix.

23 CO-HEARING OFFICER DODUC: You may argue that
24 in your motion/objection.

25 MS. ANSLEY: I can move on to salinity

1 impacts.

2 CO-HEARING OFFICER DODUC: Actually, no.

3 We're going to take a break.

4 Five minutes. Return at 4:05.

5 (Recess taken)

6 CO-HEARING OFFICER DODUC: All right. It is

7 4:05. We are back in session.

8 Ms. Ansley.

9 MS. ANSLEY: Yes. I'm trying to -- if you
10 have a copy of your testimony in front of you, there
11 are a number of references on Pages 9 through the end
12 of your testimony to Chapter 5 and Chapter 4.

13 Maybe if you could take a minute to look at
14 those, and -- or we could scroll, however you feel more
15 comfortable doing it, and you could confirm to me that
16 those references are to the Draft BDCP plan, and then I
17 wouldn't have to ask about each section in particular.

18 WITNESS SUARD: So you're saying page -- which
19 pages did you say?

20 MS. ANSLEY: Well, actually, I believe we
21 stopped off on Page 8, Line 14, talking about salinity.
22 And that section references Chapter 5, if you can see
23 that. And then it provides specific page numbers. But
24 I believe that, if you had the opportunity to look
25 through your testimony, there are references to both

1 Chapter 4 and Chapter 5.

2 WITNESS SUARD: Okay. I see that, that's --

3 MS. ANSLEY: And I believe that they are
4 mostly all to the draft -- up through -- we're up
5 through about -- well, I guess let's say the bottom of
6 Page 10, that those references are all to the Draft
7 BDCP, I guess 8 through 10. My understanding is those
8 references to Chapter 5 are to the Draft BDCP plan.

9 WITNESS SUARD: They are to Draft Bay-Delta
10 Conservation Plan. And again, as you can say -- see,
11 like, on Page 8 it talks about tunnels. And now the --
12 you're saying all? In between some of these, I would
13 put comments in, based on my understanding. But again
14 --

15 CO-HEARING OFFICER DODUC: Ms. Suard, she's
16 only asking where there are bold references to
17 Chapter 5, she's asking whether that came from the BDCP
18 plan.

19 WITNESS SUARD: It appears to, yes.

20 MS. ANSLEY: And as a foundational question,
21 is it your understanding that Alt 4A was not a BDCP
22 scenario?

23 WITNESS SUARD: Alt 4A is a tunnel project
24 that proposed to take 9,000 cubic feet per second of
25 export from the Sacramento River. So it is a very

1 similar project. It's not WaterFix exactly, but it is
2 very similar. And Bay-Delta Conservation Plan provided
3 much more impact information than WaterFix did.

4 MS. ANSLEY: I'm sorry, I don't think that was
5 responsive to my question. My question was simply your
6 understanding of the Alt 4A --

7 WITNESS SUARD: Alt 4A C+ [sic] is the name
8 for the WaterFix project, right? Isn't it called C+
9 now?

10 MS. ANSLEY: Are you familiar with the FEIR
11 for the California WaterFix

12 WITNESS SUARD: I have look at that, yes.
13 I've gone online and looked at different sections.

14 MS. ANSLEY: And in that FEIR, it analyzes a
15 number of alternatives; is that your understanding?

16 WITNESS SUARD: Yes, it does.

17 MS. ANSLEY: And that the alternatives for the
18 Draft EIR/EIS for the California WaterFix to the
19 recirculated Draft EIR/EIS, is it your understanding
20 that additional alternatives were added?

21 WITNESS SUARD: Yes.

22 MS. ANSLEY: And one of those alternatives was
23 Alt 4A; is that correct?

24 WITNESS SUARD: I think it -- Alt 4A is kind
25 of a further description of Alternative 4, and that's

1 my understanding of it.

2 MS. ANSLEY: Okay. And is it your
3 understanding that that was added in the Recirculated
4 Draft EIR?

5 WITNESS SUARD: I don't recall right now when
6 it was added.

7 MS. ANSLEY: Okay. Looking at the bottom
8 of --

9 ~~WITNESS SUARD: And under -- I'd like to say~~
10 ~~that it is my understanding that, under your~~
11 ~~description of -- or the testimony is about alternative~~
12 ~~management and adaptive management, that the plan could~~
13 ~~change again to one of the other operations.~~

14 MS. ANSLEY: I'd like to move to strike that
15 as non-responsive to any question I asked.

16 CO-HEARING OFFICER DODUC: Sustained.

17 MS. ANSLEY: And is it your understanding also
18 that a number of operational criteria have been
19 analyzed as well? Are you familiar with H3 and H4, for
20 example?

21 WITNESS SUARD: Yes, I listened to all your
22 guys' testimony, and I do understand that there's
23 another -- a number of different operational criteria,
24 that none of them protected human use of water that I
25 could tell.

1 MS. ANSLEY: And you're familiar with
2 Boundary 1 and Boundary 2?

3 WITNESS SUARD: Yes, I listened to your
4 testimony, witnesses' testimony.

5 MS. ANSLEY: Just confirming we are talking
6 about the same thing.

7 Looking at Page 10 at the bottom, where you
8 start talking about the North Delta intakes on Line 45,
9 do you see that testimony?

10 WITNESS SUARD: On Line --

11 MS. ANSLEY: Page 10, Line 45 starts a new
12 topic.

13 WITNESS SUARD: I cut it off on mine.

14 MS. ANSLEY: We can scroll if you like. It's
15 the top part of the screen there.

16 WITNESS SUARD: Yes.

17 MS. ANSLEY: And you cite the EIR/EIS
18 Alternatives, Chapter 3?

19 WITNESS SUARD: Yeah, and Line 46 says three
20 North Delta intakes with fish screens along the east
21 bank.

22 CO-HEARING OFFICER DODUC: Hold on. Let's
23 wait for Ms. Ansley to ask her question.

24 WITNESS SUARD: Okay.

25 MS. ANSLEY: My question was simply it's my

1 understanding that what you're citing there is, again,
2 we're back to the admin draft of the BDCP Draft EIR.
3 And by "admin draft" do you understand I mean
4 administrative draft?

5 WITNESS SUARD: Yes, I do.

6 MS. ANSLEY: Okay. The administrative draft
7 of the BDCP Draft EIR.

8 WITNESS SUARD: Yes.

9 MS. ANSLEY: It is. Okay.

10 CO-HEARING OFFICER DODUC: And would that
11 apply to all citations referring to EIR/EIS?

12 WITNESS SUARD: It is the Bay-Delta
13 Conservation Plan referrals, yes.

14 MS. ANSLEY: So the administrative draft of
15 the --

16 WITNESS SUARD: You know, I looked at a couple
17 drafts, and I don't know a hundred percent if it's all
18 the administrative draft. I believe so. It appears
19 to. But you would have to look at the page numbers. I
20 recall kind of clicking on a lot of different things,
21 starting from the WaterFix website, from the drafters
22 of WaterFix. And it would -- you'd end up going
23 different ways. So that's why I'm uncomfortable saying
24 it's all the administrative draft.

25 MS. ANSLEY: Is it your understanding that any

1 of these are the final draft or the Final EIR/EIS for
2 the California Water -- would you be here -- SWRCB-102?

3 WITNESS SUARD: I believe that much of the
4 administrative draft is the same content as the final
5 draft, is the same project, 9,000 cubic feet per second
6 at three intakes.

7 MS. ANSLEY: Have you compared -- aside from
8 the 9,000 cfs three intakes, your testimony includes a
9 lot of numbers in terms of facility heights. For
10 example, we're looking at Page 11, Line 11 through 12
11 which talks about specific surge shaft heights. Have
12 you compared the factual numbers in your testimony with
13 the Final EIR/EIS?

14 WITNESS SUARD: On the -- no. But I did have
15 questions about that of your witnesses.

16 I unfortunately wasn't able to get here on
17 that because the -- at least what I saw, excuse me, of
18 your -- the witnesses you presented actually didn't
19 provide clear information of -- of those dimensions and
20 the heights in -- in a couple areas that I thought were
21 important.

22 MS. ANSLEY: In another example, looking at
23 Line 22 of Page 11, and do you see there where you
24 have -- I assume you're saying these are screen shots
25 if they're preceded by that strange bullet point with

1 the square?

2 WITNESS SUARD: Yes.

3 MS. ANSLEY: That you're saying there's a
4 925-acre intermediate forebay proposed. Do you see
5 that?

6 WITNESS SUARD: Yes, and I do believe that
7 number has now been reduced.

8 MS. ANSLEY: So if you believe that number has
9 now been reduced, why are you not citing the numbers
10 from the Final EIR/EIS?

11 WITNESS SUARD: It was when I was drafting it,
12 that's what I used.

13 MS. MESERVE: I believe this was asked and
14 answered as well.

15 MS. ANSLEY: And then looking on Page 11,
16 Line 37, and I'm just going to try and quickly get
17 through these final cites. This Chapter 4 reference,
18 or any of the Chapter 4 references on Line 11, we have
19 confirmed that that is not the Final EIR/EIS; is that
20 correct?

21 WITNESS SUARD: Yes.

22 MS. ANSLEY: And that it could be the
23 administrative Draft BDCP, Draft EIR/EIS; is that
24 correct?

25 WITNESS SUARD: Yes.

1 MS. ANSLEY: Looking at Page 12 which is the
2 second to last page of your testimony, is your answer
3 the same for the Chapter 4 reference on Line 16?

4 WITNESS SUARD: I'm sorry, you're saying
5 Page 12, Line -- which line?

6 MS. ANSLEY: 16.

7 WITNESS SUARD: 16, okay, not 15. Okay.
8 Again, this is one of the chapters, one of the sections
9 where restoration impacts, but that would probably be
10 under EcoRestore now.

11 MS. ANSLEY: Okay. So we can agree that this
12 Chapter 4 reference is actually to the Draft BDCP plan?

13 WITNESS SUARD: Yes.

14 MS. ANSLEY: And these numbers do not apply to
15 the California WaterFix?

16 WITNESS SUARD: No, those numbers don't. The
17 content of this particular one does not apply to the
18 California WaterFix.

19 MS. ANSLEY: How about the paragraph Lines 18
20 through 24 of the same page that refers to the Calhoun
21 Cut/lower Yolo Restoration; is that also a separate
22 project from the California WaterFix?

23 WITNESS SUARD: Again -- well, I don't know if
24 I explained it very well earlier. But these projects
25 that are ongoing impact everyone down river, including

1 me. And this was an example of -- these are -- that
2 Yolo bypass floodplain restoration project in
3 particular has been impacting Ryer Island, Steamboat
4 Slough, the cover and protect in particular, and so has
5 the Prospect Island one. So those are examples of
6 ongoing projects that were having impacts that were
7 never considered, impacts to the humans. So that's
8 what that's about.

9 MS. ANSLEY: Impacts that were considered when
10 these projects were approved -- or implemented?

11 WITNESS SUARD: They're being implemented. I
12 don't know when they were approved. They are being
13 implemented.

14 MS. ANSLEY: And it's your understanding that
15 these projects are separate and distinct from the
16 California WaterFix?

17 WITNESS SUARD: Yes. And, again, the reason
18 why I brought those up was to talk about the impacts.
19 You see Line 31, it begins --

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

21 MS. ANSLEY: I'm sorry. I don't have a
22 question pending.

23 I'm just going to take a quick flip through
24 make sure that I'm done, make sure that I didn't notate
25 one more question.

1 I think that's all my questions. Thank you
2 for your time.

3 CO-HEARING OFFICER DODUC: Thank you.

4 Mr. Jackson. And I have forgotten now,
5 Mr. Jackson, what your time estimate was.

6 MR. JACKSON: I believe it was 20 minutes.

7 CO-HEARING OFFICER DODUC: All right. So that
8 would get us to 4:40. Ms. Des Jardins, what was your
9 time estimate?

10 MS. DES JARDINS: I said half an hour, but I
11 can cut it down.

12 CO-HEARING OFFICER DODUC: Ms. Meserve, do you
13 anticipate having redirect? We do have a stop at 5:00.

14 MS. MESERVE: I'm thinking about it. If I do,
15 it will be very brief.

16 CO-HEARING OFFICER DODUC: Let's see if we can
17 try to get this done by 5:00. If not, Ms. Suard will
18 have to come back.

19 CROSS-EXAMINATION BY MR. JACKSON

20 MR. JACKSON: My issues --

21 CO-HEARING OFFICER DODUC: We'll forgo the
22 issues, just go for it, Mr. Jackson.

23 MR. JACKSON: Thank you.

24 CO-HEARING OFFICER DODUC: Go directly to your
25 questions.

1 MR. JACKSON: Thank you.

2 Ms. Suard how many times have you commented on
3 a DWR-BOR dual conveyance plan in the last 15 years?

4 WITNESS SUARD: You know I can't think off the
5 top of my head, but at least -- I'd say at least five
6 times.

7 The different ways they called it or different
8 sections of those plans, at least five, probably more
9 than that. And if you want to add to the DSC and to
10 all the different agencies that are also involved in
11 this, it's a lot more than that.

12 MR. JACKSON: The -- when was the first time
13 you ever heard of -- in those periods of time, you ever
14 heard of Alternative 4A, H3+?

15 WITNESS SUARD: During this WaterFix hearing,
16 only in the last few months, I think.

17 MR. JACKSON: Would it be fair to say it was
18 after Part 1 of this hearing?

19 WITNESS SUARD: I believe so.

20 MR. JACKSON: Do you know when the final
21 Environmental Impact Report was filed as a potential
22 exhibit in this hearing?

23 WITNESS SUARD: I can't say the exact date
24 now. I believe it was sometime in 2017.

25 MR. JACKSON: Calling your attention to --

1 well, have you ever heard the words "adaptive
2 management"?

3 WITNESS SUARD: Yes, in this hearing, yeah.

4 MR. JACKSON: Do you know what they mean?

5 WITNESS SUARD: They're going to do what they
6 want to do when they want to do it is my impression.

7 MR. JACKSON: Does that reassure you about any
8 of the issues that you're interested in?

9 WITNESS SUARD: No.

10 MR. JACKSON: Does that indicate to you that
11 there're going to be rules changed over your future?

12 WITNESS SUARD: Yes. History shows that.

13 MR. JACKSON: So you are one of the owners of
14 Snug Harbor?

15 WITNESS SUARD: Yes.

16 MR. JACKSON: And --

17 WITNESS SUARD: I should say there's a lot of
18 folks, individual homes. Sometimes people confuse
19 that. Just the resort section.

20 MR. JACKSON: I'm trying to identify a
21 location.

22 WITNESS SUARD: Okay.

23 MR. JACKSON: So are you one of the owners of
24 Snug Harbor?

25 WITNESS SUARD: Yes.

1 MR. JACKSON: And where is Snug Harbor located
2 exactly?

3 WITNESS SUARD: It is -- it's a peninsula off
4 of Ryer Island. And this is Ryer Island north of
5 Rio Vista. And it's located on Steamboat Slough. And
6 I'm specifying which Ryer Island because there's two of
7 them in Solano County.

8 MR. JACKSON: You indicated in your testimony
9 that whatever -- I believe you said whatever water
10 bypasses the last diversion splits into -- you
11 described it as four rivers?

12 WITNESS SUARD: Four rivers and the Delta
13 Cross Channel.

14 MR. JACKSON: And the -- would you identify
15 those four rivers for me?

16 WITNESS SUARD: It would be the rivers
17 downstream of the intakes, the leftover -- the bypass
18 flows would go into Sutter Slough, Steamboat Slough,
19 the Delta Cross Channel, I'm going in order, going down
20 river, into Georgiana, and then continue in the
21 Sacramento River down by Isleton.

22 MR. JACKSON: So if the water doesn't get all
23 the way down to the lowest one of these rivers, where
24 does -- where do the diversions above it take the
25 water?

1 WITNESS SUARD: I'm not sure I understand the
2 question.

3 MR. JACKSON: Sure. You indicated that water
4 goes down Sutter Slough?

5 WITNESS SUARD: Yes, Sutter Slough.

6 MR. JACKSON: Steamboat Slough?

7 WITNESS SUARD: Yes.

8 MR. JACKSON: And then below those is the
9 Cross Channel gates?

10 WITNESS SUARD: The Cross Channel gates.

11 MR. JACKSON: And then below the Cross Channel
12 gates would be three diversions?

13 WITNESS SUARD: Would be Georgiana and then
14 the lower Sacramento River. So by five rivers, I meant
15 the Delta Cross Channel, when it's open, is like a
16 river. It takes the water.

17 MR. JACKSON: Right. So for water to go into
18 the lower Sacramento River, it has to be -- there has
19 to be enough water to make the split at all of those
20 places?

21 WITNESS SUARD: Correct.

22 MR. JACKSON: Now, your business is to enhance
23 recreation?

24 WITNESS SUARD: Boating and fishing recreation
25 in particular.

1 MR. JACKSON: So let's talk about boating
2 first. I'm going to use the term navigation.

3 WITNESS SUARD: Okay.

4 MS. ANSLEY: Do you know what I mean?

5 WITNESS SUARD: Yes.

6 MR. JACKSON: Do people who stay at your
7 Marina navigate in all of these rivers?

8 WITNESS SUARD: Oh, certainly, yes. These
9 five that we talked about? Yes, definitely, they're
10 connected. And people will go from one to the other to
11 get to Walnut Grove to shop, or to go through the Delta
12 Cross Channel gates to get to Giusti's to eat because
13 everybody loves Giusti's. And that's the Mokelumne
14 River. They go through the Delta Cross Channel gates
15 to get up to the Meadows, because that was the favorite
16 place -- or it used to be the favorite place to duck
17 hole. "Duck hole" means hang out on your boat.

18 MR. JACKSON: Now, in regard to this
19 network -- is it fair to call it "network"?

20 WITNESS SUARD: Yes.

21 MR. JACKSON: In regards to navigation?

22 WITNESS SUARD: Yes.

23 MR. JACKSON: In regard to that network, what
24 types of boats do people use?

25 WITNESS SUARD: What types of boats?

1 MR. JACKSON: Yes.

2 WITNESS SUARD: Kayaks, little fishing skiffs,
3 ski boats, paddle boards, larger boats like cruisers,
4 all the way up to 40-foot, 50-foot, and 60-foot and
5 70-foot cruising boats, house boats. So I'm -- I'm
6 talking about all the recreation boats.

7 Sometimes there are shipping-type boats that
8 also go up and down the river. Used to be steamboats.
9 The Delta King used to go up and down Steamboat Slough
10 years ago, but now it's more -- it's smaller boats than
11 that, you know, the cruisers and any kind of boat that
12 you can think of that is under a hundred feet.

13 MR. JACKSON: So --

14 WITNESS SUARD: In length I mean.

15 MS. ANSLEY: Do these people using these boats
16 on these interconnected waterways, do they fish?

17 WITNESS SUARD: Yes, they fish. There's
18 definitely a connection. That one study I referred to,
19 21F, does correlate and, you know, talk about that
20 boating and fishing usually go hand and hand, and most
21 fishermen would love to fish from a boat if they can
22 afford it.

23 MS. ANSLEY: Do you get people who also use
24 boats to photograph birds?

25 WITNESS SUARD: Absolutely, photograph birds,

1 photograph nature. It's really fun to go to, you know,
2 something like Lost Slough or Beaver Slough or some of
3 the waterways where there's -- you can watch the river
4 otters and the beavers and just sit quietly and watch
5 them play. It's really fun. And there's so many birds
6 I think there's 110 bird species in the Delta. I
7 remember seeing a report about that. It's pretty
8 amazing to see them.

9 MR. JACKSON: Do you talk to people when they
10 come back from their boating trips?

11 WITNESS SUARD: Yes. You mean when they come
12 back to Snug Harbor? Yes.

13 MR. JACKSON: Do they appreciate what they
14 saw?

15 WITNESS SUARD: Yes, generally. Depends on
16 the age, though. The younger ones just talk about how
17 much fun they had tubing or skiing or whatever.

18 MR. JACKSON: Is one of your worries that the
19 diversions are going to affect that ability to navigate
20 in that area?

21 WITNESS SUARD: Yes. To navigate, you have to
22 have sufficient water height in the column. And a lot
23 of these boats have a drafts -- I mean, kayaks can have
24 a draft of, you know, maybe 12 inches. But other boats
25 will have draft -- if they are in the water, they'll be

1 five feet. The bigger boats will be even more than
2 that. And when there's low water flow it lowers -- it
3 changes where the boats can go because of the -- lower
4 water flows as we've seen now, with 9,000 cubic feet
5 of -- cubic feet per second of flow diverted from the
6 Sacramento River -- and we don't know the timing of
7 when all of this -- DWR gave me a chart. It's SHR-350,
8 352.

9 And it indicated that in the prime summer
10 months, there would be 5,000 cubic feet of flow left on
11 those five waterways, four of which have farmers who
12 are diverting water off of it. So we don't even know
13 if there will be any freshwater left to outflow to the
14 San Francisco Bay. It might all be used by farmers,
15 which would mean it would be too low to be boating
16 probably.

17 MR. JACKSON: In regard to the navigation in
18 the area of Snug Harbor, will the barge traffic in your
19 opinion be compatible with the navigation that everyone
20 else at Snug Harbor is doing?

21 WITNESS SUARD: Okay. You just scared me
22 because I haven't heard the barges are coming up
23 Steamboat Slough. I do know that it makes sense that
24 the barges come up Steamboat Slough. But we have
25 shallow spots.

1 But if barges were coming through, it depends
2 on the size. It depends on their weight. For Snug
3 Harbor, we're a little bit wider than most of the other
4 areas along Steamboat Slough, especially upper. So I
5 am very much concerned, especially at low tide, that
6 the barge wake would make it impossible for us to
7 operate because people can't be on those docks.

8 When a wake throws it, you throw the person
9 off it. And that's really dangerous. So it's not just
10 the boats that are impacted; it's the people, either on
11 the boat or on the docks.

12 So I am very concerned whether it's at Snug
13 Harbor or the Sacramento River, when it's narrow
14 waterways, it is a very big risk for people.

15 MR. JACKSON: I've heard that the Delta in
16 general is a major water ski area.

17 WITNESS SUARD: Oh, absolutely.

18 MR. JACKSON: In your opinion as the owner of
19 one of the navigation service areas, do you worry about
20 barges and water skiers being incompatible?

21 WITNESS SUARD: You could not water ski around
22 a barge. The boat has to go pretty fast, and it will
23 be five-mile-an-hour. So you just won't be able to
24 water ski. You can't do that in five-mile-an-hour.

25 MR. JACKSON: Can you think of other

1 recreational interests that would be hindered by the
2 barge traffic?

3 WITNESS SUARD: I believe that wake -- you
4 couldn't wake surf either. People wake surf behind
5 boats there.

6 You know, fishing, the fish are not going to
7 hang around when the barges going through. So I think
8 it really will impact the fishing and -- where there's
9 barge travel.

10 And this applies more for the narrower
11 waterways rather than -- you see a barge or a big ship
12 on -- on the San Joaquin River, the big part of San
13 Joaquin River, or on the Sacramento ship channel,
14 that's a different kind of thing than when you put
15 those big barges in narrow waterways. It's a different
16 kind of impact.

17 MR. JACKSON: Have you been able to determine
18 the actual barge landing locations?

19 WITNESS SUARD: They were described, but then
20 I think they changed again. And I asked for the
21 descriptions of the sizes of these barges and the
22 depth, how deep they are. Because if their draft is 10
23 feet, like the Dutra barges, and they had a bunch of
24 rock on them, they need about 20 feet depth.

25 And they were talking about bringing these

1 things up Sacramento River or Steamboat Slough. And we
2 don't have that depth in certain areas. So you know,
3 there's a lot of unstated details in the WaterFix
4 documents, or, more importantly, the evidence that was
5 presented before this Board that I heard.

6 MR. JACKSON: When did you learn that the
7 conceptual engineering had been changed for this
8 project or was proposed to be changed? I don't even
9 know if -- so let me say, when is the last time you
10 heard that they had changed the conceptual design?

11 WITNESS SUARD: The first time I heard it was
12 in early December. I was at what was called the
13 Industry Day. I was invited to it. I don't know why.
14 But I know I went to it, and it was -- it was a meeting
15 called by DWR, Metropolitan Water District, Southern
16 California.

17 And Mr. Bednarski was one of the main
18 speakers. And he presented information about how they
19 were going to do the tunnel project in phases and
20 possibly higher six or seven tunnel contractors to work
21 all at once. And there was other information provided
22 that was different than what I'd heard at this hearing.

23 So I was a little bit surprised about that.
24 That was early December is when I heard it.

25 MR. JACKSON: And since December to today, do

1 you have any certainty as to what the project is and
2 how it will affect your property?

3 WITNESS SUARD: No. I don't have any
4 certainty. I -- we've gone through this -- is it six
5 first, 6,000 cubic feet per second at two intakes, or
6 three intakes? What's before this Board is three
7 intakes, 9,000 cubic feet per second. So I'm guessing
8 that's what it is, before this Board.

9 But what the tunnel contractors and their subs
10 are being told is kind of different. But I don't know.
11 It keeps changing. I don't know.

12 Just like the electrical that -- the changes
13 to the electrical, the little asterisk of what was
14 provided by Mr. Mizell on -- that sent around to us,
15 there's a little asterisk by the electrical. And it
16 said that's already in progress or something to that
17 effect.

18 Well, there's a huge amount of electrical work
19 going on in the Delta, right across from Snug Harbor
20 making a lot of noise. And, you know, that appears to
21 be part of that project. It's not what they drew on
22 their little plans. But they referred to a change
23 already in what they proposed to this Board. And it's
24 already being built, the electrical.

25 MR. JACKSON: Have you heard anything from DWR

1 and the Bureau about what the flows below these five
2 rivers are going to be?

3 WITNESS SUARD: Yes. Again, I had asked for
4 information. I don't have the capability to run
5 computer models. And I was provided information in
6 Part 1. And that's where it indicated that 5,000 cubic
7 feet per second would be, in effect, split in five
8 ways.

9 And that indicated the Delta Cross Channel
10 gates would still be open. And those graphics were
11 only for July, August, September, October. And so it
12 wasn't -- didn't give me an indication what's going to
13 happen the rest of year.

14 And actually, November and December can
15 actually be really dry, especially November can be
16 pretty dry, believe it or not. We might not have the
17 rain. The salinity can be higher in November.

18 So I only know on a limited nature and where
19 they think that 5,000 cubic feet per second of flow is
20 going to go. And I don't believe that it splits five
21 ways, exactly.

22 MR. JACKSON: So how long have you be trying
23 to follow this project?

24 WITNESS SUARD: WaterFix or --

25 MR. JACKSON: No, no. Your description of

1 three -- I guess let's go back a little bit.

2 You've mentioned CalFed a couple of times?

3 WITNESS SUARD: Yes. So I started paying
4 attention when studies and reports from CalFed came out
5 which were incorrect, which implicated Ryer Island,
6 where I am. And I started writing letters to the
7 people.

8 And this was about 2004, when they were
9 studying the region studies. And then, you know, I
10 noticed that the names kept -- I saw that CalFed split
11 into several projects, the North Delta Improvement
12 Project, the South Delta Improvement Project. And then
13 the projects -- same thing, but it changed its name to
14 Bay-Delta Conservation Plan. And then Bay-Delta
15 Conservation Plan changed to WaterFix and EcoRestore.

16 So it's the same plan. It just changes its
17 name -- in my opinion.

18 MR. JACKSON: One more question, if I could,
19 and then I'll be done.

20 The difference between CalFed and whatever
21 iteration of the BDCP WaterFix, adaptive management,
22 4A, H3+, is it -- the water taken from the Sacramento
23 River goes through the Delta on the surface?

24 WITNESS SUARD: Yes. The CalFed was through
25 the Delta on the surface, therefore, still protecting

1 the Central Delta and the West Delta and all that.

2 And the tunnel project doesn't protect anybody
3 in the Delta.

4 MR. JACKSON: Thank you. No further
5 questions.

6 CO-HEARING OFFICER DODUC: Ms. Des Jardins.
7 And we do have a hard stop at 5:00.

8 MS. DES JARDINS: Deirdre Des Jardins, with
9 California Water Research.

10 Let's -- I'm going to try to keep this short.
11 So let's -- can we please pull up SHR 2-253. And I'd
12 like to go to Page 11, please.

13 CROSS-EXAMINATION BY MS. DES JARDINS

14 MS. DES JARDINS: Was this the flooding in
15 Snug Harbor? Was this in 2017?

16 WITNESS SUARD: Yes, that is. That's Snug
17 Harbor Drive on the right. And the one on the left is
18 the RV park, fairly suddenly being flooded when
19 Oroville dumped -- I think you said a million acre-feet
20 of water on everybody down river.

21 MS. DES JARDINS: And let's go to the next
22 page, please. And was this another view of Snug
23 Harbor?

24 WITNESS SUARD: Yes. It's -- and I know it
25 sounds really weird, but Snug Cove is at the bottom,

1 and then you can see a little bit of our land is still
2 above water. And then there's -- the land is just
3 covered water. And you can see the other edge.

4 And what was really important about this
5 particular one, instead of the water coming up and
6 going down during tides, it stayed for weeks. And it
7 waterlogged the trees. And we lost so many trees. And
8 trees fell on structures and fell on docks.

9 And of course we had to shut down, and we
10 couldn't operate. Everybody had to go.

11 MS. DES JARDINS: What were your losses?

12 WITNESS SUARD: You know, to date, because of
13 damage to our banks and damage to trees, I'm estimating
14 it's coming close to 300,000.

15 MS. DES JARDINS: Thank you. Can we go to
16 Page 16.

17 So Ms. Suard, at the bottom right here -- so
18 you show the proposed Cache Slough, Yolo Bypass
19 restoration area. And at the center there in blue, I
20 believe it's Liberty Island?

21 WITNESS SUARD: Yes.

22 MS. DES JARDINS: And to the right in orange
23 is Prospect Island?

24 WITNESS SUARD: Yes.

25 MS. DES JARDINS: And Prospect Island, they're

1 planning to flood?

2 WITNESS SUARD: Well, they did.

3 MS. DES JARDINS: They have flooded it
4 already?

5 WITNESS SUARD: Yes, just like Liberty Island
6 was flooded. These are examples of restoration
7 projects that have been done or are in middle of being
8 done. A bunch of Prospect Island was flooded in 2017.
9 Makes sense, you know, a very high flow winter. I've
10 been using a drone to track what's been going on there
11 for quite a few years.

12 MS. DES JARDINS: Are you concerned that the
13 island right next to Ryer Island is flooded now?

14 WITNESS SUARD: Yes, it -- it was brought up
15 in other people's testimony that, when you flood one
16 island, it kind of creates a hydraulic pressure. And
17 it actually impacts the -- the groundwater level. And
18 you can actually a little bit raise the groundwater
19 level. And it can happen kind of in the whole area.

20 I know we were impacted when they started
21 doing their work at Liberty Island.

22 MS. DES JARDINS: So in addition to changing
23 groundwater levels, it also affects the hydrodynamics
24 of how flows happen around Ryer Island?

25 WITNESS SUARD: Yes. In particular, the

1 whole -- when the flows are coming down the
2 Yolo Bypass -- and this is an example of impacts to
3 humans, impacts to my business. There were other
4 businesses around there that have been impacted.

5 But the flows coming down the Yolo Bypass can
6 then switch and go up Steamboat Slough. So we'll have
7 flows coming down Steamboat Slough; some of the Yolo
8 Bypass flows go up Steamboat Slough. There's an area
9 where there's been restoration along Steamboat Slough.
10 And everything kind of backs up there and then pushes
11 onto Snug Harbor.

12 So that's why we've had a -- compared to the
13 record since 1945 of, you know, flooding maybe once
14 every 10 or 11 years to now flooding maybe 2.8 years --
15 and I shouldn't say flooding because high water rises.
16 It's not rushing; it's not scary. It just rises and
17 sits there. And we've had a lot more of it.

18 MS. DES JARDINS: So all these projects are
19 being implemented as mitigation for the impacts of the
20 State Water Project and Central Valley Project,
21 correct?

22 WITNESS SUARD: I don't know why all the
23 projects are being implemented. I do know that quite a
24 few of them were listed under the Bay-Delta
25 Conservation Plan, which is why I brought up a lot of

1 that. And I know that those projects, as being
2 implemented, was impacting my property, which is the
3 reason why I offered boat rides to people like the
4 director of DWR to see how it's impacting us and why.

5 MS. DES JARDINS: And your concern -- and you
6 would like to see some cumulative analysis of these
7 restoration projects, current and future, with the
8 WaterFix, correct, with the actual project before the
9 Board?

10 WITNESS SUARD: I would -- you know, I think
11 that prudent persons would want to make sure that these
12 projects actually work. And have studies to look at
13 impacts to people. And you know, I really -- I have
14 been questioning the actual outcomes of some of these
15 projects because I can see them.

16 And the only one I did talk about was the fish
17 screens because I suspect fish screens don't quite work
18 as --

19 MS. DES JARDINS: Let's just go on. I'm
20 trying not to get into other things. So let's pull up
21 DDJ-288, please. It's on the stick. And it's under
22 "Nicky Cross" -- "Snug Harbor Cross," there we go.
23 Yeah.

24 And Ms. Suard, this is just a very simple
25 graphic. You did mention the Oroville spillway crisis.

1 And I just wanted to ask you a little bit about your
2 understanding. So let's --

3 CO-HEARING OFFICER DODUC: Ms. Ansley.

4 MS. ANSLEY: I have two objections. There may
5 be some foundation laid with the next question. I know
6 that Ms. Suard has testified as to impacts from what
7 she perceives as the Oroville Dam crises, as alleged
8 here.

9 I'm not sure she's familiar with this
10 timeline, this document. I will also note that this
11 document sources Wikipedia. So I definitely have
12 concerns regarding the accuracy and authenticity of
13 this document.

14 I don't believe that anything from Wikipedia
15 is self-authenticating. And we have no idea who
16 created this document.

17 So unless Ms. Des Jardins can provide some
18 fundamental facts about this timeline of what is
19 characterized as the Oroville Dam crisis, there's no
20 way to check it.

21 CO-HEARING OFFICER DODUC: Let's let
22 Ms. Des Jardins proceed. You may include this in part
23 of your written objection/motion if you'd like.

24 MS. ANSLEY: Even though it's a DDJ exhibit?

25 MS. DES JARDINS: Yes, I just wanted to ask.

1 So is it your understanding -- this says that
2 on February 7, 2017, the main spillway at Oroville
3 failed.

4 WITNESS SUARD: The spillway -- I think it
5 started to spill and then had a bigger spill. I don't
6 know the exact timing. I just know that all of a
7 sudden we got a huge amount of water.

8 And we were told it wouldn't reach our area of
9 the Delta until about 12 hours. And I think it took
10 about eight. And since then, those maps showing the
11 flow requirements have changed. They've been
12 corrected. But when you're down --

13 MS. DES JARDINS: Ms. Suard, I'm not asking
14 you about Oroville spillway maps.

15 WITNESS SUARD: Okay.

16 MS. DES JARDINS: I wanted to know, so it does
17 show that the emergency spillway was used?

18 WITNESS SUARD: Yes.

19 MS. DES JARDINS: And that was -- and that the
20 potential risks -- let's look over on the right. The
21 potential risks were that erosion on the spillway, if
22 it reached the top, it could cause the weir gate to
23 fail?

24 WITNESS SUARD: Yes. And I realize they had
25 to let to water go to save all the people below

1 Oroville.

2 MS. DES JARDINS: The concern -- so 200,000
3 people were evacuated because they were concerned about
4 the -- the erosion undermining the weir, correct?

5 WITNESS SUARD: That 200,000 people was only
6 the people from Oroville and Marysville. That doesn't
7 count all the people of the Delta that evacuated or the
8 people in West Sacramento that weren't warned to be
9 ready. There was a lot more people --

10 MS. DES JARDINS: Okay. So did the people on
11 Ryer Island evacuate?

12 WITNESS SUARD: Yes.

13 MS. DES JARDINS: And did people on Snug
14 Harbor evacuate?

15 WITNESS SUARD: Yes.

16 MS. DES JARDINS: Were you very concerned
17 about what would happen if the weir did fail and that
18 flood water came down?

19 WITNESS SUARD: Absolutely.

20 MS. DES JARDINS: And let's look up there at
21 2005, where it says "Upgrade Proposal Rejected."

22 Are you aware -- let's zoom in on that.

23 Are you aware that there was a request by
24 community groups to upgrade the emergency spillway to
25 concrete liner so that this very scenario would

1 wouldn't happen?

2 WITNESS SUARD: I didn't get that from
3 Wikipedia, but did I read about that. I read about
4 which groups. It was all over the news, you know.

5 MS. DES JARDINS: Yeah, so did that give you
6 the feeling that DWR didn't value your safety,
7 public -- safety of people in -- below?

8 WITNESS SUARD: Absolutely. But even more so
9 were the people from DWR. The engineers saying, "Oh,
10 no problem, we got this." And, you know, 18 hours
11 later, we're flooded out.

12 MS. DES JARDINS: And so --

13 WITNESS SUARD: Mr. Countryman, I think, was
14 the person talking on the media.

15 (Reporter interruption)

16 WITNESS SUARD: He was on the news
17 representing DWR, saying, "No, we don't think there's
18 going to be a problem." I think that was the name.
19 Maybe I shouldn't say names, but I know for sure it was
20 on the news.

21 MS. DES JARDINS: So you were given -- there
22 was very little notice given, advance notice given that
23 there was a problem, correct?

24 WITNESS SUARD: Snug Harbor in particular was
25 given no telephone notice. Normally we would get that

1 if we are going to flood. I watch the CDEC very, very
2 closely. There's maps that tell you when a certain
3 waterway up river of us is at flood level or warning
4 level or things like that.

5 This was a sudden flood for everybody. So we
6 did not get a telephone warning. We usually will know
7 at least 24 in advance if we're going to get high
8 water. This wasn't high water. This was really high
9 water, very different than anything we've experienced.

10 MS. DES JARDINS: And so that's reflected in
11 your testimony.

12 Okay. Next I'd like to go --

13 CO-HEARING OFFICER DODUC: Do you have much
14 more?

15 MS. DES JARDINS: Just a little bit more.

16 CO-HEARING OFFICER DODUC: Ms. Ansley, please
17 just put your objection to this cross-examination in
18 writing by noon Monday.

19 MS. ANSLEY: I'm happy to put this in writing.
20 For the record, out loud, though, I'd like to object to
21 Oroville Dam spillway issues as outside the scope and
22 relevance.

23 CO-HEARING OFFICER DODUC: Understood.

24 MS. DES JARDINS: She --

25 CO-HEARING OFFICER DODUC: And you may have

1 until Wednesday noon to respond to her. Move on.

2 MS. DES JARDINS: So Ms. Suard, does this make
3 you concerned about how DWR might handle safety issues
4 during construction of the WaterFix?

5 WITNESS SUARD: Yes. DWR tends to ignore us.
6 Because -- I've been one that has brought up things.
7 DWR also tends to hire contractors to do the work, and
8 then they say "go talk to the contractor," and it's
9 very hard to find someone to talk to. That's been my
10 experience already.

11 MS. DES JARDINS: Did you look into recovering
12 any of the money for damages flood damages to your
13 property because of the Oroville incident?

14 WITNESS SUARD: I have started looking into
15 it, but a couple of the attorneys -- and I don't know
16 that that's an issue that I can't do yet or -- you
17 know, a lot of attorneys have said that when you sue
18 DWR, you have to plan to spend a million dollars suing
19 them because they're never going to admit to anything.

20 MS. DES JARDINS: Thank you. So I'd like to
21 pull up SHR-253, please. Oh, I'm sorry -- 2-251,
22 please. And I'd like to go to Page 8, please.

23 You're going to have to be quick, but
24 Ms. Suard, on the right here, is this microcystis
25 blooms?

1 WITNESS SUARD: No, this is an area that --
2 there's been some duck weed on top of it. I'm not sure
3 that it was ever called microcystis blooms or anything
4 like that. This is an example of what happens when you
5 have low flow, when the Delta is operated in drought
6 conditions.

7 This is just one marina. This is mine. We
8 lose a lot of boaters when this happens. All of the --

9 MS. DES JARDINS: Can we go to the next page,
10 please, Page 9.

11 WITNESS SUARD: Here's another marina. This
12 one had water hyacinth. You can see that it gets
13 clogged up. When there's low flows, the water
14 temperatures raise, and these weeds go nuts.

15 MS. DES JARDINS: And Page 10, please.

16 WITNESS SUARD: Okay. This is over by Tower
17 Park. This is also considered the North Delta. This
18 is along the Mokelumne River. There's a lot of flow
19 along the Mokelumne River, but again, the water
20 temperatures were so high that it allowed this type of
21 water weed to grow.

22 MS. DES JARDINS: Page 11, please.

23 WITNESS SUARD: And I do have to say, the
24 State's been trying to treat it, and the treatments
25 haven't fully affected it.

1 Snodgrass Slough, I believe that was entirely
2 covered. I do want to note that there's good flow
3 going under here. I checked the flow, and yet the
4 cover was pretty striking. You can't go boating here.
5 This clogs engines.

6 MS. DES JARDINS: Okay. I think -- let's go
7 to the next page, but I think since it's 4:58 that's
8 going to have to --

9 CO-HEARING OFFICER DODUC: That means,
10 Ms. Meserve, if you have redirect, she'll have to come
11 back tomorrow.

12 WITNESS SUARD: This is the county park. And
13 again, there's -- low flows mean higher temperatures,
14 which grows invasive water weeds which impact boating.

15 MS. DES JARDINS: Okay. Thank you. That
16 concludes my questions.

17 CO-HEARING OFFICER DODUC: All right. We are
18 in adjournment.

19 MS. MESERVE: We are done with the case in
20 chief, and we will submit the evidence and deal with
21 evidentiary issues next week.

22 CO-HEARING OFFICER DODUC: Thank you.

23 (Whereupon, the proceedings recessed
24 at 4:59 p.m.)

25

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
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9 That I took down in machine shorthand notes all
10 morning 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
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16 proceedings had and testimony taken;

17 That I am not a party to the action or related to
18 a party or counsel;

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22 Dated: April 26, 2018

23

24

25

Candace L. Yount, CSR No. 2737

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) ss.
2 COUNTY OF MARIN)

3 I, DEBORAH FUQUA, a Certified Shorthand
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11 I further certify that I am not of counsel
12 or attorney for either or any of the parties in the
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16 Dated the 26th day of April, 2018.

17

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20 CSR NO. 12948

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