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BEFORE THE
CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

CALIFORNIA WATERFIX WATER)
RIGHT CHANGE PETITION)
HEARING)

JOE SERNA, JR. BUILDING

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

COASTAL MEETING ROOM

1001 I STREET

SECOND FLOOR

SACRAMENTO CALIFORNIA

PART 2 REBUTTAL

Thursday, August 2, 2018
9:30 A.M.

VOLUME 35
Pages 1 - 281

Reported By: Deborah Fuqua, CSR No. 12948
(a.m. session)
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(p.m. session)

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Felicia Marcus, Chair and Co-Hearing Officer:

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7 Staff Present

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1 Thursday, August 2, 2018 9:30 a.m.

2 PROCEEDINGS

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4 CO-HEARING OFFICER DODUC: All right. Good
5 morning, everyone. It is 9:30. Welcome back to this
6 hearing on the Joint Water Rights Change Petition for
7 the California WaterFix project.

8 I am Tam Doduc, State Water Board Member and
9 Co-Hearing Officer. To my right is Board Chair and
10 Co-Hearing Officer Felicia Marcus. To the Chair's
11 right is Board Member Dee Dee D'Adamo. To my left are
12 Senior Staff Attorney Andrew Derringer, Supervising
13 Staff Engineer Connie Mitterhofer, and Senior Staff
14 Engineer Jean McCue. We also have Mr. Hunt and
15 Ms. Rasis -- welcome -- to assist us today.

16 I see lots of familiar faces but some new
17 ones, so we'll spend some time going over three very
18 important general announcements.

19 First of all, please take a moment and
20 identify the exit closest to you. In the event of an
21 emergency, an alarm will sound; we will evacuate this
22 room. Please take the stairs, not the elevators, down
23 to the first floor and exit, meeting up in the park
24 across the street.

25 If you're not able to use the stairs, please

1 flag down one of the security people wearing
2 fluorescent-colored vests and caps, and they will
3 direct you to a protected area.

4 Secondly, this hearing is being recorded and
5 webcast, so please speak clearly into the microphone
6 after making sure that the button is pushed and the
7 green light is on. And please begin by stating your
8 name and affiliation.

9 Our court reporter is back with us today and
10 will prepare a transcript for this hearing. The
11 transcripts for the rebuttal phase of Part 2 will be
12 posted on the website, on our WaterFix hearing website,
13 after completion of Part 2. If you'd like a copy
14 sooner, please make arrangements with the court
15 reporting service.

16 Finally and most importantly, as you all know
17 by now, take a moment and make sure that all of your
18 noise-making devices -- I'm staring especially at the
19 repeat offenders, Ms. Aufdemberg -- and make sure that
20 it's on silent, vibrate, do not disturb.

21 Okay. As usual, we will -- for planning
22 purposes, we will take a 10- or 15-minute break in the
23 morning as well as another in the afternoon, and we
24 will take a 60-minute break for lunch or longer on days
25 when we need to have a meeting with the hearing team or

1 we have closed session. We will also be adjourning no
2 later than 5:00 o'clock -- trying to be more humane
3 this time around.

4 All right. I have a long list of procedural
5 items I need to read. For all of those -- and I thank
6 you; I don't see anyone lining up at the microphone
7 just yet; please hold your horses. If I don't cover
8 your issues during this long script that I'm about to
9 read, there will be a housekeeping item at the end.

10 All right. So in late April, we concluded the
11 cases in chief portion of Part 2. Parties submitted
12 written rebuttal testimony and other evidence on or
13 before July 13th. Beginning today, witnesses for the
14 Petitioners and other parties participating in Part 2
15 will have an opportunity to concisely summarize their
16 written rebuttal testimony. Cross-examination of
17 rebuttal witness by other parties will follow.

18 As a reminder, rebuttal evidence is limited to
19 evidence that is responsive to evidence presented in
20 connection with another party's Part 2 case in chief,
21 and it does not include evidence that should have been
22 presented during the case in chief of the parties
23 submitting rebuttal evidence. It also does not include
24 repetitive evidence. And when we say "evidence
25 presented in connection with another party's Part 2

1 case in chief," that includes cross-examination of that
2 party's witnesses.

3 In accordance with previous rulings, parties
4 may present evidence during the rebuttal phase of
5 Part 2 that is relevant to Part 1 issues, provided that
6 the evidence is responsive to evidence presented in
7 connection with another party's Part 2 case in chief.

8 In addition, the parties may present evidence
9 that is responsive to DWR's EIR supplement, even if
10 that evidence touches on matters not directly raised
11 during the case in chief phase of Part 2.

12 Everyone got that? Okay. All right.

13 Any objections to the admissibility of
14 rebuttal testimony that we did not address in our July
15 27th ruling and any objections to the admissibility of
16 any other rebuttal exhibits must be made at or before
17 the time when the exhibits are moved into evidence.
18 Any such objections should be consistent with the
19 reasoning provided in our July 27th, ruling.

20 For the sake of efficiency, we ask that
21 parties lodging any objections to the admissibility of
22 rebuttal testimony make every effort to do so before
23 the witness in question begins presenting his or her
24 testimony.

25 And this last bit is very important. As a

1 reminder, objections that go to the weight of the
2 evidence should be reserved for closing briefs.

3 All right. Order of proceeding. As you know
4 by now, presentation of each party's rebuttal evidence
5 will begin with an oral summary of rebuttal testimony
6 for each witness or panel of witnesses and
7 cross-examination. We may allow redirect examination
8 upon a showing of good cause and recross-examination.

9 After each party's rebuttal witnesses have
10 been subject to cross-examination and any redirect and
11 recross, the parties should move to have their rebuttal
12 testimony and exhibits accepted into the evidentiary
13 record.

14 When called to testify, witnesses should begin
15 by stating whether they have taken the oath, and I will
16 administer it, if necessary. Witnesses should then
17 proceed to identify their written rebuttal testimony as
18 their own and affirm that it is true and correct. I
19 will emphasize again that witnesses should summarize
20 the key points in their written testimony and should
21 not read their written testimony into the record.

22 When admitted into evidence, written testimony
23 will be part of the hearing record that we will rely on
24 in informing our decision. In no event may a rebuttal
25 witness present oral rebuttal testimony that goes

1 beyond the scope of their written rebuttal testimony.

2 All right. You know that oral summary is
3 limited to 15 minutes per witness. Each party may
4 distribute their total allotted time among their
5 witnesses as they see fit. For example, Petitioners
6 are offering 20 rebuttal witnesses; they will have five
7 hours to summarize their rebuttal testimony. Do not
8 feel the need to take up all five hours. They may use
9 this time however they wish but shall not have more
10 time without good cause and our approval.

11 With the exception of Dr. Susan Paulsen,
12 Thomas Stokely, and Dr. Shankar Parvathinathan --
13 apologies, Doctor -- who submitted different testimony
14 on behalf of different groups of parties, witness
15 representing more than one party will not be allowed
16 more than 15 minutes by virtue of the fact that they
17 are representing more than one party. Again, we expect
18 the parties to adhere to the time limits unless we
19 approve an extension.

20 All right. Rebuttal testimony will be
21 followed by cross-examination and then, if necessary,
22 by questions from us. Parties will cross-examine
23 witness panels one panel at a time. And please note
24 that the scope of cross-examination on rebuttal is
25 limited to the scope of the witnesses' rebuttal

1 testimony. Each party will be limited to one hour of
2 cross-examination per witness or panel of witnesses.
3 We may, upon a showing of good cause, allow additional
4 time for cross-examination. But we expect, as always,
5 all parties to be efficient in their cross-examination.

6 After completion of rebuttal and cross, we may
7 allow for redirect and recross. The presentation of
8 rebuttal will proceed in accordance to the order of
9 presentation provided to the parties yesterday. There
10 are additional copies at the back of the room.

11 The parties will conduct cross-examination and
12 any recross in same order as in the case in chief phase
13 of Part 2.

14 Unless any party objects, I will skip reading
15 the list of parties who are presenting rebuttal
16 testimony.

17 All right. Thank you for not objecting.

18 I do ask that, if there are any are errors on
19 the order of presentation, that you raise them now.

20 (No response)

21 CO-HEARING OFFICER DODUC: All right. Not
22 seeing any -- all right. Let me address one thing now,
23 before we move to housekeeping. I see -- oh. I'm
24 sorry. People are coming up.

25 Is this with respect to the order of

1 proceeding?

2 MS. TABER: Yes, it is.

3 CO-HEARING OFFICER DODUC: All right,

4 Ms. Taber.

5 MS. TABER: Good morning, Chair Doduc.

6 It's not exactly an error in the order of
7 presentation but a concern about the availability of
8 witness and a proposal for a change related to Group --
9 what you've identified as Groups 4, 5, and 6, Regional
10 Sanitation District, City of Stockton, City of Antioch.

11 As we noted in our correspondence, Dr. Paulsen
12 is out of the country and won't be able to attend until
13 August 10th. We are concerned that, if the hearing
14 moves quickly, we might get to that group before the
15 10th. Therefore -- well, we're proposing to switch our
16 order with North Delta Water Agency, which is Group 20.

17 Mr. Aladjem and I have conferred about that,
18 and North Delta Water Agency would be prepared to go in
19 the spots where Regional San, Stockton, Antioch are
20 currently scheduled. And that would be those three
21 groups after Group -- current Group 19.

22 CO-HEARING OFFICER DODUC: Are you proposing
23 to make the switch now or to make the switch only if we
24 move quicker than expected?

25 MS. TABER: We're happy to wait. I just

1 wasn't sure we'd be able to give the three days'
2 advance notice that you requested in the ruling.

3 CO-HEARING OFFICER DODUC: Ah. Any objections
4 to the switch now?

5 (No response)

6 CO-HEARING OFFICER DODUC: All right. We'll
7 go ahead and do the switch now.

8 MS. TABER: Thank you very much.

9 CO-HEARING OFFICER DODUC: Keep in mind that
10 we will not be, like we did before, continuously
11 updating this order of presentation based on everyone's
12 requested changes. So you will be responsible for
13 keeping track of the changes.

14 But, Ms. Taber, we will switch North Delta
15 Water Agency and Groups 13, 22, 27.

16 All right. Any other issue with order of
17 proceeding?

18 (No response)

19 CO-HEARING OFFICER DODUC: Then let me -- I
20 see Mr. Bezerra here and Mr. Mizell. So let's get to
21 the Sacramento Valley Water Users' motion to admit
22 modeling results from DWR into evidence.

23 Just a summary. During the case-in-chief
24 phase of Part 2, the Sacramento Valley Water Users
25 issued a subpoena to DWR for certain modeling results,

1 and DWR moved to quash the subpoena.

2 Our May 21st ruling disposed of the matter by
3 instead relying on our authority to require
4 supplemental information of the Petitioner and
5 directing DWR to provide the subpoenaed information by
6 June 4th. It appears that they did. However, our
7 prior ruling did not say anything about whether or when
8 that modeling information would be admitted into
9 evidence.

10 The Sacramento Valley Water Users now move
11 that we admit those modeling results into evidence, a
12 motion that Ms. Des Jardins has joined and DWR has
13 opposed. Before we rule on this motion, I think we
14 need a little bit of clarification from both parties.
15 So let's start with Mr. Mizell.

16 Mr. Mizell, why is DWR objecting to admitting
17 its own modeling data into the evidentiary record for
18 matter?

19 MR. MIZELL: Well, I'd like to go back to what
20 the Department stated at the time that the subpoena was
21 issued. What was produced is not a complete set of the
22 modeling results. Those were actually submitted by DWR
23 in the modeling results files, and those were provided
24 as exhibits and admitted into evidence.

25 What was produced for the Sacramento Valley

1 Water Users is a subset of that modeling data. In
2 addition, it was an analysis of the modeling results in
3 the form that they requested, which was a differential
4 analysis showing the comparison between No Action
5 Alternative and H3+. So it was not only not strict
6 modeling results -- they were a subset of what we had
7 already provided to the parties -- but it was also
8 essentially building the analysis they wanted and
9 presenting that.

10 So for that evidence to come in, it -- I
11 believe what the Department's position is is it is not
12 simply submitting modeling results. It's submitting
13 modeling -- a subset of modeling results and analysis
14 that we were ordered to produce for another party.

15 So I don't believe that the basis for the
16 request to admit it into evidence is complete. I think
17 that the characterization is misstated. If Sacramento
18 Valley Water Users wish to see a complete set of
19 modeling results, those are in the record. And I
20 believe my opposition to the motion states which
21 exhibits those are. And so it would be duplicative at
22 this point to admit them as modeling results.

23 That exists -- there is an exhibit number
24 assigned, and they were admitted into evidence.

25 CO-HEARING OFFICER DODUC: I think that

1 basically summarized the written opposition you filed.

2 Let me see if I can request additional clarifications.

3 The Sac Valley Water Users did initially make
4 that request. But that order for you to provide the
5 data came from us. It came from us because we believed
6 it would be helpful to not just Sac Valley but other
7 parties as well as to us.

8 You did the analysis; you submitted the data;
9 you did it based on your modeling data and your
10 modeling activities and your results.

11 So again I ask: Why is it that you are
12 objecting to the admission of your own analysis that
13 was done at our order?

14 MR. MIZELL: Part of the reason why we're
15 objecting is that on a -- another exhibit that was also
16 ordered because it would be helpful to the Hearing
17 Officers and it was simply an analysis of existing
18 material in the record, Sacramento Valley Water Users
19 objected because it was produced at a time when it
20 wasn't available for cross-examination by the other
21 parties. And so in that opposition to our other
22 exhibit, you upheld that reasoning to exclude it from
23 evidence.

24 I see no distinction between the DWR-1143
25 original chart that we produced because it was helpful

1 and these modeling results. We're not disputing the
2 accuracy of the results. The results are what the
3 modeling files show. So that's not the point.

4 The point is that, in one case, there was a
5 procedural question drawn about the entry of DWR-1143
6 because of the timing in which it was produced, at your
7 order, for the assistance to you to understand the
8 case.

9 It's the same case here with these modeling
10 results. They were produced to be helpful, but the
11 timing is no different. And therefore, to be
12 consistent with the previous ruling, we think that the
13 modeling results should be excluded from the
14 evidentiary record. It's not a matter of accuracy;
15 it's a matter of procedure.

16 CO-HEARING OFFICER DODUC: All right. I see
17 Ms. Morris. Did you wish to add to Mr. Mizell's
18 clarification?

19 And then I will turn to others out there to
20 see if they have additional questions for Mr. Mizell.

21 MS. MORRIS: This is very brief.
22 Stefanie Morris for the State Water Contractors.

23 We would join in the objection. The issue
24 isn't the modeling, as Mr. Mizell already stated. It's
25 really the analysis; it's the format. Modeling results

1 can be presented in many different ways, and we
2 disagree fundamentally with the script that was
3 provided by Sac Valley Water Users and that we had to
4 provide the information based on that script.

5 We fundamentally disagree that the modeling
6 results should be looked at that way. And we presented
7 the modeling results in a way that we believe is the
8 appropriate way to look at those modeling results. So,
9 in a way, you're asking a party to change their
10 evidence -- it's the same basic data -- and to present
11 it in a way that they fundamentally disagree with. And
12 that's the basis of my objection.

13 CO-HEARING OFFICER DODUC: Thank you. Let's
14 ask Mr. Bezerra to come up. Mr. Mizell raised the
15 issue of timing. And that actually was also something
16 that I was going -- that I plan on raising with you.
17 I'm a little bit puzzled as to the timing of your
18 motion.

19 Why move this modeling into evidence now,
20 outside of the ordinary process outlined in our hearing
21 procedures? You've had it since June 4th, before
22 rebuttal exhibits were due.

23 MR. BEZERRA: Yes. Thank you very much. It's
24 a pretty simple matter. It's to enable appropriate
25 cross-examination of rebuttal evidence. As you know,

1 throughout this proceeding, we have had difficulty in
2 attempting to cross-examine Petitioners' modelers about
3 their modeling results. In multiple instance, they
4 have denied any knowledge of modeling results that we
5 have extracted from the complete modeling files that
6 they have presented.

7 This occurred once again in cross-examination
8 of Mr. Reyes in Part 2 case in chief when he denied
9 knowledge of modeling results that actually Ms. Parker
10 now wants to present extensive rebuttal evidence about.
11 So our logic simply was, if this is information that's
12 helpful to the Board and the Board ordered it as a
13 supplement to the petition information, it is
14 appropriate to have just the basic modeling results,
15 month by month; people can use them in evidence in
16 cross-examination.

17 And moving them into evidence as an exhibit
18 clarifies the record so that everybody can rely on one
19 exhibit and we're not having to ask Petitioners'
20 modelers yet again whether or not they have knowledge
21 of their own modeling results.

22 It's just a simple matter of efficiency in the
23 hearing. The petition itself, of course, is an exhibit
24 in the hearing. The Board ordered this information as
25 a supplement to the petition pursuant to your statutory

1 authority. So it would seem to make perfect sense for
2 the Board to add this supplement to the petition into
3 the record as an exhibit given that the petition itself
4 is an exhibit, and it also will just help everybody
5 move forward with cross. Thank you.

6 CO-HEARING OFFICER DODUC: So, Mr. Bezerra,
7 since you want to be so helpful, why did you not
8 include it in your rebuttal exhibits?

9 MR. BEZARRA: Because, frankly, we thought it
10 would make a lot more sense just to rely on what the
11 Petitioners produced. Why have a dispute between our
12 witnesses and their witnesses and --

13 CO-HEARING OFFICER DODUC: No, no, no. Why
14 not move the exhibit -- move into the record the
15 modeling data that you motioned us to move, why not
16 include that as part of your rebuttal exhibits before
17 the deadline?

18 MR. BEZERRA: Because we weren't offering a
19 witness to authenticate those results. The
20 authentication of --

21 CO-HEARING OFFICER DODUC: But sponsoring
22 testimony is not required for exhibits.

23 MR. BEZERRA: You do have an evidentiary
24 matter of where did these documents come from. And
25 since they came directly from the Petitioners at

1 directly the State Board's order, it makes more sense
2 to use that line of evidence and orders as an
3 authentication of the modeling results as opposed to
4 having someone else have to testify about how they
5 derived them or where they found them. It seems like a
6 pretty simple matter since it's supplemental to the
7 petition.

8 CO-HEARING OFFICER DODUC: Any other responses
9 you want to provide based on what Mr. Mizell and
10 Ms. Morris said?

11 MR. BEZERRA: No, not at the moment. I will
12 have a related request when we get to housekeeping.

13 CO-HEARING OFFICER DODUC: Anyone else wish to
14 add to what Mr. Bezerra has voiced? Mr. Aladjem?

15 MR. ALADJEM: Dave Aladjem, Sacramento Valley
16 Water Users. I just have one point very quickly,
17 Madam Chair.

18 Mr. Mizell made the point of distinguishing
19 our initial subpoena request and saying these should
20 not be moved into evidence.

21 This is different because it's a Board
22 request. That is an important difference that we need
23 to acknowledge here, as Mr. Bezerra said.

24 CO-HEARING OFFICER DODUC: Ms. Des Jardins?

25 MS. DES JARDINS: I'm not sure that I --

1 CO-HEARING OFFICER DODUC: I'm not sure your
2 microphone is on.

3 MS. DES JARDINS: Oh. Deirdre Des Jardins,
4 California Water Research.

5 I am not sure that I formally joined in their
6 motion. But I --

7 CO-HEARING OFFICER DODUC: You did, twice.

8 MS. DES JARDINS: Okay. Okay.

9 I was stunned when I extracted one of the
10 modeling components and when they objected to the
11 authenticity and as not being authenticated. There
12 have been repeated difficulties with the modeling
13 exhibits in the form they were provided. You have to
14 do some work extracting them; they're not human
15 readable. Even the parts that are human readable, you
16 have to extract --

17 CO-HEARING OFFICER DODUC: Ms. Des Jardins, I
18 believe this is going beyond the motion that the Sac
19 Valley Water Users made, which --

20 MS. DES JARDINS: Well, you have --

21 CO-HEARING OFFICER DODUC: -- which is the
22 only thing I am focused on right now.

23 MS. DES JARDINS: Okay. So the issue is I
24 believe they are correct in that having this subset of
25 data in the record in the form that both the parties

1 and Hearing Officers and Hearing Team can read and
2 examine is important.

3 CO-HEARING OFFICER DODUC: Thank you. Hence
4 your joinder in their motion?

5 MS. DES JARDINS: Yes.

6 CO-HEARING OFFICER DODUC: All right.

7 Mr. Herrick, I see, is coming up. The always
8 concise and efficient Mr. Herrick.

9 MR. HERRICK: Thank you. John Herrick for
10 South Delta parties. I would just join in the motion.
11 I think Mr. Bezerra succinctly described the difficulty
12 the parties have had with examination of Petitioner
13 witness with regard to modeling issues. And I think
14 this would be very helpful, and it's appropriate to
15 allow it in.

16 CO-HEARING OFFICER DODUC: Mr. Mizell, did you
17 have anything final to add?

18 MR. MIZELL: I think I'd just like to make one
19 last additional point, which is the notion that our --
20 the Department's witnesses, particularly Mr. Reyes,
21 will be willing to adopt the analysis that was ordered
22 by virtue of the Sacramento Valley Water Users script
23 is unlikely, whether or not this is in evidence.

24 It's incumbent upon the Sacramento Valley
25 Water Users to put forth their own case in chief and

1 their own rebuttal evidence and their own witnesses to
2 authenticate their analysis.

3 Our modelers have repeatedly answered
4 questions about their way of characterizing the
5 modeling data as being not our way of characterizing
6 the modeling data. That's not going to change with the
7 entry of this exhibit into evidence.

8 And frankly, because it is analysis, it's not
9 particularly helpful for all parties unless all parties
10 agree that the Sacramento Valley Water Users' way of
11 looking at the world is the accurate way of looking at
12 the world. And our witnesses aren't on that same page.

13 So I don't believe that it is helpful, as
14 Mr. Bezerra would point out, and procedurally, again,
15 not particularly prudent. Thank you.

16 CO-HEARING OFFICER DODUC: Further questions?

17 Hold on, Mr. Mizell.

18 CO-HEARING OFFICER MARCUS: Yes, hold on.

19 just humor me for just a minute.

20 Can you give me an example of a different way
21 of looking at the world? I hear that not wanting --
22 not liking the script or -- I'm just having trouble
23 understanding what in the analysis -- maybe if it were
24 in, we wouldn't be having this conversation. But I'm
25 having trouble understanding what about it is

1 objectionable. And it may just be we've had too long
2 of a break, and if I went back and read all the
3 transcripts, I'd be right on this one.

4 But it's -- this first morning, it's eluding
5 me. So if you could illuminate it, then it would help
6 me think about it.

7 MR. MIZELL: Certainly. So what has occurred
8 in the past, under my recollection, is that our
9 modeling witness have been asked whether or not they
10 should be looking at the data on a month-by-month
11 comparison, September of 1983 to September of 1983
12 under the No Action Alternative and the California
13 WaterFix H3+ scenario.

14 And our modeling witnesses have indicated that
15 the more appropriate way to look at these model results
16 are in exceedance plots. And if you recall, that's
17 what these line graphs are that look like a curve. And
18 our modelers have repeatedly presented the material in
19 that form.

20 Mr. Bezerra's tables do it on a month-by-month
21 comparison. So I don't believe that this exhibit's
22 going to further clarify or resolve the disagreement
23 between our modelers and -- and the Sacramento Valley
24 Water Users perspective.

25 So the most efficient way to go about

1 discovering that perspective is for the Sacramento
2 Valley Water Users to present their own experts to
3 explain their view of the world and let our experts
4 explain our view of the world. And then that presents
5 you clear information on both sides of the camp, and
6 you can make your determination based upon it.

7 CO-HEARING OFFICER DODUC: But you would agree
8 that Sac Valley Water Users, or any other parties, for
9 that matter, could use the analysis to cross-examine
10 your witnesses?

11 MR. MIZELL: I believe that the
12 cross-examination exhibits that have been used
13 previously are not necessarily exhibits that have been
14 previously entered into the record. So I don't believe
15 that there's any necessity for this exhibit to be
16 entered into evidence only to be used on
17 cross-examination during rebuttal. So it's not a
18 prerequisite that this go into the record for them to
19 try and cross-examine our witnesses on it.

20 Now, they may not be satisfied with the
21 answers they get precisely for the reasons that I've
22 just outlined.

23 CO-HEARING OFFICER DODUC: Any other follow-up
24 questions?

25 CO-HEARING OFFICER MARCUS: No, that's all.

1 CO-HEARING OFFICER DODUC: All right. I see
2 Mr. Bezerra and Mr. Aladjem standing up now. I do want
3 to get to rebuttal at some point today.

4 MR. BEZERRA: Yes, this is pretty brief.

5 So first of all, in Part 1, we did exactly
6 what the Department is requesting we do. We presented
7 witnesses with exactly this sort of documentation and
8 model results, and they moved to strike them out of the
9 record as improper rebuttal.

10 Now, the Board denied that motion, but it
11 seemed a whole lot more efficient to simply subpoena
12 them -- and especially when the Board ordered their
13 production in order to assist the Board under your
14 statutory authority. It just seemed a whole lot more
15 efficient to simply rely on the modeling results
16 produced by Petitioners.

17 Second, the entire argument essentially breaks
18 down to, "We shouldn't have to have our witnesses
19 testify about an analysis they don't agree with." And
20 that is simply contrary to all law regarding the
21 cross-examination of experts.

22 You are allowed to cross-examine experts on
23 the basis of their opinions. And of course, the
24 month-by-month modeling results are the basis for all
25 exceedance charts produced by Petitioners for all

1 water-year-type results produced by Petitioners. The
2 fact that they don't want to show you month-by-month
3 results does not mean we should not be able to ask them
4 questions about it and require that information be in
5 the record.

6 And that's all we did was ask for
7 month-by-month results for a wide variety of
8 parameters. If they would like to add parameters
9 because they think that's an incomplete data set, we
10 are more than happy to have them add more
11 month-by-month parameter results. Thank you.

12 CO-HEARING OFFICER DODUC: Mr. Aladjem. And
13 then I'm going to wrap this up by allowing either
14 Ms. Morris or Mr. Mizell to have a brief response.

15 MR. ALADJEM: Let me respond to Mr. Mizell's
16 point that the DWR modelers would like to do it one
17 way, with the exceedance plots. That's absolutely the
18 case.

19 Our contention, however, has been, since
20 Part 1, that exceedance plots obscure what's really
21 going on. Month-by-month allows for cross-examination
22 to show the differences, project and non-project, and
23 it allows the Board to make its own determination of
24 what is appropriate and whether there is an injury or
25 adverse effect on fish and wildlife.

1 That's the purpose of this hearing. That's
2 why we need it in the record. Thank you.

3 CO-HEARING OFFICER DODUC: Ms. Des Jardins,
4 very briefly, please.

5 MS. DES JARDINS: I just wanted to give an
6 example -- I just wanted to give an example, which
7 would be the recent drought.

8 If you think that successive years of drought
9 are important, exceedance plots don't show that.
10 That's just an example of the kind of information
11 that's available; month by month is just the data, the
12 way the data is output by the CalSim model.

13 CO-HEARING OFFICER DODUC: Thank you.

14 Mr. Mizell.

15 MR. MIZELL: So I want to be very clear about
16 what my position was because I don't think it was
17 accurately summarized by Mr. Bezerra.

18 The Department is not disputing the fact that
19 Mr. Bezerra has the right to cross-examine my
20 witnesses. We're not disputing the fact that he can
21 use the Board-ordered result set to do so.

22 What we have an objection on is the form by
23 which the -- the administrative process by which he is
24 trying to admit this into evidence, the fact that there
25 is a disconnect between their very argument disallowing

1 a different exhibit that was produced under virtually
2 identical circumstances and this new exhibit, and the
3 fact that what his argument essentially amounts to is
4 he wishes that our witnesses would adopt his way of
5 thinking.

6 He is free to cross-examine our witnesses with
7 this exhibit. But it's inappropriate to admit it into
8 evidence at this time under these circumstances.

9 CO-HEARING OFFICER DODUC: All right. Thank
10 you. We will take this discussion under advisement,
11 and we'll announce our decision on the motion shortly.

12 In the meantime, the Hearing Team will assign
13 the exhibit number SVWU-406 to the modeling results and
14 the accompanying DWR cover letter so that parties may
15 refer to it as a cross-examination exhibit if they
16 wish.

17 (Protestant Exhibit SVWU-406 marked for
18 identification)

19 All right. Let's get to housekeeping. I see
20 Ms. Womack in the audience.

21 Ms. Womack.

22 MS. WOMACK: Hi, there. I sent something to
23 the Board a little bit ago about -- I'm trying -- the
24 entire California WaterFix project has completely
25 changed with the -- the little update DWR sent us in

1 June. We have the rebuttal. I -- I am not able to ask
2 all the questions I need to ask. And so what -- I ask
3 that same question. How am I going to be able to ask
4 all the questions I should have been asking in Part 1
5 but couldn't because there was no -- this didn't exist.
6 So how do I -- how am I able to do that? Because I
7 have not been able to do that.

8 CO-HEARING OFFICER DODUC: I'm glad you raised
9 that topic because I just found something relating to
10 it.

11 All right. Ms. Womack, this is our ruling on
12 your request. We agreed that recent changes to the
13 WaterFix project significantly affect the analysis of
14 injury to Clifton Court LP's water rights, in
15 particular, that Petitioner is no longer proposed to
16 take all or nearly all of CCLP's property.

17 During Part 1, you understandably focused your
18 hearing participation on the reasonable assumption that
19 the proposed project would effectively preclude the
20 exercise of water rights, your water rights, by taking
21 the property that those water rights serve.

22 The current proposal would leave CCLP's
23 property intact, thereby raising the possibility that
24 the WaterFix project's construction activities or
25 operation may, nonetheless, injure CCLP's exercise of

1 its water rights.

2 This change was not one that you could
3 reasonably have foreseen during Part 1. It therefore
4 would be fundamentally unfair to deprive CCLP of the
5 opportunity to question pertinent witnesses on the
6 current proposal's potential to injure its water
7 rights.

8 However, we do not agree that due process
9 requires re-calling each and all of the Part 1
10 witnesses panel, most of whom did not provide testimony
11 relevant to impacts in the vicinity of CCLP. Our
12 review of Part 1 testimony indicates that a select few
13 witnesses for Petitioners provided testimony, the scope
14 of which suggests they may be able to provide
15 cross-examination relevant to your potential legal
16 injury.

17 Some of those same witnesses are scheduled to
18 appear as witnesses during Part 2 rebuttal. Because we
19 have already stated that the scope of Part 2 rebuttal
20 includes testimony pertaining to the recent EIR
21 supplement for the WaterFix project, you should take
22 the opportunity to cross-examine -- to cross-examine
23 Part 2 rebuttal witnesses who may be able to testify
24 about the implication of the recent project changes for
25 injury to your water rights.

1 To the extent your questions regarding legal
2 injury cannot be answered by Petitioner's Part 2
3 rebuttal witnesses, we will set a date when DWR will be
4 required to produce the following two witnesses or
5 alternative witness who are able to testify on the
6 topics covered in their Part 1 testimony. And that
7 would be Maureen Sergent and Parviz Nader-Tehrani.

8 MS. WOMACK: Let's see. I'm a little bit --
9 so what you're saying is I will be able to question
10 during cross-exam based on not necessarily just their
11 cross-exam but also what is in the Draft EIR/EIS?

12 CO-HEARING OFFICER DODUC: Supplement, and how
13 it affects your water rights.

14 MS. WOMACK: Thank you. I appreciate that.

15 There is one more thing I wanted to say. You
16 know, we were all here when he -- DWR said they will
17 take everything. And you're saying -- and they're now
18 saying they're taking nothing.

19 CO-HEARING OFFICER DODUC: Is this a
20 commentary, or is this a request?

21 MS. WOMACK: Oh, no. It's a -- it's just a
22 request. So the water rights -- I'm very concerned
23 about operations, and I'm very --

24 CO-HEARING OFFICER DODUC: Again, is this a
25 request or a commentary?

1 MS. WOMACK: Well, no. The two people that
2 are -- I'm very concerned about operations and
3 maintenance and the taking of water -- the taking of
4 waters rights. Those are two huge things.

5 CO-HEARING OFFICER DODUC: And what is the
6 request associated with that?

7 MS. WOMACK: The people that gave information
8 on -- the panelists that were there -- well, as well as
9 seismology. I just want to make sure that I have all
10 the parts. I'll have to look at that carefully.

11 But I appreciate that. Thank you. But if
12 I -- if I find other areas of panelists that are not
13 being brought in, can I request additional people?

14 CO-HEARING OFFICER DODUC: Your request, which
15 we granted, was to allow you to ask questions
16 pertaining to potential injury to your water rights --

17 MS. WOMACK: Absolutely.

18 CO-HEARING OFFICER DODUC: -- which you could
19 not have anticipated --

20 MS. WOMACK: Absolutely.

21 CO-HEARING OFFICER DODUC: -- in Part 1.

22 MS. WOMACK: Okay. Well, there's a lot.
23 Thank you so much.

24 CO-HEARING OFFICER DODUC: All right.

25 And the other housekeeping matter,

1 Ms. Meserve.

2 MS. MESERVE: Good morning. Osha Meserve for
3 LAND and other parties.

4 Just adding on to discussion you just had with
5 Ms. Womack, I did have Part 1 water rights holders who
6 were protestants, and there may be -- I guess I just
7 want to clarify and request that, to the extent I could
8 come up with questions that those water rights holders
9 would have regarding the change in the project, that I
10 too could ask those same kinds of questions because
11 there are footprint changes that go beyond Clifton
12 Court in the Supplemental EIR. So I think it would
13 equally apply to any water rights holder who is a party
14 to this matter.

15 CO-HEARING OFFICER DODUC: Because we have
16 stated that the scope of Part 2 rebuttal includes
17 testimony and cross pertaining to the recent EIR/EIS
18 supplement, yes, you may.

19 MS. MESERVE: Thank you.

20 CO-HEARING OFFICER DODUC: To the extent that
21 is reflected by the changes being proposed.

22 MS. MESERVE: Right. And that would go to, I
23 guess, if these other witnesses get called, those same
24 issues could come up, obviously. Hopefully that
25 happens down the road in a week or so so we could be

1 prepared for that.

2 CO-HEARING OFFICER DODUC: All right. Let me
3 hear from all the other parties before I turn back to
4 Petitioners. Mr. Bezerra.

5 MR. BEZERRA: Yes, I have a housekeeping
6 request.

7 CO-HEARING OFFICER DODUC: I'm sorry. Is it a
8 different request?

9 MR. BEZERRA: Yes.

10 CO-HEARING OFFICER DODUC: Let me ask, are
11 there any further commentary on this particular set of
12 requests?

13 Ms. Morris.

14 MS. MORRIS: Thank you. I would ask that
15 anyone who -- like, in regards to Ms. Womack's request,
16 that there be written topics because what I -- before
17 she begins cross-examination so that we can be sure
18 that we -- that DWR may be able to answer those without
19 bringing additional witnesses back.

20 So if she provides the topics, that would be
21 very helpful rather than going through
22 cross-examination --

23 CO-HEARING OFFICER DODUC: Ms. Morris, the
24 only topic that she is allowed by our ruling is
25 potential injury to water rights.

1 MS. MORRIS: I understand that. But she just
2 said, in her response to you, that that includes many
3 things. And so, if it includes many things, I would
4 like to understand what those many things are so that
5 we don't end up with another phase of this hearing to
6 answer those questions if it would be possible to
7 handle it in this particular phase.

8 CO-HEARING OFFICER DODUC: Those other things
9 will have to relate to potential water rights impact.

10 MS. MORRIS: I still --

11 CO-HEARING OFFICER DODUC: To which you may
12 object when she makes -- conducts her
13 cross-examination.

14 MS. MORRIS: Thank you. But I still request
15 that -- and you are welcome to deny me -- that it be
16 provided in writing so that we have some record of it
17 and it doesn't become much more expansive. Thank you.

18 CO-HEARING OFFICER DODUC: Anything else with
19 respect to this particular -- all right. Mr. Bezerra
20 is next.

21 MR. BEZERRA: Thank you very much.

22 So, again, a request and a question. The
23 request is that, during cross-examination, we may need
24 to drill down into the complete modeling files that
25 have been produced.

1 The CWF H3+ with project files, my
2 understanding is those are Exhibit DWR 1077, so those
3 are available. However, the related No Action
4 Alternative files do not appear to be marked as an
5 exhibit and we believe have been pulled down from the
6 Board's FTP site.

7 So the request is, if those No Action
8 Alternative modeling files could be made available for
9 use during cross-examination so that we can, in fact,
10 conduct the cross that Mr. Mizell apparently believes
11 we should by drilling down into the actual modeling
12 files, we would like those No Action Alternative files
13 to be made available for cross-examination.

14 CO-HEARING OFFICER DODUC: Hold on. Let's let
15 Mr. Mizell -- were you moving on to your next request
16 or --

17 MR. BEZERRA: To a question. But I could stop
18 there.

19 CO-HEARING OFFICER DODUC: Let's stop there
20 and hear from Mr. Mizell.

21 MR. MIZELL: I'd like to indicate that the No
22 Action Alternative is DWR-500; it was submitted into
23 evidence in Part 1, and therefore, it's available as an
24 exhibit.

25 And to reiterate, Mr. Bezerra's free to use

1 the tables that were generated in cross if he feels
2 that that is a more effective way than drilling into
3 the actual modeling files.

4 CO-HEARING OFFICER DODUC: Mr. Bezerra,
5 explain again why that was not sufficient.

6 MR. BEZERRA: Well, at this point, he's
7 confirmed DWR-500 is the No Action Alternative file.
8 So we'll just check that out, and if we have anything
9 further, we'll ask.

10 CO-HEARING OFFICER DODUC: All right.

11 MR. BEZERRA: The question -- so, Mr. Reyes --

12 CO-HEARING OFFICER DODUC: So, for now, you're
13 withdrawing that request?

14 MR. BEZERRA: Correct.

15 CO-HEARING OFFICER DODUC: I need to keep a
16 list of things.

17 MR. BEZERRA: No, I understand.

18 CO-HEARING OFFICER DODUC: All right.

19 MR. BEZERRA: In terms of questions, so
20 Mr. Reyes will be presented as a witness per the
21 Board's orders. My understanding is his -- the sole
22 topic of -- he is not giving testimony, as I understand
23 it. It's simply -- he will simply be there to answer
24 questions about DWR-1143; is that accurate?

25 CO-HEARING OFFICER DODUC: That is my

1 understanding.

2 MR. BEZERRA: Okay. We just -- you know, we
3 need to stay within a scope. The rebuttal rule is you
4 keep your cross within the scope of the testimony. We
5 just need to make sure what the appropriate scope of
6 cross is for Mr. Reyes. Thank you.

7 CO-HEARING OFFICER DODUC: All right.

8 Mr. Berliner.

9 MR. BERLINER: Good morning. Tom Berliner on
10 behalf of the Department of Water Resources.

11 CO-HEARING OFFICER DODUC: Welcome back,
12 Mr. Berliner. You missed all of Part 2 case in chief.

13 MR. BERLINER: Well, I was watching on
14 commercial free, and it was very entertaining and
15 instructive. And I missed being here, but thank you.
16 It's good to be back.

17 A filing was made that was entitled a "Notice
18 Of An Ex Parte Communication," which frankly is
19 confusing.

20 We're not understanding why it was filed, why
21 it was filed at this particular time, and why it's not
22 being dealt with as a potential cross-examination issue
23 as part of the rebuttal phase. So it appears to be an
24 attempt to submit the document into evidence through a
25 notice of ex parte communication, but it doesn't appear

1 to pertain to what we're talking about in this part.

2 So I'm not seeking to strike the document
3 itself because it doesn't appear to me that it's being
4 properly introduced. My question really is what are we
5 doing with an ex parte notice of a communication in
6 another proceeding?

7 I understand they want to argue that there
8 might be some inconsistencies, but that's what
9 cross-examination is for.

10 CO-HEARING OFFICER DODUC: Thank you, Mr.
11 Berliner. I, too, was a bit unclear about the purpose
12 of that filing. And it has been noted for the record,
13 and it's been reviewed and filed.

14 MR. BERLINER: So it's going to be part of the
15 record in this proceeding?

16 CO-HEARING OFFICER DODUC: That is correct.

17 MR. BERLINER: Then I'll move to strike it as
18 being inappropriate, that it's improperly -- it's
19 improperly advanced as an ex parte motion when it's
20 actually an effort to submit an exhibit into this
21 proceeding without following our normal proceeding
22 rules.

23 CO-HEARING OFFICER DODUC: My understanding,
24 Mr. Derringer, is that it's in the record not as an
25 evidentiary exhibit.

1 MR. DERRINGER: I would just suggest that we
2 take this under advisement. I don't think it needs to
3 be dealt with at this moment.

4 CO-HEARING OFFICER DODUC: Meaning he doesn't
5 have an answer right now. All right.

6 MR. DERRINGER: Yes.

7 CO-HEARING OFFICER DODUC: Does anyone else,
8 especially the parties who submitted that document,
9 wish to respond to Mr. Berliner's motion?

10 MS. DES JARDINS: Deirdre Des Jardins with
11 California Water Research.

12 CO-HEARING OFFICER DODUC: Mr. Berliner, if
13 you would like, there is already a place with your name
14 tag next to the microphone, if you would like to move
15 there in case you have additional --

16 MR. BERLINER: Thank you.

17 CO-HEARING OFFICER DODUC: -- comments.

18 All right. Ms. Des Jardins.

19 MS. DES JARDINS: There were two reasons that
20 that filing was done. One was that we did identify
21 when the issues that pertain to both this proceeding
22 and the Phase 1 Water Quality Plan Update. And we did
23 transmit that communication to the Board, and it would
24 have been ex parte if it wasn't noticed.

25 The other was that we became aware -- I became

1 aware, personally, of a communication by Reclamation
2 with the Board in which they stated that they could not
3 comply with Decision 1641 because the 1999 model was
4 wrong.

5 CO-HEARING OFFICER DODUC: Ms. Des Jardins,
6 you do not need to go into detail of that notice.

7 MS. DES JARDINS: Yeah. So -- so that was
8 also -- I felt that that was referenced in the filing;
9 I feel it was a significant ex parte communication. I
10 had not been aware of it before because it was not
11 noticed to the parties -- or of the Board's response.
12 That's why those three documents were submitted as a
13 notice of ex parte communication. It was both the
14 filing and the two -- the correspondence with the Board
15 and between the Board and Reclamation. The Board --

16 CO-HEARING OFFICER DODUC: Thank you.

17 MS. DES JARDINS: Thank you.

18 CO-HEARING OFFICER DODUC: Mr. Jackson.

19 MR. JACKSON: At approximately the same time
20 that we were beginning this hearing and dealing with
21 effects on other people's water rights by this
22 proposal, there was a letter sent to the Board from one
23 of the Petitioners explaining to the Board that,
24 because of some perceived inconsistency between the
25 Board's authority and the federal government's

1 authority and the Central Valley Project, that they
2 were not going to be able to supply the water that
3 D1641 called for.

4 CO-HEARING OFFICER DODUC: Yes, that's what
5 the notice says.

6 MR. JACKSON: Right. I thought the Board
7 should know that the assurances all the way through the
8 testimony of the Petitioners' experts that, if they
9 complied with D1641, there would be no injury.

10 And I was not aware because it was not noticed
11 during that period of time to those of us who were
12 already in the hearing that that was the position
13 officially of the Bureau. And consequently, I wanted
14 to bring it to the Board's attention. If I had known
15 about it in Part 1, I would have brought it to your
16 attention.

17 The -- it's a substantial difference in the
18 amount of water that's available. And the reliance on
19 D1641 is the only reliance I could find for the
20 testimony that many of the witnesses from the
21 Petitioners brought forward that there was no injury
22 because they would obey the Board's orders and be
23 consistent with D1641. I didn't know how else to get
24 it to you. And so -- here it is.

25 CO-HEARING OFFICER DODUC: Thank you,

1 Mr. Jackson.

2 Before you all get up, let me confirm
3 something, that, when Mr. Derringer said it was in the
4 record, he meant the hearing administrative record, not
5 the evidentiary record. So therefore, it is not an
6 exhibit, and the Board will not rely on it.

7 Does that help you to withdraw your motion,
8 Mr. Berliner?

9 MR. BERLINER: Well, I think the motion ought
10 to stand, and the Board ought to then advise on the
11 motion formally that it's not going to be part of the
12 hearing record and it's part of the administrative
13 record and would not be considered in evidence.

14 CO-HEARING OFFICER DODUC: That's what I just
15 said.

16 MR. BERLINER: I think that it would be --

17 CO-HEARING OFFICER DODUC: Okay.

18 MR. BERLINER: -- responsive.

19 CO-HEARING OFFICER DODUC: So you want your
20 motion to stand and for my ruling to stand.

21 MR. BERLINER: Exactly.

22 CO-HEARING OFFICER DODUC: Mr. Mizell.

23 MR. MIZELL: Yeah, I'd like to respond to
24 Mr. Jackson's comments because it seemed as though he
25 was arguing about the merits of the --

1 CO-HEARING OFFICER DODUC: No, you're not
2 going to because, as we said, that will be in the
3 hearing administrative record, not an exhibit upon
4 which we will not [sic] rely.

5 MR. MIZELL: Thank you.

6 CO-HEARING OFFICER DODUC: Are there any other
7 housekeeping matters?

8 Thank you for waiting patiently.

9 MR. WASIEWSKI: Hi. Good morning.
10 Tim Wasiewski for the San Joaquin Tributaries
11 Authority.

12 I just want to take a minute -- and I'll be
13 quick because I know you want to get started -- to
14 address the July 27th ruling in which you struck
15 essentially all of the SJTA's rebuttal testimony.

16 CO-HEARING OFFICER DODUC: I believe we have
17 received a motion for reconsideration.

18 MR. WASIEWSKI: Well, yes. I would encourage
19 you to take it up for --

20 CO-HEARING OFFICER DODUC: Which we are
21 considering.

22 MR. WASIEWSKI: Okay.

23 CO-HEARING OFFICER DODUC: So you do not need
24 to make your arguments today.

25 MR. WASIEWSKI: Okay. I appreciate that.

1 You know, I guess I'll just rely on the letter
2 there, but I think that there are a lot of
3 inconsistencies in how we were treated with that. And
4 I guess the request is -- now, is when do you think we
5 will get a response on that, just so that we can
6 continue working with the subpoenaed witnesses, if that
7 changes, or we can let our experts know that they need
8 to prepare or not.

9 CO-HEARING OFFICER DODUC: We will respond as
10 soon as we are able to.

11 MR. WASIEWSKI: Okay. Thank you. Appreciate
12 it.

13 CO-HEARING OFFICER DODUC: All right. If
14 there are no other housekeeping matters, we actually
15 have one.

16 Please make a note that the August 20th --
17 that would be Monday, August 20th -- we are canceling
18 that hearing date.

19 And my other housekeeping matter is, just to
20 acknowledge, we received a request from California --
21 the Save the California Delta Alliance to switch places
22 with Clifton Court for cross-examination of
23 Petitioners' Panel 1. And that request is granted.

24 All right. One hour -- well, not one hour but
25 54 minutes later, thank you all for raising those

1 issues. I apparently did not move fast enough.

2 Ms. Des Jardins.

3 MS. DES JARDINS: Well, there was one more
4 issue which, in the past two weeks, it's become clear
5 to me that Exhibit DWR-1143 is not responsive to the
6 hearing ruling on July 16th.

7 And I'm not sure if I should move to strike
8 that exhibit or how the Board will deal with it not
9 being fully responsive. But there are modeling
10 assumptions, very clearly, that are no longer part of
11 the proposed operations, -- that are not -- there is no
12 explanation, and they're not in the table.

13 CO-HEARING OFFICER DODUC: Why don't we wait
14 until you conduct your cross-examination of
15 Petitioners' witnesses on that. And if, at that time,
16 you still feel need to move to strike, you may do it at
17 that time.

18 MS. DES JARDINS: Thank you.

19 CO-HEARING OFFICER DODUC: All right. I think
20 we deserve a break. And so let's take a short break
21 while Petitioners' Panel 1 gets set up.

22 A short break, Debbie, is okay?

23 Okay. Why don't we return at 10:40.

24 (Recess taken)

25 CO-HEARING OFFICER DODUC: All right. It is

1 10:40. We are resuming. If everyone could please take
2 a seat.

3 And before we get to Petitioners' Panel 1, we
4 do have one outstanding motion or request that was made
5 by Ms. Morris during the housekeeping matters.

6 And, Ms. Morris, I was perhaps
7 misunderstanding your request. I thought you were
8 requesting that Ms. Womack submit questions for her
9 cross-examination of Petitioners' witnesses during
10 rebuttal. If that's the case, then that request is
11 denied because we don't typically ask for
12 cross-examination questions to be submitted as a usual
13 process.

14 However, if your request was that she submit
15 in writing questions for any additional witnesses that
16 we may call back for her -- in order to address her
17 water rights concern, then that request is granted.

18 So, Ms. Womack, if after your
19 cross-examination of Petitioners' rebuttal witnesses
20 there are still outstanding questions to which we will
21 require Petitioner to produce additional witnesses,
22 then we will require you to submit those questions in
23 writing.

24 MS. WOMACK: I understand. What sort of time
25 frame will I be given to -- this is generous.

1 CO-HEARING OFFICER DODUC: We'll work that
2 out.

3 MS. WOMACK: That sounds fine.

4 CO-HEARING OFFICER DODUC: A reasonable amount
5 of time.

6 MS. WOMACK: Reasonable, we are reasonable.
7 Thank you.

8 CO-HEARING OFFICER DODUC: Thank you,
9 Ms. Womack.

10 Mr. Mizell, Mr. Berliner, I do believe some of
11 your witnesses need to take the oath.

12 MR. MIZELL: Yes. We need to have Mr. Volk,
13 Mr. Choa, and Mr. Goshi sworn in.

14 (Witnesses sworn)

15 JASON VOLK, FRED CHOA, BRANDON GOSHI,

16 GWEN BUCHHOLZ, JOHN BEDNARSKI,

17 and LAURA YOON,

18 called by the Petitioners as Part 2

19 Rebuttal Panel 1 witnesses, having

20 been duly sworn, were examined and

21 testified as hereinafter set forth:

22 CO-HEARING OFFICER DODUC: Mr. Mizell, you may
23 begin.

24 DIRECT EXAMINATION BY MR. MIZELL

25 MR. MIZELL: Thank you very much.

1 So this morning, you're going to hear from
2 DWR's -- the first of DWR's three panels of witnesses
3 for its rebuttal case. And we'll be presenting
4 evidence in this panel addressing Supplemental EIR
5 proposed engineering changes for the California
6 WaterFix. We will also be presenting in later panels
7 components of the California WaterFix for the
8 reasonable protection of fish and wildlife.

9 Also, DWR is presenting a third panel, which
10 will present evidence responsive to, among others,
11 NRDC's case in chief about the reasonable protection of
12 existing conditions for fish and wildlife in the
13 system.

14 You are going to hear from a number of
15 experts. And it's the Department's position that, at
16 the conclusion of the Department's rebuttal, you will
17 have yet more evidence that the California WaterFix
18 includes the appropriate Delta flow criteria by virtue
19 of the heightened biological criteria and corresponding
20 operational conditions.

21 It's the Department's position that the
22 California WaterFix has appropriate Delta flow criteria
23 because it provides more protective operations than
24 existing standards. And this undoubtedly will come to
25 light as we hear cross-examination on DWR-1143.

1 Also recognize that DWR and Reclamation are
2 not the sole actors in the Bay-Delta system and that it
3 incorporates the consensus of the scientific community
4 that a flow-only approach is no longer appropriate for
5 the Bay-Delta.

6 So with that, I'd I like to introduce the
7 witnesses in Panel 1. Surely you recognize
8 Ms. Buchholz and Mr. Bednarski. They've been before
9 you a number of times. I would like to introduce those
10 who are joining those two, though.

11 Mr. Volk, he's here to answer questions of
12 Mr. Bednarski's testimony that are focused on noise.
13 Ms. Yoon is here to answer questions of Mr. Bednarski's
14 testimony regarding air quality. Mr. Choa is here to
15 answer questions of Mr. Bednarski's testimony regarding
16 traffic. And to my right, Mr. Goshi is here to answer
17 any questions responsive to his testimony regarding
18 Metropolitan's regional planning process.

19 So with that, I'll ask them a few preliminary
20 questions, and we can turn the mikes over to the
21 presenters. We will be presenting for roughly 30
22 minutes this morning.

23 Ms. Buchholz, is DWR-42 a true and correct
24 copy of your statement of qualifications?

25 WITNESS BUCHHOLZ: It is.

1 MR. MIZELL: And is DWR-1213 a true and
2 correct copy of your testimony?

3 WITNESS BUCHHOLZ: It is.

4 MR. MIZELL: Mr. Bednarski, is DWR-17 a true
5 and correct copy of your statement of qualifications?

6 WITNESS BEDNARSKI: Yes, it is.

7 MR. MIZELL: And is DWR-1212, as modified by
8 the Board's order, a true and correct copy of your
9 testimony?

10 WITNESS BEDNARSKI: Yes, it is.

11 MR. MIZELL: Mr. Volk, is DWR-1209 a true and
12 correct copy of your statement of qualifications?

13 WITNESS VOLK: Yes, it is.

14 MR. MIZELL: And is DWR-1128 a true and
15 correct copy of your testimony?

16 MR. VOLK: Yes, it is.

17 MR. MIZELL: Ms. Yoon, is DWR-1210 a true and
18 correct copy of your statement of qualifications?

19 WITNESS YOON: Yes, it is.

20 MR. MIZELL: And is DWR-1230 a true and
21 correct copy of your testimony?

22 WITNESS YOON: Yes, it is.

23 MR. MIZELL: Mr. Choa, is DWR-1203 a true and
24 correct copy of your statement of qualifications?

25 WITNESS CHOA: Yes, it is.

1 MR. MIZELL: And is DWR-1218 a true and
2 correct copy of your testimony?

3 WITNESS CHOA: Yes, it is.

4 MR. MIZELL: Mr. Goshi, is DWR-1204 a true and
5 correct copy of your statement of qualifications?

6 WITNESS GOSHI: Yes, it is.

7 MR. MIZELL: All right. And is DWR-1220 a
8 true and correct copy of your testimony?

9 WITNESS GOSHI: Yes, it is.

10 MR. MIZELL: Thank you very much.

11 I'd like now to turn it over to Mr. Bednarski.

12 WITNESS BEDNARSKI: Thank you.

13 Mr. Hunt, could you bring up my presentation,
14 DWR-1361.

15 Good morning, Members of the Board. I'm happy
16 to be back in front of you. I'll be presenting --

17 Can you turn to the next slide, Mr. Hunt.
18 Thank you.

19 I've broken my presentation into two parts.
20 The first part will describe the proposed WaterFix
21 refinements that are included in the Supplemental
22 EIR/EIS. And then the second part of my testimony or
23 my presentation today will cover the items listed on
24 the rest of the slide that are responses to the
25 Protestants' testimony carried on in Part 2, and those

1 include noise, air quality, transportation, the
2 barge -- question of barges and their use on the
3 California WaterFix, the adequacy of the existing
4 engineering effort to date, and then the seismic design
5 criteria for the tunnels. So this presentation will
6 summarize my written testimony.

7 Next slide.

8 Just to provide by way of background an
9 overview of the California WaterFix facilities that are
10 included in the proposed Supplemental EIR/EIS.

11 On this slide, it's pretty high level. So the
12 most significant revisions to point out from this slide
13 are down at the south end of the WaterFix where we have
14 now -- instead of modifying the Clifton Court Forebay,
15 we have the Byron Tract Forebay, a new forebay that
16 will be constructed. And then what we're referring to
17 as the south tunnels, two short tunnels, each about a
18 mile and a half, and then a connector channel. And
19 I'll go into a little bit more detail on these later on
20 in my presentation.

21 Next slide.

22 This is a publicly available document on the
23 California WaterFix website, and I'm going to zoom in
24 on the top part and the bottom part to kind of walk
25 everyone through our proposed refinements.

1 So if we can go to the next slide.

2 This is an overview of the top part of the
3 slide. And before I get into those refinements
4 specifically, let me give a little bit of background as
5 to why the engineering staff was requested to take
6 another look at making refinements to the WaterFix that
7 have ended up now in the supplemental document.

8 As part of the 404 LEDPA process, which stands
9 for the Least Environmentally Damaging Practicable
10 Alternative, DWR was required to look for alternatives
11 to the approved project that would have reduced impacts
12 on waters of the U.S. and wetlands.

13 So as we go through the refinements that I
14 will be discussing here, in many of those areas, we
15 have attempted to modify the facilities and have done
16 so to reduce their impacts on waters to the U.S. and
17 also to wetlands. And so those have been documented in
18 this publicly available document.

19 And you can see the sum total there in the
20 upper left is over 500 acres reduced impact on wetlands
21 on a permit basis and nearly 2,000 acres on a temporary
22 construction -- from a temporary construction
23 standpoint, reduced.

24 So start at the top.

25 We have realigned the north tunnels near the

1 town of Hood. This was based primarily on a comment
2 that we received in Part 1 that our tunnel was running
3 in between two of the municipal water wells that serve
4 the town of Hood. And so we took a look at this, and
5 we found that, if we moved the tunnel alignment to the
6 east, we would both no longer pass underneath the town
7 of Hood and we would not, basically, bifurcate between
8 these two tunnels.

9 So we have shifted the alignment of the
10 tunnels there exclusively to meet those two objectives
11 and respond to a comment that we received in Part 1.

12 The next item that I wanted to touch on --
13 this is actually included in a separate document. This
14 was -- we put it in an addenda to the Final EIR/EIS
15 that was issued in January of 2018.

16 We have now reconfigured the use of some
17 existing power lines in the north part of the project,
18 and that's allowed us to eliminate constructing new
19 power lines in that area as a way to reduce potential
20 impacts to birds and other environmentally sensitive
21 areas along the power line alignment.

22 As we move south, in response to comments that
23 we received during Part 2 of this Board hearing, we
24 have eliminated the barge landing at Snodgrass Slough.
25 And DWR is also making the commitment to no longer use

1 any type of water traffic to transport materials or
2 supplies to the Intermediate Forebay area up through
3 this portion of the Delta.

4 Adjacent to the Snodgrass Slough area is the
5 facility that -- part of the WaterFix that we refer to
6 as the Intermediate Forebay. In this area, we have,
7 again, to reduce wetlands impacts and also to reduce
8 truck trips required to move the reusable tunnel
9 material from one -- from the tunnel excavation area to
10 the disposal areas or the stockpile areas, we have now
11 consolidated all of our RTM storage areas into one
12 site. This has allowed us, again, to reduce impacts to
13 wetlands as the previous configuration in the approved
14 project has us filling some wetlands areas as disposal
15 areas for the RTM material.

16 Next slide.

17 As we move south to the project, now we are
18 down in the area of Bouldin Island, and we have made
19 some revisions to the RTM configuration there, again,
20 to avoid wetlands that currently exist on Bouldin
21 Island. And we have relocated the barge landing at the
22 south end of Bouldin Island on Potato Slough in
23 response to comments that we received during Part 2 of
24 these Board hearings.

25 Moving south along the alignment, then, on

1 Mandeville Island, we have moved the potential shaft
2 site to avoid wetlands.

3 And then the next set of changes occurs down
4 at the south end of the project. Down at the south end
5 of Victoria Island, we have modified the alignment of
6 the twin tunnels to bring them over to the west so that
7 they would tie in with the new Byron Tract Forebay.

8 Now, in this area at the south end of the
9 project, DWR is no longer making any modifications to
10 the Clifton Court Forebay. So we anticipate that
11 Clifton Court Forebay will continue to be operated by
12 DWR as it currently is but now in conjunction with the
13 new California WaterFix facilities.

14 This revision at Clifton Court allows us to
15 avoid wetlands impacts and impacts to waters of the
16 U.S. and also responds to comments that we received
17 during Part 1 and Part 2 of this hearing process.

18 By making these changes, also, DWR has been
19 able to avoid having to relocate a couple of
20 high-voltage transmission lines that cross just south
21 of the existing Clifton Court.

22 By moving the -- so by not making any
23 modifications to Clifton Court Forebay, we are now
24 constructing a new forebay which we refer to as the
25 Byron Tract Forebay. We will be including in the Byron

1 Tract Forebay two pumping plants. I've discussed these
2 similarly in my previous testimony. Basically
3 identical pumping facilities will be required at the
4 Byron Tract Forebay now, which is the terminus of the
5 two main tunnels.

6 Out of the two main tunnels, we are then
7 anticipating or proposing that two 40-foot
8 inside-diameter tunnels will be constructed that lead
9 from the outlet of the Byron Tract Forebay to what
10 we're referring to as a connector channel. And I have
11 some later graphics that show that in more detail. But
12 the water will pass from the Byron Tract Forebay to
13 this connector channel into control structures and then
14 will be distributed to either the Banks or the Jones
15 intake channels.

16 Next slide.

17 So I'm going to spend a little bit of time to
18 detail out our plans now at the very south end of the
19 project. This is the approved project. Even though it
20 says "option" up there on the top of the slide, it is
21 actually the approved project with the Final EIR/EIS.
22 And it shows our original plans for splitting the
23 existing Clifton Court in half, expanding it to the
24 south, and then bringing in the two main tunnels with
25 pumping station in the upper left-hand corner of that

1 slide.

2 If we can go to the next slide.

3 This is now our proposed project with the
4 creation of the new Byron Tract Forebay. The forebay
5 itself, with the current configuration of the
6 embankments, has a footprint of about 1130 acres. You
7 can see the Byron Tract Forebay pumping plant. The
8 twin shafts, tunnels, will be driven from these
9 locations, and then those shafts will be converted into
10 pumping plants as I previously explained in previous
11 testimony.

12 You can see the two south tunnels exiting the
13 Byron Tract Forebay and heading over to a connection
14 channel. With that connection channel, we will be
15 connecting into the Jones and Banks intake channels.

16 And then two things I would like to point out
17 for future discussion. You can see two yellow boxes,
18 rectangular boxes on the intake channels. I'll be
19 focusing in on one of those in a minute and speak about
20 the one on the Delta-Mendota Canal.

21 But as you can see, the current proposed plans
22 now for the WaterFix do not make any changes to the
23 Clifton Court Forebay. So we anticipate that DWR will
24 continue to operate that facility as they do now,
25 although will be in conjunction with the California

1 WaterFix facilities going forward.

2 Next slide.

3 So we're going to take it a little bit closer
4 to look at the control structure on the Delta-Mendota
5 Canal because we did receive some questions from the
6 Board on that, and we are prepared to respond to those,
7 and I have done so in my written testimony.

8 If we can go to the next slide, we zoom in a
9 bit closer on that.

10 And so what DWR is committing now to do is
11 that the footprint, both temporary and permanent
12 footprints for this control structure on this canal,
13 will be entirely south of Herdlyn Road. So we do not
14 anticipate that there will be any need for either
15 temporary easements, fee title, acquisition of any of
16 the Clifton Court LP properties. So we will be
17 entirely south of that. And we feel comfortable with
18 the footprint that was shown here and the location of
19 that as it orients to the Delta-Mendota Canal itself.

20 And if I might just point out the importance
21 of these control structures. They will operate in
22 conjunction with the WaterFix facilities so that, when
23 we're in the operational mode of dual mode, which means
24 we're diverting water from both the south and the north
25 diversion facilities, these facilities will be in

1 operation to allow us to do such. These facilities
2 will also have control gates such that, if we're
3 diverting only from the south in the future or only
4 from the north, these gates will be opened or closed
5 appropriately.

6 Next slide.

7 So that's my overview of the proposed changes
8 to the California WaterFix facilities that have been
9 included in the Supplemental EIR/EIS.

10 Now what I'd like to move on to is response to
11 the comments that we've received in Part 2. And,
12 again, I would refer you back to my written testimony
13 for more detail, but I'm going to kind of go through
14 these subject by subject, first starting with noise.

15 Just emphasizing that all of the noise
16 calculations that have been presented in the EIR/EIS
17 and in the Supplemental EIR/EIS have been done in
18 accordance with the Federal Transit Authority guidance.
19 This guidance has covered all of the noise analyses
20 that have been conducted for this program. The Final
21 EIR/EIS utilized noise sources from impact pile drivers
22 based on this FTA guidance. So I know that there was
23 testimony that came up in cross-examination regarding
24 the noise levels that were used for the impact pile
25 drivers, and so I'm just providing by way of reference

1 the sources that we used to generate our noise contour
2 diagrams.

3 DWR has disclosed the use of pile drivers as a
4 worst-case situation for driving the piles to support
5 various structures on the California WaterFix,
6 specifically and primarily, the intake structures along
7 the Sacramento River. DWR has also committed, in my
8 previous testimony, to use non-impact pile-driving
9 methodologies where that's appropriate.

10 However, as I've stated in previous testimony,
11 we will need additional geotechnical information, which
12 we are planning to obtain during preliminary design, in
13 order to make that final determination that our
14 construction specifications would require something
15 other than impact pile driving.

16 So we -- in the documents that we have today,
17 DWR has committed to a noise abatement plan, and that
18 includes putting enclosures around all of the
19 noise-generating equipment. I think this is in
20 agreement with some of the Protestants' testimony that
21 they have previously presented in Part 2.

22 Next slide.

23 Moving on to air quality. In the Supplemental
24 EIR/EIS, DWR has made revisions to the construction
25 equipment exhaust plan. Specifically, there are two

1 areas. DWR is now committing to use model year 2010 or
2 newer equipment throughout the project. DWR is also
3 committing to require Tier 4 engines on all off-road
4 equipment. This is the most restrictive category of
5 engines that can be used today. So we're requiring
6 that, again, to be used on all equipment on the
7 WaterFix as construction goes forward.

8 DWR is also committed to and is conducting
9 ongoing coordination with the different air quality
10 districts that are involved with the WaterFix. DWR
11 remains committed to this level of coordination with
12 Sacramento Metro AQMD on the availability and costs of
13 potential offsets for air quality mitigation.

14 Revisions have been made to Mitigation Measure
15 AQ9 to reduce the localized particulate matter, and
16 I'll explain what that includes. Dust suppressants are
17 now going to be required on all unpaved surfaces. This
18 will be included in all of our construction
19 specifications. And DWR's dust control plans are now
20 consistent with Sacramento Metro AQMD requirements.

21 DWR has conducted analysis of valley fever and
22 commits -- and makes commitments to reduce public
23 exposure to valley fever. Our analysis, and we
24 affirmed, is consistent with the County assessment
25 approach for this -- for this condition.

1 Next slide.

2 I've got now transportation impacts. The
3 analysis conducted in the Final EIR/EIS examined the
4 worst-case traffic scenario. The analysis used the
5 traffic engineering methodologies that are consistent
6 with both Sacramento and Yolo and San Joaquin County
7 standards.

8 Through the Supplemental EIR/EIS
9 transportation analysis, the proposed project now has
10 been identified to reduce the number of vehicle trips
11 by nearly 29 percent when compared to the approved
12 project. We also have determined that we are reducing
13 the number of impacted roadway segments by nearly
14 11 percent when compared to the approved projects. And
15 finally, we have been found to be able to reduce the
16 number of unacceptable pavement conditions by nearly
17 11 percent when compared with the approved project.

18 Next slide.

19 We did receive a request from the Board to
20 provide more detailed information on the use of barges
21 and barge landings. So my testimony, my written
22 testimony responds to that, and I'm summarizing it here
23 in my presentation.

24 As DWR's engineers began developing this
25 project, we identified the potential use of the

1 waterways as a way to deliver materials to the
2 different job sites. We developed an anticipated
3 number of barge trips that would be needed to support
4 the project. That number of 10,800 barge trips --
5 these are one-way barge trips -- was input to our
6 transportation folks and analyzed by them in their
7 impact analysis for the Final EIR/EIS.

8 As discussions with National Marine Fisheries
9 Services commenced in an effort to obtain the
10 Biological Opinion for the project, negotiations took
11 place between DWR and NMFSS as to the number of barge
12 trips that would be permissible under this project.
13 That 10,800 that was initially identified was reduced
14 to 9400 one-way barge trips. And that is the number
15 that DWR now commits to as part of the Supplemental
16 EIR/EIS, and we believe that we have clarified that
17 language in those documents to support this commitment
18 that DWR will work within the limit of 9400 one-way
19 barge trips for the duration of the project.

20 That provides an overview there of the Board's
21 request. As I mentioned earlier, we have eliminated
22 the barge landing at Snodgrass Slough, and one other
23 barge landing was eliminated at the West Canal.
24 Through this, DWR is committing to no longer make any
25 type of water deliveries to the Intermediate Forebay

1 through the Snodgrass Slough. There will be no changes
2 made to the number of barges, barge landing, or
3 delivery of segments to Bouldin Island.

4 The Byron Tract will now -- the Byron Tract
5 Forebay work area will now receive the segment
6 deliveries that were previously planned for the Clifton
7 Court. The approach to segment delivery for the
8 project remains unchanged from the Final EIR/EIS.

9 DWR affirms that the size and location of the
10 temporary barge landings as depicted in all of our
11 documents is appropriate. We did receive comments from
12 the Protestants that they were not appropriate. We
13 have reviewed that. We feel that that information we
14 presented to the Board is correct.

15 DWR does acknowledge that the water traffic
16 from the barges will require the opening of bridges
17 from time to time as deliveries are made to the various
18 sites. The impact on vehicular traffic in these areas
19 where the bridges are opened will be mitigated. And
20 DWR has already set forth a series of mitigation
21 measures, TRANS-1A, 1B, and 1C. And these will be
22 implemented as part of our barge transportation plan
23 and will be enforced through our construction
24 specifications with the contractors.

25 Next slide.

1 The next slide, just go over several different
2 areas to address the adequacy of the information that
3 DWR has presented to date as far as the engineering
4 level. This slide summarizes our response to claims
5 made by the Protestants through Part 2 of this hearing
6 process, and you can see my written response for more
7 detailed information on that.

8 However, DWR affirms that the level of
9 engineering that has been completed to date is
10 sufficient to support the conceptual engineering that
11 has been developed to support not only this Board
12 process but also the Final EIR and the Supplemental
13 EIR/EIS process.

14 DWR also affirms that the geotechnical data
15 collected to date is appropriate. DWR has collected
16 nearly 250 different borings and CPTs along the
17 alignment. We presented 25 of those in the conceptual
18 engineering report. We believe that we have an
19 adequate understanding of the ground conditions at
20 tunnel depth and in the areas of the other WaterFix
21 facilities to make the recommendations that we have
22 made in the conceptual engineering report.

23 DWR acknowledges that the WaterFix facilities
24 will pass through an area of the Delta that contains
25 gas wells and gas fields. We have actually revised the

1 alignment of the tunnels to avoid any active gas wells
2 in the Delta. We acknowledge that there are a lot of
3 abandoned gas wells in the Delta. We have reviewed
4 publicly available information, and I have identified
5 those. And through my testimony and through the CER,
6 we have committed to doing additional investigations to
7 identify the location of abandoned gas wells and remove
8 any that are along the tunnel alignment.

9 Finally, in regards to levee monitoring
10 programs, additional detailed plans will be developed
11 as we get into preliminary and final design. By way of
12 my testimony, I presented examples of how we have
13 interacted with specific reclamation districts on
14 Bouldin Island in regard to our development of detailed
15 design plans for a site preparation contract. Those
16 have been provided as examples to the Board of our
17 interaction with the different reclamation districts
18 and, again, provide examples of how we will continue
19 that interaction on in the future as we work with
20 additional reclamation districts for this project.

21 Next slide.

22 I'm going to the skip through this slide.
23 This just kind of lays out the 25 geotechnical
24 investigations that have been listed in the conceptual
25 engineering report, but for the sake of brevity, I'll

1 pass through this slide and also the next one.

2 Next slide.

3 This is also contained in the CER, so I won't
4 delay my presentation with that.

5 Again, with this one, I've spoken briefly, and
6 this is discussed in more detail in my testimony and in
7 the conceptual engineering report. This just lines out
8 where the WaterFix alignment is in relation to the
9 known active and inactive gas wells in the Delta.

10 So, next slide.

11 I'll skip this slide also. It just provides
12 some additional detail, and so for the sense of
13 brevity, next slide after this, and we'll go to the
14 next slide.

15 So I'm going to wrap up with just a short
16 discussion about the seismic design criteria for the
17 tunnels. In Part 2 of this Board process, concerns
18 were raised by the Protestants about the seismic design
19 criteria that was utilized by DWR in the conceptual
20 design of the tunnels.

21 Protestants incorrectly stated that ASCE-7-10
22 seismic standard was the appropriate one to use for
23 underground tunnels and pipelines. My testimony goes
24 into detail about why DWR feels that this is not the
25 correct standard to be used and that DWR had, indeed,

1 cited the correct standard as part of the EIR/EIS and
2 the original conceptual engineering report, and that
3 was based around the 975-year return event.

4 However, based on the comments that we
5 received during Part 2, DWR undertook an additional
6 engineering study to determine if there would be any
7 impact to our current design with adopting the
8 2,475-year return event as our new criteria for the
9 seismic design of the tunnels, and we basically
10 summarized those results on the next page.

11 Next slide.

12 Finding that the current tunnel design will
13 adequately sustain the 2475-year event, there will be
14 no structural failures in the tunnels, there will be no
15 leakage from the tunnels, and there will be no
16 increased design or construction costs to achieve the
17 seismic design criteria. And again, this information
18 is being prepared -- presented as a response to
19 comments that were provided during Part 2 of these
20 Board hearings.

21 And so with that, I'd like to conclude my
22 formal presentation and turn it back to Tripp Mizell.

23 MR. MIZELL: Thank you. We have a brief
24 presentation by Ms. Buchholz.

25 WITNESS BUCHHOLZ: Good morning. My name is

1 Gwen Buchholz. And I'm just summarizing that my
2 testimony presented in DWR-1213 is in response to
3 issues related to the areal extent of the groundwater
4 monitoring as described in Mitigation GW-1 as raised by
5 Dr. Mehl in Exhibit SCWA-302.

6 And I also am providing responses to the --
7 related to the methodology presented by Mr. Lambie in
8 Exhibit SJC-223 for analyzing groundwater impacts. My
9 testimony in Part 2 rebuttal hearings is based upon and
10 references to my testimony in the Part 1 rebuttal
11 hearings.

12 That's the summary.

13 MR. MIZELL: And with that, these panelists
14 are now available for cross-examination.

15 CO-HEARING OFFICER DODUC: All right. Let me
16 get a showing of those who would like to conduct
17 cross-examination of this panel -- and a time estimate.
18 Please identify yourself by group number as well as a
19 time estimate.

20 MR. FERGUSON: Good morning. Aaron Ferguson
21 and behalf of Sacramento County Water Agency in
22 Group 7. I estimate an hour.

23 MR. ALADJEM: David Aladjem, Delta Flood
24 Control Group. I believe it's Group 11. Estimate 45
25 minutes, but I'll try to be quicker.

1 MR. KEELING: John Keeling for the San Joaquin
2 County Protestants, Group -- I'm looking. I don't see
3 it. Mr. Herrick says I'm 120. No more than an hour
4 and probably close to 45 minutes.

5 MR. HERRICK: John Herrick, South Delta
6 parties. I believe 21, maybe ten minutes.

7 MS. MESERVE: Osha Meserve for Friends of
8 Stone Lakes and LAND. I have about an hour of cross,
9 and I would be going in with Group 45 position, Friends
10 of Stone Lakes.

11 MR. JACKSON: Michael Jackson for CWIN, CSPA
12 and AquAlliance. I think it's Group 31, and 40
13 minutes.

14 MS. WOMACK: Suzanne Womack, Clifton Court LP,
15 No. 43. I think I have about four hours of questions.

16 CO-HEARING OFFICER DODUC: You have an hour to
17 begin with.

18 MS. WOMACK: Okay. Thank you.

19 CO-HEARING OFFICER DODUC: And then you would
20 have to demonstrate good cause.

21 MS. WOMACK: I've got a lot. Thank you.

22 MR. OBEGI: Good morning. Doug Obegi on
23 behalf of NRDC, et al. I believe we're Group 35. I
24 estimate we have approximately 20 minutes of
25 cross-examination of Mr. Goshi.

1 MS. DES JARDINS: Deirdre Des Jardins, and I'd
2 like to reserve an hour, but I may take less than that.
3 Group 37.

4 CO-HEARING OFFICER DODUC: Thank you. I was
5 looking for you.

6 All right. Anyone else?

7 (No response)

8 CO-HEARING OFFICER DODUC: Ms. Sheehan, why do
9 I see your nameplate up there?

10 WITNESS SHEEHAN: Should I be over here? I
11 don't know.

12 CO-HEARING OFFICER DODUC: Yes, because that's
13 for cross-examination.

14 MS. SHEEHAN: I didn't put it there, but
15 that's where it was, so. . .

16 CO-HEARING OFFICER DODUC: All right. Okay.
17 If I -- this is why I ask everyone to identify yourself
18 by group number because I believe, Mr. Ferguson, you
19 are up first.

20 Is there anyone wishing to conduct
21 cross-examination that has a smaller grouping number
22 than 7?

23 (No response)

24 CO-HEARING OFFICER DODUC: Mr. Mizell.

25 MR. MIZELL: Hearing Officer Doduc, if I

1 might, Mr. Goshi is up from Southern California. He
2 has other duties down at Metropolitan, as you might
3 suspect.

4 It appeared as though Mr. Obegi, for NRDC,
5 indicated he would solely be crossing Mr. Goshi. If
6 other groups don't intend to cross-examine him, is
7 there any opportunity to cross Mr. Goshi first, and we
8 would then be able to dismiss him and allow him to
9 return to L.A.?

10 CO-HEARING OFFICER DODUC: Does anyone else
11 have cross-examination for just -- or for Mr. Goshi?

12 MS. WOMACK: I might.

13 CO-HEARING OFFICER DODUC: All right. Are
14 there any objections to allowing NRDC and potentially
15 Clifton Court to proceed with cross-examination of
16 Mr. Goshi first?

17 (No response)

18 CO-HEARING OFFICER DODUC: All right.

19 Ms. Suard, you just came in. Do you wish to
20 conduct cross-examination of this panel?

21 MS. SUARD: Yes, ma'am.

22 CO-HEARING OFFICER DODUC: And your estimated
23 time?

24 MS. SUARD: Fifteen minutes, maximum.

25 CO-HEARING OFFICER DODUC: And do you have any

1 questions just for Mr. Goshi?

2 MS. SUARD: For Mr. Bednarski.

3 CO-HEARING OFFICER DODUC: Oh, Bednarski. All
4 right.

5 MS. WOMACK: I actually don't have.

6 CO-HEARING OFFICER DODUC: You don't have.

7 All right. Then thank you for that efficient request.

8 Mr. Mizell, I'll ask Mr. Obegi to come up and
9 conduct his cross-examination of Mr. Goshi.

10 MR. OBEGI: If you wouldn't mind just giving
11 me a moment to get prepared, since I was expecting I
12 would be several hours from now.

13 CO-HEARING OFFICER DODUC: I guess I should
14 have asked if you had any objection.

15 MR. OBEGI: I do not object.

16 CO-HEARING OFFICER DODUC: And since
17 Mr. Goshi's testimony is contained, I don't think we
18 need to go through your list of topics.

19 MR. OBEGI: I believe that is fine.

20 CROSS-EXAMINATION BY MR. OBEGI

21 MR. OBEGI: Mr. Goshi, if I can begin, thank
22 you.

23 I want to clarify one thing in your testimony.
24 On Page 3, Line 3, you refer to DWR Exhibit-1335, which
25 I think is reference to the Urban Water Management

1 Plan.

2 And I believe that that exhibit is actually
3 DWR-1345A.

4 MR. MIZELL: If we could have the exhibit on
5 the screen, I think that would help.

6 MR. OBEGI: Is that correct?

7 WITNESS GOSHI: Yeah, that's correct.

8 MR. OBEGI: Your testimony refers to
9 Exhibit 1335, I believe, on Page 3, Line 3. I just
10 want to clarify that my understanding is that that's a
11 typo and it should be referring to 1345D, as in "dog"?

12 WITNESS GOSHI: Yes, that's correct. I'm
13 referring -- in that line, I'm referring to the Urban
14 Water Management Plan. Oh, that's the Integrated
15 Resources Plan Update. I was referring to the Urban
16 Water Management Plan, which is 1345D. That's correct.

17 MR. OBEGI: Thank you.

18 Mr. Hunt, would you please pull up Exhibit DWR
19 Exhibit 1345D and turn to pdf Page 353.

20 Mr. Goshi, does Appendix 5 to the Urban Water
21 Management Plan include a list of local water supply
22 projects?

23 WITNESS GOSHI: Yes.

24 MR. OBEGI: And does it include the estimated
25 yield and the date that these projects would come

1 online?

2 WITNESS GOSHI: Based on the survey from the
3 member agencies, yes.

4 MR. OBEGI: Does Appendix 5 include local
5 water supply projects that are in the conceptual stage?

6 WITNESS GOSHI: Yes.

7 MR. OBEGI: And does it include local supply
8 projects that are in the feasibility stage?

9 WITNESS GOSHI: Yes.

10 MR. OBEGI: And does it include local supply
11 projects that are in the full design and funding
12 appropriated stage?

13 WITNESS GOSHI: Yes.

14 MR. OBEGI: And are any of those projects
15 included in the Urban Water Management Plan's
16 projections of local water supplies that are included
17 in the body of the report?

18 WITNESS GOSHI: They're characterized as
19 potential projects to go towards meeting the Regional
20 Integrated Water Resources Plan framework and planning
21 for long-term potential investments.

22 MR. OBEGI: So it's correct to say that those
23 are projects that could be developed?

24 WITNESS GOSHI: Yes.

25 MR. OBEGI: Is it correct that Appendix A

1 identifies more than 600,000 acre-feet per year of
2 potential water supply from projects in the conceptual,
3 feasibility, and full design and funding appropriated
4 stages?

5 WITNESS GOSHI: Yes, that's correct.

6 MR. OBEGI: Can we turn to Page 80,
7 pdf Page 80.

8 Does this table show Metropolitan's estimate
9 of regional water supplies and demands in an average
10 year?

11 WITNESS GOSHI: Yes, for our service area.

12 MR. OBEGI: And does it show that the total
13 local supplies are anticipated to increase from, what
14 is it, 2,578,000 acre-feet per year in 2020 to
15 2,689,000 acre-feet per year in 2040? That would be
16 Line C, I believe.

17 WITNESS GOSHI: The local supplies, yeah.
18 Okay, so, in this table, this characterizes the demands
19 for water -- demands for water given the existing and
20 under-construction local projects that are -- that are
21 operated, as you can see in Subsection C there.

22 MR. OBEGI: And so that's an estimate of only
23 about 120,000 acre-feet per year of additional local
24 supplies over the next 20-year period?

25 WITNESS GOSHI: Demands that would have to be

1 met by projects that would be built in the future.

2 MR. OBEGI: And then looking at water
3 recycling in Subpart C, that's estimated to only
4 increase by about 73,000 acre-feet per year between
5 2020 and 2040; is that correct?

6 WITNESS GOSHI: In this table, the water
7 recycling refers to projects that are already built or
8 are under construction as of 2015. Already built or
9 under construction, that would be expanded to their
10 capacity as designed.

11 MR. OBEGI: So some of the projects listed in
12 Appendix 5 could increase the amount of the water
13 recycling over the time period; is that correct?

14 WITNESS GOSHI: For all the categories in
15 Appendix 5 outside of existing and under construction,
16 yes.

17 MR. OBEGI: So things like the Carson Water
18 Recycling Project is not reflected this table?

19 WITNESS GOSHI: You're referring to the
20 Regional recycled water project?

21 MR. OBEGI: Yes.

22 WITNESS GOSHI: Again -- well, not "again."
23 That's a project that's within Metropolitan service
24 area that could be developed, and it's being
25 investigated for development for future water supply --

1 water supply.

2 MR. OBEGI: And is it also correct that this
3 table does not include the full buildup of the Pure
4 Water San Diego project?

5 WITNESS GOSHI: That is correct. That is not
6 a project that is existing and under construction at
7 this time.

8 MR. OBEGI: And turning to the estimates of
9 total conservation, does this table include the -- did
10 the projections of water conservation and efficiency in
11 this table include the effects of the 2018 State
12 legislation on water use efficiency?

13 MS. SHEEHAN: Objection. That question is
14 vague. Could you be more specific as to what you're
15 referring to?

16 MR. OBEGI: Referring specifically to Senate
17 Bill 606 and Assembly Bill 1668 that were signed into
18 law by the Governor earlier this year.

19 WITNESS GOSHI: My understanding of that
20 legislation is that that will -- that water use
21 efficiency legislation will describe water use targets
22 for agencies based on a number of different factors
23 indoor water use, outdoor water use, and commercial and
24 industrial water use.

25 Those targets are not necessarily conservation

1 targets per se. The way that this would mix -- or
2 match that is this table shows existing and
3 under-construction or existing conservation devices.
4 Our devices are relative to a 1990-base that will go
5 towards -- or individual agencies, go towards their
6 overall water use. It will make up the
7 characterization of their overall water use in the
8 future and then be compared to the targets that are set
9 through the legislation.

10 MR. OBEGI: So I'm not sure I fully understood
11 that. Is it correct to say that the effects on demand
12 for water for Metropolitan, for instance, are not -- do
13 not, in this table -- pardon me.

14 Do the estimates of total Metropolitan demands
15 in this table include the effects of those two pieces
16 of legislation?

17 MS. SHEEHAN: Could you please be more
18 specific as to what you mean by "effects"?

19 MR. OBEGI: There's been a perception that
20 these two bills will increase water use efficiency, and
21 I'm asking whether those effects are captured in this
22 table.

23 WITNESS GOSHI: To the extent that the
24 water-using devices that underlie water use and are
25 characterized here as conservation, relative to a base

1 where these devices hadn't been in place, will go
2 towards the total water use which will be characterized
3 in the future.

4 So in other words, lower-water-using devices
5 that have already been installed are going to
6 contribute towards meeting overall water use targets
7 that include indoor water use targets or outdoor water
8 use targets. So insomuch as those conservation
9 devices, if they include indoor or outdoor
10 water use, which they do -- toilets, showerheads,
11 fixtures, et cetera -- will go towards that. So I
12 think it's fair to say that that is included.

13 The effects -- the effects of meeting those
14 future conservation targets, this will contribute to
15 that.

16 MR. OBEGI: This will contribute to it. But
17 is it -- do you believe it is unlikely that the --
18 these two pieces of legislation will reduce demand for
19 water in Southern -- in Metropolitan service area?

20 MR. MIZELL: Objection, calls for speculation
21 as to what is likely in the future under these pieces
22 of legislation. The witness has already answered how
23 he perceives the legislation to impact this report,
24 which is the basis of his testimony.

25 CO-HEARING OFFICER DODUC: Mr. Goshi, if I

1 might. With your current expertise, do you have an
2 opinion as to how the conservation numbers on this
3 chart might change as a result of the legislation to
4 which Mr. Obegi has referred?

5 WITNESS GOSHI: I think I understand how I can
6 clarify this.

7 So this table that Mr. Obegi is referring to
8 sets the basis or the base of planning of things that
9 have already occurred. Future actions -- future
10 actions, future conservation towards meeting, say, the
11 legislation are described in our overall IRP targets
12 for future activities. Our IRP describes future
13 activities and development that would have to take
14 place in order to achieve levels of reliability
15 described with our integrated resources plan.

16 So, for example, our integrated resources plan
17 calls for increased focus on outdoor water use
18 conservation efforts to the tune of reducing --
19 reducing future outdoor water use for existing
20 households, as an example, to achieve savings on a
21 conservation basis in the future. Those are described
22 within both the Urban Water Management Plan and the
23 IRP.

24 CO-HEARING OFFICER DODUC: But are they
25 reflected in these numbers?

1 WITNESS GOSHI: No, because this is the base
2 under which you are going to build off of. What I
3 meant by my previous answer, though, is that these
4 efforts which have already taken place prior to the
5 legislation will continue to be part of the overall
6 water use in the future. And I wanted to make sure
7 that was clear.

8 CO-HEARING OFFICER DODUC: Thank you.

9 (Reporter interruption)

10 WITNESS GOSHI: Yes, insomuch as water use in
11 the future is made up of all of the water-using devices
12 and uses of individuals -- that's how the aggregate
13 water use in the future is made up of -- this describes
14 the type of water use that will take place in the
15 future and therefore is part of that overall total.

16 MR. OBEGI: Thank you. I'd like to ask you a
17 couple questions about Metropolitan's plans for future
18 water supplies from the Delta.

19 Has Metropolitan planned for the contingency
20 of reduced water supplies from the Delta?

21 MS. SHEEHAN: Objection. This is outside the
22 scope of his testimony.

23 CO-HEARING OFFICER DODUC: Mr. Obegi?

24 MR. OBEGI: Mr. Goshi's testimony and his
25 reliance on the Urban Water Management Plan discuss in

1 detail projections for future demand and future water
2 supplies, including discussion of -- assumptions about
3 water available from WaterFix. And I'd like to test
4 whether Metropolitan has actually looked at the
5 potential for reduced Delta water supplies.

6 CO-HEARING OFFICER DODUC: Response?

7 MS. SHEEHAN: I don't see in his testimony
8 where he testifies specifically to water available from
9 WaterFix.

10 MR. OBEGI: He has -- the Urban Water
11 Management Plan, which is an exhibit cited in his
12 testimony, discusses the yield from WaterFix.

13 CO-HEARING OFFICER DODUC: Overruled,
14 Ms. Sheehan.

15 MR. MIZELL: I'm going to raise an objection
16 on vague and ambiguous. Mr. Obegi states it has
17 reduced water supplies from the Delta. I would like to
18 see the authority on that statement.

19 It could be confused with the statutory
20 mandate to do reduced reliance on the Delta, but I
21 believe the term is ambiguous currently. You could
22 mistake it for reduced quantities or reduced reliance.
23 It could go either way.

24 CO-HEARING OFFICER DODUC: Mr. Obegi, clarify.

25 MR. OBEGI: Has Metropolitan planned for the

1 contingency of reduced quantities of water supplies
2 available from the Delta in its planning efforts such
3 as the Urban Water Management Plan?

4 WITNESS GOSHI: Yes.

5 MR. OBEGI: Has Metropolitan considered the
6 State Water Board's 2010 public trust flow criteria
7 report in considering the availability of future water
8 supplies from the Delta?

9 MS. SHEEHAN: I'm going to raise the same
10 objection again. I don't see in Mr. Goshi's testimony
11 where he references the 2010 flow report.

12 CO-HEARING OFFICER DODUC: Mr. Obegi?

13 MR. OBEGI: I'm willing to withdraw it.

14 CO-HEARING OFFICER DODUC: Withdrawn.

15 MR. OBEGI: I'd like to ask you a couple
16 questions about the Mismatched report and your
17 testimony about it.

18 Are you aware that in September of 2017 NRDC
19 sent the Mismatched report to the Board of Directors of
20 the Metropolitan Water District and its staff?

21 WITNESS GOSHI: Not directly, no.

22 MR. OBEGI: And prior to your testimony, has
23 Metropolitan ever provided any comments, criticisms, or
24 questions about the Mismatched report directly to NRDC?

25 WITNESS GOSHI: No.

1 MR. OBEGI: And finally, I'd I like to ask you
2 a couple questions about Metropolitan's demands for
3 water from the Delta.

4 Is it correct that in 2018, in this year,
5 based on current levels of demand and other available
6 supplies, Metropolitan has estimated that a 35 percent
7 State Water Project allocation would result in a
8 balance between supplies and demand?

9 MS. SHEEHAN: I object as being outside the
10 scope of Mr. Goshi's testimony.

11 CO-HEARING OFFICER DODUC: Mr. Obegi.

12 MR. OBEGI: Mr. Goshi's testimony discusses in
13 depth the consideration of both supply and demand
14 projections -- as well as in the Urban Water Management
15 Plan. And I'm just trying to flesh out that
16 discussion.

17 CO-HEARING OFFICER DODUC: Are you able to
18 answer the question, Mr. Goshi? Your testimony seemed
19 to be broader in terms of its specifics.

20 WITNESS GOSHI: Can you restate the question,
21 please.

22 MR. OBEGI: Is it correct that in the year
23 2018, this year, Metropolitan staff have estimated
24 that, based on the current levels of demand for water
25 and the available water supplies from the Colorado

1 River and local projects, a 35 percent State Water
2 Project allocation would result in a balance between
3 supply and demand?

4 MR. BERLINER: Objection.

5 Do you have a reference for that statement
6 that the witness can review?

7 CO-HEARING OFFICER DODUC: Sustained.

8 MR. OBEGI: Mr. Hunt, would you please pull up
9 Exhibit NRDC-201 and turn to Page 3. And below -- if
10 you scroll down below the table, right about where the
11 cursor is --

12 CO-HEARING OFFICER DODUC: And Mr. -- I'm
13 sorry, Mr. Obegi. For the record, this document is?

14 MR. OBEGI: This -- sorry.

15 Go back to the first page, if you would,
16 Mr. Hunt. I'm sorry.

17 This is a report of the Metropolitan Water
18 District of the Southern California, the water surplus
19 and drought management plan from the April 9th, 2018.
20 And if you turn to Page 3, there's a sentence that
21 says, "Should this SWP allocation increase to 35
22 percent, however, staff projects that supplies would
23 balance with demands without the need for water
24 management actions."

25 MR. BERLINER: I'm going to object on the

1 grounds that this is well beyond this witness's
2 testimony. This appears to be a document where Met is
3 reporting to its Board as of April 2018 on its
4 available water supplies for the current year.

5 CO-HEARING OFFICER DODUC: Mr. Obegi, make a
6 direct link for me between this line of questioning and
7 Mr. Goshi's testimony.

8 MR. OBEGI: It goes directly to the question
9 of how to balance supplies and demands, including local
10 demands, that are discussed at length in Mr. Goshi's
11 testimony where he references both the IRP and the
12 Urban Water Management Plan and discusses how
13 Metropolitan has done a very good job of balancing --
14 has a longstanding track history -- a longstanding
15 planning history and track record of developing local
16 conservation and local resources and that WaterFix is
17 part of an all-of-the-above strategy and that
18 Metropolitan is able to develop these incentives for
19 local projects based on the estimates of demand.

20 CO-HEARING OFFICER DODUC: Mr. Goshi, to what
21 extent are you familiar with this document and with
22 this analysis that was performed by staff?

23 WITNESS GOSHI: Yes, I am.

24 CO-HEARING OFFICER DODUC: You are? All
25 right. Then I will give Mr. Obegi some leeway.

1 MR. OBEGI: Is it correct that in 2018, based
2 on current levels of demand and available alternative
3 supplies such as the Colorado River and local projects,
4 that a 35 percent State Water Project allocation would
5 result in a balance between supply and demand?

6 MR. BERLINER: Objection as to time frame.
7 This is a 35 percent available supply for April onwards
8 of 2018 for purposes of developing an Urban Water
9 Management Plan. We need to have some definition.

10 CO-HEARING OFFICER DODUC: Ms. Morris.

11 MS. MORRIS: I would also object as to vague
12 and ambiguous as to "local supplies." Does that
13 include local supplies of their member agencies, or is
14 that limited to on-hand local reservoirs? It's unclear
15 from the question.

16 CO-HEARING OFFICER DODUC: Mr. Obegi, perhaps
17 you might be more direct in terms of what is the point
18 you're trying to get at.

19 MR. OBEGI: The point I'm trying to get at is
20 that, according to Metropolitan's staff, a 35 percent
21 State Water Project allocation this year resulted in
22 balance between supply and demand.

23 CO-HEARING OFFICER DODUC: That's what it
24 says. What's the point?

25 MR. OBEGI: And the point is, to the extent

1 that future demand measures are implemented, whether a
2 35 percent State Water Project allocation would result
3 in a balance between -- it goes to the question of how
4 much water Metropolitan needs in the future to balance
5 supply and demand, which is fundamental to the Urban
6 Water Management Plan.

7 CO-HEARING OFFICER DODUC: And?

8 MR. OBEGI: And based on this current level of
9 demand and the other supplies that Metropolitan has
10 available, according to this table and their document,
11 they achieved balance this year.

12 CO-HEARING OFFICER DODUC: So, Mr. Goshi, were
13 you able to follow that?

14 WITNESS GOSHI: Somewhat.

15 CO-HEARING OFFICER DODUC: Ask your direct
16 question, Mr. Obegi.

17 MR. OBEGI: Does a 35 percent State Water
18 Project allocation result in a balance between supply
19 and demand in 2018 for Metropolitan?

20 CO-HEARING OFFICER DODUC: Answer to the best
21 of your ability, Mr. Goshi.

22 WITNESS GOSHI: In the context of the overall
23 mix of water supplies and demands that are estimated
24 for this year as of the April 9th, 2018 and shown in
25 this report -- and so that's inclusive of water use at

1 the retail level -- water management actions by the
2 local agencies, including the production of --

3 CO-HEARING OFFICER DODUC: And so that's a
4 yes?

5 WITNESS GOSHI: I want to make sure that I
6 characterized the 35 percent allocation. Inasmuch as
7 those other water supplies may not have been available
8 in a different year type than 2018, 35 percent State
9 Water Project allocation may not be sufficient.

10 But directly answering the question,
11 35 percent in this specific year with those given other
12 resources and the demand level balances the overall
13 regional supply and demand.

14 CO-HEARING OFFICER DODUC: Thank you.

15 MR. OBEGI. Thank you. Nothing further.

16 CO-HEARING OFFICER DODUC: All right. Thank
17 you, Mr. Obegi.

18 Any redirect of Mr. Goshi?

19 MR. BERLINER: No.

20 CO-HEARING OFFICER DODUC: All right. With
21 that, thank you, Mr. Goshi.

22 Mr. Ferguson, you are up. You have requested
23 60 minutes. I would like to take a lunch break around
24 the noontime hour. So if you would find a good break
25 in your cross-examination, a good time to break.

1 MR. FERGUSON: Okay.

2 CO-HEARING OFFICER DODUC: You don't want to
3 be standing between us and lunch.

4 MR. FERGUSON: No.

5 CO-HEARING OFFICER DODUC: And I will ask you,
6 since you have questions for, I would guess, more than
7 one witness on a variety of topics, to list your topics
8 that you will be conducting cross on.

9 MR. FERGUSON: Yeah. I have questions for
10 Ms. Buchholz concerning her testimony about Dr. Mehl's
11 testimony. And then I have questions for Mr. Bednarski
12 about the realignment around the town of Hood and his
13 testimony about transportation issues, and then
14 testimony about air quality issues.

15 CO-HEARING OFFICER DODUC: All right. Please
16 proceed.

17 CROSS-EXAMINATION BY MR. FERGUSON

18 MR. FERGUSON: Hi, Ms. Buchholz. I'd like to
19 start with you.

20 So in your testimony, you state that the
21 assertions of Steffen Mehl that groundwater monitoring
22 data should be collected in a more distributed way
23 around the Sacramento River and also within Zone 40 are
24 not supported by the evidence, correct?

25 WITNESS BUCHHOLZ: What I said was that the

1 proposed proposal is presented for the adopted project
2 of focusing that groundwater monitoring network within
3 two miles of the river on either side is adequate,
4 based upon our modeling results that we used in the
5 analysis.

6 MR. FERGUSON: But you did make the statement
7 on Page 2 that his statements aren't supported by the
8 evidence, correct?

9 WITNESS BUCHHOLZ: Right.

10 MR. FERGUSON: Okay. So just prior to stating
11 his opinion in SCWA-302 that monitoring data should be
12 collected in a more distributed way, Dr. Mehl stated
13 that Zone 40 within the South American Subbasin could
14 be affected by changes in flow patterns from multiple
15 directions because it is bounded by the Sacramento and
16 American Rivers and stream flows will change, correct?

17 WITNESS BUCHHOLZ: That is what is in
18 SCWA-306.

19 MR. FERGUSON: And at Page 2, Lines 12 through
20 15 of your testimony, you similarly acknowledge that
21 groundwater in Zone 40 is affected by changes in
22 groundwater flows from multiple sources, correct?

23 WITNESS BUCHHOLZ: That's true, and that's
24 consistent with my testimony in DWR-80.

25 MR. FERGUSON: And so is it your testimony

1 that stream flows -- well, excuse me.

2 Would you agree that stream flows in these
3 rivers including the American and Sacramento will
4 change with implementation of the project?

5 WITNESS BUCHHOLZ: As I stated in DWR-80, we
6 acknowledge that there will be changes in stream flows
7 in the Sacramento River due to the operation of the
8 project, due the operation of the project for both
9 projects, and that there will be changes in groundwater
10 elevations adjacent to the river within two miles.

11 MR. FERGUSON: So don't the facts that
12 groundwater in Zone 40 is influenced by all these
13 sources and that stream flows will change with the
14 project in place --

15 WITNESS BUCHHOLZ: Well, as we --

16 MR. FERGUSON: Support a -- excuse me --
17 support a conclusion -- I'm going to actually start
18 over, if you don't mind.

19 So don't the facts that groundwater in Zone 40
20 is influenced by all of these sources and that stream
21 flows will change with the project in place support a
22 conclusion that groundwater monitoring should be
23 conducted in a more distributed fashion than within a
24 two-mile corridor of east of the proposed intakes?

25 WITNESS BUCHHOLZ: I do not believe so, no.

1 MR. FERGUSON: Why is that?

2 WITNESS BUCHHOLZ: As I stated in DWR-80 in
3 Part 1 rebuttal, the areas to the east of Interstate 5
4 appear to be much more influenced by flows in the
5 American River and recharge flows coming off from the
6 eastern foothills and also coming up from the Cosumnes
7 River and that the influence on groundwater associated
8 with changes in the Sacramento River flows and
9 elevations are more focused to the west of Interstate
10 5, where there are no Zone 40 wells that we're aware of
11 based on Zone 40 documents.

12 MR. FERGUSON: To the extent that, like I
13 said, these -- that Zone 40 is influenced by these
14 other sources and the stream flows would be changing
15 with the project in place, aren't there facts there to
16 support his opinion that a more distributed monitoring
17 program is appropriate?

18 MR. MIZELL: Objection, asked and answered.

19 CO-HEARING OFFICER DODUC: Sustained.

20 MR. FERGUSON: Let's move on and talk a little
21 bit about the -- some the testimony of Dr. Mehl in
22 SCWA-302.

23 Can we bring up SCWA-302, please. Page 7.

24 Scroll down a little.

25 So at Lines 17 and 18, do you see that

1 testimony --

2 WITNESS BUCHHOLZ: Yes.

3 MR. FERGUSON: -- where Dr. Mehl states that,
4 as presented in Figure 1, implementation of CWF could
5 affect the water budget in the entire South American
6 Subbasin and not just in the area of the diversion? Do
7 you see that testimony?

8 WITNESS BUCHHOLZ: I see the testimony.

9 MR. FERGUSON: And then Dr. Mehl also notes
10 that -- in Figure 1 in SCWA-302, that the relative
11 cumulative difference in stream leakage between the
12 CVHM Alt 4 and the No-Action Alternative along the
13 Sacramento River is significant, correct? And that's
14 on Page 9.

15 WITNESS BUCHHOLZ: I see the Figure 1 on
16 Page 9. It's a different way of analyzing the changes
17 in -- groundwater elevation changes in groundwater
18 storage than we usually utilize.

19 MR. FERGUSON: Can you please bring up
20 SCWA-200, Page 6, Paragraph 22 at the bottom.

21 So in Paragraph 22, Dr. Mehl states that he
22 qualitatively evaluated the cumulative difference in
23 stream leakage between the CVHM-D No Action and
24 Alternative 1B and determined there would be large
25 cumulative differences in stream leakage under the

1 project alternative, indicating that the project would
2 have more water drained from the aquifer, correct?

3 MR. MIZELL: I'd like to object to this
4 question. At no point in Ms. Buchholz' testimony does
5 she reference SCWA-200, and Mr. Ferguson hasn't drawn
6 the linkage back to Ms. Buchholz' rebuttal testimony.
7 So at this point, I believe this is out of scope.

8 CO-HEARING OFFICER DODUC: And Mr. Ferguson,
9 that's the third question for which you've asked
10 Ms. Buchholz to just affirm what's on the screen. I'm
11 hoping that these are foundational questions that would
12 actually --

13 MR. FERGUSON: Sure.

14 CO-HEARING OFFICER DODUC: -- lead to the
15 point.

16 MR. FERGUSON: So the evidence presented by
17 Dr. Mehl that the groundwater budget in the South
18 American Subbasin is going be affected by
19 implementation of the WaterFix, supports Dr. Mehl's
20 opinion that the groundwater monitoring should be
21 conducted in a more distributed fashion rather than a
22 two-mile corridor east of the river, correct?

23 MR. MIZELL: Objection, asked and answered.

24 CO-HEARING OFFICER DODUC: Sustained.

25 MR. FERGUSON: That was with respect to the

1 first piece of testimony. I'm talking about all the
2 testimony I presented, which she said was inadequate to
3 support his opinions. So that's why I've marched
4 through each of these pieces and am asking the same
5 question.

6 CO-HEARING OFFICER DODUC: Ms. Buchholz, has
7 your response changed?

8 WITNESS BUCHHOLZ: No.

9 MR. FERGUSON: So Page 2 of your testimony,
10 you state that DWR-80 shows that a portion of the
11 aquifer that could be affected by changes in the
12 Sacramento River flows in the vicinity of the proposed
13 CWF intakes is located to the West of Interstate 5,
14 correct?

15 WITNESS BUCHHOLZ: True.

16 MR. FERGUSON: And in DWR-80, you focus on the
17 contour maps in DWR-801; is that correct?

18 WITNESS BUCHHOLZ: That's part of the backup
19 information, yes.

20 MR. FERGUSON: Okay. So using these maps in
21 DWR-801, can you explain why you think that a portion
22 of the aquifer -- I should say the only portion of the
23 aquifer that could be affected is the portion in the
24 vicinity of the intakes located west of Interstate 5?

25 CO-HEARING OFFICER DODUC: Ms. Ansley.

1 MS. ANSLEY: I'm going to object as sort of
2 vague and ambiguous. She just said that the figures in
3 801, I believe, is only part of their backup for this
4 plan. If he has a -- if he'd like to call up figures
5 in 801 and then ask a specific questions -- his
6 question is vague and ambiguous to the extent it asks
7 for an -- just an open-ended narrative.

8 CO-HEARING OFFICER DODUC: Mr. Ferguson.

9 MR. FERGUSON: Well, we can bring up 801,
10 Pages 14 through 17. That's where the contour maps are
11 located.

12 WITNESS BUCHHOLZ: I'm looking at --

13 MR. FERGUSON: Pages 14 through 17.

14 WITNESS BUCHHOLZ: Right. I wasn't sure this
15 was 801.

16 With respect to this contour map, this was
17 Attachment 2 in DWR-80 that I presented in Part 1
18 rebuttal.

19 And as can you see, the -- as we talked about
20 in Part 1 rebuttal, the flow of groundwater is going to
21 be more prevalent where the contours are closer. And
22 so there's a larger portion of the groundwater coming
23 in from the eastern side, Cosumnes and American side,
24 in towards this area of the -- of the central
25 groundwater authority -- from the basin. And that the

1 contours from the river towards -- and they flow down
2 to the areas -- I don't have a pointer.

3 They flow down to the locations that are the
4 lower elevations, which is the circle there associated
5 on the sort of center of the left side.

6 The contours coming in from the river are not
7 as close. And so even though there definitely is a
8 certain amount of water coming in from -- those
9 contours also, if you notice, only slightly extend past
10 Interstate 5 on those areas, too.

11 So this was specifically why we felt that the
12 groundwater recharge in this area is primarily coming
13 not from the Sacramento River in this location.

14 MR. FERGUSON: So I believe you just indicated
15 it's your opinion that the groundwater contours from
16 the river to Interstate 5 are fairly modest compared to
17 the -- okay.

18 But then you also acknowledge that there still
19 could be influence from the river and stream leakage,
20 if you will, in that direction from the river to the
21 basin, correct?

22 WITNESS BUCHHOLZ: And that is why, in
23 Mitigation Measure GW-1, we have proposed -- not
24 proposed but mandated the groundwater monitoring
25 network to be established during predesign and continue

1 through design and construction and after construction
2 so we can see how the groundwater reacts through a
3 variety of hydrologic water year types.

4 And if I may add, the mitigation measure then
5 includes actions that would be taking place if we did
6 see adverse impacts associated with the project
7 operations and construction.

8 MR. FERGUSON: So given this interaction that
9 we just discussed, stream leakage from the river to the
10 basin has the potential to affect aquifer water volume
11 in the South American Subbasin, correct?

12 WITNESS BUCHHOLZ: On the western side.

13 MR. FERGUSON: The basin extends from the
14 river to the -- all the way east to the foothills,
15 correct?

16 WITNESS BUCHHOLZ: I understand. But the --
17 as you can see from the contours, there's -- the water
18 sources into that groundwater basin come from
19 multiple -- and as I said in my testimony and Dr. Mehl
20 says in his testimony, they come from different
21 water -- both surface water and groundwater bodies.
22 And we've acknowledged what there is an interface
23 between surface water and groundwater along the river.

24 MR. FERGUSON: So these groundwater contour
25 maps are based on a snapshot in time, correct?

1 WITNESS BUCHHOLZ: That's right. This was
2 based on the 2009-2010 report, and I believe these were
3 just fall 2010 groundwater maps I used as an example,
4 but I did review the report.

5 MR. FERGUSON: Okay. So these contour maps in
6 DWR-801 do not provide evidence of long-term average
7 change in stream leakage from the Sacramento River to
8 the South American Subbasin, correct?

9 WITNESS BUCHHOLZ: Not -- this --

10 MR. FERGUSON: They simply measure levels at a
11 point in time, correct?

12 WITNESS BUCHHOLZ: This map is showing just a
13 snapshot in time, yes. The -- there was a report that
14 was indicative of various snapshots in time that we
15 could look at.

16 MR. FERGUSON: But they don't evaluate changes
17 in stream leakage over time, correct?

18 WITNESS BUCHHOLZ: This report that you --
19 that has -- that an excerpt is from does not include
20 that, no.

21 MR. FERGUSON: Okay. Thank you.

22 So in DWR-1213, you rely on DWR-80, as you
23 stated, correct? And in DWR-80, you rely on
24 Figure 7-14 to support your assertion about the
25 two-mile-wide corridor being the area of influence,

1 correct?

2 WITNESS BUCHHOLZ: In DWR-80, I rely upon
3 multiple documents.

4 MR. FERGUSON: But one of the sources is
5 Figure 7-14, correct?

6 WITNESS BUCHHOLZ: Yes, and I also rely upon
7 the results of our modeling that was presented in the
8 EIR/EIS.

9 MR. FERGUSON: Okay. So in DWR-80, you state
10 that Figure 7-14 shows the maximum reduction in
11 groundwater levels along the Sacramento River due to
12 the operation of the CWF intakes, correct?

13 WITNESS BUCHHOLZ: Could you give me a page
14 and a line number for that, please?

15 MR. FERGUSON: Oh, for your testimony?

16 WITNESS BUCHHOLZ: Yes.

17 MR. FERGUSON: Can we bring up DWR-80?
18 Pardon.

19 Go towards the end. I apologize. I don't
20 have the page number handy. That was it, right there,
21 at Line 13 at Page 20.

22 WITNESS BUCHHOLZ: I need a minute to see the
23 context of this paragraph.

24 Okay. I've read it now. I'm sorry. I forgot
25 the question.

1 MR. FERGUSON: Well, is it fair to say --
2 well, I just wanted you to acknowledge that the
3 testimony -- is your testimony, DWR-80

4 So Figure 7-14 shows the typical peak
5 difference in groundwater levels between Alternative 1B
6 and the No Action Alternative in a given month,
7 correct?

8 MR. MIZELL: I'm going to object to this line
9 of questioning on this citation, not necessarily to
10 questions that might be posed produced about other
11 portions of DWR-80.

12 However, looking at the context, this is well
13 beyond the scope of any testimony put on in Part 2
14 because it references Alternative 1B, which is not the
15 California WaterFix H3+.

16 The modeling Mr. Ferguson is referencing
17 includes five intakes. As we know, this doesn't
18 represent the three-intake project that's before the
19 Board.

20 CO-HEARING OFFICER DODUC: Mr. Ferguson.

21 MR. FERGUSON: This is DWR's own witness's
22 testimony with respect to groundwater. They chose to
23 rely on Alternative 1B as the project alternative when
24 evaluating groundwater impacts.

25 CO-HEARING OFFICER DODUC: And?

1 MR. FERGUSON: And this is their only
2 testimony with respect to groundwater impacts. And
3 she -- and Ms. Buchholz chose to use Alternative 1B as
4 representative of what would be occurring with
5 Alternative 4A in place. And she describes a little
6 later that it's because of a flow condition similarity.

7 CO-HEARING OFFICER DODUC: Ms. Meserve.

8 MS. MESERVE: Yes. I just want to confirm
9 that that's the analysis DWR chose to use. So it would
10 be very unfair to now say that we're not allowed to
11 question them about the analysis they relied on for
12 determining groundwater impacts in their documents.

13 CO-HEARING OFFICER DODUC: And did you
14 continue to rely on this, Ms. Buchholz, in your
15 rebuttal testimony?

16 WITNESS BUCHHOLZ: Yes. This is the modeling
17 that we used.

18 CO-HEARING OFFICER DODUC: Mr. Mizell?

19 MR. MIZELL: Yes. That was a clarification of
20 my objection I would like to raise. Mr. Ferguson
21 hadn't drawn the connection. Simply pointing to a
22 ran- -- to an isolated sentence in a lengthy testimony
23 that occurred over a year ago is, I think, not as
24 helpful as if he were to draw the connection for you.

25 CO-HEARING OFFICER DODUC: Mr. Ferguson, draw

1 the connection. Ask your questions as they pertain to
2 Ms. Buchholz's rebuttal testimony for Part 2.

3 MR. FERGUSON: Well, Figure 7-14 represents a
4 snapshot in time, correct, because it reflects the
5 maximum reduction in groundwater levels in a given
6 month that the modeling showed, correct?

7 MR. BERLINER: Objection, relevance. Has not
8 shown the connection to her testimony.

9 CO-HEARING OFFICER DODUC: Sustained.

10 MR. FERGUSON: She is relying on DWR-80 and
11 DWR-1213, and she consistently relies on it as a basis
12 for her opinion that Mr. -- Dr. Mehl's opinions are
13 unsupported when he said the modeling needs to be
14 conducted in a more distributed fashion.

15 So it seems fair to ask her questions about
16 her opinions in DWR-80 and the basis for those
17 opinions.

18 MR. BERLINER: Well, that was subject to
19 cross-examination in Part 1.

20 MR. FERGUSON: But she's raised it again in
21 DWR-1213.

22 CO-HEARING OFFICER DODUC: Ms. Buchholz, to
23 what extent does Figure 7-14 in DWR-80 contribute to
24 your testimony for this Part 2 rebuttal?

25 WITNESS BUCHHOLZ: It pertains in two ways.

1 One is -- and I'll answer that question, and then if I
2 may answer -- make a statement that the assumption
3 about Figure 7-14 is incorrect.

4 So the way it is used is that that isn't the
5 figure from the EIR/EIS that indicates the two-mile --
6 the area that we feel is going to be affected within
7 two miles of the river.

8 So this -- or something close.

9 The Figure 7-14 is included in the EIR/EIS as
10 the indication of why we believe that the effects of
11 operations would be within two miles of the river near
12 the intakes.

13 The Figure 7-14 represents, as it says there,
14 the anticipated maximum reduction in groundwater
15 elevations. It's done by looking at the entire length
16 of the model runs in the multiple years every month.
17 It is a monthly time step.

18 And going from the beginning to the end, we --
19 we selected -- and that was explained in the
20 Appendix 7A that this was the maximum reduction area
21 along the river. The month that happened to be in the
22 entire model output, this showed the maximum reduction
23 of the groundwater along that river.

24 MR. FERGUSON: So it is true that it's
25 representative of a given month, a maximum reduction?

1 WITNESS BUCHHOLZ: It's the maximum reduction
2 of that entire model simulation --

3 MR. FERGUSON: As represented in a given
4 month?

5 WITNESS BUCHHOLZ: -- in -- it's a monthly
6 model, but it's not -- so I guess you would say it's a
7 monthly model. We compared it to the No Action, and
8 this was the month that had the increment with the
9 maximum reduction.

10 MR. FERGUSON: So Figure 7-14 does not provide
11 evidence of long-term changes in stream leakage from
12 the sacramento River to the South American Subbasin,
13 correct?

14 WITNESS BUCHHOLZ: We did not analyze the --
15 our analysis is looking at changes in groundwater
16 elevation in that case, and we were not calculating, as
17 I said before, the leakage factors that Dr. Mehl
18 analyzed.

19 And we believe that they -- the approach that
20 we used was adequate to look at the analysis and
21 determine adverse effects of the operation and
22 construction of the facilities.

23 MR. FERGUSON: So it doesn't reflect long-term
24 changes in the groundwater aquifer conditions, correct?

25 MR. BERLINER: Objection, asked and answered.

1 CO-HEARING OFFICER DODUC: Sustained.

2 MR. FERGUSON: That's all the questions I have
3 for Ms. Buchholz. So maybe now would be a good time.

4 CO-HEARING OFFICER DODUC: It would be,
5 indeed.

6 Before we take our lunch break, though, let me
7 run down a list of who I expect will conduct
8 cross-examination this afternoon.

9 After Mr. Ferguson completes his cross, we'll
10 get to Mr. Aladjem, then Mr. Herrick, Mr. Keeling,
11 Ms. Womack, who switched places with Mr. Brodsky.

12 MS. WOMACK: And that's just for his doctor's
13 appointment.

14 CO-HEARING OFFICER DODUC: Yes, but you --
15 we'll get to you.

16 MS. WOMACK: Absolutely.

17 CO-HEARING OFFICER DODUC: Yes.

18 Followed by -- after Ms. Womack will be
19 Mr. Jackson. I expect that will probably be all we'll
20 get to today. And if we finish with Mr. Jackson, then
21 Ms. Des Jardins would be next. And Mr. Obegi has
22 already conducted his cross.

23 Okay? With that, then, we'll go ahead and
24 take our lunch break and we'll return at 1:05.

25 (Luncheon recess taken at 12:05 p.m.)

1 Thursday, August 2, 2018 1:05 p.m.

2 PROCEEDINGS

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4 CO-HEARING OFFICER DODUC: It is 1:05.

5 Welcome back.

6 Before we return to Mr. Ferguson, are there
7 housekeeping matters we need to address?

8 MR. BEZERRA: Yes. Ryan Bezerra.

9 This is a followup to this morning's
10 discussion on potentially having modeling files
11 available for cross-examination tomorrow. Those are in
12 Exhibits DWR-500 and DWR-1077. Each of those exhibits
13 is quite a collection of files.

14 Ultimately, there is in each -- As I
15 understand it, there is in each of those exhibits one
16 file in a DSS format that you can use to view modeling
17 results sort of one -- one result at a time.

18 So it's rather laborious to download them. So
19 the housekeeping matter is, I'd like to request that
20 the Water Board staff download those DSS files so that
21 we could have them available and we don't have to spend
22 10 minutes scrolling down the file tree if necessary.

23 And I can offline, I think, help the staff
24 find those. And if DWR or Water Contractors or whoever
25 else would also like to participate in that process to

1 ensure authenticity, that's fine.

2 But it seems like, to maximize efficiency
3 tomorrow, we should download DSS files. And if we need
4 to mark them separately from existing DWR exhibits, we
5 can do that. But I'd just like to try to do that
6 today.

7 CO-HEARING OFFICER DODUC: Since Mr. Hunt is
8 here, Miss McCue, is there any staff available?

9 MS. McCUE: Can I check?

10 CO-HEARING OFFICER DODUC: Okay. Why don't we
11 get back to you before we adjourn today.

12 MR. BEZERRA: Shall I come back today and --

13 CO-HEARING OFFICER DODUC: Afternoon break.

14 MR. BEZERRA: Afternoon break?

15 CO-HEARING OFFICER DODUC: Yeah.

16 MR. BEZERRA: Thank you.

17 CO-HEARING OFFICER DODUC: Okay. We'll turn
18 back -- Miss Morris, was there something else?

19 MS. MORRIS: (Shaking head.)

20 CO-HEARING OFFICER DODUC: Okay.

21 Collaborating.

22 Mr. Ferguson, continue your examination.

23 MR. FERGUSON: So, Mr. Bednarski, what factors
24 led DWR to believe that it's important for the tunnel
25 alignment to avoid the municipal wells in the Town of

1 Hood?

2 WITNESS BEDNARSKI: The factors in our
3 decision to move that were two-fold:

4 We looked for an opportunity to move the
5 tunnels away from the vicinity of the housing and other
6 structures that were in the Town of Hood.

7 And then, as I mentioned in my presentation
8 today, the subject of the existing municipal wells were
9 brought to our attention in Part 1 of these hearings.
10 And we took that into account and moved the tunnel
11 alignment to avoid those since in, Part 1, when we
12 originally laid out the tunnel alignment we were not
13 aware of those municipal swells.

14 MR. FERGUSON: Was there a specific concern
15 about the tunnel physically affecting the wells or the
16 land in the Town of Hood.

17 WITNESS BEDNARSKI: Two-fold answer to that:

18 We wanted to minimize any potential risk of
19 settling during tunneling to any of the structures in
20 the Town of Hood.

21 You know, we've already discussed that, in my
22 prior testimony, that we feel there is a small risk of
23 surface settlement that we will be dealing with along
24 the entire alignment. But we felt this was a prudent
25 way to minimize that risk even further by moving the

1 tunnel alignment.

2 And then I believe that we disclosed in Part 1
3 that, even though the tunnel alignment originally
4 passed directly between these two municipal wells, we
5 did not feel that there would be an impact on those
6 wells' operation. But we felt again this was
7 additional insurance that we would not have an impact.

8 MR. FERGUSON: So what factors did DWR
9 consider in setting the new tunnel alignment east of
10 the Town of Hood? Was there a -- Let me just leave it
11 there.

12 WITNESS BEDNARSKI: Primarily the two factors
13 that I've already discussed: The proximity to the
14 existing surface structures, and also to these two
15 municipal wells, were the primary factors in setting
16 the new alignment and moving those as far as we could
17 east without encroaching into the Stone Lakes Reserve.

18 MR. FERGUSON: Okay. I'm going to ask you a
19 few questions about traffic conditions.

20 So, Petitioners evaluated existing projected
21 traffic volumes to measure traffic operating conditions
22 using a Level of Service Analysis; correct?

23 WITNESS BEDNARSKI: That's correct.

24 MR. FERGUSON: And the LOS is a qual-- Can I
25 use the acronym "LOS" for Level of Service?

1 Okay. LOS is a qualitative measure of traffic
2 operating conditions whereby a letter grade is used to
3 represent conditions; correct?

4 WITNESS BEDNARSKI: I'm going to refer you to
5 Mr. Choa, my associate here, expert on traffic.

6 WITNESS CHOA: Yes, that is correct.

7 MR. FERGUSON: And my understanding is that
8 DWR consultants developed existing hourly traffic
9 volume thresholds based on the 2000 Highway Capacity
10 Manual methodology; correct?

11 WITNESS CHOA: Yes, that is correct. It was a
12 current methodology at the time we were performing the
13 analysis.

14 MR. FERGUSON: So the HCM -- if I might call
15 it that -- offers a methodology for assessing Level of
16 Service on two-lane highways; correct?

17 WITNESS CHOA: That is partially correct. It
18 also includes multilane highways and freeways as well,
19 so it's the same methodology for all roadway segments.

20 MR. FERGUSON: And the HCM methodology assumes
21 ideal conditions and then offers adjustment factors for
22 anything that might restrict traffic; correct?

23 Assume the set of ideal conditions, and then
24 provides for adjustments based upon potential
25 restrictions; correct?

1 WITNESS CHOA: I would rephrase that to state
2 that it begins with ideal saturation and actual
3 conditions, adjust that to conditions determined for
4 each segment.

5 MR. FERGUSON: And are you generally familiar
6 with the physical characteristics of Delta roads in
7 Sacramento County?

8 WITNESS CHOA: Can you be more specific in
9 terms of locations?

10 MR. FERGUSON: Well, any of the segments that
11 the EIR indicates will be affected by construction of
12 the WaterFix Project located within Sacramento County.

13 Are you generally familiar with those
14 roadways?

15 WITNESS CHOA: Yes. In general, the -- I am
16 familiar with the 114 segments that were evaluated.

17 MR. FERGUSON: Okay. So you're familiar with
18 the fact that the Delta roads in Sacramento County
19 often have narrow pavement widths?

20 MR. MIZELL: Objection: Assumes facts not in
21 evidence.

22 CO-HEARING OFFICER DODUC: Mr. Ferguson.

23 MR. FERGUSON: I can rephrase the question
24 perhaps.

25 CO-HEARING OFFICER DODUC: Thank you.

1 MR. FERGUSON: So, in your opinion, do roads
2 in Sacramento County in the Delta have narrow pavement
3 widths?

4 MR. MIZELL: Objection: Vague and ambiguous.
5 Can we specify a specific roadway so the
6 answer's not misleading?

7 CO-HEARING OFFICER DODUC: Mr. Ferguson.

8 MR. FERGUSON: Well, did they have narrower
9 pavement widths than those assumed in the HCM
10 methodology?

11 CO-HEARING OFFICER DODUC: And where in the
12 Delta?

13 MR. FERGUSON: I'm just saying, in general, on
14 the two-lane segments in the Delta, do the -- are the
15 widths generally narrower than those assumed in the HCM
16 for two-lane roadways?

17 CO-HEARING OFFICER DODUC: Mr. Mizell.

18 MR. MIZELL: I'm renewing the objection. I
19 think it's very difficult for any witness to answer
20 that generally about what the roadway margins would be,
21 not to mention I'm not sure what value it would hold if
22 we're generalizing the entire Delta to have narrow or
23 wide medians.

24 If we could focus on a specific location, then
25 the witness can certainly answer.

1 CO-HEARING OFFICER DODUC: Mr. Ferguson, that
2 would be helpful.

3 MR. FERGUSON: Well, let me move on to another
4 question that maybe gets -- gets right to it.

5 So did DWR's traffic consultant develop the
6 LOS thresholds which were used for the traffic study by
7 making adjustments to the -- to the base HCM
8 assumptions for the road conditions in the Delta?

9 WITNESS CHOA: Yes, that is correct. Based on
10 Highway Capacity Manual, adjustments were made to that
11 to develop Level of Service criteria.

12 MR. FERGUSON: So where is that explained?

13 WITNESS CHOA: It is in --

14 MR. FERGUSON: Where are those adjustments
15 explained?

16 WITNESS CHOA: (Searching through document.)

17 In document SWRCB-102, Appendix 19A under
18 Methods of Analysis.

19 MR. FERGUSON: Can you be more specific on the
20 page number?

21 MR. MIZELL: Mr. Choa, if you'd like to bring
22 up --

23 MR. FERGUSON: Please bring it up, yeah.

24 MR. MIZELL: -- the citation, feel free to ask
25 Mr. Ferguson.

1 (Document displayed on screen.)

2 WITNESS CHOA: It would be under Section 2,
3 Analysis Approach.

4 (Exhibit displayed on screen.)

5 MR. FERGUSON: So, where on this page does it
6 indicate that adjustments were made relative to the HCM
7 methodology in order to develop the thresholds seen in
8 Table 2?

9 WITNESS CHOA: Under Lines 11, 12, it states
10 (reading):

11 "Traffic operations of roadway
12 segments were analyzed using procedures
13 and methodologies contained in the
14 Highway Capacity Manual, Transportation
15 Research Board 2010."

16 MR. FERGUSON: So where specifically are the
17 adjustments for Sacramento County roads documented? I
18 see this general language here, but is there any -- any
19 documentation of the adjustments that were made to
20 develop the LOS thresholds in this table?

21 WITNESS CHOA: Could you scroll below Table 2.
22 (Exhibit displayed on screen.)

23 WITNESS CHOA: So this defines the -- Table 2
24 shows the -- based on the facility type from two-way
25 highway to freeways, the resulting hourly LOS volume

1 thresholds for Level of Service A through E.

2 MR. FERGUSON: But this is the end result of
3 an analysis -- correct? -- that started with the HCM
4 methodology.

5 WITNESS CHOA: That is correct.

6 MR. FERGUSON: So what sort of adjustments
7 were made in the base conditions in the HCM methodology
8 to develop the LOS thresholds in this table?

9 WITNESS CHOA: It was a function of, again,
10 characteristics or parameters in the Highway Capacity
11 Manual in terms of lane widths, in terms of the -- of
12 the shoulder widths, and characteristics of roadways
13 that need those facility types.

14 MR. FERGUSON: So has DWR introduced any
15 evidence documenting those adjustments that you're
16 aware of?

17 MR. MIZELL: I'm going to -- I'm going to
18 object, maybe a late objection here, but vague and
19 ambiguous.

20 Mr. Ferguson is referring to documentation
21 but, as we can see on the screen, there are different
22 types of documentation. One might go to traffic
23 operations, another might go to physical conditions.
24 Those are contained in sections of this document.

25 And maybe the ambiguity in the question is

1 confusing the witness, so maybe you could give a
2 specific as to what particular documentation you're
3 looking for. Is it traffic operations or physical
4 conditions?

5 MR. FERGUSON: Yes. We're talking about
6 traffic operations here on this page.

7 So I'm just --

8 MR. MIZELL: Section 2 concludes -- Section 2
9 includes both, so that's why I'm asking you to specify.

10 MR. FERGUSON: I know.

11 So, are you -- Are you aware of any
12 documentation evidencing the adjustments that were made
13 from the base ACM -- HCM methodology to address the
14 unique physical conditions of roadways in Sacramento
15 County in order to set these thresholds?

16 WITNESS CHOA: Again, these threshold were
17 applied to all 114 segments. So in terms of a specific
18 jurisdiction, they were more in terms of the facility
19 type and not -- and not a specific location in
20 Sacramento County.

21 MR. FERGUSON: Okay. So are you saying that
22 adjustments were not made from the HCM methodology with
23 that statement?

24 WITNESS CHOA: No. As I stated before, the
25 adjustments to the ideal saturation flow rate were

1 applied to develop these thresholds that were applied
2 to all -- all the 114 segments, whether they were in
3 Sacramento or other jurisdictions.

4 MR. FERGUSON: But you're not aware of -- Are
5 you aware of the documentation where that's -- that's
6 contained?

7 CO-HEARING OFFICER DODUC: Miss Ansley.

8 MS. ANSLEY: I'm going to object as asked and
9 answered.

10 The witness has already pointed out the
11 methodology and the source of the methodology used and
12 pointed out this table which contains the actual
13 thresholds that were applied.

14 I'm not sure what this witness is going to
15 gain -- or this testi -- the question is going to gain
16 by asking the same question for the fourth time.

17 CO-HEARING OFFICER DODUC: Miss Ansley, let me
18 make sure I understand Mr. Choa.

19 You're saying that the -- this are based on --
20 These LOS thresholds are based on facility types but
21 then they're applied generally throughout the Delta but
22 not specifically to any particular county like
23 Sacramento.

24 WITNESS CHOA: That is 95 percent correct.

25 CO-HEARING OFFICER DODUC: Okay.

1 takes into account passenger car equivalents.

2 MR. FERGUSON: So did the -- the traffic
3 analysis for the Level of Service conditions that will
4 exist with the Project in place, was that performed --
5 was a passenger car equivalent analysis performed with
6 that given the likely vehicle traffic with the Project
7 in place -- excuse me -- with construction of the
8 Project?

9 Let me rephrase that. That was a little
10 confusing.

11 So, the Level of Service Analysis that was
12 performed in the EIR associated, with the vehicle
13 activity that will be seen with construction of the
14 Project, was a passenger car equivalent analysis
15 conducted for those analyses?

16 WITNESS CHOA: That is correct. We defined
17 them as vehicle trips.

18 MR. FERGUSON: And so, for example, you may
19 have -- You converted the passenger car equivalent of
20 certain trucks, for example, that are likely to be used
21 in constructing the -- the Project; is that correct?

22 CO-HEARING OFFICER DODUC: I'm not sure I
23 understand the question, Mr. Ferguson.

24 MR. FERGUSON: Well, let me just -- So, in the
25 LOS analysis, you had to assume a certain vehicle mix

1 for construction of the Project; correct?

2 WITNESS CHOA: That is correct, yes.

3 MR. FERGUSON: Okay. And did you perform a
4 passenger car equivalent analysis of those types of
5 vehicles that will be seen with construction of the
6 Project?

7 MR. BERLINER: Objection: Asked and answered.

8 CO-HEARING OFFICER DODUC: I believe the
9 answer is yes.

10 WITNESS CHOA: That is yes.

11 CO-HEARING OFFICER DODUC: All right. So
12 let's see where Mr. Ferguson goes.

13 MR. FERGUSON: I'm going to move on.

14 So, on Page 12 of Mr. Bednarski's testimony,
15 it states that the traffic analysis was also conducted
16 using Sacramento County-approved methodology and Level
17 of Service standards for roadway and pavement analysis.

18 So what does the phrase "approved methodology"
19 mean with respect to the traffic operations analysis in
20 Sacramento County?

21 WITNESS CHOA: That is in terms of using the
22 Highway Capacity Manual, which is a . . . industry
23 standard of analyzing roadway segments.

24 And then also for the -- in terms of the
25 methodology used for the pavement analysis.

1 MR. FERGUSON: So by that phrase, "approved
2 methodology," it doesn't sound like you specifically
3 meant a methodology that Sacramento County told you is
4 their way of conducting the analysis; is that correct?

5 MR. BERLINER: Objection: Asked and answered.
6 He already stated what he used.

7 CO-HEARING OFFICER DODUC: You know what? I
8 need to perfect understand it so please answer again,
9 Mr. Choa.

10 WITNESS CHOA: The methodology used is the
11 industry standard of using the Highway Capacity Manual,
12 so it is the approved methodology of -- In this case,
13 the question asked is in terms of Sacramento County.

14 MR. FERGUSON: How did you confirm that with
15 respect to Sacramento County?

16 (Pause in proceedings.)

17 WITNESS CHOA: Can I have a moment to refer to
18 the footnotes of the table?

19 CO-HEARING OFFICER DODUC: Sure.

20 (Pause in proceedings.)

21 WITNESS CHOA: Can you open SWRCB-102, Page 32
22 and 33 of Appendix 19A.

23 CO-HEARING OFFICER DODUC: As we're doing
24 that, I think where Mr. Ferguson is going is, at least
25 for me when I read your testimony, Mr. Bednarski, I

1 interpreted Line Number 9 as that Sacramento,
2 San Joaquin and Yolo County somehow approved the
3 methodology and Level of Service standard.

4 Is that where you were going, Mr. Ferguson?

5 MR. FERGUSON: Yes.

6 CO-HEARING OFFICER DODUC: So what you're
7 directing us to, Mr. Choa, is it information that would
8 demonstrate somehow that the counties involved reviewed
9 and approved the methodology?

10 WITNESS CHOA: That is correct, yes.

11 So this shows, beginning on Line Number 9 --

12 CO-HEARING OFFICER DODUC: Okay.

13 WITNESS CHOA: -- that (reading):

14 "Beginning in January 2012, agencies
15 were first contacted regarding the
16 general approach and methodology
17 intended . . .

18 "Agencies were sent the list of
19 study segments for review and comment.
20 In one case, study segments were adjusted
21 within a jurisdiction to be consistent
22 with current truck routing practices.
23 Subsequently, agencies were requested to
24 supply readily available existing
25 pavement condition . . ."

1 So, we -- It was through our agency outreach
2 before the traffic analysis was conducted to reach out
3 to the agencies to -- regarding their general approach
4 and methodology for these. And based on that, we used
5 these -- industry standard of using the Highway
6 Capacity Manual.

7 MR. FERGUSON: And, so, with respect to the
8 Level of Service, the EI -- the traffic analysis in the
9 EIR states roadway Level of Service standards --
10 correct? -- for Sacramento County.

11 CO-HEARING OFFICER DODUC: And your question,
12 Mr. Ferguson?

13 MR. FERGUSON: Correct? Is that correct, that
14 it contains standards?

15 WITNESS CHOA: Again, Table 2 shows the Level
16 of Service standard that we used for all 114 segments.

17 MR. FERGUSON: Well, I'm referring to the
18 standards of significance, I guess you would say, where
19 the EIR indicates that there will be a significant
20 impact if operations deteriorate in certain ways from,
21 say, Level D to Level E or Level E to Level F.

22 It contains specific standards for Sacramento
23 County; correct?

24 WITNESS CHOA: Yes. I -- It had standards for
25 the jurisdiction that we're evaluating, one of which

1 was the Sacramento County.

2 MR. FERGUSON: Okay. And the LOS on an
3 affected roadway segment is simply one potential factor
4 in the traffic operations analysis; correct?

5 WITNESS CHOA: So, in terms of the analysis
6 completed, in addition to roadway level service, we
7 also did pavement level service or pavement conditions.
8 So it was one of two methodologies used for the CWF.

9 MR. FERGUSON: So another potential component
10 of a traffic operations analysis could be an
11 intersection level of analysis; correct? For level of
12 Service Analysis; correct?

13 WITNESS CHOA: So, as stated on the, you know,
14 prior document on -- If you go to . . . I always
15 forget what number. DWR-1212, Page 12, Line Number 23
16 (reading):

17 "Prior to construction, the DWR will
18 implement site-specific Construction
19 Management Plans (SWRCB-111,
20 Transportation 1a, 1b and 1c) . . ."

21 And at that point, yes, you -- in addition to
22 what was evaluated for the EIR/EIS, you can -- you can
23 analyze intersections.

24 MR. FERGUSON: I'm sorry. You moved a little
25 quickly there.

1 Can you point me to the location of the
2 testimony you're referring to?

3 WITNESS CHOA: Page 12 of DWR-1212.

4 MR. FERGUSON: Okay. I see it now.

5 So you're indicating that DWR intends to
6 conduct intersection level analyses in this sort of
7 process prior to construction?

8 WITNESS CHOA: They will be conducting
9 site-specific Construction Management Plans, and that
10 could be one of the components of a site-specific
11 Construction Management Plan.

12 MR. FERGUSON: How will you determine if
13 that -- that will be one of the components?

14 WITNESS CHOA: I think it's -- I believe
15 it's -- I don't know the exact section in the -- in
16 the -- but it would be again working with the local
17 agencies. Based on your prior questions, I believe
18 you're referring to Sacramento County.

19 MR. FERGUSON: So is there a reason an
20 intersection analysis was conducted for this traffic
21 analysis in Chapter 19 in the EIR?

22 WITNESS CHOA: Back in 2012, when we were
23 looking at multiple alternatives and multiple agencies,
24 the intent of the analysis was to evaluate the 114
25 segments encompassing lots of jurisdictions.

1 And at that time, it was determined that --
2 that, using approved methodologies, that was the -- the
3 course of action or what would be included in the
4 traffic -- traffic analysis.

5 MR. FERGUSON: So is there a reason an
6 intersection level LOS analysis was not conducted?

7 MR. BERLINER: Objection: Asked and answered.

8 CO-HEARING OFFICER DODUC: Sustained.

9 MR. BERLINER: He just . . .

10 MR. FERGUSON: He didn't answer why it didn't
11 include it. He just said they didn't include it.

12 CO-HEARING OFFICER DODUC: He did answer.

13 Would you like the court reporter to read back
14 his last answer?

15 MR. FERGUSON: No, that's fine.

16 CO-HEARING OFFICER DODUC: Go on, please,
17 Mr. Ferguson.

18 MR. FERGUSON: So Mitigation Measure TRANS-1b
19 would essentially seek the route construction activity
20 to designated roadways to avoid congested -- congested
21 routes; correct?

22 WITNESS CHOA: Can you please open that up on
23 screen? I don't have that specific page.

24 MR. FERGUSON: Yeah. Well, I guess it would
25 be in SWRCB-102.

1 (Pause in proceedings.)

2 WITNESS CHOA: So it's on SWRCB-111, Page 2-91
3 for the specific language. Actual action was -- was
4 more than -- more than that.

5 The action was to fit within available reserve
6 capacity or shift construction activity to hours with
7 more reserve capacity so as to achieve acceptable level
8 service.

9 As Mr. Bednarski stated in his presentation,
10 that we did a worst-case analysis, which assumed the
11 highest amount of construction-related traffic would
12 occur over the course of the entire day. But it would
13 actually occur most likely not during the peak hours.

14 And so this Mitigation Measure TRANS-1b adds
15 an additional layer in terms of, if there are impacts
16 or identified impacts, of shifting that to outside peak
17 hours to reduce traffic impacts.

18 MR. FERGUSON: So, as part of this Mitigation
19 Measure, one of the elements is not seeking to route
20 construction to designated roads that are less
21 congested? Wouldn't that be included within this
22 measure?

23 WITNESS CHOA: That is one of the potential
24 item, but also shifting to different hours is also a
25 part of a Mitigation Measure.

1 MR. FERGUSON: So it's typically difficult to
2 control truck traffic during construction; correct?

3 WITNESS CHOA: I will defer that to
4 Mr. Bednarski.

5 WITNESS BEDNARSKI: I believe that there were
6 concerns that were brought up that we would work that
7 through our construction specifications and then with
8 our construction Management Team to make sure that
9 whatever restrictions were placed on the Project
10 were -- were upheld.

11 But those would need to be identified to us as
12 part of the design and then the construction
13 management. Then we would manage within those hours.
14 For example, Mr. Choa mentioned different hours. We
15 could have shifts change at different times so that
16 we -- they may be off-peak times.

17 MR. FERGUSON: Okay. Will there be someone
18 that performs hourly volume counts on affected roadways
19 and then shuts down construction traffic if LOS
20 capacities are reached?

21 WITNESS CHOA: So, on Page 2-90, there is a
22 section regarding monitoring of traffic conditions.

23 MR. FERGUSON: And so will that occur?
24 Somebody will be monitoring the affected roadways and
25 then making adjustments if the LOS threshold is

1 reached? Is that part of the measure?

2 WITNESS CHOA: Yes, that is.

3 (Pause in proceedings.)

4 MR. FERGUSON: So with respect to pavement
5 conditions, the EIR/EIS uses a Pavement Conditions
6 Index -- correct? -- as a metric to describe the
7 condition of roadway segments?

8 WITNESS CHOA: Yes, that is correct.

9 MR. FERGUSON: And are you aware of any
10 discussions between DWR consultants in the county about
11 how the county evaluates the condition of rural
12 roadways?

13 (Pause in proceedings.)

14 WITNESS CHOA: Again, based on my earlier
15 testimony that agency outreach was performed -- And if
16 you give me a minute, I'll take a look at Sacramento
17 County.

18 Was that your question specifically?

19 MR. FERGUSON: Sure.

20 (Pause in proceedings.)

21 WITNESS CHOA: Can you please restate your --
22 your question?

23 MR. FERGUSON: Are you aware of discussions
24 between DWR, their consultants, and Sacramento County
25 about how the county itself evaluates the condition of

1 rural roadways such as seen in the Delta?

2 (Pause in proceedings.)

3 WITNESS CHOA: So, was your question am I
4 personally aware of?

5 MR. FERGUSON: Yes.

6 WITNESS CHOA: Yes, I am.

7 MR. FERGUSON: Okay. So what are the nature
8 of those conversations, and what was -- what was told
9 to you in terms of how the county evaluates those
10 pavement conditions? Or what was told to DWR?

11 WITNESS CHOA: In terms of Sacramento County,
12 they used what is called PQI, which is defined as
13 Pavement Quality Index.

14 MR. FERGUSON: Okay. What was told to you
15 about the Pavement Quality Index?

16 WITNESS CHOA: That it's, again -- From
17 transportation, it's similar to Passenger Condition
18 Index, which was effectively used but not exact.
19 There's some translation from their number to PCI,
20 which is again the -- more the standard methodology.

21 So, we have information on Table . . . 19-2
22 regarding existing pavement conditions in the study
23 area for the 114 segments.

24 MR. FERGUSON: So did DWR consultants ask
25 whether the county uses as factors in addition to PCI

1 to evaluate pavement conditions?

2 (Pause in proceedings.)

3 WITNESS CHOA: Can you restate that? I think
4 I just answered that question.

5 MR. FERGUSON: Well, does the P -- Are you
6 saying -- Maybe by your -- Does the PQI you mentioned
7 capture more than the PCI? Is that what you're trying
8 to say?

9 WITNESS CHOA: I believe it is similar to.
10 It's just the county's method -- county's way of using
11 it -- PQI versus PCI.

12 MR. FERGUSON: Okay. Where in the EIR does it
13 indicate the county indicated they used the PQI and
14 then explains what's in the PQI?

15 MR. BERLINER: Objection: Compound question.

16 MR. FERGUSON: Where in -- Where in the EIR
17 does it indicate that Sacramento County uses something
18 called a PQI to evaluate pavement conditions in the
19 county?

20 (Pause in proceedings.)

21 WITNESS CHOA: Let me clarify your question.

22 I believe you're asking -- Sacramento County
23 provided a PQI factor but -- for the two segments in
24 Sacramento County.

25 MR. FERGUSON: There are more than two

1 segments that will be affected in Sacramento County;
2 correct?

3 WITNESS CHOA: Yes. There's a -- There are --
4 Oh, I apologize. I can modify that. I was looking at
5 City of Sacramento versus Sacramento County.

6 So City -- Sacramento County, which is in our
7 Table SC, uses PCI. So apologies.

8 MR. FERGUSON: Right. So did DWR consultants
9 ask whether the county uses any factors in addition to
10 PCI to evaluate pavement conditions?

11 WITNESS CHOA: Not to my knowledge.

12 MR. FERGUSON: Okay. So the PCI does not
13 account for pavement structure; correct?

14 WITNESS CHOA: I believe you are incorrect.
15 It does.

16 MR. FERGUSON: It does account for the way in
17 which the roadway is constructed is what you're saying?

18 WITNESS CHOA: Well, it -- it's defined as
19 Pavement Condition Index, so, inherently, based on how
20 it was constructed, affects the pavement condition of
21 the roadway.

22 MR. FERGUSON: Does it account for pavement
23 structural section strength?

24 (Pause in proceedings.)

25 WITNESS CHOA: Again, I think that pavement

1 structural strength is part of the -- how you construct
2 a roadway. So, based on the previous answer, yes.

3 MR. FERGUSON: Well, based upon a construction
4 methodology and/or the materials, you might have
5 different strengths; correct?

6 WITNESS CHOA: And that would show up in the
7 Pavement Condition Index.

8 MR. FERGUSON: But doesn't the PCI give you
9 the existing condition of the roadway? It doesn't
10 necessarily account for the structure?

11 MR. MIZELL: Objection: Misstates the
12 witness' testimony and asked and answered.

13 CO-HEARING OFFICER DODUC: And, Mr. -- And,
14 Mr. Ferguson, you're getting way into the weeds here.

15 What is the point you're trying to establish
16 in this line of cross-examination?

17 MR. FERGUSON: I think he's -- I think we've
18 got to the end, so . . .

19 (Pause in proceedings.)

20 MR. FERGUSON: My time is running short. Is
21 there any way I can request 15 more minutes?

22 CO-HEARING OFFICER DODUC: What additional
23 lines of questioning do you have?

24 MR. FERGUSON: I was hoping to ask some
25 questions about . . .

1 CO-HEARING OFFICER DODUC: By my list, I only
2 have air quality left.

3 MR. FERGUSON: Yeah, that's right.

4 I had a few more questions about traffic as it
5 relates to the roadway segments they indicate will not
6 be significantly affected, and then I have air quality
7 questions.

8 CO-HEARING OFFICER DODUC: Let's give you an
9 additional 10 minutes and ask that you be very direct
10 in your questioning. Get directly to the point. We
11 will backtrack if we have to.

12 (Pause in proceedings.)

13 MR. FERGUSON: Chapter 19 of the EIR
14 identifies segments that are projected to see increases
15 in traffic volumes but which the EIR determines will
16 not be subject to significant deterioration; correct?

17 (Pause in proceedings.)

18 WITNESS CHOA: Can you restate that so I --

19 MR. FERGUSON: Well, there -- there are
20 roadway segments identified in the -- in Chapter 19
21 that show increases in traffic volume but for which the
22 EIR determines there will not be significant
23 deterioration with construction of the Project;
24 correct?

25 WITNESS CHOA: Yes, that's correct.

1 MR. FERGUSON: So, for example, segment SC03,
2 it will see significant increases in truck trips of
3 Project implementations; correct?

4 WITNESS CHOA: I would clarify that we would
5 see an increase in traffic --

6 MR. FERGUSON: I understand.

7 WITNESS CHOA: -- over baseline plus
8 background traffic, that's correct.

9 MR. FERGUSON: Okay. Yet the EIR uses --
10 Because the EIR uses as a standard for significant
11 deterioration, the addition of construction traffic to
12 a roadway segment that has an existing pavement rating
13 below the applicable PCI threshold, and SC03 has a
14 rating above that threshold, the EIR concludes there
15 will not be a significant deterioration of these
16 segments; correct?

17 WITNESS CHOA: If you're referring to
18 specifically --

19 MR. FERGUSON: SC03.

20 WITNESS CHOA: -- SC03?

21 MR. FERGUSON: For example.

22 WITNESS CHOA: Can you state your question
23 into two parts? The first part was in terms of volume.
24 That's one. In terms of --

25 MR. FERGUSON: The EIR determines there won't

1 be significant deterioration of this segment because
2 the standard that's used is that significant -- for
3 significant deterioration, isn't -- is an addition of
4 traffic to a segment that has a PCI under a threshold,
5 and SC03 has PCI above the threshold.

6 That's the reason for which there's not a
7 determination that there will be significant
8 deterioration on such a segment; correct?

9 WITNESS CHOA: Yes, that is correct, for SC03
10 but not for SC02.

11 MR. FERGUSON: So would you expect to see
12 deterioration of a segment like SC03 given the increase
13 in traffic volume construction?

14 WITNESS CHOA: Going back to Table 2 in the
15 Level of Service Threshold, in both the roadway segment
16 for SC03, and the pavement, no.

17 The EIR showed that there is no impact at that
18 one segment in Sacramento County.

19 MR. FERGUSON: Would you expect to see
20 deterioration on a roadway like that with the con --
21 the volumes that are anticipated with construction of
22 the Project?

23 WITNESS CHOA: Again, the results of the
24 analysis that looks at the 16 segments in Sacramento
25 County, other segments identify impacts but not

1 specifically SC03.

2 MR. FERGUSON: That's be -- That's because
3 there's a specific standard used in the EIR; correct?

4 Which -- which is that the existing condition
5 needs to be that the PCI is below 55; correct?

6 In order for a roadway to potentially be
7 considered an effective roadway; is that correct?

8 MR. MIZELL: I'm going to object as a compound
9 question. There are now three questions.

10 WITNESS CHOA: Again, it's --

11 MR. FERGUSON: Would you -- Regardless --
12 Irrespective of what the EIR says about whether there's
13 a significant impact, with the increase in traffic
14 volumes on a route like SC03, would you expect there to
15 be deterioration of the roadway?

16 MR. MIZELL: I'm going to object as beyond the
17 testimony of Mr. Bednarski and the assistance of
18 Mr. Choa.

19 His personal opinion as to the LOS or -- what
20 are we talking about at this point -- traffic condition
21 on SC03 is not what was expressed in rebuttal
22 testimony. What we spoke to there was SWRCB-102 and
23 what was assessed in the document.

24 CO-HEARING OFFICER DODUC: Mr. Ferguson.

25 MR. FERGUSON: Mr. Bednarski's testimony

1 refers to Mr. Moghissi's testimony, who was the Traffic
2 Engineer for Sacramento County, saying that -- Mr.
3 Moghissi indicates that their analysis underestimates
4 the impacts. And the whole remainder of
5 Mr. Bednarski's testimony attempts to counter that.

6 And this, frankly, gets to a point that
7 Mr. Moghissi was making, and the underlying analysis
8 that his opinion indicates the impacts are going to be
9 worse than they're expressing. So that's why I'm
10 asking the questions about these various analyses.

11 CO-HEARING OFFICER DODUC: Miss Ansley.

12 MS. ANSLEY: As to the specific question
13 asked, I'd also like to add an objection of vague and
14 ambiguous as to the -- as to the conditions he is now
15 asking our witness to testify about in his personal
16 opinion on a particular road segment, SC03.

17 So it is also vague and ambiguous as to the
18 conditions for now framing the question.

19 CO-HEARING OFFICER DODUC: His personal
20 opinion as an expert witness.

21 Mr. Choa, are you able to answer the question
22 to the level of specificity that Mr. Ferguson is
23 asking?

24 WITNESS CHOA: I do not think I can answer to
25 the specificity of SC03, that segment, again, just

1 relying on the methodology and the technical analysis
2 that was completed for the FSEIR and also the
3 supplemental.

4 CO-HEARING OFFICER DODUC: All right.
5 Mr. Ferguson, you're down to 4 minutes and 36 seconds.

6 MR. FERGUSON: So, Mr. Bednarski, at . . .
7 You indicate that DWR proposes to adopt
8 Mitigation Measure AQ-6a which required that dust
9 suppressants be applied to unpaved surfaces; correct?

10 WITNESS BEDNARSKI: That's correct.

11 MR. FERGUSON: And the dust suppressant that
12 DWR proposes is the Pennzsuppress. That's what's
13 identified; correct?

14 WITNESS BEDNARSKI: I'll refer to Miss Yoon on
15 that.

16 WITNESS YOON: Yes, that is correct.

17 MR. FERGUSON: So, Miss Yoon, are you familiar
18 with the California Air Resources Board order of G15045
19 regarding precertification of Pennzsuppress?

20 WITNESS YOON: I'm not familiar with that
21 specific order, no.

22 (Pause in proceedings.)

23 MR. FERGUSON: So are you familiar with the
24 recommended practices for use of Pennzsuppress?

25 WITNESS YOON: In a general sense, yes.

1 MR. FERGUSON: Does DWR plan to follow those
2 recommended practices . . . in use of Pennzsuppress?

3 WITNESS BEDNARSKI: That -- That would be --
4 That would be our intention through the use of the
5 plans and specifications that are issued to the
6 Contractors and to the outside monitors that would be
7 reviewing their work.

8 MR. FERGUSON: So you indicated,
9 Mr. Bednarski, that the proposal is to use the
10 Pennzsuppress in the con -- in the construction
11 right-of-way areas; is that correct?

12 WITNESS BEDNARSKI: I re -- I made that
13 response as a general response to the fact that anytime
14 these additives are used, whether it's dust
15 suppressants, or it could be additives that are used in
16 the tunnel-boring machine, that they will be used in
17 accordance with manufacturers' requirements or any
18 other requirements that pertain to their usage, and
19 that would be enforced by DWR and their Inspectors.

20 MR. FERGUSON: So by "construction
21 right-of-way," do you mean all unpaved surfaces and not
22 just roadways?

23 WITNESS YOON: That is correct. It would be
24 all unpaved surfaces.

25 MR. FERGUSON: So Mr. Bednarski indicates that

1 the use of dust suppressants is sufficient to reduce
2 concentrations to below a significant level and that,
3 therefore, temporary relocation, paving and PM
4 monitoring are no longer required to achieve a less
5 than significant finding; correct?

6 WITNESS YOON: That is correct.

7 MR. FERGUSON: So with respect to the
8 significant impact level, the ambient air quality
9 threshold for PM10 within the Sac Metro area --
10 Sacramento Air Quality Management District area --
11 changed from the Final EIR to the Administrative Draft
12 EIR; correct?

13 WITNESS YOON: Yes, that is correct.

14 MR. MIZELL: To be clear: Was your last
15 question in reference to the Administrative Draft
16 Supplemental?

17 MR. FERGUSON: Yes, the Administrative Draft
18 Supplemental EIR, correct.

19 WITNESS YOON: Yes, that's correct.

20 MR. FERGUSON: So how would the ambient air
21 quality thresholds for PM10 within the Sacramento Metro
22 AQMD area set for the Administrative Draft Supplemental
23 EIR?

24 WITNESS YOON: As part of the Final EIR -- At
25 the time of the Final EIR/EIS, Sacramento Air Quality

1 Management District had a concentration-based threshold
2 of 5 percent of the ambient air quality standards.

3 In 2015, they rescinded that threshold.

4 And at the time of the supplement, they
5 currently have no ambient air quality threshold for
6 particulate matter.

7 DWR elected to conservatively apply the EPA
8 significant impact level consistent with ADCD guidance
9 across the entire plan area to evaluate PM impacts of
10 the Project.

11 MR. FERGUSON: So did DWR have any
12 conversations with the Sacramento Metro Air Quality
13 Management District in preparation of the analysis in
14 the Supplemental EIR?

15 WITNESS YOON: Yes. DWR has been consulting
16 with the Sacramento AQMDs in the beginning of the
17 environmental analysis, and that consultation continued
18 throughout preparation of the Supplemental.

19 MR. FERGUSON: So did the staff of the Air
20 Quality Management District make recommendations for
21 the concentration thresholds that they thought were
22 appropriate to use in the analysis for the Supplemental
23 EIR?

24 WITNESS YOON: There was general discussion of
25 the concentration thresholds. And, as I stated, they

1 had rescinded their threshold in 2015 and they
2 confirmed that they indeed have no adopted threshold
3 for particulate matter. And that is outlined in their
4 guidelines -- their CEQA air quality guidelines on
5 their website.

6 (Timer rings.)

7 MR. FERGUSON: Could I ask about two more
8 questions?

9 CO-HEARING OFFICER DODUC: Go ahead.

10 MR. FERGUSON: So . . . So the thresholds
11 that were in the Final EIR, are they lower or higher
12 than the thresholds that were part of the
13 Administrative Draft Supplemental EIR for PM10?

14 WITNESS YOON: For the concentration-based PM
15 thresholds, they are lower.

16 MR. FERGUSON: The Supplemental EIR was lower
17 thresholds or the Final EIR?

18 WITNESS YOON: The Final EIR does.

19 MR. FERGUSON: Is there . . .

20 So, in your opinion, would the lower
21 concentrations expressed in the Final EIR be
22 potentially more protective of public health?

23 WITNESS YOON: I don't believe I have enough
24 information to answer that question.

25 (Pause in proceedings.)

1 MR. FERGUSON: So if the lower concentrations
2 expressed in the Final EIR had been used for the
3 analysis in the Supplemental EIR, is it likely that
4 mitigations similar to what was in Mitigation Measure
5 AQ-9 requiring monitoring and relocation and paving, is
6 it more likely that that mitigation would be required?

7 WITNESS YOON: Again, the analysis that was
8 conducted for the Supplement was consistent with the
9 Air District's guidance at the time of the Supplement.

10 They did not have a threshold and DWR
11 conservatively elected to still continue that analysis
12 in the interest of evaluating all potentially -- all
13 potential impacts of the Project in Sacramento County,
14 even though there was no adopted threshold at the time
15 of the Supplement.

16 MR. FERGUSON: So without moni -- PM
17 monitoring as proposed in Mitigation Measure AQ-6a, DWR
18 will not know whether the dust suppressants are
19 reducing concentrations to below the significant impact
20 level; correct?

21 WITNESS YOON: No, I don't believe that's
22 correct.

23 The analysis that was conducted as part of the
24 Supplemental EIR is a very conservative analysis. It's
25 based on worst-case assumptions. It uses adoptive

1 models and control efficacies.

2 So the impacts that are presented in the
3 Environmental Impact Analysis are representative of
4 what we'd anticipate under construction with
5 application of the dust suppressants.

6 MR. FERGUSON: How will you --

7 WITNESS YOON: And that analysis shows that
8 there would be less significant impact.

9 MR. FERGUSON: How will you test that without
10 monitoring?

11 WITNESS YOON: Again, the analysis that was
12 conducted, the modeling that was conducted,
13 demonstrates that the anticipated concentrations from
14 the equipment and vehicles assumed for construction of
15 the Project would be below the significant impact
16 levels. And this is standard procedure consistent with
17 the Air District's CEQA guidelines for evaluating
18 potential ambient air quality impacts of construction
19 projects.

20 CO-HEARING OFFICER DODUC: Your two questions
21 have multiplied.

22 MR. FERGUSON: I know.

23 Sorry. There's a lot of testimony to get
24 into.

25 I have a couple more questions, but I -- if my

1 time's up, my time's up.

2 CO-HEARING OFFICER DODUC: Are your questions
3 significant?

4 MR. FERGUSON: Well, it relates to Valley
5 Fever and his testimony about Valley Fever. So I -- We
6 feel it's significant, just a couple questions.

7 CO-HEARING OFFICER DODUC: Then go ahead and
8 ask your couple of questions.

9 MR. FERGUSON: So one of the common
10 constituents of PM10 is dust; correct?

11 WITNESS YOON: That's correct.

12 MR. FERGUSON: And an increase in dusty
13 conditions generally increases the risk of exposure to
14 Valley Fever; correct?

15 WITNESS YOON: Under certain climatological
16 conditions and under soil -- certain soil conditions,
17 that is correct.

18 CO-HEARING OFFICER DODUC: That's a couple of
19 questions right there, Mr. Ferguson.

20 Be direct.

21 MR. FERGUSON: So construction of the WaterFix
22 would lead to exceedances of the Sacramento Metro Air
23 Quality Management District's daily PM10 emissions
24 threshold of 80 pounds per day during 10 of the 14
25 years of Project construction; correct?

1 MR. BERLINER: Objection.

2 Is there a document you're referring to?

3 MR. FERGUSON: Yeah. It's Chapter 22 of the
4 Administrative Draft Supplemental EIR at Page 22-15.

5 CO-HEARING OFFICER DODUC: And assuming that
6 that is what is stated in that document, what is your
7 question, then, about it?

8 MR. FERGUSON: So with this increase in PM10
9 emissions, there is the potential for WaterFix to
10 increase the risk to Delta residents of being exposed
11 to Valley Fever; correct?

12 WITNESS YOON: As you stated, parti -- dust is
13 a constitute of particulate matter and DWR has
14 committed to a robust Fugitive Dust Control Plan. And
15 implementation of these fugitive dust control measures
16 are recognized as the primary mechanism for avoiding
17 risk and exposure to contracting Valley Fever.

18 So DWR has implemented all feasible control
19 measures to reduce that potential risk from
20 dust-generating activities.

21 MR. FERGUSON: Including a public education
22 campaign; is that correct?

23 WITNESS YOON: Visually -- Vis -- Excuse me.

24 Publically visible signs are required to be
25 posted on the construction site with a number for

1 individuals to call if there are any sort of dust
2 complaints.

3 MR. FERGUSON: So how --

4 WITNESS YOON: That is outlined in the
5 Fugitive Dust Control Plan.

6 MR. FERGUSON: Will there be outreach directly
7 to residents through written communications, or TV, or
8 radio?

9 WITNESS YOON: I'm not aware of that. I can
10 tell you what's in the Fugitive Dust Control Plan,
11 which is to require the publicly posted visible sign
12 with respect to fugitive dust controls.

13 MR. FERGUSON: All right. Thank you very
14 much.

15 CO-HEARING OFFICER DODUC: Thank you,
16 Mr. Ferguson.

17 How is the court reporter doing?

18 THE REPORTER: Fine.

19 CO-HEARING OFFICER DODUC: All right. Mr. --
20 How are the witnesses doing?

21 Why don't we ask Mr. Aladjem to come up and
22 we'll take a break around 2:30.

23 And, Mr. Bezerra, staff would like to meet
24 with you during the break in order to better understand
25 your request.

1 MR. ALADJEM: Madam Chair, since it is your
2 practice to ask what I'm going to be asking about, my
3 questions will be directed to Mr. Bednarski.

4 And I'd like all other members of the panel,
5 if they want to jump in, to please do so. But I think
6 these are really focus on Mr. Bednarski's testimony.

7 The topics I'll be covering are: Conceptual
8 engineering; footprint, primarily the Byron Tract
9 Forebay; impacts of the Project on levees; impacts on
10 seepage; the coordination with local agencies; and,
11 last but not least, traffic.

12 CROSS-EXAMINATION BY

13 MR. ALADJEM: Mr. Bednarski, good afternoon.

14 WITNESS BEDNARSKI: Good afternoon.

15 MR. ALADJEM: Just as a matter of
16 nomenclature, for the record, every once in awhile, I
17 will refer to REC 800, by which I mean Reclamation
18 District 800 Byron Tract. That's the official name.

19 WITNESS BEDNARSKI: (Nodding head.)

20 MR. ALADJEM: Mr. Bednarski, are you aware
21 that REC 800 is the Reclamation District in the Byron
22 Tract area?

23 WITNESS BEDNARSKI: No, I was not aware of
24 that.

25 MR. ALADJEM: And, also, for the record, I may

1 use the abbreviation BTF for Byron Tract Forebay. It's
2 used in all the documents.

3 WITNESS BEDNARSKI: Yes.

4 MR. ALADJEM: And, also, when I refer to your
5 testimony, I will refer to DWR-1212 as it has now been
6 revised per the Board's ruling yesterday.

7 WITNESS BEDNARSKI: Yes, that's fine.

8 MR. ALADJEM: Again, it's a little bit
9 preliminary.

10 So you've testified previously in this -- in
11 these hearings?

12 WITNESS BEDNARSKI: Yes, I have.

13 MR. ALADJEM: And you prepared DWR-1212 and
14 you've overseen the preparation of DWR-1304 through
15 -1306, the Conceptual Engining Reports?

16 WITNESS BEDNARSKI: That's correct.

17 MR. ALADJEM: And, again, as a matter of
18 nomenclature, I may refer to those as CERs.

19 Mr. Hunt, could you please put up
20 Mr. Bednarski's testimony, Page 2.

21 (Exhibit displayed on screen.)

22 MR. ALADJEM: Lines 4 to 6, if you would, sir.

23 (Exhibit displayed on screen.)

24 MR. ALADJEM: Okay. You say here --
25 Mr. Bednarski, you say (reading):

1 "The information presented in this
2 testimony is based on a conceptual-level
3 of design (. . . approximately 10 percent
4 complete), which will continue to be
5 refined in future engineering phases."

6 WITNESS BEDNARSKI: That's what it says.

7 MR. ALADJEM: Um-hmm. Could you please
8 describe the components of the engineering design that
9 will make up the remaining 90 percent of the
10 engineering design.

11 WITNESS BEDNARSKI: We have -- I previously
12 testified that we have an extensive geotechnical
13 investigation program that's planned as a two-phase
14 program. That will be one component of it.

15 We have a survey and mapping operation that
16 will take place.

17 We have a property acquisition activity that
18 will take place.

19 We have a number of engineering studies that
20 I've talked about in previous testimony that will take
21 place.

22 We would then move into preliminary design of
23 the facilities based on the findings from the
24 activities that I've just mentioned.

25 And then, generally at the end of about 30 to

1 40 percent design, which we typically call the
2 conclusion of preliminary design, we would then move on
3 to finalize the design and complete final design
4 activities and prepare plans and specifications for
5 different contract packages.

6 And along the way, the entire WaterFix Project
7 will be broken up into individual construction projects
8 through that entire process that I've -- that I've laid
9 out.

10 MR. ALADJEM: That's very helpful. Let me see
11 if I can restate it just a bit.

12 The initial studies that you described might
13 get us from 10 percent to somewhere in the neighborhood
14 of 20 percent maybe, because you then said preliminary
15 engineering would be about 30 percent design. And then
16 final, if I heard you correctly, about 50 percent,
17 somewhere in that neighborhood.

18 Is that fair?

19 WITNESS BEDNARSKI: Yeah. Final -- It varies
20 from organization to organization. But I would say
21 generally from 40 to 50 percent on is all final --
22 final design.

23 MR. ALADJEM: Okay. Where in that process,
24 whether it's in the initial studies, in preliminary
25 engineering design or final, will the Department be

1 reaching out to other stakeholders to get their input
2 into those design characteristics?

3 MR. MIZELL: Objection: Misleading question.
4 It implies that there has not been any outreach to
5 date.

6 MR. ALADJEM: If that's not correct, I'll let
7 Mr. Bednarski tell us what's been done.

8 CO-HEARING OFFICER DODUC: All right.
9 Overruled.

10 Please answer.

11 WITNESS BEDNARSKI: Okay. Well, maybe by way
12 of example, I can explain how we would be approaching
13 this.

14 And I believe I said, for example, in my
15 testimony, as we began preliminary and final design on
16 the site preparation contract that we've identified for
17 Bouldin Island, at that point, we reached out to Rec
18 District I believe it's 756 on Bouldin Island and began
19 having discussions with them in advance of our
20 geotechnical investigations, and then throughout the
21 entire design process to understand what their concerns
22 might be not only for our own investigations on the
23 island but also for the activities that would come
24 forward as we're awarded the construction project.

25 So I think, in summary, as we identified

1 construction contracts that would impact individual
2 Reclamation Districts, we would begin that outreach to
3 these Reclamation Districts at a very early stage in
4 the preliminary final design of those construction
5 packages.

6 MR. ALADJEM: Thank you, Mr. Bednarski. That
7 was actually going to be a line of questioning. I'm
8 going to jump to that now.

9 So, Chair Doduc, I'm jumping down.

10 So you had planned, when you get to that
11 Project contract, to consult with Reclamation District
12 800, REC 800, for that segment; is that correct?

13 WITNESS BEDNARSKI: Yes. As -- I would say
14 yes.

15 As we started embarking on identifying
16 specific work to be done within that Rec District, we
17 would begin the outreach process to that Rec District.

18 MR. ALADJEM: Okay. Very good.

19 Mr. Hunt, if we could bring up DWR-1308.

20 And, Mr. Bednarski, let me refresh your memory
21 about 1308.

22 (Exhibit displayed on screen.)

23 MR. ALADJEM: Mr. Hunt, could you please
24 scroll down so Mr. Bednarski can read this.

25 (Exhibit displayed on screen.)

1 WITNESS BEDNARSKI: I'm familiar with that
2 letter.

3 Was there something that you wanted me to
4 focus on or . . .

5 MR. ALADJEM: I wanted to ask: DWR has
6 approved moving forward with Bouldin Island
7 improvements using these terms and conditions?

8 WITNESS BEDNARSKI: That is my understanding,
9 yes.

10 MR. ALADJEM: Okay. And in -- If I could
11 direct your attention to Paragraph 1, there is an
12 encroachment permit process there.

13 If the District Engineer for Reclamation
14 District 756 were to ask for some conditions as part of
15 that encroachment permit, as long as they were
16 reasonable, the Department would agree to that; right?

17 WITNESS BEDNARSKI: Yes, I believe they would.

18 MR. ALADJEM: Mr. Hunt, if we could move on to
19 DWR-1310.

20 (Exhibit displayed on screen.)

21 MR. ALADJEM: And, Mr. Bednarski, I won't ask
22 you to read this entire permit.

23 But the question here, if I understood your
24 testimony, sir, is, this is a template of what an Entry
25 Permit might look like that the Department has already

1 signed off on; is that correct?

2 WITNESS BEDNARSKI: I'm not -- Can we scroll
3 to the top of that?

4 MR. ALADJEM: Oh, sure.

5 (Exhibit displayed on screen.)

6 WITNESS BEDNARSKI: I believe this was the
7 form that was generated by Rec District 756.

8 When you say "template," it implies it might
9 apply anywhere to all the Rec Districts. I'm not
10 personally aware of what other Rec Districts would use
11 but it may look similar this.

12 MR. ALADJEM: Let me rephrase the question.

13 The Department, as I understand, has agreed to
14 the terms of this Permit.

15 WITNESS BEDNARSKI: Yes. We had accepted
16 those and we would be working those in to our
17 construction specifications.

18 MR. ALADJEM: And, presumably, if another Rec
19 District wanted to offer the Department an Entry Permit
20 on the same terms and conditions, the Department would
21 agree.

22 WITNESS BEDNARSKI: I would -- I would
23 generally say yes if you're saying these exact terms
24 because they already planned to incorporate them in one
25 set of contracts.

1 But, yeah, seeing they're only the ones that
2 you're referring to in this letter, I would tend to say
3 yes.

4 MR. ALADJEM: I'm not trying to ask a trick
5 question.

6 WITNESS BEDNARSKI: Okay.

7 MR. ALADJEM: I just want to understand.

8 Okay. Let me then turn back here.

9 At this point in time, do you have a sense of
10 how the -- Going back to the engineering phases you
11 were talking before.

12 Do you have a sense, given the length of this
13 Project, roughly when, overall, you will hit
14 preliminary design, or will it vary segment by segment?

15 WITNESS BEDNARSKI: I think it will vary based
16 on activities that we perceived to be on the critical
17 path activities. We will start those ones early.

18 So, for example, we -- we've identified
19 providing power to the various sites as an early
20 activity that could become critical path.

21 So we would start preliminary and final design
22 on power transmission lines early so that where those
23 power transmission lines came into contact with
24 different Reclamation Districts, we would begin working
25 with them on that specific subject.

1 It probably would not include the tunnels at
2 that point because we would still be working on other
3 issues related to the tunnels and would not be prepared
4 to bring those subjects forward. We would need to
5 return, then, at a later time and discuss the tunnel
6 with a certain Rec District.

7 MR. ALADJEM: That's helpful.

8 Let me direct your attention to the Byron
9 Tract Forebay.

10 Where would that fall on the critical path
11 line?

12 WITNESS BEDNARSKI: Go back to my example of
13 the power lines.

14 Power lines have been identified to go through
15 a portion of that area, so those might be some of the
16 early discussions that we would have.

17 MR. ALADJEM: Um-hmm.

18 WITNESS BEDNARSKI: But I would also think
19 that, say, the forebay construction, because we also
20 need to bring in DSOD to talk to, and other outside
21 agencies, that we may want to bring those activities up
22 earlier in the schedule. I don't have a specific date
23 for you, though.

24 MR. ALADJEM: Speaking of DSOSD (sic), the
25 Division of Safety of Dam --

1 WITNESS BEDNARSKI: Right.

2 Sorry. That's correct.

3 MR. ALADJEM: Am I correct in thinking because
4 the capacity of the forebay would be, if memory serves,
5 approximately 5,000 acre-feet, this would be a
6 jurisdictional dam under the Department of -- Division
7 of Safety of Dam's jurisdiction?

8 WITNESS BEDNARSKI: That is correct. That's
9 my understanding also.

10 MR. ALADJEM: And has the Department reached
11 out to DSOD to seek consultation?

12 WITNESS BEDNARSKI: Not at this point, to the
13 best of my knowledge.

14 MR. ALADJEM: Okay. But, presumably, the
15 Department would abide by any conditions imposed by
16 DSOD on the construction of the embankments and the
17 rest of the forebay.

18 WITNESS BEDNARSKI: That is correct.

19 (Pause in proceedings.)

20 MR. ALADJEM: One last question about
21 engineering design, Mr. Bednarski.

22 Once you get to preliminary engineering
23 design, in your experience, are there ever major
24 changes? There are, obviously, lots and lots of minor
25 changes, but major changes in the Project?

1 WITNESS BEDNARSKI: Once -- Are you referring
2 to once we start preliminary design or when --

3 MR. ALADJEM: When you finish preliminary
4 design.

5 WITNESS BEDNARSKI: When we finish preliminary
6 design.

7 No. The goal of the team is that once
8 preliminary design is completed, there would not be
9 major changes, footprint changes, or location changes,
10 or any of those kind of things. Things are locked in
11 at the completion of preliminary design.

12 MR. ALADJEM: Now, to raise the question you
13 just raised -- To address the question you just raised,
14 what about the beginning of preliminary design?

15 WITNESS BEDNARSKI: It's possible there could
16 be some changes through that. We -- We discourage that
17 but, you know, to speculate about what the magnitude of
18 those might be, that would be really difficult for me
19 to do.

20 But, you know, preliminary design is an
21 opportunity for us to vet out some last alternatives
22 before we go into final design.

23 MR. ALADJEM: Would those alternatives be of
24 the major change, such as rerouting the tunnels, or
25 would they be moving in, say, 50 feet from here to

1 there?

2 MR. MIZELL: Objection: Asked and answered.

3 CO-HEARING OFFICER DODUC: Hold on.

4 Mr. Aladjem.

5 MR. ALADJEM: Let me rephrase --

6 CO-HEARING OFFICER DODUC: Repeat your --

7 MR. ALADJEM: -- the question.

8 CO-HEARING OFFICER DODUC: Yes, thank you.

9 MR. ALADJEM: At the -- In the course of
10 preliminary design, would the Department retain the
11 ability to make a change of more than 100 feet either
12 way in the location of the facility?

13 WITNESS BEDNARSKI: Again, could you clarify:
14 You're referring to by the end of preliminary
15 design or --

16 MR. ALADJEM: At the beginning.

17 WITNESS BEDNARSKI: At the beginning of
18 preliminary design.

19 If you're referring to the tunnels in
20 particular, I think we -- we have identified very
21 preliminary engineering studies that would tie down all
22 of the starting points and ending points of the tunnel
23 reaches.

24 So all of the things that we call the -- the
25 intersection points where curves start and stop, all

1 that would be identified during this study phase.

2 So that when we begin preliminary design,
3 we're working with fixed ends to the tunnel alignment
4 and then we would go from there.

5 So, I would suspect that by the time we enter
6 preliminary design, we'd have tied down the ends of the
7 tunnel, where things like shafts and other structures
8 would go.

9 MR. ALADJEM: And would that apply also to the
10 embankments of the Byron Tract Forebay?

11 WITNESS BEDNARSKI: I don't think we would
12 necessarily have all of that information by the time we
13 start preliminary design for the forebays.

14 MR. ALADJEM: Okay. Thank you.

15 Let's see here.

16 Mr. Hunt, could you bring up SWRCB-113, the
17 Administrative Draft Supplemental Environmental Impact
18 Report, Figure 3-2.

19 And, Mr. Bednarski, while this is being
20 brought up, I have a couple of questions for you about
21 the acreage and the size of the embankments, the
22 excavation. I'll just through that, but I want to give
23 you a sense of what I'm going to be doing here.

24 (Exhibit displayed on screen.)

25 MR. ALADJEM: Mr. Hunt, if you could go down

1 to the bottom of that map there.

2 (Exhibit displayed on screen.)

3 MR. ALADJEM: And then enlarge the area around
4 Clifton Court Forebay and Byron Forebay.

5 (Exhibit displayed on screen.)

6 MR. ALADJEM: A little more, please.

7 (Exhibit displayed on screen.)

8 MR. ALADJEM: All right. Mr. Bednarski,
9 looking here at Figure 3-2, you see the pale yellow
10 area there at the southern end of Clifton Court
11 Forebay; correct?

12 WITNESS BEDNARSKI: Are you referring to the
13 pale yellow that is -- has the words "Clifton Court"
14 inside it, or the area below the Byron Highway that is
15 also pale yellow?

16 MR. ALADJEM: Actually, the area just to the
17 northwest of the words "Clifton Court Forebay."

18 WITNESS BEDNARSKI: Okay. I -- Yeah, I see an
19 area there. What color is it?

20 MR. ALADJEM: Is my understanding correct that
21 that is an area that was included in the expansion of
22 Clifton Court --

23 CO-HEARING OFFICER DODUC: Mr. Aladjem, before
24 you continue, please help me and, I think,
25 Mr. Bednarski.

1 Which area are you specifically talking to?

2 And Mr. Hunt, if you can maybe move that
3 mouse.

4 MR. ALADJEM: Madam Chair, I was looking here
5 at this monitor and it looks different there --

6 CO-HEARING OFFICER DODUC: Yes.

7 MR. ALADJEM: -- so that explains our problem.

8 Mr. Bednarski, if you look here at . . .

9 Let me rephrase this.

10 If you look at the gold area that is to the
11 north of the Clifton Court Forebay --

12 Up a little to the left there, Mr. Hunt, the
13 mouse.

14 (Exhibit displayed on screen.)

15 MR. ALADJEM: There we go.

16 There are two blocks roughly trapezoidal, for
17 the record.

18 Those are the locations of the new material
19 spoil locations; is that correct?

20 WITNESS BEDNARSKI: That -- This is an odd map
21 to use for that reference, because what I'm observing
22 here is that the tunnel alignment is turning in to
23 that.

24 I think if we used a different figure, that
25 you would see that -- that that goldenrod line that

1 comes into that goldenrod area, that would be where the
2 Pump Station is.

3 It's difficult to say from this -- from this
4 drawing. It just really doesn't represent the
5 location, the facilities that are planned. I think
6 there could be other ones to be used that would better
7 show that.

8 MR. ALADJEM: Since we have this up here,
9 let's just work with it.

10 WITNESS BEDNARSKI: Okay. I'll answer to the
11 best of my ability based on this figure.

12 MR. ALADJEM: Sure.

13 You see there is a white area between the two
14 goldenrod areas?

15 WITNESS BEDNARSKI: Yes.

16 MR. ALADJEM: Okay. Is it your understanding
17 that the roughly triangular piece that is both
18 goldenrod and gray that is bounded on the west by a
19 straight line, that that would be the configuration of
20 Byron Tract Forebay?

21 WITNESS BEDNARSKI: Generally speaking, yes.

22 MR. ALADJEM: And in the roughly trapezoidal
23 area, looks roughly like the State of Montana, to the
24 north of that, would that be the spoils area?

25 WITNESS BEDNARSKI: Yes, generally speaking.

1 MR. ALADJEM: Okay. And then where on this
2 map, Mr. Bednarski, in the generally yellow area
3 identified as Clifton Court Forebay are the areas that
4 are no longer going to be used as part of the Project?

5 WITNESS BEDNARSKI: Again, with -- with this
6 particular drawing, it doesn't really show up. That's
7 why I'm saying that it's not a very good drawing to use
8 to make that point.

9 MR. ALADJEM: Okay.

10 WITNESS BEDNARSKI: But it would be, generally
11 speaking, that area that is in yellow just above the
12 curved gray line that has a square in it that's half
13 gray and half, you know, burnt orange.

14 And, you know, the delineation of it is very
15 poor in this -- in this figure, so I don't want to hang
16 my hat on that, but it would be generally that area
17 north of there.

18 And then it would go to --

19 MR. ALADJEM: Mr. Bednarski --

20 WITNESS BEDNARSKI: I'm sorry.

21 MR. ALADJEM: Excuse me. Let's try a
22 different map.

23 WITNESS BEDNARSKI: Yeah.

24 MR. ALADJEM: Mr. Hunt, could you go to
25 SWRCB-113, Mapbook 15-4, Sheet 5 of 6.

1 (Exhibit displayed on screen.)

2 MR. ALADJEM: I think you're in the general
3 area.

4 (Exhibit displayed on screen.)

5 MR. ALADJEM: There we go.

6 Okay. Mr. Bednarski, I think this is a more
7 legible area.

8 WITNESS BEDNARSKI: Yes, it is.

9 MR. ALADJEM: Okay. Let me ask a simple
10 question:

11 There was a change in the Project footprint
12 from the Final EIR/EIS to the Supplemental which
13 involves the construction of the Byron Tract Forebay,
14 and it involves the exclusion of areas around Clifton
15 Court; correct?

16 WITNESS BEDNARSKI: I'm sorry. Could you
17 repeat that question?

18 MR. ALADJEM: Sure.

19 The major change in the Draft Supplemental EIR
20 is the inclusion in the Project of the Byron Tract
21 Forebay.

22 WITNESS BEDNARSKI: That's correct.

23 MR. ALADJEM: And the exclusion of areas
24 around Clifton Court.

25 WITNESS BEDNARSKI: I would just modify that

1 to say that we are no longer expanding Clifton Court to
2 the south as we had previously planned, and we have
3 removed some modifications interior to Clifton Court,
4 and we are no longer putting a Pump Station in the
5 northeast corner of Clifton Court.

6 MR. ALADJEM: I'll accept that.

7 WITNESS BEDNARSKI: Okay.

8 MR. ALADJEM: Can you tell me the net change
9 in acreage that would be disturbed by the Project, not
10 the change in wetland acres but total change in
11 acreage.

12 WITNESS BEDNARSKI: I don't have that on the
13 top of my head. I -- We would have to look for it in
14 the EIR. I'm sure it's disclosed in there, but I don't
15 have personal knowledge of that.

16 MR. ALADJEM: Let me move on, then, to
17 questions about the embankment.

18 Looking at this map here, the northern and
19 western, presumably, edges of the forebay would be
20 limited by an embankment; is that correct?

21 WITNESS BEDNARSKI: Yes, that's correct.

22 We -- On the northern and the western side, we
23 would be constructing new embankments. Actually, we'd
24 be constructing new embankments for the entire forebay,
25 so all -- all-encompassing.

1 MR. ALADJEM: And can you tell me, because the
2 documents are a little bit confusing:

3 Roughly how many cubic yards would be involved
4 in that?

5 WITNESS BEDNARSKI: Again, I would have to
6 look into the Conceptual Engineering Report to those
7 tables that are provided. That's where all of that
8 information is laid out is in the Conceptual
9 Engineering Report in that section that discusses Byron
10 Tract Forebay. I don't recall off the top of my head.

11 MR. ALADJEM: Would the spoils in -- Would you
12 be excavating the forebay to generate some of those
13 materials?

14 WITNESS BEDNARSKI: Yes, that would be our
15 plan, using a portion of the excavated materials from
16 the foundation, as well as some of the RTM, or the
17 reusable tunnel material.

18 MR. ALADJEM: And do you anticipate being able
19 to use the excavated material or would the -- Excuse
20 me. Strike that.

21 Would the quantity of excavated material be
22 sufficient to construct the embankments?

23 WITNESS BEDNARSKI: The combination of the
24 excavated material plus the RTM, we believe would be
25 based on some of the historical geotechnical

1 information that we have from the original construction
2 of Clifton Court. They were able to use the material
3 there.

4 We do not have specific geotechnical
5 information at this time but that would be, again, some
6 of the early work that we would do to refine that.

7 MR. ALADJEM: And is it DWR's intention that
8 the RTM site, the trapezoidal State of Montana area,
9 north of the forebay, would that remain as a spoils
10 area indefinitely?

11 WITNESS BEDNARSKI: We have identified it
12 through the Final EIR/EIS, and I believe we continued
13 that approach through the Supplemental document, that
14 that is the final disposition location for the RTM.

15 (Pause in proceedings.)

16 MR. ALADJEM: Mr. Bednarski, in terms of the
17 critical path you were talking about before, would the
18 acquisition of the lands needed for the RTM site and
19 the forebay be on that critical path pretty early?

20 WITNESS BEDNARSKI: You know, I -- I don't
21 know specifically in this location, but I -- We have
22 generally prioritized property acquisition as one of
23 the key critical path activities for the entire
24 program.

25 Where the acquisition of this property would

1 fit into that overall Property Acquisition Plan, I
2 couldn't tell you today.

3 MR. ALADJEM: Okay. And have you, as -- Or,
4 to your knowledge, has DWR contacted the owners of that
5 land?

6 WITNESS BEDNARSKI: I do not believe that DWR
7 has contacted, though I'm not personally aware of that,
8 no.

9 MR. ALADJEM: To your knowledge, has DWR
10 conducted a site-specific geotechnical investigation
11 going on now?

12 CO-HEARING OFFICER DODUC: Ms. Morris.

13 MS. MORRIS: Objection as to relevance.

14 These questions are very hypothetical. There
15 are several things that have to happen before
16 construction can even occur in this Project, one being
17 getting through this Change Petition and whether or not
18 a Permit is received.

19 And these are really going to purchasing lands
20 that I really don't think that they have anything to do
21 with legal users of water or Part 2 of this proceeding.

22 CO-HEARING OFFICER DODUC: Mr. Aladjem, I'm
23 sure you can respond.

24 MR. ALADJEM: All of these matters were
25 discussed in Mr. Bednarski's testimony, about how they

1 were going to construct and operate the Byron Tract
2 Forebay. I'm trying to understand what is the basis of
3 his knowledge.

4 CO-HEARING OFFICER DODUC: Overruled,
5 Miss Morris.

6 And somebody needs to turn their phone to
7 silent. I'm hearing dings.

8 Right. Check.

9 Mr. Aladjem.

10 MR. ALADJEM: Mr. Bednarski, has the
11 Department conducted geotechnical analyses of the lands
12 that would be in the forebay or the RTM site?

13 WITNESS BEDNARSKI: I don't believe DW -- DWR
14 has at this point in time. I reviewed that information
15 during the development of the most current CER and I
16 don't believe we have any borings in that area or CPTs,
17 but we do have some in the surrounding area.

18 MR. ALADJEM: And has the Department conducted
19 any biological surveys in the area of the RTM or the
20 forebay?

21 WITNESS BEDNARSKI: I don't believe we've
22 actually had, quote, boots on the ground to look at it.
23 We have looked at it through other pieces of technology
24 that are available, on GIS and other databases that we
25 have. But I don't believe that they've actually gone

1 out and surveyed it directly.

2 MR. ALADJEM: Mr. Hunt, if you could bring up
3 DWR-1305.

4 CO-HEARING OFFICER DODUC: Is this a different
5 line of questioning, Mr. Aladjem?

6 MR. ALADJEM: Pardon me?

7 CO-HEARING OFFICER DODUC: Is this a different
8 line of questioning?

9 MR. ALADJEM: It is a different line of
10 questioning.

11 CO-HEARING OFFICER DODUC: Then it's time for
12 us to take our break.

13 MR. ALADJEM: Thank you.

14 CO-HEARING OFFICER DODUC: We will resume at
15 2:45.

16 Mr. Bezerra, please hang around to meet with
17 staff.

18 (Recess taken at 2:31 p.m.)

19 (Proceedings resumed at 2:45 p.m.):

20 CO-HEARING OFFICER DODUC: All right. It is
21 2:45. We're back in session.

22 And before we return to Mr. Aladjem, let's do
23 a time check.

24 After Mr. Aladjem -- Are you anticipating
25 needing more than 12 minutes?

1 MR. ALADJEM: I think I'll be very close.

2 CO-HEARING OFFICER DODUC: Okay. Okay. We'll
3 give you to 3 o'clock. How about that? I'm being
4 generous.

5 Mr. Herrick is next and you're still
6 anticipating 10 minutes?

7 MR. HERRICK: Yes.

8 CO-HEARING OFFICER DODUC: Mr. Keeling would
9 be after that.

10 Are you still anticipating 45?

11 MR. KEELING: Yes.

12 CO-HEARING OFFICER DODUC: Okay. And then
13 Miss Womack for 60.

14 MS. WOMACK: (Nodding head.)

15 CO-HEARING OFFICER DODUC: I think that'll get
16 us close to between 4:30 and 5:00, and so with that,
17 Mr. Jackson, we'll see you in the morning.

18 Any other housekeeping matter before I turn
19 back to Mr. Aladjem?

20 All right. Could I get a report back from the
21 staff or Mr. Bezerra in terms of your discussion?

22 Mr. Bezerra does not look happy.

23 MR. BEZERRA: No. Actually, I'm quite
24 thrilled.

25 CO-HEARING OFFICER DODUC: Oh, that is your

1 thrilled face. Okay. I'll try to remember that.

2 MR. BEZERRA: No. Your staff seems to have it
3 well under control. I think we're going to have it set
4 up just fine --

5 CO-HEARING OFFICER DODUC: All right.

6 MR. BEZERRA: -- for in the morning. They
7 seem to be making great strides.

8 CO-HEARING OFFICER DODUC: Not surprisingly.

9 Thank you, staff.

10 With that, then, we will turn back to
11 Mr. Aladjem.

12 MR. ALADJEM: For the record, Mr. Hunt, if you
13 could pull up here DWR-1305, Page 39.

14 (Exhibit displayed on screen.)

15 MR. ALADJEM: And Mr. Bednarski, I want to let
16 you refresh your memory with this.

17 And if you would look at the chart at the
18 bottom of this graphic, and particularly near the
19 right-hand piece of that.

20 (Exhibit displayed on screen.)

21 MR. ALADJEM: Thank you, Mr. Hunt.

22 Tell me when you're ready.

23 WITNESS BEDNARSKI: Yes, okay.

24 MR. ALADJEM: Mr. Bednarski, I want to
25 understand -- make sure I'm understanding this chart

1 correctly.

2 The somewhat wavy dashed line at the top there
3 is an approximation of the existing ground surface
4 elevation; is that correct?

5 WITNESS BEDNARSKI: That's correct.

6 MR. ALADJEM: And then the blue -- or it looks
7 blue here -- dashed line is the minimum depth of the
8 tunnel; and then the solid line at the very bottom of
9 that graph is the bottom depth of the tunnel; is that
10 correct?

11 WITNESS BEDNARSKI: I -- I believe so, yes.

12 MR. ALADJEM: And, so, if I'm reading this
13 correctly, at the Byron Tract Forebay drive shafts, the
14 depth of the tunnel would be somewhere -- looks about
15 95 feet below ground surface to potentially as deep as
16 160 feet; is that correct?

17 WITNESS BEDNARSKI: Can -- Can you blow up
18 that call-out on the dashed line so I can actually read
19 what that is. I . . .

20 (Exhibit displayed on screen.)

21 WITNESS BEDNARSKI: Okay. So that would be --
22 Yeah, the dashed line represents the minimum elevation
23 for the top of the tunnel.

24 So the top of the tunnel could be as high as
25 that. These are some of the investigations that we

1 want to do in some of the early stages of our work
2 would be to set the final depth of the tunnel.

3 But, yes, as it is characterized now, the
4 bottom of the tunnel would be at minus 162 and, then,
5 40 feet up from that would be the top of the inside.

6 But we're, you know, just disclosing that it
7 could be a little bit higher depending on ground
8 conditions and approvals by different agencies to
9 construct under their levees.

10 MR. ALADJEM: And is it your opinion that a
11 tunnel buried at this depth would have no impact on the
12 overlying levee?

13 WITNESS BEDNARSKI: Which levee are you
14 referring to?

15 MR. ALADJEM: The Byron Tract levee.

16 You look on the chart here --

17 WITNESS BEDNARSKI: Yeah.

18 MR. ALADJEM: -- there's a trapezoid.

19 Yes?

20 WITNESS BEDNARSKI: I believe that trapezoid
21 that's shown there would be the construction of the new
22 embankment that we would be building for the Byron
23 Tract Forebay.

24 Maybe the levee that you're referring to is
25 that dashed line that jogs up and goes down and back up

1 would be levees on either side of that channel. Those
2 are existing levees in the dashed line.

3 MR. ALADJEM: But either -- Whether it is the
4 forebay embankment or those levees, you would not
5 anticipate there being any impact to the tunnel that is
6 that deep.

7 WITNESS BEDNARSKI: I believe I previously
8 testified that we would be taking all necessary
9 measures to ensure that there would be no impact on any
10 of the existing levees or, in this case, a newly
11 constructed embankment that, you know, we might be
12 building at the same time we're constructing the
13 tunnels.

14 MR. ALADJEM: Okay. Let me ask a question
15 there about flood control related to this.

16 Mr. Hunt . . .

17 Actually, let me just ask the question.

18 The Department has said that it will construct
19 all facilities to meet a 200-year standard of flood
20 protection; is that correct?

21 WITNESS BEDNARSKI: That's correct. That's
22 the direction that we were given, as the engineering
23 team, to protect from that type of a flood event.

24 MR. ALADJEM: And that would apply to Byron
25 Tract Forebay and the entire facility; correct?

1 WITNESS BEDNARSKI: Yes, it would.

2 MR. ALADJEM: Do you know, as you sit here
3 this afternoon, what the 200-year water surface
4 elevation would be?

5 WITNESS BEDNARSKI: I -- I do not. That
6 information may be identified in the Conceptual
7 Engineering Report, but I don't know off the top of my
8 head.

9 (Pause in proceedings.)

10 MR. ALADJEM: And is it the case,
11 Mr. Bednarski, that while the Department has given
12 instructions to construct facilities to a 200-year
13 flood protection standard, that that engineering has
14 not yet taken place; that would be preliminary design?

15 WITNESS BEDNARSKI: I believe in some
16 instances we've identified some conceptual elevations
17 that would protect against that, such as at the
18 intakes.

19 I don't know that we've done that throughout
20 the CER at all of the facilities, although our criteria
21 is the 200-year flood, plus sea-level rise, plus wave
22 runup, and we're anticipating that's an additional
23 3 feet on top of the other two criteria. So there's
24 actually three criteria that are going to come into
25 play in protecting from flood kind of events.

1 MR. ALADJEM: So -- So, let me make sure I
2 understand this.

3 The three criteria are 200-year level water
4 surface elevation.

5 WITNESS BEDNARSKI: Of flood conditions.

6 MR. ALADJEM: Of flood conditions.

7 Plus anticipated sea-level rise. And is that
8 roughly 60 inches?

9 WITNESS BEDNARSKI: That's roughly 60 inches
10 at the San Francisco Golden Gate. I think there's been
11 previous testimony that it's estimated to be 18 inches
12 at the Delta, specifically at the intakes.

13 MR. ALADJEM: And, then, plus the 200-year
14 water surface elevation, plus 18 inches in the Delta,
15 plus 3 feet.

16 WITNESS BEDNARSKI: Of wave runup, or
17 freeboard as we call it, so -- Yeah.

18 MR. ALADJEM: Very good.

19 (Pause in proceedings.)

20 MR. ALADJEM: Relating to the Byron Tract
21 Forebay embankment.

22 When would the Department consider questions
23 about seepage from that embankment?

24 WITNESS BEDNARSKI: Our -- Well, when you say
25 "consider questions," you mean as to . . .

1 MR. ALADJEM: When would the Department
2 analyze the potential for seepage from the embankment
3 and to make them -- Well, just leave it -- leave it
4 there.

5 WITNESS BEDNARSKI: I just -- I believe that
6 one of our fundamental goals would be to eliminate any
7 chances of seepage, just going into any of the future
8 studies or preliminary designs.

9 MR. ALADJEM: So, by the -- In the preliminary
10 design, you would have a design that would eliminate
11 seepage to the Department's satisfaction.

12 WITNESS BEDNARSKI: Not just to the
13 Department's satisfaction but to DSOD's satisfaction,
14 too. So we'd be working closely with them to come up
15 with a system that would eliminate that potential.

16 MR. ALADJEM: And is it too early to determine
17 whether some sort of slurry wall would be required to
18 prevent seepage?

19 MR. BERLINER: At this point, I'm going to
20 object: This is well beyond the scope of the
21 testimony.

22 If you could identify where in his testimony
23 you're exploring, that would be helpful.

24 MR. ALADJEM: Mr. Berliner, the scope of this
25 rebuttal cross-examination is including anything in the

1 Draft Supplemental EIR.

2 And I'm trying to understand how the Byron
3 Tract Forebay is going to be put together to protect
4 against flooding.

5 CO-HEARING OFFICER DODUC: Yes.

6 Overruled, Mr. Berliner.

7 WITNESS BEDNARSKI: I believe that our -- our
8 commitment in the CER is that slurry wall construction
9 would be used at Byron Tract Forebay in similar fashion
10 to what we had previously disclosed in the Intermediate
11 Forebay. And also not necessarily for flooding but
12 around all of the intake structures that would be using
13 slurry wall construction.

14 So we would carry that forth to the Byron
15 Tract Forebay now that we're using that as our
16 terminous forebay.

17 (Pause in proceedings.)

18 MR. ALADJEM: Let me shift over from flooding
19 and levees and seepage to traffic.

20 Mr. Hunt, could you pull up Mr. Bednarski's
21 testimony, DWR-1212.

22 (Exhibit displayed on screen.)

23 MR. ALADJEM: Page 12, Lines 22 to 26.

24 (Exhibit displayed on screen.)

25 Mr. Bednarski, sorry to take you back to this

1 little section of your testimony. You spent some time
2 with Mr. Ferguson on it.

3 But you see here beginning at Line 21?

4 WITNESS BEDNARSKI: Yes.

5 MR. ALADJEM: Okay. And you see that the
6 Department made certain commitments in response on
7 working with San Joaquin County, Sacramento County and
8 Yolo County; correct?

9 WITNESS BEDNARSKI: Yes.

10 MR. ALADJEM: Are you aware, Mr. Bednarski,
11 that the Byron Tract Forebay would be in Contra Costa
12 County?

13 WITNESS BEDNARSKI: I was not personally aware
14 of that.

15 MR. ALADJEM: Okay. Allow me to represent it
16 would be in Contra Costa County.

17 WITNESS BEDNARSKI: Okay.

18 MR. ALADJEM: Would the Department be willing
19 to make similar commitments to Contra Costa County as
20 it did to the other three counties?

21 WITNESS BEDNARSKI: Yes.

22 MR. ALADJEM: And, Mr. Hunt, Page 13, if you
23 would, at Line 6 through 10.

24 (Exhibit displayed on screen.)

25 MR. ALADJEM: Just to be specific here,

1 Mr. Bednarski, it says here (reading):

2 "DWR will ensure . . . prior to
3 commencement of construction
4 activities . . . DWR will make a
5 good-faith effort to enter into
6 mitigation agreements . . . to verify
7 location," et cetera, et cetera,
8 et cetera.

9 Do you see that, sir.

10 WITNESS BEDNARSKI: Yes, I do.

11 MR. ALADJEM: And that is the commitment that
12 DWR has made to the other three counties and you would
13 make it in Contra Costa County as well.

14 WITNESS BEDNARSKI: Yes.

15 MR. ALADJEM: Madam Hearing Officer, no other
16 questions.

17 CO-HEARING OFFICER DODUC: Thank you,
18 Mr. Aladjem. Definitely very efficient.

19 Mr. Herrick.

20 MR. HERRICK: The epitome of inefficiency.

21 CO-HEARING OFFICER DODUC: Oh, no. I'm being
22 spoiled here with one efficient attorney after another.

23 MR. HERRICK: Thank you, Chairpersons.

24 John Herrick for South Delta Water Agency.

25 I just have a few questions. I don't think it

1 repeats anything, but I missed part of the earlier
2 cross.

3 CROSS-EXAMINATION BY

4 MR. HERRICK: Mr. Bednarski, most of these
5 questions are for, or all of them. I don't know if
6 anybody else wants to come in if we get to a topic
7 that they produced testimony for.

8 On Page 11 of your testimony, which is
9 DWR-1212 . . .

10 (Exhibit displayed on screen.)

11 MR. HERRICK: And I'm looking at the very
12 bottom of that, starting on Line 26, where you
13 reference the unacceptable level of service conditions.

14 You see that?

15 WITNESS BEDNARSKI: Yes.

16 MR. HERRICK: Is it correct to say that your
17 testimony on Pages 11 and 12 is telling the Board that,
18 based on the Revised Project, there will be fewer
19 unacceptable levels of service conditions in the
20 Project area?

21 WITNESS BEDNARSKI: I will refer that to
22 Mr. Choa.

23 WITNESS CHOA: Yes, that statement is correct.

24 MR. HERRICK: But there will still be
25 unacceptable levels of service conditions in the

1 Project area; correct?

2 WITNESS CHOA: Yes, that is correct.

3 MR. HERRICK: And, Mr. Bednarski, on the next
4 page, Page 12 of your testimony, on Line 22, do you see
5 where you reference the significant and unavoidable
6 traffic impacts?

7 WITNESS BEDNARSKI: Yes.

8 MR. HERRICK: Now, you used the term or phrase
9 "significant and unavoidable."

10 Is that in reference to some sort of CEQA
11 standard or -- or something else?

12 WITNESS BEDNARSKI: I'll refer to Mr. Choa on
13 that.

14 WITNESS CHOA: Yes. That is referring to the
15 analysis that showed significant impacts and resulting
16 in that same page, towards the bottom, the Mitigation
17 Measures in SWRCB-111, Transportation-1a, 1b, 1c, and
18 also Transportation-2a, 2b, 2c.

19 MR. HERRICK: Yeah. My question is: That
20 phrase is used because it references some sort of
21 standard or description in CEQA; is that correct?

22 WITNESS CHOA: Yes, that is correct.

23 MR. HERRICK: And do you have any knowledge of
24 what the standard is for reviewing the proposed
25 petition in this proceeding? Do you believe it's CEQA

1 or do you know?

2 WITNESS CHOA: I will request Mr. Bednarski to
3 respond to that.

4 WITNESS BEDNARSKI: I'm personally not
5 familiar if there's a different standard for this
6 hearing process for that specific item.

7 MR. HERRICK: Okay. So your testimony for
8 this rebuttal -- for these rebuttal purposes is to --
9 includes a description of what you found as a CEQA
10 significant and unavoidable impact or impacts.

11 CO-HEARING OFFICER DODUC: Hold on.

12 Miss Ansley.

13 MS. AYNSLEY: Objection: Misstates testimony
14 as Mr. Bednarski just said, as to this item, which I
15 believe we're talking specifically about traffic.

16 CO-HEARING OFFICER DODUC: Mr. Herrick.

17 MR. HERRICK: Yeah. I meant to limit that to
18 traffic, sure.

19 CO-HEARING OFFICER DODUC: All right.

20 WITNESS BEDNARSKI: Can you repeat the
21 question?

22 MR. HERRICK: Probably not. I'll leave it at
23 that.

24 Mr -- I think probably Choa then. At the
25 bottom of Page 12, it talks -- it says, starting on 26

1 (reading):

2 "Where feasible, limit construction
3 activity to fit within available reserve
4 capacity . . ."

5 Do you see that in Mr. Bednarski's testimony?

6 WITNESS CHOA: Yes, as shown on the screen,
7 Lines 26 to 27.

8 MR. HERRICK: My question is: Does that mean
9 that, rather than have more traffic during fewer hours,
10 you'll have more hours with additional traffic?

11 WITNESS CHOA: According to my earlier
12 testimony, we did a worst-case analysis in terms of the
13 highest number -- highest amount of traffic. And this
14 Mitigation Measure identifies shifting that to an
15 earlier time period or during hours that are not coming
16 to periods.

17 MR. HERRICK: Is that a "yes"?

18 I'm not trying to be argumentative. I mean,
19 my question is: The mitigation for having, shall I
20 say, heavy traffic during certain hours is to spread
21 that out so there's more traffic in other hours that
22 wouldn't have had it without this mitigation?

23 WITNESS CHOA: My response is no. It would --
24 The amount of traffic would not change if it was
25 shifted to a different hour because we use the highest

1 number -- highest amount of traffic, whether it
2 occurred at 6:00 in the morning or 8:00 in the morning
3 and so forth.

4 MR. HERRICK: Yes. But if you're shifting
5 traffic from, say, working hours, some of it's being
6 shifted to nighttime hours, then aren't you increasing
7 the traffic in the nighttime hours?

8 It may not increase the total traffic in the
9 study, but it's increasing traffic during the times to
10 which you shifted the traffic. Isn't that by
11 definition?

12 WITNESS CHOA: I'll respond that shifting the
13 amount of traffic to different times of the day would
14 not change the amount of construction traffic.

15 MR. HERRICK: Okay. That's not the question.

16 The question: Is there -- Is the mitigation
17 increasing the traffic at other times of the day than
18 would be there absent the mitigation?

19 WITNESS CHOA: In response to that, yes.
20 Compared to background traffic, it would increase it
21 with that Mitigation Measure.

22 MR. HERRICK: Mr. Bednarski, on Page 13 of
23 your testimony --

24 (Exhibit displayed on screen.)

25 MR. HERRICK: -- there were some other

1 questions but I'm looking at Lines 6 through 8. Do you
2 see that? Or is that up yet?

3 It talks about the mitigation agreements with
4 the counties.

5 Do you see that?

6 WITNESS BEDNARSKI: Yes, I do.

7 MR. HERRICK: Now, when you say "mitigation,"
8 you're not talking about mitigating an impact. You're
9 talking about repairing a road after it's damaged;
10 correct?

11 WITNESS BEDNARSKI: I'm going to refer to
12 Mr. Choa on that.

13 MR. HERRICK: Mr. Choa, the description here
14 of "mitigation agreement's" talking about when and how
15 much to do for repairing the roads. That's a
16 description of repairing the roads that might be
17 damaged; isn't it?

18 WITNESS CHOA: That is part of the -- part of
19 it, but also in terms of reducing the amount of traffic
20 on those roadways.

21 MR. HERRICK: Well, the agreements won't do
22 that. These are -- I'm referring to the mitigation
23 agreements that DWR intends to enter into; right?

24 WITNESS CHOA: Correct. And that's where
25 there are two Mitigation Measures, Transportation 1a,

1 1b, 1c, and also 2a, 2b, 2c.

2 MR. HERRICK: Yeah. But you're not mitigating
3 damage to roads. You're offering to repair roads; is
4 that correct?

5 I mean, I don't -- The question is: You can't
6 mitigate impacts to roads by not having -- unless you
7 don't have the impact.

8 What you're suggesting here is, if roads are
9 damaged, agreements will be reached by which they would
10 be repaired; correct?

11 MR. MIZELL: Objection: Asked and answered.

12 CO-HEARING OFFICER DODUC: Mr. Herrick, I'm
13 actually confused by your question, because if you read
14 the remainder of that sentence, Lines 8 and 9, it
15 implies more than just repairs. So I'm now confused.

16 MR. HERRICK: Well, maybe it's a definitional
17 question.

18 I'll -- I'll move on. I apologize for that if
19 it was confusing.

20 Mr. Bednarski, your testimony talks about
21 eliminating two barge sites; is that correct?

22 WITNESS BEDNARSKI: That's correct.

23 MR. HERRICK: Does the elimination of those
24 two barge sites increase barge traffic on some channels
25 in the Delta by -- it would be shifted because they're

1 no longer the sites are there?

2 WITNESS BEDNARSKI: We don't anticipate they
3 will, no.

4 MR. HERRICK: Well, the barge that was going
5 to a site that's now eliminated has to go somewhere
6 else; does it not?

7 MR. MIZELL: Objection: Asked and answered.

8 MR. HERRICK: No. That was a clarification, I
9 would say.

10 CO-HEARING OFFICER DODUC: No. Hold on.

11 MR. HERRICK: Sorry.

12 CO-HEARING OFFICER DODUC: Mr. Bednarski,
13 please reply.

14 WITNESS BEDNARSKI: We've relocated in the
15 south -- On West Canal, we've eliminated that barge
16 landing, but we've disclosed that the deliveries that
17 were going to be made there are now going to be dropped
18 off at the Byron Tract Forebay.

19 So, for that particular site -- for that
20 particular portion of the Delta, there's no net
21 difference in what we disclosed originally --

22 MR. HERRICK: Okay.

23 WITNESS BEDNARSKI: -- so . . .

24 MR. HERRICK: Turning to Page 15 of your
25 testimony.

1 (Exhibit displayed on screen.)

2 MR. HERRICK: Starting on Line 16, you
3 describe which bridges have -- will potentially be
4 affected.

5 Do you see that?

6 I don't mean to misstate your testimony. I'm
7 just drawing your attention to Line 16 and beyond.

8 Do you see that?

9 WITNESS BEDNARSKI: Right. In the paragraph
10 starting on Line 16, yes, we identified some bridges
11 that may be affected by barge traffic, that's correct,
12 yes.

13 MR. HERRICK: Now, are you familiar -- I'm not
14 trying to test you here.

15 Are you familiar with Highway 4 between, say,
16 Stockton and the bridge on Highway 4 at Old River?

17 WITNESS BEDNARSKI: I've driven on that road
18 several times, yes.

19 MR. HERRICK: Are you familiar with the last
20 few miles -- a few miles east of that bridge on
21 Highway 4? I'm just trying to dial down a little bit.

22 WITNESS BEDNARSKI: I'm familiar with the fact
23 that it crosses Victoria Island. Anything -- I don't
24 know. If you have a specific feature.

25 MR. HERRICK: On Victoria Island, are there

1 very many, if any, opportunities to pull off the road
2 onto a shoulder there?

3 WITNESS BEDNARSKI: I don't -- I don't recall
4 the exact width of the highway there. I know there's
5 limited offramps and opportunities to enter, but I
6 don't recall where those are specifically placed.

7 MR. HERRICK: Do you recall that there are two
8 large drainage ditches on each side of that road?

9 WITNESS BEDNARSKI: Yes, I do recall that.

10 MR. HERRICK: And that limits the ability of
11 anybody to pull off to the side of the road; right? Or
12 do you know?

13 WITNESS BEDNARSKI: It depends on how far off
14 the road they want to pull. I don't recall what the
15 shoulder width there is or anything like that, so I
16 maybe there's room for them to pull to the side. I
17 couldn't vouch for that.

18 MR. HERRICK: Are you familiar -- Do you know
19 how many times a day the bridge on Highway 4 over Old
20 River is raised or . . . is raised.

21 WITNESS BEDNARSKI: I understand it happens
22 infrequently under present conditions.

23 MR. HERRICK: And do you know what will happen
24 during a normal day, I'll say during the -- the
25 afternoon between 4:00 and 6:00 -- I'm just assuming

1 that's close to rush-hour -- do you know what sort of
2 traffic goes across that bridge in both directions?

3 WITNESS BEDNARSKI: I would have to refer to
4 Mr. Choa for vehicle counts during that period of time.
5 I don't know myself.

6 MR. HERRICK: Mr. Choa, do you know?

7 WITNESS CHOA: You know, off the top of my
8 head, I don't. I just have -- I have information
9 regarding daily but not specific hours.

10 MR. HERRICK: Do you know if traffic across
11 that bridge is controlled by a light?

12 (Pause in proceedings.)

13 WITNESS CHOA: Off the top of my head, I'm not
14 aware. I think it's only when the -- It's controlled
15 when the -- it is raised but not a traffic light.

16 MR. HERRICK: Do you know if that bridge
17 safely accommodates traffic in both directions when one
18 direction has a large semi truck going across the
19 bridge?

20 MR. BERLINER: Objection: Vague.

21 I think you have to describe traffic
22 conditions a little bit better there. Just the
23 presence of a truck?

24 MR. HERRICK: Mr. Choa, if there's a semi
25 truck going east on Highway 4 crossing the bridge and a

1 normal sedan car going west, is there sufficient room
2 for both those vehicles at that time?

3 Sufficient. By that, I mean some reasonable
4 margin of error on either side.

5 WITNESS CHOA: In terms of the number of lanes
6 on the bridge? There is, in terms of how it actually
7 operates. Folks do wait as a truck -- when a truck is
8 crossing. They wait on each side.

9 So there is -- there is adequate width but,
10 again, from observations and driving that corridor,
11 people do wait for the occasional truck to cross the
12 bridge as they're going the opposite direction.

13 MR. HERRICK: Now, if the bridge goes up
14 because of barge traffic, will that result in traffic
15 backing up in either direction, assuming there's
16 traffic on the road?

17 WITNESS CHOA: If that occurs, yes, it would
18 continue with -- in the future.

19 MR. HERRICK: So, if it backs up when the
20 bridge is not raised, it would be worse when the bridge
21 is raised; correct?

22 WITNESS CHOA: If those two occurrences occur
23 at the same time, yes, they would occur.

24 MR. HERRICK: Now, absent shifting the raising
25 of the bridge to some time when there's no traffic, how

1 would one mitigate the impacts to traffic when the
2 bridge goes up at this location?

3 WITNESS CHOA: As stated in your question,
4 yes, changing the time of day when the bridge is raised
5 would reduce the amount of delay occurring.

6 MR. HERRICK: Okay. That was the one
7 exception in my question, so . . .

8 Absent shifting the timing of the raising of
9 the bridge, how would one mitigate that traffic backup
10 due to raising the bridge?

11 WITNESS CHOA: I believe in the information
12 provided in the -- in DWR-1212, that is one of the
13 options for reducing congestion is to adjust the times
14 when barge trips are crossing underneath those bridges.

15 CO-HEARING OFFICER DODUC: So what are the
16 other options?

17 MR. HERRICK: The question is what are the
18 other options?

19 Sorry.

20 WITNESS BEDNARSKI: Well, I personally
21 wouldn't be aware of what other options there would be.
22 That's why we put forth that mitigation measure, to
23 require Contractors to bring their barges down there
24 during non-peak times.

25 And if that's deemed to be the case that we

1 would have that unavoidable impact, then that would be
2 an requirement on the deliveries of the materials to
3 the Byron Tract Forebay.

4 MR. HERRICK: So there are no other Mitigation
5 Measures that you know of other than shifting the
6 timing of the raising the bridge; correct?

7 WITNESS BEDNARSKI: I mean, there could be a
8 lot of hypothetical ones, but I don't know that there's
9 any value in going to ideas such as constructing a new
10 bridge or something like that, that would mitigate this
11 narrow bridge.

12 So, within the context of what we're looking
13 at in this Project, that would be a main mitigation
14 measure that we would employ, would be adjusting the
15 times that barges could pass by that location.

16 MR. HERRICK: Well, the reason I'm trying to
17 drill down in this is because the next page talks about
18 not knowing what the barge traffic will be that's not
19 scheduled yet. Page 16, Line 1, you say (reading):

20 "While the exact routing of the
21 barges is unknown at this time," blah
22 blah.

23 So, I'm just trying to drill down to it. I
24 know you don't like to say it but I'm trying to
25 clarify.

1 It is correct that, absent being able to shift
2 the timing of the barge -- of the bridge going up,
3 there is no other Mitigation Measure for traffic
4 impacts; correct?

5 MR. MIZELL: Objection: Asked and answered.

6 CO-HEARING OFFICER DODUC: Sustained.

7 MR. HERRICK: He has answered it?

8 CO-HEARING OFFICER DODUC: Yes, he has.

9 (Timer rings.)

10 MR. HERRICK: That's all I have. Thank you
11 very much.

12 CO-HEARING OFFICER DODUC: Thank you,
13 Mr. Herrick.

14 Mr. Keeling.

15 MR. KEELING: Contrary to Mr. Herrick's
16 representation, I am not number 120. I'm number 24.

17 (Pause in proceedings.)

18 CO-HEARING OFFICER DODUC: All right. What
19 topics will you be covering, Mr. Keeling?

20 MR. KEELING: All of my questions will be for
21 Mr. Bednarski.

22 I will be asking him a number of questions
23 about: Changes reflected in the Revised Project; the
24 SEIR; the alignment vis-`-vis gas wells and gas well
25 fields; settlement monitoring; and a few questions

1 about traffic.

2 I'm happy to say that many of my questions
3 have already been covered to some degree, and I
4 apologize in advance if I have to -- there's a little
5 bit of overlap, but I'm trying to skip through where
6 they've already been asked.

7 Mr. Hunt, could we get up DWR-1212 Second
8 Revised.

9 (Exhibit displayed on screen.)

10 MR. KEELING: And put it to the Page 24.

11 (Exhibit displayed on screen.)

12 MR. KEELING: Line 14.

13 (Exhibit displayed on screen.)

14 MR. KEELING: Thank you.

15 CROSS-EXAMINATION BY

16 MR. KEELING: Good afternoon, Mr. Bednarski.

17 Good to see you again.

18 WITNESS BEDNARSKI: Likewise.

19 MR. KEELING: I can say I've known you for two
20 years now, just about.

21 In our -- In these questions, I will be
22 referring to you or DWR or Petitioners, and I may slip
23 but I want to make it understood and make sure there's
24 no confusion:

25 When I ask you, for example, have the

1 Petitioners done this, or has DWR done that, I'm not
2 meaning strictly DOI or DWR. I mean, anyone acting on
3 their behalf or in furtherance of the WaterFix, some
4 private Contractor.

5 Do you understand that? Or Met, for example.

6 WITNESS BEDNARSKI: Yes, I do.

7 MR. KEELING: Okay. And if there's any
8 confusion about that, please stop me and explain or ask
9 me for clarification.

10 MR. MIZELL: Mr. Keeling, I did have one
11 clarification, then:

12 You just mentioned Metropolitan. I'd like to
13 know precisely what boundary you're drawing there
14 because Mr. Bednarski is an employee of Metropolitan
15 acting in this hearing on behalf of DWR, so I -- I
16 believe that's in.

17 Now, other actors at Metropolitan who are not
18 acting on behalf of the Department would be a different
19 category.

20 Is that -- Is that your intention?

21 MR. KEELING: That's a fair question,
22 Mr. Mizell. I'm really asking about entities or
23 persons acting on behalf of the WaterFix Project.

24 Usually, we're talking about the Petitioners,
25 but I know that some of these tasks have been delegated

1 out. And I don't want any confusion later on some
2 technical thing, "Well, he only asked about the
3 Petitioners but not the Contractor." I don't want
4 that. I want real answers.

5 MR. BERLINER: I'm sorry, but that -- I was
6 expecting you to say actually at the end exactly the
7 opposite.

8 Are you expecting the witness to testify on
9 behalf of both DWR and Met or on behalf of DWR?

10 MR. KEELING: I understand that the witness is
11 testifying on behalf of DWR, but if I ask him a factual
12 question, as --

13 CO-HEARING OFFICER DODUC: Mr. Keeling.

14 MR. KEELING: -- have the Petitioners done X
15 and --

16 CO-HEARING OFFICER DODUC: Mr. Keeling, I
17 think we understand --

18 MR. KEELING: All right.

19 CO-HEARING OFFICER DODUC: -- what you mean.

20 Mr. Bednarski will answer the question to
21 his -- to the best of his ability as a representative
22 of DWR and as someone who is familiar with all of the
23 various parties who are contributing to the conceptual
24 design and development of the WaterFix Project.

25 WITNESS BEDNARSKI: That's correct. I can do

1 that.

2 CO-HEARING OFFICER DODUC: You cannot speak to
3 everyone in the State of California who might be
4 supporting the WaterFix, but you can speak on behalf of
5 those who are actually actively participating with DWR
6 on the development of the Project and in its submittal
7 of the Petition to this Board.

8 WITNESS BEDNARSKI: That's correct.

9 MR. KEELING: Mr. Bednarski, at Page 24 of
10 your testimony, Line 14, you state (reading):

11 "The current tunnel alignments avoid
12 all active gas wells."

13 And just before that, you reference the
14 Exhibit DWR-1304, Figure 13-1.

15 Do you see that?

16 WITNESS BEDNARSKI: Yes.

17 MR. KEELING: I don't -- Would it help to
18 throw that figure up for you on the screen? Because
19 I'm going to ask you if -- if that figure depicts many
20 gas wells along the line -- the alignment.

21 WITNESS BEDNARSKI: You don't need to show
22 that figure.

23 MR. KEELING: I didn't think I did.

24 Is the answer "yes"?

25 WITNESS BEDNARSKI: Yes.

1 MR. KEELING: Okay. And that figure does not
2 show the locations of abandoned wells, the locations of
3 which are not known, to use your nomenclature; is that
4 correct?

5 WITNESS BEDNARSKI: That -- That figure would
6 not show abandoned wells that are not known, that is
7 correct.

8 MR. KEELING: What efforts, to your knowledge,
9 have the Petitioners made to locate abandoned wells
10 other than those reflected on that figure?

11 WITNESS BEDNARSKI: If we can refer to my
12 presentation, I'll give you an example. That's
13 DWR-1361.

14 (Exhibit displayed on screen.)

15 WITNESS BEDNARSKI: Page 20.

16 (Exhibit displayed on screen.)

17 WITNESS BEDNARSKI: This is an aerial view of
18 Bouldin Island, the north part of Bouldin Island just
19 above Highway 12 there. There's Highway 12 running
20 east-west across the island.

21 There is a green dot that's very close to that
22 crosshairs that is in the alignment. This is an
23 abandoned gas well that we received information from
24 the DOGGR reports, publicly available reports.

25 As we were preparing the preliminary and final

1 design for the site preparation contract on Bouldin
2 Island, we actively went out and looked for that
3 abandoned well with ground-penetrating radar devices on
4 a drone, and other devices, manual excavation to dig
5 around to see if we could find something there. We did
6 not find anything there.

7 Then if you go down to -- towards those two
8 yellow lots, those are the proposed shaft locations.
9 There is a green dot to the left of that tunnel
10 alignment. We looked for that abandoned gas well. We
11 did find that gas well.

12 So, in this limited example, we have
13 investigated and had mixed results with finding the
14 abandoned gas wells.

15 But we only examined this island because we
16 were doing this preliminary and final design for this
17 one potential construction contract.

18 CO-HEARING OFFICER DODUC: Miss Morris.

19 MR. KEELING: Who owns --

20 CO-HEARING OFFICER DODUC: Hold on,
21 Mr. Keeling.

22 MS. MORRIS: Just for the record, because it
23 wasn't -- The crosshairs are not on the exhibit. So if
24 we could just clarify that the first green dot that
25 Mr. Bednarski was referring to is directly above

1 Exhibit DWR-1361, Page 20, Bouldin Island directly on
2 the white and black sort of checkered mark.

3 CO-HEARING OFFICER DODUC: So noted.

4 MR. KEELING: Who currently owns Bouldin
5 Island?

6 WITNESS BEDNARSKI: To the best of my
7 knowledge, Metropolitan Water District.

8 MR. KEELING: So you were investigating the
9 island owned by your employer?

10 WITNESS BEDNARSKI: That's correct.

11 MR. KEELING: Thank you.

12 Have you investigated any other islands along
13 the alignment such that -- for the same?

14 WITNESS BEDNARSKI: Not at the present time,
15 no.

16 MR. KEELING: What is the basis for your
17 statement in your testimony at Page 24 that (reading):

18 "The current tunnel alignments avoid
19 all active gas wells."

20 WITNESS BEDNARSKI: The basis of that
21 statement is two-fold:

22 We reviewed the information provided from the
23 Division of Oil, Gas and Geothermal Resources, the
24 DOGGR reports. We reviewed those.

25 And, additionally, we have done field

1 reconnaissance to -- into the areas that we can gain
2 access to to observe active gas wells which we would
3 fundamentally understand would have a surface feature
4 attached to them that we could see.

5 And then, finally, we've looked at Google
6 Earth images and also historic photographs that we have
7 obtained of the Delta, again to look for surface
8 features that may still be present.

9 And so through this sort of stepwise approach,
10 we believe that we have avoided all active gas wells.

11 MR. KEELING: Were any of the alignment
12 adjustments in the Revised Project a result of taking a
13 look at gas wells?

14 WITNESS BEDNARSKI: "In the Revised Project,"
15 are you referring to the Supplemental EIR/EIS?

16 MR. KEELING: Yes.

17 WITNESS BEDNARSKI: No, we have not made any
18 revisions to the alignment in the Supplemental document
19 to avoid gas wells.

20 MR. KEELING: Take a look on the same page
21 around Lines 17 through 19.

22 (Exhibit displayed on screen.)

23 MR. KEELING: My question has to do with the
24 phrase (reading):

25 ". . . Specialized studies and work

1 activities to locate and remove any
2 abandoned wells that are in the tunnel
3 alignment."

4 My question is: Have you developed any of
5 those plans or studies at this point?

6 WITNESS BEDNARSKI: Not probably to their full
7 completion.

8 As I mentioned, on Bouldin island, we did some
9 preliminary work with a drone and some
10 ground-penetrating radar type device -- I don't know
11 the actual name of it -- and we used that on Bouldin
12 Island.

13 I don't know that that would be the
14 methodology we would use throughout the rest of the
15 alignment. We'll probably refine that approach as we
16 go forward.

17 MR. KEELING: What is required to remove an
18 abandoned gas well?

19 WITNESS BEDNARSKI: It's my understanding that
20 there are industry practices of being able to open up
21 the gas well and to be able to go down and cut it off
22 at a certain elevation, whatever might be appropriate
23 for that particular application, and then reseal that
24 gas well.

25 MR. KEELING: Have you ever personally been

1 involved in the removal of a natural gas well?

2 WITNESS BEDNARSKI: No, I have not.

3 MR. KEELING: What are the permit requirements
4 for removal of an abandoned gas well?

5 WITNESS BEDNARSKI: I don't personally know.

6 MR. KEELING: Do you know if there are permit
7 requirements?

8 WITNESS BEDNARSKI: I would imagine there are
9 if it's similar to removing water wells. Permits need
10 to be received for those.

11 MR. KEELING: In removing an abandoned gas
12 well, must there be involvement by the landowner as
13 well?

14 WITNESS BEDNARSKI: I would --

15 MS. MORRIS: Objection.

16 CO-HEARING OFFICER DODUC: Miss Morris.

17 MS. MORRIS: This calls for a legal opinion;
18 it's outside the scope of his testimony as well.

19 CO-HEARING OFFICER DODUC: Mr. Bednarski,
20 you've already said you're not familiar with the
21 process.

22 Are you able to answer or is this pure
23 speculation on your part?

24 WITNESS BEDNARSKI: It would be speculation on
25 my part. I assume we have to coordinate with the

1 landowner but they may not own the well so we have to
2 coordinate with different owners as well.

3 CO-HEARING OFFICER DODUC: Move on,
4 Mr. Keeling.

5 MR. KEELING: Well, I appreciate that it's
6 speculative but Mr. Bednarski has undertaken in his
7 testimony, his rebuttal testimony, to talk about how
8 well prepared they are to deal with abandoned gas
9 wells. I think I'm entitled to drill down on that.

10 CO-HEARING OFFICER DODUC: And you have done
11 so, and he has answered to the best that he can.

12 You are now be directed to move on,
13 Mr. Keeling.

14 MR. KEELING: With permission, I'd like to ask
15 one more question about that.

16 CO-HEARING OFFICER DODUC: Let's hear your
17 question.

18 MR. KEELING: How long do you think it takes
19 typically to remove an abandoned gas well?

20 CO-HEARING OFFICER DODUC: Are you able to
21 answer, Mr. Bednarski?

22 WITNESS BEDNARSKI: I don't have any personal
23 knowledge of that.

24 MR. KEELING: So you would have no
25 understanding as to the delay caused by even one

1 abandoned gas well you'd have to remove.

2 MR. BERLINER: Objection: Assumes facts not
3 in evidence.

4 There's no evidence of delay.

5 CO-HEARING OFFICER DODUC: I'm --

6 MR. KEELING: If you take a look at --

7 CO-HEARING OFFICER DODUC: -- overruling the
8 objection, but I believe Mr. Keeling has exhausted this
9 line of questioning. So you will move on.

10 MR. KEELING: On Line 20 on the same page, it
11 says (reading):

12 "Additionally, DWR may potentially
13 require tunnel contractors to install
14 equipment on the tunnel-boring machines
15 to detect buried metallic objects
16 directly in front of the TBMs."

17 Is that correct?

18 WITNESS BEDNARSKI: Yes, that's what's written
19 there.

20 MR. KEELING: And "TBMs," just for the record,
21 means tunnel-boring machines?

22 WITNESS BEDNARSKI: That's correct.

23 MR. KEELING: Can you describe to me what this
24 metal-detecting equipment is?

25 MR. BERLINER: Objection: Relevance.

1 CO-HEARING OFFICER DODUC: Actually, I want to
2 know the answer to that.

3 Overruled.

4 WITNESS BEDNARSKI: My understanding -- and
5 again this is at a novice level -- is a -- some sort of
6 a forward-penetrating radar that has been utilized in
7 some tunneling efforts to identify objects that are in
8 front of the tunnel-boring machine.

9 This is an emerging technology that we've
10 recently become aware of. And we will be exploring
11 that during our upcoming studies and preliminary design
12 to see if it has merit to be specified on our machines.

13 MR. KEELING: Do you have any understanding of
14 the range of detection of these devices?

15 MR. MIZELL: Objection: Asked and answered.

16 MR. KEELING: I don't -- Is it --

17 CO-HEARING OFFICER DODUC: Hold on.

18 MR. KEELING: -- a mile? 50 feet? I don't
19 remember an answer to that.

20 MR. MIZELL: Same objection.

21 CO-HEARING OFFICER DODUC: Mr. Bednarski, my
22 understanding from your previous question is, this is
23 something that you're not familiar with, that is just
24 being explored, so you would not have any specific
25 detailed information about this technology.

1 WITNESS BEDNARSKI: I can only add to that,
2 that it would be less than 100 feet ahead that they
3 would be able to detect something, you know, that close
4 into the tunnel-boring machine.

5 MR. KEELING: But you've only begun looking
6 into this.

7 WITNESS BEDNARSKI: We've just become aware of
8 this through our dialogues with Tunnel Contractors.
9 It's an emerging technology.

10 MR. KEELING: Did the Tunnel Contractors give
11 you any understanding of the cost of this
12 metal-detecting equipment?

13 MR. BERLINER: Objection: Relevance.

14 CO-HEARING OFFICER DODUC: Mr. Keeling.

15 MR. KEELING: What is the length of a
16 tunnel-boring machine that you -- that you intend to
17 use?

18 WITNESS BEDNARSKI: I believe they're on the
19 order -- Are you referring to all of the equipment that
20 would be pulled behind the actual unit itself?

21 MR. KEELING: Yes. I'm referring to the whole
22 thing.

23 WITNESS BEDNARSKI: The whole enchilada?

24 MR. KEELING: Yeah.

25 WITNESS BEDNARSKI: It could extend up to 250

1 to 300 feet long with all of the backup equipment and
2 support equipment and things like that.

3 MR. KEELING: Do the TBMs have a turning
4 radius?

5 MR. MIZELL: At this point, I'm going to
6 object to this line of questioning.

7 If I recall your direction at the beginning of
8 today correctly, Mr. Bednarski is here to answer
9 questions on the Supplemental EIR/EIS.

10 The Supplemental EIR/EIS does not propose to
11 change the equipment proposed for the tunneling, which
12 means that this falls outside the scope of what we're
13 presenting Mr. Bednarski to testify on. It's something
14 that should have been asked when we were discussing
15 this earlier.

16 MR. KEELING: This question has nothing to do
17 with the SEIR or the Revised Project. This question
18 goes directly to his testimony that they are -- they've
19 got it all handled with respect to navigating through
20 gas fields and abandoned wells. It has nothing to do
21 with the SEIR.

22 CO-HEARING OFFICER DODUC: I will overrule.

23 There's, I believe, a limit to Mr. Bednarski's
24 technical expertise on this matter. So, to the extent
25 that you are able to answer, please do.

1 WITNESS BEDNARSKI: The turning radius for a
2 tunnel-boring machine varies with its size.

3 So, for this size of machine, possibly 1,000-
4 to 1500-foot turning radius.

5 (Pause in proceedings.)

6 MR. KEELING: I suppose I could ask you if you
7 know what the turning radius of an aircraft carrier is,
8 but I suspect I'd draw an objection so I won't ask.

9 Going back to Lines 5 through 7 on this page,
10 isn't it true -- I don't think we need to put up the
11 figure.

12 But isn't it true that Figure 13.1 shows the
13 proposed alignment passing through gas fields?

14 WITNESS BEDNARSKI: Yes, that's what it's
15 meant to depict.

16 MR. KEELING: And I believe, in your
17 testimony, you faulted Mr. Neudeck for not pointing out
18 that the proposed tunnel would not be at a depth where
19 it could go through an actual gas field.

20 Do I remember correctly your criticism of him
21 on that point?

22 WITNESS BEDNARSKI: Yeah. I believe that my
23 testimony points out that the gas fields are well below
24 the bottom of the tunnel, yes.

25 MR. KEELING: Isn't it true that natural gas

1 often escapes and rises to the surface in the Delta by
2 traveling around the annular spaces that surround the
3 natural gas wells?

4 WITNESS BEDNARSKI: I -- I don't have any
5 professional or personal knowledge about that.

6 MR. KEELING: What is the extent of your
7 experience with natural gas wells, Mr. Bednarski?

8 WITNESS BEDNARSKI: I'm a Civil Engineer that
9 deals with water.

10 But we have investigated the occurrence of gas
11 wells, and I presented that level of information that
12 is our level of current knowledge on that subject. I'm
13 not portraying myself as a Gas Well Engineer or a
14 Petroleum Engineer.

15 MR. KEELING: But you're qualified to give
16 this testimony, you think?

17 MS. MORRIS: Objection -- Stefanie Morris --
18 argumentative.

19 Mr. Bednarski is simply discussing in his
20 testimony elements of the Project. He's not professing
21 to be a tunneling expert or a petroleum expert. So the
22 objection is that it's argumentative and maybe outside
23 the scope.

24 CO-HEARING OFFICER DODUC: All right.

25 Mr. Bednarski, you stand behind the findings and

1 analysis associated with this issue.

2 WITNESS BEDNARSKI: I stand behind it with the
3 basis being the engineering studies and investigations
4 that we've done to date to present the level of
5 information that we presented in my testimony and in
6 the Conceptual Engineering Report, yes.

7 MR. KEELING: On Page 25, Lines 2 through 3 of
8 your testimony --

9 (Exhibit displayed on screen.)

10 MR. KEELING: -- as part of your criticism of
11 Mr. Neudeck and his lack of expertise, you state that
12 (reading):

13 "Mr. Neudeck provided no evidence
14 that he has, quote, has participated in
15 developing a Settlement Monitoring
16 Program for a Tunnel Project."

17 Do you see that testimony?

18 WITNESS BEDNARSKI: Yes, I do see that. At
19 Lines 2 and 3? Yes.

20 MR. KEELING: Do you dispute that Mr. Neudeck
21 has devoted, as he said, his entire career as an
22 Engineer to operating, maintaining and designing
23 improvements for levees in the Delta?

24 WITNESS BEDNARSKI: I don't believe that this
25 sentence that I wrote disputed that.

1 MR. KEELING: Do you have any basis for
2 suggesting that he is not an expert in the area of
3 levees and settlement monitoring?

4 CO-HEARING OFFICER DODUC: Miss Morris.

5 MS. MORRIS: Objection: Outside the scope of
6 the rebuttal testimony.

7 This is specifically monitoring program for a
8 Tunnel Project and nothing more.

9 MR. KEELING: And that is precisely my point.

10 CO-HEARING OFFICER DODUC: Well, thank you for
11 making it so efficiently.

12 Sustained, Miss Morris.

13 MR. KEELING: By the way, referring to your
14 text at Lines 7 through 15 on Line (sic) 25, my
15 question is: Why haven't the Petitioners developed a
16 Settlement Monitoring Program yet?

17 WITNESS BEDNARSKI: I think the Petitioners do
18 not feel that we have a complete understanding of the
19 geotechnical characteristics along the tunnel
20 alignment, nor along the levees or some of the other
21 features that we'll be crossing, so it would be
22 premature to set forth a Settlement Monitoring Program
23 at this time.

24 MR. KEELING: Well, do the Petitioners intend
25 to present a Settlement Monitoring Program to the Board

1 in this proceeding before the time comes for a ruling
2 on the Petition for Change?

3 WITNESS BEDNARSKI: I don't believe we'll have
4 the requisite information to be able to present that
5 information to the Board.

6 If you mean this procedure will wrap up by the
7 end of the year, that's just not possible.

8 MR. KEELING: So, if I understand your
9 testimony correctly, Petitioners are seeking approval
10 of the Petition without such a program based upon an
11 assurance that they'll take care of it later?

12 MR. BERLINER: Objection: Argumentative.

13 CO-HEARING OFFICER DODUC: Sustained.

14 MR. KEELING: Do you know if Delta levees near
15 the proposed alignment typically have extra freeboard?

16 Do you know what I mean by "extra freeboard"?

17 WITNESS BEDNARSKI: I understand the concept
18 of freeboard, but I'm not sure how you're using the
19 concept of "extra" in front of "freeboard."

20 MR. KEELING: Fair. Let me ask it
21 differently:

22 Do you -- Do you have any understanding as to
23 how much freeboard, if any, levees in the Delta near
24 the proposed alignment typically have?

25 WITNESS BEDNARSKI: I am -- No, I'm not

1 familiar with that. It may vary from one Reclamation
2 District to another. I don't know.

3 MR. KEELING: At Lines 22 through 25 on
4 Page 25, Mr. Hunt, if we can go down a little bit.

5 (Exhibit displayed on screen.)

6 MR. KEELING: You refer to the, quote,
7 "pressurized face" tunnel boring machines proposed in
8 this Project.

9 Do you see that?

10 WITNESS BEDNARSKI: Yes.

11 MR. KEELING: I'm fascinated. I wish you'd
12 give me an illustration but -- a visual.

13 But isn't it true that the tunnel-boring
14 machines that Petitioners propose to use have not yet
15 been built?

16 WITNESS BEDNARSKI: The machines that we would
17 propose to use, yes, they would not be constructed
18 until Contractors actually purchased -- issued purchase
19 orders to the tunnel-boring machine manufacturers.
20 We're several years away from that.

21 MR. KEELING: So, am I correct in
22 understanding that the engineering specs for
23 construction of those machines aren't even finalized
24 yet?

25 WITNESS BEDNARSKI: We have not developed any

1 engineering specifications for the tunnel-boring
2 machines.

3 MR. KEELING: And you're going to have a
4 number of these machines, all with pressurized face
5 construction as you testify here?

6 CO-HEARING OFFICER DODUC: Hold on.

7 Miss Ansley.

8 MS. ANSLEY: Yes. I believe this is outside
9 the scope of the rebuttal testimony.

10 Per the Hearing Officer's direction, the scope
11 of rebuttal is not just what -- just because he says
12 "pressurized face tunnel-boring machines" in his
13 testimony as a term, he does not discuss the
14 construction of that equipment, and any of that could
15 have been answered. This is the same equipment that's
16 been present through the whole proceeding.

17 And so your direction was, it's not repetitive
18 evidence. It's not evidence that Petitioners present
19 or, I assume, cross in earlier phases of this hearing.

20 So now we're talking one term in the context
21 of something else in his testimony and expanding on
22 that when it's not within the scope of his rebuttal.
23 It could have been asked at any time in this
24 proceedings.

25 MR. KEELING: Well, I beg to differ.

1 Mr. Neudeck testified about the problems of
2 tunneling through saturated soils and the like.

3 And Mr. Bednarski responded by, "Not to worry,
4 Board. We can go through -- even through open water,"
5 he says, "because we have these pressurized face
6 tunnel-boring machines."

7 CO-HEARING OFFICER DODUC: And your --
8 Miss Morris.

9 MR. KEELING: So I -- I think I'm entitled to
10 dig down and find out what is the basis for that
11 testimony?

12 CO-HEARING OFFICER DODUC: Mr. Keeling, please
13 do so with civility and succinctness.

14 MR. KEELING: Have you designed this
15 pressurized face you're talking about? Do you have a
16 final design for that?

17 CO-HEARING OFFICER DODUC: Asked and answered.

18 MR. KEELING: Do you know how long it takes to
19 build a tunnel-boring machine with a pressurized face?

20 CO-HEARING OFFICER DODUC: Miss Morris.

21 MS. MORRIS: Objection: Outside the scope for
22 all the reasons that Miss Ansley previously said.

23 CO-HEARING OFFICER DODUC: You know what?
24 Mr. Bednarski, are you able to shed any further light
25 into this technology that has yet to be designed, much

1 less built?

2 WITNESS BEDNARSKI: I could probably shed a
3 little bit of information.

4 CO-HEARING OFFICER DODUC: What information
5 can you share?

6 WITNESS BEDNARSKI: In response to the
7 question, it would take about 12 months to build the
8 machine once a purchase order has been placed, 12 to 14
9 months.

10 The pressurized face machine that I refer to
11 is a group of machines of which there are specific
12 different. Ones, and I believe I've talked about these
13 in my previous testimony.

14 You can have a slurry pressurized face machine
15 or you can have an earth pressure balance pressurized
16 face machine. So there's several different types of
17 machines that fall into this overall category of
18 pressurized face. They've all been used before.

19 And we expect that their design for this
20 application is relatively well known. That's why we're
21 recommending that, and I previously testified about
22 that.

23 CO-HEARING OFFICER DODUC: Mr. Mizell,
24 Mr. Berliner, Miss Morris, Miss Ansley, et al., I hear
25 your objections and I appreciate the spirit in which

1 you are making them.

2 But the reason I am allowing Mr. Keeling to
3 pursue this, at least if he does it with civility and
4 succinctness, is that it adds information and value to
5 our consideration.

6 So, in that aspect, Mr. Keeling, proceed
7 carefully.

8 MR. KEELING: I'm off to a different topic.

9 CO-HEARING OFFICER DODUC: And moving on to a
10 different topic, watch your tone, please, and maintain
11 civility.

12 MR. KEELING: How many Reclamation Districts
13 are there within the proposed tunnel alignment and the
14 footprints for WaterFix-related activities in the
15 Delta?

16 WITNESS BEDNARSKI: I don't presently know.

17 MR. KEELING: Do you have an estimate?

18 WITNESS BEDNARSKI: An estimate, maybe 10 or
19 12. I don't know.

20 MR. KEELING: On Page 27 of your testimony,
21 you briefly describe recent work --

22 (Exhibit displayed on screen.)

23 MR. KEELING: -- on a site preparation
24 contract on Bouldin Island and related interaction with
25 Reclamation District 756.

1 Do you recall that?

2 WITNESS BEDNARSKI: Yes, I do.

3 MR. KEELING: And, by the way, at Line 19 on
4 Page 27, you refer to RD 751. Is that a mistake?

5 WITNESS BEDNARSKI: That is correct. It
6 should be RD 756.

7 MR. KEELING: Thank you.

8 And this site preparation contract that you're
9 working on is between RD 756 and the Petitioners?

10 WITNESS BEDNARSKI: I wouldn't say that the
11 site preparation contract is between the Petitioners
12 and RD 756.

13 We consulted with RD 756 in the preparation of
14 our plans and specifications, because the work falls
15 within their jurisdiction.

16 The property is actually owned, as we've
17 previously discussed, by Metropolitan Water District.

18 MR. KEELING: And Metropolitan Water District
19 is the -- is the primary decision-maker on the Board of
20 756; is that correct?

21 WITNESS BEDNARSKI: I believe we have some
22 members on that Board. I don't recall the exact makeup
23 of that Board, but I do know that we have at least one
24 representative on that Board.

25 MR. KEELING: Have the Petitioners sought

1 Encroachment Permits for any other Reclamation
2 Districts in the Delta for the WaterFix other than 756?

3 WITNESS BEDNARSKI: To the best of my
4 knowledge, no.

5 MR. KEELING: Have the Petitioners entered
6 into any discussions at all about site preparation
7 plans with any Reclamation Districts responsible for
8 levees on property not already owned by Metropolitan
9 Water District?

10 WITNESS BEDNARSKI: To the best of my
11 knowledge, no.

12 And, to clarify, we've only spoken with
13 Metropolitan Water District about Bouldin Island.
14 Metropolitan has several islands in the Delta.

15 MR. KEELING: Thank you.

16 Going to the Revised Project in the SEIR, I --
17 as I listened to you this morning, as I reviewed the
18 SEIR, my understanding is that that Revised Project
19 involves tunnel realignments and some changed
20 footprints on WaterFix-related activities and
21 structures.

22 Is that a fair statement?

23 WITNESS BEDNARSKI: Yes, it is.

24 MR. KEELING: As to sites that are the sites
25 of new alignment or new activities and structures, have

1 you identified the owners of those new locations?

2 WITNESS BEDNARSKI: Could you clarify what you
3 mean by "identified the owners"?

4 MR. KEELING: Well, for example, where you
5 have a realignment of the tunnels, you've proposed to
6 shift them one direction or another onto other
7 property.

8 Have you identified the landowners of the
9 property to which they are being realigned?

10 WITNESS BEDNARSKI: We're aware through public
11 records who owns the different parcels that the new
12 fingerprint falls within, yes.

13 So, from that standpoint, that would be the
14 level of identification that we've done at this point.

15 MR. KEELING: Has -- Have the Petitioners
16 contacted the owners of properties affected by the
17 realignments and other changes in the Revised Project?

18 MR. BERLINER: Objection: Relevance.

19 MR. MIZELL: Also to add to that: Vague and
20 ambiguous as to what he means by "contacting."

21 The Department has many different offices
22 involved, and so we would need to know the context of
23 he would like to have the answer cast.

24 MR. KEELING: I'm asking to his knowledge.

25 CO-HEARING OFFICER DODUC: Mr. Keeling, what

1 was your question again?

2 MR. KEELING: Have the Petitioners contacted
3 the owners of the properties affected by the revised
4 alignments and footprints?

5 CO-HEARING OFFICER DODUC: In whatever form.

6 MR. KEELING: In whatever form.

7 CO-HEARING OFFICER DODUC: Overruled.

8 Mr. Bednarski.

9 WITNESS BEDNARSKI: I -- I'm not aware that
10 they have. I -- There may be some portion, some
11 percent, of DWR that has reached out, but I have not
12 been personally made aware of that.

13 MR. KEELING: To your knowledge, have any
14 of -- Well, probably asked and answered.

15 To your knowledge, have any of these other
16 owners indicated an interest in participating in this
17 proceeding?

18 MR. BERLINER: Objection: Relevance.

19 CO-HEARING OFFICER DODUC: Well, I think it's
20 relevant but Mr. Bednarski has indicated that he's not
21 aware of any contact.

22 So, Mr. Keeling --

23 MR. KEELING: Fair enough.

24 CO-HEARING OFFICER DODUC: -- move on.

25 MR. KEELING: On that, I do have one question.

1 A rather large new structure, the Byron Tract
2 Forebay, which I believe you said was estimated at --
3 did I hear you -- it was 1100 acres or 1300 acres?

4 WITNESS BEDNARSKI: I believe it's 1100 plus
5 or minus acres, yes.

6 MR. KEELING: And do you know who owns that
7 property?

8 WITNESS BEDNARSKI: I do have an understanding
9 of who owns it.

10 MR. KEELING: Have you contacted that owner?

11 WITNESS BEDNARSKI: As far as from the Project
12 staff? No.

13 MR. KEELING: To your knowledge, has that
14 owner of that 1100 acres indicated any interest in
15 showing up at the WaterFix proceeding to discuss that?

16 MR. BERLINER: Objection: Relevance.

17 CO-HEARING OFFICER DODUC: Overruled,
18 Mr. Berliner, even though I don't believe Mr. Bednarski
19 can answer the question.

20 WITNESS BEDNARSKI: I -- I don't know if they
21 have an interest in showing up at these -- at these
22 hearings.

23 MR. KEELING: If you'll give me just a minute,
24 I think I can cut through a lot of this.

25 CO-HEARING OFFICER DODUC: Take that minute,

1 Mr. Keeling.

2 Everyone else can stand up and stretch.

3 (Pause in proceedings.)

4 MR. KEELING: I'm ready.

5 Mr. Bednarski, going to Page 3 of your
6 testimony, Lines 20 and following --

7 (Exhibit displayed on screen.)

8 MR. KEELING: -- I believe Mr. Herrick asked
9 you about this, and I apologize if I overlap with him.

10 As I understand it, and as you say, the barges
11 originally envisioned as a way to deliver oversized
12 equipment will no longer be delivering that equipment.

13 Am I correct?

14 WITNESS BEDNARSKI: That was the intent.

15 However, all of our planning, as far as traffic
16 analyses and others, we had planned to use road
17 deliveries for all equipment and tunnel segments to the
18 Intermediate Forebay, which is the purpose for having
19 the -- having the Snodgrass Slough barge landing.

20 So we identified it as a location that we
21 would potentially bring a barge to but, in reality, all
22 of the deliveries to that site were planned to be made
23 by truck.

24 MR. KEELING: I'm a little confused.

25 Are you telling me that you were never . . .

1 Let me see if I can clarify.

2 Are you saying that the deliveries that had
3 been planned by barges will now be delivered by trucks
4 traveling on roads?

5 WITNESS BEDNARSKI: No. We had -- Let me
6 clarify.

7 We had identified the plan to have a barge
8 landing at Snodgrass Slough more or less adjacent to
9 the Intermediate Forebay. However, we had not
10 identified specific loads of material that would be
11 brought there. We would provide it as an option for
12 the Contractor, the Tunnel Contractor, to make
13 deliveries.

14 However, for our subsequent analysis in
15 regards to traffic -- things like traffic and others,
16 we had not planned barge traffic up there. We had
17 planned to make all deliveries by road but we had kept
18 that as an option for the Contractors.

19 MR. KEELING: So the effect of this
20 elimination of this barge landing is to eliminate that
21 option.

22 WITNESS BEDNARSKI: It eliminates the
23 potential to make deliveries by water, and we're
24 comfortable with that on this Project.

25 MR. KEELING: And I'd like to direct your

1 attention -- And this is my final line of questions.

2 I've eliminated much of what I had to do but . . .

3 Page 12, Lines 5 through 17.

4 (Exhibit displayed on screen.)

5 MR. KEELING: In general, you talk about
6 communications between the Petitioners and counties
7 with respect to traffic.

8 Do you -- Do you recall that part of your
9 testimony?

10 WITNESS BEDNARSKI: Yes, I do.

11 I'd like to perhaps maybe refer you to
12 Mr. Choa here to answer the traffic questions.

13 MR. KEELING: On Lines 5 through 8, the
14 testimony reads (reading):

15 "Through the Notice of Preparation
16 and Scoping Process, and before the
17 traffic analysis was conducted, San
18 Joaquin County, Sacramento County and
19 Yolo County were contacted regarding
20 roadways of regional significance that
21 could be affected by WaterFix Project
22 traffic."

23 And then there's a reference to State Water
24 Resources Control Board Exhibit 102, Appendix 19A, at
25 Pages 32 and 33.

1 Mr. Choa, you recall that we had that up on
2 the screen earlier today?

3 WITNESS CHOA: Yes, I do.

4 MR. KEELING: It consisted of two paragraphs
5 on Page 32 and then a chart on Page 33.

6 Why don't we put the chart up, Mr. Hunt.

7 I think I think the chart's on Page 33.

8 (Exhibit displayed on screen.)

9 MR. KEELING: There we go.

10 Mr. Choa, I appreciate that you may not know
11 the answers to all my questions, but I have to ask
12 these.

13 Who from the Petitioners contacted San Joaquin
14 County about this?

15 (Pause in proceedings.)

16 WITNESS CHOA: To the best of my knowledge, it
17 was . . . the Petitioners. I don't know exactly who,
18 but they were -- they were contacted.

19 MR. KEELING: Then who at San Joaquin County
20 was contacted, to your knowledge?

21 WITNESS CHOA: To the best of my knowledge,
22 it's somebody within the county itself, I believe
23 Public Works.

24 MR. KEELING: What -- I assume -- Am I correct
25 in assuming that that contact would have taken

1 place . . . in 2012 or earlier?

2 WITNESS CHOA: Yes. Consistent with my
3 response before -- earlier today, yes, in 2012, when
4 the Project was -- was beginning.

5 MR. KEELING: Do you have any record of what
6 was discussed between these two identities of whom
7 you're not aware?

8 WITNESS CHOA: It's a document? It's . . .
9 So if you can bring up, let's see,
10 Appendix 19, Section 2. I believe that was the page
11 that we discussed previously.

12 (Exhibit displayed on screen.)

13 WITNESS CHOA: My apologies. Maybe in 19,
14 Pages 32, 33.

15 (Exhibit displayed on screen.)

16 WITNESS CHOA: Actually, the previous
17 document.

18 (Exhibit displayed on screen.)

19 WITNESS CHOA: So, as we discussed earlier
20 today, this documents the process that was completed in
21 terms of agency outreach. It doesn't define
22 specifically who but states that San Joaquin County was
23 contacted beginning in January 2012.

24 MR. KEELING: Do you know what information was
25 provided by whoever was representing the Petitioners to

1 whoever was at the county?

2 WITNESS CHOA: As stated in Lines 11 through
3 13, agencies, which includes San Joaquin County, were
4 sent a list of study segments for review and comment.

5 MR. KEELING: I read that. That's a general
6 statement. I'm asking specifically about the contact
7 with San Joaquin County.

8 MR. MIZELL: I'd object as asked and answered.

9 At this point, the witness has answered
10 multiple times to the best of his knowledge.

11 CO-HEARING OFFICER DODUC: Sustained.

12 MR. KEELING: Well, do you -- do you know what
13 information San Joaquin County provided to the
14 Petitioners?

15 WITNESS CHOA: Yes, I do.

16 If you go to Table . . . to the information --
17 I believe it's Table . . .

18 Could you scroll up a little bit.

19 (Exhibit displayed on screen .)

20 WITNESS CHOA: For San Joaquin County -- it's
21 SJ -- there are seven segments in which -- in terms of
22 information, in terms of volumes, and also pavement
23 condition information was provided.

24 MR. KEELING: So your testimony is that
25 identification of the segments and the categorization

1 of conditions, acceptable or deficient, came from the
2 county?

3 WITNESS CHOA: The information that was used
4 to determine that was provided by the county first,
5 SJ-01 through SJ-07.

6 MR. KEELING: What communications, if any,
7 have Petitioners had with the County of San Joaquin on
8 traffic impacts since that communication in or about
9 2012?

10 WITNESS CHOA: Well, if you go back to
11 DWR-1212.

12 (Exhibit displayed on screen.)

13 WITNESS CHOA: In terms of information after
14 that point, we did not rely on just existing conditions
15 but we looked at future conditions with the proposed
16 construction of the California WaterFix to look at the,
17 again, future conditions and not 2012 data.

18 So there has not been additional communication
19 with them other than their review and comments on the
20 information provided in both the Final EIR and the
21 Supplemental EIR.

22 MR. KEELING: To your knowledge, are there
23 presently any plans for the Petitioners to contact
24 San Joaquin County officials about traffic impacts in
25 San Joaquin County, including impacts resulting from

1 the Revised Project?

2 WITNESS CHOA: So if you scroll down to
3 Line -- And I have a slightly different version, so
4 Page 12.

5 (Exhibit displayed on screen.)

6 WITNESS CHOA: Again, it shows in terms of
7 Transportation-1a, 1b, 1c, and also in terms of
8 roadways, consistent with my testimony earlier this
9 morning, was, you know, they would be working directly
10 with San Joaquin County prior to construction and DWR
11 would implement site-specific construction management
12 plans.

13 MR. KEELING: Thank you, Mr. Choa.

14 Thank you, Mr. Bednarski.

15 That's it.

16 CO-HEARING OFFICER DODUC: Thank you,
17 Mr. Keeling.

18 Miss Womack --

19 MS. WOMACK: Yes.

20 CO-HEARING OFFICER DODUC: -- you are up.

21 MS. WOMACK: All right.

22 CO-HEARING OFFICER DODUC: Does anyone need a
23 break? Mr. Bednarski, Mr. Choa? All right. Let's
24 take a short break. We'll return at 4:05.

25 (Recess taken at taken at 3:58 p.m.)

1 (Proceedings resumed at 4:05 p.m.):

2 CO-HEARING OFFICER DODUC: All right. It is
3 4:05. Please take your seat.

4 Before we turn to Miss Womack, by my estimate,
5 assuming we finish with Miss Womack's cross-examination
6 today, we still have three hours approximately of
7 Panel 1 tomorrow, and that does not include Mr. Brodsky
8 who did not give us a time estimate in his request.

9 Miss Meserve, you don't know?

10 MS. MESERVE: I'm going to guess an hour for
11 him.

12 CO-HEARING OFFICER DODUC: That would have
13 been my guess as well.

14 So we have up to four hours of
15 cross-examination remaining for this panel and then
16 we'll discuss any redirect, which means that we will
17 not get to your Panel 2 until after the lunch break at
18 least tomorrow.

19 MR. MIZELL: Thank you. I'll have the
20 witnesses available after the lunch break.

21 CO-HEARING OFFICER DODUC: Any other
22 housekeeping matters we need to address?

23 Miss Morris.

24 MS. MORRIS: Thank you.

25 I was looking for some clarification regarding

1 DWR-1143 Second Revised, I think we're on, about the
2 scope of cross-examination on that exhibit.

3 As I understand it, that information in terms
4 of the modeling and the outputs from the modeling have
5 been provided, and the witnesses have been
6 cross-examined for numerous hours on that.

7 And so I -- The way I understand -- and this
8 is why I'm seeking clarification -- is that that was
9 really just a tabulation of the basis for each of those
10 modeling criteria in that table, and so that the -- Is
11 the cross-exam then just limited just to where the
12 basis came from and how it was compiled and not to
13 actual modeling that may be derived from that criteria.

14 CO-HEARING OFFICER DODUC: So you're seeking
15 clarification on that.

16 MS. MORRIS: (Nodding head.)

17 CO-HEARING OFFICER DODUC: All right. Let's
18 hear from -- Anyone else want to chime in on just that
19 issue?

20 Mr. Aladjem.

21 MR. ALADJEM: Madam Chair, it will not
22 surprise you that my understanding was exactly the
23 opposite of Miss Morris', that Mr. Reyes was going to
24 be available to answer any questions that one would
25 have about what is in 11 -- DWR-1143.

1 CO-HEARING OFFICER DODUC: Anyone else?

2 Hold on.

3 I assume, Mr. Bezerra, who actually is looking
4 slightly happier now with Mr. Aladjem's comment.

5 MR. BEZERRA: I fully concur with
6 Mr. Aladjem's highly anticipated comments.

7 CO-HEARING OFFICER DODUC: Are you concurring
8 or are you adding more, Miss Des Jardins?

9 MS. DES JARDINS: I wanted to both concur and
10 add a little bit more.

11 The exhibit includes the Hearing Officer's
12 direction in preparing the exhibit. And I think asking
13 about the process of determining what is in that
14 exhibit should certainly be, particularly since it is
15 confusing. There are multiple -- There is a very large
16 number of modeling assumptions, many of which are not
17 included.

18 And so they were very clear directions about
19 what modeling assumptions should be included in the
20 table and that is in the exhibit itself.

21 Thank you.

22 CO-HEARING OFFICER DODUC: Miss Meserve.

23 MS. MESERVE: I would just add that I think
24 it's about what's in 1143 Second Revised. It's also
25 about what's not in there and why not.

1 I think that the Hearing Officers ordered that
2 this be prepared and is -- you know, you guys said it
3 was necessary in order to understand the Petition and
4 it is maybe a part of the Petition at this point. I
5 don't know.

6 But I think that really -- I mean, we may need
7 to get into those questions to understand what the
8 scope is. But at this time, it would be premature to
9 try to limit what kind of questions could be asked by
10 that exhibit.

11 CO-HEARING OFFICER DODUC: All right. Final
12 clarification or . . .

13 MR. MIZELL: I would like to --

14 CO-HEARING OFFICER DODUC: . . . responses?

15 MR. MIZELL: -- weigh in with Miss Morris'
16 seeking clarification here.

17 It was the Department's understanding based on
18 the Board's order on 1143 Second Revised that our
19 witnesses would be discussing the modeling assumptions
20 in the Operational Criteria and the Permit conditions
21 associated with those.

22 It was not our understanding that that would
23 extend into any sort of modeling results that would
24 ultimately flow from those operating criteria modeling
25 assumptions and Permit conditions.

1 So I think I'm now also concerned that we have
2 a difference of opinion with some of the other parties
3 as to whether or not DWR-1143 opens the door to discuss
4 the modeling results.

5 It's my understanding it does not. It simply
6 discussion about assumptions, criteria and Permit
7 conditions.

8 CO-HEARING OFFICER DODUC: All right. We will
9 take this under advisement. We will provide you with
10 additional direction tomorrow morning before we get to
11 Panel 2.

12 And, Miss Womack, thank you for waiting.

13 Let me also acknowledge that we received your
14 letter from yesterday regarding the conflict between
15 this hearing and the Water Rights Fee Stakeholder
16 meeting.

17 MS. WOMACK: Yes.

18 CO-HEARING OFFICER DODUC: Thank you for
19 choosing to be here with us instead of at the
20 stakeholder meeting.

21 Our B-unit Chief, David Ceccarelli will be
22 contacting you.

23 MS. WOMACK: Actually, he's already given me a
24 DVD.

25 CO-HEARING OFFICER DODUC: Oh, that's good. I

1 was going to say he'd give you a DVD and he will be
2 available to answer any questions you have.

3 MS. WOMACK: You know I'll comment.

4 CO-HEARING OFFICER DODUC: Right.

5 MS. WOMACK: Anyway, thank you so much. I
6 really appreciate it. It's hard to be two places at
7 once.

8 So, I just -- I want to double-check with you:

9 Am I correct in assuming that recreation comes
10 up later, because it's not in Mr. Bednarski's
11 testimony. I'm not sure where the recreation that's
12 talked about in the Supplemental comes in and I don't
13 know if I should bring it up here or if I should bring
14 it up later.

15 CO-HEARING OFFICER DODUC: I believe you
16 should bring it up here because Mr. Bednarski is here
17 to answer questions about the EIR Supplemental.

18 Is that correct, Mr. Mizell?

19 MR. MIZELL: Yes. He is here to answer
20 questions about the Supplemental EIR.

21 CO-HEARING OFFICER DODUC: All right.

22 MR. MIZELL: I believe that his -- one of his
23 opinions in his testimony -- and he can speak for
24 himself when we get into questioning -- does mention a
25 conclusion on recreation.

1 CO-HEARING OFFICER DODUC: All right.

2 Miss Womack.

3 MS. WOMACK: Oh. And also climate change. Is
4 climate -- Because I was concerned with Miss . . .

5 But you -- your air quality and climate change
6 but you're really just air quality, so . . .

7 WITNESS YOON: I am here representing air --
8 22 which is --

9 CO-HEARING OFFICER DODUC: Not 29.

10 WITNESS YOON: Correct, not 29.

11 MS. WOMACK: Okay. So would 29 also be a
12 question I would ask Mr. Bednarski?

13 CO-HEARING OFFICER DODUC: If it pertains to
14 the changes being proposed --

15 MS. WOMACK: Absolutely.

16 CO-HEARING OFFICER DODUC: Mr. Mizell.

17 MR. MIZELL: Yeah. I would, maybe prematurely
18 but I'll raise the objection later if necessary.

19 Climate change scenario assumptions are not
20 different between the original document and the
21 Supplemental document. There's been extensive
22 testimony on climate change.

23 At this point, Mr. Bednarski is not here to
24 testify about things that are remaining the same from
25 the Adopted Project to the Proposed Supplemental

1 Project.

2 CO-HEARING OFFICER DODUC: Understood.

3 MS. WOMACK: I have very specific questions
4 about Supplemental Pro -- 29 to do with climate change.

5 CO-HEARING OFFICER DODUC: Why don't we get to
6 your question and we will --

7 MS. WOMACK: Okay. That sounds great.

8 CROSS-EXAMINATION BY

9 MS. WOMACK: All right. So I'm going to start
10 with Mr. Choa with traffic. If Mr. Bednarski --
11 Because I believe that's what we've doing; Mr. Volk;
12 then we'll get to Mr. Bednarski.

13 And I have an awful lot of questions:
14 Control, structures, impacts, dredging, all -- power
15 lines, all sorts of things that I just don't know,
16 south tunnels, footprint of the Byron Tract, more
17 questions there. Anyway, I have a lot of questions.

18 So, saying that . . . Let's see.

19 Could I have -- Let's see. We'll start with
20 traffic.

21 So, Mr. Choa, why is -- Why -- Where is the
22 site-specific construction plans for Contra Costa
23 County? They seem to be missing and I want to know why
24 Contra Costa County isn't considered.

25 WITNESS CHOA: Contra Costa County was

1 actually considered. There were five segments
2 identified through the agency outreach.

3 Through the testimony of Mr. Bednarski, we
4 concentrated on Sacramento County, Yolo County and
5 San Joaquin County, but Contra Costa County was also
6 evaluated as part of the -- as part of the 114 segments
7 analyzed in the transportation section.

8 MS. WOMACK: But -- But you didn't do a -- You
9 didn't meet with Contra Costa County people?

10 WITNESS CHOA: Again, similar to the other
11 agencies, they were contacted at the beginning of the
12 Project identifying segments of potential effect for
13 their review and in terms of the segments, the
14 methodology, and so forth.

15 So -- But they were not part of the DWR-1212
16 that specifically talked about those three previous
17 counties.

18 MS. WOMACK: Okay. So I'm a little confused.

19 They chose -- They said, "We don't want to be
20 a part of this"?

21 CO-HEARING OFFICER DODUC: Hold on.

22 MR. MIZELL: Objection: Misstates the
23 testimony.

24 MS. WOMACK: I'm sorry. I'm trying --

25 CO-HEARING OFFICER DODUC: Hold on.

1 Miss Morris.

2 MS. MORRIS: I think it's really more of a
3 clarification. I think if we could ask the questions
4 in terms of traffic impacts from the Supplemental EIR,
5 if there are any changes, versus what Miss Womack seems
6 to be focusing on in rebuttal testimony because those
7 three counties provided testimony and that's why it was
8 rebutted.

9 Contra Costa did not provide similar
10 testimony, which is why I think there is some
11 confusion.

12 CO-HEARING OFFICER DODUC: Ah. Miss Womack,
13 does that help?

14 MS. WOMACK: No, because I live in Contra
15 Costa County. And -- You know, I'm affected by Contra
16 Costa County so I want to know -- It helps a little
17 bit.

18 CO-HEARING OFFICER DODUC: Also, Miss Womack,
19 I believe you were here when Mr. Aladjem questioned
20 Mr. Bednarski about the inclusion of Contra Costa
21 County in future discussion and future mitigation
22 agreements.

23 MS. WOMACK: But this is the confusing part.

24 Because Clifton Court Forebay has always been
25 in Contra Costa County. That's when it was built.

1 I mean, so why wouldn't you have your
2 essential? I just . . .

3 CO-HEARING OFFICER MARCUS: This is a response
4 for rebuttal. Contra Costa County didn't do rebuttal.

5 MS. WOMACK: Okay. So this is where I don't
6 fit in as well, yeah.

7 CO-HEARING OFFICER MARCUS: You should have
8 done it in Part 1.

9 MS. WOMACK: But I couldn't because, remember,
10 you were going for take my place.

11 CO-HEARING OFFICER MARCUS: Ah.

12 MS. WOMACK: It's very hard to -- Yes. I'm
13 working with this so this is one of the problems.

14 Anyway, could I have the -- the Draft
15 Supplemental 19-3. Could you put that up because I
16 wanted -- I'm a little confused with things here, and I
17 wanted to start by getting rid of my confusions, which
18 could be hard, but thank you.

19 (Exhibit displayed on screen.)

20 MS. WOMACK: Okay. That is not what I have.
21 Oh, goodness. I'm looking for the -- all the lines
22 that tell the CT-01 and CC-05. I thought that it was
23 19-3 in the Supplemental.

24 Or maybe it --

25 MR. MIZELL: Chapter 19, Page 3.

1 MS. WOMACK: Yeah. I mean, I have -- See, I
2 have this but this is not -- This says 19-3 on it.

3 CO-HEARING OFFICER DODUC: Chapter 19, Page 3,
4 please.

5 MS. WOMACK: Thank you.

6 (Exhibit displayed on screen.)

7 MS. WOMACK: Ah. There we go. Thank you so
8 much.

9 About halfway down -- Let's see. Well, I'm
10 going to go to CT-01, I-5 Northbound say. That's about
11 halfway through, Mr. Choa.

12 And it says Florin to Pocket. And it says
13 it's a three-lane freeway. And I take it to mean
14 there's three lanes going in one direction.

15 WITNESS CHOA: That's correct, three lanes
16 going in one direction northbound.

17 MS. WOMACK: Okay. So, just about that, is
18 CC-05, Byron Highway, SR 4, and it says it's a major
19 two-lane highway.

20 So I take it that means that there are two
21 lanes going in one direction.

22 WITNESS CHOA: That is incorrect. Only the
23 freeways, there's a -- In the original -- Final EIR, it
24 identified for freeways, it's per direction, but for
25 highways, it's both directions together. So it's a

1 two-lane.

2 MS. WOMACK: Does that say that somewhere? I
3 must have missed that. Okay.

4 WITNESS CHOA: It was not in the Supplemental
5 EIR; it was in the Final EIR.

6 MS. WOMACK: I see.

7 Okay. Because that -- that just implies that
8 there's a lot more room there than there actually is.

9 Gosh, I've lived there through all -- from
10 '61 onward, '62, I guess. No, '63. And, you know, I
11 go back and visit frequently.

12 Okay. So thank you for clarifying that.

13 Why are the studies that you've done only from
14 6 a.m. to 7 p.m. in the areas? Do I need -- You know,
15 the -- all of the traffic studies are from 6 a.m.
16 These traffic studies are from 6 a.m.

17 MR. MIZELL: To avoid continuous objections on
18 misstating facts and evidence, if Miss Womack could
19 please point us to a citation or a segment on the page
20 that indicates the facts she's stating. It would maybe
21 streamline my objections.

22 MS. WOMACK: Oh, sure. I'm so sorry. It's
23 the Proposed Project hourly roadway volumes and LOS
24 thresholds.

25 Let's go ahead and look at Alameda 01.

1 Let's see. It's on Page 1, but I know it's by
2 segment.

3 CO-HEARING OFFICER DODUC: Hold on,
4 Miss Womack. Page 1 of what document?

5 MS. WOMACK: Well, you tell me. It's -- Could
6 you tell me, Mr. -- Because you know how difficult this
7 is. I was trying to find it. I think it's 19 and it's
8 for Alameda.

9 WITNESS CHOA: Miss Womack is referring to the
10 Appendix 19 --

11 MS. WOMACK: Ah, okay.

12 WITNESS CHOA: -- which is accompanied to
13 Chapter 19.

14 MS. WOMACK: Oh, thank you. It just didn't
15 have all that stuff on it.

16 (Exhibit displayed on screen.)

17 MS. WOMACK: All right. That's not it.

18 WITNESS CHOA: Mr. Hunt, could you look at
19 Appendix 19A?

20 CO-HEARING OFFICER DODUC: Miss Womack, you
21 must have pulled that document from somewhere.

22 MS. WOMACK: Well, you know, DWR surprised me
23 with all my documents and, I'm sorry, I --

24 CO-HEARING OFFICER DODUC: You received it
25 just like that?

1 MS. WOMACK: Yes, I did.

2 CO-HEARING OFFICER DODUC: It wasn't --

3 MS. WOMACK: And I received --

4 CO-HEARING OFFICER DODUC: It wasn't as part
5 of another document?

6 MS. WOMACK: It was -- It was -- I pulled out
7 the documents. I was provided a whole stack of them.

8 CO-HEARING OFFICER DODUC: Yes. So when you
9 pulled it out, what was the initial document from which
10 you pulled it?

11 MS. WOMACK: I couldn't remember by the end.

12 CO-HEARING OFFICER DODUC: Miss Womack, this
13 is not an efficient way to proceed.

14 MS. WOMACK: Well, you know what? It isn't.
15 I have a lot of documents that have no -- that I've had
16 to go back and look up because there was nothing
17 provided.

18 I was a little disappointed. It seems that,
19 well, DWR wouldn't -- You know, they wouldn't give me a
20 document. I think it should have a little more on
21 this.

22 CO-HEARING OFFICER DODUC: Apparently it did,
23 because it was part of a larger document.

24 Miss Womack, I don't know how to facilitate
25 your cross-examination when we do not have the material

1 upon which you want to question these witnesses.

2 MS. WOMACK: I will be glad to bring the
3 little box I got.

4 Mr. Choa, you know where these are from. This
5 is what you provided. And this is not it, either.

6 I'm sorry. There's no document -- I don't
7 know why there's no documentation, you know. And at
8 the top, it says -- it's not very helpful.

9 CO-HEARING OFFICER DODUC: Perhaps if we might
10 get to the main question you have.

11 MS. WOMACK: Well, it -- I -- My main question
12 is: This -- And Mr. Mizell asked me to provide this
13 document. It says from 6:00 in the morning till 7:00
14 at night and I want to know --

15 CO-HEARING OFFICER DODUC: Mr. Choa --

16 MS. WOMACK: Yes.

17 CO-HEARING OFFICER DODUC: -- in the traffic
18 studies that you conducted, is it true that the studies
19 were limited to those time period?

20 WITNESS CHOA: That is correct. It began at
21 6 a.m. in the morning until 7 p.m. at night, so 13
22 hours of the day.

23 CO-HEARING OFFICER DODUC: And why were
24 those -- that time period?

25 WITNESS CHOA: Again, from the worst-case

1 analysis that we did for construction traffic, the
2 highest amount of traffic was analyzed to occur anytime
3 between 6 a.m. in the morning and 7 p.m. at night, to
4 include the morning and evening commute time periods.

5 CO-HEARING OFFICER DODUC: Thank you.

6 MS. WOMACK: Does that include the traffic on
7 the Byron Highway?

8 WITNESS CHOA: That is correct. The same
9 methodology was used for all 114 segments that were
10 studied.

11 MS. WOMACK: Okay. Well, the Byron Highway --

12 CO-HEARING OFFICER DODUC: Miss Womack, I'm
13 going to caution you to refrain from commentary --

14 MS. WOMACK: Okay.

15 CO-HEARING OFFICER DODUC: -- but to ask
16 specific questions of the witnesses.

17 MS. WOMACK: Okay. Mr. Choa, are you aware
18 that the Byron Highway is a -- between Tracy and Byron
19 is a two-lane -- a one-lane each way, so two-lane
20 highway that has -- now includes a development,
21 Mountain House, which is a 40,000-person development
22 that's being built out.

23 CO-HEARING OFFICER DODUC: And let's not make
24 this a very compound question.

25 MS. WOMACK: Well, are you aware of that?

1 Thank you.

2 WITNESS CHOA: Yes, I'm aware that Byron
3 Highway is a two-lane highway.

4 MS. WOMACK: Are you aware that Mountain House
5 is on -- in that segment and that it is a -- will be
6 built to 40,000 people and probably has 10,000 right
7 now.

8 MR. MIZELL: I'm going to object: Including
9 facts not in evidence.

10 And to the extent to which Mountain House may
11 or may not be built out in the future.

12 CO-HEARING OFFICER DODUC: Mr. Choa, are you
13 familiar with that community?

14 WITNESS CHOA: Yes. And it was included as
15 part of the background traffic conditions without the
16 Project and then Project-related traffic was added on
17 top of that to determine whether or not there was an
18 impact.

19 MS. WOMACK: And was that in 2012?

20 WITNESS CHOA: The baseline was 2012, but the
21 analysis looks at the full duration where the -- the
22 highest amount of traffic would occur in 2024.

23 MS. WOMACK: When the community is built out?

24 WITNESS CHOA: Again -- Based on, again,
25 information from -- In that case, Mountain House is in

1 San Joaquin County, whatever their projections were for
2 2024 for that community was included in this, yes.

3 MS. WOMACK: Okay. Thank you.

4 Let's see. Are you aware that traffic in --
5 between Tracy and Byron starts at 5:00 in the morning,
6 4:00 in the morning? 6 o'clock is not a -- Because
7 people are -- are traveling to the Bay Area?

8 MR. MIZELL: Objection: Assumes facts not in
9 evidence.

10 CO-HEARING OFFICER DODUC: Miss Womack,
11 Mr. Choa has answered the question with respect to the
12 time period for their traffic studies and why that time
13 period was chosen.

14 MS. WOMACK: He said it was chosen because it
15 is the highest traffic time. But he is not taking into
16 account the Bay Area and the three- or four-hour
17 commutes.

18 CO-HEARING OFFICER DODUC: Now, you are
19 testifying.

20 MS. WOMACK: I -- Well, but I --

21 CO-HEARING OFFICER DODUC: No.

22 MS. WOMACK: Six -- But 6 a.m. --

23 CO-HEARING OFFICER DODUC: You're -- You're --

24 MS. WOMACK: Okay.

25 CO-HEARING OFFICER DODUC: -- arguing against

1 his testimony, which is not appropriate for
2 cross-examination.

3 MS. WOMACK: Okay. All right.

4 So . . . Hmm.

5 So, when you're talking about off-peak hours,
6 could you give me very specific off-peak hours?

7 CO-HEARING OFFICER DODUC: He has answered the
8 question already with respect to the traffic studies
9 and the time period during which that was conducted.

10 MS. WOMACK: I did not hear numbers, so I --
11 I've heard, well, we'll -- we'll mitigate to a
12 different time, but I haven't heard the different times
13 that are good traffic times. So I would like to know
14 Mr. Choa's opinion of a good traffic time.

15 CO-HEARING OFFICER DODUC: I'm not sure --
16 Well, I will refrain. I for one am not sure what
17 specifically you're asking.

18 MS. WOMACK: Well, I want to -- I don't know
19 if there is an off-peak time on these roads, they are
20 so severely impacted.

21 Remember, these roads were built -- Byron had
22 300 people.

23 CO-HEARING OFFICER DODUC: Hold on.

24 MR. MIZELL: When --

25 CO-HEARING OFFICER DODUC: I'm not asking you

1 to testify. I'm trying to understand the question.

2 And the question is of Mr. Choa . . .

3 Are you asking about mitigation options for
4 traffic?

5 MS. WOMACK: I want to know what the
6 off-peak -- He said the off-peak is, well, when there
7 isn't traffic. I have not heard a time. If he said
8 from 10:00 to 2:00 is our off-peak time, that would be
9 very specific and very helpful.

10 CO-HEARING OFFICER DODUC: Are you able to
11 answer the question?

12 MS. MORRIS: Can I -- I'm sorry.

13 CO-HEARING OFFICER DODUC: Hold on.

14 Mr. Choa.

15 WITNESS CHOA: Is there a specific segment
16 that you're referring to?

17 MS. WOMACK: Well, I'm very interested in the
18 segment that goes from Tracy all the way down the Byron
19 Highway, past Byron, all the way over to Discovery Bay.
20 So basically Byron Highway and Highway 4 --

21 CO-HEARING OFFICER DODUC: All right.

22 MS. WOMACK: -- that segment.

23 CO-HEARING OFFICER DODUC: Miss Morris.

24 MS. MORRIS: Vague and ambiguous as to "off
25 peak."

1 And, in addition, I think this is outside the
2 scope. Again, the scope of the Supplemental, as I
3 understood it, was to be changes. I don't understand
4 that these -- this traffic analysis in that area has
5 changed, and there was no specific rebuttal testimony
6 on this -- on these specific questions.

7 MS. WOMACK: Again, that's because I was
8 not -- I -- I was not -- I'm in a different
9 circumstance. This affects me directly.

10 CO-HEARING OFFICER DODUC: But, Miss Womack,
11 your different circumstance has to do with water rights
12 and potential injury to your water rights.

13 MR. MIZELL: Yes. My farmer cannot move
14 things as well. The roadways impact my farm, my
15 ability -- my farmer's ability to farm.

16 My goodness. That's huge.

17 CO-HEARING OFFICER DODUC: Again, you're
18 testifying.

19 All right. Let's -- Let's try to move on,
20 because I don't believe --

21 MS. WOMACK: Certainly.

22 CO-HEARING OFFICER DODUC: -- Mr. Choa can
23 answer that question.

24 WITNESS CHOA: I can provide more in general
25 in terms of, as Mr. Bednarski provided in the beginning

1 of this, that the -- compared to the Approved Project,
2 the Revised Project has a lower amount of traffic
3 compared to the Approved Project.

4 That's all I can give. I don't know the
5 specifics again for the segment or segments that
6 Miss Womack is referring to.

7 MS. WOMACK: Mr. Choa, you say that there's
8 a -- there's a decreased amount of traffic, and yet
9 I'm -- I'm concerned.

10 So the construction traffic for, say, the
11 control structure, or for the new -- for the -- all the
12 structures that would have taken place from the barge
13 at Western Canal -- but you call it West Canal -- are
14 now going to be trucked from Discovery Bay to -- on
15 Highway 4 down the Byron Highway to your facility and
16 to -- or the control structure on the Delta-Mendota
17 Canal. That will be all the way down past -- to the
18 Clifton Court Forebay.

19 CO-HEARING OFFICER DODUC: Let's try this,
20 Mr. Choa:

21 Will you explain your statement about the
22 reduction in traffic as a result of the changes
23 proposed in the EIR Supplement.

24 WITNESS CHOA: So I'll start and request
25 Mr. Bednarski to add.

1 I was talking about just the total Project.

2 CO-HEARING OFFICER DODUC: The total Project.

3 WITNESS CHOA: Total Project, yes.

4 So it would take me some time to -- To the
5 best of my knowledge, off the top of my head, I don't
6 know the specifics about Byron Highway itself.

7 MS. WOMACK: So this is a change that I would
8 like addressed. I -- This is going to affect my
9 farmer, my farm.

10 The traffic -- And there clearly is going to
11 be a change in traffic because of the barges.

12 CO-HEARING OFFICER DODUC: Mr. Mizell or
13 Miss Ansley? Both of you are at the microphone.

14 MS. ANSLEY: I would just like to object.

15 If Miss Womack has looked at a particular
16 portion of the traffic analysis --

17 MS. WOMACK: Absolutely.

18 MS. ANSLEY: -- in the Supplemental EIR, if
19 she can refer Mr. Choa to a specific line or line
20 segment or piece of the actual analysis.

21 I think what we're struggling with is the
22 generalities of the question. He's here today to
23 answer questions about the traffic analysis, which was
24 done with the same methodology he's already testified.

25 But if she would like to refer him to a

1 specific road segment, again, in the analysis, I think
2 he would struggle less with answering the questions.

3 CO-HEARING OFFICER DODUC: That would be
4 helpful if she is able to.

5 MS. WOMACK: Well, I have -- I do have them
6 all pulled. Yes, I have them here. And there's
7 several segments. There's quite a few segments.

8 But I don't know how they've been adjusted for
9 the barge. That's why I -- I guess my question is,
10 have you adjusted these segments? And we can say --
11 Golly.

12 CO-HEARING OFFICER DODUC: Mr. Mizell?

13 MR. MIZELL: Yeah. I'd like to raise an
14 objection, cautiously here, that this particular
15 question has been asked and answered by two of the
16 attorneys who preceded Miss Womack, if the question is,
17 will the elimination of the barge landing site increase
18 traffic. That question has been asked twice and
19 answered twice.

20 MS. WOMACK: Not for Clifton -- not for Byron
21 Highway, not for -- not for this area. This has not
22 been asked.

23 WITNESS BEDNARSKI: Can I provide some
24 clarification in that area?

25 CO-HEARING OFFICER DODUC: Please do,

1 Mr. Bednarski.

2 WITNESS BEDNARSKI: I'll do my best.

3 Can we bring up my testimony, DWR-1212, and go
4 to Page 13. So I think this goes directly to
5 Miss Womack's questions about the barge traffic and
6 landings.

7 (Exhibit displayed on screen.)

8 WITNESS BEDNARSKI: Starting at Line 21, we
9 talk about the West Canal landing has been
10 eliminated --

11 MS. WOMACK: Yes.

12 WITNESS BEDNARSKI: -- and a new forebay site
13 does not include construction of a large landing.

14 MS. WOMACK: Yes.

15 WITNESS BEDNARSKI: However, we follow that by
16 saying -- On Line 23, we talk about how, even without
17 the temporary barge landing being constructed, we still
18 plan to make barge deliveries to the new Byron Tract
19 Forebay site via barge.

20 So I think our overall conclusion is that
21 we've just shifted the location of the barge deliveries
22 from the West Canal to the Old River there near the
23 Byron Tract Forebay.

24 And so I think, consequently, our overall
25 conclusions as far as road traffic goes, it remains

1 unchanged with the revised facilities.

2 MS. WOMACK: Could you --

3 WITNESS BEDNARSKI: With the original, we
4 still have a lot of construction work inside Clifton
5 Court that was going -- and that construction traffic
6 was going to be on Byron Highway.

7 With the new facilities, we have construction
8 equipment that's going to be on Byron Highway as we
9 construct the other facility.

10 But the barges will still be doing what they
11 were doing in the original Project.

12 MS. WOMACK: So, the barge -- So the
13 construction at Clifton Court Forebay would not use
14 barges, you're saying. It was all going to be
15 trucking.

16 WITNESS BEDNARSKI: No, that is not correct.

17 I've testified in the last couple times in
18 front of this Board that we had a barge on the West
19 Canal.

20 CO-HEARING OFFICER DODUC: Yes.

21 WITNESS BEDNARSKI: And that we were going to
22 be delivering equipment and supplies to that location,
23 most notably, you know, at least half of the tunnel
24 lining segments.

25 That continues to be our approach with the

1 Byron Tract Forebay. We will have the barges come over
2 to the -- on Old River to that location and we'll
3 unload approximately one-half of the tunnel lining
4 segments and other pieces of equipment there.

5 So it's the same. No change.

6 MS. WOMACK: But -- But, from the Western
7 Canal, you would be able to drive over the land to
8 these various areas or on the levee top.

9 WITNESS BEDNARSKI: I believe we could still
10 do the same thing, is, we park the barge near -- on the
11 Old River near the Byron Tract Forebay. We'll be able
12 to take equipment off of the barges and put it on the
13 land, you know, if we need to without using the
14 highway, so . . .

15 At this level of our understanding of the
16 Project, at the conceptual level, we felt that there
17 was no change in either surface transportation or water
18 transportation with the revised option.

19 MS. WOMACK: Okay. Okay. So I'll move on.

20 So, Mr. Choa, how old is the Old River Bridge?

21 CO-HEARING OFFICER DODUC: And your point in
22 asking that, Miss Womack?

23 MS. WOMACK: It was old when I was a child.
24 I'm old.

25 CO-HEARING OFFICER DODUC: And?

1 MS. WOMACK: Well, I want to know what the
2 contingency plans are when it breaks, because it will.
3 It's very old.

4 CO-HEARING OFFICER DODUC: Then let's ask
5 whether there has been any contingency plans or
6 analysis with respect to impact to that bridge.

7 WITNESS BRADBURY: I guess our response at
8 this point would be that we would be working closely
9 with Caltrans to work with them to make sure that the
10 bridge is in operating condition before we begin making
11 deliveries down there.

12 We -- A number of years ago, we'd already
13 begun preliminary discussions with them about the use
14 of that bridge for barges.

15 We could also take a look at -- Perhaps
16 there's a different routing on the waterways. But,
17 again, we haven't gone to the level of detail to
18 identify how we would bring in a barge not coming up
19 Old River to that location.

20 MS. WOMACK: Absolutely. There it is no way.

21 WITNESS BEDNARSKI: There's the potential for
22 that. But until we get further into the Project, we
23 don't have any specifics on that.

24 MS. WOMACK: So you have no --

25 WITNESS BEDNARSKI: So, I'm just saying

1 that --

2 MS. WOMACK: -- you have no contingency plans.

3 WITNESS BEDNARSKI: No. I'm saying that there
4 is the potential for other waterways to be our
5 contingency to get to that location.

6 But as far as the Conceptual Engineering
7 Report goes, at 10 percent design, we have not
8 developed all of those contingency plans at this point.

9 MS. WOMACK: So what other -- I'm confused
10 what other waterways there are you would use to avoid
11 Old River.

12 CO-HEARING OFFICER DODUC: Miss Morris.

13 MS. MORRIS: Objection: This is an incomplete
14 hypothetical. The witness has kindly answered even
15 though it's a hypothetical.

16 And I'd just object that it's outside the
17 scope and it's been asked and answered.

18 CO-HEARING OFFICER DODUC: Miss Womack, I'm
19 not sure to what extent we can provide any further
20 clarity on this for you.

21 MS. WOMACK: Um-hmm. Okay.

22 Well, let's see.

23 Are you aware, Mr. Choa, that over 13,000
24 people live at Discovery Bay?

25 CO-HEARING OFFICER DODUC: And what is your

1 question rather than . . .

2 Where are you going with this?

3 MS. WOMACK: Well, I'm asking, are you aware
4 of that?

5 WITNESS CHOA: Well, if you state it as a
6 fact, I am aware of it now.

7 MS. WOMACK: Okay. You can Google it. It's
8 no big deal. That's great.

9 So, those 13,000 people, many of them drive to
10 the City, and many of them drive to Stockton. In other
11 words, those roads are very busy.

12 So, the people that drive to Stockton, that --
13 You've talked about mitigating Highway 4 if -- if
14 there's a problem.

15 How would you have those people go from
16 Discovery Bay to Stockton, those people that work in
17 Stockton and use -- we used to call it the Island
18 Way -- but Highway 4 to Stockton?

19 How would you mitigate their -- their traffic,
20 where they should go?

21 MR. MIZELL: I'm going to lodge an objection
22 again for facts not in evidence.

23 I may pose an suggestion: If the Board would
24 allow, the witness could certainly attempt to answer in
25 hypothetical that the facts are accurate.

1 Where my objections come in is where a fact
2 that is -- well, a presumable fact is stated by the
3 questioner, and then I'm forced to respond to it on the
4 record.

5 CO-HEARING OFFICER DODUC: Understood.

6 MR. MIZELL: If we simply treat the questions
7 in this round of cross-examination as hypotheticals
8 where they state facts, then we could avoid some
9 objections from me.

10 CO-HEARING OFFICER DODUC: Yes. This is all
11 hypothetical.

12 MS. WOMACK: Not to the people that work
13 there. We have real people.

14 So, Mr. Choa, the point -- Moving to the point
15 of this is that, when Highway 4 is -- is -- is taken
16 out of commission, which it is from time to time
17 because it's a very dangerous road, there's -- When
18 Highway 4 is closed between Discovery Bay and Stockton,
19 do you know where people -- the routes that people
20 take?

21 WITNESS CHOA: Based on your hypothetical, if
22 Highway 4 is closed, I do not know specifically what
23 routes they would take when -- you know, when that does
24 occur and . . .

25 MS. WOMACK: So, have -- So have you, then --

1 I guess -- Have you allowed for Highway 4 closing down
2 and what that will do to traffic in the other areas?

3 CO-HEARING OFFICER DODUC: Miss Morris.

4 MS. MORRIS: Yeah. Objection: This is not a
5 question specific to WaterFix or impacts from WaterFix,
6 so maybe we could rephrase it in terms of, I guess, if
7 WaterFix shut down Highway 4.

8 CO-HEARING OFFICER DODUC: Yes, that's --

9 MS. WOMACK: Oh, it's the WaterFix
10 construction. I'm sorry. I thought we were at the
11 WaterFix and this is kind of -- You know, I'm clearly
12 not a lawyer.

13 (Pause in proceedings.)

14 WITNESS BRADBURY: As far as I'm aware --
15 Mr. Choa, you can correct me if I'm wrong -- we don't
16 have any plans to shut down Highway 4 with any of our
17 activities.

18 We have three transportation Mitigation
19 Measures that we proposed to utilize to minimize any
20 traffic impacts.

21 MS. WOMACK: On Highway 4?

22 WITNESS BEDNARSKI: Yes, we have -- Yes, we
23 do.

24 And we talked about some of those this
25 morning, or earlier today, in regards to the barges

1 coming down the Old River, that we would work with the
2 Construction Contractors to schedule their passage
3 through that area in off-peak hours.

4 So we -- None of our construction plans modify
5 Highway 4, do anything to Highway 4, other than this
6 bridge opening, and we have plans to --

7 MS. WOMACK: And -- Okay. And you said the
8 Mitigation Measure was a time, as I heard you with
9 Mr. Herrick. It's a time.

10 What is the off-peak time you would put the
11 barges through?

12 If this is your plan.

13 WITNESS CHOA: Again, there's opportunities in
14 terms of between 6 a.m. and 7 p.m. It might be at
15 10:00 in the morning or 2:00 in the afternoon.

16 It could also be, again, outside those time
17 periods at, you know, 3 o'clock in the morning when
18 there's very little or low volumes on Highway 4 or
19 State Route 4.

20 Again, the purpose of the transportation
21 analysis was look at the higher volume time periods,
22 but there is opportunities to have those barge trips
23 occur, again, outside that 6 a.m. to 7 p.m. time
24 period.

25 MS. WOMACK: How --

1 WITNESS BEDNARSKI: And I might add that this
2 is the approach that we would take for the other
3 bridges in the Delta, very similar approach to what
4 Mr. Choa just explained.

5 MS. WOMACK: Are you saying -- Mr. Bednarski,
6 are you saying that the traffic in -- I don't know
7 where there's a bridge -- that the traffic -- Are you
8 saying the traffic didn't go to the Bay Area from
9 Discovery Bay, going to Stockton, that is the same
10 traffic as you're going to incur in bridges in the
11 middle of the Delta?

12 And, Mr. Bednarski, are you saying that's the
13 same?

14 MR. BERLINER: Objection: Vague and
15 ambiguous.

16 CO-HEARING OFFICER DODUC: And I believe it
17 misstates the witness' testimony.

18 MS. WOMACK: You know, I just have a really
19 hard time having just been in traffic there. I have --
20 I have had to avoid --

21 CO-HEARING OFFICER DODUC: Miss Womack.

22 MS. WOMACK: I know I can't do that.

23 CO-HEARING OFFICER DODUC: Miss Womack --

24 MS. WOMACK: Okay.

25 CO-HEARING OFFICER DODUC: -- you are not

1 conducting an efficient cross-examination.

2 MS. WOMACK: Well, I'm trying my best.

3 CO-HEARING OFFICER DODUC: I need you -- I
4 need you to do better.

5 You've been through this with us for several
6 years. You've seen the attorneys and the other
7 non-attorneys conducting cross-examination.

8 I expect you to be more focused, more concise,
9 more clear, and better prepared.

10 MS. WOMACK: I am prepared.

11 CO-HEARING OFFICER DODUC: No, you are not.

12 And with that, Miss Womack, I'm going to end
13 your cross-examination for today. We will return with
14 you tomorrow.

15 I strongly encourage you to, tonight, focus on
16 your calculation, ensure that your questions are
17 focused and direct without commentaries and testimony
18 on your part.

19 And, if at all possible -- and I strongly
20 encourage you to do this -- to actually identify and
21 pull from the testimony presented by these witnesses
22 the specific citations to which you want to direct
23 them, upon which you want to focus your questions.

24 MS. WOMACK: I think this is pretty specific.

25 CO-HEARING OFFICER DODUC: No. That is not

1 specific enough.

2 You have to --

3 MS. WOMACK: It is from the draft.

4 CO-HEARING OFFICER DODUC: Miss Womack, you
5 must identify, as everyone else conducting
6 cross-examination has, the specific exhibit number,
7 page number and, if appropriate, line number of the
8 testimony to which you are conducting
9 cross-examination.

10 MS. WOMACK: I will bring in my box.

11 CO-HEARING OFFICER DODUC: I don't have an
12 opinion on what you bring, as long as you are able to
13 provide us with that specific citation so that these
14 witnesses can answer your question, so that we will all
15 benefit from your cross-examination.

16 Otherwise, it's just a fishing expedition on
17 your part that does not help our understanding.

18 I'm asking you to help us better understand
19 your concerns by being more focused and more prepared
20 for your cross-examination.

21 Help us better understand --

22 MS. WOMACK: I'm sorry. I'm just very
23 disappointed in the paperwork that I have been given.

24 And that's all I can say. To me, this should
25 have -- I agree this should have more on it. This is

1 all part of the Draft Supplemental EIR that was sent to
2 me by DWR.

3 CO-HEARING OFFICER DODUC: All right.

4 MS. WOMACK: And so I -- I'm . . .

5 CO-HEARING OFFICER DODUC: Miss Meserve.

6 MS. MESERVE: Just a quick clarification.

7 I think one of -- I don't know if this is the
8 reason for the lack of marking, but -- And I probably
9 should have brought it up sooner.

10 But one of the things is, when we mark
11 exhibits, it's a program in Adobe or whatever, and it
12 marks every single page with that exhibit number on the
13 top. But, for some reason, when DWR makes their
14 exhibits, it's only on the first page, not the rest of
15 the pages.

16 So it would be great if everybody using the
17 convention of making sure the exhibit number's on every
18 single page at the top right corner. It would be
19 awesome.

20 So I don't know if that's part of the problem
21 but I just thought I'd add that.

22 MS. WOMACK: Thank you so much.

23 Thank you.

24 CO-HEARING OFFICER DODUC: And before we
25 adjourn:

1 Mr. Mizell, I would encourage you to spend
2 some time with Miss Womack. And to the extent that you
3 might help her identify the testimony to which she'll
4 be conducting cross-examination, it might be helpful to
5 all of us.

6 MS. MORRIS: I would volunteer to do that. So
7 I'm willing to stay after. If you have the documents,
8 I can help you pull the exhibit numbers.

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

11 Thank you all. Welcome back.

12 With that, we will see you at 9:30 tomorrow.

13 (Proceedings adjourned at 4:48 p.m.)

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1 State of California)
2 County of Sacramento)

3

4 I, Candace L. Yount, Certified Shorthand Reporter
5 for the State of California, County of Sacramento, do
6 hereby certify:

7 That I was present in the afternoon session of the
8 above proceedings;

9 That I took down in machine shorthand notes all
10 proceedings had and testimony given;

11 That I thereafter transcribed said shorthand notes
12 with the aid of a computer;

13 That the above and foregoing is a full, true, and
14 correct transcription of the shorthand notes of the
15 afternoon proceedings, and a full, true and correct
16 transcript of all afternoon proceedings had and
17 testimony taken;

18 That I am not a party to the action or related to
19 a party or counsel;

20 That I have no financial or other interest in the
21 outcome of the action.

22 Dated: August 8, 2018

23

24

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Candace L. Yount, CSR No. 2737

1 STATE OF CALIFORNIA)
) ss.
2 COUNTY OF MARIN)

3 I, DEBORAH FUQUA, a Certified Shorthand
4 Reporter of the State of California, do hereby
5 certify that the foregoing proceedings (Pages 1
6 through 108) were reported by me, a disinterested
7 person, and thereafter transcribed under my
8 direction into typewriting and which typewriting is
9 a true and correct transcription of said
10 proceedings.

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

16 Dated the 8th day of August, 2018.

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DEBORAH FUQUA
CSR NO. 12948