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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 HEARING ROOM  
1001 I STREET  
SECOND FLOOR  
SACRAMENTO, CALIFORNIA

**PART 2 REBUTTAL**

Tuesday, August 15, 2018

9:30 a.m.

Volume 42

Pages 1 - 236

Reported By: Candace Yount, CSR No. 2737, RMR, CCRR  
(a.m. session)  
Deborah Fuqua, CSR No. 12948  
(p.m. session)

1 APPEARANCES

2 CALIFORNIA WATER RESOURCES BOARD

3 Division of Water Rights

4 Board Members Present:

5 Tam Doduc, Co-Hearing Officer  
6 Felicia Marcus, Chair & Co-Hearing Officer  
7 Dorene D'Adamo, Board Member

8 Staff Present:

9 Diane Riddle, Environmental Program Manager  
10 Dana Heinrich, Senior Staff Attorney  
11 Andrew Deeringer, Senior Staff Attorney  
12 Conny Mitterhofer, Supervising Water Resource Control  
13 Engineer  
14 Jean McCue, Water Resource Control Engineer

15 PART 2

16 **For Petitioners:**

17 California Department of Water Resources:

18 James (Tripp) Mizell  
19 Thomas M. Berliner

20 The U.S. Department of the Interior:

21 Amy L. Aufdemberge, Esq.

22 FOR PROTESTANTS AND INTERESTED PARTIES:

23 For State Water Contractors:

24 Stefanie Morris

25 For San Joaquin Tributaries Authority, The (SJTA),  
Merced Irrigation District, Modesto Irrigation  
District, Oakdale Irrigation District, South San  
Joaquin Irrigation District, Turlock Irrigation  
District, and City and County of San Francisco:

Tim Wasiewski

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2 FOR PROTESTANTS AND INTERESTED PARTIES (Continued):

3 For The Environmental Justice Coalition for Water,  
4 Islands, Inc., Local Agencies of the North Delta, Bogle  
5 Vineyards/Delta Watershed Landowner Coalition, Diablo  
6 Vineyards and Brad Lange/Delta Watershed Landowner  
7 Coalition, Stillwater Orchards/Delta Watershed  
8 Landowner Coalition, Brett G. Baker and Daniel Wilson:

9 Osha Meserve

10 For Sacramento Valley Water Users:

11 Ryan Bezerra

12 For Tehama-Colusa Canal Authority & water service  
13 contractors in its service area:

14 Meredith Nikkel

15 For California Sportfishing Protection Alliance (CSPA),  
16 California Water Impact Network (C-WIN), and  
17 AquAlliance:

18 Chris Shutes  
19 Michael Jackson

20 For Central Delta Water Agency, South Delta Water  
21 Agency (Delta Agencies), Lafayette Ranch, Heritage  
22 Lands Inc., Mark Bachetti Farms and Rudy Mussi  
23 Investments L.P.:

24 John Herrick, Esq.

25 For Grassland Water District:

Ellen Wehr

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

Thomas H. Keeling

For California Water Research:

Deirdre Des Jardins

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APPEARANCES (Continued)

FOR PROTESTANTS AND INTERESTED PARTIES (Continued):

For Westlands Water District and San Luis &  
Delta-Mendota Water Authority:

Hans-Peter Walter

For The City of Stockton:

Kelley Taber

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1 Tuesday, August 15, 2018

9:30 a.m.

2 PROCEEDINGS

3 ---000---

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

8 I'm Tam Doduc. To my right is Board Chair and  
9 Co-Hearing Officer Felicia Marcus, to the Chair's  
10 right, Board Member Dee Dee D'Adamo. To my left are  
11 Andrew Deeringer and Conny Mitterhofer. We are being  
12 assisted by Mr. Hunt.

13 I see all familiar faces in the room, so I'm  
14 going to skip the first two announcements and focus on,  
15 as always, the most important one.

16 Please take a moment and put all your  
17 noise-making devices on silent, vibrate, do not  
18 disturb.

19 All right. Are there any housekeeping matter  
20 that we need to address?

21 Mr. Wasiewski.

22 MR. WASIEWSKI: Hi. Tim Wasiewski for the  
23 San Joaquin Tributaries Authority.

24 I just want to let you know that we are  
25 withdrawing the remainder of our testimony that wasn't

1 stricken. And I heard that that might -- we might be  
2 called today so I wanted to let you know.

3 CO-HEARING OFFICER DODUC: So you are not  
4 putting on a rebuttal case today.

5 MR. WASIEWSKI: We are not putting on a Part 2  
6 rebuttal case, correct.

7 CO-HEARING OFFICER DODUC: Thank you for  
8 clarifying that.

9 MR. WASIEWSKI: Thank you.

10 CO-HEARING OFFICER DODUC: Miss Meserve, that  
11 means you're up.

12 MS. MESERVE: Good morning.

13 Yes. Based on the way things ended yesterday,  
14 I understood that our Order of Direct Testimony  
15 Number 8 with Dr. Shilling and Mr. Stokely would be on  
16 Thursday morning.

17 And so I directed Mr. Stokely to begin  
18 traveling back down here from Oregon, and he will be  
19 available, along with Dr. Shilling, on Thursday  
20 morning.

21 CO-HEARING OFFICER DODUC: I think I'm fine  
22 with that.

23 MS. MESERVE: Okay.

24 CO-HEARING OFFICER DODUC: Unless there are  
25 any objection. I think we have all the things that we



1 need to discuss as the Hearing Team. And so if we  
2 break a little bit earlier today, I don't think anyone  
3 will object; okay?

4 MS. MESERVE: Appreciate your flexibility.  
5 Thank you.

6 CO-HEARING OFFICER DODUC: All right. Plus, I  
7 think you have a motion to file today as well --

8 MS. MESERVE: Yes.

9 CO-HEARING OFFICER DODUC: -- Miss Meserve, if  
10 I remember correctly.

11 Okay. In that case, then, we will now  
12 turn . . . to Mr. Bezerra and Miss Nikkel for your  
13 rebuttal presentation.

14 And I believe both witnesses are familiar  
15 hands and have already taken the oath; right?

16 MR. BEZERRA: Yeah, I believe so.

17 CO-HEARING OFFICER DODUC: All right. With  
18 that, then, you may begin.

19 MR. BEZERRA: Thank you.  
20  
21  
22  
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25

1                                    Walter Bourez

2                                    and

3                                    Shankar Parvathinathan,

4                                    called as witnesses by the Sacramento  
5                                    Valley Water Users, having previously  
6                                    been duly sworn, were examined and  
7                                    testified further as follows:

8                                    DIRECT EXAMINATION BY

9                                    MR. BEZERRA: Could the witnesses please state  
10                                   their name for the record.

11                                   WITNESS BOUREZ: Walter Bourez.

12                                   MR. BEZERRA: And could you just please -- I'm  
13                                   sorry.

14                                   WITNESS PARVATHINATHAN: Shankar  
15                                   Parvathinathan.

16                                   MR. BEZERRA: And just to confirm that you  
17                                   both have taking the oath in this hearing; correct?

18                                   WITNESS BOUREZ: Yes, I have.

19                                   WITNESS PARVATHINATHAN: Yes, I have.

20                                   MR. BEZERRA: Mr. Bourez, is Exhibit SVWU-400  
21                                   your testimony?

22                                   WITNESS BOUREZ: Yes, it is.

23                                   MR. BEZERRA: Have you previously submitted  
24                                   your Statement of Qualifications in this hearing?

25                                   WITNESS BOUREZ: .

1 MR. BEZERRA: Do you rely on Exhibits  
2 SVWU-402, SVWU-404 and SVWU-405 in presenting your  
3 testimony in this Part 2 rebuttal?

4 WITNESS BOUREZ: Yes, I did.

5 MR. BEZERRA: Does Exhibit SVWU-403 summarize  
6 your testimony in Exhibit SVWU-400?

7 WITNESS PARVATHINATHAN: Yes, it does.

8 MR. BEZERRA: Dr. Parvathinathan, is Exhibit  
9 SVWU-401 your testimony?

10 WITNESS PARVATHINATHAN: Yes, it is.

11 MR. BEZERRA: Have you previously submitted  
12 your Statement of Qualifications in this hearing?

13 WITNESS PARVATHINATHAN: Yes, I did.

14 MR. BEZERRA: Thank you.

15 WITNESS PARVATHINATHAN: And I did again.

16 MR. BEZERRA: And -- I'm sorry -- could you  
17 repeat that?

18 WITNESS PARVATHINATHAN: I think I did it  
19 again.

20 MR. BEZERRA: You have a Statement of  
21 Qualifications in SVWU-401?

22 WITNESS PARVATHINATHAN: Yes.

23 MR. BEZERRA: Thank you.

24 Do you rely on Exhibits SVWU-402, SVWU-404 and  
25 SVWU-405 in presenting your testimony?

1 WITNESS PARVATHINATHAN: Yes.

2 MR. BEZERRA: Does Exhibit SVWU-403 summarize  
3 that testimony?

4 WITNESS PARVATHINATHAN: Yes.

5 MR. BEZERRA: Could we please pull up Exhibit  
6 SVWU-403, please.

7 (Exhibit displayed on screen.)

8 MR. BEZERRA: And beginning with Mr. Bourez,  
9 could the two of you please summarize your testimony,  
10 please.

11 WITNESS BOUREZ: Yes. If we could go to  
12 Page 2, please.

13 (Exhibit displayed on screen.)

14 WITNESS BOUREZ: Our testimony consists of  
15 four topics. And the first topic I will present is  
16 modeling issues identified in Part 1 that persist in  
17 the DWR/USBR California WaterFix H3+ modeling.

18 Dr. Shankar, as we like to call him, will talk  
19 about March Delta Outflow Criteria in the H3+ modeling,  
20 as well as the Spring Outflow Criteria in the  
21 Incidental Take Permit.

22 Lastly, I will present the effects of State  
23 Water Resources Control Board 2010 Delta Outflow  
24 Criteria Report if it were included as a Permit term in  
25 the California WaterFix.

1           Please go to the next slide.

2           (Exhibit displayed on screen.)

3           WITNESS BOUREZ: The key findings in our  
4 review of the H3+ modeling is, like Part 1 of the  
5 DWR/USBR BA modeling, the H3+ model does not consider  
6 additional capacity that would be made available by the  
7 North Delta diversion when modeling allocations to  
8 South-of-Delta CVP and SWP Contractors.

9           This artificially and unrealistically limits  
10 the modelability of the California WaterFix to increase  
11 South-of-Delta allocations. And this affects  
12 systemwide operations for the Central Valley Project  
13 and State Water Project.

14           Second, like Part 1 of the BA modeling, the  
15 H3+ model includes artificial limits on the use of  
16 Joint Point of Diversion.

17           Third, like Part 1 BA modeling, the H3+ model  
18 changes the North-of-Delta/South Delta reservoir  
19 balancing criteria. So less water stored -- Less  
20 stored water is modeled.

21           THE WITNESS: As being conveyed from North  
22 Delta reservoirs to South Delta reservoirs, San Luis.

23           This artificially and incorrectly keeps model  
24 storage North of the Delta higher in the H3+ modeling  
25 compared to the No-Action Alternative.

1 Fourth, CalSim II does not address effects to  
2 many types of water users.

3 Items 1, 2 and 3 are discretionary operating  
4 criteria that are used to balance the model and operate  
5 the model, to make allocations and balance reservoirs.

6 And there's many different discretionary  
7 actions that can be taken to change the operations, and  
8 those change in operations have -- result in different  
9 effects systemwide.

10 So, overall, our opinion is that the modeling  
11 does not provide sufficient information to understand  
12 how the California WaterFix may affect systemwide  
13 operations.

14 Next slide, please.

15 (Exhibit displayed on screen.)

16 WITNESS PARVATHINATHAN: Thank you. Good  
17 morning, everyone.

18 This slide represents information on the March  
19 Delta Outflow Criteria included in the CWF H3+ model.  
20 And there's some specific area are summarized from  
21 Petitioners' own modeling.

22 The table here, I would like to explain.

23 The first column in this table presents the  
24 years in which the March outflow criteria is not met,  
25 even after reducing exports to obtain cfs.

1           The second column presents the outflow target  
2 included in the CWF H3+ model.

3           And the third column presents the simulated  
4 outflows, Delta outflow.

5           And the fourth column, simulated total  
6 exports.

7           And the last column is a calculation that  
8 shows the deficit, or the additional water type that  
9 would be needed to meet the targets in those years when  
10 the target is not met.

11           So any additional actions that may be taken to  
12 meet that target or to satisfy the deficit would result  
13 in impacts to North-of-Delta storages.

14           Next slide, please.

15           (Exhibit displayed on screen.)

16           WITNESS PARVATHINATHAN: This slide summarizes  
17 Spring Delta Outflow Criteria included in the  
18 Incidental Take Permit for the CWF.

19           The Delta Outflow Criteria and the Incidental  
20 Take Permits are different than those in the ITP  
21 Application and analyzed in the CWF H3+.

22           And the CWF Proponents have not analyzed Delta  
23 outflow criteria in the ITP.

24           And DWR witnesses have testified that ITP  
25 Delta Outflow Criteria and ITP Application Criteria

1 result in substantially the same Delta outflow.

2 Next slide, please.

3 (Exhibit displayed on screen.)

4 WITNESS PARVATHINATHAN: So, M -- MBK was  
5 given the objective of investigating what could be the  
6 effects of meeting the ITP criteria. So MBK performed  
7 a simplified analysis to estimate how often the  
8 target -- ITP target is met in the H3+ modeling.

9 So we calculated outflow target based on  
10 Sub Table B of the Incidental Take Permit, which  
11 specifies outflow target in Florex (phonetic) and cfs  
12 and as a function of the Eight River Index.

13 And we processed outputs from the CWF H3+  
14 modeling and compared the outputs of simulated outflow  
15 against the target in the Incidental Take Permit. It's  
16 a simple mathematical calculations, just to see how the  
17 targets in ITP are not -- are met in the CWF H3+  
18 modeling.

19 In conclusion, the Incidental Take Permit  
20 Delta outflow target is met less frequently than the  
21 outflow target from the ITP Application in March, and  
22 the Delta outflow deficit is greater with the  
23 Incidental Take Permit targets.

24 The last point: April and May show even  
25 greater deficits than March.



1 Thank you.

2 WITNESS BOUREZ: May we have the next slide,  
3 please.

4 (Exhibit displayed on screen.)

5 WITNESS BOUREZ: So our fourth and final topic  
6 in our testimony is addressing the effects that 2010  
7 Delta Flow Criteria Report would have on the system if  
8 the criteria was adopted as a permit term.

9 So this slide demonstrates a modeled Delta  
10 outflow compared to unimpaired Delta outflow.

11 And when we take the ratio of model to  
12 unimpaired, on an annual average, basically 53 percent  
13 of the time . . . for the ratio is 53 percent on an  
14 annual average basis.

15 So the red line on that chart, which -- Let me  
16 explain the chart in a little bit more detail.

17 It's average monthly unimpaired Delta outflow  
18 on the X-Axis. The Y-Axis is the percent of Delta  
19 outflow of that unimpaired flow.

20 So if -- if unimpaired flow is equal to  
21 outflow, it would be a one. If Delta outflow was half  
22 of unimpaired flow, it would be on that red line, and  
23 some of the points fall on that red line.

24 Inside the circles on that chart are the water  
25 year-type. And essentially the wetter types of years

1 are above 50 percent unimpaired flow, while more of the  
2 dry, critical and below-normal years are less than  
3 50 percent of Delta -- unimpaired Delta outflow.

4 So by imposing a 50 percent unimpaired flow  
5 requirement, we're affecting more of the dry and  
6 critical years than we are the wetter types of years.  
7 So, in the dry and critical years, there would be an  
8 increase in Delta outflow requirement.

9 Next slide, please.

10 (Exhibit displayed on screen.)

11 WITNESS BOUREZ: When we modeled this in  
12 CalSim in 2011, we found that a 50 percent unimpaired  
13 flow criteria from January through June would increase  
14 Delta outflow roughly a million acre-feet. The model  
15 came up with 1,057,000 on an annual average basis.

16 And one of the things that we found created  
17 the largest impacts were the critical year increase of  
18 about a million acre-feet Delta outflow.

19 And when we start thinking about critical  
20 years like we had in 2014 and 2015, years that we could  
21 not meet existing D-1641 standards, an additional  
22 outflow requirement could also not be met.

23 So it -- It's a . . . additional flow  
24 requirement in years when we cannot always meet  
25 standards as is, and an additional flow requirement

1 would be very difficult to meet.

2           The other thing with the unimpaired flow from  
3 January through June is, those are the times that were  
4 building up coldwater pool in our reservoirs, and there  
5 are no ag diversions -- agricultural diversions at that  
6 time to cut.

7           So, even if we were to reduce agricultural  
8 diversions upstream to meet that, we would rely on our  
9 reservoirs to put that water into the Delta, and that  
10 would prevent us from building up our coldwater pool  
11 that's necessary for listed species upstream for the  
12 summertime.

13           In addition to that Delta outflow and flow  
14 changes in the system, the -- the Sacramento Valley  
15 would rely more on groundwater pumping to meet the  
16 needs of the system.

17           And we know that a quarter million acre-feet  
18 of additional pumping would be difficult to meet, or  
19 impossible. And in critical years, the need for  
20 additional water is roughly a million acre-feet in  
21 average and critical years.

22           In addition to those effects of the system  
23 operations, South-of-Delta exports went down roughly  
24 700,000 acre-feet on an annual average basis. And this  
25 effect to the system could cause the Projects to be

1 non-viable, particularly the CVP. That reduction in  
2 the delivery for a system that's already having  
3 economic difficulty repaying the Projects, would --  
4 would really -- it could push it over the edge.

5 Please turn to the next slide.

6 (Exhibit displayed on screen.)

7 WITNESS BOUREZ: When we looked at reservoir  
8 storages in this model run, we found that Trinity,  
9 Shasta and Folsom hit dead pool approximately  
10 20 percent of the time due to the 50 percent flow  
11 criteria. And in some cases, we had consecutive years,  
12 three to four years, where Shasta hit dead pool.

13 When we look at some of the return on Salmon,  
14 my understanding is that three years is a return  
15 period. And if we had lost three years in a row  
16 because of dead pool or bad temperatures, that would be  
17 a real issue.

18 And when we looked at the modeling in  
19 consecutive droughts, we were hitting dead pool in  
20 consecutive years.

21 So it makes it very difficult to manage for  
22 cold water pool and upstream habitat.

23 Next slide, please.

24 (Exhibit displayed on screen.)

25 WITNESS BOUREZ: So the conclusions of the

1 modeling is that we saw that the CVP and SWP had  
2 difficulty with viable operations. We saw regular  
3 violations of existing D-1641 standards in the Delta,  
4 and as well as upstream standards.

5 We saw an average annual decrease in carryover  
6 percent of unimpaired flow of about 2 million acre-feet  
7 in CVP reservoirs and SWP upstream reservoirs, and  
8 about a million acre-feet in the 40 percent unimpaired  
9 outflow requirements.

10 And, again, we saw violations of existing  
11 standards, and those were flow standards in the  
12 Sacramento River and American River and -- and in the  
13 Delta, and we had severe water supply impacts.

14 That concludes a summary of our testimony.

15 MR. BEZERRA: We're ready for cross.

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

18 I see more people here today than there were  
19 yesterday, so let me confirm.

20 I -- At least the request I received yesterday  
21 for cross-examination was: For the Department for 10  
22 minutes; State Water Contractors for 10;  
23 Miss Des Jardins for 45; and Grassland for 15.

24 Are there any other?

25 If you could help me out by giving me your

1 group number, that would be helpful.

2 MR. SHUTES: Chris Shutes CSPA, Group  
3 Number 31.

4 I have maybe 45 minutes for this panel.

5 CO-HEARING OFFICER DODUC: Okay.

6 MR. HERRICK: John Herrick for the South Delta  
7 parties, Group 21.

8 You know, maybe 10, 15 minutes.

9 CO-HEARING OFFICER DODUC: 10 to 15?

10 MR. HERRICK: Yes, ma'am.

11 MR. WASIEWSKI: Tim Wasiewski for the  
12 San Joaquin Tributaries Authority, Group 18.

13 About 10 minutes.

14 CO-HEARING OFFICER DODUC: All right. We will  
15 once again go in order of Group Number.

16 A heads-up to everyone that, before we break  
17 today, I'm going to want to go through at least the  
18 next -- I don't know -- five or six parties in terms of  
19 presenting rebuttal and get estimates for rebuttal time  
20 as well as cross-examination time so that we can sort  
21 of tentatively plan out the remainder of this week.

22 So, with that, Mr. Mizell, Miss Morris. Is  
23 this a joint cross?

24 MR. MIZELL: Yes. Last night, we were able to  
25 find some efficiencies and I think we can do a joint

1 cross in 15.

2 CO-HEARING OFFICER DODUC: Okay.

3 MS. MORRIS: Good morning.

4 Most of my questions -- Or all of my questions  
5 are for Mr. Bourez, and they're largely related to his  
6 opinion about the unimpaired flow requirement on  
7 CVP/SWP operations for his last opinion.

8 CROSS-EXAMINATION BY

9 MS. MORRIS: Good morning, Mr. Bourez. How  
10 are you?

11 WITNESS BOUREZ: Super good and getting better  
12 all the time. How are you?

13 MS. MORRIS: Very good. I see the light at  
14 the end of the tunnel.

15 In your rebuttal testimony, you discussed  
16 potential effects of 50 percent unimpaired flow  
17 requirements on CVP and SWP operations; correct?

18 WITNESS BOUREZ: That's correct.

19 MS. MORRIS: And that testimony, or opinion,  
20 is largely based on what's been marked as SVWU-404,  
21 which was a submittal on the Workshop Number 1  
22 Ecosystem Changes and Slow Salinity Zone submitted by  
23 yourself; correct?

24 WITNESS BOUREZ: That's correct.

25 MS. MORRIS: Thank you.

1           In looking at that document, SVWU-404, on  
2 Page 11.

3           MR. BEZERRA: Just a brief -- I think Mr. Hunt  
4 saw it, but if we could pull that up, that would be  
5 great.

6           (Exhibit displayed on screen.)

7           MS. MORRIS: Your Opinion Number 21 -- 20, you  
8 state there are (reading):

9           ". . . regulatory requirements for  
10 streamflows in the Sacramento Valley's  
11 major river systems (sic) to improve  
12 conditions for Salmon and Steelhead."

13          Correct?

14          WITNESS BOUREZ: That's correct.

15          MS. MORRIS: Moving on:

16          In your Opinion Number 21, you state  
17 (reading):

18                 "These . . . requirements . . ."

19          And you're referring back to the one, two,  
20 three, four bullet points in Opinion 20.

21                 ". . . provide appropriate  
22 downstream water temperatures to support  
23 Chinook Salmon and Steelhead."

24          Correct?

25          WITNESS BOUREZ: That's correct.



1 MS. MORRIS: So, if I understand you  
2 correctly, you're saying the requirements listed above  
3 those four bullet points provide protection for Chinook  
4 Salmon and Steelhead on each tributary; correct?

5 WITNESS BOUREZ: That's correct.

6 MS. MORRIS: Did the Petitioners include the  
7 requirements listed on Page 11 of your opinion of  
8 SVWU-404 in the No-Action Alternative and CWF H3+  
9 modeling?

10 MR. BEZERRA: I'm going to object as compound.  
11 We've got four different rivers here.

12 CO-HEARING OFFICER DODUC: Mr. Bourez can take  
13 them one at a time in his answer.

14 WITNESS BOUREZ: Yes, I can. So I'll start  
15 with the Sacramento River, and the . . .

16 In CalSim, it's difficult to put temperature  
17 operating criteria into the model, and we do that  
18 through reservoir balancing rules.

19 And in the Petitioners' No-Action Alternative,  
20 that criteria does get violated because of the nature  
21 of CalSim in the -- in the balancing. It goes to dead  
22 pool. We're not meeting that.

23 So, although there are criteria in the models  
24 to try to meet that, it's not fully satisfied in the  
25 dry periods.

1 But there are periods --

2 CO-HEARING OFFICER DODUC: Hold on. That  
3 wasn't her question.

4 Go ahead, Miss Morris. Please repeat your  
5 question.

6 MS. MORRIS: Thank you.

7 And if it's better, why don't we just say --  
8 let's ask for -- I'm really asking about whether or not  
9 the modeling include -- for CWF H3+ and NAA includes  
10 the four things that you have listed in Opinion 20 of  
11 SV-404 (sic), the requirements.

12 CO-HEARING OFFICER DODUC: So, Miss Morris,  
13 you are not asking whether or not the model result  
14 shows compliance with those. You're just asking  
15 whether or not they are included in the modeling.

16 MS. MORRIS: That's correct.

17 WITNESS BOUREZ: I would say that they're  
18 included, and the -- for each tributary.

19 However, the Sacramento River, it's not that  
20 90-5 and 91-1 is not explicitly included in the model,  
21 although I believe they tried to meet it in the model.

22 MS. MORRIS: Right.

23 And, in fact, in the modeling you presented in  
24 this proceeding, you do a similar type of thing because  
25 your modeling does not actually have the exact

1 criteria; correct?

2 WITNESS BOUREZ: That's correct.

3 MS. MORRIS: Thank you.

4 For the American River, you listed the flow  
5 management standard as incorporated in the 2009 NMFS  
6 bop as a regulatory requirement.

7 Does the American River flow management  
8 standard you have in Opinion 20 on Page 11 of SVWU-404  
9 include a carryover storage requirement for Folsom?

10 WITNESS BOUREZ: It does not. And if I may  
11 just remind: This was modeling done in 2011 --

12 MS. MORRIS: Right.

13 WITNESS BOUREZ: -- so it was before any of  
14 that was conceived.

15 MS. MORRIS: Actually, my question was about  
16 what the standard was. And you have the Water  
17 Forum-governed flow management as incorporated in the  
18 2009 NFMS Biological Opinion.

19 And my --

20 WITNESS BOUREZ: That's correct.

21 MS. MORRIS: My --

22 WITNESS BOUREZ: That's correct.

23 MS. MORRIS: Okay. But that standard you've  
24 listed here doesn't include any carryover storage  
25 target at Folsom; correct?

1 WITNESS BOUREZ: That's correct.

2 MS. MORRIS: If a carryover storage  
3 requirement for Folsom were part of a flow management  
4 standard, is there a potential for redirected impacts  
5 of other Sacramento Valley reservoirs?

6 MR. BEZERRA: Objection: Vague and ambiguous  
7 as to what she means by "redirected impacts."

8 CO-HEARING OFFICER DODUC: Mr. Bourez, did you  
9 have a chance to review other testimony submitted in  
10 this rebuttal phase and a discussion with respect to  
11 redirected impacts?

12 WITNESS BOUREZ: I have not been involved with  
13 those. My colleague, Lee Burgfeld, has been involved  
14 with that and I've stayed away from it, so I have not  
15 evaluated it.

16 CO-HEARING OFFICER DODUC: And so you're not  
17 familiar with the term "redirected impacts"?

18 WITNESS BOUREZ: I'm familiar with the term  
19 "redirected impacts." And I have not as part of this  
20 hearing evaluated the testimony submitted by the  
21 American River Group for the carryover alternative.

22 I think that any criteria has an effect on the  
23 system, and whether that's a redirected impact or a  
24 change in operations, I -- I can't comment on that.

25 MS. MORRIS: Let me just ask a question, then,

1 to be specific about reservoir storage, or water supply  
2 deliveries, because you speak -- you speak to those  
3 directly in your Opinion Number 9.

4 If there were to be a carryover storage  
5 requirement for Folsom as part of the flow management  
6 standard, is there a potential for impact to other  
7 Sacramento Valley reservoirs?

8 MR. BEZERRA: And, again, vague and ambiguous.

9 We're talking about a WaterFix hearing here.  
10 Mr. Bourez's testifying about WaterFix and the --

11 CO-HEARING OFFICER DODUC: He's testifying  
12 about flow criteria, and flow criteria that might be  
13 considered by us.

14 And he's talking specifically about the 2010  
15 Flow Criteria Report, so there is a flow component that  
16 he was focusing on.

17 MS. MORRIS: In addition, key references to --

18 MR. BEZERRA: If we could --

19 CO-HEARING OFFICER DODUC: One at a time.

20 Miss Morris.

21 MS. MORRIS: Thank you.

22 In addition, he references CSPA-202-Errata in  
23 its entirety as part of his Opinion 9, which has  
24 specific carryover storage requirements at Folsom.  
25 That's why I'm asking.

1 CO-HEARING OFFICER DODUC: All right.

2 Overruled, Mr. Bezerra.

3 WITNESS BOUREZ: That's a -- That's a tough  
4 question, because it depends on how Reclamation  
5 operates the Projects and, you know, whether there's  
6 going to be impacts to Delta flows, to exports, to  
7 balancing of reservoirs.

8 And there's always a potential for changes to  
9 all of the entire system operation, including other  
10 reservoirs.

11 MS. MORRIS: So, I just want to be sure I'm  
12 understanding, because my question wasn't about other  
13 impacts. I was going to do that one by one.

14 But I think what you're saying is a more  
15 holistic answer, that there would be potential impacts.  
16 You just don't know if it would be to reservoir  
17 storage, water supply deliveries, meeting Delta flow  
18 standards. That's what I'm hearing from your answer.

19 Is that a correct summary?

20 WITNESS BOUREZ: Almost. I would say -- I  
21 can't say whether there would be impacts. There would  
22 be changes in operations. I -- I'm not going to judge  
23 whether that would impact anybody or anything.

24 But any time you have one change in the  
25 system, the whole chain -- the system's highly

1 integrated, and whole thing changes. So there is a  
2 potential that there's going to be a change in  
3 operations.

4 MS. MORRIS: Could those potential changes in  
5 operations have impacts to senior -- deliveries to  
6 senior water rights holders in Sacramento Valley?

7 WITNESS BOUREZ: I don't know.

8 (Pause in proceedings.)

9 MS. MORRIS: Can you answer my question  
10 regarding potential impacts to senior water rights  
11 holders in the Sacramento valley based on carryover  
12 storage targets at Folsom in a hypothetical situation?

13 CO-HEARING OFFICER DODUC: Miss Morris, would  
14 you mind changing the word "impact" to "change" or are  
15 you --

16 MS. MORRIS: Sure.

17 If you could discuss the potential changes.

18 MR. BEZERRA: I'm going to object for multiple  
19 reasons:

20 One, I believe, it's asked and answered. He  
21 just answered the question.

22 Second, it's vague and ambiguous as to who the  
23 senior water right holders are.

24 CO-HEARING OFFICER DODUC: Miss Morris, would  
25 you like to clarify some more?

1 MS. MORRIS: Sure.

2 Mr. Bourez, when I say "Sacramento Valley  
3 senior water right holders," do you know what I'm  
4 talking about?

5 WITNESS BOUREZ: There's -- There's a lot of  
6 senior water right holders within the Sacramento  
7 Valley. There's other river Settlement Contractors.  
8 There's pre-'14 water rights holders throughout the  
9 valley. There's Sacramento settlement contractors.

10 MS. MORRIS: Great. Let's start with  
11 Sacramento Settlement Contractors.

12 And answer the hypothetical question in  
13 regards to potential changes to Sacramento Settlement  
14 Contractor water deliveries if there were carryover  
15 storage target requirements at Folsom.

16 MR. BEZERRA: I'm going to object as to an  
17 incomplete hypothetical.

18 I don't understand what the hypothetical is  
19 other than just simply implementing the modified FPS.

20 CO-HEARING OFFICER DODUC: Well, the question  
21 is whether Mr. Bourez understands it and whether he's  
22 able to answer.

23 With all due respect, Mr. Bezerra.

24 WITNESS BOUREZ: It -- It's -- It's -- It  
25 depends on so many things, so -- And I apologize for a



1 long-winded answer, but I have to explain . . . my  
2 conclusion.

3 If we had higher storage required in Folsom,  
4 the system operation systemwide would change. And that  
5 would also affect Oroville. It would affect ability to  
6 meet flows in the Delta. It would affect Delta  
7 exports. It could affect Shasta and Trinity and the  
8 Shasta/Folsom balance.

9 And whether that would affect the Sac River  
10 settlement contracts is going to depend on how the  
11 Bureau operates. It -- It could have -- It's -- It's  
12 possible that it could have effects to flows in the  
13 Sacramento River. And whether that trickled down to a  
14 change in the Sac River settlement contract diversions,  
15 I can't answer that question.

16 MS. MORRIS: But you agree that changing a  
17 carryover storage requirement at Folsom could  
18 potentially cause changes on a number of issue -- on a  
19 number of system operations, including Delta exports?

20 MR. BEZERRA: Objection: Asked and answered.  
21 He just stated he couldn't tell you that.

22 CO-HEARING OFFICER DODUC: Actually, that's  
23 not the answer I thought I heard from Mr. Bourez, so  
24 perhaps you would clarify.

25 WITNESS BOUREZ: It would -- It could -- has a

1 potential to change the system operations, including  
2 exports, Delta flow, balancing of reservoirs. It could  
3 change just the timing from one month to the next and  
4 not affect it on an annual basis.

5 So, I have not personally evaluated in detail  
6 the carryover alternatives, so I couldn't answer  
7 details about what specifically would be changed.

8 MS. MORRIS: And just to sort of shortcut  
9 this:

10 Is it true that similar types of changes could  
11 occur in the system if there were carryover storage  
12 requirements at Trinity Reservoir?

13 MR. BEZERRA: I'm going to object as vague and  
14 ambiguous as to what a carryover standard is.

15 For instance, the Modified Flow Management  
16 Standard is a highly detailed set of proposed terms and  
17 conditions.

18 Simply stating "carryover storage" tells you  
19 very little of what the proposal is. So the answer is  
20 vague -- The question is vague and ambiguous.

21 MS. MORRIS: I'm not --

22 CO-HEARING OFFICER DODUC: Hold on.

23 The question is very much in line with her  
24 previous question.

25 So, did you intend to change any aspect of

1 your question?

2 MS. MORRIS: Other than I said Trinity  
3 Reservoir, which doesn't have anything to do with the  
4 modified flow standard. And throughout this entire  
5 questioning, I've been talking about just carryover  
6 storage, not the modified flow standard.

7 CO-HEARING OFFICER DODUC: Overruled.

8 WITNESS BOUREZ: So if there was a higher  
9 carryover requirement in Trinity Reservoir, I would  
10 anticipate that the imports from the Trinity River  
11 system into the south would be affected by that, which  
12 would affect Shasta and, in turn, would affect the  
13 Shasta/Folsom balance, and could affect exports and  
14 ability to meet Delta flow criterias.

15 MS. MORRIS: Same question in regards to, if  
16 there were to be any carryover storage requirement at  
17 Oroville reservoir, would you expect to see the same  
18 kind of changes in the system?

19 WITNESS BOUREZ: The Oroville carryover, I  
20 think, would have a different effect than the carryover  
21 target at Trinity, because the Central Valley Project  
22 balances Trinity, Shasta and Folsom to meet CVP  
23 obligations while DWR operates Oroville in balance  
24 with -- It's their only main upstream reservoir, so it  
25 would affect the balance between State -- San Luis and

1 Oroville and State Water Project operations. And I  
2 think it would have a different effect on the system as  
3 a whole.

4 MS. MORRIS: I have no further questions.  
5 Thank you.

6 CO-HEARING OFFICER DODUC: Thank you,  
7 Miss Morris, Mr. Mizell.

8 Mr. Wasiewski, you're up.

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

11 This will be in regards to the Delta Flow  
12 Criteria Report, and these are just for Mr. Bourez.

13 If we can go to SVWU-403, and you can go to  
14 Page 8.

15 (Exhibit displayed on screen.)

16 **CROSS-EXAMINATION BY**

17 MR. WASIEWSKI: So, Mr. Bourez, this graph  
18 shows Delta outflow at -- did you say 50 percent  
19 unimpaired flow?

20 WITNESS BOUREZ: The red line is a 50 percent  
21 unimpaired flow line.

22 So, if Delta outflow for the months of January  
23 through June is 50 percent of unimpaired flow, it would  
24 fall on that red line.

25 MR. WASIEWSKI: Okay. So which -- Which

1 rivers or which tributary -- I -- Which tributaries did  
2 you assume would be contributing 50 percent unimpaired  
3 impaired flow in this calculation?

4 WITNESS BOUREZ: That's a good question.

5 The San Joaquin River we left as a baseline,  
6 did not affect it in this model run, so --

7 MR. WASIEWSKI: Well, let me just stop you  
8 there because that's what I'm most concerned about.

9 What -- What do you mean you left it a.m.  
10 loan. Did you leave it at D-1641 or did you use a  
11 percentage of unimpaired flow?

12 WITNESS BOUREZ: Neither because 1641 is not  
13 met in the San Joaquin River at Vernalis. It's the  
14 existing conditions.

15 And this was eight years ago so I can't  
16 remember. We may have had vamp in that model run at  
17 the time, and since then, vamp has been removed.

18 So we'll left San Joaquin Tributaries. That  
19 model is equal to the existing conditions, and it's  
20 consistent in the with and without unimpaired flow.

21 MR. WASIEWSKI: And so when you did this Delta  
22 outflow calculation, though, you needed to include at  
23 least some flow, or you need to consider at least some  
24 flow from the San Joaquin in order to do the equation;  
25 right?

1 WITNESS BOUREZ: That's correct.

2 And if my memory serves right, it's about an  
3 annual average of 3 million acre-feet is the average  
4 annual San Joaquin River flow at Vernalis in the model  
5 runs, and that contributes to Delta outflow.

6 MR. WASIEWSKI: Okay. That's all I have.

7 Thank you.

8 CO-HEARING OFFICER DODUC: Thank you.

9 Mr. Herrick.

10 MR. HERRICK: Thank you, Madam Chair, Chair  
11 Marcus and Board Member D'Adamo.

12 John Herrick for the South Delta Water --  
13 Delta Water Agency and other parties.

14 I'd like a quick intro, please, that --  
15 because Mr. Bourez also, and Dr. Shankar also, talk  
16 about the 2010 Report.

17 I think, to be consistent with the motions  
18 yesterday, I would just make a motion that, depending  
19 on how you decide with the with DWR witnesses, that  
20 should it also apply to this testimony, too, the  
21 portion that deals with the flow reports. So . . .

22 CO-HEARING OFFICER DODUC: Hold on. The  
23 motion as I understood it yesterday was very specific  
24 to -- at least the argument made was that the citation  
25 of case in chief testimony to which those witnesses

1 were rebutting was improperly either cited or  
2 interpreted.

3 MR. HERRICK: Correct.

4 CO-HEARING OFFICER DODUC: Are you making the  
5 same allegation with respect to Mr. -- to these  
6 witnesses' testimony.

7 MR. HERRICK: Yes. No offense to the  
8 witnesses, but their references to -- the references to  
9 references in the report is the same thing. There's no  
10 citations to people's discussion or valuation of those  
11 reports. I believe it's the same situation.

12 CO-HEARING OFFICER DODUC: Miss Nikkel.

13 MS. NIKKEL: Yeah, if I could respond.

14 CO-HEARING OFFICER DODUC: Please.

15 MS. NIKKEL: I think we can -- I think we  
16 could probably resolve this now without additional  
17 briefing.

18 In particular, the testimony offered here does  
19 include citations to specific testimony that it's  
20 rebutting, and that testimony is in paragraph -- I  
21 think it was four of Mr. Bourez's testimony.

22 Sorry. Nine of Mr. Bourez's testimony. And  
23 specifically the rebuttal is appropriate under this --  
24 the Hearing Officers' November 8th, 2017, ruling, which  
25 specifically provides that rebuttal is the appropriate

1 time to present evidence of potential injury to legal  
2 users from a term or condition presented in another  
3 party's case in chief in Part 2.

4 And, in particular, the testimony offered in  
5 NRDC-58 errata at Page 42 proposed a term and condition  
6 that would require 67 to 75 percent of unimpaired flows  
7 in December through June as a permit condition on the  
8 Permits that are being considered.

9 So this is clearly appropriate testimony. We  
10 can walk through the other citations if that would be  
11 helpful for the Hearing Officers right now.

12 CO-HEARING OFFICER DODUC: Your response,  
13 Mr. Herrick.

14 MR. HERRICK: I recognize that. I don't  
15 believe the citations are different than the citations  
16 the motion's being relied upon.

17 But the important thing for me is that, as  
18 long as the Board is aware of it and makes an  
19 appropriate decision, is, we're embarking upon a -- it  
20 seems a partial evidentiary hearing on flow criteria,  
21 Flow Criteria Report. A partial one.

22 Now, I don't know if we're going to have  
23 surrebuttal, but if this some of this testimony comes  
24 in, then people are going to be demanding surrebuttal  
25 on that issue.



1           But then after this process is done, we're  
2 going to move into a nonevidentiary quasi-legislative  
3 process in the Bay-Delta hearings dealing with the  
4 flows, the necessary flows for various parties or --  
5 necessary flows for the Water Quality Control Plan that  
6 eventually assigned to parties.

7           So, I've been struggling with this and I'm not  
8 sure what the legal problem is, but it strikes me as  
9 something we'd want to avoid, which is a partial  
10 evidentiary hearing on things to be considered at the  
11 quasi-legislative process because there will be a whole  
12 lot of parties that will say, "Well, I didn't know, and  
13 I wasn't able to cross-examine or put on expert  
14 witnesses."

15           When we get into the legislative process,  
16 people aren't under oath. People are just submitting  
17 documents and they're making presentations to argument,  
18 so I would just caution the Board. I think we're  
19 tippy-toeing towards a potential cliff.

20           CO-HEARING OFFICER DODUC: Good imagery,  
21 Mr. Herrick.

22           MR. HERRICK: Giving it my best.

23           CO-HEARING OFFICER DODUC: Miss Morris.

24           MS. MORRIS: Just briefly on this issue.

25           I wanted to respond to Mr. Herrick's

1 allegation about tippy-toeing around the issue.

2 I really don't think that's appropriate for  
3 his motion to strike this testimony. I agree with  
4 Miss Nikkel that it's is clear it was in the scope of  
5 rebuttal because these conditions for flow carryover,  
6 we -- They were part of permit conditions. And the  
7 Board clearly in their ruling said that folks could  
8 reply to permit conditions and explain impacts, and  
9 that's exactly what Mr. Bourez's testimony is intended  
10 to do.

11 CO-HEARING OFFICER DODUC: All right.

12 f: Well, I don't need to tippy-toe around. I  
13 apologize.

14 I'm not trying to undermine other people's  
15 motions, but if Mr. Bourez's citations are sufficient  
16 to let, in then that's sufficient to let in other  
17 people's, regardless of whether they made the proper  
18 citation. We've done that before by finding some, you  
19 know, verbal cross-examination.

20 No, they didn't say that that was the reason,  
21 so . . .

22 I'm just warning -- not warning. I'm just  
23 bringing the issue up. I think there's a potential for  
24 inconsistency and, you know, then we'll all be  
25 scratching heads later about how we handle that.

1 I've just made the motion. If everybody  
2 thinks it's ridiculous, you can deny it, but I just  
3 thought I'd go on the record.

4 CO-HEARING OFFICER DODUC: And so, for the  
5 record, the motion is to strike sections of these  
6 witnesses' testimony pertaining to the Delta Flow  
7 Criteria Report because . . .

8 On what grounds? I need a ground here.

9 MR. HERRICK: The ground is, it's -- it's not  
10 responsive to case in chief testimony or other  
11 appropriate bases for rebuttal.

12 CO-HEARING OFFICER DODUC: We will take that  
13 under consideration.

14 Do you have anything else you'd like to ask,  
15 Miss Nikkel or Mr. Bezerra?

16 MR. BEZERRA: I don't. We believe it's  
17 perfectly responsive to specific terms and conditions  
18 proposed by other parties in Part 2 case in chief.

19 CO-HEARING OFFICER DODUC: All right. Thank  
20 you.

21 MS. NIKKEL: I would just ask for a  
22 clarification whether or not the Hearing Officers are  
23 asking for any written submittal --

24 CO-HEARING OFFICER DODUC: No.

25 MS. NIKKEL: -- on this motion.

1 CO-HEARING OFFICER DODUC: No. I think we  
2 understand the crux of Mr. Herrick's motion.

3 MS. NIKKEL: Thank you.

4 MR. HERRICK: Thank you.

5 My cross is not that long but it covers the  
6 topics that Mr. Bourez and Dr. Shankar go through.

7 CROSS-EXAMINATION BY

8 MR. HERRICK: And, Mr. Bourez, I just want to  
9 start with some ground -- laying some ground here  
10 questions, and I don't think they're inappropriate but  
11 let me just see.

12 The -- one of the issues that underlies your  
13 analysis and conclusions is that, although there's  
14 modeling for some things, because there's potential  
15 discretionary decisions or new incentives, like curves  
16 changing, that the actual operations may not be  
17 reflect -- may not reflect what the modeling is  
18 predicting.

19 Is -- Is that a fair statement?

20 WITNESS BOUREZ: That is a fair statement,  
21 yes.

22 MR. HERRICK: So what -- Again, a couple more  
23 foundational questions.

24 Is that a concern to you, that we have  
25 modeling that assumes operations that bring reservoirs

1 down to dead pool sometimes but that, in reality, we're  
2 assured that won't happen.

3 Does that concern you, that the evaluation  
4 is -- might be incomplete in this process?

5 WITNESS BOUREZ: Yes. There -- There is an  
6 inconsistency between modeling and the way that the  
7 Project could actually and does actually operate.

8 And there are discretionary actions in the  
9 modeling that have a wide range of potential model  
10 results.

11 We've seen one in the Petitioners' modeling.  
12 MBK has submitted several different ones for the  
13 hearing. And they have very different operational  
14 results and different effects to the system.

15 All of those complied with the criteria of the  
16 WaterFix in terms of the North Delta diversion and so  
17 on, with the exception of some of the Spring Outflow  
18 Criteria that Dr. Shankar testified about.

19 So there's -- There's a lot of discretion in  
20 the way the Project could operate, and additional  
21 ability to convey water from north of the Delta to  
22 south of the Delta provides operational flexibility to  
23 the system that can be used in many different ways.

24 And I -- We do have a concern that the way  
25 that it was modeled doesn't reflect the way it could

1 potentially operate if it were to be built.

2 MR. HERRICK: And let me -- To just tie that  
3 up:

4 The issue about dead pool. So, say we're in  
5 a -- in a drought at some point, and operations to meet  
6 all the various water quality requirements and other  
7 obligations of projects, would be predicted to reach  
8 dead pool this year, next year, or something.

9 It's your understanding, then, that the  
10 Operators would make decisions to avoid reaching dead  
11 pool; correct?

12 WITNESS BOUREZ: That's correct. That's what  
13 they have done in the past and I assume they will  
14 continue to do that in the future.

15 MR. HERRICK: And if they do that, that means  
16 there are changes being done to the system's operations  
17 that wouldn't have been reflected in modeling; correct?

18 WITNESS BOUREZ: That's correct.

19 MR. HERRICK: So the modeling, then, doesn't  
20 predict any impacts or results from those changes if  
21 it's not assuming they haven't.

22 I don't know if that's the right word.

23 WITNESS BOUREZ: So, I need to add something  
24 here:

25 I -- There -- That's not the whole story,

1 because when you operate, say, a No-Action Alternative  
2 and a With-Project Alternative, you have similar issues  
3 in both.

4 And in modeling it the way we've been applying  
5 it for many projects, including this one, is to compare  
6 a With-Project scenario to a No-Action Scenario.

7 And I think that the rule -- the appropriate  
8 question to ask here:

9 Is that difference and the effects of the  
10 Project going to be consistent if you have a different  
11 baseline?

12 So even though our baseline -- And we  
13 testified that the baseline in the WaterFix has these  
14 issues. We don't believe it's operating appropriately  
15 during droughts. That could result in a different  
16 effect of the Project during those dry periods if the  
17 baseline were different.

18 I'm not sure that answers your question, but  
19 there -- there is a potential that we're not  
20 characterizing the effects of the Project appropriately  
21 because we're not addressing those drought periods  
22 appropriately.

23 MR. HERRICK: And that's the crux of the  
24 issue, isn't it, that the modeling we use in these  
25 proceedings compares a No-Action in the Project or

1 other things.

2 But if those don't somehow, to some degree,  
3 reflect reality, it's sort of like an exercise in  
4 fantasy; correct?

5 I mean, let me just put it this way:

6 If the modeling assumes, you know, there's  
7 going to be, you know, X amount of releases but, in  
8 reality, they won't do that, then the difference  
9 between the two scenarios may be irrelevant if what's  
10 happening on the ground is something entirely  
11 different.

12 CO-HEARING OFFICER DODUC: Miss Morris.

13 MS. MORRIS: I'm just going to object: This  
14 is outside the scope of rebuttal.

15 The testimony that Mr. Bourez has offered on  
16 Item Number 6, he essentially says that four of the  
17 five key conclusions span in regards to the H3+  
18 modeling.

19 His opinion's not changing. He's just  
20 reiterating that it still applies to H3+.

21 None of these questions are to H3+. They seem  
22 to be a rehash of questions that have been asked before  
23 about the modeling and Mr. Bourez's opinion about how  
24 they should have been modeled.

25 CO-HEARING OFFICER DODUC: Well, he is



1 rehashing his opinion about how it should have been  
2 remodeled.

3 But, Mr. Herrick, your response to that?

4 MR. HERRICK: I could end here. I was just  
5 trying to lay foundation because that foundation, I  
6 think, will be part of future questions and answers.  
7 It's relevant to his analysis.

8 CO-HEARING OFFICER DODUC: Yes. It's a basis  
9 of his opinion.

10 MR. HERRICK: Yes.

11 CO-HEARING OFFICER DODUC: All right.

12 Overruled.

13 MR. HERRICK: I can leave it at that.

14 CO-HEARING OFFICER DODUC: Oh. Don't you want  
15 an answer? I just overruled --

16 MR. HERRICK: If he can answer that, yes,  
17 but . . .

18 CO-HEARING OFFICER DODUC: Mr. Bourez.

19 WITNESS BOUREZ: I'm sorry. Can you please  
20 repeat the question?

21 MR. HERRICK: The question was, basically,  
22 that we don't want to just do modeling and compare it  
23 to scenarios if they don't -- if those results don't  
24 somehow reasonably reflect reality; otherwise, we're  
25 not really determining the effects of the Project.

1           Would you agree with that?

2           WITNESS BOUREZ: I would agree with that, yes.

3           MR. HERRICK: Okay. Do you believe that the  
4 Boundary 1 and 2 conditions that we've all -- we've  
5 all -- we've all modeled, do those encompass or cover  
6 the areas of concern that you've raised?

7           WITNESS BOUREZ: We testified to this in  
8 Part 1, and we wrote a report and submitted as  
9 evidence. And we don't believe those are --  
10 appropriately bound the potential effects of the  
11 California WaterFix.

12           MR. HERRICK: You don't think they accurately  
13 describe the discretionary choices that you've been  
14 referring to.

15           CO-HEARING OFFICER DODUC: Hold on.

16           Miss Morris.

17           MS. MORRIS: Same objection. His opinion  
18 clearly is related to them.

19           His opinions compare four out of five to H3+  
20 modeling. This is talking about Boundary 1 and  
21 Boundary 2. And adequacy of that modeling is clearly  
22 outside the scope of his rebuttal testimony.

23           CO-HEARING OFFICER DODUC: Mr. Herrick.

24           MR. HERRICK: Well, I think it is. I don't  
25 have to get an answer to that if you don't want. I can

1 move on.

2 CO-HEARING OFFICER DODUC: All right. Let's  
3 move on.

4 MR. HERRICK: Mr. Bourez, I'm looking at  
5 SVWU-402, which is your Modeling Review Report  
6 submitted as part of the rebuttal.

7 (Exhibit displayed on screen.)

8 MR. HERRICK: Do you have that in front of  
9 you?

10 WITNESS BOUREZ: Yes, I do.

11 MR. HERRICK: And your point -- I guess your  
12 Opinion Number 1 on the bottom of Page 5.

13 (Exhibit displayed on screen.)

14 MR. HERRICK: So, again, just sort of a  
15 foundational.

16 Your opinion is that the H3 -- California  
17 WaterFix H3+ modeling does not consider the additional  
18 capacity provided by adding the North Delta diversions;  
19 correct?

20 WITNESS BOUREZ: That's correct. It does not  
21 consider the additional capacity that it -- that the  
22 California WaterFix can provide for June through the  
23 summer periods when determining South-of-Delta water  
24 supply allocations for both the CVP and SWP.

25 MR. HERRICK: And that -- I'll call it an

1 error, if I may.

2 That error in the modeling, by not considering  
3 that, that would result in the model resorts -- excuse  
4 me -- model results artificially showing higher  
5 reservoir storages in Sacramento Valley; is that  
6 correct?

7 MR. BEZERRA: And I'm going to object that it  
8 misstates testimony. I don't think Mr. Bourez's  
9 testified that that's an error.

10 MR. HERRICK: That was my word.

11 This peculiarity of the modeling, does that  
12 result in the modeling results artificially showing  
13 higher storage in the Sacramento Valley than would be  
14 without it?

15 WITNESS BOUREZ: It can, and it complicates  
16 things. Let me explain.

17 What happens is, in the model, the San Luis  
18 Rule Curve is increased in -- in June, and more water  
19 is conveyed from north of the Delta to south of Delta,  
20 also moving that reservoir storage and diversion of  
21 excess flows. That water is exported and stored in  
22 San Luis. San Luis is higher as a result.

23 And the model, because of this issue, doesn't  
24 allocate that water. And so that would tend to hold  
25 more water upstream.

1           That, in addition to the change in the  
2 San Luis Rule Curve, which is lower in the Action  
3 Alternative relative to the No-Action Alternative also  
4 keeps more water north of the Delta.

5           Those are both discretionary actions. And the  
6 discretion that they used in that model, in the  
7 With-Project model, tends to keep more stored water  
8 north of the Delta.

9           That's a discretionary action and, in actual  
10 operations, they don't have to do it that way. They  
11 can actually convey more stored water than allocated.

12           So, it -- I think it's unrealistic to assume  
13 that, if you export water in June and through the  
14 summertime, that you wouldn't allocate it. I'm not  
15 sure why you would want to export it and not allocate  
16 it.

17           So we don't believe that's a realistic  
18 operation.

19           MR. HERRICK: So the -- the Project which the  
20 new diversion -- the new North Delta diversion creates  
21 an incentive to create the opportunity for additional  
22 exports.

23           Is that what -- Is that part of your answer  
24 there?

25           WITNESS BOUREZ: It does. It adds flexibility

1 to the operations. And -- And that flexibility allows  
2 more discretion to convey stored water and allocate it.

3 And by not recognizing that flexibility in  
4 that allocation, they're not using that water and  
5 allocating it in that year.

6 MR. HERRICK: That last part of your answer  
7 was my next question, then.

8 Then the modeling is not, you think,  
9 reflective of the incentives to increase exports to  
10 certain times of the year.

11 WITNESS BOUREZ: It -- It tries to -- It  
12 reflects it in some -- some regards. In other regards,  
13 it does not.

14 So, in the regard of the added export capacity  
15 from June through the summertime, it does not account  
16 for that when making allocations South of Delta. It  
17 does not exercise that ability to increase allocations  
18 due to that additional export capability.

19 MR. HERRICK: Okay. I'm turning to Page 9 now  
20 of your -- excuse me -- of the SVWU-402.

21 (Exhibit displayed on screen.)

22 MR. HERRICK: And that begins your Table 1,  
23 which shows deficits of March outflow requirements  
24 under the Incidental Take Permit.

25 Is that correct, or did I state that wrong?

1 WITNESS PARVATHINATHAN: Table 1 talks about  
2 CWF H3+ --

3 MR. HERRICK: Yes. Yes.

4 WITNESS PARVATHINATHAN: -- and outflow  
5 criteria in the CWF H3+, not in Incidental Take.

6 MR. HERRICK: And the highlighted numbers in  
7 the far right column are the -- the deficit between  
8 what the model provides for the outflow criteria and  
9 what should be provided under the requirements; is  
10 that -- is that right?

11 WITNESS PARVATHINATHAN: That's correct.

12 MR. HERRICK: Now, the highest one you have  
13 is -- is 1960 on Page 10. And I want to make sure I'm  
14 reading that right because the flows are in cfs and  
15 then the deficit is in acre-feet so that's over a  
16 million acre-foot deficit.

17 WITNESS PARVATHINATHAN: That's correct.

18 MR. HERRICK: Now, later in the -- in the --  
19 in the document, you talk about how Department of Fish  
20 and Wildlife assumes water to meet these Spring Outflow  
21 Criteria will be -- at least partially may be obtained  
22 through purchases; correct?

23 MS. NIKKEL: Objection: I think that  
24 misstates the testimony or it's vague and ambiguous.  
25 If Mr. Herrick could point to the particular portion of

1 the testimony you're referring to, that would be  
2 helpful.

3 MR. HERRICK: On Page 11, at the very bottom,  
4 the indented quote.

5 (Exhibit displayed on screen.)

6 MR. HERRICK: Do you see that, either one of  
7 you?

8 MS. NIKKEL: Yes. Thank you. That's helpful.

9 MR. HERRICK: No problem.

10 I'm not the most organized brain in the world,  
11 clearly.

12 WITNESS BOUREZ: So -- So, there's --  
13 there's -- We're talking about H3+ modeling in Table 1,  
14 and that quote is referring to the Incidental Take  
15 Permit modeling. So we're -- we're --

16 MR. HERRICK: I'm ahead of myself.

17 WITNESS BOUREZ: We're -- We're mixing two  
18 things. So if you could specify which one --

19 MR. HERRICK: Okay. I apologize. I did  
20 confuse those. I'm sorry.

21 Let's go back to Table 1, then. I just want  
22 to -- You may not be the correct person to answer this.

23 But if somebody needs an additional million  
24 acre-feet of water in one year, does your familiarity  
25 with the system lead you to conclude whether or not



1 anybody could ever purchase that?

2 WITNESS BOUREZ: It would be difficult. And  
3 one of the things that I've -- I've looked at in terms  
4 of transfers -- we worked on transfers quite a lot --  
5 and at the time that this water would need to be made  
6 available in March, there are little to no agricultural  
7 diversions at that time.

8 So even if there were a purchase of a million  
9 acre-feet -- which is a lot of water, and I don't know  
10 if that is possible -- it would require a release from  
11 Project reservoirs in March that would then have to be  
12 compensated later to reduce diversions.

13 Now, that -- that -- The effect of that would  
14 be similar to what I testified on the Delta Flow  
15 Criteria. That water has to come out of storage at  
16 that time, and that would be a very difficult  
17 operation.

18 I don't know -- It hasn't been analyzed and I  
19 would assume that the effects to cold water would be  
20 significant.

21 MR. HERRICK: Okay. Let's -- I'm running out  
22 of time, so let's move very quickly to Page 11, which  
23 was the page of that quote I referenced out of order.

24 (Exhibit displayed on screen.)

25 MR. HERRICK: On that page, you talk about how

1 the Incidental Take Permit states that the Permittee  
2 shall -- I'm now looking at the indented quote under  
3 the paragraph that starts -- has the heading of Spring  
4 Delta Outflow Criteria.

5 Do you see that, the indented quote?

6 MR. BEZERRA: Mr. Herrick, just for clarity:

7 Are you referring to the indented paragraph  
8 that begins "To minimize take."

9 MR. HERRICK: Yes.

10 WITNESS PARVATHINATHAN: I see that paragraph.

11 MR. HERRICK: And that -- there's an  
12 italicized part that says (reading):

13 "Permittee shall maintain Delta  
14 outflow (sic) . . ."

15 Do you see that?

16 WITNESS PARVATHINATHAN: I do.

17 MR. HERRICK: And then, later down, you talk  
18 about a clarification letter that says that -- it  
19 appears to say that rather than "shall maintain,"  
20 they're now targets.

21 Do you see that?

22 WITNESS PARVATHINATHAN: I see that.

23 MR. HERRICK: Am I reading that correctly,  
24 that it's your opinion that, although the Incidental  
25 Take Permit says they "shall do" something, a later

1 letter then says well, they're really targets, not a  
2 mandatory action; is that correct?

3 MR. BEZERRA: I'm going to object as calling  
4 for a legal opinion as to the relationship between  
5 Incidental Take Permit and the clarification letter.

6 CO-HEARING OFFICER DODUC: All right.  
7 Mr. Herrick, are you just asking Mr. Bourez for what he  
8 means in his testimony?

9 MR. HERRICK: Yes. I was just -- The  
10 follow-on, if appropriate, I was going to ask him if  
11 they knew why or what had happened -- they don't  
12 know -- to have a mandatory "shall" changed to a target  
13 in a later document. I just want to explore that. If  
14 it's not appropriate, I won't.

15 CO-HEARING OFFICER DODUC: Are you able to  
16 answer, Mr. Bourez?

17 WITNESS BOUREZ: I don't know how to interpret  
18 that. I don't know how it will be interpreted or  
19 enforced, either.

20 MR. HERRICK: And then . . .

21 May I ask just one more short set of  
22 questions?

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

24 MR. HERRICK: Dr. Bourez -- Mr. Bourez or  
25 Dr. Shankar, the -- the -- the clarification letter

1 mentioned at the bottom of Page 11, it talks about  
2 cutting exports down to 1500 cfs in order to achieve  
3 the flows necessary for the outflow of coldwater  
4 target; correct?

5 WITNESS PARVATHINATHAN: Yes.

6 MR. BEZERRA: And then, later on in your  
7 report, you talk about how just cutting exports down to  
8 that doesn't all the time meet what's needed for those  
9 export flows; correct?

10 WITNESS PARVATHINATHAN: That's correct.

11 MR. HERRICK: I think that's all I have. I'd  
12 love to go on forever, but . . .

13 CO-HEARING OFFICER DODUC: Thank you,  
14 Mr. Herrick.

15 MR. HERRICK: I've worn out my welcome.

16 CO-HEARING OFFICER DODUC: And I beg to  
17 differ. I found that you are very organized, have a  
18 very organized mind, especially --

19 CO-HEARING OFFICER MARCUS: Frame.

20 CO-HEARING OFFICER DODUC: -- frame, yes,  
21 especially in conducting your cross-examination.

22 MR. HERRICK: Thank you. But you should see  
23 it from the inside.

24 (Laughter.)

25 CO-HEARING OFFICER DODUC: I will decline that

1 invitation.

2 MR. HERRICK: Well chosen.

3 Thank you.

4 CO-HEARING OFFICER DODUC: Mr. Shutes, you're  
5 up.

6 And as you're coming up, let me check with the  
7 court reporter.

8 Mr. Shutes has estimated 45 minutes, so are  
9 you okay with going until 11:15 --

10 THE REPORTER: Um-hmm.

11 CO-HEARING OFFICER DODUC: -- or we can take a  
12 break at 11:00.

13 THE REPORTER: Whatever works.

14 CO-HEARING OFFICER DODUC: Okay.

15 (Exhibit displayed on screen.)

16 CO-HEARING OFFICER DODUC: So what I would  
17 like to do is, after Mr. Shutes, we have  
18 Miss Des Jardins for 45 minutes, and then Grasslands,  
19 Group 44, for 15.

20 I would like to complete the  
21 cross-examination, and we can discuss any potential  
22 redirect/recross. But I would like to complete this  
23 panel before we take our lunch break today.

24 Mr. Shutes.

25 MR. SHUTES: Good morning. Chris Shutes for

1 the California Sportfishing Protection Alliance.

2 These questions are primarily for Mr. Bourez,  
3 although if Mr. --

4 And I don't see his name. I believe it's  
5 Parvathinathan; is that correct?

6 WITNESS PARVATHINATHAN: It's close.

7 MR. SHUTES: Close.

8 CO-HEARING OFFICER DODUC: We call him  
9 Dr. Shankar.

10 MR. SHUTES: -- Dr. Shankar, he may answer  
11 some of these, too.

12 They relate to Exhibits SVWU-404, questions  
13 relating to his analysis of the Delta Flow Criteria,  
14 and also some questions relating to Exhibit 402, both  
15 Delta Flow Criteria and some of the other conclusions  
16 that he draws, and so the analysis that he makes.

17 CROSS-EXAMINATION BY

18 MR. SHUTES: Good morning, Mr. Bourez.

19 WITNESS BOUREZ: Good morning, sir.

20 CO-HEARING OFFICER MARCUS: Ask him how he is.

21 MR. SHUTES: He already said he was so good, I  
22 just don't think we need to do that.

23 CO-HEARING OFFICER DODUC: Actually, I want to  
24 see if his answer changes --

25 (Laughter.)

1 CO-HEARING OFFICER DODUC: -- after  
2 cross-examination, so please do ask.

3 MR. SHUTES: How are you this morning,  
4 Mr. Bourez?

5 WITNESS BOUREZ: Super good and getting better  
6 all the time.

7 (Laughter.)

8 MR. SHUTES: Mr. Bourez, the modeling you  
9 performed for your analysis in Exhibit SVWU-404 was  
10 modeling you performed in 2001; is that correct?

11 2011. Excuse me.

12 WITNESS BOUREZ: 2011, correct.

13 MR. SHUTES: Thank you.

14 And the modeling did not include any  
15 adjustments to CalSim to account for climate change;  
16 did it?

17 WITNESS BOUREZ: It did not.

18 MR. SHUTES: So one scenario you modeled for  
19 your analysis in SVWU-404 was the 2011 existing  
20 conditions with then-current regulatory constraints; is  
21 that correct?

22 WITNESS BOUREZ: That's correct.

23 MR. SHUTES: And another scenario you modeled  
24 for your analysis was the 2011 existing condition with  
25 the then regulatory constraints with an added

1 regulatory requirement for Delta inflow and outflow  
2 from January through June to be at least 40 percent of  
3 the unimpaired flow from each tributary to the Delta  
4 except those in the San Joaquin; is that correct?

5 WITNESS BOUREZ: That's correct. And I need  
6 to maybe clarify.

7 When you specify a Delta outflow, you are  
8 including all the tributaries. So, when we make that  
9 statement, we are including anything that drains into  
10 the Delta.

11 And in the modeling, the only way to respond  
12 to that Delta outflow is with CVP and SWP operations.  
13 We are not changing the east side streams; we did not  
14 change the San Joaquin.

15 MR. SHUTES: And in -- in that analysis, did  
16 you change, for example, operations on the Yuba River?

17 WITNESS BOUREZ: We did not.

18 MR. SHUTES: Okay. So the change -- any  
19 changes you made were strictly limited to the State  
20 Water Project and the Central Valley Project; is that  
21 correct?

22 WITNESS BOUREZ: That's correct.

23 MR. SHUTES: Thank you.

24 And the third scenario you modeled for your  
25 analysis was the 2011 existing condition with



1 then-current regulatory constraints with an ag  
2 regulatory requirement for Delta inflow and outflow  
3 from January to June to be at least 50 percent of the  
4 unimpaired flow from tributaries to the Delta with the  
5 caveats that you just described for 40 percent; is that  
6 correct?

7 WITNESS BOUREZ: That's correct.

8 MR. SHUTES: Thank you.

9 And you compared the model output for these  
10 three scenarios in conducting an analysis; correct?

11 WITNESS BOUREZ: That's correct.

12 MR. SHUTES: And, generally, you found Delta  
13 outflow was controlling in both of your 50 percent and  
14 40 percent scenarios, so you focused on Delta outflow  
15 as opposed to inflow; is that correct?

16 WITNESS BOUREZ: That's not quite correct.

17 MR. SHUTES: Okay.

18 WITNESS BOUREZ: When we applied a 50 percent  
19 and 40 percent unimpaired flow requirement, we applied  
20 that to Delta outflow and to Sacramento River Basin  
21 inflow to the Delta. And that Sacramento River Basin  
22 inflow to the Delta included the Yolo Bypass flow into  
23 the Delta and the Sacramento River at Freeport.

24 When we apply the 50 percent unimpaired flow  
25 to both the Sacramento River at those locations, and

1 the Delta, the Sacramento River tends to be above the  
2 50 percent almost all the time, and there's only a few  
3 times that it would control and require more water to  
4 meet 50 percent of the Sac River than meeting  
5 50 percent in the Delta.

6 MR. SHUTES: Thank you.

7 Your modeling in 2011 did not simulate, and  
8 the analysis did not include, a North Delta diversion;  
9 did it?

10 WITNESS BOUREZ: It did not.

11 MR. SHUTES: And the water supply impacts you  
12 discuss in SVWU-404 do not account for any potential  
13 water supply benefit of a North Delta diversion; do  
14 they?

15 MR. BEZERRA: I'm going to object as vague and  
16 ambiguous.

17 Water supply impacts could apply throughout  
18 the system. I think Mr. Shutes is asking about  
19 exports, but it's vague and ambiguous as it stands now.

20 MR. SHUTES: I believe Mr. Bourez analyzed  
21 water supply impacts, and he uses that term both in 404  
22 and following up in 402.

23 And he can answer the question as he  
24 understands it from his testimony in 402. I think that  
25 would be appropriate.

1 CO-HEARING OFFICER DODUC: Mr. Bourez, are you  
2 able to answer or do you need more specificity?

3 WITNESS BOUREZ: I think the answer's pretty  
4 easy.

5 In 2011, in the work we did, it's  
6 reconnaissance level work that did not consider the  
7 California WaterFix.

8 MR. SHUTES: Thank you.

9 Mr. Bourez, in conducting your analysis for  
10 SVWU-404, you did not model or analyze any modification  
11 of the percent of unimpaired flow requirement in  
12 critically dry years or dry-year sequences; did you?

13 WITNESS BOUREZ: We did not. We applied that  
14 in every year.

15 MR. SHUTES: And such modification would be  
16 possible; would it not?

17 WITNESS BOUREZ: I think -- Yeah, many  
18 modifications would be possible.

19 MR. SHUTES: Fair enough.

20 WITNESS BOUREZ: Even including no outflow at  
21 all is possible.

22 MR. SHUTES: Fair enough.

23 Mr. Bourez, you state at the bottom of Page 13  
24 of SVWU-402 regarding modeling for the Incidental Take  
25 Permit for California WaterFix that there is

1 uncertainty regarding how Delta Outflow Criteria  
2 contained in the ITP will be interpreted, operated to  
3 and enforced.

4 Do you recall that?

5 WITNESS BOUREZ: Can we pull up that -- Please  
6 pull up that quote.

7 (Exhibit displayed on screen.)

8 MR. BEZERRA: Mr. Shutes, just clarification  
9 here:

10 Are you talking about the bottom of 13; is  
11 that correct?

12 MR. SHUTES: I believe so. Let's see.

13 (Exhibit displayed on screen.)

14 MR. SHUTES: Yes, last sentence.

15 WITNESS BOUREZ: Yeah. Please repeat the  
16 question. I'm sorry.

17 MR. SHUTES: First, simply, do you recall your  
18 statement that there is uncertainty regarding Delta --  
19 how Delta Outflow Criteria contained in the ITP will be  
20 interpreted, operated to, and enforced?

21 WITNESS BOUREZ: Yes. And I -- If you would  
22 like, I'll explain now why we made that statement.

23 MR. SHUTES: I -- I have a different question,  
24 and I think I'd just as soon go on, and you may choose  
25 to elaborate, if you wish.

1           Isn't it also true that there's similar  
2           uncertainty about a potential regulatory requirement to  
3           release a percent of unimpaired flow?

4           MR. BEZERRA:   Objection:   Calls for a legal  
5           conclusion.

6           He's responding to certain proposed terms and  
7           conditions by other parties.

8           CO-HEARING OFFICER DODUC:   And, Mr. Shutes,  
9           would you please repeat the question for me.

10          MR. SHUTES:   Isn't it true that there is  
11          similar uncertainty about any potential regulatory  
12          requirement to release a percent of unimpaired flow?

13          CO-HEARING OFFICER DODUC:   And when you say  
14          "uncertainty," what do you mean.

15          MR. SHUTES:   I'm discussing the uncertainty  
16          that he mentions in -- at the bottom of Page 13  
17          regarding how Delta Flow Criteria would be -- in the  
18          ITP would be interpreted --

19          CO-HEARING OFFICER DODUC:   So --

20          MR. SHUTES:   -- operated to and enforced.

21          CO-HEARING OFFICER DODUC:   I think it's a  
22          simple question.

23          Does that apply to potentially other criteria  
24          in the requirements?

25          MS. NIKKEL:   Can I make an objection on the

1 basis that that's outside the scope of Mr. Bourez's  
2 rebuttal testimony.

3 He's testifying here about the Incidental Take  
4 Permit and, in the unimpaired flow context, he's  
5 responding to proposed terms and conditions, not  
6 generally regulatory uncertainty that's out there, so  
7 it's outside the scope of his rebuttal testimony.

8 CO-HEARING OFFICER DODUC: All right. I'm  
9 going to have to sustain that.

10 MR. SHUTES: Could I respond before you  
11 sustain it?

12 CO-HEARING OFFICER DODUC: Okay. Okay. So  
13 you'll make the linkage, then, Mr. Shutes, or you're  
14 trying to.

15 MR. SHUTES: Yes. I think that, generally,  
16 Mr. Bourez's testimony goes to how modeling is  
17 performed in the -- of the CVP and SWP and that, in  
18 pointing out the uncertainty regarding one of the --  
19 the application of one requirement, it also calls into  
20 question of whether any requirement will have a certain  
21 level of uncertainty.

22 CO-HEARING OFFICER DODUC: I will allow you  
23 the question if this does not mean that you're going to  
24 open the door asking questions about those other  
25 requirements because that would be outside the scope,

1 definitely.

2 MR. SHUTES: Not going to do that.

3 CO-HEARING OFFICER DODUC: All right. So I  
4 regard this, as I first thought, as a pretty general  
5 question.

6 Mr. Bourez, if you're able to answer whether  
7 or not the uncertainty associated in your -- the  
8 uncertainty discussed in your testimony would apply to  
9 other criteria requirements regardless of where they  
10 came from.

11 WITNESS BOUREZ: Okay. I think there's a  
12 difference here, because when we were looking at this,  
13 the Incidental Take Permit has Permit terms in it.

14 And there's a clarification letter, and we're  
15 not re -- and those, I think, are a bit more certain  
16 for the WaterFix than an unimpaired flow criteria or  
17 other criteria.

18 What we're testifying on here is the  
19 Incidental Take Permit criteria for spring flow. And  
20 the uncertainty that we were struggling with is the  
21 clarification letter and whether the clarification  
22 letter is what will be operated to or the actual  
23 Incidental Take Permit itself. And are there going to  
24 be other clarification letters in the future?

25 CO-HEARING OFFICER DODUC: So the uncertainty

1 that you discuss is the uncertainty specific to the ITP  
2 in the clarification letter.

3 WITNESS BOUREZ: That is correct, not other  
4 criteria.

5 CO-HEARING OFFICER DODUC: Got it. Okay.

6 MR. SHUTES: That's fine. We'll move on.

7 Mr. Bourez, I call your attention to Exhibit  
8 SVWU-404.

9 And I'd like to pull up, please, .pdf Page 44  
10 and the top of .pdf Page 45.

11 (Exhibit displayed on screen.)

12 MR. SHUTES: And can you scroll up some,  
13 please.

14 (Scrolling through document.)

15 MR. SHUTES: Yes, that's fine.

16 Mr. Bourez, you state in these -- in this  
17 passage -- and, actually, if you scroll down a little,  
18 it would be good if he could see a little farther down.

19 Down through -- I'm specifying looking at the  
20 last paragraph down through where it says "such  
21 requirements."

22 Do you see that?

23 (Pause in proceedings.)

24 MR. BEZERRA: Mr. Shutes, just for clarity:  
25 You're talking about the sentence that begins "for this



1 reason" to be more accurately -- to more accurately --

2 MR. SHUTES: Correct, down through that  
3 sentence.

4 Mr. Bourez, you say that these scenarios are  
5 far beyond what CalSim was designed to evaluate;  
6 correct?

7 WITNESS BOUREZ: Yeah. CalSim is not designed  
8 to change land use within the Sacramento Valley or the  
9 San Joaquin Valley.

10 MR. SHUTES: And you know the model impacts  
11 are not the way the CVP and SWP would actually be  
12 operated; is that also correct?

13 WITNESS BOUREZ: No model is exactly the way  
14 that the Projects will be operated.

15 I would like to point out that we state very  
16 clearly in this analysis that this is a reconnaissance  
17 level analysis to get an idea of what the effects would  
18 be. It's not an operations analysis. It's not a real  
19 detailed analysis to -- to pin down every impact of the  
20 Delta Flow Criteria.

21 When we modeled it, the magnitude of change  
22 is -- and flow regime changes are what we were trying  
23 to estimate.

24 And for that purpose, I believe that the  
25 modeling is adequate to -- to look at very detailed

1 land use changes and many other changes. It's -- That  
2 wasn't the intended purpose of this model.

3 MR. SHUTES: Very good. Thank you. Didn't  
4 suggest that it was.

5 Did you conduct the in-basin depletion  
6 analysis you discuss in this paragraph?

7 WITNESS BOUREZ: I have performed numerous  
8 in-basin completion analysis for the past 30 years.  
9 That was how I started my career, looking at in-basin  
10 depletion analysis.

11 And we developed a large partial -- a large  
12 part of the CalSim depletions and have developed that  
13 analysis.

14 MR. SHUTES: My question really went to  
15 whether you had done an analysis such as that you  
16 describe in the last sentence of this paragraph -- of  
17 this section that starts (reading):

18 "For this reason, to more accurately  
19 model the effects of such requirements, a  
20 new in-basin depletion analysis would  
21 need to be constructed."

22 And my question is: Did you conduct this  
23 particular in-basin depletion analysis?

24 WITNESS BOUREZ: No, we did not.

25 MR. SHUTES: Thank you.

1 Back to SVWU-402.

2 (Exhibit displayed on screen.)

3 MR. SHUTES: Could we please look at the last  
4 two sentences of the first full paragraph on Page 13.

5 (Exhibit displayed on screen.)

6 MR. SHUTES: Mr. Bourez, you state that  
7 modeling -- the modeling of the ITP requirement should  
8 include the ability to meet the spring outflow target  
9 by means other than reducing exports to 1500 cfs; is  
10 that correct?

11 WITNESS BOUREZ: That's correct.

12 MR. SHUTES: What would be the benefits of  
13 doing that for the purposes of this hearing?

14 WITNESS BOUREZ: The -- The -- It would help  
15 us to understand the impacts of meeting that criteria,  
16 whether that's changes in reservoir operations or  
17 effects to instream flow and habitat, as well as  
18 impacts to water users.

19 MR. SHUTES: And -- And isn't it true,  
20 Mr. Bourez, that actual operations would still be  
21 different than the modeling even if the modeling  
22 included such additional analysis?

23 WITNESS BOUREZ: Actual operations will always  
24 be different than the modeling.

25 But the modeling can give you insight as to

1 what the effects may be, and that's the intent of the  
2 modeling. So it would have to be performed in a -- in  
3 a manner which you can understand what those effects  
4 would be and mitigate them.

5 MR. SHUTES: Thank you.

6 Would it be possible to create constraints  
7 that avoided the potential consequences of such  
8 additional means to meet outflow requirements?

9 WITNESS BOUREZ: If you could be more specific  
10 on the outflow requirements that you're referring to.  
11 Is this the spring outflow requirement?

12 MR. SHUTES: The ITP spring outflow  
13 requirements, March through May.

14 WITNESS BOUREZ: I think it is possible to  
15 develop constraints to avoid those impacts.

16 MR. SHUTES: Thank you.

17 In your opinion, is The Water Forum's proposed  
18 modified outflow standard for Folsom Reservoir one  
19 potential part of one of those potential constraints?

20 MR. BEZERRA: I'm going to object as beyond  
21 the scope of his rebuttal testimony.

22 CO-HEARING OFFICER DODUC: Mr. Shutes, unless  
23 you can show me where it is in his testimony, or make  
24 the linkage . . .

25 (Pause in proceedings.)

1 MR. SHUTES: I'm trying to get at Mr. Bourez's  
2 understanding with his expertise of the type of  
3 constraint that could be placed on the Project to avoid  
4 some of the concerns that Mr. Bourez and his -- his  
5 group have expressed.

6 And my question goes to a specific -- trying  
7 to make it more specific as opposed to a more general  
8 statement simply that constraints can be placed.

9 I want to know if this would be an example.

10 CO-HEARING OFFICER DODUC: But the example  
11 that you're asking him about is outside the scope of  
12 his rebuttal testimony.

13 Does he mention the modified flow?

14 MR. BEZERRA: No. In this section of his  
15 testimony, all Mr. Bourez and Dr. Shankar are doing is  
16 identifying the -- in the modeling how the ITP outflow  
17 criteria are not met. There's nothing in here about  
18 what you might do in response to that problem.

19 MR. SHUTES: That's okay. I'll move on.

20 Could we please turn to Page 7 of SVWU-402.

21 (Exhibit displayed on screen.)

22 MR. SHUTES: And I'm looking specifically at  
23 Section 4 entitled (reading):

24 "CalSim . . . does not address  
25 effects on many types of water users."

1           Mr. Bourez, in the first paragraph of this  
2 section, you state that (reading):

3           ". . . CVP and SWP Settlement Contractor  
4 deliveries . . . are 'hard coded . . .'"

5           Correct?

6           WITNESS BOUREZ: That's correct.

7           MR. SHUTES: Where does the model deliver  
8 those settlement contract deliveries?

9                         (Pause in proceedings.)

10           WITNESS BOUREZ: Can you restate your  
11 question?

12           So where in the model grid, if you will --

13           MR. SHUTES: Correct.

14           WITNESS BOUREZ: -- are those diversions?

15           MR. SHUTES: Yes.

16           WITNESS BOUREZ: They're at numerous locations  
17 on the Sacramento River and the Feather River.

18           They're also with the Exchange Contractors on  
19 the San Joaquin River, Refuges in the San Joaquin  
20 Basin.

21           There's also non-Project users in the Delta,  
22 and on numerous tributaries throughout the CVP -- or  
23 throughout the Bay-Delta watershed.

24           MR. SHUTES: Speaking specifically of the  
25 North-of-Delta CVP and SWP Settlement Contractors, if

1 they were to transfer water South of Delta, would that  
2 water show up in the model as moving South of Delta or  
3 would it still show up as being delivered North of  
4 Delta?

5 WITNESS BOUREZ: If modeled properly, it would  
6 be shown as not being diverted in the Sacramento Basin  
7 and moving through the Delta and exported.

8 MR. SHUTES: And in modeling that you  
9 performed, how do you, briefly, go about assuring that  
10 transfer water is actually shown as -- and appears as  
11 being exported and as not being delivered North of  
12 Delta?

13 MS. NIKKEL: I'm going to object both as to  
14 vague and ambiguous.

15 Modeling that you perform is very general for  
16 a professional Modeler. And also, it's outside the  
17 scope of the testimony. I don't understand how we're  
18 talking about transfer water at this point.

19 MR. SHUTES: Part of the issue that Mr. Bourez  
20 raises in this section, first paragraph of Page 4  
21 (sic), has to do with differences between --

22 CO-HEARING OFFICER DODUC: I'm sorry. Why did  
23 we move this section. Hold on. I was reading  
24 Mr. Bourez's testimony.

25 MS. NIKKEL: Can you -- Can you restate the

1 reference you just talked -- you just mentioned,  
2 Mr. Shutes? I missed it.

3 MR. SHUTES: Yes. It's the first paragraph  
4 under Section 4.

5 MS. NIKKEL: Oh, same paragraph.

6 MR. SHUTES: Same paragraph.

7 MS. NIKKEL: Sorry.

8 MR. SHUTES: Yes.

9 And the purpose, as I understand it, of this  
10 paragraph is to describe some of the . . . differences  
11 between what actually happens with deliveries to the --  
12 to certain types of Contractors and what the model  
13 does.

14 And I am -- I am looking at another potential  
15 discrepancy between what the model does and what  
16 actually happens, and that goes to effects not only on  
17 water users but effects to instream actions.

18 CO-HEARING OFFICER DODUC: And that is outside  
19 the scope of his rebuttal testimony.

20 Unless, Mr. Bourez, your intent of your  
21 testimony regarding many types of water users to also  
22 include water transfers.

23 WITNESS BOUREZ: It does not include water  
24 transfers in this statement.

25 CO-HEARING OFFICER DODUC: It does not.



1 MR. SHUTES: Thank you.

2 That's all I have.

3 CO-HEARING OFFICER DODUC: Thank you,  
4 Mr. Shutes.

5 Let's go ahead and take our morning break.  
6 When we return, we'll have Miss Des Jardins for 45  
7 minutes, and Miss Wehr, hopefully, who will return for  
8 15 minutes, and then we'll ask about any redirect.

9 But we will return at 11:15.

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

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

12 CO-HEARING OFFICER DODUC: All right. It is  
13 11:15. We're resuming.

14 And before I turn to Miss Des Jardins, a  
15 heads-up to everyone that, when we -- when we reconvene  
16 after lunch, I'm going to want to do a little bit of  
17 time estimates.

18 So, I am looking at, right now, the Order of  
19 Presentation, and I'm looking at Local -- Actually,  
20 this would be -- In sixth position is 19, 24 and 25,  
21 LAND, Sac County, and San Joaquin County. They will be  
22 up tomorrow.

23 So I'll be needing cross-examination estimates  
24 not only for that group but also the group of hearing  
25 seventh, which would be South Delta, Mr. Burke; also

1 eighth, Mr. Michael; ninth, Dr. Denton; 10th, which is  
2 the Save the California Delta Alliance Rebuttal; 11th,  
3 which would be Tim Stroshane and Brandon Nakagawa  
4 from -- I believe it's County of San Joaquin; 12th,  
5 CSPA; 13th, Miss Des Jardins; 14th, PCFFA and LAND.

6 I want to see if we can at least estimate  
7 whether we'll get to those groups Thursday and Friday.  
8 That will depend a lot on the cross-examination  
9 requests.

10 So I want to do a time check when we return  
11 from lunch.

12 If things continue to go smoothly, I'll give  
13 you an extra -- well, extra bit of time during lunch to  
14 either go to the Farmers' Market or to focus on giving  
15 me cross-examination estimates.

16 All right. And for those who are not here,  
17 please e-mail the California WaterFix hearing e-mail  
18 with your time estimates for cross-examination of those  
19 parties that I just read out.

20 So that would be parties in sixth place in the  
21 order of testimony through 14th.

22 With that, Miss Des Jardins.

23 MS. DES JARDINS: Thank you.

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CROSS-EXAMINATION BY

MS. DES JARDINS: Good morning, Mr. Bourez.  
Thank you for being here.

My name is Dierdre Des Jardins with California  
Water Research.

And, first, I had a followup question with  
respect to your statement that the Proposed Modified  
Flow Management Standard could affect Sacramento  
Settlement Contractors.

Wouldn't CVP exports be reduced before  
deliveries to Settlement Contractors were reduced?

MS. NIKKEL: Objection: I think this goes  
outside the scope of Mr. Bourez's testimony.

I don't believe there was testimony regarding  
the Modified FMS generally but, more specifically,  
particular requirements within it.

CO-HEARING OFFICER DODUC: Yes. We went  
through that with Mr. Shutes.

MS. DES JARDINS: I can read back the record.  
There was a statement just now in response to  
cross-examination.

CO-HEARING OFFICER DODUC: Yes, which we --  
which was objected to and which I sustained.

MS. DES JARDINS: No, no. By the State Water  
Contractors. He -- Mr. Bourez made -- testified in

1 response to that cross-examination --

2 CO-HEARING OFFICER DODUC: I don't --

3 MS. DES JARDINS: -- on the Modified Flow  
4 Management Standard could affect Sacramento Settlement  
5 Contractors.

6 To the extent that he provided that testimony,  
7 for the record, I'd like to be able to follow up on it.

8 CO-HEARING OFFICER DODUC: Mr. Bourez, do you  
9 recall?

10 WITNESS BOUREZ: I don't recall specifically  
11 responding to the Modified FMS or carryover in the  
12 Modified FMS.

13 I did respond to hypotheticals regarding  
14 changes in carryover targets at Trinity, Shasta,  
15 Oroville and Folsom.

16 CO-HEARING OFFICER DODUC: Correct.

17 MS. DES JARDINS: So, changes in carryover  
18 storage at Folsom could potentially affect the  
19 Sacramento Settlement Contractors? Was that the  
20 opinion that you expressed?

21 CO-HEARING OFFICER DODUC: Mr. Bezerra.

22 MR. BEZERRA: Yeah. I'm going to object as an  
23 incomplete hypothetical.

24 It depends on what the carryover storage  
25 requirements would be, and it depends on what the

1 operations would be in response. And so there's a wide  
2 variety of assumptions that are embedded in that  
3 question.

4 And so it's an incomplete hypothetical and  
5 it's beyond the scope of rebuttal.

6 CO-HEARING OFFICER DODUC: Miss Des Jardins,  
7 could you narrow that to something --

8 MS. DES JARDINS: Well, I believe I had a  
9 specific reservoir -- I wanted to ask him about a  
10 specific reservoir, and he expressed an opinion  
11 that . . . that mandatory carryover storage target  
12 could potentially affect . . .

13 My question was: If -- If a mandatory  
14 carryover storage target -- If a standard -- carryover  
15 storage target at Folsom, could that -- could that  
16 potentially be addressed by modifying CVP exports?

17 CO-HEARING OFFICER DODUC: I'm sorry. We're  
18 all being distracted by this buzzing noise.

19 Someone is sawing through the wall, I think.

20 Okay.

21 MS. DES JARDINS: Mr. Bourez, with re -- I  
22 just wanted to ask with respect to specific reservoirs.

23 With respect to Folsom Reservoir, couldn't CVP  
24 exports be adjusted as needed before -- before  
25 affecting other reservoirs?

1 MS. NIKKEL: I'd like to renew my objection  
2 that this is outside the scope of Mr. Bourez's  
3 testimony, which he just clarified regarding carryover  
4 storage targets, and related to his testimony regarding  
5 flow -- Delta flow.

6 I don't see how operational changes regarding  
7 exports and meeting other demands of the system is  
8 related.

9 CO-HEARING OFFICER DODUC: Sustained.

10 MS. DES JARDINS: Okay. Mr. Bourez did have  
11 specific testimony on Oroville carryover storage  
12 targets and potential effects. I just -- and also  
13 other carryover storage targets.

14 I'd just like to be able to ask followup  
15 questions, and if there's some guidance on how I might  
16 be able to formulate those questions.

17 CO-HEARING OFFICER DODUC: Ask your question  
18 and we'll see whether there are any objections or if  
19 Mr. Bourez is able to answer.

20 MS. DES JARDINS: Okay. So, you stated that  
21 Oroville carryover storage targets could potentially --  
22 You testified that Oroville carryover storage targets  
23 could potentially affect CVP/SWP balance.

24 Do you recall that?

25 MR. BEZERRA: I'm going to object: This is --

1 This is questioning following -- building on previous  
2 cross. It's outside the scope of his actual rebuttal  
3 testimony.

4 I mean, if there's something in the rebuttal  
5 testimony that this is based on, we should look at that  
6 so that Mr. Bourez can answer based on that.

7 CO-HEARING OFFICER DODUC: I'm trying to still  
8 understand Miss Des Jardins' question. So, in order to  
9 rule on the objection, I need to first understand the  
10 question.

11 MS. DES JARDINS: Well, it was just he had  
12 testified -- Did he testify previous -- You know, my  
13 understanding is that cross -- testimony elicited on  
14 cross-examination is rebuttal testimony that's in the  
15 record.

16 I just wanted to ask a clarifying question  
17 about that testimony. And --

18 CO-HEARING OFFICER DODUC: You -- Okay. I'm  
19 trying to understand now.

20 Yes, you may ask questions based on cross, but  
21 it still does not mean that you can expand the scope  
22 beyond what's appropriate in rebuttal.

23 MS. DES JARDINS: Yes.

24 Well, he did state --

25 Did you not state that Oroville carry -- on

1 cross that Oroville carryover storage targets could  
2 affect CVP/SWP balance?

3 WITNESS BOUREZ: It -- It would be helpful  
4 to -- If I could trouble the court reporter to read  
5 that exact quote so I know what to respond to, because  
6 I'm not clear I understand the question, or what I  
7 responded.

8 MS. DES JARDINS: Yeah. Well --

9 CO-HEARING OFFICER DODUC: Mr. Bourez --  
10 If the witness cannot answer, then we need to  
11 move on.

12 MS. DES JARDINS: Well, I would like to object  
13 to the extent that I'm just trying to ask questions  
14 about an answer that he just made. And to the extent  
15 I'm not able to ask followup questions because --

16 CO-HEARING OFFICER DODUC: The objection,  
17 Miss Des Jardins, is that your followup question goes  
18 beyond the scope of his rebuttal testimony.

19 MS. DES JARDINS: I actually just asked -- was  
20 trying to clarify whether he made that statement --  
21 just made that statement in his rebuttal testimony.  
22 And it was --

23 CO-HEARING OFFICER DODUC: And,  
24 Miss Des Jardins, he answered he cannot answer -- I  
25 mean, he doesn't recall it; he cannot answer.



1 MS. DES JARDINS: Okay. Oh, I would like to  
2 lodge an objection that --

3 CO-HEARING OFFICER DODUC: You're going to  
4 force him to answer?

5 MS. DES JARDINS: -- that I'm not able to ask  
6 followup questions on the statements he just made  
7 because of Mr. Bourez's difficulty in recalling the  
8 statements that he just made.

9 But I can go on.

10 So, Mr. Bourez, I'd like to go to your  
11 statement on SVWU-402, Page 5.

12 (Exhibit displayed on screen.)

13 MS. DES JARDINS: Down at the bottom.

14 (Scrolling through document.)

15 MS. DES JARDINS: You state that -- that  
16 (reading):

17 "CWF H3+ Model includes artificial  
18 limits on the modeled use of joint point  
19 of diversion."

20 And . . . I wanted to ask you about the -- the  
21 relationship to the documentation of modeling  
22 assumptions by the Petitioners.

23 And if we could pull up the Final EIR/EIS -- I  
24 believe you can identify the assumption -- Chapter 5.A.

25 That's SWRCB-102.

1 (Exhibit displayed on screen.)

2 MS. DES JARDINS: (Reading):

3 "Appendix 5A.

4 "Section B: CalSim II and DSM-2  
5 Modeling Simulations and Assumptions."

6 (Exhibit displayed on screen.)

7 MS. DES JARDINS: And I'd like to go to  
8 Page 160.

9 (Exhibit displayed on screen.)

10 MS. DES JARDINS: And if we could scroll in to  
11 where it says (reading):

12 "CVP-SWP Coordinated Operations."

13 (Exhibit displayed on screen.)

14 MS. DES JARDINS: Mr. Bourez, are you familiar  
15 with this table?

16 WITNESS BOUREZ: I have looked at it quite  
17 awhile ago, so I'm somewhat familiar with it. I don't  
18 have it memorized.

19 MS. DES JARDINS: Okay. Well, that was why I  
20 brought it up.

21 I'm just wondering if -- It mentions  
22 (reading):

23 "Sharing of total allowable export  
24 capacity for project-specific priority  
25 pumping."

1 And then mentions (reading):

2 "Equal sharing of export capacity  
3 under SWRCB D-1641" at the "FWS BO . . .  
4 NMFS BO . . . export restrictions."

5 Do you see that?

6 WITNESS BOUREZ: Yes, I do.

7 MS. DES JARDINS: And let's scroll over to --  
8 to . . . Scroll over to the right, please.

9 (Scrolling through document.)

10 MS. DES JARDINS: And it says -- This category  
11 in the center is for the model.

12 Is this the general -- Is -- Is this sharing  
13 of export capacity assumption, is this what you're  
14 referring to in "artificial limits on the use of joint  
15 point of diversion"?

16 MR. BEZERRA: Could we scroll to the top of  
17 the table so Mr. Bourez --

18 MS. DES JARDINS: Yeah. I'm sorry. Yes.

19 MR. BEZERRA: -- can see the column.

20 MS. DES JARDINS: Scroll up to the top.

21 (Scrolling through document.)

22 MS. DES JARDINS: Yeah. This is for -- This  
23 is for -- Well, first, Mr. Bourez, these were  
24 assumptions for the Alternative 4 scenario; correct?

25 WITNESS BOUREZ: It appears that -- that those

1 export constraints and sharing of exports under the  
2 D-1641 EI ratio, the OMR constraints under the Smelt  
3 BiOp, and the export constraints under the Fish and  
4 Wildlife Service BiOp percent for April-May are shared  
5 equally amongst the CVP and SWP for South Delta  
6 diversions.

7 That is different than sharing a joint point  
8 of diversion, which occurs in a different season than  
9 the springtime.

10 MS. DES JARDINS: So, when -- Considering  
11 sharing of joint point diversion under D-1641, was that  
12 documented in this table anywhere?

13 Is it in the previous modeling? Is it  
14 something that's been carried forward?

15 MR. BEZERRA: And I'm going to object as both  
16 vague and ambiguous.

17 As I understand it, this is an appendix to the  
18 Final EIR.

19 And my --

20 MS. DES JARDINS: I -- I'm --

21 MR. BEZERRA: Hold -- Hold on.

22 My understanding also is that the modeling in  
23 the Final EIR is different than the CWF H3+ modeling.

24 So to the extent we're talking about modeling  
25 assumptions for the Final EIR, they're not necessarily

1 the same modeling assumptions for CWF H3+ because it's  
2 two different model runs.

3 CO-HEARING OFFICER DODUC: And was the  
4 modeling for CWF H3+ which is the focus of your  
5 rebuttal testimony?

6 WITNESS BOUREZ: That's correct.

7 CO-HEARING OFFICER DODUC: All right.

8 MS. DES JARDINS: I'm just-- Since this is the  
9 only table anywhere of all the modeling assumptions, I  
10 was just trying to . . .

11 So -- So this assumption in the CWF H3+, the  
12 artificial limits, is that a -- Is -- Are those  
13 artificial limits new to the H3+ scenario?

14 WITNESS BOUREZ: No. Our testimony refers to  
15 the USBR/DWR California WaterFix BA modeling scenario,  
16 as well as the H3+ scenario.

17 MS. DES JARDINS: And -- And in both those  
18 scenarios, was the artificial limits on use of joint  
19 point of diversion, was that new to those models? Was  
20 that different than prior modeling?

21 WITNESS BOUREZ: Our -- Our statement is in  
22 reference to the California WaterFix scenario that has  
23 both the North Delta diversion and the South Delta  
24 diversion.

25 MS. DES JARDINS: But I meant, was it new

1 to -- There's been a sequence of modeling for the --  
2 for the WaterFix.

3 Is it new to the modeling -- Is it new to the  
4 BA H3+ and CWF H3+ scenario modeling for the  
5 WaterFix -- for the joint -- to North Delta and South  
6 Delta diversions?

7 WITNESS BOUREZ: I have to ask: Is that new  
8 relative to what modeling?

9 MS. DES JARDINS: To H3 and H4.

10 WITNESS BOUREZ: I'm not sure which one went  
11 first -- or -- I can't -- I don't recall what was in  
12 the Final EIS/EIR and --

13 MS. DES JARDINS: Okay.

14 WITNESS BOUREZ: -- I'd have to go and look at  
15 that modeling to determine what the differences are.

16 MS. DES JARDINS: Okay. So -- So . . . the  
17 artificial limits on the joint point of diversion,  
18 what -- what component of the model are those limits  
19 in?

20 WITNESS BOUREZ: They're referring to the  
21 joint point of diversion, but the . . .

22 The use of, say, State facilities to convey  
23 CVP water through the Delta and -- and export that  
24 water, or vice versa, would be the use of CVP  
25 facilities to move State Water Project water through

1 Federal facilities, because joint point.

2 MS. DES JARDINS: Yeah. I know operationally  
3 what it's simulating.

4 I'm just wondering what module in the CalSim  
5 model.

6 WITNESS BOUREZ: I don't recall which file the  
7 code is in. There's literally hundreds of files. I'd  
8 have to look for it.

9 MS. DES JARDINS: Okay. Thank you.

10 So, in your opinion, has the use of joint  
11 point -- has the potential use of joint point been  
12 adequately evaluated by the CWF H3+ modeling?

13 WITNESS BOUREZ: As our testimony states, we  
14 believe there's an artificial limit where the CVP does  
15 not have access to unused base capacity during  
16 times . . . when it would be available.

17 There's times where -- As our testimony  
18 states, there's high storage in upstream CVP  
19 reservoirs, and there's unused capacity at the North  
20 Delta diversion, and Banks, while CVP may be at full  
21 capacity.

22 And in the California Fix -- WaterFix H3+  
23 modeling, and in the BA modeling, the model's set up to  
24 prevent full -- full use of that joint point of  
25 diversion.

1           And, that, again, is a discretionary operating  
2 criteria.

3                           (Pause in proceedings.)

4           MS. DES JARDINS: Do you have any knowledge  
5 of . . . what -- so -- of whether that is actually  
6 proposed -- that limit is actually proposed to be  
7 included in the operations?

8           WITNESS BOUREZ: I don't, whether -- I don't  
9 have knowledge whether it will be or won't be. It's  
10 included in the operation. It's, again, a  
11 discretionary action and it depends on the coordinated  
12 operation of the Projects.

13           MS. DES JARDINS: So, I wanted to . . . go  
14 back to the -- Does the CWF H3+ modeling, would you say  
15 that it implements the current Coordinated Operating  
16 Agreement of 55 percent unimpaired flow to CVP and  
17 45 percent to SWP?

18           WITNESS BOUREZ: Those percentages do not  
19 refer to unimpaired flow.

20           MS. DES JARDINS: I mean -- I mean -- not --  
21 of unstored -- unstored flow. Apologies.

22           WITNESS BOUREZ: So the Coordinated Operating  
23 Agreement refers to a 55 percent/45 percent for the CVP  
24 and SWP respectively of unstored water that is  
25 available for export, and that's . . .



1 MS. DES JARDINS: So, does the modeling  
2 implement that but only to the -- but not to the extent  
3 that there's unused Banks capacity that might be used  
4 by the CVP to export the export from?

5 WITNESS BOUREZ: The -- That percentages in  
6 the Coordinated Operating Agreement do not refer to  
7 exports alone.

8 That refers to the State and Federal share of  
9 that water, and what the Projects do with their share  
10 is up to their ability to operate to that. Whether  
11 they store that in upstream reservoirs or export it is  
12 up to their discretion.

13 (Pause in proceedings.)

14 MS. DES JARDINS: So, again, trying to  
15 understand.

16 I also wanted -- Do you know if there are any  
17 limits on assumptions about Article 21 water or surplus  
18 water for the State Water Project and the CWF H3+  
19 model?

20 MR. BEZERRA: I think this is beyond the scope  
21 of the rebuttal. I don't believe Mr. Bourez talks  
22 about Article 21 water. He talks simply about  
23 continuation of modeling issues from one model to  
24 another.

25 MS. DES JARDINS: Yeah. I just wanted to ask

1 about if -- In relation to Question 1, it says, DWR --  
2 the (reading):

3 "CWF H3+ model does not consider the  
4 additional capacity that would be made  
5 available by the North Delta diversion  
6 when . . . modeling allocations to  
7 South-of-Delta CVP and SWP Contractors."

8 So -- So maybe I should -- I need to ask some  
9 clarifying questions.

10 So -- So, on Part 1, you state that . . .  
11 that . . . the . . . the export estimates used in  
12 CalSim II to calculate SWP Table A contract allocations  
13 are set to those in the BA NAA.

14 Is that just Table A or is it Table A and  
15 Article 21?

16 WITNESS BOUREZ: That is only Table A.  
17 Article 21 is a delivery of surplus water.

18 And just for clarification: Article 21 is  
19 delivered when there's three conditions:

20 One, there's demand for water --

21 CO-HEARING OFFICER DODUC: And isn't it  
22 outside the scope of your rebuttal testimony?

23 WITNESS BOUREZ: Yes, it is.

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

1 MS. DES JARDINS: Okay. Thank you.

2 So you're referring to Table A.

3 So -- So, the Table A -- So you -- so when you  
4 say that the Table A contract -- So -- So in the  
5 modeling for CWF H3+, you're saying that it is  
6 artificially constrained Table A allocations to the  
7 NAA?

8 WITNESS BOUREZ: It artificially constrains  
9 our allocations in the H3+ model.

10 MS. DES JARDINS: 2008 No-Action Alternative.

11 WITNESS BOUREZ: Not to those in the No-Action  
12 Alternative.

13 MS. DES JARDINS: How -- How does it  
14 artificially constrain them?

15 WITNESS BOUREZ: The California WaterFix  
16 improves the ability to convey water from North of  
17 Delta to South of Delta.

18 It also improves the ability to take excess  
19 water out of the system.

20 And when that water is exported in June or  
21 July, August, that additional export capability beyond  
22 the No-Action Alternative will only be allocated if the  
23 model export estimate is increased or recognizes.

24 So that water is exported in June, and then  
25 it's not recognized in allocation procedure; therefore,

1 it's not allocated in that year.

2 So the result of that is an export because of  
3 the flexibility that the North Delta diversion offers  
4 to operations, and it's not allocated.

5 And that -- If it were to be allocated, we'd  
6 have a different operation of the CVP/SWP system. That  
7 is -- That is what we refer to when it's artificially  
8 constrained.

9 MS. DES JARDINS: And aren't June, July and  
10 August the months that you refer to, the months in  
11 which exports are -- are -- require significant  
12 reservoir releases?

13 WITNESS BOUREZ: It depends on the hydrology.

14 In -- In some cases, there is excess flows in  
15 the system in June that can be exported.

16 Other times, June may be in a balanced  
17 condition and the additional export capacity would  
18 allow for conveyance of stored water.

19 So it depends on the hydrology whether it's  
20 excess or release of stored water.

21 MS. DES JARDINS: But isn't -- Aren't  
22 conditions generally balanced in July and August?

23 WITNESS BOUREZ: In July and August, yes.

24 June, I would say about 50 percent of the time  
25 are excess and 50 percent in balanced.

1 MS. DES JARDINS: And -- And June -- June --  
2 And are June flows driven by -- partly by snowmelt?

3 WITNESS BOUREZ: There's a combination in --  
4 in June.

5 It depends on the hydrology. So if we have  
6 late rains, a lot of times the femoral streams and  
7 smaller streams within the Sac Valley will continue to  
8 flow from groundwater contribution, you know, the  
9 rainfall runoff. It doesn't just come out when it  
10 rains. It takes awhile. Soaks in the soil and comes  
11 out slowly at times.

12 Sometimes we have rain in June and snowmelt is  
13 typically captured in our major reservoirs, so that's  
14 not necessarily contributing to that excess, and it  
15 depends on reservoir conditions.

16 There's an awful lot of factors here.

17 So, you know, the bottom line is, about half  
18 the time we're in a condition in the Delta where we  
19 have excess flow and half the time, it's in a balanced  
20 condition.

21 MS. DES JARDINS: Do -- Do you know if that is  
22 true for the Q5 scenario as well for June?

23 WITNESS BOUREZ: I don't recall. I'd have to  
24 look at it.

25 MS. DES JARDINS: Okay. Thank you.

1           So . . .

2           And I'd also like to ask you with respect to  
3 Page 9 of SVWU-402.

4           (Exhibit displayed on screen.)

5           MS. DES JARDINS: So, you're looking at  
6 combined Delta exports here, and you look at an alpha  
7 deficit; correct?

8           WITNESS BOUREZ: That's correct.

9           MS. DES JARDINS: But doesn't the CVP also  
10 have North-of-Delta ag service deliveries?

11          MS. NIKKEL: Objection: This question calls  
12 for testimony outside the scope of the rebuttal.

13          CO-HEARING OFFICER DODUC: Miss Des Jardins.

14          MS. DES JARDINS: It's just to the extent that  
15 he -- that the testimony is . . . Looking at effects of  
16 spring outflow and whether those -- that outflow  
17 deficits are achievable. I guess he, you know, is  
18 your -- So maybe I should just ask:

19                 So your testimony is limited to just whether  
20 those out -- outflow targets are achievable by  
21 reductions in Delta exports and not -- Correct?

22          WITNESS BOUREZ: That's correct.

23          MS. DES JARDINS: Okay. And not looking at  
24 any up -- upstream contracts of Bureau of Reclamation;  
25 correct?

1 WITNESS BOUREZ: That's correct.

2 MS. DES JARDINS: Okay. That's sufficient.

3 And . . .

4 So, I also had some questions with respect to  
5 SVWU-404.

6 (Exhibit displayed on screen.)

7 MS. DES JARDINS: So, in your modeling of  
8 impact -- reservoir impacts.

9 So, the -- the -- You're -- The CalSim model  
10 determines delivery allocations based on projected  
11 water supply; isn't that correct?

12 MS. NIKKEL: Objection: Vague and ambiguous.  
13 What CalSim modeling assumption are you  
14 talking about?

15 MS. DES JARDINS: I'm talking about the CalSim  
16 modeling used by Mr. Bourez for Exhibit SVWU-404.

17 WITNESS BOUREZ: So CalSim will calculate the  
18 South-of-Delta CVP and SWP allocations based on the  
19 logic in the model.

20 MS. DES JARDINS: And doesn't that model  
21 include projections of water supply for --

22 CO-HEARING OFFICER DODUC: Let me --

23 MS. DES JARDINS: -- the year.

24 CO-HEARING OFFICER DODUC: I'm sorry.

25 Perhaps you could go directly to the question

1 you want to ask specific to Mr. Bourez's testimony.

2 It sounds like you're asking about general  
3 modeling assumptions and operations. And I'm sure this  
4 is laying the foundation for something. Perhaps we can  
5 just go straight to that point.

6 MS. DES JARDINS: Well, it has to do  
7 with . . .

8 Doesn't -- Aren't . . . allocations in the  
9 CalSim model determined and a -- the target allocations  
10 determined in a pre-processing stage before the  
11 optimization?

12 CO-HEARING OFFICER DODUC: And that's another  
13 basic modeling question.

14 Could you tie it specifically to Mr. Bourez's  
15 testimony, his analysis of the modeling DWR did?

16 MS. DES JARDINS: Well, it's -- it's -- it's a  
17 basis of the models of the projected impacts on  
18 carryover storage.

19 So if we could look at, for example, on  
20 Page 23 --

21 (Exhibit displayed on screen.)

22 MS. DES JARDINS: -- of SVWU-404.

23 And I wanted to ask about --

24 Page 23.

25 Oh. I'm not sure what document page that is.



1 That's Page 1 of 10. Looks like he's got a . . .

2 Sorry. I have a printout here.

3 Can you search for "monthly Oroville"?

4 (Exhibit displayed on screen.)

5 MS. DES JARDINS: There it is. Figure 16.

6 So, I just wanted to ask some about the  
7 Oroville Reservoir, how the CalSim model evaluates  
8 impacts on reservoir storage.

9 And . . . what I was attempting to ask was:

10 Does . . . Does the model make target  
11 allocations before doing the optimization?

12 CO-HEARING OFFICER DODUC: Miss Morris.

13 MS. MORRIS: Objection: Outside of rebuttal  
14 testimony.

15 His testimony regarding this document is about  
16 15 percent unimpaired flows, not about CalSim modeling  
17 as it relates to H -- California WaterFix H3+ or export  
18 allocations.

19 CO-HEARING OFFICER DODUC: Miss Des Jardins.

20 MS. DES JARDINS: I believe an offer of proof  
21 that this is a key issue of how the CalSim model  
22 evaluates impacts on reservoirs.

23 And to the extent that the model meets  
24 carryover storage targets only after attempting to make  
25 deliveries, it could significantly affect these graphs.

1 CO-HEARING OFFICER DODUC: Mr. Bezerra.

2 MR. BEZERRA: Yeah. I'm going to object as  
3 outside the scope of rebuttal as well.

4 The -- This whole analysis is an analysis of  
5 the effect of certain unimpaired flow levels. It does  
6 not include any sort of carryover storage requirements,  
7 I believe, because the existing CalSim doesn't.

8 That's a proposal in this hearing but not  
9 relative to this testimony.

10 CO-HEARING OFFICER DODUC: Sustained.

11 MS. DES JARDINS: I would like to say --

12 CO-HEARING OFFICER DODUC: No. Move on,  
13 Miss Des Jardins.

14 MS. DES JARDINS: Mr. Bourez, doesn't the  
15 CalSim model have specific carryover storage  
16 requirements for Oroville hard-coded into the model?

17 CO-HEARING OFFICER DODUC: Miss Morris.

18 MS. MORRIS: Objection: Again, outside the  
19 scope for all the same reasons as before.

20 CO-HEARING OFFICER DODUC: Sustained.

21 MS. DES JARDINS: Okay. Mr. Bourez, are there  
22 modeling assumptions that would affect this chart of  
23 monthly carry -- monthly Oroville Reservoir storage?

24 CO-HEARING OFFICER DODUC: Mr. Bourez, how did  
25 you develop this chart?

1 WITNESS BOUREZ: So, this chart was developed  
2 based on running CalSim.

3 So, we took the DWR Delivery Reliability  
4 Report in 2011. We put in the unimpaired outflow  
5 criteria. We ran the model, and we plotted the  
6 results.

7 CO-HEARING OFFICER DODUC: And that's all you  
8 did.

9 WITNESS BOUREZ: That's what we did, yes.

10 CO-HEARING OFFICER DODUC: This does not  
11 reflect WaterFix.

12 WITNESS BOUREZ: It does not reflect WaterFix.

13 MS. DES JARDINS: And, Mr. Bourez, are you  
14 aware that DWR's operations of Oroville have changed  
15 since 2011?

16 MS. MORRIS: (Approaching podium.)

17 CO-HEARING OFFICER DODUC: Yes, it is outside  
18 the scope.

19 MS. DES JARDINS: So, Mr. Bourez, is this --  
20 are these graphs limited by the assumptions in the DWR  
21 2011 Preliminary Reliability Report modeling?

22 CO-HEARING OFFICER DODUC: I didn't catch that  
23 last part.

24 MS. DES JARDINS: In the DWR 2007 Delivery  
25 Reliability Report.

1 CO-HEARING OFFICER DODUC: I'm not familiar  
2 with that report. Is it part of the record?

3 MS. DES JARDINS: This is essentially  
4 modifications to the 20 -- Is this modeling -- I  
5 believe you just testified that this modeling is  
6 modifications to the DWR 2011 Delivery Reliability  
7 Report modeling.

8 CO-HEARING OFFICER DODUC: Hold on.  
9 Miss Morris?

10 MS. MORRIS: I guess -- I was going to object  
11 that the original question was outside the scope. But  
12 the last was just a statement, so I'm not sure . . .

13 But in terms of the Delivery Reliability  
14 Report, he was responding to her answer. Again,  
15 there's been no connection back to his testimony and  
16 how this impacts WaterFix or the proposed conditions  
17 that this testimony was offered in, like  
18 CSPA-202-Errata, which is asking for carryover storage  
19 targets.

20 So it's outside the scope.

21 CO-HEARING OFFICER DODUC: Miss Des Jardins.

22 MS. DES JARDINS: Respectfully, to the extent  
23 that I . . .

24 John Herrick did move to strike this and  
25 that --

1 MR. BEZERRA: Can I -- Can I clarify? I think  
2 I know where Miss Des Jardins' is going.

3 CO-HEARING OFFICER DODUC: Help us.

4 MR. BEZERRA: Yes. If I can ask a question.  
5 I know it's not proper but --

6 CO-HEARING OFFICER DODUC: Please.

7 MR. BEZERRA: Mr. Bourez, do these modeling  
8 results reflect your use of the model used for the 2011  
9 DWR Water Reliability Report?

10 WITNESS BOUREZ: Yes. In fact, the red line  
11 on there is exactly that model run that is published in  
12 the DWR 2011 Reliability Report.

13 The other two alternatives are based on  
14 modifications we made to that modeling. And those are  
15 documented here as the 40 and 50 percent unimpaired  
16 flow criteria imposed on that model run.

17 MS. DES JARDINS: So this is entirely relative  
18 to the operations or assumptions reflected in the  
19 deliver -- 2011 Delivery Reliability Report modeling;  
20 correct?

21 WITNESS BOUREZ: That's correct.

22 MS. DES JARDINS: Are there . . .

23 Are there changes between the 2011 Delivery  
24 Reliability Report modeling and the CWF H3+ modeling?

25 WITNESS BOUREZ: Yes.

1 MS. DES JARDINS: And there are quite -- quite  
2 a number of assumptions?

3 WITNESS BOUREZ: I would say yeah. The  
4 model's been worked on in the past eight years all the  
5 time, and there's always changes.

6 MS. DES JARDINS: Thank you.

7 That's, I believe -- Just a sec.

8 Finally, I'd like to ask: If this model was  
9 run with significantly reduced, for example, Table A  
10 demands, could that affect this graph?

11 CO-HEARING OFFICER DODUC: Miss Morris.

12 MS. MORRIS: Objection: Outside the scope as  
13 well as relevance to the WaterFix proceeding.

14 As this modeling has clearly indicated, it  
15 does not include any WaterFix H3+. It's only CalSim  
16 with 40 or 50 percent unimpaired flow.

17 CO-HEARING OFFICER DODUC: Yes, but it's  
18 relative to the flow criteria.

19 Mr. Bourez, if you can please answer.

20 WITNESS BOUREZ: If I can restate the  
21 question.

22 You're asking if we changed the Table A --

23 MS. DES JARDINS: If -- If the Table A -- If  
24 this was run with, say, 2 million acre-feet Table A  
25 demands, could that affect this draft?

1           WITNESS BOUREZ: I'm not sure what 2 million  
2 acre-feet Table A demands would -- would do relative to  
3 what is in this model run.

4           I will say that I believe that the effects of  
5 the 40 and 50 percent would not change much with  
6 different SWP demands simply because we're not meeting  
7 all those demands most of the time, even in existing  
8 conditions modeling run.

9           So, the demand is not the limiting factor on  
10 the effects that 40 and 50 percent would have on  
11 Oroville operation.

12           MS. DES JARDINS: But you didn't run the model  
13 with different -- with lower demands; did you?

14           WITNESS BOUREZ: That's correct. The only  
15 changes that we made to the DWR's 2011 Reliability  
16 Report model was to impose the 40 and 50 percent  
17 unimpaired flow criteria and then run the model.

18           MS. DES JARDINS: If the model was run with  
19 reduced Table A demands, would that mean that  
20 deliver -- potential deliveries would then be done  
21 through surplus water?

22           MS. MORRIS: Ob --

23           MR. BEZERRA: Objection: Vague and ambiguous;  
24 and also incomplete hypothetical.

25           Mr. Bourez just stated that in this modeling,

1 the change in Table A demands wouldn't necessarily make  
2 much difference because of how little Table A was being  
3 delivered in the first place, so it's an incomplete  
4 hypothetical.

5 MS. MORRIS: I join.

6 MS. DES JARDINS: But going back to . . .

7 Mr. Bourez, doesn't the model attempt to meet  
8 delivery allocations before carryover storage targets?  
9 Isn't that how the model -- CalSim model rates are  
10 con -- are constructed?

11 MS. MORRIS: Objection: Asked and answered.

12 CO-HEARING OFFICER DODUC: Mr. Bezerra.

13 MR. BEZERRA: (Nodding head.)

14 CO-HEARING OFFICER DODUC: Same.

15 All right. Sustained.

16 MS. DES JARDINS: To the extent that I'm not  
17 able to explore the reasons for Mr. Bourez's conclusion  
18 that the -- that changing the Table A demands wouldn't  
19 change this graph --

20 CO-HEARING OFFICER DODUC: He --

21 MS. DES JARDINS: -- I have an objection.

22 CO-HEARING OFFICER DODUC: He answered --

23 MS. DES JARDINS: And it --

24 CO-HEARING OFFICER DODUC: He answered the  
25 question.



1 MS. DES JARDINS: -- specifically has to do  
2 with the model rates.

3 CO-HEARING OFFICER DODUC: He answered the  
4 question.

5 To the extent that you are struggling to ask  
6 questions, I don't believe is a reflection of  
7 Mr. Bourez's attempt to answer.

8 He did answer that question.

9 MS. DES JARDINS: He -- That -- He hasn't  
10 answered a question about the -- the model rates and  
11 whether the model attempts to meet delivery targets  
12 before carryover storage.

13 And I can take you to the PCFFA exhibits and  
14 where Eric Reyes said that the mod -- testified that  
15 the --

16 CO-HEARING OFFICER DODUC: Mr. Bourez, could  
17 you put us out of our misery and say something?

18 WITNESS BOUREZ: The model doesn't allocate  
19 water irregardless of targets inn -- in Oroville.  
20 It -- It considers all of those factors when making  
21 allocations.

22 It -- It's not going to drain Oroville in  
23 order to meet deliveries south of the Delta. It has a  
24 balance and rules that are designed to have a  
25 reasonable operation of Oroville.

1           And -- And -- And personally, when I run the  
2 model, we attempt to maintain Oroville storage at a  
3 million acre-feet at the end of the water year, as the  
4 criteria that Mr. Leahigh testified to. And I believe  
5 that, you know, the WaterFix operations attempt to do  
6 the same thing.

7           So, when we ran this, we attempt to maintain  
8 that storage in Oroville. When Oroville drops below  
9 that, we typically have little or no deliveries south  
10 of the Delta and -- and the Delta's just picking up  
11 incidental water as it can.

12           So it -- The -- The model doesn't just deliver  
13 water irregardless of the storage in the upstream  
14 reservoirs. They're done together as -- The operation  
15 criteria's designed to do that together. They're  
16 codependent.

17           (Timer rings.)

18           MS. DES JARDINS: I believe that . . .

19           Does it -- Just one followup question:

20           Does it require any manual adjusting of the  
21 model results to have Oroville drain -- not draining  
22 below a million acre-feet?

23           WITNESS BOUREZ: We annually adjust and look  
24 at the operational rules in every model run that we do,  
25 unless it's a reconnaissance-level type modeling. And,

1 you know, the rules in -- in the model are somewhat  
2 robust, so we do have some flexibility there.

3 We did not manually adjust the operating rules  
4 in these model runs because they're a reconnaissance  
5 level study. If we were to do that, it would be weeks  
6 and weeks of work just to get this model run done. And  
7 that was not the intent of these model runs. It -- it  
8 would have gone beyond the information we had regarding  
9 the Delta Flow Criteria.

10 So, the level of model study is commensurate  
11 with the flow criteria that we had -- information we  
12 had at the time.

13 MS. DES JARDINS: So, some of the balance --

14 CO-HEARING OFFICER DODUC: Is this another  
15 followup question?

16 MS. DES JARDINS: Yes, just -- Yeah, one more.

17 So some of the balance and rules that are  
18 designed to have a reasonable operation are implemented  
19 by the Modeler in their judgment of how the hot system  
20 would be operated?

21 CO-HEARING OFFICER DODUC: Miss Morris.

22 MS. MORRIS: Objection: Outside the scope;  
23 misstates the testimony.

24 The testimony was related to this graph and --  
25 and it should be properly in the scope, but this is

1 beyond, which was not --

2 MS. DES JARDINS: So -- so --

3 MS. MORRIS: -- very articulate. I apologize.

4 MS. DES JARDINS: -- if Mr. --

5 CO-HEARING OFFICER DODUC: Hold on.

6 MS. DES JARDINS: Yeah, okay.

7 CO-HEARING OFFICER DODUC: Mr. Bezerra, do you  
8 have anything to add?

9 MR. BEZERRA: Yeah. I --

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

11 MR. BEZERRA: I think it's also asked and  
12 answered. Mr. Bourez just answered that he manually  
13 has to deal with Oroville.

14 CO-HEARING OFFICER DODUC: Sustained.

15 MS. DES JARDINS: Okay. It was just . . .

16 When -- When you refer to balance and rules in  
17 the model, did you only refer to the logic in the  
18 model?

19 MR. BEZERRA: Objection: Vague and ambiguous.

20 I believe it's also asked and answered because  
21 we're dealing with Oroville, and Mr. Bourez just  
22 explained what he does with Oroville in the modeling.

23 MS. DES JARDINS: So -- So -- So -- So I just  
24 wanted to clarify that the balance and rules includes  
25 the manual adjustment that you refer -- just referred

1 to.

2 CO-HEARING OFFICER DODUC: Can you quickly  
3 answer that, Mr. Bourez? Then we can be done.

4 WITNESS BOUREZ: In this model run, we did not  
5 manually adjust anything.

6 CO-HEARING OFFICER DODUC: Thank you.

7 MS. DES JARDINS: Okay.

8 CO-HEARING OFFICER DODUC: Goodbye.

9 MS. DES JARDINS: Okay.

10 CO-HEARING OFFICER DODUC: Miss Wehr.

11 MS. DES JARDINS: Good morning. Ellen Wehr on  
12 behalf of Grassland Water District.

13 I have two areas of questions for Mr. Bourez.

14 The first is in regard to his CalSim II  
15 modeling review in Exhibit SVWU-402.

16 And the second is in regard to his analysis of  
17 Delta Flow Criteria in Exhibit SVWU-404.

18 **CROSS-EXAMINATION BY**

19 MS. WEHR: Good morning, Mr. Bourez. Are you  
20 still feeling super good?

21 WITNESS BOUREZ: And getting better.

22 (Laughter.)

23 MS. WEHR: That's good.

24 Mr. Hunt if you could pull up Exhibit  
25 SVWU-402.

1 (Exhibit displayed on screen.)

2 MS. WEHR: And scroll to Page 7.

3 (Exhibit displayed on screen.)

4 MS. WEHR: I'd like to ask toward the bottom  
5 of the page about the paragraph labeled 4.

6 And also the last sentence on that page. If  
7 you could scroll down a little more.

8 (Scrolling through document.)

9 MS. WEHR: Thank you.

10 Mr. Bourez, if you look at the Paragraph 4,  
11 the second through fourth line about, you state that  
12 the CalSim II model (reading):

13 ". . . does not model any changes in  
14 water deliveries . . ."

15 And then you list five types of water users.  
16 One of those are Wildlife Refuges.

17 So, is it correct that this states that  
18 CalSim II does not model any changes in water  
19 deliveries to wildlife refuges?

20 WITNESS BOUREZ: That's correct.

21 MS. WEHR: And your exhibit then states that  
22 CVP and SWP settlement contracts and non-Project water  
23 deliveries are, quote, "Hard Coded" in the model.

24 Based on your previous answer that CalSim II  
25 does not model any changes in deliveries to Wildlife

1 Refuges, would you agree that Wildlife Refuge  
2 deliveries are also hard coded into the model?

3 WITNESS BOUREZ: That's correct.

4 MS. WEHR: And would you please explain, with  
5 as much detail as you can, what you mean when you --  
6 when you conclude that Wildlife Refuge deliveries are  
7 hard-coded into the Project model.

8 WITNESS BOUREZ: Sure.

9 The model inputs demands for Wildlife  
10 Refuge -- Wildlife Refuges and Settlement Contractors  
11 and all Project deliveries.

12 When the allocation logic assesses available  
13 water supply, it -- the first line of that logic will  
14 set the Exchange Contractors', Refuges', Settlement  
15 Contractors' deliveries based on Shasta criteria, which  
16 is an inflow to Shasta, and it won't adjust them after  
17 that point.

18 MS. WEHR: Thank you.

19 Is it accurate to characterize this as a  
20 CalSim II modeling assumption?

21 WITNESS BOUREZ: Yes.

22 MS. WEHR: Would it be accurate to  
23 characterize this as a modeling criteria?

24 (Pause in proceedings.)

25 WITNESS BOUREZ: I'm not sure how to define

1 "criteria."

2 MS. WEHR: That's okay. It's not a trick  
3 question.

4 WITNESS BOUREZ: The way the model --

5 MS. WEHR: Various phrases have been used  
6 throughout the hearing about the modeling  
7 assumptions -- modeling criteria, modeling assumptions,  
8 CalSim II logic.

9 Is it accurate to characterize the Wildlife  
10 Refuge hard coding as part of the CalSim II logic?

11 WITNESS BOUREZ: It is.

12 MS. WEHR: Thank you.

13 Earlier this morning, you discussed your  
14 opinion about the operational flexibility that the  
15 Projects have, and you stated that the way the Project  
16 was modeled does not necessarily reflect how it will be  
17 operated.

18 In the last sentence in this testimony on  
19 Page 7, you state that the (reading):

20 ". . . CWF H3+ modeling does not provide  
21 sufficient information to understand how  
22 the CWF project may affect CVP/SWP  
23 operations."

24 In the context of this last sentence, were you  
25 alluding, in part, to the potential effects on the



1 hard-coded water deliveries described above in this  
2 testimony?

3 WITNESS BOUREZ: It would be included.

4 And the -- the original intent of this  
5 statement is in regard to the discretionary actions,  
6 the exports estimate, the San Luis Rule Curve, limiting  
7 joint point use, and others that we've identified.

8 And when I look at the way the system was  
9 operated in 2014 and 2015, we had reductions to Refuge  
10 deliveries, as I'm sure you're aware.

11 And because CalSim does not model the way that  
12 we've actually operated the system, I think, you know,  
13 in our opinion, you have to assess the model results in  
14 order to . . . to try to estimate what that effect  
15 might be.

16 So we don't have enough information from the  
17 modeling, H3+ modeling and the Part 1 modeling, to  
18 understand how the California WaterFix would affect the  
19 system operations.

20 MS. WEHR: And, in your opinion, is it  
21 possible that the WaterFix Project could be operated in  
22 a way that deviates from the hard-coded water  
23 deliveries in the model?

24 WITNESS BOUREZ: The actual system certainly  
25 could be different than --

1 MS. WEHR: Thank you.

2 WITNESS BOUREZ: -- the model.

3 MS. WEHR: Finally, Mr. Hunt, if you would  
4 pull up Exhibit SVWU-404 and scroll to Page 14 --

5 (Exhibit displayed on screen.)

6 MS. WEHR: -- the final bullet on that page.

7 And here, Mr. Bourez, you refer to the  
8 40 percent/50 percent unimpaired flow scenario in the  
9 2010 Delta Flow Criteria Report; is that correct?

10 WITNESS BOUREZ: That's correct.

11 MS. WEHR: And you state that (reading):

12 "Under both . . . scenarios, there  
13 would be severe water supply impacts  
14 including" -- at the end of the  
15 sentence -- "reductions in water  
16 deliveries to Wildlife Refuges."

17 WITNESS BOUREZ: That's correct. And that did  
18 occur in the model.

19 What -- And that -- that didn't occur in the  
20 south of the Delta as much as looking at the Sacramento  
21 River.

22 When Shasta hits dead pool, the releases at  
23 Keswick aren't met if we don't meet that flow  
24 requirement.

25 And the next step is the Sacramento Settlement

1 Contractors and the water they deliver to refuge is  
2 also cut.

3 So we saw those cuts in that modeling. And  
4 the model puts a higher priority on meeting  
5 South-of-Delta refuge over Sacramento River settlement  
6 and Refuge.

7 So, when you look at that modeling, there  
8 isn't enough water to meet all of those requirements.  
9 And, you know, at a reconnaissance level model, we  
10 didn't go adjust to determine where all those impacts  
11 would fall out, but we know that they're fairly severe  
12 and that next step of determining what would be cut  
13 would likely result in South-of-Delta Refuge shortages.

14 MS. WEHR: Okay. Thank you, Mr. Bourez.  
15 That's all I have.

16 CO-HEARING OFFICER DODUC: Thank you,  
17 Miss Wehr, for a concise and clear cross-examination.

18 Mr. Bezerra, Miss Nikkel, do you have any  
19 redirect and, if so, on what particular issue?

20 MR. BEZERRA: Yes. I think we have about five  
21 minutes' redirect on two issues.

22 One is the timing of Mr. Bourez's statements  
23 about American River flow standard in SVWU-404.

24 The other is just to clarify one of his  
25 answers to Mr. Herrick's questions about model

1 applications.

2 CO-HEARING OFFICER DODUC: All right. Go  
3 ahead.

4 **REDIRECT EXAMINATION BY**

5 MR. BEZERRA: Okay. If we could please pull  
6 up Page 11 of Exhibit SVWU-404.

7 (Exhibit displayed on screen.)

8 MR. BEZERRA: And scroll down to the bottom of  
9 that page.

10 (Scrolling through document.)

11 MR. BEZERRA: Mr. Bourez, you prepared Exhibit  
12 SVWU-404 in 2012; correct?

13 WITNESS BOUREZ: 2011 and 2012.

14 MR. BEZERRA: Okay. And so your statement  
15 there at the beginning of 20 -- of Paragraph 21 on  
16 Page 11 here is as of 2011 and 2012; correct?

17 WITNESS BOUREZ: That's correct.

18 MR. BEZERRA: So, that preceded the 2014 and  
19 2015 critical water years; correct?

20 WITNESS BOUREZ: That's correct.

21 MR. BEZERRA: And, to the best of your  
22 knowledge, did Folsom Reservoir reach its historic low  
23 state of storage --

24 CO-HEARING OFFICER DODUC: Hold on.

25 Miss Morris is dashing to the microphone.

1 MS. MORRIS: Yeah. I would object to the last  
2 question -- sorry I couldn't get here faster -- as  
3 outside the scope of the cross-examination, as well as  
4 this question about dry-year period.

5 I -- No one asked any questions about dry-year  
6 period reservoir storage at all whatsoever.

7 CO-HEARING OFFICER DODUC: Mr. Bezerra.

8 MR. BEZERRA: Ms. Morris' statements were  
9 intended to elicit testimony regarding what the intent  
10 of the 20 -- the existing American River flow  
11 management standard is. And I'm attempting to  
12 demonstrate that that statement of intent is dependent  
13 on the timing, and that the world has changed since  
14 2011 and 2012.

15 CO-HEARING OFFICER DODUC: Yes, but she did  
16 not get into the details that you are getting into.

17 MR. BEZERRA: It's a simple question as to  
18 whether or not the drought may have affected the  
19 applicability of this statement.

20 CO-HEARING OFFICER DODUC: Nope. Beyond the  
21 scope.

22 MR. BEZERRA: Okay. I'll move on to . . .

23 Well, there is one question.

24 This -- This document preceded the 2014 and  
25 2015 critical water years; correct?

1 MS. MORRIS: Objection.

2 CO-HEARING OFFICER DODUC: Okay. Hold on.  
3 Let's see where he goes with it because it's a  
4 statement of fact.

5 MS. MORRIS: That was the question.

6 MR. BEZERRA: I just want a question about  
7 saving --

8 CO-HEARING OFFICER DODUC: Yes. It's a  
9 statement of fact, Miss Morris.

10 MS. MORRIS: But it's outside the scope.

11 The questions I asked were about specifically  
12 carryover targets and meets criteria, not as to any  
13 timing.

14 CO-HEARING OFFICER DODUC: You did ask about  
15 the modified --

16 MS. MORRIS: No, I did not. I did not ask  
17 about any modified flow standard. Mr. Bourez answer  
18 questions and I clarified.

19 To go back, my only questions were related to  
20 American River water flow management and whether they  
21 were incorporated in the modeling.

22 And then I went on to ask other questions  
23 about carryover storage impacts.

24 CO-HEARING OFFICER DODUC: Yes, you did.

25 MR. BEZERRA: Okay. I'm -- I'm a little

1 unclear.

2 We're in a proceeding in 2018. The questions  
3 were to modeling being presented in 2018. And  
4 Ms. Morris was attempting to draw conclusions from  
5 these statements that were made originally no later  
6 than 2012.

7 I'm simply attempting to establish what the  
8 relevance of these statements is relative to the  
9 proceeding we're now in.

10 CO-HEARING OFFICER DODUC: And . . .

11 Well, let's -- let me -- let him proceed  
12 before -- I'll take your objection under -- But,  
13 Miss Morris, he's, as far as I'm recalling right now,  
14 just simply establishing the timeline.

15 MR. BEZERRA: Yes. It's a -- I have two  
16 questions.

17 CO-HEARING OFFICER DODUC: Ask your two  
18 questions.

19 MS. MORRIS: May I respond, though, before,  
20 please?

21 CO-HEARING OFFICER DODUC: Go ahead.

22 MS. MORRIS: Responding to the timeline, it is  
23 outside the scope, number one, and it's improper legal  
24 argument.

25 If Mr. Bezerra wants to make this argument, he

1 can make it in civilly. It clearly says the 2009 NMFS,  
2 and it clearly doesn't say anything about the modified  
3 flow standard.

4 What he's attempting to do is make a legal  
5 argument by going outside the scope of what was asked  
6 on cross-examination.

7 CO-HEARING OFFICER DODUC: Mr. Bezerra.

8 MR. BEZERRA: I have two factual --

9 CO-HEARING OFFICER DODUC: We have five  
10 minutes.

11 MR. BEZERRA: Yes. I apologize.

12 I have two factual questions that go to  
13 Miss Morris' point about what was incorporated into the  
14 modeling --

15 CO-HEARING OFFICER DODUC: All right.

16 MR. BEZERRA: -- in this hearing.

17 CO-HEARING OFFICER DODUC: Overruled,  
18 Miss Morris. Let's let him ask the question.

19 But they are indeed just factual questions.

20 MR. BEZERRA: Yes.

21 So, Mr. Bourez, after 2012, the 2014 and '15  
22 water years were critical water years; correct?

23 MS. MORRIS: Same objection.

24 CO-HEARING OFFICER DODUC: Overruled.

25 WITNESS BOUREZ: Correct.



1 MR. BEZERRA: I'm going to try this and we'll  
2 see.

3 In 2015, Folsom Reservoir reached its lowest  
4 historical level of storage ever; correct?

5 MS. MORRIS: Objection: Outside the scope of  
6 cross-examination.

7 CO-HEARING OFFICER DODUC: Overruled.

8 WITNESS BOUREZ: That's correct.

9 MR. BEZERRA: Thank you.

10 Moving on to Ms. -- Ms. -- the clarification  
11 on Mr. Herrick.

12 So, you -- Mr. Herrick asked you questions  
13 about the discretionary allocation logic in the model  
14 and your opinion that that logic does not adequately  
15 account for the additional diversion capacity provided  
16 by California WaterFix; correct?

17 WITNESS BOUREZ: That's correct.

18 MR. BEZERRA: And in answering those  
19 questions, were you referring to the discretionary  
20 allocation logic known as the export estimate?

21 WITNESS BOUREZ: That's correct, and the  
22 San Luis Rule Curve.

23 MR. BEZERRA: As to the export estimate, is it  
24 your opinion that the Petitioners' modeling  
25 inappropriately held the export estimate constant

1 between the No-Action Alternative and the H3+  
2 With-Project scenario?

3 WITNESS BOUREZ: That's correct.

4 MR. BEZERRA: And the export estimate only  
5 reflects -- attempts to reflect operational discretion;  
6 correct?

7 WITNESS BOUREZ: That's correct.

8 MR. BEZERRA: So is it your opinion that  
9 holding it steady between No-Action and With-Action  
10 inappropriately reflects how the Operators might  
11 actually allocate water with WaterFix in place?

12 WITNESS BOUREZ: That's correct.

13 MR. BEZERRA: That concludes my redirect.

14 CO-HEARING OFFICER DODUC: Here comes the  
15 recross.

16 And thanks to Mr. Bezerra, you will not be  
17 getting a longer lunch break.

18 MR. BEZERRA: I apologize to everyone.

19 **RE-CROSS-EXAMINATION BY**

20 MS. MORRIS: Mr. Bourez, do you know if the  
21 Modified FMS is part of any current regulatory  
22 requirements?

23 MR. BEZERRA: Objection: Beyond the scope of  
24 recross.

25 CO-HEARING OFFICER DODUC: Sorry. I was

1     distracted by something else.

2             MS. MORRIS: I'll restate the question.

3             CO-HEARING OFFICER DODUC: Please.

4             MS. MORRIS: The question was if Mr. Bourez  
5     knew that the modified flow standard was part of any  
6     regulatory requirement.

7             And I don't believe it goes beyond the scope,  
8     because Mr. Bezerra asked about the modified flow  
9     standard and the timing of the report that I was asking  
10    about and was trying to make an argument related to the  
11    changes.

12            And my question goes to whether or not  
13    Mr. Bourez knows if that modified flow standard is a  
14    current regulatory requirement.

15            CO-HEARING OFFICER DODUC: That is beyond the  
16    scope.

17            MS. MORRIS: He -- He asked --

18            CO-HEARING OFFICER DODUC: About the timing.

19            MS. MORRIS: Of the modified flow standard.

20            MR. BEZERRA: Not about the timing of the  
21    modified flow standard. I asked about the timing of  
22    Exhibit SVWU-404 and what events occurred in real-world  
23    after that document was developed.

24            CO-HEARING OFFICER DODUC: Correct.

25            MS. MORRIS: Okay. Then let's try this:

1           You just testified that the -- since 2011, in  
2 your finishing of the report marked SVWU-404, that  
3 there were several drought years; did you not?

4           WITNESS BOUREZ: Yes.

5           MS. MORRIS: What -- If the standards in  
6 SVW-4 -- SVWU-404 had changed in regards to carryover  
7 at Folsom in the drought years that you just testified,  
8 would there be other impacts to the SWP/CVP operations?

9           MR. BEZERRA: Objection: Beyond the scope of  
10 recross; also incomplete hypothetical.

11           There's no definition as to what the standards  
12 may have changed to.

13           CO-HEARING OFFICER DODUC: Sustained.

14           MS. MORRIS: May I respond?

15           I did not allow him to go beyond the scope of  
16 the cross-examination. He has asked the witness  
17 what -- He is inferring that things have changed since  
18 the questions I asked to undermine the credibility of  
19 the questions.

20           And now, because he -- the scope has opened  
21 beyond, and we are now looking at different factual  
22 patterns, I'm reasking the --

23           CO-HEARING OFFICER DODUC: Miss --

24           MS. MORRIS: -- same question --

25           CO-HEARING OFFICER DODUC: Okay.

1 MS. MORRIS: -- I asked on cross --

2 CO-HEARING OFFICER DODUC: Miss Morris --

3 MS. MORRIS: -- but with the --

4 CO-HEARING OFFICER DODUC: Miss Morris,  
5 perhaps you can help me understand.

6 Why is this important?

7 MS. MORRIS: I believe it just creates a  
8 factual -- It completes the factual record. And I  
9 believe that if we are not allowed to ask this  
10 question, it doesn't allow us the opportunity to  
11 understand the potential changes in Mr. Bourez's  
12 opinion based on a modified flow standard and the  
13 timing, because that was not the focus of my  
14 cross-examination but is now being undermined by a  
15 reopening and an expansion of a redirect.

16 CO-HEARING OFFICER DODUC: You are making an  
17 inference about Mr. Bezerra's redirect and then  
18 expanding that in your recross.

19 So . . . I'm still sustaining the objection.

20 MS. MORRIS: Let me try again. I'll try a  
21 different way.

22 You testified that 2014 and 2015 were  
23 critically dry years; correct?

24 WITNESS BOUREZ: Correct.

25 MS. MORRIS: And that Folsom reached lowest

1 storage ever -- lowest storage levels ever --  
2 correct? -- in those years?

3 WITNESS BOUREZ: That's correct.

4 MS. MORRIS: And was the FMS applied in those  
5 years?

6 (Pause in proceedings.)

7 WITNESS BOUREZ: The 2009 NMFS Biological  
8 Opinion had the FMS in it. I cannot say whether it was  
9 operated to or -- or not.

10 I believe that the operations were  
11 inconsistent with that FMS at the time.

12 MS. MORRIS: Was there another standard that  
13 was applied during those timeframes?

14 MR. BEZERRA: I'm going to object as vague and  
15 ambiguous.

16 There were a lot of standards during the  
17 drought, including temporary urgency change orders from  
18 this Board and --

19 CO-HEARING OFFICER DODUC: Sustained.

20 And we're not going through all of that.

21 **RE-CROSS-EXAMINATION BY**

22 MR. MIZELL: Mr. Bourez, you just answered  
23 that the FMS -- if Folsom operations in those  
24 critically dry years were not consistent with the FMS;  
25 is that correct?

1 WITNESS BOUREZ: That's correct.

2 MR. MIZELL: So if Folsom was operated  
3 consistent with FMS, would it be your opinion that  
4 other reservoirs would have seen larger shortages or  
5 lower reservoir levels by virtue of that change?

6 MR. BEZERRA: Objection: Beyond the scope of  
7 recross; incomplete hypothetical.

8 Again, there were a wide variety of changes to  
9 regulatory rules during those years --

10 CO-HEARING OFFICER DODUC: Actually, he's  
11 focusing on just that FMS.

12 So, Mr. Bourez.

13 WITNESS BOUREZ: I need to give a little --  
14 talk through this a little bit.

15 Because, in 2013, when Folsom started to . . .  
16 get low, and we went into 2014 and we didn't have  
17 enough rainfall to fill it, the releases from Folsom  
18 were above what the FMS required at the time. And if  
19 they were following it, we would have been -- we would  
20 have had much lower flow going into the drought.

21 And if that were the case, then it's -- it's  
22 likely that we would have had higher --

23 CO-HEARING OFFICER DODUC: I'm sorry. I'm  
24 sorry.

25 But we're just way, way, way expanding the

1 scope now, so I need to bring it back.

2 Mr. Bourez, are you able to answer the  
3 question without going into . . .

4 WITNESS BOUREZ: I believe that reservoirs in  
5 the system could have been higher if we followed the  
6 FMS --

7 CO-HEARING OFFICER DODUC: Thank you.

8 WITNESS BOUREZ: -- the 2006 FMS.

9 MR. MIZELL: Okay. So, if I understand,  
10 reservoirs in the system, you're meaning Shasta,  
11 Trinity, Folsom would have been higher on aggregate if  
12 the FMS was in place.

13 WITNESS BOUREZ: There's -- There's a  
14 potential that it could -- that -- Not the modified  
15 FMS.

16 If we followed the FMS at the time, we would  
17 have had lower flows in the American River at the end  
18 of 2013 and we would have had a higher storage going  
19 into 2014.

20 MR. BEZERRA: Okay. Thank you.

21 CO-HEARING OFFICER DODUC: Mr. Herrick?

22 MR. HERRICK: I was just stretching.

23 CO-HEARING OFFICER DODUC: Ah. Oh, boy.  
24 Your fault, Mr. Bezerra.

25 MR. BEZERRA: Yeah.



RE-CROSS-EXAMINATION BY

1  
2 MS. DES JARDINS: Mr. Bourez, isn't whether --  
3 Isn't it discretionary -- If there were impacts of  
4 Modified Flow Management Standard, isn't it  
5 discretionary how they would be managed?

6 MR. BEZERRA: Just -- I'm going to clarify.  
7 The questions were about the 2006 FMS so I  
8 think the question refers to that as opposed to the  
9 NMFS?

10 MS. WEHR: Yeah, okay. So, if -- With the  
11 2006 FMS, if there were impacts of, for example,  
12 potentially reduced flows on American Rivers (sic),  
13 wouldn't that be discretionary about how the Operators  
14 managed it?

15 (Pause in proceedings.)

16 WITNESS BOUREZ: Reclamation does have  
17 discretion to operate and change operations to comply  
18 with the standards and criteria -- operating criteria  
19 that are imposed on the Project. How they would  
20 respond to the FMS, there is discretion.

21 MS. WEHR: And there's discretion about  
22 whether it would be done through . . . through  
23 increased reservoir releases or through other  
24 discretionary operations; correct?

25 WITNESS BOUREZ: It depends on what criteria

1 is governing the operation of the system.

2 MS. WEHR: Okay. Thank you.

3 CO-HEARING OFFICER DODUC: All right. I'm  
4 almost hesitant to do this now, but since we're going  
5 beyond 12:30, anyway . . .

6 Mr. Bourez, or Dr. Shankar, for that matter,  
7 I'm going to exercise Hearing Officer discretion and  
8 ask you a question, or it could be more than one,  
9 totally outside the scope of your rebuttal testimony.

10 Did either one of you or both of you have a  
11 chance to examine DWR-1143, Second Revision?

12 WITNESS BOUREZ: I have looked at it.  
13 Dr. Shankar has looked at it in greater detail than I  
14 have.

15 I do have a copy.

16 CO-HEARING OFFICER DODUC: All right. So, a  
17 question to either one of you:

18 Are there any modeling assumptions about  
19 discretionary operating criteria not included in that  
20 table that would be informative in analyzing the  
21 potential impacts of the WaterFix Project?

22 WITNESS BOUREZ: I haven't looked at it in --  
23 to know if there's discretionary criteria that's not  
24 included.

25 CO-HEARING OFFICER DODUC: That's fine. I

1 thought I'd just try.

2 Dr. Shankar?

3 WITNESS PARVATHINATHAN: Same answer.

4 CO-HEARING OFFICER DODUC: All right. Thank  
5 you both.

6 And, with that, we will take our lunch break  
7 and we'll return at 1 -- oh, I'll be generous -- 1:45.

8 MR. BEZERRA: And simply to state the obvious:  
9 I have no further examination for these  
10 witness, so they're done.

11 CO-HEARING OFFICER DODUC: Actually, does that  
12 mean at this time you wish to -- Do you have other --  
13 Are you appearing on any other panels, or does that  
14 conclude your . . .

15 MR. BEZERRA: I believe that conclude -- We do  
16 have the issue that the modeling tables are marked as  
17 an SVWU exhibit, as 406, which is a different matter.

18 But as to SVWU-400 through 405, yes we would  
19 move them into the record.

20 CO-HEARING OFFICER DODUC: Why don't you go  
21 ahead and move the modeling exhibit as well and see if  
22 we get any objections.

23 MR. BEZERRA: We will add moving SVWU-406 into  
24 the record as well.

25 CO-HEARING OFFICER DODUC: Objections?

1           Going once, twice . . .

2           Mr. Mizell is walking up to the microphone.

3           MR. MIZELL: I'm unaware that Exhibit 406 was  
4 referenced in either of the testimonies.

5           And as we filed before, we have objections to  
6 the characterization of that as a complete set of  
7 modeling results, given it is not a complete set of  
8 modeling results.

9           It also contains essentially an analysis  
10 because it has calculated columns that were done under  
11 a script provided by SVWU. So I don't believe the  
12 characterization of the exhibit's proper and -- because  
13 it hasn't been one of their -- one of their Point of  
14 Reference exhibits.

15           MR. BEZERRA: Can I please clarify a point  
16 there? And this is not in evidence.

17           But my understanding is the Department  
18 contacted MBK Engineers to obtain the computer script  
19 necessary to generate those modeling tables.

20           So, to characterize it as, you know, a  
21 modeling script that wasn't generated by them is  
22 inappropriate. They asked for that from MBK is my  
23 understanding.

24           MR. MIZELL: We were told to provide modeling  
25 results in the form and format demanded by SVWU. We

1 reached out to them to find out what form and format  
2 they could handle.

3 CO-HEARING OFFICER DODUC: Mr. --

4 MR. MIZELL: It was not our discretion.

5 MR. DEERINGER: Mr. Mizell, is -- is -- is it  
6 DWR's position that the cover letter to SVWU-406 does  
7 not correctly characterize the contents of the exhibit?

8 MR. MIZELL: It would be our position that it  
9 does not fully characterize the contents of that  
10 exhibit.

11 MR. DEERINGER: And are those . . .

12 Let me see if I can phrase this right.

13 Would there be any impediment to DWR or any  
14 other party correctly, in their view, characterizing  
15 that exhibit in closing briefs?

16 MR. MIZELL: No.

17 MR. DEERINGER: Okay.

18 CO-HEARING OFFICER DODUC: So . . .

19 MR. DEERINGER: And -- I'm sorry -- I did have  
20 one -- one or two followup questions for Mr. Mizell or  
21 any other objecting party, I suppose.

22 Do I understand correctly that one basis for  
23 your objection was that SVWU-406 was not referenced in  
24 any testimony?

25 CO-HEARING OFFICER DODUC: That's not a

1 requirement, I don't think, for us to move it into the  
2 record.

3 MR. MIZELL: That's correct. And you --  
4 You've ruled on that before.

5 I believe where my objection is going is more  
6 about our inability to cross-examine anybody upon the  
7 calculated fields that were required in that exhibit  
8 because it was not referenced in anybody's testimony.

9 So to admit a calculated column -- a  
10 calculated set of results into evidence without the  
11 ability to cross-examine on it would prejudice the  
12 Department.

13 MR. DEERINGER: Did the Department not have  
14 the opportunity to conduct redirect, after I believe it  
15 was, Group 7 attorney cross-examined using that  
16 exhibit?

17 I made a mistake and I'm asking for  
18 clarification.

19 MR. MIZELL: Redirect is limited to the scope  
20 of cross, and cross didn't go into the accuracy or  
21 applicability of the calculated field.

22 MR. DEERINGER: Is not a permissible scope of  
23 redirect the basis for opinions provided on cross?

24 MR. MIZELL: I don't believe we were asked to  
25 provide an opinion about the characterization of the

1 differential columns provided in that exhibit.

2 MR. DEERINGER: Understood.

3 CO-HEARING OFFICER DODUC: Yes,  
4 Miss Des Jardins.

5 MS. DES JARDINS: I would like to support the  
6 introduction -- the submission of that exhibit because  
7 I used the columns, which are simply tabulations of  
8 data from -- outputs from the modeling, on . . . on  
9 cross-examination of Nancy Parker.

10 And I believe that was one of the reasons that  
11 the exhibit was requested, was to add a common exhibit  
12 that all parties could use and refer to.

13 And -- And Mr. Mizell did have an opportunity  
14 to do recross after I introduced those pages, and ask  
15 them of Nancy Parker, and he did not do so.

16 CO-HEARING OFFICER DODUC: All right. On that  
17 note, we will accept into evidence all the exhibits  
18 moved by Mr. Bezerra, except for 406. And we will take  
19 under consideration the objection and support noted.

20 (Sacramento Valley Water Users' Exhibits 400 through  
21 405 received in evidence)

22 MS. WEHR: Will it be allowable for us to  
23 submit a written response to objections on SVWU-406  
24 just stated here today?

25 MR. BEZERRA: I also have a question.

1           This has been thoroughly confusing to me since  
2 the DWR objected to this exhibit.

3           I don't understand. Are they disputing the  
4 accuracy of the results?

5           CO-HEARING OFFICER DODUC: If my recollection  
6 is correct, we have already received a -- written  
7 objections from DWR on this table. And did we not only  
8 receive a written response from you to DWR's objection?

9           MS. WEHR: I'm sorry. I just missed that.

10          CO-HEARING OFFICER DODUC: We already have --  
11 I believe we already have in the record DWR's written  
12 objection to this table and your response to that  
13 objection.

14          MR. BEZERRA: I don't think we responded in  
15 writing. We -- We moved it into the record via a  
16 written motion.

17          CO-HEARING OFFICER DODUC: And DWR objected.

18          MR. BEZERRA: DWR objected. I don't think  
19 we've provided a written response.

20          CO-HEARING OFFICER DODUC: You should provide  
21 a written response.

22          MR. BEZERRA: Okay.

23          CO-HEARING OFFICER DODUC: And please do so  
24 by -- let's give you a deadline -- 5 p.m. Friday?

25          MS. WEHR: That's fine. Thank you.



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MR. BEZERRA: Yes. Thank you.

CO-HEARING OFFICER DODUC: Thank you.

All right. With that, the Farmers' Market is closed, or closing soon, so we are adjourning and we will reconvene at 1:45.

Oh, Mr. Bezerra, ugh.

(Lunch recess at 12:41 p.m.)

\* \* \*

## 1 AFTERNOON SESSION

2 (Whereupon, all parties having been  
3 duly noted for the record, the  
4 proceedings resumed at 1:45 p.m.)

5 CO-HEARING OFFICER DODUC: All right. It's  
6 1:45. Please take a seat before we turn to Grassland.  
7 Let's do what I said we would do and try to project as  
8 best we can how the rest of this week will go.

9 Before I do, I guess I'd need to respond to  
10 Mr. Berliner's request yesterday to bring back DWR's  
11 three remaining witnesses this week pending our  
12 decision on the motions to strike which were raised by  
13 Ms. -- Mr. Keeling, Ms. Meserve, and I believe  
14 Ms. Des Jardins, yesterday, then with Mr. Jackson,  
15 also. Okay.

16 Mr. Berliner, that request is denied. We want  
17 to be able to review the motions and your responses to  
18 those motions, and we recognize that your three  
19 witnesses do have a time constraint. So should we  
20 determine that they will be allowed to testify, we will  
21 certainly arrange it for a time when they will be  
22 available. I believe it was after August 27th. Okay?

23 MR. BERLINER: Thank you.

24 CO-HEARING OFFICER DODUC: With that, then let  
25 me get estimates, if I could, for cross-examination of

1 the next group, which I believe is Group 19, 24, and  
2 45, presenting witnesses Shilling and Stokely.

3 Cross-examination for that group, please?

4 MR. MIZELL: Tripp Mizell, DWR. And for all  
5 the estimates that I'll give to you today, we've done  
6 our best to coordinate with State Water Contractors,  
7 Inc. So this will be combined times. For Shilling and  
8 Stokely, we estimate 45 minutes.

9 CO-HEARING OFFICER DODUC: All right.

10 MR. HERRICK: John Herrick, South Delta  
11 parties, 10, 15 minutes at the most.

12 MS. DES JARDINS: Deirdre Des Jardins,  
13 California Water Research, 15 minutes at the most.

14 CO-HEARING OFFICER DODUC: Mr. Jackson.

15 MR. JACKSON: Yes, 15 minutes.

16 CO-HEARING OFFICER DODUC: And I will assume,  
17 Ms. Mitterhofer, that we did not receive any e-mail  
18 requests over the lunch break?

19 MS. MITTERHOFER: I think we received one, and  
20 I -- we received one, and I'm -- accessing my e-mail  
21 right now.

22 CO-HEARING OFFICER DODUC: Okay. So we'll get  
23 back to you later.

24 So then the group after that I expect will be  
25 Group 21, South Delta Water Agency, Mr. Herrick's

1 witness, Mr. Burke.

2 Cross on that, please? Oh, was there a  
3 change?

4 MR. JACKSON: Yes. If it's okay with the  
5 Hearing Officer and DWR and the Bureau, I would like to  
6 change with Dr. -- Dr. Burke to put Mr. Cannon and  
7 Mr. Shutes, who are No. 14, up to No. 9.

8 CO-HEARING OFFICER DODUC: Okay.

9 MR. MIZELL: It's --

10 CO-HEARING OFFICER DODUC: I'm sorry. Any  
11 objection to that switch?

12 MR. MIZELL: Our cross-examination preparation  
13 for -- I think it's Dr. Burke, right?

14 CO-HEARING OFFICER DODUC: For whom?

15 MR. MIZELL: Is that we would need Burke to go  
16 this week. If Burke's -- with this switch, Mr. Burke  
17 is pushed out to next week. It causes a rather  
18 significant shift in our cross-examination preparation  
19 at this point.

20 So if -- if we can ensure that Burke will be  
21 available for cross-examination before the close of  
22 business on Friday, then we would --

23 CO-HEARING OFFICER DODUC: So, Mr. Herrick, is  
24 this change because of Mr. Burke's unavailability this  
25 week?

1 MR. HERRICK: No. This is a consideration  
2 for --

3 CO-HEARING OFFICER DODUC: So would there be  
4 any objection then with just moving CSPA, Mr. Cannon  
5 and Mr. Shutes, ahead of Mr. Burke?

6 MR. WALTER: Hanspeter Walter, Westlands Water  
7 District with San Luis and Delta-Mendota Water  
8 Authority. Does that mean that Cannon and Shutes might  
9 go today?

10 CO-HEARING OFFICER DODUC: No. I'm talking  
11 about tomorrow.

12 MR. WALTER: Okay.

13 CO-HEARING OFFICER DODUC: Hearing no  
14 objection, then, we will, after the conclusion with  
15 Dr. Shilling and Mr. Stokely, we will then move to CSPA  
16 with Mr. Cannon and Mr. Shutes.

17 Estimates of cross-examination for that group?

18 MR. MIZELL: DWR estimates 45 minutes.

19 MR. WALTER: San Luis and Delta-Mendota Water  
20 Authority, 15 minutes for Cannon and Shutes.

21 MR. HERRICK: South Delta parties, 10 minutes.

22 MS. DES JARDINS: Deirdre Des Jardins,  
23 Group 37, 20 minutes.

24 CO-HEARING OFFICER DODUC: 20?

25 MS. DES JARDINS: Yes.

1 CO-HEARING OFFICER DODUC: All right. Then  
2 after group -- after that group, we will then get to  
3 Mr. Herrick's Tom Burke.

4 And cross-examination estimates for Burke?

5 MR. MIZELL: DWR would request two hours,  
6 please, in combination with the State Water  
7 Contractors.

8 CO-HEARING OFFICER DODUC: Anyone else?

9 MR. JACKSON: CSPA parties, 20 minutes. I'll  
10 try to stay within that.

11 MS. DES JARDINS: Deirdre Des Jardins, 20  
12 minutes.

13 CO-HEARING OFFICER DODUC: After that we'll  
14 then get to Dr. Jeffery Michael.

15 Estimate of cross?

16 MR. MIZELL: I'm sorry. For Michael's?

17 CO-HEARING OFFICER DODUC: Yes, Jeffery  
18 Michael.

19 MR. MIZELL: Thirty minutes, please.

20 MR. WALTER: San Luis and Delta-Mendota Water  
21 Authority Westlands, 10 minutes for Dr. Michael.

22 MR. JACKSON: CSPA, 15 minutes.

23 MS. DES JARDINS: Deirdre Des Jardins, 15  
24 minutes. And there's a request for Group 47, Osha  
25 Meserve, up to 25 minutes for Burke and Michael, and

1 two other parties which I'll mention later.

2 CO-HEARING OFFICER DODUC: Let me make sure I  
3 understand. That was 25 minutes being requested by  
4 Ms. Meserve to cross?

5 MS. DES JARDINS: Twenty-five minutes each for  
6 Burke and Michael, and 25 minutes for Denton and --  
7 each for Denton and State of California Delta Alliance,  
8 who you haven't asked for yet.

9 CO-HEARING OFFICER DODUC: You were mumbling.  
10 I did not hear that last part.

11 MS. DES JARDINS: My apologies. And 25  
12 minutes each for Denton and Save the California Delta  
13 Alliance.

14 CO-HEARING OFFICER DODUC: Oh, which I --

15 MS. DES JARDINS: You have not mentioned yet.

16 CO-HEARING OFFICER DODUC: Okay. So anyone  
17 else for Delta, Michael?

18 (No response)

19 CO-HEARING OFFICER DODUC: All right. Now  
20 we'll move on to Dr. Denton and cross, please, for DWR.

21 MR. MIZELL: The Department would request  
22 45 minutes.

23 CO-HEARING OFFICER DODUC: Okay. And let me  
24 go ahead and put Meserve down for 25 before I forget.

25 MR. HERRICK: South Delta parties. I would

1 have 30 minutes for Mr. Denton.

2 MR. BEZERRA: Ryan Bezerra. I think I'd have  
3 30 minutes, maximum, for Dr. Denton.

4 MR. JACKSON: Michael Jackson. I think we  
5 have 25 minutes.

6 CO-HEARING OFFICER DODUC: Okay.

7 MS. NIKKEL: Meredith Nikkel for Group 8,  
8 Tehama-Colusa Canal Authority, 10 minutes.

9 MS. DES JARDINS: Deirdre Des Jardins,  
10 California Water Research, up to 35 minutes.

11 CO-HEARING OFFICER DODUC: All right.  
12 Mr. Denton is popular -- Dr. Denton. All right.

13 Next then we will have Save the California  
14 Delta Alliance.

15 MR. MIZELL: Department estimates 30 minutes.

16 CO-HEARING OFFICER DODUC: And Ms. Meserve  
17 requests 25 minutes.

18 Anyone else?

19 MS. DES JARDINS: Deirdre Des Jardins, up to  
20 20 minutes.

21 CO-HEARING OFFICER DODUC: All right. And  
22 next would be DDJ with -- Mr. Wehling, is it? Or did  
23 we -- no. That's no longer the case.

24 So then after that would be PCFFA and LAND  
25 with Oppenheim, DDJ, and Mr. Stokely.



1 Cross on that, please?

2 MR. JACKSON: Before I do cross on that, the  
3 California Sportsfishing Protection Alliance,  
4 Group 13, Tim Stroshane and Brandon Nakagawa.

5 CO-HEARING OFFICER DODUC: Oh, did I skip you?

6 MR. JACKSON: Yeah.

7 CO-HEARING OFFICER DODUC: That's right. I'm  
8 sorry, because you were moving Tom Cannon and  
9 Chris Shutes.

10 MR. JACKSON: Yes.

11 CO-HEARING OFFICER DODUC: All right. So  
12 let's go back. My apologies.

13 After Save the California Delta Alliance, we  
14 have the two witnesses there, Stroshane and Nakagawa.

15 MR. JACKSON: Nakagawa.

16 CO-HEARING OFFICER DODUC: Cross estimate for  
17 that, please?

18 MR. MIZELL: 45 minutes, please.

19 MR. WALTER: 15 minutes for San Luis.

20 MR. HERRICK: South Delta parties, 10, 15  
21 minutes.

22 CO-HEARING OFFICER DODUC: Okay. Now we get  
23 to PCFFA, and that would be Oppenheim, Ms. Des Jardins,  
24 and Mr. Stokely.

25 MR. MIZELL: The Department is requesting 20

1 minutes.

2 CO-HEARING OFFICER DODUC: 20 minutes.

3 MR. WALTER: 30 minutes for San Luis and  
4 Westlands.

5 CO-HEARING OFFICER DODUC: Anyone else?

6 (No response)

7 CO-HEARING OFFICER DODUC: All right. I think  
8 that gives us enough to play with for the rest of this  
9 week. I don't know that we'll get to all of them, but  
10 at least you have some rough time estimates.

11 Ms. Taber.

12 MS. TABER: Thank you. I'm following up on my  
13 request yesterday that we identify dates certain for  
14 Dr. Paulsen. We've conferred with the Department of  
15 Interior and DWR, and they are amenable to having her  
16 appear next Friday, the 24th, if that is convenient for  
17 the Hearing Officers.

18 CO-HEARING OFFICER DODUC: I thought she was  
19 not going to be available next Friday.

20 MS. TABER: She's not available on the 23rd.

21 CO-HEARING OFFICER MARCUS: Right. She's not  
22 available tomorrow or the 23rd.

23 MS. TABER: She wasn't available on this  
24 Thursday and next Thursday.

25 CO-HEARING OFFICER DODUC: All right. Are

1 there any objections to that?

2 (No response)

3 MS. TABER: Thank you.

4 CO-HEARING OFFICER DODUC: All right. Then we  
5 will look forward to having Dr. Paulsen present on  
6 behalf of Groups 13, 22, and 27 on Friday the 24th?

7 MS. TABER: Yes, please.

8 CO-HEARING OFFICER DODUC: And since we're at  
9 it, can we get estimates of cross as well? I'd like to  
10 see if we can do it all in one day. We'll see.

11 MS. MORRIS: The Department and State Water  
12 Contractors have a combined two hours cross-examination  
13 for -- estimated combined for Paulsen.

14 CO-HEARING OFFICER DODUC: All right.

15 MR. HERRICK: South Delta parties, 20, 30  
16 minutes for Dr. Paulsen.

17 MR. JACKSON: California Sportsfishing  
18 Protection Alliance, 20 minutes for each of the three,  
19 so a total of 60. They're three distinct topics.

20 MS. DES JARDINS: Deirdre Des Jardins,  
21 California Water Research, up to 30 minutes.

22 CO-HEARING OFFICER DODUC: 30 minutes, total?

23 MS. DES JARDINS: Yes.

24 CO-HEARING OFFICER DODUC: And, Ms. Morris,  
25 that was two hours, total? Not per group?

1 MS. MORRIS: (Shakes head)

2 CO-HEARING OFFICER DODUC: All right. That  
3 does give us a lot to work with. Thank you all for  
4 being so organized.

5 Are there any other housekeeping matters?

6 And Mr. Bezerra is once again not wearing his  
7 happy face.

8 MR. BEZERRA: Well, you know, getting blamed  
9 for everybody getting out late to lunch was a sobering  
10 experience.

11 Anyway, just a quick question regarding  
12 DWR-1143. So I'm wondering to what extent that's a  
13 subject for cross-examination for all of these other  
14 witnesses. Some of them have modeling expertise. Some  
15 of them may know about results.

16 Obviously, their rebuttal testimony in and of  
17 itself doesn't address 1143 because nobody's rebuttal  
18 testimony addressed that. So I'm wondering if you can  
19 provide some guidance as to the allowable scope for  
20 asking other witnesses about 1143 and the assumptions  
21 that are in there or not in there?

22 CO-HEARING OFFICER DODUC: Is this just  
23 because I asked your witness about 1143?

24 MR. BEZERRA: No. I'd be interested in some  
25 of these witnesses' opinions about what's in there and

1 how that may affect project operations.

2 CO-HEARING OFFICER DODUC: Ms. Morris.

3 MS. MORRIS: I would to object that. First of  
4 all, I think it's premature because I think it would  
5 depend on the question, and there may be the ability  
6 for someone to tie it back. But to the extent it's  
7 just questions about 1143 2nd Revised, that seems to go  
8 beyond the scope of the Board's hearing [sic] that the  
9 Department made witnesses available to answer  
10 questions.

11 And then my final objection would be that it's  
12 definitely would most likely go beyond the scope of the  
13 witnesses' rebuttal testimony which the  
14 cross-examination is going to. But again, it is  
15 possible that it could come up and be tied back to  
16 something in their testimony.

17 CO-HEARING OFFICER DODUC: All right. Before  
18 everyone chimes in, let me be very clear right now.

19 I recognized when I asked Mr. Bourez and  
20 Dr. Shankar that question earlier that I went beyond  
21 the scope of their rebuttal testimony. And I did say I  
22 was exercising my discretion as Hearing Officer.

23 I am not granting that discretion to the other  
24 parties. You are limited on cross to the scope of the  
25 rebuttal testimony. That's not to say, Ms. Morris,

1 that I might not decide to exercise my Hearing Officer  
2 discretion and ask that question again should I feel  
3 that additional information might be helpful.

4 MR. BEZERRA: I appreciate that guidance.  
5 That's very helpful. Thank you.

6 CO-HEARING OFFICER DODUC: All right.

7 MR. JACKSON: 1143 was not available when  
8 rebuttal testimony was filed. So it will go completely  
9 unquestioned in the hearing if you don't allow some  
10 questions.

11 CO-HEARING OFFICER DODUC: Mr. Jackson, you  
12 had opportunity to question petitioners' witnesses,  
13 Mr. Reyes and Dr. Chilmakuri, the other doctor about  
14 1143.

15 MR. JACKSON: And we did.

16 CO-HEARING OFFICER DODUC: And you did.

17 MR. JACKSON: But in terms of the insight that  
18 could be gained from a bunch of very good witnesses in  
19 the next week or so, then there is no chance to ask  
20 questions on 1143. So the way it came in after the  
21 rebuttal time period is pretty prejudicial to the  
22 cross-examiners.

23 CO-HEARING OFFICER DODUC: Are you making a  
24 request? a motion? Because --

25 MR. JACKSON: I'm making --

1 CO-HEARING OFFICER DODUC: Mr. Jackson, I am  
2 limiting to the scope of rebuttal testimony -- I am  
3 limiting the scope of cross-examination to rebuttal  
4 testimony presented.

5 MR. JACKSON: And 1143 and the other -- the  
6 supplemental environmental document?

7 CO-HEARING OFFICER DODUC: As long as the  
8 rebuttal testimony is somehow linked to it, if you can  
9 establish that connection.

10 MR. JACKSON: All right.

11 CO-HEARING OFFICER DODUC: The only exception  
12 that we've made in terms of -- I think I know what  
13 you're going at here, Mr. Jackson.

14 We directed petitioners to answer questions  
15 even if it was outside the scope of their rebuttal  
16 testimony with respect to DWR-1143 2nd Revision and the  
17 Supplemental EIR Administrative Draft document because  
18 that was our charge to them for the scope of this  
19 rebuttal.

20 This does not mean that all parties are then  
21 now free to ask questions about things outside the  
22 scope of the rebuttal testimony. That was a special  
23 onus we put on petitioners.

24 MS. DES JARDINS: I would like to respectfully  
25 request the Hearing Officers then -- it would seem --

1 for protestants to have a chance to examine and rebut  
2 the assertions in DWR-1143 or the testimony by DWR's  
3 witnesses, it would then require surrebuttal on that --  
4 on that exhibit and the testimony because it's not  
5 within the scope of rebuttal. Would it not then  
6 require surrebuttal, Madam Chair?

7 CO-HEARING OFFICER DODUC: If that's your  
8 request, it's noted.

9 And I will remind everyone that no good deed  
10 goes unpunished, that DWR-1143 2nd Revision was  
11 actually required of petitioners by us in the hope that  
12 it would clarify and help us understand the various  
13 modeling assumptions and the various operating criteria  
14 and how that -- all those things fit together.

15 It was not testimony, per se, offered by  
16 petitioners like it would be in the normal course of  
17 this hearing. It was a special directive requirement  
18 of this Board and, therefore, there were extenuating  
19 requirements associated with it for the purpose of this  
20 rebuttal phase.

21 So on that note, we will now again emphasize  
22 that the scope of cross is limited to the rebuttal  
23 testimony of the witnesses being crossed.

24 Anything else?

25 MS. TABER: I've just received a request from



1 Mr. Keeling for 20 minutes of cross-examination of  
2 Mr. Shutes and Mr. Cannon on behalf of San Joaquin  
3 County.

4 CO-HEARING OFFICER DODUC: Okay. Hold on.  
5 So Shutes and Cannon -- Keeling, that was 20  
6 minutes?

7 MS. TABER: Correct.

8 CO-HEARING OFFICER DODUC: Ms. Morris.

9 MS. MORRIS: Before the testimony of  
10 Mr. Ortega begins, I had an objection -- a motion to  
11 strike.

12 So could you please pull up GWD-22 revised.  
13 The motion to strike is to strike from Page 2,  
14 Line 19, through Page 8, Line 7, as improper rebuttal  
15 testimony for two reasons. The testimony as drafted is  
16 a summary of DWR and the Bureau witness testimony with  
17 citations and does not offer new evidence by  
18 Mr. Ortega. Further, it is legal argument since it  
19 does not provide any new testimony but rather argues  
20 about existing testimony in the record.

21 For example, if you turn to Page 2, please,  
22 and scroll to the bottom.

23 Each paragraph that I just went through has a  
24 summary of the testimony and then a footnote, and the  
25 footnote, as you can see, is to testimony that's

1 already in the record.

2 Mr. Hunt, could you scroll to the next page.

3 And that continues in each paragraph all the  
4 way through Page 8, Line 8, which is properly rebuttal  
5 testimony according to the Hearing Officer's ruling,  
6 and that is where it begins talking about the proposed  
7 water rights terms and conditions.

8 So my motion, again, is to strike as improper  
9 rebuttal testimony for being -- not providing new  
10 evidence but rather making arguments about the evidence  
11 and characterizing evidence that's already in the  
12 record.

13 CO-HEARING OFFICER DODUC: Your response,  
14 Ms. Wehr.

15 MS. WEHR: Hearing Officer Doduc, it's  
16 surprising that this motion to strike comes at this  
17 time, given that the Hearing Officers already struck a  
18 portion of our testimony several weeks ago which we did  
19 not object to. It would have been proper or more  
20 timely for the petitioners or State Water Contractors  
21 to object and request further stricken testimony  
22 instead of springing it on us right before my client is  
23 about to testify.

24 I do -- although it does characterize some of  
25 the testimony that Mr. Ortega is reflecting on, there

1 are portions of this testimony that's requested to be  
2 stricken that contain Mr. Ortega's personal knowledge,  
3 personal observation, or confirmation of some of the  
4 testimony that was provided on direct.

5 For example, Page 6, Line 15, Mr. Ortega  
6 confirms his personal experience regarding how refuge  
7 water supplies are allocated. And Page 7, Lines 17 to  
8 18, again Mr. Ortega confirms his knowledge about  
9 Reclamation's position on participation in the  
10 California WaterFix.

11 So I think it's untimely. I think it's  
12 unfair. I don't think that it's necessarily material  
13 to the evidence presented, to the arguments made or to  
14 be made in the hearing. And it would be also improper  
15 to strike testimony related to his confirmation of  
16 his -- and his direct personal knowledge.

17 CO-HEARING OFFICER DODUC: I will address the  
18 "untimely" part of your response, Ms. Wehr.

19 It actually is timely. We did provide  
20 instruction to the parties to not submit anything in  
21 writing prior to presentation of testimony at the  
22 hearing. So Ms. Morris was following our orders in  
23 terms of presenting her oral objections.

24 With respect to the remainder of your  
25 response, Ms. Wehr, I would tend to agree unless,

1 Ms. Morris, you can shed additional light onto it.

2 MS. MORRIS: Sure. I would just -- the two  
3 citations that Ms. Wehr pointed to are just citations  
4 back to evidence that's already in the record by GWD.  
5 And then on Page 7, it's again evidence that was  
6 Kristen White's oral testimony and just that it hasn't  
7 changed.

8 So, again, all of this entire document is  
9 really a legal brief comparing and contrasting  
10 evidence, and it doesn't provide any new evidence on  
11 rebuttal.

12 CO-HEARING OFFICER DODUC: What I would like  
13 to do is to -- I'm not a lawyer, so I'm trying to  
14 figure out the best way to say this -- is take your  
15 motion to strike, Ms. Morris, under consideration but  
16 applying it to weighing the evidence. So instead of  
17 striking it, I'm going to allow Mr. Ortega to make his  
18 direct testimony, to keep the statements in his  
19 testimony, but we will weigh it accordingly.

20 With that, is there any -- okay.

21 Not on that, sorry, but there's something  
22 else. All right.

23 MR. HERRICK: John Herrick, South Delta  
24 parties. I apologize for being a non sequitur here.

25 I misinterpreted e-mail to me. I believe

1 Contra Costa County and Water Agency are requesting 20  
2 minutes of cross on the LAND witnesses. I apologize.  
3 I thought they were telling me how long their rebuttal  
4 would take.

5 CO-HEARING OFFICER DODUC: And which group is  
6 that group number, please?

7 MR. HERRICK: The cross will be on group --  
8 order of Groups 19, 24, and 45. They are Group 25,  
9 Contra Costa.

10 CO-HEARING OFFICER DODUC: They are Group 25,  
11 requesting how much?

12 MR. HERRICK: 20 minutes.

13 CO-HEARING OFFICER DODUC: 20 minutes.

14 MR. HERRICK: I apologize for misinterpreting  
15 the instruction. Thank you.

16 CO-HEARING OFFICER DODUC: All right.

17 MS. DES JARDINS: Just one addition. CSPA,  
18 Group 13, 14, would like to reserve up to 20 minutes  
19 of -- it got confused that PCFFA had been mentioned.

20 CO-HEARING OFFICER DODUC: I did not hear that  
21 at all.

22 MS. DES JARDINS: Deirdre Des Jardins, Group  
23 37. I would like to clarify that I'm also requesting  
24 20 minutes for CSPA Group 13, then CSPA second group.

25 CO-HEARING OFFICER DODUC: Which CSPA?

1 MS. DES JARDINS: CSPA has two groups. One is  
2 Tom Cannon and Chris Shutes, which did I request time  
3 for. The other is Tim Stroshane and Brandon Nakagawa.  
4 And we'd like to request 20 minutes for that group.

5 CO-HEARING OFFICER DODUC: All right. Now,  
6 finally, Ms. Wehr and Mr. Ortega.

7 RICARDO ORTEGA,  
8 called as Part 2 Rebuttal witness by  
9 Protestant Grassland Water District,  
10 having been previously duly sworn,  
11 was examined and testified further as  
12 hereinafter set forth:

13 DIRECT EXAMINATION BY MS. WEHR

14 MS. WEHR: Thank you. Good afternoon.

15 Mr. Ortega, can you introduce your name and title?

16 WITNESS ORTEGA: Yes. My name is Ricardo  
17 Ortega. I'm the general manager of Grassland Water  
18 District, and we deliver water supply to 90 percent of  
19 the South of Delta CVPIA Refuge habitat.

20 MS. WEHR: And have you previously taken the  
21 oath and established your qualifications in this  
22 hearing?

23 WITNESS ORTEGA: I have.

24 MS. WEHR: Can you confirm that Exhibit GWD-22  
25 is a true and correct copy of your rebuttal testimony?

1 WITNESS ORTEGA: Yes, it is.

2 MS. WEHR: Thank you. Please proceed.

3 WITNESS ORTEGA: Okay. Thank you.

4 The testimony provided by DWR and Reclamation  
5 clearly states that the modeling assumes that refuge  
6 water allocations will continue to be based on Shasta  
7 critical criteria and that refuge water will be allowed  
8 to move through the tunnels.

9 Despite this testimony, I've found nothing in  
10 the mitigation measures and the WaterFix operating  
11 criteria or the CEQA or NEPA documents that requires  
12 this. Instead, Reclamation has informed us that it  
13 will not participate in WaterFix project, that there is  
14 no plan or funding to guarantee that refuge water will  
15 be allowed to move through the tunnels, and that  
16 mitigation will be necessary at some point in the  
17 future to protect refuge water supplies. That does not  
18 inspire confidence.

19 CO-HEARING OFFICER DODUC: Mr. Ortega, if you  
20 could please hold on. Mr. Berliner is rushing to the  
21 microphone.

22 MR. BERLINER: This testimony is not  
23 summarizing his testimony. There is no discussion in  
24 his testimony of NEPA or CEQA or position of  
25 Reclamation regarding the project. This is all new

1 information. On that basis, I object.

2 CO-HEARING OFFICER DODUC: Ms. Wehr.

3 MS. WEHR: I disagree. On Page 5 of  
4 Mr. Ortega's testimony, it clearly addresses the  
5 EIR/EIS, which is a CEQA/NEPA document.

6 CO-HEARING OFFICER DODUC: I'm sorry. Could  
7 we go there, please. We're looking at Mr. Ortega's  
8 testimony, Page 5. Ms. Wehr?

9 MS. WEHR: If you scroll down to Lines 16  
10 through 17, for example, characterizing the CEQA/NEPA  
11 document, it characterizes that document as stating  
12 that there are no new adverse impacts to water  
13 supplies, no further mitigation. That's essentially  
14 what Mr. Ortega is summarizing right now. He has not  
15 seen in any CEQA or NEPA document any mitigation or any  
16 requirements to meet refuge water supplies.

17 Throughout Mr. Ortega's testimony, he also  
18 describes, for instance, on Page 7, Lines 14 through  
19 18, that Reclamation issued a letter to all contracts,  
20 including to himself, about the uncertainties of his  
21 participation in WaterFix and that, to his knowledge,  
22 Reclamation has not changed its position after issuing  
23 that letter. I don't think this is an improper summary  
24 of his testimony.

25 CO-HEARING OFFICER DODUC: Are you reading the



1 same thing that I am, Mr. Berliner?

2 MR. BERLINER: I think I am. Just to clarify,  
3 I'm looking at Lines 14 to 17 on Page 7, which  
4 mentions -- this is a reference to the modeling and  
5 then to Exhibit 21, GWD-21, correct, which is the  
6 letter.

7 MS. WEHR: Correct.

8 MR. BERLINER: With respect to my latter part  
9 of the objection, I'll withdraw that.

10 With respect to CEQA/NEPA on the prior  
11 reference, all it merely does is echo what's already  
12 been stated by other parties. It doesn't offer any new  
13 information.

14 CO-HEARING OFFICER DODUC: That's the same  
15 objection that Ms. Morris made.

16 MR. BERLINER: Well --

17 CO-HEARING OFFICER DODUC: So it will go to  
18 weight.

19 MR. BERLINER: -- not quite, no. I wasn't  
20 moving to strike that.

21 CO-HEARING OFFICER DODUC: I'm sorry. Could  
22 someone move that chair away from Mr. Berliner? He  
23 looks so uncomfortable.

24 MR. BERLINER: It wasn't that bad. Thank you.

25 CO-HEARING OFFICER DODUC: If we could go back

1 to, then, Page 35, Mr. Hunt.

2 And what line was that again, Ms. Wehr?

3 MR. BERLINER: 14.

4 CO-HEARING OFFICER DODUC: Okay.

5 MR. BERLINER: This is -- on Line 14 through  
6 the end of the page is simply a restatement of what was  
7 said as part of -- as part of the Supplemental EIR/EIS  
8 statement. That's all it is. It's just in essence  
9 observation of the length and the quote from the  
10 document. It's not in the testimony.

11 He was going -- as I understood where he was  
12 going, it was going beyond this.

13 CO-HEARING OFFICER DODUC: Mr. Ortega --

14 MR. BERLINER: I could be mistaken.

15 CO-HEARING OFFICER DODUC: If you could repeat  
16 that first part of the last statement you just made.

17 WITNESS ORTEGA: Sure. Despite their  
18 testimony, I found nothing in the mitigation measures  
19 in the WaterFix operating criteria in the CEQA or NEPA  
20 documents that requires this. Instead, Reclamation --

21 CO-HEARING OFFICER DODUC: I'm sorry. When  
22 you say "requires this," you're referring to?

23 WITNESS ORTEGA: To maintaining the Shasta  
24 criteria as it relates to the delivery of refuge water  
25 supply.

1 MR. BERLINER: And in my review of that  
2 language, that's not what it says. This is simply an  
3 observation that no new adverse water supply impacts  
4 have been identified and thus no further mitigation is  
5 necessary, and then it quotes from the document.

6 MS. WEHR: If I could --

7 MR. BERLINER: Now -- I'm sorry.

8 MS. WEHR: I can just add I think the  
9 purposes -- the purpose of Mr. Ortega's testimony is to  
10 in part respond to your request, Chair Doduc, or  
11 Hearing Officer Doduc, about wanting to know what  
12 conditions, or permit terms and conditions Grassland  
13 Water District would accept in an effort to resolve its  
14 protest.

15 On Page 8 of Mr. Ortega's testimony, Lines 3  
16 through 5, he states that the new Supplemental EIR/EIS  
17 ignores discrepancies regarding how the project will  
18 operate and resulting water supply impacts. That is  
19 his personal, professional expert opinion.

20 And it is explained below on Page 8, Lines 26  
21 through 28, that the purpose of the terms and  
22 conditions that Grassland Water District has proposed  
23 are intended to resolve the inconsistencies,  
24 uncertainties, and omissions throughout the testimony  
25 and the EIR/EIS.

1 CO-HEARING OFFICER DODUC: So that statement  
2 to which Mr. Berliner objects goes towards this  
3 uncertainty and omission background that you're trying  
4 to establish, leading to the proposed terms and  
5 conditions?

6 MS. WEHR: Correct.

7 CO-HEARING OFFICER DODUC: Overruled,  
8 Mr. Berliner.

9 MR. BERLINER: Thank you.

10 CO-HEARING OFFICER DODUC: Please proceed.

11 WITNESS ORTEGA: Thank you. In my experience  
12 as general manager of the Grassland Water District and  
13 as a person who oversees the delivery of refuge water  
14 supplies to over 90 percent of the South of Delta  
15 habitat, Reclamation has a long history of  
16 deprioritizing our refuge water supply needs, despite  
17 the legal mandate.

18 A few examples. Reclamation arbitrarily  
19 denied refuges their 20-year ability to schedule water  
20 from February into April in both water years 2016 and  
21 '18. Also in 2016, Reclamation dictated that refuges  
22 would not be able to receive their water supply until  
23 late October. We typically have demand ramping up in  
24 August, but the demand is really year-round. These  
25 animals need to drink fresh water. We need to provide

1 the food and resources that they maintain.

2           These are examples from my personal experience  
3 with Reclamation that they cannot be counted on to  
4 uphold the requirements of the law or to protect  
5 critical water supply refuges -- water supplies to  
6 refuges.

7           Can you pull up GWD Exhibit 23.

8           Okay. We have presented three very  
9 straightforward terms and conditions for the project.  
10 The fact that Reclamation has not agreed to these terms  
11 should be a sign to you how serious the threat is to  
12 wildlife. First, we would like to see that the permits  
13 require compliance with the refuge water supply  
14 requirements under federal law, Central Valley Project  
15 Improvement Act, as a condition of the project.

16           Secondly, require that refuge shortages are  
17 based on Shasta criterion similar -- in the same  
18 fashion that is -- the hard-coded modeling assumptions  
19 provide and not because other water supplies are  
20 prioritized within the conveyance or storage of these  
21 new facilities.

22           Thirdly, ensure that the refuges have  
23 equitable right to reschedule water supplies in  
24 San Luis Reservoir as we have utilized for the past 20  
25 years.

1 This concludes my testimony. Thank you.

2 CO-HEARING OFFICER DODUC: Thank you,  
3 Mr. Ortega.

4 Cross, I have DWR for 20, State Water  
5 Contractors for 10, and Ms. Des Jardins for 20.

6 Ms. Aufdemberge.

7 MS. AUFDEMBERGE: Yes, Amy Aufdemberge,  
8 Department of Interior. I have 10 minutes.

9 CO-HEARING OFFICER DODUC: All right.

10 MR. MIZELL: If I may make a request. The  
11 transcript that we rely upon to accurately read what  
12 has been said by witnesses has gone down. If we can  
13 take maybe a five-minute break here.

14 THE REPORTER: Two minutes.

15 MR. MIZELL: Two-minute break to get that back  
16 up.

17 CO-HEARING OFFICER DODUC: Five is actually a  
18 nice round number. So we will reconvene at 2:30.

19 (Recess taken)

20 CO-HEARING OFFICER DODUC: All right. We're  
21 ready?

22 Ms. Aufdemberge, I see your nameplate, so. . .

23 CROSS-EXAMINATION BY MS. AUFDEMBERGE

24 MS. AUFDEMBERGE: Hello, Mr. Ortega. My name  
25 is Amy Aufdemberge. I'm an attorney with the

1 Department of Interior in the Solicitor's Office here  
2 in Sacramento. I represent the Bureau of Reclamation  
3 in this hearing.

4 So you -- your testimony, you've requested  
5 water right conditions about CVPIA requirements; is  
6 that correct?

7 WITNESS ORTEGA: Correct.

8 MS. AUFDEMBERGE: Are you familiar with CVPIA  
9 Section addressing the Central Valley Refuges?

10 WITNESS ORTEGA: I am.

11 MS. AUFDEMBERGE: That section requires the  
12 Secretary of Interior to provide certain water supplies  
13 to the Central Valley refuges, correct?

14 WITNESS ORTEGA: It does.

15 MS. AUFDEMBERGE: And the Secretary, through  
16 the Bureau of Reclamation, supplies this water pursuant  
17 to federal contracts; is that correct?

18 WITNESS ORTEGA: It does.

19 MS. AUFDEMBERGE: And in GWD-17 -- if we can  
20 pull that up.

21 You've included these contracts as an exhibit,  
22 correct?

23 WITNESS ORTEGA: Correct.

24 MS. AUFDEMBERGE: You're familiar with these  
25 contracts?

1 WITNESS ORTEGA: Yes.

2 MS. AUFDEMBERGE: Does your contract -- do  
3 these contracts -- I understand there's three contracts  
4 in GWD-17, correct?

5 WITNESS ORTEGA: Yes.

6 MS. AUFDEMBERGE: Do these contracts  
7 include -- with Reclamation include shortage  
8 provisions?

9 WITNESS ORTEGA: They do.

10 MS. AUFDEMBERGE: Does your contract define  
11 "critically dry year" based on Shasta inflow?

12 WITNESS ORTEGA: It does.

13 MS. AUFDEMBERGE: Do the shortage provisions  
14 allow for shortages only in Shasta critically dry  
15 years?

16 WITNESS ORTEGA: Yes.

17 MS. AUFDEMBERGE: Do the contracts with  
18 Reclamation mention rescheduled water?

19 MR. ORTEGA: I believe so, yes.

20 MS. AUFDEMBERGE: Can we go to Article 3(e).  
21 We'll just use the first contract. It's on  
22 Page 8 [sic]. I'm sorry. That's paginated 8. That's  
23 it.

24 Starting there on Line 198 on this page, can  
25 you read that for me, please.



1                   WITNESS ORTEGA: "In order to maximize water  
2 available to refuges and better manage such water, the  
3 contractors may request, with the contracting officer's  
4 permission, to reschedule a portion of the Level 2  
5 water supplies and/or a portion of the Incremental  
6 Level 4 water supplies made available to the contractor  
7 for use within the contractor's boundary during the  
8 current water year for use within the subsequent year."

9                   Would you like me to keep going?

10                  CO-HEARING OFFICER DODUC: No, let's not.

11                  MS. AUFDEMBERGE: Or just read the rest to  
12 yourself, please.

13                  This section requires the refuges to request  
14 permission from Reclamation, is that correct, for  
15 scheduling?

16                  WITNESS ORTEGA: Yes.

17                  MS. AUFDEMBERGE: And this contract says that  
18 Reclamation only may allow rescheduling; is that  
19 correct?

20                  WITNESS ORTEGA: Yes.

21                  MS. AUFDEMBERGE: Thank you. No further  
22 questions.

23                  CO-HEARING OFFICER DODUC: Thank you,  
24 Ms. Aufdemberge.

25                  MR. BERLINER: My cross-examination is limited

1 to a question about 2016 shortages and the three  
2 requested permit terms.

3 Good afternoon, Mr. Ortega. my name is Tom  
4 Berliner. I'm an attorney for the Department of Water  
5 Resources. Nice to meet you.

6 You made a comment during your summary of your  
7 testimony about shortages in 2016. I was curious where  
8 in your testimony you discuss that. I did not see it  
9 in your written testimony.

10 WITNESS ORTEGA: I'm not positive as to where.  
11 I don't have it in front of me.

12 MR. BERLINER: Do you have a copy of your  
13 written testimony with you today?

14 WITNESS ORTEGA: Yes.

15 It looks as if I did not identify specifically  
16 the 26-year timing problems that we were facing.

17 MR. BERLINER: On that basis, I'd like to  
18 request that that part of his summary of his testimony  
19 be stricken from the record.

20 CO-HEARING OFFICER DODUC: Ms. Wehr.

21 MS. WEHR: If it is true that it is not in his  
22 written testimony, I would say that Mr. Ortega was  
23 given an example of the risks that he sees in the  
24 inconsistencies and omissions in the testimony.

25 There was extensive testimony in the direct

1 portion of this Phase 2 hearing about shortages that  
2 occurred in 2016. So to the extent it was just an  
3 example that he has already given before, you know, if  
4 it really needs to be stricken and it's very important  
5 to Mr. Berliner, we'll accept that.

6 CO-HEARING OFFICER DODUC: Then it's stricken.

7 MR. BERLINER: Thank you.

8 Mr. Ortega -- Mr. Hunt, could we pull up  
9 GWD-23, please.

10 Mr. Ortega, on Page 8 of your testimony, you  
11 paraphrase the three conditions that you're requesting.  
12 So just consistent with your paraphrasing of them, so I  
13 don't have to read the whole thing, as I understand  
14 that, the -- and I'm on Line 18 of Page 8 -- that the  
15 first of the conditions that you would like requires  
16 Reclamation to ensure that the diversions or  
17 re-diversions of CVP water made in compliance with the  
18 Level 2 requirements under CVPIA, correct?

19 WITNESS ORTEGA: Yes.

20 MR. BERLINER: And just to be clear on the  
21 record, when you refer to Level 2, to what are you  
22 referring?

23 WITNESS ORTEGA: Specifically for our  
24 contracts, it's 125,000 acre-feet. For the total South  
25 of Delta refuge supply, it's a little north of 250,000

1 acre-feet.

2 MR. BERLINER: And "Level 2" refers to what?

3 WITNESS ORTEGA: It is based on the historic  
4 use of water supply for these refuge areas.

5 MR. BERLINER: And what is the difference  
6 between Level 2 water and Level 4 water?

7 WITNESS ORTEGA: So Level 2 water basically  
8 comes out of CVP yield, as where incremental Level 4 is  
9 acquired on the open market. The combination of Level  
10 2 water and incremental Level 4 water cumulatively  
11 equal Level 4 water supplies.

12 Level 4 water supply is the total need and our  
13 total contractual amount. In our case with Grassland  
14 Water District, that equals 180,000 acre-feet.

15 MR. BERLINER: Thank you.

16 You indicated you're familiar with Section  
17 3406(d) of the CVPIA. And with regard to the Level 2  
18 condition that you're asking for, in your view, is this  
19 more of a -- a right than you would be entitled to  
20 under CVPIA?

21 WITNESS ORTEGA: I think it is a right that is  
22 established under CVPIA, but now that, you know, this  
23 new project is being proposed, I think it could have  
24 implications on Reclamation's ability to continue to  
25 meet those obligations.

1 MR. BERLINER: And in your view, does  
2 Reclamation have the firm obligation to meet Level 2  
3 supplies?

4 WITNESS ORTEGA: Yes.

5 MR. BERLINER: So in your view, does the  
6 WaterFix project CWF H3+ exculpate Reclamation from  
7 that obligation?

8 WITNESS ORTEGA: It does not, but I think it  
9 does make it more difficult to meet those refuge needs  
10 and requirements, especially South of the Delta.

11 MR. BERLINER: Is Reclamation [sic] first  
12 priority to which Reclamation supplies water along with  
13 the Exchange Contractors?

14 Ms. WEHR: Do you mean refuges?

15 MR. BERLINER: Refuges. I'm sorry. Maybe I  
16 misspoke.

17 WITNESS ORTEGA: Can you repeat the question.

18 MR. BERLINER: Sure. Part of the -- is the  
19 Grassland Water District one of the first priorities,  
20 along with the Exchange Contractors, to which  
21 Reclamation provides water South of the Delta?

22 WITNESS ORTEGA: I think that's -- that's  
23 really a timing issue. The vast majority of the water  
24 need for the refuges occurs in the fall and winter,  
25 where the agricultural demand from the Exchange

1 Contractors is really a spring-summer peak demand.

2 So when you say "first," are you referring to  
3 timing?

4 MR. BERLINER: No. I'm referring to priority.

5 If there's water available to Reclamation,  
6 does the water go first to the refuges and the Exchange  
7 Contractors?

8 WITNESS ORTEGA: I think it goes first to the  
9 Exchange Contractors in practice. We have been kept,  
10 from an allocation perspective, at -- at an unequal  
11 level, but obviously we're dealing with vastly  
12 different sizes of water blocks.

13 MR. BERLINER: But you're kept an equal level  
14 with the Exchange Contractors?

15 WITNESS ORTEGA: We have to date -- on just  
16 the Level 2.

17 MR. BERLINER: So just to clarify, the  
18 condition that you are seeking from the Water Board  
19 would be somehow a greater level of assurance of Level  
20 2 refuge water than you -- in your view, you're  
21 entitled to under CVPIA, if I understand correctly?

22 MS. WEHR: Objection. That completely  
23 misstates Mr. Ortega's testimony. I don't believe he  
24 has stated that he is asking for a greater level of  
25 protection than the refuges currently enjoy under the

1 CVPIA.

2 WITNESS ORTEGA: I would like for it to be  
3 maintained. I'm not asking for anything out of this  
4 project, just not to be harmed.

5 MR. BERLINER: Thank you. I appreciate that  
6 clarification.

7 And under 3406(d) Subpart 5, which provides in  
8 part that the Secretary of the Interior is authorized  
9 and directed to construct or acquire from nonfederal  
10 sources, water conveyance facilities or capacity, are  
11 you familiar with that provision?

12 WITNESS ORTEGA: Yes.

13 MR. BERLINER: And that's as necessary to  
14 implement their -- the requirements for the delivery of  
15 Level 2 water, correct?

16 WITNESS ORTEGA: For both. So cumulatively  
17 for Level 4. But yes, that would encompass all of  
18 Level 2.

19 MR. BERLINER: And there is a condition under  
20 Subpart 5 that you're aware of, are you not, that would  
21 prohibit the Secretary from using --

22 MS. WEHR: Objection. This goes beyond the  
23 scope of Mr. Ortega's rebuttal testimony. It also  
24 calls for legal analysis or interpretation of statutory  
25 provisions. Mr. Ortega's not a lawyer. So I would

1 just object that this is going well beyond the scope of  
2 his rebuttal.

3 CO-HEARING OFFICER DODUC: Mr. Berliner.

4 MR. BERLINER: Well, this whole proceeding  
5 concerns the California WaterFix, which is a facility  
6 that runs through the Delta. And I'll offer an offer  
7 of proof that, under Subpart 5 it states, and I'll  
8 quote, that the "Secretary is authorized and directed  
9 to construct" -- I'm sorry -- "Secretary is authorized  
10 and directed to construct or acquire from nonfederal  
11 entities such water conveyance facilities, conveyance  
12 capacity, and wells as are necessary to implement the  
13 requirements of this subsection, provided that such  
14 authorization shall not extend to conveyance facilities  
15 in or around the Sacramento's San Joaquin Delta  
16 Estuary."

17 This facility, this proceeding is about  
18 exactly that, which is -- which Reclamation is  
19 prohibited, by my understanding of this language, from  
20 engaging in to deliver these refuge supplies.

21 MS. WEHR: I will renew my objection. If  
22 Mr. Berliner is apparently now, in cross-examination on  
23 rebuttal, appears to wish to draw into this hearing,  
24 wishes to argue the legal points and interpretations of  
25 Section (d)(5), 3406(d)(5), we can do that in closing



1       briefs.

2                   CO-HEARING OFFICER DODUC:   Sustained.

3                   MR. BERLINER:   Well, as I look at these  
4       conditions, these conditions appear to go directly to  
5       the WaterFix project, and I'm asking it in that  
6       context.   So the terms -- the terms and conditions were  
7       proposed now.

8                   CO-HEARING OFFICER DODUC:   Yes.

9                   MR. BERLINER:   So we're allowed to  
10      cross-examine on the terms and conditions.

11                   CO-HEARING OFFICER DODUC:   Yes.

12                   MR. BERLINER:   So --

13                   CO-HEARING OFFICER DODUC:   To the extent that  
14      Mr. Ortega can answer.

15                   MR. BERLINER:   Yes, I understand.   So I was  
16      asking for his understanding.   I'm not asking for a  
17      legal analysis.   Mr. Ortega responded at the beginning  
18      of cross-examination that he was familiar with  
19      Section 3406(d).   3406(d) includes Subpart 5, and  
20      Subpart 5 --

21                   CO-HEARING OFFICER DODUC:   Hold on.

22                   MR. BERLINER:   -- contains this prohibition.

23                   CO-HEARING OFFICER DODUC:   Which prohibition  
24      are you talking about?

25                   MR. BERLINER:   That the -- my words, not the

1 words of the statute, that Reclamation would be  
2 prohibited from using a Delta facility to meet the  
3 Level 2, Level 4 needs.

4 MS. WEHR: Objection. That mischaracterizes  
5 even the plain language of the statute. It also  
6 mischaracterizes the language of the proposed terms and  
7 conditions which do not require Reclamation to  
8 construct or divert through the new facilities a refuge  
9 water. It simply requires as a condition of  
10 Reclamation's permit for the CVP that it comply with  
11 the law. We looked at these conditions as narrowly as  
12 possible to be as practical and reasonable as possible.

13 CO-HEARING OFFICER DODUC: This sounds  
14 remarkably more and more like legal arguments.

15 Mr. Berliner, if you would help me by  
16 directing me to -- I assume you're focusing on that  
17 first proposed term?

18 MR. BERLINER: Yes.

19 CO-HEARING OFFICER DODUC: Okay. And where  
20 does 3406(d)(5) come into this?

21 MR. BERLINER: So 2406(d) Sub (5) provides  
22 that the Secretary's authorization and direction about  
23 acquiring or constructing facilities --

24 CO-HEARING OFFICER DODUC: Mr. Berliner, stop.

25 MR. BERLINER: -- water conveyance

1 facilities --

2 CO-HEARING OFFICER DODUC: Stop. I'm looking  
3 at proposed Condition 1.

4 MR. BERLINER: Yes.

5 CO-HEARING OFFICER DODUC: I don't see  
6 3406(d)(5) being mentioned. So are you trying to  
7 explain to me how, I hope, 3406(d)(5) relates to this  
8 proposed term?

9 MR. BERLINER: Correct.

10 CO-HEARING OFFICER DODUC: Okay.

11 MR. BERLINER: Yes. So that subpart prohibits  
12 the Secretary from using a Delta facility to meet these  
13 requirements, so. . .

14 MS. WEHR: That language is not included in  
15 Section (d)(5), Mr. Berliner. I renew my objection.

16 CO-HEARING OFFICER DODUC: Okay. Enough.

17 MR. BERLINER: I'm actually just reading.

18 CO-HEARING OFFICER DODUC: Enough, enough.  
19 Mr. Berliner, you're not testifying.

20 So what is your question?

21 MR. BERLINER: So my question --

22 CO-HEARING OFFICER DODUC: Is your question  
23 about Mr. Ortega's testimony, i.e., the proposed term,  
24 or is it about 3406(d)(5)?

25 MR. BERLINER: It is about the term that's

1 being requested in light of the proviso under  
2 3406(d)(5) and his understanding.

3 CO-HEARING OFFICER DODUC: Mr. Ortega --  
4 Hold on, hold on.

5 Are you familiar with 3406(d)(5)?

6 WITNESS ORTEGA: Not intimately.

7 MR. BERLINER: I was just responding to -- he  
8 said he was familiar with it, and this is just one of  
9 the subparts.

10 CO-HEARING OFFICER DODUC: And now he says  
11 he's not.

12 MR. BERLINER: I'll move on.

13 CO-HEARING OFFICER DODUC: Please.

14 MR. BERLINER: With regard to the second, you  
15 would like the Board to adopt a condition that would  
16 prohibit, as I understand it, a reduction due to  
17 conveyance limitations in the Delta that would be  
18 caused or would result from diversions through the  
19 California WaterFix facilities, correct?

20 WITNESS ORTEGA: Correct.

21 MR. BERLINER: If the shortage is based on  
22 lack of availability of water as opposed to any other  
23 reason, you're not suggesting that that should  
24 prohibited as a condition of shortage, correct?

25 WITNESS ORTEGA: Can you clarify "lack of

1 availability of water"?

2 MR. BERLINER: Hydrologic circumstances that  
3 would prevent delivery of your --

4 WITNESS ORTEGA: The only shortage provision  
5 that we have is tied to the Shasta index. So anything  
6 that's occurring within the Delta, especially this new  
7 facility, I think should be held accountable for any  
8 additional harm.

9 MR. BERLINER: So in essence, to sort of  
10 paraphrase that, you want to make sure that your water  
11 supply is as it would be if the WaterFix project did  
12 not exist, correct?

13 WITNESS ORTEGA: Correct.

14 MR. BERLINER: So sort of a "with and without"  
15 test, correct? In other words, if your water supply  
16 was reduced because of the WaterFix, you don't want  
17 that to occur; and if it would have occurred without  
18 the WaterFix, based on natural conditions, then that's  
19 consistent with operations today?

20 WITNESS ORTEGA: To the -- you know, within  
21 the shortage provision of up to 25 percent, yes.

22 MR. BERLINER: Thank you.

23 In your view, that's a right, that's  
24 consistent with your rights as provided under CVPIA  
25 today, correct?

1 WITNESS ORTEGA: Correct.

2 MR. BERLINER: So this permit condition then,  
3 essentially, that you're asking for is to say -- is to  
4 echo what exists under federal law; is that right?

5 WITNESS ORTEGA: Correct.

6 MR. BERLINER: Your third condition asks for  
7 an equal opportunity to reschedule water in San Luis  
8 Reservoir. Are you asking for a provision that is not  
9 dependant on approval by the Secretary?

10 MS. WEHR: Could you clarify that?

11 MR. BERLINER: Sure.

12 MS. WEHR: When that approval would be  
13 required or not?

14 MR. BERLINER: Sure.

15 As you were being cross-examined earlier by  
16 Ms. Aufdemberge on the rescheduling provision, it  
17 states that approval of the Secretary is required.

18 As I read the third condition, my  
19 understanding, that would be because there's no  
20 definition of an "equitable opportunity."

21 And maybe I'll ask you, does the equitable  
22 opportunity -- is that contingent on approval by the  
23 Secretary?

24 WITNESS ORTEGA: By the contracting officer at  
25 Reclamation, yes.

1 MR. BERLINER: So are you asking for a  
2 provision from the Board that would increase the rights  
3 that you have under your existing contract?

4 WITNESS ORTEGA: I am not. I am simply trying  
5 to state the fact that a new block of water will be  
6 introduced into San Luis Reservoir and the potential  
7 for our supply to be displaced or de-prioritized is  
8 high.

9 And we've seen this occur in 2016 and in 2018,  
10 so the condition exists. It's tough already; this  
11 project is going to make it tougher, and so -- to the  
12 degree that this project is going to further impact our  
13 ability to reschedule water, given still the authority  
14 and the approval that's required under our contracts  
15 and under CVPIA.

16 MR. BERLINER: Are your rights to reschedule  
17 or your opportunity, I should say, to reschedule water  
18 today determined by, to use your phrase, a contracting  
19 officer?

20 WITNESS ORTEGA: Yes. We make a request, and  
21 they either approve or deny.

22 MR. BERLINER: And are there guidelines that  
23 are set forth each year as to what rescheduling will be  
24 allowed?

25 WITNESS ORTEGA: There are.

1 MR. BERLINER: And in 2016, if I understand  
2 your response from a moment ago, some rescheduling  
3 opportunity was decreased as a result of some other  
4 water that was in San Luis Reservoir on the federal  
5 side; is that right?

6 WITNESS ORTEGA: It was denied. It was not  
7 decreased.

8 MR. BERLINER: And do you know why it was  
9 denied?

10 WITNESS ORTEGA: I can't speak to the  
11 rationale of Central Valley operations or the  
12 contracting officer.

13 MR. BERLINER: Did they tell you why they were  
14 denying it?

15 WITNESS ORTEGA: No. They simply said that  
16 the request was denied.

17 MR. BERLINER: And for 2018, your opportunity  
18 was decreased; is that correct?

19 WITNESS ORTEGA: No. It was denied.

20 MR. BERLINER: Denied. And do you know why?

21 WITNESS ORTEGA: No.

22 MR. BERLINER: Was it -- was your opportunity  
23 allowed in 2017?

24 WITNESS ORTEGA: 2017, we had a full Level 4  
25 supply, and so there was no need to reschedule water



1 supply. But for the previous 20 years, we have  
2 utilized this tool.

3 End of the day, Reclamation holds a lot of  
4 discretion as to how they move our water, if they allow  
5 us to carry over that supply despite the longstanding  
6 unmet mandate.

7 MR. BERLINER: And does Reclamation deny  
8 rescheduling opportunities to agricultural water  
9 service contractors South of the Delta?

10 WITNESS ORTEGA: I'm not aware of them denying  
11 any ag requests. They, however, may be reduced in  
12 certain year types. I am aware that there has been a  
13 historic cap under certain hydrologic conditions.

14 MR. BERLINER: And is the ability to  
15 reschedule subject to, for instance, Warren Act water  
16 being stored in San Luis?

17 WITNESS ORTEGA: I can't speak to that.

18 MR. BERLINER: What about water transfer  
19 water, can you speak to that?

20 WITNESS ORTEGA: No.

21 MR. BERLINER: Are you aware that there are  
22 priorities for stored water in San Luis Reservoir?

23 WITNESS ORTEGA: Yes.

24 MR. BERLINER: And do you know what priority  
25 rescheduled water has?

1 WITNESS ORTEGA: Relative to?

2 MR. BERLINER: To other federal water in the  
3 reservoir.

4 WITNESS ORTEGA: Depending on the year.

5 MR. BERLINER: What about 2018?

6 WITNESS ORTEGA: So rescheduling of 2017 into  
7 2018?

8 MR. BERLINER: Yes.

9 WITNESS ORTEGA: I can't recall the  
10 rescheduling guidelines off the top of my head.

11 MR. BERLINER: What about 2018 to 2019, are  
12 you familiar with the proposed guidelines?

13 MR. ORTEGA: I'm not even sure that they're  
14 out so, no, I'm not familiar.

15 MR. BERLINER: Okay. I have no further  
16 questions.

17 CO-HEARING OFFICER DODUC: Thank you,  
18 Mr. Berliner.

19 Ms. Morris.

20 CROSS-EXAMINATION BY MS. MORRIS

21 MS. MORRIS: Good afternoon.

22 WITNESS ORTEGA: Good afternoon.

23 MS. MORRIS: I just have a couple quick  
24 questions. I estimated 20 minutes. I don't think it's  
25 going to take that long.

1           Mr. Ortega, did you draft the testimony that  
2 was marked as GWD-22 and now is shown as GWD-22  
3 Revised?

4           WITNESS ORTEGA: I did.

5           MS. MORRIS: Did you have help from anybody?

6           WITNESS ORTEGA: Our general counsel,  
7 Ms. Wehr, did help me review.

8           MS. MORRIS: And did you pull the citations to  
9 all the transcripts and exhibits listed in your  
10 testimony?

11          WITNESS ORTEGA: I had assistance with  
12 Ms. Wehr, yeah.

13          MS. MORRIS: Did you review all the portions  
14 of the transcripts and exhibits that you cited in your  
15 testimony?

16          WITNESS ORTEGA: I did.

17          MS. MORRIS: And looking at GWD-22 Revised on  
18 Page 2, Line 14 -- I'll pause for a minute while it  
19 gets pulled up.

20                 So, again, looking at Page 2, Line 14, when  
21 you say "substantial risk of injury," do you mean less  
22 deliveries to Grassland?

23          WITNESS ORTEGA: Yes.

24          MS. MORRIS: And specifically, less deliveries  
25 to Grassland because of California WaterFix?

1           WITNESS ORTEGA: I think it extended beyond  
2 Grassland to all South of Delta refuges, but, yes.

3           MS. MORRIS: And you state that the  
4 Supplemental EIR/EIS represents a substantial risk of  
5 injury to San Joaquin Valley wildlife, public trust  
6 resources, and the public trust interest.

7           When you make that statement, "public trust  
8 resources and public interests," you're speaking about  
9 the -- in the San Joaquin Valley, correct?

10          WITNESS ORTEGA: Yes, those South of Delta  
11 CVPIA refuges.

12          MS. MORRIS: Thank you. Can you explain what  
13 has changed in Supplemental EIR/EIS to create this  
14 substantial risk of injury?

15          And that was a bad question. So what I'm  
16 really talking about is what's changed from the Final  
17 EIR/EIS to the Supplemental EIR/EIS that has caused  
18 this substantial risk of injury that you speak of?

19          WITNESS ORTEGA: I think that the initial  
20 EIS/EIR and the associated water-coded modeling within  
21 CalSim II identified Level 2 supply as -- as not being  
22 impacted and also able to move through the tunnels.

23          MS. MORRIS: So there's no change between the  
24 Final EIR/EIS and the Supplemental EIR EIS, correct?

25          WITNESS ORTEGA: I have no idea if there's no

1 change between two massive environmental documents.

2 MS. MORRIS: Okay. Well, I'm trying to  
3 understand the basis of your statement because you say  
4 that the Supplemental EIR/EIS presents a substantial  
5 risk. And then you also say --

6 WITNESS ORTEGA: I think what's changed is  
7 that Reclamation has indicated that they are not going  
8 to participate financially in the project, so we are  
9 left with uncertainty that, okay, how -- how is it that  
10 our supplies are not going to be impacted?

11 MS. MORRIS: Where in the Supplemental EIR/EIS  
12 does it say anything about CVP not participating? Did  
13 you cite that in your testimony?

14 WITNESS ORTEGA: No. No, it's a correction.  
15 It was -- I'm referring to the letter issued by  
16 Reclamation.

17 MS. MORRIS: I don't have any other questions.  
18 Thank you for your time.

19 CO-HEARING OFFICER DODUC: Thank you,  
20 Ms. Morris.

21 And I do not see Ms. Des Jardins, and  
22 apparently she has informed Mr. Herrick that she does  
23 not wish to conduct cross.

24 Any redirect, Ms. Wehr?

25 MS. WEHR: Yes, please.

1 CO-HEARING OFFICER DODUC: And what topic?

2 I've learned my lesson from Mr. Bezerra. I'm  
3 very careful when allowing for redirect.

4 MS. WEHR: I would like to ask some follow-up  
5 redirect questions about the shortage provision in the  
6 contract that Ms. Aufdemberge asked Mr. Ortega about;  
7 the firm obligation under CVPIA that Mr. Berliner asked  
8 Mr. Ortega about; and the rescheduling guidelines that  
9 Mr. Berliner asked Mr. Ortega about.

10 CO-HEARING OFFICER DODUC: All right.

11 MS. WEHR: Should I move to --

12 CO-HEARING OFFICER DODUC: No, just stay right  
13 there.

14 MS. WEHR: Okay.

15 REDIRECT EXAMINATION BY MS. WEHR

16 MS. WEHR: Mr. Ortega, you were asked about  
17 the shortage provisions in the Shasta criteria in your  
18 contract by Ms. Aufdemberge. And I think the  
19 implication is "thems the rules" and Reclamation's got  
20 to follow.

21 Have you experienced examples of shortages in  
22 either your total supply or your scheduled deliveries  
23 of water that are not based on the Shasta criteria or  
24 the letter of the shortage provisions in your  
25 contracts?

1 WITNESS ORTEGA: Yes.

2 MS. WEHR: Are there examples of such  
3 shortages being imposed on your water supply or your  
4 schedule of deliveries that were imposed in years when  
5 you were not at a Shasta critical shortage condition?

6 WITNESS ORTEGA: Yes. In 2016, it was  
7 declared a non-critical year, and there's a major  
8 bottleneck in the Delta that precluded our ability to  
9 flood up on the schedule that the habitat requires.

10 MS. WEHR: So you were asked to defer your  
11 otherwise required deliveries of water?

12 WITNESS ORTEGA: Yes, delay.

13 MS. WEHR: By how long?

14 WITNESS ORTEGA: Two months.

15 MS. WEHR: Are there any examples of the  
16 Bureau of Reclamation making an initial decision or an  
17 initial announcement that you may not be able to  
18 receive all of your allocated refuge water for  
19 financial reasons affecting the CVP?

20 CO-HEARING OFFICER DODUC: Hold on, please. I  
21 believe Mr. Berliner has an objection.

22 MR. BERLINER: This is beyond the scope of  
23 cross-examination and therefore is improper redirect.  
24 He was not asked about financial conditions at all.

25 CO-HEARING OFFICER DODUC: Ms. Wehr.

1 MS. WEHR: Ms. Aufdemberge asked Mr. Ortega if  
2 the shortage provisions in the contract dictated or the  
3 CVPIA requirements for refuges dictated the shortages.  
4 And I am eliciting examples from my client of times  
5 when that was not the case to exemplify the fact that  
6 the shortage conditions in the contracts are not the  
7 only thing that Reclamation takes into account when it  
8 allocates water to refuges.

9 CO-HEARING OFFICER DODUC: Understood.

10 Overruled, Mr. Berliner. You may recross on  
11 that, if you wish.

12 MS. WEHR: So going back to example of an  
13 instance when Reclamation, additionally, they  
14 determined that refuges would not receive their full  
15 allocation for financial reasons of the Central Valley  
16 Project, can you explain what that was and what you  
17 experienced?

18 WITNESS ORTEGA: Sure, sure. So, you know,  
19 the allocation of water is really only half the story.  
20 The funding that's required to wield that water is a  
21 necessary component of the ultimate goal of delivering  
22 the water supply to the habitat.

23 Depending on the cost to convey water, which  
24 can fluctuate dramatically from year to year,  
25 Reclamation has a finite amount of money that they've



1 allocated within the restoration fund. So we have been  
2 told in the past that they would have not only no money  
3 to acquire any incremental Level 4 but that there  
4 wasn't adequate funding to even convey the Level 2  
5 component of our supply.

6 MS. WEHR: Thank you. Moving on to the  
7 rescheduling guidelines, you were asked both by  
8 Ms. Aufdemberge and Mr. Berliner about the provision in  
9 your contract on the rescheduling guidelines.

10 Has Grassland Water District asked Reclamation  
11 to allow for rescheduling as contemplated in that  
12 provision of the contract?

13 WITNESS ORTEGA: Yes, in all years but  
14 extremely wet years.

15 MS. WEHR: And did -- as contemplated in that  
16 contract, did Reclamation revise its rescheduling  
17 guidelines to include refuge water as an available  
18 water supply to be rescheduled in San Luis Reservoir?

19 WITNESS ORTEGA: In most years, yes.

20 MS. WEHR: So it's your understanding that the  
21 conditions under that contract provision have been  
22 triggered and met already?

23 WITNESS ORTEGA: Yes.

24 MS. WEHR: I want to explore a little bit more  
25 about how those rescheduling guidelines are implemented

1 by Reclamation because you received some questions  
2 about that.

3 Historically how and why do the refuges  
4 reschedule water into San Luis Reservoir?

5 WITNESS ORTEGA: Okay. Are we going to dive  
6 into the complexity of refuge water supply?

7 MS. WEHR: In brief. General reasons why.

8 WITNESS ORTEGA: So Level 2 supply comes out  
9 of yield and is fairly reliable. The Incremental Level  
10 4 component is acquired from willing sellers and is  
11 acquired over the course of the water year, and -- or  
12 is developed over the course of the water year.

13 And so we have a lot of demand that ramps up  
14 in the early spring in the months of April, May, and  
15 June especially, much earlier than these acquired  
16 blocks  
17 are -- actually come to fruition.

18 So when we, you know, have water supply at the  
19 end of the water year, it really mitigates that. It  
20 allows us to carry over a small block across the water  
21 year from the end of February. And then our demand  
22 starts to pick up in April.

23 So that rescheduling really provides an  
24 essential tool to meet habitat needs in advance of  
25 Reclamation's ability to acquire those blocks.

1 MS. WEHR: Thank you. And you were asked  
2 about why you think you need -- the refuges should  
3 receive an equitable opportunity to reschedule.

4 Other than years of 2016 and '18, where you  
5 described how Reclamation exercised its discretion to  
6 deny refuge water carryover rescheduling and instead  
7 allow only agricultural water rescheduling, has  
8 Reclamation provided the refuges historically with an  
9 equitable opportunity to reschedule water?

10 WITNESS ORTEGA: They have. And I think it's  
11 probably noteworthy that we don't carry water, you  
12 know, for an extended period or from year to year to  
13 year. We need it, you know, three months at the max  
14 after the end of the -- our water year.

15 MS. WEHR: And do you know whether Reclamation  
16 intends to allow that equitable opportunity continue,  
17 for example, in this water year?

18 WITNESS ORTEGA: We do not.

19 MS. WEHR: Why do you not know?

20 WITNESS ORTEGA: Reclamation has yet to make  
21 that determination. We have made the request, like we  
22 do in every year.

23 MS. WEHR: Are you aware whether Reclamation  
24 does allow rescheduling of non-project water, transfer  
25 water, as Mr. Berliner asked you?

1           WITNESS ORTEGA: They do. And in recent  
2 practice, it's been exempt from any cap, San Luis  
3 Reservoir.

4           MS. WEHR: You mean it's been exempt from any  
5 restrictions on rescheduling?

6           WITNESS ORTEGA: Yes, yes.

7           MS. WEHR: So for example, in 2018, as I  
8 understand it, just to clarify your testimony, is that  
9 Reclamation allowed agricultural water to be  
10 rescheduled and it allowed non-project transfer water  
11 to be rescheduled, but it did not allow refuge water to  
12 be rescheduled in the reservoir?

13           CO-HEARING OFFICER DODUC: Hold on.  
14 Ms. Morris is running for the microphone.

15           MS. MORRIS: I would just object because it  
16 misstates his testimony because, when Mr. Berliner  
17 asked about ag scheduling, he said he didn't know. And  
18 now, all of a sudden, we have two new opinions. And  
19 he's recalling that there was that ability for ag.

20           So I think it's outside the scope. Plus I  
21 think the questions mischaracterize the testimony that  
22 was earlier provided in cross-exam.

23           CO-HEARING OFFICER DODUC: Ms. Wehr.

24           MS. WEHR: I believe Mr. Ortega testified that  
25 agricultural users were allowed to reschedule in those

1 years. I apologize I don't have the transcript in  
2 front of me.

3 CO-HEARING OFFICER DODUC: He's nodding. And  
4 let's take this as his clarification of the answer he  
5 gave to Mr. Berliner, and you may recross on it.

6 Proceed.

7 MS. WEHR: Final questions, you testified --

8 CO-HEARING OFFICER DODUC: Did he answer that  
9 question? I think I stopped him from answering because  
10 Ms. Morris was rushing up to the microphone.

11 WITNESS ORTEGA: Can you restate the question?  
12 Sorry.

13 MS. WEHR: Just to clarify your testimony and  
14 bring it together, your experience in 2018 was that  
15 Reclamation allowed agricultural water to be  
16 rescheduled in San Luis Reservoir and non-project  
17 water, including water transfers, to be rescheduled in  
18 San Luis Reservoir but did not allow for refuge water  
19 to be rescheduled in San Luis Reservoir; is that  
20 correct?

21 WITNESS ORTEGA: Correct.

22 MS. WEHR: And you have no idea why?

23 WITNESS ORTEGA: I do not.

24 MS. WEHR: Thank you.

25 CO-HEARING OFFICER DODUC: All right.

1 Recross.

2 RECROSS-EXAMINATION BY MS. AUFDEMBERGE

3 MS. AUFDEMBERGE: Hi, Mr. Ortega. Amy  
4 Aufdemberge again with Reclamation.

5 I just have one question for you. I think you  
6 testified that, in 2016, Reclamation did not short you  
7 according to the Shasta criteria in your contract; is  
8 that correct?

9 WITNESS ORTEGA: Correct. It was a  
10 non-critical year.

11 MS. AUFDEMBERGE: Did you sue the United  
12 States for breach of contract?

13 WITNESS ORTEGA: They -- no.

14 MS. AUFDEMBERGE: Thank you. No further  
15 questions.

16 RECROSS-EXAMINATION BY MR. BERLINER

17 MR. BERLINER: I'll try to be very brief.

18 Mr. Hunt, could you please pull up GWD-19, and  
19 if you could scroll down a little bit, right there.

20 Mr. Ortega, are you familiar with this  
21 document?

22 WITNESS ORTEGA: Yes.

23 MR. BERLINER: Do you need to see the very top  
24 of it?

25 WITNESS ORTEGA: Yeah, I would like to see the

1 year.

2 I'm familiar with it.

3 MR. BERLINER: You're familiar with it. So  
4 this Section A is -- indicates that it's storage  
5 priority for San Luis Reservoir. And as I understand  
6 it, rescheduled project water is the third priority; is  
7 that correct?

8 WITNESS ORTEGA: Yes. Rescheduled project  
9 water is No. 3.

10 MR. BERLINER: And refuge water Level 2 is the  
11 first priority for storage in San Luis, correct?

12 WITNESS ORTEGA: Yes.

13 MR. BERLINER: And Level 4 water is in second  
14 priority for refuge water, correct?

15 WITNESS ORTEGA: When it is granted.

16 MS. WEHR: I just want to object that it  
17 misstates the document. There are distinctions between  
18 the type of Level 2 and Level 4, specifically which  
19 year. No. 1 and 2 refer to upcoming water allocations,  
20 not rescheduled project water.

21 WITNESS ORTEGA: Correct.

22 CO-HEARING OFFICER DODUC: That's what it  
23 says, yes.

24 MR. BERLINER: That's No. 3, correct?

25 Mr. Ortega, No. 3 is the -- it's the third priority for

1 storage in San Luis?

2 WITNESS ORTEGA: That's rescheduled project  
3 water is the third priority for those that they grant  
4 -- that Reclamation grants that to.

5 MR. BERLINER: So they are after Level 2 and  
6 Level 4 water for the upcoming year for the refuges?

7 WITNESS ORTEGA: For the upcoming year, yes.

8 MR. BERLINER: And then the refuges  
9 potentially have another opportunity under rescheduled  
10 as the second priority, along with municipal and  
11 industrial water, correct?

12 WITNESS ORTEGA: For the upcoming water year.

13 MR. BERLINER: Correct. And the Bureau, as I  
14 understand it -- or Bureau of Reclamation has granted  
15 you permission to reschedule water in the last 18 out  
16 of 20 years, subject to the availability of water; is  
17 that not correct?

18 WITNESS ORTEGA: Yes.

19 MR. BERLINER: So -- I have no further  
20 questions. That's it. Thank you.

21 CO-HEARING OFFICER DODUC: Any other recross?

22 (No response)

23 CO-HEARING OFFICER DODUC: All right. Thank  
24 you, Mr. Ortega. At this time, does that conclude your  
25 rebuttal, Ms. Wehr? And if so, would you like to move



1 your exhibits into the record?

2 MS. WEHR: Yes, it does. I'd like to move  
3 Exhibits GWD-22 and GWD-23 into the record.

4 CO-HEARING OFFICER DODUC: Any objections?

5 (No response)

6 CO-HEARING OFFICER DODUC: Not hearing -- oh,  
7 question.

8 MR. DEERINGER: Just a clarification for the  
9 record. This is GWD-22-R?

10 MS. WEHR: Correct.

11 MR. DEERINGER: Okay. Just making sure.

12 CO-HEARING OFFICER DODUC: So moved into the  
13 record.

14 (Grassland Exhibits GWD-22-R and GWD-23  
15 admitted into evidence)

16 CO-HEARING OFFICER DODUC: Thank you,  
17 Mr. Ortega, Ms. Wehr.

18 We have one more party that I would like to  
19 get through today. And, Ms. Nikkel, are your witnesses  
20 here?

21 MS. NIKKEL: Yes, they're here.

22 CO-HEARING OFFICER DODUC: How much time do  
23 you anticipate needing for direct testimony?

24 MS. NIKKEL: Approximately ten minutes.

25 CO-HEARING OFFICER DODUC: Okay. Let's do

1 that if that's okay with the court reporter, because I  
2 have an estimated total hour or so of cross. So let's  
3 get the direct testimony. We'll take a break, and then  
4 we'll come back for cross.

5 GARY KIENLEN and SHANKAR PARVATHINATHAN  
6 called as Part 2 Rebuttal witnesses  
7 by Protestant Group 9, North Delta  
8 Water Agency, having been duly sworn,  
9 were examined and testified as  
10 hereinafter set forth:

11 DIRECT EXAMINATION BY MS. NIKKEL

12 MS. NIKKEL: Good afternoon. Meredith Nikkel,  
13 Group 9, the North Delta Water Agency.

14 If I can have the witnesses please state their  
15 names for the record.

16 WITNESS KIENLEN: Gary Kienlen.

17 WITNESS PARVATHINATHAN: Shankar  
18 Parvathinathan.

19 MS. NIKKEL: And you've both taken the oath in  
20 this proceeding, correct?

21 WITNESS KIENLEN: Yes.

22 WITNESS PARVATHINATHAN: Yes.

23 MS. NIKKEL: Mr. Keenlan, is Exhibit NDWA-500  
24 your testimony?

25 WITNESS KIENLEN: Yes, it is.

1 MS. NIKKEL: And have you previously submitted  
2 your statement of qualifications in this proceeding as  
3 Exhibit NDWA-4?

4 WITNESS KIENLEN: Yes, I have.

5 MS. NIKKEL: Do you rely on Exhibits NDWA-502  
6 and NDWA-503 in presenting your testimony for this  
7 Part 2 Rebuttal?

8 WITNESS KIENLEN: Yes.

9 MS. NIKKEL: Dr. Shankar, is Exhibit NDWA-501  
10 your testimony?

11 WITNESS PARVATHINATHAN: Yes.

12 MS. NIKKEL: Have you previously submitted  
13 your statement of qualifications in this hearing as  
14 Exhibit NDWA-6?

15 WITNESS PARVATHINATHAN: Yes.

16 MS. NIKKEL: And do you rely on Exhibits  
17 NDWA-502 and NDWA-503 in presenting that testimony?

18 WITNESS PARVATHINATHAN: Yes.

19 MS. NIKKEL: If I could have each of you  
20 summarize your testimony.

21 WITNESS PARVATHINATHAN: Thank you. My  
22 testimony is based on the DSM-2 modeling performed by  
23 the petitioners. But it is focused exclusively on  
24 summarizing the impact to NDWA users, especially the  
25 NDWA contract violations.

1           So my review focuses on two specific locations  
2 in the Delta: Sacramento River at Emmaton and  
3 Sacramento River at Three Mile Slough.

4           And these results -- this review is purely  
5 based on the modeling by DWR or petitioners.

6           The Sacramento River at Emmaton, average EC  
7 values under CWF H3+ are higher than the No Action  
8 Alternative between July and December, with the  
9 greatest increase of 23 percent in September.

10          And to provide more detail on the temporal  
11 changes in electrical conductivity, Table 1 shows  
12 monthly changes in EC values of Emmaton and the CWF H3+  
13 related to the No Action Alternative.

14          MS. NIKKEL: Dr. Shankar, if I could  
15 interrupt.

16          Mr. Hunt, if you could please pull up NDWA-502  
17 and turn to Page 2, I think it would be helpful as a  
18 visual guide to the summary.

19          WITNESS PARVATHINATHAN: Thank you. Page 3,  
20 please.

21          Using this table, this table shows monthly  
22 changes in average electrical conductivity in the  
23 Sacramento River at Emmaton. I will take -- show a  
24 good quick example here.

25          In September of 1989, you can see the

1 average -- the change in EC is nearly 77 percent, the  
2 value of 1696 microsiemens per centimeter under the  
3 project as compared to the No Action Alternative.  
4 That's the difference in the electrical conductivity,  
5 just to illustrate the magnitude of the changes under  
6 project.

7 Page -- next page, please.

8 In the Sacramento River at Three Mile Slough,  
9 average EC values under the project are higher in July  
10 and December, with the greatest increase of 20 percent.

11 And the next page has a table which summarizes  
12 similar information but for Sacramento River at Three  
13 Mile Slough. And my colleague, Gary Kienlen will  
14 explain in detail the results from this table in his  
15 testimony.

16 Page 6, next page, please.

17 And the Table 3 in this page presents the  
18 number of violations of NDWA contract standards at  
19 Three Mile Slough under No Action Alternative.

20 The 1981 contract was not met for 579 days out  
21 of 5843 days, which is the 16-year period of  
22 simulation, which is equal to nearly 10 percent  
23 violations under the No Action Alternative. And Table  
24 4 presents similar violations under the project.

25 Overall, the violations increase from 579 days

1 under No Action Alternative to 870 days under the  
2 CWF H3+, which is an increase of 5 percent, or 292  
3 additional days in the 16-year period of simulation.  
4 And these results are summarized from the data provided  
5 by DWR, which is NDWA-503.

6 That's it. That ends my testimony. Thank  
7 you.

8 WITNESS KIENLEN: As described by -- I've been  
9 practicing his name, but I'm going to use the one  
10 everybody else is using -- Dr. Shankar, NDWA-502  
11 summarizes MBK's review of the modeling conducted by  
12 DWR to the No Action Alternative in the CWF H3+  
13 alternative.

14 If we could go to Page 5, please, going back  
15 to Table 2 here. As previously identified, this table  
16 shows the average increase in electrical conductivity  
17 or EC in the Sacramento River at Three Mile Slough  
18 resulting from the CWF H3+, which is approximately  
19 7 percent increase on average based on DWR's modeling.

20 In many months, as can be seen in this table,  
21 in many months, the increase in EC is much greater than  
22 the 7 percent average. Based on the modeling conducted  
23 by DWR, the greatest increases occur in November of  
24 1979 and September of 1989, which we see increases of  
25 80 percent and 69 percent respectively.

1           The red highlighting on this table for the  
2 years 1976, 1979, and 1989 show monthly increase in EC  
3 is equal to or greater than that 7 percent average in  
4 each month for five consecutive months.

5           As indicated in Tables 3 through 5, the  
6 increase in contract violations is as Dr. Shankar was  
7 discussing, increases for the period July through  
8 September of 1989. The increase is a total of 76 days  
9 from -- increased by 76 days to a total of 138 days  
10 during that five-month period.

11           That concludes my testimony.

12           MS. NIKKEL: Thank you.

13           That concludes our direct testimony.

14           CO-HEARING OFFICER DODUC: All right. Let's  
15 go ahead and take our afternoon break. We will return  
16 at 3:45, upon which I believe the Department has  
17 requested 45 minutes for cross with the State Water  
18 Contractors also -- or have you coordinated that?

19           MR. MIZELL: I have coordinated with State  
20 Water Contractors, and we've actually been able to  
21 maybe get our cross down shy of 45 minutes. I'll do my  
22 best to take your guidance and do direct questions --  
23 maybe half an hour.

24           CO-HEARING OFFICER DODUC: All right. Let's  
25 do that. We'll reconvene at 3:45.

1 (Recess taken)

2 CROSS-EXAMINATION BY MR. MIZELL

3 CO-HEARING OFFICER DODUC: All right. It is  
4 3:45. We are back, and I will now turn to Mr. Mizell  
5 and Mr. Berliner for the closing act for the day.

6 MR. MIZELL: We will try to make it short and  
7 sweet. If we can bring up NDWA-500, please, my first  
8 line of questioning will be for you, Mr. Kienlen.

9 So if we could go to Page 2, please, of  
10 NDWA-500. I'm going to focus you initially on Lines 5  
11 through 7.

12 You described your duties with MBK to include  
13 contract compliance; is that correct?

14 WITNESS KIENLEN: Yes.

15 MR. MIZELL: Mr. Hunt, if we could bring up  
16 DWR 306, please.

17 So, Mr. Kienlen, this is the 1981 contract  
18 between DWR and NDWA referenced in your testimony; is  
19 that correct?

20 WITNESS KIENLEN: Yes, it is.

21 MR. MIZELL: And you're familiar with this  
22 contract?

23 WITNESS KIENLEN: Yes, I am.

24 MR. MIZELL: And your duties include  
25 interpreting it; is that correct?



1 WITNESS KIENLEN: Yes.

2 MR. MIZELL: If we can bring up DWR-1400,  
3 please. Oh, you know what? Strike that. You do not  
4 have DWR-1400. It is sitting on my desk.

5 Are you aware that there was a 1997 amendment  
6 to the 1981 contract between DWR and NDWA?

7 WITNESS KIENLEN: Yes, I am.

8 MR. MIZELL: Was the extent of that amendment  
9 to move the compliance location from Emmaton to Three  
10 Mile Slough?

11 WITNESS KIENLEN: Yes, it was.

12 MR. MIZELL: And in interpreting the contract,  
13 you would also be interpreting that amendment; is that  
14 correct?

15 MS. NIKKEL: I'm going to object as vague and  
16 ambiguous on the word "interpret" and also on the basis  
17 that it calls for a legal conclusion if the meaning of  
18 the word "interpret" is to ask for a legal interpretation  
19 of either the contract or the amendment.

20 MR. MIZELL: I can clarify.

21 CO-HEARING OFFICER DODUC: Please, Mr. Mizell.

22 MR. MIZELL: I'm simply looking to see if  
23 Mr. Kienlen is, in his duties as -- if his duties for  
24 contract compliance include contract compliance with  
25 the 1997 amendment to the 1981 contract.

1                   WITNESS KIENLEN: Well, the 1997 amendment  
2 simply moved the compliance location for the contract  
3 as is contemplated in the contract -- or was  
4 contemplated in the contract. I forget the section of  
5 the contract. But it's on Page 2, I believe, of the  
6 contract.

7                   There were no other changes to the criteria or  
8 anything else. It was simply moving the contract  
9 compliance location a short distance upstream from  
10 Emmaton to Three Mile Slough.

11                  MR. MIZELL: Thank you. So when you're  
12 fulfilling your duties for contract compliance  
13 purposes, you would take the 1997 amendment into  
14 consideration; is that correct?

15                  WITNESS KIENLEN: Yes, we monitor compliance  
16 with the contract at Three Mile Slough today or since  
17 that amendment took place, as opposed to Emmaton prior  
18 to that.

19                  MR. MIZELL: Thank you. Perfect.

20                  If we could go back to NDWA-500, please, on  
21 Page 2, Lines 26 through 28. I'm going to focus you  
22 here on Paragraph 7 of your testimony, please.

23                  Isn't it true that the 1981 contract between  
24 DWR and NDWA was not in existence between the years  
25 1976 and 1981?

1           WITNESS KIENLEN: The 1981 contract was not in  
2 existence, you are correct. There were prior  
3 agreements between DWR and North Delta during at least  
4 some of those years. I don't recall exactly which  
5 ones.

6           MR. MIZELL: And isn't it true that the  
7 modeling results you describe here in Paragraph 7 are  
8 not reflective of the protection provided to North  
9 Delta Water Agency by the 1981 contract between DWR and  
10 NDWA?

11          MS. NIKKEL: Objection, vague and ambiguous as  
12 to not reflective of the protection provided by the  
13 contract and the amendment. If Mr. Mizell could  
14 clarify what he means.

15          CO-HEARING OFFICER DODUC: Mr. Mizell.

16          MR. MIZELL: Certainly. I'll try to do a  
17 better job of phrasing that.

18                 In your Paragraph 7, you use the term  
19 "violations" of the 1981 contract; is that correct?

20          WITNESS KIENLEN: Yes.

21          MR. MIZELL: Is it your intention in using  
22 that phrase to say that DWR has not fulfilled its  
23 contractual obligations to North Delta Water Agency?

24          MS. NIKKEL: Objection, vague and ambiguous as  
25 to "contract obligations." I also would object on the

1 grounds that this appears to be going beyond the scope  
2 of the rebuttal testimony, which is an interpretation  
3 of model results, not an interpretation or opinion  
4 regarding actual violations or compliance with the  
5 contract.

6 CO-HEARING OFFICER DODUC: So if I might,  
7 because it's getting later in the day, I'm reading this  
8 as -- at least I think where Mr. Mizell is going is  
9 your statement about 5 percent violation of the 1981  
10 contract during 1976 through 1981, what do you mean by  
11 that if the 1981 contract did not exist during that  
12 period?

13 WITNESS KIENLEN: That's based on the analysis  
14 of the modeling results.

15 No, the contract was not in place. We're not  
16 talking about real-time, real conditions in here.  
17 We're talking about what the model shows. They modeled  
18 that period from 1976 through 1991. And I see a typo  
19 in my testimony.

20 CO-HEARING OFFICER DODUC: So your testimony  
21 is, if the hydrology during that period that was  
22 depicted in the model were to be considered regardless  
23 of the year, that this would be the result that was  
24 shown?

25 WITNESS KIENLEN: Correct.

1           MR. MIZELL:  And if I understood your answer  
2 just now, this is a statement -- your use of the word  
3 "violations" is a statement only with regard to  
4 assessment of the modeling results and not a conclusion  
5 on the protectiveness the contract; is that correct?  
6 So in other words, you're not making a legal  
7 conclusion; you're making an assessment of modeling  
8 results.

9           WITNESS KIENLEN:  Correct.

10          MR. MIZELL:  So you would agree with me that  
11 the results represented in Paragraph 7 are not the  
12 actual salinity experienced by members of the North  
13 Delta Water Agency but a modeling exercise; is that  
14 correct?

15          WITNESS KIENLEN:  That's correct.  The  
16 testimony is about the modeling and the results of the  
17 modeling that DWR did.

18          MR. MIZELL:  So through your understanding of  
19 the contract, you are aware that there are payment  
20 provisions for drought years provided for in the  
21 contract; is that correct?

22          MS. NIKKEL:  Objection, goes outside the scope  
23 of rebuttal testimony, which again is focused on the  
24 analysis of the modeling results and not terms -- other  
25 terms of the contract or interpretation of the contract

1 for that matter.

2 CO-HEARING OFFICER DODUC: Mr. Mizell.

3 MR. MIZELL: Yes, his characterization of even  
4 modeling results as violations of a contract would  
5 imply that the contract terms do not allow for a  
6 reduction in water quality.

7 Generally, we have debated the use of the term  
8 "exceedances" or other non- -- well, we've generally  
9 used the term exceedances. I'll leave it at that.

10 And so what I'm trying to get to is is the  
11 intent of statement "violations of the 1981 contract"  
12 inclusive of the entire contract, or is it essentially  
13 looking only at the water quality provision of the  
14 contract?

15 CO-HEARING OFFICER DODUC: As modeled.

16 MR. MIZELL: As modeled.

17 CO-HEARING OFFICER DODUC: Please answer that  
18 question.

19 WITNESS KIENLEN: I think I agree with you.  
20 Let me restate it just -- the interpretation is, as to  
21 the water quality provisions of the contract, based on  
22 the modeling results, the results of the modeling  
23 conducted by DWR for that period. Does that --

24 MR. MIZELL: If that's -- I'm just looking for  
25 elaboration. If that's what you mean when you say

1 "violations of the 1981 contract" is it's limited to  
2 the water quality portion of the contract, that's all.

3 WITNESS KIENLEN: Yes.

4 MR. MIZELL: Thank you.

5 If we could move to Page 3 to the top there,  
6 in Paragraph 8.

7 Is it your testimony that the modeled  
8 increases described near Paragraph 8 represent  
9 exceedance of the 1981 contract standards?

10 WITNESS KIENLEN: I believe Table 2, which is  
11 referred to here, is the increase in the salinity or EC  
12 from the No Action Alternative to the CWF H3+  
13 alternative. I don't believe this -- this paragraph is  
14 not talking about contract exceedances or violations.

15 MR. MIZELL: And so this paragraph would not  
16 necessarily represent any injuries suffered by North  
17 Delta Water Agency or its members?

18 MS. NIKKEL: Objection, calls for a legal  
19 conclusion, misstates the testimony.

20 CO-HEARING OFFICER DODUC: Sustained.

21 MR. MIZELL: When you testify in Paragraph 8  
22 about increases in EC at Three Mile Slough on the  
23 Sacramento River, what is the point that you're trying  
24 to convey to the Board?

25 WITNESS KIENLEN: The point is that there's

1     been testimony in this proceeding that says that the  
2     average over a 16-year period, the average increase in  
3     EC is 7 percent. And that -- I don't disagree with  
4     that. That's what the modeling shows.

5             What that 16-year average doesn't show is  
6     there are large increases in some months and for some  
7     periods that well exceed that 7 percent. The contract  
8     -- if we look at the contract and talk about  
9     exceedances and the protections of the contract, it's  
10    not a long-term average that the contract envisions.  
11    It's more that real-time water quality and those  
12    provisions that provide protections to the water users  
13    and the farms and the crops within the agency.

14            MR. MIZELL: And if I understand the objection  
15    of your counsel, this paragraph is not intended to  
16    convey any injury that the members of North Delta would  
17    experience under the California WaterFix?

18            MS. NIKKEL: Objection, legal conclusion,  
19    misstates the testimony.

20            MR. MIZELL: Hearing Officer Doduc?

21            CO-HEARING OFFICER DODUC: Yes.

22            MR. MIZELL: I'm trying to understand the  
23    intent behind the paragraph. Ms. Nikkel objected to  
24    the question probing as to whether or not this  
25    paragraph was intended to convey injury. So I'm



1 actually trying to agree with her objection as going  
2 beyond -- that that conclusion went beyond the scope or  
3 that question went beyond the scope, saying, well,  
4 then, isn't it true the converse would be the case.  
5 Either --

6 CO-HEARING OFFICER DODUC: Mr. Mizell, before  
7 you go any further, as we've learned throughout this  
8 hearing, the term "injury" has special significance.  
9 There are -- perhaps there is a reason why Mr. Kienlen  
10 did not use that term "injury" in his testimony, nor  
11 did he use it in responding to your question. But you  
12 used that term "injury" in asking him questions, to  
13 which  
14 Ms. Nikkel then objected because of the legal  
15 significance of that term as applicable to our hearing.

16 MR. MIZELL: Mm-hmm.

17 CO-HEARING OFFICER DODUC: So is it your  
18 intent to ask him -- when you use the word "injury," do  
19 you intend to use it in the legal term that is  
20 applicable to our hearing?

21 MR. MIZELL: I can rephrase it to avoid the  
22 word "injury." How about that?

23 CO-HEARING OFFICER DODUC: Thank you. Again,  
24 it's you lawyers and your sensitivities.

25 MR. MIZELL: So Mr. Kienlen would it be

1 correct to say that Paragraph 8 does not intend to make  
2 any conclusions on the protectiveness of the 1981 North  
3 Delta contract?

4 MS. NIKKEL: Objection, vague and ambiguous as  
5 to "protectiveness of the North Delta contract" and  
6 also outside the scope of the testimony, which is,  
7 again, focused on an analysis of modeling and the  
8 results of the modeling.

9 CO-HEARING OFFICER DODUC: Therefore, his  
10 answer is no?

11 MS. NIKKEL: I'm not going to answer for my  
12 witness. I'm just making an objection the record.

13 CO-HEARING OFFICER DODUC: Mr. Kienlen, what  
14 is your intention? Actually, you answered that  
15 question already. And it was focused on showing -- I  
16 don't want to answer for Mr. Kienlen either, but it's  
17 actually right there.

18 He is pointing out the difference between --  
19 well, there's a monthly average and then there's the  
20 increase that is much better -- much more than a  
21 monthly average, and that's what he's focusing on.

22 MR. MIZELL: Right. So we asked the question  
23 for Paragraph 7, which spoke about a different metric.  
24 In Paragraph 7, he was speaking about 5 percent in  
25 violations of the 1981 contract.

1 CO-HEARING OFFICER DODUC: And he clarified  
2 that.

3 MR. MIZELL: Right, that he was not talking  
4 about the contract as a whole.

5 In Paragraph 8, he's simply talking about a  
6 change in water quality at Three Mile Slough.

7 CO-HEARING OFFICER DODUC: Yes.

8 MR. MIZELL: There's no reference to the  
9 contract at all.

10 So my question would be very similar to that  
11 of 7 but not answered in the same way. It's a  
12 different statement he's making in Paragraph 8.

13 So the question would be can he confirm, like  
14 in Paragraph 7, that he cannot confirm the  
15 protectiveness of the 1981 contract based upon the  
16 numbers represented in Paragraph 8.

17 MS. NIKKEL: I would renew my objections to  
18 that question as well.

19 CO-HEARING OFFICER DODUC: Let's go back,  
20 Mr. Kienlen, to your answer with respect to Paragraph  
21 7. You said that you're -- when you used that  
22 terminology "violation," that the intent was to -- the  
23 focus was on the -- you acknowledged that you were  
24 focused on the water quality aspect of the contract as  
25 depicted in the modeling results.

1           Would that same phrase apply to Paragraph 8,  
2           that you are describing or you're focusing on a water  
3           quality component of the contract as reflected in the  
4           modeling results?

5           WITNESS KIENLEN: I don't think this paragraph  
6           speaks to the contract at all. It's simply a statement  
7           that we looked at the modeling. There's been testimony  
8           that says the average increase in salinity at this  
9           location is 7 percent.

10          This is an observation that, yeah, the  
11          average -- yes. In fact, the average is 7 percent, but  
12          there's a lot -- there's a lot of times when the actual  
13          increase in salinity, based on the model, is quite a  
14          bit higher, greater than the 7 percent average.

15          MR. MIZELL: Okay. So Paragraph 8 is entirely  
16          silent as to the 1981 contract?

17          WITNESS KIENLEN: Yeah, I don't speak to the  
18          contract at all, no, in that paragraph.

19          MR. MIZELL: Mm-hmm. So if we can scroll to  
20          Page 3, Lines 9 through 11. Here, you summarize  
21          NDWA-502, Tables 3 through 5. Do those tables include  
22          all of the compliance points included in the 1981  
23          contract?

24          WITNESS KIENLEN: No, they are -- they are  
25          referring only to Sacramento River at Three Mile

1 Slough.

2 MR. MIZELL: Did you investigate or look at  
3 modeling results for the non-reported locations?

4 WITNESS PARVATHINATHAN: No, we did not.

5 MR. MIZELL: Thank you.

6 So, Mr. Kienlen, would you agree with the  
7 testimony of Dr. Nader-Tehrani that absolute  
8 differences computed at a single point in time between  
9 two scenarios are an inappropriate use of the model --  
10 of the DSM-2 model? I'll be specific.

11 WITNESS KIENLEN: I am not a modeler, and  
12 although I am familiar with DSM-2 and what it's  
13 supposed to do, that is not my expertise. I would say  
14 that, in general, models are -- they're for comparative  
15 purposes. I think I'll stop there.

16 MR. MIZELL: Thank you. I'm going to move on  
17 to -- and at the break, Dr. Shankar and I had a  
18 conversation. I wasn't going to try and attempt his  
19 last name. So -- no disrespect; I just have an  
20 American palate for languages.

21 CO-HEARING OFFICER DODUC: Actually, we noted  
22 that he's being kind to us because "Shankar" is not the  
23 entirety of his first name either.

24 MR. MIZELL: Can we bring up NDWA-501, please.  
25 And if we can scroll to Page 2, please.

1           In reviewing your testimony, it does not  
2 appear that you highlight contract compliance as one of  
3 your roles at MBK as Mr. Kienlen does; is that correct?

4           WITNESS PARVATHINATHAN: Correct.

5           MR. MIZELL: So if we could focus you on  
6 Lines 23 through 26 of Page 2.

7           So, Dr. Shankar, when you use the term "1981  
8 contract violations," is it intended to mean a modeled  
9 exceedance of the 1981 contract water quality criteria  
10 at Three Mile Slough?

11          WITNESS PARVATHINATHAN: That's correct.

12          MR. MIZELL: And it's not intended to be a  
13 conclusion based upon the entirety of the 1981  
14 contract?

15          WITNESS PARVATHINATHAN: That's correct.

16          MR. MIZELL: Thank you. If we could go to  
17 Page 3, Line 17.

18          Dr. Shankar, on Line 17 you reference the  
19 Emmaton standard. But isn't it true that the Emmaton  
20 standard is unnecessary for compliance with the 1981  
21 contract?

22          MS. NIKKEL: Objection, misstates the  
23 testimony. I don't see any reference to the Emmaton  
24 standard. But I may just be missing it.

25          MR. MIZELL: Line 17 mentions EC

1 concentrations of the Sacramento River at Emmaton.

2 MS. NIKKEL: Right. My objection is that the  
3 testimony does not refer to a standard but refers to a  
4 location on the Sacramento River.

5 MR. MIZELL: Okay. I will rephrase.

6 Isn't it true that your reference to the water  
7 quality at Emmaton on the Sacramento River is  
8 unnecessary in light of the 1981 contract standard at  
9 Three Mile Slough?

10 MS. NIKKEL: Objection, vague and ambiguous as  
11 to "unnecessary." Unnecessary to what? I didn't  
12 follow.

13 CO-HEARING OFFICER DODUC: Mr. Mizell.

14 MR. MIZELL: Here we have in Paragraph 8, a  
15 comparison being made between Emmaton and Three Mile  
16 Slough. Three Mile Slough is where the contract  
17 compliance location is. I'm trying to understand  
18 Dr. Shankar's use of Emmaton as a surrogate in this  
19 paragraph.

20 I'm simply trying to inquire as to why he felt  
21 the need to include Emmaton in testimony when  
22 discussing a Three Mile Slough compliance location.

23 CO-HEARING OFFICER DODUC: Then that's the  
24 question Dr. Shankar should answer.

25 WITNESS PARVATHINATHAN: The Sacramento River

1 at Emmaton analysis is not relevant to the Three Mile  
2 Slough contract. The reason I'm showing that is just  
3 to show the effect of the project on the Delta, the  
4 particular location, Emmaton.

5 MR. MIZELL: And let's see if I can get this  
6 right from our last go-round. It would be very similar  
7 to what I was attempting to get at with Mr. Kienlen.

8 So it is not your intent to equate an increase  
9 in water quality at Emmaton with contract compliance or  
10 protection of the North Delta Water Agency members?

11 MS. NIKKEL: I'm going to make an objection on  
12 the basis of relevance. I'm not sure I understand the  
13 relevance of the intent of these witnesses.

14 These witnesses have been called by North  
15 Delta Water Agency, which is a protestant in this  
16 proceeding. And these witnesses have been called as  
17 experts to offer their expert opinion.

18 It's relevant to understand what the basis and  
19 the meaning of those opinions is but not what the  
20 intent is of the experts who have been called by a  
21 protestant.

22 CO-HEARING OFFICER DODUC: Mr. Mizell.

23 MR. MIZELL: The relevance is that North Delta  
24 Water Agency holds a contract with the Department, and  
25 it states quite clearly that the North Delta Water



1 Agency would defend the water quality standards in that  
2 contract as protective.

3 The intent of the witnesses in presenting to  
4 you changes in water quality at locations other than  
5 that contract goes to the very heart of -- as to  
6 whether or not the contract is being upheld, and it is  
7 the basis upon which North Delta Water Agency is or is  
8 not a proper -- asserting a proper injury in this  
9 hearing.

10 CO-HEARING OFFICER DODUC: Be as that may,  
11 that is beyond the scope of the rebuttal testimony.  
12 The intent or what you -- what inference you may make  
13 from their rebuttal testimony is outside of the scope  
14 of their rebuttal testimony.

15 MR. MIZELL: I was not attempting to make an  
16 inference. I was attempting for them to preclude an  
17 inference being made. It's different -- I'm trying to  
18 get them to essentially answer a question in a way that  
19 says I can't ask any further questions about compliance  
20 for that paragraph.

21 If -- let's see if I can sort this out.

22 Does Paragraph 8 have any bearing in your  
23 opinion on your previous statements in your testimony  
24 about 1981 contract violations?

25 WITNESS PARVATHINATHAN: No.

1 MR. MIZELL: Thank you. So, Dr. Shankar, as a  
2 modeler, do you agree with the testimony of  
3 Dr. Nader-Tehrani that absolute differences computed at  
4 a single point in time between two scenarios are an  
5 inappropriate use of the modeling results?

6 WITNESS PARVATHINATHAN: Can I see the  
7 testimony? Because I have to read it in context.

8 MR. MIZELL: Certainly.

9 We can go to NDWA-502, Table 3, please.

10 WITNESS PARVATHINATHAN: I'm sorry. I was  
11 looking for the testimony by Dr. Nader-Tehrani that  
12 talks about how not to focus on absolute changes in  
13 monthly values.

14 MR. MIZELL: Yes, well, that is -- we could go  
15 to any number of his statements, but I'll assert to you  
16 that that's his testimony.

17 WITNESS PARVATHINATHAN: Sure.

18 MR. MIZELL: Certainly just answer the  
19 question under that assumption.

20 WITNESS PARVATHINATHAN: I was looking for the  
21 context, whether it was made as a standalone statement  
22 or are there any preceding lines that leads to that  
23 statement. But I think I can answer to your question.

24 MR. MIZELL: Okay.

25 WITNESS PARVATHINATHAN: So long-term averages

1 are statistics. And there are many statistics to  
2 modeling data. You could use your statistics to prove  
3 a point and the point that was made by Dr. Tehrani on  
4 using long-term average has a specific reason. He  
5 talks about how the operations changed between months  
6 and how he cannot focus on particular months, and I  
7 understand it.

8 At the same time, it is important to look at  
9 some monthly changes to see the why they are so  
10 extremely different.

11 So for example, if you look at Table -- if you  
12 can go to Page No. 3, Table 1. And as I stated in my  
13 oral testimony, if you go to row number -- or the year  
14 1989 in September, and it says the salinity increases  
15 by  
16 77 percent. And that is a -- that's an extremely large  
17 increase in the EC.

18 And I'm not saying the EC in the real world  
19 would increase by 77 percent in September of 2065. I'm  
20 just saying that that number needs much more detailed  
21 investigation to understand why there's such an  
22 increase. Is that due to a project, or is it something  
23 else?

24 And it's important that, as scientists, we  
25 need to investigate and understand what is causing the

1 increase. And this is just some information; this is  
2 just another statistic that helps up dive deeper into  
3 understanding more of what the project operation is.  
4 Is it something in the CalSim operations model that is  
5 being propagated into the DSM-2 model?

6 So these are all indicators that help us  
7 investigate more and then gain more information and  
8 help in making the right decisions. And that's the  
9 point of presenting the statistics, not to say that  
10 this is going to happen in reality.

11 CO-HEARING OFFICER DODUC: So you agree?

12 WITNESS PARVATHINATHAN: I agree that there is  
13 need to focus on average statistics but also need to  
14 focus on other numbers that reveal certain aspects of  
15 the modeling. We cannot just choose one statistics to  
16 say it is superior to other statistics. It is very  
17 subjective.

18 MR. MIZELL: Well, thank you very much. And  
19 thank you for bearing with me so late in the afternoon.  
20 That's all my cross.

21 CO-HEARING OFFICER DODUC: Thank you,  
22 Mr. Mizell.

23 Any redirect, Ms. Nikkel?

24 MS. NIKKEL: I have two brief questions  
25 regarding the 1981 contract.

1 REDIRECT EXAMINATION BY MS. NIKKEL

2 MS. NIKKEL: And I'll ask this question of  
3 each of the witnesses.

4 Have you been retained by North Delta Water  
5 Agency to offer any opinions in this proceeding  
6 regarding the intent of the agency with respect to the  
7 1981 contract? Would you like me to repeat the  
8 question?

9 WITNESS KIENLEN: Yeah, I think so.

10 MS. NIKKEL: Have you been retained by North  
11 Delta Water Agency to offer any opinions in -- and I'll  
12 be more specific -- the rebuttal -- Part 2 Rebuttal  
13 phase of this proceeding regarding the intent of the  
14 agency with respect to the 1981 contract?

15 WITNESS KIENLEN: No.

16 MS. NIKKEL: Dr. Shankar?

17 WITNESS PARVATHINATHAN: Sorry, I wasn't  
18 paying attention.

19 MS. NIKKEL: Thought you were done?

20 WITNESS PARVATHINATHAN: Yes.

21 MS. NIKKEL: I'll repeat the question. Have  
22 you been retained by North Delta Water Agency to offer  
23 any opinions in Part 2 Rebuttal of this proceeding  
24 regarding the intent of the agency with respect to the  
25 1981 contract?

1 WITNESS PARVATHINATHAN: No.

2 MS. NIKKEL: So by "violations of the 1981  
3 contract" used in your testimony, you mean an  
4 exceedance of water quality criteria specified in the  
5 1981 contract, correct?

6 WITNESS PARVATHINATHAN: Yes.

7 WITNESS KIENLEN: Yes, that's correct.

8 MS. NIKKEL: Thank you. I have nothing  
9 further.

10 CO-HEARING OFFICER DODUC: Recross?

11 MR. MIZELL: No, I think we've covered it.

12 CO-HEARING OFFICER DODUC: All right. Thank  
13 you. Does that conclude North Delta's?

14 MS. NIKKEL: Thank you, it does conclude North  
15 Delta's Part 2 rebuttal testimony.

16 And at this time, I'd like to move exhibits  
17 NDWA-500, NDWA-501, NDWA-502, and NDWA-503 into the  
18 record.

19 CO-HEARING OFFICER DODUC: Any objections?

20 (No response)

21 CO-HEARING OFFICER DODUC: Not hearing any,  
22 those are now moved into the record.

23 (North Delta Water Agency Exhibits 500  
24 through 503 admitted into evidence)

25 MS. NIKKEL: Thank you.

1 CO-HEARING OFFICER DODUC: Thank you. Thank  
2 you, both.

3 All right. Before we adjourn, just quickly,  
4 I'll remind everyone the order that we went through  
5 previously today after our lunch break is for, first of  
6 all, Dr. Shilling and Stokely, I estimated that,  
7 including presentation of direct testimony as well as  
8 cross, roughly two and a half hours. And that will be  
9 followed by Mr. Cannon and Shutes, then followed by  
10 Mr. Burke, followed by Dr. Michael, Dr. Denton, and  
11 then the panel of Morgan Wells and, I believe, it's  
12 Brodsky representing Save the California Delta  
13 Alliance.

14 After that would be Mr. Stroshane and Nakagawa  
15 of CSPA and County of San Joaquin and LAND -- I think  
16 that's the group -- followed by the PCFFA and LAND  
17 group of Oppenheimer, Ms. Des Jardins, and Mr. Stokely.  
18 That's about as far as we went through in terms of time  
19 estimates today.

20 And then we also had a note that Dr. Paulsen  
21 will appear on Friday, August 24th, on behalf of Groups  
22 18, 19, and 20.

23 So we have some time estimates, but I'm not  
24 providing any guarantee as to who will appear when.  
25 You now have the order that I'm expecting parties to

1 present their oral testimony, and we will proceed in  
2 that order starting tomorrow morning.

3 And with that, we are adjourned until 9:30.

4 (Whereupon, the proceedings concluded  
5 at 4:20 p.m.)  
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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 certify  
 5 that the foregoing proceedings (Pages 140 through 234)  
 6 were reported by me, a disinterested person, and  
 7 thereafter transcribed under my direction into  
 8 typewriting and which typewriting is a true and correct  
 9 transcription of said proceedings.

10 I further certify that I am not of counsel or  
 11 attorney for either or any of the parties in the  
 12 foregoing proceeding and caption named, nor in any way  
 13 interested in the outcome of the cause named in said  
 14 caption.

15 Dated the 1st day of Septebmer, 2018.

16  
 17 *Deborah Fuqua*  
 18 DEBORAH FUQUA  
 19 CSR NO. 12948  
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 25

1 State of California )  
2 County of Sacramento )

3

4 I, Candace L. Yount, Certified Shorthand Reporter  
5 for the State of California, County of Sacramento, do  
6 hereby certify:

7 That I was present at the time of the above  
8 proceedings;

9 That I took down in machine shorthand notes all  
10 proceedings had and testimony given;

11 That I thereafter transcribed said shorthand notes  
12 with the aid of a computer;

13 That the above and foregoing is a full, true, and  
14 correct transcription of said shorthand notes, and a  
15 full, true and correct transcript of all proceedings  
16 had and testimony taken;

17 That I am not a party to the action or related to  
18 a party or counsel;

19 That I have no financial or other interest in the  
20 outcome of the action.

21

22 Dated: September 1, 2018

23

24

25

*Candace Yount*

\_\_\_\_\_  
Candace L. Yount, CSR No. 2737