

WORKSHOP
STATE WATER RESOURCES CONTROL BOARD
STATE OF CALIFORNIA

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Subject: *Review of Water Quality Standards
for the San Francisco Bay/
Sacramento-San Joaquin Delta Estuary*

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Held in
Bonderson Building
Sacramento, California

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**Tuesday, April 26, 1994
10:00 a.m.**

VOLUME I

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Board Members:

- JOHN CAFFREY, Chairman
- JAMES STUBCHAER, Vice Chairman
- MARC DEL PIERO
- MARY JANE FORSTER
- JOHN BROWN

Staff:

- WALTER PETTIT, Executive Director
- THOMAS R. HOWARD, Senior Engineer
- BARBARA LEIDIGH, Senior Staff Counsel

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1 TUESDAY, APRIL 26, 1994

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1 TUESDAY, APRIL 26, 1994, 10:00 A.M.

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3 MR. CAFFREY: If you'll find your seats, we will
4 begin the proceeding.

5 Good morning and welcome to these proceedings.

6 My name is John Caffrey, Chairman of the State Water
7 Resources Control Board.

8 By way of introduction to the people at the dais, to
9 my far left is our Executive Director, Walt Pettit.
10 Proceeding from there, Marc Del Piero, Board Member; Mary
11 Jane Forster, Board Member; then yours truly, and on my
12 immediate right is Board Vice Chairman, James Stubchaer;
13 Board Member John Brown.

14 Welcome to you all. Before we get to the blue cards
15 this morning and hear your presentations, I am going to read
16 a statement into the record that will take a few minutes,
17 which will lay out what we are about today and how we intend
18 to proceed.

19 This is the time and place for the State Water
20 Resources Control Board to hear comments and recommendations
21 regarding the water quality standards for the San Francisco
22 Bay/Sacramento-San Joaquin Delta Estuary.

23 Today marks the beginning of the Board's triennial
24 review of its 1991 Water Quality Control Plan for the
25 estuary. We are conducting a series of workshops through

1 July on a number of issues and factors that affect
2 conditions in the estuary.

3 Our purpose is to develop new water quality
4 objectives for protection of the estuary's public trust
5 values. We intend to do this in a manner which respects the
6 needs of the other established beneficial uses of Delta
7 waters. We intend to develop and release a draft plan by
8 the end of this calendar year.

9 In a few minutes we will begin hearing presentations
10 from the various parties who wish to speak on the subjects
11 noticed for today's workshop.

12 If you intend to speak today, please fill out a blue
13 speaker card and give it to our staff at the front table.

14 Our staff at the front table, lest I forget to
15 introduce them, we have our Senior Engineer, Tom Howard from
16 the Delta Unit; and Barbara Leidigh, who is from our legal
17 office and is our senior counsel.

18 We also have other staff present today who will
19 assist us from time to time.

20 The comments and recommendations received today and
21 during the workshops in May, June and July, will be used to
22 prepare a draft water quality control plan. We expect to
23 release a draft in December, 1994.

24 About two months after the draft is released, we
25 will hold a hearing on the draft. After the hearing, we

1 will make whatever changes are needed, provide copies of the
2 revised draft to the interested parties, and then hold a
3 Board meeting to consider it for adoption.

4 When it is adopted, the new water quality plan, with
5 its new or amended water quality objectives, will replace
6 the 1991 Bay-Delta Plan.

7 We intend to include objectives that will supplant
8 the new standards which the United States Environmental
9 Protection Agency is proposing. The plan will include a
10 program of implementation which may outline an approach for
11 implementing the plan under water rights law, but the plan
12 will not establish any responsibilities among the water
13 right holders.

14 The water right proceeding that will commence after
15 the water quality control plan is adopted will address the
16 responsibilities of water right holders.

17 Conduct of the workshop: Today's procedures are
18 described in the notice for today. Additional copies of the
19 notice are available from the staff.

20 This workshop and the workshops in May, June and
21 July will be informal. Today we want to hear from the
22 parties on the key issues specified for this workshop. We
23 will give each party 20 minutes for an oral presentation. I
24 should say up to 20 minutes. You don't have to take 20
25 minutes if you don't need 20 minutes. If a party needs

1 additional time, the party's representative may request
2 additional time at the beginning of the presentation.

3 Please explain why the additional time is necessary.
4 If we are not able to provide you all the time you think you
5 need, and such a decision would be out of fairness to the
6 other parties, we encourage you to submit your presentation
7 in writing.

8 In the interest of time, we ask that parties avoid
9 repeating details already presented by other parties
10 wherever possible and simply indicate agreement.

11 Alternatively, parties with the same interests are
12 welcomed and encouraged to make joint presentations.

13 We will also accept and we encourage written
14 comments. You need to provide the Board and its staff 20
15 copies of any written comments and recommendations, and make
16 copies available to the other parties who are here today.

17 A court reporter is present and will prepare a
18 transcript. If you want a copy of the transcript, you must
19 make arrangements with the court reporter.

20 There will be no sworn testimony or cross-
21 examination of the parties, but the Board members and the
22 staff may ask clarifying questions.

23 Now, we have at the moment about 20 cards, and I
24 have had some requests for people who have scheduling
25 problems and I will announce that in a little while.

1 We do have two days scheduled for the workshop, and
2 I don't know if there will be blue cards coming in
3 throughout the course of the day, but if this is any
4 indication of the number of cards we're going to have, and
5 if the presentations are held reasonably in check in terms
6 of their time, it's conceivable that we would complete the
7 proceedings today, but we will take a look at that situation
8 as the day progresses.

9 If we have to go into tomorrow, we would be in our
10 hearing room across the street.

11 Key issues -- today's key issues are:

12 A. Which standards should the Board focus on
13 during this triennial review?

14 B. What level of protection is required by the
15 California Water Code and the Clean Water Act for
16 protection of public trust uses in the Bay-Delta
17 estuary?

18 C. What are the principal environmental, water
19 supply and economic effects of U. S. EPA's draft
20 standards? Should these standards, or modified
21 versions of these standards, be considered as
22 alternatives in this review?

23 In addition to comments on the key issues, the Board
24 welcomes written or oral comments on the timing, or
25 placement, if you will, for the discussion of specific

1 subjects in this series of workshops.

2 Other key issues will be discussed at the other
3 workshops in May, June and July.

4 By now you should have received a notice listing the
5 key issues we currently expect to discuss during those
6 workshops.

7 I will call the parties in the following order:

- 8 1. Elected officials for the State, Federal and
9 local governments;
- 10 2. Representatives of State, Federal and local
11 agencies;
- 12 3. All others in the order that your speaker card
13 was submitted to the staff, unless you have special
14 time constraints which you have noted on your
15 speaker card.

16 Before we get into calling the various speakers, I
17 would like to say to the parties that the Board encourages
18 you throughout the duration of these workshops to work
19 together to identify and develop areas of agreement.

20 The Board is interested in having this kind of
21 information as it hears facts and opinions regarding the very
22 complex subject of standard setting for the estuary.

23 We hope that all the parties will use these
24 proceedings as an opportunity to help the Board develop a
25 plan that will afford reliable and reasonable protections

1 for the estuary and all its beneficial uses, rather than
2 using the workshops solely to assert positions of advocacy.

3 We wish to note the presence of representatives of
4 Club Fed. Welcome to members of that agency.

5 I see Mr. Seraydarian is here and will soon be
6 making a presentation.

7 We have noted with interest the settlement agreement
8 between the U. S. EPA, Region 9, and the various
9 environmental groups, and we also note the express desire of
10 Mr. Seraydarian and the staff, and other members of Club Fed
11 to work as closely as they can with this Board in its
12 process to hopefully develop standards that are acceptable
13 to all parties.

14 Now, that completes my statement.

15 Do any of the Board members wish to make a comment
16 at this time or add anything to what I have said?

17 Nothing at this time.

18 Mr. Pettit, do you wish to make any comments or add
19 anything?

20 MR. PETTIT: No, Mr. Chairman, we don't have any
21 formal staff presentation prepared. I believe that the
22 March 25th notice lays out the process for the next few months
23 pretty well, and your opening statement pretty well covers
24 the issues and the procedures for today's session.

25 I think it would be most productive to get right to

1 the presentations by the parties.

2 I will ask Ms. Leidigh and Mr. Howard if they have
3 any last-minute housekeeping details to advise you before
4 you get started, but that would be the only thing.

5 MS. LEIDIGH: I don't have any.

6 MR. HOWARD: No.

7 MR. CAFFREY: All right, thank you all very much.

8 I notice there are some individuals standing in the
9 back. There are, at least from this point of view, still a
10 number of seats available in the audience. Please feel free
11 to sit down and relax. This probably won't be a very short
12 day, so I just thought I would mention that.

13 Well, as I mentioned earlier, we do not have cards
14 for any elected officials yet, so we will go to our public
15 officials representing State, Federal and local governments.

16 We have a request from Mr. Seraydarian of the U. S.
17 EPA, that he be allowed to come early because of the press
18 of his schedule, and I believe, Mr. Seraydarian, you have a
19 panel presentation that you want to make with other members
20 of Club Fed; is that correct?

21 MR. SERAYDARIAN: That is correct.

22 MR. CAFFREY: Please come forward and good morning.

23 MR. SERAYDARIAN: Good morning, Mr. Chairman and
24 Board members. Thank you for this opportunity.

25 We are here as the Federal Ecosystem Directorate.

1 With me is Wayne White with the Fish and Wildlife Service,
2 Dan Fults with the Bureau of Reclamation and Roger Wolcott
3 with the National Marine Fisheries Service.

4 I want to make reference to a memorandum of
5 coordination that was signed last September, 1993, between
6 and amongst the U. S. Fish and Wildlife Service, National
7 Marine Fisheries Service, Bureau of Reclamation and EPA.
8 This created the Federal Ecosystem Directorate with the goal
9 of coordinating Federal resource protection and management
10 decisions in the Bay-Delta estuary and its watershed.

11 The memorandum specifically called for coordination
12 with the State, and I will quote:

13 *Coordination also states the Federal agency's*
14 *commitment to work closely with all the*
15 *involved agencies of the State of California*
16 *and the Federal government so that to the*
17 *greatest extent possible our implementation of*
18 *Federal law in the Bay-Delta estuary*
19 *complements the State's role in allocating*
20 *water resources and the State's continuing*
21 *efforts to preserve, protect and enhance the*
22 *natural resources of the estuary.*

23 I will make a short statement as the lead for this
24 particular workshop and we expect that we will rotate the
25 lead and be present for all your workshops. I think some of

1 the other subsequent subjects are more appropriate for Fish
2 and Wildlife and NMFS and the Bureau to take the lead.

3 I want to recognize the importance of the State
4 Board's role, first of all. We look forward to working with
5 the Board in developing mutually acceptable standards and we
6 are pleased that the Board has chosen to develop new
7 standards under the triennial review process established by
8 the Clean Water Act and our goal continues to be the State
9 adoption of approvable standards.

10 I would like to provide a brief status report on the
11 EPA process. As you all know, we disapproved the fish and
12 wildlife standards in September of 1991. EPA held off on
13 promulgating any Federal standards in hopes that the State's
14 process would lead to approvable standards. When D-1630 was
15 withdrawn, we moved ahead together with the other Federal
16 agencies to propose Federal standards and other actions
17 under the Clean Water Act, the Endangered Species Act, and
18 the Central Valley Project Improvement Act.

19 EPA specifically proposed three sets of criteria,
20 a two-part per thousand salinity criterion in Suisun Bay,
21 survival targets for migrating salmon and salinity criteria
22 to protect striped bass spawning habitat on the lower San
23 Joaquin.

24 We have also been working closely with the
25 Department of Water Resources, the Bureau and Contra Costa

1 Water District and others to develop modifications that
2 would better tailor the standards to natural hydrologic
3 conditions.

4 Our goal is to adopt final standards that would
5 restore the health of the estuary while minimizing impacts
6 on water users.

7 The comment period closed March 11. We encouraged
8 comments on alternatives that would provide more flexibility
9 and reduce the water supply impacts while maintaining the
10 environmental benefits. We are generally pleased that
11 several organizations took this challenge seriously and
12 submitted detailed alternatives.

13 We are now in the process of reviewing these
14 comments and we would be happy to make them available to the
15 Board.

16 We recently announced that we have entered into a
17 settlement agreement to issue final standards by December
18 15, 1994; and Fish and Wildlife has agreed to issue its
19 final decision on the designation of critical habitat at the
20 same time. This should allow us sufficient time to address
21 the comments received on the proposal and to work with the
22 Board in developing draft standards.

23 Because we are now in the decision-making process,
24 we cannot discuss our final conclusions with respect to the
25 issues raised in the proposal. We can discuss, however, the

1 requirements of the Clean Water Act and how they relate to
2 the Board's process and the development of final
3 alternatives before the final decision.

4 I would like to address the key issues raised by the
5 Board: What standards should the Board focus on?

6 I am paraphrasing.

7 Because we approved the standards in the Board's
8 1991 plan for agriculture and municipal and industrial uses,
9 we agree that the Board should focus on the fish and
10 wildlife standards during this triennial review.

11 Second, what level of protection is required by the
12 Clean Water Act and State laws?

13 The Clean Water Act requires that State standards
14 must be based on sound scientific rationale and be
15 sufficient to protect the most sensitive designated use.

16 In our proposed rule and previous statements, we
17 have suggested that this requirement would be met for the
18 estuarine habitat and fish migration uses by standards that
19 would restore habitat conditions to those that existed in
20 the late '60s and early '70s.

21 For the San Joaquin River salmon, we propose
22 somewhat higher levels of protection because the runs are
23 smaller and more at risk.

24 To protect striped bass spawning habitat, our
25 proposal was based on more specific information developed by

1 the State Department of Fish and Game on salinity levels
2 necessary to protect this habitat in the lower San Joaquin
3 River.

4 We also raise this issue for comment as part of the
5 proposed rule and have received comments on the level of
6 protection.

7 Third, the Board also asked about the environmental,
8 water supply and economic effects of EPA's draft standards,
9 and whether the standards -- or modified versions, should be
10 considered as alternatives in this review.

11 We hope the Board will build on the momentum created
12 by the proposed rule and ongoing efforts to address the
13 issues raised by the commenters.

14 Once again, we would be happy to make available the
15 comments received on the proposed rule to you and your
16 staff. We certainly hope and expect that the Board will
17 develop and adopt standards that are consistent with Federal
18 requirements, and we look forward to working with you to
19 accomplish that goal.

20 And we would all be happy to answer any questions
21 that the Board members may have.

22 MR. CAFFREY: Thank you very much, Mr. Seraydarian.

23 Do the Board members have any questions at this
24 time?

25 Nothing at this time.

1 How about staff?

2 We certainly appreciate your being here for the
3 kickoff of our process, so to speak, Mr. Seraydarian, and we
4 look forward to continued involvement of the members of Club
5 Fed, and we certainly are hopeful as well that we can
6 develop standards that are mutually acceptable, not only to
7 your agency and ours, but to all parties, so we look forward
8 to working with you in the next several weeks and months,
9 and toward that year-end goal.

10 Thank you very much.

11 I have a request from John Wodraska, General Manager
12 of Metropolitan Water District, and Andy Moran, General
13 Manager for San Francisco Water, who are desirous of making
14 a joint presentation, and you may have other parties as
15 well.

16 Then, after that presentation, we will hear from the
17 Department of Water Resources, and then, depending on where
18 we are at that point, we may go out of category to
19 accommodate some people from the other categories that have
20 time constraints, and we will see where that takes us.

21 Good morning, gentlemen. Please introduce your-
22 selves for the record. We know who you are, but we want to
23 get it in the transcript.

24 MR. MORAN: My name is Andy Moran and I am General
25 Manager of the San Francisco Public Utilities Commission and

1 current Chair of the California Urban Water Agencies.

2 MR. WODRASKA: John Wodraska, General Manager of
3 Metropolitan Water District of Southern California.

4 MR. QUINN: Tim Quinn, Director of the State Water
5 Project and Conservation Division, Metropolitan Water
6 District of Southern California.

7 MR. BERLINER: Tom Berliner, Deputy City Attorney,
8 City and County of San Francisco.

9 MR. CAFFREY: Welcome to you all.

10 MR. MORAN: Mr. Chairman and members, we have
11 several submissions that we will not read to you, but we
12 will provide to the clerk.

13 The first is a statement of the San Francisco Public
14 Utilities Commission, basically a two-page statement. We
15 also have a statement from the California Urban Water
16 Agencies, both dated today.

17 Coming to the Board are copies of the Public
18 Utilities Commission comments on the EPA proposed
19 regulations, specifically on standards, and the draft RIA.
20 We also have copies coming of the comments by the California
21 Urban Water Agencies on the EPA standards as well.

22 In addition to that, as background to the CUWA
23 comments, there were about 800 pages of technical reports
24 which we have made available to the staff and would like as
25 part of the record. We are a little reluctant to provide 20

1 copies of that, but we will look to your guidance on that
2 matter.

3 My role here today, really, is to represent the
4 California Urban Water Agencies and just a brief word as to
5 who we are. We are an association of 11 of California's
6 largest urban water agencies. We serve roughly 20 million
7 water consumers in the state and support roughly three-
8 quarters of the State's economic activity.

9 CUWA is a non-profit organization. One of our
10 primary roles is to sponsor technical review and studies.
11 We have done several of those over the years. Also, one of
12 the principal purposes of the organization from the first
13 day was to bridge some of the traditional gaps that exist
14 within the water community and perhaps the most successful
15 bridge that we have done is between north and south urban
16 water interests, and my presence today with Wodraska, Tim
17 and Tom, I think is evidence of that fact and evidence of
18 the fact that northern agencies can be concerned about
19 reliable water supplies, and that southern agencies can be
20 concerned about fixing problems that exist in the Delta. We
21 are committed to both of those.

22 Shortly after EPA issued its Draft Regulations, CUWA
23 commissioned a series of studies which took over four
24 months. They consisted of work by biologists and
25 hydrologists, statisticians, engineers and other

1 professionals, some of whom were obtained directly by CUWA,
2 some were provided by member agencies.

3 We also work very closely and cooperatively with the
4 Delta-Mendota Water Authority incorporating the work that
5 they were doing at the same time.

6 From the beginning of that effort, the presumption
7 was that that work would be done in public, it would be
8 subject to public review, that we would basically cast our
9 lot with whatever the science determined, and that that work
10 would be public whether we liked the answer or not. That
11 has happened.

12 Those reports are public, they are being discussed
13 broadly today, and one of the things that CUWA is committed
14 to is making its staff and members available to review those
15 findings and reports with people who have an interest in
16 doing so.

17 One thing that I might mention is that this is
18 probably not the forum to go into detailed technical review
19 of all those reports and findings, but we would offer to do
20 that on any basis that is useful to this Board, whether it
21 is staff to staff, some of which has already happened;
22 whether it is in the form of work groups; whatever works we
23 will be glad to do.

24 The results of that work in general confirms and
25 refines work that has been done in other forums, both by EPA

1 and others.

2 For instance, it does support the use of standards,
3 but it also recommends refinements to the standards which
4 end up providing equivalent protection for the estuary but
5 makes more efficient use of water allocated to the estuary.

6 Specifically, CUWA recommends the adoption of a
7 Suisun estuary standard to be measured at the confluence of
8 the Sacramento and San Joaquin Rivers, and also, at Chipps
9 Island, which would provide a level of protection for the
10 estuary which is as effective, if not more effective, than
11 the EPA proposal in protecting estuarine habitat and fish
12 resources.

13 And it is fully consistent with EPA's stated goals
14 with lower water supply impacts.

15 CUWA does not support extending the standards to
16 include Rowe Island, Port Chicago, for four reasons:

17 (1) At this location the correlation between flow
18 and fishery abundance is very weak;

19 (2) The water cost is very high;

20 (3) The Chipps Island standard concentrates the
21 fisheries in an environment specifically in the
22 Suisun estuary which is more desirable for estuarine
23 processes; and

24 (4) As to some species the standards may result
25 in counterproductive environmental effects.

1 There are some species which actually seem to suffer
2 by the use of the Rowe Island standard.

3 On the goals of EPA's proposed fish migration and
4 cold-water habitat criteria, these goals are not met by the
5 EPA proposal. The proposed criteria are not directly
6 indicative of biological response because the indices are
7 not valid over a wide range of hydrologic and hydraulic and
8 operating scenarios. Rather, criteria for salmon smolt
9 survival are more appropriately addressed by a basin-wide
10 management plan developed to control the full range of
11 variation which affects salmon smolt survival.

12 Several activities are currently under way basically
13 working on recovery programs, the San Joaquin River
14 Management Plan, the Central Valley Project Improvement Act;
15 implementation efforts all address that activity and we feel
16 are more effective.

17 As to the striped bass spawning standards, we
18 believe that it should not be set as proposed by EPA.
19 Action to improve striped bass spawning habitat would be
20 better managed in a multispecies planning effort and should
21 be consistent with the U. S. Fish and Wildlife Service and
22 NMFS's recovery plans for threatened and endangered species.

23 Such actions should also be consistent with the
24 State's program to regulate and control agricultural
25 drainage.

1 I would also like to refer to something which is not
2 part of CUWA's comments, but is in San Francisco's submittal
3 to the U. S. EPA. In Appendix 2, there is a letter from Dr.
4 Peter Moyle which addresses this issue and specifically he
5 states that there is likely no genetic distinction between
6 the Sacramento River and the San Joaquin River striped bass,
7 and because of that, there is no need for special
8 protection.

9 The specific criteria to enhance the non-native
10 striped bass population will increase predation pressures on
11 other species such as the already depressed San Joaquin
12 stock of chinook salmon.

13 And finally, any specific additional protection for
14 the striped bass should be deferred, and that's important,
15 deferred and not eliminated, but deferred until there has
16 been significant recovery of the San Joaquin salmon
17 population.

18 That's very briefly an overview of the process that
19 the CUWA went through in its findings, and I would like to
20 turn it over to John Wodraska.

21 MR. WODRASKA: Mr. Chairman and Board members, I sit
22 as the General Manager of Metropolitan Water District, but
23 it is important for you to know that I sit on this panel as
24 a member of the urban coalition or the California Urban
25 Water Agencies.

1 When I first came to Metropolitan, I asked what's
2 your mascot, and they told me an 800-pound gorilla, and you
3 don't often find an 800-pound gorilla sitting with other
4 people or joining up in a team, and it's retiring the 800-
5 pound gorilla at Metropolitan, and it is most important that
6 you understand we are joining together with the urban
7 interests in the State of California to solve what we
8 believe are the most important economic and water resource
9 problems facing California and maybe the nation.

10 One of the questions that I got asked as we came out
11 with our March 11 statement, which Andy has summarized the
12 urban position to respond to the EPA proposal, and the
13 question was, why do the urbans do this? And it's important
14 for you to understand and the State of California to
15 understand that under the Clean Water Act when EPA came out
16 with their proposal, if no one had developed an alternative,
17 they are required to proceed based on the information they
18 received going through that process.

19 By the urban alternative having been submitted,
20 laying out the documentation and the science that was
21 submitted, that gives us flexibility and what we think is a
22 preferred alternative, and as a matter of fact, EPA is
23 required to consider alternatives that are less costly but
24 accomplish the same objective.

25 We think we have come up with a better approach and

1 would invite the State Water Resources Control Board and
2 other entities to review what the urbans have put together
3 as an alternative in managing the Bay-Delta estuary.

4 One of the other questions that was raised is, are
5 the urbans trying to pre-empt the State Water Resources
6 Control Board? Why did we jump into this fray?

7 The fact is we have so much at stake we could not
8 afford not to be involved in it, but clearly understand, our
9 position is the State needs to exercise the leadership. We
10 see a State-Federal partnership with the emphasis on the
11 State, and we look forward to this being the kick-off of
12 that leadership process.

13 It is really so important for us to solve this
14 problem. This is not going to be easy and the stakes have
15 been raised recently.

16 Last week I was invited to attend in Washington with
17 the National Academy of Engineers hosted by the National
18 Academy of Sciences, how as a nation do we solve complex
19 engineering problems that have ecological constraints?
20 There were about 30 top people in the country, engineers and
21 systems ecologists, and we used the Bay-Delta as one of the
22 case studies and identified that we don't have a successful
23 track record in this nation of how do we retrofit an
24 existing engineering problem to solve environmental problems
25 with it.

1 We are creating a new record here and creating a new
2 mousetrap, and how as a society are we going to make these
3 things work.

4 So, clearly, what you are embarking on, you cannot
5 go and say, let's learn based on what somebody else did or
6 rely on that track record. We are plowing new ground here.

7 Also, the reason the stakes have been increased --
8 on March 21, Standard & Poors' Credit Week Municipal came
9 out with an article and let me quote:

10 *The allocation of water supplies for*
11 *consumption in California remains in gridlock*
12 *as both Federal and state forces try to achieve*
13 *a workable solution to the conflicting*
14 *interests in the Delta.*

15 The day after, the Bond Buyer, on March 22nd, had
16 this headline. It said: California Water Credit Ratings at
17 Risk, Standard & Poors Warns.

18 The Standard & Poors article went on to say:
19 *Problems faced by California water suppliers*
20 *will have a generally negative impact on credit*
21 *quality for years to come due to the economic*
22 *impact and rising costs associated with water*
23 *supply and reliability.*

24 Now, you might ask, what does this mean? Standard &
25 Poors is saying a down-rating, decrease in the credit rating

1 for California water agencies.

2 Metropolitan is the anchor credit rating west of the
3 Mississippi. If Metropolitan, which serves as -- if you
4 think of dominoes, loses a credit rating, which would be 25
5 basis points, to our agency alone with our capital
6 improvement program, we are looking at an increase of 344
7 million dollars of added interest. If you look at the other
8 capital improvement programs throughout just Southern
9 California, add another 250 million dollars in added
10 interest costs, plus everybody else that would be affected
11 if our credit rating is adversely impacted.

12 It is imperative -- the business community is sending
13 a warning shot over our bow and saying, we have to solve
14 this problem from a financial standpoint, and the stakes are
15 indeed very high.

16 I mention that the nation is watching. This is New
17 York and Washington, commenting and focusing on what we are
18 doing in California to solve this problem.

19 Just as in the EPA proposal, when the urbans got
20 together, and we felt those standards were too rigid and
21 they weren't going to accomplish the end objective, we also
22 asked that the State Water Resources Control Board rely on
23 the information, we pledge our support in generating the
24 information, the modeling.

25 There is certainly a lot of data, the analysis of

1 this data, to come up with the solution that is going to
2 address the issues and set a standard by the end of this
3 calendar year, which is really going to be critical for the
4 future of California.

5 The urbans are sitting on the side lines. We're
6 passing the baton to the State. We think we have helped get
7 us to this point, but really, the work is in front of us and
8 we pledge our support to make this successful.

9 Thank you very much.

10 MR. CAFFREY: Thank you, Mr. Wodraska.

11 Mr. Quinn, are you next?

12 MR. QUINN: I think so, yes.

13 Tom and I would like to address the specific
14 questions that you identified at the outset of this hearing.
15 I will address the question of what standards are implied by
16 the work that we think the Board should focus on, and very
17 briefly, a comment on the impacts of the EPA proposal.

18 And then, Tom Berliner of San Francisco will address
19 the question surrounding the level of protection, and we
20 will also suggest a fourth question we think is important:
21 What are the specific procedures that the Board might
22 consider for submitting their results to the Federal
23 Government that respects the relative roles of the Federal
24 Government and State Government in these matters?

25 Let me also point out that in addition to the

1 materials that Mr. Moran indicated would be submitted, there
2 were comments filed by an ad hoc group that we called the
3 Bay-Delta Urban Coalition that were joined by more than 20
4 urban agencies. Those comments, which were submitted to EPA
5 on March 11, will also be put into this record so the Board
6 and the Board staff have access to them and can use them in
7 their deliberations as well.

8 Turning to the question of appropriate standards, as
9 Mr. Moran implied, first to the issue of an estuarine
10 habitat standard, we believe the inclusion of such a
11 standard is essential in what the State Board produces. We
12 would recommend that you give strong considerations to the
13 urban alternative as a way to approach that estuarine
14 habitat standard.

15 Second, with respect to salmon, we have disagreed
16 with EPA's approach to protecting salmon, but recognize the
17 importance that salmon smolts be protected in the system and
18 think it is appropriate for the Board to consider
19 operational constraints in its deliberations as it comes
20 together with a program for the Bay-Delta.

21 Third, as to striped bass, as Mr. Moran indicated, we
22 think the striped bass should be considered only as a part
23 of a multispecies effort and it is probably wise to allow
24 the salmon and other endangered species and the habitat to
25 recover before you engage striped bass in earnest.

1 Fourth, with respect to Delta resident fish, our
2 strong supposition is that other standards will adequately
3 protect the other resident fish, so it is not clear to us
4 that separate standards for those species are required, but
5 they probably need to be looked at as part of the process.

6 Fifth, with regard to Suisun Marsh, we would like to
7 suggest that the Board consider adopting the 1985 Suisun
8 Marsh Preservation Agreement as an appropriate means of
9 protecting the habitat and environmental values in the
10 Marsh.

11 Lastly, on the question of M&I, municipal and
12 industrial standards, for the purpose that they now serve,
13 which is protection of water quality for industry primarily,
14 we see no reason to change those standards. However, we
15 would remind the Board that virtually all urban agencies in
16 the State have serious concerns with drinking water quality
17 and source quality of the water that we now divert from the
18 Delta.

19 Let me also add that we will submit some written
20 comments to follow up these verbal comments once we can all
21 agree to words on the same page.

22 Very briefly, impacts of the EPA proposal -- they are
23 well documented in the CUWA material and other materials
24 being submitted to you. The bottom line is we believe that
25 the impacts of protecting the estuary can be substantially

1 reduced with a carefully drawn up plan that is based on
2 sound biology.

3 The latest estimates we have, and we are still
4 refining them, but it appears the urban alternative would
5 reduce the water supply impacts and, therefore, the economic
6 impacts of the EPA proposal by approximately 40 percent.

7 MR. CAFFREY: Thank you, Mr. Quinn.

8 MR. BERLINER: Thank you. Good morning. I am Tom
9 Berliner.

10 The Board also asked for information on the reference
11 period that should be used to guide their decision, and we
12 are recommending that a reference period of the late 1960s
13 to mid-1970s be adopted as an appropriate starting point to
14 begin focusing on the environmental needs of the Bay-Delta
15 environmental resources.

16 We recognize that there is value in identifying a
17 desired level of protection in order to focus the analysis
18 which California law requires. We also understand the need
19 in view of the documented decline in the number of aquatic
20 resources in the Bay-Delta estuary for a concrete goal to
21 guide the actions necessary to allow restoration of these
22 resources to an appropriate level.

23 The EPA and Fish and Wildlife Service and others have
24 suggested that a level of protection which would restore
25 habitat conditions to those existing in the late '60s and

1 early '70s is required.

2 In the recent EPA proceedings to adopt Federal Bay-
3 Delta standards, we assumed this target period for the
4 purpose of analyzing EPA's draft estuarine habitat proposal.

5 In the course of doing so, we determined that with
6 important revisions the estuarine habitat standard which is
7 based on the proposed target period would likely provide
8 reasonable protection.

9 We think that this period should be considered as one
10 of the alternatives by the Board.

11 The estuarine habitat standard proposed in our recent
12 comments was developed with the intent of providing a flow
13 regime approximating that which occurred during the target
14 period.

15 You will be receiving additional data concerning this
16 proposal in the submittals that were referenced before.

17 As Mr. Quinn stated earlier, an important question
18 that we thought that the Board should address is how the
19 State's program will be submitted to the EPA.

20 Under the Clean Water Act, EPA's principal authority
21 in the area of water quality concerns discharges.

22 We think that the Board has the ability to adopt any
23 one of three types of standards in this proceeding. The
24 first would be a true water quality standard. The second
25 would be a fresh water outflow or salinity repulsion

1 standard, and the third would be operational constraints
2 such as diversion limits and pumping restrictions.

3 I might add a fourth, which is that there also needs
4 to be a recognition that water diversion and outflow are not
5 the only impacts on the system and that standards need to be
6 developed to address the diversity of other issues that are
7 affecting water quality and water use in the state.

8 It is our belief that only in the first category,
9 water quality standards, must the State submit this question
10 to EPA for its approval. Outflow requirements and
11 operational constraints could be submitted, but there is no
12 absolute requirement.

13 In addition, you can consider non-quality measures
14 adopted by the Board for inclusion in the program of
15 implementation under State authority.

16 Another approach would be to submit the entire
17 package to EPA in order to apprise EPA of the State's
18 overall approach consistent with the options described
19 previously.

20 This would provide the EPA with a clear demonstration
21 of the State's intent under Section 303 and applicable other
22 State and Federal laws.

23 In closing, I might add a note that each of us here
24 has been in Washington, D. C., and several others as well
25 from the ad hoc group that was formed that Mr. Quinn

1 mentioned, and we have had a very good reception in
2 Washington. We have met a lot of people that are keenly
3 interested in this ranging from representatives of the White
4 House, EPA, Department of the Interior, and elected
5 officials, including Representative Cal Dooley and other
6 offices where we have met with staff, and without exception,
7 the effort by the California Urban Water Agencies and the
8 integrity of the science behind the work that they did, was
9 well received.

10 I don't think anybody was at the point of endorsing
11 the CUWA recommendations partly, of course, because they
12 hadn't had a chance to study them and understand them, but
13 as far as the effort was concerned, it was extremely well
14 received and we have been told specifically that EPA regards
15 the work that the scientists did as being legitimate science
16 and worthy of respect and consideration.

17 And we offer the State to work closely with you to
18 follow up on the CUWA work and to continue to work with the
19 Federal Government and other interested parties who want to
20 investigate further the CUWA alternative.

21 Thank you.

22 MR. CAFFREY: Thank you very much, gentlemen.

23 We do recognize your positive effort to come up with
24 an analysis and alternative to the proposed standards the
25 U. S. EPA gave us, and we look forward to your continuing

1 exercise and we hope it will be a part of this workshop
2 where appropriate, and that you will keep our staffs
3 informed as you refine your analysis and findings.

4 With that, before you leave, I would like to ask, Mr.
5 Del Piero, did you have a question?

6 MR. DEL PIERO: Mr. Moran, I have not had the benefit
7 of seeing the report supplied by the California Urban Water
8 Agencies, and if it is not too much trouble, could you
9 forward a copy to my office?

10 MR. MORAN: We will certainly do that.

11 MR. DEL PIERO: I understand not all of the report is
12 finalized; is that correct?

13 MR. MORAN: The report is finalized. The submission
14 that we made to the EPA, the official submission was
15 complete some time ago, and we will be glad to get you a
16 copy of that.

17 MR. DEL PIERO: If you would be so kind.

18 MR. CAFFREY: I think we have one set of the volumes,
19 which is making its way around.

20 MR. MORAN: You will receive 20 of those probably
21 within the next 24 hours. We will make sure you have a copy
22 directly.

23 MR. DEL PIERO: The other comment I wanted to make
24 was that Mr. Wodraska and I have met before today, and the
25 other Board members are aware of the comments that he made

1 about the weakness of the bond market, which is something
2 that we are aware of.

3 I was afforded the opportunity to be invited to a
4 conference of investment bankers and bond brokers about a
5 month ago at Scottsdale, Arizona, to talk about financing
6 public facilities in the state, and virtually to a person,
7 with the exception of those that were located in the State
8 of California, there was an express concern about the
9 weakness of the water system in the state and the express
10 desire that we resolve both the environmental problems as
11 well as the supply problems.

12 And it was interesting because the representations
13 indicated that one-half of the equation was not going to be
14 considered by them to be a solution. Both halves of that
15 equation were going to have to be resolved for them to have
16 confidence in continuing to invest in facilities for the
17 State of California.

18 So, it is really interesting to hear your perception
19 on that because it's virtually the same thing I heard a
20 month ago in Scottsdale.

21 MR. WODRASKA: Mr. Del Piero, I think we're going to
22 have a new player and I think it is going to be the business
23 communities of California, and this week we are meeting with
24 the Federal Reserve Commission, who has asked for a meeting
25 of the major business community to understand the full

1 implications and what's going on with respect to water
2 resource planning.

3 So, it is our desire that as you have your future
4 hearings, that the business community become more active
5 than they have in the past, and clearly understand what is
6 at stake for California.

7 MR. DEL PIERO: It's particularly interesting for me
8 because there was not a reluctance, there was not an
9 intentional express reluctance to invest in California; it
10 was a reluctance to invest in an area where there was
11 uncertainty.

12 And as we all know, the business community, more than
13 anything else, wants certainty in terms of resource
14 availability because they have got enough problems to deal
15 with running a business, let alone worrying about whether
16 there is going to be adequate water coming out of the tap.

17 MR. WODRASKA: A week doesn't go by that somebody
18 doesn't call up and ask about reliability and affordability
19 of water for the future of California.

20 MR. CAFFREY: Thank you, Mr. Del Piero.

21 Any other members? Mr. Brown.

22 MS. BROWN: Mr. Wodraska, a 25-point down rating, if
23 I understood your correctly, I think I ended up 600 million
24 dollars in the MWD service area.

25 MR. WODRASKA: Actually, we are into a 6 billion

1 dollar capital improvement program, which, with a 25-basis
2 points would amount to about 344 million dollars of
3 increased interest payments just to our capital improvement
4 program, but all of our member agencies, if you were to combine
5 all of their capital improvement programs as well, that's
6 another 6 billion dollars, so just for the water agencies in
7 Southern California, you are looking at approximately 700
8 million dollars added interest costs.

9 MS. BROWN: That's the criteria currently proposed by
10 EPA that you are responding to?

11 MR. WODRASKA: I want to make it clear that we have
12 talked to Standard & Poors and there is no indication of any
13 immediate negative credit rating. Met bonds are still a
14 good investment. The question is if we don't as a State
15 solve this gridlock problem, and they are talking in a
16 generic sense and they did not get into any -- if you follow
17 any of these proposals -- they are simply giving us the
18 message and we need to solve this problem.

19 MS. BROWN: Thank you, that's very helpful.

20 EPA has a copy of your report and recommendations or
21 suggestions. Are you expecting a response back from that
22 any time soon?

23 MR. WODRASKA: I think that will be incorporated --
24 they are going through our technical information now and as
25 Tom Berliner indicated, we have given them the 800 pages of

1 technical and the modeling, and all the work that we had
2 done in developing the urban position and have a working
3 relationship with them.

4 MS. BROWN: So, when we receive it, we will have your
5 comments added to it?

6 MR. WODRASKA: Yes. One of the questions you might
7 want to ask EPA at future meetings is their review of the
8 work on the urban position and assessment of the science
9 that we submitted.

10 MR. CAFFREY: I think it is important -- we may want
11 to give Mr. Seraydarian an opportunity to comment. I think
12 there are perhaps legal restrictions as to how much they can
13 comment. This is part of the commentary process in your
14 promulgation; is it not, Mr. Seraydarian?

15 I don't want to give the impression, maybe you do,
16 that you intend to answer all critical comments prior to
17 your finalization of your standards.

18 MR. SERAYDARIAN: No. We will not specifically
19 respond to all comments before the final action, but we will
20 try and develop an array of alternatives based on the
21 comments we have received for the final decision making, and
22 we will try and involve the interested parties as much as we
23 can in that process respecting our decision-making process
24 under Federal rules.

25 MR. CAFFREY: That was my understanding of your

1 process. I just didn't want to leave any misimpression with
2 any of the Board members or anyone in the audience.

3 MR. MORAN: And, Mr. Chairman, the material you will
4 be receiving in the next few days, obviously, will not have
5 those comments attached. It will be our submission to them
6 without comments at this point.

7 MR. CAFFREY: Anything else?

8 MS. BROWN: No.

9 MR. CAFFREY: Mr. Pettit.

10 MR. PETTIT: No.

11 MR. CAFFREY: Staff?

12 MR. HOWARD: No.

13 MR. CAFFREY: Thank you, gentlemen, very much for
14 appearing today. We appreciate it. It has been very
15 helpful.

16 We will next hear from the Department of Water
17 Resources that has asked for about half an hour, which we
18 will grant.

19 The last speakers took a little extra time. I think
20 it was appropriate. They were representing a number of
21 parties.

22 After that, let me announce we will go out of
23 category and hear from Mr. Greg Thomas from the Natural
24 Heritage Institute. He has a timing problem and we want to
25 get Mr. Thomas in before noon, so we will do that.

1 Good morning, Mr. Potter.

2 MR. SCHUSTER: Can we get who will be after Greg?

3 MR. CAFFREY: Sure. Mr. Schuster is asking --
4 perhaps if I could read some names to see what the order is
5 -- that is a good suggestion. Let me do that.

6 After Mr. Potter, like I say, we will go to Mr.
7 Thomas. I do intend to break for lunch around noon, and
8 after Mr. Thomas, we will have David Anderson, and then we
9 have Perry Herrgesell, then Dave Schuster, Dave Whitridge,
10 Austin Nelson, and Austin Nelson asked to speak before
11 lunch. I am sure we are going to be able to accommodate
12 that. Then Bill Baber, Michael Heaton.

13 That is the order and that will probably take us into
14 the mid-afternoon.

15 All right. With that, Mr. Potter, why don't you
16 proceed.

17 MR. POTTER: Thank you, Chairman Caffrey, and good
18 morning, members of the Board and staff.

19 It is appropriate that you begin this proceeding in a
20 year in which we are going to see the Sacramento River index
21 in the neighborhood of 8.5, so we will be able to watch
22 California struggle with short supplies but plentiful
23 storage.

24 The Department supports the Board's efforts to have
25 California seize the initiative to protect the estuary and

1 to protect the reliability of the State's water supply
2 system.

3 As you heard from the panel that just left, the
4 stakes are extremely high, both in terms of water and in
5 terms of economic impacts.

6 The Department especially appreciates the workshop
7 format that you have chosen, which will enable you to have a
8 free give and take of ideas. As you know, State agencies
9 are involved right now with the Federal Government in an
10 attempt to draft a framework agreement which would
11 supplement the work that you are doing here today.

12 But with or without that agreement, it is appropriate
13 that the Board lead this effort.

14 The Department team involved will be a group of
15 people with whom you are familiar from our past work
16 together. I will just remind you that our team is led by Ed
17 Huntley, the Chief of the Division of Planning, and Dave
18 Anderson from our legal office, and Dave will now respond to
19 the three specific questions that you put forward in today's
20 announcement, and I congratulate you in undertaking this
21 important mission.

22 MR. CAFFREY: Thank you very much, Mr. Potter, for
23 being here. We look forward to working with the Department
24 and the other parties as well as we go through this workshop
25 series.

1 Good morning, Mr. Anderson.

2 MR. ANDERSON: Good morning, Mr. Caffrey.

3 My name is David Anderson and these are our comments
4 in response to the three questions proposed in the Board's
5 notice of the public workshop for review of standards.

6 The first question asks about which standards ought
7 to be focused on by the Board during this review, and
8 specifically, during this triennial review. The phrase
9 *triennial review* suggests that the Board's inquiry may be
10 limited to the water quality objectives adopted by the Board
11 in its May, 1991, Water Quality Control Plan for Salinity,
12 and which then was subsequently reviewed by EPA.

13 The Department believes that the 1991 Plan is both
14 too broad and too narrow a scope for the Board's purposes in
15 this review.

16 It's too broad in the sense that we agree that the
17 Board's inquiry ought to be focused on the issues of current
18 importance. A review of the non-fish and wildlife
19 objectives in the 1991 Plan, Delta M&I and Delta ag, should
20 probably be deferred. In deferring that review, of course,
21 the Board should keep in mind the new balance that it is
22 setting out to achieve for the Delta must include Delta
23 agriculture and Delta M&I uses, requirements, and
24 obligations.

25 As a practical matter, however, a comprehensive

1 review should be put off until next year in order to focus
2 our time, attention and energy on the estuary's pressing
3 fisheries and habitat issues. So, in that sense, we think
4 that the 1991 Plan is too broad a perspective.

5 But more importantly, it is way too narrow. The 1991
6 Plan is about water quality. The pressing fisheries and
7 habitat issues just referred too, issues which investigate
8 the impact of water users and water right holders on the
9 estuary's biological resources, mainly deal with the effects
10 of flow and diversion, not the effects of salinity,
11 dissolved oxygen, or controllable temperature.

12 I am going to repeat, the pressing fisheries and
13 habitat issues regarding the effect of water use are about
14 flow and diversion, not water quality.

15 You see in my remarks that I have a footnote here
16 talking about distinguishing the effects of the discharges
17 and pollutants, and that is not what I am speaking of. I am
18 talking about the relationship of water use with respect to
19 the natural resources of the estuary.

20 The issues that people are talking about, wherever
21 that may be, are the entrapment zone, diversion through the
22 Delta Cross Channel and Georgiana Slough, reverse flows
23 downstream or upstream, QWEST, transport flows, agricultural
24 and other unscreened diversions, project pumping, removing
25 organisms from the Delta zone of influence, and predation

1 losses.

2 Whatever their merit, and it is the investigation of
3 that merit which is going to be the Board's task here, these
4 are the important issues with respect to water use and they
5 have nothing to do with water quality or with the effects of
6 salinity.

7 Our concern on this point is heightened by the fact
8 that the Board's notice talks about water quality in terms
9 of its process, but not about flow and diversion, although
10 the issues which it identifies for future workshops
11 certainly engage those issues.

12 I'm not sure exactly what this means. Perhaps it
13 means that the Board intends to address flow and diversion
14 in the water rights hearing that's going to follow this
15 process as was the Board's intent in 1989, when it separated
16 flow and diversion from the water quality planning process.

17 If that's the Board's intent, then we emphatically
18 urge the Board to take a different course, to establish
19 procedures to join these issues now, to identify and
20 consider policy and objectives for flow and diversion,
21 before the water rights hearing, up front, alongside water
22 quality.

23 Then, once this has been done, you will have
24 objectives of a planning and policy nature for both flow and
25 diversion and water quality which then you may seek to

1 implement appropriately in a water rights hearing.

2 The two paragraphs on page 2 of the Board's notice
3 under the heading *Regulatory Basis of Action* refers to the
4 Board's authority on the one hand to adopt water quality
5 control plans and objectives in those plans, and two, to set
6 State policy on water quality. These are really towards
7 essentially the same thing and operating at different
8 particularity. They involve the establishing of substantive
9 rules, legislative-type rules, of general applicability
10 integrating State policy on water quality.

11 The Department's view is that comparable steps are
12 required for State policy on flow and diversion. In the
13 water rights phase, you are going to be asked to implement
14 policy. We think it is wise to set that policy up front.

15 We recognize that the Water Code does not expressly
16 set out a process for this. Nonetheless, we do believe that
17 the Water Code clearly authorizes you to undertake these
18 measures.

19 I am not going to go through the next few paragraphs
20 which describe and set out our views on the legality and the
21 authority in the Water Code to do this, but it basically
22 draws from the very large and liberal authority that the
23 Board has in its water rights administration, jurisdiction,
24 as well as its authority under Section 275 of the Water
25 Code.

1 The Department believes, as Mr. Potter indicated,
2 that the workshop process that the Board has outlined is
3 well suited to the development of information relevant to
4 policies for flow and diversion.

5 We do ask, however, that the Board do two specific
6 additional things. The first is simply to make policy
7 guidance or objectives for flow and diversion an added
8 purpose of its review of standards; and second, expressly
9 provide for the issuance of a plan or statement of policies
10 applicable to flow and diversion, under the authorities that
11 we have cited, or additional authorities, at the same time
12 that the draft and final water quality control plans are
13 published.

14 These two documents would then guide the Board in its
15 implementation of a policy for both water quality and flow
16 and diversion in the subsequent water rights hearing. These
17 policies for flow and diversion would be of general
18 application and, like water quality objectives, would not be
19 binding upon any given water year until and unless they are
20 made binding in the water rights proceeding. They may have
21 the degree of specificity of the water quality policy or of
22 a water quality objective, or somewhere in between.

23 These are specific concerns that we are going to
24 hear about and the questions we are going to be engaging
25 about in the particular standards that will be developed

1 over the course of the Board's workshops to come. The
2 particular issues that you will be hearing from the
3 Department on will be in addition to the central fisheries
4 and habitat questions, the treatment of endangered species,
5 how from a regulatory perspective will the Board be
6 addressing those concerns, the regulation by Federal
7 agencies;

8 The inclusion of recommendations for Suisun Marsh
9 and also the need to increase project flexibility,
10 specifically the advisability of adopting interchangeable
11 points of diversion for problems in the Delta.

12 The second question asked about level of protection,
13 specifically the level of protection for public trust uses
14 under both State and Federal law.

15 First, under State law, the standard which, of
16 course, governs Board determinations in general throughout
17 the state as well as the Delta in particular, is a
18 constitutional standard of reasonable use, and the Water
19 Code injunction to serve the public interest. It follows
20 that the State standard for level of protection is that
21 level which secures the reasonable use of water.

22 We note that the California Constitution does look
23 to the Legislature to give some guidance on issues of
24 reasonable use, but we would note, however, that there is no
25 single overriding statutory policy which reconciles the many

1 interests and values in the Bay-Delta estuary.

2 There are, in fact, dozens, if not hundreds, of
3 statutes and legislative policies that are relevant to the
4 estuary, but they are diverse and they frequently compete
5 and at times they are contradictory.

6 What this means is that the level of protection that
7 needs to be afforded to any given beneficial use requires
8 the Board administratively -- to determine what is
9 reasonable, to weigh and balance the many diverse policies,
10 interests and equities which apply to the estuary.

11 As the Board hears and entertains specific
12 recommendations for levels of protection for the public
13 trust uses of the Bay-Delta estuary, I think it might be
14 helpful to keep in mind a simple but important perspective,
15 and that is that the determination of reasonable use have a
16 symmetry about them. A reasonable level of protection for a
17 given use can only be defined in reference to the costs
18 which it imposes upon the other uses of water. The level of
19 protection is reasonable when the costs which it imposes are
20 reasonable.

21 At the same moment, however, that we decide what the
22 reasonable costs are that are imposed upon those uses are
23 reasonable, that decision defines the reasonable level of
24 protection for those other uses.

25 The symmetry is that we should be able to start with

1 any given beneficial use and achieve the same result.

2 If the reasonable level of protection for
3 consumptive uses is defined in terms of the social and
4 economic costs which they impose upon environmental uses of
5 water, it is equally true that the reasonable level of
6 protection for environmental uses is defined in terms of the
7 water and economic costs which that level of protection
8 imposes upon other uses of water.

9 Conceptually, it should make no difference what the
10 focus or starting point is, but that is not the important
11 point. The important point is that the level of protection
12 for one use cannot be defined until it can be defined for
13 all uses.

14 When a particular level of protection is advocated
15 for a given use, the first question that the Board should
16 ask is, what are the costs of that level of protection in
17 terms of other uses foregone, or the levels of protection of
18 other uses which are thereby diminished? From this we can
19 see that for the Board's purposes level of protection is not
20 the starting point; it is the ending point.

21 Parties and interests will come in and recommend
22 various levels of protection for the uses that they
23 represent. But it is only after the Board has considered
24 all those interests and uses, and after it has balanced them
25 and made a reasonable allocation of water among them, that

1 we can discover the level of protection to which any given
2 use is entitled.

3 Just as we cannot say that export users are entitled
4 to a level of protection insuring seven million acre-feet of
5 export per year during the critical period without asking
6 what the environmental consequences of that level of
7 protection are, we cannot say that the public trust uses of
8 the estuary ought to receive a 1967 or 1975 level of
9 protection without also inquiring what the water costs and
10 economic consequences of that level of protection are.

11 The weighing and balancing of those uses and costs
12 are precisely what the Board's job is, and the end result
13 will be the determination of reasonable levels of protection
14 for all uses.

15 The specific goals or advocated levels must be seen
16 as unbalanced proposals or positions advanced by parties
17 which may frame the Board's inquiry, but which cannot
18 predetermine its outcome in advance.

19 I guess what I am saying is, it is not timely for
20 the Board to set a level of protection. Instead, the Board
21 must examine a variety of levels of protection, assess the
22 benefits expected to be achieved, and array them against
23 their costs.

24 I would note that this is the process, the
25 procedure, the methodology that the Board employed at the

1 outset of its scoping phase in the Bay-Delta hearing. I
2 think that was a correct process. I think that is what the
3 Board should be doing now.

4 And, of course, at each point the Board must ask
5 whether benefits may not be achieved and costs diminished
6 through non-water costing or less water intensive
7 alternatives.

8 The second issue also asks what level of protection
9 is required under the Clean Water Act for public trust uses.
10 What the Clean Water Act literally requires is not directly
11 relevant. The Board is acting under State law and must only
12 meet the requirements of State law. State law does not in
13 and of itself say that Federal requirements must be met.

14 As a practical matter, the standards under review
15 directly implicate the State's water allocation system. I
16 don't think anyone can doubt that.

17 If the Clean Water Act requirements were found to
18 vary materially from State requirements, then I believe that
19 the Clean Water Act Section 101(g) would sustain the State
20 requirements.

21 Of course, the Federal requirements are relevant as
22 sources of Federal water quality policy, for which the Board
23 should first look to EPA to present and explain. The Board
24 notice cites EPA for the proposition that the 1960s to 1970s
25 level of protection is consistent with the Clean Water Act.

1 That statement, to us, is unclear. At that level it
2 may be consistent begs the question whether or not other
3 levels of protection that may also be consistent with the
4 Clean Water Act.

5 Level of protection, as we also indicated in our
6 comments to EPA, to the extent it is cognizable under the
7 Clean Water Act, is one of designated use, not scientific
8 criteria, but EPA has not attempted to designate uses in the
9 Bay-Delta estuary under the Clean Water Act, so its
10 invocation of a certain level of protection is at best
11 confusing.

12 Third, Federal officials have suggested that the
13 Clean Water Act does not permit balancing. Although we
14 disagree with that interpretation, we do agree that EPA, in
15 fact, did not balance in arriving at its proposed standards,
16 and that fact is fundamentally at odds with the California
17 constitutional policy and statutory mandates to this Board,
18 which require consideration of competing uses, values, and
19 policies, as well as the facts and circumstances surrounding
20 the uses of water in the Bay-Delta estuary.

21 As the Board considers what levels of public trust
22 uses may be reasonable to protect, there are some very
23 important questions that it should keep in mind, not only
24 keep in mind, but do its best to answer.

25 When we speak of level of protection of these uses,

1 we must ask level of what? Of populations? Of certain
2 species, of which species? Native species? Or the current
3 species composition, which is largely not native? Of
4 certain indicator species? Of habitats, which habitats?

5 Especially in a changing estuary, we will discover
6 that habitat is fluid and that species compete just as other
7 uses of water compete. And the question I have here is
8 which should be protected?

9 The second question is, protection from what? And
10 that goes to the scope and the method of the Board's
11 inquiry. Is it protection from water quality impairment
12 alone? From flow and diversion, or from other changes?
13 From climatic changes? Or uncontrolled flood flows? From
14 toxic pollution? From changes in the food chain? From the
15 introduction of exotic species?

16 Well, obviously, the Board's actions will concern
17 only those factors which are within its jurisdiction and
18 which are, in fact, controllable. The important point is
19 that the Board is likely not able to fully protect uses of
20 the estuary solely through manipulation of controllable
21 water quality, flow, and diversion factors.

22 Third, have we candidly and forthrightly recognized
23 and dealt with uncertainties that attend the determinations
24 pertaining to biological phenomena?

25 It is entirely appropriate for a decision maker to

1 take an action based upon facts and circumstances that are
2 less than certain, but it is imperative that the factual or
3 scientific basis for such decisions be fully and accurately
4 represented so that society and future decision makers will
5 not be misled by the character of the determinations and
6 actions taken today.

7 Fourth, to the extent that we are tempted to invoke
8 the phrase *stop the decline*; decline of what? What species
9 are we talking about? What habitats are we talking about,
10 again the need to address these issues specifically. Are
11 decline and change the same thing?

12 How, if there are causes beyond the Board's reach
13 and beyond the reasonable use of water, may a given decline
14 be stopped?

15 We also note that the ability of the State Water
16 Project or the water supply systems in general to meet
17 increasing demand is also declining. Is this a decline that
18 should also be stopped?

19 The third question asks about the principal
20 environmental, water supply and economic effects of EPA's
21 standards. And then, it goes on to ask, should these
22 standards or modified versions of these standards be
23 considered?

24 On March 11, the Department submitted, along with
25 many others, its comments to EPA and those comments contain

1 an analysis of the water supply impacts of the EPA
2 proposals.

3 We have previously made these analyses available to
4 the Board and have attached a summary table from that
5 exhibit for comments today. I won't go over that again, but
6 note that it's immediately after page 13 of the written
7 material.

8 In addition, we are providing a 1993-1994
9 operational analysis which shows how EPA standards would
10 have affected the projects this year. Jim Snow of our
11 Division of Operations and Maintenance, can explain that
12 analysis to you, if you have any questions, but what it does
13 show and explain is how it is allocated, that had EPA
14 standards been in effect this year and the impacts of those
15 standards over and above D-1485, above the biological
16 opinion requirements for both winter run and the Delta smelt
17 would have been 2.2 million acre-feet of water.

18 The second part of this question asks whether EPA's
19 proposals or versions thereof should be considered as
20 alternatives in the Board's review. Inasmuch as EPA is a
21 major Federal agency that has proposed or advocated certain
22 water qualities, outflows and operational constraints for
23 the Delta, these may appropriately be considered by the
24 Board and should be considered by the Board.

25 Moreover, in attempting to find common ground with

1 Federal agencies, the State has a strong interest in taking
2 their views and positions into consideration, even beyond
3 submitting comments to them as we all did on March 11, and
4 we believe we may do this without rehashing the Clean Water
5 Act issues which are relevant to the Federal proceeding.

6 There is, however, one issue which relates to the
7 structure of the primary EPA standard, X2, which is a
8 matter of concern to us as a matter of fundamental State
9 policy. This same structural problem existed with the work
10 of the San Francisco estuary project from which the EPA
11 proposal was derived.

12 We believe that the Board's process to find the
13 reasonable and efficient use of water will deal with this
14 problem. Nonetheless, we believe it important to state our
15 concerns up front.

16 The two parts per thousand standard was developed by
17 putting together an assortment of biological factors and
18 considerations in the estuary; the desire to avoid
19 entrainment of organisms at agricultural diversions and
20 project export facilities in the Delta, the desirability to
21 transport flows, the location of the entrapment zone,
22 reverse flows, cross-Delta flow, low salinity habitat, food
23 supply, organic loading and so forth.

24 We heard from the proponents of X2 in the flows
25 subgroup of the San Francisco estuary project that one of

1 the most salutary features of using a single estuarine
2 variable as a management device is that policy makers could
3 simply dial the amount of estuarine protection they wanted.
4 This single variable is outflow. Whether it is indexed by
5 X2 or not, it is outflow, and outflow is water.

6 Under this approach, even problems which do not
7 necessarily need water or need more water could be cured or
8 their effects mitigated by dialing for more water.

9 This formulation may be stunning in its simplicity,
10 but it absolutely contradicts the idea that we are supposed
11 to be looking for solutions that don't cost water or that
12 don't cost less water.

13 We are extremely concerned that aggregating
14 biological phenomena to be represented by a single index
15 achievable only through outflow, which means the commitment
16 of large volumes of water violates the fundamental principle
17 of California water policy that water be used efficiently,
18 that beneficial uses be accommodated wherever possible, and
19 that water not be taken from one beneficial use to serve
20 another where non-water solutions or water efficient
21 physical solutions are available.

22 To explore physical or other non-water costing
23 solutions, we must, rather, disaggregate biological and
24 hydrologic phenomena to be able to respond individually to
25 those needs that do not necessarily place a demand upon

1 scarce water supplies, such as entrainment, flow regime and
2 so forth.

3 The same basic State policy that compels conser-
4 vation and reclamation for consumptive use also compels
5 efficient water use by instream uses. We are concerned that
6 aggregation of multiple factors into a single index that
7 requires outflow alone, or directly requiring outflow in
8 this manner, is simply throwing water at the problem and
9 contravenes the fundamental water policy of this State.

10 That is not to say that there is not a place for
11 outflow in your considerations. There certainly is, but the
12 question is, are we looking at outflow in the most efficient
13 manner possible and are we looking to water solutions only
14 after we have adjusted the non-water and less water intent
15 solutions?

16 Thank you very much.

17 MR. CAFFREY: Thank you, Mr. Anderson.

18 That completes the DWR presentation?

19 MR. ANDERSON: Yes, it does.

20 MR. CAFFREY: Are there questions or comments from
21 the Board members?

22 Mr. Stubchaer.

23 MR. STUBCHAER: On Table 2 there's a reference to
24 water costs with and without X2 buffer. Could you briefly
25 explain what the buffer is?

1 MR. ANDERSON: I can't, but I think we have somebody
2 from the Division of Operations and Maintenance that can
3 explain it better.

4 My understanding of the buffer is simply a margin of
5 error that is placed in the operational runs to account for
6 the extreme variability in salinity at the designated
7 locations. There's extreme uncertainties involved in the
8 equation which translated the position of X2 to the outflow
9 that's required to sustain that position.

10 MR. STUBCHAER: Is there a percentage of time met
11 associated with the buffer?

12 MR. ANDERSON: I can't answer that, but perhaps --

13 MR. HUNTLEY: Ed Huntley from the Department of
14 Water Resources. Can I answer from here?

15 MR. CAFFREY: Go ahead, Ed.

16 MR. HUNTLEY: The buffer is to bring the proceeding
17 of meeting the standard up to 90 percentile. Without the
18 buffer you would be at about 50 percentile.

19 MR. STUBCHAER: Thank you.

20 MR. ANDERSON: I would point out for clarification
21 the work done by the 1994 year was with the -- without
22 buffer formulation.

23 MR. CAFFREY: Mr. Del Piero.

24 MR. DEL PIERO: During the course of your
25 discussion, particularly in regard to competing beneficial

1 uses, there was some noticeable absence of any discussion
2 about public trust resources within the context of the
3 prioritization given to them by the Audubon decision.

4 Is there a reason for your having left that out of
5 your presentation? You talked about statutory authority,
6 but you failed to reference any case law at all, and I
7 listened real intently to make sure I didn't miss any of
8 that, and it was noticeably absent from your presentation.

9 MR. ANDERSON: I think my point with respect to
10 statutory law was there was no overriding policy that
11 indicated how reasonableness and balancing ought to include
12 reconciling the various interests.

13 My view is that that has not changed with the case
14 law, that public trust uses must be noticed by the Board,
15 the Board may go into and re-examine the need to protect
16 public trust uses, but there is no greater priority under
17 the case law given to public trust uses.

18 MR. DEL PIERO: Okay.

19 MR. ANDERSON: So, it's a clear balancing.

20 MR. DEL PIERO: Thanks. It might be worth your
21 while to take a second look at Audubon then.

22 MR. ANDERSON: Upon that advice, I certainly will.

23 MR. CAFFREY: Wisely spoken.

24 MR. STUBCHAER: Getting back to the tables, the one
25 entitled *Summary of 1994 Potential Impacts*, and it is based

1 upon a 50-50 split of the impacts between the two projects?

2 MR. ANDERSON: Yes.

3 MR. STUBCHAER: Is that based upon some analysis of
4 what would be required or is it just an assumption for the
5 purpose of the analysis?

6 MR. ANDERSON: Purely an assumption. Obviously,
7 many of the new requirements that are coming from the
8 Endangered Species Act and so forth are not easily handled
9 and we are in the process currently of discussing these
10 matters with the Bureau, but for the purpose of analysis, we
11 just simply assumed a 50-50 split.

12 MR. STUBCHAER: Thank you.

13 MR. CAFFREY: Anything else from the Board members?
14 Mr. Pettit?

15 MR. PETTIT: No.

16 MR. CAFFREY: Thank you very much, Mr. Anderson. We
17 appreciate your being here, and thank you, Mr. Potter. We
18 look forward to working with you throughout the process.

19 It is now 11:30. I would like to accommodate Mr.
20 Thomas of the National Heritage Institute.

21 Good morning, sir.

22 MR. THOMAS: Good morning, Mr. Chairman and members
23 of the Board.

24 I do appreciate your taking me at this time to
25 un-complicate my schedule and complicate Dave Schuster's

1 schedule in the process -- fringe benefits.

2 I have prepared some written comments for you which
3 I passed out to you.

4 MR. CAFFREY: We have them, sir.

5 MR. THOMAS: In the interest of time, I will just
6 try to hit some of the main excerpts here and lay out some
7 basic themes.

8 I can't resist opening by basically urging you
9 forward. This marks the fifth time by my count in seven
10 years that the State Board has announced an intention to
11 finally set standards to deal with the decline of the public
12 trust resources in the estuary. Every time, it's miscarried
13 for one reason or another.

14 The public trust resources in the meanwhile continue
15 to decline, as indeed, they have over the 16 years that the
16 now applicable standards have been in place, and the
17 consequence of that, easily observable, is that the
18 Endangered Species Act has, in effect, put the estuary in
19 Federal receivership for all intents and purposes, and this
20 cannot be good for the California bond market.

21 This is a problem for everyone. It is a problem
22 that has to be dealt with. The sooner the State Board can
23 see this process go through to completion, the better.

24 There never will be a solution to the problem that
25 is going to satisfy every constituency, every legislator,

1 every governor, for that matter, whoever that governor may
2 be in November, and there is an additional reason why we are
3 eager to see this matter brought to closure.

4 For the non-profit conservation organizations that
5 have been participating in this process for the last seven
6 years, there simply is a limit to the extent to which we can
7 engage in a way of attrition.

8 We raise our resources the hard way, through
9 charitable contributions, and every time the Board gets
10 religion on setting standards for the Delta, we have to go
11 out and find those resources to participate. So, if the
12 participation is valuable, and we hope it is, please
13 understand that it is a limited resource on our part.

14 I would like to address quickly the three key issues
15 that have been posed for consideration in the proceeding
16 this morning, the first of which is which standards should
17 the State Water Board focus on during this triennial review.

18 Well, at a minimum, of course, the same standards
19 that have been proposed by the Federal agencies. In order
20 to bring this matter to closure, it is going to be
21 essential, it seems to me, to articulate a set of standards
22 that this time can pass Federal muster; in other words, can
23 be approved.

24 EPA has, and the Club Fed agencies have basically
25 laid down a marker with the proposals that are now on the

1 table.

2 As I understand the timing of your process, the
3 Federal standards, EPA standards will be finalized at
4 roughly the same time that the State Board will produce a
5 draft, so that marker will be all the more firm and certain.

6 Certainly, at a minimum, this State Board ought to
7 be sure that the standards it develops are at least as
8 protective of the public trust resources, the designated
9 environmental uses, as are the totality of the Club Fed
10 proposals. So that ought to take a good bit of the mystery
11 out of the equation that seems to have bedeviled this
12 process for the last seven years.

13 And that should include, by the way, a Rowe Island
14 standard or the equivalent for reasons developed at
15 considerable length in testimony that Dr. Pete Moyle
16 presented to you in the D-1630 proceedings. That westerly
17 checkpoint in Suisun Marsh is quite vital for a suite of
18 species, not one or two, an entire suite of species in which
19 he presented testimony that are currently at jeopardy in the
20 estuary, so, you know, thinking about the Federal marker
21 that has been laid down, that is one we think is
22 particularly important to preserve.

23 Well, the Federal aiming points are aiming points
24 that the State Board ought to take seriously. Those Federal
25 proposals do meet some critical resource that is under-

1 protected, so there is a larger agenda for the State Board
2 than simply satisfying the Federal requirements.

3 In the comments we prepared for EPA, we itemized a
4 number of respects in which the Federal proposal appears to
5 be under-protective.

6 Let me just mention one to you today that is of
7 particular concern, and that's the spring-run salmon. This
8 is a run of salmon that used to be the most abundant and
9 commercially important in California. The run has been
10 entirely extirpated in the San Joaquin River. It remains
11 marginally viable in some tributaries of the Sacramento
12 River. The news is very bad on the species.

13 Last year less than 200 adults returned to their
14 spawning streams in the Sacramento basin. We are talking
15 about the native fish now and there is no real protection in
16 prospect.

17 In 1992, as you know, this organization did file a
18 cluster petition for listing of a number of species that
19 appeared to be on the brink of extinction in the estuary.
20 Action has been taken on at least a portion of those
21 species. We did not include in that listing the spring-run
22 salmon even though it was quite apparent at that time that
23 it was in serious trouble, and the reason was simply that we
24 wished to provide an opportunity to the commercial fishing
25 industry to attempt measures short of the strictures of the

1 Endangered Species Act to try to begin the recovery of that
2 species.

3 And a very vigorous process, I can tell you, has
4 been under way in the meanwhile.

5 But one of the opportunities and short of the
6 Endangered Species Act, that we had in mind in not filing a
7 petition at the time was action by the State Board. So,
8 this is an action of particular salience in this proceeding.

9 We did just last week, in fact, convene, and I guess
10 you could call it a workshop of salmon experts from State
11 and Federal agencies and the academic world, to consider
12 this specific question and particularly the issue of whether
13 or not the EPA and Club Fed proposals would provide
14 sufficient incidental protection to the species so that
15 additional protective measures would not be necessary.

16 The discussion was inclusive but it appears that the
17 Federal proposals will not be sufficient and that some kind
18 of a hydrodynamic standard will be necessary specific for
19 the spring run to protect them from extinction. We are
20 working with the State and Federal agencies to develop a
21 concrete proposal for your consideration in your June
22 workshop.

23 Other holes in the safety net, if you will, include
24 San Joaquin salmon smolt survival criteria, the issue of
25 whether or not it is prudent to permit relaxation of the

1 Rowe Island standard every year in the extended drought
2 period or whether or not some particular protections will be
3 necessary in every second or every third year of an extended
4 drought, again based upon the considerations that Peter
5 Moyle testified about in the D-1630 proceeding.

6 And finally, apparently some additional protection
7 for the tidal brackish marsh is going to be necessary beyond
8 the EPA salinity standard, in January's and February's of
9 critically dry years.

10 Let me move to the second question, what level of
11 protection is required by the California Water Code and
12 Clean Water Act for protection of public trust uses in the
13 Bay-Delta estuary. This is basically a legal question and
14 answered to a considerable extent by the Clean Water Act.

15 At a minimum, in order for the State to develop
16 standards to be approvable by the Federal Government, it is
17 going to have to be clear they are sufficient to protect the
18 designated beneficial uses.

19 Now, it may be helpful in coming to terms with what
20 that standard means to specify a period of reference for
21 water quality conditions in the estuary, historic period of
22 reference, that would be sort of the aiming point for the
23 State Board to use in considering standards.

24 It would seem that's required by the antidegradation
25 policy of both State and Federal law.

1 Now, we regard that as simply a floor. The real
2 aiming point, of course, has to be whatever is better than
3 those floor conditions, whatever above those floor
4 conditions may be necessary to actually protect these
5 beneficial uses.

6 Just to concentrate on this reference period for a
7 second, as you know, the Club Fed specified reference period
8 was late 1960, early 1970. For purposes of the State
9 process, we do not believe that is sufficient. The State
10 antidegradation policy specifies now a 1968 marker date and
11 we think that's the date that the State Board ought to use.

12 Now, of course, a discrete date isn't a particularly
13 workable aiming point because of the great variations in
14 conditions in the estuary from year to year. So, we think a
15 workable way of translating that antidegradation marker into
16 standards would be to develop standards that will work for
17 all types of hydrology assuming a 1968 level of development
18 in the estuary, storage and diversions as of 1968.

19 Let me move to the last question posed for
20 discussion, what are the principal variable water supply and
21 economic effects of EPA's draft standards.

22 NHI did commission an economic analysis of the
23 proposed Club Fed standards and it was quite revealing.
24 What we essentially did is pose this question, assuming that
25 the State were to choose an implementation strategy for the

1 Federal standards as currently proposed, a least-cost
2 approach, what would be the cost to the economy of
3 California of satisfying those standards?

4 As we considered it, a least-cost arrangement would
5 be one where the water necessary to meet the standards would
6 be generated through voluntary acquisitions, voluntary
7 water transfers from willing sellers, and we would assume
8 that that water, the requisite water would come from the
9 least economically productive uses to which water is
10 currently put in the state today.

11 So, this analysis essentially asks that question,
12 where is the State economy getting the least bang for its
13 water, if you will.

14 Let's then assume that a purchase fund could be
15 constructed that would allow that water to be purchased for
16 compliance purposes. Now, if this sounds like a familiar
17 idea, it should, because it is not our idea. It is your
18 idea. What we basically modeled was the implementation of
19 the water mitigation and purchase fund that you proposed in
20 your draft D-1630 proceeding. And, by the way, that matter
21 is currently before you again for consideration in spite of
22 the collapse of 1630 because some months ago we did, in
23 fact, petition on behalf of some eight or so conservation
24 organizations for your consideration of adopting that
25 feature of D-1630, so it is pending before you for decision.

1 Should you adopt that kind of approach to
2 implementing the Club Fed type of standards, the analysis
3 that we conducted reveals the following conclusions, and by
4 the way, that analysis wasn't done by me, it was done by a
5 professor at the University of California at Berkeley in the
6 Department of Agricultural Resource Economics dated Sunday,
7 who, by the way, will be joining our staff come June.

8 The model yielded these results: Assuming that
9 water trading from north to south is going to be constrained
10 by Delta pumping, taking that assumption as the most likely
11 case, the average year impacts to the State's economy would
12 be less than 4 million dollars. In a critically dry year,
13 those impacts would be less than 4 million dollars.

14 Now, this is hardly a scenario for horrible economic
15 ruin of the State of California, 4 million dollars. That's
16 assuming that half of the water necessary for compliance
17 would come from the Federal water purchase program
18 established under the Central Valley Project Improvement
19 Act. The other half would come from the State water bond
20 the State has already proposed.

21 So, another conclusion out of this, again, assuming
22 that water trading is constrained through pumping
23 restrictions in the Delta, this purchase fund lowers the
24 economic impacts of additional Bay-Delta standards on
25 agriculture by 61 million dollars, a 94-percent reduction in

1 an average year, and by 205 million dollars, an 83-percent
2 reduction, in a critically dry year.

3 So, to the extent that the economic consequences of
4 rule making are of concern to this Board, I would simply
5 submit that there is a relatively painless way out and it's
6 an analysis that we want to present to you in detail in July
7 during that workshop and open it up to all interested
8 parties to discuss and critique.

9 That is my only comment.

10 MR. CAFFREY: Thank you very much, Mr. Thomas. We
11 look forward to your further information.

12 Are there questions by Board members of Mr. Thomas?

13 What about staff?

14 Thank you very much.

15 Mr. Brown.

16 MS. BROWN: The 4 to 40 million dollars, was that
17 based on San Joaquin Valley crops that have least payment
18 capacity like irrigated pasture?

19 MR. THOMAS: It looked at four different areas, I
20 believe. The analysis looked at crops in the San Joaquin
21 Valley both east and west, the Delta, and the Sacramento
22 Valley, so state-wide.

23 MS. BROWN: The Sacramento Valley would still
24 require transfer of some use through the Delta?

25 MR. THOMAS: Talking now about purchase of water for

1 improved Delta inflow and outflow.

2 MS. BROWN: Okay.

3 MR. CAFFREY: Any other questions?

4 Thank you, Mr. Thomas.

5 It is now roughly 15 minutes to the hour. This is
6 probably as good a time as any to break, so let's be back at
7 1:15.

8 We have 11 more speakers, so we should be able to
9 finish today.

10 Thank you. We will see you at 1:15.

11 (Whereupon the noon recess was taken.)

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1 TUESDAY, APRIL 26, 1994, 1:15 P.M.

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3 MR. CAFFREY: If you'll please take your seats, we
4 will resume the workshop.

5 A recount of the blue cards reveals that we have 12
6 parties or groups wishing to speak, and I am going to read
7 them in the order that we will be taking them:

8 Perry Herrgesell, Dave Schuster, Dave Whitridge,
9 Alex Hildebrand, together; Austin Nelson, Gary Bobker, Ann
10 Schneider and Jim Easton together; John Krautkraemer, Bill
11 Baber, Michael Heaton, Michael Jackson, Laura King and
12 Patrick Porgans.

13 All right, let us begin with Perry Herrgesell
14 representing the Department of Fish and Game.

15 Good afternoon, sir.

16 MR. HERRGESELL: Good afternoon, Chairman Caffrey
17 and members of the Board and members of the staff.

18 For the record, my name is Perry L. Herrgesell and I
19 am Chief of the Department of Fish and Game's Bay-Delta
20 Special Water Projects Division in Stockton.

21 Today I will present a brief summary of our
22 Department's comments on your review of the standards for
23 the Bay-Delta estuary.

24 We have handed out copies of our complete statement
25 and I assume you have that already.

1 I might say at the outset that our Department really
2 welcomes the opportunity to continue our participation in
3 your process to review and set standards for the estuary.
4 Notice that I said *continue*, since as you know, we were
5 significantly involved in your 1987 and 1992 efforts, and,
6 in fact, our comments today are consistent with our position
7 in those earlier efforts.

8 To put our comments in perspective, I would like to
9 repeat the Governor's well worn statement that the Delta is
10 broken. For more than 40 years our Department, and this has
11 been in conjunction, at least a lot of that time, with the
12 interagency ecological program. We have researched
13 conditions in the estuary and probably the most ominous fact
14 that we have found is that most fish species which are
15 dependent upon the estuary for food or for nursery habitat
16 and migration routes are in a state of decline.

17 You have heard that already today but, for example,
18 I might mention a couple. Adult striped bass populations in
19 that time have declined by about 70 percent. The winter-run
20 chinook salmon are less than 10 percent of their historical
21 abundance.

22 There is a correction in our draft which says 90
23 percent. It is less than 10 percent, and the spring run are
24 down 80 percent, and the fall run has decreased 50 percent.

25 At the same time, the starry flounder and bay shrimp

1 populations are also quite severely depressed, and as you
2 know, the winter-run salmon and the Delta smelt have been
3 listed under the Federal Endangered Species Act and it is
4 likely that the Sacramento splittail will be federally
5 listed as well.

6 Well, how does all this relate to today's
7 proceedings? Our work over the years has led us to the
8 conclusion that many of the estuarine species are affected
9 by the amount of fresh water flowing through the estuary,
10 particularly during the spawning and early nursery periods.

11 To state it in very general terms, we found that
12 greater fresh water outflows and the associated movement of
13 the salinity gradient downstream clearly benefits the entire
14 estuarine ecosystem.

15 Although outflows are crucial, we have recently
16 become more aware of the significance of exports and
17 diversions in this process. Significant fish losses occur
18 directly through entrainment in diverted water and
19 indirectly through the disruption of migration patterns and
20 altered nursery habitat conditions.

21 Parenthetically, you might note that most of these
22 effects are caused by exporting water from the Southern
23 Delta while most of the water originates in the Sacramento
24 River.

25 As a result of all the complex interactions between

1 flows and exports and diversions, and other factors, I think
2 we emphatically support efforts to develop a comprehensive
3 habitat-based approach to the maintenance and restoration of
4 the ecological health of the estuary.

5 We are very eager to advise the Board and your staff
6 regarding the standards that would be consistent with that
7 kind of approach, and to that end, I would like to relay to
8 you today our position on the three key issues in your
9 workshop notice that others have commented on today as well.

10 First of all, what standards should the Board focus
11 on during this triennial review? We, as others have,
12 recommend dealing only with standards that affect fish and
13 wildlife in this process. We say that simply because we
14 feel that these are the most controversial and, in fact, are
15 the most crucial to restoring a healthy aquatic ecosystem.

16 Parenthetically, we believe that the scientific case
17 for salinity-based water quality criteria that has been
18 proposed by Club Fed and EPA is sound, but from a cause and
19 effect standpoint, we believe that in some instances, at
20 least those associated with the transport of young fish
21 through the estuary and losses of fish that are entrained in
22 the water diversions, in those cases it may be more
23 effective to regulate outflow and exports. Those are the
24 factors that are in the realm of your authority rather than
25 EPA's authority, and it may be important to do that as

1 opposed to just salinity alone.

2 However, I think there are other cases with
3 standards needed to maintain Suisun Marsh, for example,
4 where salinity criteria are definitely more appropriate in
5 those cases.

6 The next question was, what level of protection is
7 required by the California Water Code and the Clean Water
8 Act for protection of the public trust uses in the Bay-Delta
9 estuary?

10 I think our position there is that we believe the
11 long-term level of protection goal that should be
12 established by the Board should be to simply assure
13 maintenance of a healthy aquatic ecosystem, and that
14 development of such a goal as that should come about through
15 testing and analysis where that's feasible so we can really
16 know more about what it will take to reach that kind of
17 goal.

18 But, in any case, we feel that attainment of that
19 kind of goal will require eventual changes in Delta
20 facilities that are used by the Central Valley Project and
21 the State Water Project and other diverters that manage
22 water in the estuary.

23 Beyond that, we think that the Governor's Bay-Delta
24 Oversight Council is an appropriate forum for evaluating
25 those kinds of changes.

1 The upshot of that suggestion is that restoration of
2 the ecosystem can't really be achieved entirely, we believe,
3 within the scope of this triennial review, but it must be a
4 long-term objective.

5 In light of that, the short-term or the interim goal
6 of the present proceedings, in our opinion, should be to
7 halt the decline in aquatic populations and at least begin
8 their recovery.

9 One measure that the Board could take to make
10 interim progress towards halting the decline and starting
11 this recovery is to set an ecosystem goal of reaching fish
12 populations that existed during the late 1960s and early
13 1970s.

14 For example, these kinds of conditions would improve
15 the striped bass population from its current level of about
16 635,000 fish to about 1.7 million.

17 Now, although that sounds large, that target is
18 really conservative. In fact, it is shy of the Central
19 Valley Project Improvement Act mandate goal of about 2.5
20 million striped bass, and it is well under the roughly 3
21 million adults that were actually present in the early
22 1960s.

23 Referring again to the EPA and Club Fed standards,
24 or proposed standards, for a minimum we believe that those
25 proposals are actually a step towards achieving the goals of

1 the late '60s and early '70s populations, but we are
2 concerned that the EPA proposed standards do not, and by
3 their nature cannot, address the needs for year-round
4 protection of the habitat and fish populations in the
5 estuary, and that's based on the fact that some of the
6 benefits that are gained through the improved habitat
7 proposed by EPA from February through June would still be
8 diminished by inadequate protection during the remainder of
9 the year.

10 Our studies since the 1960s, which we have
11 summarized in previous DFG exhibits to the predecessors to
12 this process have established that striped bass year class
13 strength is really modified considerably by environmental
14 conditions during subsequent months of the year after the
15 June period.

16 From a salmon perspective, there is also
17 justification, we believe, for year-round protective
18 criteria as well.

19 And finally, the third issue deals with what are the
20 principal environmental effects of EPA's draft standards?

21 Three quick points on this issue.

22 Number one, the proposed EPA standards, we believe,
23 would improve fishery habitat from February through June,
24 but as I just said, the standards will have to be mutually
25 developed by the State and Federal governments so that year-

1 round protections can be attained.

2 Secondly, it's true that EPA's proposals would move
3 fish nurseries farther away from the unfriendly Delta
4 diversions, but without restrictions on exports that occur
5 later in the year, any protection gained would be reduced.
6 We feel that these kinds of restrictions; in other words,
7 year-round standards jointly developed along with other
8 habitat protection strategies, would really be consistent
9 with an ecosystem multispecies approach.

10 Thirdly, we think that any evaluation of the
11 environmental effects of EPA's proposed standards for the
12 estuary should include a full evaluation of the potential to
13 impact upstream water quality standards.

14 Specifically, we want to insure that adequate
15 carryover storage is maintained in all the affected
16 reservoirs.

17 We previously commented or made recommendations to
18 you in other phases of this process regarding the minimum
19 pool volumes at Shasta, Oroville, and Folsom, that we
20 believe are necessary.

21 So, in summary, we believe that the Board's review
22 should consider a full range of alternatives, including the
23 U. S. EPA proposals, or the appropriate modifications, and
24 our Department certainly looks forward to working with you
25 and your staff in its deliberations to attain that end.

1 Thank you.

2 MR. CAFFREY: Thank you very much, Mr. Herrgesell.

3 You are based in Stockton?

4 MR. HERRGESELL: Yes.

5 MR. CAFFREY: We are glad to have you here and
6 appreciate your input.

7 Any questions from any of the Board members?

8 Mr. Stubchaer.

9 MR. STUBCHAER: Do you have any comments on the
10 possible conflict between the endangered species restoration
11 and maintaining a high striped bass population?

12 MR. HERRGESELL: I think before we consider that
13 that is the reality, we need to continue looking at that
14 relationship. We have established the process already. The
15 Department has met with the U. S. Fish and Wildlife Service
16 and the NMFS people, and we are in the very early stages of
17 beginning a consultation with them under the Endangered
18 Species Act, and we are anticipating doing a Section 7
19 consultation and getting a biological opinion on our striped
20 bass management activities and see how those things actually
21 do relate to Delta smelt and winter-run salmon.

22 We are certainly concerned about that potential and
23 have started that process. It may be months or half a year
24 before that is finished, but we are in the phase of that
25 now.

1 MR. STUBCHAER: Thank you.

2 MR. CAFFREY: Any other questions of Mr. Herrgesell?
3 Staff.

4 MR. HOWARD: Have you looked at or considered the
5 water supply location of attempting to reach the 1.7 million
6 striped bass?

7 MR. HERRGESELL: No.

8 MR. HOWARD: I know that EPA standards were about
9 600,000, which is about the existing conditions, and they
10 had some substantial water supply costs, and getting the 1.7
11 could be problematic.

12 MR. HERRGESELL: We haven't looked at that, but keep
13 in mind we talk about a comprehensive kind of package where
14 we need to think about facilities, we need to think about
15 other kinds of constraints and various things in addition to
16 just the amount of water, and that would certainly be part
17 of that process.

18 MR. STUBCHAER: Has the Department of Fish and Game
19 looked at some sort of dynamic management where you test
20 something and see if it works, and if so, implement it; and
21 if it doesn't you try something else?

22 I don't know how we could incorporate that in
23 standards, but it seems to me things aren't so cut and dry
24 that you can predict in advance what is going to happen.

25 MR. HERRGESELL: No, that's certainly the case. The

1 nearest thing we may have are the various models. Frankly,
2 the biological models are not as well developed as they
3 could be. We have some. Hydrological models are easier to
4 come by these days, but that's the one way to do something
5 like that.

6 But, you know, it's hard to predict up front what's
7 going to happen. We don't have a good answer to that, but
8 we are certainly willing to work with the staff to develop
9 what we can.

10 MR. CAFFREY: Anyone else?

11 Thank you very much, sir.

12 Next, we will hear from a panel representing Kern
13 County Water Agency, Dave Schuster, Tom Clark and Cliff
14 Schulz.

15 MR. SCHUSTER: Thank you, Mr. Chairman.

16 I hate to start the process by negotiating with the
17 Chairman, but we thought with your permission, instead of
18 each one of us testifying separately for 20 minutes, we
19 would go ahead and do it as a panel.

20 I am going to guess, unless either Clark or I get a
21 motion, it will be less than 35 minutes.

22 ~~Is~~ that all right with you?

23 MR. CAFFREY: Thirty-five minutes -- we will allow
24 you thirty-five minutes.

25 MR. SCHUSTER: With that lead, I will turn it over

1 to Tom. What we are trying to do is not only address your
2 questions, but also, give you a sense from Kern County which
3 we believe you and others will need to have when we get into
4 the balancing process.

5 MR. CAFFREY: All right, thank you.

6 MR. CLARK: I am Tom Clark, the General Manager of
7 the Kern County Water Agency and thank you, Mr. Chairman and
8 members of the Board, for giving us the opportunity to speak
9 today.

10 I would like to start by confirming what a number of
11 others have said, which is we very much support this process
12 with the State Board. We do believe that the water rights
13 of the state are appropriately controlled by the State and
14 that this process is welcome.

15 What I thought I might do as far as my presentation,
16 I am going to kind of be all over the wall. I am the
17 uncontrolled one. Schuster is the controlled one. I am
18 sure he will give you much more technical information than I
19 can, but I thought what I would do is give you a little
20 perspective in terms of starting off on this process.

21 We put up two charts here that are right in front of
22 you which are not within the handout that we have given
23 either to the public or the ones that are in front of you,
24 but these are two charts that I used recently with the
25 Senate Ag and Water Committee where they held a hearing on

1 the status of the State Water Project.

2 The chart on your left represents the State Water
3 Project as it was envisioned in the early 1960s. The red
4 line was the projected yield of the project over time
5 beginning with construction in 1965 and continuing. This
6 chart goes through 2020.

7 The blue bar charts are the buildup of entitlements
8 by State Water Contractors.

9 The initial facilities that were to be constructed
10 in the early '60s include Oroville, San Luis and a Delta
11 transfer facility as provided for in the Burns-Porter Act.

12 By the mid '80s, the upper Eel River development was
13 scheduled to complete the project yield to meet the
14 entitlements of the State Water Contractors of 4.22 million
15 acre-feet.

16 The concept of the State project was to build the
17 yield in advance of demand. In other words, you would have
18 a reliable water supply, so facilities were constructed in
19 advance of anticipated demand.

20 The chart on your right is a chart from the 1994
21 perspective. It asks the question, what do we have now? In
22 that particular chart, again, the red line is the developed
23 yield of the project as we see it today. The first vertical
24 line was the project facilities, the initial project
25 facilities that were built in the '60s, which as most of you

1 know, includes Oroville, San Luis and the Harvey Banks
2 pumping plant.

3 The Delta transfer facility was postponed.

4 So, as a result, our initial yield was something
5 under 3 million acre-feet and then, of course, through
6 D-1485 that was adopted by your Board in 1978, there was a
7 reduction in yield from about 2.8 million acre-feet down to
8 about 2.3 million acre-feet.

9 The next reduction in yield that you will see is the
10 EPA-Club Fed reductions as proposed on December 15. This
11 includes winter-run salmon protection, Delta smelt, as well
12 as the EPA standards.

13 Now, the blue bars through 1994 are the actual
14 deliveries of project entitlement to contractors.

15 Two things have happened. The demand has not been
16 as great as we thought it would be, principally in Southern
17 California, but we have also -- and particularly during the
18 period 1990 to the present, experienced severe water
19 shortages.

20 So, if you look at the State Water Project, it's not
21 a very pretty picture in terms of what do we have to deal
22 with. So, I would like to have that picture hopefully fixed
23 in your mind as you go through this process, that the
24 beginning point in this process for water users is not with
25 an abundance of water but with a shortage of water.

1 This year is a classic example and I think the
2 Department gave you some pretty good numbers on what would
3 have happened this year had we had the EPA standards, but I
4 can tell you personally from the standpoint of someone that
5 has to operate within the State Water Project, we have right
6 now a 50 percent shortage. Our bill to the State is 70
7 million dollars. That bill does not go away whether we get
8 the water or not, so we're going to try to pay a 70 million
9 dollar bill with half the water.

10 Right now we have crops in the ground today that do
11 not have a water supply. Unless we go out and find water to
12 buy to deliver to these lands, we will have more land out of
13 production.

14 So, I really wanted to start you in this direction
15 that we truly believe and are convinced that there is a need
16 for standards in the Delta. We do believe that there should
17 be fish and wildlife protection. However, we feel that the
18 EPA approach, Club Fed -- we supported in a big way the
19 creation of Club Fed. We also supported an MOU with the
20 State. We think that's a good process. We feel the EPA
21 standards, however, fail to consider balancing, fail to
22 consider our water needs.

23 Greg Thomas earlier gave you a good dissertation of
24 how great he thought, in fact, I was thinking about asking
25 Greg to testify with us just as a statement of a new

1 coalition, but once I heard his testimony, I am glad I
2 didn't. I think the presentation is completely wrong in
3 terms of the regulatory impact assessment that EPA
4 conducted. I think that EPA themselves were even apologetic
5 about that study.

6 They managed to study the impacts of major shortages
7 on the water users, but without having even visited our
8 service areas. They have the basic concept that I told you
9 about that Kern County has a 70 million dollar water bill
10 with the State, and we have to pay it whether we get the
11 water or not. They didn't know that.

12 So, they reached the conclusion there is a 4- to 40-
13 million dollar economic impact state-wide. I just don't
14 think that study is credible.

15 As a result, our agency authorized our economist,
16 Northwest Economic Associates, to conduct a study of the
17 economic impacts of the EPA proposals. The conclusions that
18 we reached, as opposed to their numbers, and we were looking
19 San Joaquin valley-wide. We looked both within the State
20 project and the Central Valley Project, but the economic
21 impact just on a revenue base was about 600 million dollars
22 per year San Joaquin valley-wide. Of that 600 million
23 dollars about 340 million dollars of that was income and if
24 you run a present value of that, it's about a 8.3 million
25 dollar impact on income within San Joaquin valley.

1 There would be an associated job loss on the order
2 of 12,000 people.

3 I know that in your documents I have seen that you
4 are also committed to investigating the economic effects of
5 these proposals. I would suggest that the State take that
6 issue on in a very sincere way and I know that our report is
7 going to be discounted by the environmentalists and others.
8 They are going to say it is self-serving, it is not
9 objective, all those things.

10 We would like to see our report scrutinized, peer
11 review, whatever, but also, I would suggest that the State
12 take on the job of bringing in the responsible experts and
13 some objectivity into the process to tell you and the rest
14 of us what are the impacts of what you propose.

15 On one of the earlier issues, one of your questions
16 was, what are the goals for Fish and Wildlife, and I heard
17 the gentleman from Fish and Wildlife Service and I have
18 heard Club Fed, EPA and so forth today, and, gentlemen, we
19 think that 1968 is a good benchmark.

20 Well, of course, that's a great benchmark. That is
21 before we had 30 million more people and two water projects
22 diverting water. Similarly, if this Board is going to
23 balance, ask us, the water users, what are our goals. I
24 haven't heard that question yet.

25 If I get to pick my goal, my goal is going to be the

1 period 1978 through 1986, when we received a full water
2 supply every year, and we were told on December 1 what the
3 reliability was of our water. We had a full water supply.

4 And I am not trying to be facetious on this point,
5 but I think that to ask in advance what level of protection
6 should be attained flies in the face of a balancing process.
7 We are not dealing here in terms of, gee, what do we think
8 is the best? We've got to deal in the real world to manage
9 a system and balance competing needs.

10 I hope that you would go into this process without
11 preconceived ideas and then try to make the process fit what
12 your assumptions were in advance.

13 I have kind of jumped around here. One document
14 that we gave to you is this document that we gave to
15 Secretary Babbitt and Senator Feinstein. This is also
16 available to the public out there.

17 We went to Washington, D. C., along with several
18 other San Joaquin valley ag interests, and met with
19 Secretary Babbitt and Senator Feinstein, and this is dated
20 August 2, 1993.

21 I would really encourage you to look through this.

22 We have done several of these presentations since
23 then and, frankly, this one stands above all the others in
24 terms of presenting the issue, and at this time, we are
25 presenting it to the Federal agencies as best we could. I

1 think it tells a very good story with respect to what the
2 situation is in the San Joaquin valley and with agriculture,
3 but it also makes certain recommendations and you will find
4 that a number of those recommendations, some of them have
5 come to pass.

6 We are not taking credit for them, but for example,
7 the joint Federal-State effort, I think, it is obvious to
8 everyone we need that. We have got to move that process.

9 So, I would encourage you to read that through.

10 I might wind up by just touching on a few issues
11 here that I personally feel are important. These are things
12 that I have jotted down as we start into this process. I
13 think your process here must have Federal buy-in and by
14 Federal buy-in, I mean, and unfortunately, I was late and
15 didn't get to hear the Club Fed presentation, but I find it
16 somewhat ironic that we have got EPA on its path towards
17 December 15, we have got you on your path towards about the
18 same target date, and I haven't yet heard how those two
19 proposals are going to interface.

20 I would hope that the end product is something that
21 is akin to agreement between the agencies.

22 I think it would be a disaster for everyone if there
23 is still this separate path between the Federal and the
24 State agencies, and that we go into December and we find
25 that we have got yet another impasse. That's not why we are

1 here.

2 We are here to work out a plan that hopefully
3 finally is going to put something to bed for some period of
4 time.

5 We also believe that there must be balance and I
6 think that's a major difference between the State Board and
7 the Federal agencies. Club Fed, frankly, are advocates for
8 fish and wildlife purposes. We consistently ask them, you
9 have committed to balance towards economic needs of the
10 state. Who has that responsibility, and we can't find one
11 agency within Club Fed that has the responsibility for jobs
12 in the California economy. We hope the State Board can
13 bring that to the table.

14 In the balancing process, of course, there must be
15 good economics, there must be good science, and the benefits
16 of whatever we do in the Delta must be measurable. It
17 troubles me that outflow issues, and again, from my
18 perspective, is a gut issue with a lot of people. I've been
19 in a lot of consensus type processes and I hear people say
20 the same thing, got to have more outflow.

21 All right, let's make the assumption there is more
22 outflow. How are the benefits of that going to be measured
23 because I think it is suspect that outflow is going to fix
24 this problem. I don't think the answer is any one thing. I
25 think it is a series of actions. And if we do dedicate more

1 water to fish and wildlife purposes, creating havoc in our
2 service areas, we need to know that that's going to be
3 measurable somehow, because if, in fact, the fish species
4 continue to decline -- let's say that we put two million
5 acre-feet out the Bay and we still have decline in fish
6 species, then what? Does that mean that we need to, as it
7 was alluded to, frankly, here by the gentleman from Fish and
8 Game, that the next step is, oh, what we really need is to
9 shut the pumps down. That's the real answer.

10 So, we need some accountability in the process where
11 if the water users are going to make concessions, and I know
12 that Secretary Wheeler referred to this as shell fly -- we
13 can't be incrementalized on this. We have got to have
14 something that is going to last.

15 Another thing I would like to talk to you about is
16 South Delta facilities. This is something I am personally
17 pushing. The Governor, in his policy statement, water
18 policy statement, advocated interim standards together with
19 improvement in supply, including South Delta facilities.

20 I would like to see you bring that back to the
21 table. I know I talked with a few of you after D-1630. I
22 said, where are the South Delta facilities, and the answer I
23 got from some people was, well, the State Board can't
24 authorize those. That's not the issue. The point is you
25 can set standards and you can set the stage to promote

1 certain things.

2 Now, if you are going to ask the water users to
3 concede more water, you have got to build flexibility into
4 the system. In other words, give us the opportunity to be
5 able to move water in wet years, the wet periods, that type
6 of thing. I think the South Delta facilities could go a
7 long ways to providing that flexibility.

8 Right now the pumps are constrained. If we have
9 South Delta facilities, then we will have the ability to
10 move more water over a shorter period of time, thereby
11 reducing environmental effects.

12 Another point that I was very concerned about as a
13 result of D-1630 is the concept of an environmental fund.
14 Everybody advocates it. Water users put money up, then
15 environmental agencies, regulatory agencies, buy water to
16 fix environmental problems.

17 The problem that I had was that while there was
18 recognition of the Central Valley Project contractors in D-
19 1630, that they are paying something because of the Miller-
20 Bradley bill. I don't know if you remember that. They
21 said, well, they are paying something through Miller-
22 Bradley, so they should have relief on the proposed
23 environmental fund created by the State Board.

24 One thing the State Board failed to recognize is
25 that the State Water Contractors have been in the Delta for

1 30 years and for most of those 30 years we have been
2 standing alone. It took a lawsuit against the Federal
3 Government before we got them to acknowledge any
4 responsibility in the Delta, and it was only in the recent
5 Miller-Bradley bill that there has been any generation of
6 funds for that purpose.

7 I asked for an audit by the Department of Water
8 Resources last summer as to how much had the State Water
9 Contractors spent in the Delta. The total amount is more
10 than 200 million dollars. This does not include cost of the
11 construction of the pumps and so forth. That's the cost for
12 doing all of these studies and all the mitigation measures
13 that we have already undertaken.

14 I would hope that the Board would take into
15 consideration the fact that we now are paying for things
16 that we put in place in the Delta, that we have done in the
17 Delta in an attempt to mitigate our impacts. You need to
18 let us know where we stand as far as mitigation.

19 Sharing the pain is my last issue, and then I will
20 be quiet.

21 A lot of people have talked about what I call
22 sharing the pain, anyway, which is that the obligations in
23 the Delta should be spread throughout the watershed. It is
24 not just the obligation of the State Water Project or the
25 Central Valley Project. I happen to agree with that.

1 However, it is the position of our agency that we
2 not throw the area of origin statutes out the window. We
3 came into the Delta with the understanding that we would be
4 taking water surplus to the needs of the north. We plan to
5 live by our promises.

6 We do, however, believe that every agency, whether
7 you are an exporter or in the Delta, or whether you are
8 upstream from the Delta, has an obligation to mitigate your
9 own respective impacts.

10 Now, so far, you know, again, maybe it is from my
11 own biased perspective, the State Water Project has been
12 sitting there as basically the cash cow to do most of these
13 things. We look forward to others joining with us in an
14 attempt to resolve Delta problems.

15 So, I will end my share of the testimony with that.

16 MR. CAFFREY: Thank you very much, Mr. Clark.

17 Mr. Schuster, you are next?

18 MR. SCHUSTER: Yes, sir. Thank you.

19 One thing I should have said in our opening
20 statement was we have been trying to do as you have
21 suggested, Mr. Chairman, is work with others, in this case
22 mainly through Cliff Schulz's efforts and probably due to
23 mine. We have been working very very closely with the
24 Department of Water Resources and fully endorse their
25 comments, and do not intend to go back and repeat that.

1 So, I just want to say, me too, as far as what the
2 Department of Water Resources has got to say.

3 Very quickly, because we don't have too much time
4 here, just to finish up Tom Clark's points in terms of what
5 we think about the Club Fed proposals of December 15, and I
6 say that on purpose. We all in this room have had a
7 tendency to look at EPA only, and there's a lot of other
8 things happening to the water users that are not EPA
9 related. In fact, so far EPA hasn't done anything to us yet
10 other than threaten.

11 What we have done here, Kern County in this case,
12 using Department of Water Resources studies have gone back
13 and tried to make a calculation of what would have happened
14 -- the right charges the most important -- what would have
15 happened for us this last drought should that proposal have
16 been in place during that entire period.

17 Obviously, we have had to make some estimates in
18 terms of how the Bureau and the Department would decide how
19 to split the Coordinated Operations Agreement. We have
20 tried to make an estimate of what we think this Board may do
21 in terms of sharing responsibility for Delta outflow with
22 others, and a number of estimates like that to get this
23 number.

24 Actually, I think it's a little conservative, but it
25 was an effort on our part to try to characterize why what

1 Club Fed did in their media blitz in December was not
2 totally truthful.

3 My sense of what they said is that they found a
4 solution to the Delta problems from an environmental point
5 and then that solution did not harm the urban ag users in
6 any significant way, and, in fact, the impact on ag users
7 was only 20 million per year.

8 Looking at it from a water supply standpoint, at
9 least in our estimate, you can see in terms of those double
10 bar charts there, you can see what would have happened to us
11 if the Club Fed proposal had been in place.

12 One last thing I want to say about this, this is not
13 just for Kern County Water Agency, this is State Water
14 Project deliveries, so like in 1991, we show zero
15 deliveries, we, the Kern County Water Agency got zero
16 deliveries in 1991 from the State Project.

17 The urban people got about 33 percent. They would
18 hae gotten zero also, just to give the sense of the
19 magnitude of what could have happened if that had been in
20 place.

21 This second chart, which I will spend almost no time
22 on, but will become important to us as we work together in
23 the next few months is what would have happened in the '29
24 through '34 historical drought that's used by the Department
25 and others to try to measure the impact of any kind of

1 proposal in terms of deliveries during a serious drought.

2 The same relationship, of course, occurs, we get
3 much bigger reductions in terms of our deliveries due to the
4 Club Fed proposal. It is not insignificant in any way as
5 was described -- in fact, one of our ag people put it in
6 perspective for me that if you really did solve it and it
7 only cost 20 million dollars, he would personally contribute
8 5 million dollars. That's a good deal.

9 And in our sense that's not what the cost truly is.

10 Another thing I wanted to do today, and again, I
11 will not take too much time because you have been told quite
12 a bit, at least it has been implied in response to your
13 three questions, especially the first two, as to what
14 standards you look at and what the level of protection is.

15 In different ways those questions aren't the right
16 questions to ask in the sense that in the real protection if
17 you actually answer the question of the real protection
18 level, you have already balanced to some extent.

19 I sort of look at those questions a little
20 differently. What the Board members and the staff probably
21 mean, what range of standards, the first question, should
22 you look at, and on the second one, I'm really putting words
23 in your mouth, how do we balance, how should we balance?
24 Give us some suggestions from the participants standpoint.

25 And I'm just going to give you some suggestions on

1 how to approach this tough issue.

2 I went back and thought about a document that I read
3 last year that Secretary Babbitt, Secretary of the Interior,
4 gave on April 1, 1993, to the House Committee on Merchant
5 Marine and Fisheries, and the issue there was a little
6 broader than what we are looking at here, but the same issue
7 was concerning the management of the nation's biodiversity
8 resources. That's part of the jargon we all have to live
9 with today, and I started reading through the Secretary's
10 statement and I saw lots of quotes, which I want to use now
11 to make a point here, but I think he has given us some
12 guidance policywise in terms of how to figure out how to
13 balance the needs of the environment, in this case the
14 estuary's environment, and probably upstream where there's
15 conflicts, with the need to maintain economic growth in
16 California.

17 When I read Secretary Babbitt's statement, it was
18 really one of the first published statements by anybody in
19 the administration other than Mr. Clinton, who had the so-
20 called spotted owl summit, and I kept waiting for April
21 fool. It was actually quite good.

22 The first one, and I don't encourage people to go
23 back and read the whole statement, the first quote that
24 really struck me and that fits this issue, and I am going to
25 quote directly:

1 In a world in which the impacts of human
2 activities are omnipresent, maintenance of
3 biodiversity will require the careful
4 management of habitat systems in the context of
5 ongoing human use, including the use of the
6 biodiversity resources themselves.

7 One thing that struck me on that is most of the
8 Board members are new since we together started this process
9 in 1987.

10 One of the major points or themes of the State Water
11 Contractors' presentation starting in 1987 was that we,
12 mankind, have had an impact on the Delta and the Bay, and in
13 a lot of cases that's been a negative impact.

14 We need to figure out how to manage that system.
15 From my standpoint it is too simple, in fact, it is almost
16 irrelevant to go back and say how are we going to return the
17 system back to where it was, don't care when it was,
18 historically.

19 We have a system that we, mankind, have negatively
20 impacted, not always negative, and it's time for us to
21 figure out how to manage that so we can protect that
22 resource, but also, continue development of California.

23 The second one, and again I quote from the
24 Secretary:

25 It is right to deal with crisis involving

1 *individual species, but we should not manage*
2 *our lands and resources so that we either*
3 *consciously or unwittingly produced and then*
4 *react to endless progressions of crisis.*

5 Of course, what he was talking about back in that
6 area, and these are his words, not mine, continue the train
7 wrecks that we run into, especially through the Endangered
8 Species Act. He was thinking about the spotted owl. We
9 could have a bigger one, not with the Board, but with this
10 whole issue related to the endangered species.

11 That was not what struck me. What struck me there,
12 he is right in the sense that we in Kern County and others
13 keep having to focus on, first, this winter run and then
14 Delta smelt, and back to winter run, and we keep getting hit
15 from all different side, and we can't even keep track of all
16 the players in terms of their personality and what they are
17 trying to do to us.

18 It's a very difficult process to work through. And
19 through working with you, if we can come up with some kind
20 of balance situation, maybe we can get that certainty, our
21 word; Secretary Wheeler uses the shell fly terminology and
22 others use different words, certainly in terms of what the
23 near short term would look like so farmers would know what
24 to plan on in the next few years to see if they can possibly
25 survive.

1 Of course, we are talking that you need to balance a
2 decision in terms of how to protect the environment with the
3 economic impact.

4 We don't want the certainty that 1630 gave us or
5 Club Fed would give us; that is, the certainty that our
6 farmers on the west side will go broke. That's not the kind
7 of certainty we are looking for.

8 We are looking for the certainty of what will happen
9 environmental protection-wise in the next few years, and
10 it's something we can probably live with, speaking for the
11 farmers because I am a consultant. I always live with the
12 farmers in a way that they have a chance to survive in the
13 near term.

14 This next one is interesting. It's one of the key
15 things of his:

16 *When all interested parties work together with*
17 *a genuine commitment to develop solutions*
18 *rather than create confrontations, we can have*
19 *economic growth while protecting wildlife.*

20 Two things there. The one on which I am going to
21 spend the most time is trying to have economic growth while
22 protecting wildlife. In this case, we are really focusing
23 on the fisheries, but also, the wildlife stuff. That is the
24 balancing we are trying to do.

25 The other point he is making here is really

1 difficult to do, and this Board knows that to do that when
2 you haven't got a genuine commitment from all of those
3 involved and look for that balance, we have all faced that
4 over and over.

5 Another quote:

6 *Managing living natural resources without*
7 *reference to good science guarantees future*
8 *disappointment and failure.*

9 Obviously, we need to use good science. What has
10 been used as a monitor by some people in terms of science
11 isn't any good, therefore do nothing, and that's not what we
12 in Kern County mean in any way.

13 What this one made me think of is two facts: One is
14 there is a lot of good science that's been done by a lot of
15 good scientists over the last 30 or 40 years, and as Tom
16 Clark stated, the State Water Contractors have paid for most
17 of those.

18 Is that science good enough to be definitive to give
19 us definitive answers as we go through? No. Does that make
20 it bad science? No. I think we have enough science but we
21 are still going to have to make educated judgments at this
22 point in time in terms of if we do this, what's the chances
23 of a biological benefit and does that work a likely negative
24 economic impact.

25 That triggered a thought which is what Tom started

1 to get to. The Governor defined, at least he implied
2 interim standards that you are trying to establish here and
3 did try to establish a couple of years ago as being
4 standards that would be in place until a long-term solution
5 or the Delta is fixed.

6 And I agree with that. And I also think we have to
7 think of these standards as being even more short-term
8 interim-wise. Somebody, I think it was Harry, talked about
9 -- or Jim Stubchaer asked Harry about using the Delta itself
10 as a resource, I mean as a laboratory. I think that's what
11 we need to look at. We should think of these standards as
12 being very short term, establish a very very quantitative,
13 if possible, monitoring program where we can see how they
14 work and then come back and make the triennial review real
15 and meaningful over time, so interim in that sense as well
16 as the way the Governor meant it.

17 The last two, the first parts were lead-ins.
18 *While we must continue to provide support for*
19 *individual species that are already endangered*
20 *or threatened, and while we must commit*
21 *ourselves to dealing with the backlog of*
22 *candidates and providing protection to those*
23 *requiring it, it is vital that we seek ways to*
24 *carry on economic activity, manage our land,*
25 *and steward our resources so that species,*

1 *ecosystems and our very life support systems do*
2 *not continue to be put at risk.*

3 Actually, the State Board in the last 25 years that
4 I have been involved in have been trying to do that since
5 the '70s. That's what this Board is empowered to do, and
6 the task you have been given is to try to figure out some
7 way of protecting the environment. You are the only ones I
8 think that really do have that task and the legal authority
9 to do that clearly, as opposed to the Clean Water Act where
10 EPA has told us they do not have the authority to balance,
11 which they are probably correct. I am not challenging
12 that.

13 So, this is the first place that we have got to look
14 at the ecosystems and don't be too narrow. We need to look
15 at this much broader than what EPA did, which is outflow and
16 some stuff for salmon and so on, and very limited for
17 striped bass.

18 We have to find some way to maintain carrying on
19 economic activity while protecting the system, and if we
20 don't, we put everything we care for at risk.

21 The last one, I guess, is almost a plea more to the
22 participants than to individual Board members.

23 Secretary Babbitt's quote is:

24 *I believe we are starting to see the future of*
25 *resource management in this country, and that*

1 it involves greater development of and reliance
2 on science in support of management, as well as
3 a greater coming together of individuals,
4 groups, and organizations to achieve
5 sustainability in natural systems.

6 And I'm not sure about that last part. I am glad he
7 sees it. I haven't seen a whole lot of it lately. I agree
8 with him that if we are going to have any chance, and I
9 really mean we rather than just the Board, the participants
10 and the Board of actually coming together with a recommended
11 solution, a proposal in July which you have asked for, we
12 have got to start working together.

13 We in Kern County commit ourselves to trying to do
14 that with other individual entities and hopefully we will
15 definitely come to you with a proposal in July, hopefully
16 not just by ourselves.

17 One reason for going through this litany is that we
18 in Kern County and much of the ag community are always being
19 accused of the assumption that we want here is freedom to do
20 nothing, that you take no action in terms of negatively
21 impacting our water supply.

22 *Actually, I heard humorously from some environmental
23 people that they felt Met was selling out the environment.
24 That's not the issue. We are sincere about trying to find
25 some kind of way of getting all of us, including the

1 environment, out of the dilemma we find ourselves in today.

2 Thank you.

3 MR. CAFFREY: Thank you, Mr. Schuster.

4 Mr. Schulz.

5 MR. SCHULZ: Thank you. My job over the last
6 several months was to listen to Tom and Dave and see if I
7 could summarize what their positions were and get it down on
8 some pieces of paper.

9 I am responsible for the last two handouts in your
10 package, namely, Kern County Water Agency statements in
11 response to questions 1 and 2, and I would like to just
12 briefly summarize those.

13 With respect to question 1, our position is very
14 similar to DWR's and surprisingly, not that dissimilar to
15 what Harry Herrgesell said for Fish and Game; namely, that
16 we want you to develop a comprehensive package of policies
17 and regulatory actions that will balance the public trust
18 and water supply needs, and attempt to return full
19 regulatory control of California's water resources to the
20 State.

21 To do that, we think you have to be much broader
22 than just focusing on the items that it presently has before
23 it. we think you need to take a look at the entire public
24 trust batch of items, whether or not they are flow related
25 or water quality related, and that includes endangered

1 species issues, some of the issues, again, that Harry
2 Herrgesell had with respect to other species, et cetera.

3 The remainder of our response to that question talks
4 about the Board's legal authority and some recommendations
5 for the way you proceed, and like DWR, we believe that you
6 should not simply, as the notice did in your regulatory
7 basis for action, recite only the triennial review and the
8 water quality statutes.

9 We also believe that you have the authority under
10 the water rights statutes to establish flow and diversion
11 policies. We think that you should be setting flow and
12 diversion policies in these proceedings as well as water
13 quality policies.

14 But, and I am not going to summarize or read what
15 our statement in that respect says, but we quote a number of
16 Water Code sections and point out that we believe that the
17 Board clearly has the authority to set policies outside of
18 the quasi-judicial water rights hearing process that relate
19 to outflow and diversions.

20 Now, what I have just said only discusses the
21 Board's policy-setting authority and does not address the
22 implementation of policy, and that distinction certainly
23 raises the question of how the Board should disseminate any
24 flow and diversion policies that are developed during this
25 workshop process.

1 The question that is of fundamental importance is
2 that all potentially affected water rights holders must be
3 assured their due process rights are protected before
4 permits are modified. The Board can't finally decide what
5 terms and conditions should be added to the water rights
6 permits until the water rights hearings have been completed,
7 but that doesn't mean that you can't set general policies to
8 guide you in that activity, and you should be doing that as
9 part of this workshop process.

10 The non-binding nature of such flow and diversion
11 policies will not detract from their usefulness. They can
12 still be submitted to EPA and EPA can use them to see how
13 the State is going to act in order to try to more fully
14 balance public trust and water supply needs.

15 In addition, policies could be used to develop
16 alternatives for water rights CEQA evaluation and would
17 allow us and others to prepare focused evidence for the
18 water rights hearings.

19 There has been a lot of discussion this morning
20 about the Board's water quality jurisdiction as it relates
21 to the Clean Water Act, and I want to spend a little time on
22 that.

23 The Board, in its workshop notice, correctly
24 emphasized its reviews can be conducted under State law
25 under the Porter-Cologne Act, and the Board, as a creature

1 of State statutes, only has the power to act as authorized
2 by the Legislature and you don't have the authority to
3 implement the Clean Water Act.

4 This notion seems to confuse some people principally
5 because the Clean Water Act contains procedures for
6 submitting your standards to EPA for their approval. We
7 recommend that the Board early in these workshops inform all
8 the parties that the EPA approval process does not convert
9 the State level water quality planning into a procedure
10 controlled by Federal law.

11 The Board needs to emphasize that the balancing
12 process built into the Porter-Cologne Act will be followed.
13 We know that the EPA review process will always be a factor,
14 but particularly in a situation like this where flows and
15 salinity intrusion are the primary issues before you, the
16 integrity of the balancing process needs to be maintained.

17 Now, our recommendation is that we expect and want
18 these workshops to emphasize a broad range of policy matters
19 irrespective of whether they raise water quality control and
20 diversion issues, but that requires some careful attention
21 to how the results will be submitted to EPA, and Tom
22 Berlines from San Francisco touched on this very briefly.

23 We recommend that the Board state its intent to
24 treat the issues before it in a manner which is consistent
25 with your comments to EPA which were submitted on March 11

1 of 1994. That means that you would treat the two parts per
2 thousand or X2 standard as outflow rather than salinity
3 intrusion, that you would treat the salmon smolt survival
4 standard as a flow and diversion issue rather than a water
5 quality issue, and that you would treat the striped bass
6 spawning standard as a non-point source pollution, which
7 would be only submitted to EPA under Section 208 of the act.

8 The broader issues that should also be considered
9 should be categorized by whether they are water quality or
10 flow and diversion related. If they are water quality, they
11 should be categorized by whether they are in Section 303 or
12 208 issues under the Clean Water Act.

13 Then, when the process is complete, the Board can
14 provide EPA with a series of submittals, one under 303 which
15 is classic water quality matters, if that's necessary; one
16 under 208 which deals with non-point sources such as
17 salinity intrusion; and one for informational purposes which
18 would be the State level water rights policy guidance which
19 would guide the Board as the starting point for the water
20 rights hearing.

21 We think if this approach is followed, there will be
22 much less chance of confusion as to the proper roles of EPA
23 and the State Board in this entire process.

24 Turning quickly to question 2, I think we stated
25 pretty clearly that we do not believe that the Board should

1 establish any historical or other base-line water quality
2 levels as a target. Such an approach prejudices the
3 balancing process before it begins, and the same caution
4 should be followed if you establish flow and diversion
5 issues such as required Delta outflows, et cetera.

6 In other words, it would be improper in the
7 beginning to establish an historical outflow regime which
8 the Board then tries to achieve by restricting water supply
9 operations.

10 To avoid prejudging the outcome of the balancing
11 process, we believe that you should choose a wide range of
12 alternatives, request data from experts on the water supply
13 and biological impacts of those alternatives, and then, find
14 out what level of protection is appropriate under
15 California's law after the balancing process is completed.

16 You set your standards after you have completed the
17 process. You don't prejudge the process by trying to guess
18 whether it is late '60s or early '70s, or some other
19 standard today.

20 This process is not only correct from a policy
21 standpoint, it is also mandated by State law, and we have
22 discussed the State law requirements of both the Water Code
23 and the Porter-Cologne Act that require balancing.

24 I want to point out one thing here that was touched
25 on in a question by Mr. Del Piero earlier. It is our

1 position that the various Water Code provisions, including
2 Section 1257, allow the Board to balance. The Audubon
3 decision, which applied the public trust doctrine to water
4 rights also authorizes the Board to balance public trust
5 with consumptive use requirements.

6 That decision, like the Water Code sections, does
7 not mandate a priority or specific level of protection for
8 instream uses. Either it's a badge of honor or blood. Our
9 firm was the lawyers in the Audubon case for the City of Los
10 Angeles, and we believe that that's definitely the correct
11 interpretation of the Audubon case.

12 The Board presently has pending before it the Mono
13 Lake case, and just as it would be improper there to
14 establish the lake level before the hearing starts and then
15 try to justify the policy level, it would be improper in
16 this case to try to get an early '60s or early '70s, and
17 then justify it. The balancing process has to occur first
18 before you set the historic period or other standards that
19 you would use in this matter.

20 The Federal Clean Water Act is not at variance with
21 that approach, we don't believe, in this case. The Clean
22 Water Act clearly indicates that salinity intrusion and
23 matters that will be before you, to the extent they are
24 covered by the act and it only covers quality, not flow and
25 diversion issues, are 208 issues.

1 And non-point sources, including salinity intrusion,
2 are only controlled by the State to the extent feasible, so
3 that you have the authority under the 208 process even with
4 the Clean Water Act to balance.

5 Not only that, but if you balance and find that it would be
6 inappropriate under State law, or unconstitutional under
7 State law, to set a level of water quality or salinity
8 intrusion that is satisfactory to EPA, Section 101(g) of the
9 act clearly gives the State water rights priority over the
10 requirements of the Clean Water Act in that regard.

11 So, it is our conclusion and recommendation that you
12 act under State law, that you operate under State law. You
13 won't have to determine until the end of the process whether
14 there is a conflict between what you do and the Clean Water
15 Act, but at the outset, you simply should start with an open
16 balancing process and the chips will fall where they may as
17 we go through the process.

18 MR. SCHUSTER: Thank you, Mr. Chairman. I am sorry
19 I estimated poorly, but we went eight or nine minutes
20 longer.

21 MR. CAFFREY: We're inclined here at the outset to
22 be a little bit lenient when people try to combine their
23 presentations and we appreciate your comments, and we are
24 giving a lot of careful thought to them.

25 Are there questions by the Board?

1 MR. DEL PIERO: Mr. Clark, would you be kind enough
2 to give me a list of the projects that were built with the
3 200 million dollars?

4 MR. CLARK: Sure.

5 MR. DEL PIERO: I would appreciate that because the
6 comparison you drew was between that and the environmental
7 fund in D-1630, and that was only for facilities, not for
8 studies.

9 So, if you would be good enough to let me know what
10 that 2 million dollars was spent on.

11 MR. CLARK: I would be happy to.

12 MR. DEL PIERO: Thank you.

13 MR. CAFFREY: Mr. Stubchaer.

14 MR. STUBCHAER: Mr. Clark, this economic study you
15 gave to us says it is highlights on the impasse. Have you
16 submitted the backup material that our economic staff can
17 analyze?

18 MR. CLARK: We will certainly do that. Have we
19 given the State Board staff the complete reports yet?

20 MR. HOWARD: You haven't .

21 MR. CLARK: We will make it available to the Board
22 as well.

23 MR. STUBCHAER: Will it have all the interest
24 rates, growth rates, and all the assumptions?

25 MR. SCHULZ: Everything. It's about a hundred-page

1 report.

2 MR. SCHUSTER: We haven't had time to make copies,
3 but we will definitely get it to staff.

4 MR. CAFFREY: Let me say with regard to that and
5 with regard to the submittals of everybody who is going to
6 be appearing before the Board over the next several weeks as
7 we go through the process, we welcome and encourage any
8 information that you may be able to provide us. As you
9 develop your thoughts and your ideas as we go through this
10 process, be sure that you provide that to the Board, to Mr.
11 Pettit or Mr. Howard. We are very anxious to see that and,
12 again, I want to encourage you all to work together whenever
13 possible, wherever possible, to bring ideas to the Board,
14 especially those where you do agree, because that would be
15 very helpful and interesting to us as we try to forge our
16 way through this and develop a proper plan.

17 Are there other questions by the Board?

18 Mr. Brown.

19 MS. BROWN: Mr. Clark, has EPA received a copy of
20 this or are they going to comment back? Have they commented
21 on it?

22 MR. CLARK: We did submit that with the March 11
23 comments.

24 Did we submit the full report?

25 MR. SCHULZ: The full report was submitted and there

1 actually have been some meetings with EPA where we have
2 provided them with supplemental information, and we have
3 been having discussions with them about the processes that
4 were used and the numbers that were reached.

5 MR. SCHUSTER: I actually met with Patrick Ryan and
6 Palmer Reese, and Bruce was there also last week for three
7 or four hours, and Bob McKusick was with us and Harold
8 Meyer.

9 We are going through now on the economics, but how do
10 we come up with an allocation of impacts in terms of water
11 supply deficiencies to the ag districts? So, we are
12 actually trying to help work with them in terms of
13 understanding what we did and by implication what they
14 should have done.

15 MR. SCHULZ: It is our understanding that the Board
16 is going to have some economists on the staff with respect
17 to this process; is that accurate?

18 MR. CAFFREY: We have an economics unit and they are
19 present today, at least one representative, I believe, and
20 we have established a unit which was not only something that
21 we wished, but was required by the last budget, so we do
22 have three economists and so we have got up and running as
23 of about a month ago, so they will have input to this
24 process.

25 MR. SCHULZ: I would like to work with them also.

1 MR. CAFFREY: We encourage you to do that and
2 encourage all the parties to participate in this in as many
3 levels as you can possibly that.

4 Mr. Pettit?

5 MR. PETTIT: Mr. Schulz, a question with regard to
6 the flow and diversion policies -- looking at your statement
7 on page 4, the middle paragraph and the first sentence of
8 that paragraph triggered a question in my mind.

9 The succeeding sentence and the oral comments seem
10 to say the main purpose for these policies would be to keep
11 the jurisdictional distinction between the Board and EPA
12 straight.

13 Is there any other reason in your mind for adopting
14 these flow and diversion policies before we go into the
15 water rights process?

16 MR. SCHULZ: I think there is from a practical
17 standpoint. The water rights situation in California is
18 becoming so complex that to try to invent anew each time you
19 hold a water rights hearing the policies the State of
20 California is going to be following with respect to the
21 water supply allocation system, we don't think is very
22 efficient.

23 I think it would be helpful to the parties and the
24 Board to have some general policies. You know, that's
25 exactly what you have when you adopt a water quality control

1 plan. Water quality control plans are not automatically
2 implementable against a water rights permit holder until the
3 Board goes through an implementation process of holding a
4 water rights hearing and deciding whether it is in the
5 public interest to require a project to be operated in
6 accordance with that plan.

7 We think that you could beneficially do the same
8 sort of thing in the water rights area and set general flow
9 and diversion policies which could then be taken into the
10 water rights process.

11 The people who are in the process would know more
12 about the way the Board is thinking when they come in,
13 structure their evidence and decide whether it is in the
14 public interest then to impose that policy on any particular
15 water rights holder, and adjust the rights and share the
16 burden, and those kinds of things can just be better done
17 with more advanced information, plus we don't see how you
18 know what water quality standards it is reasonable to adopt
19 unless you also have some idea at least from a policy
20 standpoint of what you are going to do in the flow and
21 diversion area and how those things affect the species you
22 are trying to protect with the water quality.

23 They are so interrelated in the Delta that it seems
24 to me that you have got to consider flow and diversion and
25 water quality in the same process.

1 But as you just said, it's important that you do
2 that in a way that doesn't confuse the water quality
3 jurisdiction which has Clean Water Act overtones and the
4 water rights jurisdiction which solely resides in the State.

5 MR. SCHUSTER: I agree with everything Cliff has
6 said. I think you are right. In this case, 90 percent of
7 our reason for raising those issues is what you just stated.

8 Just don't fall back into the trap we have been in
9 together before of confusing the Board's water quality and
10 water rights authority, and also, in that context, not
11 confusing those authorities with whatever EPA role has in
12 the Clean Water Act.

13 That's our major concern. Just don't add flows to
14 water quality and have to go back through that again.

15 MR. DEL PIERO: I don't understand what the so-
16 called water rights policy concept means within the context
17 of the Water Code. Can you refer me to some statutory
18 authority that authorizes the Board to set up policies like
19 that?

20 MR. SCHULZ: There are some quotations in the paper.
21 For example, Water Code Section 1251 says that the Board
22 shall make such investigations of the water resources as are
23 necessary for the purposes of securing information in order
24 to administer the water rights process.

25 MR. DEL PIERO: That refers to the elementary

1 process of granting water rights.

2 MR. SCHULZ: It also applies, as far as I
3 believe, to permits where you have continuing jurisdictions,
4 where you have basically the same authority to impose terms
5 and conditions as you do in a brand new water right, so in
6 the circumstances -- and so, I think it also would apply in
7 circumstances where perhaps the public trust or Article 10,
8 Section 2, gives you continuing jurisdiction over permits,
9 because there is no difference in your right to impose terms
10 and conditions in those circumstances as there is in the
11 application area.

12 MR. DEL PIERO: I understand that, Mr. Schulz. Are
13 you aware of any precedents where the Board has ever set
14 these types of policies outside the context of specifically
15 water rights hearings?

16 MR. SCHULZ: I am aware, yes, that in your
17 regulations you have adopted a series of permit standards,
18 permit terms and conditions, which you propose to put into
19 permits. I think those are policy oriented. They are in
20 the regulations.

21 MR. DEL PIERO: They don't drive the hearing,
22 though. They are applied at the end of the evidentiary
23 process, not prior to it.

24 MR. SCHULZ: But they are there as a policy to guide
25 the people as you go through the hearing. You can't

1 definitely decide if you are going to impose a policy on a
2 water rights holder until you finish the hearing, but you
3 can certainly give policy guidance to him in the flow area
4 the same as you can give him guidance in the water quality
5 area.

6 I don't see a logical distinction between the two
7 that would require one result in one setting and another
8 result in another.

9 MR. DEL PIERO: Do you believe modification to the
10 notices that have been published for these hearings would of
11 necessity have to take place in order to properly have that
12 matter before the Board?

13 MR. SCHULZ: Yes, and that's one of the things we
14 recommended, because we think you are planning on covering
15 flow issues. We think that the only thing you have set
16 forth in your hearing notice is water quality sections.

17 We don't want to find ourselves in the confusion of
18 trying to set flow standards in something that has been
19 noticed as a pure water quality proceeding.

20 MR. DEL PIERO: If that's the case, Mr. Chairman,
21 the calendar on these hearings is going to be extended far
22 longer than this Board has --

23 MR. CAFFREY: Ms. Leidigh, did you want to say
24 something?

25 MS. LEIDIGH: I was curious as to what form you

1 would see water rights, flow and diversion policies taking.
2 It comes to my mind that there are three possibilities, and
3 I was curious as to what form you would see flow and
4 diversion policies taking in terms of how it would be
5 presented.

6 There are three different forms that I can think of
7 just off the top and those are regulations, or a resolution,
8 or part of the Porter-Cologne plan, or --

9 MR. SCHULZ: I vote for resolution.

10 MS. LEIDIGH: Now, why do you think a resolution
11 rather than regulations or something under the --

12 MR. SCHULZ: Well, for example, water quality
13 objectives don't require regulation -- well, actually, you
14 do -- I am trying to think -- no, you have specific
15 procedures under your water quality control plans where they
16 don't go through the Office of Administrative Law.

17 MS. LEIDIGH: Well, they do now.

18 MR. SCHULZ: There is a shortcut proceeding which I
19 get confused on.

20 MS. LEIDIGH: There's a shortcut procedure that came
21 in about a year ago in legislation, but it does have to be
22 submitted to the Office of Administrative Law.

23 MR. SCHULZ: And you should not do it under the
24 Section 13000 section of the Water Code, and that is water
25 quality.

1 When we are talking about opening and closing the
2 cross-channel gates or putting a limit on the amount of
3 water that can be diverted at a pumping plant, it doesn't
4 fall under the Porter-Cologne Act. It should not fall under
5 the Porter-Cologne Act. The State should, quite frankly,
6 from a policy standpoint avoid putting it into the Porter-
7 Cologne Act because of the Clean Water Act implications of
8 flow.

9 If California is going to maintain control of the
10 water supply, it is going to be through 101(g) that deals
11 with flow and diversion issues, where they belong, in the
12 water rights portion, and not through the water quality
13 provisions.

14 MS. LEIDIGH: Okay. With regard to your resolution
15 which you indicated was your favorite, do you think that a
16 resolution would have the reliability that would be
17 necessary to give people comfort that those are, indeed,
18 standards that the Board is going to follow in the future?

19 MR. SCHULZ: I think they give guidance to the
20 parties on the direction the Board is planning on going in
21 the future, which I think is what we want. The ultimate
22 decision-making process will be made through the
23 implementation or water rights process.

24 But, again, I think in all likelihood, the answer to
25 your question is yes.

1 MS. LEIDIGH: Okay, thank you.

2 MR. CAFFREY: Mr. Del Piero.

3 MR. DEL PIERO: Mr. Schulz, would you assume those
4 policies once adopted by the Board would be enforceable
5 against the Board should the Board decide to deviate from
6 that?

7 MR. SCHULZ: No, because the Board has the authority
8 to determine whether or not the adoption of the
9 implementation of a policy against a specific water rights
10 holder is in the public interest and would constitute a
11 reasonable use of water under Article 10, Section 22, so you
12 still have broad discretion to determine in specific
13 instances whether and how the policy should be implemented
14 on a water project.

15 MR. DEL PIERO: Would it be possible then based on
16 the way that you just described it to challenge a decision
17 of the Board alleging that the Board was arbitrary and
18 capricious in the way the policies were applied?

19 MR. SCHULZ: The way the policy was applied, I
20 suspect somebody could.

21 MR. DEL PIERO: Okay.

22 MR. SCHULZ: But I think they would have an
23 extraordinarily difficult time in prevailing. I have never
24 wanted to challenge the Board on a factual determination
25 because your powers are so broad in those areas.

1 MR. DEL PIERO: The reason I ask the question is
2 because a number of the proposals that have come forward
3 today have been to attempt to deal with the problems of the
4 Delta and diverters from the Delta in the aggregate, and
5 yet, I think it was the Department of Water Resources
6 submittal, I believe it was and if I am wrong, I will stand
7 corrected, or maybe it was the contractors, I'm not sure.
8 it was one of the two that indicated that they thought the
9 responsibility for mitigation for adverse impacts on the
10 Delta should be incrementally applied to each diverter or
11 recipient of water from diversions based on the incremental
12 impacts.

13 I know I heard that this morning.

14 MR. SCHULZ: It certainly wasn't Kern.

15 MR. DEL PIERO: The reason I ask that is based on
16 the idea that somehow those standards could ultimately be
17 used against the Board in terms of attempting to overturn
18 the decision made by the Board subsequent to that if that
19 proposal put forth was, in fact, adopted.

20 Could that, in fact, not be cause or be used,
21 whether effectively or not remains to be seen, as a way of
22 challenging the Board's subsequent decision?

23 MR. SCHULZ: Let me answer that in a little bit of a
24 round-about way. It is my understanding that Mr. Bradford is
25 planning on dealing with things like X2, a flow matter, and

1 things like the salmon smolt survival standard which deals
2 with closing the cross-channel gates, and that you are
3 planning on adopting some sort of policy through that
4 process with respect to those items, but apparently, at
5 least the way the notice reads, is that you are going to be
6 setting those policies under the Porter-Cologne Act.

7 We want you to set policies in those areas, but we
8 don't want you to do it under the Porter-Cologne Act. We
9 don't think those are water quality matters. We want you to
10 put those in their proper category of flow and diversion,
11 matters which come under your water rights jurisdiction. Go
12 ahead and set policies in those areas, but do it under the
13 right grouping.

14 MR. DEL PIERO: One last question. If we were to do
15 what you propose and set policies under our water rights
16 jurisdiction, would the adoption of those policies
17 necessitate the preparation of an environmental impact
18 report pursuant to CEQA, inasmuch as the adoption of
19 policies by governmental agencies have been construed by
20 both the courts and now the Office of Administrative Law as
21 a project?

22 MR. SCHULZ: You are going to be doing a functional
23 equivalent as part of the policy-setting process.

24 MR. DEL PIERO: A functional equivalent isn't going
25 to work for a water rights policy. That's why I am asking

1 the question.

2 MR. SCHULZ: I don't think that would be the case if
3 you are going to implement it in the water rights process,
4 but that is something I would be willing to look into and
5 give a further response to the Board on.

6 MR. DEL PIERO: Ms. Leidigh, do you have an opinion
7 on that question? Do you understand it?

8 MS. LEIDIGH: Would you repeat it?

9 MR. DEL PIERO: If this Board were to adopt a policy
10 based on our water rights authority, not water quality,
11 where we have the authority to adopt a functional
12 equivalency document, would that, in fact, require
13 compliance with CEQA?

14 MS. LEIDIGH: I think there is a strong argument it
15 would require compliance with CEQA because you would be
16 expecting there is going to be a result from that, that the
17 physical world would change as a result of that policy.

18 MR. SCHULZ: But not until you do an EIR on the
19 implementation through the water rights process.

20 MS. LEIDIGH: No, if that were true, I think that
21 you wouldn't necessarily have to do a CEQA documentation on
22 a water quality control plan.

23 MR. SCHULZ: That's self-implementing with respect
24 to a discharger. It's probably not worthwhile for us to
25 debate that here and take up your time, but I would be

1 willing to get together with Barbara and provide a
2 supplemental response.

3 MR. DEL PIERO: I would be interested in hearing the
4 opinion of anyone who has an opinion on that one way or the
5 other.

6 The reason I am so concerned about it is because the
7 argument about the functional equivalency document was used
8 by this Board in terms of the adoption of the inland surface
9 water plan and we got it handed back to us, and we are in
10 the process of having to do an EIR on that, and it's almost
11 unprecedented in terms of the extension of CEQA jurisdiction
12 as to the functions of this Board.

13 It just strikes me that adopted policies for this
14 Board in a water rights context almost certainly is subject
15 to evaluation under CEQA.

16 MR. CAFFREY: It would be important to develop the
17 concept a little further, Ms. Leidigh and Mr. Schulz, and
18 also, Ms. Leidigh, to share our recent experience with the
19 inland surface water plan that Mr. Del Piero is referring to,
20 to see what the similarities are there.

21 Mr. Schuster.

22 MR. SCHUSTER: I agree with you. I think it is a
23 good idea and I agreed with Mr. Del Piero, it should be.

24 I guess I just wanted to add something, speaking as
25 a non-lawyer, I think what we are trying to deal with here

1 and I am not sure we have all the answers to the questions
2 that have been asked, but basically, this Board put out a
3 water quality opinion in 1991, that made a very strong legal
4 argument in terms of what is a water quality standard and
5 what is a flow standard that would be rightly dealt with in
6 water rights, one we like and I think a lot of other water
7 industry people like also.

8 The situation we find ourselves in collectively now
9 is that we have got a Federal proposal on the table, so to
10 speak. The majority of that is not water quality, it is
11 flow related whether we talk about an ESA flow restriction
12 or we talk about cross-channel gate closures for salmon and
13 those things.

14 So, if the Board literally just did a triennial
15 review and stuck with their original legal opinion on water
16 quality, which is what we would like you to do, you are not
17 really addressing what the Club Fed proposal did, which is
18 what you want to do, and we agree with you.

19 I want to make that very clear, that we agree with
20 you that you've got to find some way to deal with the
21 broader context of just water quality and flows.

22 We are just trying to throw out some ideas to find
23 some way to do that, that doesn't get us collectively back
24 in the trap of changing that legal opinion of 1991. This
25 discussion is good. I am not being critical of the

1 discussion at all, but any way we or you can find a way of
2 doing that without getting back into water quality, we will
3 support. You want to and we agree with you, you need to
4 give all of us, including Club Fed some indication of where
5 you think you want to go in water rights. Otherwise, we
6 can't politically resolve this thing or have a chance to
7 politically resolve it late this year.

8 That's all we are trying to say.

9 MR. CAFFREY: We appreciate that.

10 Anything else from Board members?

11 Anything else from staff?

12 Thank you, gentlemen, very much for giving us your
13 insights. You have now given yourselves an assignment. We
14 will look forward with great anticipation to what comes out
15 of the discussion with Ms. Leidigh.

16 Thank you, Mr. Clark; thank you, Mr. Schuster; and
17 thank you, Mr. Schulz.

18 All right, we are going to take a break in about a
19 half-hour and that will give us an opportunity for at least
20 one more presentation. It will also give the court reporter
21 an opportunity to take a rest, so let's go with Dave
22 Whitridge and Alex Hildebrand of the South Delta Water
23 Agency.

24 Good afternoon, gentlemen.

25 MR. WHITRIDGE: I am David Whitridge. I am here

1 today with Alex Hildebrand on behalf of the South Delta
2 Water Agency and numerous agricultural water users in the
3 Southern Delta.

4 I would like to focus the Board's attention this
5 afternoon for jut a minute on an issue that really hasn't
6 been discussed much today, and that is the implementation of
7 your existing Water Quality Control Plan. The present Water
8 Quality Control Plan for salinity, which was adopted in May,
9 1991, establishes new salinity objectives for the Southern
10 Delta agricultural beneficial use required by the Racanelli
11 decision.

12 However, these as of yet have not been implemented,
13 with the plan setting up staged implementation with stage 2,
14 which is Vernalis and Brandt Bridge to be implemented no
15 later than 1994.

16 I think at this point it is important to ask how
17 does the Board intend to carry out this implementation? The
18 hearing notice, and I believe correctly under key issue 1,
19 states that the Board intends to review only the highest
20 priority issues, and that these issues are those for which
21 EPA is now proposing standards.

22 It seems to us that further analysis of EPA concerns
23 for fishery resources should not provide any justification
24 for delay of implementation of these other objectives which
25 are not being reviewed and which are long overdue for

1 implementation, as was noted in the Racanelli decision in
2 1986.

3 Implementation of existing objectives which were
4 painstakingly developed over years of analysis is needed now
5 and not further delay while considering additional
6 objectives.

7 The question, I guess, is how does the Board intend
8 to meet its announced 1994 implementation requirements for
9 beneficial uses and objectives not subject to this review?

10 I think the flip side of this concern is that if the
11 Board does not begin to implement existing agricultural
12 objectives, what effect would new fishery objectives have
13 upon water availability and the availability to meet other
14 existing objectives?

15 The main concern within the Southern Delta with the
16 EPA proposed objectives is the striped bass objective on the
17 San Joaquin.

18 Shifting the release of the limited San Joaquin
19 system water that is available into April and May to meet
20 the EPA proposed objectives would further reduce water
21 available for streamflow at other times, particularly during
22 the ~~summer~~ when needed to meet the Southern Delta
23 agricultural objectives.

24 We feel then a thorough analysis should be made of
25 water needed to meet the proposed EPA objectives and the

1 remaining water available for any such purpose after the
2 additional water is needed for present and as yet
3 unimplemented Water Quality Control Plan requirements.

4 Such an analysis should also include the effect of
5 the increased groundwater overdraft that could be expected
6 to result from the proposed increased instream water
7 demands. It should further include an analysis of the
8 effects on the dangerously low San Joaquin salmon population
9 of the EPA proposals requiring large water releases for the
10 EC objective to protect bass, an exotic species which feed
11 upon the juvenile native salmon.

12 Finally, if it is decided to increase the protection
13 of striped bass to the detriment of the native San Joaquin
14 salmon, this quality objective should be accomplished not by
15 increasing water releases, but rather, by timing the release
16 of west-side drainage from the Central Valley Project
17 service area to the river to accommodate water quality
18 needs.

19 In summary, it is important that the Board get about
20 its business of implementing its existing Water Quality
21 Control Plan pursuant to the commitments in that plan,
22 rather than overlook or forget about them in the process of
23 considering additional water quality objectives for
24 subsequent implementation.

25 That's all I have and I think Alex has some comments

1 on some of the statements that have been made earlier today.

2 MR. HILDEBRAND: Harry and others have called your
3 attention to the decline in certain native species in the
4 estuary and have suggested that that is indicative of a
5 general decline in the suitability of the habitat for
6 aquatic species generally.

7 They then go on to indicate this decline has
8 occurred concurrently with increased export and reduced
9 Delta outflow, and have inferred that, therefore, those
10 declines and flows must be responsible for this decline in
11 habitat.

12 But that line of logic overlooks a rather important
13 point, and that is that during this same period of declining
14 outflow and increasing exports, and declining native species
15 and certain species at least, we have had an enormous
16 increase in introduced species, even disregarding the
17 striped bass.

18 All through the food chain from the Asian clams on
19 up, we have had burgeoning populations that weren't there 30
20 years ago.

21 So, to say that the general suitability of the
22 habitat for aquatic species has declined is defied a little
23 bit by that indication. It may have been bad for some, but
24 certainly good for others, and one has to raise the question
25 then, is it the decline or to what extent is the decline due

1 to the competition of these other species rather than the
2 change in the flow regime, and that doesn't seem to get
3 addressed very much.

4 There's so many potentially serious causative
5 factors of the Delta's ecological problems that one cannot
6 assume with any confidence that any selective few causes are
7 so determinative that the rest need not be addressed in
8 order to achieve a substantial environmental improvement.

9 Now, we can't wait until all the factors and
10 interrelations are fully understood and evaluated. On the
11 other hand, we should not implement mitigative measures
12 involving very large financial and/or water costs without at
13 least having a carefully evaluated and considered opinion
14 that such measures can provide significant environmental
15 improvement in the absence of measures addressing other
16 potentially significant factors.

17 In particular, the impacts of introduced species of
18 all types must be evaluated. It has not been technically or
19 scientifically established that some of the presently and
20 most seriously proposed water management measures can be
21 substantially effective unless something can be done with
22 the competition within the entire food chain by introduced
23 species.

24 At the very least, it seems as though we ought to
25 move toward these measures rather slowly and find out

1 whether, in fact, these drastic changes in management will
2 achieve the objectives or whether they are precluded by the
3 introduced species and some other issues that we haven't got
4 time to go into today.

5 MR. CAFFREY: I would point out that in our June
6 workshops we do have that subject, the influence of
7 introduced species, scheduled for discussion.

8 MR. HILDEBRAND: I noted that, but since it was
9 brought up by Perry today, I thought maybe we should mention
10 it while it is on your mind.

11 That's all I had to say.

12 MR. CAFFREY: All right, we appreciate your being
13 here, Mr. Hildebrand. It is good to see you.

14 Are there questions from the Board members of Mr.
15 Whitridge or Mr. Hildebrand?

16 Always nice to see you, Alex.

17 MR. HILDEBRAND: Thanks.

18 MR. CAFFREY: Anything from staff?

19 Thank you very much for being here today. We
20 appreciate your input.

21 Austin Nelson from Contra Costa Water District.

22 MR. NELSON: Thank you and good afternoon, Chairman
23 Caffrey and members of the Board.

24 The materials that we have submitted, I believe you
25 have copies of them, include a formal statement, a technical

1 analysis of the proposed estuarine habitat standards which
2 was a part of the series of studies performed and submitted
3 by the California Urban Water Association, and a copy of
4 Contra Costa Water District's formal comments to the
5 Environmental Protection Agency.

6 On the key issues that are identified for this
7 workshop, we certainly agree with others that it is
8 appropriate for the State Board to concentrate its attention
9 during this review on the fish and wildlife standards.

10 On the matter of water supply effects, the technical
11 report that is a part of the material that we have provided
12 to you addresses water supply effects in terms of
13 incremental Delta outflow requirements based on other
14 historical records since 1968. The method and its
15 calibration using field data are described in our report.

16 Because of the way in which EPA's estuarine habitat
17 standard is formulated based on broad categories of
18 hydrologic years, we have come to a couple of conclusions.

19 One of them is that Delta outflow requirements are
20 highly variable within year type, and the second is that
21 they are not well correlated with year type.

22 Those findings point to the need, we think, for
23 refinement to the standards that can achieve the environ-
24 mental objectives that have been outlined by EPA and they
25 also point to a way to make those refinements in such a way

1 that the water supply effects are reduced.

2 We have made some very specific proposals on that
3 topic and we look forward to discussing that with you
4 further in subsequent workshops in this series.

5 Thank you.

6 MR. CAFFREY: Thank you very much, Mr. Nelson.

7 Any questions of Mr. Nelson at this time from Board
8 members? From staff?

9 Thank you, sir.

10 Gary Bobker of the Bay Institute. Is Mr. Bobker
11 here?

12 I will move his card to the back and call him again
13 later.

14 Ann Schneider and Jim Easton representing Delta
15 Wetlands.

16 MS. SCHNEIDER: Thank you, Mr. Chairman and members
17 of the Board.

18 I am Ann Schneider and I am appearing for the Delta
19 Wetlands Properties.

20 Delta Wetlands Properties has participated for a
21 number of years in your proceedings and we will be
22 continuing with that tradition. We have submitted a --

23 MR. DEL PIERO: I have to tell you I am glad that
24 this Board holds these hearings once a year whether they
25 need to or not because at least we get to see old friends.

1 MS. SCHNEIDER: Nice to see you, Mr. Del Piero, and
2 everyone else.

3 MR. CAFFREY: In December we are going to give an
4 award to the best line throughout the entire process. That
5 may be the best one so far.

6 Go head, Ms. Schneider.

7 MS. SCHNEIDER: We have submitted a mercifully brief
8 statement and Mr. Jim Easton is here. He is a consulting
9 engineer for Delta Wetlands Properties and he will explain
10 some of the points that we make in that statement.

11 Dave Forkel, who is the Delta Project Manager, is
12 also here and B. J. Miller is on the Delta Wetlands
13 Properties team as well. They can answer questions if you
14 have them, but we will keep this to Mr. Eaton's very brief
15 summary of the statement.

16 MR. EASTON: Mr. Chairman and members of the Board
17 and staff, what I am about to say is against the advice of
18 counsel, but as Ann mentioned, she has prepared this
19 voluminous two-page document which I have managed to
20 condense down to a purple presentation which I assure you
21 will not take longer than one minute over three hours to
22 present,

23 Delta Wetlands is pleased to participate in the
24 Board's workshop process to develop a water quality plan. I
25 would like to, first, very briefly describe to you the Delta

1 Wetlands project, and then address the three questions which
2 were in the hearing notice.

3 Delta Wetlands project is a proposed privately
4 financed water supply project which includes four Delta
5 islands, Bouldin Island, Holland Tract, Webb Tract and Bacon
6 Island. The project's preferred alternative proposes that
7 Bouldin Island and Holland Tract be dedicated for habitat
8 only, or for habitat purposes with only incidental water
9 supply benefits.

10 This aspect of the Delta Wetlands project will
11 significantly enhance the Delta's habitat for terrestrial
12 species.

13 Webb Tract and Bacon Island are proposed to be used
14 primarily for water supply reservoirs on a year-round basis
15 with only incidental, but sometimes very significant
16 environmental benefits.

17 The proposed water supply storage capacity of the
18 project is about 230,000 acre-feet per year. An updated
19 draft of the Environmental Impact Report and Environmental
20 Impact Statement is being prepared now and will be on the
21 street for public review this summer.

22 We expect that water from our project will be
23 available by 1996 if the permit process goes as scheduled.

24 We would like very briefly to respond to the three
25 questions that were asked on the notice.

1 The first dealt with what standards should the Board
2 focus on during this triennial review. We certainly agree
3 that the Board's review of EPA's draft standards should be a
4 high, if not the highest priority of this process. This may
5 be the only opportunity that the public and those that have
6 interests in Delta water have for an in-depth participatory
7 hearing on all the technical aspects of the proposed Federal
8 standards.

9 We believe this exploration should include positive
10 and negative aspects of the proposed EPA standards.

11 In addition to reviewing the EPA's draft standards
12 as proposed, and perhaps as modified, Delta Wetlands
13 believes that the Board should identify and seriously
14 consider those portions of your Draft Decision 1630 that may
15 be appropriate for inclusion in the standards that you
16 ultimately adopt, for instance, QWEST of that draft
17 decision.

18 Of critical importance in any standard is not only
19 the amount of water required to meet the standard, but also,
20 the timing and the source of the water that is required to
21 meet that standard.

22 Delta Wetlands believes that the Board's process
23 should review the relevant impacts of the various changes in
24 the flow regime from the Delta and the Delta Wetlands will
25 be prepared during this workshop process to demonstrate

1 modeling approaches that we believe should be considered for
2 this purpose.

3 Your second question dealt with the level of
4 protection that's required under the California Water Code
5 and Clean Water Act for protection of public trust uses in
6 the Bay-Delta estuary. Whatever level of protection is
7 required and ultimately adopted by this Board, we believe
8 that the Board should set standards based on the best
9 science available, and that the standards should be flexible
10 depending on year types or progression of year types, which
11 should include consideration of critical years.

12 Without such consideration resulting environ-
13 mental impacts and benefits, as well as water costs, may not
14 be adequately balanced.

15 The third question had to do with the effects of the
16 EPA standards and whether or not a modified version should
17 be considered. We certainly suggest that both the original
18 standards and any subsequent modifications are appropriate
19 to be considered during this process.

20 Delta Wetlands believes that it can offer a unique
21 perspective to the Board on EPA's draft standards. We have
22 included in the modeling that has been done for our project
23 as part of the EIR/EIS the EPA draft standards, and later in
24 this process we will be prepared to address the impacts of
25 those draft standards on projects within the Delta.

1 That concludes my remarks. If there are nay
2 questions, I would be happy to try to answer them.

3 MR. CAFFREY: Thank you, Mr. Easton.

4 Any questions by the Board members?

5 Mr. Stubchaer.

6 MR. STUBCHAER: Is the model you refer to the same
7 one that was submitted during the D-1630 process or is it
8 enhanced?

9 MR. EASTON: We used several models, Mr. Stubchaer,
10 and we will be happy to discuss those with you probably in
11 the May presentation.

12 MR. CAFFREY: Anything else?

13 Thank you, Mr. Easton. Thank you, Ms. Schneider for
14 being here. We appreciate it.

15 We will now hear from Gary Bobker from the Bay
16 Institute, and as Mr. Bobker is approaching, let me say that
17 after his presentation, we will take a short break, and
18 after that, I think we have six more cards, so it looks like
19 we will be able to finish today.

20 MR. BOBKER: Thank you, Mr. Caffrey.

21 I appreciate your inserting me back into the order.
22 I got some very dirty looks from my ride back to the area
23 when I missed my turn, so thank you.

24 Mr. Chairman and members of the Board, my name is
25 Gary Bobker. I'm the policy analyst at the Bay Institute of

1 San Francisco.

2 I have been surprised that nobody has made any
3 cracks, which I expected to hear.

4 MR. CAFFREY: I was tempted myself.

5 MR. BOBKER: I think we all were. Frankly, as I
6 approached the podium I realized that this continues to be
7 not the best forum for flip remarks about something so
8 serious.

9 We have made available to your staff extensive
10 materials that we prepared in connection with the EPA
11 promulgation and related matters that are germane to the
12 main issues that were raised in the hearing notice that you
13 sent out for this workshop, and I will not go into depth on
14 those. They are technical in nature and deal with the level
15 of protection, what criteria are necessary to protect the
16 estuary and so forth.

17 Instead, I want to make some very brief comments
18 that probably can be misconstrued as non-constructive, but I
19 think need to be said, and that is that, bluntly put, we are
20 somewhat discouraged by the Board's decision to re-engage in
21 this kind of process, for some pretty obvious reasons.

22 I think that this process that the Board decided to
23 re-engage in is something that really defines the phrase,
24 *reinventing the wheel*. The main issues that are the subject
25 of the hearing notice have been the subject of extensive

1 presentations to this Board beginning in 1987; and arguably
2 beginning well before then, and in the hearing record of the
3 Bay-Delta hearings from 1987 onward and in the subsequent
4 formal rule-making process now being undertaken by EPA,
5 there has been work cited, summarized or entered into the
6 record which I think pretty conclusively demonstrates the
7 need for protections for the Bay-Delta's estuary and the
8 details of those protections, specifically, the provision of
9 adequate low salinity habitat to protect estuarine species,
10 provision of increased fresh water outflow from San
11 Francisco Bay, improved restrictions on export operations
12 from the South Delta are certainly other measures as well.

13 Despite the existence of that record and the clear
14 admission of the need for increased protection that has been
15 offered by this Board and other parties over the years,
16 there has been no remedy forthcoming.

17 I am not going into the litany of the Board's
18 aborted attempts to resolve this problem. We are all
19 familiar with that.

20 At this point in time, rather than duplicate the
21 exhaustive efforts undertaken by this Board in the past in
22 at least three separate hearing processes, and reduplicate
23 the effort undertaken by EPA during the course of the rule-
24 making activities since September of 1991, we recommend
25 instead that the Board begin preparations for implementing

1 new improved standards for the estuary after that adoption
2 later this year by the Federal Government.

3 As you know, we and other groups have signed a
4 consent decree with EPA which is being submitted to the
5 judge in the case. We expect him to sign it and we will see
6 after all these years final rules promulgated by December
7 15.

8 Under our interpretation of the law, somewhat at
9 variance with what you have heard earlier, both Federal and
10 State law make it clear that EPA's standards, once
11 promulgated become the operable standards for this Board,
12 and the Board must be held accountable for achieving them
13 and insuring that water users, water suppliers and other
14 parties comply with those standards.

15 That's a task the Federal Government cannot be
16 engaged in, but which this Board is eminently qualified to
17 do and authorized to do, and it has shown excessive creative
18 energy in addressing the issues of implementation in the
19 draft of D-1630 that it offered a year ago.

20 Although we disagreed with the level of protections
21 which were sought in that draft decision, we nonetheless
22 appreciated the work that went into trying to implement, or
23 rather, design creative mechanisms to reach water users and
24 to deal with water supply impacts.

25 Considering the legal mandate to the Board and EPA's

1 continuing commitment which was expressed once again this
2 morning to work with the input from all parties, including
3 the Board, in fashioning the final form of the Bay-Delta
4 rule, the wisest course of the Board would be, we believe,
5 would be to devote its resources to designing a water rights
6 proceeding including the preparation of the environmental
7 documentation that would be necessary to insure that the
8 Federal water quality standards are implemented in an
9 equitable and effective manner, and in a timely manner, and
10 in a final manner as well, of the problem that we have with
11 a parallel process to issue standards that will further
12 delay the final implementation of standards.

13 A workable program to implement within the shortest
14 possible time line which incorporates all uses of the
15 estuary's water and which exploits creative mechanisms such
16 as were contained in D-1630 to manage water through
17 mitigation funding, conservation requirements and other
18 measures, would be your greatest contribution to solving
19 problems of the Bay-Delta environment while at the same time
20 providing a greater measure of reliability to water supplies
21 and users.

22 In conclusion, I guess the only thing I would like
23 to add is that directing your energies to that
24 implementation process will, I think, achieve effective
25 protection in a timely manner, which is what we are all

1 interested in seeing, and get us closer to effectively
2 addressing water supply impacts through more rational water
3 management strategies and water supply operation
4 requirements.

5 To proceed in going back to the water quality
6 standards setting phases, really in some sense is something
7 in the past, and that concludes my statement, Mr. Chairman.

8 MR. CAFFREY: Thank you very much, Mr. Bobker.

9 We recognize your frustration and you have stated it
10 eloquently, but we do appreciate your participating in this
11 process and I feel compelled to say, and I hope it is not
12 naive of me, but I do feel compelled to say that out of this
13 process, as I said earlier, the kind of standards that
14 hopefully we are all looking for will be developed in a
15 cooperative way and this Board could move fairly quickly,
16 hopefully, into the water rights process and implementation,
17 so we do think it is important for you and the other
18 environmental groups to participate in this process, and we
19 are glad you are here.

20 Are there any comments or questions from Board
21 members of Mr. Bobker? Anything from staff at this point?

22 Thank you, sir.

23 Okay, let's take a ten-minute break.

24 (Whereupon a recess was taken.)

25 MR. CAFFREY: Let's take our seats and begin again.

1 Mr. Krautkraemer.

2 MR. KRAUTKRAEMER: I am John Krautkraemer and I am a
3 senior attorney for the Environmental Defense Fund in its
4 Oakland, California, office.

5 I will try to make my comments as brief as possible.
6 I am one of those rides back to the area. I am the ride
7 back to the area.

8 MR. CAFFREY: Take your time, John.

9 MR. KRAUTKRAEMER: I am going to echo a little bit
10 what Gary said. I actually think it is good that the Board
11 has re-engaged in this process and that you are once again
12 trying to tackle the issue of Bay-Delta protection. I think
13 I would agree with Mr. Bobker, though, that the focus of
14 this effort is misplaced, at least at the moment.

15 I think it is clear, based on the schedule that you
16 sent out and the time frame that we are looking at, that any
17 final promulgation of standards by the State Board, and this
18 assumes everything goes well, that we get to the draft when
19 you say we are going to get to the draft, and that the draft
20 moves to final, and I have gone through a couple of
21 experiences where we have had some difficulty getting the
22 draft to final, that even under the most optimistic scenario
23 it is going to be well beyond the final promulgation of the
24 EPA standards before the State can adopt a standard.

25 And I think some of the concerns we have heard

1 expressed by the water users today are concerns that really
2 can be addressed more directly, not through the standard
3 itself, but through how that standard is implemented.

4 We have had extensive hearings in 1987, we had
5 hearings after that, we had hearings during the summer
6 before last on the interim standards, and we have a lot of
7 evidence.

8 We really pretty much know what is necessary and
9 what is needed to be done in terms of standard setting. The
10 tough issues, and I think the issues that are most important
11 to address in terms of how protections for the Bay-Delta are
12 going to affect other users are implementation issues, and
13 what I would urge the Board to do is to focus your efforts
14 now on putting in place, starting the processes that are
15 going to be necessary to implement the standards that come
16 out of the EPA process.

17 Now, that's not to say there isn't a role for you
18 during the EPA process in trying to comment on and get your
19 viewpoints expressed in that process, but that the real
20 important issues and where you can really contribute are on
21 the implementation side.

22 There are two issues I can think of that are
23 extremely important when it comes to implementation and one
24 is the concept of sharing the responsibility for meeting the
25 standards. I think as EPA's Regulatory Impact Analysis

1 correctly shows, how the standards are implemented will have
2 a big effect on what their economic impact is going to be on
3 other users, and that can be a wide range depending on how
4 the standards are implemented.

5 One of the things that can be done is to spread the
6 responsibility for meeting those standards among water users
7 throughout the entire watershed and this, obviously, needs
8 to be done consistent with area of origin laws, but I would
9 agree with Tom Clark, and you can note this if you want,
10 that I actually agree with something that Kern County Water
11 Agency says, that everybody that diverts water in this
12 watershed has a public obligation to protect the beneficial
13 uses of the Bay-Delta estuary.

14 And I think the second area, there's actually two
15 related issues, to ameliorate the economic effects have to
16 do with using market mechanisms. One is transfers which you
17 have heard a lot from EDF over the years and we have
18 submitted a lot of testimony in the various hearings about
19 how transfers can serve to move water from the lower value
20 economic uses to the higher values and help insure that
21 those higher uses that are most important to the State's
22 economy, remain viable.

23 But the second is the concept that Greg Thomas
24 addressed earlier and one that's embodied in the
25 restoration fund in the Central Valley Project Improvement

1 Act and one that I think was one of the most laudable
2 attributes of Draft 1630, was the concept of the restoration
3 fund, that rather than going through the transfer mechanism
4 and relying on consumptive users to reallocate water, set up
5 a fund of money so we can go out and purchase water directly
6 for the environment, and that will help insure you can
7 target the uses of water, those willing sellers who almost
8 always represent the lower valued uses of water, and that's
9 the way to insure that the economic impacts are going to be
10 minimized.

11 So, I would urge you to begin the process and to
12 look at those implementation mechanisms and begin to take
13 the steps so that you can move quickly toward implementing
14 the standards that come out of the EPA process.

15 What I would like to do, I guess, in closing, is
16 address the three issues you identified.

17 The first has to do with the standards that should
18 be addressed in this process. Given what I just said, I
19 think that should not be the major focus of what you are
20 attempting to do here certainly in the short term. Over the
21 long term, I think it is appropriate for the Board to re-
22 engage in the standard-setting process, but in the short
23 term, I don't think that's where your attention should be.
24 It should be implementation.

25 But I am going to answer the question anyway with

1 that caveat. I think clearly the major deficiency in the
2 standards is the fish and wildlife standards, and that
3 should be the focus of your attention, not the municipal and
4 industrial and agricultural standards.

5 I note with some irony that what DWR and some of the
6 other folks here would like to see you do is combine flow
7 objectives into water quality objectives.

8 The reason you are in the bind you are in now and
9 the reason they are trying to come up with these processes
10 to allow you to combine the two things is because back in
11 1989 you made the decision at the urging of the Department
12 of Water Resources and others to drop flow objectives from
13 the water quality planning process. That was a serious
14 mistake.

15 I think it was based on a misreading of the
16 Racanelli decision. The easiest way to remedy that is to go
17 back to the way you intended to do that all along back in
18 1987, is to adopt a comprehensive set of standards for the
19 estuary which include flow objectives, which include
20 operational constraints, do that through the water quality
21 planning process, and then move into the implementation
22 stage. ✖

23 You had it right the first time. Go back and do it
24 that way.

25 The second question has to do with the level of

1 protection. I have heard a lot about balancing and not
2 establishing the level of protection ahead of time. The
3 problem with that is it ignores the requirements of the
4 State and Federal law which established minimum anti-
5 degradation requirements, and establish a balancing, if you
6 will, as a matter of law, that establishes a minimum flow
7 below which you cannot go in terms of protection, and that
8 level of protection is tied to the late '60s under State law
9 and the middle part of the 1970s under Federal law, and the
10 concept underlying that principle is pretty basic.

11 It is that when these laws took effect, these water
12 quality protection laws, the idea was not to make things
13 worse than they are now, which when you think about it is a
14 good objective for water quality law which must try to
15 make things better than worse.

16 So, the anti-degradation policy requires that you
17 protect existing uses and existing is defined at
18 the time that the policies reference.

19 So, the late '60s, and 1968 I think is the
20 appropriate target today in terms of level of protection.

21 One comment we had in the EPA standards which we
22 think pertains here also, is that the level of protection
23 doesn't necessarily mean the water quality conditions that
24 existed at that time. What it requires is the protection of
25 the existing uses and what is required then is the level of

1 water quality that's necessary to protect those uses.

2 That doesn't necessarily mean that if you can
3 replicate the late '60s and early '70s water quality
4 conditions, you can look at that period of time, and we go
5 into more detail in our comments.

6 We believe that the evidence shows a lot of species
7 were already in decline during that period and probably the
8 reason you don't see more serious decline is because there
9 weren't any critical and dry years during that period. It
10 was a relatively wet period and it wasn't until 1976-77 that
11 you hit a dry period, and then you saw some pretty severe
12 declines in some of the resources, so it was a problem
13 waiting to happen.

14 And one of the problems here is that you have to
15 structure your standards over a full range of hydrologic
16 conditions, and protections during drought years are
17 particularly important.

18 The final question asked about the environmental
19 economic impacts of EPA's standards. Clearly, we believe
20 that the EPA standards would be a significant step toward
21 protection of the estuary. We go into more detail in our
22 comments about what we like and don't like about those
23 standards, and I won't go into that now. I will just refer
24 you to the comments.

25 As far as the economic impacts, as I mentioned

1 earlier, I think there are some ways in which this Board
2 could play an important role to implement those standards in
3 ways which would minimize the economic impacts for other
4 water users that may be affected by dedicating more water to
5 Bay-Delta protection.

6 That's, really, all the comments I have right now,
7 and I would be happy to answer any questions you might have.

8 MR. CAFFREY: Thank you very much, Mr. Krautkraemer.

9 Are there questions by Board members?

10 Anything from staff?

11 Mr. Brown.

12 MS. BROWN: Mr. Krautkraemer, probably in your
13 report you have it here, but what were your ideas on funding
14 the restoration fund?

15 MR. KRAUTKRAEMER: We referenced D-1630. We also
16 referenced the CVPIA fund. I think most of those could
17 serve as models.

18 There has been some discussion about legislation
19 which would be some combination of user charge and bond
20 funds.

21 So, there are different ways that you could put
22 together a fund like that. We don't really propose a
23 specific way.

24 I think that is one of the things the Board could
25 do, is hold hearings targeted specifically toward this

1 issue. You could explore the issue. Can we do this
2 ourselves? Should we do this ourselves? Maybe it's better
3 to get legislative approval just to get a larger buy-in to
4 it.

5 Those are the kinds of issues I think that are the
6 ones that I would like to see the Board start to address now
7 so that when we come to the point where we have standards,
8 we are in a position to move quickly to implement those
9 standards.

10 One thing I might add, I think the restoration fund
11 concept also helps you bridge the gap with this sharing
12 responsibility among water agencies. I think there are a
13 lot of sort of difficult technical issues and administrative
14 issues about how you spread responsibility among all the
15 water users in the watershed.

16 And one way to kind of bridge that is through the
17 restoration fund concept where you can pool money from all
18 the water users maybe as an alternative to a specific
19 regulatory control over their diversions and operations.

20 MR. CAFFREY: Thank you, Mr. Krautkraemer.

21 We have had two more cards added, so we are down now
22 to, I believe, seven more cards. We do intend to finish
23 today or tonight, so we are making progress.

24 Mr. Baber, please.

25 MR. BABER: Thank you, Chairman Caffrey.

1 Mr. Chairman and Board members and staff, my name is
2 Bill Baber. I am with the Minasian law firm out of
3 Oroville.

4 These comments that I am going to give you now are
5 made on behalf of the water supply districts in the
6 Sacramento Valley and Northwestern San Joaquin Valley, and
7 they include Byron Bethany Irrigation District, Clear Creek,
8 Community Services District, Cordua Irrigation District, El
9 Camino Irrigation District, Biggs-West Gridley Water
10 District, Butte Water District, Sutter Extension Water
11 District, Richvale Irrigation District, Nevada Irrigation
12 District, Oakdale Irrigation District, Oroville-Wyandotte
13 Irrigation District, San Joaquin River Exchange Contractors
14 Water Authority, which consists of the four exchange
15 contractors, South San Joaquin Irrigation District, Western
16 Canal Water District and the Tri-Dam Authority.

17 My comments are directed primarily to the proposed
18 EPA regulations, but will indirectly answer your questions 1
19 and 2, the selection of standards for review and the level
20 of protection.

21 The proposed rules to be adopted by the EPA are
22 economically shortsighted at best. It is clear pursuant to
23 the section of rules entitled *Summary of Costs and Benefits*,
24 that the implementation plan for the Federal proposals has
25 not yet been developed, making it difficult to project the

1 actual level of economic impacts.

2 The EPA proposals estimate that the cost of
3 implementation could be 40 million dollars for the
4 agricultural sector and 25 million dollars for the urban
5 sector, assuming cost effective and flexible implementation.

6 The Environmental Protection Agency greatly under-
7 estimated the economic impacts of the proposed rules. Even
8 using a crude measure of economic impacts, the market value
9 of the additional water required for these sets of rules
10 demonstrates the absurdly low nature of a 40 million dollar
11 conclusion.

12 Despite EPA's recitation of the portion of Governor
13 Wilson's comments on April 6th, 1992, in which he stated
14 that the Delta is broken, EPA needs to state that on April
15 1, 1993, a year later, Governor Pete Wilson asked then
16 Acting Chairman of the State Board, Mr. Caffrey, the
17 following:

18 *The National Marine Fisheries Service and the*
19 *U. S. Fish and Wildlife Service, acting under*
20 *the virtually unlimited powers of the*
21 *Endangered Species Act, has set limitations on*
22 *the operation of the Central Valley Project and*
23 *the State Water Project.*

24 *At the Board's workshop on May 22, 1993,*
25 *Federal Government officials said that Federal*

1 standards would build on the proposed D-1630,
2 but might also go far further. Federal
3 officials stated that anywhere from one to
4 three million additional acre-feet beyond flows
5 prescribed by D-1630 could be required by ESA
6 to protect the Delta smelt.

7 So, imprecise a statement gives rise to great
8 suspicion as to the quality of the science being employed.

9 Moreover, it is the ESA which permits the Federal
10 Government to pre-empt the State in the allocation of water
11 resources.

12 The U. S. Supreme Court interpretation of the act
13 makes clear that it is a blunt instrument that can be used
14 to achieve a judicious balancing of the needs of the
15 endangered species and of California's endangered economy.
16 Instead, it has been interpreted as demanding that the needs
17 of the endangered species be pursued absolutely without
18 regard for any other consideration.

19 In light of these events, I believe the wisest
20 course is for the Board to turn now to the effort of
21 establishing permanent standards for the protection of the
22 Delta.

23 It is my strong intention to return control of
24 California's water allocation process to the State and to
25 your Board. I believe the Board can provide a needed forum

1 for resolving scientific questions and unresolved
2 jurisdictional issues.

3 Regrettably, despite the diligent efforts of the
4 Board, additional action by the State to provide interim
5 standards at this juncture would serve only to increase the
6 regulatory confusion surrounding this issue. What is
7 paramount is that the State proceed to identify a permanent
8 standard and a permanent solution for the Delta which will
9 permit all California's major water user groups, urban,
10 agricultural and environmental, to enjoy assurances of
11 adequate water resources well into the 21st century.

12 The State Board is the proper jurisdictional forum
13 for resolving scientific questions raised by the proposed
14 EPA water quality regulations such as the use of large
15 amounts of fresh water to repel salinity in the Bay.

16 The Federal Government is attempting to use its
17 regulatory authority to cause a de facto reallocation of
18 California water rights in violation of provisions set forth
19 in the Clean Water Act and particularly in Section 101(g).

20 EPA admits that the State Board has full discretion
21 to determine the source of water flows. However, EPA
22 ignores^{the} the State Board's authority in California through
23 the proposed rules by proposing salinity criteria to restore
24 estuarine habitat conditions that existed prior to 1976, in
25 fact, as far back as the late '60s and early '70s.

1 EPA is wrongfully attempting to invade the
2 jurisdiction of the State Board in allocating and
3 maintaining water rights in this state.

4 We support the level of protection analysis given by
5 Dave Anderson of the Department of Water Resources this
6 morning.

7 It is timely to select a level of protection now as
8 it depends upon which fish species or habitat your
9 regulation intends to protect, and then, the cost analysis,
10 both water and money, for adopting a level of protection
11 varies with whichever fish species or habitat you decide you
12 wish to protect.

13 As Governor Wilson stated to then Acting Chairman
14 John Caffrey in his letter of April 1, 1993, he desired
15 return of control of California's water allocation process
16 to the State and to the State Board. For that reason, the
17 State Board was proceeding to develop an environmental
18 impact report investigation and study to determine the
19 environmental effects and impacts of implementation of
20 proposed D-1630 and proposed permanent long-term goals in
21 deference to the interim goals which Governor Wilson thought
22 unnecessary due to the Federal Government's implementation
23 and, in effect, wielding as a club the Endangered Species
24 Act to take water from farmers to benefit fish habitat and
25 fish.

1 In fact, Governor Wilson's April 1, 1993, letter
2 references the March 22, 1993, State Board workshop which
3 commenced with a joint presentation by the U. S. Fish and
4 Wildlife Service, NMFS, and the California Department of
5 Fish and Game, which is something similar to the Club Fed
6 that was formed following Governor Wilson's letter of April
7 1, 1993.

8 At that meeting, NMFS testified that California's
9 water system could be manipulated to increase fish species
10 by putting more water through the system, by using Section
11 7(e) consultation with other public agencies in the
12 development and implementation of biological opinions.

13 The statement was made by representatives of the U.
14 S. Fish and Wildlife Service that the listing of the Delta
15 smelt would definitely require two parts per thousand at
16 Chipps Island in the summer of June, July and August, that
17 failure to cooperate by the remaining beneficial users of
18 water in this state would result in more onerous enforcement
19 by the custodians of the Endangered Species Act.

20 In fact, ladies and gentlemen, that two parts per
21 thousand translates to 1.5 million to 3 million acre-feet of
22 additional water depending upon the water year, which is in
23 the range of the fresh water supply impacts that the State
24 Board estimates will be removed from California's water
25 system in another critically dry year by EPA's adoption of

1 the standards and subsequent implementation by the State.

2 We understand that the State Board estimates fresh
3 water supply impacts resulting from the adoption of the
4 proposed rules over the average 70-year hydrological cycle
5 would be 930,000 acre-feet to 1.6 million acre-feet, 1.6
6 million acre-feet in a critical year and 3.1 million acre-
7 feet in a critically dry year.

8 EPA's estimate of fresh water supply impacts caused
9 by the adoption of their proposals are significantly less,
10 in fact, 2 million acre-feet less than the State Board's
11 estimate in a critically dry year.

12 EPA admits in the RIA at page 10 that the impacts on
13 small farm entities, which they define as making less than
14 500,000 a year in gross sales, and the alternatives to
15 regulating the small farmers were not fully analyzed. EPA,
16 and certainly, the State Water Resources Control Board, if
17 they choose to adopt these draconian regulations, should
18 know the economic and environmental impact on farmers before
19 it adopts and enforces such regulations.

20 We believe that the impacts of the EPA regulations
21 could put small farmers out of business, change land uses
22 and otherwise damage permanently what is readily
23 acknowledged as not only this nation's, but the world's,
24 fourth or fifth largest agricultural economy.

25 We ask for a continuation of the State Board's

1 intent to develop long-term goals complete with
2 environmental review as requested by Governor Wilson back in
3 April of 1993.

4 Thank you for the opportunity to present these
5 comments.

6 MR. CAFFREY: Thank you, Mr. Baber.

7 Any questions from the Board?

8 Mr. Brown.

9 MS. BROWN: Mr. Baber, you mentioned a reduction of
10 two parts per million, two parts per million of what?

11 MR. BABER: Were you talking about the State Board's
12 estimate and the EPA estimate?

13 MS. BROWN: Yes.

14 MR. BABER: Two million acre-feet in a critically
15 dry year, 1.6 and 3.1, something like that.

16 MS. BROWN: Is it two parts per million TDS?

17 MR. BABER: Two parts per thousand.

18 MS. BROWN: Two parts per thousand.

19 MR. BABER: Two parts per thousand at Chipps Island.

20 MS. BROWN: Two parts per thousand.

21 MR. BABER: Yes. That was the testimony on March 22
22 of last year, the workshop held by the State Board on the
23 Delta smelt.

24 MS. BROWN: Okay, thanks.

25 MR. CAFFREY: Thank you, Mr. Baber.

1 Mr. Heaton. Mr. Heaton is here representing the
2 Westlands Water District, and following Mr. Heaton will be
3 Michael Jackson, Laura King, Patrick Porgans, Greg Gartrell
4 and Alan Lilly.

5 MR. HEATON: My name is Mike Heaton, staff attorney
6 for Westlands Water District.

7 MR. CAFFREY: And you have a familiar face with you,
8 Mr. Heaton.

9 MR HEATON: B. J. Miller is with me in his capacity
10 as consultant to Westlands and the San Luis Delta Water
11 Authority.

12 B. J. has two jobs here today. One is to say
13 anything that I miss, and since this is the first time that
14 I have appeared before the Board, he is also supposed to
15 give me a kick if I say anything really stupid.

16 MR. DEL PIERO: Sir, years ago, Mr. Miller used to
17 provide advice to the Monterey County Board of Supervisors
18 and he kicked me, too.

19 MR. HEATON: That's what he gets paid big money for.

20 MR. DEL PIERO: He is also a former member of this
21 Board.

22 MR. HEATON: And we are sitting down not because we
23 have a lengthy presentation, but mostly because we are
24 tired.

25 We are at the point in this proceeding where our

1 comments are going to be starting to be redundant, so we
2 will try to minimize that.

3 I wanted to make a couple of general comments sort
4 of in the order of putting this into context, and then,
5 second, deal briefly with the three questions you asked in
6 the notice, and third, a thing I just added, is that I want
7 to respond to the comments made by the Bay Institute and EDF
8 just briefly.

9 Why is Westlands here? Westlands is here because we
10 support the State Board's process. We think it is
11 imperative that the State Board re-engage or continue its
12 engagement in the Delta solutions, that it is imperative
13 that the State Board take back full control of the Delta and
14 the State water quality and water rights process.

15 Agriculture has traditionally been accused of
16 resisting change, of being unwilling to accept movement in
17 the direction of environmental protection and mitigation if
18 it means reduced water for agriculture. Agriculture is
19 characterized as resistant to that process.

20 It is probably true that in the past that has been
21 the case to some extent. I don't think that that's the case
22 any more and it is particularly not the case with the
23 Federal contractors on the west side of the San Joaquin
24 valley, and certainly, not the case of the Westlands because
25 the status quo, as it exists right now, is unacceptable to

1 us. The status quo right now, to us, means basically the
2 slow strangulation of the Central Valley Project and
3 consequently, the economic strangulation of west side
4 agriculture.

5 The constraints on the project that we now deal
6 with, that we now face on a daily basis, resulting from the
7 implementation of the Endangered Species Act and the Central
8 Valley Project Improvement Act, have cost us substantial
9 quantities of water, and just to give an idea of the
10 magnitude of this thing, and recognizing that it is a little
11 bit difficult to sort out because of the drought; since
12 1990, looking at the last five water years, '90, '91, '92,
13 '93 and '94, we have been shorted over three million acre-
14 feet of water out of our contractual entitlements.

15 Westlands has a contractual entitlement to 1.15
16 million acre-feet per year. We have had supplies in the
17 last five years of 50 percent in 1990, 25 percent in 1991
18 and '92, 50 percent in '93 and right now we are looking at
19 35 percent. Adding all them up, the shortages themselves
20 exceed 3 million acre-feet.

21 Now granted, the first two years, '90 and '91, were
22 mostly drought functions, but the last three years we have
23 tried to some extent to isolate out the impacts of ESA and
24 CVPIA, and it is difficult, but my own non-engineering
25 estimate is that it is in excess of 1 million acre-feet that

1 Westlands alone has contributed, if you will, to
2 environmental protection, environmental mitigation,
3 threatened and endangered species protections in the Delta.

4 Since Westlands represents a little more than half
5 of the total Federal water service contracts on the west
6 side, you can double that impact when you are looking at the
7 Delta-Mendota Canal contractors, the San Luis contractors
8 and the San Benito Water District in Santa Clara valley.

9 The impact of that has been primarily twofold,
10 threefold, I guess.

11 Land fallowing has increased, groundwater pumping
12 has dramatically increased, we have probably a safe yield in
13 Westlands of somewhere in the order of 200,000 acre-feet a
14 year on the average. We have probably overdrafted in
15 Westlands in the last five years something over a million
16 acre-feet.

17 The third thing that happened is that the credit
18 and financing conditions have pretty much gone down the
19 tubes and I know that's been addressed by a couple of people
20 earlier in the day, but I see that on a daily basis in the
21 bankruptcies and foreclosures and receiverships in the
22 district. It's not a tidal wave of foreclosures and
23 bankruptcies and receiverships, but it has been a steady
24 stream of farm failures over the last three or four years.

25 Basically, these water users are not going to make

1 it on 50 percent water supply, and if the status quo
2 continues, that is basically what we are looking at and that
3 is our own calculation as well as what we have been told to
4 expect for the next 20 or 25 years by the Bureau of
5 Reclamation.

6 So, we come in here with the idea that we would sure
7 like to see the State Board get a hold of this situation and
8 do something about fixing the Delta.

9 Now, I'm not quite sure what that means. A lot of
10 people have spoken to that issue repeatedly today who know a
11 heck of a lot more than I do about water quality and water
12 right issues, and authority and jurisdiction of the State
13 Board, and so, I guess just to put it very plainly, we hope
14 that the end result of the State Board's process will be to
15 restore some certainty to our water supply.

16 We think that you have got to set some standards
17 that will reflect the political realities. You have got to
18 have buy-in as has been suggested by the feds. You probably
19 have to have buy-in to some extent from the environmental
20 groups; otherwise, we look at simply more and more years of
21 litigation, which again, just tends to perpetuate the status
22 quo, and we believe the projects, the exporters, bearing the
23 burden of providing the water that's allegedly needed to
24 solve the environmental problems in the Delta.

25 So, that's what we want out of this is, is we would

1 like to see some standards that basically get us out of the
2 box that we are in in terms of providing the water that's
3 needed to restore habitat conditions in the Delta, and
4 hopefully, in that process make the Endangered Species Act
5 constraints irrelevant.

6 Ideally, what we would have is standards under which
7 the projects could operate, that would allow them to operate
8 with non-jeopardy opinions, that would allow them to operate
9 as they were designed to operate to deliver water to their
10 contractors. That's sort of the context for this thing.

11 In brief response to the three points that you
12 raised in the notice, to take the last one first, we have
13 submitted copies to staff of the comments of the Westlands
14 Water District on the EPA proposal. Those comments are
15 identical and basically done jointly with the San Luis
16 Delta-Mendota Water Authority.

17 There is also substantial overlap, I believe, in the
18 technical analysis of our comments with the technical
19 comments of the California Urban Water Agencies and one of
20 the things that is interesting in the dynamics of this
21 process, both as I think you will see here before you in the
22 next few months and as we went through with the EPA
23 standards, is as strangely enough, we find ourselves in
24 considerable agreement with where the Urban Water Agencies
25 are on a lot of these issues.

1 As I sat and listened to the gentlemen from San
2 Francisco and Metropolitan this morning, I found myself in
3 agreement with almost everything they said.

4 And then, I found myself in agreement again with
5 most everything that the Department of Water Resources said,
6 and I was trying to figure out how to synthesize the two and
7 see if there was some sort of grand unified field there, and
8 I was almost there, and then, after lunch I got sleepy and I
9 kind of lost it.

10 I guess the one common theme in there, as I see it,
11 is everybody agrees that at some point we've got to deal
12 with outflow and we can no longer pretend we aren't dealing
13 with outflow, and we can put whatever kind of label on it
14 you want, call it X2 or call it salinity intrusion, or
15 whatever, but eventually we are going to deal with outflow,
16 and it seems to me that it's difficult to confine this thing
17 then to the water quality issues and not address the flow
18 issues at the same time, and I don't know how you do that.

19 I am sort of inclined, I think, to agree with where
20 Cliff Schulz was going that somehow you need to acknowledge
21 that in the water quality process and expand the scope, if
22 you will, a little bit of this thing to fold in ultimately
23 policies or objectives that will provide a base or a
24 starting point for the water rights phase.

25 The other thing that relates to the question of what

1 are the standards, is outflow is not all of the answer. If
2 there is one thing, I think at least all the water users
3 agree on, it is that there's a lot of other things that have
4 gone wrong in the Delta. It is not just the project, it is
5 not just exports, it is not just outflow, and again, there
6 are limitations on where the Board can go.

7 You know, the Board probably can't do much about
8 overfishing and poaching, but maybe the Board can address
9 some of the other issues that relate to toxics and pollution
10 and food-chain problems and exotic species to the extent
11 that these can be dealt with in the context of water quality
12 or water rights issues.

13 One other point related to this outflow question is
14 that we recognize that that is going to be part of the
15 eventual solution, if you will. We would also encourage the
16 Board to keep in mind that the Federal contractors have made
17 a contribution, somewhat unwillingly maybe, but nevertheless
18 a contribution in the form of 800,000 acre-feet prescribed
19 by Section 3406(b) to the Central Valley Project Improvement
20 Act, and while we have a dispute with the Federal Government
21 over the method and manner of implementation of that
22 provision which is now in litigation, we know that somewhere
23 down the road there is going to be 800,000 acre-feet of
24 Central Valley Project yield dedicated to fish and wildlife
25 purposes.

1 And while we quarrel with their interpretation of
2 how they implement that, particularly with respect to NEPA
3 compliance and Section 3411 compliance, which is the
4 provision that says they have to come before this Board to
5 modify their permits before they can use that water. It's
6 more a dispute about timing than end result, I think.

7 And again, we would ask the Board to keep in mind
8 that that water is out there, and we would hope that when we
9 get to the water rights portion of this thing, that that can
10 be reflected as a Federal contribution, if you will.

11 I have listened with a great deal of interest to
12 this discussion about the level of protection and balancing,
13 and basically, everything I know about that I have learned
14 today, and for what it is worth, I have come away convinced
15 that you can't establish the level of protection without
16 going through the balancing and without going through the
17 balancing first, and I think what I have learned is that
18 granted there are instream uses that are reasonable and
19 beneficial uses, or environmental uses that are reasonable
20 and beneficial uses, but that until you know what you are
21 trying to protect and what you are trying to protect those
22 things ~~from~~, and then, having decided those two things, how
23 you are going to balance those protections against the other
24 existing reasonable beneficial uses, you can't determine the
25 level of protection, and so, how can you say, well, we are

1 going to create a level of protection that's based on some
2 historic period, and we have heard what EPA proposed was the
3 '68 through '75 period.

4 How can you do that without doing the balancing
5 first? It just seems to me, and I became convinced
6 listening to the argument today, if you set the level of
7 protection first, you, in effect, jumped over the whole
8 balancing process and you have also jumped over what some
9 refer to as the threshold questions of -- well, what are the
10 biological objectives here that we are trying to protect;
11 don't those need to be described somehow, don't those need
12 to be quantified, don't the standards that you are going to
13 propose have to have some objective measurements associated
14 with them? How do you know when enough water is enough, and
15 how do you know when you are getting biological benefits
16 from that water?

17 I thought David Anderson's analysis on that was
18 excellent, so for what it is worth, I second David Anderson
19 on the level of protection argument.

20 The last thing I wanted to say is in response to
21 what the gentleman from the Bay Institute and EDF said about
22 basically why you should just cut to the chase and get to
23 the water rights phase of this thing, and quit fooling
24 around with water quality issues because everybody knows
25 what needs to be done.

1 I take exception to that remark. I don't think any
2 of us know what needs to be done.

3 Westlands, more than any other contractor or at
4 least as much as any other contractor, is interested in
5 getting to the point where the Federal contractors no longer
6 have to bear the burden of Delta protection, where there is
7 some equity or sharing of the pain, if you will, in terms of
8 where the water comes from to provide Delta protection.

9 We want to get to the water rights issues and we
10 want to deal with this on a state-wide basis, and basically,
11 we want everybody at the table -- and recognizing the area
12 of origin statutes have to be dealt with and it's going to
13 be a long and painful and contentious process.

14 We want to get there as much as anybody, but we
15 don't want to get there by having this Board simply role
16 over, if you will, for the EPA proposal, which is a flawed
17 proposal and not based on good science, based on maybe the
18 best science that's available right now, but it is certainly
19 not the best the technical people in this state and water
20 community are capable of producing.

21 And I guess if I had to live for another year or two
22 years or three years under the status quo, which means under
23 the constraints of the Endangered Species Act, that's still
24 preferable to having the Board simply adopt standards and
25 implement standards that don't do anything but just throw

1 more water at the problem, that don't do anything more than
2 ratchet it up another notch, which is basically a one-year
3 box, ratchet up and up and throw more and more water at it,
4 but there is no reverse on this machine. There is no way to
5 ever ratchet it down, and I guess I am a little skeptical or
6 suspicious of what some of the environmental groups might
7 have in mind.

8 We would strongly encourage the State Board to not
9 simply advocate water quality and water rights prerogatives
10 here and slog through this process one more time.

11 Like I say, I don't think any of us have the
12 answers, but I think collectively we are getting closer, and
13 Westlands is committed to working within the authority and
14 with Santa Clara and with Contra Costa and with Kern County,
15 and with the other urban agencies, and anybody else who has
16 relied on exports or is interested in resolving these
17 problems. We will be there and we will do what we can.

18 And I thank you for the time.

19 B. J., anything else?

20 MR. MILLER: Well, it's nice to be back at water
21 camp with the same issues, except everyone looks a little
22 older, ~~except~~ for the Board members.

23 Dan Nelson is the General Manager of --

24 MR. DEL PIERO: We didn't make them swear under oath
25 to tell the truth.

1 MR. MILLER: Dan Nelson is the General Manager of
2 the San Luis Delta-Mendota Water Authority and he would be
3 here today except his daughter was injured yesterday playing
4 softball, and he told me that I should come and I could say
5 anything I wanted to, then later on he called me back.

6 The San Luis Delta-Mendota Water Authority is an
7 association of 39 agencies who get Federal water out of the
8 Delta. It includes Westlands, the exchange contractors, the
9 Santa Clara Valley Water District and a number of other
10 agencies that make up what is generally known as the west
11 side.

12 San Luis Delta-Mendota Water Authority worked with
13 California Urban Water Agencies on the technical analysis of
14 the EPA standards and submitted comments on those standards
15 that were similar to what CUWA submitted.

16 In terms of what we have heard here today, the
17 Department of Water Resources' comments were particularly
18 interesting, I thought, and I think many of the agencies
19 that make up the San Luis Delta-Mendota Water Authority
20 would concur with those comments to the extent that there is
21 some conflict between them and what we said on the EPA
22 standards, and there are other members of the San Luis
23 Delta-Mendota Water Authority who would not necessarily
24 concur with the DWR comments.

25 One final sort of general thought -- I was thinking

1 back listening to all this here all day to something that
2 Don Kelley, who is a prominent fisheries biologist and who
3 is now retired, said a number of years ago at a meeting of
4 the Interagency Ecological Study Program where he sort of
5 lamented that we, he was using the term collectively, were
6 being asked to do something that was impossible, which was
7 to protect and restore the environmental values of the Delta
8 and to protect the reasonable uses of water by agriculture
9 and urban water users, and to do this without building
10 anything in the Delta.

11 And he commented that that was impossible. I think
12 it is probably impossible.

13 There may be a way to do it, but I think the reason
14 that the Board, this Board, has not been able to do it in
15 the past is that the task you have may not be doable. You
16 may not be able to balance and to do that without inflicting
17 serious harm on one or more of the users.

18 If that's true, then what prospect is there for this
19 Board to do something that's fundamentally different than
20 what EPA and the endangered species agencies can and are
21 doing?

22 The answer to that, I think, lies in the fact that
23 the Board has broader authority than these Federal agencies,
24 that you can do things toward solving these problems that
25 they cannot do.

1 So, I would urge you to step forward here in a big-
2 time way, I suppose is one way to put it. I would urge you
3 to assume that you are the way this problem is going to get
4 solved and not BDOC -- BDOC is a commendable process, but
5 you have two great advantages over BDOC. One is you are
6 legitimately and unquestionably powerful and BDOC may or may
7 not be. We will have to see, but there isn't much question
8 that you are.

9 I remember when I was on the Board how that was pretty
10 apparent.

11 And second, we are all pretty sure that you are
12 going to be here even if Kathleen Brown is elected, and we
13 are not sure of that about BDOC.

14 MR. DEL PIERO: The institution will be here. We
15 can talk about in terms later on (laughter).

16 MR. MILLER: You will be here for a while, which
17 actually maybe is one of the best things we could all hope
18 for.

19 MR. DEL PIERO: Thank you, B. J.

20 MR. MILLER: You know, you will have a parting shot
21 and you know you will be gone after that, but aside from the
22 possibility that we can through this and you will hear
23 something new on the technical side that will provide some
24 insights that your Federal counterparts have not had the
25 opportunity to consider, that's a possibility, but there are

1 three things that you can do that the Federal Government
2 can't do that I think you ought to strongly consider doing.

3 One, obviously, is you can -- as Tom Clark said --
4 spread the pain. You may be able to diminish the social and
5 economic effects of whatever standards you impose simply by
6 spreading around the Central Valley and into the export
7 regions. I kind of doubt that that's going to do the job.

8 There are two other things that I think are at least
9 worth considering without necessarily endorsing them.

10 One is a thing that Greg Thomas mentioned about the
11 environmental water fund, the idea of purchasing water for
12 the environment, rather than taking it in an involuntary,
13 uncompensated, relatively economically inefficient way.

14 It seems to me that is something worth considering.

15 And finally, you could do something about Delta
16 facilities. I am not exactly sure what that would be, but I
17 don't believe that you are powerful in that regard. I think
18 there are steps that you could take, maybe not under your
19 direct authority, but certainly, you have some power that
20 you can cause good things to happen in that regard, and I am
21 not suggesting that you cause something to happen that the
22 environmental interests would be strongly opposed to. I
23 think there is a way if you are creative and expansive in
24 the way you view your powers, to make some real progress in
25 that area, and possibly start to break up this logjam we

1 have had on that issue for a number of years.

2 And I hope you decide to take that on and not leave
3 that task to BDOC with its feeble power and its questionable
4 continued existence.

5 I think that's it.

6 MR. CAFFREY: Thank you very much, gentlemen.

7 Are there questions by Board members beyond the
8 discourse we have already enjoyed?

9 Mr. Del Piero.

10 MR. DEL PIERO: Mr. Miller periodically comes to
11 make presentations to this Board and it always strikes me
12 after he has made a presentation why he served on this
13 Board.

14 I listened very closely to what you said and I know
15 the other Board members did, too.

16 MR. MILLER: Thank you.

17 MR. CAFFREY: Thank you, B. J., and thank you, Mr.
18 Heaton.

19 Mr. Jackson, good afternoon.

20 MR. JACKSON: Good afternoon, Mr. Caffrey.

21 When I first started coming to camp, as Mr. Miller
22 calls it, it was seven years ago and I think we have had
23 five different camps, and since I have listened to all of
24 the testimony by all of the people, what I want to do is try
25 to recount what might be different about this camp.

1 What seems to be different is that in the years
2 since we have been gone, people have begun to realize that
3 gridlock hurts a different interest than it used to hurt.

4 In the first six years that I came here, gridlock
5 frustrated me tremendously because it was the public trust
6 that was dying and the gridlock essentially kept us from
7 doing anything about the trust.

8 And then, it became apparent as time went on that
9 the California public and the American public were not going
10 to stand for the greatest estuary on the Pacific Coast and
11 maybe, indeed, the greatest estuary on the planet, to die.

12 And I think the Board members themselves began to
13 realize that they didn't want to be responsible for its
14 death.

15 I have been through about four incarnations of
16 boards while this has been going on, and I realize that we came
17 very very close in D-1630 to going forward with an ecosystem
18 management approach long before ecosystem management became
19 a catch word of those who are dissatisfied with the
20 Endangered Species Act and the present gridlock which is
21 killing agriculture.

22 Now, what's happened in the last year is that
23 agriculture is beginning to die. It is beginning to die as
24 species do in different places. Some agriculture will go
25 before other agriculture because of its location.

1 When I looked at the notice, I realized immediately
2 the Board was not yet ready to be serious. The reason that
3 I know you are not ready to be serious is because the notice
4 does not deal with the whole equation. There are only two
5 things that we can do about reordering the supply of water
6 in the Delta and that it's water out or water in. We
7 haven't talked at all about water in.

8 Now, this Board knows, or members of this Board
9 know, or staff knows, that there's probably two million
10 acre-feet of water that need to be released from upstream
11 reservoirs upstream of the Delta in order to meet the
12 ecosystem standards of the rivers of California.

13 If that water were released, that would be
14 essentially an addition to the Delta that could then go to
15 solving the water problems of the 20 million people who live
16 in the urban areas of California and to solve the problems
17 of the half of agriculture that's south of the Delta.

18 Well, agriculture can't have it both ways. They
19 can't take water out of the Central Valley Project and the
20 State Water Project with those organizations being the only
21 ones responsible for salinity questions or endangered
22 species questions in the Delta, without requiring that their
23 brethren in agriculture release some water to come downhill
24 into the Delta to help us resolve this problem.

25 Now, I live in Northern California and I have lived

1 in Northern California all my life, and I believe in the
2 area of origin laws, the original reason. I believe in the
3 Delta Protection Act, but maybe we need to look at them
4 again.

5 Following straight California water law, which I
6 have been trying to do for this seven years, and it's now
7 become, I guess, my will, my business; it's become very
8 clear to me that if we applied straight water law to the
9 Delta, the Delta is over-appropriated and junior
10 appropriators would be kicked out. Great. We kick out the
11 mess.

12 How long is that going to last?

13 The idea of California water law removing the junior
14 appropriator in the Delta, the appropriator of surplus water
15 which Mr. Clark in his honesty agreed that that's what
16 happened when the State Water Project went in, but while the
17 law says we kick out the junior appropriator, that's not the
18 right result.

19 I think the Board needs to take as large a view as
20 possible. You do have the authority and the reason I keep
21 coming back is because at the end you are going to enforce
22 the law. You are the only ones who can and, consequently,
23 you need to take advantage of all your water right
24 authority, all your water quality authority, all of your
25 public trust authority.

1 It's kind of amazing to me to sit here and listen to
2 the people who are now talking about asking you to take
3 public trust jurisdiction of the Delta is the ag industry.
4 And yet, in the first five times to camp, they were the ones
5 who were asking you not to do that.

6 What's changed this? The urban water users are now
7 having to talk to their bankers. The Cortesi bill is only
8 the first step toward applying growth and water in order to
9 limit what's happening in urban California.

10 I would suggest this, that you take a look at
11 suggesting to the Legislature that they make a change. I
12 think we would all be in better shape if the urban water
13 users got every drop of their water before anybody in
14 agriculture or the environment got theirs.

15 Now, I understand that that's -- you know, I'm an
16 environmentalist and, of course, I may not be after making
17 that statement, but the point is that what drives California
18 water and the power of the urban areas is droughts and the
19 lack of water. And when that happens, we get these
20 screwball ideas about some law to pass that harms the
21 environment and harms agriculture.

22 If we can deliver 15 percent of the water first to
23 the urban areas, then we don't need to worry too much about
24 bad law caused by needs in the middle of a drought.

25 If you can take your water quality or water quantity

1 jurisdiction and your water rights jurisdiction and begin to
2 tinker with the 85 percent we have left, you can use it
3 conjunctively in many ways to help the environment.

4 The rice to wetlands is only one idea. We believe
5 that out of the 2 million acre-feet of water that should be
6 released down the rivers of California, that you can do that
7 very slowly. You can store water leaving you with more
8 ability to collect water in agriculture. A million acre-
9 feet could be stored in the rice areas alone to be released
10 when you need it for fish in the high flow period of the
11 spring.

12 You can try to work in the same way with conjunctive
13 use with groundwater in the rest of agriculture.

14 The point is that the Board is the only people with
15 enough authority to attempt to use water in California more
16 often than once for more purposes than one. And I would ask
17 you to do that because right now gridlock favors single
18 uses.

19 Now, I believe that that single use is the most
20 important because I believe that my children's children's
21 children are going to want to farm. They are also going to
22 want to duck hunt. They are going to want some ducks. They
23 are going to want to fish. They are going to want some
24 fish, so the idea here is that while the environmental
25 public trust is the key issue if we believe in our children.

1 It doesn't mean that we can't use all of this engineering
2 talent, all of this ability in management that we have
3 within the existing three-way process to use water.

4 I disagree with Mr. Miller. I hate to do that
5 because he is a very smart guy, so it means I am probably
6 wrong, but I have been wrong before.

7 So, I am going to suggest something. I suggest that
8 there is enough water and I suggest that it is simply a
9 matter of vision. I suggest it is simply a matter of people
10 like me, and like the people in agriculture, and people in
11 the urban areas looking at short-term bottom line for their
12 interest and growth and not long-term gain for California,
13 and I think this Board needs to do it.

14 I know there were three votes to do 1630 for one
15 minute at some point in the past. I think we ought to start
16 with 1630.

17 I don't think we need to have more hearings. I
18 think the evidence is in. I think we all know what it is.
19 I think we ought to take advantage of what's happened in a
20 year, which is that I believe that agriculture has now
21 realized that gridlock will kill them, and I think the
22 bankers have realized gridlock will kill the California
23 economy.

24 So, Mr. Caffrey, Mr. Del Piero, Mr. Stubchaer, and
25 the two new Board members whom I haven't had the opportunity

1 to meet, step up to the plate as we are all asking you to do
2 and knock this thing out of the park because people want it
3 done now, and you can do it now with the authority you have.

4 Look upstream, that's where your solution is.

5 MR. CAFFREY: Thank you very much, Mr. Jackson.

6 Are there questions of Mr. Jackson?

7 MR. STUBCHAER: Lots of questions, but I won't ask
8 them now.

9 MR. CAFFREY: How are things in Quincy?

10 MR. JACKSON: We are busy doing ecosystem management
11 in the forest. Actually, it's not as hard as you think when
12 people have the will to do it.

13 MR. STUBCHAER: I thought you lived in Santa
14 Barbara for a while.

15 MR. JACKSON: Actually, I don't live in Santa
16 Barbara. I am looking forward to the renewal in June of the
17 Santa Ynez hearings, however.

18 MR. DEL PIERO: Because it's such a pleasant place
19 to visit; isn't it?

20 MR. JACKSON: The thing about coming to Sacramento
21 is that there is some strange mystique that brings all of
22 these people from everywhere to the camp for all of these
23 hearings. I guess what I am saying is the Santa Barbara
24 solution lies in the Delta. The Mokelumne solution, the
25 Shasta Dam solution, it's all here.

1 MR. CAFFREY: Thank you, Mr. Jackson.

2 Laura King.

3 MS. KING: Mr. Chairman, I do have a couple of
4 statements on EPA standards that we submitted to EPA, and I
5 know staff has seen them.

6 MR. CAFFREY: Ms. King is representing East Bay
7 Municipal Utility District. She is the Environmental
8 Affairs Officer.

9 MS. KING: Thank you for that introduction. Most of
10 you on the Board are new to me. I am new to East Bay
11 Municipal Utility District. I have been with the District
12 for three months now and before that I was with the National
13 Resources Defense Council for over 16 years, and in that
14 capacity I appeared a number of times before the Board
15 dealing with agricultural drainage and Bay-Delta standards,
16 and the staff faces are certainly very familiar.

17 It's actually been a number of years, though, since
18 I came before the Board or was involved in the debate on the
19 Bay-Delta standards, and for me, I think, in contrast to
20 some of the other folks here, it's kind of a pleasure to be
21 back involved in the debate again and perhaps because I have
22 been gone for so long, I don't have the same sense of deja
23 vu that other people have been alluding to.

24 Actually, I think things have changed quite a bit in
25 the last five years or so, and the previous speaker, I

1 think, commented on that as well.

2 The District welcomes the State Board's re-entry
3 into this process, like a number of other speakers today.
4 Regardless of one's opinion about whether EPA has the
5 authority to issue standards, we all agree that it is the
6 State Board that needs to implement the standards.

7 Given the likelihood that EPA is going to be
8 revising the proposed standards over the coming months as
9 they indicated this morning, I believe it is really valuable
10 to have these workshops that you are holding to focus on the
11 key unresolved issues and I am optimistic that this Board
12 will find a way to develop standards cooperatively as
13 Chairman Caffrey alluded to earlier, and if they are
14 developed cooperatively, I think they have a good chance of
15 sticking.

16 I am not going to go through our statement on the
17 EPA standards in any detail because of how late it is. I
18 would like to just make a couple of points.

19 First, with regard to the urban proposal that you
20 heard about this morning on the salinity standards, one
21 point that I don't think completely came across in the
22 presentation this morning is that I don't believe that
23 anyone associated in that effort believes that the CUWA
24 alternative is the final word on the subject.

25 In fact, we are still looking at it ourselves and

1 discussing a number of the technical and scientific issues
2 with members both of the environmental and the agricultural
3 communities.

4 And so, it is quite possible that we will come back
5 at a later workshop and say, we think after reflection and
6 discussion that further modifications of the proposal that
7 was submitted to EPA are desirable, and hopefully, if we do
8 come back with changes, they will be changes that an even
9 broader group will be supporting.

10 I know that there's provision in one of the
11 workshops that is coming up later on to propose alternative
12 standards, and I assume that would be the suitable forum for
13 coming back with something like that.

14 I would like to turn now to two concerns that East
15 Bay MUD has regarding implementation of the standards, and
16 we have talked a lot today about are people really concerned
17 about the standards, or are they concerned about the
18 implementation, and obviously, it is both.

19 The first concern that we have, and let me just
20 preface by saying that East Bay MUD does very strongly
21 support the adoption of strong standards and we have been on
22 record taking that position for a number of years now.

23 But we have two concerns. One deals with upstream
24 impacts on our own river system, the Mokelumne River; and
25 secondly, we have a concern that we would like to highlight

1 for you today that regards the shared-pain philosophy.

2 On the upstream impacts, since Decision 1630 was put
3 out, we have been working on a management plan to improve
4 conditions on the Mokelumne River, and actually, we have a
5 plan that is under consideration here at the State Board as
6 we speak.

7 That plan is an attempt to balance the inflow, the
8 instream needs of the habitat with the needs of our 1.2
9 million customers. We are concerned that some of the kinds
10 of requirements that could be coming out of the EPA
11 standards or that could come out of the standards that you
12 adopt, may be in conflict with some of the actions that we
13 are considering or that we are already doing on the
14 Mokelumne, and I would like to just read from page 6 of the
15 letter just to emphasize the specifics on this.

16 We are concerned that changes in Delta hydrology
17 potentially required in the implementation of the standards
18 could adversely affect upstream and downstream migration of
19 salmonids on the Mokelumne. For example, any increase in
20 spring-time releases from the Camanche Reservoir on the
21 Mokelumne that might be required to comply with the
22 standards above and beyond the flows prescribed in our
23 management plan will reduce the lower Mokelumne River
24 weighted usable salmon rearing area, the principal indicator
25 of habitat availability and quality.

1 In addition, higher early spring flows, which
2 potentially will be required under the standards, could
3 prematurely move salmon fry and smolt into the Delta when
4 they are not physiologically ready to migrate, making them
5 more vulnerable to predation, entrainment and the effects of
6 less than optimum rearing conditions.

7 Also restricting water project pumping operations in
8 the early spring to comply with an estuarine habitat
9 standard would likely result in greater fall pumping and
10 higher cross-Delta flows of Sacramento River water that
11 would result from such operations may influence or obscure
12 olfactory and hydraulic cues utilized during upstream
13 migration and result in adult chinook and steelhead straying
14 from the Mokelumne to the Sacramento River.

15 So that's just to give you an indication of the kind
16 of possible conflicts with upstream needs if the standards
17 are not developed carefully, and we will be providing you
18 with more information specifically on that at the
19 appropriate point in the workshop process.

20 The second issue I just wanted to cover briefly,
21 share the pain, East Bay MUD is on record as saying that we
22 are willing to share part of the water costs for meeting the
23 standards despite the fact that we are not one of the
24 project operators, but we do have a concern that some people
25 when they talk about sharing the pain may have some kind of

1 formula across the board that would be per acre-foot of
2 diversion, and we don't believe that a straight across-the-
3 board formula is appropriate.

4 We believe it should be based on relative impacts on
5 the Bay-Delta, and we believe that our diversion upstream on
6 the Mokelumne have lesser impacts relative to diversion than
7 other exporters that are tied to pumping.

8 We will be providing more information at the
9 workshops on this as well.

10 I did see staff comments on EPA's proposed standards
11 raise this issue, suggesting that an across-the-board
12 formula was not necessarily appropriate, so I was pleased to
13 see that.

14 I think I will stop there and would be happy to
15 answer any questions.

16 Thank you very much.

17 MR. CAFFREY: Thank you very much, Ms. King.

18 Are there questions of Ms. King from Board members?

19 Anything from staff?

20 Thank you very much for being here. We appreciate
21 your input and thank you for waiting.

22 We do have three more cards. I will read the order
23 in which we will take them: Patrick Porgans, Greg Gartrell
24 and Alan Lilly.

25 Mr. Porgans, welcome.

1 MR. PORGANS: Thank you, Mr. Chairman.

2 MR. CAFFREY: Good to see you again, sir.

3 MR. PORGANS: Thank you very much. I am from the
4 water camp of the mid-1970s.

5 MR. CAFFREY: I believe there are two water camps.

6 MR. PORGANS: I was in the one when we had the D-
7 1485 issues.

8 MR. CAFFREY: You go back a ways.

9 MR. PORGANS: I don't want to sound like I am any
10 younger than Mike.

11 What I would like to address here today, and I think
12 it is along the same theme as what Mike was saying and Mr.
13 Miller was saying, and some of the views that the Board
14 shared with me and others in the past.

15 And I am sitting here and I am thinking about how
16 easy it is for me to decide how the water should be shared
17 because I don't operate any of the projects.

18 Now, I know that that's like a double-edged blade
19 because I don't have to go back and talk with the guys on
20 the quarterly report. I'm the type of guy that I believe in
21 fundamentals. I am fundamentalist. I am a born-again just
22 a basic fundamentalist, and what I am trying to grasp here,
23 and I am listening to what the Department of Water Resources
24 is saying, I am listening to what other agencies are talking
25 about, and I am trying to grasp the essence of how we can

1 transcend the so-called debacle and, you know, I could lie
2 and tell you I have all the solutions, but I am not going to
3 do that.

4 What I would suggest, however, is that one way we
5 need to deal with the problem is we have to recognize that
6 the problem has to be dealt with in its entirety. And I
7 don't sympathize with any member of this Board, you know,
8 being an election year or non-election year, because I
9 realize that you have certain limitations in terms of what
10 you can do, be it water rights issues, complying with
11 Federal water quality requirements, and going through a
12 process to develop standards that are called acceptable, and
13 at the same time trying to minimize the impacts associated
14 with the decision you make. Good luck.

15 My point today, and I want to keep this very simple,
16 and you will see why I am a fundamentalist, I don't even
17 want your standards. I'm not even asking for that. What I
18 am asking for, as I always do, and I know that most of the
19 Board members are new from '87, except for Mr. Caffrey --

20 MR. CAFFREY: I wasn't even here --

21 MR. PORGANS: Excuse me, see my memory is slipping.

22 MR. CAFFREY: I arrived in 1990.

23 MR. PORGANS: You are late to the water camp.

24 So, what is happening here with what I am looking
25 at, I see and I realize the concerns that the Department of

1 Water Resources have, you know, they have a project where
2 they can't quite meet the total demands, and I realize their
3 intrinsic problems in terms of financing and revenue, and
4 all these factors.

5 Please be mindful that I started a whole series of
6 reports on the state of the State Water Project in 1978. I
7 want to make sure my wife is not here. She told me I can't
8 come to water camp anymore. I am in the process of, and I
9 fear my wife more than I fear anything in government,
10 believe me. I have to live with her.

11 At any rate, don't let that out.

12 Anyway, my point is that I am in the process of
13 finishing the report on the state of the State Water Project
14 and I am looking at all these issues, supply, demand,
15 financing and management.

16 In 1980, and please, I am 40 volumes into water
17 rights. I have 40 fact-finding volumes done. I think I am
18 up to 17 on this one here. I lost track.

19 My point is that I have been talking about this
20 credit rating issue for some time. I discussed it with a
21 former fiscal adviser, Mr. Sanderson, a great man, and I
22 have foreseen this coming, and I'm suggesting to you that I
23 realize that there are problems and I realize the guys down
24 in the Central Valley have problems.

25 The issue here is that we can't react to conditions

1 that have evolved over decades. We need to respond, but we
2 need to respond in a way which is more in line with taking
3 into account that everybody is going to feel some pain. How
4 do we distribute the pain across the board?

5 I'm suggesting that, and if anyone comes here
6 pleading ignorance today, I am not going to let that happen.
7 We know that the provisions in the water supply contracts
8 under Article 18A and 18B foreseen shortages, possibility of
9 temporary and permanent shortages. It's there.

10 We know under Decision 1485 this Board has the right
11 to come back in and look at issues like salinity, terms and
12 conditions attached to permits. We know that the
13 Constitution -- I wrote it down, Article 10, Section 2 -- I
14 am not really smart, wrote it down -- all have these types
15 of limitations that are relative to the way these projects
16 are being operated.

17 I am suggesting that if we are really serious, and I
18 am not going to deny -- I give everybody the benefit of the
19 doubt, that the Governor is serious, the Board is serious
20 and we are going to move forward, and I suggest that we
21 cannot isolate the two issues. That's what, if I remember
22 correctly, was part of what the fight was over, that you
23 can't isolate water rights from water quality, and somehow
24 the Federal Government has the ball and you know how it
25 goes.

1 I need some assurances as a member of the public, I
2 am here as a member of the public today, and I am concerned
3 about future generations and I am not being paid to be here
4 today. I figured the amount of salaries that was sitting
5 out there by the hour today and I was astonished.

6 My point here is very simple. What we need to do is
7 we have to look at where the problem stems from. It's the
8 demand side. It's the changing priorities by the public.
9 It's the need to try to rectify problems that have been
10 evolving.

11 I strongly suggest that we can't do anything unless
12 we start looking at ways to see what's realistic in terms of
13 what amount of water we provide through these projects. I
14 am suggesting that we can keep agriculture productive, but
15 we have to change the way the water is allocated.

16 I called Standard & Poors and I talked to them. I
17 called all the boys back there and I informed them of what I
18 know is going on, at no cost, at no charge, because I
19 believe that we have a whole series of issues going on here
20 and it is not just the bankrupt Delta, it is not just the
21 potential of bankrupting the agricultural system, it's
22 bankruptcy in our whole system.

23 So, in conclusion, I stand by the way I have always
24 been. I am looking to try to resolve the problem. I want
25 to see agriculture stay productive, I want to see the fish

1 swimming in and out of that estuary, and I don't even fish,
2 I have no time.

3 And I am suggesting that all these things can be
4 done if everybody is willing to give up what they have to
5 give up in order to make the transition. The short-term
6 transition is probably a five-year period of time and we can
7 make the adjustments before we move into the 21st century,
8 we can retain our competitiveness in the global environment
9 and we can do all this with pre-existing resources without
10 causing significant damage.

11 If anybody wants to talk about, if they want to
12 really go for that, I'm here.

13 So, thank you.

14 MR. CAFFREY: Thank you, Mr. Porgans.

15 Any questions by members?

16 Thank you, sir.

17 Mr. Gartrell, good afternoon, sir.

18 MR. GARTRELL: Thank you, Chairman Caffrey and
19 members of the Board.

20 I am Gary Gartrell of the Bay-Delta Modeling Forum.

21 I have submitted a statement and I am going to
22 briefly summarize it.

23 The Bay-Delta Modeling Forum was recently formed
24 with the adoption of by-laws and is the result of the joint
25 effort by private, environmental and educational activities,

1 and State and Federal agencies, to develop a mechanism for
2 the exchange and improvement of the modeling information.

3 The Forum was established because of the consensus
4 there is a need to resolve technical disagreements in a non-
5 adversarial setting, to allow an open exchange of technical
6 information, and help insure that technical work continues
7 to take into account the needs of stakeholders and decision
8 makers.

9 The purpose of the Forum is to increase the
10 usefulness of models for analyzing the water-related
11 problems in the Bay-Delta estuary, to provide an open Forum
12 for the exchange, improvement and pooling of water-related
13 modeling and modeling information, to seek input from the
14 California water resources system stakeholders and decision
15 makers to better meet their modeling needs, to mediate any
16 technical disputes and conduct impartial peer reviews.

17 The Forum has recently conducted two well-attended
18 workshops on issues related to the proposed EPA standards.

19 The first concern is salinity/outflow relationships
20 and issues related to meeting the proposed standards, and
21 the second focused on the narrow issue of development of a
22 sliding scale to be used to implement the proposed
23 standards.

24 A third workshop is being planned in the near future
25 on issues related to biological aspects.

1 In the next several months, the Forum will be
2 developing a detailed work plan, beginning work on peer
3 reviews, establishing funding and selecting an executive
4 director.

5 The Forum is open to all the individuals and
6 entities who have an interest in the Bay-Delta system. It's
7 led by a steering committee and includes 15 State, Federal
8 and local agencies, as well as representatives from water
9 agencies and private, environmental and educational groups.

10 The general administration of the Forum will be
11 located in the Aquatic Habitat Institute and the peer review
12 related activities will be housed in the Lawrence Livermore
13 National Laboratory.

14 In conclusion, I would like to say the Forum urges
15 the widest participation in its efforts and hope that all
16 become active participants in its efforts to improve
17 communications on technical issues related to the Bay-Delta
18 estuary.

19 That concludes my remarks.

20 MR. CAFFREY: Thank you, Mr. Gartrell.

21 Any questions by Board members?

22 From staff?

23 Thank you, and I am sorry you had to wait so long.

24 We have one more card from Mr. Lilly. You get to
25 close.

1 MR. LILLY: Jerry Johns asked me if I was going to
2 pull it together. I will do my best and I will follow your
3 admonition and try not to repeat anything anyone else said.

4 MR. CAFFREY: The closing one always pulls every-
5 thing together.

6 MR. LILLY: Just for the record, I am Alan Lilly of
7 Bartkiewicz, Kronick & Shanahan, representing several water
8 districts in the Sacramento valley.

9 I wanted to start out with a compliment for this
10 Water Board. I am not sure there have been too many of them
11 given today. I think the staff --

12 MR. DEL PIERO: Let me prepare myself, please.

13 MR. LILLY: I am not sure whether or not you deserve
14 it, Mr. Del Piero. (laughter)

15 MR. DEL PIERO: I was hoping.

16 MR. LILLY: I don't know who drafted the comments on
17 EPA's proposed water quality standards, but while we didn't
18 agree with everything in them, I thought they were very
19 good, and frankly, they show that the Board has spent a lot
20 of time on these issues, and certainly has a very detailed
21 grasp, and I think very effectively pointed to the problems
22 of EPA's proposal.

23 I look at that as a very encouraging sign for this
24 process going forward.

25 My comments are down to four, and I will run through

1 them very briefly so we can all go home.

2 First of all, I think in any process that this Board
3 does in the Bay-Delta, it must recognize that simply
4 providing greater Delta outflows won't solve the declines
5 that have occurred. There are too many other things that
6 have happened. Some of those have been listed today,
7 certainly the diversions from the Delta, both by the
8 projects and the in-Delta users, the introduction of exotic
9 species, the harvesting of species, both in the ocean and
10 inland, particularly salmon and striped bass, various forms
11 of water pollution, the filling in of wetlands, tidelands
12 and other habitat; these are all things that have happened
13 over the last 20 years that won't be corrected simply by
14 throwing out more water into the Delta, and I think the
15 Board has to recognize that as part of the decision-making
16 process.

17 It may simply not be possible to restore conditions
18 that existed in the past. I don't think the Board should be
19 ashamed or hesitant to make recommendations to other
20 regulatory agencies, particularly the State and Federal
21 agencies that have control over the harvest of both ocean
22 and inland fishes.

23 To the extent that the Board finds through its
24 detailed scientific inquiry that that is part of the
25 problem, while the Board can't regulate, it certainly has

1 the authority to make recommendations to those other
2 agencies, and should do that.

3 Obviously, water quality is something within the
4 Board's concern and that needs to be addressed as well
5 because that certainly is part of the cause of the problems
6 that we have today.

7 The second point I would like to make, and I think
8 others have made this, and this is why I really am
9 encouraged with the Water Board's detailed comments to EPA
10 and I think it is very clear by now that any plan or
11 decision involving the Delta has to be based on a detailed
12 scientific analysis, both biological and hydrological. I
13 think that is the big problem of EPA's proposed standards,
14 that the Board's staff and others have pointed out very
15 effectively, and frankly, I think that was the fundamental
16 problem of D-1630 and the 1988 proposed standards that were
17 eventually withdrawn by the State Board and the staff.

18 It is just not going to work to say that standards
19 or requirements that do have large impacts don't have large
20 impacts. It just won't work and it doesn't, frankly, allow
21 the Board to perform its proper balancing process.

22 Going on, I just wanted to comment on point No. 3
23 regarding flow and diversion policies that Mr. Schulz
24 alluded to. I am certainly not going to repeat legal
25 argument at this late hour. I think it is clear that the

1 Board has some legal authority to do that, either as a water
2 quality policy or under its general water rights authority,
3 and I think it is very important that any plan that's
4 adopted or any other resolution or decision that's adopted,
5 follow this process.

6 Clearly, separate out that flow requirements are not
7 water quality standards that are submitted to EPA. It's,
8 obviously, a different thing and it just doesn't work to
9 have flow be treated as water quality when it is not water
10 quality.

11 Finally point No. 4, implementation, there's been a
12 lot of talk about implementation today, and my understanding
13 is that the water quality plan that the Board envisions
14 adopting will have an implementing element as required by
15 Porter-Cologne, and as past water quality control plans
16 have.

17 However, it's also my understanding that the details
18 of water rights will be deferred to the follow-up water
19 rights hearings, very similar to how the 1991 plan did that.

20 With that understanding, I won't go into this in
21 detail, but there are a couple of things that I have to
22 respond to based on numerous comments from other people.

23 First of all, I think everyone says they recognize
24 the county of origin and watershed protection statutes, but
25 they don't think this Board should follow them, is what I

1 hear several comments saying.

2 Well, we, obviously, on behalf of the Sacramento
3 Valley Water Users, disagree with that. Those statutes were
4 the basic premise on which agreement was reached to build
5 the Central Valley Project and the State Water Project. In
6 each case, the political decision was made that the
7 Sacramento Valley would not be turned into another Owen's
8 Valley, and frankly, just taking away water rights will be
9 even worse than what happened in the Owen's Valley. At
10 least those landowners received some compensation for their
11 water and land that was taken away.

12 There's been the comment that everyone has an effect
13 on the Delta and, therefore, everyone must mitigate those
14 effects. Again, we will go into more detail in the water
15 rights phase, but I just ask the rhetorical question, does
16 anybody think we would have been here today if the Water
17 Board would have started the proceeding back at least with
18 D-990, which is the first one I'm aware of, leading up to D-
19 1485, D-1630 to today, and EPA standards, if the Central
20 Valley Project and the State Water Project had not been
21 built and started diverting water which has reached up to 6
22 million acre-feet per year?

23 I think it is very clear that that is -- I don't
24 know whether I would say it is the straw, that might be the
25 800-pound gorilla that broke the camel's back as far as the

1 Delta is concerned.

2 Finally, Mr. Jackson and I have dealt with each
3 other in other forums and I just have to comment on this 2
4 million acre-feet of water in the Sacramento Valley.
5 Obviously, he is alluding to the Yuba River and we have a
6 disagreement on that. I think the hearing we held on the
7 Yuba River made it very clear that, number one, there is no
8 decline in the species in the Yuba River that justify the
9 higher flows that he and others were advocating, certainly
10 no scientific proof in DFG's own IFIM analysis that those
11 were necessary, and also, there was clear proof that
12 releasing tremendous amounts of additional water for greater
13 instream flows would have adverse and substantial adverse
14 impacts on the local water users.

15 So, I think that just highlights the point that
16 there are no simple answers. There is not simply a large
17 amount of water waiting somewhere to be devoted to the
18 Delta, and I know, particularly for Yuba County Water
19 Agency, one of my clients, there has been a feeling they
20 made all that money in '87 through '91 with water transfers,
21 so they must have an infinite amount of water that they are
22 holding back which could be devoted to the Bay-Delta.

23 That is just not true. Timely precipitation was
24 higher than the drought-year conditions in the rest of the
25 state in those years, so Yuba had some water to transfer,

1 and also, its local demands were lower even than they are
2 today, having increased by approximately 50,000 acre-feet
3 just between that period and today.

4 So, there is not a simple solution like that and I
5 think that just highlights the general point here.

6 We need a detailed hydrological analysis, and we
7 need responsible balancing. That's the only way that we are
8 going to solve this problem.

9 I do appreciate your patience in waiting for me
10 until five o'clock.

11 MR. CAFFREY: Thank you very much, Mr. Lilly. Good
12 to see you again.

13 Any questions of Mr. Lilly by Board members? Staff?

14 Thank you, sir.

15 That completes the cards for today.

16 Let me just say that when next we meet it will be
17 May 16. We have noticed that workshop. We have three
18 subjects for that day. We also have set aside the dates of
19 May 17, 23 and 24, for any discussion that may extend over
20 and there may be a good likelihood that we will have to
21 avail ourselves of some of those days.

22 I want to thank you all for being here today. It's
23 been a fairly long day and I think we will have some longer
24 ones as we go through this process.

25 Unless there are any closing statements that any of

1 the Board members want to make or anything from Mr. Pettit
2 or the staff, and I don't see a response, we will conclude
3 and we will see you on May 16.

4 Thank you very much.

5 (Thereupon the workshop was concluded.)

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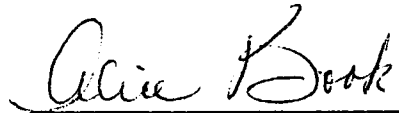
REPORTER'S CERTIFICATE

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This is to certify that I, ALICE BOOK, a Certified Shorthand Reporter, was present during the workshop held on April 26, 1994 by the State Water Resources Control Board to review Water Quality Standards for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary;

That I recorded in Stenographic writing the statements given; that I thereafter caused the stenographic writing to be transcribed into longhand typewriting and that pages 1 through 211 herein constitute said transcript, and the same is a true and correct of my said stenographic writing for the date and subject matter hereinabove described.

Dated May 9, 1994



Alice Book, CSR No 43