

BEFORE THE
CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

Board Meeting Item Four:)
Consideration of a Proposed)
Resolution to Adopt)
Amendments to the Water)
Quality Control Plan for the)
San Francisco Bay/Sacramento-)
San Joaquin Delta Estuary)
and Adopt the Final)
Substitute Environmental)
Document)
_____)

JOE SERNA, JR.-CaleEPA Building

COASTAL HEARING ROOM

1001 I STREET

SACRAMENTO, CALIFORNIA

Wednesday, August 22, 2018

9:38 A.M.

Volume 2A

Reported by:
Peter Petty

APPEARANCES

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

Division of Water Rights

Board Members Present:

Felicia Marcus, Chair

Steven Moore, Vice Chair

Dorene D'Adamo

Tam M. Doduc

E. Joaquin Esquivel

Jeanine Townsend, Clerk to the Board

Marji Popour, Executive Office

STAFF PRESENT

Eileen Sobeck, Executive Director

Jonathan Bishop, Chief Deputy Director

Eric Oppenheimer, Chief Deputy Director

Michael A.M. Lauffer, Chief Counsel

Andy Sawyer, Assistant Chief Counsel

William Anderson, Division of Water Rights

Phil Crader, Division of Water Rights

Erin Foresman, Division of Water Rights.

Tina Cannon Leahy, Office of Chief Counsel

Erin Mahaney, Office of Chief Counsel

Yuri Won, Office of Chief Counsel

APPEARANCES (Cont.)

STAFF PRESENT (Cont.)

Daniel Worth, Division of Water Rights

ALSO PRESENT:

PUBLIC COMMENTERS

George Soares, Karn, Soares and Conway, LLP

Gordon Hollingsworth

Dave Warner

Patti Regehr

Julianne Frizzell

John Sweigard, Modesto Irrigation District

Shannon McEntee

Virginia Tincher

Victor Rosasco

Joe Amodio

Tim O'Laughlin, San Joaquin Tributaries

Chris Scheuring, California Farm Bureau Federation

Vito Chisea, Supervisor, Stanislaus County

Joe Daly, Tuolumne River Trust

Anna Brathwaite, Modesto Irrigation District

Percilla Frizzell, Sacred Generations

Susan Rowinski

Debbie Webster, Central Valley Clean Water Association

Chad Tienken, Modesto Irrigation District

APPEARANCES (Cont.)

PUBLIC COMMENTERS (Cont.)

Karna Harringfeld, Stockton East Water District

Ann Clark, Tuolumne River Trust

John Kreiter, Tuolumne River Trust

Meredith Nikkel, North Delta Water Agency

Valerie Nera, California Chamber of Commerce

John Herrick, South Delta Water Agency and Central Delta
Water Agency

Justin Fredrickson, California Farm Bureau Federation

Scott Schoettgen

David Ragland

Patrick Koepele, Tuolumne River Trust

John McManus, Golden Gate Salmon Association

Jacky Douglas, Golden Gate Salmon Association

Tom Orvis, Stanislaus County Farm Bureau

Michelle Connelly, California Walnut Commission

Mary-Ann Warmerdam, Rural County Representatives of
California

Jacklyn Shaw

Patrick Porgans, Porgans and Associates

Steve Boyd, Turlock Irrigation District

Michael Carlin, San Francisco Public Utilities Commission

Gary Bobker, The Bay Institute

Doug Obegi, National Resources Defense Council

Jay Ziegler, The Nature Conservancy

APPEARANCES (Cont.)

PUBLIC COMMENTERS (Cont.)

Brian Johnson, Trout Unlimited

Steve Rotherth, American Rivers

Chris Shutes, California Sportfishing Protection Alliance

Bruce Blodgett, San Joaquin Farm Bureau

Charlton Bonham, California Department of Fish and
Wildlife

Dierdre Des Jardins, California Water Research

Mark Tompkins, FlowWest

Michelle Banonis, California Department of Water
Resources

Louise Conrad, Department of Water Resources

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P R O C E E D I N G S

9:38 A.M.

SACRAMENTO, CALIFORNIA

WEDNESDAY, AUGUST 22, 2018

CHAIR MARCUS: Welcome at 9:38 to this continuation of the hearing we started yesterday on the San Joaquin River South Delta Update to the Water Quality Control Plan for the Bay-Delta.

I'm not going to go back over all the opening. Many of you, actually, were here yesterday. Let me just say a few things. And I anticipate that we'll have more people, substantially more people joining us through the course of the morning and the day. I want to talk a little bit about how the proceedings have been going, for those of you who aren't here.

And today will be a little bit different than yesterday because the handful of groups that asked in advance, which is important to do, that's part of our process, to have a little more time all decided to go today because of all the people who were waiting yesterday, so they would have a chance to speak. So again, I want to thank all of those presenters for understanding that we'll be here the whole time and listening

1 to you, and very much appreciate folks
2 accommodating all the folks who came in yesterday
3 making it a long day, but not an intolerably long
4 day, well, at least for me. But anyway, those of
5 us who are extraverts were fine. Those of who
6 were introverts were wiped out.

7 So let me start with some of the basic
8 announcements because many of you aren't with us
9 all the time, and this is true of every meeting
10 we have in this building. Please take a look to
11 see where the nearest exit is. And if you hear
12 an exit -- an emergency sound -- I'll finish this
13 coffee and I'll get the words right. I just
14 need -- I'm a little late on the caffeination
15 this morning. If you hear a sound that sounds
16 like a Star Trek red alert Klaxon, when you hear
17 that, it's either an emergency or a fire drill
18 that's poorly timed, but we need to deal with it.
19 We can't ignore it because you never know. So if
20 you hear one of those sounds, just proceed
21 carefully with your friends and your stuff and go
22 down the stairs, not the elevators. If you need
23 help and can't use the stairs, emergency
24 personnel in vests magically appear and will help
25 you to a protected area, and there are a number

1 of them on every floor.

2 The other thing is that the meeting is
3 being webcast and recorded. I mean, we can hear
4 you at the microphone, but we really want people
5 in the back of the room and in the satellite
6 rooms and on the web to be able to hear you.
7 We're also recording it, so it is very important
8 that you speak into the microphone, not so close,
9 like a rock star, because that creates a staticky
10 sound on the other side, I'm told, but close
11 enough that it gets picked up. That's really
12 important.

13 Also, please take a moment to check any
14 noise-making devices and set them on silent, off,
15 do not disturb, whatever your usual preference,
16 just out of courtesy to everybody else.

17 As I said, we have a satellite room, the
18 Sierra, which is the one right next to us. It's
19 different than yesterday, which was the Klamath.
20 I don't anticipate we'll need the Klamath, as
21 well. There's also -- we've set up video
22 capability in this outer lobby, so that people
23 can also be out there and watching what's going
24 on.

25 The Fire Marshal is very strict about the

1 room. Once this room fills up, people can't be
2 standing along the back in a full room. And we
3 do have to obey the Fire Marshal's rules as a
4 professional courtesy, I suspect, among
5 regulators.

6 What else is sort of the basics? Have I
7 forgotten a basic? I've done the three rules.
8 The webcast? I've got all that. All right.

9 So here's how we're going to go to make
10 sure everyone can be heard. Again, I do
11 anticipate that there will be more people coming
12 in, from what I've heard or people have said.
13 That may or may not be the case.

14 If you wish to speak, you need to fill
15 out a blue speaker card as early in the day as
16 possible so that I can, in fact, gage it. It's
17 very difficult if we're timing it out and giving
18 people an amount of time, and then all of a
19 sudden I get a flood of cards at the end. And
20 all of a sudden we've gone much later than people
21 anticipate. So it's just as a courtesy.

22 If you have a time sensitive deadline,
23 give it to us. We've tried to accommodate people
24 throughout, so, for example, the one person who
25 has to leave early, I'm going to take first. We

1 also have the groups. Well, also, somebody else
2 who I said could speak, so speaking early.

3 We have just a few speakers that asked
4 for more time. They represent significant groups
5 and players. Others have chosen to just have
6 lots of people talk. If you all have some time
7 preferences during the day, I'm happy to try and
8 do it. Otherwise, I just sort of kind of
9 scramble them in order. But there's just four of
10 them.

11 And then we'll be closing with a panel
12 from CNRA at the end of the day, Department of
13 Fish and Wildlife Director Chuck Bonham and
14 whoever he's bringing with him, just to talk
15 about -- to talk about the science that they've
16 been working on to how we blend non-flow and flow
17 and show comparable benefits, so that will be
18 very interesting, I think, to hear.

19 I encourage -- is the staff presentation
20 from yesterday up on the web? Has it been
21 posted?

22 UNIDENTIFIED MALE: (Off mike.) No. No.

23 MS. FORESMAN: No. We haven't. I think
24 it's still on Jeanine's computer. So if we need
25 to pull slides from it today, we can do that.

1 CHAIR MARCUS: That's great. I'd just
2 like to position it at some point --

3 MS. FORESMAN: Okay.

4 CHAIR MARCUS: -- so people can look at
5 it, because I don't want to go back over stuff
6 for people here today.

7 MS. FORESMAN: Okay.

8 CHAIR MARCUS: I just want to encourage
9 them to look at the materials on the web.

10 MS. TOWNSEND: (Off mike.)
11 (Indiscernible.)

12 CHAIR MARCUS: Why don't you put it on --

13 MS. FORESMAN: We'll have it --

14 CHAIR MARCUS: -- your program page?

15 MS. FORESMAN: -- listed today. We'll do
16 that.

17 CHAIR MARCUS: That would be terrific.

18 MS. FORESMAN: Okay.

19 CHAIR MARCUS: And then I know that
20 there's a frequently asked questions list that
21 went up, as well as a response to comments. And
22 I already have notes on additional frequently
23 asked questions because they've been asked
24 frequently in the course of the last day. So I
25 suspect there will be more, so watch that as it

1 evolves.

2 We're starting with three minutes per
3 panelist. If we end up with a mass number of
4 people and it starts getting late in the day, I
5 will cut it to one or two minutes. I haven't had
6 to do that yesterday and people stayed. I didn't
7 yesterday. I didn't feel the need to also give
8 people the opportunity for sort of the me to,
9 which is if I have a very full room with a ton of
10 people who need to go, I will sometimes allow a
11 lineup of people just to put their name on the
12 record and say they agree with a previous
13 speaker, not to do -- not to use it as a way to
14 jump in line on a comment, but I didn't feel the
15 need to do that yesterday. I'll have to see what
16 happens and evolves today.

17 Also, there were a number of people,
18 though, because we did go late in the day, not --
19 maybe six or seven people who, I called their
20 name and they weren't here. I see some of their
21 cards back in the stack, so they must have come
22 back in this morning. But if you're someone who
23 put in a card yesterday, you're back and you
24 haven't already spoken to the clerk to let her
25 know you're back and would still like to speak,

1 please go ahead and let me know. And if you end
2 up not being at the very -- should I -- Jeanine,
3 the cards of the people who didn't speak
4 yesterday that I found in the pack, are they in
5 the order in which they came in this morning?

6 MS. TOWNSEND: (Off mike.)
7 (Indiscernible.)

8 CHAIR MARCUS: There are just a couple of
9 them that aren't at the back.

10 MS. TOWNSEND: The ones from yesterday?

11 CHAIR MARCUS: Yeah.

12 MS. TOWNSEND: Yeah. No, they're in
13 the -- yeah, they're in the back.

14 CHAIR MARCUS: But, no, there were a few
15 that weren't in the back.

16 MS. TOWNSEND: The ones that are on the
17 very front (indiscernible).

18 CHAIR MARCUS: No, there are a few in
19 the -- I may -- I just don't want -- let's just
20 say, if you're here, if you were here yesterday
21 and you filled out a card and you didn't get to
22 speak and you want to speak -- we don't have a
23 zillion cards yet today. If you don't want -- if
24 you want to speak earlier today, just let Jeanine
25 know and we'll pull you up because you were here

1 yesterday too. That's all I'm trying to get at.

2 All right, with that, I think I'm ready
3 to go. Am I forgetting anything? Okay. Great.

4 And so what I'm going to do with the
5 folks who asked for more time, I'm going to
6 intersperse you with the individual speakers
7 because, again, I want to get to the individual
8 speakers, so I call them in groups of five, so
9 you have a sense. I don't think people are in
10 the overflow rooms yet, so I could do it in
11 threes. But I'll go ahead and do it in fives so
12 you have a little bit of time to get ready to
13 come up. All right.

14 I sure feel like I'm forgetting
15 something, but I'll just say it when it comes up.

16 So here are the first five speakers for
17 this morning. First, George Soares on behalf of
18 several groups, followed by -- somebody from
19 Modesto Irrigation District wanted to go again
20 early, but I don't know which card that is.

21 Is --

22 MS. TOWNSEND: It's Merced.

23 CHAIR MARCUS: Oh, it was Merced? Oh, I
24 thought someone said it was -- is that -- so, Mr.
25 Sweigard, okay, we'll take you right after the

1 first five then. I got it.

2 MS. TOWNSEND: (Off mike.)

3 (Indiscernible.)

4 CHAIR MARCUS: Oh, thank you. We also
5 have an interpreter available. So if anybody
6 needs interpretation, obviously, the three-minute
7 limit, it will become six for the interpretation.
8 And there he is, raising his hand. So if you
9 need an interpreter, please let us know. Espanol
10 over there. Right.

11 So, okay, so Gordon -- George Soares,
12 followed by Gordon Hollingsworth, Dave Warner,
13 Patti Regehr, Regehr, I think. Correct me if I
14 get this wrong or mangle it, Julianne Frizzell.

15 Hi.

16 MR. SOARES: Hi.

17 CHAIR MARCUS: Good morning, Mr. Soares.

18 MR. SOARES: Good morning.

19 CHAIR MARCUS: Oh, and please restate
20 your name and affiliation for the record, even if
21 I've just said it, so --

22 MR. SOARES: George Soares with the Law
23 Firm of Karn, Soares and Conway, on behalf of
24 four agricultural organizations. I think they're
25 all known to you but I'll mention their names

1 now. American Pistachio Growers, California
2 Citrus Mutual, California Cotton Ginners and
3 Growers Association, and Western Ag Processors
4 Association.

5 So, Madam Chair and Members, thank you
6 for this opportunity to speak. My clients have
7 asked to do a little bit of a big picture with
8 you in my three minutes.

9 Seven, almost eight years ago, this
10 administration made a big point about breaking
11 down silos. And we were encouraged by that. We
12 thought that that would result in equitable
13 resolution of problems. That may be happening
14 with this Board, but it doesn't feel like it.
15 And so maybe that's our shortcoming, but we'd
16 like to figure out how this Board is going about
17 breaking down silos and getting information from
18 all corners and the like. And we'd be happy to
19 cooperate in that effort, as well.

20 My clients asked me to draw a parallel
21 with these wildfires. It's been dismissed by
22 some in government that wildfires are because of
23 climate conditions and the like. We think it's
24 bigger than that. We think it's one-dimensional
25 decision making. We think that's decades in the

1 making. And we think it's out of control.

2 And so now we draw that parallel with
3 water. We think we're at least three decades
4 behind in dealing seriously with the complexities
5 of our water situation. I don't think that's
6 news to anybody. We're at least three decades
7 behind. We think we're -- we've been engaged in
8 patchwork decision making now for several years,
9 decades, again, patchwork on top of patchwork.
10 As a result, we're getting unintended
11 consequences for that action, wildfires, water,
12 meaning as big as wildfires are, this water
13 thing, as we all know, is as big as that, at
14 least in my clients' view.

15 So we have some simple requests. We want
16 this Board to expand its search for balance in
17 its decision making. It goes back to that silo
18 discussion that I mentioned briefly. We think
19 it's critically important before you move on
20 issues of this magnitude that you resolve issues
21 like this conflict between the state and the
22 federal government, relative to authority. The
23 federal government was speaking yesterday on that
24 issue. I read their six-page letter. You'll
25 have your own opinion on it, but there's a

1 conflict. And it seems to me that those kind of
2 conflicts need to get themselves resolved, as
3 opposed to making decisions and then facing that
4 sort of problem later on. We think you need to
5 focus on the human condition.

6 We understand the needs for fish.

7 I need just about one more minute if I
8 can, Madam Chair.

9 CHAIR MARCUS: That's okay. I want to
10 get to the other points.

11 MR. SOARES: We understand the focus of
12 fish of this Board. We also understand the human
13 condition needs to be addressed, as well.

14 We're looking for solutions, like you
15 are, that are all encompassing. But I don't hear
16 much conversation from this Board about the human
17 condition. There's 40 million people in this
18 state. There's millions in rural areas. There's
19 real people. We are here. What are we going to
20 do with all these people as you're doing your
21 decision making? I'm not intending to be
22 offensive, but it looks like patchwork again. If
23 we keep getting patchwork, we continue to
24 perpetuate the wildfires.

25 We really encourage you to delve into

1 human conditions, as well as fish conditions.
2 And we'd like you, and with all respect, to
3 exercise your authority in a less threatening
4 way. Now you may not think it's threatening on
5 your end. But when you're on the receiving end,
6 it's pretty serious business. And it's sending a
7 lot of shockwaves through rural areas of
8 California. And it's having significant negative
9 impact, just the notion of your proposal.

10 We're encouraging you to do more
11 outreach, to engage more with real people as you
12 do the job that you're hired to do. I don't know
13 if that changes the outcome, but it would sure be
14 helpful to get people willing to engage instead
15 of we start with a fight and go from there.

16 So I want to stop there. That's
17 basically the sense, the opinion of the clients
18 that I just mentioned to you. We're available to
19 help wherever we can, but we can't, we just
20 can't, tolerate this periodic conflict that
21 destabilizes what we're trying to accomplish in
22 our lives. So we look forward to working with
23 you.

24 CHAIR MARCUS: Thank you, Mr. Soares. I
25 did let you go. That's a good start for the

1 morning.

2 One of the things I didn't say this
3 morning is that in the interest of hearing from
4 everybody, we don't get into a conversation with
5 everyone in a meeting with this many people. And
6 I don't want to either get into an argument with
7 you, but I appreciate that offer, and I'm happy
8 to meet with you later on.

9 I will just say that the balancing is
10 very much in evidence in the proposal already.
11 And that's not to say it's perfect, but you -- if
12 you're here all day or you were here yesterday or
13 you're in my email feed or Twitter feeds out
14 there, there is anger on both sides and a sense
15 that we're balancing enough, because we've
16 started in a place that's nowhere near what some
17 of the science suggests. And so you just have
18 very different world views.

19 And I do think that, and I mentioned this
20 a little bit yesterday, the idea of engagement
21 and collaboration is a two-way street. So there
22 are -- there's all kinds of misinformation out
23 there that is scaring people. There's plenty to
24 be concerned about, which is why we're not going
25 for the top number and they're still

1 considered -- it's exactly why. And people are
2 unhappy with us on both sides. So we're
3 searching for that space, but we actually need
4 help sometimes in being able to have that back
5 and forth conversation, as opposed to being
6 caricatured at times.

7 But I understand people's
8 misunderstanding. There's plenty, it's
9 complicated, and there's a lot of misinformation
10 out there. So I think 99 percent of the folks
11 who are out there are just honestly -- just have
12 different views, have been told things. And I
13 can see why they're concerned, but we actually
14 are trying to get to the place that you're
15 suggesting.

16 But I look forward to continuing that
17 conversation with you --

18 MR. SOARES: Thank you.

19 CHAIR MARCUS: -- and appreciate your
20 help.

21 MR. SOARES: Thank you.

22 CHAIR MARCUS: All right, that's a way to
23 set the morning a little bit.

24 Mr. Hollingsworth, followed by Mr.
25 Warner.

1 MR. HOLLINGSWORTH: Good morning. I'm
2 Gordon Hollingsworth. I'm from --

3 COURT REPORTER: You mind moving closer
4 please?

5 MR. HOLLINGSWORTH: My name is Gordon
6 Hollingsworth.

7 CHAIR MARCUS: That's not -- well, you
8 must be tall. Try to just step a little closer.

9 MR. HOLLINGSWORTH: Okay. How are we
10 doing now?

11 CHAIR MARCUS: Do you hear him on the --
12 is he good now? Okay. Thank you. Sorry.

13 MR. HOLLINGSWORTH: Okay. And I'm from
14 Modesto, California, and I'm representing myself.

15 And I'd first like to say that I think
16 the Board has done an excellent job of public
17 outreach and offering hearings like this, which
18 are probably required by law. But there's --
19 it's very easy for us to come here and make
20 comments. And I think that's important because I
21 think you're institutionally doing very good at
22 what you're trying to do.

23 CHAIR MARCUS: Well, trying. It's never
24 enough, actually. I wish we could do more.

25 MR. HOLLINGSWORTH: It's a bureaucracy.

1 In any case --

2 CHAIR MARCUS: Time.

3 MR. HOLLINGSWORTH: -- what I have to
4 offer is generally anecdotal, but I still think
5 it's important because it's based upon my
6 personal observations.

7 I came to Modesto in 1974. I've always
8 been interested in the outdoors. I've always
9 been interested in fishing. And it became almost
10 a religious ritual for me every fall to visit the
11 Tuolumne River at LaGrange, and then the
12 Stanislaus River at Knights Ferry, and observe
13 the spawning salmon. And what I have observed
14 over the years is that the runs are declining,
15 which you know.

16 When we have good outflows in the spring,
17 roughly three years later the returns are much
18 better. When we have a drought, the returns
19 three years after the drought are vastly
20 diminished. And the thing which is -- most
21 concerns me is that the trend is downwards, as
22 you know.

23 So I'm here to state that and to support
24 the general idea that fish need water to survive.
25 I've paid some attention to what the local

1 irrigation districts have done on both the
2 Stanislaus and Tuolumne Rivers about improving
3 habitat by spending millions of dollars on
4 spawning bed improvements. And I think those
5 efforts had great merit, but they have not been
6 effective.

7 So I think the only reasonable
8 alternative at this point is to release a lot
9 more water in the spring. And I support every
10 effort to do so.

11 And thank you again for the opportunity
12 to make these comments.

13 CHAIR MARCUS: Thank you.

14 Mr. Warner.

15 MR. WARNER: Thank you. My name is --

16 CHAIR MARCUS: Oh, there you are.

17 MR. WARNER: My name is Dave Warner. I'm
18 a long-time resident in Palo Alto. Thank you for
19 serving to the State Water Board and thank you
20 for protecting the public trust.

21 The voluntary settlement negotiations are
22 a mysterious process, likely, to most of us here.
23 To my knowledge, they are between some of your
24 sister state organizations and the effected water
25 districts with, by the way, no environmental

1 organizations involved. It appears that at least
2 part of the reason for how long it is taking you
3 to make your decision is to give more time to
4 settlement negotiations. As you know, giving
5 more time to settlement negotiations at the
6 expense of delaying a decision and delaying
7 benefit to the ecosystems is a valuable
8 concession.

9 The suggestion is that you only give more
10 time if the parties give you a significant --
11 such a significant concession that demonstrates
12 to you that the additional time will have a high
13 probability of resulting in a win-win negotiated
14 settlement.

15 Here's an example from industry. At a
16 high-growth tech company, we had one of our sales
17 teams working for almost two years on a large,
18 multi-million dollar sales opportunity that would
19 have been significant for the company. The
20 status reports from the sales team were, we're
21 making progress. We met with this executive or
22 that one and the discussions went well, and we
23 think we'll close the deal in X weeks. But, of
24 course, the sale kept getting delayed and their
25 predictions for the dates for closing kept

1 getting missed. And during this time the sales
2 team wasn't selling much else.

3 Luckily, the company hired a new Sales
4 VP. One of the first things the new Sales VP did
5 was to tell the sales team to go get something
6 from that perspective customer that demonstrates
7 that they intend to close the deal, or the sales
8 team needs to stop working this opportunity.

9 So the sales team went to the prospect
10 and explained the situation and said that they
11 needed a good-faith, modest \$50,000 order, much
12 less than millions, in order to keep working with
13 the prospect. The prospect said no. That was a
14 sad ending to years-plus of work.

15 But then the sales team moved on to other
16 sales opportunities, often using the same
17 technique, and became very successful selling to
18 other prospects, as some definitely did make the
19 good-faith orders that led to large sales.

20 In your case the sister agencies are like
21 your equivalent of a sales team in this example.
22 What could the sister agencies bring to you that
23 would give you confidence that the negotiations
24 will pay off if you give them the additional time
25 requested? I don't know the answer to that. You

1 have to come up with it. But one idea we saw in
2 industry was this term called a covenant not to
3 sue. It's legal language that says one party
4 will not sue another for a specified issue.

5 If the water districts really think the
6 additional time will lead to good result, maybe
7 they would sign a covenant not to sue against the
8 Phase 1 Bay-Delta Plan. Now, I bet that's a
9 longshot, but you get the idea.

10 CHAIR MARCUS: I'm looking at a
11 particular face in the audience and I'm getting a
12 reaction, yeah.

13 MR. WARNER: Okay. I'm running out of
14 time here. I'm almost done.

15 You get the idea. Get something
16 significant from the parties that give you the
17 confidence that the additional time will lead to
18 good results. If you don't get something that
19 gives you confidence --

20 CHAIR MARCUS: That's interesting.

21 MR. WARNER: -- don't provide the time
22 and go ahead and make your decision.

23 Again, thank you for serving on the State
24 Water Board and your contributions to California.

25 CHAIR MARCUS: Thank you for joining us.

1 Ms. Regehr, and then -- hi.

2 MS. REGEHR: Hi. I'm Patti Regehr.

3 CHAIR MARCUS: Regehr. I know I should
4 have it by now. I apologize.

5 MS. REGEHR: That's okay. I've only been
6 here once before.

7 I wanted to say thank you so much,
8 because I was here a long time ago and I listened
9 to all the scientists and all the -- and the
10 future farmers and the fisher people and
11 everything, and I know that your -- it's a
12 compromise. And I want to say thank you for
13 trying to help everyone.

14 And I came to California because my
15 family left M Missouri for the -- during the Dust
16 Bowl. I lived in Stockton, and then I lived in
17 Fresno. And I was -- I picked grapes. My
18 brother was a crop duster flagger. And now I
19 live in -- I moved out.

20 But I just -- water -- and I understand,
21 I mean, I still have family members that are
22 farmers in Missouri, but I understand the plight
23 of everyone. And I think the water has always
24 been historical problem in California.

25 CHAIR MARCUS: Right.

1 MS. REGEHR: It's always been. And I
2 just want to say that I'm really pleased about
3 your plan that you've done. And I understand how
4 hard it must be trying to make the world better
5 for everyone. So I just want to say thank you
6 and --

7 CHAIR MARCUS: Thank you. Thank you for
8 coming to say that.

9 Ms. Frizzell?

10 MS. J. FRIZZELL: Good morning.

11 CHAIR MARCUS: Good morning.

12 MS. J. FRIZZELL: I am Julianne Frizzell
13 and I live in Palo Alto. And I am here to speak
14 in support of the Board Bay-Delta Plan.

15 I believe that this plan most accurately
16 reflects the solutions required to keep the
17 Tuolumne River and Bay-Delta system healthy, as
18 well as provide enough water for farmers and
19 folks within the SFPUC District.

20 During our recent, long drought, people
21 in the Bay Area just -- or the SFPUC District
22 rose to the challenge and reduced their water
23 use. Our community of Palo Alto reduced water
24 use.

25 I am a landscape architect and most of my

1 clients over the last decades have been
2 interested in using less water. They happily
3 give up water-thirsty lawns for more
4 environmentally-friendly, low-water-tolerant
5 landscapes. And I believe that the TRT, Tuolumne
6 River Trust, studies have shown that people on
7 the most -- for the most part reduce their own
8 water use in order to protect our struggling
9 environment.

10 Californians care deeply about the
11 beautiful environment that we have. And we
12 recognize that healthy ecosystems not only help
13 the plant and animal life directly dependent on
14 those systems, but we recognize that without
15 healthy natural areas, humans suffer. The world
16 and California are experiencing the dire effects
17 of our lack of care for our natural environment
18 and the collapse of ecosystems throughout the
19 world. I believe we must not allow the beautiful
20 and important ecosystem of the Tuolumne River and
21 the Bay-Delta to fail.

22 And I can finish there. So I urge you to
23 pass your plan because I do believe it's balanced
24 and you are taking into consideration, as best
25 you can, all the various conflicting interests

1 of -- in California.

2 Thank you.

3 CHAIR MARCUS: I wouldn't mind seeing
4 pictures of some of those new -- the yards you've
5 done. All right.

6 I think what I'll do after those five,
7 again, I'm going to start moving to some of the
8 slightly longer presentations. They're more 10
9 or 15 minutes. And so I actually -- sorry.
10 These are in order, just with the notes flagged
11 where people -- okay. I'm just trying to -- so
12 people listen to each other, because I think
13 there's a heartfelt feeling on all sides and
14 fears of all kinds on all sides. And so I think
15 taking a little time to listen to just a few more
16 detailed presentations is always helpful because
17 there's more time to think. Hopefully we'll be
18 able to get through a lot of people. And, at
19 least for me, it's helpful to be listening to
20 people and thinking about them.

21 So I'm going to go to the first of those,
22 and so I'm going to call on John Sweigard, the
23 General Manager for Merced Irrigation District.

24 Mr. Sweigard, I can't remember, 15
25 minutes is what you asked for, but I don't

1 remember --

2 MR. SWEIGARD: Yes, and I thank you for
3 granting that extra time.

4 CHAIR MARCUS: Oh, of course.

5 MR. SWEIGARD: Appreciate it. Again,
6 John Sweigard, General Manager at Merced
7 Irrigation District. What I want to talk about
8 today is kind of a brief outline. You have a
9 specific project that has vague, unquantified
10 natural salmon production benefits. There are
11 specific impacts. And I want to talk about what
12 the District is doing now and what it's done in
13 the past and what we are willing to do.

14 We're reasonable people. We're willing
15 to participate in real, reasonable solutions that
16 we believe in. If we don't solve the salmon
17 issue on the Merced River, it's always going to
18 be used as a target for us and the resources that
19 we believe we've been good stewards of.

20 I feel like I need to establish some
21 environmental credibility. So I drive an
22 electric car. I have fake grass. And I spent
23 ten years of my career at Patterson Irrigation
24 District permitting funding and getting to
25 construction the last fish-screen pumping plant

1 that was built on the San Joaquin River. So I
2 personally have a history of collaboration on
3 fishery and water issues.

4 So on this specific project, you know, in
5 the name of salmon, as far as our community is
6 concerned, you know, this project is a taking of
7 senior water rights. And it's taking of a
8 locally-owned and paid for reservoir and
9 implementing state-controlled environmental
10 operations, flow and taking of storage.

11 We understand that the salmon lifecycle
12 is a complicated issue. There are six state or
13 federal agencies that have some say in the
14 lifecycle process of the salmon. And to our
15 knowledge, there is no coordination between those
16 state and federal agencies to work on this
17 holistic issue. And I understand today, you
18 know, what your responsibilities are for
19 reasonable beneficial use, and we're talking
20 about flow.

21 The benefits that I'm looking for, I
22 asked myself, what is this document trying to do?
23 And how many salmon is this thing actually going
24 to produce? I can't see any quantified benefits
25 anywhere. We see some assumptions that we're

1 very concerned about.

2 Let's talk about floodplain for a minute.
3 Floodplain is something that the document
4 actually refers to quite frequently. Floodplain
5 has an actual meaning to it. You have to look up
6 the definition. There's depth. There's
7 velocity. There's food supply. There's cover.
8 All these things; right?

9 So I understand that Staff has used GIS
10 and maps and that type of thing. But I would
11 suggest that, absent an entire personal view of
12 the river with those maps, that there are huge
13 errors in the amount of, quote unquote,
14 floodplain that's going to be available to
15 actually benefit salmon.

16 You know, as an example, there's a part
17 in Newman, close to the confluence of the Merced
18 and the San Joaquin River. Just because that
19 park gets underwater doesn't mean that that's a
20 floodplain, but that is actually, probably
21 counted in your document.

22 We live in an altered system from top to
23 bottom. We fully understand that a reservoir has
24 been built. Most of the best spawning habitat is
25 probably underneath Lake McClure and Lake

1 McSwain. That's not going to change.

2 There's been mining by others. Where are
3 they? Where are they to take responsibility for
4 what they've done? There's 13 miles of tail
5 dredgings that are anywhere from a half-a-mile to
6 three-quarters-of-a-mile in width. There's
7 levies. There's been reclaimed land which was,
8 most likely, floodplain.

9 And reservoirs have benefits that nobody
10 likes to talk about. When the Irrigation
11 District reservoirs and other reservoirs were
12 saving the Delta and those levied lands from
13 floods last year and --

14 CHAIR MARCUS: Uh-huh.

15 MR. SWEIGARD: -- prior wet years, we
16 didn't get a lot of credit for that. Reservoirs
17 provide live, wet rivers in droughts, cold water
18 pools, renewable energy, and energy grid support.
19 And today alone we're releasing four times the
20 amount of inflow that's coming into Lake McClure
21 below our diversion, so we continue to provide
22 benefits.

23 We speak of the Delta as if it's 1800 and
24 ignore the fact that that is a very developed
25 system. It's a system of levies, junior water

1 right diversions, and reclaimed floodplain for
2 estuaries, cities and farms. And it appears that
3 that area gets a lifetime hall pass, and we're
4 being asked to mitigate for the fact that that
5 entire ecosystem has been damaged and,
6 apparently, not going to be reclaimed.

7 To our knowledge, most salmon, if not all
8 salmon lifecycle models crash when you put in
9 predation, and that's the elephant in the room
10 that we continue to ignore. And in this staff's
11 document, there's a suggestion on new numbers of
12 production, and it's very specific, 2,059, right
13 down to the fish, to 7,637 total adult salmon,
14 based on SalSim Projections in Chapter 19. And
15 that also said that it's not factoring in
16 temperature improvements or floodplain
17 inundation, which would represent a large
18 percentage increase.

19 I think, without getting into the details
20 any further on floodplain, the analysis on
21 floodplain is very problematic. It assumes that
22 side plain inundation is going to occur and it's
23 going to be beneficial. It also ignores that
24 when you're doing that, you're degrading in-river
25 rearing habitat at the same exact time.

1 Temperature improvements, I'll get into
2 that here in a minute, but --

3 CHAIR MARCUS: Yeah. That's important.
4 Thank you.

5 MR. SWEIGARD: -- there's been no
6 quantification that temperature is actually doing
7 any damage. I've never seen any information that
8 says we've got carcasses because of temperature,
9 and where they are.

10 I honestly don't see how, with a straight
11 face, people can continue to use temperature
12 criteria from the Columbia River Basin and apply
13 that to the Merced River, the southernmost reach
14 in a desert that we all know, when you get into
15 June and further the ambient air temperatures
16 govern exactly what happens in those systems.
17 You could operate our entire reservoir for
18 temperature and ignore everything else and you're
19 not going to be able to affect temperature for
20 more than one mile on the Merced River when it
21 actually might matter.

22 But I want to talk about now, too, is there
23 are specific impacts. There are specific impacts
24 to the river. The unimpaired flow paradigm
25 without doing something further bankrupts the

1 reservoirs, it degrades the river temperatures
2 and flows in the fall and the winter. These
3 flows are designed to improve temperature at
4 significant water costs with small temperature
5 improvements. June, I think, is recognized as
6 very problematic. There's a very high water cost
7 with minimum real benefits.

8 And there's no discussion in the document
9 about if these fish are going to try to escape in
10 June, how are they going to get past the
11 temperature issues in the Lower Merced and the
12 San Joaquin system? This is the furthest river
13 from the Delta and from the ocean. They've got a
14 long ways to go and very high temperatures. Five
15 times the critical water year supply impact for
16 less than a mile increase and slightly improved
17 thermal Merced River suitable habitat.

18 We dry up the rivers in droughts. And
19 what we see here, too, is an acknowledgment that
20 this program doesn't work well. It's implied
21 that we're going to take an additional 185,000
22 acre feet of bottom storage, carryover storage,
23 from Merced Irrigation District, because the
24 system doesn't work if you don't do that. I
25 would just have to say that we have a significant

1 issue with that with our locally-owned reservoir
2 that we built and paid for. And it has huge
3 water supply impacts, especially in back-to-back
4 dry years. In that second year of every back-to-
5 back dry year, we have zero water supply. We have
6 other water supply needs in the river, in our
7 basin, including a national wildlife refuge that
8 we have to meet before our folks get any water
9 whatsoever.

10 Water supply impacts, just on their face,
11 in the three driest year types, it's 110,000 acre
12 feet and 190,000 acre feet in the two driest year
13 types. Those are big numbers. I can tell you
14 that if an un-inflowed paradigm is put in play
15 the discretion that the District uses now in
16 allocating water and trying to hold water in the
17 reservoir for subsequent years, that's probably
18 not going to happen anymore. There will be a
19 race to 300,000 acre feet, so that we can get all
20 of our water out of that reservoir as soon as we
21 can, so we can put it on the ground and have less
22 losses.

23 So that's something else that's not being
24 thought about here is the discretion that we have
25 in operating our own project under the water

1 rights and storage rights that we do have.

2 The groundwater impacts are significant,
3 and that has a huge impact on the analysis. The
4 assumption that somehow we're going to pump
5 groundwater to make up for the loss of this
6 surface water is absolutely wrong. We have a
7 high-priority basin. We're already over-drafted.
8 To comply with SGMA, the allocation is likely to
9 be one acre foot per acre in our entire basin.
10 People are not going to be able to make up
11 hundreds of thousands of acre feet by pumping
12 groundwater, so that affects your economic
13 analysis, it affects your water balances. It has
14 a huge impact. And we have tried to point that
15 out time and time again on the first draft, on
16 the final draft, in discussions with Board
17 Members that have come out to mi.

18 The economic study, we firmly disagree.
19 And I guess the number one premise is probably
20 this groundwater issue. But our economic study,
21 PhD-level study, \$230 million in an already
22 severely disadvantaged community, and it also
23 kills thousands of family-supporting jobs. And
24 we're going to kill an entire economy in a
25 community for two percent of the Delta inflow or

1 less than two percent of the actual salmon
2 production in the furthest river from the Delta.
3 We just don't see how that makes a ton of sense.

4 To remind folks of what we have done,
5 we've participated in VAMP for over ten years,
6 the Vernalis Adaptive Management Plan. Over a
7 half-a-million acre feet was released down the
8 Merced River in coordination with fish agencies.
9 And we've also, since that date and continue to
10 do so, fall attraction pulse flows. And the
11 outcome of VAMP was very specific, predation and
12 lack of survival of out-migrating salmonids is
13 the main issue. The state acknowledges that with
14 their operations of the hatchery on the Merced
15 River. They take those salmonids and they ship
16 them past the predation corridors and they put
17 them in the Delta. It's a direct acknowledgment
18 that that's an issue.

19 And I will just briefly now notice that I
20 think everybody's probably seen the work by
21 Professor Peter Moyle that's come out here in the
22 last day or two suggesting that ecosystem
23 restoration in the Southern and Central Delta is
24 the probably most important thing, in that
25 releasing water and only releasing water at this

1 point in time is not going to do anything.

2 I want to talk about our SAFE Plan .
3 There's been a lot of talk here about settlements
4 and voluntary agreements. I want to say that in
5 2016, when we began these discussions, they were
6 characterized as settlements. And now the
7 language has morphed into voluntary agreements.
8 I don't hear the word settlement really actually
9 being out there in that discussion. And it also
10 indicates that you guys would like to see us fit
11 within what you're suggesting here. And what
12 we're suggesting is we have issue with the
13 premises that are in the SED and the actual
14 salmon benefits that it would derive.

15 We've spent decades and tens of millions
16 of dollars on the science on the Merced River.
17 And we've worked with agencies on these things.
18 And we've put together a plan that has specifics.
19 I would suggest we have more specifics on a
20 poster board than what's in the SED. And we keep
21 being told we need to provide more. We have
22 expressed exactly what we would restore, exactly
23 how much new habitat there would be for both the
24 rearing, how much predation control there would
25 be. There's increased flows immediately in every

1 year type, 40,000 acre feet in critical years,
2 160,000 acre feet in wet years. We're willing to
3 talk about the hatchery modernization. We're
4 willing to undergo a robust post and project
5 monitoring program.

6 A couple of you folks have been out and
7 you've listened to our biologist, that's
8 actually -- you know, he's also a professor, but
9 he gets his hands dirty and he works on the
10 ground. He's done two restoration projects in
11 the area below our diversion where there's
12 actually possibility for habitat temperature
13 improvements, et cetera. And what he says is the
14 restoration that he does is in-channel. It's at
15 today's flows. And today's flow patterns that we
16 see, there's lots of promise. And that what
17 they're seeing on the ground is that fish,
18 predators, food supplies do not act like what is
19 being taught in the classroom, and that we need
20 to do more projects and we need to gather more
21 data, and that he sees these things as extremely
22 promising.

23 The flows that we're willing to embrace
24 right now are the FERC flows. We're going
25 through FERC relicensing. There's been a final

1 Environmental Impact Statement with a table for
2 flows in it. We would suggest that FERC knows
3 what they're doing. They understand balance.
4 They've been relicensing projects nationwide for
5 decades, and it was a very long process that
6 involved the State Water Board staff.

7 Actually, the staff agreed with us, that
8 anything below Shafer Bridge, when we were
9 looking at anything we could do for salmon, was a
10 complete waste of time. It's a corridor. You
11 guys actually issued an order that we had to go
12 do studies. We brought the staff out and
13 explained to them what we were seeing, and they
14 actually agreed with us, that we didn't need to
15 do any further studies below Shafer Bridge.

16 BOARD MEMBER D'ADAMO: Can I jump in
17 here? And I don't want to take up your time.

18 So if you could stop the clock?

19 CHAIR MARCUS: Yeah, so the clock should
20 stop.

21 BOARD MEMBER D'ADAMO: Yeah. So I don't
22 know that everybody knows where Shafer Bridge is.
23 So you might --

24 MR. SWEIGARD: Shafer Bridge is our
25 compliance point on the Merced River. It's

1 appropriate 16 miles down from our diversion.

2 BOARD MEMBER D'ADAMO: Okay, 16 miles
3 down?

4 MR. SWEIGARD: I could be wrong about
5 that. It's less than that. I'd have to get back
6 to you on that. I think it's 13.

7 BOARD MEMBER D'ADAMO: Okay. And --

8 UNIDENTIFIED MALE: (Off mike.) It's 20
9 miles.

10 CHAIR MARCUS: Twenty?

11 MR. SWEIGARD: He's the expert, so it's
12 20 miles.

13 BOARD MEMBER D'ADAMO: Okay. Upstream
14 from the confluence? How many miles for the
15 whole river? It's like 52 miles to the
16 confluence? I'm hearing yes.

17 MR. SWEIGARD: Yes.

18 BOARD MEMBER D'ADAMO: Okay. All right.
19 And then --

20 MR. SWEIGARD: But we have agreed with
21 Fish and Wildlife, and they can --

22 BOARD MEMBER D'ADAMO: Uh-huh.

23 MR. SWEIGARD: -- disagree if they come
24 up here, that there's only a six-and-a-half mile
25 stretch below Crocker-Huffman Diversion Dam,

1 which is where our diversion is, where we could
2 have an impact on temperature and habitat for
3 spawning and rearing that would make a
4 difference. And that's the stretch of river that
5 we've talking about rehabilitating in our SAFE
6 Plan. We didn't mine that river and cause that
7 damage, but we're willing to take responsibility
8 for it because it's in what we could consider our
9 area of influence. And we've suggested that if
10 the SAFE Plan were implemented, there would be
11 new water in this river right now. There would
12 have been new water in this river last year. We
13 would have immediately undertaken everything and
14 anything that could be done to get those
15 restoration projects done and begin monitoring.

16 But, honestly, we've been rebuffed and
17 been told that that's a nice start, but you need
18 to throw a lot more water on top of it. And to
19 us, that's -- we don't see where that's going to
20 provide benefit, so it's going to be very hard
21 for us to navigate that circumstance.

22 BOARD MEMBER D'ADAMO: Right. And I'm
23 going to just call out the Executive Summary
24 here --

25 CHAIR MARCUS: Yeah, sure.

1 BOARD MEMBER D'ADAMO: -- ES, page 41,
2 The Merced. There's a chart here on temperature
3 for the Merced. And I think that this plays into
4 what you're talking about on, first of all, for
5 those of us who have been out there, we're
6 talking about below Crocker-Huffman. It's about
7 15 miles of highly degraded channel where the
8 cobble is no longer, for the most part, no longer
9 in the river. And it's on the banks and it
10 stretches out, in some parts as far as a quarter-
11 of-a-mile, half-a-mile. So we're talking about a
12 lot. Well, basically, the river is no -- the
13 cobble is no longer in the river. It's on the
14 outside.

15 MR. SWEIGARD: And for those of us that
16 do know what we're talking about, it's
17 channelized. It's been hydraulically mined and
18 dredged, so there is no natural floodplain for
19 the high flows to push out onto the floodplain.
20 And the two restoration projects that are a mile-
21 and-a-half in total are using an in-channel
22 analysis and redesign that has been bought into
23 by both the state and federal fish agencies.
24 They were part of those restoration projects. So
25 they believe in that type of design under these

1 circumstances also.

2 BOARD MEMBER D'ADAMO: Okay. So two
3 points.

4 First of all, on this chart, it talks a
5 lot about temperature. And the very first
6 sentence is,

7 "There's no temperature improvement
8 immediately downstream of Crocker-Huffman
9 with this proposal for any of the
10 alternatives because the temperature goal is
11 already achieved 100 percent of the time,"
12 so we're talking immediately downstream,
13 Crocker-Huffman prime temperature conditions.

14 And then it goes on to say further on,
15 this paragraph,

16 "If one considers the improvement of
17 temperature with 40 percent of unimpaired
18 flow over the entire 52-mile reach, all the
19 way to the confluence, the overall attainment
20 for core rearing temperature target increases
21 by 332-mile days."

22 And so the question that I have is that
23 in your work with Fish and Wildlife and with the
24 NGOs, aren't you focusing on the upper reaches,
25 and how far down? You've got your SAFE Plan. I

1 think you're talking six miles within the SAFE
2 Plan, but others may be talking more. So not
3 just MID but others, how far down can you go
4 until the habitat, it's just not possible anyway?

5 MR. SWEIGARD: It's been generally agreed
6 that no further than maybe seven, seven-and-a-
7 half miles can we have a positive impact on
8 temperature that will make a difference, no
9 matter what the releases are from New Exchequer.

10 CHAIR MARCUS: Say that again. What's
11 the number you just said?

12 MR. SWEIGARD: So if we do restoration on
13 the five-and-a-half to six miles, maybe another
14 mile, we could have an influence on temperature
15 with some type of modified operations, and the
16 water costs would be really high.

17 BOARD MEMBER D'ADAMO: And that would be
18 the reach of the river where you might also be
19 able to do some in-channel improvements --

20 MR. SWEIGARD: Just below it --

21 BOARD MEMBER D'ADAMO: -- along the lines
22 of --

23 MR. SWEIGARD: -- maybe an additional
24 mile --

25 BOARD MEMBER D'ADAMO: -- what you've

1 already done.

2 MR. SWEIGARD: -- below the restoration
3 area, correct.

4 BOARD MEMBER D'ADAMO: Okay.

5 CHAIR MARCUS: Did you -- were you -- I'm
6 sorry, I don't mean to keep taking your time,
7 but -- and we can, obviously, since this is
8 not --

9 MR. SWEIGARD: Well, I have two more
10 points when you're done, yeah.

11 CHAIR MARCUS: Yeah. It's not a thing
12 that's ex parte, and we have talked and we can
13 talk more.

14 One of the things yesterday that Staff
15 put up, and I know you were here yesterday, but I
16 don't know if you were watching at the time, was
17 a chart of how the extra flows help not just the
18 Merced River itself, but end up cooling the San
19 Joaquin to help there be a drop until the
20 Tuolumne comes in and further cools it, so the
21 migration corridor, as well.

22 Did you have -- and I apologize, I'll go
23 back and reread all your comments. Do you have a
24 response on that, as well?

25 MR. SWEIGARD: So my response to that

1 would be we are not opposed to discussing
2 changing inflow patterns. We're going through
3 FERC relicensing. There's an inevitability that
4 our flow patterns are going to change. We
5 released water in the spring, in some years, well
6 over 100,000 acre feet under the VAMP Program for
7 specifically that purpose. We have some issues
8 with June. You know, we may have some issues
9 with May. But like I said, we're reasonable and
10 we understand that those are opportunities that
11 might be explored, but some of these others are
12 not.

13 And a couple things I want to finish up
14 with here is, you know, there's 1.3 million acre
15 feet annually out -- flowing out of the Delta
16 that wasn't 25 years ago. So we're doing --
17 there's a lot of new flow in the system and we're
18 still wondering where all these fish are.
19 There's a lot of water that went down the Merced
20 River itself in VAMP. We have the same
21 questions.

22 And, Steve, I understand that there's a
23 lot of talk about flexibility. And I'm just
24 going to tell you from our perspective, when we
25 hear code words, like unimpaired flow and

1 flexibility, and it scares the holy whatever out
2 of us. In my 20-plus years as being a General
3 Manager in the Irrigation and Water District,
4 I've never seen where that worked in the favor of
5 an irrigation district or actually produced any
6 real fishery benefits. I'm open to seeing what
7 that is, but I'm just telling you that the
8 flexibility that's being given to a Committee to
9 run our reservoir is not something that we're
10 real interested in.

11 And I want to remind that, you know, we
12 asked the question about what was stated on the
13 Board's website back in December of 2016 about
14 using the 401 process as the process to
15 eventually get to the end game on this State
16 Water Board plan. That question was met with
17 general surprise and, you know, we thought we
18 were putting these things together and doing the
19 District a favor.

20 And then yesterday we see in the slides,
21 you know, two sentences that generally indicate
22 the Clean Water Act Authority is, you know, on
23 the table. And I got to say that putting that
24 kind of stuff out there is not a real good way to
25 try to get us reengaged in the room. I would say

1 that MID was one of the main proponents of
2 settlement discussions early on. And we were one
3 of the first folks after some of the NGOs, which
4 I'm going to have correct people, there are NGOs
5 in the room, that had to walk away because it was
6 not a genuine process. And I've been involved in
7 genuine process before with good results.

8 So I just want to put that out there in
9 that we are here and we are willing to talk. I
10 would suggest the SAFE Plan is a really good
11 place to start. There's immediate water.
12 There's immediate restoration. There's immediate
13 monitoring to get better science than we have
14 today, and that's what we offer up.

15 CHAIR MARCUS: Great. Well, I could
16 actually spend all day.

17 MR. SWEIGARD: Me too.

18 BOARD MEMBER D'ADAMO: Well, I tell you,
19 yeah.

20 CHAIR MARCUS: Yeah, I have a zillion
21 questions, so it's just a question of time. And
22 people --

23 BOARD MEMBER D'ADAMO: Right.

24 CHAIR MARCUS: -- that's where -- that's
25 the frustrating thing, but I think that's the

1 point with some of the longer ones with
2 (indiscernible), so we could have a
3 conversation --

4 BOARD MEMBER D'ADAMO: Yeah.

5 CHAIR MARCUS: -- I think is fair.

6 BOARD MEMBER D'ADAMO: So I have several.
7 I'll try -- we'll try and go fast here, because
8 we talked quite a bit yesterday about sequential
9 dry year issues.

10 And so can you talk a little bit, say
11 take the recent drought and your baseline
12 conditions and what your deliveries were?
13 Because, you know, the slides that Staff focused
14 on, and I think it's helpful to kind of use the
15 same framework.

16 MR. SWEIGARD: Uh-huh.

17 BOARD MEMBER D'ADAMO: So if we looked at
18 the 38 percent reduction in critically dry year,
19 and I don't remember what it was for dry years,
20 can you talk about, say the most recent drought
21 and what your baseline cuts were, and then
22 overlay the impacts of the SED on top of those
23 cuts, so we get a better perspective?

24 MR. SWEIGARD: Right. So in the recent
25 drought, if we have a good wet year and have a

1 decent irrigation season, we'll generally, in
2 today's circumstance, be okay. The second year
3 will be challenging, but under the SED, with the
4 minimum pool being increased, we would absolutely
5 have zero water deliveries. We have other
6 commitments which are in our basin to a national
7 wildlife refuge. So I think the Bureau and
8 Department of Interior would be interested as to
9 how the refuge is going to get water under this
10 plan, also, in consecutive dry years.

11 But it would double the amount of zero
12 water years. And it would double the amount of
13 negative impacts that we have. So the third year
14 of the drought we had one acre foot per acre,
15 that would have been a big fat zero. And the
16 second year would have been a big fat zero. And
17 in a lot of years, our board doesn't take all the
18 water it can take out of the reservoir. It
19 conservatively allocates water and holds water
20 over in the hope that it will help the following
21 year. And that line of thinking will have to be
22 rethought about in the future if this is where
23 we're going to go. We'll have to take advantage
24 of every drop of the water that's in the
25 reservoir while it's there. It will get to

1 minimum pool immediately, and then good luck to
2 everybody after that.

3 BOARD MEMBER D'ADAMO: So -- and I think
4 that one of the statements yesterday was this is
5 only 40 percent February through June. But with
6 carryover, how do you get that water into
7 storage? Are you going to get it into storage
8 February through June or do you achieve that by
9 having additional cuts on your growers during the
10 delivery season --

11 MR. SWEIGARD: Well, there's --

12 BOARD MEMBER D'ADAMO: -- or both?

13 MR. SWEIGARD: -- a two-part question
14 there. I mean, I would ask, there's not enough
15 detail in this document to tell us how we would
16 fill it and when. But, yeah, I mean that's
17 185,000 acre feet at the bottom of our reservoir
18 that's -- that we're going to be told is
19 unavailable for our use in the District, so that
20 will have a huge impact, especially in that year,
21 and it's not available in the next year to carry
22 over.

23 BOARD MEMBER D'ADAMO: Okay. And then
24 June, June is a big deal. And there's something
25 about Merced that's a little different and I just

1 want to make sure everybody understands.

2 CHAIR MARCUS: There's a lot about Merced
3 that's a little different.

4 BOARD MEMBER D'ADAMO: Yeah. Yeah.
5 Smaller reservoir.

6 MR. SWEIGARD: You're not talking about
7 me, I hope.

8 BOARD MEMBER D'ADAMO: Fills and spills.

9 CHAIR MARCUS: No, the river.

10 BOARD MEMBER D'ADAMO: Yeah.

11 CHAIR MARCUS: Hey, man, I saw those
12 cobbles. That's like the most amazing
13 terraforming in a bad way I've ever seen. So you
14 didn't --

15 MR. SWEIGARD: Well, we're here to tell
16 you --

17 CHAIR MARCUS: -- you didn't do it.

18 MR. SWEIGARD: -- we're willing to fix
19 it. We're willing to fix it now.

20 BOARD MEMBER D'ADAMO: Okay. But you
21 have -- by your own water rights, you do not have
22 the right to divert water in July?

23 MR. SWEIGARD: We don't have the ability
24 to store after June 30th.

25 BOARD MEMBER D'ADAMO: Okay.

1 MR. SWEIGARD: Correct.

2 BOARD MEMBER D'ADAMO: So if we run this
3 through June, you can't make up for the loss --

4 MR. SWEIGARD: Yeah.

5 BOARD MEMBER D'ADAMO: -- past June?

6 MR. SWEIGARD: Correct. And I want to
7 reiterate that if we're trying to mimic nature,
8 but yet we're running a ledger and some state
9 agency is holding water in our reservoir as
10 storage and they're going to release it at some
11 other time, and you want to take more minimum
12 pool from us, to me that doesn't mimic nature.
13 That masks the adverse impacts that you say you
14 don't want to have by taking storage and
15 operating our reservoir differently.

16 So the two statements don't -- they don't
17 jibe. We can't mimic nature and then run a
18 ledger in our reservoir, hold the water over,
19 release it some other time for environmental
20 purposes --

21 CHAIR MARCUS: Wait.

22 MR. SWEIGARD: -- and take, you know,
23 take more minimum pool at the end of the year.

24 CHAIR MARCUS: Can you help me
25 understand? I'm sorry to interrupt, but there's

1 just a point that people have made. Again, it's
2 code words, I don't mean it in a pejorative way.
3 People get it. You know, there are, really,
4 there are ten different narratives out there that
5 are all firmly believed out of everything
6 everyone says, even though it's not necessarily
7 what someone intends, and sometimes it's just
8 language.

9 When you say some agency is holding it,
10 does that get into your not liking the idea of
11 the STM, as if the STM is going to take away your
12 authority?

13 MR. SWEIGARD: Oh, yeah, we -- that --

14 CHAIR MARCUS: Because you'd be a part of
15 it.

16 MR. SWEIGARD: Yeah. Well --

17 CHAIR MARCUS: No, but I mean it's one of
18 those things where it's not quite that simple.
19 It's an opportunity, but folks would need to
20 agree and it would need to be vetted. You don't
21 even like the concept of --

22 MR. SWEIGARD: No.

23 CHAIR MARCUS: -- the flexibility in
24 there, is what you're saying? Because it feels
25 like somebody else is going to run your -- which

1 I don't think --

2 MR. SWEIGARD: Well, I know that.

3 CHAIR MARCUS: -- it's not the intent.

4 MR. SWEIGARD: I guarantee you, that
5 would be the result.

6 CHAIR MARCUS: That's all right. It's
7 important to know you're feeling.

8 BOARD MEMBER D'ADAMO: Okay, so last
9 question. And I think you already did a good job
10 talking about how wetted acre days does not mean
11 flood --

12 MR. SWEIGARD: Right.

13 BOARD MEMBER D'ADAMO: -- floodplain
14 habitat --

15 MR. SWEIGARD: Right.

16 BOARD MEMBER D'ADAMO: -- even though
17 we're calling it inundation of floodplain
18 habitat, or not we, but our staff is calling it
19 that.

20 So I want to make sure that I understand
21 or that -- you know, because I mentioned
22 yesterday that there are a number -- each river
23 has a model that's been used. And our staff has
24 a model that they've used. So could you talk
25 about the model, the Merced Instream Flow Study

1 2-D Model that takes into account the fact that
2 the river channel has been highly degraded?

3 MR. SWEIGARD: Well, we're using a custom
4 model to do the actual design of the restoration,
5 the same process that was used on the other two
6 restoration projects that have already been built
7 on the Merced. But that model takes into account
8 all of the commonly used models that everybody
9 else uses to look at, 2-D flow, 2-D habitat,
10 PHABSIM, et cetera. So we're using all the
11 baseline stuff everybody else is using. We're
12 using the same process that's been used in two
13 other restoration projects to look at how we
14 could redesign the instream channel with the
15 flows that exist today to provide all the
16 opportunity in the salmon's lifecycle spent in
17 the river to provide benefit.

18 BOARD MEMBER D'ADAMO: Okay. So you did
19 say, though, that you're looking -- you're open
20 to increase flows and so I want to understand,
21 some increase flows, but then maybe an increase
22 along the magnitude that the proposal has and
23 what that would do to the habitat that already
24 exists in the river channel or the restoration
25 projects that you've already invested in, this

1 issue of displacement?

2 MR. SWEIGARD: Yeah, I'm not sure I'm
3 following you.

4 BOARD MEMBER D'ADAMO: Well, it's my
5 understanding that the model demonstrates that
6 increased flow at a certain point could actually
7 decrease the habitat because you lose the shallow
8 water habitat that --

9 MR. SWEIGARD: Oh, yeah.

10 BOARD MEMBER D'ADAMO: -- exists within
11 the channel.

12 MR. SWEIGARD: The assumption on the
13 floodplain habitat is that anything that's under
14 water is useable floodplain. It's not. It's
15 just a change in wetted perimeter. And you don't
16 know what the other factors are, where that water
17 is going, if it's a parking lot, if it's an
18 orchard, if it's a lawn. And at the same time
19 you're degrading the in-river rearing habitat by
20 increasing the depth, increasing the velocity,
21 and a number of other factors.

22 BOARD MEMBER ESQUIVEL: What I can't help
23 but feel, particularly when we get into
24 discussions around modeling, is how disparate
25 those modeling efforts can be and how it can

1 sometimes lead, actually, the sort of
2 miscommunication on what it is that, you know, we
3 have before us.

4 I guess my question is, you know, is
5 there the opportunity to have more collaborative
6 sort of modeling work done so there is, if you
7 will, a common decision support tool amongst the
8 agencies, amongst the locals, amongst ourselves
9 so that we're -- so that we're not sort of
10 talking past each other in so far as what the
11 actual impacts will be of certain flows on the
12 landscape? You know, how do we get a little more
13 sophisticated then with developing a tool that is
14 common amongst us so it allows us to see the same
15 thing, as opposed to, again, you know, the
16 criticisms of the staff modeling work that's been
17 done, I think can be valid? And obviously, you
18 have your own capabilities in-house or contract
19 out for modeling work. But how do we sort of
20 collapse some of that so that we are getting the
21 most out of whatever flows we may be trying to
22 discuss here?

23 MR. SWEIGARD: I don't think there's
24 really a lot of disagreement there. What I'm
25 talking about is specifically floodplain and

1 temperature and what we know. And we've
2 collaborated with the agencies in settlement
3 discussions and outside of settlement discussions
4 and we've agreed on a lot of things. We sit
5 down, our modelers, their modelers, what are the
6 assumptions, what are you using, running the same
7 thing. So I don't think there's a huge
8 disconnect there.

9 I think the issue is that, you know, we
10 just don't agree that one mile of slightly
11 improved temperature is worth that water cost.
12 And ultimately, I'm thinking about one thing at
13 the very end of this whole game: How can we
14 quantify how many natural production salmon are
15 actually going to return to the Merced River, be
16 productive, and how are they going to get out?
17 That's what we're looking at. If you guys can
18 show us a program that actually does that, it's
19 going to be really hard to argue with, but we
20 can't -- we don't see that.

21 BOARD MEMBER ESQUIVEL: Well, in so far
22 as floodplain inundation and, you know, the
23 further development then of habitat as sort of a
24 key sort of metric as to, you know, are we
25 improving conditions in the ecosystem as a whole?

1 Again, I hope that there is, you know, the
2 temperature issue aside, at least on the habitat
3 portion as to, you know, how this water is moving
4 across the landscape. Again, there should be
5 some agreement amongst us on how it's -- and
6 where best, I guess --

7 MR. SWEIGARD: Well --

8 BOARD MEMBER ESQUIVEL: -- projects are
9 starting to be --

10 MR. SWEIGARD: -- it's not moving across
11 the landscape. That's my whole point.

12 And I would offer up, if anybody on the
13 staff wants to come out with their maps and
14 travel the entire stretch of the Merced and the
15 San Joaquin River and look at their maps compared
16 to what's actually you there, we're more than
17 willing to do that, and I know what it will show.

18 BOARD MEMBER D'ADAMO: I actually think
19 that's a good point. And I think there probably
20 is more agreement than what it sounds like --

21 CHAIR MARCUS: No, there may be.

22 BOARD MEMBER D'ADAMO: -- you know?

23 CHAIR MARCUS: I think it's part of the
24 challenge, again, all good intentions of there's
25 a lot of conversation happening in an arena we

1 don't see, so -- and yet, we don't get quite as
2 much detail, although maybe more than I realize.
3 And so there's -- I just think it's just a little
4 bit challenging, but there's -- I can see some
5 things we can do in follow-up.

6 Did you -- I don't want to cut you off,
7 Steve. I do want to start getting back to folks
8 for the -- this is useful. I know it's just a
9 bite-size version, and we can do a lot more
10 that's not in the forum, but I do think it's
11 helpful to do. So I appreciate your indulgence,
12 because we could each ask ten questions.

13 But please, you have (indiscernible).

14 BOARD MEMBER MOORE: Yeah. I just want
15 to acknowledge the points you're making, the
16 commitment that Merced Irrigation District has to
17 studying the system. And so, you know, and you
18 have your stated biological goals. You know, you
19 show leadership at the local level on that.

20 How open are you and your folks to the
21 idea of a broader set of biological goals and the
22 role the Merced River plays as one of many rivers
23 that feed the Bay-Delta? Because you've talked
24 about salmon per gallon. You've got to know that
25 that's not the whole picture, it's one indicator.

1 What are some of the other? You know, what's the
2 openness level to considering the broader range
3 and the role the Merced River and the greater
4 system?

5 MR. SWEIGARD: Hey, look, if the other
6 agencies and the other people that are in charge
7 of making the rules and enforcing them and
8 regulating are willing to make commitments to
9 restore ecosystems, to handle predation, to
10 recognize ocean conditions and catching of
11 natural-production fish is going to be a factor,
12 we're more than willing to listen. But we can
13 only control what we can control.

14 BOARD MEMBER D'ADAMO: Right.

15 MR. SWEIGARD: And we're willing to take
16 responsibility for mining effects on our river
17 that was not ours. We've gone through mitigation
18 in an original relicensing. We built a hatchery.
19 We're doing that now for a second license and we
20 have a Final Environmental Impact Statement.

21 We're willing to do our part, but I can
22 say that, at least from what I've seen, this
23 biological monitoring thing is getting way out of
24 control, things that are outside of the control
25 of anybody are going to be looked at and used as

1 a basis for where we're not being successful.
2 It's a very complicated issue, but I think we're
3 making it too complicated, to be honest with you.
4 I think everybody relies upon the fact that this
5 is complicated, so therefore we've got to do X, Y
6 and Z.

7 I think we need to work on some of the
8 basic things first. Let's get those squared away
9 and let's see how that works and let's really do
10 the monitoring, and then let's see if we're
11 missing something. I think a lot of folks are
12 relying on this being a, quote unquote,
13 complicated issue as a reason to stay in their
14 corner and get what they want. You're here. I'm
15 here telling you, we're reasonable. We're
16 willing to do things we think will make a
17 difference. If this issue doesn't get solved, it
18 doesn't do us any good either.

19 BOARD MEMBER MOORE: And then finally,
20 how about the concept, which Staff hasn't
21 emphasized this so much, but I do in trying to
22 come to resolution and communication, the idea of
23 a water budget? You know, that is, you know,
24 every year we get something different from nature
25 here in this state. And the idea that, you know,

1 we want whatever water budget goes to the
2 environment to be effective. And we actually
3 completely agree, I think, on the idea of
4 functional flow. You know, that's not something
5 that we're not thinking about. In fact, it's at
6 the heart of the proposal and we're just not
7 doing a great job of communicating that.

8 And you mentioned mimicking nature. You
9 know, what's your willingness to step forward and
10 to say, yeah, I can live with a water budget for
11 this river?

12 MR. SWEIGARD: I mean, we're willing to
13 have the discussion. And honestly, it's not a
14 complicated discussion, we don't have to make it
15 complicated, so we're open to it. But the
16 operation of our reservoir being taken over by
17 anybody else is very problematic for us.

18 BOARD MEMBER MOORE: Yeah. For me, too.

19 CHAIR MARCUS: Yeah. I don't think it's
20 what's intended, so we need to understand that.
21 Thank you for illuminating.

22 MR. SWEIGARD: Okay. Thank you very much
23 for your time --

24 CHAIR MARCUS: All right. No, thanks.
25 Very --

1 MR. SWEIGARD: -- and my extended time.

2 I appreciate it.

3 CHAIR MARCUS: No, no. Very useful.

4 Thank you all.

5 Okay, next five, Shannon McEntee --

6 you'll have to tell me how to pronounce it. Even

7 though it's perfectly written, I'm just not sure.

8 Shannon McEntee.

9 MS. MCENTEE: Like John McEnroe.

10 McEntee.

11 CHAIR MARCUS: McEntee, all right,

12 followed by Virginia Tincher, Victor Rosasco --

13 MR. ROSASCO: Rosaseo.

14 CHAIR MARCUS: -- Rosaseo?

15 MR. ROSASCO: Right.

16 CHAIR MARCUS: Okay. Thank you. John

17 Amodio, and Joe Daly. They will be the five in

18 order, so that you know.

19 MS. MCENTEE: Hi. Thank you.

20 CHAIR MARCUS: Good morning.

21 MS. MCENTEE: I want to thank you for all

22 the good work you do on behalf of us and

23 California, and for your leadership over all

24 these years.

25 Today, I've come to lend my support to

1 the careful and scientific analysis that you and
2 others have given to determining this sufficient
3 minimum flow of our rivers into the bay. I trust
4 your technical analysis and I support the Bay-
5 Delta Plan.

6 I would only add that I doubt any of us
7 will have an opportunity, nor would we want to
8 live on another planet. So if anything, we
9 should err on the side of caution. Reversing the
10 effects of lost water fall can be -- water flow
11 can be impossible. And as many other places in
12 the world have learned through catastrophic water
13 problems, it's essential that we protect the
14 fragile ecosystem of our rivers, the Delta and
15 the Bay. And in my opinion, and I think you
16 probably agree, nothing is more important than
17 protecting the integrity of our water system for
18 humans and for all the species that are involved
19 in our ecosystem. So I give you my sincere
20 thanks.

21 And I also want to share that on Monday
22 night the Palo Alto Council voted unanimously to
23 support the Bay water program -- or, excuse me,
24 the Bay-Delta Plan. And that was against the
25 recommendations of their staff, so it was a

1 really remarkable evening, and they were just
2 with huge enthusiasm.

3 So again, thank you for all your good
4 work.

5 CHAIR MARCUS: Thank you, and thanks for
6 taking the time to come.

7 Ms. Tincher, followed by Mr. Rosaseo --
8 Rosaseo -- Rosasco?

9 MR. ROSASCO: Rosasco.

10 CHAIR MARCUS: Oh, it's a C. That's
11 where I'm getting it wrong. Sorry. That's not
12 so hard, is it?

13 All right, go ahead. Sorry. I didn't
14 hear that.

15 MS. TINCHER: Hi.

16 CHAIR MARCUS: Hi.

17 MS. TINCHER: My name is Virginia
18 Tincher. I'm one more person who supports the
19 plan.

20 I grew up and live in the Bay Area. When
21 I was younger, I didn't appreciate how we're
22 stewards of the planet. And I do now and I want
23 to make up for all that lost time. I'm
24 passionate about leaving a healthy planet for my
25 children and grandchildren, and that's how I

1 intend to spend the rest of my days, doing what I
2 can do.

3 Thank you for the opportunity to comment
4 on the plan. We're at the end of a multi-year
5 process where the Water Board has carefully
6 considered multiple options. It's time to
7 support your recommendations. You are tasked
8 with looking at the big picture, and the rest of
9 us must also. There is no Planet B. It means I
10 will probably need to conserve more water and
11 spend more for food, and I am willing to do that.
12 It's being part of the solution. I will benefit
13 from a healthier Bay-Delta and river system which
14 is critical for the future of the planet.

15 I strongly support the State Water
16 Resources Control Board's revisions. It's time
17 to do the right thing for all of the beneficial
18 uses of California's precious water.

19 Thank you again for following your
20 mission and coming up with a fair solution.
21 Thank you.

22 CHAIR MARCUS: Yeah. Mr. Rosasco.

23 MR. ROSASCO: Much better.

24 CHAIR MARCUS: I know.

25 MR. ROSASCO: I have a show and tell

1 thing I want to give to Jeanine. And I would
2 like if you could pass it around up there and
3 look at it?

4 CHAIR MARCUS: Well, sure, if it's not
5 going to explode.

6 MR. ROSASCO: No, it's not. That
7 wouldn't be funny.

8 CHAIR MARCUS: That's not the first time
9 I've seen a jar with that color in it, so I have
10 guesses --

11 MR. ROSASCO: Well, maybe --

12 CHAIR MARCUS: -- so go on.

13 MR. ROSASCO: -- you know, I don't know.

14 CHAIR MARCUS: I pretty much know what's
15 in there.

16 MR. ROSASCO: I don't know. I got it
17 this morning at the head of the deep water
18 channel in Stockton.

19 CHAIR MARCUS: Yeah.

20 MR. ROSASCO: That's where it came from.

21 But my name is Victor Rosasco. I live on
22 a small farm on Roberts Island west of Stockton,
23 near where the San Joaquin River enters and
24 becomes part of the Delta. On this farm, I grow
25 walnuts, olives and produce. I am also an

1 advocate for Restore the Delta, a Board Member
2 for Water 4 Fish, a member of the Golden Gate
3 Salmon Association and the Coastside Fishing
4 Club.

5 I have been in and around the Delta my
6 whole life. The things that are wrong with it hit
7 me in the face as soon as I walk out the door in
8 the morning. My walnut trees are slowly dying.
9 There is so much salt in the ground, it turns
10 leaves brown in midsummer and they fall off. My
11 produce has to be watered with water from the
12 river because the groundwater has so much salt in
13 it that if I use it, it stunts the plants.

14 Speaking of river water, we used to swim
15 in it 20 years ago, but now I won't let my dog
16 swim in it because the neighbor's dog died from
17 infection received from water-borne toxins caused
18 by toxic algae.

19 And then I wonder, should I be irrigating
20 what I eat with this water? When I was a kid, I
21 used to go swimming in the slough near my house.
22 I could wade in up to my thighs and still see my
23 feet on a hard, sandy bottom. Now, as soon as
24 you step into it, you sink past your ankles into
25 a slimy goo and you can't see two inches into it.

1 When the Central Valley Water Improvement
2 Act was passed in 1993, I thought help was on the
3 way. But the water under my ground was sweet
4 then, influenced by flows from the San Joaquin
5 River, so things have gotten steadily worse. I
6 have seen the tide running backwards when water
7 was being released, supposedly for the
8 environment. I've witnessed salmon trying to
9 jump into a storm drain because there was more
10 water coming out of that than down the San
11 Joaquin River.

12 Salmon are very resilient. We have had
13 them on the brink of extinction two times in the
14 last two decades. After a couple of above-average
15 rain seasons, they came back, not because someone
16 killed off a predator species or enhanced their
17 habitats. It was because we couldn't catch all
18 the rainfall behind the dam. This natural safety
19 net is going to get a big hole in it when the new
20 water storage projects come online because we
21 will be able to keep more water -- more winter
22 storm runoff.

23 So now is the time to act. Each
24 watershed needs a minimum flow during important
25 times of the year for fish passage. This flow

1 must be cast in stone so that it will go from the
2 river to the ocean and not get lost somehow in
3 the Delta. Your own scientific evaluation
4 indicates that a minimum flow of 50 percent is
5 required to restore the salmon run, so why not do
6 it right.

7 So it's simplistic, what I said, but I'm
8 all for the program.

9 Now that little -- my little water thing
10 there. So that came this morning from the head
11 of the channel in Stockton. And if you keep it
12 upside down you'll notice that the green goo
13 comes all the way up to the top.

14 CHAIR MARCUS: Yeah.

15 MR. ROSASCO: Well, that covers the
16 entire area of Downtown Stockton. I know you
17 guys have probably seen it; right? And it --

18 CHAIR MARCUS: Oh, no, definitely.

19 MR. ROSASCO: No, I want you guys to keep
20 it.

21 CHAIR MARCUS: Oh, good. Thank you.

22 MR. ROSASCO: You know, I want you to
23 keep it. I --

24 MR. SAWYER: Madam Chair, I think our
25 ruling that we won't accept written materials,

1 also applies to bottles.

2 BOARD MEMBER ESQUIVEL: Oh, thank
3 goodness, Counselor.

4 CHAIR MARCUS: I can put it with my three
5 jars of what, primary, secondary and tertiary-
6 treated sewage look like. And my jars of --

7 MR. ROSASCO: Yeah. It would make --

8 CHAIR MARCUS: -- desal.

9 MR. ROSASCO: -- a good paperweight.

10 CHAIR MARCUS: I have jars of everything.

11 MR. ROSASCO: It would make a good
12 paperweight.

13 CHAIR MARCUS: It's a great -- I have a
14 snow dome collection. It would fit right in.

15 MR. ROSASCO: And I would like you to put
16 it on the table when you guys all vote for this
17 to pass it, okay? Thank you.

18 CHAIR MARCUS: Thank you. You don't
19 happen to have any pictures of video of the
20 salmon jumping into a storm drain, do you?

21 MR. ROSASCO: I do.

22 CHAIR MARCUS: Will you please send that
23 to me, quite outside the record? I just would
24 like to see that. Thank you.

25 Mr. Amodio, nice to see you, speaking of

1 veterans --

2 MR. AMODIO: Thank you.

3 CHAIR MARCUS: -- of decades of working
4 on these things.

5 MR. AMODIO: So I just recently re-
6 retired after 40 years, split about equally
7 between nonprofit conservation work and 20 years
8 in the State of California service, including a
9 few years heading up one of the many state-led
10 efforts on the Bay-Delta. We failed.

11 So I want to really thank you and your
12 staff for such a thorough process steeped in
13 science. Yet the question really remains in
14 addressing this Gordian knot is whether all your
15 efforts result in meaningful, timely action, or
16 you become just another study collecting dust on
17 the shelf, which I know none of you wish, nor do
18 I.

19 So I'd like to offer two bits of counsel
20 I received from two individuals, much wiser than
21 I, in hopes it may prove of value as you exercise
22 your authority and responsibility.

23 David Brower, who I assume many of you
24 are familiar with, admonished all of us 40 years
25 ago that, quote, "We have to stop taking the easy

1 trip and charging it to our kids."

2 Tragically --

3 CHAIR MARCUS: I remember that.

4 MR. AMODIO: -- this warning has
5 generally been ignored, resulting in a global
6 environmental crisis, an existential crisis about
7 the human future. In truth, for a state that
8 views itself as a global leader in protecting a
9 healthy environment, California has continuously
10 taken the easy trip when it comes to the Bay-
11 Delta, and more so the San Joaquin River system.
12 It's hard to call it a river for many, many
13 miles.

14 Cumulative results are reflected in an
15 aquatic ecosystem teetering on collapse, as
16 reflected in threatened and endangered fish
17 species and the aquatic web of life. As noted,
18 this is perhaps the most studied ecosystem in the
19 world and yet, to date, we have failed to provide
20 the one essential need for adequate instream
21 flow.

22 Second thing I would offer comes from a
23 previous Resources Secretary Huey Johnson. And
24 he counseled those holding public trust
25 responsibilities. He said,

1 "Just as you reach a decision personally,
2 stand in front of the mirror and think five
3 years from now, am I going to stand up here
4 and see something I'm proud of, something
5 that I know really reflects the best science
6 and really does serve the overall public
7 interest and meets our public trust
8 responsibilities to protect and preserve the
9 environment for future generations?"

10 So I would just lastly say I truly
11 believe you are the last great hope for
12 beginning -- to moving us from the decades of
13 overuse of our rivers to watching an era of
14 restoration. So I will say I fervently hope and
15 will pray for you that in five years from now you
16 can look in that mirror and know that you
17 followed the science and began that era of
18 restoration.

19 And I thank you very, very much for your
20 service.

21 CHAIR MARCUS: Thank you very much.
22 Helpful from one who's been in the trenches
23 himself.

24 MR. AMODIO: I appreciate it.

25 CHAIR MARCUS: Thank you. You know what

1 else David Brower told me?

2 MR. AMODIO: Huh?

3 CHAIR MARCUS: Never put olives in a
4 martini because they displace a good two ounces
5 of gin.

6 (Applause.)

7 CHAIR MARCUS: It's a favorite thing he
8 ever told me while he was on.

9 All right, next. I'm going to do next
10 five, and then take a short break. I'm going to
11 try and get my breaks a little closer this time.
12 We'll take a few. And we'll take -- we won't
13 take a full hour lunch break, we'll take a short
14 lunch break, but we'll do a 15 minutes break
15 after the next five, and then we'll move to
16 another one of our longer speakers.

17 So the next five I have are -- and if
18 you're not in them, let me know, Chris Scheuring
19 from the California Farm Bureau, Joe Daly from
20 the Tuolumne River Trust, Michael Carlin from the
21 San Francisco Public Utilities Commission, Adrian
22 Covert from the Bay Area Council -- Adrienne, I
23 didn't see you -- and Anna Brathwaite from the
24 Merced Irrigation District.

25 MS. TOWNSEND: (Off mike.)

1 (Indiscernible.)

2 CHAIR MARCUS: I have Mr. Daly, yeah.
3 Yes. Yes. That's right. He's one of the
4 longer, but this is Tim O'Laughlin, one of the
5 longer people, so --

6 MR. O'LAUGHLIN: So Michael Carlin will
7 be going with me at the same time, so we'll
8 probably --

9 CHAIR MARCUS: Oh, I'll pull him out then
10 and put --

11 MR. O'LAUGHLIN: Yeah. Pull him out and
12 you can put somebody else in that can speak. And
13 we're going to try to jam our session together.

14 CHAIR MARCUS: Like a full on SJTA?

15 MR. O'LAUGHLIN: Well --

16 CHAIR MARCUS: Sorry. I'm not trying to
17 make a joke or anything, I'm just sort of --
18 okay.

19 So, Mr. Scheuring, because I know you
20 have to take off.

21 MR. SCHEURING: Madam Chair, Members of
22 the Board, good morning. Chris Scheuring on
23 behalf of the California Farm Bureau Federation.
24 Trying to do this in three minutes, I represent
25 the entire membership of my organization today,

1 not just the folks on the tribs.

2 CHAIR MARCUS: Right.

3 MR. SCHEURING: And the reason for that
4 is --

5 CHAIR MARCUS: Right.

6 MR. SCHEURING: -- because I can't figure
7 out any reason why this template doesn't
8 eventually go to all river systems in California.
9 So it's a precedential thing in our view --

10 CHAIR MARCUS: Uh-huh.

11 MR. SCHEURING: -- that we're very
12 concerned about.

13 Obviously, we oppose the amendments. You
14 know that.

15 CHAIR MARCUS: Uh-huh.

16 MR. SCHEURING: We urge you to reject the
17 SED for now anyway.

18 Let me just start with the gist of my
19 written comments was that the flow criteria in
20 the incarnation you're looking at are going to
21 violate Article X, Section 2 of the California
22 Constitution, which you know well, and requires
23 that water is used beneficially to the fullest
24 extent, and that no use of water can be wasteful
25 or unreasonable.

1 Now this action is taken under a Water
2 Quality Control Law, Porter-Cologne, which
3 traditionally, I conceive of it as something
4 related to water pollution and constituents and
5 pollutants, and that sort of stuff. But
6 fundamentally what's at issue here is water
7 resources. I think the core of this is sort of a
8 beef with water rights or our system of prior
9 appropriation, or the way we have organized our
10 human settlement in water rights terms over the
11 last century. And if that's true, you know, I
12 think that Article X, Section 2 and its
13 requirements absolutely do apply because that's
14 the framework for the organization of water
15 resources in the state.

16 So whatever the statutory authority,
17 here, Porter-Cologne, the Constitutional
18 framework is absolutely Article X, Section 2.
19 And the scrutiny that it requires with respect to
20 reasonableness has to be brought to bear on your
21 action today.

22 The view of my organization, these flow
23 requirements in this incarnation, they're clearly
24 not reasonable. There's an absurd human cost
25 involved with questionable, you know, if

1 laudable, certainly very questionable
2 environmental benefit. And yet I think that
3 environmental water commitments or reorganization
4 of other water rights in the name of the
5 environment absolutely do have to meet that
6 constitutional test.

7 So I'm here to ask you to step back from
8 the brink, if you can do that, to table or reject
9 the SED and the amendments, redouble your efforts
10 with folks, like I just -- the speaker I heard
11 from -- the General Manager of the Merced
12 Irrigation District, it seems like people are
13 using a lot of good words and talking about a lot
14 of good things, so let's double-down on that
15 stuff. Let's find these voluntary settlement
16 agreements. Let's consider the non-flow measures
17 and realize that there's a jurisdictional issue
18 here, that some of these are not within your
19 control.

20 But I think you can certainly think about
21 them, things like the projects that are out there
22 in terms of predation, food supply, habitat, more
23 precisely calibrated flow regimes, I think, that
24 are at some level acceptable to the water users.
25 I heard them talk about the SAFE Plan, FERC

1 proceedings. Some of those flows, the gentleman
2 from Merced just said that they can live with
3 some of that. Those are the things we need to be
4 talking about that do not sort of present this
5 excruciating level of human conflict that
6 you're -- that's in front of you for the last
7 couple of days.

8 And then the last thing I'll say is I
9 would urge you to look at incremental strategies
10 in the implementation of this or the adoption of
11 it or whatever stage. I think incrementally, you
12 know, whatever we can say about SGMA, we can at
13 least say that there's a ramp-down or a ramp-up
14 or whatever you want to call it, a 20- to 30-year
15 time horizon. I don't know what the time horizon
16 on this is for implementation, but I think it's
17 going to be a lot shorter.

18 I would urge you instead to kind of
19 stretch this out, look at ways to meet the water
20 needs that are involved here through win-win type
21 water supplies. Prop 1 is supposedly going to
22 bring some new water supplies online that might
23 not be skin off of somebody else's back.
24 Conservation, as we go forward, I think cities
25 and farms are going to be ever more efficient.

1 That frees up some water.

2 CHAIR MARCUS: You should probably wrap
3 up because you ran over.

4 MR. SCHEURING: Yeah, I'll wrap up.

5 CHAIR MARCUS: Sorry. I know that --

6 MR. SCHEURING: You know where I am.
7 Thank you for your -- thank you for the
8 opportunity, and that's it. Thank you.

9 CHAIR MARCUS: No. Thank you.

10 BOARD MEMBER MOORE: Thank you. Yeah. A
11 good comment about incremental implementation.

12 CHAIR MARCUS: We have an elected
13 official who's joined us, I saw him, to
14 Supervisor Vito Chisea from Stanislaus County.

15 Nice to see you. Thank you.

16 SUPERVISOR CHISEA: (Off mike.)
17 (Indiscernible.)

18 CHAIR MARCUS: You don't have to. We're
19 casual here.

20 SUPERVISOR CHISEA: I've been watching
21 the last couple of days and it didn't look
22 casual, all the speakers.

23 So thank you very much, Chair Marcus,
24 fellow Board Members, for allowing the
25 opportunity to be here. Vito Chisea, Stanislaus

1 County Supervisor, representing District 2.

2 I'm not a rah-rah guy. I know you've had
3 a lot of people come up here and they're pretty
4 emotional, but I just want to talk about the
5 human toll and some statistics.

6 First of all, I want to thank Member
7 Esquivel for coming down. It was very nice to
8 have you down to have conversation offline, learn
9 about each other, backgrounds and other things,
10 so that's a big thank you.

11 So yesterday, I did watch the hearing for
12 a couple hours, from about 1 to 3 o'clock. A did
13 hear a gentleman say he was pretty excited, the
14 Palo Alto City Council had unanimously agreed to
15 the SED Plan. I can tell you that in my
16 community, all the cities, it was pretty easy,
17 unanimous against it. But I wanted to just let
18 you know that Palo Alto is not Stanislaus County
19 and that -- or Santa Clara, and that Palo Alto is
20 not like Modesto. I'll throw out a few
21 statistics.

22 Unemployment in the state of California
23 is 4.4, the nation is 4.1 percent, Santa Clara is
24 2.7, and Stanislaus County is 7.0. Violent
25 crimes in Modesto are 7.77 per 100,000, and in

1 Palo Alto it's .8. The median household income,
2 \$50,000 in Stanislaus County; it's about \$112,000
3 in Santa Clara County.

4 I also currently serve at the pleasure of
5 Governor Brown on the San Joaquin Partnership
6 with Mrs. Member D'Adamo. And it was created to
7 deal with problems like this because we are one
8 big disadvantaged community. If you look at it,
9 the San Joaquin Valley as a whole, we are 32
10 percent less per capita income versus the State
11 of California, 50 percent fewer college
12 graduates, and 51 percent less access to
13 healthcare. Those are pretty daunting, along
14 with our air quality, water quality and water
15 quantity issues, which you keep hearing more and
16 more about.

17 I've also failed to mention that I'm a
18 farmer. I grow walnuts in the Turlock Irrigation
19 District. I think it brings me a unique
20 perspective as an elected official. And as a
21 farmer on the ground, I can tell you, in
22 Stanislaus County, we have nine of our ten
23 largest major manufacturing employers are ag
24 based, and you know them all, Foster Farms,
25 Gallo, Conagra, Stanislaus Foods, Hilmar Cheese,

1 Blue Diamond, and the list goes on and on.
2 That's tens of thousands of employees and people
3 on the ground that are directly related to
4 agriculture. If I told you we had one shining
5 star, it's agricultural in our community at this
6 time.

7 But remember, the tax base on all of the
8 land values, whether it's housing, whether it's
9 commercial, whether it's ag value, are all based
10 on water, this 100 years of diversions from TID.
11 And I always like to remind, TID and MID have
12 been diverting the same amount of water off the
13 Tuolumne for more than 100 years, but that whole
14 tax base is what concerns me on the professional
15 side, on the supervisor side. That's how we
16 provide all the services for the community.

17 I know I'm repeating a lot of things that
18 other people have said, but --

19 CHAIR MARCUS: No, you're actually not.
20 You're saying it all much more eloquently, in a
21 more comprehensible way --

22 SUPERVISOR CHISEA: Well --

23 CHAIR MARCUS: -- I think, for a lot of
24 the people listening who don't understand what's
25 happening in the San Joaquin Valley.

1 SUPERVISOR CHISEA: And as we try and go
2 back to natural river flows, if we sit and talk
3 about those things and try to unwind 100 years of
4 water rights, you have to understand, and that's
5 what I'm here for, to understand the complete
6 devastation if it were -- the flow proposal went
7 through as it.

8 The, you know, 3 million people versus 40
9 million people in 100 years in the State of
10 California, quite frankly, the infrastructure
11 hasn't held up. It hasn't -- we haven't expanded
12 it the way we should have. But that's, again,
13 that's another discussion for another day.

14 I know you've heard from a lot of angry
15 people. I like to boil it down because that's
16 not the way I am, I like to just talk, but it's
17 because they're scared. It's not --

18 CHAIR MARCUS: Right.

19 SUPERVISOR CHISEA: -- it's not because
20 there's anger, they're scared. When you look at
21 our average farm, 70 percent of the farms in
22 Stanislaus County are less than 50 acres. The
23 average farm is 185 acres. Everyone needs every
24 acre, the average farmer in my county. This is
25 not Resnick, this is not mega farms, this is

1 Stanislaus County, their family farms, that's
2 what they are. And the people that are bigger
3 family farms were just smarter than me. That's
4 the bottom line, because I didn't take the
5 chance. They took a lot of chances.

6 So just looking forward, we're a
7 challenged and distressed area. There's no ifs,
8 ands or buts about it. I think everyone
9 recognizes that this could be a potential
10 negative tipping point that could take decades
11 for us to overcome if the proposal went through.
12 The forced proposals don't work. I think
13 negotiations, and I know I've offered myself, I
14 believe that we have to do better as farmers. We
15 all have to do better. We can do better, but
16 there has to be -- you know, we have to weigh the
17 cost and we have to weigh how much time is out
18 there.

19 So again, I thank you for allowing me
20 this time. I think, again, you'll hear more and
21 more from people as this thing rolls down. But a
22 voluntary settlement -- and just listening to
23 Merced, I loved listening to Mr. Sweigard and
24 what he had to say, I think TID and MID would
25 agree, and South San Joaquin. I think there's

1 real hope for a settlement.

2 So I'm going to just ask you not to push
3 too far, too earlier.

4 CHAIR MARCUS: Thank you.

5 SUPERVISOR CHISEA: Thank you very much.

6 CHAIR MARCUS: Thanks very much. Always
7 good to see you.

8 (Applause.)

9 CHAIR MARCUS: Mr. Daly, followed by Mr.
10 Covert.

11 MR. DALY: I'm Joe Daly, a member of the
12 Advisory Board of the Tuolumne River Trust.

13 You are at a very challenged stage of the
14 proceedings because the political squeeze is on.
15 I have a perspective that might be helpful.

16 I see you as the good doctors dealing
17 with a very ill patient, a patient who has been
18 ill for a long time. The salmon counts are down
19 in the San Joaquin Watershed, and they keep going
20 down. And the saltwater intrusion into the Delta
21 keeps going up.

22 I'm retired now, but my business for over
23 40 years was taking people on river adventure
24 vacations. Many of those years were on the
25 Tuolumne, Stanislaus and Merced. Over those

1 decades, beginning in the early 1970s, I kept
2 hoping things would get better. That has not
3 happened.

4 Clearly, you have done your work and you
5 know what the results are. Your staff has given
6 the scientific evidence, the medicine, so to
7 speak, to bring about a policy change for the
8 betterment of these rivers and the Delta.

9 In the Sunday newspaper, Secretary Laird
10 is quoted as saying he is holding out that there
11 could be a compromise. The problem with that
12 thinking is that compromise has already happened.

13 Your staff indicated a 60 percent flow
14 would be needed to bring things back to normal.
15 However, you are recommending 40 with a flexible
16 range of 30 to 50 in the February to June time
17 period. To compromise further would make this
18 whole exercise a marginal endeavor at best, maybe
19 even a doomed endeavor.

20 The second problem with more compromise
21 in the San Joaquin Watershed comes when you have
22 to deal with the Sacramento Watershed. If you
23 start compromising here, you're going to be in a
24 much weaker position there.

25 Next, I have great respect for the San

1 Francisco PUC. They have very talented people
2 working there, but there are times when the
3 leadership says the sky is falling. Their double
4 drought modeling is extreme. Their water taps
5 are not running dry and they're not going to run
6 dry anytime soon.

7 Finally, being brave and doing the right
8 thing are not easy. Your scientific
9 documentation is good. I might disagree with
10 your percentages, but you're moving in the right
11 direction. You have come up with a flexible
12 medical plan that recognizes the severity and the
13 complexity of the problem. To help bring about a
14 healthy recovery, your plan must be enacted now.
15 If you do not do it, who will? Be brave and be
16 good doctors.

17 Thank you.

18 (Applause.)

19 CHAIR MARCUS: Thank you.

20 Mr. Covert, followed by Ms. Brathwaite.
21 Oh, he's not here. Okay. Maybe he'll come back.

22 Ms. Brathwaite, I saw you. I knew you
23 were here.

24 MS. BRATHWAITE: Good morning, Board.
25 This is Anna Brathwaite. I'm with Modesto

1 Irrigation District. Two quick points of
2 background.

3 I'd like to emphasize the historical
4 cooperation that has occurred on the Tuolumne
5 River between the Modesto ID, the Turlock ID, and
6 the City and County of San Francisco, and that it
7 has created not just success, but a diversity of
8 successes. The two areas could not have grown
9 more differently in the last 100 years, but it's
10 the decisions and the cooperation that served as
11 the foundation for both of those areas successes.

12 And secondly, I'd like to use Racanelli
13 from 1986. It is a legal decision looking at the
14 1978 Bay-Delta Plan. And I thought that it
15 served as a good framework for our discussion
16 going forward, the main takeaway being that
17 Racanelli divided up the State Water Board's
18 duties into two buckets, the first bucket being
19 coming up with a general plan of applicability
20 for water quality, the water quality control
21 planning process, and then your second bucket of
22 duties which has to do with implementing those
23 decisions on individual water right holders. And
24 that second bucket has to do with due process and
25 the rights afforded to water rights holders.

1 And so I'd like to get to the first point
2 of the comment which is to basically try to
3 explain the steal-our-water comment. I believe
4 that it's received a lot of negative implications
5 here, as if we in the Central Valley don't
6 understand that the water molecules don't belong
7 to us specifically and that we aren't willing to
8 share. And I think that that flies in the face
9 of the last century of history and cooperation
10 that we've managed to do on the Tuolumne River.
11 So I'd like to explain what it means to me.

12 And so steal our water has to do with
13 looking at the final SED, recognizing that the
14 State Water Board addresses it as a planning
15 document, one of general applicability. But for
16 those of us who've read the document, recognizing
17 that all the elements of a water rights decision
18 have been decided in what is supposed to be a
19 planning document, it lays out the parties, it
20 lays out the points of diversion, it lays out
21 quantity, it lays out timing, these are all the
22 elements that supposedly go into a water rights
23 decision.

24 And so when we say steal our water, we
25 aren't saying the physical molecules are somehow

1 ours and cannot be shared. What we're saying is
2 that you're stealing the most fundamental
3 American value, which is that we get our due
4 process. We spent 100 years cooperating and
5 investing in our water rights. And we are due
6 notice for a hearing -- notice and a hearing to
7 talk about how our projects specifically effect
8 the Bay-Delta.

9 And so when we hear steal our water, some
10 of us do believe it is grounded in both fact and
11 law, and that it should not be a position to be
12 mocked.

13 And so moving to the second point --

14 CHAIR MARCUS: That's actually helpful to
15 hear.

16 MS. BRATHWAITE: Wonderful. I do think
17 it has been roundly dismissed, and that's just
18 not fair in light of 100 years of history showing
19 the opposite.

20 So moving forward to the second comment,
21 and that would be about, so, what to do? What
22 would you guys like to hear as what needs to be
23 done going forward from someone who has been
24 participating quite deeply -- (timer buzzes) --
25 if I may continue?

1 CHAIR MARCUS: Finish. Please, finish
2 the thought.

3 MS. BRATHWAITE: It's short. What you
4 would take as a piece of advice from an agency
5 that has been around since the beginning and has
6 been cooperating successfully to successful -- to
7 diverse and successful ends? And that would be
8 to go back to Racanelli, and maybe go back and
9 look at what he offered us as advice. And what
10 he asked the Board to do when he rejected your
11 plan, the asked the Board to look at all the
12 beneficial uses of the Delta.

13 In 1978, when you were attempting to
14 assist the Delta, you were actually looking at
15 the environmental conditions in the Delta. And
16 it is not lost upon many in the regulated
17 community that this newest version of the plan
18 now takes you completely outside the geography of
19 the Delta. And now you're upstream looking at a
20 very narrow group of water right holders. And so
21 maybe taking Racanelli's advice to heart, all the
22 water rights holders includes the projects, it
23 includes the environment, and it includes the
24 Delta diverters, some of which have dealt with
25 the historical problem of proving up their water

1 rights claims.

2 And so I would urge the Board that as you
3 go forward, A, you should be looking at the
4 Delta. This is the Bay-Delta Plan. And the
5 problems identified and addressed in 1978 have
6 never been addressed fully, such that you have
7 now moved your geography to an entirely different
8 area to try and help the Bay-Delta.

9 And we would also say that adjudicating
10 the Delta or otherwise coming to sufficient
11 knowledge about the water right holders in the
12 Delta so that you can implement the Bay-Delta
13 Plan, Racanelli's second bucket, to implement
14 responsibilities on everyone, all the beneficial
15 uses.

16 So thank you very much.

17 CHAIR MARCUS: Thank you.

18 (Applause.)

19 CHAIR MARCUS: Yeah.

20 BOARD MEMBER DODUC: I'm sorry.

21 CHAIR MARCUS: Ms. Doduc?

22 BOARD MEMBER DODUC: Could you please
23 come back up? Thank you. Thank you for your
24 comments. I appreciate your two points very
25 much. However, I'm a bit confused because they

1 seem to contradict each other.

2 What you described in your third point in
3 terms of looking at the entire Delta, all the
4 water users, that would be part of a water rights
5 phase --

6 MS. BRATHWAITE: Absolutely.

7 BOARD MEMBER DODUC: -- which your point
8 two says you believe has already been done
9 through this Water Quality Control Plan.

10 MS. BRATHWAITE: Absolutely. And I'd
11 point out that that actually gets to the heart of
12 one of the concerns that we have with the final
13 SED; you are no longer looking at the Delta. The
14 physical plan area is drawn around three very
15 specific rivers. And so if you go to implement
16 the plan --

17 BOARD MEMBER DODUC: Which would require
18 an additional step, whatever that step might be.

19 CHAIR MARCUS: Before it's implemented;
20 right?

21 BOARD MEMBER DODUC: Yes.

22 MS. BRATHWAITE: Absolutely. And I'm
23 saying that you have not finished your job in the
24 Delta itself, and that it is objectionable to
25 parties upstream that you have not imposed any of

1 the Water Quality Control Plan obligations upon
2 all the parties in the Delta first before moving
3 upstream, or altogether.

4 I think that the point is, is that we're
5 now three Water Quality Control Plans after 1978
6 and there hasn't been any implementation against
7 the Delta water right holders yet, other than the
8 projects, clearly.

9 CHAIR MARCUS: Well, that's a whole other
10 issue --

11 MS. BRATHWAITE: It is.

12 CHAIR MARCUS: -- that you're tossing in.

13 MS. BRATHWAITE: It absolutely is. And I
14 think that it's absolutely tied to this issue
15 now.

16 CHAIR MARCUS: All right. So there's
17 two -- I'm sorry.

18 BOARD MEMBER DODUC: No. No, go ahead.

19 CHAIR MARCUS: Are you okay?

20 So there's too --

21 BOARD MEMBER DODUC: I'm just trying to
22 understand. It's a lot. It's a lot.

23 CHAIR MARCUS: -- you know, just to
24 understand.

25 MS. BRATHWAITE: No, please. Please.

1 CHAIR MARCUS: Because again, people are
2 speaking in stuff in make sense to them because
3 they're talking to their own folks about it. So
4 helping illuminate it as --

5 MS. BRATHWAITE: Mostly, because we get
6 three minutes.

7 CHAIR MARCUS: -- Mr. Sweigard did --

8 MS. BRATHWAITE: And so, you know, we
9 really try to --

10 CHAIR MARCUS: No. That's why we --

11 MS. BRATHWAITE: -- try to focus our
12 words.

13 CHAIR MARCUS: -- can ask questions and
14 it doesn't count on your time.

15 MS. BRATHWAITE: Thank you.

16 CHAIR MARCUS: And it -- but it helps
17 illuminate where folks are -- a number of these
18 help us understand where some of the talking
19 points are coming from legitimately, as opposed
20 to them just coming at us without context, so
21 this is helpful.

22 MS. BRATHWAITE: Very good.

23 CHAIR MARCUS: But help me understand
24 something, what you're saying. I recognize there
25 are the issues as -- between water users as we're

1 trying to figure out the whole when we're talking
2 about, for example, Delta outflow, which we'll be
3 dealing with in the -- in Part 2.

4 But are you arguing -- are you arguing
5 that the Bay-Delta Plan is only to just help
6 the -- you're saying it's just to help the Delta
7 proper, as opposed to looking at the whole
8 ecosystem of which these tributaries are a part
9 and we need to do planning for, as well? I mean,
10 ultimately, when it comes to outflow you do need
11 to -- I've read, I won't get into like --

12 MS. BRATHWAITE: I understand
13 (indiscernible).

14 CHAIR MARCUS: -- how familiar I am with
15 Racanelli and his family and all that. But the -
16 - you're suggesting that somehow to our plan
17 here, which also talks about ecological flows
18 that need to come from everywhere and the
19 lifecycle of salmon on those tribs is somehow
20 totally apart from the Delta Plan, whereas it's
21 not. It's part of the whole, the whole part of
22 the Delta Plan.

23 MS. BRATHWAITE: Yeah, I would agree with
24 that, that we, the San Joaquin River tributaries
25 and the San Joaquin River, we are part of the

1 Delta and we are contributing to the Delta. And
2 so I'm trying to walk you through where we were
3 in 1978 to present. And I would say that for
4 every iteration of the Water Quality Control
5 Plan, there has never been an adjudication or --
6 and otherwise, there has not been imposition on
7 the water rights of the Delta water rights
8 holders. And I think that --

9 CHAIR MARCUS: Well, because last time,
10 it settled.

11 MS. BRATHWAITE: Because the last time it
12 settled. The -- well, maybe to help finish the
13 point.

14 CHAIR MARCUS: Sorry.

15 MS. BRATHWAITE: No, that's okay. I'm
16 just trying to follow every strain of thought.

17 And what I would say is that Cal WaterFix
18 and the brouhaha that has been created because it
19 -- there is warfare among all of the in-Delta
20 diverters, and I don't think that there's
21 certainty. And I think that the Delta itself has
22 been identified as a killing field for salmonids.
23 And the salmonids are supposed to be that
24 biological link that we're trying to follow
25 through the Bay-Delta Plan; right? The fish is

1 going upstream to the tributaries and heading
2 back out to the ocean, presumably to come back.

3 And so this suggestion about coming to a
4 better understanding of the water rights that are
5 held in the Delta is about, A, looking at all of
6 the beneficial uses, including those particular
7 water diverters coming to a better understanding
8 of how water quality control obligations would be
9 imposed upon them. And that is because those
10 obligations have now migrated upstream to the
11 upstream diverters.

12 And so as we see a lack of certainty
13 about all of the Delta water right holders, I
14 think that has been best proven through the
15 Division of Water Rights most recent report going
16 through the informational order responses from
17 the Delta diverters. There's been a report
18 that's been created. There's a summary
19 spreadsheet that lays out the parties whose water
20 rights are not on their face -- not water rights,
21 water claims that are on their face not prove --
22 insufficient to substantiate the claim. And so
23 we can see the Division of Water Rights going
24 forward on that very type of work. We encourage
25 that and we think that that entire process should

1 be incorporated into the implementation of the
2 Water Quality Control Plan.

3 CHAIR MARCUS: Interesting. Thank you.
4 That's helpful framing.

5 Let me say we'll take a 15-minute break.
6 Oh, is there another question? No? A 15-minute
7 break, and we'll come back. And then we'll take
8 a latish lunch. So if you're someone who needs
9 to eat at noon, I suggest you get a snack now.
10 We will come back at 11:40.

11 (Off the record at 11:24 a.m.)

12 (On the record at 11:48 a.m.)

13 CHAIR MARCUS: We've got -- I think I
14 have your cards the way they've come in, or I
15 know the people who need to leave early. And I
16 think I understand what the folks who had advance
17 permission to present earlier to present longer
18 want to do. I'm going to start with general
19 public.

20 And just for the reminders of the --
21 quite a few people have come in since the
22 beginning. Folks will have three minutes. I'm
23 going to call you in groups of five, just so you
24 have a little advance notice as to when you're
25 going to be coming up. And I will be

1 interspersing those with some of the longer
2 presentations. And then we'll do at least one,
3 or maybe two, of the longer presentations before
4 we break for lunch formally, which will be
5 sometime between 1:00 and 2:00. So I hope folks
6 have gotten snacks or sustenance. And I have
7 some emergency provisions here if you end up
8 having -- I'm happy to share my emergency
9 provisions. You may not like them, but I'm happy
10 to share them. Yeah, I'm not announcing what I
11 have. But we will -- we'll take reasonable
12 breaks today.

13 Again, if you wish to speak, please fill
14 out a blue card now. It's always -- getting a
15 flood of them later on upsets the balance. We're
16 taking the cards pretty much in the order in
17 which they came in, unless people have asked to
18 be paired with someone or they have let the clerk
19 know if they have to leave by a certain time, and
20 I'm just trying to accommodate that.

21 So we'll do it in groups of five. The
22 next five are Percilla Frizzell for Sacred
23 Generations, Susan Rowinski, Debbie Webster from
24 CVCWA, Chad Tienken from Modesto Irrigation
25 District, and Karna Harringfeld for Stockton East

1 Water District.

2 MS. P. FRIZZELL: Good morning, State --

3 CHAIR MARCUS: Good morning.

4 MS. P. FRIZZELL: -- Water Board Members.

5 First, I'd like to honor the Maidu, Miwok and
6 (indiscernible) land that we stand on today.

7 Second, I'd like to introduce myself. My
8 name is Percilla Frizzell. I am the Executive
9 Director of Sacred Generations and a 2008 Echoing
10 Green Fellow, joining over 800 climate and global
11 leaders driving social impact around the world
12 for the better, such as our former First Lady
13 Michelle Obama.

14 Sacred Generations is an
15 intergenerational movement led by our indigenous
16 world view of healing to protect sovereign
17 nations and honor the sacred -- our sacred
18 culture, communities and land. Educational
19 inequity, mass incarceration and climate
20 injustice are interconnected problems. I'd like
21 to ground us in a quote from a historically well-
22 known and highly respected civil rights leader,
23 Dr. Martin Luther King.

24 "Our nation was born in genocide when it
25 embrace the doctrine that the original

1 American, the Indian, was an inferior race.
2 We are perhaps the only nation which tried,
3 as a matter of national policy, to wipe out
4 its indigenous population. Moreover, we've
5 elevated that tragic experience as a noble
6 crusade."

7 This historical context is important to
8 understand when framing the future of natural
9 resources, especially water, because
10 (indiscernible), water is life.

11 Today I'm asking you to not only consult,
12 but rather partner with the tribal nations of
13 California in this process, respecting the
14 hundreds of years of environmental knowledge the
15 indigenous communities of California have as the
16 original stewards of this land and all the
17 natural resources.

18 This process of partnership raises a key
19 question of treaty rights within the
20 Constitution. Will the California State Water
21 Resources Control Board partner with sovereign
22 nations in the process of making decisions about
23 natural resources?

24 I encourage you to furthermore
25 historically partner with sovereign nations,

1 sovereign tribal nations by restoring
2 California's rivers, water and salmon with their
3 original environmental stewards of this land to
4 protect our way of life and future generations.

5 Furthermore, I'd like you to clearly
6 understand the impact of your decisions on our
7 brothers and sisters reentering the community.
8 Relying on traditional food ways and ceremonies
9 to restore their balance and leadership after
10 being incarcerated for 5, 10, 20, 40 years.

11 I encourage you to research the
12 leadership of the Tribal Judge of the Yurok
13 Nation, Abbie Abinanti, who is also the first
14 Native American woman to pass the Bar in
15 California. Our Honorable Elder Abinanti is one
16 of a growing number of tribal judges nationwide
17 incorporating traditional culture into their
18 classrooms in the process of restoring
19 communities. Ultimately, natural resources are
20 critical in this process. Also, access to
21 traditional food ways and ceremonies are equally
22 important.

23 And I want to sing a song to recognize
24 the future generations impacted by your decision.

25 (Singing.) "Think of the generations,

1 who will inherit these nations, prophesize to,
2 make sacred choices. It's your job to live
3 sovereign voices."

4 Thank you for your time today.

5 CHAIR MARCUS: Thank you very much for
6 yours.

7 (Applause.)

8 CHAIR MARCUS: Ms. Rowinski.

9 MS. ROWINSKI: Just -- there we go.
10 Okay. Great. Good morning. My name -- oh,
11 thank you. Okay.

12 CHAIR MARCUS: Is that a trick mike or
13 the fallback mike?

14 MS. TOWNSEND: (Off mike.)
15 (Indiscernible.)

16 CHAIR MARCUS: Okay.

17 MS. TOWNSEND: (Indiscernible.)

18 CHAIR MARCUS: Yeah. Sorry.

19 MS. ROWINSKI: Okay. Great. Good
20 morning. My name is Susan Rowinski. I'm a 20-
21 year resident of the City of San Mateo. My
22 family's drinking water is from the Tuolumne
23 River. And as a result, my comments today will
24 focus on the final SED's flow proposals. I
25 represent no organization or trade group. I

1 represent my household. I drove up from San
2 Mateo this morning to speak to the Board on this
3 important matter.

4 I recommend the Board approve the flow
5 proposal described in the final SED in the Bay-
6 Delta Plan. The proposal is a 30 to 50 percent
7 unimpaired flow, starting with a 40 percent, as
8 well as the non-flow factor incentive for the
9 Lower San Joaquin, Stanislaus, Tuolumne and
10 Merced Rivers.

11 I also recommend that the Board finalize
12 the Draft Bay-Delta Plan and its accompanying
13 Substitute Environmental Document in the very
14 near future. However, finalizing does not mean
15 continuous development improvement and changes.

16 Implementation of the Bay-Delta Plan, I
17 believe, is key to breaking through the process
18 of relying on supply, as well as breaking through
19 the water wars, from my perspective, which have
20 made it -- which have made it very difficult for
21 my state for too long to regulate and manage its
22 waters for multiple use.

23 Breaking this blockade and reliance on
24 supplies -- on supply, I believe, will give water
25 utilities and agencies and cities the incentives

1 to move beyond and unleash the technology
2 required to maximize reclaimed water for potable
3 and non-potable uses.

4 In my City of San Mateo, we are currently
5 investing \$1 billion on a new wastewater
6 treatment plant scheduled to be completed in
7 about nine years. When completed, that plant
8 will release millions of dollars -- I mean
9 millions of gallons of some of the most cleanest
10 drinking water in the state, in the state.

11 Now in May -- in May, my city council
12 approved an exploratory plan for potable reuse to
13 capture and transport that very clean water
14 leaving our wastewater treatment plant to the
15 Crystal Springs Reservoir. Breaking the water
16 war blockade and moving beyond the reliance of
17 supplies means more focused and very aggressive
18 residential conservation methods. During the
19 drought the San Francisco Bay Area reduced its
20 residential water use by 30 percent. As a
21 resident, I believe we can increase another five
22 to ten percent.

23 Thank you for allowing me to speak. But
24 once again, really, this plan is another jolt to
25 move us beyond supply. Thank you.

1 (Applause.)

2 MS. WEBSTER: Good morning, Chair Marcus.
3 Debbie Webster.

4 CHAIR MARCUS: Hey.

5 MR. TIENKEN: And Board Members, Debbie
6 Webster, with the Central Valley Clean Water
7 Association. And --

8 CHAIR MARCUS: Thank you also for coming
9 back today. I really appreciate the people who
10 spent time yesterday and then deferred comment to
11 let other speak. It's very kind.

12 MS. WEBSTER: I would have missed your
13 three jars of different type of wastewater
14 treatment.

15 CHAIR MARCUS: You probably have your own
16 set.

17 MS. WEBSTER: I enjoyed that --

18 CHAIR MARCUS: Yeah.

19 MS. WEBSTER: -- so thank you. Anyways,
20 I wanted to follow up a little bit on the
21 comments that were made by Melissa Thorme
22 yesterday.

23 As you probably know, several of our
24 member agencies are going to be impacted by the
25 changes. And I want to start also by saying that

1 we really appreciate the effort that Staff has
2 gone to address many of our changes, recognizing
3 the wastewater treatment plants are very much a
4 diminimis source, also recognizing that we in the
5 Central Valley have a plan through SV-SALTS to
6 address salinity. And having these treatment
7 plants be able to participate in that is critical
8 and is in, I believe, the best interest of the
9 Central Valley and of the state to be able to
10 collaboratively work towards solutions.

11 CHAIR MARCUS: I appreciate all the time
12 that you've spent with Staff, really just
13 working, working it through. It was a good --
14 you spent a lot of time with us on water quality
15 issues, but it was really helpful to have you do
16 that.

17 MS. WEBSTER: One of the concerns that we
18 still has that Melissa was talking about
19 yesterday was with the compliance schedule policy
20 and how that was framed. The compliance schedule
21 policy, unless there is a TMDL, expires after ten
22 years from the date a new objective is
23 implemented. So therefore, basically, in ten
24 years, even though it's defined to be infeasible,
25 these treatment plants would have to comply.

1 We think that there's probably ways that
2 we can word it in such a way so that with the
3 variance policy, which is a little bit of a
4 different tool but --

5 CHAIR MARCUS: Uh-huh.

6 MS. WEBSTER: -- and the compliance
7 schedule policy, we can work it so that these
8 treatment plants can participate in the really
9 long-term salt solution for the Central Valley.

10 And so I just wanted to come up here and
11 say that we'd like to -- we probably think that a
12 few more changes are needed, and we'd like to
13 work with your staff on that.

14 So thank you.

15 CHAIR MARCUS: Thank you. Happy to.

16 Mr. Tienken?

17 MR. TIENKEN: Good morning, Chairwoman
18 Marcus and additional Board Members. My name is
19 Chad Tienken and I'm the Modesto Irrigation
20 District's Civil Engineering Manager. It's my
21 pleasure to be here today. And I appreciate you
22 taking the time to hear public comment on this
23 vitally important issue.

24 I know my time is limited, and thus, I
25 wanted to make comments regarding three issues:

1 one, the STM Working Group --

2 CHAIR MARCUS: Uh-huh.

3 MR. TIENKEN: -- two, the impacts of the
4 preferred alternative on river temperature and
5 salinity control absent carryover storage; and
6 finally, three, the potential exacerbated impacts
7 of climate change.

8 With respect to the STM Working Group,
9 let me remind you that Don Pedro is a privately-
10 owned facility. The State Water Resources
11 Control Board has no authority to establish the
12 STM Working Group.

13 As water managers, complicating our real-
14 time reservoir management actions, which are
15 predicated on the most technologically advanced
16 watershed management practices, with a group of
17 individuals unfamiliar with the Tuolumne River
18 Watershed, our operations and the relationships
19 among the three partners on the Tuolumne River
20 remains an unnecessary, undefined and
21 irresponsible exercise. We don't need any
22 outside agencies to assess the effectiveness of
23 our operations. Our operations both from a flood
24 control perspective and that from a water supply
25 perspective have been well documented and enjoyed

1 by those we serve and those we protect
2 downstream.

3 With respect to the impacts of the
4 preferred alternative on river temperature, I'm
5 reminded of the question that your previous
6 Assistant Deputy Director Les Grober was asked
7 November 29th, 2016. The question was: "What is
8 the 40 -- why is the true 40 percent unimpaired
9 flow not in the SED?"

10 His answer was strikingly honest, and let
11 me remind you of what it was.

12 "If reservoir constraints are excluded it's
13 going to be a very interesting result. I'm
14 not sure that we would drain the reservoirs,
15 but we'd come close to it in some years and
16 we'd lose all temperature control for many
17 months."

18 So rather than develop a balanced plan
19 that meets the needs of wildlife, urban customers
20 and our agricultural customers, you chose to not
21 analyze it and assume that the reservoir owners
22 will solve the problem by modifying the reservoir
23 operations.

24 In addition to river temperature, under
25 the SED, salinity control will no longer be the

1 responsibility of the State Water Project and the
2 Central Valley Project, but will be borne on the
3 backs of the San Joaquin River tributaries.

4 Lastly, and pertaining to climate change,
5 the State Water Resources Control Board has
6 chosen to ignore both its own resolution adopting
7 a comprehensive response to climate change and
8 the reality that future runoff patterns,
9 available precipitation, temperature changes and
10 other factors will significantly impact the
11 assumptions made in the SED. In fact, the SED's
12 current Impacts Analysis is based on a
13 temperature model that ignores climate change and
14 that uses cooler historical climate conditions to
15 simulate reservoir stratification -- (timer
16 buzzes) -- I'm almost done --

17 CHAIR MARCUS: No, go. Please, finish
18 up. That's fine.

19 MR. TIENKEN: -- sure -- release
20 temperatures and downstream river temperatures.
21 This position is inexcusable given that the other
22 proceedings before -- that in other proceedings
23 before you, you are keenly aware of the
24 importance of modeling adaptive reservoir
25 operation's responses to climate change.

1 And I'll conclude now.

2 Despite the fact that the revised SED
3 remains a significantly flawed document, we
4 aren't a group of hell-no. We are a group that
5 was -- that has invested \$25 million in the best
6 available science on the Tuolumne River. If you
7 are looking for a balanced and sustainable plan
8 that has predicted benefits in excess of what you
9 have developed, you need not look far, as MID and
10 TID have developed the Tuolumne River Management
11 Plan to do just that. And I believe you'll hear
12 more about that later today.

13 CHAIR MARCUS: Thank you. Thank you.
14 You've illuminated some things for me. I
15 appreciate it.

16 (Applause.)

17 CHAIR MARCUS: Ms. Harringfeld.

18 MS. HARRINGFELD: Good morning, Chair
19 Marcus --

20 CHAIR MARCUS: Hello.

21 MS. HARRINGFELD: -- Members of the State
22 Board. I'm Karna Harringfeld on behalf of
23 Stockton East Water District. We are here today
24 to make sure that the State Water Board Members
25 understand the devastating impact that will occur

1 on Stockton East water supplies, as well as the
2 critically over-drafted Eastern San Joaquin
3 Groundwater Basin.

4 By way of background, Stockton East is a
5 CVP contractor from the New Malones Project on
6 the Stanislaus River. Our contractual
7 entitlement is 75,000 acre feet. We have another
8 district, a neighboring district that also has a
9 contract for 80,000 acre feet, a total of 155.

10 The final SED purports to evaluate the
11 impacts of the Water Quality Control Plan. But
12 because of the way it is depicted in the SED,
13 meaning that all of water years are actually
14 meshed together and averaged, it really doesn't
15 elicit what is really happening in our district.

16 And to be specific, yesterday the --
17 your -- one of your State Water Board staffers
18 said that in above-normal years there will not be
19 any impact to water users. And if you really dig
20 into your document and the appendix, it shows
21 something very different for Stockton East Water
22 District. In above-normal years the document
23 you're modeling shows we will be impacted 58
24 percent of the years, in above-normal years. In
25 below-normal years, that number gets to 68

124

1 percent. In critical and dry years, we receive
2 zero supply, 100 percent impact.

3 And I think what -- one of the most
4 frustrating things is from our perspective is
5 your staff's statement that, oh, well, we won't
6 really be impacting water users because they'll
7 just pump groundwater. And I can tell you, we
8 are in a critically over-drafted groundwater
9 basin. The provision of the Stanislaus River
10 supply from roughly 1995 through 2018 has really
11 done wonders for our over-drafted groundwater
12 basin. We have brought levels up in certain
13 areas that have had surface water supply to a
14 steady state of almost equilibrium. So we've
15 been doing it, but we can only do it when we have
16 surface water.

17 The SED also says that Stockton East
18 supplies won't be impacted, well, that we could
19 offset the impact by looking to the Calaveras
20 River. The Calaveras River, we fully utilize the
21 entire supply in that river, as well as the
22 framework document that was just released July
23 8th --

24 CHAIR MARCUS: Uh-huh.

25 MS. HARRINGFELD: -- is proposing 55

125

1 percent of our Calaveras River supply would be
2 dedicated to the environment. I mean, that's
3 just unacceptable for a district that's in a
4 critically over-drafted groundwater basin.

5 The only other comment I have is with
6 respect to the salinity objective at Vernalis and
7 the interior Delta. We don't have a position on
8 what the objective should be. But in your
9 implementation plan, you are intending to
10 condition the Bureau's water rights at New
11 Melones to meet the .7, and that is just --
12 that's unacceptable. It is illegal from, at
13 least, our perspective.

14 And what's interesting is you base the
15 continuing the condition on D-1641 findings. And
16 you have to recognize, D-1641 was adopted in
17 2000. There has been 18 years of water quality
18 improvements that have occurred on the San
19 Joaquin system, including the Grasslands Bypass
20 Project, including the San Joaquin River
21 restoration flows. And so for this summary
22 conclusion that we should continue to condition
23 the Bureau's rights on an outdated analysis from
24 2000 is just -- is very frustrating from our
25 perspective.

1 So that's all I have.

2 CHAIR MARCUS: That's helpful. Thank you
3 for flagging it. As with the discussion about
4 Racanelli, I can't engage in a conversation about
5 what I might think or not, and we'll have to
6 spend a longer time on some of these. I don't
7 necessarily agree, but I also want to understand
8 it. So --

9 MS. HARRINGFELD: All right.

10 CHAIR MARCUS: -- thank you for flagging
11 it because it's important to flag all these
12 issues. That's --

13 MS. HARRINGFELD: Certainly.

14 CHAIR MARCUS: -- basically what I'm
15 trying to say. I'm also trying to explain that
16 I'm not going to get into an extended
17 conversation on the law here. But flagging it is
18 particularly helpful for us for follow-up. Yeah.

19 BOARD MEMBER D'ADAMO: I'd just like to
20 ask you some follow-up questions here. This is
21 an area that I'm particularly concerned about
22 because groundwater, shifting to groundwater, my
23 understanding of the area is the whole point
24 behind getting you the surface supply in that
25 area was to address saltwater intrusion. And so

1 I think that although Staff's assumption that
2 there will be a shift to groundwater, maybe from
3 a broad view, that would make sense in the short
4 run, not in the long run because of SGMA, but in
5 the short run. But that's a different situation
6 in East San Joaquin because of the saltwater
7 intrusion.

8 So could you talk a little bit more about
9 -- you say that, you know, it's an equilibrium.
10 You don't mean the groundwater basin is an
11 equilibrium? You're talking about the saltwater
12 intrusion issue?

13 MS. HARRINGFELD: Both, actually. We've
14 seen from the provision of anywhere from 30,000
15 acre feet in some years to 155 acre feet in other
16 years, that surface water supply has gradually
17 brought up the groundwater basin in both Central
18 and in Stockton East. Stockton East has provided
19 on average 50,000 acre feet of water to our urban
20 customers, which include the City of Stockton,
21 Cal Water, and two little county entities.

22 Bringing in that and treating surface
23 water and delivering it to our urban users has
24 basically pushed back the saline intrusion that
25 had been occurring. So that area has been

1 stabilized because we have brought in the surface
2 water. And the City and Cal Water are pumping
3 much less than they have historically.

4 BOARD MEMBER D'ADAMO: Yeah. The whole
5 point was to get people off groundwater, not --

6 MS. HARRINGFELD: Exactly.

7 BOARD MEMBER D'ADAMO: -- take away the
8 surface and then now go back to groundwater. So
9 it's a particular issue in this region.

10 And then on the Calaveras supply, Staff
11 was suggesting in the response to comments that
12 you use, you fully utilize your supply, or that
13 you apply for a water right to obtain additional
14 water?

15 MS. HARRINGFELD: Well, we currently
16 fully utilize not only our allocation, but
17 because of a contractual relationship, we are
18 allowed to use water that the Calaveras County
19 Water District doesn't use. So we use our
20 supply. We use their supply. And, yes, in fact,
21 we have applied for additional water rights for
22 additional flood flows that will be put to
23 beneficial use, but those aren't occurring today.

24 BOARD MEMBER D'ADAMO: Okay.

25 MS. HARRINGFELD: So we've applied for

1 them but -- and we applied in 1997, so it's been
2 a while.

3 BOARD MEMBER D'ADAMO: Okay. And then to
4 your point about Phase 2, it's just not a
5 realistic alternative on the Calaveras?

6 MS. HARRINGFELD: That is correct. You
7 mean utilizing Calaveras River water?

8 BOARD MEMBER D'ADAMO: Right.

9 MS. HARRINGFELD: I mean, I could talk
10 for days on the unrealistic aspect of applying 55
11 percent unimpaired flow on the Calaveras River
12 that isn't even connected to the Delta, that
13 doesn't support a salmon fishery, that has a
14 created Steelhead fishery because of the way we
15 operate our system. I mean, it was a warm water
16 fishery until the dam went up.

17 BOARD MEMBER D'ADAMO: Okay. And then
18 Board Member Moore corrected my label of stranded
19 assets yesterday, so I don't want to make that
20 same mistake today.

21 With respect to the investment, so when
22 you got the water supply from the Stanislaus
23 River, I believe Stockton East and, you know,
24 maybe other entities, as well, invested in a
25 conveyance system to deliver that water. So I

1 want to understand how much you put into that
2 system. And would it be considered completely
3 stranded or, as Board Member Moore pointed out,
4 an underutilized asset?

5 MS. HARRINGFELD: Well, certainly. In
6 1980, basically when they -- when the Board
7 granted the water rights for the U.S. Bureau of
8 Reclamation, they said you can't fill the
9 reservoir until you go out and you find people to
10 contract with. And the estimated was roughly
11 200,000 acre feet. And so they came -- coming to
12 us. And we contracted for the joint districts,
13 155 in 1983.

14 We then had to build facilities to
15 connect the Stanislaus River Basin to the Eastern
16 San Joaquin Groundwater Basin. And we spent
17 roughly \$70 million. We financed that with the
18 help of the City of Stockton and our other
19 ratepayers. But absolutely, I mean, in years
20 when we get zero percent supply, it will be a
21 very, very underutilized asset. We take water.
22 We wheel water for Central. But Stockton East
23 and Central are the only two that use those
24 facilities. So there is an Oakdale and SSID that
25 don't have access to those facilities. They

1 are -- they would be completely underutilized in
2 many, many years.

3 BOARD MEMBER D'ADAMO: Okay. Thank you.

4 CHAIR MARCUS: That's helpful, I know.
5 Thank you for the judicious use of time, too. I
6 know we heard a lot about this in our other
7 hearing, and I think getting into the details is
8 particular helpful, so thanks. You've put up all
9 kinds of flags and asterisks. I appreciate that.

10 Next five, and then I'll take a panel or
11 a set of speakers, Anya Radabaugh -- Anya
12 Radabaugh, sorry, I always do that, Ann Clark.
13 Anya is from the Western United Dairyman. Ann is
14 from the Tuolumne River Trust. John Kreiter from
15 the Tuolumne River Trust. Meredith Nikkel on
16 behalf of North Delta Water Agency. And Michelle
17 Connelly from the California Walnut -- oh, I'm
18 not -- she needs to go later. Sorry. And then
19 Valerie Nera from the California Chamber of
20 Commerce.

21 Also, in case you came in a little later,
22 I have a stack of cards of people who came
23 yesterday and had to leave before they were able
24 to speak. If you're here and you want to come
25 speak, just let the clerk know so that I'm not

1 just reading off a bunch of names.

2 Ms. Radabaugh? She may come back. I'll
3 give her another shot.

4 Ann Clark, nice to see you. I haven't
5 seen you in a very long time.

6 MS. CLARK: It's wonderful to see you
7 too. I'm going to talk very fast. I'm Ann
8 Clark, a member of the Tuolumne River Trust
9 Advisory Board, and a member of NRDC. I'm
10 speaking today for myself.

11 I want to thank the State Water Resources
12 Control Board and staff for all their work. You,
13 the State Water Resources Control Board, have
14 vital and critical decisions to make. Water is
15 not just about real estate density and
16 development, which we have a lot of in San
17 Francisco. Water must conserved for use for
18 cities, towns, farms, orchards, vineyards and
19 rivers, and the public must be included in the
20 decision making.

21 You and we know that with the
22 comprehensive better management of snow melt,
23 water-efficient irrigation practices, and
24 replacing lower value water-intensive crops with
25 higher value water-efficient crops, we could grow

1 more food with less water.

2 I'm a Hetch Hetchy person. In our Hetch
3 Hetchy service area, water was decreased by 30
4 percent between 2006 and 2016 as a result of
5 water conservation. And for me, guess what? My
6 water bill went down. Yay.

7 In the South Joaquin Water district, a
8 pressured irrigation system reduced water by 30
9 percent while increasing crop yields by 30
10 percent.

11 In 2009, I discovered an important study
12 that I had forgotten about and found again last
13 week and brought it with me called Maximizing Ag
14 Water Resources, A Bar Ag Enterprises, Los Banos.
15 I have a copy to share with you. It's an
16 excellent study and it's an excellent study now.

17 Way back when, I'm probably the only
18 person in the audience who remembers a musical
19 called Oklahoma. One of the lyrics was "The
20 farmer and the cowman should be friends."

21 CHAIR MARCUS: That's right.

22 MS. CLARK: That's us. We must work
23 together, the farmers, the ranchers, the cowboys
24 and cowgirls, cities, urban, suburban communities
25 with the land, the rivers, the deltas. Working

1 together is the only way we will survive drought
2 and horrible forest lands and communities,
3 meadows destruction and fires.

4 We all know how important water and
5 rivers are for California and worldwide. Water
6 is not just a tap-fill use and flush commodity.
7 Water is the lifeline of our planet.

8 Thank you for having these hearings and
9 inviting all of us to come and speak to you.
10 Thank you very much.

11 CHAIR MARCUS: Thank you very much.

12 (Applause.)

13 CHAIR MARCUS: And I think you've set up
14 the holiday skit by taking Oklahoma and adding a
15 bunch of lyrics to it. I kind of like that as an
16 idea. Yeah.

17 MS. CLARK: You do not want to hear me
18 sing.

19 CHAIR MARCUS: Yeah. I'm going to be the
20 last person to sing in front of everybody too.

21 Mr. Kreiter?

22 MR. KREITER: Good morning. It's nice to
23 be here in front of the Board. My name is John
24 Kreiter and I have a home on Lake Don Pedro. I'm
25 also, as you noted, a member of the Tuolumne

1 River Trust Board.

2 One of the things that I enjoy is
3 kayaking the Tuolumne River. That's been fun.
4 I've been able to observe it over time. I also
5 enjoy fly fishing. Unfortunately, there's not a
6 lot of fish in the Tuolumne River to fly fish
7 for, but I enjoy it anyway.

8 I want you to know that I support the
9 recommendation of the Board.

10 Through the time that I've spent on the
11 Tuolumne River, I have witnessed the devastation
12 that have occurred with low flows. I've seen the
13 intrusion of water hyacinths that have come up in
14 the river that have made the river pretty much
15 unusable for humans and made fish passage
16 extremely difficult. I've seen firsthand the few
17 hundred salmon that spawn in the La Grange area.
18 And I know that that's far, far less than the
19 hundreds of thousands that used to spawn in this
20 area. So, you know, the way I look at it, a
21 healthier salmon population is a big deal.

22 And the thing I would say is that salmon
23 is more than an environmental issue. It's also
24 an economic issue. As you know, the salmon, you
25 know, world creates jobs and it contributes to

1 the California economy significantly, so it's not
2 just an environmental issue.

3 The health of the bay and the rivers that
4 connect it are being compromised with low flows.
5 We've heard a lot of, you know, I think good
6 information about that and we know that's true.

7 Now, you know, I know the opponents of
8 this proposition will tell you that agriculture
9 is going to be harmed, as well as the City of San
10 Francisco is going to be affected by -- it's
11 going to inhibit growth. Well, you know, I think
12 that there is a lot that can be done
13 technologically that person spoke to earlier.
14 There's a lot more that we could do with recycled
15 water, whether that be piping it to areas that
16 need more water. There are so many technological
17 advances that we haven't taken advantage of. I
18 mean, the good news is in San Francisco, some of
19 the buildings that are going up are putting in
20 recycled water systems, which I think is
21 fantastic.

22 But, you know, I would agree with the
23 person that said if we don't take a stand and
24 force there to be action, then we'll continue to
25 do what we've always done, which is to burn up

1 the water that we currently use and flush it down
2 the toilet and put it in the bay.

3 So, obviously, there are a lot of
4 competing interests for the water that's
5 available. And I think that the Board has done a
6 good job of trying to find the middle ground that
7 will hopefully balance the needs of the many.
8 And I fully support, you know, your
9 recommendation and I thank you for your time
10 today.

11 CHAIR MARCUS: Thank you. Thank you for
12 joining us.

13 (Applause.)

14 CHAIR MARCUS: Ms. Nikkel? There you
15 are.

16 MS. NIKKEL: Good afternoon already.
17 Meredith Nikkel, representing the North Delta
18 Water Agency. Melinda Terry, the Agency's
19 General Manager, was here yesterday listening to
20 the comments. But she had to be at a board
21 meeting for the Agency this morning, so she sent
22 me and you get me instead.

23 The Agency has a legislative mandate to
24 assure that the lands within the North Delta have
25 a dependable supply of water of suitable quality

1 sufficient to meet present and future beneficial
2 uses for agricultural, municipal and industrial
3 purposes. Although water users within the Agency
4 do not use water from the Lower San Joaquin
5 River, the proposed changes to existing salinity
6 standards still may affect those water users.

7 The Agency, therefore, wants to remind
8 the State Water Board and its staff of the
9 contractual protections afforded to the water
10 users in the North Delta, including year-round
11 water quality criteria at seven monitoring
12 locations to protect agricultural activity, and
13 also the responsibility of the Department of
14 Water Resources to meet any new flow obligations
15 and objectives contained in an updated Bay-Delta
16 Plan.

17 In 1981 the Agency reached settlement
18 with the state and signed a contract with the
19 Department of Water Resources for the assurance
20 of a dependable supply of suitable quality to
21 satisfy beneficial uses in all channels within
22 the Agency's boundaries. The 1981 contract also
23 prohibits the state from exporting State Water
24 Project water so as to cause a decrease in
25 natural flow, an increase -- or, excuse me, a

1 reversal of natural flow, a reversal of
2 direction, or alteration of water surface
3 elevations in Delta channels to the detriment of
4 Delta channels or water users within the North
5 Delta.

6 During the D-1641 proceedings, DWR and
7 the Agency entered into a Memorandum of
8 Understanding which states that pursuant to the
9 terms of the 1981 contract, DWR is responsible
10 for any obligation imposed on water users within
11 the Agency to provide flows to meet new flow
12 objectives. The State Water Board then expressly
13 assigned responsibility for any obligation of the
14 Agency to meet flow objectives to DWR, and that
15 decision was subsequently upheld by the Court of
16 Appeal.

17 Before the Board considers adoption of
18 the San Joaquin River amendments or releases a
19 draft Southern California River SED, the North
20 Delta Water Agency requests that Staff and the
21 Board consider how changes to existing D-1641
22 salinity standards will affect the ability of the
23 state to comply with the assurances provided in
24 the 1981 contract.

25 Thank you.

1 CHAIR MARCUS: Thank you. Thanks for
2 flagging all of that. You all got that? There's
3 a request for follow-up.

4 Ms. Nera, there you are. I hadn't -- I
5 didn't realize you were here.

6 MS. NERA: (Off mike.) (Indiscernible.)

7 CHAIR MARCUS: That's where I like to sit
8 in the hearing room, too, when I'm in somebody
9 else's.

10 MS. NERA: Good afternoon, Ms.
11 Chairwoman --

12 CHAIR MARCUS: Good afternoon.

13 MS. NERA: -- and Board Members. Valerie
14 Nera for the California Chamber of Commerce. The
15 Chamber and its 13,000 members support a
16 comprehensive solution to the water supply and
17 quality problems existing in the state. Let me,
18 right up front, say that we'll associate the
19 Chamber with the comments made by Mr. Soares in
20 looking at this from the people's perspective,
21 and Mr. Scheuring for his points regarding
22 working incrementally. And finally, on the
23 elected official's points, on the economic
24 points.

25 Having said that, we believe that the

1 proposal on the table underestimates the
2 devastating impacts on drinking water, on
3 sanitation needs, food production, the economy
4 and jobs for people, stretching all the way from
5 the upper Central Valley through the Bay Area and
6 down the peninsula. Small changes in regulations
7 can have some really tough impacts on the
8 business community. We not only are subject to
9 the Water Board, but Air Board, Cal OSHA, just a
10 number of various state, local, municipal, and
11 then federal regulations. So we can never look
12 at any small change in isolation of the whole
13 picture.

14 We look at the economy on the basis of
15 businesses operating on Main Street up and down
16 the state. So we don't rely on modeling for our
17 economic analysis. We rely more on our sense of
18 what's happening in the communities. So I guess
19 we would ask you to slow your process down and
20 just take a moment longer to look at what happens
21 in these communities when restrictions on water
22 supply, which, you know, it changes a production
23 line, it changes the city, it changes how we will
24 be assessed.

25 Thank you.

1 CHAIR MARCUS: Thank you very much.

2 Okay, now I'm going to go to one of the
3 longer presentations. And I don't want you to
4 like flip a coin or anything. I'm looking for
5 preferences. My instinct is to go to Mr.
6 Herrick, because we haven't talked as much about
7 the Delta salinity standards over the course of
8 the last two days, if that's okay with Mr. Bobker
9 and Mr. O'Laughlin? Do either of --

10 UNIDENTIFIED MALE: (Off mike.) No. I
11 think John should go first.

12 CHAIR MARCUS: Okay. And then who wants
13 to go after lunch?

14 UNIDENTIFIED MALE: (Indiscernible.)

15 CHAIR MARCUS: And what do you want to
16 do?

17 UNIDENTIFIED MALE: (Indiscernible.)

18 CHAIR MARCUS: I know you've never had so
19 much fun, have you, and --

20 UNIDENTIFIED MALE: (Indiscernible.)

21 CHAIR MARCUS: -- Steve, too. I mean, we
22 can do it again another time just for you, if
23 you'd like.

24 UNIDENTIFIED MALE: (Indiscernible.)

25 CHAIR MARCUS: After lunch. Okay.

1 Thanks. I just wanted to make sure. I'm not
2 trying to presume.

3 Mr. Herrick?

4 UNIDENTIFIED MALE: (Indiscernible.)

5 When are you thinking about breaking for lunch?

6 CHAIR MARCUS: Well, what I'm thinking
7 about doing, and this is -- okay, here's your
8 choice. After Mr. Herrick, I want to take more
9 people. And I was thinking of breaking for lunch
10 somewhere around 1:30, just because I'm mindful
11 that some people just want to say their peace and
12 go. But I'm happy to take you before lunch in
13 there, if you would prefer that to after lunch.

14 UNIDENTIFIED MALE: (Indiscernible.)

15 Yeah, after lunch is fine (indiscernible).

16 CHAIR MARCUS: Okay.

17 BOARD MEMBER D'ADAMO: And I just have a
18 request. If anyone --

19 CHAIR MARCUS: Yeah. Sure.

20 BOARD MEMBER D'ADAMO: -- has a
21 PowerPoint, make sure you get it to the clerk so
22 that we can get copies. I'm a paper --

23 CHAIR MARCUS: It just helps for us to be
24 able to --

25 BOARD MEMBER D'ADAMO: Write on them.

1 CHAIR MARCUS: -- write our notes on
2 them, though they don't become a part of the
3 record because they are late, but they do exist.
4 And they are tools for your oral presentation.
5 Did I get that right? That's closer to right
6 than wrong; right? I know, I'm not making people
7 happy here. The --

8 BOARD MEMBER MOORE: It's getting kind of
9 Cartesian over here.

10 CHAIR MARCUS: That's right. Maybe we'll
11 do a showing of Mindwalk during lunch for people
12 who want to get into that.

13 MR. HERRICK: Is this taking away from my
14 time?

15 CHAIR MARCUS: No, no, Mr. Herrick.
16 Never. Never.

17 MR. HERRICK: I have one minute left.

18 MS. TOWNSEND: John, I manage the time.

19 MR. HERRICK: I'm reassured.

20 CHAIR MARCUS: And as we ask questions or
21 even laugh at your humor, we'll absolutely add
22 that to your time.

23 MR. HERRICK: I'm mostly without humor
24 today.

25 CHAIR MARCUS: I would think that may be

1 true, so I'm really interested in what you have
2 to say, so thank you.

3 MR. HERRICK: Thank you, Madam Chair,
4 Board Members. John Herrick for the South Delta
5 Water Agency and for the Central Delta Water
6 Agency. I feel the need to bear my soul now that
7 TID has identified the South Delta diverters as
8 the cause of the destruction of the fisheries in
9 the Delta.

10 CHAIR MARCUS: I believe, yeah, she --

11 MR. HERRICK: And, yes --

12 CHAIR MARCUS: I think it may be MID.

13 MR. HERRICK: -- it's true --

14 BOARD MEMBER MOORE: It's MID.

15 MR. HERRICK: -- we --

16 BOARD MEMBER MOORE: We keep having
17 this --

18 MR. HERRICK: MID. Sorry.

19 CHAIR MARCUS: We're going to have a
20 whole --

21 MR. HERRICK: So --

22 CHAIR MARCUS: -- is it Turlock or
23 Modesto coming out of this as a meme --

24 MR. HERRICK: Don't even know the
25 difference.

1 CHAIR MARCUS: -- as opposed to the
2 Belgian or Dutch beer meme that we all went
3 through in college, I believe? But anyway, I'm
4 sorry.

5 MR. HERRICK: We have been developing
6 submersible death rays and we've been killing the
7 fish, and we've bred thousands of striped bass to
8 put in the waters to kill anything. And so there
9 really is no need for new fishery standards
10 because it's the South Delta's fault. Now, of
11 course, that's just a little bit of snide talk,
12 given the chaff that was presented to you as to
13 what we should be doing here.

14 So let me move onto salt, which is what's
15 dear and close and dear to my heart. I'm going
16 to be referring to the Board or Staff in a
17 general manner. Most of the staff here was not
18 during the development of the SED over the past
19 eight years, and the Board has changed over time,
20 certainly over the past 25 years, 23 years.

21 But I want you to understand that in
22 balancing or making a decision about what to do
23 about the salinity standards, you don't have
24 evidence on both sides to balance. You don't
25 even have a little teeny bit of evidence on your

1 side. You have zero evidence on your side. And
2 the reason you would be presented with a proposal
3 that has zero evidence on supporting it is a very
4 serious question, and which is the reason why
5 I'll give you a brief history of where we stand
6 now --

7 CHAIR MARCUS: Uh-huh.

8 MR. HERRICK: -- because this is a 23-
9 year policy, unstated policy of the Board.

10 So in 1978 the .7 standard was developed.
11 It wasn't implemented. We had Racanelli. We had
12 the Governor's revoke or withdrawal of Water
13 Quality Control Plans. We ended up in 1995 with
14 the Water Quality Control Plan of that year.

15 CHAIR MARCUS: Uh-huh.

16 MR. HERRICK: That document stated that
17 in order to protect South Delta agricultural
18 beneficial uses, .7 was the appropriate number,
19 .71.0. The document then said in its
20 implementation portion the Brandt Bridge in
21 Vernalis standard should be implemented
22 immediately because they were flow dependent.
23 And then it gave another, I believe, three years,
24 maybe two years, three years to implement the
25 other two standards. So it was going to take a

1 three-year period, supposedly, before the .7 was
2 effected.

3 D-1641 started in -- the hearing started
4 in what, '98, weren't finished until the year
5 2000.

6 CHAIR MARCUS: Uh-huh.

7 MR. HERRICK: And instead of saying we
8 will implement it quickly it said, well, we'll
9 implement Vernalis right away, and then five
10 years later, 2005, we'll implement the other
11 standards. There's no reason for that, but it
12 was delayed.

13 And then in the last issuance of the last
14 draft of the order there was a footnote. And the
15 footnote said if you build barriers, we've been
16 talking for years, barriers out there, if you
17 build the permanent barriers then the standard
18 goes from .7 back to 1.0. Now think about that
19 non sequitur for a second. If it takes .7 to
20 protect the beneficial use, barriers don't have
21 anything to do with effectuating that standard
22 unless they create .7, but that's what the
23 footnote said.

24 So then we had lawsuits. And the final
25 decision by the Appellate Court said that State

1 Board, you can't change a water quality standard
2 in this manner because you're in a water rights
3 hearing. It said you can do that in a water
4 quality process, like we're doing now, but not in
5 a water rights hearing, so they sent it back to
6 you with that order.

7 CHAIR MARCUS: The flip of the argument
8 earlier.

9 MR. HERRICK: That's correct.

10 CHAIR MARCUS: Right. Yeah.

11 BOARD MEMBER D'ADAMO: Which case was
12 that?

13 MR. HERRICK: That's the D-1641 cases,
14 State Water Board.

15 MR. SAWYER: State Water Resources
16 Control Board cases.

17 MR. HERRICK: Yeah. I'm sorry. So at
18 the, don't know if it was a hearing or a
19 meeting, all of the attorneys for the exporters
20 and DWR and the Bureau stood up and said, well,
21 State Board, you've just been ordered to change
22 the salinity standard. Mind you, there was
23 nothing in the D-1641 record that suggested the
24 standard was insufficient or overly protective,
25 nothing, no evidence, nothing. But everybody

1 stood up and said, well, you've got to change the
2 standard now.

3 And to his credit, he's gone now, Mr.
4 Lauffer, where is he, there he is, I revoke my
5 laudatory comments to him later, probably, but he
6 stood up and he said, "No, the court said if you
7 want to change it, you have to do it through the
8 right process. It didn't tell you to change it."
9 So with that caveat by your own counsel, the
10 State Board then proceeded to try to change the
11 standard.

12 Now 2005 came around or started to come
13 around and I reminded the Bureau and DWR that,
14 "By the way, in April of 2005 the .7 kicks in, so
15 what are we doing?"

16 And the Deputy Director of the Department
17 of Water Resources looked me and said, "What?"

18 And I said, "D-1641 requires you to meet
19 the .7 starting next year."

20 "Oh."

21 And so sometime thereafter, DWR and the
22 Bureau wrote you a letter and said we can't do
23 that, we're not going to meet that standard. Now
24 I'll come back to that in a minute.

25 During that same time frame, we had all

1 sorts of discussions, arguments and joint point
2 or transfers occurring in the Delta. Part of D-
3 1641 says you can do joint point if you do all
4 these things and you're in compliance with all
5 other provisions of your license -- or your
6 permits. So, and I don't remember if it was 2005
7 or 2006, I don't know, but -- so joint points
8 went forward. The water quality standards were
9 breached, violated, exceeded, whatever you want
10 to call it. And I delicately informed the State
11 Board Division staff, I said they're not supposed
12 to be doing that.

13 After the season was over and the
14 violations were over the State Board staff wrote
15 a letter to the Bureau and DWR and said you're
16 not supposed to do that unless you're in
17 compliance. And remember, if you want to get
18 relief from your obligations, do it early. Don't
19 wait until the last minute.

20 So the State Board staff told them with
21 to do in order to not be obligated to meet the
22 .7, so they could do exports.

23 Now because of the notification by DWR
24 and the Bureau about they weren't going to meet
25 the .7, we had a cease and desist order hearing.

1 We had two of them. And the first one, instead
2 of finding that they weren't going to meet their
3 obligations or hadn't, said and used the famous
4 lines in my area of not meet the standard, it's
5 one of your permit conditions, it said thou shalt
6 obviate future threats to water quality
7 violations. Now that's one of the classic lines
8 in all of bureaucracy, meaning nothing.

9 And so the CDO gave them time to work out
10 something, pending something else happening, and
11 gave them some deadlines. What it also did was
12 it said if you're in compliance with the CDO,
13 then you can do joint point. You don't have to
14 meet all the standards under your permits.

15 Well, time ticked on. The State Board
16 wasn't able to review the standards and adopt new
17 standards. And so we had to have a second CDO
18 hearing because time ran out. So the second CDO
19 hearing said, well, yes, it's kind of your
20 obligation but, you know, you don't have to do it
21 now but you have to do some studies and work on
22 some stuff and maybe come up with a plan, unless
23 we change the standard, which again was still in
24 the process, a change of standard.

25 But then it said, of course, if we don't

1 change the standard by January of 2013, then you
2 do have to produce a plan in, I think it was, 180
3 days about how you'll meet your obligations.

4 So 2013 came and went. State Board staff
5 said nothing. Nobody contacted DWR or the
6 Bureau. Nobody said a word, except Bill Jennings
7 and myself and we raised that issue. And DWR
8 said, well, it -- we -- that was based upon they
9 were going to change the standard before then, so
10 they haven't changed it yet, so we don't have to
11 comply with the CDO. And that's where we stand
12 today, no enforcement.

13 We've had 23 years, since 1995. Either
14 it wasn't imposed, which it was supposed to be,
15 and it's never been enforced. There have been
16 hundreds, if not thousands by now, of violations.
17 No enforcement.

18 Which brings us to the end of the CDO
19 process. And we said, well, we don't want to
20 enforce the .7, so we have to change the
21 standard, and that's what we did. That's what
22 you guys did. Not you personally, but that's
23 what the process did.

24 And so they hired Dr. Hoffman. Dr.
25 Hoffman did a report, a wonderful report. He

1 examines how models describe salt passing through
2 soils and whether it gets to the end and whether
3 it's in various zones of the soils. And he went
4 through all the thing about how wonderful these
5 models are. Then he plugged in data, okay, and
6 he produced results. And the results were the
7 South Delta leaching, which the rate or the
8 ability to get salty, the leaching is between 20
9 and 50 percent. These people are fine. They
10 don't even need .7.

11 Well, just as an aside, a 50 percent
12 leaching fraction means you've got a box of sand
13 and you planted one turnip in it and you pour a
14 quart of water on it every day. I mean, it's a
15 nonsensical position to say that there's 50
16 percent leaching somewhere in the South Delta.

17 Anyway, so Alex Hildebrand, you may
18 remember, grabbed Dr. Hilderberg -- or Dr.
19 Hoffman and he said, "Hey, you're not
20 understanding how the real world works. And
21 water doesn't just easily pass through the
22 soils." And he told him about his own
23 experiment, anecdotal again, I don't have
24 evidence, where Alex put piezometers in the soil
25 and in one year he didn't get any leaching. That

1 means every time he applied water, it didn't pass
2 through the soil profile. It was used by the
3 plants. He couldn't soak it for long. And so
4 all of the salt he applied stayed in the soil.

5 And Dr. Hoffman -- and then Alex said,
6 "You know, when you drive a tractor to mow and
7 rake and bale and pick up the bales of alfalfa,
8 you're compressing the soil, and that effects the
9 leaching because there's no permeability or
10 there's less permeability."

11 And Dr. Hoffman, the second most famous
12 line in all of bureaucracy, said, "Mr.
13 Hildebrand, I can't help it if you have bad
14 management practices. Mowing, raking and baling
15 alfalfa is a bad management practice."

16 So then we said, "Well, look, Dr.
17 Hoffman, you did your calculations based upon
18 inputs and outputs. In order to measure
19 leaching, how much salt is put on, and you either
20 measure how much salt remains in the soil or how
21 much salt passed through the soil, and that's how
22 you figure out how much got left over."

23 So Dr. Hoffman ran his models by taking
24 an assumed water quality of the .7. Why you
25 assume that the area where this was happening had

1 the .7 all the time is inexplicable, but that's
2 what he did. And then to measure the salt that
3 left the soil profile, he took tile drain
4 information, most of it was years' old, but tile
5 drain information. So --

6 CHAIR MARCUS: As opposed to leaching?

7 MR. HERRICK: As opposed to some actual
8 number.

9 So we told the Board, we told Dr.
10 Hoffman, told Staff, we said, "Now wait a minute,
11 those tile drains," because most all of them were
12 in the southeast -- Southwest corner of our area,
13 down by Tracy-ish, we said, "those tile drains
14 aren't intercepting the water that goes to the
15 root zone. Those tile drains are artificially
16 lowering the groundwater. The groundwater is
17 salty. So when you take tile drain information,
18 it doesn't show you how much salt passed through
19 the soil profile, it shows you that you have
20 salty groundwater. So his calculation was set up
21 to have lots of salt leaving the system because
22 he was measuring the wrong amount of -- the wrong
23 source of salt.

24 Now, we brought that to everyone's
25 attention. And so immediately, Staff went out

1 and checked to make sure that I was correct on
2 those tile drainage numbers. That's a lie. I
3 just made that up. Staff never checked on that.
4 They didn't determine whether Dr. Hoffman used
5 the wrong information or not. Now why wouldn't
6 you determine that because the entire basis of
7 the change is the Hoffman Report? Why wouldn't
8 you do -- why wouldn't you check to see if John
9 Herrick's a liar or the people I had to submit
10 statements were lying? Why wouldn't you check
11 that? Because that's fundamental to the issue.

12 I'll tell you why you wouldn't do it,
13 because now we have an SED that says -- it
14 doesn't say he used the wrong information. The
15 SED says some parties suggested or stated that
16 the wrong data was used; right? So why is that?
17 That's because now you have, well, Dr. Hoffman
18 said it was okay and somebody else said it
19 wasn't, so now we balance and we just chose this
20 one, but it's false. You can label it anything
21 you want, it's not correct data, it's wrong.

22 So what did South Delta do? South Delta
23 went out and paid for a study, Dr. Michelle
24 Leinfelder-Miles. She actually measured each
25 irrigation -- excuse me. First, she measured the

1 soil salinity and measured each irrigation
2 through the season. And then after the season
3 she measured the soil salinity again to see how
4 much salt was applied and how much salt stayed in
5 the soil profile. And she found in her study that
6 in a number of places we weren't just getting
7 leaching fractions at or below 20, in some places
8 it was below 5 percent, not all, but in some
9 places it was virtually no leaching. One of them
10 was two percent, I think. And her study showed
11 that in those instances, salt was collecting in
12 the soil profile. That doesn't mean everything's
13 okay. That's the opposite of okay.

14 So Staff immediately contacted us and
15 offered to participate in further studies, more
16 comprehensive, in order that we can get more
17 data.

18 That's false. Staff did nothing. I
19 don't think they even talked to Michelle -- Dr.
20 Leinfelder-Miles. Here's a study that directly
21 contradicts a model that used the wrong data and
22 nobody does anything about, nobody. Now why is
23 that? Because we don't want to have information
24 that shows that our information is completely
25 false.

1 Now the solution to this was, because I
2 had long -- one long discussion with your staff
3 at a meeting, I said, "You don't have any
4 science."

5 "Well, the SED answers that. The SED
6 says we didn't find any connection between
7 Michelle Leinfelder -- Dr. Michelle Leinfelder-
8 Mile's study and yields, so leaching doesn't have
9 anything to do with it."

10 Now savor that for a minute. Not only is
11 that a I-know-you-are-but-what-am-I answer, it
12 doesn't address any factual issue, but as Dr.
13 Leinfelder-Miles stated yesterday, the study
14 wasn't constituted to find any relationship
15 between leaching and yields. You have to --

16 CHAIR MARCUS: As opposed to counter Dr.
17 Hoffman?

18 MR. HERRICK: No. It was to measure
19 whether or not salt was building up in the soil.

20 CHAIR MARCUS: Right.

21 MR. HERRICK: We know Hoffman's wrong
22 because he used the wrong data. This is a what
23 is happening study.

24 So you can't make a conclusion that a
25 study is reliable for yield relationships to

1 leaching fractions when that's not what was done.
2 You'd have to hold all these things constant.
3 You'd have to change it.

4 They also said, well, their yields seem
5 to be state average yields. Well, that's
6 somebody, and I won't get personal, that's
7 nonsensical too. I mean, how many farmers do you
8 know that go I'm shooting for the state average.

9 CHAIR MARCUS: Right.

10 MR. HERRICK: The state average --

11 CHAIR MARCUS: Right. Right.

12 MR. HERRICK: -- includes sick fields,
13 fields that are half weeds, that's sort of just
14 like it. And whether or not the salt is
15 affecting the yield has nothing to do with the
16 state average; right?

17 More importantly, the entire basis of Dr.
18 Hoffman's report is that at some leaching
19 fraction you approach the point where salt will
20 interfere with the yield. So when you make the
21 statement in the SED that says, well, there's
22 apparently no connection between leaching and
23 yields, you've undermined the entire Hoffman
24 Report. It makes it nonsensical. So there's
25 nothing there.

1 No, wait, there is something there. Part
2 of South Delta's testimony to you, right, were
3 five farmers who stood before you in Stockton,
4 sat before you, appeared before you.

5 CHAIR MARCUS: They did both at times,
6 yes.

7 MR. HERRICK: They did both --

8 CHAIR MARCUS: Yeah.

9 MR. HERRICK: -- as I shake my fist
10 around. And they said, look, we have salt
11 problems. And some of them had quantified it.
12 Some of them testified about the expenses. We
13 had yield -- effects on yields. We had extra
14 expenses. We had to restructure crops, blah,
15 blah, blah, blah. They had all that stuff.

16 So, of course, Staff then immediately
17 contacted all of those farmers to find out what
18 degree or what's actually going on there. No,
19 they didn't do that.

20 Why wouldn't you go contact the people
21 that said, hey, I'm being harmed by the current
22 situation? Why wouldn't you do that? Because
23 you don't want that. You want to be able to say,
24 well, we're just balancing some evidence. We
25 don't know what the truth is. We know what the

1 truth is.

2 Now, we could have done stuff; right? I
3 know, we could have done stuff. We could have
4 looked at various things and we could have
5 produced something that said whether or not
6 that's happening. You have no data that supports
7 the change. You do have data. It's only small.
8 It's not the entire. You do have data that says
9 the current situation is collecting salts in the
10 soil and has people being harmed by salt. That's
11 what you have. How on earth can you make a
12 finding that it's okay to relax the standard?
13 And this notion of keeping things the same by
14 keeping the Vernalis at the right EC, that
15 doesn't have anything to do with it if the only
16 evidence you have is the current situation is not
17 protective.

18 So the reason I went through that big
19 history is from day one, you guys as a group, and
20 I mean that historically, have done everything
21 you can not to enforce .7. We even have the data
22 that shows it's not helping right now. And the
23 SED quotes a study that we know is wrong. We
24 know. We know it used the wrong information.
25 And we know it's modeling, so it doesn't overcome

1 a field test. That's the opposite.

2 Models have to reflect reality, not just
3 be abstract thoughts. If you have field data
4 that's different than the model, you can't use
5 the model. That's like saying we calculated that
6 that bumblebee can't fly, and then a bumblebee
7 flies by and it says, I'm sorry, we calculated it
8 can't fly. You can't use that. I mean, it's
9 that bad.

10 And you'll notice that nobody in Staff is
11 standing up and saying, that's wrong, Mr.
12 Herrick, we did investigate that. We did look at
13 that. That is wrong.

14 CHAIR MARCUS: Well, that's because
15 they're being quiet and not taking your time.

16 MR. HERRICK: Well, I know why they're
17 not.

18 CHAIR MARCUS: And I've asked them not to
19 argue with anybody.

20 MR. HERRICK: I know why they're not
21 talking, because these poor people have been
22 thrust in this position. Now --

23 CHAIR MARCUS: Now I'm going to stop you
24 because you're way over --

25 MR. HERRICK: I know.

1 CHAIR MARCUS: -- but I wanted you to be
2 able to explain this, because I do think this is
3 a really hard issue.

4 The only place I am going to take some
5 issue, and I will take it with everybody and
6 have, this has actually been a hearing where
7 people have done far less of it than in the other
8 hearings, is where you imply or that you know the
9 intent of what people -- and people have done
10 that on the fish side to us or Staff, folks have
11 done it on the ag side. It's much better to just
12 talk facts and tell a story, which you did --

13 MR. HERRICK: I understand.

14 CHAIR MARCUS: -- which is very helpful
15 in us doing the follow-up, because this is an
16 issue that I've been concerned about and have
17 been struggling to understand and even reading
18 peer reviews and the like.

19 So thank you for --

20 MR. HERRICK: I understand that an did
21 apologize. Let me --

22 CHAIR MARCUS: I'm just saying, but what
23 you're doing is you're telling us what we need to
24 look at before we make our decision. And other
25 than the impugning of intent, you did a very good

1 job of it.

2 MR. HERRICK: Let me just -- let me say,
3 I don't want to -- I'm not trying to be the last
4 word, but let me just say, the reason I brought
5 up these things that purportedly impugn
6 somebody's integrity is nobody investigated the
7 tile drain data. Nobody talked to the --

8 CHAIR MARCUS: No, I heard that.

9 MR. HERRICK: -- Delta farmers.

10 CHAIR MARCUS: You made --

11 MR. HERRICK: And why wouldn't --

12 CHAIR MARCUS: -- you did make --

13 MR. HERRICK: -- you do that? And that's
14 why --

15 CHAIR MARCUS: You made that point.

16 MR. HERRICK: -- I'm asking you to ask
17 that.

18 CHAIR MARCUS: Yeah.

19 MR. HERRICK: May I say one last thing?
20 Because it has to do with the fishery flows.
21 It's a different topic, but I was supposed to
22 include this in the thing.

23 CHAIR MARCUS: Only very briefly --

24 MR. HERRICK: Very briefly. And I --

25 CHAIR MARCUS: -- with the indulgence of

1 the crowd --

2 MR. HERRICK: I apologize for that.

3 CHAIR MARCUS: -- because there aren't as
4 many people talking about --

5 MR. HERRICK: I know.

6 CHAIR MARCUS: -- the Delta. And I want
7 -- it's helpful to have more of a balance today.

8 MR. HERRICK: I don't know what fish
9 need. It's a very difficult decision. You guys
10 very nicely sit up and hear all sorts of people
11 insulting everybody, including me. I understand
12 that.

13 However, the proposal is to take a
14 substantial amount of water to protect fish,
15 right, to Vernalis. Those fish don't get in
16 transporter beams and go to Antioch after that,
17 they go through the Delta. And so when you
18 increase the flow to Vernalis, you're
19 automatically increasing the amount of available
20 for export, and you're going to decide that
21 later, apparently. I think that's backwards and
22 legally impermissible because no matter how it's
23 done it either adds to outflow, which means it
24 saves project water upstream over there, or they
25 export it because the inflow-export ratio, it

1 doesn't care what amount it is, it just tells you
2 percentages.

3 So when you increase the flows on the
4 tributaries first, you've automatically given
5 exports more water. And I'm not --

6 CHAIR MARCUS: It's first. We finish --

7 MR. HERRICK: -- a fan of exports.

8 CHAIR MARCUS: -- the plan first. We
9 don't implement it first.

10 MR. HERRICK: Thank you very much. And I
11 apologize for not having more humor.

12 CHAIR MARCUS: You did okay, actually.
13 Thank you.

14 All right, I'm going to go with five
15 more.

16 Still, your best time was when you
17 objected to yourself in another -- you made an
18 objection to your own statement. That is still
19 my favorite thing.

20 MR. HERRICK: (Off mike.)

21 (Indiscernible.)

22 CHAIR MARCUS: What? You were what?

23 MR. HERRICK: (Indiscernible.)

24 CHAIR MARCUS: You were right. All
25 right. You get extra points and a little extra

1 time for being funny. I think that's fair, and
2 good public policy, frankly.

3 So we have Justin Fredrickson from the
4 California Farm Bureau, representing a number of
5 the committees. Doug Obegi from -- oh, you
6 wanted after lunch. I'll pull it out. Scott
7 Schoettgen, David Ragland, Patrick Koepele from
8 the Tuolumne River Trust, and John McManus from
9 the Golden Gate Salmon Association.

10 Hi.

11 MR. FREDRICKSON: Good afternoon.

12 CHAIR MARCUS: Afternoon.

13 MR. FREDRICKSON: Justin Fredrickson.
14 I'm an Environmental Policy Analyst at the Farm
15 Bureau, California Farm Bureau Federation. We
16 had sort of higher-level policy comments earlier
17 from Chris, so I'm not trying to get a second
18 bite at the apple on that.

19 I'm trying to call attention to something
20 that I haven't heard discussed here much and I
21 think could be helpful, and it's based on my
22 experience as a member of an Advisory Committee
23 for about two years plus to the Flood Board,
24 where we're talking about the Central Valley
25 Flood Protection Plan where, I believe, there's a

1 fair amount of overlap on a couple of levels.
2 One is with flows. And the other is with non-
3 flow-type measures, and I haven't really seen it
4 taken into account much here, so I just wanted to
5 put that thought out there.

6 For one -- one thing is in the -- in
7 responses to comments I saw, you know, comments
8 that non-flow measures, wherever they might be,
9 habitat might not be big enough, might not be
10 concrete enough, might not -- may not be timely
11 enough, so we just need to go with these, you
12 know, hard percentages and hope that works out,
13 you know? And maybe in adaptive management,
14 we'll figure out the habitat piece later.

15 Well, we do have some concrete habitat
16 things that are proposed on the tributaries
17 themselves, but those areas are fairly limited.
18 I mean, it's many river miles, but there are many
19 more river miles. And there's an entire Delta
20 below that, that's not a hospitable place for
21 fish. So if you put flows down, it's not
22 necessarily going to be beneficial to fish.
23 Actually, you know, in all likelihood it will not
24 be beneficial for a couple of reasons, because of
25 all the predation and because it's just, it's

1 sterile. There's no habitat. There aren't
2 places for the little fish to hide before they
3 get eaten heading out to the ocean. That's a
4 problem.

5 Now, fortunately or not, when I talk as a
6 member of that advisory committee, we actually
7 had a fair amount of consensus. So I think I
8 can -- you know, there wasn't total consensus,
9 but there was a surprising amount amongst, you
10 know, a pretty broad range of -- from
11 environmentalists to agriculture to flood
12 managers and so forth. So when I say that there
13 are, you know, there are proposals in the Flood
14 Plan that could relate on both levels, flow and
15 non-flow, I think that's correct. On the flow
16 level --

17 CHAIR MARCUS: I think that plan is a
18 historic breakthrough. I think people will look
19 back to it as a really important, I don't want to
20 say watershed moment because it seems like a pun,
21 but it was a big deal.

22 MR. FREDRICKSON: Hopefully so.

23 So on the flow level, one of the things
24 that they talk about is reservoir reoperation,
25 operating reservoirs differently to better manage

1 flood flows, including doing things like spillway
2 modifications at a place like -- places like Don
3 Pedro where during the, you know, 2017, you had
4 the research overtopping. And that's the case
5 with a lot of these reservoirs. There's a whole
6 lot of water that's not impacting water supply
7 that, you know, is potentially available for
8 fish. So how can you manage that in combination
9 with things like the flows in the FERC
10 proceedings that are being, you know, more or
11 less agreed to by the districts and, you know,
12 improve those peaks?

13 Can I go for a couple of seconds more?

14 CHAIR MARCUS: Yeah.

15 MR. FREDRICKSON: Okay.

16 CHAIR MARCUS: Just make your point.

17 MR. FREDRICKSON: Thank you.

18 CHAIR MARCUS: I have --

19 MR. FREDRICKSON: On the non-flow side,
20 there are also floodplain-type projects that are
21 already coming to fruition, things like Dos Rios
22 and --

23 CHAIR MARCUS: Oh, Dos Rios is a great
24 project.

25 MR. FREDRICKSON: -- Tres Amigos.

1 CHAIR MARCUS: Uh-huh.

2 MR. FREDRICKSON: -- and then also
3 Paradise Cut, and there are some other things out
4 there. And those are -- that's kind of the
5 string of pearls that --

6 CHAIR MARCUS: Uh-huh.

7 MR. FREDRICKSON: -- you know, if some of
8 these things come online in the future, that's
9 what gets the little fish from the projects
10 proposed by the water districts on the
11 tributaries out to the Delta. Now what happens
12 to them after the Delta, is another question. I
13 don't think it's fair, necessarily, to put that
14 solely on the districts or to have the
15 expectation that flows alone are going to
16 accomplish what needs to be accomplished.

17 I'm going to try and wrap. If, when
18 we --

19 CHAIR MARCUS: Wrap. That's probably in
20 the -- I'm reading the crowd, but this is good.
21 I'm just trying to --

22 MR. FREDRICKSON: Okay.

23 CHAIR MARCUS: -- not get everybody
24 scared that I'm going to let everybody talk as
25 long as they want.

1 MR. FREDRICKSON: Okay. I appreciate
2 that, because I have not heard this as part of
3 the conversation much and I, so, I mean, our
4 metric -- and by the way, there are also metrics
5 in the Flood Plan. There are at least measuring
6 sticks, and there's some disagreement on that.
7 And there's a fair amount of consensus in the
8 various regions on projects that are probably
9 necessary for public safety and flood protection
10 that, by the way, could benefit flows and fish.

11 I think that our ultimate metric needs to
12 be looking at incrementally, as Chris said, my
13 colleague Chris, and realistically at what is
14 needed to actually help the fish. Part of that
15 we know is doing -- maybe tweaking flows, timing
16 flows differently at biologically important
17 times. But the other part of that that we know
18 is important is habitat. And a big part of
19 habitat is floodplain. If you look at the
20 Sacramento Valley and a lot of what's going
21 there, productivity and just places, refugia,
22 places --

23 CHAIR MARCUS: Right.

24 MR. FREDRICKSON: -- for the little fish
25 to go and hide from the predators that are

1 gobbling them up on the way down, that makes all
2 the difference. And you can take this much flow,
3 this much flow and make it count for this much
4 flow, if you combine it with those other non-flow
5 things.

6 CHAIR MARCUS: Right.

7 MR. FREDRICKSON: So that's one of the --

8 CHAIR MARCUS: And we've identified
9 that --

10 MR. FREDRICKSON: Yeah.

11 CHAIR MARCUS: -- in the report, as well.
12 But flow --

13 MR. FREDRICKSON: Okay. So that -- yes.

14 CHAIR MARCUS: -- flow itself does more
15 than many people are giving it credit for. But
16 this is where the space of argument comes in.

17 But you should wrap now because you're --

18 MR. FREDRICKSON: Yeah, I will. So --
19 but I -- so, I mean, we've got pieces on the
20 tributaries themselves that could be combined
21 with other things in the system as a whole and
22 looked at as ways to potentially bring those
23 flows down and benefit --

24 CHAIR MARCUS: Right.

25 MR. FREDRICKSON: -- the fish to the same

1 degree.

2 CHAIR MARCUS: Right.

3 MR. FREDRICKSON: Thank you.

4 CHAIR MARCUS: Thank you.

5 Mr. Schoettgen, and tell me how to
6 pronounce it, I'm sorry, followed by Mr. Ragland.

7 MR. SCHOETTGEN: No, you actually got it
8 correct. That was impressive. Thank you. That's
9 the first time in my life, so far.

10 So my name is Scott Schoettgen. I've
11 spent the last several years guiding white water
12 rafting trips here in California, as well as
13 South America, and spent some time working in a
14 local ski resort up in the Sierra Nevada, as
15 well. So I spend a lot of time on, in, you know,
16 the headwaters to the issues that we're talking
17 about. And I appreciate you guys hearing public
18 comment.

19 I want to speak kind of on behalf of a
20 bit of a younger generation and the issues that
21 we look at. Obviously, climate change is one of
22 those major issues that, you know, is kind of a
23 hot topic, a buzz word for most of us of the
24 millennial generation.

25 One of the things that I want to bring

1 into this conversation is the topic of how much
2 water are we actually using to support things
3 that are contributing to our greenhouse gas
4 emissions; right? We have, especially in the Bay
5 Area, we've become really known as a very
6 innovative community for developments in
7 technology and addressing issues of climate
8 change and sustainable energy.

9 Well, we also know that, you know, less
10 of our CO2 emissions, less of our greenhouse gas
11 emissions come from private transportation than
12 do from things like industrial agricultural;
13 right? So as we are making decisions about
14 water, what are we deciding to contribute
15 towards; right? And that's something that I want
16 to bring to the conversation, as well; right?

17 Now kind of along those lines is sort of
18 looking at a vision of what do want our long-term
19 outcomes of these decisions to mean for
20 California? Now realistically, we have to look
21 at our space and time here.

22 California has been a state for about 168
23 years; right? This land has been occupied by
24 people for the last 10,000 to 20,000 years.
25 Well, the benefits that we're reaping, you know,

1 from the fertility of the Central Valley and
2 whatnot come from a time much, much further back
3 than that; right? Our soils here are very
4 fertile because of the sediments that come down
5 from the Sierra, because of those salmon flows,
6 because of the floodplain that is the Central
7 Valley. And, you know, I would really encourage
8 us to kind of look at our space in this time
9 frame in those terms, if that's making sense.

10 So I really do appreciate you guys' time.
11 I'll go ahead and just wrap with that. But
12 again, looking at, you know, what are we -- what
13 long-term decisions and what long-term
14 implications do we have in regards to what the
15 younger generation is looking for?

16 Thank you very much.

17 CHAIR MARCUS: Thank you for that. I
18 appreciate it.

19 Mr. Ragland? Helpful.

20 MR. RAGLAND: Hello. Thank you to the
21 Board for doing this work and giving me the
22 opportunity to speak. My name is David Ragland.
23 I'm an engineer and a land surveyor. I run my
24 own business in Sonora, California, in the
25 watershed of the Tuolumne River.

1 My brother was a sometime-commercial
2 salmon fisherman out of Bodega Bay when that was
3 possible. My family and I, we love to hike and
4 raft and canoe and fish and enjoy rivers, and
5 this is a pretty personal point of view, but
6 they're all personal point of views.

7 I spent formative years poor, living in a
8 campground posing as a trailer park on the banks
9 of the Feather River. And for the last 29 years,
10 like I said, I've lived in the drainage of the
11 Tuolumne River, which I want to talk about.

12 If we were starting fresh with this
13 stream and we could do that, and we're talking
14 about water rights, what reasonable person would
15 look at the Tuolumne River and say to the
16 irrigation districts and utility districts, go
17 ahead, take 80 percent? Who would say that? No
18 reasonable person would say that.

19 Also, who would say -- and by the way, on
20 a daily basis it can be as much as 90 percent,
21 maybe more, which is a number that Felicia Marcus
22 had in a letter, as much as 90 percent. And I
23 believe you were actually being gentle. It might
24 be as much as 95 on the Tuolumne at times.

25 I'd like you to give us back 50 percent

1 for salmon and steelhead and otters and green
2 sturgeon and white sturgeon and bald eagles and
3 orcas and osprey, and it goes on and on and on
4 from there, and all the things that depend on
5 them. And I want you to give it back for every
6 family and every neighborhood living along the
7 rivers, especially the poor kid in a trailer park
8 where the free and natural environment might be
9 the best thing in their live.

10 Irrigation districts have hired some
11 people to obfuscate the fact that their clients'
12 removal of habitat and flow are the main reasons
13 that salmon are on the brink, along with other
14 things. I'm tired of hearing about striped bass.
15 You can go from north to south in this valley and
16 look at the conditions on different rivers and
17 you'll find that water is the key difference
18 among a whole bunch of rivers with an awful lot
19 of striped bass in them. Even among the three
20 major tributaries we're talking about, the
21 somewhat enlightened flows on the Stan' cause it
22 to have five to ten times as many salmon as
23 either the Merced or the Tuolumne, not to mention
24 two thriving commercial raft rental businesses.

25 So I want to thank you for your time and

1 I appreciate the work you're trying to do. Thank
2 you.

3 CHAIR MARCUS: Thank you for joining us.

4 Mr. Koepeler, followed by Mr. McManus.
5 And then I'm going to do a time check.

6 MR. KOEPELE: Patrick Koepeler. I'm the
7 Executive Director of the Tuolumne River Trust.
8 Chair Marcus, Members of the Board, thanks for
9 letting me speak today. I really appreciate it.

10 It's a complicated issue that we're
11 dealing with, in a way. There are a lot of
12 nuances, but it's also kind of simple in a way.
13 Fish need water and they need habitat.

14 I'm glad the previous speaker spoke a
15 little bit about the Dos Rios Project, a project
16 that I've been involved with for many years. And
17 he's right, there are ongoing projects, ongoing
18 non -- projects to focus on habitat improvements,
19 non-flow measures. Sites like Dos Rios have been
20 purchased, in-channel gravel pits have been
21 filled in, and a variety of things, and we need
22 to do more of that. But what these projects
23 don't do, they don't really achieve what they are
24 meant to achieve because they don't have the
25 flow.

1 Taking the Dos Rios Ranch as an example,
2 when I go out there and you walk along the river,
3 the historic floodplains sit actually pretty high
4 up above the flow that you commonly have in the
5 river. And those floodplains are really
6 infrequently inundated. And the Dos Rios Ranch
7 and other projects like it aren't going to
8 achieve the benefits without some inundation,
9 without more water on them to make them work.

10 The in-channel gravel pit projects that
11 are designed to reduce bass habitat also aren't
12 going to achieve the benefits without the right
13 amount of flow.

14 I wanted to bring up the ideas some folks
15 have referred to, technology, what we can -- what
16 technology we can bring to bear. Something that
17 hasn't gotten much discussion is how we can more
18 effectively recharge groundwater --

19 CHAIR MARCUS: Uh-huh.

20 MR. KOEPELE: -- capturing some of the
21 high storm flows. Like in 2017, there was quite
22 an abundance of water. And this is, you know,
23 there's a great opportunity to capture that and
24 put it in the ground, I think in a much more
25 effective manner than allowing flood irrigation

1 to do that job for us. I kind of think of it as,
2 well, to flood irrigate so that it recharges the
3 groundwater is kind of like, well, we play
4 football so we can drink Gatorade. It's not
5 really getting to the point, and you don't know
6 how much of that water is recoverable.

7 Also, South San Joaquin Irrigation
8 District implemented a pilot project on 3,000
9 acres, pressurized their canal and turned it into
10 a pressurized pipe. It reduced water consumption
11 by 30 percent, reduced electric use by 30
12 percent, and increased productivity by 30
13 percent. I think there are a host of tools out
14 there that can be brought to bear on this problem
15 and it can be used -- water can be used much more
16 effectively and efficiently.

17 And so I'll just wrap up. I don't, you
18 know, I don't think there's any reason to delay
19 any further. I think we have the science to act
20 and that we can get to a point where we'll be
21 improving our rivers. So thanks much for your
22 time.

23 CHAIR MARCUS: Thank you for your time,
24 not just today, but you really have been not only
25 a bridge, but for putting yourself where your

1 mouth is and actually doing these projects on the
2 ground. It's really great. And thank you for
3 all the time you give all of us and anyone who
4 will listen to see it and see the art of the
5 possible.

6 Mr. McManus?

7 MR. MCMANUS: John McManus, Golden Gate
8 Salmon Association. We represent recreational
9 and commercial salmon fisherman and related
10 businesses. I've been before you before. We've
11 been here for years. I don't want to talk about
12 the science today. I think the science is pretty
13 much settled. I think the law is settled.

14 At this point, I can only appeal to your
15 humanity and your wisdom and your judgment for
16 what's ahead. And I don't envy where you guys
17 are. I appreciate the work you do. I think it's
18 great, the work that the staff has done.

19 But the decision before you kind of
20 reminds me of the condition we faced when there
21 was a decision make to build the Friant Dam. The
22 Friant Dam took our spring run salmon on the San
23 Joaquin River; it drove them to extinction. In
24 hindsight, who would argue that was a right
25 decision? I think, actually, some people would

1 argue it was a right decision. I think some
2 people would say the benefits outweighed the
3 costs. There's others of us who feel differently
4 about that. And I think it's this type of
5 judgment that you're being called to make now,
6 basically, a judgment on the human condition and
7 what we value in this state.

8 There's no doubt there's an
9 oversubscribed system. You guys have inherited a
10 mess. This issue has been up to this Board in
11 the past where we came close to solutions that
12 were thwarted, both by the Deukmejian
13 Administration, as I understand it, and again by
14 the Wilson Administration. We just go around in
15 circle here.

16 You're facing a historic moment. And I
17 just know that if I was sitting in your place, it
18 would be a tough one, but I'd want history to
19 look at me as having done the right thing. And
20 we hope that that occurs now.

21 Real briefly, I want to visit on this
22 letter that came to you, dated July 27th, from
23 CDFW and DWR.

24 "The idea that we can replace a doubling
25 standard stipulated in state and federal law

1 from the CVPIA with a new doubling standard
2 that looks at the absolute worse years of
3 salmon returns to the San Joaquin River, i.e.
4 from 2000 to 2015, is one that we take deep
5 issue with."

6 I mean, keep in mind, these years that
7 were pointed out in this letter include the worst
8 recorded returns to that river in history in 2008
9 and 2009, so this is a bad batch of years to
10 choose from. I don't know the basis for why that
11 was put in there, but I just wanted to make that
12 point.

13 There's no doubt that there's pain on all
14 sides. I mean, that's clear, and you've heard it
15 for a couple years.

16 CHAIR MARCUS: Or our whole lives. It
17 just depends on what you've been doing the last
18 few decades. Yes.

19 MR. MCMANUS: We're willing to work with
20 all parties to correct the environmental and
21 social damage that's been done. And I know we're
22 scheduled to go into lunch, but I just want to
23 flag that if you've got a moment --

24 CHAIR MARCUS: Finish, please.

25 MR. MCMANUS: -- I came up here with

1 Captain Jackie Douglas from San Francisco. And
2 if you have a moment to take her comments before
3 the lunch break, that would be --

4 CHAIR MARCUS: Oh, yeah. No, definitely.
5 I'll take more.

6 MR. MCMANUS: Appreciate it.

7 CHAIR MARCUS: Absolutely.

8 MR. MCMANUS: Okay. Thanks, and that's
9 all I've got.

10 CHAIR MARCUS: Thank you.

11 Well, there you go. I didn't notice that
12 when I went through that. I'm going to just move
13 you. I'm going to take the next five, but it may
14 be that folks want to wait, some want to wait
15 until after lunch, so I'm going to go through --
16 I'm basically going to go through what I have,
17 and just let me know if you want to go before
18 lunch or after. I have a number of people who
19 have talked to Ms. Townsend and, I believe, need
20 to speak after 1:00, or even after 2:30 anyway.
21 So just let me know when I go through, because I
22 can take whoever wants to talk before lunch
23 first.

24 Captain Jackie, honored to have you here.
25 And then we have -- and then just let me

1 know if you'll wait until after lunch of you'd
2 rather go before -- Tom Orvis, you want -- is
3 before --

4 MR. ORVIS: (Off mike.) (Indiscernible.)

5 CHAIR MARCUS: All right. No, we have a
6 little time.

7 Jay Ziegler?

8 MR. ZIEGLER: (Off mike.)
9 (Indiscernible.)

10 CHAIR MARCUS: After lunch? And you,
11 too, Mr. Johnson?

12 MR. JOHNSON: (Off mike.)
13 (Indiscernible.)

14 CHAIR MARCUS: Okay. Steve Rotherth?

15 MR. ROTHERT: (Off mike.)
16 (Indiscernible.)

17 CHAIR MARCUS: You want to listen,
18 anyway, to everything else that's coming.

19 Jacklyn Shaw?

20 MS. SHAW: (Off mike.) (Indiscernible.)

21 Thank you

22 CHAIR MARCUS: Nice to see you. Hi.

23 And Patrick Porgans. Patrick, would you
24 like to go sooner? You feel okay?

25 MR. PORGANS: (Off mike.)

1 (Indiscernible.)

2 CHAIR MARCUS: If that's okay with you,
3 okay. Well, great, then we'll -- and Mr. Orvis
4 doesn't mind.

5 So why don't we hear from Captain Jacky
6 Douglas, and then we will -- then we'll break for
7 lunch and then come back.

8 Hello.

9 MS. DOUGLAS: Hello.

10 CHAIR MARCUS: Thank you for joining us.

11 MS. DOUGLAS: Well, thank you for having
12 me here. I'm very excited about talking about
13 salmon. I'm Jacky Douglas, of course, a captain.
14 This is my 47th year and I'm 90 years old, and
15 I'm still working. I wish I was out there today.
16 I wish all of you were out there today. My boats
17 being out there today. And I've got to tell you
18 something, one of my first customers just got a
19 big pig, and I'm so happy. And John, Captain
20 John's, running my boat, but I'm glad to be here.

21 And I just want to explain one thing, 47
22 years, I have been blessed to have salmon, to be
23 able to catch salmon, teach people how to catch
24 fish and go home. And look at me. And my four
25 daughters, they said to me when they were little,

1 Mom, where's the beef? Because I kept feeding
2 them salmon. And I ate salmon. And my husband
3 ate salmon. And I'm going to tell you, now what
4 do you think my kids are saying to me? Mom,
5 where's the salmon? They really love me to catch
6 them. They drive all over, from San Rafael up
7 north and they come back down, just so I can give
8 them some salmon.

9 So what salmon has done, it just is the
10 most healthiest fish you can have in your life.
11 Look at me. It's done so much for me. It gave
12 me power. At 90 years old I can go out and run
13 that boat and kind of boss people around a little
14 bit, and now I teach them and I have a good time,
15 but I love my job. And if it wasn't for salmon,
16 I wouldn't be standing here and thanking you for
17 your time to listen to me because the number one
18 thing in your mind is to eat well and to eat
19 salmon.

20 Bye-bye.

21 CHAIR MARCUS: Thank you so much. And
22 thanks for --

23 (Applause.)

24 CHAIR MARCUS: -- thanks for all you do
25 to inspire so many, particularly young people.

1 It's really quite the icon.

2 BOARD MEMBER DODUC: Now I want salmon.

3 MS. DOUGLAS: I know.

4 CHAIR MARCUS: Yeah, you should all
5 Google here and read the profiles, if you haven't
6 already.

7 All right, it's 1:15 and we will take a
8 break until 2:00 p.m., if that's okay. That
9 gives folks a chance, also, to marshal their
10 thoughts.

11 (Off the record at 1:17 p.m.)

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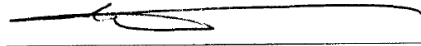
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IN WITNESS WHEREOF, I have hereunto set my hand this 1st day of October, 2018.



PETER PETTY
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Myra Severtson
Certified Transcriber
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