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BEFORE THE  
CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

CALIFORNIA WATERFIX WATER )  
RIGHT CHANGE PETITION )  
HEARING )

JOE SERNA, JR. BUILDING  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY  
BYRON SHER AUDITORIUM  
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SACRAMENTO, CALIFORNIA

PART 1 - REBUTTAL

Tuesday, May 9, 2017  
9:30 A.M.

Volume 41  
Pages 1 - 279

Reported By: Candace Yount, CSR No. 2737, RMR, CCRR  
Certified Realtime Reporter

Computerized Transcription By Eclipse

1 All of my questions will be for Mr. Leahigh and  
2 all of my questions involve the exhibits that were  
3 provided yesterday afternoon, which I think we're okay to  
4 refer to as DWR Exhibits 903, 904, 905 and 906. And I  
5 will be referencing those exhibits as well as the charts  
6 in DWR-10 which the exhibits relate to.

7 **CROSS-EXAMINATION BY**

8 MS. SPALETTA: So, Mr. Leahigh, we'll get  
9 started by my asking you some basic questions.

10 Tim O'Laughlin went over Exhibit 905 with you  
11 in detail, which is the data for DWR Exhibits 850 and 851  
12 for the year 2015. And during that discussion, you  
13 explained the columns on that exhibit and what they  
14 meant.

15 My first question to you is whether the  
16 explanation you gave for the columns on Exhibit 905 would  
17 be the same for Exhibits 903 and 904?

18 WITNESS LEAHIGH: Yes, they should be.

19 MS. SPALETTA: Okay. And who prepared  
20 Exhibits 903, 904, 905?

21 WITNESS LEAHIGH: So that was my staff  
22 prepared. This was the data that my staff used to  
23 prepare the graphs.

24 MS. SPALETTA: Who on your staff?

25 WITNESS LEAHIGH: Aaron Miller.

1 MS. SPALETTA: And when did -- Is Aaron a man  
2 or a woman?

3 WITNESS LEAHIGH: Aaron is a man.

4 MS. SPALETTA: When did Mr. Miller prepare the  
5 datasets that are in Exhibits 903, 904, 905?

6 WITNESS LEAHIGH: Well, just to be clear:

7 So the -- the data was what Aaron used to  
8 prepare the graphs that were the exhibits in my  
9 PowerPoint.

10 MS. SPALETTA: So Aaron Miller on your staff  
11 prepared the graphs that were in DWR Exhibit 10, your  
12 PowerPoint, on Pages 6, 8, 10 and 12?

13 WITNESS LEAHIGH: Correct.

14 MS. SPALETTA: Okay. And did Mr. Miller also  
15 prepare the charts of data that are Exhibits 903, 904,  
16 905 and 906?

17 WITNESS LEAHIGH: I -- I actually prepared the  
18 charts that were -- I'm sorry. The -- Are you talking  
19 about the tables?

20 MS. SPALETTA: We can call them tables. That's  
21 okay.

22 WITNESS LEAHIGH: The tables of data, that was  
23 from the sources that -- or from -- of what Aaron used.  
24 Because Aaron has been -- he's temporarily on assignment  
25 elsewhere, I did prepare those tables.

1 MS. SPALETTA: Okay. And when did you prepare  
2 the tables that are 903, 904, 905 and 906?

3 WITNESS LEAHIGH: This weekend.

4 MS. SPALETTA: Okay. And was that before or  
5 after Aaron had prepared the charts that appeared in  
6 DWR-10?

7 WITNESS LEAHIGH: It was after.

8 MS. SPALETTA: Okay. So where is the data that  
9 Aaron used to prepare the charts that are in DWR-10 on  
10 Pages 6, 8, 10 and 12?

11 THE WITNESS: Well --

12 MS. MCGINNIS: Objection: Relevance.

13 It doesn't really matter where the data is.  
14 Miss Spaletta asked for the data; we've provided the  
15 data. It's in the tables we provided.

16 I don't understand where she's going with this.

17 CO-HEARING OFFICER DODUC: Miss Spaletta.

18 MS. SPALETTA: Well, it's unusual for a set of  
19 data to be compiled after an exhibit that purportedly  
20 represents the data.

21 So I'd like to know where the data is that was  
22 used by Mr. Miller to prepare the exhibits and the charts  
23 that we saw in DWR-10. It may be that there's some  
24 master set of data that was used for both but I'm just  
25 trying to understand that.

1 CO-HEARING OFFICER DODUC: I'll give you that  
2 limited leeway.

3 WITNESS LEAHIGH: Well, the data is in a  
4 spreadsheet, and this is the data from that spreadsheet.

5 MS. SPALETTA: Okay. So there is a -- like, a  
6 master spreadsheet that you used to pull data out of to  
7 create DWR-903, 904, 905 and 906?

8 WITNESS LEAHIGH: Correct.

9 MS. MCGINNIS: Objection: Again, relevance.  
10 I don't think it matters where the data is.  
11 She asked for the data; we gave the data. So --

12 CO-HEARING OFFICER DODUC: And it was the same  
13 data that was used to generate the graphs --

14 WITNESS LEAHIGH: Yes.

15 CO-HEARING OFFICER DODUC: -- initially.

16 WITNESS LEAHIGH: Yes.

17 CO-HEARING OFFICER DODUC: Okay.

18 MS. SPALETTA: And the master spreadsheet that  
19 you just referred to, does it contain additional  
20 information other than the information that has been  
21 pulled out and used to create the tables?

22 CO-HEARING OFFICER DODUC: Now you may object.

23 MS. MCGINNIS: Yeah. Objection: It's not --  
24 He never said it was a master spreadsheet.

25 MS. SPALETTA: So this raises a very

1 interesting question, which is, is there something that  
2 DWR needs to hide from the rest of us?

3 I just have this strange feeling we're talking  
4 about a public agency who has data that they've gathered  
5 about the operation of a public project permitted by this  
6 agency, and we're seeing graphs of this data compiled  
7 from supposedly a master spreadsheet which has not been  
8 made available to the rest of the parties.

9 So I think it's a valid question where this  
10 master spreadsheet is, what format it's in, and what  
11 other data may be included.

12 CO-HEARING OFFICER DODUC: Now, Miss Spaletta,  
13 the data was provided to support Mr. Leahigh's testimony  
14 that was submitted as part of his rebuttal. And so to  
15 the extent that this spreadsheet contains other data that  
16 is not part of his rebuttal, it would be outside the  
17 scope for your cross-examination.

18 MS. SPALETTA: I strongly disagree, because we  
19 have no idea what that other data is. It may be highly  
20 relevant to the data that he chose to put in the  
21 spreadsheet. There may be other data on the spreadsheet  
22 that would make the data that he chose to put in the  
23 spreadsheet be viewed in a different light, but because  
24 the rest of the parties don't have access to it, we don't  
25 have a fair opportunity to make that determination.

1 CO-HEARING OFFICER DODUC: Your response?

2 MS. MCGINNIS: This is entirely outside the  
3 scope of Mr. Leahigh's rebuttal.

4 We included these charts in his test -- He  
5 included these charts in the testimony. They are --  
6 They're generated by Excel; they pull from different  
7 worksheets.

8 The data that was requested was provided, and  
9 if Protestants have a theory that there is some other  
10 information that they should be entitled to, then they  
11 can ask for that.

12 MS. SPALETTA: Well, then, I'll make a formal  
13 request, and it's going to be multiple part:

14 Number one, I would request that the  
15 information that's been provided in DWR-903, 904, 905 and  
16 906 be provided in its native format, which I believe is  
17 probably Excel, so that the parties to this proceeding  
18 can actually view the data in something other than what  
19 is less than 10-point font and do the addition and  
20 subtraction and see the formulas in the spreadsheet.  
21 That's the first request.

22 And the second request is that if there is a  
23 master spreadsheet that this data was pulled from, that  
24 also be produced to the parties in its native format.

25 CO-HEARING OFFICER DODUC: And --

1 MS. MCGINNIS: My response is: What is the  
2 authority for this information request? Is it a  
3 discovery request, a PRA request?

4 MS. SPALETTA: It could be both. I don't think  
5 that it really matters.

6 I think the Hearing Officers have the authority  
7 to ask DWR to make the production if for no other reason  
8 it's in the public interest and it makes the hearing  
9 transparent.

10 MS. MCGINNIS: And my response is, it actually  
11 confuses issues.

12 We have provided the data that backs up those  
13 charts. They're in Mr. Leahigh's testimony. That is the  
14 scope of his testimony and this request is outside the  
15 scope.

16 CO-HEARING OFFICER DODUC: We'll take that  
17 under consideration.

18 MS. SPALETTA: All right. So, then, I will do  
19 my best to ask questions about the information that is in  
20 these exhibits.

21 I will note that I probably would not have had  
22 to ask a lot of these questions if I'd actually received  
23 the data in Excel and I could have seen the formulas but  
24 we will plow through.

25 Okay. Let's start with DWR-903.



1           Mr. Leahigh, can you please identify for me  
2 which columns on the table in DWR-903 contain measured  
3 data as opposed to computed data.

4           (Document displayed on screen.)

5           WITNESS LEAHIGH: (Examining document.)

6           Well, the -- certainly total Oroville releases,  
7 State Water Project exports. The -- So the breakdown of  
8 the instream requirements, those are manually input but  
9 they're input based on our requirements.

10           The Feather River service area deliveries is  
11 measured data. I think the others -- I think the other  
12 columns are probably a result of a calculation, but it's  
13 hard to tell just sitting here right now exactly.

14           MS. SPALETTA: Okay. So you're not able to  
15 explain to me what the calculation is, then, to get each  
16 of the other columns as we sit here today?

17           WITNESS LEAHIGH: Well, if you want -- if you  
18 want to go through it, we can make an attempt.

19           MS. SPALETTA: Well, I don't want to do  
20 something that's futile. Are you confident in your  
21 ability to explain how each of the columns other than the  
22 three columns you identified as measured, how each of the  
23 other columns is computed?

24           WITNESS LEAHIGH: I'd have to think through it  
25 a bit but, yeah, we could probably do it.

1 MS. SPALETTA: Okay. Well, let's start with --  
2 Maybe I can make this easy for you.

3 For the total Oroville release which is a  
4 measured number, is there some combination of the other  
5 columns that should add up to that measured number?

6 MR. BERLINER: I'm going to object to this line  
7 of questioning.

8 We've been through this chart already quite  
9 extensively through Mr. O'Laughlin.

10 If there's a point that Miss Spaletta wants to  
11 get to, why don't we find out what the point is and see  
12 if all of this tedious analysis of this spreadsheet has  
13 any relevance here at all.

14 CO-HEARING OFFICER DODUC: Actually, I don't  
15 believe Mr. O'Laughlin asked that specific question.

16 But, Miss Spaletta, help us with --

17 MS. SPALETTA: Sure.

18 CO-HEARING OFFICER DODUC: -- the point.

19 MS. SPALETTA: Mr. O'Laughlin only examined  
20 Mr. Leahigh about DWR 905 and I'm actually working from a  
21 different exhibit.

22 I really would prefer not to have to do this in  
23 the hearing, but, again, because we don't have discovery  
24 before the hearing, nor the opportunity to examine the  
25 witnesses, we are left with this forum.

1           So, there is a point. Frankly, I just want to  
2 understand the numbers.

3           I don't think it's appropriate for DWR to  
4 present in graphical or chart form conclusions about  
5 their operational data without having adequate  
6 foundation.

7           If the rest of the stakeholders in this  
8 proceeding do not understand the foundation for the  
9 chart, it should not be admissible. And so this is an  
10 attempt to reach that understanding.

11           CO-HEARING OFFICER DODUC: All right.  
12 Overruled, Mr. Berliner. We will plow through this.

13           WITNESS LEAHIGH: You know, I'm sorry, but I  
14 could conceptually describe why the breakdown is what it  
15 is in those stacked bar charts. I don't think we need to  
16 go through a tedious exercise bit by bit.

17           I mean, I can -- I can explain why all of the  
18 results that apparently are . . . somebody has a problem  
19 with the results. But we can step through conceptually  
20 why they make sense.

21           CO-HEARING OFFICER DODUC: Hold on a second.  
22 Mr. Ochenduszko.

23           MR. OCHENDUSKO: I'm just going to repeat the  
24 offer by Co-Hearing Officer Doduc:

25           If anybody wants to approach the screen to see

1 what we're talking about.

2 CO-HEARING OFFICER DODUC: So that's what you  
3 were --

4 MS. DES JARDINS: Yes.

5 CO-HEARING OFFICER DODUC: Yes. There are  
6 monitors up here.

7 MS. DES JARDINS: Okay.

8 CO-HEARING OFFICER DODUC: I'm sorry. Where  
9 were we?

10 MS. SPALETTA: Mr. Leahigh was objecting to my  
11 line of questioning.

12 CO-HEARING OFFICER DODUC: Oh. Which I believe  
13 his attorney has already done and which I have overruled.

14 MS. SPALETTA: So my question was, you told me  
15 that the total Oroville release number is measured. And  
16 I was asking you if there was some other combination of  
17 the other columns that should add up to that measured  
18 number.

19 WITNESS LEAHIGH: Yes.

20 MS. SPALETTA: Okay. And which columns should  
21 add up to the measured number for the total Oroville  
22 release?

23 WITNESS LEAHIGH: So any of the numbers in the  
24 Instream Requirements columns. Actually, any -- any of  
25 the columns -- all of the columns with the exception of

1 the Feather River service area, the FRSA column, which is  
2 the first column, because those deliveries come straight  
3 out of Thermalito and they're not -- Thermalito Afterbay  
4 and they're not released to the river.

5 MS. SPALETTA: Okay. So that is helpful.

6 The total Oroville release number, then, is  
7 exclusive of the withdrawals from the Thermalito  
8 Afterbay.

9 WITNESS LEAHIGH: Correct.

10 MS. SPALETTA: Okay.

11 So, then, Mr. O'Laughlin didn't ask this  
12 specific question and it was something that I wanted to  
13 ask.

14 For this time period in January of 2011, the  
15 Delta was in excess conditions. And if I'm reading this  
16 chart correctly, the -- all of the exports are treated as  
17 coming from unstored flow, even though there is a release  
18 of 1750 cfs from Oroville for instream purposes; is that  
19 correct?

20 WITNESS LEAHIGH: That's correct, because  
21 that's a passthrough of unstored flow. It's not -- It  
22 doesn't represent a release of stored water.

23 MS. SPALETTA: Oh. So this measured Total  
24 Oroville Release column that says 1750, how do we know if  
25 the number in that column is a passthrough of unstored

1 flow versus a release from storage?

2 WITNESS LEAHIGH: Whether or not there's a  
3 number in the far right-hand column or not.

4 MS. SPALETTA: Can you explain that in more  
5 detail.

6 WITNESS LEAHIGH: A non-zero number in the far  
7 right-hand column. So if there's a zero in that column  
8 on the far right, then that would indicate that the --  
9 that releases are from stored water in Oroville. But in  
10 this particular case, there's -- not only is there  
11 unstored water being passed through Oroville, there's  
12 unstored water in the system that's being exported as  
13 well.

14 MS. SPALETTA: There's stored water?

15 WITNESS LEAHIGH: I'm sorry. Unstored water  
16 that's being exported in this period.

17 MS. SPALETTA: All right. So I think that  
18 helps me, because when -- when you finished with  
19 Mr. O'Laughlin, I had reached the conclusion that this  
20 Total Oroville Release column was only releases from  
21 storage.

22 But I think if you -- if I'm correct in my  
23 understanding right now, it could be either a passthrough  
24 of unstored water or a release from storage, depending on  
25 the condition.

1 WITNESS LEAHIGH: Correct.

2 MS. SPALETTA: Okay. Looking at March 15th in  
3 this table, there is a Total Oroville Release of 4,017  
4 thousand acre-feet and a flood release of 2,742 thousand  
5 acre-feet.

6 And then what does the difference between those  
7 two numbers represent?

8 WITNESS LEAHIGH: So this is in cfs.

9 MS. SPALETTA: I'm sorry, cfs.

10 WITNESS LEAHIGH: Yeah. And the -- So the  
11 difference is that minimum -- minimum instream flow  
12 release, which is the 1275.

13 MS. SPALETTA: So why are you classifying some  
14 of it as flood release here when earlier in the year it  
15 was classified simply as unstored flow?

16 WITNESS LEAHIGH: I'm sorry. Can we go back  
17 up? I don't have the --

18 MS. SPALETTA: Up to January.

19 (Scrolling up document.)

20 WITNESS LEAHIGH: Oh, why -- Okay. The  
21 question is why is this -- some of it's being classified  
22 as a flood release?

23 MS. SPALETTA: Um-hmm. Why?

24 WITNESS LEAHIGH: Because either -- Most  
25 likely, we were going into flood control storage at this

1 point.

2 MS. SPALETTA: Okay. Okay. This is probably a  
3 simple question.

4 If you scroll down to June 5th, that row is  
5 highlighted.

6 (Scrolling down document.)

7 MS. SPALETTA: Is there some significance to  
8 the highlighting?

9 WITNESS LEAHIGH: Not that I'm aware.

10 MS. SPALETTA: Okay. And then if we scroll  
11 down to December 1st.

12 (Scrolling down document.)

13 MS. SPALETTA: On December 1st, you have  
14 exports of 6,360 and an Oroville release of 2,845 with  
15 exports from unstored flow at 3,515.

16 So here, are you treating a portion of the  
17 export as a re-diversion of releases from Oroville?

18 WITNESS LEAHIGH: (Examining document.)

19 So we have unstored flow that's being exported  
20 and part of that -- Let's see, 1145, that column is -- I  
21 forget. That's release for export? No, that was -- I  
22 don't have the headings in front of me.

23 MS. SPALETTA: It's flood release. I'm sorry,  
24 no, Release for Export. You're correct. Release for  
25 Export.



1 (Pause in proceedings.)

2 MS. SPALETTA: I think, based on your earlier  
3 testimony, what's happening here is different than what  
4 was happening in January is, you are treating the release  
5 from Oroville as a release from storage and then counting  
6 that as a re-diversion of the release from storage at the  
7 pumps and reducing the export of unstored flow by a like  
8 amount.

9 Am I correct?

10 WITNESS LEAHIGH: It looks like that could be  
11 the case here.

12 MS. SPALETTA: Could be or is?

13 WITNESS LEAHIGH: You know, it's really hard to  
14 tell sitting here and looking at two .pdfs, but . . .

15 MS. SPALETTA: I'm glad that you agree.

16 What would you need to have to verify that?

17 WITNESS LEAHIGH: I'd have to -- Well, I need  
18 to talk to the person that put this together, for one.

19 MS. SPALETTA: I thought you said you put this  
20 together.

21 WITNESS LEAHIGH: Well, I just put the data  
22 together to put it in a form that was somewhat readable.  
23 That's all I did.

24 But the -- the graph was produced, as I said,  
25 by my staff.

1 MS. SPALETTA: So you're not able to answer.

2 WITNESS LEAHIGH: I'm not able to answer what?

3 MS. SPALETTA: Whether the difference between  
4 the SWP exports on December 1st -- Well, I'll ask it  
5 better. Strike that.

6 Whether the 2,845 cfs of Oroville release is  
7 being treated as a re-diversion of released stored water  
8 at the export pumps on December 1st.

9 WITNESS LEAHIGH: (Examining document.)

10 Yeah, I'm not sure.

11 MS. SPALETTA: Okay. Let's move on to DWR  
12 Exhibit 906.

13 Oh, actually before we do.

14 All of the explanations you just gave me for  
15 DWR-903, would they be equally applicable to the way that  
16 the columns work on DWR-904 and 905?

17 WITNESS LEAHIGH: Yes. The arrangement of the  
18 columns are the same in all the exhibits.

19 MS. SPALETTA: Okay. Then moving on to  
20 DWR-906.

21 (Document displayed on screen.)

22 MS. SPALETTA: This is the data for DWR  
23 Exhibit 852.

24 And, again, you created this document; right?

25 WITNESS LEAHIGH: Yes.

1 MS. SPALETTA: And it includes columns entitled  
2 "Unmet Demand" for the CVP and the SWP.

3 Do you see those?

4 WITNESS LEAHIGH: Yes.

5 MS. SPALETTA: And what do those numbers  
6 represent?

7 WITNESS LEAHIGH: Those numbers represent the  
8 difference between -- Well, for SWP, it's the difference  
9 between the total Table A amount and the percentage of  
10 the Table A that was allocated.

11 MS. SPALETTA: So am I correct to understand,  
12 then, that you are equating demand with total Table A  
13 amount in each contractor's contract?

14 WITNESS LEAHIGH: That's re -- That's -- That's  
15 correct, because as I testified before, essentially the  
16 demands we're getting from our contractors now are the  
17 full Table A.

18 MS. SPALETTA: Okay. And so that is without  
19 regard to whether a contractor is intending to take  
20 delivery of the water to sell it to someone else, use it  
21 for direct beneficial use, or put it to storage; correct?

22 WITNESS LEAHIGH: It's -- It's with regard  
23 to -- I can't say. It's in terms of their request, like  
24 I said. They're requesting the full Table A, and I don't  
25 have the specifics on what that water would be used

1 for --

2 MS. SPALETTA: That's all I have.

3 WITNESS LEAHIGH: -- when or how it would be  
4 used.

5 MS. SPALETTA: Those are all my questions.  
6 Thank you.

7 CO-HEARING OFFICER DODUC: Thank you,  
8 Miss Spaletta.

9 Well, we've been busy today. We've received  
10 several objections, several requests, and we'll need to  
11 think that over.

12 In the meantime, when we resume tomorrow, we  
13 will have Mr. Aladjem first up followed by Mr. Keeling  
14 and then followed by the others.

15 Mr. Berliner, I am estimating at this point,  
16 though. Who knows? At this point, I'm estimating around  
17 two and a half hours left of cross-examination for this  
18 panel.

19 I was going to ask, with respect to this panel,  
20 I believe you have some redirect but I also believe you  
21 have perhaps a time constraint with respect to your  
22 Panel 3 witnesses.

23 So do you have a proposal to make,  
24 Mr. Berliner?

25 MR. BERLINER: I have one that would be a