

APPEARANCES

BOARD MEMBERS

Ms. Tam Doduc, Chairperson

Dr. Gary Wolff, Vice Chairperson

Mr. Arthur Baggett

Mr. Charlie Hoppin

Ms. Frances Spivy-Weber

STAFF

Mr. Chris Carr, Staff Environmental Scientist

Mr. Tom Howard, Chief Deputy Director

Ms. Erin Mahaney, Senior Staff Counsel

Ms. Diane Riddle, Staff Environmental Scientist

Ms. Anne Short, Staff Environmental Scientist

ALSO PRESENT

Mr. Gary Bobker, The Bay Institute

Ms. Karna Harrigfeld, Stockton East Water District

Mr. John Herrick, South Delta Water Agency

Mr. Alan Lilly, Sacramento Valley Water Districts

Mr. Dante Nomellini, Jr., Central Delta Water Agency

Mr. Tim O'Laughlin, San Joaquin River Group Authority

Mr. John Rubin, San Luis & Delta Mendota Water Authority,
Westlands Water District

Mr. Erick Soderlund, California Department of Water
Resources

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1 PROCEEDINGS

2 CHAIRPERSON DODUC: Good morning. If everyone
3 could please take a seat. It's about two minutes after
4 10. We're going to go ahead and get started.

5 Not yet a packed house.

6 All right, everyone. Welcome to this meeting
7 of -- this workshop, I guess I should say. Today is
8 October 8th. I'm Tam Doduc, Chair of the State Water
9 Resources Control Board. With me here today are my
10 colleagues; to my left, Vice Chair Gary Wolff; to my far
11 right, Member Frances Spivy-Weber. We expect Members Art
12 Baggett and Charlie Hoppin to be joining us shortly.

13 Assisting the Board today are staff: Diane
14 Riddle, Staff Environmental Scientist. Next to her is
15 Anne Short, Environmental Scientist. And next to her is
16 Erin Mahaney, Senior Staff Counsel.

17 We will now commence the workshop regarding the
18 periodic review of the Water Quality Control Plan for the
19 San Francisco Bay/Sacramento-San Joaquin Delta Estuary.

20 (Thereupon an overhead presentation was
21 Presented as follows.)

22 CHAIRPERSON DODUC: This workshop is being held
23 in accordance with the State Water Board's Notices of
24 Public Workshop dated August 29th and September 24th,
25 2008. Today's procedures are in those notices.

1 The primary purpose of this workshop is to
2 receive information regarding the periodic review of the
3 2006 Bay-Delta Plan to identify what elements of the
4 Bay-Delta Plan may need amendments or whether new elements
5 should be considered for addition to the Plan.

6 The Revised Notice of Workshop also states that
7 additional information will be provided regarding the
8 evidentiary hearings or fact-finding proceedings that was
9 discussed in the Bay-Delta workplan. And I will provide
10 an update on that fact-finding process right now.

11 As some of you know, on September 29th the State
12 Water Board received written comments on factual issues
13 that the Board should consider. Some of the comments also
14 raised questions about the fact-finding process. Staff is
15 preparing a description of that proposed process that
16 considers those comments. And we will make that process
17 description available as soon as possible, after, of
18 course, the hearing officers have had an opportunity to
19 review and approve it.

20 I do, however, for today want to clarify that the
21 fact-finding proceedings will be conducted as
22 informational proceedings based on Section 649(b) of the
23 Board's regulations. The proceedings will not be
24 conducted as adjudicative proceedings under the
25 Administrative Procedures Act and will not have a binding

1 effect in subsequent adjudicative proceedings, absent
2 stipulations by the parties.

3 We will not discuss the fact-finding proceedings
4 further today, because any such discussion would be
5 premature prior to release of the process description.

6 Again, the focus of today's workshop is on the
7 periodic review.

8 Participants in today's workshop will be given an
9 opportunity to summarize and supplement their written
10 materials with oral presentations. The workshop will be
11 informal and there will be no sworn testimony or
12 cross-examination of participants. But Board and staff
13 may ask clarifying questions.

14 If you intend to speak today, please fill out a
15 blue speaker card and give it to our staff. If you have
16 written comments, please give them to staff as well.

17 I encourage participants to summarize their
18 written comments in their oral presentations. And I
19 encourage participants with similar comments to make joint
20 presentations. There may be an imposition of time limits
21 depending on the number of speakers.

22 A court reporter is present and will prepare a
23 transcript. To accommodate the reporter, please use a
24 microphone. If you want a copy of the transcript, please
25 make arrangements with the court reporter.

1 At this time, staff is going to make a brief
2 presentation regarding the workshop. And following
3 staff's presentation, I'm turning the workshop over to
4 Vice Chair Wolff, who will then call the parties who have
5 submitted a blue speaker card.

6 With that, we also now welcome Members Hoppin and
7 Baggett.

8 STAFF ENVIRONMENTAL SCIENTIST RIDDLE: Good
9 morning, Chair Doduc and Board members. Again, my name is
10 Diane Riddle. I'm a staff environmental scientist with
11 the Bay-Delta Unit. And I'm just going to provide a brief
12 introduction for the Periodic Review Workshop.

13 As you'll recall, the Bay-Delta Strategic
14 Workplan calls for a comprehensive review of the Bay-Delta
15 Plan, beginning with a periodic review of that plan
16 starting this month.

17 The State Board issued the public notice for this
18 workshop on August 29th, and comments for the workshop
19 were received by October 1st. Again, the purpose of this
20 workshop is to receive information concerning what
21 elements of the 2006 Bay-Delta Plan, in addition to
22 southern Delta salinity and San Joaquin River flows, which
23 we've already begun a review of, may need amendment,
24 whether new elements should be added to the plan, or
25 whether the entire plan should be revised.

1 was held in 2003 and 2004. And the last update to the
2 plan was made in 2006.

3 The 2006 plan includes only minor modifications
4 to the 1995 plan, but does identify emerging issues
5 including southern Delta salinity, San Joaquin River
6 flows, the Pelagic Organism Decline, and climate change.

7 Again, work on the southern Delta salinity and
8 San Joaquin River flow objectives has already started but
9 will ultimately fold into the comprehensive review of the
10 Bay-Delta Plan.

11 It is anticipated the issues related to the
12 Pelagic Organism Decline and climate change will be
13 addressed in this comprehensive review as well.

14 While work on the southern Delta salinity and San
15 Joaquin River flow objectives will still be a part of the
16 comprehensive review of the Bay-Delta Plan, since these
17 issues are more developed, their view of these issues is
18 beginning earlier.

19 In addition, the California Environmental Quality
20 Act scoping for these issues is also planned to occur
21 prior to scoping for other issues and is planned to occur
22 during the first quarter of 2009.

23 CEQA scoping for other elements of the Bay-Delta
24 Plan will follow this scoping for southern Delta salinity
25 and San Joaquin River flows. The timing of that scoping

1 Delta Vision process.

2 Due to the rapid decline of Delta native fish
3 populations, commenters suggest that review of water
4 quality objectives for fish and wildlife beneficial uses
5 comments after biological opinions have been issued. The
6 biological opinions are intended to address the effects of
7 continued operations of the State and federal water
8 projects and their effect on listed species.

9 Commenters also expressed uncertainty of the
10 relationship between fact-finding proceedings and the
11 periodic review. Specifically interested parties will
12 like further clarification with respect to the conduct of
13 the informational proceedings and how the information is
14 going to be used.

15 This concludes our staff presentation. Are there
16 any questions before hearing public questions?

17 BOARD MEMBER SPIVY-WEBER: I have one.

18 Could you tell me where climate change is going
19 to be incorporated again? I know you mentioned it, but I
20 didn't see it in the presentation.

21 STAFF ENVIRONMENTAL SCIENTIST RIDDLE: I think
22 we'll have to account for it in our review of all of the
23 water quality objectives. And it may be that it would
24 play a bigger role in future reviews of the Bay-Delta
25 Plan. But in our CEQA review for all of the objectives,

1 we'll include an analysis related to climate change.
2 Specific measures to necessarily address climate change,
3 we didn't receive any comments related to that. However,
4 when we go out and do our CEQA scoping, we will request
5 information related to that issue.

6 VICE CHAIRPERSON WOLFF: I also have one
7 question.

8 Also, I have no blue cards.

9 Ah, there they are.

10 Question has to do with the other stressors.
11 Many of other stressors, not all but many of them, are
12 controlled or not controlled through other policies or
13 plans in the Bay-Delta Plan. And I'm curious about, you
14 know, the linkage between the periodic review in those
15 documents. It was my understanding that through the
16 periodic review we could make some recommendations with
17 respect to -- or you would be making some recommendations
18 with respect to whether some of those things should be
19 pursued through other venues in the plan. But you didn't
20 mention that in the presentation. So I wanted to confirm
21 I'm understanding that correctly.

22 STAFF ENVIRONMENTAL SCIENTIST RIDDLE: Yeah,
23 that's true. Generally in the program of implementation,
24 if there are needed measures to protect various beneficial
25 uses that the Board doesn't have direct authority over, we

1 would make recommendations to other agencies to pursue
2 those measures.

3 VICE CHAIRPERSON WOLFF: Well, I didn't mean
4 other agencies. I meant other parts of our own apparatus.
5 So it might be one of our own policies that might perhaps
6 need amendment or the Region 5 Basin Plan or the Region 2
7 Basin Plan.

8 STAFF ENVIRONMENTAL SCIENTIST RIDDLE: Right,
9 that information could definitely inform those processes.

10 VICE CHAIRPERSON WOLFF: Thank you.

11 So I was just handed a pile of cards. They're in
12 a certain order. Unless someone needs to go sooner, I'm
13 just going to go in the order they're handed to me in.
14 There are seven of them, so I don't think we'll be here
15 that long.

16 First card is John Rubin.

17 MR. RUBIN: Good morning, Board members. Jon
18 Rubin with the Law Firm of Diepenbrock Harrison appearing
19 for the San Luis & Delta Mendota Water Authority and
20 Westlands Water District.

21 Appreciate the opportunity to speak this morning.
22 The summary of comments that was provided by your staff I
23 don't think captured the comments that the San Luis &
24 Delta Mendota Water Authority and Westlands made. I hope
25 you've had the opportunity to read our comment letter. If

1 you haven't, I hope that you take that opportunity.

2 Let me begin by saying the comment letter that I
3 submitted on behalf of the San Luis & Delta Mendota Water
4 Authority and Westlands Water District reflects a level of
5 frustration. And I want to make it clear that the
6 frustration is not directly with the State Water Resources
7 Control Board, but with the circumstances that my clients
8 face.

9 Over the last decade or so the San Luis & Delta
10 Mendota Water Authority members and Westlands Water
11 District specifically suffered significant water supply
12 shortages. Fish and wildlife apparently have not
13 benefited from the actions causing those shortages. And
14 there are many other factors that are affecting fish and
15 wildlife that have gone underregulated or unregulated.

16 Turning to the State Water Resources Control
17 Board and the authorities that it has. It should be
18 beyond dispute amongst the stakeholders and hopefully the
19 Board and the Board's staff that when the State Water
20 Resources Control Board adopts objectives, those
21 objectives should be based upon the best available
22 science, and the State Board must include a level of
23 balancing when it sets the objectives. And balancing
24 needs to reflect the competing demands for the water that
25 is protected by the objectives.

1 At this point, the San Luis & Delta Mendota Water
2 Authority and Westlands Water District believe that the
3 State Board must reconsider the balance struck in 2006 and
4 the science relied upon for the objectives contained in
5 the 2006 Bay-Delta Plan. In our comment letter, we
6 proposed a stepped approach. And this is the point that I
7 don't believe your staff has reflected. I think it's an
8 important one. We've identified a first step. And the
9 first step would be based upon the existing configuration
10 of the Delta, the existing use of the Delta for conveyance
11 particularly by the Central Valley Project and the State
12 Water Project.

13 And within this first step we see a potential for
14 immediate action, action that might be taken to help
15 address potential circumstances within the next water year
16 or the current one -- the water year that started October
17 1st.

18 Previous comments that we've submitted and others
19 have identified tools that could help. We believe that it
20 could help the water supply for the areas that are
21 dependent on Central Valley Project water and the State
22 Water Project water, and we believe the tools could be
23 exercised in a fashion that has little, if any, adverse
24 impact on other beneficial uses. The tools that we've
25 identified -- and I don't think this is exhaustive but

1 representative -- is flexing of the export-inflow ratio,
2 flexing of outflow objective, or X-2, and flexing of the
3 Rio Vista objective.

4 Along the lines of this first step, we also
5 believe that there are shorter term actions that might be
6 taken. Shorter term meaning prior to some of the existing
7 planning efforts initiatives coming to a recommendation or
8 conclusion. And, again, these are based upon the existing
9 configuration, existing use of the Delta for conveyance.

10 And many of these are the ones that the State
11 Board staff has identified, that you've already
12 identified, south Delta salinity, San Joaquin River flow,
13 chloride objectives. But we're also hoping during this
14 second phase, I guess, of your first step you might also
15 consider any other information that might come out of your
16 evidentiary proceedings.

17 The second step might be obvious at this point.
18 But what we're talking about is a potential of more
19 significant changes or a new plan based upon the results
20 of the initiatives, the planning efforts.

21 Let me turn to a couple of questions that came
22 after the presentation from staff. In terms of climate
23 change, we do see that as an important element here. Not
24 necessarily for you to set objectives to protect against
25 climate change and the potential effects of climate

1 change, but we see that as an important factor in your
2 balancing. Sea level rise may make certain objectives
3 unreasonable. And we see that as an important element in
4 your balancing.

5 And then the second, in terms of Dr. Wolff's
6 question and what you can or can't do in the plan. I
7 think it's -- I just wanted to highlight that there are
8 tools that you have available. A program of
9 implementation is an important one. You used that in
10 2006. And I highlight one tool that was used. And I
11 think that one of the other commenters, the Central Valley
12 Clean Water Association, highlights it in their comment
13 letter as well. In the program of implementation related
14 to the south Delta salinity objectives, you directed the
15 Central Valley Board to impose discharge controls on
16 in-Delta discharges of salt as a mechanism of helping
17 implement the south Delta salinity objectives.

18 And so there are tools, particularly in the
19 program of implementation, that could be used.

20 With that, I have no further comments. And I'd
21 be happy to answer any questions that the Board might
22 have.

23 VICE CHAIRPERSON WOLFF: Thank you.

24 Any questions?

25 MR. RUBIN: Thank you.

1 VICE CHAIRPERSON WOLFF: Alan Lilly.

2 And can we run the clock when Mr. Lilly starts
3 speaking. The last time it didn't run.

4 MR. LILLY: I'll be way under five minutes.

5 Good morning, Dr. Wolff, members of the Board.
6 I'm Alan Lilly of Bartkiewicz, Kronick & Shanahan,
7 representing numerous different districts and agencies in
8 the Sacramento Valley.

9 I submitted written comments and Northern
10 California Water Agency submitted written comments as
11 well. And I just want to emphasize two points for the
12 proceeding. And they may be obvious, they may not be
13 controversial, but I can't tell.

14 The first is, the notice seems to contemplate
15 that staff will prepare draft plan amendments or a new
16 draft plan. And what I can't tell from the notice is
17 whether or not the contemplation is that staff will have
18 different alternatives or just basically one staff
19 recommendation. And I think that's very important. If
20 there are disputed issues, I think both for the public
21 process and for the Board's decision-making process, if
22 the staff has presented different alternatives, with pros
23 and cons analysis of the impacts of them, it makes for a
24 much more reasonable and efficient decision-making
25 process. Otherwise, if the staff has committed to one

1 particular course of action and everyone's having to
2 challenge that, I think it doesn't work as well for an
3 open and efficient public process. So I just would like
4 to emphasize that.

5 In the proceedings that led to D-1641, the Board
6 prepared a comprehensive EIR that did just that. It
7 had -- for each of the different parameters that was at
8 issue, it had several different alternatives, sometimes
9 four, sometimes up to seven or eight I believe. And I
10 think that really did facilitate the process. And I'd
11 really encourage the Board to do that again as this water
12 quality control plan review process goes forward.

13 The second point -- second and final point is
14 that -- and perhaps this is obvious to the Board members
15 and staff as well. I know you have great powers and I
16 know you really try to do the right thing. But you can't
17 do it all, and certainly I think that's very clear in the
18 Delta.

19 With things like exotic species and even just the
20 physical configuration of the channels and the fact that
21 there now are deeper channels and not as much of the
22 brackish wetlands that existed pre-development, those
23 things obviously affect the habitat and the conditions for
24 the fish species that are at risk. And some of them you
25 can control through water quality objectives, and some of

1 them obviously you cannot and have to be addressed through
2 other -- a regulatory planning process. And I believe,
3 Dr. Wolff, you alluded to this in your questions a few
4 minutes ago.

5 So I guess my concern particularly from the
6 Sacramento Valley District's point of view is I hope this
7 process doesn't get to be one where there's a push to
8 just, as I'll put it in vernacular, throw a lot of water
9 at the Delta and hope it solves the problem. Because
10 obviously that could have serious water supply impacts,
11 while perhaps not doing any good and perhaps even causing
12 harm for the fish species that we all want to try to
13 protect and enhance in the Delta.

14 So, again, it's going to take a lot of work and
15 the State Board's going to have to recognize, I believe,
16 that there has to be coordination with other processes.
17 The Water Quality Control Plan process alone, while it's
18 certainly very important, is not the whole story.

19 So with that, I'll be glad to answer any
20 questions. But those were my comments for today, and I
21 appreciate the opportunity to make them.

22 VICE CHAIRPERSON WOLFF: Any questions?

23 BOARD MEMBER SPIVY-WEBER: Do we answer his first
24 question?

25 VICE CHAIRPERSON WOLFF: Staff, do you have a

1 response to --

2 BOARD MEMBER SPIVY-WEBER: Is staff prepared to
3 respond to his first --

4 STAFF ENVIRONMENTAL SCIENTIST RIDDLE: Yeah, it
5 is anticipated that the environmental review for the
6 revised Water Quality Control Plan would include
7 alternatives -- a broad range of alternatives. So, yes.

8 MR. LILLY: Good. And I appreciate that
9 clarification very much. Thank you.

10 VICE CHAIRPERSON WOLFF: The next card is from
11 Tim O'Laughlin.

12 MR. O'LAUGHLIN: Which one?

13 VICE CHAIRPERSON WOLFF: Which Tim?

14 The next card has your name on it.

15 MR. O'LAUGHLIN: I'm schizophrenic, so don't --

16 (Laughter.)

17 VICE CHAIRPERSON WOLFF: Oh, I would like the
18 good Tim to come forward. Would that be possible?

19 MR. O'LAUGHLIN: My mom hoped that for twenty
20 years.

21 (Laughter.)

22 VICE CHAIRPERSON WOLFF: You should have reserved
23 the bad Tim for the serious litigative matters, you know,
24 and other venues. Send the good Tim over here.

25 (Laughter.)

1 MR. O'LAUGHLIN: Okay. Tim O'Laughlin.

2 The first card that I'm going to speak under --
3 at the last meeting you requested an update from the San
4 Joaquin River agreement parties on where we were with our
5 process. So I'm going to read an approved statement by
6 the San Joaquin River parties in regards to the question
7 raised by the Board: What are we going to do with VAMP in
8 2010 and 2011?

9 "The participants generally
10 concurred with the San Joaquin River
11 Group Authority that there were four
12 primary issues to be resolved regarding
13 extending VAMP to 2011: 1) funding; 2)
14 water; 3) monitoring, and 4)
15 environmental documentation.

16 "The participants generally agreed
17 that two groups would be formed to
18 discuss and attempt to resolve the
19 outstanding issues in each of these
20 areas. The groups to be formed are a
21 water and funding group and a monitoring
22 and environmental compliance group.

23 "It was agreed that the issue of
24 monitoring and environmental compliance
25 would be addressed after the issue of

1 funding and water showed promise for
2 resolution. The participants agreed
3 that an investigation regarding what, if
4 any, environmental process and
5 documentation is needed to expand VAMP
6 in 2010 and 2011 is warranted. No
7 commitments were made by any participant
8 to initiate this investigation."

9 Based on that agreement, letters went out to the
10 Department of Water Resources, the United States Bureau of
11 Reclamation, the Central Valley Water Project Contractors,
12 the State Water Project Contractors, the San Joaquin River
13 Group Authority, at the policy level, to convene the first
14 group to have discussions as soon as possible on
15 funding and water -- oh, California Department of Fish and
16 Game and the U.S. Fish and Wildlife -- sorry about that --
17 to discuss funding and water issues.

18 The goal of that group is to report back to this
19 Board no later than the end of the year about whether or
20 not a resolution could be reached in regards to funding
21 and water to extend the VAMP to 2010 and 2011.

22 Are there any questions on that one?

23 BOARD MEMBER HOPPIN: I have a question if I
24 figure out how to turn my microphone on.

25 Funding's kind of a big word. Do we have a

1 general parameter? Do we have, as Mr. Lilly asked for,
2 options on funding? Do you have an idea or are we just
3 talking about funding?

4 MR. O'LAUGHLIN: The proposal --

5 BOARD MEMBER HOPPIN: Or would you rather not
6 talk about it right now?

7 MR. O'LAUGHLIN: Oh, no, I'm happy to talk about
8 funding. Funding's -- we can't hide from these things.

9 The San Joaquin River Group Authority proposed to
10 keep the current VAMP funding in place for 2010 and 2011.
11 That calls for a payment of \$4 million a year with an
12 escalator clause. I don't know what the number is right
13 now. Plus, there are additional monies paid to Oakdale
14 and Merced to acquire additional waters for VAMP -- for
15 pulse flows in the fall and/or shoulder water for the
16 VAMP. So all total, it comes out to roughly around \$7
17 million.

18 So currently the United States Bureau of
19 Reclamation and DWR have a cost-sharing agreement on
20 providing those payments to the San Joaquin River Group
21 Authority member units. So it's about \$7 million.

22 None of the funding that will probably be
23 discussed in these meetings had to do with funding for the
24 actual experiment that takes place during the year. This
25 was just funding for water, not funding for the

1 experiment, because there's a funding for the experiment
2 that takes place during the year too as well, and that's
3 based on a cost-share agreement that's split in quarters
4 between the parties.

5 BOARD MEMBER HOPPIN: Just rough numbers, how
6 does it compare with the cost of buying the water?

7 MR. O'LAUGHLIN: I'm going to go out -- I think
8 it's \$1.5 million was the last year for VAMP. For the
9 study, the acoustic tagging and all the data monitoring,
10 the reporting, was about \$1.5 million, ballpark.

11 BOARD MEMBER HOPPIN: Did the tagging add a
12 significant element of cost to the study? I know it
13 provided a lot more data for you. But what did it do to
14 your original --

15 MR. O'LAUGHLIN: Yes.

16 BOARD MEMBER HOPPIN: -- operational budget
17 estimations?

18 MR. O'LAUGHLIN: The budget for the study has
19 continued to rise over the term of the VAMP. And
20 switching to acoustic tags has -- there's a cost savings
21 but there's a cost escalator. The cost savings is we're
22 not marking and trying to recapture 250,000 fish. But the
23 flip side on that is that these acoustic tags cost about
24 \$250 to \$275 apiece. You've got the labor and time to put
25 them in. You've got to hold them. You've got to

1 transport them. And then we have to deploy all the
2 receivers throughout the Delta, monitor them, upload them,
3 get the data from them, make sure the batteries are
4 working.

5 So overall, the cost of doing the acoustic
6 tagging has gone up even though the number of study
7 fish -- I mean, we -- I think we did like 1,200 fish this
8 year -- has gone down. So it's a trade-off. But overall
9 the costs for the experiment have gone up.

10 Just another quick note. Two other items were
11 discussed at this meeting. I'm going to go off-script for
12 just a second. We did talk about VAMP extension beyond
13 2011 at the meeting. Everybody thought it would be
14 productive not to have those discussions until after we
15 got done -- getting done with 2010 and 2011 since those
16 are the most pressing problems in front of us right now.

17 And then the other one was an update by the VAMP
18 Technical Committee on 2009. We were proceeding forward
19 with the study plan, trying to work out what the study
20 plan will encompass in detail. One of the things that the
21 State Board and the public should be aware of is that the
22 current indicator on the San Joaquin -- for the San
23 Joaquin River agreement is that if we have a critical year
24 or dry year in the San Joaquin River basin, the VAMP goes
25 to an offramp. So the San Joaquin River Group Authority

1 member units will not be required to make water available
2 under that situation if we go to a critical or dry year in
3 the San Joaquin River basin again. Just an FYI.

4 One other thing -- and I'm going to put on a
5 different hat. I'm going to speak on behalf of Oakdale
6 and South San Joaquin Irrigation districts real quickly.
7 Some good news. Sorry. I don't want to come in here and
8 give bad news all the time.

9 Very interesting, on the Stanislaus River -- and
10 actually you'll be getting an invite from Mr. Schwartz to
11 come visit the Stanislaus Weir. The Stanislaus Weir has
12 been installed and operated by the districts in
13 conjunction with the California Department of Fish and
14 Game and U.S. Fish & Wildlife Service on the Stanislaus
15 River.

16 We have good salmon numbers this year. We have
17 over 160 returning salmon as of last Monday on the river.
18 To put that into some context for you, that matches the
19 highest return numbers to date for the biggest year of
20 returning fish that we've ever had on the Stanislaus
21 River. Now, it's early. Lots of things can happen. You
22 never know. But the current numbers are excellent. And
23 what's interesting about this, I think, is that flows on
24 the Stanislaus River were 75 cfs at the time the fish
25 started returning. Flows at Vernalis were 800 cfs. Water

1 temperature in the main stem of the San Joaquin River was
2 about 75 degrees Fahrenheit.

3 Now, if the trends of salmon returning hold true
4 by the 1st of October, less than 2 percent of our fish
5 historically return in the September time period. So we
6 should be looking at substantial returns if the returns
7 hold true to the historic graphs. So that's some news.
8 And you'll be getting an invite from Mr. Schwartz to come
9 view the Stanislaus Weir.

10 Do you want me to switch to my other hat now and
11 I'll finish -- because I have another speaker card on
12 behalf of the San Joaquin River Group to talk about
13 periodic review.

14 VICE CHAIRPERSON WOLFF: Yeah, we can start the
15 clock again.

16 And just so everyone knows, Mr. O'Laughlin is not
17 actually schizophrenic. He submitted two cards because he
18 has two clients. And I was not aware of that when I
19 called him the first time.

20 MR. O'LAUGHLIN: I have more than two clients.

21 But --

22 (Laughter.)

23 VICE CHAIRPERSON WOLFF: Well, two clients today.

24 MR. O'LAUGHLIN: Two clients today. Thanks.

25 (Laughter.)

1 BOARD MEMBER BAGGETT: Since there are no
2 conflicts in water right law.

3 MR. O'LAUGHLIN: There are no conflicts.

4 (Laughter.)

5 MR. O'LAUGHLIN: I need -- today I'm not going to
6 talk about our comment letter that we submitted. I just
7 need some clarification on where we're going. I was
8 appreciative of hearing the Chairwoman tell us about the
9 evidentiary proceedings.

10 I'm still perplexed though. The San Joaquin
11 River Flow Workshop was canceled on November 5th. I've
12 submitted a letter to the State Water Resources Control
13 Board asking about the Fish and Game model and whether or
14 not we needed to respond to it, because they said that
15 they were going to do away with the model and go forward
16 with a new model next year. But it's kind of surprising
17 to me to hear your staff say that you're going forward
18 with a scoping session in 2009 because the San Joaquin
19 River flow objectives or issues are more developed. And
20 I'm sitting here wondering, based on what? Because you
21 had a model -- you had one workshop on San Joaquin River
22 flow. And based on that, you had two things that were
23 presented: 1) the VAMP peer review, which you still don't
24 have and that's coming; and 2) a model that by Fish and
25 Game's own statement was obsolete as soon as it hit your

1 desk, which was going to come back.

2 So if you're going to go forward on a scoping
3 session, my question is, based on what? And because we
4 outlined extensive issues to you in our June letter and
5 our July letter about providing you with the information
6 we think is necessary for you to have an adequate scoping
7 session.

8 Also, we find it ironic, how are you going to do
9 scoping when the biological opinions aren't even done? We
10 have a biological opinion coming out for Delta smelt in
11 December. We have a follow-up one that's coming out
12 for -- which is an important one on the San Joaquin River
13 if you look at the POD issues and those issues. But then
14 we also have the Steelhead issue and the salmon issue,
15 which is supposed to be in March maybe.

16 So, I don't know how we're going to go forward
17 with that.

18 VICE CHAIRPERSON WOLFF: I wonder if I could
19 interrupt you briefly.

20 MR. O'LAUGHLIN: Sure.

21 VICE CHAIRPERSON WOLFF: I don't want to
22 arbitrarily cut you off. And I do want you to get answers
23 to your questions. But I believe the notice for this
24 hearing was about the periodic review of all other aspects
25 of the plan other than the aspects you're talking about.

1 So, Mr. Howard, can you help with this?

2 MR. O'LAUGHLIN: But where do I --

3 VICE CHAIRPERSON WOLFF: What's the avenue for
4 Mr. O'Laughlin to get his answers? I mean he wants
5 answers, I understand that. But what's the avenue for
6 that? Do you want to make comments like today, or is
7 there a different pathway for him getting the answers he
8 needs?

9 CHIEF DEPUTY DIRECTOR HOWARD: Well, there are
10 two pathways. One is staff will be happy to sit down with
11 him and talk about the information that we'd like to see
12 in the CEQA scoping. The second is, of course, that the
13 CEQA scoping will be initiated, will be noticed. And at
14 that point he, you know, should be bringing in any
15 information that he has.

16 The fact of the matter is that in the Delta
17 everything is changing. It's changing on a weekly basis.
18 So if the intent -- the point is that things are changing
19 late, yes, that's true, and that will continue to be the
20 case into the future.

21 So the Water Board needs to start the process of
22 CEQA scoping at some date. And, at this point, we're
23 proposing the first quarter of 2009.

24 MR. O'LAUGHLIN: And I get that. I've done
25 plenty of CEQA stuff -- documents with you. I understand

1 your standards. I get all that.

2 But here's my problem: You sent out a workshop
3 notice. And we said we'd participate and comply with your
4 workshop notice on the San Joaquin River flow and on
5 salinity issues.

6 You had a workshop. You told me specifically not
7 to submit the information that we wanted to submit because
8 you wanted to have it focused on the model and you wanted
9 to have it focused on the VAMP peer review.

10 Okay. So the model comes in. And we all agree,
11 we got it the day of the hearing. So based on my previous
12 letters, I told you there's no way I can respond if I get
13 the model the day of the hearing. And now all of a sudden
14 the workshop that's scheduled on November 5th is canceled.
15 I have no problem with that. As long as you tell me --
16 and I sent you a letter on this -- if you're not going to
17 use that model for any basis for moving forward with any
18 San Joaquin River flow objectives, I'm a happy camper.
19 But if you are, which according to your staff you now have
20 more developed issues in regards to San Joaquin River flow
21 I guess at the model, then I need to respond and comment
22 on the model. You owe me that. Okay? That's only fair.
23 Okay?

24 And the other thing is, you still haven't told
25 me, based on your San Joaquin River flow workshops, how we

1 plug in, because I wrote that letter back in June or July.
2 You told me you were going to respond and let me know when
3 we were going to plug in. I still haven't heard a
4 response. I've gone through the periodic review process.
5 I've gone through your evidentiary process. I've gone
6 informally through other processes. I still haven't
7 gotten a response.

8 VICE CHAIRPERSON WOLFF: Well, let me intervene
9 again.

10 If I recall correctly, when I was told that the
11 staff wanted to cancel the November 5th workshop, it was
12 because a status report was being added to the agenda for
13 the November 4th regular Board meeting. Is that correct?

14 STAFF ENVIRONMENTAL SCIENTIST RIDDLE: (Ms.
15 Riddle Nods head.)

16 VICE CHAIRPERSON WOLFF: So fill in what you
17 anticipate will be in that status report on the November
18 4th Board meeting.

19 Is that going to give Mr. O'Laughlin the answers
20 he's looking for?

21 STAFF ENVIRONMENTAL SCIENTIST RIDDLE: I think we
22 were expecting a status report from Mr. O'Laughlin that he
23 actually provided today. And the expectation regarding
24 the November 5th date, it's my understanding that it was
25 still probably too soon to address the remaining issues

1 related to the review of the VAMP -- the peer review of
2 the VAMP, and that that would be too soon; and potentially
3 that we could address some of these issues through this
4 CEQA scoping process.

5 BOARD MEMBER BAGGETT: That was exactly the
6 discussion we had with Mr. O'Laughlin a month ago, a few
7 weeks ago. So wait on the peer review, the VAMP.

8 VICE CHAIRPERSON WOLFF: So --

9 BOARD MEMBER BAGGETT: And that won't be done
10 till November -- you said December, as I recall.

11 MR. O'LAUGHLIN: December -- the VAMP peer review
12 on the VAMP will be done hopefully by December. We're
13 sending that over to CALFED hopefully this week.

14 Okay. So that's -- but that still doesn't answer
15 my question. I got that.

16 So I get the workshop has been canceled. But
17 you're moving forward -- and Tom -- and with all due
18 respect to Tom and your staff, not all of these issues
19 will be addressed in your CEQA scoping document.

20 Also, getting to your point, Dr. Wolff, which
21 I've always agreed to from day one, which is, you know,
22 people write lots of stuff for CEQA scoping documents.
23 But where is the rigor, where's the analysis? Where is
24 our insight into trying to ascertain what these issues are
25 all about. That doesn't occur in CEQA. Because all that

1 occurs in CEQA is I send you lots of comments, you respond
2 to lots of comments, and that's what happens.

3 So that's what we tried to point out with the San
4 Joaquin River Flow Workshop issues, which is let's get
5 some rigor, let's get some analysis, let's see what this
6 is all about. And that's not going to occur in CEQA.

7 VICE CHAIRPERSON WOLFF: Okay. Thank you for the
8 comments. Well made. I'm especially glad to be agreed
9 with by anyone on anything.

10 But, you know, we don't have answers that are
11 clear to you today, but we'll continue to work on that.
12 Certainly pieces of it are clear. And other pieces we'll
13 just have to continue to work forward to clarify. You've
14 submitted your comments, and we'll have to respond
15 accordingly.

16 MR. O'LAUGHLIN: Thank you.

17 VICE CHAIRPERSON WOLFF: The next card is Erick
18 Soderlund.

19 Am I pronouncing your last name correctly?

20 MR. SODERLUND: Close enough.

21 How would you prefer it pronounced?

22 MR. SODERLUND: Soderlund.

23 VICE CHAIRPERSON WOLFF: Soderlund.

24 MR. SODERLUND: Vice Chair Wolff, members of the
25 Board, good morning. My name is Erick Soderlund and I'm

1 here on behalf of the Department of Water Resources.

2 And my comments this morning will be brief. You
3 know what we suggested for amendments in our written
4 comments were fairly brief. And the reason why is there's
5 a lot of processes going on. And we're waiting for at
6 least one ball to drop so that we can be informed by that.
7 And we think that the biological opinions, the smelt
8 coming in December, the salmon coming in hopefully March
9 of next year, will be at least two really good
10 informational places to start from. And from that, you
11 know, then we can really start the process. I mean we're
12 starting the process now, but really start the process of
13 submitting comments on potential amendments and changes
14 that we would like to see in the 2006 Bay-Delta Plan.

15 It will be interesting I think, you know, just
16 the previous conversation, to see how the processes inform
17 each other and whether they're in the right order. That
18 will be interesting. I think we all need to give a lot of
19 consideration.

20 But I just wanted to again highlight that the
21 Department of Water Resources looks forward to working
22 with the Board. And the brevity of our comments right now
23 were really because a lot of processes are still up in the
24 air and the south Delta salinity was not covered.

25 So we look forward to all the processes that were

1 coming up.

2 So, again, thank you.

3 VICE CHAIRPERSON WOLFF: Please.

4 BOARD MEMBER SPIVY-WEBER: You're the, I think,
5 third person this morning to mention the biological
6 opinion that may occur, could occur, hopefully would occur
7 in March. So what I'm hearing is it won't happen in March
8 likely. It's quite likely that it won't happen, or at
9 least there's a good chance that it won't happen.

10 How will we know what the real timeline is should
11 it change from March? You know, will we know early in the
12 year? Will we know later this year? Is there going to be
13 a signal -- a smoke signal that says it's going to be
14 late, it's going to be late by a month or two months or
15 three months?

16 MR. SODERLUND: I don't know if I'm the best
17 person to answer that question. I'd hope if there's a
18 NOAA Fisheries person here --

19 BOARD MEMBER SPIVY-WEBER: Okay.

20 MR. SODERLUND: I do know that the timeline that
21 was presented that I'm familiar with -- it may have
22 changed -- but the one that I'm familiar with accounted
23 for all the steps that needed to be accounted for. But it
24 was still a pretty aggressive timeline. So whether we're
25 in March, I'm not sure. But I do think it would be fairly

1 close. And, you know, I'm sure that there's critical
2 stages along the way where if we know that we don't -- or
3 if NOAA Fisheries or if the project applicants know that
4 we're not going to be on that timeline, we can definitely
5 inform the Board at those times. But right now I'm not
6 sure how that will look.

7 BOARD MEMBER SPIVY-WEBER: Let me ask Diane.

8 So you're in touch with those who are working on
9 this; and you would know in plenty of time to adjust
10 whatever we're doing to that schedule, or not?

11 STAFF ENVIRONMENTAL SCIENTIST RIDDLE: I'm not
12 sure how much notice we would have if the biological
13 opinion was delayed. That's sort of uncertain to me.

14 BOARD MEMBER SPIVY-WEBER: Let's work on that
15 one.

16 Thank you

17 MR. SODERLUND: Thank you.

18 CHIEF DEPUTY DIRECTOR HOWARD: Board Member
19 Wolff?

20 VICE CHAIRPERSON WOLFF: Yes, please.

21 CHIEF DEPUTY DIRECTOR HOWARD: Could I just
22 briefly return to a question that was asked a couple of
23 minutes ago by Board Member Spivy-Weber. It had to do
24 with the question from Alan Lilly that I think might have
25 been some lack of understanding of the question or the

1 answer.

2 Mr. Lilly was asking, I believe, whether or not
3 in the CEQA document we would be identifying a preferred
4 alternative. The reply from Ms. Riddle was that we would
5 be looking at a broad range of alternatives, which is
6 absolutely true, but not, I think, responsive to the
7 question that Mr. Lilly was asking.

8 The answer is, at this point, we haven't decided
9 whether a CEQA document would include a preferred
10 alternative or not. In D-1641, Mr. Lilly is correct that
11 the Water Board analyzed equally a broad range of
12 alternatives with no selected preferred alternative. But
13 at this point, we had not discussed whether or not a
14 preferred alternative should be developed. And that
15 would, of course, be the Board's decision to make.

16 Thank you.

17 VICE CHAIRPERSON WOLFF: That's actually a very
18 good point. I would expand upon it to say that, as I
19 understand the process, we haven't decided that anything
20 will be included in the EIR from the next Bay-Delta Plan
21 other than the San Joaquin River flows and the south Delta
22 salinity objective solely with respect to protection of
23 agricultural beneficial use. And those are the only two
24 items included to this point.

25 So that's the purpose of the periodic review, is

1 to say what else should be included.

2 Next card is from Dante Nomelli. Or is it
3 Nomelly?

4 MR. NOMELLINI: Close enough. Dante Nomellini,
5 Jr., on behalf of the Central Delta Water Agency.

6 I'm just going to -- we actually submitted
7 written comments. We were a few hours late beyond noon.
8 They didn't show up on there, but hopefully you guys will
9 see them. I just want to highlight an important point as
10 to what needs to be amended. And what needs to be amended
11 is your implementation plan. It's one thing to say the
12 fish, farming, everything -- everybody needs this amount
13 of water, this amount of flow. It's another thing to say
14 whose water is that coming from, who has to give it up.

15 And I unfortunately had the option -- or
16 opportunity to participate in a Term 91 litigation, which
17 occurred a few years ago, where there was an attack on the
18 farmers in the Delta. For the first time in 20 years all
19 of a sudden Term 91 was being enforced. It was
20 unfortunate because so many laws in my opinion were just
21 overlooked and it was just a really sad decision from you
22 folks as well as the courts.

23 But in reviewing this plan, I noticed that the
24 1995 plan and the -- or the 2006 plan, which has an
25 implementation component saying how it's going to

1 implement these objectives, doesn't even mention Term 91,
2 doesn't even say the word. And what Term 91 is is it's a
3 mechanism to force people to contribute to meeting the
4 standards. That's really all it is. And I guess
5 everybody in this room probably knew that. I didn't
6 really realize that till the litigation. But all it did
7 was assign responsibility to in-Delta folks and hundreds
8 of other people throughout the watershed to meet the
9 standards.

10 And that should have been done as part of the
11 implementation plan. And unless I'm missing something,
12 it's inconsistent to be forcing those people to contribute
13 to the standards now because it's inconsistent with your
14 plan.

15 Both the 1995 and 2006 plan say the State Water
16 Board will consider in a future water rights proceeding
17 the nature and extent of water right holders'
18 responsibilities to meet these objectives. Well, that
19 didn't happen. In D-1641, which implemented the 1995
20 standards, there's no mention of Term 91. And Term 91 was
21 imposed 20 years ago.

22 So that's a major problem that needs to be fixed.

23 And just real quickly, some of the questions you
24 should resolve if you're going to continue implementing
25 responsibility on these Term 91 folks, who are all in the

1 Bay-Delta watershed, who all come before exports -- if
2 you're going to continue to do that, you should look at
3 what specific water quality objective are you holding them
4 responsible for, outflow, salinity, what is it? And does
5 their water right -- or does their use of water actually
6 impact that standard? That may sound obvious. But in the
7 Delta -- I've mentioned this before, and I'm going to
8 mention it again -- it's not at all clear that Delta
9 farming actually negatively impacts salinity in the Delta.

10 DWR did a study in 1956, and they concluded, "The
11 Delta lowlands act as a salt reservoir, storing salts
12 obtained largely from the channels during the summer, when
13 water quality in such channels is most critical, and
14 returning such accumulated salts to the channels during
15 the winter, when water quality there is least important.
16 Therefore, agricultural practices in that area enhanced
17 rather than degraded the good quality Sacramento River
18 water en route to the Tracy pumping plant."

19 So why should these folks be told to stop
20 diverting to help meet the salinity standard when, in
21 fact, the evidence shows when they divert they help meet
22 the salinity standard? This is an example of issues that
23 got completely glossed over because nobody talked about
24 Term 91 in any of these implementation plans. And it can
25 go on and on. I mean this was thought to be a so-called

1 Phase 8. I think it was before all your folks' time back
2 in 2000. But Phase 8 was part of the implementation of
3 the 1995 plan that was going to involve all this finger
4 pointing as who should be responsible to meet what. And
5 that was put on hold because various people settled and
6 the projects assumed responsibility and you imposed it on
7 them for most of the stuff.

8 But what got overlooked is in reality there's
9 hundreds of Term 91 folks that are being asked to
10 contribute, and there's been no analysis as to whether
11 that makes factual sense or legal sense.

12 And I'd just like to leave you with, the Delta
13 Protection Act puts the burden on the projects legally to
14 provide salinity control. So why should other people be
15 providing salinity control if it's a legal burden of the
16 projects?

17 So implementation, please pay attention to that
18 this go-around.

19 Thank you.

20 BOARD MEMBER HOPPIN: Mr. Nomellini, I have a
21 question for you. I obviously wasn't involved in these
22 issues in 1956 and you probably weren't born then or you
23 weren't very old.

24 But do I understand you to say that the study
25 said that the Delta farmers take salt out of the channel

1 during the growing season and hold it until December
2 before they discharge it?

3 MR. NOMELLINI: Yes, either in the soils -- they
4 retain the salt in the soils themselves and in the
5 underlying groundwater. And then when the winter rains
6 come, it flushes the soil, then it goes out.

7 BOARD MEMBER HOPPIN: Did it take into
8 consideration the fact that you -- I would assume down
9 there that when you put water on your land, you have a
10 reclamation issue of some sort and you -- do you hold that
11 water all summer and wait till the winter to discharge?
12 You don't pump your drainage back into the channel during
13 the course of the growing season?

14 MR. NOMELLINI: Yeah, I'll have to defer to the
15 experts in DWR who made that conclusion. But --

16 BOARD MEMBER HOPPIN: No, I -- it seems
17 counterintuitive to me. I'm asking you. You're down
18 there. Are you saying that people divert water during the
19 growing season and don't discharge anything back into the
20 channel that would have salt in it; it just kind of goes
21 away during the winter? That doesn't make sense to me.

22 MR. NOMELLINI: Well, in the central Delta a lot
23 of the lands are below sea level. So they're constantly
24 pumping drainage water back into the river 24 hours a day.

25 BOARD MEMBER HOPPIN: Well, did you put stock on

1 this 1956 report? I mean it doesn't make sense to me,
2 quite frankly.

3 MR. NOMELLINI: I agree. It's interesting and
4 it's something that's been completely overlooked. And I'd
5 be happy to send you guys a copy. I had to go get it --

6 BOARD MEMBER HOPPIN: No, I'm not asking for a
7 copy of it. I'm asking you if it -- being down there, if
8 that comment that you made makes any sense to you at all?
9 Or are we just quoting the 1956 study that in retrospect
10 looks kind of ludicrous to both of us?

11 MR. NOMELLINI: No, in my experience -- and I
12 work with my father who's been involved for 40 years or
13 whatever -- that in the wintertime a big flushing occurs
14 for Delta islands, and that's due to the rain -- heavy
15 rainfall. The soils actually get leached very
16 significantly with all the extra water. And there's a
17 surge of salt that hits the rivers. But what the report
18 is saying is that comes when the water quality is not as
19 significant.

20 I mean your experts probably understand that
21 more. And maybe Herrick can add something to it. But I
22 dug up the report a few months ago. I plan to air it out.
23 And I think you ought to take a look at it.

24 BOARD MEMBER HOPPIN: Oh, I'm not denying there's
25 a report. I just asked you if it made sense to you.

1 MR. NOMELLINI: It does. It is consistent with
2 what I've heard, yes, that there is a surge in the
3 wintertime that leaches. And in the summer they do retain
4 salts from the waterways.

5 So implementation, please pay attention to that.

6 Thank you.

7 VICE CHAIRPERSON WOLFF: Thank you.

8 Next card is from John Herrick.

9 MR. HERRICK: Thank you, Mr. Chairman, Board
10 Members. John Herrick for the South Delta Water Agency.

11 Briefly, the study refers to a salt balance. The
12 amount of salt coming into the Delta is not all flushed
13 out during those summer months. And so the Delta actually
14 holds some of the salt coming down the San Joaquin River
15 until high flows flush it out of the soils or shallow
16 groundwater during high flow tides. So it does make
17 sense. However, the farmers all -- virtually all have
18 their sump pumps, and the tail water after irrigation gets
19 pumped almost immediately, within a short period of time,
20 back into the channels. But there is a net salt retention
21 during those dry times.

22 With that said, I want to make a point here. As
23 the Chairman said, we've gone back and forth between what
24 we're supposed to cover today and the other two issues
25 that we weren't supposed to cover. But I've said this in

1 writing two times, and I just heard both Mr. Howard and
2 the Chair today talk about the next review of the Water
3 Quality Control Plan will have the southern Delta salinity
4 objectives in it change. Well, it's going to have all the
5 objectives in it. But I keep hearing everybody assuming
6 that we're going to change those objectives.

7 If your expert comes back and says, "I don't see
8 anything in the science that indicates these should be
9 changed," then I hope you haven't already decided that
10 you're going to change them.

11 VICE CHAIRPERSON WOLFF: Well, let me be very,
12 very clear with you so that --

13 MR. HERRICK: Please.

14 VICE CHAIRPERSON WOLFF: All I said was that the
15 EIR for the next version of the plan would include those
16 two issues, because it was decided that those two issues
17 should be reviewed through an environmental review. That
18 doesn't pre-decide what the outcome of that analysis will
19 be or what the decision of the Board would be at the end
20 of that. I mean, for all I know, the San Joaquin flow
21 objectives will stay the same as they are now too. I
22 don't really know.

23 MR. HERRICK: Okay. But that's a big difference.
24 If the analysis is of other standards or that you've
25 concluded along the way that the standards are fine, the

1 EIR will look significantly different. And I keep getting
2 these bad vibes from you guys -- no offense --

3 (Laughter.)

4 MR. HERRICK: -- that -- well, you know, we're
5 going to -- when we change the standards next year, that
6 the --

7 VICE CHAIRPERSON WOLFF: You might --

8 BOARD MEMBER HOPPIN: Mr. O'Laughlin's paranoid
9 and you're getting vibes. I mean we're --

10 (Laughter.)

11 MR. HERRICK: No, O'Laughlin's evil. I'm just
12 uneasy.

13 (Laughter.)

14 VICE CHAIRPERSON WOLFF: You might just want to
15 check your receptors a little bit, you know, because I
16 know I'm not sending out any bad vibes. If you're getting
17 them, I don't know where they're coming from.

18 MR. HERRICK: I'm getting plenty.

19 VICE CHAIRPERSON WOLFF: All right, all right.

20 MR. HERRICK: Anyway, Let me return to the
21 subject topic here.

22 VICE CHAIRPERSON WOLFF: Thank you.

23 MR. HERRICK: I just want to remind the Board of
24 the history of what we're going through here.

25 The exporters and the contractors and some of the

1 environmental groups got together and crafted the Delta
2 accord, the Delta principles, all those things which led
3 to the '95 plan and D-1641 and CALFED. Okay. Now, your
4 staff representation on that is alleged and sworn to be
5 nonparticipatory but just viewing and, you know,
6 procedural comments, both in that process and in the
7 current BDCP.

8 That model that they went through back in 1994 or
9 whatever the year, '95, resulted in the
10 no-net-loss-of-exports principle adopted by your
11 predecessors, record export levels during CALFED, until
12 the federal judge slowed things down a bit -- record
13 export -- there was no doubt about that -- and the
14 fisheries crashing.

15 For the review of the 2006 Water Quality Control
16 Plan, you asked the public and the agencies, "What do we
17 need to do?" The POD tells us, you know, "We're in big
18 trouble for the smelt. We're having troubles with the
19 other fisheries too." The fishery agencies stood here
20 before you and said, "Well, we're not really ready to
21 suggest anything yet." That's what they told you. And
22 now this process has gone on another, I don't know, eight
23 months, ten months, two years. You guys have to act.
24 Nobody wants their own gore ox -- ox gore. Sorry. But
25 you guys have to act.

1 If you're waiting for biological opinions, just
2 recall that Fish and Game knew the State project didn't
3 have a permit to kill smelt -- and still doesn't -- and
4 that the federal agencies' biological opinions were, not
5 really completed, but thrown out by a federal judge, who
6 said, "Well, those aren't based on sound science." So
7 that's the history of the other regulators.

8 You guys have to do something different. And I'm
9 suggesting that in the upcoming review, you have to look
10 very, very hard at outflow, X-2, you have to look at
11 export limitations. It is indefensible to have a water
12 quality control plan that has a no-net-loss principle in
13 it. That's nonsensical.

14 Now, there are plenty of attorneys in this room
15 who will stand up and say, "No, that's an indicator."
16 Fine. But, you know, normal human thought has to be
17 involved. That's nonsensical for a regulator to tell
18 somebody, "I'm only going to regulate you up to a point.
19 And then it doesn't matter how much you're affecting
20 fisheries. I'm not going to do that." Well, look at
21 other things.

22 And so if you think somebody else, biological
23 opinion or BDCP, is going to come to you and solve it,
24 just look back 13 years, 14 years. That didn't work then.
25 And why didn't it work? Because when the regulators, the

1 fishery agencies, sit down with the regulated, the
2 exporters, and work something out mutually agreeable, what
3 do they do? They have two conflicting principles and they
4 don't solve the one principle, the protection of the
5 fisheries.

6 Now, I'm not a fishery advocate. But you guys
7 all know that's true. If they're going to work something
8 out, it's not going to work. And you don't have the time
9 to wait for another process to give you something that
10 protects multiple interests instead of the interests
11 you're supposed to be protecting.

12 I thank you very much.

13 VICE CHAIRPERSON WOLFF: Mr. Herrick, I want to
14 be sure I understood your remarks with respect to the
15 specific action you're asking us to do within the specific
16 notice for today.

17 I think you said the EI -- you think that the EIR
18 for the next version of the plan should include review of
19 net outflow and of export restrictions. Those are the two
20 most important things we should review and consider
21 changing, is that correct?

22 MR. HERRICK: I believe that's correct.

23 VICE CHAIRPERSON WOLFF: Okay. Thank you.

24 Other questions?

25 Next card is Karna Harrigfeld.

1 MS. HARRIGFELD: Good morning, Dr. Wolff, members
2 of the Board. Karna Harrigfeld on behalf of the Stockton
3 East Water District. We submitted written comments. I
4 will be very brief this morning.

5 When we did a review of the 1995 Water Quality
6 Control Plan, one of the issues that the district wanted
7 addressed was salinity objectives upstream of Vernalis.
8 The staff report on the 2006 plan said that the Regional
9 Board was making progress and that the staff recommended
10 additional time be given to the Regional Board. Nothing
11 has happened. Since 1999, since your 2004 pronouncement,
12 nothing has happened. It's been 13 years since this Board
13 directed the Regional Board to adopt upstream objectives.
14 I think the time is now we should move forward with the
15 water quality. This issue should be included in the
16 periodic review.

17 Thank you.

18 VICE CHAIRPERSON WOLFF: I would just comment
19 that that's one of the reasons I was asking earlier about
20 other plans and policies of the Water Board system,
21 because that was an issue in one of the comment letters
22 that has come up repeatedly. And although it's not
23 directly within the Bay-Delta Plan, it is within our
24 authority.

25 The last card is from Gary Bobker, Bay Institute.

1 MR. BOBKER: Well, I feel this great wave of
2 paranoia sweeping over me. It must be something about
3 this podium maybe.

4 (Laughter.)

5 MR. BOBKER: Mr. Wolff, members of the Board.
6 I'm Gary Bobker. I'm the Program Director of the Bay
7 Institute. There seems to be a -- I'll forgo the comment
8 that comes to mind.

9 VICE CHAIRPERSON WOLFF: If you criticize the
10 podium, it gets even.

11 (Laughter.)

12 MR. BOBKER: Apparently, it's got a life of it's
13 own. I'll just hold it and we'll pretend this is a town
14 hall meeting.

15 (Laughter.)

16 MR. BOBKER: I'll try to restrict my comments to
17 the periodic review. The issues that I'll raise with
18 periodic review apply also, I think, to the evidentiary
19 hearings. I will not comment on the San Joaquin issues
20 specifically and reserve that for another time of your
21 choosing.

22 And we've written comments on issues that we
23 think are relevant to both periodic review and evidentiary
24 hearings that we brought today. And I'd like to submit
25 them into the record.

1 There are, I think, four main points that I'd
2 like to emphasize in terms of what we think needs to be
3 emphasized as you're preparing for periodic review. And
4 these sort of track some of the issues that were
5 identified in your list of issues that you wanted more --
6 to do fact finding on.

7 The first is that this estuary is characterized
8 by reduced variability. That, you know, it just does not
9 experience the kind of dynamic changes characteristic in
10 the estuary that seem to be extremely important to
11 ecological function. And so you should be looking at ways
12 to increase variability. In fact, when you adopted the
13 X-2 standard, that was actually the first major step you
14 took toward restoring that variability. But there's a lot
15 of reasons to think that we need to go further.

16 In looking at salinity variability as a part of
17 that restored variability, I think there are two important
18 principles that you need to follow as you start to look at
19 them.

20 The first is that there's a lot of
21 mischaracterization of what natural salinity variability
22 was and is in this estuary. A lot of people, when they
23 talk about salinity -- natural salinity intrusion, are
24 talking about -- they talk about the Delta when they mean
25 the western Delta, Suisun Marsh. A lot of people when

1 they talk about natural salinity intrusion are talking
2 about a period earlier in the 20th Century when -- before
3 releases for salinity control but after major upstream and
4 in-Delta diversions and impoundments. So I think the
5 Board really needs to clarify kind of what the best
6 understanding of salinity -- natural salinity variability
7 was, because while we're not going to recreate historic
8 conditions, we need to understand them.

9 And there are several parties, including the Bay
10 Institute and Contra Costa Water District, that have done
11 pretty detailed studies of salinity that we'll bring to
12 the evidentiary hearings. But I think the Board probably
13 needs to do a little of its own diligence on that as a
14 template. Historical ecology is useful.

15 The second principle in regard to restoring
16 salinity variability and variability in general is that
17 there's a hypothesis that restoring variability will help
18 control invasive species. We think that that's an
19 interesting and exciting prospect. But it needs to be
20 tied to what we know about invasives. So you really need
21 to get as good an understanding as possible of what the
22 tolerances are of invasive species that we're trying to
23 control, so that if we're going to build new regimes
24 around invasives control, they actually target the
25 invasives that are disrupting the system.

1 So that's the first area that we think needs
2 attention in review of the plan.

3 The second -- surprise, surprise -- is flows.
4 You know, if the Board is interested in good science, if
5 the Board is interested in providing the highest level of
6 certainty about ecological benefits, then the relationship
7 between flow and abundance is the strongest information
8 that we have in this estuary about what the primary
9 ecological drivers are.

10 There is no question that those relationships
11 between flow and abundance are -- they're significant.
12 They apply across the board to a number of different
13 species at different hierarchical levels, different taxa.
14 They're consistent over time. And they're also large in
15 magnitude in a, you know, logarithmic nature.

16 So the flow in and of itself is not the only
17 parameter. We have always said that there are other
18 issues that need to be addressed. Obviously, the aquatic
19 organisms that we care about are affected by a number of
20 factors at different stages of their life history,
21 different parts of the Delta and the surrounding
22 watershed, and those all need to be addressed. But if you
23 want to really protect this estuary and estuarine
24 organisms, then the best tool that we know is flow.

25 And your consideration of flow should not be

1 constrained by what you eventually decide about who
2 releases what, who is forced to cease diversion, et
3 cetera. That you should not be constrained by.

4 Third, I'll just make a brief comment, that in
5 terms of export criteria, we really -- you need to focus
6 on the State and federal pumps. I mean the unscreened
7 diversions in the Delta we think probably have some local
8 impacts. You know, there are times and places where when
9 fish, whose populations are depressed or present, you
10 know, they have an impact. But it is pretty minuscule, as
11 far as we can tell, compared to the State and federal
12 project pumps. And the most recent information that we
13 have shows that we've been underestimating those impacts.
14 And the references are in the comments that we wrote.

15 Let me end with a fourth area that was not listed
16 in sort of things that you've identified in the past as
17 things you should pay attention to in the periodic review.
18 And, that is, the adoption of biological criteria as water
19 quality objectives. You know, currently you have the
20 narrative objective for doubling Chinook salmon. I think
21 there's some really good reasons to add more biological
22 metrics and to be more quantitative about what those
23 objectives are.

24 I think as Tom Howard said earlier, you know,
25 we're in an estuary that's changing as we look at it. You

1 know, we should call it the Eisenberg estuary instead of
2 the Bay-Delta estuary.

3 And while it's -- you know, there's a lot of
4 evidence about flow, salinity, chemical contaminants,
5 temperature, et cetera, that we should right, you know --
6 and there's more than enough to regulate those abiotic
7 factors. But there's so much uncertainty about being able
8 to provide full protection, that we need to have some sort
9 of guidance for actions by the Board and by permit
10 holders.

11 Biological targets are a way to do that. We
12 would suggest that you consider looking at biological
13 objectives that target the things that people, like NOAA
14 Fisheries, have identified as important criteria for the
15 protection of species of concern: Abundance, spatial
16 distribution, growth rates. Identify those creatures,
17 those aquatic organisms that we care about or that seem to
18 be indicator or umbrella or keystone species, and add
19 those to the Water Quality Control Plan.

20 And then you can use those targets as a way of
21 calibrating the implementation over time rather than
22 having to just go back and revise non-biotic water quality
23 standards. You can say, "Look, things are not looking too
24 good here. We need to look at the plan of implementation.
25 Are you in compliance with it?" It also, I think, gives

1 permit holders a little bit more guidance about -- they
2 can flexibly react to conditions because they know, okay,
3 we're getting in to worse conditions over time.

4 Now, biological objectives should not be, you
5 know, viewed as something you comply with on a yearly
6 basis. We're not suggesting that sort of thing. We're
7 looking at some longer term trends. But again it's a
8 useful, I think, tool in complement with more traditional
9 water quality objectives to doing adaptive management over
10 the long term. And, you know, now is the time for some
11 maybe less traditional measures. So we would ask you to
12 look at those.

13 Those are my comments. Thank you for the
14 opportunity to make them.

15 VICE CHAIRPERSON WOLFF: Questions?

16 I'm curious. Can you name one such measure? I'm
17 listening to what you're saying, but I'm not entirely
18 clear what you mean by those biological measures.

19 MR. BOBKER: Biological measures. You could
20 identify abundance of Delta smelt or longfin smelt --

21 VICE CHAIRPERSON WOLFF: Oh, I see.

22 MR. BOBKER: -- that averaged over a period as a
23 baseline condition. You could say we want -- instead of
24 just a Chinook salmon target that applies to the Central
25 Valley, that we actually want to have a more specific run

1 or site specific, so forth and so on.

2 VICE CHAIRPERSON WOLFF: I understand now. I
3 didn't understand.

4 I did have one other question for you about the
5 variable salinity. It's not clear to me sort of where the
6 science is on this. And given your background on this, I
7 thought I would ask you. We have a comment letter from
8 DWR saying they don't think that there's very much in the
9 scientific literature on the benefits of variable salinity
10 for control of invasive species. But I was told by
11 someone else, a knowledgeable biologist, that there's a
12 lot of scientific literature on that. You know, what is
13 your assessment of sort of the amount of science on that,
14 what you called a hypothesis?

15 MR. BOBKER: Let me first of all not represent
16 myself as an expert on that issue. The Bay Institute has
17 particularly drilled down on the historic conditions
18 rather than the ecological theory part of this. So I just
19 want to --

20 VICE CHAIRPERSON WOLFF: I'm sorry. Fran is
21 laughing because somehow solitaire just appeared on all of
22 our screens here -- card solitaire. We're getting rid of
23 it.

24 (Laughter.)

25 VICE CHAIRPERSON WOLFF: You can't see it. But

1 it was a little private joke I'll share with you.

2 MR. BOBKER: The name of this game is five-card
3 stud.

4 So having said that, that we focus more on the
5 first of the two issues, you know, my understanding is
6 that there is some limited information. I don't know that
7 there's a comprehensive literature on salinity effects on
8 invasives. What there is is a comprehensive literature on
9 salinity effects on the fauna that are characteristic of
10 estuaries. So you can sort of infer, I think, that from
11 estuarine conditions that favor natural native species,
12 what the likely effects have been on colonization. And
13 that if you look at less disturbed versus more disturbed
14 estuaries and you look at the rate of colonization and the
15 success of colonization, you can infer some things from
16 that.

17 But that's one of the reasons why we think that
18 we need to actually do more focused work on salinity
19 tolerances to be able to say, "Can we vary salinity enough
20 to make a difference?" And we don't know the answer to
21 that question yet. You know, it's kind of a nice idea,
22 but nobody really knows.

23 VICE CHAIRPERSON WOLFF: Okay, great. Thank you.
24 I appreciate that.

25 Any other questions or -- I have no more cards.

1 Was there anyone else who wanted to speak?

2 MR. BOBKER: Logically, by the way, I should
3 correct you, when you said that -- just because Mr.
4 O'Laughlin submitted two cards for two clients doesn't
5 mean he's not schizophrenic.

6 (Laughter.)

7 VICE CHAIRPERSON WOLFF: I see. I'll keep in
8 mind then that some people believe Mr. O'Laughlin to be
9 schizophrenic and other people believe him to be evil.

10 (Laughter.)

11 VICE CHAIRPERSON WOLFF: I hope he has a better
12 self-image than that. I'm certain he does.

13 So no more cards. No more questions.

14 Does staff have any closing remarks?

15 Seeing none.

16 I want to thank you all for coming. I appreciate
17 the input, as we all do.

18 We'll see you at the next workshop meeting or
19 hearing.

20 (Thereupon the State Water Resources Control

21 Board workshop adjourned at 11:20 a.m.)

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CERTIFICATE OF REPORTER

I, JAMES F. PETERS, a Certified Shorthand Reporter of the State of California, and Registered Professional Reporter, do hereby certify:

That I am a disinterested person herein; that the foregoing California State Water Resources Control Board workshop was reported in shorthand by me, James F. Peters, a Certified Shorthand Reporter of the State of California, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said workshop nor in any way interested in the outcome of said workshop.

IN WITNESS WHEREOF, I have hereunto set my hand this 14th day of October, 2008.

JAMES F. PETERS, CSR, RPR
Certified Shorthand Reporter
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