Board Meeting
STATE WATER RESOURCES CONTROL BOARD
STATE OF CALIFORNIA

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Subject:
Consider Adoption of Proposed
Water Quality Control Plan for the
San Francisco Bay/Sacramento-San Joaquin Delta Estuary

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Held in
744 F Street Auditorium
Sacramento, California

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Monday, May 22, 1995
10:00 a.m.
APPEARANCES

Board Members:

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

Staff:

WALTER PETTIT, Executive Director
THOMAS R. HOWARD, Senior Engineer
BARBARA LEIDIGH, Counsel
ANDREW SAWYER, Board Assistant Chief Counsel
JERRY JOHNS, Bay-Delta Unit
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MR. CAFFREY: Good morning. Welcome to this proceeding.

This is the day that the Board will consider adoption during this meeting of the Bay-Delta Water Quality Plan.

I am John Caffrey, Chairman of the State Water Resources Control Board.

Let the record show that a full quorum of the Board is present here today.

We have, by way of introduction, to my far left are Board members Marc Del Piero and next to him Vice Chair Mary Jane Forster. To my immediate right is Board Member James Stubchaer and next to Mr. Stubchaer is Board Member John Brown.

And at the far right end of the dais is our Executive Director, Mr. Walt Pettit.

Good morning to you all.

This is the time and place for the Board meeting to consider adoption of the Water Quality Control Plan for the San Francisco Bay-Sacramento-San Joaquin Delta estuary.

Shortly, staff will make a presentation that will include the introduction of some changes in the plan, the Environmental Report and the responses to comments.

Later, staff will respond to some of today's
comments.

Any party who wishes to comment orally on the plan before the Board takes the vote, must fill out a blue card and give it to Ms. Marche' at the front table -- she is ill today, so you might try Andy Sawyer over here. The blue card looks like this. You all know what they are. You've filled them out before.

We will limit the time for each oral comment to ten minutes. This is a voting meeting and we are not taking evidence this morning.

At the moment we have 12 cards and I will read them shortly so we get an idea of what order we are going to take you in.

I would like to remind you that since this is a Board meeting and we have completed the hearing, we will not be accepting any new evidence today. Therefore, your comments must be limited to arguments concerning the hearing record.

Before we hear our staff presentation, let me not forget to introduce the staff at the table over here. To my far left is Mr. Tom Howard. Next to Mr. Howard is Barbara Leidigh, one of our attorneys in this matter; and next to Ms. Leidigh is Jerry Johns, who is with the Bay-Delta Unit; and on the table to my right is Board Assistant Chief Counsel, Andy Sawyer, who is joining us today.

With that then, let me ask Mr. Tom Howard to give us
a presentation, and while Mr. Howard is coming up, let me read the names of the 12 cards that I have. We will take the names in the order that the cards were submitted:

Dan Nomellini
Kenneth Robbins
John Herrick
Alex Hildebrand
Perry Herrgesell
Patrick Wright
Patrick Porgans
Jeanne Zolezzi
Gary Bobker
Jim Chatigny
David Anderson
Kevin Haroff, or whatever designee is chosen to speak for the Urban Joint Water Users.

Good morning, Mr. Howard.

MR. HOWARD: Good morning, members of the Board.

As you might recall, we started this process about 13 months ago, in April of 1994. Prior to last December, the Board held six workshops and the staff held three separate workshops. Throughout the process, the Board encouraged participants to try to come to agreement regarding appropriate standards, and we were all very pleased in December of 1994 when the Principles for Agreement were
signed in which many of the participants agreed on appropriate standards.

And at the same time, the Board released its draft plan on that same date, December 15, 1994, and an Environmental Report was released shortly thereafter.

A hearing was held in February and we received a number of comments. Based on those comments, we redrafted the plan, the Environmental Report and we prepared responses to the comments. Those documents were all released 10 to 15 days ago, and copies of them are available outside.

Also outside, we prepared an errata to the response to comments, an errata to the plan and addendum to the Environmental Report, and also, a draft resolution for the Board's consideration for adoption of the plan.

The errata to the response to comments was made at the request of the law firm of Neumiller & Beardsley representing Stockton East Water District. They objected to the fact that in the response to comments at two points we state that the biological opinion for Delta smelt required releases from New Melones to meet San Joaquin River flow requirements; and in actuality, the biological opinion requires the Bureau to provide the flows, but it doesn't specify where those flows are supposed to originate.

Consequently, we put together the very brief errata that you have before you to clarify that point.
An errata to the plan was also prepared. That has three purposes; one, to clear up a couple of typographical errors.

The second is that it makes the standards for Suisun Marsh consistent with the recommendation we received, a joint recommendation from the Department of Fish and Game and the Department of Water Resources, the Bureau of Reclamation and the Suisun Resource Conservation District.

It was always our intent upon receiving a joint recommendation of this nature to adopt standards consistent with that recommendation, but in the transcription of those recommendations in our redraft of the plan, a couple of errors were made, and so, we have corrected them at this point.

The addendum, which was just handed out, and I apologize for the tardiness of it, but the photocopy machine broke down and we were working up to the last minute to get it completed. It summarizes the CEQA findings the Board is making upon adoption. Originally we intended to incorporate that into the resolution, but after its preparation, it became clear that it is probably more appropriately a part of the Environmental Report.

So, we prepared an addendum to the report for that purpose.

The last thing that's available outside is the draft
resolution for adoption of the plan. Naturally at present, the Board staff is recommending that the Board approve the resolution which adopts the plan, the Environmental Report and response to the comments with the errata and the addendum.

That's all the comments I wanted to make.

Does the Board have any questions?

MR. CAFFREY: Thank you, Mr. Howard.

Are there questions of Mr. Howard at this point by the Board members?

I am having a little difficulty seeing up and down the dais, so, if I miss you raising your hand, just holler out, please.

Mr. Howard, we will ask you to return and make more comments after we hear from those who have filled out cards today.

MR. HOWARD: All right, thank you.

MR. CAFFREY: Let's begin with Mr. Nomellini. Please come forward, sir. Good morning.

MR. NOMELLINI: For the record, my name is Dante John Nomellini. I am one of the attorneys for the Central Delta Water Agency.

I appreciate the opportunity to go first. It hardly ever happens.

First of all, we appreciate the effort to get the
modeling review of the impacts of these particular objectives on agricultural water quality in the interior of the Delta. We are a little bit concerned with the results and it does look to us like it is coming late in the game and there are no indicated changes in the plan related to that information, but it does present very clearly the need to define agricultural criteria, which we know is not a part of this proceeding, but the need to define it over a broader number of months other than the period April 15 through August 15.

The second point I would like to make is that the interrelationship of water quality planning and water rights has not been adequately maintained in this process. I think it is because the Principles for Agreement had two components. One was to try and set up criteria to protect fish and wildlife on which we really have not presented evidence and arguments as to whether or not those are right or wrong, but the second part of it was to try and maintain a certain level of exports, and although your staff has integrated throughout the documentation disclaimers, somehow this thing is totally separated from the water rights aspect; we do not think, of course, that the separation exists.

There are a number of points that highlight it in the proposed plan which we think are unfortunate and inappropriate. They are in the footnotes, footnotes 22, 24,
25 and 26, and they delegate the authority to change the export levels based on recommendations of the Operations Committee.

We think the Operations Committee, under the Principles for Agreement, should simply be able to make a recommendation. We think that if there's any objection, it should come back to this Board and we think it is essential to the process that you do something with that, and I realize it's not printed that way, but that's, we think, a very bad delegation and it happens to be one of the principle issues that deal with water rights or flows.

There's a serious question in our mind as to whether or not this particular plan is simply in furtherance, and I am going to use the term a rubber stamp, of the Principles for Agreement of the deal. It smells like that. Every feel you get is that it is tied -- there are lots of references still in the document of Principles for Agreement and it really should stand independently of the Principles for Agreement.

And we have that big problem with the way in which the Implementation Plan is focused on New Melones that we think it violates the watershed protection statute. We think that's in here. It is hard for you to segregate it out. It is kind of like unringing the bell.

We would like to note that and we recognize that
water rights proceedings are going to go forward, but depending upon when you act on water rights matters, we could be living with implementation of this plan for a three-year period or something like that without a tangible basis for straightening out the legal issues.

So, anyway, those are my comments and I thank you for the opportunity to present them.

MR. CAFFREY: We thank you very much, Mr. Nomellini. We do understand your concerns.

Are there any questions of Mr. Nomellini at this point?

All right, thank you, sir.

Next is Kenneth Robbins representing the San Joaquin Tributaries Agencies.

Good morning, sir.

MR. ROBBINS: Good morning.

I, too, appreciate being allowed to go early. We have a 12 o'clock automobile leaving for Merced and we will be able to make it now.

I am here representing Merced Irrigation District as well as the San Joaquin Tributaries Agencies. I am appearing on behalf of the Tributaries which include Modesto, Turlock, Oakdale and South San Joaquin as well as Merced Irrigation District.

My comments today are directed at the proposed flows
in the San Joaquin at Vernalis.

As the Board knows, the footnotes to those prescribed flows simultaneously allow the State and Federal Projects to export 100 percent of the three-day running average prescribed for the San Joaquin River at Vernalis. Those proposed standards never addressed the obvious linkage between the San Joaquin flows and exports, but rather, state that these flows are for the protection of smelt and salmon.

We challenge the staff to point to any evidence justifying the flow standards for salmon. For Delta smelt, the justification then seems to be that the high flows are necessary to go past the pumps in order to separate the smelt from the pumps.

Our position is that the project should, therefore, be responsible for mitigating that effect. The Board has in its records ample statements and documentation from our member agencies on the San Joaquin that demonstrate the San Joaquin River water rights are the most senior rights in the system certainly, and the export permits are among the most junior.

Moreover, the evidence is overwhelming, as the Board has long known, that the operation of these projects is the defining cause of the deleterious effects on fish caused by water diversions.

The staff to the Board has repeatedly stated that
issues of water rights, of whose uses will be impacted for benefits of fish will be deferred until the later water rights hearing; however, in adopting these flow requirements, a subsidy has been created.

The Board has pre-empted this process and directly dedicated senior water rights to the service of junior water rights. It is not an answer to say that later hearings will determine with exactness on who in the San Joaquin will bear the burden of the subsidy.

By determining in advance that there will, in fact, be a subsidy as a flow standard at Vernalis, the Board has gone beyond prescribing standards to protect fish, to enacting contributions for export. The linkage between the Vernalis flows and the export of 100 percent of those flows is not a product of scientific coincidence.

Rather, it seems to be a provision for export at the expense of the rightholders on the San Joaquin River.

Finally, on a related matter, the December 15, 1994, agreement which the Board here is otherwise implementing, calls for the construction of an Old River barrier. This plan, by contrast, calls only for the study of that barrier, despite the protests of our group and some of the parties to that agreement that it should, in fact, be constructed now. Absence of the barrier merely feeds the San Joaquin flows and the fish directly into the export pumps.

In summary, we would object to the adoption of the
proposed standards because in the guise of water quality standards, it is an overt subsidy of the export projects.

Such an action is not only unsupported and unwise, but is legally deficient for the following reasons:

Enacting flow contributions from the San Joaquin for the benefit of the export is beyond the scope of the notice of hearing. Merely couching a water allocation action in the guise of standards is not enough. These standards both prescribe and inexorably require water rights reallocation in the guise of the adoption of water quality standards.

Enacting flow contributions on senior rightholders to protect exports is a taking of water rights without compensation, in violation of the United States and the California Constitutions.

The proposed standards and export subsidy are in violation of the area of origin statutes, which were designed as a guarantee to senior water rightholders that the kind of action this Board is proposing would never occur.

The record does not support that these flows are required to protect salmon at all or to protect Delta smelt except to try to push them past the pumps, according to the biological opinion. The projects, however, must mitigate their own effects. The proposed action is thus arbitrary,
capricious and without evidence in your record.

The record and the broker deal you are asked to impose, both call for the construction and operation of the Old River barrier. Absence of the barrier merely feeds the fish you are trying to protect directly into the pumps, for inevitable and devastating destruction.

The water rightholders on the San Joaquin were completely excluded from the negotiations which led to the agreement you are asked to now enact. Small surprise that the plan calls for the contribution of our senior water rights, which were passed down to us over the last hundred years for the use of interests that, unlike us, were represented at the table, specifically the exporters.

It is not enough to say that these issues will be deferred to the water rights hearings. By that time, the staff and the exporters will insist that the standards and its built-in subsidy are a given; that is to say, they have hardened up.

The Board is respectfully asked not to enact this thinly disguised subsidy, and to address this matter now. A flow standard at Vernalis should not be adopted without further study.

The San Joaquin Tributaries Agencies and its members will welcome and participate in a dialogue with the Board's staff and others so that such standards as are adopted
reflect good science and good sense.

That's sort of the bad news. The good news is that the dialogue has started. I hope it bears fruit, but we would encourage you not to act on the standards today.

MR. CAFFREY: Thank you, Mr. Robbins.

Any questions from the Board?

I'm sorry, I didn't mean to exclude staff. Any questions by staff?

All right, thank you, sir.

MR. ROBBINS: We do have copies of the statement for anybody that would like a copy.

MR. CAFFREY: Thank you.

Next is John Herrick.

MR. HERRICK: Mr. Chairman, I believe Alex would like to go before me.

MR. CAFFREY: Fine.

Mr. Hildebrand, good morning, sir.

MR. HILDEBRAND: Good morning. Mr. Chairman and members of the Board, I would like to express some of the same views you just heard, but in a little different manner.

First, let me acknowledge that the redraft is significantly improved over the earlier draft in response to comments, and we very much appreciate that.

However, we believe that there are still a number of points where the plan would be more defensible if you
reconsidered the language in various places.

The plan, on page 28, only states that the USBR intends to provide the Vernalis flows rather than it shall provide them. That is a step in the right direction; however, the Board should not permit this shift of water for fish flows prior to a water rights determination without stipulating restraints on how it may be accomplished.

Appendix 2, page 32, says:

*Water users are responsible for mitigating the effects of their own diversions.*

Then, on page 78, it is acknowledged that the flows could be provided from the San Luis Reservoir, they can also be obviously provided by circulating the water from the DMC down the river and then redivot it to the DMC.

It is, therefore, clear that the Central Valley Project is responsible for mitigating its own impacts on both river flow and quality, and also, that it has the means to do so without impacting superior water rights and without any new facilities.

The plan should make it clear that the Bureau must do so and must not shift this obligation to others either by reducing protection of the Vernalis water quality standard or by reducing protection of the superior water rights in the watershed and South Delta.

Furthermore, public trust flows should come first
from holders of junior water rights.

The Environmental Report acknowledges that New Melones cannot provide Vernalis flows while also meeting water quality standards and other obligations of the facility.

This obligation of the Central Valley Project to mitigate its own impacts has been obscured by the pretense that the Vernalis flows are required solely for ESA protection of Delta smelt and by implication that they can, therefore, appropriately be provided at the expense of other obligations of the New Melones facility and other upstream parties.

The biological opinion was rewritten as dictated by the December 15 agreement to be a combination of a smelt and salmon opinion. The previous smelt opinion only required large San Joaquin flows when Delta smelt were found to be in the South Delta channels and that was frequently not the case.

At all other times they are for San Joaquin salmon. They are not for Sacramento winter-run salmon because Vernalis flows can be 100 percent exported and Vernalis flows, therefore, won't repel salmon coming across the Delta.

The statement on page 28 designated Vernalis flows will be supplied as required for Delta smelt, is, therefore,
The Board should not be a party to a misrepresentation that confuses the issue and destroys the credibility of future biological opinions.

The statement on page 29 that the fish flows will assist in meeting salinity objectives is simply not true. The net effect of the fish flows is to shift to spring flow the water that's needed in the summer for water quality control, unless the flows are provided from the DMC.

The spring flow is far more needed for quality control whereas the summer flow is not. Furthermore, the shift reduces agricultural return flows that help provide summer dilution.

I previously have given you some figures on the magnitude and the importance of those return flows. The plan should be corrected either to acknowledge this impact or to require that the flows be provided from the DMC.

Appendix 2 on page 71 condones the use of a 70,000 acre-foot cap on New Melones quality releases by alleging that control of drainage from the Central Valley Project west side service area will make this amount adequate. However, the plan does not require that drainage control.

The plan should either require the necessary drainage control or stipulate New Melones water quality releases cannot be limited to a 70,000 acre-foot cap unless and until
the drainage control is sufficient to meet 70,000 acre-feet adequate for that purpose.

Appendix 2 on page 19 refers to SDWA's request that the plan should state that salinity standards may not be violated in order to provide Vernalis fish flows. The response declined to do this on the basis that this would nullify the flow objectives under some conditions, the fish flow objectives, and would establish a priority between fish flows and downstream water rights.

This is an invalid response. The flows can be met with releases from DMC and mitigation of CVP salinity flow impacts. The plan should stipulate that compliance with the quality standards should not and need not be impacted by the provision of fish flows.

We urge you to reconsider these points and we think your plan will be far more defensible if you address them.

Thank you.

MR. CAFFREY: Thank you very much, Mr. Hildebrand.

Questions by Board members?

Anything from staff?

Thank you, sir.

Mr. Herrick, good morning.

MR. HERRICK: Good morning. Thank you, Mr. Chairman.

My name is John Herrick. I am representing the South Delta Water Agency.
We would like to join the comments that have been given already this morning. I will be as brief as I can.

We believe the Board continues to put off addressing the salinity and drainage problems of the San Joaquin River. Salt intrusion from agricultural drainage is virtually the sole cause of elevated salinity in the Southern Delta. We do not feel that this plan or the Central Valley Regional Board's basin plan go as far as required by law in addressing this issue.

The plan is supposed to establish measures which will contribute to the protection of beneficial uses. This plan doesn't incorporate any specific measures that will be instituted in the water rights phase to address the salinity problem. Rather, it only lists future actions that should be done to address this issue.

We would like to reaffirm our previous testimony and arguments and that of the Stockton East Water District with regard to this issue.

The plan justifies the export limits by stating that they are included to protect the habitat of estuarine-dependent species by reducing the entrainment at the pumps. That's on page 15 of the plan and on page VIII-5 of the Environmental Report.

The report goes on to say restricted exports and reduced pumping should affect habitat conditions. That is
the justification for including export limits. However, footnotes 22, 24 and 25 to the fish and wildlife objectives specifically authorized the Ops Group to adjust the export rate amounts so that there's no net water supply cost annually. That's on page 21.

To us, this means that there is no specific limit on the exports and the exports are justified by being a limit on current levels to prevent further entrainment. This suggests the export limits are not a decrease to provide protection against entrainment.

The plan should specifically address entrainment at the pumps and examine the amounts of exports that may be available during the water rights phase, or at least clarify how no net loss of water provisions addresses the entrainment issue.

I would like to point out that the ability of the Ops Group to increase export amounts does, in fact, coincide with the times of the year that the fish flows are supposed to be appearing.

The comments on page 127 of the comments states that the Ops Group needs to have a formal structure and procedure. The Board's response to that in that document is that this issue need not be addressed until the water rights phase.

However, since there is a petition currently before
the Board to change the water rights permits of DWR and the U. S. Bureau of Reclamation, we are faced with that situation right now. The petition requests the Operations Group be given this same authority before the water rights phase; hence, we believe the plan should clarify that until the water rights phase is completed, all parties must operate according to existing permits or the controlling law, and the Operations Group will have no authority until they are constituted and directed to proceed according to the Rules of Government.

The authorizing statutes for this whole process require that there be established objectives to protect beneficial uses and those objectives must take into consideration reasonable use, public trust and statutory principles pertaining to water rights.

By allowing in the plan or at least recognizing an interim or partial implementation by the U. S. Bureau of Reclamation, the Board is not insuring the interplay of protections that the plan is supposed to carry out. Therefore, we believe that the plan should either not mention any interim implementation or it should state that although the parties to the Principles for Agreement intend to implement the objectives during the three-year interim, any such actions must be pursuant to existing permit conditions or subject to requested permit changes, and can
only be done in ways that will not adversely affect other
listed beneficial uses; otherwise, the interim implementa-
tion will affect beneficial uses as is clarified by the
handout we received this morning.

The plan contemplates sales to be allowed to
contribute to other flows. We believe that any sales must
be examined so that the water used for the sale was not
dependent, was not a factor in other beneficial uses before
the sale, so that we believe that any sales should not
adversely affect given beneficial uses.

Finally, I would like to clarify -- I talked to the
staff last week. On the plan itself there is a confusion
between the export limits of 100 percent of the Vernalis
flow or 35 percent of the inflow.

My understanding now is that those interlap, and the
smaller, the lesser of the two would control.

I think the plan should clarify that just so it is
clear.

That's all I have to say. Thank you very much. We
appreciate the efforts that you are making.

MR. CAFFREY: Thank you very much, Mr. Herrick,
appreciate your appearing.

Any questions from Board or staff?

Thank you.

Perry Herrgesell from the Department of Fish and
Good morning, Dr. Herrgesell.

MR. HERRGESELL: Good morning, Chairman Caffrey and Board and staff.

Thanks for the opportunity to address you briefly today on the Department's position on this plan.

For the record, I am Perry Herrgesell, Chief of the Department's Bay-Delta Division in Stockton.

As I said, I want to just briefly give you the Department's perspective regarding the Water Quality Control Plan for the San Francisco Bay-Sacramento-San Joaquin estuary.

As you know, the foundation for this plan was laid through the extraordinary efforts of many individuals, both within the State and Federal Governments, the environmental community and the water community, and as with most products developed through consensus, however, the accord which came before the plan today really does not represent the ideal for any particular interest, but it does represent progress, progress that has far too long eluded us, but indeed, this Water Quality Control Plan and the accord that contributed to it are major accomplishments representing some giant steps forward for all of us.

However, we shouldn't lose sight of the fact that although these steps are giants, they are indeed just the
first step and that the task ahead to reach a long-term solution will be an arduous one and must be undertaken with the same spirit of consensus and cooperation that has led to your announcement today regarding the plan.

The Department supports the Board's adoption of this Water Quality Control Plan and is committed to continuing its participation and its cooperative implementation by the Cal-Fed process, through the so-called Operations Group that meets monthly, and through the upcoming water rights process that you will initiate later this year.

As a trustee for California's fish and wildlife resources, the Department is charged with a continuing responsibility to protect our natural resources and the responsibility of that cannot and has not been, by the way, completely discharged through this process. We look forward to working with all parties to insure that California's fish and wildlife resources receive the maximum benefit possible under the conditions of this plan.

We are confident that the accomplishments represented by the accord and your proposed action today is historic for California.

Still, the plan's actual benefits to the Bay-Delta resources and our trustee obligations to them will remain unknown for the near future.

While we are hopeful that this plan, in conjunction
with Category 3 efforts supported by the water community, which we are working with diligently, we are hoping that will yield the desired benefits for all interests.

We believe it is prudent to reiterate our view, however, that comprehensive re-evaluation and possible redirection may be in order when the Board undertakes its 1998 triennial review. I assume that is the date three years from now.

Because it represents another vital component of our effort to fix the Delta, the Department also looks forward to working closely with the Cal-Fed Bay-Delta program as it seeks to develop a comprehensive strategy to address the long-term integrity of the estuary's biological resources while yet serving other beneficial uses as well.

The uncertainties that confront us in the Bay-Delta, the often conflicting needs of various species and the difficult timing issues relating to instream and user requirements all require vigilance as we move forward together in our efforts to assure the biological attainability of the estuary while appropriately serving the water needs of all Californians.

Thank you. That is all I have today.

MR. CAFFREY: Thank you very much, sir.

Are there questions from Board members?

Anything from staff?
Thank you, Dr. Herrgesell.

Patrick Wright, U. S. EPA, and I understand, Mr. Wright, that you will be speaking on the entirety of the Club Fed this morning?

Good morning and welcome.

MR. WRIGHT: Good morning, Mr. Chairman and members of the Board.

I am Patrick Wright from the Regional Administrative Office of EPA in San Francisco.

On behalf of the federal agency members of the Club Fed, U. S. EPA is pleased to be here this morning to comment on the final Water Quality Control Plan being considered for adoption by the Board today.

We commend the Board for its open and collaborative effort it has undertaken in developing and considering this plan, both before and after the Bay-Delta accord was signed last December.

We believe that this collaborative process provides a solid foundation for future efforts to address water quality and management issues in California. We also think that both the framework agreement and the December accord demonstrate the importance of a strengthened State-Federal partnership.

As you know, despite our occasional differences over our respective roles and authorities of the State and
Federal Governments, at EPA we have always defined success
in terms of State adoption of approvable standards. And
that's why we are especially pleased to be here today to say
that based on our preliminary analysis of the Board's
proposed Water Quality Plan, EPA Region 9 fully expects to
be able to recommend that the Administrator approve the final
plan under Section 303 of the Clean Water Act.

Finally, I want to thank both you and your staff for
your commitment to this process over the past several years.

A couple of quick comments:

First, we note that the Bay-Delta accord includes
agreements covering many aspects of the Bay-Delta water
system. In particular, the accord called for substantial
measures to address a number of non-flow parameters
affecting the Bay-Delta designated uses, the so-called
Category 3 measures.

As you know, we have not made as much progress as we
had anticipated in securing additional funding for these so-
called Category 3 measures.

The federal agencies believe that these measures are
essential to the ultimate protection of the designated uses
of the Bay-Delta waters. Without these measures, which were
an integral part of the Bay-Delta accord, we think it will
be more difficult for the State Board to conclude that fish
and wildlife uses are adequately protected.
We are pleased that the Board recognizes these concerns in the final plan and we urge you to exercise your leadership to assure that these measures will, in fact, be implemented as envisioned in the accord.

Secondly, I want to note briefly that the federal agencies and their State counterparts have been discussing a possible modification to one of the footnotes in the plan, the footnote on page 22, footnote 27, which discusses the operation of the Delta cross channel gates.

The footnote now contained on that page states that the gates will be closed for a period of 14 days. The CalFed agencies have been discussing whether or not it would be appropriate to give the Operations Work Group a little more flexibility on this requirement, and so, we put together some draft language that your staff has that we would like you to consider.

We think that a little bit more flexibility would support the real-time operations approach that we are all vigorously trying to implement right now, and we also think it will be consistent with the accord that was signed last December.

In line with that, let me add that we recognize the concern that was expressed earlier by Mr. Nomellini and others about the operation of the Ops Group. You will note footnote 22 clarifies that all the recommendations of the
Ops Group are subject to the discretion and approval of the Executive Director of the Board, and we would certainly support expanding that language where appropriate to other footnotes in other parts of the plan to clarify the importance of the Board's role in the governing of the Ops Group.

Finally, let me just add that the federal agencies and the State agencies look forward to working with the Board together as it moves toward the next stage of Bay-Delta protection.

As you know, we have come a long way from the sometimes adversarial relationship that once existed between the State and Federal Governments on these and other issues, and we think it is not a coincidence that progress has accelerated under the leadership of this present Board.

Your success in facilitating the success of both this agreement, the Mono Lake accord and others demonstrates, we think, that a strong State-Federal partnership and more collaborative approach with the State Board community can be effective and we look forward to working with you in building upon this success, not only on the long-term process but across the full spectrum of water use in California.

Thank you.

MR. CAFFREY: Thank you very very much, Mr. Wright.
Mr. Howard, I presume we will be hearing from you on some of these comments at the end of the presentation, so I won't ask you right now about the language Mr. Wright has suggested, but we will talk about it a little bit later.

Thank you very much.

Are there questions from Board members at this time of Mr. Wright?

Anything from staff?

Thank you, again, Patrick.

Mr. Porgans, Patrick Porgans. Good afternoon, Mr. Porgans.

MR. PORGANS: Good morning, members of the Board.

For the record, I am Patrick Porgans. I am an independent government regulatory specialist and I am also publisher of the Public Trustee. I am here as a member of the public.

Without going into all the background and my involvement in this process, you know I have been before you guys on a few occasions, and essentially stated my position, and that's all on the record.

Almost all the information I have brought before this Board I received from the Public Records Act or the Freedom of Information Act, so it is not my opinion. My opinion is worthless.

At any rate, my wife keeps reminding me of that fact.
Anyway, moving on here, I want to make some general comments first. My review of the plan indicates that the plan fails to adequately address many of the significant issues that I and others have raised during the course of these proceedings, and it fails to adequately address the reasonable use issues, the agricultural drainage water problems, the related water issues, and compliance with the terms and conditions of existing permits.

The plan and the EIR are written in a manner that makes it very difficult to understand. It's equally perplexing whether this was done intentionally or inadvertently, and I want Mr. Howard and others to realize I appreciate the level of pressure that was placed on them and I recognize because of the time restraints that may have been a factor.

But with that said, I suggest a rewrite. For example, you know, early on in the EIR it mentioned the importance of the 1984-1992 period, the base period in determining impacts on striped bass. However, in Chapter 8, page 35, it places great emphasis on the dependency on the operational study number instead of the base period, making it difficult for me to comprehend the full adverse impacts associated with the species that we are talking about.

The plan does not provide adequate information on the cumulative impacts. You notice how I am using adequate a
lot. I don't want to come out and say it doesn't at all because I think that would be undermining the staff's efforts here.

I have stated in previous hearings the plan was primarily orchestrated by the vested interests, in particular, the Department of Water Resources, long-term friends of mine, and the Bureau of Reclamation, and to some degree the environmental groups.

Neither the plan nor the EIR provides specific assurance that it will provide these levels of protection to protect the long-term viability of the estuary. The draft EIR did not contain water quality analysis, although the final one does, but it put me in a difficult position because the final is done and I am not getting a chance to respond to it; I mean, just verbally.

It is unclear whether compliance with water quality standards are voluntary or mandatory. Historically the record shows that we have had a difficult time getting the boys over at the Department of Water Resources and the Bureau to comply with these regulations and I don't want to leave out my friend, the Bureau, because you know we realize that they had significant violations of the Vernalis standard under D-1422 during the drought period.

As a matter of fact, it got to the point where they said they were not going to meet it anymore.
As a member of the public, I was forced to file a public trust lawsuit back on December 7, 1993, and someone said it would go down in infamy. I want to point out that since that time, we have not had one water quality violation of D-1485, not one. That all my be coincidental. Who knows?

My point being that these agencies can, when they take the initiative, comply with the law and I appreciate that. I really do.

The plan and the EIR before me are fundamentally flawed because the demands are based on inflated demands that have yet to occur. You know, that 6.9 and 7 million acre-feet, I don't see that happening yet.

Essentially, the base case is not properly defined. The plan and most of the basis for the data contained therein were generated by our friends at the Bureau and DWR. In the interim, there are many unresolved issues that are directly and indirectly related to this particular plan.

You know, on April 18, we all remember the Department of Water Resources and the Bureau came over asking for relaxation of the conditions in D-1485. Of course, I was there to protest that request because, you know, I said these guys have plenty of time to come over here and get permission to request relaxation and they waited until the last minute; and just like Mr. Howard pointed out, he is
working this morning, his Xerox machine broke down and he is running over here with the data. The man has been working hard.

I am the type of guy that I feel like when things are this important we need to plan these things. We are not making decisions here for ourselves. We are making decisions for our children and their children, and I feel that, you know, Mr. Howard running over here like that, I mean, I know he is in shape but the point being that I don't feel that we have to put that kind of stress on the man.

Sorry, Mr. Howard, if I am sounding too personal, but I am like that.

Now, what's happened since December and the April 18th meeting? The Department of Water Resources and the Bureau sent this Board a letter on May 1 essentially saying that if you can't approve the petition requested on April 18, I believe it was under condition 3, then give us a condition 6, and so, this way, you know, in the end they are going to be in compliance and if they are out of compliance, they will be relieved of that problem because there will be relaxation in the standard.

I wish I had a condition 6 for everything I purchased in my life.

At any rate, as an alternative, they are either circumventing or negating the ultimate requirement to comply
with the law, and I just don't think that's right.

   Excuse me, strike that. It's not right.

   Once again, I look at myself as a member of the
community trying to keep up with all of these issues and it is
very difficult because I have other responsibilities that I
need to keep up with.

   In my review of the data, it appears and it was
stated earlier, that this plan essentially does facilitate
the principles for the agreement. There is no question in
my mind about that and, unfortunately, what we have here is
a situation where when the Department of Water Resources and
the Bureau comes back in and they say to us, let's make
D-1485 consistent with the Principles for Agreement. I have
another offer for them. Let's make the agreement consistent
with D-1485. That was a water rights decision that was done
in the daylight.

   Mr. Wright mentioned this was such an open process.
I take total exception to that. It is not an open process.
I wasn't involved and I know other people that weren't
involved, especially the county of origin, especially the
people from the county of origin were omitted from the
process, the consensus-building process.

   Okay, then there's another issue. Back in March I
sent a letter over to the Corps of Engineers and I was
concerned that it appeared, in looking at the Department of
Water Resources' data, that the Bureau had pumped more water at the Banks pumping plant than is allowed under their nationwide permit. There was some question as to the interpretation, as to whether or not, in fact, they were exceeding the take in the amount of water that they were allowed to take, but now the Corps is taking the position -- it appears they have, and I have that letter here, until the Department can prove otherwise.

So, we are here taking more water out of the system than allowed under certain conditions and in certain months, and we have this question as to who is right and wrong. I mean, these are issues that have gone on for decades.

In closing, I wanted to reflect on some of the South Delta people's concerns about the agricultural drainage problem. As you know, this Board is holding a hearing on the evaporation ponds problem down in Tulare Lake. That hearing is scheduled for Thursday and Friday, so I will see everybody again, and I will try to wear a different suit.

Then, on Friday, I am going to have to be in two places at once. I also have to be down in Fresno before the Regional Water Quality Control Board at 8:15 in the morning to provide information on the discharge of the agricultural drainage from the San Luis drain.

So, all of these issues in and by themselves, standing by themselves may not present a major problem.
Cumulatively, they are the issues and in my review of the data, it doesn't appear that this particular report addressed those issues in the way that I believe they should have been.

And lastly, I question the whole use of reasonable use of water and based on my review of the data, it appears they are going to be taking more water, they are going to be irrigating land that causes toxic problems. This condition has not been resolved, and you know that I explained to you that I was going to come in and file a complaint against both of the operators. I gave them an extra week to see if they would change things in the valley, so I am ready to do that now.

The last thing I want to mention to you is that I also mentioned about the cross-valley canal exports. I filed a complaint against the operators for unauthorized diversions. I hope to have something done about that, then maybe I can get back to the Water Quality Control Plan, once I get these details out of the way.

So, this issue here, as far as I am concerned, is just the doorway to open up things for the Peripheral Canal, and I take exception to the Department of Fish and Game's statement. I have done a complete review of the Department of Fish and Game's history, and quite frankly, I am appalled at their inability to protect the public trust resources of
the Bay-Delta.

So, my recommendation to this Board is that they do not adopt this particular plan at this time, that we go back and include many of the concerns that I have raised and others, and that we try to take a more comprehensive approach to the problem and come up with real answers to real problems so we can avoid protracted litigation.

Thank you, Mr. Chairman.

MR. CAFFREY: Thank you very much, Mr. Porgans.

Any questions from Board members?

Anything from staff?

Thank you very much, sir.

Jeanne Zolezzi representing Stockton East Water District.

Good morning and welcome.

MS. ZOLEZZI: Thank you and good morning to you.

For the record, I am Jeanne Zolezzi, general counsel for Stockton East Water District and I would hope that I do get it into the record that at least I think my opinion is worth something, but we will see if Alice puts that in there.

MR. CAFFREY: I saw her do it.

MS. ZOLEZZI: The State Board has obviously, or at least the staff, made minor changes in the plan that attempts to present the plan as an isolated document as has
been mentioned before without interaction to activities going on around it.

In the opinion of the Stockton East Water District board, the State Board, if it adopts this plan, appears to be washing its hands of all responsibility for or authority over the operators of the two largest water projects in the State of California.

To say that the Bureau of Reclamation is required to make flow releases in the plan to comply with the Endangered Species Act is simply preposterous. We would agree with the statements made by John Herrick and the South Delta Water Agency earlier, that the biological opinion does not require the flows that are in the Principles for Agreement or in this plan.

We must remember that what the biological opinion for Delta smelt for 1995 does is assume compliance with the principles. Basically, the project and the stakeholders told the U. S. Fish and Wildlife Service that we will be operating in this manner.

Given that assumption -- the Fish and Wildlife Service said that there will be no jeopardy. There is not a Delta smelt opinion directing the projects to operate in that manner and we must not forget that.

In any event, we are disappointed that the State Board has not taken notice of the liberty that the U. S.
Bureau of Reclamation is taking with its water rights permits for the New Melones project. To say that this Board is not directing anyone to do anything in compliance with the plan, but at the same time that it cannot take any action if someone is implementing this plan or implementing the principles, appears to us to be disingenuous.

The plan itself acknowledges implementation. As also mentioned earlier, there are references again and again in the plan and the environmental document that the U. S. Bureau of Reclamation and the Department of Water Resources may be voluntarily complying with the flows required by this plan, or through some boot-strapping may be doing so in compliance with the Endangered Species Act.

Because of this acknowledgement in the plan, we agree again with the South Delta Water Agency that there must be something further said in the plan; either leave all references out as to implementation, or if those references are made, you must go further and also include a warning, and the language that was referenced earlier appears to us to be acceptable, that if the operators of the two largest projects in the state are going to implement this plan even if it is voluntary, they must do so in accordance with law, in accordance with area of origin protection and in accordance with the specific terms and conditions of their permits.
Nevertheless, we have been directed in the response to comments that the appropriate place to proceed with our complaints that we have made previously is through a water rights proceeding, and we will attempt to initiate one.

Finally, I have two technical points:

The first is the statement made by Mr. Nomellini of the Central Delta Water Agency about the authority of the Operations Group and particularly Mr. Wright referenced that somehow the final review of the Executive Director provide sufficient oversight that we should all be comfortable with that process.

It does not, for two reasons:

The first is the decision of the Ops Group takes effect immediately and it can be set aside within ten days if it is objected to by the Executive Director. That doesn't give us great comfort.

The second, and I think the most important problem is that we are not given notice of this, again behind-the-doors decision that the Ops Group makes and the Executive Director reviews. There is no public input, there is no opportunity for legal users of water who may be injured by this change to give comments to the Executive Director. That must be addressed.

The final point is, again, and we have made it in the record, the Environmental Report is not a sufficient
document for CEQA purposes for the reasons that we placed in
the record previously and I won't go into here. Approval of
the plan today by this Board would be a violation of the
California Environmental Quality Act and we would, again,
urge you to go back and prepare a correct CEQA document.

That's all I have. Thank you.

MR. CAFFREY: Thank you very much, Ms. Zolezzi.

Any questions from Board members?

Anything from staff at this time.

Thank you very much for being here.

Gary Bobker of the Bay Institute. Good morning, Mr.
Bobker, and welcome.

MR. BOBKER: Thank you, Mr. Caffrey and members of
the Board.

For the record, I am Gary Bobker, policy analyst for
the Bay Institute of San Francisco.

I had made some written comments available for the
Board members and staff. Much of what is in those comments
are areas in the Draft Water Quality Control Plan where we
disagree with the way that the plan or objectives are
characterized, and I have already made statements both in
writing and verbally as to the substance in the past on the
Bay-Delta responses to comments, and I am not going to go
through them here again.

I would just note that we continue to have
disagreement about some of that language.

    What I do want to focus on is one sort of major point just about the plan in general, and then some specific comments as to two particular areas in the plan and language therein.

    First of all, our support for this Water Quality Control Plan has always been premised on the fact that we consider it to be an interim measure, that it will, in conjunction with a number of other necessary initiatives, result in improved conditions in the estuary for some species at some times, but it doesn't fully discharge the Board's obligations under the Clean Water Act, public trust and antidegradation statutes to completely protect the beneficial uses. That is something that we have said to the Board before.

    The Board doesn't agree with that characterization. I am simply going to insist that to us it is an important recognition.

    It also ties into some other things as to how we characterize the plan, and the intent of the signatories to the December 15, 1994, Principles for Agreement was never to suggest that the level of protection that was contained in that plan was the complete deal and end-all water quality protection.

    There has always been recognition among all the
parties that we need to go further.

There has also been historic commitment by this Board and the State of California to a much greater level of protection than seems to be premised in this plan, of course, referring to the language in D-1485 as to offsetting project impacts. I believe that that approach is still valid.

The Racanelli decision criticized the Board for limiting its consideration to project operations, and also, reminded the Board that its primary charge was, in fact, to protect beneficial uses, but I would suggest that somewhere in that plan you need to reaffirm your commitment to that basic approach of D-1485.

I have suggested some language. It is not very eloquent, but it simply reaffirms the long-term objective of the underlying principle of D-1485 which was that water quality should be at least as good as levels which would have been available had the State and Federal projects not been constructed, obviously, with the proviso that this must assure reasonable protection of beneficial uses and that degradation of water quality by non-project users is also protected against, and I urge you to include this or similar language that reasserts the Board's long-term commitment and allows for guidance for future water rights and water quality proceedings.
That's the general comments I wanted to make.

Specifically, most of the comments, specific comments that I have made on the plan and on the Environmental Report had to do with the overall framework of the plan and with, of course, aquatic resource and habitat issues, and that's been our major concern.

One place that we didn't offer comments in the past was on the part of the plan that characterizes the San Joaquin Valley drainage program. I have had a chance since the final draft was circulated to talk to members of the Citizen's Advisory Committee on the implementation of that program as well as with Dr. Terry Young of the Environmental Defense Fund, and with others who have been involved in that drainage issue, and I want to offer some discussion where the plan could elaborate a little on the drainage program, or is inconsistent with the drainage program.

Three specific recommendations:

One was that in the discussion of source control on page 30, and there the plan supports the implementation of efforts to do source control through reduction of drainage and through land retirement; the specific recommendations only deal with the reduction of drainage, and we think you should simply add at this point a recommendation that the Department of Water Resources and the Bureau, through their respective land retirement programs, retire lands.
The land retirement programs, the San Joaquin Valley Drainage Relief Act program and the Central Valley Project Improvement Act land retirement program have not as yet resulted in any retirement of land. That's an important part of the drainage program package in the 1990 management plan.

Secondly, there is discussion on page 32 of the discharges to the San Joaquin River. We generally don't have a problem with the way that the plan discusses the need to have controlled discharges to the river and it talks about how the dilution capacity should be used.

We don't necessarily take issue with that. We think it needs to be clarified that you are not suggesting that flows be released specifically for dilution purposes or that flows that are specifically directed to environmental enhancement be used when calculating dilution capacity.

We also point out that when looking at dilution issues, that because agricultural drain water contains bioaccumulative substances like selenium concentrations, a base standard for meeting water quality objectives as the plan states on that page should include setting limits along mass loading.

My final comment on the drainage plan is on page 32 and page 33, the discussion of out-of-valley disposal of salts. That section is inconsistent with the drainage
The Draft Water Quality Control Plan is recommending that the Bureau proceed now with consideration of language for out-of-valley disposal. The drainage program, the 1990 Management Plan, specifically found that; number one, no decision needed to be made for decades really on out-of-valley disposal and that in any case before any out-of-valley exports or salt removal program was considered, that the recommended plan needed to be in place because that was going to help determine what the final solution was, so we strongly recommend that this section be removed from the plan as being inconsistent with the recommendations of the drainage program.

That program spent something like 50 million dollars and 6 years to come up with its recommendations. I would be very loathe to see you alter those recommendations without giving it the time that it deserves.

My final comment has to do -- there are a number of areas where you clarify things in a very helpful way. One of them was in your discussion of the habitat recommendations, and the effort under way with the so-called Category 3 program and mentioned if a funding for that program is not forthcoming, that you would consider whether legislation or other measures were necessary, if it would be helpful if there was some determination of when that needs
Obviously, the habitat recommendations are a part of the success of this plan as a component of the comprehensive management package. If the efforts for implementation of these recommendations don't move ahead in some timely fashion, obviously, that threatens the success of this plan in protecting beneficial uses.

So, I urge you to put in some recognition that this has to be done in a timely fashion.

That concludes the comments that I wanted to make.

Thank you.

MR. CAFFREY: Thank you, Mr. Bobker.

Are there questions by Board members? Staff?

Thank you for being here.

Mr. Chatigny representing the Delta Tributaries.

Good morning, sir.

MR. CHATIGNY: Good morning. I am Jim Chatigny, General Manager of the Nevada Irrigation District, but this morning I am here speaking in the first part as Chairman of the Delta Tributary Agencies Committee.

As you know, we have been involved in the hearings since early 1987. We have submitted to you all the documents that we have been able to produce. There are 30 agencies that are in the DTAC group. We are primarily all upstream users.
We know that you are aware of the ongoing negotiations between what is referred to as the Ag CUWA group and the upstream users which could avoid subsequent water right implementation proceedings for the quality objectives which you intend to adopt.

We, again, must remind you that the State, Federal, Ag CUWA accord of December 15 was announced without consensus approval of the remaining two-thirds of the agricultural, M&I, recreation and hydroelectric developers in the Central Valley, and again, Delta Tributary Agencies Committee represents 30 of those agencies.

Not one of us was able, or was invited or was a participant in this consensus.

As you see in our reports, we have some six million acre-feet of water available for uses within our service areas. The amount of agricultural and other economic benefits are many many fold to that and, again, we were not involved in any way in the consensus.

We, again, urge you to be mindful of reasonable and beneficial uses of water of all of our member agencies so that you will not in the subsequent water rights hearings deviate from the California water right priority system in favor of this share of the pain concept that some exporters claim is required because of the Racanelli decision.

DTAC would, again, like to once more reaffirm its
statement of the principles for these proceedings that we adopted in 1991, that the State Board should recognize and follow area of origin and watershed protection principles. The State Board should recognize the unique impacts of Delta water exports and require those exporters to mitigate their adverse environmental impacts, and consistent with those first two principles, the State Board must rely on the priority system to allocate the responsibility of the Bay-Delta water quality objectives and flow requirements.

And the municipal and domestic uses should receive no special preference in this allocation of responsibility to maintain Bay-Delta water quality objectives and the flow requirements.

Again, if the Board feels constrained to take some action today, we urge its action be advisory and subject to further review and final adoption in connection with the next phase of these proceedings in order to insure full compliance with CEQA and the full balancing of the standards to be adopted along with the water supply, economic, environmental and social impacts.

We trust that in the next phase all these matters will be seriously considered and recognized by you in taking a global approach to setting these water quality objectives despite receiving what we are sure are very difficult political pressures from various interest groups.
If I may now put on my Nevada Irrigation District cap and bring some specifics to this -- on the addendum that we received this morning under Chapter 14 of the Environmental Report on page 13, you talk about mitigation measures and findings, and it is essential that the Board now adopt a Water Quality Control Plan to serve as the basis for future regulatory measures that will protect the fish and wildlife uses of the estuary.

The plan is essentially an early step in establishing adequate protections of the estuary. Down a little bit further it says: Actions which could mitigate or avoid the significant effects on the environment are primarily within the responsibility and jurisdiction of local water purveyors and managers, and have been or can and should be adopted by these entities.

The decisions made by local water purveyors, and these are quotes, when they allocate the remaining water supplies will determine if the adverse effects occur. And then, on page 14 there is a list of 11 items under these: Mitigation measures, urban water conservation, ag water conservation, groundwater management, water transfers, et cetera.

The first two, the District has some ability to do, the Nevada Irrigation District. We have an urban water conservation plan. We use the best management practices.
We also have an agricultural water conservation plan and we have utilized that for quite a few years.

We do not have groundwater management. We have no groundwater. Water transfers, I guess I should repeat again what I offered over in the Convention Center probably six years ago, that the District was willing at that time to transfer waters on a gravity basis from our foothills to the valley if the Board, in turn, would provide the reciprocal of giving us water when we are short of water. I got no answer then.

Obviously, that is still there. We still make that offer.

On reclamation, we do reclaim a little bit of water from the two sewage plants of Nevada City and Grass Valley. Grass Valley now is trying to charge us for that water. I don't think we are going to pay for it, but they are trying to charge us for it.

The next one is the one that really bothers us and this is the mitigation fund, and in parenthesis, including a mitigation credits program. To provide for a mitigation fund would mean that we would have to raise our water rates and I think I would have a very difficult time convincing the customers in the Nevada Irrigation District that we should raise water rates in order to provide a mitigation fund to do the restoration within the Delta.
Most of our people believe that charity begins at home, and I do, too. We cannot use the Central Valley Project or the State Water Project point of diversion, we have no upstream storage such as the Los Banos Grande, and so on and so forth.

The South Delta program does not fit, the purchase of Delta islands does not work, nor the long-term Delta solution.

So then, go over to page 15 under mitigation measures and findings, that last sentence in that last paragraph:

Therefore, the benefits of providing protection for fish and wildlife uses in the estuary outweigh any significant environmental effects that could occur due to implementation of the plan.

The people in Nevada County, the Board members and staff of Nevada Irrigation District, would have a very difficult time trying to subscribe to that sentence in that paragraph, and I don't believe I could ever change the mind of the people within the Nevada Irrigation District that they should give up all of these things in light of working towards the Delta until we have taken care of the public trust within the Nevada Irrigation District and have met all the needs that are already required within our Irrigation
And with that, thank you very much.

MR. CAFFREY: Thank you, Mr. Chatigny.

Are there questions from Board members?

Anything from staff?

David Anderson with the Department of Water Resources.

Good morning, sir, welcome.

MR. ANDERSON: Good morning, Mr. Chairman and members of the Board.

My name is David Anderson with the Department of Water Resources. The Department of Water Resources supports the adoption of the Board's May 1995 Draft Water Quality Control Plan for the Bay-Delta estuary with the errata that have been published, and also, with Patrick Wright's clarification on the cross channel gate operations.

We believe that the plan is a proper exercise of the various authorities conferred by the Water Code upon the Board to establish planning objectives not only for water quality, but for flow and diversion, and it is properly supported by the May 1995 Environmental Report which we also recommend be adopted by the Board.

Much has been said today about the relationship between the December 15, 1994, Principles for Agreement and the Board's current Bay-Delta planning effort.
We certainly agree with the Board in its response, I believe, to the Central Delta Water Agency that the principles did not and could not bind the Board to a particular planning outcome. At the same time, we strongly support the Board's looking to the Principles as the policy cornerstone for its plan for the estuary. The Principles supply what has been sorely wanting in our most recent Delta efforts of bringing together a reconciliation and synthesis of the disparate and often competing policies that apply to individual aspects of Delta water use.

The views of public agencies charged with the overall use and protection of the estuary, as well as the views of those interested in water supply and environmental uses of the estuary are critical to the development of such a significant element of California water policy, whether that be accomplished through formal legislative processes or through other less formal, though no less compelling consensus processes.

We believe that the Board would be greatly remiss were it not to use the Principles for Agreement as an essential sort of policy for its planning effort. We do wish to acknowledge and commend the substantial efforts of the Board to foster an environment conducive to producing consensus as well as the very significant efforts of the Board staff in putting these difficult documents together so
quickly and responding to the comments and concerns of all the parties.

Thank you.

MR. CAFFREY: Thank you very much.

Any questions from the Board and staff?

Thank you, sir.

The final card is from Kevin Haroff. Good morning, sir, and welcome.

MR. HAROFF: Good morning, Mr. Chairman and members of the Board.

My name is Kevin Haroff with the law firm of Morrison and Foerster, which represents Santa Clara Valley Water District.

I have been asked to make a brief general statement today on behalf of the Joint California Water Users which are different groups of water agencies serving more than two-thirds of the State's urban population and a substantial portion of its irrigated farm land.

The Joint California Water Users commend the State Board on its efforts to develop and finalize the proposed Water Quality Control Plan. The plan is an important step in the implementation of a comprehensive ecosystem protection program for the Bay-Delta.

Moreover, we appreciate the substantial work that has been done by the Board and by staff since its February 23
The Joint Users group submitted detailed comments on that draft and we want to acknowledge the thoughtfulness that went into the preparation of responses to our comments and to the comments submitted by others.

While not all of our suggestions have been taken up in the response to comments, we believe that the plan has benefited materially from the public comment process.

The Joint Water Users support the Board's adoption of the water quality and operational standards contained in the plan and we look forward to continuing to work to insure their implementation in the future.

Finally, I would like to take this opportunity to note that while you have been doing your job in issuing the plan, the Joint Water Users have been doing their job as well. You will recall that one of the provisions of the December 1994 Bay-Delta accord called upon the Joint Water Users to sponsor the development of a detailed plan of implementation or so-called Category 3 measures to address non-flow factors as part of the comprehensive Bay-Delta protection program.

The accord also called for the Category 3 Implementation Plan to be finalized by the time your Board issued the Water Quality Control Plan.

Consistent with this direction, a proposed Category 3
Implementation Plan has been prepared through an effort that involved representatives not only from the Joint Water Users, but also, from Cal-Fed, the environmental community and the fishery community.

A final review draft of the text of the Implementation Plan was made available at Cal-Fed's public session meeting last Thursday, May 18. Copies of the complete document were mailed out on Friday, and you should be receiving your copy today.

A great deal of work went into the preparation of the Category 3 Implementation Plan just as a great deal of effort went into the preparation of the Water Quality Control Plan. We applaud all parties who have contributed to that effort and we look forward to continuing progress on all fronts in the development of a comprehensive program of action to protect the Bay-Delta ecosystem.

Thank you.

MR. CAFFREY: Thank you, Mr. Haroff.

Are there questions from Board members?

Anything from staff?

Thank you, sir. We look forward to your recommendations.

MR. HAROFF: Thank you very much.

MR. CAFFREY: That completes the cards.

I think now we should turn back to Mr. Howard to hear
his comments.

MR. HOWARD: There were lots of comments and I tried to jot them down, but I am not a scribe, so Barbara over here is going to -- to the extent I forget any comments -- try to remind me so we can get an answer to everything.

I think that if anyone believes that I haven't adequately answered their comments, I would invite them to stand up and tell me what I have forgotten to say or forgotten to respond to, and I will take a stab at that juncture.

The first person that came up was Mr. Nomellini from the Central Delta Water Agency. I think one of the concerns was that footnotes 22, 24, 25 and 26 are inappropriate in that the Board has delegated to the Ops Group some of the decisions that in their opinion should remain only with the Board.

In putting the delegation together, the Board tried to, the staff tried to provide well defined parameters in which the Operations Group had to make decisions; that is, there isn't, in our opinion, simply a statement that the Operations Group can do most anything it wants. Instead, there was an attempt to define a box, if you will, and set a limit to which the project Operations Group could make decisions, and to the extent that the box seemed to us quite large, and footnotes -- I think 22 and 24, we then had a
backup decision based on the Executive Director's review of those recommendations from the Operations Group.

Consequently, we felt the limits that the Operations Group had to operate within were sufficiently defined that beneficial uses would be protected within the confines of those limits.

To the extent the Board might disagree with that, then, of course, the recommendations could be changed regarding the Operations Group's discretion. But that was our opinion.

MR. JOHNS: If I could just add, the principal purpose of the flexibility was better protection for fish and wildlife, so we are looking at flexibility that, instead of rigid operation, would provide that kind of flexibility, provided that that would not cause problems with other uses.

MR. CAFFREY: Mr. Del Piero.

MR. DEL PIERO: What, in terms of the staff recommendations, was anticipated as to the appeal process that would be involved if someone were dissatisfied?

MR. HOWARD: Since we had clearly defined limits as to the parameters under which decisions would be made, we felt there was sufficient control from the Board's perspective.

MR. DEL PIERO: Who in staff recommended it's an absolute delegation?
MR. HOWARD: With respect to a couple of objectives, of course, other ones are subject to review by the Executive Director, but yes, for example, one of them is the operation of the Delta cross channel gates and the Operations Group can decide when within a certain number of days to open and close the gates.

However, you know, it is supposed to be a defined quantity of time in which the gates are opened and closed. Those are the kinds of limits that are placed on -- there's no provision in the plan presently before the Board to review those decisions.

MR. CAFFREY: Please proceed, Mr. Howard.

MR. HOWARD: Another one raised by Mr. Nomellini is they believe it is appropriate for year-round objectives to be placed for agriculture in the Central Delta. They correctly identified that wasn't a subject of this proceeding, but, of course, I think that in the next review it will probably be appropriate to take up agricultural objectives as they weren't discussed in this particular proceeding.

Our review of modeling results indicated there shouldn't be any violation of the existing objectives based on DWRSIM. There are objectives for agriculture in the Central Delta only from April through August, I believe, and there are some possible problems, especially in December and
January in very dry years, and the Board might want to take
that up on the next review of the draft plan.

Those were the only two I had for Mr. Nomellini. Was
there anything else, Barbara?

MS. LEIDIGH: That is all I have.

MR. NOMELLINI: Are you going to focus on comments?

MR. CAFFREY: I am a little concerned about having an
adversarial debate which borders on holding another hearing.
I appreciate Mr. Howard's desire to get into some discourse
if it is needed, but I am a little concerned if we start
debating the issues all over again -- go ahead.

MR. NOMELLINI: On that procedural issue of review,
what we are suggesting is not that you eliminate the
Operations Group flexibility, but that you clearly establish
a notice requirement and then an opportunity to bring it --
a clear right when there is a dispute from any interested
party to bring it back to the Board. That doesn't eliminate
-- we are not suggesting you take that flexibility away.
Maybe in 100 percent of the cases or 99 percent, there would
never be a need for a procedural review, and I just don't
think you address that aspect.

You focus in on the flexibility. I don't think
anybody was trying to take the flexibility away because you
need that to make it work.

What harm is there in having a review right and a
MR. HOWARD: I think the principal problem is one of time. The purpose of the Operations Group is to be able to make real-time decisions right now. For example, there is a lot of biological monitoring going on in the Delta for the purpose of analyzing the ability to make real-time decisions.

A couple of days ago, a lot of salmon smolts were seen entering the head of Old River because the hatchery had made some releases downstream, and the purpose of the Operations Group is to be able to say today we see a large number of smolts entering the head of Old River, it is appropriate to cut back pumping for the protection of those smolts.

If we incorporate a review in the protest, the smolts will have long ago been entrained into the pumps by the time the Board has a chance to meet.

So, the decisions are really based on the concept of real time and if the Board thinks it is appropriate to try and manage the fishery on a real-time basis, a lengthy review process is not going to be workable.

MR. CAFFREY: Thank you, Mr. Howard, and thank you, Mr. Nomellini. I appreciate your clarification.

Proceed.

MR. HOWARD: The next comments were made by Kenneth
Robbins of the San Joaquin Tributaries Agencies. I think one of the first things he said was he challenged the Board to find anything in the record that supported the flows that were required for the benefit of salmon.

I really believe that the record is really replete with data that has been collected that indicates that the flows on the San Joaquin affect salmon smolt escapement. For example, it has been well established for a long time that escapement two and a half years later is dependent on flows on the San Joaquin. Whenever we saw very high flows on the San Joaquin, we saw very good escapement. Whenever there were low flows in the San Joaquin, there was very poor escapement.

In addition, the U. S. Fish and Wildlife Service has put together a couple of models. Those models have been questioned as to their statistical validity, but a number of work groups all agreed that the parameters that they were defining; that is exports, temperature and flows on the San Joaquin, were, in fact, the factors that affect salmon smolt survival.

Also, we received a submittal, I believe it was from -- it might have been the Stanislaus River Council that did a rather lengthy set of regression analyses showing that of the two factors that principally affect smolt survival on the San Joaquin River, flows and exports, that flows are the
factor that more strongly defined survival on the river.

In addition, there have been work groups for years on the San Joaquin dealing with this issue and they have all agreed that flows on the San Joaquin are a principal factor to the smolt survival, and I believe their record is very clear on all that.

They did say the projects are causes of reductions and I don't think anyone disagrees that exports are a large factor in the salmon smolt survival. It is just that flows are also a substantial factor.

They recommend that the plan require construction of the Old River barrier. We have in the plan recommended construction of an Old River barrier. In addition, in the Principles for Agreement, the projects have committed to construct it.

The problem that we had in requiring it was that in the last couple of years, I guess it was last year, they did construct it and the Fish and Wildlife Service required them to pull it out early because of the fact that there seemed to be an increase in the capture of Delta smelt, and so, until it is very clearly defined that the Old River barrier is appropriate to protect all of the estuary resources, we thought it would be appropriate to include it as a recommendation to evaluate it, and then perhaps in the water rights proceeding or in the next triennial review, to
require its construction and operation.

But at present, it seems a bit premature.

Those were the two principal issues that I think were technical issues that required addressing.

Was there anything else, Barbara?

MS. LEIDIGH: It looks like Mr. Robbins --

MR. ROBBINS: Just one comment based upon Mr. Howard's comments, and we weren't quite sure from staff -- are we to assume then that the record from D-1630 has been incorporated into the record for this proceeding?

MR. HOWARD: Well, we have not specifically incorporated the record. We had incorporated many of the references is D-1630 in our Environmental Report. All of what we perceived to be the record at present is; number one, the items that were submitted to the Board during workshops; number two, all of the items that were referenced in our Environmental Report; and number three, all of the comments that were received from the participants after the February 23 hearing, plus, of course, all the oral testimony at workshops and hearings.

That was our perception of the record, but the Board can augment that any way it wants.

MR. ROBBINS: But not specifically all the testimony that was received in 1630?

MR. HOWARD: Not unless it was addressed in the
Environmental Report.

The next was Alex Hildebrand representing South Delta Water Agency. His recommendation is that the Board should stipulate how the flows should be accomplished.

In the response to comments I know we got a bit repetitive. We kept saying this is one of the factors that should be considered in the water rights proceeding, and it just seems as though where the flows should come from on the San Joaquin River are appropriately a water rights process.

He recommends that they come from the Delta-Mendota Canal and there's nothing that presently keeps the Bureau of Reclamation from providing those flows from any source it wants, whether it be Friant, Stanislaus or bringing the Sacramento River water around from the San Luis Reservoir and then into the San Joaquin River to meet the flow requirements.

And that, of course, is something I think the Board should look at during the water rights proceeding. It doesn't seem as though we should be specifying location of where these flows should be coming from until a water rights proceeding in which testimony is given and received.

He points out that the previous biological opinion had lower flows for Delta smelt. That's true. That biological opinion, when it was redrafted, raised the flows for Delta smelt to coincide with those that had been
discussed for salmon protection. I presume their opinion was that, you know, the joint protection of salmon and Delta smelt was appropriate.

He objects to the fact that we are saying as required for Delta smelt on page 28 of the draft plan. My recollection is that we were referring to the biological opinion at that point. The biological opinion does provide these flows in the protection of Delta smelt and we were simply citing that as a fact.

He objects to the statement that spring flows will help to meet salinity standards. He says that statement is incorrect because, after all, if we provide these spring flows, there will be insufficient water in New Melones to meet salinity requirements in the summer.

The plan doesn't presuppose any source for the flows. I presume if the Board adopts flow standards for the San Joaquin River and a salinity standard, the intent is to try to meet them and we concur that if all of the standards have to come out of the Stanislaus, then it will not be possible to meet all the standards.

Consequently, it would seem appropriate in a water rights proceeding in order to insure that all the standards are met to allocate flows in such a way that the water is actually available. So, his comment presupposes that the flows all come out of the Stanislaus. I think that is an
issue for the water rights proceeding.

Was there anything else from Alex, Barbara?

MS. LEIDIGH: No.

MR. HOWARD: There's also here that the control of drainage will make 70,000 acre-feet adequate. In the modeling studies we went ahead and said to make the model runs with the maximum water release of 70,000 acre-feet for salinity control on the San Joaquin, specifically the salinity standard at Vernalis.

There's a very long history associated with the 70,000 acre-foot limit. It goes back quite a ways before D-1422. The Board has never adopted a cap on the flow requirements to meet the salinity standard on the San Joaquin. However, I believe it was sometime back in the sixties, long ago, I researched this and found an answer, but there was something in the early sixties where there was an agreement among the Bureau and some other parties that salinity control -- the other parties is not including the Board -- would be limited to 70,000 acre-feet.

When the Board adopted D-1422, they acknowledged that agreement, but they did not include that 70 thousand cap.

However, in most operation studies that have ever been conducted, the Department has continued to impose a 70,000 acre-foot cap because that was largely what the Bureau told them was their intention regarding operating on
the San Joaquin and the Stanislaus.

We decided it would probably be appropriate to continue that cap because it is the Board's intention to try to at least -- I understand it is the Board's intention to try to control agricultural drainage to the extent feasible and, therefore, the amount of water that is necessary is going to be dependent on the controls that are imposed.

And it, therefore, seems like it was a rather arbitrary decision whether you said make it all up with flow, or instead, impose an arbitrary cap. We propose the cap just because of the issue of salinity control through other measures as well.

But it is true that there are other assumptions that could have been made, any number of other assumptions that could have been made.

He has also asked us to make a statement that water quality for salinity control have priority over the flow standards on the San Joaquin, I presume over this interim period, before the water rights proceeding.

It is our opinion that that would to some extent nullify the standards. It would then be something that EPA or others who might be reviewing these standards would have to look at when they decided whether to approve them.

So, we didn't think it was appropriate at this juncture to prioritize the standard and say one type of
standard takes priority over another.

In our response to comments, I think we said that we assume that the Board, when they decide to implement the plan, will look at the available water supply and if the available water supply doesn't match the standard, at that point it might be necessary to prioritize the standard, but it doesn't seem appropriate at this point before we have even looked at the sources of water that are going to be used to meet the standards.

That was another -- Barbara, was there anything else?

MS. LEIDIGH: I think that covered Mr. Hildebrand's comments.

Mr. Herrick was next.

MR. HOWARD: Mr. Herrick representing the South Delta Water Agency.

Well, he recommended a formal structure for the Operations Group. Our response and response to comments is that the Board should certainly consider that in a water rights proceeding, so that, again, until the Operations Group is actually operating under the authority of the Board through a water rights decision, our specifying its particular function in structure is a bit premature.

We presume that over the next couple of years as they work to implement the Principles for Agreement, not the Water Quality Control Plan, that there's going to be some
discussion about the structure and function of the group.

In fact, that has been brought to the agenda of the Operations Group once and it is an ongoing discussion there about how exactly they should configure themselves to make decisions, and in a water rights proceeding we will bring that before the Board to ask whether or not they want to provide more definition to the structure and function of that group.

They also said that the plan should not mention interim implementation or state that such implementation should not affect rights. I presume that in that they are talking about interim implementation with respect to the South Delta Water Agency, I mean with respect to the San Joaquin River flows.

Our intention on discussing the fact that there's going to be some interim implementation of the San Joaquin River flows is what we are trying to say is that the Board in the plan states that there is going to be a review of those objectives prior to adopting them into a plan and, of course, you can't review them to see whether they are adequate until they have actually been implemented for a while, and we simply note the Bureau intends to implement them because they have made that statement in the Principles for Agreement, and that presumably we will get some data.

Unfortunately, we won't be getting any this year
because the flows are so high we can't really see the effects of the standards. But if we get some data, then we would be able to bring some additional information about it to the Board, about the appropriateness of those standards, and therefore, all we were doing in the plan was acknowledging that the interim implementation would be occurring.

They also asked us to condition water sales or transfers. I presume they should be conditioned so that beneficial uses are protected. We have a recommendation in the plan or in the Environmental Report regarding sales of water.

Again, the Board right now has -- all of these transfers come, or at least a large fraction of these transfers come to the Board and during that process the Board has in the past tended to condition some of these water transfers, and that's the appropriate time to do so if conditions are necessary.

I think there really are very specific conditions with particular transfers, and the Board is going to have to look at conditioning those transfers during the time they propose to adopt them.

The last comment was that on the San Joaquin River from April 14 to May 15, there seemed to be two standards; one 35 percent of Delta inflow and the other 100 percent of
San Joaquin River flow. Because there are two standards, it always seems, I guess, obvious that both standards apply and, therefore, the one that is the lower is the one that has to be operated to.

The comment of Mr. Herrick was that we should clarify that. I am not sure clarification is necessary, but if the Board wants to clarify that, we could include a clause in one of the footnotes that says the least of these or the more restrictive of these two standards applies. Whenever you have two standards that are simultaneous in effect, it seems obvious the more restrictive one applies. Otherwise, you would be violating that standard.

Anything else, Barbara?

MS. LEIDIGH: I think that's all.

MR. HERRICK: Could I ask for clarification? I am not sure I am on the same track on interim implementation. You said the Board may later but not now, have to prioritize the objectives or beneficial uses, but the point I was trying to make is by recognizing that there will be interim implementation by the Bureau, is the Board recognizing that somebody else will be prioritizing those and that will necessarily affect the different objectives.

Can the Bureau then choose to release more water now for fish flows and come up short for the summer water quality flow?
MR. HOWARD: Well, the standard that is in effect right now is 500 parts per million -- well, actually the standard is .7 EC and 1 EC, if the Board chooses to adopt this at Vernalis.

And insofar as I am aware, the Bureau, you know, is required to meet these flows. At the same time, they have an agreement to try to meet this water quality with flow releases from New Melones. At the same time, the Bureau has an agreement in which they state they will try to meet the fish flows.

There's nothing that eliminates their responsibility to meet the water quality standards.

The reality, of course, is that in the past there hasn't been sufficient water in many cases to meet all the salinity requirements, and at that time, my understanding is that the approach taken by the Bureau is to meet the South Delta Water Agency and other water users in the basin, and try to work out some sort of agreement.

I would believe that that would be the same process the Bureau would use at this time if they found themselves in the same bind; that is, they couldn't meet all of their commitments out of New Melones.

In the past the Board has not specifically objected to this type of agreement process, nonetheless, the result has been that occasionally the New Melones standards are
violated and there hasn't been much in the way of concern expressed by many people because the agreements that have been reached among the water users have been adequate for their purposes.

So, I guess my answer is that standards are still in effect. The Bureau is required to meet them. If there is some problem, I presume the Bureau will meet with all the interested parties and try to work out an agreement, and if an agreement can't be worked out, then I presume a petition could be filed with the Board.

MR. HILDEBRAND: A clarification question.

Last year, for example, the Bureau bought 50,000 acre-feet of ag water and let it down for fish, thereby diminishing the return flows available in the summer. They did that without change of place and purpose of use. They did it without coming to the Board for permission to do that.

Did I interpret your remark a little bit ago to say that is not going to be allowed for them to do that sort of thing without coming to the Board? They have proposed to do it again this year.

MR. HOWARD: Well, I don't know any particulars about the transfer. I don't know if that transfer is within the Board's jurisdiction.

Jerry, do you know anything about that?
MR. JOHNS: I would hope, based on past practices the
Bureau would try to work with the parties as they move
forward.

MR. HILDEBRAND: This business of working with the
parties worked fine when everybody knew that we were short
of water for all purposes. Now all of a sudden we are in a
different position where you are going to take water away
from one purpose for another, so you don't short one purpose
more than you do short another. That's the thing we are
beginning to be faced with and it isn't clear to us why just
because it is for fish they should be able to change the
purpose of use without coming to the Board.

If it were a change of purpose of use for something
other than fish, you would have to come to the Board, I
think clearly, and they circumvent this whole business
through some oversight on the priority as to who gets the
water.

MR. CAFFREY: I think the Bureau has a comment here.

MR. RENNING: I don't want to get into a debate with
Mr. Hildebrand, but what he has been saying is
mischaracterizing what happened last year, and I truly don't
think the discussion of that transfer, the action that took
place at that time is appropriate for this proceeding.

MR. CAFFREY: I see our counsel nodding in the
affirmative.
Thank you all for your comments.

We will ask Mr. Howard to proceed.

MR. HOWARD: The next comments were made by Perry Herrgesell of the Department of Fish and Game -- we appreciate the support for the plan but that seemed to be pretty much the extent of his comments.

The next comments came from Patrick Wright, representing Club Fed. I think Patrick expressed again support for the plan but he also recommended a change in footnote 27, and that has to do with operation of the Delta cross channel gates from May 21 through June 15.

We have gone through several permutations on this one. Let me give you a little bit of history.

The Principles for Agreement said that the gates may be closed for four days during each week, the idea being that they would presumably be closed during weekdays and remain open for recreational boating traffic.

We originally put that in but then changed it because it wasn't a regulatory requirement in our minds to just say that they may operate the gates. We might just as well not say anything since, of course, they may operate the gates at their discretion as long as it is within the standards.

We then changed it to say well, okay, close them for 14 days for protection of fish, which approximately represents 4 days closed and 3 days open that the
recommendation from the Principles for Agreement had in it.

Now we have another recommendation from the Club Fed agencies saying that variations in the number of days, and I will just read the recommendation since we didn't have enough copies for everyone. It maintains the existing footnote and then says:

Variations in the number of days of gate closure are authorized if agreed to by the Operations Group established under the framework agreement. Variations shall result from recommendations from agencies for the protection of fish resources including actions taken pursuant to the State and Federal Endangered Species Act. The process for approval of variations shall be similar to that described in footnote 22.

Again, this is a delegation to the Ops Group to allow real-time operation of the Delta cross channel gate operation for the benefit of fish and at the same time trying to take into account concerns for other species that might be present, and also, for water quality in the Central Delta, which may suffer when the Delta cross channel gates are closed.

Consequently, we have no particular objection to the footnote as provided by the Club Fed agencies. It is
largely a policy issue on the part of the Board respecting how much flexibility they want to provide for the Operations Group.

MR. CAFFREY: We are taking a look at it now. Why don't you proceed.

MR. DEL PIERO: Excuse me, before you go on, where is the reference here?

MR. HOWARD: Footnote 22 says process for approval --

MR. DEL PIERO: I'm sorry, okay.

MR. HOWARD: Footnote 22 refers to that process.

MR. DEL PIERO: Okay, fine.

MR. CAFFREY: Why don't you go ahead.

MR. HOWARD: Okay, the first specific comment of Patrick Porgans, he said that page 34, Chapter 8 has -- I think I understood him to say the base period for the striped bass index doesn't use the 1984 to 1992. I double checked again and the 1984 to 1992 period is the period that was used for the striped bass models.

In addition, in the same graph we used the 71 years of hydrology for comparison, so I think the comment is incorrect, but perhaps I misunderstood. If I did, I ask Patrick to point that out when I am done here.

He claims that the demands are based on inflated demands in the base case and, therefore, the base case is not properly defined.
We disagree with that. Demands in the model and analysis are variable demands. It ranges from 5.9 million acre-feet to 6.9 million acre-feet. The wetter it gets the lower the demand is. That is approximately what you will be seeing from the projects this year. It's around the upper 5 million acre-foot range.

This particular demand was developed with the Department to reflect what we believe to be existing demands on the system and all the model runs, both for water supply and fishery impacts were run using that demand; we believe it was appropriate.

I think a large concern of Mr. Porgans is that the Environmental Report simply does not address the major issues. In the Environmental Report we tried to cover all of the water supply and fishery issues that we were aware of.

I encourage Mr. Porgans to point out the specifics that he thinks were not covered, but we believe we covered everything that we could reasonably perceive due to implementation of the plan.

Those were the couple of things I had for Mr. Porgans.

Was there anything else, Barbara?

MS. LEIDIGH: No.

MR. PORGANS: Let's go back to the demands. Mr.
Howard makes reference to the demand issue and in my particular situation, I have pointed out to the Board and I did submit comments where I said that these demands are over-inflated, and the reason I think is that Mr. Howard is depending to some degree on DWR's data and I don't know if he is depending upon the Bulletin 160 projections. I know that issue had been brought up.

Did you use the 160 projections demand?

MR. HOWARD: No.

MR. PORGANS: What we are suggesting here is that historically the demands that DWR has put out for water demands in the future have always been over-estimated. The Bulletin 160 series shows us that.

So, the estimated 5.9 million to 6.9 million demand as far as we are concerned based upon historical projections, is over-inflated.

I haven't received information contrary to that other than data that has been put out by the Department and the other water project operators.

I don't believe that those demands take into consideration taking land out of production, you know, over the long period of time, land retirement, which was part of that Rainbow Report. I don't know if those issues have been factored in as other issues relating to changes that are occurring in Congress regarding crop subsidies and
reductions and revisions in farm policies.

All of those factors would have to be considered in relationship to what the demand is.

MR. HOWARD: I think it is important to clearly define what demand is; that is, how it is used in an operation study. Demands are requests; that is, the contractors have contracts with the Department and the Bureau. They make certain requests for water and the Department and the Bureau have agreed to try to deliver those requests through contractual agreements.

MR. CAFFREY: Excuse me, Mr. Howard. I do not intend nor do I think the Board members intend for this to be kind of a debate between you and Mr. Porgans. What this is, is an opportunity for the staff to clarify for the Board their reaction to the responses from the parties who are here today, and then, we will give, as we have been, the particular party a very brief time to comment at the end.

MR. PORGANS: I appreciate that.

MR. CAFFREY: The back-and-forth discussion is somewhat problematic because we are not in a hearing. We are trying to get to a point where we decide whether we are going to act.

MR. PORGANS: I appreciate that. Let me suggest that -- let's just take this year, for example, in terms of demands. I am sorry I have to make this point, but it just
goes to show that the demands that they are talking about are questionable.

In December the Department of Water Resources' contractors were asking somewhere in the area of about 3.9 million or 4 million -- I don't have the figure off the top of my head. They turned around in January and changed that figure, dropped it down and now I think the figure, unless somebody can give me the figure, is about 2.5 or 2.6 million.

These figures are so variable and it has so much dependence upon what the climatological conditions are and the ability of the contractors to pay, so I take exception with the way those numbers were used. They are manipulating the numbers.

MR. CAFFREY: Mr. Howard, will you complete your comments on Mr. Porgans.

MR. HOWARD: Again, demands in this instance are not based on some assessment of the actual physical needs of the contractors, they are based on the request of the contractors and they are required to try to provide those contract requests.

To clarify a bit, when this whole process started, the Department was running a demand of 7.1 million acre-feet at the 1991 level of development. It was our opinion, and we worked with federal agencies and the Department, that
that level of demand was probably not appropriate because of our knowledge that the demands changed with respect to the hydrology. The wetter it got, the lower the demand.

Consequently, we worked with George Barnes of the Department of Water Resources, and he looked at historical requests and came up with a sliding scale where the demand actually changes each year based on the hydrology of that year. The wetter it is, the lower the demand. The demand fluctuates from 5.9 to 6.9 million acre-feet and we felt that this was a much more accurate representation of the demand and it's what we used in the report.

We concede that, of course, in any particular year, this was the fourth wettest year in history, there are areas that are not going to be asking for water.

We are not able to model those demands exactly; we recognize that. But this was our best effort at generating a demand that actually reflected the hydrology.

MR. CAFFREY: Does that close your comments on Mr. Porgans' statement?

MR. HOWARD: Yes.

MR. CAFFREY: Mr. Porgans, very briefly.

MR. PORGANS: First of all, the way the system is set up, you can't force 7 million acre-feet of water through it. That was brought out in DWR's own document going back to 1976.
The next issue I want to talk about, and I believe that if we look at the checklist that's contained in the Environmental Report, I believe it is the '66 issues that we checked off, and half of them were yes and maybe in terms of impacts. So, those issues have not been adequately addressed as far as I am concerned.

The last and most important issue I raise, and I don't see where it is addressed, was the reasonable use of water. I question whether, in fact, it is prudent to take water from the counties and area of origin and put it down into the valley where we have known toxic problems with drainage. I question the issue of taking water from the counties and area of origin, which is counterproductive to what the Delta Protection Act says, and using that water to make up for water that both projects have failed to provide to meet standards.

I mean, the projects essentially are saying, we want you counties and areas of origin to meet standards, but historically during drought years especially, they didn't provide the water that they are required to provide to meet standards.

So, those issues as far as I am concerned, Mr. Howard, unless I overlooked them, were not addressed.

Now, the last issue with regard to the striped bass, I almost have to read the text it is so perplexing. This is
MR. CAFFREY: Mr. Porgans, I will give you one more minute because we do understand your points and you have raised them before.

MR. SAWYER: Just to take a moment to put this in context, the purpose of this portion of the proceeding is to allow the staff to respond to the significant environmental issues raised in the previous comments.

The reason we are allowing the previous commenters to speak is to identify issues that we overlooked and forgot to respond to, not to follow up on every comment or to disagree with the staff's analysis, so if you have a comment on something Mr. Howard overlooked, you should respond to that. That is the kind of comment that is appropriate.

MR. PORGANS: Thank you very much for clarifying that.

My comment would be I don't see where this particular report took into account the issues that I raised in relationship to taking water from areas of origin to supply to areas where we have toxic problems.

Now, the last thing, just for a point of clarification on that striped bass, if this is in order, the way I read this, we talked about the two issues, the '84 to '92 period, and we talked about the operation studies.

When you concluded in this report, did you use the
'84 to '92 period to show the impacts, the actual impacts that would occur to stiped bass, and if so, are they lower or higher than the operational studies?

MR. CAFFREY: I believe Mr. Del Piero has a question.

MR. DEL PIERO: Mr. Porgans, you held up a document, a publication of DWR on how much water you can put through the system. What is that document?

MR. PORGANS: The document is Phase 2, Alternative Courses of Action to Provide Delta Protection and Adequate Water Supplies for California.

MR. DEL PIERO: What is the date on that?


MR. DEL PIERO: Is there a reference number so I can go get it?

MR. PORGANS: I can make a copy available to you.

But in summary, it was saying the Delta water conveyance system capacity is inadequate to meet presently contracted SWP and CVP export demands in the year 2000.

MR. DEL PIERO: I would appreciate it if I can get a copy of that.

MR. CAFFREY: Mr. Howard, please proceed.

MR. PORGANS: Thank you, Mr. Chairman.

MR. CAFFREY: Thank you, Mr. Porgans.

MR. HOWARD: Was there something else I was supposed to say about Patrick?
MR. CAFFREY: You are supposed to go to Jeanne Zolezzi now, if you have anything to add about what she said.

MS. ZOLEZZI: Thank you.

MR. DEL PIERO: That was a good recovery, Mr. Chairman, real good.

MR. HOWARD: Well, I guess most of her comments were legal. There was one comment I saw that said that the biological opinion assumes compliance with the principles. It is true the way the biological opinion is written that the projects notify the fishery agency what their presumed operation is, what their intended operation is, and then the biological opinion says, well, based on that operation, will there be jeopardy or will there not be jeopardy, and in this case, the projects told the fishery agency that they were going to operate to the Principles for Agreement; and the fishery agency responded by saying, if you operate to the Principles for Agreement, there is no jeopardy.

Our opinion is that that means that the projects, unless they reinitiate consultation, are required to operate to the Principles for Agreement. Therefore, the plan says that the Bureau intends to provide the flows on the San Joaquin River, which strikes us as an accurate statement.

Also, I guess there is a recommendation that we include a warning in the plan to the extent that the Bureau
implements the San Joaquin River flows, they must do so in compliance with the law and area of origin statutes. I presume that the Bureau is required to operate in compliance with the law.

Such a warning seems redundant to me, but, of course, the Board is welcome to incorporate such a comment into the draft plan.

They believe the Executive Director oversight is inadequate because I presume there's this water -- there is this automatic implementation. Again, the principal issue here is, do we have real-time operation or do we not?

If real-time operation is appropriate, then some sort of facilitator decision making has to be incorporated into the plan, into the water rights decision. That was our intent in drafting the plan as it is presently drafted, and the Board has emphasized where the real-time operation is appropriate.

I think most of the fishery agencies, or all of the fishery agencies and most of the participants believe that some type of real-time operation is necessary and appropriate for protection of fishery resources.

MR. JOHNS: If I could add a comment, also the Operations Group currently has about 60 people that represent a real good cross-section of both environmental and water supply people in the state and people have
concerns about the type of activities that either are going on or are being discussed.

I would encourage them to attend those meetings to make sure their concerns are heard and evaluated carefully.

Also, the way this is currently worded, the Board has up to ten days to respond to a concern here -- of course, they could act more quickly than that, so hopefully, we would be giving them directions to follow the proceedings in the Operations Group, and my guess is we would bring that back to the Executive Director and have him discuss the matter with the Board if appropriate, and the Executive Director could act much more quickly than within ten days since we follow these very closely.

MR. HOWARD: Let's see. The next comments were made by Gary Bobker. Gary provided a number of comments that are duplicative of comments we have already -- I presume the Board has it in front of them -- the comments were duplicative of the comments we responded to in the responses to comments.

However, he did include three additional recommendations that we haven't previously seen.

On page 30, under Source Control, he recommends that the Board include a statement that the Department, through the San Joaquin drainage program, and the Bureau, through the Central Valley Project Improvement Act land retirement
program, should acquire and cease irrigation of lands with high priority drainage problems.

I don't really recall, but I believe there is some legislation to that effect and there doesn't seem to be necessarily any problem with incorporating that statement.

I believe it would be purely a policy direction from the Board whether they should provide any recommendation that the Department and the Bureau should acquire and cease irrigation on lands having drainage problems, and I think that's your discretion.

Staff has no recommendation on the statement.

MR. CAFFREY: I trust somebody is keeping a list of these discretionary items that staff has no recommendation on. We have had about four now.

Please proceed, Mr. Howard.

MR. HOWARD: On page 32, recommend that the following sentences or similar language should be added at the end of the first paragraph in the section:

However, no flows should be released to the river specifically for dilution purposes nor should releases for environmental enhancement purposes be included in the calculation of dilution capacity.

In addition, if agricultural drainage water contains selenium and other bioaccumulative substances which persist in the environment,
upper limits should be placed by the Central Valley Regional Water Quality Control Board on low discharges to the river.

To a great extent, flows in rivers have always been used, the assimilative capacity has been used to provide dilution for pollutants of one kind or another. It is not a beneficial use. However, the reality is that as long as there is assimilative capacity, the Board has in the past allowed discharge of waste to a water body.

This particular statement would seem to say that that would not be appropriate in this instance. It would seem to fly in the face of regular Board practice.

In addition, the statement regarding bioaccumulative substances and that loads should be placed on discharges to the river, the Regional Board does adopt water quality objectives. It has adopted water quality objectives for selenium and other bioaccumulative substances.

I presume their objectives take into account past loading and concentration effects. Consequently, I don't really see the need for this particular recommendation being incorporated into the draft plan.

Unless I am overridden by Walt of Jerry, I would say we recommend not adopting that particular recommendation.

And the last recommendation regards the out-of-valley disposal of salts, and it basically says that we should
remove that recommendation about out-of-valley disposal of salts.

It is true that the San Joaquin Valley drainage program focused on interim implementation measures necessary to protect the San Joaquin River and maintain agricultural activity. However, it seems clear from my perspective that minus an agricultural drain, that we are slowly poisoning the San Joaquin Valley, and that doesn't seem appropriate.

The Board should, in my opinion, maintain the recommendation that is presently in the draft plan, that the Bureau should proceed with out-of-valley disposal of salts. At least they should proceed with a re-evaluation of the out-of-valley disposal of salts and move forward with permits and construction as appropriate.

MR. CAFFREY: All right.

MR. BOBKER: Independent of the issue of our disagreement over the interim level of protection, it was our recommendation today that the Board adopt today some sort of long-range goal or objective for this and future water rights proceedings.

I submit this in the context of the D-1485 recommendations, but as I said, some sort of long-range program.

MR. HOWARD: In our response to comments, we got a recommendation from BCDC making the same comment, and we
responded to them in the response to comments.

My recollection is that our opinion is that the plan as drafted is very similar to the type of recommendation that was in D-1485 that Gary is citing. In D-1485 we said we had an overall goal of mitigating the effect of the projects. However, in D-1485 it also said that the standards that were in that were not adequate to do that and that, in fact, what was needed was a long-term solution.

Now this was in '78 and here we are in '95 and we are saying the same thing. We think that the standards as drafted are reasonable, that we need to have some long-term goals, that those long-term goals should probably be worked out through the long-term process that is being developed through a multi-agency effort, and I don't think it is necessarily appropriate for us to limit it to mitigating project impacts. Perhaps it would be more appropriate to go beyond that.

What we have said in the draft plan at present is that we think the plan provides reasonable protection considering the present configuration and that we recommend a long-term solution be developed, and in our response to comments we said that the ultimate goal should be developed through that process as well.

It's not real clear what that ultimate solution might be and it is not clear what is an achievable goal until that
ultimate solution is put forth, and therefore, we think it should be left to that particular forum at present.

Let's see, Jim Chatigny from Nevada Irrigation District.

MR. DEL PIERO: I have a question in regard to the out-of-valley disposal of salts. I have looked through here. Is there some identified solution that I have somehow missed here as to a disposal site?

The reason I ask the question, it is all well and good but there are some locations that are statutorily prohibited to be considered as disposal areas for that salt.

MR. HOWARD: Yes, Monterey Bay.

MR. DEL PIERO: That's right, Monterey Bay, so I am asking the question whether or not we wish to take into consideration if we are going to have this provision in here, whether we are going to also acknowledge what the current status of the law is.

MR. HOWARD: Well, the only place that I am aware of that it is statutorily prohibited to have a discharge of drainage is Monterey Bay.

What we have recommended in the draft plan is that the Bureau re-evaluate, and we use the term re-evaluate because, in fact, that has been evaluated quite a bit already, the completion of the drain and, of course, the location of the discharge.
There are what appear to be two obvious locations; one being somewhere in the Western Delta, the other being the Pacific Ocean.

I would point out at this point that there is a process ongoing through a group of agencies in the San Francisco Bay system to have an exchange of -- it's a rather convoluted exchange process, where the effluent from a wastewater treatment plant is pumped into the valley to provide for irrigation water after being tertiary treated, that in return they get some of the freshwater supplies that were going to be provided to the agricultural area.

And another thing that has been loaded on is to also use the same right-of-way to bring agricultural drainage and discharges through the City of San Francisco's Pacific outfall four miles off shore. That's certainly another alternative that would be considered in the re-evaluation process.

So, there are several options.

The next set of comments was provided by Jim Chatigny representing DTAC and Nevada Irrigation District.

He asked the Board to be mindful of all reasonable and beneficial uses of all waters, including waters in the area of origin.

I believe that comment was responded to in the response to comments, that, in fact, the Board would
certainly be mindful of all those uses when it makes a decision regarding allocation of responsibility to meet the standards.

He asks us to follow area of origin statutes and I presume the Board will also follow all applicable laws in the water rights proceedings.

And that municipal and industrial uses be given special preference, again, a water rights proceeding issue.

He recommends that this action should be advisory only.

Staff doesn't agree with that recommendation. It does seem as though it is appropriate at this point to adopt a Water Quality Control Plan.

He also went through the options that were available to Nevada Irrigation District to mitigate for any water losses that might occur from NID.

I guess the only thing I can say to all that is it does seem premature to get too concerned about the loss of area of origin prior to a water rights proceeding.

Obviously, one of the options that is available to the Board in deciding responsibility to meet the standards to maintain the status quo is to continue to require the Bureau and the Department to be solely responsible for meeting Delta standards.

And also, with respect to specific mitigation
measures, as we have tried to make clear, it does seem as though we are going to have to get into more detail in mitigation measures in the water rights proceeding if the Board's intent is to try to minimize the adverse effects of many of these standards.

I guess he also disagrees with the last statement regarding overriding considerations. Specifically, with respect to NID's water, he doesn't believe there would be overriding considerations.

However, if the Board does not believe that there aren't overriding considerations under CEQA, then it wouldn't be appropriate to adopt the plan. So that's a decision that will have to be made by the Board.

The last few comments were made by David Anderson and --

MR. CAFFREY: I'm sorry. Bill Baber.

MR. BABER: Mr. Howard, let me comment, if I could, just briefly.

In Jim Chatigny's comments made on behalf of DTAC, he submitted a letter of about four pages earlier this morning. All of you were given copies, I presume.

During a hearing, and I am not sure you have had a chance to review the letter, but from the way these proceedings are going now and looking at the resolution adopting the Water Quality Control Plan, I am presuming it might be your Board's intent to adopt the resolution right
after these comments are completed, and if that's the case, one of the suggestions in DTAC's response, the written response on page 4 in the last paragraph, is that if it is your intention to take some action other than simply deem these hearings advisory and wait until the water rights hearing before you adopt an order, and I presume that is your intention -- Mr. Howard said that just a few moments ago.

MR. CAFFREY: We are only dealing with the Water Quality Plan today.

MR. BABER: Then, is it your intention to adopt the Water Quality Plan today?

MR. CAFFREY: I can't tell whether or not we are going to adopt it today. We are going to consider adopting it today.

MR. BABER: But I see your draft resolution for adoption and so what I would suggest, at the least you have two bullets for adopting the Water Quality Plan, your draft resolution on page 3, and I would add a third, and just for the benefit of Barbara over there, I will recite it and then Alice can take it down.

It would read as follows, and this is suggested by DTAC, and it's also, I think, supported by comments from Ken Robbins, the San Joaquin-Delta Trib group, Jeanne Zolezzi, Stockton East group on the CEQA problem.
Okay. The bullet would read:

That the statute of limitations, upon any challenge of the State Board's adoption of the Bay-Delta Plan, will not commence to run until after adoption of a water rights decision, and that any duty to request a reconsideration of the State Board's decision or any other procedural prerequisite to bringing litigation, will not commence to run until after the water rights decision.

The intent here isn't to say here is another lawyer, we are going to run into litigation. The intent here is to perhaps avoid some litigation if it is your intent to adopt the Water Quality Control Plan in accordance with this draft resolution, and that's the basis of our comment from DTAC.

MR. CAFFREY: Any comments from our attorneys?

MS. LEIDIGH: Yes. First of all, there is no statute of limitations that I am aware of on litigation against the Water Quality Control Plan.

Second, there is a statute of limitation with respect to actions under CEQA and that would have to be filed within, I believe, a 30-day period for this type of document.

I don't know that adopting a resolved point in the resolution would have any effect on that statute operating.
MR. CAFFREY: Your recommendation is to adopt Mr. Baber's suggestion?

MS. LEIDIGH: No.

MR. BABER: May I comment --

MR. CAFFREY: Very briefly, we are not debating.

MR. BABER: I understand that.

You have heard comments from at least two interest groups here today that CEQA is violated by acting and adopting a Water Quality Plan today. That kicks off the statute of limitations. That could kick off a lawsuit within 30 days.

We can avoid all that by simply conveying in your order that you are mooting the statute of limitations until the water rights decision. I mean, it's simple. We avoid litigation.

What's the problem?

MR. CAFFREY: Thank you, sir. We appreciate your points.

Do either counsel wish to comment any further on this matter?

MR. SAWYER: I concur on the recommendation not to adopt an open-ended extension of the statute of limitations. I don't know if we can do it. It certainly is not a good idea to do it.

MR. CAFFREY: Thank you, Mr. Baber, for your offer.
Does that conclude your comments?

MR. HOWARD: I thought it was concluded; however, Barbara tells me there is more to come.

I have some written comments from the Sierra Club.

MR. SAWYER: Mr. Howard, I believe those are from the Sierra Legal Defense Fund on behalf of several parties.

MR. HOWARD: Yes, they are.

There are a couple of technical comments I will respond to and then Barbara will respond to a legal comment.

On No. 2 on their page 2, it says:

The draft plan's narrative water quality project objective for salmon protection appears to be less protective than either the State or Federal anti-degradation policies. These policies require protection of fishery levels extant of '68 and '75 respectively.

We disagree with that, in that the anti-degradation policy requires protection of fishery levels at some historical period.

The reason for that agreement is that the anti-degradation policy requires protection of water quality.

However, there are many factors that affect fisheries, some of them not related to water quality.

For example, there has been a lot of testimony regarding the effect of ocean fishing on salmon populations
and the anti-degradation policy was not intended to regulate ocean fishing or provide for regulation of ocean fishing.

There are a large number of other factors, introduced species and other things which the anti-degradation policy was never meant to cover and, therefore, we don't think that the comment correctly identifies the requirement of the anti-degradation policy.

No. 3 says the draft plan's proposed export limit of 65 percent from July through January could allow freshwater diversions to exceed by a substantial margin the historic export levels during this period. The environmental impact of this potential increase in freshwater diversions has never been studied.

This statement is correct. If they export at the 65 percent inflow level, it will in many cases exceed the level at which exports occurred in the past. This is documented in the Environmental Report. The purpose for the standard is to provide an upper limit of exports.

I think the problem with the comment is that it focuses on one particular standard and doesn't look at all of the standards together.

The purpose of the percent inflow standard was largely to restrict exports in the spring. The net effect of that is to push exports into the fall and then we place an upper cap on that. So, therefore, if you are going to
evaluate the effect of these standards, you have to look at the full package. You can't look at one particular element of the standards and say this renders the standards inadequate.

We believe the full package of protection is reasonable. If the only standard was the 65 percent inflow from July through January, then we would agree, or I would agree that the standards would probably be inappropriate. But in combination, we think the standards are reasonable.

No. 4, the draft plan's management regime for the San Joaquin River does not adequately protect its fish and wildlife beneficial uses. The proposed level of diversion of 100 percent of Vernalis flow does not in and of itself appear to assure adequate fishery transport during the April to May period, and could expose fish to unacceptable levels of entrainment.

A couple of points:

Number one, that the proposed 100 percent standard associated with Vernalis flow is more restrictive than the existing project operations. That is, we expect to have lower levels of export than occurred historically during this period. The purpose is to increase protection. It may not be the end-all of the issue, but it does provide increased protection.

Also, I would say that the proposed level of 100
percent of Vernalis flow, I would agree it does not in and of itself appear to assure adequate fishery transport. We have also included high San Joaquin River flows during the same period for the purpose of insuring adequate transport.

So that, again, this is looking at a single standard and claiming that it is not adequate. I think, again, you have to look at the whole suite of protections in order to determine whether or not something provides adequate protection, and our opinion -- or my opinion is that the package as formulated provides such protection.

Barbara was going to comment on the legal issues raised in the letter.

MS. LEIDIGH: Yes. The comment also pointed out that the commenter just received the last draft of the Environmental Report and that he felt that the Board could not adopt the plan until 45 days after the Board had sent it out. That is incorrect. The 45-day period he is referring to is the 45 days when the draft report was first made available in January and the 45-day period ran to March 10.

We sent out a letter on January 17 that made the Environmental Report available to the parties and satisfied that requirement.

MR. HOWARD: Let's see if I can summarize this.

MR. CAFFREY: Just a minute.
MR. SAWYER: Just a couple of questions. I didn't hear you specifically respond to Kevin Haroff. Did he raise any issues not covered by the response you already gave?

MR. HOWARD: All right, which one was his?

MR. SAWYER: The Joint Water Users.

MR. HOWARD: He and Dave Anderson, the two last, in my opinion, did not raise any issues that needed a response.

MR. SAWYER: Have you seen the written comments from the Delta Tributary Agencies Committee?

MR. HOWARD: I have a copy over there but I haven't read them yet. I just received them.

MR. SAWYER: Are there any other written comments we received too late to respond to?

MR. JOHNS: There is one comment contained in DTAC's written comments that we haven't had a chance to respond to yet. It deals with the idea of the Board considering the beneficial uses in the DTAC member agencies' areas as beneficial uses in the Water Quality Control Plan.

Would you like to respond to that?

MR. HOWARD: To a certain extent, we had a comment of that nature in response to comments that said that the Board is obliged to consider their beneficial uses. Our response, I believe, was that the Board acknowledges the beneficial uses, they are not Delta beneficial uses. We were looking at a description of the beneficial uses of water within the
Delta, legal boundaries of the Bay-Delta, and it would seem inappropriate to start adding up water outside the legal boundaries of the Bay-Delta as beneficial uses for a Water Quality Control Plan dealing only with the Delta.

So, I would not recommend adoption of beneficial uses of upstream waters for a plan that is exclusive to the Delta.

MR. SAWYER: Does that cover all the written comments?

MR. JOHNS: That we are aware of, yes.

MR. CAFFREY: Does that cover it?

MR. HOWARD: Do you want me to summarize this?

MR. CAFFREY: I think not. I think we have a pretty good understanding of the issues. I was thinking perhaps it might be wise now to have some discussion with the Board members.

The matter is now before us and what is the pleasure of the Board in this regard?

Could I have Mr. Del Piero's attention? I know he is busy down there, but I don't want him to miss this.

MR. SAWYER: Would you like the staff to go over the specific changes to the plan?

MR. CAFFREY: I think we may get to that, but let's see what we have got up here on the basis of our own notes.

Mr. Del Piero, I was just telling the other Board
members and the audience that the matter is now before us
going for action on the proposed Bay-Delta Water Quality Control
Plan and I was asking for comments, or what is the pleasure
of the Board.

MR. DEL PIERO: I have three points that I would like
to comment on that were raised by Mr. Howard as issues that
staff had no recommendation to the Board on, but they have
to be resolved as policy issues.

First of all, in regard to -- and I forget who the
commenter was, but the desire to have it expressly stated
that in the event there are two standards, the most
restrictive applies. I think simply from the standpoint of
clarity, Mr. Chairman, it would be appropriate to have that
incorporated in.

MS. LEIDIGH: I recommend that we not take a water
rights action in this water quality --

MR. DEL PIERO: Excuse me. That could be construed
as a water rights action?

MS. LEIDIGH: Oh.

MR. DEL PIERO: I would agree with that also, but
that's not what I am talking about.

Mr. Howard, do you know what I am talking about?

MR. HOWARD: You are talking about from April 15 to
May 15 there are two export restrictions that are
simultaneous in effect. One export restriction says that
exports should not exceed 35 percent of Delta inflow. The other export restriction says that exports shall not exceed 100 percent of the San Joaquin River inflow.

Your recommendation, I take it, is that we clarify one of those or both of those, that the more restrictive of the two applies.

MR. DEL PIERO: And currently the way it is written that is, I think, what the express intent of the staff was. Simply clarifying that language makes life a lot easier in response to that concern.

MR. CAFFREY: Why don't you give us the other two, Mr. Del Piero.

MR. DEL PIERO: There is another one but, frankly, it's slipped my mind. I was trying to sit here and draft language, but let me just reference the second paragraph on page 33.

I would suggest, Mr. Chairman, that after the first sentence --

MR. CAFFREY: This is on page 33 of the plan?

MR. DEL PIERO: Yes. After the first sentence, I would suggest, Mr. Chairman, we add this language:

No alternative for the disposal of drain salts prohibited by State law at the time of the adoption of this plan shall be considered as part of this process.
MR. SAWYER: Mr. Chairman, I am a little concerned with that. There is case law that has required the Bureau under NEPA, under the National Environmental Protection Act, to consider alternatives that would require legislation.

You could get the Bureau in a kind of catch-22. The Federal law requires them as part of the National Environmental Protection Act evaluation process to consider something that they know they would have to seek change in legislation for, and at the same time we are telling them don't consider that.

MR. DEL PIERO: Mr. Chairman, I don't know that there's anything that we do that constrains the U. S. Bureau of Reclamation as to what they can evaluate. So, if they choose to evaluate that and pursue the modification of State law as it is, although the last time I checked, this is a State agency and one of the things we do is not only to uphold the law and the Constitution of the State, but also, the laws of the State.

The current law of the State prohibits discharge into a certain area and I would think the Board members would be very reluctant to be giving direction to anybody to pursue alternatives that are clearly within the prerogative of the Legislature, not this Board.

MR. CAFFREY: Let me ask a question. Is this a superfluous statement inasmuch as that is currently the law?
Mr. Sawyer, what would happen if the law changed at a later date? Are we bound to the current law at the time we adopted the plan?

MR. SAWYER: There are two issues. One is the decision, the implementation, and that, of course, will be bound by the law in effect.

But the language I have heard had to do with, and perhaps I misunderstood, the study of alternatives, and my concern was, I don't think we can or should tie the Bureau's hands to preclude alternatives from being considered, those that may require legislation.

MR. CAFFREY: Thank you.

MR. DEL PIERO: Mr. Sawyer, I simply disagree. I think giving direction to anybody to study an alternative that the State Legislature has determined to be inappropriate and which Governor Deukmejian signed into law strikes me as being an unbelievable waste of time and the public's money.

MR. CAFFREY: Thank you.

Mr. Del Piero, do you have a third?

MR. DEL PIERO: I didn't make a note on it. It is a minor issue.

MR. CAFFREY: All right, thank you.

Anything else from the Board members?

Nothing else. Okay, the matter is now before us.
MR. HOWARD: Can I raise an issue? We also have a recommendation from the Club Fed agencies regarding a change in the --

MR. DEL PIERO: That is it.

MR. HOWARD: -- Delta cross channel date operation from May 21 through June 15 to provide more flexibility in the operation through the Operations Group. Specific language was proposed. I can read that to you again, if you like.

MR. CAFFREY: I think we have read it.

MR. DEL PIERO: So long as it allows for an appeal of the decision of the Operations Group to our Executive Director, I have no problem with it. I looked at the language and it appears to be so, so unless someone tells me differently, I have no objection to having that language incorporated.

MR. CAFFREY: I don't think I had any objection when I saw it.

What is your recommendation, by the way, on that?

MR. HOWARD: Our recommendation is to adopt the language recommended by the Club Fed agencies.

MR. CAFFREY: In other words, to accept the change?

MR. HOWARD: Yes.

MR. CAFFREY: You had something else?

MR. HOWARD: Yes, Mr. Del Piero raised the issue of
clarifying about the two export restrictions. One does not
supersede the other.

I could recommend language in footnote 22 to be
incorporated after the first sentence that would say:

This export restriction does not supersede the
export restriction of 35 percent of Delta
inflow. The more restrictive of these two
objectives applies from April 15 to May 15.

MR. CAFFREY: All right. Do you understand the
language?

MR. HOWARD: There was one more that was raised by
the Bay Institute on which I made no recommendation. I
haven't heard anything from your Executive Director or from
others. The Bay Institute, on page 30, recommends the
following statement be included at the end of the second
paragraph, so in DWR through the San Joaquin Valley drainage
relief program and the USBR through the Central Valley
Project Improvement Act land retirement program should
acquire and cease irrigation of lands with high priority
drainage problems.

If you don't have a copy of it --

MR. CAFFREY: We have a copy.

What is your recommendation?

MR. HOWARD: Well, I guess I don't have one, so
perhaps Mr. Pettit or Mr. Johns has a recommendation you
might want to consider.

MR. PETTIT: Mr. Chairman, I think you are going to be dealing with that issue as a result of the follow-up the Region 5 basin plan amendment that you approved recently and which has also been challenged.

You instructed the Regional Board to look at the drainage issue in more detail and come back to you with specific plans for improving the salinity regime at Vernalis.

I have had some discussion with the Regional Board staff already and I think they are on the verge of giving you a proposal, so I would defer to that process rather than adding the language in this one.

MR. CAFFREY: All right, sir, thank you.

Again, I will state for about the fourth time, the matter is before us. I hope there is nothing else that somebody forgot to tell us about.

What is the pleasure of the Board with regard to the plan?

Mr. Brown.

MR. BROWN: I have heard fully the concerns now several times from the people in the San Joaquin County area and DTAC. Their participation may have been limited in this phase of the plan. I hope that the follow-up phase, the next review of the water rights, that they will have more
involvement and their concerns will be fully addressed.

It was stated earlier by, I think, Mr. Herrgesell, that this plan is not perfect but it is a positive step and I concur in that statement.

MR. CAFFREY: Mr. Stubchaer.

MR. STUBCHAER: I am ready to make a motion, but I don't want to squelch any comments.

I recognize this has been a long and difficult process. Not all the parties are going to be satisfied in a process such as this. I think much progress has been made by many of the parties working together under the framework agreement and the fact that this plan is before us does represent that as much consensus as it has does represent an historic moment.

I recognize there are still issues to be addressed during our water rights hearing, and also, as Mr. Pettit mentioned during the Regional Board's continuing water quality process.

And at the risk of paraphrasing Churchill, I recognize if the Board adopts this plan, it is the end of the Bay-Delta controversy. However, I would like to think that it is the end of the beginning and that we are at the beginning of the process that might lead to a satisfactory long-term protection for the Bay-Delta process.

Therefore, I would like to move adoption of the
resolution which adopts the Bay-Delta plan that is before us with two modifications; that is, the clarification on which standard applies, and also, the change or the addition to footnote 27 proposed by EPA.

MR. CAFFREY: It has been moved by Mr. Stubchaer and I think we are all very familiar with the two accommodations or adjustments he is suggesting.

Is there a second?

MS. LEIDIGH: Point of clarification.

MR. CAFFREY: Yes, Ms. Leidigh.

MS. LEIDIGH: Does that include the errata and addendum that we put on for the environmental document?

MR. STUBCHAER: Yes.

MR. CAFFREY: Yes, it does.

MR. STUBCHAER: It's the resolution I am moving. It's in the resolution or the resolution will be amended to include that.

MR. CAFFREY: We have a motion. Is there a second?

MS. FORSTER: Second.

MR. CAFFREY: Seconded by Ms. Forster.

Is there discussion on it?

MR. DEL PIERO: Mr. Chairman, I would move to amend the motion to add the language I referenced on the second paragraph on page 33.

MR. CAFFREY: All right, relative to Morro Bay?
MR. DEL PIERO: Monterey Bay.

MR. CAFFREY: What is the procedure here?

MR. DEL PIERO: I would be happy, Mr. Chairman, rather than the general language, I would be happy to make it specific to Monterey Bay legislation if that satisfies the other Board members as to what the alternatives are.

MR. CAFFREY: I think you are requesting of Mr. Stubchaer whether or not he is willing to modify his motion; is that correct?

MR. DEL PIERO: I am asking him if he will accept it. If he won't, I will make a formal motion to amend.

MR. STUBCHAER: I would suggest making the amendment and we will vote on the amendment.

MR. DEL PIERO: Okay, I will so move.

MR. CAFFREY: Let me make sure I understand. Mr. Sawyer is our parliamentarian by my anointment right now. Are we suggesting then that we take a vote on whether or not to amend the motion?

MR. SAWYER: An amendment as suggested by Board Member Del Piero and you can --

MR. CAFFREY: All right, let's ask Mr. Del Piero to make a specific or suggest a specific --

MR. DEL PIERO: I will move this amendment. If this is not successful, I intend to offer an additional motion to amend and then that will be the end of this, if neither one
passes.

The first one is the generalized language:

No alternative for disposal of drain salts prohibited by State law at the time of adoption of this plan shall be considered a part of this evaluation process.

MR. CAFFREY: That is the motion. Could you repeat that one more time, Mr. Del Piero?

MR. DEL PIERO: No alternative for disposal of drain salts prohibited by State law at the time of adoption of this plan shall be considered as part of this evaluation process.

MR. CAFFREY: It has been moved that we make an amendment to the motion.

Is there a second? I will second it as a courtesy to Mr. Del Piero.

Is there discussion?

MR. DEL PIERO: There has been a long history of an attempt to insure that the problems of salt contamination of water quality that is generated out of the San Joaquin Valley for a variety of reasons are not passed on to other geographic areas of the state, particularly the coast. There has been bipartisan support to that position for decades.

Not only has there been bipartisan support for that,
Mr. Chairman, but in the mid-1980s the Legislature at that time adopted the statute. It was signed by George Deukmejian and codified to expressly prohibit the disposal of San Joaquin Valley salts in the Monterey Bay area expressly because of recognition of the significant environmental resources in that area.

Furthermore, one of the findings made at the time that then Senator Wilson, now Governor Wilson, chose to support the establishment of the Monterey Bay National Marine Sanctuary, one of the findings made by the Federal Government was the protection of those waters, those environmental resources in the Monterey Bay, allowed for the designation of the Monterey Bay National Marine Sanctuary is because of the attention paid to it by the State Legislature and by the Governor, then Deukmejian.

There is a long history, as I indicated, of both bipartisan support, support by previous governors and current governors, and legislators, both former and current in regard to this issue.

It seems to me that even though we acknowledge that there is a problem in terms of salts in the San Joaquin Valley, that it is beyond the authority or the prudent action of this Board to be giving direction to anybody to pursue the consideration of an alternative that in a state like California where there is rarely consensus among all of
the competing parties, virtually everyone has agreed that is
a bad idea.

MR. CAFFREY: Mr. Sawyer.

MR. SAWYER: I just want to clarify my concern with
this over, I think, a completely different point than Mr.
Del Piero's reasons for raising it.

My concern is solely with the words no consideration
shall be given in the context of the paragraph because the
paragraph directs the Bureau to evaluate certain things, and
although I think we have the authority to direct the Bureau
to evaluate things, I don't think we have the authority to
tell the Bureau not to evaluate things.

If the language were slightly changed, I would have
no legal concern and it would be a policy decision on which
I would make recommendations. Instead of saying no
consideration shall be given, the language says something
like the Board will not approve, then my concern would be
erased.

MR. DEL PIERO: Mr. Chairman, let me offer this
modification then to the language. There is currently the
word shall -- change that to should and that would give the
same direction to the U. S. Bureau of Reclamation as the
initial sentence does.

The first sentence reads: The U. S. Bureau of
Reclamation should re-evaluate -- it is not mandatory, and
that is probably indicative of the fact we cannot give
direction to the Bureau of Reclamation. We can simply make
a suggestion.

If the language in my amendment were changed to have
the same verb as this, it would read:

No alternative disposal of drain salts prohibited by State law at the time of adoption of this plan should be considered as part of this evaluation process.

MR. STUBCHAER: Mr. Chairman, I think I could support that if you would omit the word at the top of the adoption of this plan, why not, in accordance with State law?

MR. DEL PIERO: Well, I have no problem with that except given the way this is incorporated in here, it appears to be an open-ended invitation to go back and attempt to modify the discharge in Monterey Bay. It is a bad idea.

It's been argued long and hard by a variety of folks and I don't think we ought to be providing an opportunity for someone to reopen that door.

MR. STUBCHAER: It just seems to me if the Legislature changes the law, the door is open and we should just work in accordance with the law, and then I can support the amendment with that change.
MR. CAFFREY: Well, as a practical matter, if they change the law subsequent to this decision, we are not going to violate the law. I think Mr. Stubchaer's suggestion is a good one because that doesn't bind us up in some other kind of consideration of what does current law mean when there are further actions of the Legislature in the future.

MR. DEL PIERO: As I said, Mr. Chairman, the concern that I have is that it appears to be an open invitation to revisit the issue of discharging into the Monterey Bay.

MR. CAFFREY: I think it would be easier for me to vote for it, Mr. Del Piero, if you were to accept Mr. Stubchaer's suggestion.

MR. DEL PIERO: I appreciate that, Mr. Chairman. I guess the real concern I have is whether or not that achieves the protection to the Monterey Bay National Marine Sanctuary.

There has been a tremendous amount of cooperation here in trying to resolve the issue with the Delta and the issue with the San Joaquin Valley and water supply. The question is whether or not it's the cheapest alternative. That's my concern.

The way the language is written here, whether or not it constitutes an opening of the door, an open invitation to seek the most economically feasible alternative, which, in fact, is direct piping to the ocean. If you take a look at
MR. CAFFREY: We need to deal with the specifics of the matter. Before I go any further with that, let me see what Mr. Brown has to say.

MR. BROWN: Are you referring specifically to Monterey Bay, period?

MR. DEL PIERO: That is the way the statute reads. The reference is to the Monterey Bay area. It is a specific geographic designation in the statute itself.

MR. BROWN: I don't think you want to go ahead at this point in time with the dynamics in the field, with changes in science, whether it is reverse osmosis or ion exchange, or whatever it is, and place too much of a limitation upon what the Bureau can and should do.

Obviously, suitability is primary not only to the receiving water but to the San Joaquin Valley, or wherever the salt might be disposed, and then the second step is economic feasibility on whatever long-term options, if, indeed, there are any that might meet those two tests has to be evaluated, and I think that would probably be the process that the Bureau of Reclamation will pursue, so I am not sure it is our responsibility to tell them what they can and should not do on that.

They will have to meet that test themselves and the
interested parties would have to be agreeable to it, but if
you are wishing to add something to our plan here that
specifically limits that involvement to the best of our
ability and still within our legal rights to do so on
Monterey Bay, I can support that.

I don't see Monterey Bay being opened up as disposal
of salts, but again, that should be something taken up by
the Bureau of Reclamation, I believe.

MR. DEL PIERO: Mr. Chairman, let me --

MR. CAFFREY: Ms. Forster.

MS. FORSTER: I was trying to understand what Andy
was saying about it could not be in that paragraph. Can a
paragraph be added that State law now protects the Monterey
Bay sanctuary from the discharge of salt from the San
Joaquin Valley, and the Board would then add a sentence
saying the Board would uphold this State law and the Board
would not support any changes in that protection for the
sanctuary.

MR. SAWYER: Certainly.

MS. FORSTER: Would that be easier?

MR. SAWYER: That is another way of saying the State
law currently prohibits discharge of saltwater to Monterey
Bay and it is not the intent of this plan to open up that
alternative to consideration.

MR. DEL PIERO: If either of the Board members are
prepared to accept the language just articulated by Mr. Sawyer, I am prepared to accept that as an amendment. That is merely a statement of what the law is and a statement that the Board doesn't intend one way or the other by this statement --

MR. CAFFREY: I think I have a problem with it because I still don't know how it affects the future.

Go ahead, Mr. Sawyer, and read that language again, or did you take it down?

MR. SAWYER: I did not take it down.

MR. CAFFREY: Alice, would you read the language, please.

(The reporter read the statement as follows: Can a paragraph be added that State law now protects Monterey Bay sanctuary from the discharge of salt from the San Joaquin Valley and the Board would then add a sentence saying the Board would uphold the State law and the Board would not support any changes in the protection of the sanctuary.)

MR. SAWYER: I think my comment reasonably follows that. I can ask Alice to repeat it or paraphrase it.

MR. CAFFREY: Why don't you paraphrase it.

MR. SAWYER: Current State law prohibits the discharge of San Joaquin Valley agricultural drainage water
to the Monterey Bay and it is not the intent of this plan to reopen consideration of that issue.

MR. DEL PIERO: And if the Bureau wishes to re-evaluate that and make a recommendation to this Board, it is not this Board that is making the recommendation.

MR. STUBCHAER: That is different than what was said before.

MR. CAFFREY: Will you accept that language?

MR. DEL PIERO: I am prepared to accept that.

MR. CAFFREY: Mr. Stubchaer.

MR. STUBCHAER: Just a question. If there is a change in State law in the future, would this wording preclude the Bureau from acting on the laws that may be in the future?

MR. SAWYER: No.

MR. CAFFREY: Okay, is that your motion, Mr. Del Piero?

MR. DEL PIERO: Yes. Actually, if Mr. Stubchaer accepts the amendment, I don't need to go through that.

MR. CAFFREY: Would you accept that?

MR. STUBCHAER: With the consent of the second, yes.

MR. CAFFREY: Does the second consent?

MS. FORSTER: Yes.

MR. CAFFREY: The second consents. The matter is now before us with a motion and a second. I think we should
have a roll call and I think, Mr. Sawyer, I am about to
elect you as roll caller unless there is somebody else who
falls to that privilege.

MR. SAWYER: Mr. Del Piero.
MR. DEL PIERO: Aye.

MR. SAWYER: Ms. Forster.
MS. FORSTER: Aye.

MR. SAWYER: Mr. Brown.
MR. BROWN: Aye.

MR. SAWYER: Mr. Stubchaer.
MR. STUBCHAER: Yes.

MR. SAWYER: Mr. Caffrey.
MR. CAFFREY: Aye.

The vote is unanimous. The Bay-Delta Water Quality
Plan is adopted.

Let me also now say that we thank you all for your
participation. It has been a long arduous road and you will
be hearing from the Board in the very near future about what
the schedule is for the summer with regard to taking up the
water rights proceeding for the Bay-Delta.

We hesitate to say this, and don't hold me to it, but
when you look at the amount of time that we need, and that
we need to give you proper and adequate notice, I would say
that we would be back out in the public with our public
proceedings on water rights circa early August.
We will have notices out for you in that regard as soon as we possibly can.

Thank you all very much for your attendance.

(The meeting was adjourned.)
REPORTER'S CERTIFICATE
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This is to certify that I, ALICE BOOK, a Certified Shorthand Reporter, was present during the Board meeting of the STATE WATER RESOURCES CONTROL BOARD, STATE OF CALIFORNIA, held in Sacramento, California, on May 22, 1995;

That as such I recorded in stenographic writing the proceedings held in the matter of: Consider Adoption of Proposed Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary.

That I thereafter caused my said stenographic writing to be transcribed into longhand typewriting and that the preceding 129 pages constitute said transcription;

That the same is a true and correct transcription of my said stenographic writing for the date and subject matter hereinabove described.

Dated: May 29, 1995

Alice Book

ALICE BOOK