

STATE WATER RESOURCES CONTROL BOARD

PUBLIC WORKSHOP

REVIEW FOR THE 1995 WATER QUALITY CONTROL PLAN FOR THE
SAN FRANCISCO BAY/SACRAMENTO-SAN JOAQUIN DELTA ESTUARY

THURSDAY, JANUARY 8, 2004
10:00 A.M.

JOE SERNA CAL/EPA BUILDING
CENTRAL VALLEY AUDITORIUM
SACRAMENTO, CALIFORNIA

REPORTED BY:

ESTHER F. SCHWARTZ
CSR NO. 1564

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APPEARANCES

STATE WATER RESOURCES CONTROL BOARD:

ARTHUR G. BAGGETT, JR., CHAIR
PETER SILVA
RICHARD KATZ
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NANCY SUTLEY

STAFF:

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BARBARA LEIDIGH

AUDIENCE PARTICIPANTS:

TIMOTHY O'LAUGHLIN
DANTE JOHN NOMELLINI
JEANNE ZOLEZZI
JOHN HERRICK
BILL JENNINGS
DAVID GUY
MICHAEL JACKSON
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PERRY HERRGESELL
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ALF BRANDT
JON RUBIN

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SACRAMENTO, CALIFORNIA

THURSDAY, JANUARY 8, 2004, 10:00 A.M.

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CHAIRMAN BAGGETT: Good morning. Welcome to the workshop on the periodic review of 1995 Bay-Delta Water Quality Control Plan. The workshop is being held in accordance with the Notice of Public Workshop dated September 10th, 2003. I'm Art Baggett, Chair of the State Water Resources Control Board. With me today are two of my colleagues: Vice Chair Pete Silva and Board Member Carlton. And I think we will be joined by Nancy Sutley and Richard Katz momentarily. We are assisted today by Barbara Leidigh, senior attorney, and Jim Kassel, and Gita Kapahi, of the Bay-Delta Unit.

This workshop commences a periodic review of the 1995 Bay-Delta Water Quality Control Plan. The purpose of this workshop is to receive comments from agencies and members of the public regarding the current plan and regarding any changes the participants are requesting. The comments of the parties will assist the State Board in identifying elements of the 1995 plan that may need amendment.

If you intend to speak today, fill out a blue card. We have that one down.

A non-exclusive list of workshop issues is in the

1 Notice of Workshop dated December 10th. Summarize the
2 first issue:

3 Should the State Board amend the San Joaquin River
4 flow objectives for fish and wildlife uses in the 1995
5 plan?

6 Second, should the State Board amend the chloride
7 objectives on Table 1 for municipal and industrial uses
8 that apply at the Contra Costa Pumping No. 1 in the 1995
9 plan?

10 Third, should the State Board amend the salinity
11 objectives on Table 3 for fish and wildlife uses that
12 apply to the western Suisun Marsh at Interagency Station
13 Nos. S-97 and S-35?

14 Should the State Board amend the narrative
15 objectives for salmon protective on Table 3 in the 1995
16 plan?

17 And fifth, should the State Board modify the
18 Preliminary Water Quality Compliance and Baseline
19 Monitoring Program provided in Table 4 of the 1995 plan?

20 Today's procedures are described in the Notice of
21 Public Workshop. Additional copies of the notice are
22 available from staff. This is an informal workshop.
23 There will be no sworn testimony or cross-examination, but
24 the Board and staff may ask clarifying questions. I
25 encourage participants to summarize their written comments

1 and their oral presentations to ensure everyone will have
2 an opportunity to speak, and we will limit oral
3 presentations to ten minutes or less. I encourage
4 participants with similar comments to make joint
5 presentations.

6 The Board would like to have as much information as
7 possible from participants regarding any changes they
8 propose in the 1995 plan and the technical basis for those
9 changes. We will accept written comments today and up
10 until February 5th, so hopefully that gives you ample time
11 to provide written comments which I think will definitely
12 be more helpful. If participants provide written
13 comments, we would like to receive five copies of the
14 document. We will have the document scanned and will post
15 them on the Board's website, as has been our practice of
16 late.

17 After receiving all written comments, Board staff
18 will prepare a written report with recommendations for
19 amendments to the plan. The Board will consider this
20 report at a future workshop likely to be late spring, and
21 any proposed amendments will then be a subject of future
22 workshops and hearings. Esther, trusty Court Reporter, is
23 present and will prepare a transcript. To accommodate
24 Esther, will you please use a microphone. And if you
25 would like a copy, you all know to make arrangements with

1 her.

2 I think a couple comments to clarify how we envision
3 this process working. Today we will be a scoping. We
4 will you allow a month to make, as I said, more detail
5 comments and supportive technical information if you feel
6 it is necessary. It will take staff at least a month or
7 so to evaluate those. Then we will come back to a Board
8 workshop hopefully by May. At that point the Board will
9 direct, based on that report and discussion with you all
10 on that report, we will then likely commence a series of
11 specific workshops on the different objectives so we won't
12 meld them into a continuing marathon. What we will
13 probably have depends on what comes out of that report and
14 what comes out of your comments. We could have a number
15 of workshops on a number of constituents or, I guess,
16 possibly none if the recommendation and decision in May is
17 to not go forward with any changes. So I think,
18 hopefully, that provides some clarity of where we are
19 headed in this process.

20 After this workshop you will probably have to come
21 back for a hearing, so we are looking at a significant
22 period of time before this is finally completed, because
23 we realize it is very important, significant work. So
24 optimistically a year would even be pushing it. I think
25 it will be into past a year from now before this process

1 is complete. It's been nine years. Took, what, 13 years
2 last time, 14 years. We are ahead of schedule.

3 With that, we have a number of cards. Any staff
4 want to make comments?

5 Start out with Tim O'Laughlin.

6 MR. O'LAUGHLIN: Morning, Chairman, Board
7 Members. Tim O'Laughlin representing the San Joaquin
8 River Group Authority. Thank you for the opportunity to
9 discuss these important issues with you today as we start
10 the Triennial Review process.

11 As you know, the San Joaquin River Group Authority
12 is an entity that entered into the San Joaquin River
13 Agreement which has, as an important component, the
14 Vernalis Adaptive Management Plan. That plan and that
15 agreement was reached in order to try to avoid a lengthy
16 contested hearing in front of the State Board on the
17 implementation of the 1995 Water Quality Control Plan.
18 Unfortunately, I didn't get notice of the workshop until
19 late. Your staff didn't have my correct address. We've
20 got that rectified. I submitted my comments to you today.
21 There are copies of our comments; I think there are 30 on
22 the back table. We will send an electronic copy to the
23 State Board if they wish to post it.

24 CHAIRMAN BAGGETT: Be helpful.

25 MR. O'LAUGHLIN: To go through the hearing

1 issues rather briefly. I don't think there is any doubt
2 that Issue 1(a) is probably the most important thing from
3 our standpoint that you put in your notice. We worked
4 long and hard through the 1995 Water Quality Control Plan
5 and through the Agreement to arrive at a situation wherein
6 we could fulfill the requirements of the plan.

7 What had happened when we went in front of Judge
8 Candee on the writ of mandates that were filed by various
9 parties was that Judge Candee thought that, in his
10 opinion, that the exact flows had not been met by the
11 Vernalis Adaptive Management Plan. I want to make this
12 clear. We believe that the State Board has, through the
13 adoption of D-1641, implemented in a phased fashion the
14 1995 Water Quality Control Plan. In fact, in his decision
15 Judge Candee acknowledged in regard to the narrative
16 standard that the State Board could phase implementation
17 of the 1995 Water Quality Control Plan.

18 Our argument will be to the Appellate Court
19 that the implementation is being phased, and we also
20 believe that the State Board did assign ultimate
21 responsibility for the implementation of flow objectives
22 to the United States Bureau of Reclamation. That is
23 D-1641, Page 161,2.a.

24 As we move forward in this process, we will provide
25 you technical information that's been provided in our

1 reports from 2000, 2001, and 2003. The Vernalis Adaptive
2 Management Plan, as part of its adoption and as part of
3 D-1641, a technical report has been provided to the State
4 Water Resources Control Board every year. We will provide
5 information from that report wherein we believe at this
6 current time the best process for the State Board would be
7 to adopt the flow standards set forth in the Vernalis
8 Adaptive Management Plan, and we will be providing those
9 to you by February 5th.

10 A couple other notes on the flow objectives in
11 regards to the San Joaquin River and the fish flow
12 objectives. One, we believe Footnote 14 of Table 3 needs
13 to be expanded. It is very interesting to us in trying to
14 put together this study plan and trying to meet the needs
15 of salmon outmigration, that we've limited it to a 30-day
16 period which is April 15th to May 15th. Granted, that may
17 provide protection and/or help to outmigrating salmon
18 smolts, but outmigration of salmon starts as early as
19 January in the San Joaquin River system.

20 What we need to maybe start looking forward to is a
21 more adaptive plan that when fisheries start moving
22 through a system that there is a way that we can help and
23 protect the salmon as they move through the system to make
24 it to the Bay-Delta and out to the ocean. We also believe
25 that the Vernalis flow objectives in the 1995 plan should

1 be amended in regards to the other fish flow objectives
2 that occur outside the pulse flow period.

3 This past year, as you probably remember, we ran
4 into a peculiar problem where the Sacramento River in 2003
5 released flows from Shasta and Folsom. X2 got moved out
6 to Chipps Island, and what happened was that drove the
7 standard where on the San Joaquin River the flows were
8 supposed to be at 2,280 cfs in the February-March time
9 period. Well, the problem last year at that time was the
10 San Joaquin River was basically -- the index was dry at
11 that point in time. In fact, New Melones was low. The
12 Bureau subsequently, as you are aware of, did not meet
13 that standard. They came in for an urgency petition.
14 They rescinded their urgency petition. But the long and
15 short of it was, you had a standard and the standard
16 wasn't met.

17 And what we are concerned about is that given the
18 distinctions between the Sacramento River Basin and the
19 San Joaquin River Basin, it seems very peculiar to us that
20 if the San Joaquin River Basin is in a dry condition or a
21 critical dry condition and the Sacramento River conditions
22 are higher, better, than the San Joaquin which is already
23 short in part is going to be releasing water during those
24 time periods to meet the X2 standard in the Delta. We
25 think that needs to be reviewed and revisited.

1 The last one is on the fish flow objectives. We are
2 concerned that after May 15th that fish flow objectives
3 remain in place on the San Joaquin River Basin at
4 Vernalis. The reason for that is that by May 15th, and we
5 are going to provide technical data on this, most of the
6 salmon have outmigrated from the San Joaquin River Basin.
7 So our question is, if the standard is there to protect
8 outmigrating salmon, and most of the salmon or all of them
9 have already left by May 15th, then why do we have fish
10 flow standards on Vernalis at the San Joaquin River for
11 outmigrating salmon. It seems to us that that water could
12 be better used at other times of the year to benefit
13 outmigrating salmon smolts.

14 Finally, the narrative objectives. There is several
15 workshops on this since the narrative was adopted. It was
16 a contention, a very big contention in the D-1641
17 litigation. We do not believe that the narrative
18 objective needs to be changed. What we do believe needs
19 to be done is that the narrative objective needs to be
20 clarified. We have listed five points upon which we
21 believe the narrative objective needs to be clarified, so
22 that people who are dealing with this, both in the
23 regulatory setting and the implementation setting, have a
24 very firm idea of what is meant by the standard.

25 Right now there is various interpretations by

1 people, given where they sit on the issue, on what that
2 standard means and how it should be implemented. We think
3 production should be defined as set forth in California
4 Fish and Game Section 6911. The doubling objective is a
5 goal rather than an absolute. That is Fish and Game Code
6 Section 6902(a). And the goal is for the entire San
7 Joaquin-Sacramento Bay-Delta Basin. It is not for
8 individual basins, nor is the doubling standard applicable
9 to individual rivers or streams.

10 We believe, finally, that the installation of a
11 permanent operable head of Old River Barrier is a
12 necessary component, especially on the San Joaquin River,
13 for any implementation plan that will double the natural
14 production of anadromous fish, and we think that should be
15 conditioned of any change permit that now takes place in
16 the Delta.

17 We do not believe that you should modify the water
18 quality compliance and baseline monitoring set forth in
19 Table 4.

20 One of our other suggestions is that there should be
21 no EC requirement at Vernalis, electrical conductivity or
22 PPMTDS as it used to be known as, for the November through
23 March time period. This standard was set to protect
24 agricultural beneficial uses. Given cropping patterns and
25 diversions in the Delta during that time period, we

1 believe that releasing high quality water from New Melones
2 Reservoir to meet that requirement is a waste and
3 unreasonable use of water given that there are very little
4 diversions in the Delta and given that that water
5 basically wastes to the ocean.

6 And then the last point, and this is a point that is
7 becoming near and dear to my heart as we've moved away
8 from the 1995 with Water Quality Control Plan and moved
9 into other arenas, the plan, the 1995 plan, as well as the
10 TMDL and basin plan amendments are processes that must
11 become integrated. Currently, as you are aware, the
12 Central Valley Regional Water Quality Control Board is
13 undergoing draft amendments for salt and boron in the San
14 Joaquin River Basin. To tell you quite frankly I am
15 flabbergasted by what they are doing. They seem to be
16 ignoring very direct requirements from the State Water
17 Resources Control Board on salt and boron.

18 And to give you an idea on that, in D-1641 the State
19 Water Resources Control Board says unequivocally that the
20 United States Bureau of Reclamation had caused the salt
21 problem in the San Joaquin River Basin. And then in
22 D-1641 the Board went further and said not only did you
23 cause the problem, but you are going to required to fix
24 that problem. And not only are you going to be required
25 to fix it from New Melones Reservoir, but every CVP

1 facility that you have at your disposal in the San Joaquin
2 River Basin is going to be dedicated to resolving the
3 Vernalis salinity problems as well as the interior South
4 Delta interior standards.

5 The Regional Board has totally ignored that and
6 said, we are going to have a Basin Plan amendment, and
7 since the Bureau's the only one responsible we don't think
8 that that can be implemented so now we are going to spread
9 this amendment where -- and I will tell you how crazy it
10 is, they are going to stop east side high quality drainage
11 in July and August, when it is needed most in the San
12 Joaquin River to help dilute water coming from the west
13 side in order to meet an EC requirement.

14 So what we think needs going forward as part of this
15 Triennial Review process is that there needs to be an
16 integration occurring between this process and the Basin
17 Plan amendment process that is ongoing through the TMDL
18 process.

19 Thank you for your time. If there are any questions
20 from the Board Members or staff, I would be happy to
21 answer them.

22 CHAIRMAN BAGGETT: No questions.

23 MR. O'LAUGHLIN: Thank you very much.

24 CHAIRMAN BAGGETT: Dante John Nomellini.

25 MR. NOMELLINI: Mr. Chairman, Members of the

1 Board. Dante John Nomellini. I am the manager and
2 co-counsel for the Central Delta Water Agency. We will be
3 supplying further detailed comments.

4 One of the areas not listed in the notice that I
5 think is critically important is somewhat close to what
6 Mr. O'Laughlin's talking about, and that is the solution
7 to the San Joaquin salinity problem that is caused by the
8 CVP exports into the valley and particularly the parts of
9 the CVP exports that were conditioned on there being a
10 drain with a terminal point outside the valley. That is
11 the San Luis unit. Previous decisions of the State Water
12 Resources Control Board required two things.

13 One was that the salinity problems on the river be
14 addressed, and they are trying to do that with the TMDL
15 process, which I think is somewhat flawed, but it is a
16 step in that direction. The other is to set a standard
17 upstream of Vernalis, which was part of the direction from
18 State Board. We have supported a standard previously at
19 Hills Ferry, and due to discussions that we've had with
20 the contractors which have not yet succeeded in any
21 particular agreement, we think that it is more practical
22 to focus the standard at the Newman Wasteway, because
23 recirculation water could be put in San Joaquin River via
24 the Newman Wasteway.

25 It is quite obvious to us that the solution to the

1 San Joaquin River salinity problems is going to require
2 dilution. And I think it is important that the Board in
3 the Water Quality Control Plan review, look at setting a
4 standard upstream of Vernalis.

5 What does that do? The Bureau's plan now focuses
6 now only on Vernalis. And you have seen much of our
7 correspondence and you know our unhappiness with the
8 performance of the Bureau with regard to their willingness
9 to address meeting the standards as well as address the
10 drainage problem. If we had a State Board standard set, a
11 water quality standard set upstream of Vernalis, the
12 planning by the Bureau, the environmental documentation
13 goes along with all their various projects, would have to
14 focus on meeting that standard. Right now it only focuses
15 on Vernalis, and what we have, in our view, is a draining
16 into New Melones, a draining of the east side tributary
17 reservoirs in order to play a game that doesn't really
18 achieve meeting the standard, and it is the wrong
19 approach. The approach ought to be to keep that burden on
20 the Bureau and the exports that come from the Delta.

21 Now shifting a little bit to the Vernalis fish
22 flows. It has been our contention that there was never
23 any scientific basis for the flows on the San Joaquin
24 River that were set in the 1995 Water Quality Control
25 Plan. That Water Quality Control Plan arose out of the

1 Delta Accord, which was a series of negotiations that took
2 place. We consider them backroom negotiations. Other
3 people may not. But anyway, out of that Accord came this
4 criteria which are the fish flows at Vernalis.

5 Now when we worry about fish, we really worry about
6 fish making it all the way to the Ship Channel at
7 Stockton. So the Vernalis requirements are really not
8 relevant and not protective unless you have a head of Old
9 River Barrier. And the State Board always felt it could
10 not specify and demand that physical feature be
11 constructed. We have in previous comments, and we will
12 give them to you again, suggested that there be a fish
13 flow requirement at Stockton as well as Vernalis to make
14 sure that the problem of whether or not all the fish get
15 diverted at the pumps is really addressed. So
16 practically, if you can't specify that there has to be a
17 head of Old River Barrier, you ought to set your
18 parameters so they protect the fish. Our thinking on
19 the fish is that a minimum flow is probably more important
20 than this wide range of flows, but if there is biological
21 support -- and we didn't submit biological testimony and I
22 am not sure it is our burden to do that. Those that want
23 the fishery protection should be required to present the
24 evidence to support the fish flows. I don't really know
25 what they should be.

1 The Vernalis Adaptive Management Plan, which is the
2 plan in the San Joaquin River Agreement, doesn't have the
3 same flows as in the 1995 Water Quality Control Plan.
4 That is one of the legal issues, and I won't burden you
5 with all our legal argument, but Mr. O'Laughlin knows what
6 our side of the argument is and he can give you his. The
7 two ought to be the same. If you're going to implement
8 the plan, the numbers that you want to try to implement
9 ought to match. I don't know which set of numbers is the
10 right numbers to protect fish. And I suspect that neither
11 set is the correct set.

12 Now the VAMP experiment and the numbers in it, when
13 we went through the hearings to find out what the basis
14 was, we found that, well, we need more information, and we
15 want to get dots on a chart. We need to have a range of
16 flows that will give us the information. And what is
17 happening, as we understand it, is they're correlating
18 flows in the river with limitations on export pumping in
19 order to try and determine whether or not the export
20 pumping has a significant relationship to survival of
21 fish.

22 Instead of releasing water out of the tributary
23 reservoirs and New Melones to conduct the experiment, we
24 think the experiment ought to be conducted with whatever
25 the resulting flows would be. It may take longer to get

1 the dots on the chart, but we really don't have the extra
2 water in the system to provide those flows for
3 experimental purposes. In our view it is a waste of water
4 to do it because we are short, and there is not enough
5 water available in the system to provide the minimum flows
6 necessary to protect fish, protect salinity in the event
7 we get dry years. We've been pretty lucky. We haven't
8 had a reoccurrence of the cycle. We will urge and have
9 urged in the past that, to the extent that an experiment
10 must be conducted, that we don't add the flows released
11 from storage to conduct the experiment, but rather work
12 with the flows that are available and coordinate the
13 export pumping rate accordingly to get the dots on the
14 chart.

15 Now, our thinking with regard to what fish really
16 need involves in part what we understand to be the
17 dissolved oxygen problem at the Stockton Ship Channel,
18 regardless of who caused the problem. We think the Corps
19 of Engineers built the Ship Channel and maybe they are the
20 ones responsible. But in any event, you have a dissolved
21 oxygen problem.

22 As I understand the facts, even if we clean up all
23 the drainage and we have zero drainage from agriculture
24 and all the rest, we are still going to have a dissolved
25 oxygen problem in the Ship Channel because of the resident

1 time of water with high nutrients in it between the Ship
2 Channel and Turner Cut. It takes a minimum flow in order
3 to reduce that resident time. So minimum flow is
4 necessary to be integrated in there to solve the dissolved
5 oxygen problem, and that goes back to our thinking that we
6 need minimum flows specified at Stockton as well as at
7 Vernalis in order to protect fish, and we ought to be
8 thinking about dissolved oxygen as well.

9 Some of the other problems with regard to year-round
10 criteria to protect agriculture, others will address
11 those. We'll address them in our comments. But our
12 primary issue is with regard to the Vernalis fish flows
13 and how we address the San Joaquin River problem and
14 getting the Bureau to cooperate. They haven't done the
15 recirculation experiment. They haven't produced a plan,
16 and it doesn't look to us like they are going to.

17 Anyway, thank you for your comments, and I would be
18 happy to answer questions at this time. We will give them
19 to you in writing.

20 CHAIRMAN BAGGETT: Thank you.

21 John Herrick, and then Jeanne Zolezzi.

22 MR. HERRICK: Mr. Chairman, Board Members,
23 thank you very much. My name is John Herrick. I am
24 counsel to the South Delta Water Agency, and we appreciate
25 the opportunity to give comments to the Triennial Review.

1 As you know, salinity is one of the major issues
2 facing the South Delta. And that was the focus of most of
3 our comments which we have submitted in writing.

4 The '95 plan recognized the need for preserving
5 agricultural beneficial uses by setting a new salinity
6 standard, as we call it, the agricultural beneficial use
7 objective at Vernalis, Brandt Bridge and two other
8 locations in the South Delta. That plan anticipated that
9 early on the Vernalis and Brandt Bridge standard of .7 EC
10 would be met in what is commonly referred to as the
11 irrigation season, April through September.

12 In practice that is not occurring. And, in fact, in
13 the implementation of the '95 plan, the previous Board put
14 in a new footnote which says that if the barriers, South
15 Delta tidal barriers, are installed then the standards in
16 the South Delta go up to 1.0 during irrigation season.
17 This would provide less protection. The barriers may be
18 helpful in addressing certain issues, but they are not a
19 substitute for the water quality objective that was found
20 to be necessary to protect agricultural beneficial uses.

21 So we think that needs to be corrected. It makes no
22 sense. There is no information that I have seen that
23 would lead the Board to conclude something other than 0.7
24 EC is necessary to protect beneficial uses. So that needs
25 to be corrected, and we hope that that is addressed.

1 It is certainly our opinion that we need the water
2 quality objectives all through the year. Previously it
3 was a 500 TDS standard all year. I'm not really aware of
4 any information the Board relied upon in the '95 plan to
5 say that .7, a little better than 500, is okay one time of
6 the year and 1.0 worse is okay the rest of the year. But
7 be that as it may, it is necessary to protect water
8 quality for ag all year because there is ag all year. It
9 is certainly true that there are fewer diversions in some
10 winter months. And depending on the year type, there may
11 be very few in some times.

12 But the Delta agriculture has relied upon high
13 quality water in winter to flush out the salts that
14 accumulates in the soil. If you take away that good
15 quality water, you are putting them at a disadvantage, and
16 then the standard you have in the summer is insufficient
17 then. But it is true that there is irrigation during the
18 winter, and it depends on what crop and what the winter --
19 what the water year type is. But our guys stop
20 irrigating, you know, and then start again for the next
21 year almost without pause, so we do need that.

22 Our other issues that we are concerned about are
23 water levels. There is no objective for water levels in
24 the '95 plan, and we think that that is a failure on the
25 part of that plan. The water level issue has been tried

1 to be addressed through negotiations with the Bureau and
2 DWR. There are footnotes in the plan and the
3 implementation of the plan that's referred to: If an
4 agreement is worked out, that will help address those.
5 The implementation of the '95 plan, as you know, also had
6 an approval of the joint point of diversion, which
7 required a response plan. A response plan is supposed to
8 address water levels. It hasn't worked.

9 There really isn't an issue to that. I don't know
10 who would argue that it has worked. Water level problem
11 in the South Delta resulting from exports are constant.
12 Every year a new problem arises. Sometimes DWR and the
13 Bureau promptly try to address it. Sometimes it takes a
14 year or two to address it. But the system right now
15 doesn't work. We keep putting a different finger in
16 different holes, and a new hole pops up.

17 So the objectives need to include -- there needs to
18 be a new objective for water levels. We should go through
19 a detailed investigation to see what we need, where we
20 need and when we need it. But we can't rely upon -- you
21 shouldn't rely upon on the parties trying to fight and
22 negotiate what might work because it is not working. I
23 don't have the power to force DWR and the Bureau to do
24 what we want. But you have the power to determine the
25 affect on water levels in the Delta, and you have the

1 power to address that. Because no matter what else
2 happens, siltation, low water flows, high rains, no matter
3 what, the export pumps are lowering the water level.

4 If you remove or cure their lowering, our guys would
5 have no problem. So you can't say other factors are also
6 a cause; those were there before. It is the artificial
7 lowering that is causing the problem, and we think that
8 needs to be addressed.

9 I would agree with Mr. Nomellini on his statement
10 regarding the fishery pulse flows. I would like to note
11 that I think that through the Stanislaus stakeholder
12 process, it's been fairly well-established that it is not
13 a 30-day high pulse flow of water that is needed for
14 fisheries. It is a series pulses that activates the
15 outmigrating smolts. That needs to be looked into. I
16 couldn't begin to give you numbers or the flows, but that
17 needs to be reexamined. Because what protects the fish is
18 the head of Old River Barrier, as long as it doesn't
19 dewater my guys, and decreased pumping. That's what
20 allows the fish to get out. The pulses are what's
21 activating them to start leaving. It is not -- the pulses
22 aren't needed to flush them out of the Delta. They will
23 find their way out. It's the pumps that pulled all the
24 water to them, and the head of Old River Barrier prevents
25 them from going straight. That's what protects them. So

1 protect the fish that way.

2 Use the pulses for what they are needed for, is the
3 activation of the salmon smolts. I don't flow what those
4 levels are. Data has been gathered. I think
5 Mr. O'Laughlin referred to some of that or referenced some
6 of that, too. That should be checked because that is a
7 huge use, we think waste, of freshwater. Large amounts of
8 freshwater being released from storage in the past few
9 years to implement this plan, and I think most of the
10 reservoirs may change with the rainfall. In most of those
11 reservoirs they have what they describe as a hold that
12 hasn't been recovered. That is bad operating principle to
13 gamble on refilling in the future in order to meet the
14 fishery flows.

15 That brings me to our next point, which Mr.
16 Nomellini also touched upon. Their needs to be -- once
17 you set flow standards at one time of year, then you're
18 guaranteeing changes in flows at other times of the year.
19 If we can magically micromanage the system, we can make
20 sure that it is only water that is excess to Delta outflow
21 is used for some of these things. Only that excess water.
22 But that is not the way it works in practice. So what
23 happens is, in order to maintain set flows at one time of
24 the year, flows will change at some other time of the
25 year, whether it is that year or the following year. That

1 causes the problem of what happens when those decreases
2 occur. We don't have a lot of control on that.

3 As you know, there was a problem complying with the
4 refill provision under D-1641. I don't know if that has
5 been resolved. I don't think it has. That is a
6 tremendous issue. How do you make sure that the time of
7 refill doesn't cause other downstream problems? The
8 answer is flow standards all year. You can't have it at
9 one time without another.

10 Now flow standard during the summer does a number of
11 things. It would help you meet the Brandt Bridge salinity
12 standard because you would have to have a better quality
13 at Vernalis through the higher flow so you could meet that
14 standard. It protects fisheries at that time of year
15 which exist, the issue of the -- I am sorry. The issue of
16 the fisheries in summer hasn't been addressed, but it also
17 helps you meet the dissolved oxygen standard. As Mr.
18 Nomellini referenced, the cause of dissolved oxygen
19 problem is the deepening of the deepwater Ship Channel. If
20 you remove virtually all the nutrients upstream, you will
21 still have the dissolved oxygen problem in summer and fall
22 months. That is what the DOTMDL process has determined.
23 So you need a set flow. So you might as well coordinate
24 these things so you can have adequate water for fish,
25 dissolved oxygen water quality.

1 Without going on too far, the last thing I would
2 like to mention is that the '95 plan is the first document
3 that I know of from you that set the no-net loss standard.
4 I think you need to revisit that footnote. I can't
5 imagine the basis in law for having no-net loss as part of
6 a requirement on somebody to mitigate their damage. That
7 should be removed. People should be responsible for
8 curing the problems they have caused, and one group should
9 not be protected at the expense of all others. I think I
10 will leave it at that.

11 We will submit more comments, and I appreciate the
12 opportunity.

13 Thank you very much.

14 CHAIRMAN BAGGETT: Thank you.

15 Jeanne Zolezzi, followed by Mr. Jennings.

16 MS. ZOLEZZI: Good morning. Jeanne Zolezzi
17 representing Stockton East Water District this morning.
18 Most of my issues have already been touched on, so I will
19 be brief.

20 The first item that we would like to see addressed
21 in a revised plan is the correction of the water year
22 classification that Mr. O'Laughlin referred to earlier.
23 Table 3 of the 1995 plan establishes river flow
24 requirements for both the Sacramento River and the San
25 Joaquin River. The water year type determines what those

1 flows are. Wet years, the flows are a certain level and
2 dry years they are another level. But the water year type
3 designated in Footnote 3 is the Sacramento Valley
4 Hydrologic Classification Index unless otherwise
5 indicated. The Bureau of Reclamation has been operating
6 New Melones Reservoir to meet the San Joaquin flow
7 requirements, and they have been meeting those flow
8 requirements based upon the Sacramento water year type
9 index. As Mr. O'Laughlin pointed out, that really makes
10 very little sense in some years where there is a drastic
11 difference in precipitation between the two areas.

12 So we believe the State Board should clarify that
13 the San Joaquin River flow requirements are triggered by
14 the San Joaquin Valley water hydrologic classification.
15 And I think that's a rather easy fix that makes sense.

16 The other issue that is of importance to the
17 Stockton East Water District I think has been touched on
18 by everyone else who spoke this morning, and that is the
19 salinity issue. We believe it is very important that any
20 revised plan establish a monitoring point upstream of
21 Vernalis. There is simply not enough water to dilute the
22 condition of salinity in the San Joaquin River. Despite
23 the direction in Decision 1641, the Bureau of Reclamation
24 continues to use solely New Melones to meet that. While
25 there have been improvements in the drainage discharges to

1 the river, those have been more than offset by new
2 drainage, particularly the wetlands that have been
3 provided with new and greater water supplies by the Bureau
4 of Reclamation pursuant to the Central Valley Project
5 Improvement Act, has drastically increased the winter
6 discharge of water high in salinity. And New Melones not
7 only now releases water in the summertime to meet the ag
8 requirements, we are now releasing tens of thousands of
9 acre-feet of water in February and March to dilute the
10 pollution that is released from the wetlands. And this is
11 a very new occurrence and is having drastic impact on the
12 reservoir. And as you well know, the reservoir doesn't
13 have enough water to meet the other standards that were
14 imposed by the plan.

15 The only monitoring station on the river is at
16 Vernalis, at the very end of the river where it meets the
17 Delta, and that leaves the entire San Joaquin River
18 without water standards. The result is no accountability
19 in the San Joaquin River at all until it meets the Delta,
20 and then there is a wild scramble to meet that standard,
21 New Melones is the only one left to meet it, in some
22 people's view.

23 The Board -- if the Board amended that plan and
24 added a point, which the Regional Board has failed to do,
25 and we don't see anytime in the future when they are going

1 to do that, we would suggest that that point be somewhere
2 near the Newman Wasteway, as Central Delta pointed out
3 earlier this morning, because then recirculation can be
4 used in addition to the other Bureau facilities in order
5 to meet the standards.

6 Stockton East will also submit more detailed
7 comments with evidence that we can show you of the impact
8 of some of these issues over the past implementation that
9 will be able to help staff.

10 Thank you very much.

11 CHAIRMAN BAGGETT: Thank you.

12 Bill Jennings and David Guy. Rebuttal after Bill.

13 MR. JENNINGS: Good morning, Chair Baggett,
14 Board Members. I want to make more observations and
15 musings. Then we will submit formal comments later.

16 In '99 the State Board directed Region 5 to move the
17 Vernalis compliance point upstream and to immediately
18 begin development of an implementation plan. And the
19 Board has been understandably reluctant to do that,
20 recognizing the controversy that that would cause, but
21 it's got to occur.

22 The Vernalis standard needs to be revised, certainly
23 made more stringent. If you're allocating the entire
24 assimilative capacity at the point of compliance at
25 Vernalis, you effectively deprive downstream irrigators

1 the right to use that water. At least to use it and
2 legally discharge it. And there needs to be some
3 assimilative capacity remaining at Vernalis. And
4 certainly I remind the Board that water quality standards
5 apply to an entire water body. A single point of
6 compliance is unreasonable and, in fact, illegal.

7 I think that it is improper to employ salinity as a
8 surrogate for the entire range of constituents. Salinity
9 is a fairly conservative constituent, but it certainly
10 doesn't take into consideration pesticide biocumulative
11 and many other things. With respect to the suggestion I
12 heard of the recirculation by the Newman Wasteway, I would
13 just suggest that if you look at the water quality from
14 the pumps as it goes down the DMC, you'd find that it
15 degrades at each point along. So by the time it gets to
16 Newman it's exceeding -- it is about as bad as some of the
17 water in Newman Wasteway and certainly would require an
18 NPDES permit to then bring that back over to the San
19 Joaquin system.

20 And although I am intrigued with the idea of San
21 Joaquin water coming down the -- or Sacramento water
22 coming in the San Joaquin. I wonder how everybody would
23 deal with winter-run that are then drawn into the system.

24 The bottom line is South Delta can't be fixed until
25 the San Joaquin River is fixed. And the San Joaquin River

1 can't be fixed until increased flows are provided.
2 Quality and quantity after all are just simply two sides
3 of the same coin. It's just become clear in looking at
4 the range of TMDLs that are underway on the river that
5 water quality standards cannot be met simply through
6 source reductions. I mean, farmers are out of the river,
7 they are out of business if we try to implement TMDLs only
8 through load reductions.

9 On DOTMDL we find that the Regional Board assigned a
10 three-legged stool, assigned the responsibility to the
11 diversion of assimilative capacity to load reduction and
12 to the Corps, and the Corps on modification and increased
13 residence time. And the salt TMDL, we are not going to
14 solve that problem until we increase flow. It's --
15 frankly, the Bureau is importing a half-million tons plus
16 into the basin every year. Frankly, I am fascinated at
17 this Rube Goldberg hydrologic structure we've created to
18 where farmers in Kern County are using Sierra snowmelt
19 diverted at Friant, water so pure they have to blent it to
20 get it to even get it into the ground, while the farmers
21 on the San Joaquin River are forced to use DMC water that
22 is high in salt and is polluting the river.

23 It seems that at some point you need to try to
24 unravel that Gordian knot and go back to where farmers
25 that are irrigating -- farmers within the San Joaquin

1 Basin should use San Joaquin water to irrigate, and
2 farmers down, further down in the valley need to use DMC
3 water. It would certainly restore that upper San Joaquin
4 River. It would immediately eliminate a huge salt
5 importation into the basin. It wouldn't increase export
6 pumping levels, and everybody gets an equivalent amount of
7 water. I hate the grand strategies, but that needs to be
8 -- we need to start looking at least along that line. By
9 the same token, I think that high points of diversion
10 around lower reaches is an unreasonable use, unreasonable
11 method of diversion, given the amount of water that we've
12 got. The idea that you divert high and parallel the lower
13 reaches of river is simply -- we can't do that. We need
14 to go to a lowest possible point of diversion where water
15 can meet the multiple instream beneficial uses until it is
16 finally needed to be diverted to consumption.

17 So I think that at some point you need to start
18 re-evaluating San Francisco and East Bay MUD and the Kern
19 peripheral tubes around the Delta. I think at some point
20 you need to deal with that.

21 I note that we are beginning -- I think we can
22 document that we have steelhead on the Tuolumne. I think
23 we are shortly going to be able to document spring-run on
24 the Stan, and I think we are going to have to -- as we go
25 forward, you're going to have to start accommodating that.

1 We strongly support that potential of fish doubling.
2 Obviously, that is an objective that should be retained.
3 I think you need to revisit in the '95 plan Alternative 5,
4 which was proportional sharing. I think it is time that
5 we realize that every person -- every river has to make a
6 fair share contribution to the common pool. I would just
7 -- on behalf of Mokolumne I would say I realize that you
8 concluded that East Bay has made their fair share
9 contribution or at least the FERC settlement satisfied
10 that. I would just suggest that the FERC settlement only
11 satisfied the Comanche reach. That the flows below the
12 Woodbridge reach, flows below Woodbridge Dam of 15 and 20
13 cfs at times will not reach the Delta. That, as U.S. Fish
14 & Wildlife Service testified during the hearing, that that
15 settlement did not -- FERC settlement did not set aside
16 the needs of the Mokolumne River downstream, and I think
17 you need to open up that and go back and look at that
18 evidentiary hearing on the Mokolumne River and ultimately
19 deal with that.

20 Anyway, we will submit comments.

21 Thank you very much.

22 CHAIRMAN BAGGETT: Thank you, Bill.

23 David Guy and Michael Jackson.

24 MR. GUY: Good morning, Chairman Baggett,
25 Members of the Board and staff. Pleasure to be here this

1 morning.

2 First want to thank you for your laying out the
3 process that you did. I think it is a very sound,
4 workable process over the next year and appreciate your
5 efforts to make that clear for everybody so the
6 expectations are well-known.

7 I'm Dave Guy, Northern California Water Association.
8 Our comments largely focus on Issue 4, the narrative
9 salmon objective. We have submitted some written comments
10 today to you. I want to focus just on two important
11 pieces that we believe are helping to implement the water
12 quality plan and particularly the Issue 4.

13 The first, of course, is the Sacramento Valley Water
14 Management Program, which, because of your leadership and
15 a lot of leadership from around folks in this room today,
16 helped resolve some of the Bay-Delta proceedings. And we
17 haven't been in front of your Board in a while to give you
18 a briefing on that. We'd surely welcome the opportunity
19 to do it at any time. Just want to let you know briefly
20 that, as you can imagine, there is a lot of challenges,
21 but that the progress is going very well in implementing
22 that program and, of course in that program is a long-term
23 sustained commitment to help improve salmon and steelhead
24 and other ecosystem objectives.

25 The second piece that is in the written comments is

1 a catalogue of some of the major fishery issues that have
2 been dealt with in the Sacramento Valley, and I think,
3 again, tremendous progress has been made over the last
4 decade in improving the fisheries in the Sacramento
5 Valley. As you can see, a whole lot of effort has been
6 made. Again, a lot of water by the agencies. Many of
7 which are here today. And it's really, I think, starting
8 to pay some dividends. I think the initial trends on most
9 fisheries are quite positive. Again, I think we are going
10 to need some time to tell definitively exactly what is
11 going to happen, but the initial signs are quite good as
12 far as our restoring the anadromous fisheries.

13 With that, on Issue 4, the narrative salmon
14 objective, we believe that no action is warranted at this
15 time. Urge you to keep closely watching it, but we
16 believe there is tremendous effort being made to implement
17 that program, and will continue to be made over the next
18 many years.

19 Thank you again for your process here.

20 CHAIRMAN BAGGETT: Thank you, David.

21 Michael Jackson and Cathy Crothers.

22 MR. JACKSON: Thank you, Mr. Baggett. Michael
23 Jackson on behalf of the California Sportfishing
24 Protection Alliance and the California Water Impact
25 Network.

1 I guess the first thing to say about your notice is
2 that we would ask that you take a very, very broad view of
3 this particular review. We think that after you go
4 through the evidence and take a look at the conditions as
5 they exist in 2004, you will find that many, many things
6 have changed since 1995, and that this does not need
7 simply a few minor amendments, that you basically need to
8 take a look at the whole water quality plan because it has
9 become outdated. Certain assumptions in it have proved to
10 be incorrect. I will by the February deadline send you
11 each of those as we see them.

12 But there is just no way that the existing program
13 is working. And we have a circumstance in which many of
14 the CalFed operations, much of the CalFed science has
15 revealed substantial information that indicates that the
16 Delta is in a sad shape and is declining.

17 I would point first to the ongoing estuary project,
18 which is an interagency project, that has given grades to
19 a number of the constituents of a healthy ecosystem, and I
20 would start with just two. One is the grade for the food
21 chain in the Delta this year was an F. There is a
22 collapse happening at the bottom of the food chain. And
23 it would seem to me that before we begin to start
24 discussing the individual components, that it would be
25 important for your agency to take a look at the existing

1 state of the estuary from the bottom up.

2 The second thing that I would point out to you from
3 the CalFed science review is that they have finally
4 identified the conundrum in the Delta, and it has to do,
5 as we all expected, with the incompatibility of two water
6 quality goals. We started this project to fix the
7 estuary. Right now in the Central Delta the problem in
8 the estuary seems to be that there is not enough carbon in
9 the water. Now clearly, we have looked at the estuary
10 only from the point of view of carbon as a negative
11 constituent in terms of drinking water quality. But if we
12 don't fix the carbon problem in the Delta, we are going to
13 have the continuing collapse of the ecosystem. So it
14 would seem to me that in your environmental review you
15 should start with the subject of carbon and its importance
16 to each and every one of the water quality constituents
17 that you are to examine, and it should be done without a
18 bias at the start. Because it may very well be, and many
19 of us have assumed for a long time that there is a basic
20 incompatibility between fixing the ecosystem of the Delta
21 and protecting drinking water source control in the Delta.

22 In regard to other issues that are important, we
23 would like your environmental review to take a look at the
24 enforcement of the standards you do have. Because in many
25 cases, the standards are not enforced. Each and every

1 time that the Delta pumps exceed the ability of the Delta
2 to accept the withdrawal of the water, the drinking water
3 is given a priority over the Delta itself. And however
4 you decide at the end of this review, you should know --
5 your staff should prepare a full environmental review of
6 whether or not you can actually count on whatever
7 standards you determine being carried out. Because in
8 both water quality, biological opinions for endangered
9 fish, it doesn't happen very often.

10 That being said, we are now looking at a different
11 situation than you were looking at in 1995. There has
12 been a proposal called the Al Napa Proposal which is on
13 the table, foreseeable, expected, and it is going to -- it
14 seems to me that to do an equivalent document with a CEQA
15 document, you're going to have to take a look at this
16 foreseeable activity and see whether the present standards
17 or any new standards you develop can withstand an increase
18 of 250,000 at a minimum and 1,000,000 at a maximum of
19 increased exports.

20 The timing, of course, will have something to do
21 with that. The amount of water that is shifted by such a
22 project from north to south because, make no mistake, that
23 water will come out of either fish flows or storage,
24 already existing storage. All of the biological opinions
25 on the Sacramento River are based upon containing water

1 upstream for emergency use, either in terms of water
2 quality for X2 or for fish flow, so that we don't cook the
3 salmon underneath these artificial blockages that we call
4 storage facility. The salmon can no longer protect
5 themselves by going high in the system to deep pools. We
6 have to supply cold water. And the movement of water from
7 storage out of Trinity, Oroville and Shasta, as foreseen
8 by the Napa Proposal and as foreseen by the history that
9 we have had between 1995 and 2004, indicates that there
10 may not be drought protection for the fish at the bottom
11 of the dams even in the places where we allow them.

12 The San Joaquin River is the major problem, as I
13 believe the State Board correctly determined. And there
14 is no question who is responsible for the damage on the
15 San Joaquin River. Your finding in D-1641 was exactly
16 correct. It is the Bureau of Reclamation and the United
17 States Department of Interior. Both through their water
18 deliveries to the San Luis Unit without a drain and
19 through their refusal to release water from the Friant
20 facility. All of those things would make -- need to be
21 reviewed.

22 Mr. Jennings' suggestion that you take a look at
23 Alternative 5 again in D-1641 is a useful suggestion. It
24 is an alternative that would provide a proportionate flow
25 on the San Joaquin side, so that New Melones would not

1 become a sacrificed area for the farmers who depend on
2 that facility to the need of all of the fisheries of
3 California. That is better than nothing, but doesn't seem
4 fair or equitable.

5 The next that and close to the last thing that I
6 would like to point out --

7 CHAIRMAN BAGGETT: Time's about run.

8 MR. JACKSON: -- is that the story that the
9 fish are recovering seems to me to be wrong and not
10 supported by the evidence. We had the largest fish kill
11 in California this year on Butte Creek, and that was
12 caused by the fact that there wasn't enough flow, that the
13 temperatures were too high. You can remove all of the
14 facilities, little dams you want to remove. You can
15 screen all the diversions you want to move. If there is
16 no water, you are not going to protect the fish. 35,000
17 fish. Bigger than the Klamath fish kill. There was a
18 large fish kill on the American River. You are setting
19 conditions that might protect the fish and the enforcement
20 is falling apart.

21 So we will fill your record with the written
22 material.

23 And thank you very much for the opportunity.

24 CHAIRMAN BAGGETT: Appreciate it.

25 Cathy Crothers, followed by Cliff Shulz.

1 MS. CROTHERS: Good morning. My name is Cathy
2 Crothers, staff counsel at Department of Water Resources.

3 The department presented some written comments to
4 you the other day. I just want to summarize them, a few
5 high points.

6 Hearing today what your schedule is, fits well with
7 what we were hoping to see as some workshops on specific
8 issues and give parties time to consider some recent
9 development that will be happening soon in the Delta area.

10 One of those specifically being our South Delta
11 Improvement Program. DWR is planning to get a Draft
12 Environmental Impact Report/Impact Statement out in the
13 next month. So information from some of these programs --
14 there is others, that Contra Costa is proposing some. New
15 EIRs will be out soon. That information from those
16 programs may be useful in the review of the Water Quality
17 Control Plan and issues that the Board may decide to
18 modify or amend the plan, and it might help narrow some of
19 the issues that would be subject to review.

20 In fact, DWR would like to see that the scope of the
21 review is not too broad. We would like to keep it
22 specific to issues that really are in need of change.
23 Because it does provide the baseline for many of the
24 programs that are being proposed now and getting to a
25 point where we are about to get that public review. It

1 would be nice to have some stability in some of these
2 areas.

3 DWR supports the issues that were presented in the
4 notice. We did, however, believe that the salmon
5 narrative objective may not need review at this time since
6 it had some review not too long ago and things are
7 continued to be looked at in that area. Some of the
8 things we would look to see, look at, that weren't part of
9 the notice -- and we plan to provide more detail. We
10 didn't provide much at this point. But now that we have a
11 February 5th date, we will be providing specifics on some
12 of these areas such as the EI ratio and the way it is
13 worded in the Water Quality Control Plan on how to
14 implement that, revolves around when you use the three-day
15 average versus 14-day average. We will propose some
16 specific language regarding how we would see that be
17 written.

18 Then there is also the X2 standard. We see some
19 opportunity for some flexibility in terms of a process
20 similar to the process used for the EI ratio flexibility,
21 and that is something we would also provide more detail
22 on.

23 We also encourage the Board to make note that in
24 terms of Suisun Marsh there is a SEW Report, Suisun
25 Ecological Workers Report. I think you may have received

1 that already and looked at our reference to the website.
2 There is an upcoming Suisun Marsh Science Conference in
3 March that may have helpful information for this review.

4 So with some of these things we think the process
5 that several workshops in the upcoming years make sense
6 and we support that and hope to be involved in all these
7 issues.

8 CHAIRMAN BAGGETT: Thank you.

9 MS. CROTHERS: Thank you.

10 CHAIRMAN BAGGETT: Clifford Shulz, followed by
11 Dr. Herrgersell.

12 MR. CLIFFORD: Good morning. Cliff Shulz
13 speaking today for the State Water Contractors. You
14 received a letter received by John Coburn yesterday. I
15 assume the Board Members have that, otherwise I do have
16 extra copies.

17 CHAIRMAN BAGGETT: We have copy.

18 MR. SHULZ: I am going to briefly summarize,
19 and maybe because of some of the comments made here
20 earlier expand a little bit on matters that are in our
21 letter. And we will be providing more detailed comments
22 after this hearing.

23 One thing I guess I would want to say as an opening,
24 I've heard a number of statements today which seem to me
25 to confuse the water rights process in D-1641 with the

1 Water Quality Control Plan process. And we have certainly
2 presented our comments in the concept of the Water Quality
3 Control planning process, rather than whether it should be
4 met by Alternative 5 or whatever it was that was
5 considered in the water rights process. So we are looking
6 for what changes are needed in the Water Quality Control
7 Plan to protect and identify beneficial uses. From that
8 standpoint we think the '95 plan still is doing a pretty
9 darn good job. It also has become the basis, as Cathy
10 Crothers just said, of starting to implement solutions
11 pursuant to the CalFed process. And, therefore, it is an
12 important baseline, and we think that decisions to revise
13 the plan should be not taken lightly, only if supported by
14 a demonstrated need should there be a modification.

15 But an awful lot is happening right now in reliance
16 on that plan. The CEQA analysis the Department is doing
17 on the South Delta improvement facilities, the OCAP
18 process, which the Bureau is carrying out for joint
19 operation of the federal and state projects. There is
20 just a -- this proceeding cannot be viewed in isolation
21 from the other things that are going on throughout the
22 state. And one of the things that is going on is that --
23 and certainly groups that I represent are in very
24 significant discussions with some of the people who have
25 presented here earlier today, mainly the Central and South

1 Delta and San Joaquin interests, to try to see if we can
2 solve some of the water quality issues, and we have a
3 tentative agreement that there ought to be a monitoring
4 station for water quality at Newman. And we think we can
5 bring about some of the things that have been discussed
6 today, but we hope to do it in a way that does not involve
7 a regulatory hearing, which could be quite divisive, but
8 instead through negotiations and discussions. And we
9 would want to bring back to you perhaps jointly with these
10 people the result of some of those discussions and
11 negotiations so that you could put that into the context
12 of what you are trying to do here in your review.

13 So we're quite happy with the scheduling you have
14 laid out. In our letter we recommend that you place some
15 of the more technical issues like the monitoring and some
16 issues that aren't involved in these discussions, like
17 Suisun Marsh, perhaps at the beginning of your schedule
18 and give us time to perhaps mutually work out some areas
19 and come back to you with results of those discussions.

20
21 Turning to some of the specific items that were in
22 your workshop notice. There has been a great deal of
23 discussion about the San Joaquin River flow objectives,
24 and there are two elements to that. One is to cure the
25 problem that was pointed out by Judge Candee in his

1 decision on D-1641. In that respect we think that would
2 -- that is probably more a technical issue than it is
3 substantive issue in making a plan and the water rights
4 decision compatible with one another. But on the other
5 hand we are not even sure that that is necessary to do
6 right away because the Appellate Court did stay the effect
7 of that trial court decision. And so right now you are
8 operating in compliance with the current law, and that
9 appeal will take place, and I have to say I tend to agree
10 with what Tim O'Laughlin said previously about the fact
11 that the Board's ability to stage compliance and that is
12 really what happened in 1641 with respect to the plan.

13 The other aspect of this is I heard a discussion
14 which to me went to the substantive agreements that are in
15 the San Joaquin Plan and in the VAMP. And that is an area
16 which we do not believe should be gone into at this part
17 of this proceeding. I think it should be limited to
18 correcting any perceived deficiencies between the plan and
19 the water rights decision.

20 We also don't think that it is necessary to
21 reexamine the narrative objective for salmon protection.
22 We think it is working well. You recently had a pretty
23 extensive hearing on that and found that there was
24 information available to modify it at that time, and I am
25 not aware of anything new that's come up that would

1 indicate that you have to go back into that again.

2 So the State Contractors and other individuals,
3 State Water Project contractors, will be participating in
4 those proceedings throughout, and our job will be to try
5 to, along with what the department said, is make the
6 changes where they are really necessary, but don't make
7 changes -- don't open this up into a complete
8 reexamination of everything that is now on the books and
9 is working fairly well as we try to develop a package for
10 protection of the Delta.

11 CHAIRMAN BAGGETT: Thank you.

12 Dr. Herrgesell, followed by Greg Gartrell.

13 DR. HERRGESELL: Good morning, Chairman
14 Baggett, Members of the Board and staff members. My name
15 is Perry Herrgesell. I am chief of the Central Valley
16 Bay-Delta branch for the California Department of Fish and
17 Game, and this morning I would like to briefly provide an
18 overview of Fish and Game's comments on review of the '95
19 Water Quality Plan. We have provided written copies of
20 those comments, and I think you have those, so I will just
21 merely hit the highlights and then answer any
22 clarification questions if there are any.

23 First of all, just some general thoughts. As it
24 currently stands I think that the plan has been
25 implemented in concert with a lot of other policies and

1 State Board policies and plans, Regional Water Quality
2 Control Board plans and other activities going on in the
3 jurisdiction of other agencies like CalFed, the CVPIA and
4 all of those things. In light of that, we feel that the
5 plan has been providing a good coordinated and
6 comprehensive ecosystem approach to protect the beneficial
7 uses of the estuary. And as such, we don't think that we
8 need to modify either the beneficial uses or any of the
9 objectives provided to protect those uses at this time.

10 But, however, we do recommend that if the Board does
11 elect to consider some modifications of the '95 plan, we
12 think that those objectives ought to be amended, given
13 scientific evaluation and certainly public review. Also,
14 if there are some changes that are elected to be made, we
15 feel that we ought to look at the -- the Board ought to
16 look at the potential consequences of those changes in
17 obtaining the Basin Plan objectives upstream of the
18 watershed. I know the plan itself pretty much
19 concentrates on the Delta and the estuary, but changes
20 there can certainly affect what goes on in the upper parts
21 of Sacramento River specifically. So we do think that if
22 you do contemplate changes down in the estuary that you
23 ought to consider things going on upstream as well.

24 We are also open and support the concept of allowing
25 greater flexibility for Delta water project operations,

1 but only if there is adequate protection maintained for
2 fish and wildlife resources, certainly.

3 A final thought, a final general comment before I
4 talk very quickly about some specifics is, as you are all
5 aware and all of us in this room, during 2004 there is a
6 lot of other planning activities going on that affect the
7 Delta and estuary: the OCAP proposition, the Operation and
8 Criteria Plan for the water project, the biological
9 opinions associated with those things, the Department of
10 Water Resources EIR/EIS for South Delta improvements,
11 reinitiation and consultation of CalFed, the CalFed Record
12 of Decision, the EIRs, the EWA, the ecosystem restoration
13 activities, just a multitude of things going on. Our
14 department is closely involved and intricately involved in
15 all of those activities. We want to assure you that we
16 stand ready to assist the Board in ensuring that there is
17 consistency among your activities and in all of those
18 other things that are going on as well. So we just wanted
19 to make that general thought.

20 Then very quickly a couple specifics about things
21 that were asked about in the public notice with respect to
22 the Vernalis flow objective. This is specifically outside
23 the April 15th to May 15th period. We note that in the
24 last two years at least there was compliance violations.
25 Basically compliance was not attained for those objectives

1 during this time period, and we would suggest that the
2 Board should examine the factors that allowed that to
3 happen and determine how the frequency of those kinds of
4 circumstances could be minimized and probably consider
5 whether there is some need for flexibility in the flow
6 objective that could be appropriate as well in some
7 extreme circumstances. We recognize that and stand ready
8 to work with you for that.

9 Regarding the VAMP itself, we are aware of the
10 Superior Court's case, Anderson, et al., versus the State
11 Board. We know that it has happened and we are aware of
12 that. Again, we are not going to address that
13 specifically today other than we suggest that we will be
14 standing ready to work with you to seek any resolution
15 that might need to come out of that when the time is
16 right.

17 Suisun Marsh, the Board or scoping hearing asked for
18 that. We certainly have been heavily involved in this
19 area over the last years. There are two issues you are
20 interested in in the Suisun Marsh. One is the salinity
21 objectives and second is the brackish tidal marshes of the
22 Suisun Bay narrative. A lot of key events have happened
23 since the '95 plan has been adopted there, and I think all
24 of those things should be considered before any
25 modification of the plan happens.

1 The most significant thing is certainly
2 establishment of the CalFed, and secondly the adoption of
3 the Suisun Marsh Charter. Our department's been deeply
4 involved in these things, and we suggest that the Board
5 delay any significant modifications in the '95 plan till
6 the Suisun Marsh Implementation Plan is completed through
7 this charter process.

8 We have provided a page or two of review and
9 background level of activity if you haven't been that
10 familiar with it. Cathy Crothers mentioned that they have
11 some information on that as well. Our bottom line here is
12 that we just think that a decision on your part regarding
13 these objectives or narrative is premature at this time.

14 Next to the last thought here has to do with the
15 salmon narrative. Again, we note that there is a
16 significant amount of activity going on in the estuary
17 regarding salmon populations, a lot of restoration
18 projects, a lot of programs that have been put in place to
19 benefit salmon. There is recovery planning going on. All
20 these things have been happening since 1995. And as a
21 result of that, we feel that the current narrative
22 objective should not be amended at this time; it should be
23 left as is. Specifically, I know we are aware of a lot of
24 work done by the Fish & Wildlife Service. They are doing
25 some statistical analyses that looks at populations, and

1 that work won't be done for at least a year or more. And
2 I think it is prudent to wait until we get the information
3 in before we consider that change.

4 Finally, a quick comment about increased flexibility
5 in Delta standards. This is certainly something that we
6 are all interested in. More specifically, the X2 standard
7 was developed to provide some variability in western Delta
8 salinity regimes, and it was based on some X2 fish
9 relationships. We suggest that those relationships still
10 seem to be generally valid. And so we would recommend
11 that before any changes to the X2 standard are proposed
12 that the State Board should really take a look at the
13 historical hydrology and determine if there really is a
14 problem with the existing standard that needs to be fixed.
15 We are not sure that is the case, and we again -- should
16 the Board modify its X2 standard -- in fact, we suggest
17 that you not modify it until there is some evidence that
18 there are some bad parts or is not working correctly.

19 That is the quick overview of what we had.

20 Thank you.

21 CHAIRMAN BAGGETT: Thank you.

22 Greg followed by Gary Bobker.

23 MR. GARTRELL: Morning, Chairman Baggett and
24 Members of the Board. I am Gregory Gartrell, Contra Costa
25 Water District Assistant General Manager. We have

1 submitted written comments, and I provided a copy of my
2 oral comments, and we will be submitting more detailed
3 comments later.

4 There are three areas that I would like to
5 specifically address. One is on M&I objectives, and one
6 is on relocation of the M&I standard at Rock Slough and
7 then on just some more general issues.

8 With respect to M&I objectives, the State Water
9 Board has in the past recognized the treatment challenges
10 and public health concerns the source water from the Delta
11 proposes for 22,000,000 Californians that drink it. Those
12 challenges are only growing as upstream development occurs
13 within the Central Valley, and drinking water regulations
14 become more stringent as we learn more about public health
15 impacts.

16 In the face of these challenges the State Board
17 should consider developing municipal and industrial
18 standards that directly protects public health. The
19 existing standards are based on protecting industrial
20 needs, specifically cardboard for the 150 milligrams of
21 chloride standard and aesthetics, the 250 milligrams of
22 chloride standard also known as the gag rule.

23 The State Water Board recognized in the 1995 plan
24 the M&I objectives would have to be reviewed as emerging
25 standards came out. EPA has promulgated new standards and

1 is proposing others, and, furthermore, the increasing
2 burden on the Delta water quality from upstream
3 development is putting the public at greater health risk.

4 As a starting point, the State Water Board should
5 consider a narrative objective, and that is what, I think,
6 we will be proposing. Based on the CalFed Record of
7 Decision of 50 micrograms per liter bromide and 3
8 milligrams per liter total organic carbon or an equivalent
9 level of public health protection using cost-effective
10 combination of alternative source waters, source control
11 treatment technologies. The narrative portion of that is,
12 I think, important to recognize the complexities and
13 interrelationships between source water and treatment and
14 provides for a multi-barrier approach that is important to
15 urban water users in protecting public health, and it also
16 allows the flexibility for meeting of those targets. And
17 for example, in projects that are currently under
18 discussion in the CalFed and Bay-Delta authority area,
19 including intake relocation, Franks Tract restoration and
20 San Joaquin salt low reduction.

21 Such a narrative objective would allow the State
22 Board the opportunity to have an objective that directly
23 addresses public health while being consistent with the
24 rest of its principles and the Bay-Delta principle. We do
25 not believe the compliance location for the existing

1 standards should be considered. It conflicts with state
2 and federal antidegradation policy. It conflicts with
3 federal law, specifically Public Law 99546, which requires
4 the Secretary of the Interior to meet those standards at
5 the intake of the Contra Costa Canal.

6 Presumably you would be in a situation where the
7 Department of Water Resources would be required to meet it
8 at one location and the Central Valley Project to be left
9 holding the bag to meet it at the existing location. But
10 most importantly it avoids the water quality issue at hand
11 rather than addressing it, and that is being addressed
12 directly by the Contra Costa Water District with the
13 assistance of the Bay-Delta Authority through several
14 projects, two that have been funded in the last Bay-Delta
15 Authority meeting to address water quality and drainage
16 projects in the vicinity of our intakes. And a third will
17 be and has been proposed, and we hope will be funded
18 shortly, relating to seepage within the Contra Costa
19 Canal. Those physical improvements should address the
20 issue directly.

21 The other issues, including the proposed changes in
22 X2, we'd like to see the whole package before coming to a
23 judgment on that. We're not quite sure what those are
24 exactly going to mean. We do believe there are
25 opportunities there to improve water quality. For

1 example, some of the flexibility that might be obtained by
2 altering the X2 standard could be used to provide improved
3 water quality in the fall in the Delta.

4 We do support actions and the efforts of the Central
5 Delta Water Agency and South Delta Water Agency to improve
6 water quality in the Central and South Delta, and believe
7 their issues deserve careful consideration. We also
8 support the Bay-Delta Authority's investigation of Delta
9 projects, such as the Franks Tract improvements and the
10 improvement of salt management in the San Joaquin Valley.
11 These are all projects that can be implemented in ways
12 that will improve water quality for all users in the Delta
13 as well as exporters, and these types of projects have the
14 potential to help the State Water Board meet its charge in
15 protecting multiple beneficial uses, at the same time
16 discussions are taking place among in-Delta water users,
17 including CCWD and exporters. And we would suggest that,
18 if the issues are brought forward for discussion on M&I
19 standards and water quality in south and central Delta,
20 the timing of those be located near the end of the hearing
21 so that we have time to complete those discussions.

22 That completes my comments. I'd be happy to respond
23 to any questions.

24 CHAIRMAN BAGGETT: Thank you.

25 Gary, followed by Michael Sexton.

1 MR. BOBKER: Thank you, Mr. Chairman, Members
2 of the Board. I'm Gary Bobker, program Director for the
3 Bay Institute. We did not prepare written comments for
4 this workshop. The fact that there was extremely fine dry
5 powder in the Sierra had nothing to do with that. But
6 we will submit --

7 CHAIRMAN BAGGETT: You have 30 days.

8 MR. BOBKER: -- comments by February 5th. But
9 we do have things to say, as you might imagine.

10 The first is that we think the Board has correctly
11 identified the priority issues that it should examine in
12 the Triennial Review. We agree with commenters like State
13 Water Contractors and DWR that we should narrow the focus,
14 although I was a little amused to hear DWR on the narrowed
15 focus of the X2, seemed like not narrowing the focus.

16 We think you have hit kind of the high items, the
17 ones that are the most potential for further work. And in
18 terms of operational flexibility for the core standards
19 like EI and X2, the fact is that those standards were
20 adopted because they created a minimal level of biological
21 protection at a certain water supply and water user
22 impact. Those impacts are part of providing the public
23 trust resource. What is behind a lot of the interest in
24 new flexibility is to avoid those costs. That is
25 understandable, but it is not appropriate as a basis for

1 revision of those objectives, so we would oppose them. We
2 think, again, you've noticed the right things.

3 Second, it will come as no shock to you that we
4 think one of the highest priorities is to reexamine the
5 salmon protection objective, narrative objective, or I
6 should say examine it. I'm discouraged to hear some other
7 commenters say that they don't think it is time for you to
8 do it. The fact is that you have never really done them.
9 I think that you can't really rely on outside parties for
10 that. I think it is incumbent on the Board at this point
11 to really just look at that objective and say, first of
12 all, before we modify the objective is it being achieved.

13 The Board recognized when it adopted this objective
14 that it was unclear whether the numeric objectives would
15 do that. I think it is pretty clear that the doubling
16 objective is not being met. I brought some copies of the
17 presentation we made to the Board two years ago, which I
18 am not going to go over, but I'll make available to you
19 just to make sure you haven't left it at the old building.

20 I think the main points I want to make, just to
21 remind you of some of the key issues about the salmon
22 protection objective, are that, first of all, since 1995,
23 the improvements in the regulatory requirements, the
24 substantial work that has been done in habitat
25 restorations and the improvements in the natural

1 hydrological cycle have created benefits for salmon. And
2 I don't argue with those who've said that many parties are
3 doing good things to improve conditions for salmon. The
4 Bay Institute has been involved, much more than I ever
5 contemplated doing, in work with Bay-Delta Authority and
6 with many water districts and with the resource agencies
7 on many of those habitat restoration and other activities.
8 But the fact is that while we've seen some improvements
9 for some runs in years in some areas, on the whole salmon
10 stocks are not recovering, and they are far from meeting
11 the doubling goals.

12 I think it is important that the Board examine the
13 status of chinook salmon and do a couple of things, things
14 that are within its authority. It needs to look upstream
15 because there are flow conditions, there are temperature
16 conditions and there are diversion conditions which affect
17 the status of doubling of chinook salmon. And I have
18 heard in discussions with the Board and staff, I've heard
19 the opinion that you have made that that is something the
20 Regional Boards should do. Fine.

21 Then I would suggest that in assessing this you
22 direct the Regional Boards to incorporate the narrative
23 objective into the Basin Plans and to begin proceedings to
24 assess what steps, if any, are necessary to achieve the
25 salmon objective on a stream-by-stream basis. Because one

1 of the most important things is that we need to look at
2 different runs and different geographic locations. The
3 health of the salmon stocks is very dependent on the
4 geographic distribution. We will have success with one
5 stream, that makes it the stream vulnerable, that is the
6 kind of thing we are seeing now. We are seeing habitat
7 restoration being maybe successful in one area, but not
8 throughout the whole valley.

9 So I think that if the Regional Board begins that
10 process, then we can have a thorough site-specific set of
11 criteria which could augment or even ultimately replace
12 the narrative objective with a set of numeric criteria.

13 Downstream in the Delta, again, there is a lot of
14 information, the same information that has been used by
15 the Fish & Wildlife Service and the Anadromous Fish
16 Restoration Plan and by the Bay-Delta Authority and its
17 Ecosystem Restoration Program that changes in flows and
18 exports will be beneficial and necessary to achieve
19 doubling of chinook salmon. That involves export
20 reduction requirements, Delta Cross Channel closure
21 requirements, et cetera.

22 I think that this is something that rather than the
23 Regional Board, obviously, that is something for the State
24 Board to be looking at. So I would say that, as your
25 follow-up from your assessment of the status of the

1 stocks, I would ask you to initiate some consideration of
2 what measures, if any, the Board should adopt in order to
3 achieve the salmon doubling objective within the Delta on
4 the water rights holders within the Delta. And I would
5 not exclude, in addition to the flow exporting diversion
6 conditions that I suggested, I think the potential for
7 salmon doubling restoration fees as well is something that
8 you ought to look at.

9 In my mind the Bay Institute has strong opinions on
10 what those are. Resource agencies have strong opinions on
11 what those are. Water users have strong opinions,
12 somewhat differing from what those are. Fine. Let's have
13 that dialogue. The point is, I think, you need to take
14 the initiative to both initiate the dialogue and also to
15 do your own independent analysis, because I don't think
16 you can't rely on us not necessarily to resolve all of
17 those.

18 The third thing that I will mention is on the San
19 Joaquin issue. Although we were very involved in the
20 preparation of the development of the San Joaquin River
21 Agreement, we did not sign it because of issues over
22 funding, implementation, but not because of any of the
23 requirements of it. We are -- if the Board feels that it
24 is necessary to modify those requirements to be in
25 compliance or to conform to the San Joaquin River

1 Agreement, we would not object as long as you fully
2 include the export side of the equation for San Joaquin
3 River Agreement. We were, as you know, were concerned
4 about the way the export limits were dealt within D-1641.
5 If you revise the objectives, you need to make sure that
6 in order to achieve the equivalent protection finding that
7 you have found, which we agree with, that the export
8 limits are fully enforceable through our Water Quality
9 Control Plan.

10 I think in looking at the Vernalis flow objective we
11 have tended to focus on the April-May period, and it is
12 clear that in adopting the plan and in adopting the San
13 Joaquin River Agreement all of us have perhaps not paid as
14 much attention as we should have to the rest of the year.
15 So my thinking is if you do go through looking at the
16 Vernalis flow objective, it gives us an opportunity to
17 maybe work out some of the needs in the rest of the year
18 because it has been clear that flows have not been
19 sufficient, and there has been damage to both fishery and
20 water quality as result of that. An examination by the
21 Board of ways that we could perhaps increase protection
22 within the overall framework of the San Joaquin River
23 Agreement, I think that might be a useful exercise.

24 With that, I will end my verbal comments. We will
25 give additional written comments by the 5th.

1 CHAIRMAN BAGGETT: Thank you. More powder
2 coming.

3 Michael Sexton.

4 MR. SEXTON: Morning, Mr. Chairman, Members of
5 the Board. My name is Michael Sexton. I represent the
6 Exchange Contractors.

7 One of the speakers earlier indicated to you that
8 their intent was to keep the water quality aspect of this
9 proceeding totally separate from the water right
10 proceeding that he went through in D-1641. Although I
11 guess our common sense tells us that perhaps that ought to
12 be the best way to keep things separated, in practicality
13 we are unable to do that. Because as this Board knows,
14 water rights and water quality are inextricably linked
15 when we are dealing with, especially with agricultural
16 discharges, agricultural water users and the like.

17 One of the Delta parties mentioned the '95 plan,
18 parts of it were negotiated behind closed doors. And the
19 State Water Project speaker indicated that they have been
20 negotiating with some of the Delta interests to establish
21 a monitoring point upstream of Vernalis, which tells me
22 very specifically that we are nothing -- any better than
23 my golden retriever at home who is a very opportunistic
24 little fellow. He will do whatever is necessary to say
25 pet me, do what is in my best interest. We are all, I

1 guess, the same way.

2 Now after listening to the discussions yesterday on
3 the ag waiver and several of the other discussions that
4 have been going on over the last several weeks, the
5 message I would like to leave this Board today is this:
6 You can't let a bunch of golden retrievers to run loose
7 and just do what they want to do in the most opportunistic
8 manner possible. I mean, you guys are the ones that
9 control the water rights. You are the ones that
10 ultimately are going to have to control the water quality
11 aspects. And it seems to me the only way you can do that
12 is by taking a watershed, a very broad approach.

13 Now in the last several weeks we've had hearings on
14 303(d) standards, on the impaired river systems. We've
15 had discussions about the salt and boron TMDL. At the
16 Regional Board we've had discussions about the
17 agricultural waiver. We've had discussions about the fact
18 that the Regional Board is now still trying to get
19 upstream water quality standards established upstream of
20 Vernalis. And when you ask the State Board staff or
21 Regional Board staff is there any coordination going on on
22 these separate aspects, they will tell you, no, there
23 really isn't. And I think that is a shame. Because it
24 appears to us in developing a plan for improving water
25 quality, this Board, particularly, should be guided by

1 very broad policy considerations. Those considerations, I
2 think, can be lumped into three aspects.

3 One is regional economic impacts. One is historic
4 water right protections. And the third one, at least with
5 respect to the Delta, is recognizing the hydro
6 modifications that we have made to the San Joaquin River
7 system dating back to the 1940s. I don't think we can
8 ignore any of that. We can't treat the Delta as it is a
9 pristine river system without recognizing on average a
10 million acre-feet of water has been removed from that
11 system and is being sent to a different location.

12 On the economic front you heard yesterday in
13 connection with the ag discharge waiver one of the
14 speakers for the Exchange Contractors mentioned that they
15 adopted a budget where they were going to impose another
16 \$4 an acre on the growers in their service area in order
17 to deal with the ag waiver issue. There are farmers that
18 you are aware of in the Grasslands Bypass Project in that
19 same service area that are currently paying probably 10 to
20 \$15 an acre for their part in trying to meet the water
21 quality standards imposed by the waste discharge
22 requirements on the Grasslands Bypass Project. We have
23 the NPDES permit -- after the hearing yesterday I
24 delivered an application to the water quality segment of
25 the State Board for an NPDES permit to continue to apply

1 aquatic pesticides. And some of the districts I represent
2 have been doing that. In so doing, they have to go
3 through a CEQA analysis and all manner of other things,
4 and we think that the cost of the monitoring required by
5 that program will be 4 or \$5 an acre-foot.

6 So we keep adding these 4 or \$5 an acre-foot on to
7 the cost of trying to do business in agriculture, and it's
8 getting to be pretty heavy. And it appears to us that
9 there doesn't seem to be any end to it, and most
10 importantly there doesn't seem to be any coordination
11 going on. It seems to us that at least with respect to
12 the water quality, perhaps the salt TMDL in the river,
13 because that is the most pressing issue, we need to
14 develop a regional plan.

15 And the Exchange Contractors, for example, have done
16 that. They have developed this West Side Regional
17 Drainage Plan. You heard Lloyd Carter yesterday go on
18 about the problems on the San Joaquin River going back to
19 the 1980s. Well, we are well aware of those problems.
20 And we've done our best to try to deal with them, but we
21 are unable to do it alone. The Water Board has the
22 ability to condition water rights. You took the first
23 step in D-1641 when you made some specific findings on who
24 or what is responsible for water quality problems in the
25 San Joaquin River. But you gave the Bureau five years to

1 come to you with a plan on what they are going to do.

2 When you look at your salt TMDL proposal, the
3 implementation considers a management agency agreement
4 between the Regional Board and Bureau, but the timing of
5 it is off. It gives them yet more time. And we think
6 that this Board ought to use this process, this Triennial
7 Review process, in order to try to coordinate all these
8 activities and stop the golden retrievers from running
9 around, doing everything they want to do on their own. We
10 have to grab ahold of this thing, and we need to
11 coordinate these activities. And unfortunately, it's
12 easy, it's much easier for the parents to say, "As long as
13 there is peace in the family, we don't have to do
14 anything. We don't have to make the hard choices."

15 Well, there isn't peace in the family, and you got
16 to put an end to this opportunistic and piecemeal to water
17 quality. It's just not working. I urge you to do
18 something about it.

19 Thank you very much.

20 CHAIRMAN BAGGETT: Thank you.

21 Alf Brandt and then we've got if necessary.

22 MR. BRANDT: I guess you're right, Mr.
23 Chairman, if necessary. Particularly on our part it seems
24 to require us to get up here to say something.
25 Mr. Chairman, my name is Alf Brandt.

1 CHAIRMAN BAGGETT: That is all we want.

2 MR. BRANDT: I'm sorry?

3 CHAIRMAN BAGGETT: Just provide water; that is
4 all.

5 MR. BRANDT: I guess we have all the answers
6 here. My name is Alf Brandt. I represent the Department
7 of the Interior, which includes both the Bureau of
8 Reclamation and the Fish & Wildlife Service, as well as
9 other agencies that may be helpful in this Triennial
10 Review.

11 And I guess I should start with nine years have
12 passed. So much has happened, so much has changed. We've
13 gained so much experience in operating to these standards.
14 And when I say "we," we've grown, all of us here. All of
15 us who are active in the Delta or participating in the
16 Delta regardless of what side you are, we have grown
17 together. Many of us are working together more than we
18 were nine or ten years ago, and that shows some progress.
19 But I think at this point after nine years it makes sense
20 to do a Triennial Review. It is -- of the five issues
21 you've identified, I will agree with others who have said
22 this as well, are the places where much has changed, where
23 there is new information and where concerns have been
24 raised.

25 We don't have any particular positions on those

1 issues at this point because we think that the necessary
2 thing to do is to go through a Triennial Review and draw
3 out the testimony and draw out the science and all the
4 things that have gone on and all the experience that has
5 gone on in detail over the last nine years to really
6 develop a position. We have identified in our written
7 comments, which I put copies in the back, some other
8 issues: X2, Rio Vista standards that we might want to take
9 a look at and perhaps a little bit of clarification on the
10 export-import ratio.

11 Really, and I want to say, I think I probably
12 disagree with the last speakers, that I think the focus
13 needs to be on the standards, not on the implementation.
14 The science that we have is about -- may include some of
15 the implementation and what our experience has been in
16 implementing those standards. And flexibility may help in
17 setting those standards. But the focus is on the standard
18 of how they apply, not on how they are going to get
19 implemented. You've heard a lot on that today. You have
20 heard a lot on salinity, for instance, and how the Bureau
21 of Reclamation is or is not implementing the salinity
22 standard.

23 Let me just note. We've had nine years of
24 compliance with the salinity standards at Vernalis. Yeah,
25 there may be issues about how we've done that or things

1 along those lines. We've had nine years of compliance.
2 It's an example of something that works. So we stand
3 ready to provide whatever testimony, whatever science,
4 whatever information you need about our experience because
5 we have been probably one of the major people involved in
6 addressing these issues and meeting these standards,
7 complying with these standards.

8 We will provide whatever is necessary. We will
9 provide the perspective that you need based on that
10 experience of nine years. And it may make sense to hold
11 another workshop as DWR and some others have proposed, to
12 do some more scoping, to allow the progress on some of
13 these projects that are going on right now. But
14 ultimately nine years have passed, too much has happened.
15 It is time to get started on taking a look at some of that
16 experience and see what that means for implementing the
17 standards and are they providing and supplying the
18 necessary quality for the beneficial uses in the Delta.

19 CHAIRMAN BAGGETT: Thank you.

20 Jason Miller, if necessary. And Jon Rubin, if
21 necessary. And that's all the cards I have.

22 MR. RUBIN: Morning, Chairman Baggett and
23 Members of the Board. My name is Jon Rubin. I represent
24 the San Luis and Delta-Mendota Water Authority.

25 The San Luis and Delta-Mendota Water Authority

1 submitted written comments on January 2nd. I presume that
2 the Board has copies of that letter and I did provide
3 copies in the back of the room. I'm going to be fairly
4 brief here. The Authority does support the process
5 Chairman Baggett outlined at the beginning, and it is
6 consistent with the recommendations that the Authority
7 made in its comment letter. The Authority also supports
8 the oral comments made by the State Water Contractors
9 today. Just want to highlight the three areas that the
10 Authority identified that it believes warrants further
11 consideration for amendments.

12 Those are the Contra Costa Pumping Plant objective,
13 the objective for the San Joaquin River, the export inflow
14 objective and the objective that applies to Delta Cross
15 Channel operations. The Authority will likely submit
16 additional comments before the February deadline.
17 With that, I have no further oral comments.

18 CHAIRMAN BAGGETT: That would be helpful.
19 Thank you.

20 That is all the cards. So February 5th, look
21 forward to some substantive comments from many of you. I
22 am sure we won't be disappointed. And like I stated at
23 the beginning at the outset, we will be back before this
24 Board in workshops to discuss the staff's report to the
25 Board on what issues, if any, and what order we should

1 take those up. So we will have plenty of opportunity to
2 discuss it further. We will break it down to smaller
3 pieces, and I think it is important that all of that is in
4 evidence. This is important. We realize the importance
5 of this.

6 Thank you very much, and have a good day.

7 (Workshop concluded at 11:50 a.m.)

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1 REPORTER'S CERTIFICATE

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4 STATE OF CALIFORNIA)
5 COUNTY OF SACRAMENTO) ss.

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7

8 I, ESTHER F. SCHWARTZ, certify that I was the
9 official Court Reporter for the proceedings named herein,
10 and that as such reporter, I reported in verbatim
11 shorthand writing those proceedings;

12 That I thereafter caused my shorthand writing to be
13 reduced to printed format, and the pages numbered 3
14 through 73 herein constitute a complete, true and correct
15 record of the proceedings.

16

17 IN WITNESS WHEREOF, I have subscribed this
18 certificate at Sacramento, California, on this 16th day of
19 January, 2004.

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ESTHER F. SCHWARTZ
CSR NO. 1564