

PUBLIC HEARING  
STATE OF CALIFORNIA  
WATER RESOURCES CONTROL BOARD

In the Matter of: )  
 )  
THE PROPOSED REVOCATION OF PERMITS )  
16209,16210,16211 AND 16212 FOR THE )  
AUBURN DAM PROJECT. )  
\_\_\_\_\_ )

JOE SERNA JR./CALEPA HEADQUARTERS BUILDING  
1001 I STREET  
COASTAL HEARING ROOM  
SACRAMENTO, CALIFORNIA

MONDAY, JULY 21, 2008

9:00 A.M.

JAMES F. PETERS, CSR, RPR  
CERTIFIED SHORTHAND REPORTER  
LICENSE NUMBER 10063

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Mr. Tom Cumpston, El Dorado Irrigation District

Senator Tom McClintock, California State Senate

Mr. Ken Payne, Sacramento County Taxpayers' League

Ms. Theresa L. Simsiman

Mr. Kent Smith, California Department of Fish & Game

Ms. Alexandra Snyder, Congressman Dan Lungren's Office

Mr. Edward Tiedemann, Placer County Water Agency

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1 PROCEEDINGS

2 VICE CHAIRPERSON WOLFF: Good morning.

3 Show time. Who said that?

4 This is the time and place for the hearing  
5 regarding the proposed revocation of Auburn Dam Project  
6 permits 16209, 16210, 16211, and 16212, applications  
7 18721, 18723, 21636, and 21637 of the United States Bureau  
8 of Reclamation.

9 I am Gary Wolff, Vice Chairman of the State Water  
10 Resources Control Board. I will be assisted by Dana  
11 Heinrich, Senior Staff Counsel, and staff engineers Jean  
12 McCue and Ernie Mona.

13 Before we get started, a few words about the  
14 evacuation procedure. Please look around you and identify  
15 the two exits closest to you. In some cases an exit may  
16 be behind you.

17 In the event of a fire alarm we are required to  
18 evacuate this room immediately. Please take your  
19 valuables with you. And do not use the elevators. While  
20 staff will endeavor to assist you to the nearest exit, you  
21 should also know you can find an exit door by following  
22 the ceiling-mounted EXIT signs. Evacuees will exit down  
23 the stairways and possibly to a relocation site across the  
24 street.

25 If you cannot use stairs, you will be directed to



1 a protective vestibule inside a stairwell. I think I saw  
2 that in the movie Independence Day.

3 (Laughter.)

4 VICE CHAIRPERSON WOLFF: So we have to relocate  
5 out of the building. And please obey all traffic signals  
6 and exercise caution crossing the street.

7 This hearing is being held in accordance with the  
8 Notice of Public Hearing and Prehearing Conference dated  
9 April 28, 2008, and my letter to the service list dated  
10 June 9, 2008. The purpose of this hearing is to afford  
11 the Division of Water Rights prosecution team, the  
12 permittee, and interested parties an opportunity to  
13 present relevant oral testimony and other evidence which  
14 address the following key issue:

15 Should the water right permits for the Auburn Dam  
16 Project be revoked in accordance with Water Code Section  
17 1410? Did Reclamation prosecute with due diligence and  
18 complete construction of the Auburn Dam Project and apply  
19 the water to beneficial use as contemplated by the permits  
20 and in accordance with the Water Code and the rules and  
21 regulations of the State Water Board?

22 We are broadcasting this hearing on the Internet  
23 and recording by both audio and video. A court reporter  
24 is also present to prepare a transcript of the proceeding.  
25 Anyone who would like a copy of the transcript must make

1 separate arrangements with the court reporter.

2           To assist the court reporter, please provide him  
3 with your business card, and make sure that you speak into  
4 the microphone when you speak.

5           Before we begin the evidentiary portion of the  
6 hearing, we will hear from any speakers who wish to make a  
7 non-evidentiary policy statement. If you wish to make a  
8 policy statement, please fill out a blue card and hand it  
9 to the staff if you have not done so already.

10           The Board will also accept written policy  
11 statements. If you have written copies of your policy  
12 statement, please give them to the staff.

13           A policy statement is a non-evidentiary  
14 statement. It is subject to the limitations identified in  
15 the hearing notice. Persons making policy statements must  
16 not attempt to use their statements to present factual  
17 evidence, either orally or by introduction of written  
18 exhibits. Policy statements should be limited to five  
19 minutes or less.

20           After hearing any policy statements we will move  
21 to the evidentiary portion of the hearing for presentation  
22 of evidence and related cross-examination by parties who  
23 have submitted notices of intent to appear.

24           The parties will present their cases in chief and  
25 conduct cross-examination in the following order:

1           The Division of Water Rights prosecution team.

2 We have David Rose present.

3           The U.S. Bureau of Reclamation, Mr. James Turner.

4           MR. TURNER: I'm present.

5           VICE CHAIRPERSON WOLFF: California Sportfishing

6 Protection Alliance, Michael Jackson.

7           Is Mr. Jackson present?

8           MR. JENNINGS: He is present.

9           VICE CHAIRPERSON WOLFF: The County of San  
10 Joaquin and the San Joaquin County Flood Control and Water  
11 Conservation District, Mr. Thomas J. Sheppard, Sr.

12          MS. GILLICK: How about DeeAnne Gillick.

13          VICE CHAIRPERSON WOLFF: I'm sorry?

14          MS. GILLICK: DeeAnne Gillick.

15          VICE CHAIRPERSON WOLFF: How about DeeAnne

16 Gillick.

17          We still have the wrong name here, don't we?

18          MS. GILLICK: Tom and I are both submitted as  
19 attorneys.

20          VICE CHAIRPERSON WOLFF: I see. Thank you.

21          We're also going to have the South Delta Water  
22 Agency, who is listed on the list somewhat further down.  
23 But since you're sharing witnesses with the County of San  
24 Joaquin, I was hoping you could double up your cases, do  
25 them in order, and then have your panel of witnesses all

1 at the same time.

2 Is that acceptable, Mr. Herrick?

3 MR. HERRICK: Yes, it's just the county's  
4 witnesses.

5 MS. GILLICK: That's how we submitted our  
6 testimony.

7 VICE CHAIRPERSON WOLFF: Great.

8 Stockton East Water District, Ms. Karna  
9 Harrigfeld.

10 There she is.

11 VICE CHAIRPERSON WOLFF: Friends of the River,  
12 Save the American River Association, and Defenders of  
13 Wildlife, Ronald Stork.

14 Sacramento County and Sacramento County Water  
15 Agency, Sandra K. Dunn.

16 Auburn Dam Council, Michael R. Schaefer.

17 South Delta Water Agency is here.

18 And then the next four participants will be  
19 called for cross-examination/rebuttal only:

20 The San Luis & Delta-Mendota Water Authority and  
21 the Westlands Water District, both represented by Jon  
22 Rubin.

23 MS. KINCAID: I'm Valerie Kincaid for Jon Rubin.

24 VICE CHAIRPERSON WOLFF: I see. Thank you.

25 Friend's of the North Fork, Michael Garabedian.

1 MR. GARABEDIAN: Here.

2 VICE CHAIRPERSON WOLFF: And American River  
3 Authority, Christopher D. Williams.

4 At the beginning of each case in chief the party  
5 may make an opening statement briefly summarizing the  
6 party's position and what the party's evidence is intended  
7 to establish. After any opening statement we will hear  
8 testimony from the parties witnesses. Before testifying  
9 witnesses should identify their written testimony as their  
10 own and affirm that it is true and correct. Witnesses  
11 should summarize the key points in their written testimony  
12 and should not read their written testimony into the  
13 record.

14 Because of the number of parties involved, I've  
15 limited the direct statements of the witnesses to five  
16 minutes. I'm aware the testimony would take much longer  
17 than five minutes to present in full. So give us the high  
18 points, please.

19 Direct testimony will be followed by  
20 cross-examination by the other parties, Board staff and  
21 myself. Redirect testimony and recross examination,  
22 limited to the scope of the redirect testimony, may be  
23 permitted. After all the cases in chief are completed the  
24 parties may present rebuttal evidence.

25 Parties are encouraged to be efficient at

1 presenting their cases and their cross-examination.  
2 Except where I'll approve a variation, we will follow the  
3 procedures set forth in the Board's regulations, the  
4 hearing notice, and my letter to the service list dated  
5 June 9, 2008.

6           The parties' presentations are subject to the  
7 following time limits:

8           Opening statements are limited to 20 minutes each  
9 for the prosecution team and the U.S. Bureau of  
10 Reclamation.

11           Opening statements for all other parties who are  
12 presenting a case in chief are limited to 10 minutes each.

13           For oral presentations of direct testimony, the  
14 prosecution team will be allowed 20 minutes and  
15 Reclamation will be allowed 15 minutes, as they requested.

16           Oral presentations of the direct testimony of all  
17 other parties will be limited to a maximum of 5 minutes  
18 per witness.

19           Cross-examination will be limited to 30 minutes  
20 per witness or panel of witnesses for the prosecution team  
21 and the U.S. Bureau of Reclamation, and 10 minutes for all  
22 other participants. Additional time may be allowed upon a  
23 showing of good cause.

24           Oral closing arguments will not be permitted. An  
25 opportunity will be provided for submission of written

1 closing briefs. And I will set the briefing schedule at  
2 the close of the hearing, presumably tomorrow.

3 Before we begin, are there any procedural issues  
4 that need to be addressed?

5 Mr. Jackson.

6 MR. JACKSON: Yes, Mr. Wolff.

7 VICE CHAIRPERSON WOLFF: I'm sorry. We need you  
8 to speak to a mic. And identify yourself please.

9 MR. JACKSON: My name is Michael Jackson. I'm  
10 here to represent the California Sportfishing Protection  
11 Alliance.

12 My question is that with the stipulation of facts  
13 that was filed by the two main parties in this case, it  
14 seems clear from that stipulation that there's only one  
15 question remaining under 1410, and that's whether or not  
16 you're going to exercise your discretion. Am I correct  
17 that the stipulation takes care of proving that there is  
18 cause to revoke?

19 VICE CHAIRPERSON WOLFF: I would say not. Does  
20 the prosecution defense believe that the stipulation takes  
21 care of that question?

22 I see heads being shaken.

23 No. So the stipulation does not take care of  
24 that question. We will be trying that question.

25 MR. JACKSON: So cross-examination will be

1 allowed on those issues?

2 VICE CHAIRPERSON WOLFF: Yes, on diligence.

3 MR. JACKSON: Thank you.

4 VICE CHAIRPERSON WOLFF: Before we begin with the  
5 evidentiary portion of the hearing we will hear policy  
6 statements from participants who submitted a Notice of  
7 Intent to Appear indicating that they intend to present  
8 only a policy statement and from those who stated at the  
9 prehearing conference that they intend to present a policy  
10 statement.

11 When I call each name, please come up to the  
12 microphone and state your name and the party you represent  
13 and proceed with your policy statement.

14 I'm going to take statements from two elected  
15 officials or their representatives who asked to speak. If  
16 there are other elected officials present or their  
17 representatives, please let me know and I'll let you go at  
18 the beginning of the series of statements.

19 First, Senator Tom McClintock I believe is here.

20 Welcome.

21 SENATOR McCLINTOCK: Thank you very much, Mr.

22 Chairman.

23 Your Board meets today to consider revoking  
24 permits that are necessary for proceeding with the  
25 construction of the Auburn Dam. I'm sure there's going to



1 be a lot of detailed legal discussion on both sides  
2 involving exactly what constitutes due diligence in  
3 overcoming the endless legal obstacles that have delayed  
4 this project since it was first authorized by the Congress  
5 in 1965.

6           But all of the legal arguments on both sides  
7 won't alter what we all know. This dam has been stalled  
8 for nearly 40 years by inexhaustible waves of litigation,  
9 political wrangling, and changing regulations. It's not a  
10 lack of diligence that prevents completion of the Auburn  
11 Dam. It is rather a super-abundance of delay and dilatory  
12 tactics that your Board can either cut through or add to.

13           And here's the fine point of it: The practical  
14 effect of your decision will be to maintain the option of  
15 the Auburn Dam or to further delay and complicate its  
16 ultimate completion.

17           When history looks back on these proceedings, and  
18 it will, that's going to be the sum total of this  
19 judgment. Not fine legal points, not technical  
20 interpretations of regulations, but the simple question:  
21 Did the state act in the best interests of its posterity.  
22 We should already have a very clear answer to that  
23 question.

24           The Auburn Dam means 2.3 million acre-feet of  
25 water storage at a time when Californians are already

1 facing the prospect of growing droughts. The Auburn Dam  
2 means 600 to 800 megawatts of clean and cheap electricity,  
3 enough for nearly a million households, at time when  
4 Californians are already paying the highest electricity  
5 prices in the country.

6           The Auburn Dam means 200-year flood protection in  
7 a region whose levees are in perilous condition.

8           A generation from now, all that will truly matter  
9 is whether your actions aided or delayed the delivery of  
10 this absolutely vital project, in a period when the  
11 necessity for it was already becoming stunningly obvious.

12           In a very real sense your decision will either  
13 affirm or disprove the Governor's commitment to deliver  
14 vitally needed water, energy, and flood control projects  
15 for this state.

16           There's an old legal expression, "Hard cases make  
17 bad law," meaning that one can get lost in a thicket legal  
18 minutia and end up reaching a ludicrous or unjust  
19 decision.

20           A generation from now the residents of this  
21 valley will live in a society with abundant water, clean  
22 energy, and security from floods. Or they will live in a  
23 society of water rationing, scarce and ruinously expensive  
24 electricity, and the constant threat of flooding. And no  
25 decision will weigh more heavily in that future than our

1 generation's commitment to complete the Auburn Dam.

2 Thanks very much.

3 VICE CHAIRPERSON WOLFF: Thank you, sir.

4 I have a card from Alexandra Snyder, representing  
5 Representative Dan Lungren.

6 MS. SNYDER: Good morning. My name is Alexandra  
7 Snyder and I handle Intergovernmental Affairs for the  
8 Congressman.

9 Congressman Lungren has been a vocal advocate of  
10 the Auburn Dam for many years and for many reasons. The  
11 Auburn Dam would provide a reliable source of water for  
12 the greater Sacramento community, which, as we are well  
13 aware, is especially crucial in the type of drought  
14 conditions we are currently experiencing.

15 Just a week after Governor Schwarzenegger issued  
16 a declaration of drought in California, the Governor of  
17 Iowa issued declarations of emergency in county after  
18 county, as his state was inundated by 1-in-500-year  
19 floods.

20 Cost projections for the midwest floods already  
21 top \$8.5 billion and are expected to rise. \$7 billion of  
22 this is related to crop damage alone, which will  
23 contribute to higher food prices across the nation.

24 The floods in Iowa were created by natural  
25 conditions. And it appears that the probability of such

1 disastrous flooding is likely to increase over the years.  
2 The U.N.'s Intergovernmental Panel on Climate Change  
3 reports that increases in heavy rainfall events and  
4 interactions with changes in snowmelt-generated runoff  
5 could increase the potential for flooding of human  
6 settlements in many water basins, including our own.

7           Equally, if not more, destructive would be the  
8 intentional destruction of the Folsom Dam by those who  
9 would seek to cripple California's Capital Region. As a  
10 ranking member of the Homeland Security's Subcommittee on  
11 Transportation Security and Infrastructure protection, the  
12 Congressman is gravely concerned that a catastrophic event  
13 at Folsom Dam, whether natural or man-made, would result  
14 in untold numbers of lives lost, not to mention tens of  
15 billions of dollars in property, infrastructure, and  
16 environmental damage.

17           And yet we have fully to determine the long-term  
18 health impact of standing water in cities like Cedar  
19 Rapids and New Orleans.

20           In order to fully protect our community from the  
21 ravages of flood waters, we must achieve as close to  
22 1-in-500-year flood protection as possible. Under its  
23 present configuration Folsom Dam and its surrounding  
24 levees offer us 1-in-85-year flood protection. This is  
25 not nearly adequate, and Congressman Lungren has worked

1 tirelessly to find alternate means of protecting our  
2 community.

3           On January 11th of this year the Congressman,  
4 along with his colleagues, Mrs. Matsui and Mr. Doolittle,  
5 Governor Schwarzenegger, and a number of state and local  
6 officials, celebrated the groundbreaking of the Folsom Dam  
7 spillway. Levee repairs in conjunction with the spillway,  
8 a joint project of the Bureau of Reclamation and the U.S.  
9 Army Corps of Engineers, will provide the region with  
10 approximately 1-in-220-year flood protection. This is  
11 good, but it is not good enough. New Orleans had  
12 1-in-250-year flood protection when Hurricane Katrina hit,  
13 and we all know the result of that level of protection.

14           Moreover, New Orleans has less than half the  
15 population of Sacramento. And experts predict that flood  
16 damage would be much more extensive in our area, as the  
17 water draining from Folsom Lake will create a devastating  
18 bathtub drain effect, virtually wiping out everything in  
19 its circular path. There will be no standing on rooftops  
20 waiting to be rescued by passing boats or helicopters.  
21 Homes, businesses, and the human beings in them will be  
22 swept away in a violent deluge, the force of which we  
23 cannot even imagine.

24           The immediate impact of a Folsom Dam failure  
25 would be felt as far south as Galt. The flood waters

1 would inundate treatment plants, leaving millions without  
2 safe drinking water. Our fragile Delta ecosystem, which  
3 we have worked so hard to protect, would be destroyed.  
4 And unlike the structures and roadways which would be  
5 rebuilt relatively quickly, would take many decades, if  
6 not longer, to recover.

7           Our office has explored the possibility of  
8 immediate measures that would net us 300- or 400-year  
9 flood protection. We have been told no such options are  
10 available.

11           There is only one way to prevent such a tragedy  
12 from occurring and, that is, to build the Auburn Dam.

13           I know there will be some here today who would  
14 argue that an Auburn Dam cannot coexist with the type of  
15 environmental protection sought downstream. The  
16 Congressman would argue that hard-line environmental  
17 protections will be futile if we are deprived of the  
18 prospect of building Auburn Dam.

19           Today you have the opportunity to take a critical  
20 step to ensure the protection of hundreds of thousands of  
21 residents of the Sacramento Valley. If you choose to  
22 allow the Bureau to retain these rights, we can work in  
23 collaboration with the diverse interests represented here  
24 today to safeguard all that we consider vital and precious  
25 in the Sacramento region: Abundant clean water, unique

1 ecosystems that support diverse plant and animal life; a  
2 well-planned infrastructure, and residents who have their  
3 priorities in place and are willing to work hard to see  
4 this region provide for all of the above.

5           If, however, you revoke the Bureau of  
6 Reclamation's water rights, you will be delivering the  
7 deathblow to Auburn Dam. The possibility for adequate  
8 mitigation of disaster will have passed. And when such an  
9 event inevitably occurs, those who live and work  
10 downstream from Folsom Lake, such as myself, will be the  
11 unfortunate recipients of your decision. What will we all  
12 say then? Are we prepared to stand before a watching  
13 world and accept liability for the untold damage that  
14 would be inflicted upon our region and state should the  
15 dam fail?

16           How will we defend a vote to reject the one  
17 opportunity that will guaranty adequate protection for our  
18 water supply, our critical habitats, our infrastructure,  
19 and our people.

20           Thank you.

21           VICE CHAIRPERSON WOLFF: Thank you.

22           I'll now proceed to the prepared list of parties  
23 we knew ahead of time wanted to submit policy statements.

24           There were I believe four additional cards --  
25 three additional cards -- four additional cards that came

1 in this morning. And you will be heard at the end of the  
2 list of those who had previous told us they wanted to be  
3 heard.

4 So, first, San Luis & Delta-Mendota Water  
5 Authority.

6 And are you intending to submit a separate policy  
7 statement for Westlands Water District?

8 MS. KINCAID: No.

9 VICE CHAIRPERSON WOLFF: All right. So this is a  
10 combined policy statement on behalf of both parties?

11 MS. KINCAID: That's correct.

12 VICE CHAIRPERSON WOLFF: Thank you.

13 MS. KINCAID: Good morning, Vice Chair Wolff. My  
14 name is Valerie Kincaid. I'm representing San Luis and  
15 Delta-Mendota Water Authority and Westlands Water  
16 District. And each, the Authority and Westlands, have  
17 submitted a Notice of Intent for a policy statement and  
18 also to cross-examine witnesses.

19 The Authority and Westlands do not believe the  
20 Board should exercise its discretion at this point to  
21 revoke Auburn Dam permits for the reasons set forth in the  
22 Bureau of Reclamation testimony, specifically the  
23 testimony of Ray Sahlberg.

24 Specifically we believe a high level of attention  
25 should be given to the legal issue of potential conflict



1 with federal congressional action.

2 And that's pretty much our policy statement.

3 Do you have any questions?

4 VICE CHAIRPERSON WOLFF: No. Thank you very  
5 much.

6 MS. KINCAID: Thanks.

7 VICE CHAIRPERSON WOLFF: Friends of the North  
8 Fork. Michael Garabedian.

9 MR. GARABEDIAN: We have no policy statements.

10 VICE CHAIRPERSON WOLFF: Thank you.

11 American River Authority. Christopher D.  
12 Williams.

13 MR. WILLIAMS: Good morning, Chairman Wolff.

14 The American River Authority has a strong  
15 interest in protecting and preserving for the benefit of  
16 the local region it encompasses the water resources that  
17 are the subject of these existing permits. Should the  
18 Board nevertheless decide to revoke these permits, the  
19 underlying water resources should remain available to the  
20 local region on a priority basis under county and  
21 area-of-origin statutes and pursuant to the State of  
22 California reservations in effect pursuant to applications  
23 7936 and 7937.

24 The American River Authority was created pursuant  
25 to the Joint Exercise of Powers Act in 1982 between Placer

1 County, El Dorado County, Placer County Water Agency, and  
2 the El Dorado County Water Agency. Later the County of  
3 San Joaquin became a member.

4           The ARA has very broad authorities. And among  
5 them are to include the protection, preservation,  
6 perfection of rights belonging to the member agencies of  
7 this authority to use the waters of the American River and  
8 its tributaries for the benefit of the lands and  
9 inhabitants of the parties.

10           When the Auburn Dam water rights were first  
11 considered by this Board in 1970, the Board had to  
12 consider the impact of the Auburn Dam project on the water  
13 needs of the local region. The State of California  
14 previously filed water rights applications 7936 and 7937  
15 to preserve water from the American River for the benefit  
16 of the people of Placer, Sacramento, and San Joaquin  
17 counties. Application 7937 was for 831,000 acre-feet of  
18 storage for consumptive uses within the American River  
19 watershed.

20           During the hearings on its own water rights  
21 applications, the same applications that are now before  
22 the Board, the Bureau of Reclamation asked this Board to  
23 release the priority represented by those state filings to  
24 subordinate those state filings to its Auburn Dam Project  
25 water rights permits.

1           During those hearings, ARA members sought  
2 assurance from this Board that the needs of the residents  
3 of local counties would not be jeopardized by the Auburn  
4 Dam Project water rights. In its Decision 1356 as  
5 amended, the Water Board found at that time the granting  
6 the Bureau priority over the state filings would not  
7 deprive these counties from needed future development,  
8 with the understanding that those needs would be met by  
9 water from the Auburn Dam Project itself.

10           In particular, for instance, the Board noted that  
11 ARA member Placer County Water Agency had already  
12 contracted for, quote, as much water as it would need in  
13 the foreseeable future when it executed an agreement with  
14 the Bureau of Reclamation for 117,000 acre-feet of water  
15 annually; and that other water agencies in the area were  
16 negotiating for similar contracts.

17           The Water Board also noted that there were other  
18 water sources available to meet future needs of the local  
19 counties and the conditions would be inserted in the  
20 Bureau's permits that protected the counties and watershed  
21 of origin.

22           Decision 1356 accorded a prior right, I think it  
23 was called Condition 19, to the counties of Placer,  
24 Sacramento, and San Joaquin to contract for project water  
25 before it could be committed except on a temporary basis

1 to more remote areas.

2           Decision 1356 as amended in 1970 reaffirmed this  
3 intent when the Bureau indicated it would honor this  
4 commitment, noting that the counties referred to in the  
5 condition are clearly within the area entitled to the  
6 benefits of a watershed protection law and, if necessary,  
7 can assert their rights independently of any terms in the  
8 Bureau's permits.

9           In addition, Condition 20 of Decision 1356 was  
10 not amended and it makes the Bureau's permits for Folsom  
11 and Auburn reservoirs subject to future appropriations for  
12 use within the upstream American River watershed.

13           Furthermore, the federal law which authorized the  
14 Auburn project includes the three counties as  
15 beneficiaries of the project which are to receive water  
16 from project facilities.

17           The water supply outlook in 2008 is tightened  
18 considerably since 1970. There are currently unmet and  
19 underserved needs in these counties and in the American  
20 River watershed. The American River watershed region has  
21 grown tremendously. The needs of both the populace and  
22 river's fisheries have become more urgent and sources of  
23 supply have at the same time diminished. For instance, El  
24 Dorado County is in need of additional water supplies and  
25 has recently filed an application for water rights.

1           We know, further, that the CVP contractors on the  
2 American River system have had their deliveries of  
3 municipal water supplies cut 25 percent this year based  
4 upon state supply and demand considerations, even though  
5 local hydrologic conditions on the American River would  
6 not require such cutbacks.

7           The American River Authority recently finalized a  
8 June 2008 study of the Auburn-Folsom South Unit.

9           VICE CHAIRPERSON WOLFF: Could you wrap it up,  
10 sir.

11          MR. WILLIAMS: Yes, sir.

12          We do not want the Board at this time, at a time  
13 that's looking like we're facing serious drought and  
14 climate change conditions, to revoke these rights.  
15 However, if the Board nevertheless determines that the  
16 Bureau's water rights are to be revoked, the water under  
17 those permits should not revert to a free-for-all over any  
18 unappropriated water.

19          Rather, ARA requests that the Board confirm  
20 protect the water of the American River for the benefit of  
21 the local American River water purveyors as it did in 1970  
22 in D-1356 as amended.

23          Thank you.

24          VICE CHAIRPERSON WOLFF: Thank you.

25          California Department of Fish and Game. Nancy

1 Murray.

2 MR. SMITH: Kent Smith for Nancy Murray.

3 VICE CHAIRPERSON WOLFF: Thank you for  
4 clarifying.

5 MR. SMITH: I've been called worse.

6 Hello. My name is Kent Smith. I am the Habitat  
7 Conservation Program Manager for the North Central Region  
8 of the California Department of Fish and Game.

9 The North Fork of the American River,  
10 Knickerbocker Creek, and the Lower American River are  
11 located within the Department's North Central Region.

12 We have prepared a written policy statement that  
13 we submitted. My purpose here today is simply to  
14 summarize that statement.

15 As you know, California's fish and wildlife  
16 resources are held in trust for the citizens of the state,  
17 and the Department has been designated as the trustee for  
18 those fish and wildlife resources. As trustee, our  
19 mission is to maintain native fish, wildlife, plants,  
20 natural communities for their intrinsic ecological value  
21 and for their benefits to all citizens of the state. This  
22 includes habitat protection and maintenance of habitat in  
23 sufficient amounts and quality to ensure survival of all  
24 native species in natural communities.

25 More specifically, as trustee agency for the

1 fishery resources of the state, the Department has a  
2 material interest in assuring that water flows within  
3 streams are maintained at levels which are adequate for  
4 long-term protection, maintenance, and proper stewardship  
5 for those aquatic resources. Flow from the North Fork of  
6 the American River and Knickerbocker Creek, which is a  
7 tributary to the North Fork, enters Folsom Lake where it  
8 becomes available for later release to Nimbus Reservoir  
9 and Lower American River.

10           The North Fork American River supports  
11 populations of native rainbow trout, brown trout, and  
12 smallmouth bass as well as hardhead minnow, Sacramento  
13 pike minnows, Sacramento sucker, sculpin, and other  
14 aquatic species. Important wildlife resources include the  
15 foothill yellow-legged frog, western pond turtle, and  
16 numerous neotropical bird species that are dependent on  
17 the North Fork American River and Knickerbocker Creek  
18 streamside riparian zones for their protection and  
19 habitat.

20           Recreational angling opportunities along the  
21 North Fork American River draw fishermen and women to the  
22 area for both warm and coldwater fish species. The  
23 Department supports a water management decision that will  
24 ensure flows adequate to protect public trust resources  
25 and their use, including allowing for the angling

1 opportunities that are offered by the quality fishery  
2 within the drainages of Knickerbocker Creek and the lower  
3 stream segment of the North Fork.

4           The Department cautions that any reduction in  
5 flow on Knickerbocker Creek or the North Fork has  
6 potential to degrade established in-stream habitat for  
7 certain species of special concern, such as the foothill  
8 yellow-legged frog, western pond turtle, hardhead minnow,  
9 and other aquatic species. The Department encourages the  
10 Board to place great weight on a need to preserve at a  
11 minimum the existing flows in the North Fork American  
12 River above Folsom lake for protection of riparian and  
13 in-stream habitat and as a benefit to those species at  
14 risk as well as other native aquatic life.

15           Downstream of existing impoundments at Folsom and  
16 Nimbus dams, the Lower American River ecosystem depends in  
17 part on flows from the North Fork and Knickerbocker Creek  
18 to support fish and wildlife resources and the established  
19 riparian corridor along the American River Parkway and to  
20 its confluence with the Sacramento River.

21           Fishes utilizing the Lower American River include  
22 resident warm and coldwater species of largemouth bass,  
23 smallmouth bass, blue gill, tule perch, Sacramento sucker,  
24 hardhead minnow, and rainbow trout, along with anadromous  
25 fish populations of fall-run chinook salmon, American



1 shad, striped bass, and Central Valley Steelhead, which is  
2 currently a federally list threatened species.

3           It is important to understand that water surface  
4 elevations in Folsom Lake must be sufficiently high for  
5 development of a thermally stratified condition and for  
6 maintenance of the coldwater pool necessary to provide  
7 seasonally available coldwater for delivery to meet  
8 biological needs in the Lower American River. Continued  
9 flow from the North Fork American River and Knickerbocker  
10 Creek into Folsom Lake is a critical contribution toward  
11 meeting the coldwater volumes crucial for protection of  
12 salmonid and other in-stream species of the Lower American  
13 River.

14           The Department firmly supports the proposed  
15 revocations of the permits before you. We believe that  
16 such action is consistent with our trustee responsibility,  
17 our mission, and the Fish and Game Code, and at this  
18 particular point in time will be in the public's best  
19 interests overall.

20           We thank you, Vice Chairman Wolff and the Board  
21 members for the opportunity to present this today.

22           Thank you very much.

23           VICE CHAIRPERSON WOLFF: Thank you, Mr. Smith.

24           El Dorado County Water Agency.

25           Do we have anyone present representing El Dorado

1 County Water Agency?

2 No? Going once, going twice.

3 Placer County Water Agency.

4 MR. TIEDEMANN: Mr. Chairman, for the record my  
5 name is Edward Tiedemann. I'm representing Placer County  
6 Water Agency.

7 We previously filed a policy statement. And I  
8 gather you don't want me to go through the whole thing  
9 again, and it will be taken into account.

10 While Placer County Water Agency takes no  
11 position concerning whether the Auburn Dam permit should  
12 be revoked, it does have a strong interest in protecting  
13 and preserving for the benefit of the region the water  
14 resources that are subject to those permits if they are  
15 revoked.

16 And I'll skip through this.

17 If your Board determines that the Bureau's water  
18 right permits are to be revoked, the water under those  
19 permits will revert to unappropriated water.

20 Placer County Water Agency supports reserving for  
21 beneficial uses within the counties in which the American  
22 River originates the right to develop any unappropriated  
23 American River water to meet present and future area of  
24 origin demands.

25 Accordingly, the Placer County Water Agency

1 requests that you again consider and again protect and  
2 preserve American River water for the benefit of the local  
3 American River water purveyors as you did in 1970, 38  
4 years ago, in Decision 1356.

5 Thank you.

6 VICE CHAIRPERSON WOLFF: Thank you very much,  
7 sir.

8 Sacramento County Taxpayers League.

9 MR. PAYNE: Good morning. My name is Ken Payne.  
10 I'm the President of the Sacramento County Taxpayers  
11 League. Coincidentally, I'm also a member of the Board of  
12 Directors of the Auburn Dam Council. Today I'm speaking  
13 on behalf of the taxpayers.

14 This Board has an awesome responsibility today.  
15 The economy of California is based on agriculture. In  
16 fact, half of the fruit and nuts produced in the United  
17 States come from California. And this industry is fueled  
18 by our very precious and limited resource, water.

19 As water resources shrink, we become more and  
20 more dependent on foreign food sources. We'll be in the  
21 same predicament as we are with our dependence on foreign  
22 oil sources.

23 It is shortsighted to jeopardize California's  
24 present and future economy by not properly planning and  
25 providing for the diverse water needs of this state.

1           The taxpayer implications of permits revocation  
2 are substantial:

3           First, the current site of the Auburn Dam was  
4 prepared with about \$200 million in taxpayer monies. This  
5 investment would be lost if the project is abandoned.

6           Second, these monies are still accruing at  
7 interest, which very well could have reached a total of as  
8 much as 400 to \$500 million. That has to be paid by the  
9 taxpayers either way.

10           Third, should the project be abandoned, the  
11 walkaway costs or the restoration costs are likely to be  
12 equally as expensive. Such expenses would of course be  
13 borne by the taxpayer, with absolutely no contribution to  
14 increasing flood protection or the water supply to this  
15 state. California would remain at the highest risk of  
16 flooding nationwide.

17           To quote the El Dorado County Irrigation  
18 District: "It is poor public policy for state authorities  
19 to hinder or turn their backs on Auburn and similar  
20 projects." This leads me to the next point.

21           The demand for water in California exceeds the  
22 supply by about 200 acre-feet per year for environmental,  
23 farming and urban uses. This shortfall resorts in pumping  
24 of groundwater, causing in some cases saltwater intrusion  
25 and land subsidence. California should be committed to

1 supplying adequate water to meet the current and future  
2 demands. With the growing population in California, it is  
3 impossible for conservation alone to make up this  
4 shortfall.

5           To put this in perspective, California would have  
6 to build about five storage projects as large as Auburn  
7 Dam just to make up the shortfall in the current demand  
8 for water.

9           There are also social costs of shrinking  
10 agriculture.

11           Besides the elimination of thousands of  
12 entry-level jobs, there are health and safety issues  
13 related to the water supply. First, and most obvious, is  
14 firefighting. Firefighters cannot do their job without  
15 adequate water supplies. Secondly, as ag lands are  
16 fallowed due to the decreasing water supplies, respiratory  
17 diseases like asthma and valley fever become more  
18 prominent and add an additional burden to our already  
19 stressed health care system.

20           In our pre-conference meeting on June 4th, I  
21 asked if diligence could be defined. Just because you  
22 can't see anything on the horizon doesn't mean there's  
23 nothing out there. The Auburn Dam Council surveyed the  
24 residents of California -- of Sacramento, excuse me -- and  
25 adjacent counties to measure the level of support for the

1 Auburn Dam for flood control and water storage. As a  
2 result, in April, as a member of the Auburn Dam Council  
3 Board of Directors, I hand delivered an initiative  
4 proposal to one of Sacramento County's supervisors for the  
5 creation of an American River Conservation District. This  
6 proposal would create several opportunities for the  
7 expansion of fisheries along the American River below  
8 Folsom Dam as well as water storage, power, and flood  
9 protection at the Auburn Dam site. It is my understanding  
10 that this initiative proposal is currently under review by  
11 the Sacramento County Counsel. The Auburn Dam Council is  
12 asking the Sacramento County Board of Supervisors to put  
13 this initiative on the fall ballot.

14           In summary, to quote the EID, the El Dorado  
15 Irrigation District, the public purposes and benefits  
16 identified in Congress's original authorization of the  
17 Auburn Dam Project remain valid to this day. Although  
18 Congress has not appropriated sufficient funds to  
19 construct the project, neither has it revoked its  
20 authorization for the project to proceed. In analogous  
21 situations the Board taken a flexible approach to the  
22 diligent criteria for completing construction and putting  
23 water to beneficial use and, thus, has liberally granted  
24 time extensions to the project's water permit -- water  
25 rights permits.

1           As recently as 2000 Congress appropriated funds  
2 to update analysis to the project's cost -- project's cost  
3 of benefits. And in 2008 the American River Authority  
4 evaluated the Auburn Dam projects.

5           VICE CHAIRPERSON WOLFF: Could you wrap up,  
6 please.

7           MR. PAYNE: Yeah.

8           This is really basic. Water fuels the economic  
9 engine that drives this state. And this is no time to  
10 limit opportunities. It would be premature to revoke the  
11 Auburn Dam's water rights before a comprehensive statewide  
12 plan assesses whether Auburn Dam would play a role in the  
13 solution to California's water supply shortfall. For  
14 these reasons the Sacramento County Taxpayers League joins  
15 with the EID, the El Dorado County Water Agency, the  
16 American River Association, and others in emphasizing that  
17 the Bureau's water rights permits should be left in place.

18           Thank you very much.

19           VICE CHAIRPERSON WOLFF: Thank you.

20           Theresa L. Simsiman.

21           MS. SIMSIMAN: Good morning. My name is Theresa  
22 Simsiman. I am a Sacramento County resident. I am the  
23 current events coordinator for Gold Country Paddlers and  
24 private boaters signatory to the Upper American River  
25 Project and Chili Bar Project Settlement Agreement.

1           I'm here today to represent the white water  
2 recreational interests as they pertain to the proposed  
3 reclamation of water right permits for the United States  
4 Bureau of Reclamation.

5           In 1970 when the State Water Board conditionally  
6 approved water right permits for Auburn Dam, white-water  
7 recreation in the area was only enjoyed by a privileged  
8 few.

9           Fast forward 38 years and times have changed.  
10 Interests in white-water recreation has taken off with a  
11 deep devotion of the participants themselves. In fact, a  
12 recent study published in the winter 2008 edition of the  
13 Journal of Leisure Research cites that spring and  
14 white-water paddlers take their sport more seriously than  
15 most other leisure sports.

16           In a 72-point questionnaire that asked the  
17 respondents to rate their perseverance, acquisition of  
18 knowledge and skills, benefits and progress, paddlers  
19 tended to score higher on experience (12 years), monetary  
20 investment (\$7,643 per year), and time devoted to their  
21 sport per week (7 hours).

22           Given this kind of devotion, it is no wonder that  
23 in recent years California state Parks has monitored over  
24 40 private outfitters who are licensed to author  
25 white-water trips in Auburn's state recreation area. And



1 a number of private white-water paddler clubs now  
2 proliferate the state.

3 Paddling clubs like Gold Country Paddlers, Loma  
4 Prieta Paddlers, and California Floaters Society are  
5 frequent visitors to the white-water runs found on the  
6 North Fork and middle American Rivers.

7 Complementing the emergence of white-water  
8 recreation in the Auburn state recreation area, commercial  
9 and private boaters began immersing themselves in the  
10 public trust of the area's river resources. This resulted  
11 in recognition of the white-water recreational stakeholder  
12 in terms of management and planning.

13 Among the entities that have recently addressed  
14 the value of white-water recreation within the ASRA are  
15 California State Parks, Placer County Water Agency, and  
16 the U.S. Bureau of Reclamation.

17 In May of 2006 California State Parks put the  
18 call out for public involvement in the Auburn SRA General  
19 Plan -- Resource Management Plan. An identified key issue  
20 on the table for discussion was a white-water recreation  
21 and management program.

22 White-water rafting and kayaking are popular  
23 activities in both the north and middle forks of the  
24 American River. Maintaining high quality recreation  
25 experiences, providing adequate access, and ensuring

1 protection of resources as the popularity of these  
2 activities grows will be issues addressed in this plan.

3           Concurrently in May and April of 2006 Placer  
4 County Water Agency conducted several introductory  
5 stakeholder meetings in preparation to submit their notice  
6 of intent to file an application for new license for the  
7 Middle Fork American Project.

8           In subsequent years, an invitation to participate  
9 in white-water boating focus discussion group was issued  
10 in April of 2008, the purpose of which was to identify  
11 specific white-water runs and characterize runs by such  
12 things as their access points, adequacy of support  
13 facilities, length, flow, and difficulty.

14           At present, the PCWA continues to engage  
15 white-water recreation stakeholders with a recent boater  
16 invitation to participate in flow plans.

17           Finally, Reclamation itself stepped forward to  
18 address white-water interests in September of 2007 when,  
19 despite their intent not to approve the construction of  
20 significant permanent recreational facilities within a  
21 potential Auburn reservoir, they closed the diversion  
22 tunnel at the site of the PCWA's new pump station, green  
23 watered the North Fork American River confluence to Oregon  
24 Bar River access, and included man-made white-water rapids  
25 linking seven small pools to convey boaters through the

1 area.

2 It is now a destination white-water play feature,  
3 drawing a number of advanced and beginner boaters alike.

4 As these examples demonstrate, public process and  
5 procedure has ensured that public interest in the value of  
6 white-water recreation has not been taken for granted. It  
7 is in this spirit that I support the State Water Board's  
8 revocation of the U.S. Bureau of Reclamation's water  
9 permits.

10 These original permits do not consider the  
11 white-water recreational uses in the canyon and can be  
12 revoked without prejudice. Thus, if and when permits  
13 States Endurance Run Foundation?

14 Do we have a representative here from the Western  
15 States Endurance Run Foundation - Antonio Rossmann or  
16 other?

17 Seeing none.

18 El Dorado Irrigation District.

19 MR. CUMPSTON: Good morning. I'm Tom Cumpston,  
20 General Counsel for the Irrigation District.

21 The District previously has submitted a written  
22 policy statement. And, in fact, you heard one of the  
23 other speakers a few moments ago reading from it. So I  
24 will not repeat that or even summarize. It's simply  
25 incorporated into the record of today's proceedings by

1 this reference and ask that the State Board give it  
2 careful consideration.

3 Thank you.

4 VICE CHAIRPERSON WOLFF: Thank you.

5 I now have two cards actually that weren't in  
6 this list. Mr. Al Buff, if I'm pronouncing the name  
7 correctly.

8 MR. BUFF: That's correct.

9 VICE CHAIRPERSON WOLFF: Please come forward.  
10 You did ask for ten minutes. I I'm sorry, I need to limit  
11 you to five minutes today.

12 MR. BUFF: Whatever, okay.

13 VICE CHAIRPERSON WOLFF: If only everyone were as  
14 easygoing as you. Thank you.

15 MR. BUFF: Thank you, sir.

16 Members of the group here and esteemed people of  
17 the audience. My name's Al Buff. I've been a resident of  
18 Placer County for a number of years. Saw the bridge  
19 between Auburn and Cool taken out a couple times by the  
20 force of the water in the canyon. And have studied  
21 hydrologic development in other countries.

22 I don't know if people realize that, you know,  
23 we're in a draught situation and the climate of the world  
24 is changing. In fact, the Palestinians are on water hours  
25 courtesy of the Israelis because of water fights over the

1 Jordan River. Israelis of course are building  
2 desalinization plants at Hypha and Tel Aviv to supply  
3 their water supply.

4 I've been on a nuclear ship that I ran  
5 evaporators on a nuclear ship. You either make water or  
6 you store it.

7 And I don't know if you're familiar with the  
8 history of Japan. But 200 years ago during the Tokugawa  
9 era in Japan the military government decided that they  
10 were going to have a better policy not only of  
11 reforestation but water conservation. And the Japanese  
12 have built dams up the ying-yang.

13 Currently there's another dam project plan for  
14 Africa in the Democratic Republic of the Congo. It is an  
15 \$80 billion project. It's called the Grand Inga. And it  
16 will supply one-third of Africa's electrical needs it is  
17 being given a priority by international developed  
18 corporations.

19 I don't know if you notice that there's the  
20 Itaipu in Brazil.

21 There's a lot of dams being built in the  
22 Himalayas because the Himalayas -- the ice packs up there  
23 are melting. The Chinese and everybody else wants to take  
24 advantage of it.

25 So, you know, with the Auburn Dam, it should have

1 been built years ago. It must be built. I like to take a  
2 shower at least once a day. And I know a lot of other  
3 people that should too.

4 And I tell you, water is so important, and we  
5 take it for granted. But if we go to other countries  
6 where I've been, you have a different perspective and you  
7 want to get it built right now.

8 Thank you.

9 And, besides, I'd like to present a new design  
10 for the Auburn Dam which incorporates a multipurpose use  
11 to the Board.

12 VICE CHAIRPERSON WOLFF: I'm sorry, but we can't  
13 accept exhibits introduced during policy statements.  
14 These are the rules of the system. So I apologize.

15 MR. BUFF: This is from Paolo Soleri, who used to  
16 be a student of Frank Lloyd Wright before they had a  
17 fallout. He envisioned multi-use of megastructures, and a  
18 dam is a megastructure.

19 Thank you.

20 VICE CHAIRPERSON WOLFF: Indeed. I visited  
21 Arcosanti some number of years ago. An amazing architect.

22 Thank you, sir.

23 I have a card from Sandra Dunn, Sacramento County  
24 and Sacramento County --

25 MS. DUNN: That's not for a policy statement.

1           VICE CHAIRPERSON WOLFF:  It's not for a policy  
2 statement?

3           MS. DUNN:  No.

4           VICE CHAIRPERSON WOLFF:  All right.  Do we have  
5 anyone else who wishes to make a policy statement?

6           I believe that completes the list.

7           Are any of the parties who weren't present  
8 earlier, have they now appeared?  I think El Dorado County  
9 Agency was one and Western States Endurance Run Foundation  
10 was the other.

11           Seeing none, we'll move on to the evidentiary  
12 portion of the hearing.  Before I invite appearances of  
13 the parties, I will ask Jean McCue to introduce staff  
14 exhibits.

15           WATER RESOURCE CONTROL ENGINEER McCUE:  The items  
16 listed as staff exhibits in the hearing notice are offered  
17 into evidence by reference as staff exhibits.  If there  
18 are no objections, I will not read the list of exhibits.

19           VICE CHAIRPERSON WOLFF:  Are there any  
20 objections?

21           Seeing none.

22           (Thereupon the above-referenced documents  
23 were received into evidence as SWRCB Staff  
24 Exhibits 1 through 3.)

25           VICE CHAIRPERSON WOLFF:  I would like to

1 introduce into the record two items. I hope you'll find  
2 the first one as humorous as I did. As most of you know,  
3 I'm a fact-oriented person - facts first, please. And I  
4 didn't find in the submittals a map of the location of the  
5 dam. So, frankly, I didn't know where the dam was.

6 (Laughter.)

7 VICE CHAIRPERSON WOLFF: And so the first exhibit  
8 would be a map of the dam.

9 Do we have that map available yet?

10 SENIOR WATER RESOURCES CONTROL ENGINEER LINDSAY:

11 It's in the back. I thought we could set it up  
12 during the break.

13 VICE CHAIRPERSON WOLFF: Can you bring it  
14 forward?

15 SENIOR WATER RESOURCES CONTROL ENGINEER LINDSAY:

16 Sure.

17 VICE CHAIRPERSON WOLFF: If anyone would like to  
18 object to this particular map, you're free to do so. I'll  
19 hold that question open. If something -- I'm serious. If  
20 something in the map seems to you to be incorrect, I'll  
21 hold that question open rather than forcing you to try to  
22 review the map at this point in time.

23 The second issue was that so much has been said  
24 about water supply and about the possible impacts of the  
25 marginal water supply that I asked the staff what other



1 water rights permits, licenses, granted or pending, were  
2 junior to the projects that might be affected by this  
3 decision. And they prepared a list. They said we could  
4 simply take official notice of the Board's records. But  
5 the problem is that wouldn't give any of you the  
6 opportunity to really review them and see if you think the  
7 records are accurate or not. So I asked them to prepare a  
8 list, which I guess is not quite available to pass out  
9 now. Or is it?

10 SENIOR WATER RESOURCES CONTROL ENGINEER LINDSAY:

11 It's on its way.

12 VICE CHAIRPERSON WOLFF: It's on its way. So we  
13 will have a list of what the Board's records show as water  
14 rights permits, licenses that are junior to the projects,  
15 including pending applications. And if by the end of the  
16 day tomorrow if you have any comments on them, if you  
17 believe they're inaccurate or incomplete, please let me  
18 know. And I will consider holding the evidentiary portion  
19 of the hearing open after the end of the day, tomorrow for  
20 any corrections to that list. I simply wanted to be sure  
21 we have accurate records at the close of the evidentiary  
22 portion of this process.

23 And will those exhibits have numbers? The map is  
24 number --

25 WATER RESOURCE CONTROL ENGINEER McCUE: I think

1 that would be No. 5.

2 VICE CHAIRPERSON WOLFF: So the map is Exhibit --  
3 Staff Exhibit No. 5 and the list of permits, licenses, et  
4 cetera, is Staff Exhibit No. 6.

5 WATER RESOURCE CONTROL ENGINEER McCUE: That  
6 would be 4. Sorry. Because I had already started doing  
7 that --

8 VICE CHAIRPERSON WOLFF: Well, the table will be  
9 Staff Exhibit No. 4 and the map is Staff Exhibit No. 5.

10 (Thereupon the above-referenced documents  
11 were marked as SWRCB Exhibits 4 & 5.)

12 VICE CHAIRPERSON WOLFF: And when it arrives, can  
13 we hand it out as soon as it arrives?

14 Great. Thank you.

15 Next I will invite appearances by the parties who  
16 are participating in the evidentiary portion of the  
17 hearing.

18 Will those making appearances please state your  
19 name and who you represent so the court reporter can enter  
20 the information into the record.

21 First, the Division of Water Rights prosecution  
22 team.

23 STAFF COUNSEL ROSE: David Rose representing the  
24 Division of Water Rights prosecution team. My address is  
25 1001 I Street, Sacramento 95814.

1 Thank you.

2 VICE CHAIRPERSON WOLFF: U.S. Bureau of  
3 Reclamation.

4 MR. TURNER: James E. Turner, Assistant Regional  
5 Solicitor, Mid-Pacific Region -- I'm sorry -- the Pacific  
6 Southwest Region for the Department of the Interior. Our  
7 address is 2800 Cottage Way, Room E-1712, Sacramento  
8 95825.

9 VICE CHAIRPERSON WOLFF: California Sportfishing  
10 Protection Alliance.

11 MR. JACKSON: Michael Jackson, Box 207, Quincy,  
12 California 95971.

13 VICE CHAIRPERSON WOLFF: County of San Joaquin  
14 and San Joaquin County Flood Control and Water  
15 Conservation District.

16 MS. GILLICK: DeeAnne Gillick of Neumiller &  
17 Beardslee, P.O. Box 20, Stockton, California 95201.

18 VICE CHAIRPERSON WOLFF: Stockton East Water  
19 District

20 MS. HARRIGFELD: Karna Harrigfeld, Herum,  
21 Crabtree, Brown, 2291 West March Lane, Stockton,  
22 California 95207.

23 VICE CHAIRPERSON WOLFF: Friends of the River,  
24 Save the American River Association, and Defenders of  
25 Wildlife.

1 MR. STORK: Ronald Stork, Friends of the River,  
2 1418 20th Street, Sacramento, California, 95811.

3 VICE CHAIRPERSON WOLFF: Sacramento County  
4 Sacramento County Water Agency.

5 MS. DUNN: Sandra Dunn, Somach, Simmons & Dunn,  
6 813 Sixth Street, 3rd Floor, Sacramento, California 95814.

7 VICE CHAIRPERSON WOLFF: Auburn Dam Council.

8 MR. SCHAEFER: My name is Michael Schaefer and  
9 the address is 7050 Walnut Avenue, Orangevale, California  
10 95662.

11 Thank you.

12 VICE CHAIRPERSON WOLFF: South Delta Water  
13 Agency.

14 MR. HERRICK: John Herrick, South Delta Water  
15 Agency, 4255 Pacific Avenue, Suite 2, Stockton, 95207.

16 VICE CHAIRPERSON WOLFF: San Luis and  
17 Delta-Mendota Water Authority and the Westlands Water  
18 District.

19 Had someone present earlier.

20 MS. GILLICK: She's no longer here

21 VICE CHAIRPERSON WOLFF: She's no longer here.  
22 Friends of the North Fork.

23 MR. GARABEDIAN: Michael Garabedian, 7143  
24 Gardenvine Avenue, Citrus Heights, California 95621.

25 VICE CHAIRPERSON WOLFF: American River

1 Authority.

2 MR. WILLIAMS: Mr. Chairman, Chris Williams, Post  
3 Office Box 667, San Andreas, California.

4 VICE CHAIRPERSON WOLFF: Thank you.

5 I'll now administer the oath. Will those persons  
6 who may testify during this proceeding please stand and  
7 raise your right hand.

8 (Thereupon the prospective witnesses were  
9 sworn, by the Hearing Officer, to tell  
10 the truth.)

11 PROSPECTIVE WITNESSES: I do.

12 VICE CHAIRPERSON WOLFF: Louder.

13 PROSPECTIVE WITNESSES: I do.

14 VICE CHAIRPERSON WOLFF: Thank you.

15 You may be seated.

16 We'll now hear opening statements and testimony  
17 from the Division of Water Rights prosecution team.

18 Well, let's pause just a moment. We have the  
19 table exhibit, Staff Exhibit 4. We're going to hand it  
20 out now just so everyone has it in their possession.

21 All right, Mr. Rose, you may proceed.

22 STAFF COUNSEL ROSE: Good morning, Dr. Wolff,  
23 members of the hearing team. Once again, I'm David Rose  
24 representing the Division of Water Rights prosecution  
25 team.

1           This is a simple case. The purpose of this  
2 hearing, as described in the hearing notice, is to  
3 determine whether Permit 16209, 16210, 16211, and 16212  
4 should be revoked pursuant to Water Code Section 1410.

5           Water Code Section 1410 says that there shall be  
6 cause for revocation of a permit if the work has not  
7 commenced, prosecuted with due diligence, and completed or  
8 the water applied to beneficial use as contemplated in the  
9 permit and in accordance with the Water Code and the rules  
10 and regulations of the Board.

11           The prosecution team's evidence will show that  
12 the permittee, the United States, acting through the  
13 Bureau of Reclamation, has not completed or prosecuted the  
14 project with due diligence and that no water has been put  
15 to beneficial use under the permits. Specifically the  
16 evidence will show that the periods provided for  
17 completing construction and putting water to beneficial  
18 use under the permits have expired without completion of  
19 construction and without putting any water to beneficial  
20 use.

21           The permittee stopped construction in 1975 and  
22 has no plan to resume construction in the foreseeable  
23 future.

24           No further construction is permitted under the  
25 terms of the permits and no extension can be granted,

1 because the permittee has not provided the supporting  
2 information that would be needed to approve an extension.

3           Without an extension of time within which to  
4 complete construction and without having already put water  
5 to beneficial use under the permits, revocation is  
6 appropriate.

7           I'd like to reiterate that this is a revocation  
8 hearing. It is not a hearing on an application or a  
9 change petition or a hearing on a public trust complaint.  
10 Issues concerning the need for additional water supplies,  
11 competing needs for in-stream beneficial uses, or the  
12 public interest in a proposed project might all be  
13 relevant in those proceedings but not in this revocation  
14 proceeding.

15           The issue here is whether this project has been  
16 prosecuted with due diligence in accordance with the terms  
17 of the permit and the requirements of the Water Code and  
18 whether there is cause for revocation of these permits.

19           A number of parties have submitted written  
20 testimony and exhibits not relevant to whether the permits  
21 should be revoked in accordance with Section 1410. In the  
22 interest of time, the prosecution team intends to limit  
23 its direct and cross-examination to the relevant issue  
24 identified in the hearing notice.

25           And with that, I'd like to bring up prosecution

1 team witness Kathy Mrowka.

2 Is this on now?

3 All right.

4 DIRECT EXAMINATION

5 OF MS. KATHY MROWKA

6 BY MR. DAVID ROSE, STAFF COUNSEL, representing the State

7 Water Resources Control Board, Division of Water Rights

8 Prosecution Team:

9 Would you please state your name and place of  
10 employment for the record.

11 MS. MROWKA: My name is Kathy Mrowka and I work  
12 for the Division of Water Rights.

13 STAFF COUNSEL ROSE: And what is your current  
14 position?

15 MS. MROWKA: I'm a senior Engineer. I'm  
16 responsible for supervising Watershed -- Permitting Unit  
17 No. 3.

18 STAFF COUNSEL ROSE: How long have you held your  
19 current position?

20 MS. MROWKA: I've been with the Division of Water  
21 Rights for about 22 years and in the water right  
22 permitting function for about 8.

23 STAFF COUNSEL ROSE: Have you reviewed your  
24 written testimony for this hearing, and would you say that  
25 it is true and accurate?



1 MS. MROWKA: Yes, I would.

2 STAFF COUNSEL ROSE: Is there anything you would  
3 like to correct from your written testimony?

4 MS. MROWKA: No, there's not.

5 STAFF COUNSEL ROSE: Ms. Mrowka, when did the  
6 time to complete construction and water to full beneficial  
7 use under the permits expire?

8 MS. MROWKA: The time to complete construction  
9 expired December 1st, 1975, and the time to put water to  
10 full beneficial use ended on December 1st, 2000?

11 STAFF COUNSEL ROSE: Have these dates been  
12 modified?

13 MS. MROWKA: Yes. After the deadline to complete  
14 construction ended, the Board issued an order which  
15 deleted the time to complete construction and also the  
16 time to complete use dates. That order required that  
17 Reclamation take certain steps prior to resumption of  
18 construction under these water rights. No later than  
19 December 31st, 1987, Reclamation was required to submit  
20 the changed project to the State Water Board for  
21 establishment of new dates within these permits and also  
22 was required to document it had complied with the  
23 National -- with NEPA.

24 STAFF COUNSEL ROSE: Did the permittee take those  
25 required steps prior to the 1987 deadline?

1 MS. MROWKA: No.

2 STAFF COUNSEL ROSE: So what is the status of  
3 these permits right now?

4 MS. MROWKA: The time to construct and the time  
5 to make full beneficial use of these rights has expired.  
6 There has been no extension of time granted because  
7 Reclamation did not comply with the terms of that 1984  
8 order and no construction is authorized until new dates  
9 are set.

10 STAFF COUNSEL ROSE: In your opinion, could the  
11 Board approve an extension of time for these permits based  
12 on the information in the file?

13 MS. MROWKA: No, it could not. Reclamation's  
14 petition for extension of time has been protested. The  
15 protest is unresolved. There is no California  
16 Environmental Quality Act document for the petition  
17 action. So, no, the Board could not approve it.

18 STAFF COUNSEL ROSE: When a time extension cannot  
19 be approved because a permittee doesn't meet the criteria,  
20 what actions may be taken with regards to the permit?

21 MS. MROWKA: There are two choices. If water had  
22 been used under the water right, then the Division of  
23 Water Rights would conduct a licensing inspection and  
24 offer a license for the quantity that had been documented  
25 as having been put to beneficial use.

1           If, however, there had been no use of water, then  
2 at that point the Division staff would recommend that the  
3 permit be revoked.

4           STAFF COUNSEL ROSE: And in your opinion, has the  
5 basis for revocation been met?

6           MS. MROWKA: Yes, it has. In this particular  
7 case there has been no construction of the project  
8 facilities and water has not been put to beneficial use.

9           STAFF COUNSEL ROSE: Ms. Mrowka, has anything  
10 changed since you conducted your review that would make  
11 revocation no longer appropriate?

12          MS. MROWKA: No.

13          STAFF COUNSEL ROSE: Thank you. I have no more  
14 questions at this time.

15          VICE CHAIRPERSON WOLFF: Thank you.

16          That's the shortest 20 minutes I ever  
17 experienced.

18          STAFF COUNSEL ROSE: We try.

19          VICE CHAIRPERSON WOLFF: Cross-examination, U.S.  
20 Bureau of reclamation.

21                            CROSS EXAMINATION

22                            OF MS. KATHY MROWKA

23 BY MR. JAMES E. TURNER, Assistant Regional Solicitor,  
24 Pacific Southwest Region for the Department of the  
25 Interior, representing the U.S. Bureau of Reclamation:

1           MR. TURNER: Ms. Mrowka, I have before me a copy  
2 of your written testimony. And I just have a couple of  
3 quick questions for you, first of all.

4           In your opinion, is revocation of these permits  
5 mandated by the statutory requirements of California Water  
6 Law?

7           MS. MROWKA: In my opinion, the requirements --  
8 the prerequisites for revocation have been met here  
9 because of the nonuse of water. As to mandate under Water  
10 Law, I'm not an attorney. I really am not the right party  
11 to answer.

12          MR. TURNER: Well, secondly, I note in your  
13 written testimony that you provided -- I'm looking at the  
14 very last paragraph in your written testimony.

15          MS. MROWKA: Okay.

16          MR. TURNER: You have here -- looks like about  
17 the fourth or fifth sentence you have, "Permittee's  
18 response is only that Reclamation lacks the Congressional  
19 approval to fund the construction of the project. Lack of  
20 finances is explicitly identified in Section 844 as a  
21 factor that will not generally be accepted as good cause  
22 for delay."

23          My question is: Doesn't Section 844 specify  
24 specific types of financing problems that would not be  
25 deemed sufficient?

1           STAFF COUNSEL ROSE: Objection. I believe this  
2 calls for a legal opinion of the witness.

3           MR. TURNER: Well, I raise the issue, your Honor,  
4 only because that particular section is also cited and  
5 quoted in Ms. Mrowka's testimony, and she's made a  
6 conclusion based upon her apparent interpretation of that  
7 statute. So I'm just trying to clarify how broadly she's  
8 interpreting that statute.

9           VICE CHAIRPERSON WOLFF: Could the court reporter  
10 re-read the question.

11           (Thereupon the court reporter read  
12           Back the record.)

13           VICE CHAIRPERSON WOLFF: Overruled.  
14           Please answer the question.

15           MS. MROWKA: Okay. Section 844 addresses the  
16 issue of whether time extensions are appropriate. And the  
17 text with respect to lack of finances addresses the  
18 appropriateness of whether time should be granted. And  
19 you asked me whether that has relation to mandating  
20 revocation of a water right. The revocation action is  
21 moving forward under Section 1410. And that is why it  
22 confused me, because to me it looks as though you're  
23 combining two different aspects of the Water Law.

24           As to the issue of the lack of finances, when I  
25 have been addressing that in prior reviews of water right

1 matters, it's always been case by case as to, you know,  
2 what lack of finances dealt with. Each party has come  
3 forward with their own particular information as to the  
4 problem they had on financing.

5 Does that address your concern?

6 MR. TURNER: Let me -- not really. What I'm  
7 concerned about, I'm looking essentially at the very last  
8 sentence of Section 844, which you quote on page 2 of your  
9 written testimony.

10 And that particular sentence to me is identifying  
11 certain types of financial problems that would not be  
12 accepted as good cause for delay. It's not talking about  
13 any and all types of financing problems, is it?

14 MS. MROWKA: No, it's more specific than that.

15 MR. TURNER: And so what I was trying to get at  
16 is your concluding statement on page 6 of your written  
17 testimony where you say that "Lack of finances is  
18 explicitly identified in Section 844 as a factor that will  
19 not generally be accepted as good cause for delay," that  
20 that was not intended to mean any and all type of  
21 financing problems if you're going to rely on 844. 844 is  
22 talking about certain types of financial problems that  
23 would not be accepted as good cause for delay, correct?

24 MS. MROWKA: I believe that is true.

25 MR. TURNER: Okay. I have no further questions.

1 Thank you.

2 VICE CHAIRPERSON WOLFF: Thank you.

3 You've just out -- Thank you.

4 We have a seating issue. Mr. Rose, could you  
5 move over next to your witness, so that the cross-examiner  
6 examiner can then come to here in the future.

7 I was just going to comment, thank you to the  
8 Bureau and to the prosecution. That was the shortest 30  
9 minutes on record.

10 CSPA, cross-examination.

11 CROSS EXAMINATION

12 OF MS. KATHY MROWKA

13 BY MR. MICHAEL JACKSON, ESQ., representing the California  
14 Sportfishing Protection Alliance:

15 Ms. Mrowka, my name is Mike Jackson and I'm  
16 operating as attorney for CSPA.

17 You've indicated that the request for extension  
18 of time had been protested. Who protested it?

19 MS. MROWKA: The California Sportfishing  
20 Protection Alliance.

21 MR. JACKSON: And, again, why was that extension  
22 request never heard?

23 MS. MROWKA: The extension request did not move  
24 forward to a hearing because a California Environmental  
25 Quality Act document had not been prepared. To move a

1 matter to a hearing, we want to see at least a draft CEQA  
2 document available prior to scheduling a hearing.

3 MR. JACKSON: Was there any explanation ever  
4 given for why a draft CEQA document was not prepared by  
5 the Bureau?

6 MS. MROWKA: As far as I'm aware, it just had not  
7 been funded for preparation.

8 MR. JACKSON: You heard Mr. Turner's questions  
9 about funding. Are all water rights holders required to  
10 provide information in regard to CEQA and NEPA before an  
11 extension of time can be heard?

12 MS. MROWKA: If I might expand on my prior answer  
13 first. During the time interval that I was responsible  
14 for reviewing development under these water rights  
15 Reclamation did prepare a CEQA document. But it was for a  
16 flood-control-only facility. And it's my understanding  
17 they never finalized the document. So there had been  
18 activity.

19 MR. JACKSON: And how long has it been since the  
20 last activity in regard to CEQA and NEPA?

21 MS. MROWKA: Some number of years.

22 MR. JACKSON: Is there presently a project  
23 description that would be necessary for a CEQA/NEPA  
24 document?

25 MR. TURNER: If I could, Mr. Wolff. I question



1 the relevance of this particular -- I question the  
2 relevance of this testimony. We're talking about grounds  
3 for revocation of the permit, not sufficiency of the  
4 application to extend the term of the permit.

5 VICE CHAIRPERSON WOLFF: Mr. Rose.

6 STAFF COUNSEL ROSE: I think that --

7 VICE CHAIRPERSON WOLFF: I'm sorry. I should be  
8 turning to Mr. Jackson. The objection is to his question.

9 MR. JACKSON: Yes, sir. The argument seems to be  
10 that the Board has discretion not to revoke and that  
11 discretion requires questions in regard to whether or not  
12 there would be factual conditions that would allow the  
13 Board to exercise such discretion in favor of the Bureau  
14 without committing an abuse of discretion, which is the  
15 standard. And there's no way to determine without going  
16 into the facts whether or not the Board has enough  
17 information to exercise the discretion that's requested.

18 VICE CHAIRPERSON WOLFF: Objection overruled.  
19 I'll allow the questioning to proceed.

20 MR. JACKSON: Do you remember the question?

21 MS. MROWKA: Unfortunately, no.

22 MR. JACKSON: Could you read back the question.

23 (Thereupon the court reporter read

24 Back the record.)

25 MS. MROWKA: I don't know really how to answer

1 that questioned, because I think there's a general  
2 understanding of what the Auburn Dam project consists of.  
3 We know the water rights it consists of, its location,  
4 many items like that. But as I understand it, there had  
5 been some redesign work that Bureau, you know, had to do  
6 due to seismic considerations. I simply don't know if  
7 that information's ever been brought into one document to  
8 describe what the revised project would be.

9 MR. JACKSON: If there has been a revision of the  
10 project either to make it multipurpose or to avoid the  
11 cost cap, has that information been supplied to you?

12 MS. MROWKA: The only project description which I  
13 have would be the original that's encompassed in the  
14 permit.

15 MR. JACKSON: And that was the project as  
16 designed in 1970?

17 MS. MROWKA: It was the original project.

18 MR. JACKSON: And the one that was stopped by the  
19 earthquake?

20 MS. MROWKA: It's the one that's permitted, yes.

21 MR. JACKSON: Now, at this point the CSPA protest  
22 of the requested extension of time has died basically with  
23 extension of time request itself; is that the way you look  
24 at this?

25 MS. MROWKA: The protest remains valid if the

1 Board were to entertain that particular time extension  
2 request. The protestant has standing.

3 MR. JACKSON: And, therefore, if the Board were  
4 to fail to revoke, we would then go into the extension of  
5 time hearing?

6 MS. MROWKA: It is one of the options that the  
7 Board could pursue.

8 MR. JACKSON: Now, in your examination of the  
9 revocation -- there's been some discussion of whether or  
10 not finances as identified in 844 is a factor that is  
11 generally not accepted as a good cause for a delay; is  
12 that correct?

13 MS. MROWKA: That's within a time extension  
14 proceeding.

15 MR. JACKSON: Right.

16 Does the -- to your knowledge, are there -- is  
17 there more than one set of rules for an applicant  
18 depending on whether or not the applicant is the United  
19 States?

20 MS. MROWKA: No. We try to maintain a fair and  
21 equitable system of water rights.

22 MR. JACKSON: You used the word in terms of your  
23 conclusion that the cause for revocation has been  
24 established, in your testimony on page 6, that failure to  
25 revoke would be allowing Reclamation to put this right in

1 cold storage, which violates the State Board policy to  
2 apply water to beneficial use to the fullest extent  
3 possible.

4 What do you mean by that conclusion?

5 MS. MROWKA: That maintenance of a fair and  
6 equitable system of water rights means that all parties  
7 really need to timely develop projects, to put their water  
8 to use in a timely fashion, and that it -- basically it's  
9 at not appropriate for parties to obtain water rights and  
10 not develop them, because it disrupts the equitable system  
11 of being able to develop projects.

12 MR. JACKSON: Now, if these water rights were  
13 revoked and the Congress of the United States was to  
14 decide to lift the cost cap and to reauthorize a newly  
15 designed project, would Reclamation be able to reapply for  
16 water rights?

17 MS. MROWKA: Yes, they would be able to.

18 MR. JACKSON: So this decision to revoke the  
19 water rights would not forego the project forever?

20 MS. MROWKA: No, it would not.

21 MR. JACKSON: Thank you very much.

22 VICE CHAIRPERSON WOLFF: Thank you.

23 We have cross-examination by the County of San  
24 Joaquin.

25 MS. GILLICK: Good morning. DeeAnne Gillick.

1 VICE CHAIRPERSON WOLFF: Please come over here.

2 MS. GILLICK: Okay. DeeAnne Gillick on half of  
3 County of San Joaquin and the County Flood Control  
4 District.

5 CROSS EXAMINATION

6 OF MS. KATHY MROWKA

7 BY MS. DeeAnne Gillick, ESQ., representing County of San  
8 Joaquin and the San Joaquin County Flood Control and Water  
9 Conservation District:

10 Are there any current time extensions pending at  
11 the request of the Bureau with the State Board?

12 MS. MROWKA: There is the one which Mr. Jackson  
13 just described.

14 MS. GILLICK: Have there been time extensions  
15 which the State Board has not acted upon besides the one  
16 that you just referenced that Mr. Jackson described?

17 MS. MROWKA: The State Board did act upon a  
18 number -- well two other prior time extensions in its 1984  
19 order. It did not grant the extensions. It simply  
20 deleted the time to construct and the time for beneficial  
21 use from the permit, and it established pre-conditions  
22 that had to be met by 1987 for Reclamation to move  
23 forward.

24 MS. GILLICK: Since the 1984 time extension which  
25 was granted by the State Board, have there been other time

1 extension requests by Reclamation that the Board has not  
2 acted upon?

3 Did the Bureau of Reclamation request a time  
4 extension on May 12th, 1988?

5 MS. MROWKA: I believe they did.

6 MS. GILLICK: And did the State Board act upon  
7 this?

8 MS. MROWKA: No, the State Board could not act  
9 upon that because California Environmental Quality Act  
10 document had not been prepared. And absent that, we could  
11 not act.

12 MS. GILLICK: And then was there further requests  
13 in December -- in 1995 by the Bureau for time extension?

14 MS. MROWKA: I believe that's the one that was  
15 protested, yes.

16 MS. GILLICK: I believe there was one in 1995  
17 prior to the one that was protested by the Sportfishing  
18 Protection Alliance.

19 MS. MROWKA: Okay, thank you for reminding me.  
20 Yes.

21 And, again, with no environmental document, we  
22 could not act.

23 MS. GILLICK: Okay. I had one additional  
24 question and I just lost it. I apologize. Give me a  
25 minute.

1           If the Auburn Dam permit was revoked, which is  
2 currently at issue, which is held by the Bureau of  
3 Reclamation, would there be any assurances that future  
4 water that may be appropriated from the American River  
5 would be provided to the areas of origin?

6           STAFF COUNSEL ROSE: Objection. I think that's  
7 irrelevant to revocation.

8           VICE CHAIRPERSON WOLFF: Any comment?

9           MS. GILLICK: I think that it's important for the  
10 decision maker to make a decision on what's going to  
11 happen if the permit is revoked in your public interests  
12 considerations, and I think that's important.

13          VICE CHAIRPERSON WOLFF: Objection overruled.

14          MS. GILLICK: So are there currently any  
15 assurances that if the Bureau permit was revoked that the  
16 water that could be appropriated from the American River  
17 would be for the area of origin -- the watershed of  
18 origin?

19          MS. MROWKA: Well, there is current law which  
20 respects the county of origin and watershed of origin  
21 statutes. Certainly projects that comply with the  
22 statutes would receive the preference.

23          MS. GILLICK: Under the current State Board  
24 interpretation of the Watershed Protection Act, which is  
25 11460 of the Water Code, could an applicant receive

1 watershed protection statute without utilizing the Bureau  
2 of Reclamation?

3 STAFF COUNSEL ROSE: Objection. That calls for a  
4 legal opinion. Ms. Mrowka is not the appropriate person  
5 to be asking legal questions of.

6 VICE CHAIRPERSON WOLFF: Please restate the  
7 question in such a way as to not require a legal  
8 conclusion.

9 MS. GILLICK: In the absence of a contract from  
10 the Bureau of Reclamation, is it possible for a  
11 watershed-of-origin county to receive these protections  
12 you just referenced that you said would apply?

13 MS. MROWKA: Certainly it depends on, you know,  
14 if they meet the prerequisites for the watershed of origin  
15 protection. There are current Bureau projects that would  
16 be subject to that statute. And certainly I would think  
17 it would be applicable because there are current projects out  
18 there that would be subject.

19 MS. GILLICK: But in the absence of a Bureau  
20 project. So if this permit was revoked, would that  
21 watershed protection be available to those areas of  
22 origin?

23 MS. MROWKA: The Watershed Protection Act is very  
24 specific as to who -- you know, who the project developer  
25 is and then who is entitled to the benefit of the Act. So



1 it'd have to comport and, you know, meet the first task,  
2 which is, who's the developer of the project that the  
3 person is seeking the watershed of origin protection  
4 under?

5 MS. GILLICK: And as you sit here today, can you  
6 go over what that requirement would be or not? Is that  
7 not something you're familiar with just today testifying?

8 MS. MROWKA: It's something that I rarely read,  
9 that particular section of law. So I'd be pretty -- you  
10 know, I could say what I think it means, but it'd be  
11 something I have not read in a while.

12 MS. GILLICK: Okay. And that concludes my  
13 questions.

14 VICE CHAIRPERSON WOLFF: Thank you.  
15 Stockton East Water District.

16 MS. HARRIGFELD: I have no questions.

17 VICE CHAIRPERSON WOLFF: No questions.

18 Friends of the River, et al. Any questions?

19 MR. STORK: Ronald Stork, Friends of the River.

20 CROSS EXAMINATION

21 OF MS. KATHY MROWKA

22 BY MR. RONALD STORK, representing Friends of the River:

23 Who holds the permit that this proceeding's  
24 about?

25 MS. MROWKA: The United States of America.

1           MR. STORK: What would be the status of the  
2 underlying state filings that have been released from  
3 priority by the water rights in this proceeding with  
4 regard to counties of origin?

5           MS. MROWKA: With respect to counties of origin?

6           MR. STORK: Correct.

7           MS. MROWKA: Any unassigned portion of the state  
8 filings remains available for projects that are developed  
9 in the future. When parties are developing projects, they  
10 have to take into consideration the needs of the counties  
11 of origin. And there's often -- when water's assigned  
12 under state filings, there's often text in those  
13 assignments that very specifically says that it's subject  
14 to the needs of the counties of origin. So you'll usually  
15 see permit conditions.

16           New Melones Reservoir Project was built. There  
17 was a very specific reservation of water in that for the  
18 upstream counties. They took a look at the needs and they  
19 said, okay, this is -- you know, this is approved. But we  
20 are reserving this amount of water for Alpine and other  
21 counties that were upstream of the facility.

22           MR. STORK: Thank you.

23           VICE CHAIRPERSON WOLFF: Thank you.

24           The Auburn Dam -- I'm sorry -- the Sacramento  
25 County and Sacramento County Water -- Authority or Agency?

1 MS. DUNN: Agency.

2 VICE CHAIRPERSON WOLFF: Agency. Any questions?

3 MS. DUNN: No questions.

4 VICE CHAIRPERSON WOLFF: Auburn Dam Council.

5 MR. SCHAEFER: We have no questions.

6 VICE CHAIRPERSON WOLFF: South Delta Water

7 Agency?

8 MS. GILLICK: He stepped out, but he has no

9 questions.

10 VICE CHAIRPERSON WOLFF: He has no questions?

11 San Luis and Delta-Mendota Water Authority and

12 Westlands Water District?

13 Still not present.

14 Friends of the North Fork.

15 MR. GARABEDIAN: No question.

16 VICE CHAIRPERSON WOLFF: American River

17 Authority?

18 MR. WILLIAMS: No questions, Chairman Wolff.

19 VICE CHAIRPERSON WOLFF: That was the American

20 River Authority.

21 What is your name?

22 MR. WILLIAMS: Chris Williams.

23 VICE CHAIRPERSON WOLFF: Chris Williams. Thank

24 you, sir.

25 I apologize for not knowing all of the names yet.

1           Do we have any redirect -- desire for redirect,  
2 Mr. Rose?

3           STAFF COUNSEL ROSE: No, thank you.

4           VICE CHAIRPERSON WOLFF: No redirect.

5           We'll now move to accept the exhibits into  
6 evidence.

7           STAFF COUNSEL ROSE: I would so move.

8           VICE CHAIRPERSON WOLFF: Any objections?

9           MS. GILLICK: I'd like an opportunity to comment  
10 on the chart, Exhibit 4. So with the exception of -- we  
11 have a comment on that.

12           VICE CHAIRPERSON WOLFF: Exhibit 4 was a staff  
13 exhibit, not a prosecution exhibit. So Exhibit 4, I'll be  
14 glad to take comments on that at an appropriate time, and  
15 I'll consult with counsel on that. But as I said earlier,  
16 I'll hold the hearing open beyond the end of the day,  
17 tomorrow if necessary, to be sure that people have a  
18 chance to comment on Exhibit 4 and the map.

19           MS. GILLICK: Great. Thanks.

20           VICE CHAIRPERSON WOLFF: Thank you.

21           All right. I'm sorry, we had another objection?

22           MR. TURNER: If I could, Mr. Wolff.

23           In connection with Exhibit 4, I did have some  
24 questions as to for understanding exactly what this  
25 exhibit is supposed to be reflecting. I'm wondering at

1 what stage it would be appropriate to get into that  
2 subject, whether you want to put that off to the end of  
3 the evidentiary presentation or --

4 VICE CHAIRPERSON WOLFF: Well, let's hold that  
5 question for just a minute.

6 The prosecution team's exhibits will be accepted  
7 into evidence unless I have any objections.

8 No objections. It's accepted into evidence.

9 (Thereupon Staff Prosecution exhibits  
10 PT-1 through PT-6 were received into evidence.)

11 VICE CHAIRPERSON WOLFF: All right. Now, with  
12 respect to -- thank you.

13 Now, with respect to Exhibit 4. A number of the  
14 submittals indicated the importance of water supply issues  
15 in a variety of complicated ways. It wasn't clear to me  
16 what the impact of revocation was or was not with respect  
17 to the priority order of various projects. And I didn't  
18 see in the testimony any sort of comprehensive description  
19 of who might be affected by this decision. Since if  
20 diligence is found not to exist, then there's a policy  
21 decision -- a very important policy decision before the  
22 Board, I wanted to be sure the record included that  
23 information.

24 I could have simply tried to extract that through  
25 cross-examination. But to get something comprehensive

1 didn't seem very useful. I could have simply accepted  
2 into evidence the Board's records, taken official notice  
3 of the Board's records. But that does not give the  
4 parties a chance to critique the table. Maybe the Board's  
5 records contain errors.

6 I'm not sure what the relevance of this  
7 information is. But I'm sure that some of it might be  
8 relevant, and I wanted to be sure to have a complete  
9 record. Perhaps in the end none of it will be relevant.  
10 But I thought some of it might be relevant and, as I said,  
11 I wanted to be sure the record was complete. That's the  
12 only purpose of the table.

13 Does that help you, Mr. Turner?

14 MR. TURNER: If I might, Mr. Wolff, the main  
15 thing I guess I'm -- am I too be reading this as a list of  
16 all applications that would be affected by the revocation  
17 of the permits for Auburn Dam? In other words, these  
18 would not be all -- because obviously these must -- all of  
19 these sources of water that are identified in the  
20 right-hand column I assume somehow relate to our  
21 tributaries to the American River and therefore they would  
22 be affected by this revocation. And how broad a  
23 geographic area are we talking about? So that's why I was  
24 trying to figure out, you know, why these particular  
25 applications were selected on these various identified

1 sources and not on others.

2           VICE CHAIRPERSON WOLFF: Well, apparently this  
3 list -- and I'll turn to the staff to clarify. But  
4 apparently this list is everything from the headwaters  
5 down to the Freeport Bend of the Sacramento River that is  
6 in the State Board's files at present.

7           So whether they would or would not be affected  
8 is -- you know, the list doesn't specify whether they  
9 would or would not be affected. It's just simply a list  
10 of the information that's relevant -- that might be  
11 relevant to this policy decision, and I wanted to be sure  
12 to have that information in the record. That is to say, I  
13 don't know whether they'll be affected but it's possible.

14           MR. TURNER: And my second question was in  
15 connection with the second, third, and fourth applications  
16 that are identified on this list. The State Water  
17 Resources Control Board is identified as the owner.

18           Does that mean these are state-filed  
19 applications? Or how does the State Water Resources  
20 Control Board become the owner or the holder of the  
21 permit?

22           VICE CHAIRPERSON WOLFF: I'll have to turn to the  
23 staff to clarify that.

24           SENIOR STAFF COUNSEL HEINRICH: Dana Heinrich.

25           Those are state filings, so they're held by the

1 State Board until they are assigned to an applicant --

2 MR. TURNER: Okay. Thank you very much.

3 SENIOR STAFF COUNSEL HEINRICH: -- petitioner.

4 And just for purposes of clarification, staff  
5 listed on the table what is and is not included. It  
6 includes all of the tributaries upstream of the Auburn Dam  
7 project site. And then it includes all pending  
8 applications, permits, and licenses downstream on the main  
9 stem Lower American River and on the Sacramento River  
10 between the confluence of the Lower American and Freeport  
11 Bend. It doesn't include any water rights or pending  
12 applications below Freeport Bend, it doesn't include the  
13 South Fork American River, and it doesn't include any  
14 other tributaries below the Auburn Dam Project.

15 VICE CHAIRPERSON WOLFF: Did we have another  
16 specific question on this?

17 Ms. Gillick had a comment.

18 MS. GILLICK: Yeah. On the third page it refers  
19 to San Joaquin County's pending application, 29657. I  
20 believe the priority date of that is incorrect, and I've  
21 sent an Email back to the office to get the specific date.

22 A date here indicates a 2003 date. However, the  
23 initial application was filed by the county in 1990. I  
24 don't know the exact month and date, but I'm getting that.  
25 But the original application was filed in 1990. So the



1 priority date should be 1990.

2 VICE CHAIRPERSON WOLFF: Great. Thank you.

3 MS. GILLICK: Thank you.

4 VICE CHAIRPERSON WOLFF: I appreciate that.

5 Let me emphasize again that this is not  
6 necessarily a complete list. It is simply what exists in  
7 the State Board's files. I asked that it be introduced so  
8 that people would have an opportunity to correct it or to  
9 add to it.

10 I also don't know what the necessary relevance is  
11 of these. But they might be relevant, and I wanted to be  
12 sure to have a complete evidentiary record. You could  
13 argue in your closing briefs if you believe the stuff is  
14 relevant or irrelevant. But I certainly didn't want this  
15 information to appear later in a Board order -- in a draft  
16 Board order without people having had a chance to comment  
17 on it first.

18 MS. GILLICK: If I may. By Email, the date was  
19 February 9th, 1990. That was the date the county  
20 submitted its American River application.

21 Thank you.

22 VICE CHAIRPERSON WOLFF: There were -- were there  
23 two corrections or just the one?

24 MS. GILLICK: Just the one on the priority date.  
25 It should be February 9th, 1990.

1 VICE CHAIRPERSON WOLFF: All right. Thank you.

2 With that, I'm going to give the court reporter a  
3 short break.

4 We'll take a ten-minute break and we'll come back  
5 for the defense.

6 Thank you.

7 (Thereupon a recess was taken.)

8 VICE CHAIRPERSON WOLFF: I'm going to call the  
9 hearing back to order. Please return to your seats.

10 Thank you, all.

11 It's now time for the U.S. Bureau of Reclamation  
12 to present their case in chief.

13 MR. TURNER: I don't have any real opening  
14 statement to make, other than to say that the Bureau of  
15 Reclamation has requested this particular hearing to be  
16 able to explain to you and the other members of the Board  
17 staff the reasons why the Bureau of Reclamation does not  
18 feel it would be appropriate for the Board to revoke these  
19 permits at this point in time.

20 So I would like to simply present the Bureau's  
21 witness and to provide you with that information.

22 VICE CHAIRPERSON WOLFF: Please proceed.

23 MR. TURNER: So I'm now calling Ray Sahlberg from  
24 the Bureau of Reclamation.

25 /////

1 DIRECT EXAMINATION  
2 OF MR. RAY SAHLBERG  
3 BY MR. JAMES E. TURNER, Assistant Regional Solicitor,  
4 Pacific Southwest Region for the Department of the  
5 Interior, representing the U.S. Bureau of Reclamation:  
6 Mr. Sahlberg, could you present your full name  
7 for the record.

8 MR. SAHLBERG: Yes, my name's Ray Sahlberg. I'm  
9 the Water Rights Officer for the Mid-Pacific Region of the  
10 Bureau of Reclamation. My address is 2800 Cottage Way,  
11 sacramento California 95825.

12 MR. TURNER: And did you prepare the written  
13 testimony that was presented and I believe is identified  
14 as USBR Exhibit 1?

15 MR. SAHLBERG: Yes, I did.

16 MR. TURNER: And have you reviewed the accuracy  
17 of that testimony, and is it correct?

18 MR. SAHLBERG: Yes, it is.

19 MR. TURNER: And I would like you to summarize  
20 that now, if you would, please.

21 MR. SAHLBERG: Okay. Dr. Wolff and other  
22 members.

23 Auburn Dam was authorized in 1965 as part of the  
24 Auburn-Folsom South Unit of the Central Valley Project.  
25 The authorized cost ceiling at that time was \$425 million.

1 And as an aside, that is approximately \$2.9 billion in  
2 2008 dollars.

3           Decision 1356 granted the four permits that are  
4 at issue today. Construction began in 1972 of Auburn Dam.  
5 It was halted in 1976 after the magnitude 5.7 earthquake  
6 in Oroville. Several studies were designed. Studies were  
7 conducted to make sure that a seismically safe dam could  
8 be constructed. As a result of these studies, plus the  
9 inflation we all experienced -- or a lot of experienced  
10 in the 1970s, the cost of the project exceeded the  
11 congressionally authorized cost ceiling.

12           Several studies have been conducted on the dam  
13 since the halted construction. And as of this date,  
14 there's been no legislation passed to amend the project  
15 authorization and to raise the construction cost ceiling.

16           There's been a lot of delays. There's been  
17 debates over cost sharing configuration of the project,  
18 whether it should be a flood control project -- a flood  
19 control project now and a multipurpose project later.  
20 Environmental impacts have delayed Congress's decision.

21           I'd like to move on to the issue of due  
22 diligence.

23           When the State Board issues a permit to the  
24 Bureau of Reclamation, the United States, it issues that  
25 permit with the understanding that the United States, due

1 to the separation of powers between the Executive and  
2 Legislative branches, may fund a project differently than  
3 would otherwise be expected. And this gets to the issue  
4 with Section 844 of the State Board's regulations.

5           As we know, Section 844 states that a lack of  
6 finances that is incident to the individual and not the  
7 enterprise will not be considered as grounds for an  
8 extension of time. We believe this point is relevant in  
9 this case, because in this case a lack of finances by  
10 Reclamation is not incident to Reclamation but should be  
11 considered incident to the enterprise. The reason for  
12 this is that simply Reclamation has very little control  
13 over the source of funding for a project. It has to  
14 depend on appropriations from Congress. And Congress may  
15 decide to delay funding of a project for a variety of  
16 reasons.

17           In that case, the Bureau cannot go out and issue  
18 bonds, it cannot seek a loan, it could not assess its  
19 contractors for the costs of the project, it can't hold a  
20 bake sale, it can't buy lottery tickets and hope it wins.  
21 It has to wait for Congress to decide to appropriate more  
22 funds.

23           So, when we speak of diligence, we believe that  
24 the Bureau has proceeded as far as it can with this  
25 project given the constraints put on Congress. It cannot

1 do -- let us say a new feasibility study was required. It  
2 can't do that without congressional authority. It can  
3 only do what Congress allows it to do. And we believe  
4 that the State Board could reasonably find, given the  
5 circumstances, the changes in project financing through  
6 several administrations and all the other factors that  
7 Reclamation has proceeded with due diligence, that the  
8 lack of finances is incident not to Reclamation but to a  
9 larger overall enterprise, and that you can find that we  
10 have proceeded with due diligence given the constraints  
11 put on us.

12           Okay. Now Section 1410 gives the Board  
13 discretion on whether or not to revoke a permit even if  
14 due diligence cannot be demonstrated. We believe this  
15 project is still viable today despite the lack of  
16 reauthorization. It still has Congress's interest. And  
17 we believe that the State Board should exercise its  
18 discretion in favor -- against revocation in order to  
19 allow Congress to come to a final decision on this  
20 project.

21           There have been between 8 to 13 bills introduced  
22 related to -- in Congress, depending on how you count  
23 them, related to construction of Auburn Dam. I count  
24 eight bills since 1990 -- in the period 1988 to 1998. And  
25 then Congress as late as 2005 requested an update on the

1 cost and associated benefits of the Auburn-Folsom South  
2 Unit in 2005, which we completed in 2006.

3 Congress continues to appropriate funds for the  
4 maintenance and operation of the dam site and associated  
5 lands. Congress has not de-authorized the project yet.

6 If the Board chose to revoke the permits for this  
7 project, it would present Congress with a very difficult  
8 decision on whether or not to reauthorize a project that  
9 currently had no water rights. And they may very well  
10 never obtain water rights giving -- that may never get new  
11 water rights for it. The cost of getting those water  
12 rights may make the project costs even more prohibitive.  
13 We believe such an action would prevent Congress fully and  
14 freely to deliberate in the future of this project.

15 And, finally, I'd like to make two other points.  
16 There's been a lot of discussion on the benefits and  
17 drawbacks of Auburn Dam. My written testimony outlines  
18 some of the project features contained in the 2006 update,  
19 and I won't repeat them here. I don't think that -- and I  
20 agree with the State Board's prosecution staff, that I  
21 don't think whether Auburn Dam is good or bad, depending  
22 on the opinions of -- depending on your opinion, is really  
23 the issue here.

24 In my mind, it's up to Congress to make the final  
25 decision on whether or not Auburn should be built. And a

1 discussion of whether or not it should be built today in  
2 this form, I do not believe is appropriate.

3           And I'd like to make one other point, is that  
4 there's also been a lot of discussion on whether or not --  
5 why hasn't the Bureau requested appropriations for future  
6 construction after 1979? The simple answer to that is, if  
7 the cost of the project exceeds the cost ceiling, future  
8 construction would leave you with a partially completed  
9 project and no funds left to complete it.

10           And that really concludes my testimony for today.

11           VICE CHAIRPERSON WOLFF: Thank you.

12           We'll move to cross-examination.

13           The prosecution team.

14                           CROSS EXAMINATION

15                           OF MR. RAY SAHLBERG

16 BY MR. DAVID ROSE, STAFF COUNSEL, representing the State  
17 Water Board, Division of Water Rights Prosecution Team:

18           Good morning, Mr. Sahlberg.

19           VICE CHAIRPERSON WOLFF: Mr. Rose, please come  
20 over here.

21           STAFF COUNSEL ROSE: Good morning, Mr. Sahlberg.

22           MR. SAHLBERG: Good morning.

23           STAFF COUNSEL ROSE: Has the Bureau of  
24 Reclamation or the Department of Interior ever formally  
25 requested that Congress reauthorize the Auburn-Folsom



1 South Unit?

2 MR. SAHLBERG: The Department of Interior really  
3 can't ask Congress to do that. It would be  
4 appropriate -- it would be lobbying Congress with  
5 appropriated funds, which we are prohibited from doing.

6 STAFF COUNSEL ROSE: Now, if the permits are not  
7 revoked, do you think that this project will deliver water  
8 in the next five years?

9 MR. SAHLBERG: Probably not.

10 STAFF COUNSEL ROSE: In the next ten years?

11 MR. SAHLBERG: Depends on what Congress does.

12 MR. SAHLBERG: No further questions. Thank you.

13 VICE CHAIRPERSON WOLFF: Thank you.

14 CSPA.

15 CROSS EXAMINATION

16 OF MR. RAY SAHLBERG

17 BY MR. MICHAEL JACKSON, ESQ., representing the California  
18 Sportfishing Protection Alliance:

19 MR. JACKSON: Mr. Sahlberg, my name is Mike  
20 Jackson. I'm an attorney for the California Sportfishing  
21 Protection Alliance. And I have a series of questions for  
22 you, hopefully can get through them in ten minutes,  
23 depending on the answers.

24 You indicated in your testimony on page 1 that  
25 you do not believe that the permits should be revoked at

1 this -- Reclamation does not believe that the permit  
2 should be revoked at this time. When in your opinion  
3 should they be revoked if there is no action?

4 MR. SAHLBERG: Action by who?

5 MR. JACKSON: By Reclamation to build the dam.

6 MR. SAHLBERG: That would be up to Congress.

7 MR. JACKSON: Now, you indicated that -- what new  
8 circumstance from Congress would make it, in your opinion,  
9 time to revoke?

10 MR. SAHLBERG: I can't speak for Congress.

11 MR. JACKSON: Does Congress know you're here  
12 today?

13 MR. SAHLBERG: I would think so.

14 MR. JACKSON: Nancy Pelosi?

15 MR. SAHLBERG: I haven't spoken with Ms. Pelosi  
16 lately.

17 MR. JACKSON: Harry Reid?

18 MR. SAHLBERG: I haven't spoken with him lately  
19 either.

20 MR. JACKSON: Any member of the Democratic Party  
21 interested in this project?

22 MR. SAHLBERG: No, they haven't called me lately.

23 MR. JACKSON: Okay. Have you been called by any  
24 member of the Administration asking you to appear at this  
25 hearing and request that the rights not be revoked?

1 MR. SAHLBERG: I don't understand your question.

2 MR. JACKSON: Has the President's office called  
3 you and asked you to appear at this hearing requesting  
4 that the water rights to the Auburn project not be  
5 revoked?

6 MR. SAHLBERG: I was requested to appear by the  
7 Regional Director. Is that good enough for you?

8 MR. JACKSON: No, sir. Anybody in the  
9 Administration?

10 MR. SAHLBERG: Define the Administration.

11 MR. JACKSON: Anybody in the Executive Office of  
12 the White House.

13 MR. SAHLBERG: No.

14 MR. JACKSON: Now, you indicate in your testimony  
15 that basically Reclamation hasn't built this project  
16 because of limitations imposed by Congress. What  
17 limitations were you referring to?

18 MR. SAHLBERG: They have not increased the  
19 authorized cost ceiling.

20 MR. JACKSON: And Reclamation is not, as you put  
21 it, able to lobby, and so they can't ask for that to  
22 happen?

23 MR. SAHLBERG: Basically that's correct.

24 MR. JACKSON: So at this point do you have an  
25 analysis of how many years it would take before somebody

1 might ask to lift the cost ceiling?

2 MR. TURNER: Mr. Sahlberg has already responded  
3 to that question in the subsequent cross -- the previous  
4 cross-examination.

5 MR. JACKSON: If that answer is acceptable, it's  
6 acceptable to me. I'll rely on that.

7 On the flip side of that, what in Reclamation's  
8 opinion would Congress have to do to tell Reclamation to  
9 agree that the rights ought to be revoked to allow  
10 California to use its own water in a different fashion?

11 MR. SAHLBERG: If Congress directed us through  
12 legislation to give up the permits, then we would proceed.

13 MR. JACKSON: All right. And short of that, you  
14 would not believe that -- you would not give up the  
15 permits no matter how long it took unless you got a  
16 de-authorization vote out of Congress?

17 MR. SAHLBERG: The permits are federal property  
18 rights. We are bound to protect them.

19 MR. JACKSON: You believe that these rights are  
20 property rights?

21 MR. SAHLBERG: A water right's a property right.

22 MR. JACKSON: And that the State Board has no  
23 authority to revoke?

24 MR. SAHLBERG: I didn't say that.

25 MR. JACKSON: All right. You acknowledge that

1 both the Reclamation Act and the CVPIA waive sovereign  
2 immunity in this matter?

3 MR. TURNER: That's legal conclusion and I don't  
4 feel it's appropriate for the witness to respond to.

5 MR. JACKSON: Mr. Wolff, Mr. Sahlberg in the  
6 second sentence is, "I am the Regional Water Rights  
7 Officer for the Mid-Pacific Region of the Bureau of  
8 Reclamation." If I can't ask the Bureau through their  
9 water rights officer what their view of the law is,  
10 there's no way that we can ask. He's exactly the person.

11 VICE CHAIRPERSON WOLFF: Let's re-read the  
12 question.

13 (Thereupon the court reporter read  
14 Back the record.)

15 VICE CHAIRPERSON WOLFF: Objection overruled.  
16 It's a factual question about your knowledge of the CVPIA  
17 and the Reclamation Act.

18 MR. SAHLBERG: Could you repeat the question one  
19 more time, please.

20 (Thereupon the court reporter read  
21 Back the record.)

22 MR. SAHLBERG: I'm not aware of anything in the  
23 CVPIA concerning the Board's -- a waiver of sovereign  
24 immunity concerning these types of matters.

25 MR. JACKSON: All right. Is it your position

1 that there is nothing in the CVPIA that gives the Board  
2 authority over the Bureau?

3 MR. SAHLBERG: I believe the Board's authority  
4 over the Bureau is contained in Section 8 of the 1902 Act.

5 MR. JACKSON: And reaffirmed in CVPIA?

6 MR. SAHLBERG: Like I said, I'm not aware of any  
7 such section in the CVPIA. It may exist. I'm just not  
8 aware of it.

9 MR. JACKSON: Okay. Thank you, sir.

10 In your testimony you indicate that you believe  
11 the Board should preserve -- should exercise its  
12 discretion not to revoke the water right to preserve the  
13 national, state, and local water supply and power benefits  
14 of this project; is that correct?

15 MR. SAHLBERG: Yeah.

16 MR. JACKSON: All right. So who are the  
17 contractors for this water?

18 MR. SAHLBERG: The only party I am aware of that  
19 currently has a contract to receive Auburn water from the  
20 project would be I believe the Placer County Water Agency.

21 MR. JACKSON: And does that use up all of the  
22 water for the project?

23 MR. SAHLBERG: I don't believe so.

24 MR. JACKSON: What arrangements have you made for  
25 the Placer County Water Agency to have them pay for

1 construction of the project?

2 MR. TURNER: If I might. I don't understand how  
3 this has any relevance to whether the permit should or  
4 should not be revoked.

5 MR. JACKSON: I started this morning by asking  
6 whether or not the stipulation handled the question of  
7 revocation. And now we're talking about discretion and  
8 what would happen if you exercised your discretion not to  
9 revoke.

10 VICE CHAIRPERSON WOLFF: Overruled.

11 MR. SAHLBERG: Could you repeat the question,  
12 please, sir.

13 (Thereupon the court reporter read

14 Back the record.)

15 MR. SAHLBERG: In their water service contract,  
16 if they were to receive water from the Auburn project, as  
17 I recall -- and I'm not a contracting expert -- but as I  
18 recall, the cost of Auburn would be part of the pooled  
19 cost of the CVP. The CVP is a financially integrated  
20 project. That means that all the water users pay for  
21 certain parts of the project and then they pay for other  
22 parts as they are used. So I would imagine that the costs  
23 of Auburn Dam would be included in the CVP pooled costs to  
24 be repaid by -- some costs would be repaid by all CVP  
25 contractors, some costs would be repaid only by Placer

1 County. But like I said, I'm not an expert and I could  
2 very well be mistaken in that.

3 MR. JACKSON: All right. What is the present  
4 design of the dam? Is it a multipurpose project or a  
5 flood control project?

6 MR. SAHLBERG: It is currently authorized as a  
7 multipurpose project.

8 MR. JACKSON: And you've indicated that the cost  
9 cap that Congress set is not sufficient to build it; is  
10 that correct?

11 MR. SAHLBERG: That's correct.

12 MR. JACKSON: Okay. Is the lack of activity on  
13 the Auburn project all Congress's fault, or does  
14 Reclamation share any of the burden?

15 MR. SAHLBERG: I'm uncomfortable with assigning  
16 blame to Congress on this issue.

17 MR. JACKSON: Well, you've indicated that  
18 Reclamation has no authority to build a contract -- to  
19 build the dam without Congress, correct?

20 MR. SAHLBERG: I'm sorry?

21 MR. JACKSON: Reclamation has no authority to  
22 build the dam without Congress's approval, correct?

23 MR. SAHLBERG: I said that they cannot construct  
24 the project without an amendment of the authorization.

25 MR. JACKSON: All right. So are you saying --



1 you've indicated in your testimony that Congress has  
2 ultimate control over the project?

3 MR. SAHLBERG: Yes.

4 MR. JACKSON: How is the Board or people in  
5 California in general to determine what Congress wants  
6 done with this project, given the 38 years of failure to  
7 build it?

8 MR. SAHLBERG: I don't know.

9 VICE CHAIRPERSON WOLFF: Mr. Jackson, how much  
10 further do you have?

11 MR. JACKSON: I've got, I would think, maybe six  
12 more minutes.

13 VICE CHAIRPERSON WOLFF: Well, if you could do it  
14 in three, that would be appreciated. We did lose some  
15 time for you, you know, when we asked for questions to be  
16 reread and so forth. But if you could get to the points  
17 that you want to make.

18 MR. JACKSON: All right. I'll move along as  
19 quickly as I can.

20 Mr. Sahlberg, your testimony seems to be arguing  
21 that there's something in Decision 1356 that commits the  
22 State Board to have a different standard, a reasonable  
23 standard in regard to due diligence, different than it  
24 would have with any other water user applying for a water  
25 right. Is that your position?

1           MR. SAHLBERG: My position -- the Reclamation's  
2 position is that when the Board grants a permit to the  
3 Bureau of Reclamation or any other federal agency, it  
4 grants that permit being mindful of the restrictions  
5 placed on that agency.

6           MR. JACKSON: And since there were people who  
7 were holding rights to build water facilities on the  
8 American River prior to the reassignment of the state  
9 filing to Reclamation for the Auburn project, and since  
10 Reclamation made the argument in that hearing that water  
11 could simply not be parked if people really had no  
12 authorization or finances to build, do you believe that  
13 there's a different standard for the United States?

14           MR. SAHLBERG: Like I've said, when the Bureau  
15 gets a permit, it is issued -- it is our position that the  
16 State Board issues the permit with the understanding that  
17 there is -- well, to put it differently, there's more than  
18 one set of hands on the control, that we are subject to  
19 congressional authority and the permit is granted with  
20 that understanding.

21           MR. JACKSON: So is there something that  
22 Reclamation believes is in the order of the original  
23 decision that binds this Board to treat the United States  
24 differently than any other water rights applicant?

25           MR. SAHLBERG: I'm sorry. Could you repeat the

1 question.

2 MR. JACKSON: Yes. Do you believe that there's  
3 something in the decision that was made by a previous  
4 Board 38 years ago that binds this Board in considering  
5 your situation today?

6 MR. SAHLBERG: I don't have the decision in front  
7 of me, so I can't cite specific language. But, in  
8 essence, yes.

9 MR. JACKSON: Do you find it significant that  
10 none of the processes that you highlight at page 10 in  
11 your testimony that BDCP, CALFED, Delta Vision, or the  
12 Strategic Workplan ever considered Auburn as a water  
13 supply program for the State of California?

14 MR. SAHLBERG: Do I consider it significant?

15 MR. JACKSON: Yes.

16 MR. SAHLBERG: I believe that -- given the  
17 controversy over this project, I can see why that these  
18 programs would not consider Auburn as an alternative -- as  
19 a first-line alternative.

20 MR. JACKSON: Thank you. No further questions.

21 VICE CHAIRPERSON WOLFF: Thank you.

22 County of San Joaquin.

23 CROSS EXAMINATION

24 OF MR. RAY SAHLBERG

25 BY MS. DeeAnne GILLICK, ESQ., representing County of San

1 Joaquin and the San Joaquin County Flood Control and Water  
2 Conservation District:

3 Hi there. DeeAnne Gillick on behalf of County of  
4 San Joaquin.

5 When Congress authorized the Auburn Dam Project  
6 in 1965, does the Congressional language indicate that the  
7 water was intended to serve San Joaquin County?

8 MR. SAHLBERG: Boy, that's a good question.

9 I don't recall.

10 MS. GILLICK: I'd like to provide the witness a  
11 copy of San Joaquin County Exhibit 16, which is Public Law  
12 89-161.

13 Is that the Congressional authorization that  
14 authorized the Auburn Dam Project?

15 MR. SAHLBERG: Yes.

16 MS. GILLICK: Okay. I'd like you to look at page  
17 2 of what I handed you.

18 Does that indicate that the water supply that  
19 would be developed from the Auburn Dam Project would be to  
20 serve San Joaquin County?

21 MR. SAHLBERG: It seems to indicate that the  
22 Folsom South Canal would be to serve Sacramento and San  
23 Joaquin counties. Is that --

24 MS. GILLICK: Was the Folsom South Canal a  
25 component of the Auburn Dam?

1 MR. SAHLBERG: Yes, it was.

2 MS. GILLICK: Okay. In 1970, when the State  
3 Board issued the original permit, the Auburn Dam Project,  
4 was it intended at that time that the water supply  
5 developed from the Auburn Dam would benefit San Joaquin  
6 County?

7 MR. SAHLBERG: I believe so, yes. I believe  
8 that's what the decision says.

9 MS. GILLICK: Yeah. And the Bureau study to  
10 support providing water supply in the Auburn Dam unit, was  
11 that water supply to benefit San Joaquin County?

12 MR. SAHLBERG: I'm sorry?

13 MS. GILLICK: The Bureau studies that supported  
14 the Auburn Dam Project, was the water supply to be  
15 developed to serve San Joaquin County?

16 MR. SAHLBERG: I believe so, yes.

17 MS. GILLICK: Okay. Nothing further.

18 VICE CHAIRPERSON WOLFF: Thank you.

19 Anything from Stockton East?

20 MS. HARRIGFELD: No questions.

21 VICE CHAIRPERSON WOLFF: Friends of the River?

22 CROSS EXAMINATION

23 OF MR. RAY SAHLBERG

24 BY MR. RONALD STORK, representing Friends of the River:

25 Ronald Stork for Friends of the River again.

1           Again, who holds the water right for the permits  
2 in this hearing?

3           MR. SAHLBERG: Give me a second and I'll -- I'm  
4 looking at Permit 16209. The United States of America,  
5 care of the United States Department of the Interior,  
6 Bureau of Reclamation, filed the petition -- filed the  
7 application.

8           MR. STORK: Thank you.

9           When did Congress authorize the project?

10          MR. SAHLBERG: September -- I believe September  
11 2nd, 1965.

12          MR. STORK: When did the Bureau receive the water  
13 rights for the project?

14          MR. SAHLBERG: I believe 1970.

15          MR. STORK: Are you familiar with Exhibit 19 in  
16 our testimony?

17          MR. SAHLBERG: I'm afraid not.

18          MR. STORK: Well, maybe you're familiar with the  
19 subject of it.

20          In 1989 the Bureau was attempting to get  
21 contractors to commit to supporting and incorporating  
22 Auburn Dam in the rate base. And in 1989 the CVP  
23 contractors said no.

24          Are you familiar with that piece of history?

25          MR. SAHLBERG: In 1989 I was still a rocket

1 scientist, I believe.

2 MR. STORK: Good. Let's hope you were shooting  
3 straight.

4 Are you familiar with Exhibit 2 in our testimony?

5 MR. SAHLBERG: No, I'm not.

6 MR. STORK: In Exhibit 2, there are  
7 recommendations from the Bureau of Reclamation's  
8 Commissioner and the Secretary of the Interior  
9 recommending Auburn Dam.

10 MR. SAHLBERG: Okay.

11 MR. STORK: I heard you earlier today -- or  
12 earlier in your testimony suggest that it was  
13 inappropriate for Reclamation or the Department of the  
14 Interior to make recommendations to Congress. Are you  
15 aware of any statutory changes that have occurred since  
16 1965 that would prevent the Department of Interior from  
17 making recommendations?

18 MR. SAHLBERG: Without reviewing Exhibit 2, I  
19 can't say whether or not what you said had happened in  
20 Exhibit 2 is appropriate or not. We can respond to  
21 requests from Congress. But we can't go up there on our  
22 own volition and say, "Hey, let's go up there today and  
23 lobby for Auburn Dam" or any other project.

24 MR. STORK: Okay. And that's your testimony.  
25 And we'll get back to you on that.

1           Are you familiar with the purpose of the American  
2 River Water Resources Investigation completed by  
3 Reclamation in '97-'98?

4           I actually have a copy of the executive summary  
5 of that document that is a one-paragraph summary of the  
6 purpose.

7           I also have a copy of the document here that  
8 outlines the authorization for that study. It has not  
9 been admitted into the record. And I ask the Hearing  
10 Officer, is it possible for the witness to read these  
11 relatively short paragraphs and put it in the record?

12           VICE CHAIRPERSON WOLFF: I'm sorry. What  
13 paragraphs?

14           MR. STOCK: These are paragraphs in the executive  
15 summary of the Bureau of Reclamation's American River  
16 Water Resources Investigation outlining the purpose of the  
17 study and the authority of the study and the financial  
18 background of the study. I do that because the Bureau's  
19 witness has suggested that it is -- that they are not  
20 authorized to do more things on the American River Folsom  
21 South Project.

22           VICE CHAIRPERSON WOLFF: Well, you can enter  
23 these paragraphs so long as there's not an objection. But  
24 asking Mr. Sahlberg to read them, what's the purpose of  
25 that?



1 MR. STORK: Well, I can read them as well.

2 They're --

3 VICE CHAIRPERSON WOLFF: Or you can simply hand  
4 them in and hand them to Mr. Turner so he can see if he  
5 objects.

6 MR. STORK: Okay. Thank you.

7 VICE CHAIRPERSON WOLFF: Is this the foundation  
8 for follow-up questions?

9 MR. STORK: Yes.

10 VICE CHAIRPERSON WOLFF: I see.

11 Well, let's first see if there's any objection to  
12 the paragraphs.

13 Why don't you just read them then if they're  
14 foundation for further questions.

15 The Bureau acknowledges that the paragraphs exist  
16 in the report so named?

17 MR. TURNER: That's correct.

18 MR. STORK: All right. The purpose and scope of  
19 the American River Water Resources Investigation.

20 "The purpose of the ARWRI is to identify  
21 water-related resource needs in the study area, formulate  
22 alternatives to meet these needs, and recommend a  
23 preferred program. The American River Water Resources  
24 Investigation has been conducted in accordance with the  
25 economic and environmental principles and guidelines for

1 water and related land resource implementation studies,  
2 U.S. Water Resources Council. The federal objective is to  
3 manage, develop, and protect water and related resources  
4 in an environmentally sound manner in the best interests  
5 of the American public." That's the purpose.

6           The authorization and guidance is: "In 1991,  
7 Congress provided initial appropriation for the U.S.  
8 Bureau of Reclamation to conduct an investigation of the  
9 water resources needs of the American River Basin under  
10 the Energy and Water Development Appropriations Act of  
11 1991, PL 101-514, November 5th, 1990. Reclamation's  
12 participation in the American River Water Resources  
13 Investigation is authorized by the American River Basin  
14 Development Act of 1949, PL 81-356, October 14th, 1949.

15           "Reclamation and the Sacramento Metropolitan  
16 Water Agency (SAMWA) entered into an agreement on August  
17 12th, 1991 which defines SAMWA and the interests it  
18 represents as equal cost-sharing partners with Reclamation  
19 for the American River Water Resources Investigation and  
20 identifies the roles and responsibilities of various  
21 agencies."

22           You've testified today that Reclamation is unable  
23 to venture an opinion on what its projects -- or its  
24 further responsibilities and opportunities are for the  
25 Auburn-Folsom South Unit.

1           MR. TURNER: I object. That is a  
2 misrepresentation of what Mr. Sahlberg's testimony was  
3 about limitations on the Bureau's authority.

4           MR. STORK: I'll accept his summary and call it  
5 the limitations on the Bureaus's authority.

6           Do you agree with Reclamation's characterization  
7 that participation in additional studies was authorized by  
8 the American River Basin Development Act of 1949?

9           MR. SAHLBERG: Sure.

10          MR. STORK: Are you aware of any reason why the  
11 Administration cannot request in the President's budget  
12 appropriations for these studies such as occurred in the  
13 Energy and Water Development Act of 1991?

14          MR. SAHLBERG: The Administration responded  
15 to -- I'm sorry. I don't understand your question.

16          MR. STORK: Can Reclamation through the executive  
17 process make a recommendation to do planning studies for  
18 the American River Basin under the authority of the 1949  
19 Act, send it up to O&B, and request that an appropriation  
20 be included in the President's budget for planning  
21 studies?

22          MR. SAHLBERG: Sure.

23          MR. STORK: Thank you.

24          We'll follow up later. Thank you.

25          VICE CHAIRPERSON WOLFF: Thank you.

1 Sacramento county.

2 MS. DUNN: No questions.

3 VICE CHAIRPERSON WOLFF: Auburn Dam Council.

4 MR. SCHAEFER: We have no questions.

5 VICE CHAIRPERSON WOLFF: South Delta Water

6 Agency.

7 MS. GILLICK: No questions on behalf of John

8 Herrick.

9 VICE CHAIRPERSON WOLFF: San Luis and

10 Delta-Mendota Water Authority, the Westlands Water

11 District?

12 Not present.

13 Friends of the North Fork.

14 CROSS EXAMINATION

15 OF MR. RAY SAHLBERG

16 BY MR. MICHAEL GARABEDIAN, ESQ., representing Friends of

17 the North Fork:

18 Good morning, Mr. Sahlberg. I'm Michael

19 Garabedian with Friends of the North Fork.

20 And we thank the Board for this opportunity to

21 participate in this hearing by calling it.

22 On page 10 of your written testimony, you refer

23 to Congress consistently appropriating funds for operation

24 and maintenance of the dam site and associated lands; is

25 that correct?

1 MR. SAHLBERG: Yes.

2 MR. GARABEDIAN: What are the associated lands?

3 MR. SAHLBERG: I believe they're the state  
4 recreation lands around the dam site, oh, the -- I'm  
5 trying to think of a specific one. But the state  
6 recreation lands around the land site, they're withdrawn  
7 lands we've got when the project was authorized. Those  
8 types of lands.

9 MR. GARABEDIAN: Would it include the waters? It  
10 refers to lands. Does it include the waters?

11 MR. SAHLBERG: Operation and maintenance of the  
12 waters? No, it wouldn't include the waters.

13 MR. GARABEDIAN: Can you tell us in general what  
14 are the operation and maintenance activities?

15 MR. SAHLBERG: Are we talking about the lands  
16 again, sir?

17 MR. GARABEDIAN: I think you're limiting your  
18 testimony to the lands, yes.

19 MR. SAHLBERG: Okay. It would be a payment to --  
20 I believe it's a payment to the state. I'm not a lands  
21 person, so I really can't answer that. But I believe it's  
22 to help -- the operation and maintenance of lands are to  
23 help maintain the state recreation area. But there could  
24 be other things. Plus whatever activities are required  
25 around the dam site.

1           MR. GARABEDIAN: So you're saying operation and  
2 maintenance includes the ASRA contract and dam site area  
3 activity. Do you know if it would include activities  
4 anywhere else?

5           MR. SAHLBERG: I would not know.

6           MR. GARABEDIAN: As part of this operation and  
7 maintenance, does the Bureau have a position on proposed  
8 facilities below the take line of the dam? Is that part  
9 of your operation and maintenance?

10          MR. SAHLBERG: Proposed activities below the take  
11 line? I really don't know.

12          MR. GARABEDIAN: Does the Bureau take action or  
13 activities in the lands other than operation and  
14 maintenance activity?

15          MR. SAHLBERG: Not that I'm aware of.

16          MR. GARABEDIAN: The Bureau is a land owner  
17 there, correct?

18          MR. SAHLBERG: Yes. Again, when you mention the  
19 federal government, the land owner is the United States  
20 and then there's particular agencies who are charged with  
21 administering it.

22          MR. GARABEDIAN: Thank you.

23                 No further questions.

24          VICE CHAIRPERSON WOLFF: Thank you.

25                 The American River Authority.

1 MR. WILLIAMS: No questions.

2 VICE CHAIRPERSON WOLFF: No questions.

3 Do you have any redirect testimony, Mr. Turner?

4 MR. TURNER: No, I don't. I would just like to  
5 move that the two Bureau exhibits be accepted in the  
6 record.

7 VICE CHAIRPERSON WOLFF: So accepted.

8 (Thereupon the Bureau of Reclamation's  
9 Exhibits USBR-1 and USBR-2 were received  
10 into evidence.)

11 VICE CHAIRPERSON WOLFF: What's the official  
12 pronouncement on that actually?

13 SENIOR STAFF COUNSEL HEINRICH: Accepted.

14 VICE CHAIRPERSON WOLFF: Accepted.

15 With that, we're going to move to the case of the  
16 California Sportfishing Protection Alliance.

17 Mr. Jackson.

18 MR. JACKSON: Mr. Wolff, Michael Jackson on  
19 behalf of the California Sportfishing Protection Alliance.  
20 We have a short opening statement and then we'll put the  
21 witnesses on.

22 The California Sportfishing Protection Alliance  
23 has been involved in this issue since before we filed the  
24 protest to the extension of time -- request for extension  
25 of time in the early nineties.

1           Our interest has been because even at that point  
2 there was clearly a difference between what was  
3 expected -- in 1965 and 1970 what was expected in Decision  
4 1356 and what the reality of the American River and its  
5 contribution to the Delta was beginning to show in terms  
6 of available water.

7           We are even more interested in that issue now  
8 since it's become clear over time that the 2.5 million  
9 acre-feet in storage and supply and the 2 million  
10 acre-feet in storage for hydroelectric had absolutely  
11 dwarfed the ability of the American River to supply that  
12 kind of storage numbers and to have people rely on that as  
13 a water supply and a hydroelectric supply into the future.

14           The testimony that you will hear from our  
15 witnesses:

16           Mr. Shutes will talk mostly about the changes  
17 that have taken place on the Auburn -- since the granting  
18 of the water rights at Auburn on the American River; and  
19 Mr. Jennings will testify as to what changes have happened  
20 since the granting of those water rights in terms of the  
21 Delta.

22           The purpose of our testimony is to attempt to  
23 encourage you, as Hearing Officer, and the other four  
24 Board members at the time you consider whether or not to  
25 revoke this water rights permit, in order to convince you



1 to exercise your discretion, as we believe the law would  
2 require under 1410, to revoke these rights.

3           We think it's important that everyone understand  
4 that the folks upstream do have an area-of-origin right.  
5 This river was supposed to supply the South Fork of the  
6 American project for some water for San Joaquin County.  
7 And those are rights that folks can apply for if this one  
8 gets out of the way.

9           The Decision 1356 basically looked at an  
10 analogous situation. There were people who had water  
11 right applications on the river, and they had not gotten  
12 their financing together, had not figured out the design  
13 of their project. There were no environmental documents.  
14 Of course at that point there were no environmental  
15 documents required. This water right is so old that it  
16 predates the Clean Water Act, it predates CEQA. It  
17 predates the Endangered Species Act. And none of those  
18 things were considered. It's my understanding that NEPA  
19 itself was only 30 days old.

20           MR. TURNER: Is this testimony or an opening  
21 statement? Sorry.

22           MR. JACKSON: This is an opening statement. This  
23 is an opening statement as to what the testimony will be  
24 in this case.

25           VICE CHAIRPERSON WOLFF: Mr. Turner, were you

1 objecting to the statements?

2 MR. TURNER: I was objecting to the fact that he  
3 seems to be testifying instead of doing an opening  
4 statement. He should have his witnesses present the  
5 testimony.

6 VICE CHAIRPERSON WOLFF: I concur with you. But  
7 I believe Mr. Jackson is saying his witnesses will present  
8 the same information as evidence.

9 MR. JACKSON: That's correct. And as I  
10 understand an opening statement, it is to give you a road  
11 map of what the witnesses will say. And that's what I'm  
12 attempting to do.

13 In your consideration of how to exercise your  
14 discretion, basically we believe it would be a good idea  
15 to sort of do the old division of the yellow tablet into  
16 pros and cons. And we think when you divide the yellow  
17 tablet into pros and cons, you will find that 38 years has  
18 caused a world of change in the Delta and that these water  
19 rights are no longer appropriate.

20 The most important thing to us is included in  
21 1356, almost prescient, as it went back and took a look  
22 at, as it says, where you're going to revoke the senior  
23 rights on this river and release the state filings to the  
24 Bureau, because folks have had a number of years, in that  
25 case less than ten, to get their project lined up, to do a

1 feasibility study, to find evidence necessary. And we  
2 can't just leave water in, to use Kathryn Mrowka's  
3 testimony, cold storage.

4 And so we believe that our testimony will provide  
5 facts upon which you not only have the discretion to  
6 revoke, but that not to revoke on this record would be an  
7 abuse of discretion. And so this testimony will follow.

8 Thanks.

9

DIRECT EXAMINATION

10

OF MR. CHRIS SHUTES AND MR. BILL JENNINGS

11 BY MR. MICHAEL JACKSON, ESQ., representing the California

12 Sportfishing Protection Alliance:

13 Gentlemen, what you identify yourself the record  
14 please.

15 MR. SHUTES: Chris Shutes, FERC Project Director  
16 for the California Sportfishing Protection Alliance.

17 Address?

18 MR. JACKSON: Yes, sir.

19 MR. SHUTES: 1608 Francisco Street, Berkeley,  
20 California 94703.

21 MR. JACKSON: As part of your work as FERC  
22 Coordinator For the California Sportfishing Protection  
23 Alliance, have you become familiar with the American  
24 River?

25 MR. SHUTES: Very familiar.

1 MR. JACKSON: And do you live in the drainage?

2 MR. SHUTES: I do not.

3 MR. JACKSON: Do you visit the drainage  
4 regularly?

5 MR. SHUTES: I fished there for over 40 years. I  
6 was a fishing guide in part of the drainage. I'm familiar  
7 with the hydrology of the drainage through relicensing of  
8 the Upper American River Project, the El Dorado Project,  
9 and now the Drum-Spaulding Project and Yuba Bear Projects.

10 MR. JACKSON: Mr. Jennings, would you identify  
11 yourself for the record, please.

12 MR. JENNINGS: Bill Jennings, Executive Director,  
13 California Sportfishing Protection Alliance, 3536 Rainier  
14 Avenue, Stockton, California, 95204

15 MR. JACKSON: In the course of your work as  
16 Executive Director for the California Sportfishing  
17 Protection Alliance, have you become familiar with the  
18 effects of upstream rivers on conditions in the San  
19 Francisco Bay Delta?

20 MR. JENNINGS: Yes, I have.

21 MR. JACKSON: Were both of you sworn earlier?

22 MR. JENNINGS: Yes.

23 MR. SHUTES: Yes, we were.

24 MR. JACKSON: Mr. Shutes, would you begin by  
25 summarizing your testimony.

1 MR. SHUTES: Thank you.

2 Almost exactly ten years ago CSPA filed a protest  
3 against an extension of time for water rights whose  
4 revocation is under consideration today. In crafting that  
5 protest, CSPA was incredulous that the Board would allow a  
6 set of permits to languish for 27 years with no apparent  
7 prospect that the water permitted would be put to  
8 beneficial use as proposed.

9 Ten years later, after what is now 37 years,  
10 there is no project, no prospect of a project, no  
11 congressional interest in a project, no federal funding  
12 for a project, no funding partners for a project, and no  
13 environmental documentation for a project.

14 Diligence does not mean and must not mean  
15 conforming to those aspects of State Board direction that  
16 one chooses or finds convenient to fulfill.

17 In 1984 the Board directed the Bureau to obtain  
18 preliminary approval from the Board for new project design  
19 before taking a project to Congress. The Bureau did not.  
20 In 2001, the Board directed the Bureau to prepare  
21 environmental documentation for a project. The Bureau did  
22 not, maintaining consistently that the prerequisite for  
23 diligent pursuit of its project was authorization of  
24 funding by Congress.

25 Diligence according to the Bureau has literally

1 come to mean waiting for an act of Congress.

2           The question must be asked: Who interprets,  
3 carries out, and enforces the Water Code, the Board or the  
4 Bureau? In my opinion, the Board is not asking -- the  
5 Bureau, excuse me, is not asking for discretion on the  
6 part of the Board. It is asking for abdication.

7           In no small measure CSPA has represented the  
8 public interest in this proceeding by insisting on good  
9 process. This is consistent with the role CSPA has played  
10 vis-a-vis the Board on many issues on many occasions. It  
11 is flatly unacceptable that it took the Board ten years to  
12 act on a simple protest to extend the time to put to use.

13           Recently, the Board has begun to put an end to  
14 allowing permittees to indefinitely extend their permits.  
15 For CSPA this cannot happen soon enough.

16           The draft California Water Board Strategic Plan  
17 Update states: "Goal 6: Enhance consistency across the  
18 water boards on an ongoing basis to ensure our processes  
19 are effective, efficient, and predictable and to promote  
20 fair and equitable application of laws, regulations,  
21 policies, and procedures. What goes across the various  
22 boards must go within the State Board. And what goes for  
23 all the smaller water rights that have been revoked in the  
24 last few years must also go for the Bureau.

25           No reasonable possibility remains today that the

1 projects contemplated in the Auburn water rights will be  
2 completed. Each of the parties designated as a potential  
3 beneficiary of Auburn Dam has made or at the very least  
4 begun to seriously pursue before the Board alternative  
5 arrangements. They have all moved on.

6           Decision 1356 speculated that there would be  
7 possible fisheries benefits to eastside canal. Others  
8 have speculated that there would be possible fisheries  
9 benefits to the Lower American River in completing an  
10 Auburn Dam. There is an explicit requirement in D-893  
11 that the United States provide releases past Nimbus Dam  
12 sufficient at all times to satisfy requirements for fish  
13 conservation.

14           The abusive pattern on the part of the water  
15 development community which invariably proposes to create  
16 new developments in order to comply with the requirements  
17 of previous developments must be answered instead with  
18 diligent enforcement on the part of the Board of already  
19 existing applicable law. The idea that we need an Auburn  
20 Dam to make possible a flow standard for the Lower  
21 American River is unacceptable.

22           Thank you.

23           MR. JACKSON: Mr. Jennings, would you summarize  
24 your testimony, sir.

25           MR. JENNINGS: Yes. I'll be brief.

1           My testimony points out that California has far  
2 more entitlements or claims to water than it has actual  
3 water and that downstream environmental conditions and  
4 operations of the export projects have dramatically  
5 changed subsequent to the issue of the subject permits.

6           And these subject changes in environmental  
7 conditions and export operations must be considered in any  
8 determination of whether there is good cause to not revoke  
9 the permits, whether the permits are in the public  
10 interest, whether due diligence has been exercised or if  
11 satisfactory progress can be made.

12           When these water rights were issued, I was 26  
13 years old, weighed 150 pounds, and had flaming red hair.

14           (Laughter.)

15           MR. JENNINGS: Gas was 26 cents a gallon. There  
16 was no federal Clean Water Act or Endangered Species Acts,  
17 no CEQA. And as Mike pointed out, NEPA was only 30 days  
18 old. California had half its population and the South  
19 Delta pumps were only exporting about two million  
20 acre-feet, the striped bass index was 78.5, the Delta  
21 smelt index was 32.5. And today exports are three times  
22 higher, and the striped bass and Delta smelt indexes are  
23 0.3 and 0.4 respectively, downstream waters are formally  
24 identified as toxic hot spots and impaired water bodies  
25 because of numerous contaminants. Pollutant modes are



1 increasing, salmonid and pelagic fisheries are crashing,  
2 and the Delta's aquatic ecosystem is disintegrating.

3           As noted, much has transpired, while the project  
4 has languished in limbo. Completion now on top of the  
5 myriad changes of the last 37 years would only exacerbate  
6 existing degradation.

7           But in reality, there is no longer a project.  
8 Construction ceased in 1975. Hope does not constitute a  
9 project.

10           This morning my shower diverted more water than  
11 has been put to beneficial use in 37 years under these  
12 licenses.

13           The Bureau has refused to comply with explicit  
14 State Board direction to provide a new project design and  
15 environmental documentation. It cites lack of funding.  
16 The repeated refusals by Congress to provide funding  
17 cannot be used as an excuse for the lack of satisfactory  
18 progress or due diligence. The Bureau has no pending  
19 legislation to fund the project before Congress. It has  
20 provided no new information on when, if ever, funding will  
21 be authorized or a new project design will be completed or  
22 NEPA/CEQA documentation released.

23           Putting 37-year-old water rights to beneficial  
24 use cannot be left to eternity.

25           Given existing environmental degradation and

1 water needs in California, it cannot be reasonable or  
2 in the public interest to allow the Bureau to keep these  
3 water rights in cold storage in the speculative hope that  
4 some future Congress might provide funding for some future  
5 project of uncertain feasibility. The Auburn Dam Project  
6 is dead. Ron Stork has provided the Board with an  
7 eloquent combination autopsy, obituary, and eulogy. The  
8 corpse now needs to be buried. These water rights need to  
9 be made available for protection of public trust assets or  
10 to those who can put them to timely beneficial use in  
11 accordance with the California Constitution and Water  
12 Code.

13 That sums my comments.

14 VICE CHAIRPERSON WOLFF: Thank you.

15 We have any cross-examination from the  
16 prosecution team?

17 STAFF COUNSEL ROSE: (Shakes head.)

18 VICE CHAIRPERSON WOLFF: Bureau of Reclamation?

19 MR. TURNER: No questions.

20 VICE CHAIRPERSON WOLFF: County of San Joaquin?

21 MS. GILLICK: No questions.

22 VICE CHAIRPERSON WOLFF: Stockton East Water  
23 District?

24 MS. HARRIGFELD: No questions.

25 VICE CHAIRPERSON WOLFF: Friends of the River?

1 MR. STORK: (Shakes head.)

2 VICE CHAIRPERSON WOLFF: No questions?

3 Sacramento County?

4 MS. DUNN: No questions.

5 VICE CHAIRPERSON WOLFF: Auburn Dam Council?

6 MR. SCHAEFER: No questions.

7 VICE CHAIRPERSON WOLFF: South Delta Water

8 Agency?

9 MS. GILLICK: No questions.

10 VICE CHAIRPERSON WOLFF: San Luis and

11 Delta-Mendota Water Agency and Westlands Water District?

12 Not present.

13 Friends of the North Fork?

14 MR. GARABEDIAN: No questions.

15 VICE CHAIRPERSON WOLFF: American River

16 Authority?

17 MR. WILLIAMS: No questions.

18 VICE CHAIRPERSON WOLFF: Mr. Jackson, would you

19 like to move your exhibits?

20 MR. JACKSON: Yes, we would like to move our

21 exhibits into the record.

22 VICE CHAIRPERSON WOLFF: Any objections?

23 Exhibits are accepted.

24 (Thereupon California Sportsfishing

25 Protection Alliance Exhibits CSPA-1

1 through CSPA-4 were received into evidence.)

2 MR. JACKSON: Thank you, sir.

3 VICE CHAIRPERSON WOLFF: Now, we could press on  
4 or we could break for lunch. County of San Joaquin's up  
5 next.

6 How long do you think your case and testimony  
7 will take?

8 MS. GILLICK: We have two witnesses. So five  
9 minutes a witness. Ten minutes about, with my opening.  
10 Yeah, I mean we would probably go after the noon hour.

11 VICE CHAIRPERSON WOLFF: I'm a very democratic  
12 person. Does anyone really want to get lunch now or would  
13 you rather wait?

14 Who would like to have lunch now?

15 Who would like to wait?

16 The lunch now crowd wins.

17 (Laughter.)

18 VICE CHAIRPERSON WOLFF: So we're going to  
19 take -- I'm sorry for that, DeeAnne. We're going to take  
20 50 minutes. That would get us back here at about 20 of 1.  
21 Does that seem adequate?

22 Well, let's say 55, say quarter of 1 -- we'll  
23 commence at quarter of 1.

24 Thank you.

25 (Thereupon a lunch break was taken.)

1   AFTERNOON SESSION

2                   VICE CHAIRPERSON WOLFF:  I'm going to call the  
3 hearing back to order.  Everyone please take your seat.  
4 I'm going to have the county of San Joaquin and San  
5 Joaquin Flood Control and Water Conservation District.

6                   Oops, am I on the wrong page?

7                   MS. GILLICK:  You're right.

8                   VICE CHAIRPERSON WOLFF:  No, that's correct.

9                   And then also South Delta's going to present  
10 their case after --

11                  MS. GILLICK:  That's correct.  I'm going to  
12 present concurrently as to the testimony that refers to  
13 Mel Lytle, which is the designated witness of South Delta.

14                  VICE CHAIRPERSON WOLFF:  Very good.  Proceed,  
15 please.

16                  MS. GILLICK:  Good afternoon.  DeeAnn Gillick on  
17 behalf of San Joaquin County and San Joaquin County Flood  
18 Control and Water Conservation District.  And as just  
19 indicated, I will also be presenting the case of South  
20 Delta Water Agency as it pertains to witness Mel Lytle.

21                  San Joaquin County requests the State Water Board  
22 exercise its discretion and not revoke the Bureau permits  
23 for the Bureau direct diversion permits for the Auburn Dam  
24 project.  The county requests a reasonable period of time  
25 to work with the Bureau and other interested beneficiaries

1 to prepare and present to the State Water Board a viable  
2 water supply project to utilize the permitted water right,  
3 which was intended by Congress, the Bureau, and the State  
4 Water Board to serve San Joaquin County, based upon  
5 current conditions of 2008.

6 First, the county is not proposing to build  
7 Auburn Dam, but it is only requesting the right to the  
8 direct diversion rights from the Auburn Dam Project.

9 Second, the county is not proposing to diminish  
10 the water supply that currently flows on the Lower  
11 American River through the City and County of Sacramento.  
12 Rather San Joaquin County would like to utilize the  
13 diversion of American River water at Freeport, utilizing  
14 the facilities and project currently being constructed by  
15 East Bay MUD an the Freeport Regional Water Authority.  
16 This would allow delivery to San Joaquin County American  
17 River water by the same names the East Bay MUD is  
18 receiving American River/Folsom Dam water pursuant to  
19 their contract with the Bureau.

20 Despite the fact that the four major rivers flow  
21 through the county, and much of the Delta is located  
22 within the county, much of the water of San Joaquin County  
23 is exported to meet needs outside of San Joaquin County.

24 Due to this lack of adequate surface water  
25 supply, county water purveyors have had to rely heavily on

1 groundwaters to supply both the county's urban and  
2 agricultural water needs.

3           Groundwater currently accounts for approximately  
4 60 percent of the county's water supply. As the State  
5 Water Board is aware, eastern San Joaquin County  
6 groundwater basin is subject to condition of critical  
7 overdraft. This condition was recognized in 1980 in  
8 Bulletin 118-80.

9           In addition, the State Board recognized this  
10 condition this year in March of 2008 pursuant to Water  
11 Right Order 2008-0016, where it recognized the overdraft  
12 within the eastern San Joaquin County to support the  
13 public interest in providing a time extension to North San  
14 Joaquin Water Conservation District, an entity within San  
15 Joaquin County to place surface water from Mokelumne River  
16 to beneficial use.

17           The many state and federal decisions since the  
18 1950s clearly direct the county to provide it's  
19 supplemental surface water supplies in the American River,  
20 and clearly directs the county to do so. The State Water  
21 Board actions and other state decisions have been many.  
22 Our evidence will go -- testimony today will go through  
23 these many state and federal decisions.

24           Beginning in 1955, Bulletin 11, which was a  
25 survey of the water needs within San Joaquin County,

1 indicated that the ultimate supply of water to San Joaquin  
2 County would be the American River.

3           In 1956, in Decision 858, the predecessor of the  
4 State Board denied North San Joaquin Water Conservation's  
5 prior filed water right application for water on the  
6 Mokelumne River and directed the North San Joaquin to seek  
7 water from the American River.

8           Decision 858 states: "The evidence presented at  
9 the hearing indicates that for its ultimate requirements  
10 North San Joaquin District can attain a cheaper and more  
11 dependable supply from other sources." These other  
12 sources were the American River instead of granting a  
13 right to Mokelumne River water which flowed through the  
14 county.

15           In 1958 Decision 893 denied four county water  
16 right entities' permits for the American River water at  
17 Folsom in favor of the Bureau of Reclamation. In this  
18 decision there was a condition imposed upon the Bureau  
19 that water should be supplied to San Joaquin County,  
20 Placer and Sacramento counties. The decision reads: "The  
21 Bureau applications were eligible for approval provided  
22 the deliveries outside of Placer, Sacramento, and San  
23 Joaquin counties are sufficiently restricted to ensure the  
24 satisfaction of such demands as developed within those  
25 counties."



1           Congress authorized the Auburn Dam in 1965, and  
2 the intended water supply beneficiary of that project was  
3 an Joaquin County. The authorization language provides:  
4 "The other appurtenant works" - referring to the Folsom  
5 South Canal - "was for the delivery of water as the  
6 Secretary determines will best serve the needs of  
7 Sacramento and San Joaquin counties.

8           In Decision 1356, which is the subject of --  
9 which the permits which were approved is the subject of  
10 this hearing, issued in 1970, again the State Board  
11 acknowledged the watershed protection priorities of the  
12 County of San Joaquin and the Bureau's intent to provide  
13 water service contracts to the county. The original  
14 condition in this decision, which provided that contracts  
15 should be entered into with San Joaquin County, was  
16 deleted. However, the State Board's decision indicates  
17 that counties referred to in that condition, Placer,  
18 Sacramento, and San Joaquin counties, are clearly within  
19 the area entitled to the benefits of the watershed  
20 protection law, referring to service from the American  
21 River to San Joaquin County.

22           In the late sixties and early seventies, as many  
23 as four county entities approved a water supply contract  
24 with the Bureau of Reclamation. But due to circumstances  
25 that were affecting the Bureau at that time, these

1 contracts were not approved by the Bureau in Washington.  
2 This is not because the county didn't need the water. It  
3 was due to other policies and factors that were  
4 influencing the Bureau at the time.

5           While pursuing the American River water rights,  
6 other water right opportunities were precluded from the  
7 county. The county pursued a Stanislaus -- county  
8 entities pursued a Stanislaus River water right  
9 application and in 1973 the Bureau testified in a State  
10 Board proceeding Decision 1422 that San Joaquin County  
11 would be served from the American River rather than from  
12 the Stanislaus River.

13           In the 1980s the Bureau report regarding the  
14 basin allocation for new Melones Dam again referred to  
15 service of San Joaquin county by the Folsom South Canal  
16 from the American River.

17           Today, the county recognizes that we are in a  
18 water supply shortage within the state. And in  
19 recognizing that, the county proposes developing  
20 conjunctive use projects that utilize the surplus surface  
21 water available and the groundwater to provide the needs  
22 for San Joaquin County.

23           This State Board recognized the importance of  
24 this cooperation between groundwater and surface water.  
25 In Water Right Order 2008-0016, also pertaining to North

1 San Joaquin Water Conservation District, the Board stated:  
2 "The Board supports the coordinated use of surface and  
3 groundwater supplies as a logical vehicle for meeting the  
4 Constitution's requirement that the water of the state be  
5 put to their fullest beneficial use and not wasted or  
6 unreasonably used." San Joaquin County proposes to do  
7 just that.

8           In an effort to address the critically  
9 overdrafted groundwater basin and pursue other water  
10 supply supplies, the county currently is pursuing an  
11 American River water application filed in 1990 for use of  
12 American River water to divert at Freeport.

13           The county requests that this Bureau permit not  
14 be revoked in order to provide the county sufficient time  
15 to work with the Bureau of Reclamation to perfect the  
16 priority water of the Bureau's permit.

17           Now, this is appropriate, as the State Board has  
18 made many decisions that the San Joaquin County should be  
19 served from the American River. And, in fact, in 1970  
20 determined that these -- the San Joaquin County as a  
21 beneficiary of the Auburn Dam permit should received this  
22 priority water rights in that it reserved the state  
23 applications, and the Bureau permits has 1958 filing  
24 priority.

25           I think this is demonstrated by the staff Exhibit

1 No. 4, which would indicate that the Bureau's permits have  
2 priority above all the other permits listed on that sheet.  
3 And in 1970, the Bureau determined -- the State Board  
4 determined that that was appropriate given the conditions  
5 and the need to serve water within San Joaquin County.

6 San Joaquin County is requesting the opportunity  
7 to make that a reality and not rely upon the Bureau and  
8 the Bureau's difficulty in pursuing this project but to  
9 deliver American River water to San Joaquin County.

10 And with that, I'd like to present our evidence  
11 and testimony.

12 VICE CHAIRPERSON WOLFF: I'm not clear how you  
13 were planning to proceed with the opening statement from  
14 South Delta Water Agency. Are you saying that their  
15 opening statement has been merged with yours?

16 MS. GILLICK: Yes, in consistency and for  
17 brevity, we are presenting a unified case.

18 VICE CHAIRPERSON WOLFF: Yeah, that's great.  
19 Thank you.

20 MS. GILLICK: First I'd like to call on James  
21 Hanson as our first witness.

22 DIRECT EXAMINATION

23 OF MR. JAMES HANSON

24 BY MS. DeeAnne Gillick, ESQ., representing County of San  
25 Joaquin and the San Joaquin County Flood Control and Water

1 Conservation District:

2 Jim, can you state your name for the record.

3 MR. HANSON: My name is James C. Hanson. That's  
4 H-a-n-s-o-n.

5 MS. GILLICK: And is Exhibit SJC 10 a correct  
6 copy of your -- is a true and correct copy of your written  
7 testimony?

8 MR. HANSON: It is.

9 MS. GILLICK: Is Exhibit SJC 11 a true and  
10 correct copy of your professional qualifications?

11 MR. HANSON: It is.

12 MS. GILLICK: Are Exhibits SJC 12 through SJC 22  
13 copies of relevant documents referred to in your written  
14 testimony?

15 MR. HANSON: They are.

16 MS. GILLICK: Can you please summarize your  
17 written testimony.

18 MR. HANSON: Yes. My name is James C. Hanson and  
19 I am appearing here today on behalf of San Joaquin County  
20 and the San Joaquin County Flood Control Water  
21 Conservation District. I have over 48 years of experience  
22 in the general practice of civil engineering and  
23 water-right-related matters.

24 Beginning in 1960, I was employed by the  
25 Engineering Firm of Clinton Henning, Consulting Engineer

1 who was at that time the consulting engineer for the  
2 Stockton and East San Joaquin Water Conservation District,  
3 which is now known as Stockton East Water District. In  
4 that capacity I participated in the ongoing efforts to  
5 obtain a secure water supply for the district.

6           Since 1981 I have been a consulting engineer for  
7 the county for water matters including these pending water  
8 right applications on the Mokelumne and American rivers.

9           And since 1965 I have served as the district  
10 engineer for the Woodbridge Irrigation District, which  
11 encompasses some 40,000 acres of fully developed  
12 agricultural land within the eastern part of the Folsom  
13 South Service Area in San Joaquin County.

14           Due to my many years of providing professional  
15 engineer services to entities within San Joaquin county, I  
16 am familiar with the county's efforts to obtain a  
17 supplemental water supply from the American River and the  
18 county's reliance on the United States Bureau of  
19 Reclamation to provide such American River water to the  
20 county through the Folsom South Canal.

21           In significant part the county's current lack of  
22 adequate surface water supply stems from the interplay  
23 between several state and federal actions which  
24 collectively directed the county to pursue the American  
25 River as the most economically viable source of

1 supplemental water.

2           However, the Folsom South Canal extension into  
3 San Joaquin County was never constructed, thus precluding  
4 the county from receiving American River water as the  
5 state and Federal Bureau of Reclamation intended.  
6 Meanwhile valuable opportunities for other water supply  
7 options were lost.

8           The many reports in state and federal decisions  
9 beginning with the Division of Water Resources Bulletin 11  
10 entitled "San Joaquin County Investigation" dated June of  
11 1955 indicated that the county was to receive its needed  
12 supplemental surface water supply from the American River.  
13 Decision 858 by the state engineer in 1956 denying a  
14 permanent water right to the North San Joaquin Water  
15 Conservation District for Mokelumne River water was the  
16 first State Water Board decision that pointed the county  
17 to the American River for its ultimate water supply needs.

18           Subsequent decision 893 by the State Water Rights  
19 Board in 1958 identified -- or denied four San Joaquin  
20 County entities a water right permit for American River  
21 water in favor of permits issued to the United States  
22 Bureau of Reclamation, but in doing so conditioned the  
23 Bureau's permits to allow time for the parties desiring  
24 water in Placer, Sacramento, and San Joaquin County to  
25 negotiate a water supply contract under the Bureau's

1 permits.

2           In addition to the foregoing, the following  
3 documents also clearly indicate the county was to obtain  
4 its supplemental water supply from the Folsom South Canal.  
5 These include the Auburn Unit CVP Feasibility Report dated  
6 January 1960; Public Law 89-161 dated September 1965,  
7 which authorized the Auburn Dam and Folsom South Canal  
8 Project; State Water Resources Control Board decision 1356  
9 dated February 1970, approving water right permits for the  
10 American River diversions at Auburn Dam; and State Water  
11 Resources Control Board decision amending and affirming as  
12 amended Decision 1356, clarifying that the three counties  
13 are the beneficiaries of the Bureau's water right permits.

14           Also, included in these documents would be the  
15 draft contract between the United States and San Joaquin  
16 County Flood Control and Water Conservation District which  
17 was approved by the district's board of supervisors in  
18 1972 and also approved by the USBR regional office and  
19 sent to Washington for signature, but it was never signed  
20 by the United States.

21           The county is currently pursuing water right  
22 applications for diversion of wet year American River  
23 water for beneficial use within San Joaquin County. This  
24 project would utilize the Freeport Regional Water Project  
25 as a diversion and means of conveying wet year American



1 River water diverted at Freeport to San Joaquin County.

2           The county believes there is an opportunity to  
3 develop a meaningful project to utilize the priority water  
4 rights held by the Bureau to benefit San Joaquin County,  
5 one of the intended beneficiaries.

6           The county was clearly an intended beneficiary of  
7 the Bureau's water right permits for diversion at Auburn  
8 Dam which are at issue in this revocation hearing. This  
9 ultimate water supply has not yet been developed. The  
10 county is respectfully requesting the State Board in its  
11 exercise of discretion in the public interest to not  
12 revoke the Bureau's American River permits at Auburn.

13           The county is requesting a reasonable period of  
14 time within which to negotiate with the Bureau to obtain  
15 an assignment of this water right either through an  
16 assignment or a contract, and pursue a viable project to  
17 deliver this water to San Joaquin County, one of the  
18 intended beneficiaries of this priority permit water.

19           That concludes my testimony.

20           VICE CHAIRPERSON WOLFF: Thank you.

21           MS. GILLICK: I will next call Mel Lytle.

22                               DIRECT EXAMINATION

23                               OF DR. C. MEL LYTLE

24 BY MS. DeeAnne Gillick, ESQ., representing County of San  
25 Joaquin and the San Joaquin County Flood Control and Water

1 Conservation District:

2 Mel, please state your name for the record.

3 DR. LYTTLE: C. Mel Lytle.

4 MS. GILLICK: Is Exhibit SJC 1 a true and correct  
5 copy of your written testimony?

6 DR. LYTTLE: That's correct.

7 MS. GILLICK: And is this written testimony  
8 submitted on behalf of San Joaquin County entities as well  
9 as South Delta Water Agency?

10 DR. LYTTLE: That is correct.

11 MS. GILLICK: And for the record, as there's  
12 confusion in what was Emailed out, does the correct  
13 version of SJC 1 include the footer, the document No.  
14 507895-4?

15 DR. LYTTLE: That's correct.

16 MS. GILLICK: Is exhibit SJC 2 a true and correct  
17 copy of your professional qualifications?

18 DR. LYTTLE: Yes.

19 MS. GILLICK: Are Exhibits SJC 3 through SJC 9  
20 SJC 13 and 14 and SJC 17 and 18 relevant documents  
21 referred to within your written testimony?

22 DR. LYTTLE: Yes.

23 MS. GILLICK: Please, briefly summarize your  
24 written testimony.

25 DR. LYTTLE: Thank you.

1           Board members, I'm the Water Resource Coordinator  
2 for San Joaquin County. I've been that for about the last  
3 seven years. San Joaquin County is located in the  
4 northern end of San Joaquin Valley in central California,  
5 with a current population of about 660,000. By the year  
6 2030 the population is expected to increase to about 1.1  
7 million.

8           The county encompasses nearly 920,000 acres of  
9 productive lands, two-thirds of which lie in the Delta,  
10 with 85 percent of the county being used for a fully  
11 developed agricultural economy of about \$2 billion  
12 annually. The preservation of agricultural land is a key  
13 economic as well as a quality-of-life component for the  
14 county.

15           Surface water available to the San Joaquin County  
16 interests is limited due to the historic actions and  
17 rulings, in many cases of which we've already talked about  
18 and provided testimony today.

19           Water demand in the county is approximately 1.6  
20 million acre-feet per year, 60 percent of which comes from  
21 the groundwater.

22           All seven cities within the county pump  
23 groundwater. As a result, the eastern San Joaquin basin  
24 has been critically overdrafted, as has been already  
25 alluded to in Bulletin 118-80 that was published in 1980

1 wherein the Department of Water Resources has listed the  
2 eastern San Joaquin groundwater basin as critically  
3 overdrafted.

4           Due to the combination of overdraft and saline  
5 intrusion from the western part of the Delta, it is  
6 critically important that the reliance on groundwater  
7 within the county be decreased. This demand could be met  
8 through increased protection of existing surface water as  
9 well as water quality, conservation, and with additional  
10 new surface water deliveries to the county.

11           The current inaction of the Bureau is as well as  
12 other regulatory restrictions on water resources  
13 development continue to deprive San Joaquin County  
14 interests of American River water supplies. As a result,  
15 even know it will be a more costly alternative, the county  
16 has recognized that surface water supplies obtained in the  
17 future for the most part will need to be on a conjunctive  
18 use basis.

19           Subsequently, the Board of Supervisors filed for  
20 an appropriative right from the American River back in  
21 1990. That application is 29657, which was recently  
22 noticed by the State Water Board in March of 2008.

23           The county has consistently included the American  
24 River in published water planning documents. This has  
25 progressed and is demonstrated by a series of activities.

1 In 2000, the county as well as the Department of Water  
2 Resources entered into a memorandum of understanding,  
3 wherein the county and DWR agreed to work cooperatively to  
4 formulate a conjunctive water management program for the  
5 beneficiaries in San Joaquin County. That has since  
6 progressed on and the county has developed a countywide  
7 water management plan. That was adopted by the board of  
8 supervisors in 2002 at a cost of about \$650,000.

9 Other agencies have been developed: The  
10 Groundwater Banking Authority, which has developed a  
11 groundwater management plan, and most recently an  
12 integrated regional water management plan that describes  
13 the use of the American River as central component of it.  
14 That was a two-a-half-year effort of about \$1.3 million.  
15 Since that time, the IRWMP, which described an integrated  
16 conjunctive use program, has entered into the CEQA  
17 analysis of that program. The American River component  
18 actually is in one of the four major programs of the  
19 Integrated Conjunctive Use Program for the county.

20 Current efforts. We have entered into a Phase 1  
21 feasibility study for the use of our American River Water  
22 Right Application 29657. It's projected to be finished  
23 later on this year, with Phase 2 being the  
24 project-specific CEQA analysis that our board recently  
25 funded at a level of about \$1.2 million, which will be

1 commencing in the year 2009.

2           In summary, in an effort to address the  
3 critically overdrafted groundwater basin and future demand  
4 in the county, has undertaken significant efforts to work  
5 cooperatively on a regional basis on important plans and  
6 projects that I've identified just earlier.

7           The county and local water interests continue to  
8 diligently pursue development of surface water supply in  
9 our area with the realization that the American River is a  
10 critical component of this effort along with other  
11 possible sources. Therefore, the county respectfully  
12 requests that the State Water Resources Control Board not  
13 revoke Reclamation's Auburn Dam permits for direct  
14 diversion and grant a reasonable time period for the  
15 county to meet with Reclamation and other parties to  
16 explore and prepare project alternatives to utilize a  
17 portion of the water to be diverted pursuant to the  
18 Bureau's permits for the intended beneficiaries, namely,  
19 Sacramento, Placer, and San Joaquin counties.

20           This is has been a long promise -- this has long  
21 been a promise made to the County by both the state and  
22 federal governments. And it is a commitment that should  
23 be honored to help ensure a more reliable, dependable  
24 water supply nor continued viability of our community and  
25 region.

1 Thank you.

2 MS. GILLICK: Mel, one clarification in your  
3 written testimony. SJC 1 on page 16, you described some  
4 dates for the conclusion of the Phase 1 feasibility study  
5 regarding the American River water right application. And  
6 I believe one of those dates is incorrect.

7 When is it anticipated that the Phase 1 study  
8 regarding the American River application for the Freeport  
9 feasibility be completed?

10 DR. LYTTLE: That actual contract was let by the  
11 board of supervisors in December of 2007. And it's  
12 anticipated that that project will be completed by late  
13 2008, early 2009 at a cost of about \$715,000 to the  
14 County.

15 MS. GILLICK: Thank you.

16 VICE CHAIRPERSON WOLFF: Thank you.

17 Do we have any cross-examination from the  
18 prosecution team?

19 CROSS EXAMINATION

20 OF MR. JAMES HANSON and DR. C. MEL LYTTLE

21 BY MR. DAVID ROSE, STAFF COUNSEL, representing the State  
22 Water Board, Division of Water Rights Prosecution Team:

23 My question is based on the testimony of Mr.  
24 Hanson. But really either one of you I think could answer  
25 this question.

1           In your opinion, has the Bureau of Reclamation  
2 diligently pursued execution of contracts for water  
3 delivery in San Joaquin County?

4           MR. HANSON: I can't answer that.

5           STAFF COUNSEL ROSE: Mr. Lytle, do you have an  
6 answer for that?

7           DR. LYTTLE: Could you restate the question?

8           STAFF COUNSEL ROSE: Restate or repeat?

9           MR. LYTTLE: Repeat.

10          STAFF COUNSEL ROSE: In your opinion, has the  
11 Bureau of Reclamation diligently pursued execution of  
12 contracts for water delivery in San Joaquin County?

13          DR. LYTTLE: Not necessarily.

14          STAFF COUNSEL ROSE: Thank you.

15          I have no further questions.

16          VICE CHAIRPERSON WOLFF: Thank you.

17          You've broken the record for fastest 30 minutes.

18          (Laughter.)

19          VICE CHAIRPERSON WOLFF: The Bureau of

20 Reclamation.

21          MR. TURNER: No questions.

22          VICE CHAIRPERSON WOLFF: And they've just broken  
23 your record.

24          (Laughter.)

25          VICE CHAIRPERSON WOLFF: CSPA.



1 MR. JACKSON: Yes, sir.

2 CROSS EXAMINATION

3 OF MR. JAMES HANSON AND DR. C. MEL LYTLE

4 BY MR. MICHAEL JACKSON, ESQ., representing the California  
5 Sportfishing Protection Alliance:

6 Mr. Lytle, my name is Mike Jackson. I'm an  
7 attorney for the California Sportfishing Protection  
8 Alliance.

9 You basically just acknowledged that you folks  
10 have been waiting for years and years and years, 38 I  
11 guess in this regard, and maybe 10 before that, for the  
12 Bureau to deliver on the Auburn project.

13 What assurance do you have that Auburn will ever  
14 be built?

15 DR. LYTLE: What assurance?

16 MR. JACKSON: Yes.

17 DR. LYTLE: I don't have an assurance.

18 MR. JACKSON: In the light of that, you do have  
19 an application -- a 1990 application?

20 DR. LYTLE: That's correct.

21 MR. JACKSON: And I think you also have the  
22 advantage of a new facility that might help you pick up  
23 that water on the Sacramento River?

24 DR. LYTLE: There is a potential.

25 MR. JACKSON: Right.

1           What facts do you have that would lead you to  
2 believe that you would get water faster by waiting for  
3 Auburn -- the original Auburn project than you would from  
4 having it out of your way so that you can go forward with  
5 your 1990 application?

6           DR. LYTTLE: Would you rephrase -- ask me that one  
7 again.

8           MR. JACKSON: Could you reread the question,  
9 because it may be complicated enough that I can't ask it  
10 again exactly the way I did it.

11           (Laughter.)

12           VICE CHAIRPERSON WOLFF: Could you repeat the  
13 question.

14           (Thereupon the court reporter read

15           Back the record.)

16           DR. LYTTLE: I don't have any facts before me  
17 right now concerning how fast the Auburn Dam could be  
18 completed versus the Freeport project.

19           MR. JACKSON: How much water did you apply for in  
20 your 1990 application?

21           DR. LYTTLE: The original or since amended?

22           MR. JACKSON: Since amended.

23           DR. LYTTLE: Up to 147,000 acre-feet.

24           MR. JACKSON: Are you aware that the latest  
25 studies on the Auburn project indicated that its firm

1 yield per year would be 208,000 acre-feet?

2 DR. LYTTLE: And what studies are those?

3 MR. JACKSON: Are you aware of such a study?

4 DR. LYTTLE: Not directly.

5 MR. JACKSON: All right. Hypothetically, if the  
6 Auburn project only delivered 208,000 acre-feet of water  
7 on a regular basis, given the fact that others also have  
8 area-of-origin claims and that Auburn as a multipurpose  
9 project might be delivering to other contractors south of  
10 Delta, do you have any reason to believe that you would  
11 get the amount of water you need to deal with your  
12 groundwater project from the old Auburn Dam water rights?

13 DR. LYTTLE: To answer a hypothetical, I'd  
14 probably have to speculate. And I'd probably not like to  
15 speculate before this Board.

16 But based on our analysis that we have completed  
17 on water availability to our project that we're currently  
18 looking at, that was completed -- one study was completed  
19 in 2003 by Saracino, Kirby & Snow. Another study was  
20 completed in 2006 by -- with a joint effort between the  
21 county as well as the Department of Water Resources. And  
22 both studies have indicated that there is a reasonable  
23 likelihood of water available to our project as is  
24 currently being developed outside of the Auburn Dam  
25 discussion.

1 MR. JACKSON: Outside of the Auburn Dam  
2 discussion?

3 DR. LYTTLE: That's correct.

4 MR. JACKSON: Thank you.

5 I have no further questions.

6 VICE CHAIRPERSON WOLFF: Stockton East Water  
7 District.

8 MS. HARRIGFELD: No questions.

9 VICE CHAIRPERSON WOLFF: Friends of the River.

10 MR. STORK: My name is Ronald Stork and I'm UC  
11 Davis plant science botanist rock.

12 (Laughter.)

13 MR. STORK: It's always good to interview a  
14 fellow botanist.

15 CROSS EXAMINATION

16 OF MR. JAMES HANSON AND DR. C. MEL LYTTLE

17 BY MR. RONALD STORK, representing Friends of the River:

18 How much water has been used under this permit --  
19 under Auburn-Folsom South permits?

20 DR. LYTTLE: Who are you addressing the question  
21 to?

22 MR. STORK: I'll take it to anybody here.

23 DR. LYTTLE: I'm not aware of any.

24 MR. STORK: I believe we have a stipulation of  
25 facts that there's been in fact no water used.

1           And do I understand your testimony that San  
2 Joaquin County is currently proposing to not take  
3 deliveries from the Auburn Dam nor down the Folsom South  
4 Canal?

5           DR. LYTTLE: I can answer that.

6           I think historically, and I think the historic  
7 position is still in place, that the county is very  
8 interested in receiving water from the Auburn Dam as well  
9 as the Folsom South Canal. I think those historic  
10 positions of the board of supervisors remain in place.  
11 But on top of that, due to the continued struggles of the  
12 Bureau of Reclamation to complete a project of this nature  
13 as well as the failure and completion of the Folsom South  
14 Canal and its extension into the San Joaquin County, the  
15 county on top of that filed for an appropriative right off  
16 of the American River in 1990. So I think there's --  
17 those positions historically are in place. But we also  
18 have additional contingency that potentially would allow  
19 us to continue to -- or allow us to receive American River  
20 water some time in the future.

21           MR. STORK: So to restate, you're prepared to  
22 take water from Auburn Dam and the Folsom South Canal or  
23 from a direct diversion from some American River source?

24           DR. LYTTLE: That's correct.

25           MR. STORK: Are you aware that the Placer County

1 Water Agency has an executed contract from the  
2 Auburn-Folsom South Project that the Bureau believes is  
3 not a contract in which they can deliver water?

4 DR. LYTTLE: I'm aware of the contract, but I  
5 don't know any of the details.

6 MR. STORK: I believe we've had a reference of it  
7 this morning of 117,000 acre-feet.

8 Has San Joaquin County explored with the Bureau,  
9 since you report that you've had a contract offer since  
10 1972 in front of them, whether or not the Bureau is  
11 prepared to execute a contract to San Joaquin County on  
12 the basis of the Auburn-Folsom South Unit water rights  
13 when they do not have a canal into San Joaquin County nor  
14 do they have Auburn Dam?

15 DR. LYTTLE: I'm not aware of any contract  
16 negotiations currently.

17 MR. STORK: And so therefore you do not know if  
18 the Bureau has a position on whether or not they can  
19 execute a contract under those conditions?

20 DR. LYTTLE: Only what has been historically  
21 documented.

22 MR. STORK: Is the Bureau currently entering into  
23 water service contracts with new contractors?

24 DR. LYTTLE: I'm not a member of Bureau staff, so  
25 I'm not sure.

1           MR. STORK: Have you checked with the Bureau on  
2 whether or not they have -- they're executing water  
3 service contracts at this time?

4           DR. LYTTLE: Yes.

5           MR. STORK: Okay. And you don't have an answer?  
6 You've just checked in?

7           DR. LYTTLE: There's been discussions, but I have  
8 no definitive answer on that issue.

9           MR. STORK: Do you believe that the Bureau of  
10 Reclamation in the next three years is going to be able to  
11 execute a water service contract with San Joaquin County  
12 for Auburn-Folsom South Unit water?

13          DR. LYTTLE: I think that's what we stated in our  
14 testimony, is I think we wish to have the opportunity.  
15 Though the Bureau is conflicted in developing the Auburn  
16 Dam Project, I feel that -- it's our testimony that we  
17 should be granted the opportunity outside of that. There  
18 are direct diversion potential off those water right  
19 permits that potentially the county could take advantage  
20 of as an intended beneficiary. So, therefore, I can't say  
21 that, no, the Bureau wouldn't enter into contract  
22 negotiations with us based on that idea.

23          MR. STORK: Do you believe that the State Water  
24 Resources Control Board believes that the Bureau has the  
25 authority to execute contracts to deliver water on the

1 basis of Auburn-Folsom South Unit water rights in the  
2 absence of the construction of facilities?

3 MS. GILLICK: Objection. Calls for speculation.

4 (Laughter.)

5 VICE CHAIRPERSON WOLFF: Sustained.

6 Try again, Mr. Stork.

7 MR. STORK: That's okay. I think I made my  
8 point.

9 (Laughter.)

10 MR. STORK: Is the water --

11 VICE CHAIRPERSON WOLFF: Well, I certainly missed  
12 it. So go ahead.

13 MR. STORK: Oh, good.

14 DR. LYTTLE: So did I.

15 MR. STORK: Is the water right application that  
16 San Joaquin County has, the 1991, a South Fork American  
17 water right?

18 DR. LYTTLE: That's correct. Originally it was  
19 for two diversion points, one off the South Fork as well  
20 as at Nimbus.

21 MR. STORK: And are the Auburn project lands in  
22 the South Fork American River?

23 DR. LYTTLE: No, they're not.

24 MR. STORK: That's all for now.

25 VICE CHAIRPERSON WOLFF: Thank you.



1 Sacramento County.

2 MS. DUNN: Sandra Dunn on behalf of Sacramento  
3 County and Sacramento County Water Agency.

4 CROSS EXAMINATION

5 OF MR. JAMES HANSON AND DR. C. MEL LYTLE

6 BY MS. SANDRA DUNN, representing Sacramento County and  
7 Sacramento County Water Agency:

8 I just have a couple of clarifying questions to  
9 ask.

10 I believe, Mr. Lytle, on page 23 of your written  
11 testimony you indicate that the proponents of the Freeport  
12 project are Sacramento County Water Agency and East Bay  
13 MUD; is that correct?

14 DR. LYTLE: Correct.

15 MS. DUNN: And Sacramento County Water Agency and  
16 East Bay MUD formed a JPA to construct the Freeport  
17 project?

18 DR. LYTLE: Correct.

19 MS. DUNN: And further on in that same discussion  
20 you indicated that formal negotiations with FRWA have  
21 started for use of the Freeport project.

22 Can you tell me whether Sacramento County has  
23 been involved in any of those negotiations?

24 DR. LYTLE: No, just simply East Bay MUD at this  
25 time.

1 MS. DUNN: And can you also indicated to me, have  
2 you received any protests from East Bay MUD, Sacramento  
3 County, and FRWA with regard to your water right  
4 application?

5 DR. LYTTLE: Yes.

6 MS. DUNN: And that's largely because you haven't  
7 received permission to use the Freeport project?

8 DR. LYTTLE: I think as it was stated was  
9 negotiations haven't been completed yet.

10 MS. DUNN: And you haven't gotten consent to use  
11 the Freeport project for your project. So it's a  
12 potential to use Freeport project, not a right to use  
13 Freeport at this point?

14 DR. LYTTLE: We're not stating a right, no, only  
15 the negotiations are currently underway.

16 MS. DUNN: Okay. That's all.

17 Thank you.

18 DR. LYTTLE: You bet.

19 VICE CHAIRPERSON WOLFF: Auburn Dam Council.

20 Not present or no questions?

21 MR. SCHAEFER: No questions.

22 VICE CHAIRPERSON WOLFF: South Delta Water  
23 Agency.

24 We had that already, I assume.

25 MS. GILLICK: That's correct.

1 VICE CHAIRPERSON WOLFF: That's you. You are  
2 they.

3 MS. GILLICK: Yeah, at this point.

4 VICE CHAIRPERSON WOLFF: At this point.

5 San Luis and Delta-Mendota Water Authority,  
6 Westlands Water District?

7 Not present or no questions?

8 Not present.

9 Friends of the North Fork.

10 No. questions.

11 VICE CHAIRPERSON WOLFF: American River  
12 Authority.

13 MR. WILLIAMS: No questions.

14 VICE CHAIRPERSON WOLFF: Please, go ahead.

15 WATER RESOURCE CONTROL ENGINEER McCUE: I just  
16 wanted to clarify your correction to Dr. Lytle's  
17 testimony. Was it page 16, the first paragraph, third  
18 sentence?

19 MS. GILLICK: I believe that's correct.

20 WATER RESOURCE CONTROL ENGINEER McCUE: And how  
21 would that read now?

22 MS. GILLICK: I think it says commences in 2009.

23 WATER RESOURCE CONTROL ENGINEER McCUE: Right.

24 MS. GILLICK: And I believe Mel testified that it  
25 would be concluded this year, the beginning of 2009.

1           So concluded in December of 2008 or the beginning  
2 of 2009; is that correct, Mel?

3           DR. LYTTLE: Yes.

4           WATER RESOURCE CONTROL ENGINEER McCUE: Okay.  
5 Thank you.

6           MS. GILLICK: Thank you.

7           VICE CHAIRPERSON WOLFF: Actually I have a few  
8 questions.

9           I'm sympathetic to the sad story told in the  
10 testimony. But I'm not clear about the remedy. If you  
11 could help me.

12           What quantity of water does San Joaquin County  
13 went to negotiate from the Bureau, direct diversion water?  
14 Is it more than, less than, the same as the 147,000  
15 acre-foot face value shown in Application 29657?

16           DR. LYTTLE: As currently -- as part of our  
17 development work on the project that includes the  
18 Freeport -- using the Freeport pipeline capacity, we're  
19 essentially -- we're limited by pipeline capacity. The  
20 size of the pipe limits the amount that we can potentially  
21 move to San Joaquin County. So with the 147 is  
22 essentially what sort of the maximum amount we'd be able  
23 to -- that's the maximum amount that would be included as  
24 sort of a storage amount in a duck creek reservoir. We  
25 anticipate the amount that could be sort of on average

1 annual basis a maximum amount of about 65,000 acre-feet,  
2 with an average annual yield of about 44. That's sort of  
3 the best we can look at as far as our diversion window and  
4 that sort of thing.

5           The idea if we were able to negotiate some sort  
6 of contract or agreement with the Bureau of Reclamation  
7 based on the direct diversion of the Auburn Dam permits  
8 would be potentially an increase in our diversion window  
9 or potentially giving us a different priority. And that  
10 might change yield into the future.

11           VICE CHAIRPERSON WOLFF: Well, by how much? I  
12 mean what is the maximum that you might be able to obtain  
13 through what you're asking as a remedy, you're asking the  
14 ability to negotiate with the Bureau? What's the maximum  
15 you might achieve through negotiation?

16           DR. LYTTLE: That's a good question. We're not  
17 really prepared to say exactly right now.

18           VICE CHAIRPERSON WOLFF: But you're asking me to  
19 make a decision then based on an indeterminate quantity?

20           DR. LYTTLE: Well, I would say currently it could  
21 be based on sort of our maximum amount that we could  
22 divert through the Freeport project, because that's the  
23 only infrastructure that we envision of being built and  
24 allowing us to convey water to the county.

25           MS. GILLICK: Yeah, I believe Mel said it would

1 be a longer diversion period. So, you know, we haven't  
2 calculated what that longer diversion period might be to  
3 get additional water if it's using the Auburn Dam  
4 diversion rights versus what would be available to us  
5 based on a 1990 priority.

6 VICE CHAIRPERSON WOLFF: But the physical  
7 location would be the same? It would still be through the  
8 shared facilities with East Bay MUD?

9 MS. GILLICK: Correct.

10 VICE CHAIRPERSON WOLFF: But there might be more  
11 water possibly?

12 MS. GILLICK: Correct.

13 VICE CHAIRPERSON WOLFF: Then I want to be sure I  
14 understand this project at Freeport that might occur to  
15 your benefit. This would be water in wet years, because  
16 East Bay MUD needs the water in dry years, is that right?

17 DR. LYTTLE: That's correct.

18 VICE CHAIRPERSON WOLFF: So, if -- and this is  
19 highly speculative -- but if, you know, the Bureau is not  
20 diligent, if their permits were revoked, and if you got  
21 your 1990 application approved, the intervening water  
22 rights licenses, which would be limiting under drought  
23 conditions for further lower down the priority chain,  
24 wouldn't really be limiting for you because you'd be  
25 taking wet weather -- wet-year water; is that correct?

1 DR. LYTTLE: Yes.

2 VICE CHAIRPERSON WOLFF: So I'm not quite clear  
3 why the priority matters so much. You know, you've asked  
4 us to do something to help sustain the priority. I'm not  
5 quite clear why it matters so much. Now, that may be a  
6 legal issue you need to address in closing briefs. But is  
7 there any further evidentiary statement you want to make  
8 that's relevant to why the priority matters?

9 MS. GILLICK: I don't know if it's been  
10 completely analyzed as to the additional water. I mean we  
11 would have a longer diversion months. And we have  
12 analyzed, you know, staff Exhibit 4 on, you know, how all  
13 the priorities would impact us. The assumption is that  
14 the higher priority ahead of everyone on staff Exhibit 4  
15 would give us more opportunities.

16 VICE CHAIRPERSON WOLFF: Well, yes, I understand  
17 that. But if it was wet-year water, I mean you could even  
18 amend your Application 9657. If you can somehow move more  
19 water in wet years through the physical apparatus, you  
20 could even be amended. If it's wet year water, the  
21 intervening appropriators aren't going to be taking it I  
22 mean if it's wet enough. So I'm not quite sure again why  
23 the priority year matters given that it's a wet-year  
24 water. If it were dry-year water, it would matter a lot  
25 of course.

1 MS. GILLICK: I mean I think we're simplifying  
2 the facts here as far as what would constitute more  
3 available water, you know, wet versus dry years, that  
4 there's an opportunity there for additional water.

5 VICE CHAIRPERSON WOLFF: All right. Let me then  
6 turn to the issue of area of origin.

7 MR. JACKSON: Mr. --

8 VICE CHAIRPERSON WOLFF: Mr. Jackson.

9 MR. JACKSON: Yes, I object to --

10 VICE CHAIRPERSON WOLFF: You're objecting?

11 MR. JACKSON: I'm objecting to questions asked by  
12 the Board. I'm not really objecting to the questions. I  
13 am objecting to the fact that it's not a witness that's  
14 answering them.

15 VICE CHAIRPERSON WOLFF: I see, I see. Well,  
16 that's true. We do need the answers to come from the  
17 witnesses. Good point.

18 (Laughter.)

19 VICE CHAIRPERSON WOLFF: I was about to say are  
20 you asking me to do my imitation of a schizophrenic and  
21 rule on my own behavior. I can't do that.

22 MR. JACKSON: I wasn't sure I wanted to go up  
23 there because of that.

24 VICE CHAIRPERSON WOLFF: I see.

25 Now, I believe that the witnesses answered



1 adequately. If you would like, Ms. Gillick, if you want  
2 to be sure that your witnesses answer anything that you  
3 did, I'll give you a chance. I think they answered  
4 adequately.

5 MS. GILLICK: And I guess I'd ask if the county's  
6 completely analyzed the additional water that might be  
7 available, given the Bureau priority versus our 1990  
8 application priority.

9 DR. LYTTLE: That would be part of some additional  
10 study that would allow us to understand the various  
11 diversion windows, whether or not a wet-year diversion  
12 extending the months of diversion rather than December  
13 through June. I think if we are given additional months  
14 to divert, we could calculate the amount that we could  
15 potentially receive over time.

16 VICE CHAIRPERSON WOLFF: Fair enough.

17 And I also have a question about area of origin.  
18 If the area-of-origin rules apply, if you're within the  
19 area of origin -- and I'm not sure again why the priority  
20 dates matter at all. But you've testified both that the  
21 priority dates matter, you'd like to preserve the earlier  
22 priority, and that the area-of-origin rules apply and  
23 you're protected under that legislation. So can you  
24 reconcile that for me?

25 MS. GILLICK: I mean as an attorney, I don't know

1 if we clearly know how this Board would apply the  
2 watershed protection statutes. However, we do know how  
3 conditions have been imposed in the past to give priority  
4 protections there to watershed area of origin. So maybe  
5 to ease some of that uncertainty as far as how the  
6 watershed protection statutes would be applied, to protect  
7 watershed of area -- watershed area protections against  
8 the exporters.

9 VICE CHAIRPERSON WOLFF: I understand. So this  
10 is really a legal matter. But with respect to the two  
11 witnesses, is there any evidence you want to offer with  
12 respect to this? Maybe there is no evidence; it's purely  
13 a legal matter, but --

14 DR. LYTTLE: I'll have to rely on the attorneys  
15 for that. I'm sorry.

16 VICE CHAIRPERSON WOLFF: Well, you're the  
17 witness. I'm just asking, is there anything further you  
18 want to offer?

19 Mr. Hanson? Nothing further?

20 All right. Thank you.

21 I'd appreciate this being briefed, then your  
22 closing brief. Because as I say, it's not clear to me why  
23 the -- you know, why maintaining the priority date is so  
24 important. And yet I am sympathetic to your concerns and  
25 your needs and your history.

1 DR. LYTTLE: I appreciate that.

2 VICE CHAIRPERSON WOLFF: So I believe that brings  
3 us to entering your exhibits, Ms. Gillick.

4 MS. GILLICK: Yes, I'd like to move all San  
5 Joaquin County exhibits, as well as the South Delta Water  
6 Agency Exhibits be moved. And it's San Joaquin County  
7 Exhibit 1 through 22. And the South Delta exhibits would  
8 be 1 through 9 as well as 13, 14, 17, and 18.

9 VICE CHAIRPERSON WOLFF: Any objections?

10 Seeing none, they're accepted.

11 (Thereupon San Joaquin County Exhibits  
12 SJC-1 through SJC-22 and South Delta Water  
13 Agency Exhibits SJC-1 through SJC-9 and  
14 SJC-13, SJC-14, SJC-17 & SJC-18 were received  
15 into evidence.)

16 VICE CHAIRPERSON WOLFF: Thank you, all.

17 MS. GILLICK: Thank you.

18 VICE CHAIRPERSON WOLFF: The question was that we  
19 have two exhibits which are identical but have different  
20 numbers. So those exhibits will not be given twice the  
21 weight.

22 (Laughter.)

23 MS. GILLICK: I'm sorry. What exhibits are  
24 those? If there's some confusion on --

25 WATER RESOURCE CONTROL ENGINEER McCUE: Well, I

1 was told the North San Joaquin exhibits were the same --

2 MS. GILLICK: South Delta Water Agency's exhibits  
3 were the same. They were San Joaquin County Exhibit 1  
4 through 9, and then -- what did I say? -- 12, 13, and 16,  
5 17, if I have it --

6 WATER RESOURCE CONTROL ENGINEER McCUE: Right.

7 MS. GILLICK: Right. So San Joaquin County  
8 exhibits are the exhibits for South Delta as well.

9 WATER RESOURCE CONTROL ENGINEER McCUE: Okay. I  
10 just didn't know why they had to be entered twice.

11 MS. GILLICK: Well, I just moved them on behalf  
12 of San Joaquin County and South Delta.

13 WATER RESOURCE CONTROL ENGINEER McCUE: Okay.  
14 Thank you.

15 MS. GILLICK: Uh-huh.

16 VICE CHAIRPERSON WOLFF: Thank you.

17 Stockton East Water District, if you would like  
18 to present your case, please.

19 MS. HARRIGFELD: Good afternoon, Vice Chair  
20 Wolff. Karna Harrigfeld on behalf of Stockton East Water  
21 District.

22 Stockton East Water District does not believe  
23 that it is in the public interest to revoke the Bureau of  
24 Reclamation's water right permits for the Auburn Dam  
25 Project. Kevin Kauffman will testify today that Stockton

1 East, one of the intended water users of the American  
2 River/Auburn Dam Project has diligently pursued American  
3 River water. Stockton East diligently negotiated and  
4 signed a contract for American River water. The Bureau of  
5 Reclamation failed to execute that contract. Stockton  
6 East and San Joaquin County are clearly beneficiaries  
7 under the various State Water Resources Control Board  
8 water right permits for the Auburn Dam Project, and we  
9 would like to request that we be given an opportunity to  
10 negotiate a contract with the Bureau of Reclamation for  
11 that project water.

12 That concludes my opening statement.

13 I have with me today Kevin Kauffman. He was not  
14 here in morning, so the oath needs to be administered.

15 VICE CHAIRPERSON WOLFF: Not many words put out,  
16 but I want to be sure to get the words right.

17 (Laughter.)

18 It's something like -- yeah, where is it?

19 MS. HARRIGFELD: "I swear to tell the truth"?

20 (Thereupon Mr. Kauffman was sworn by the  
21 Hearing Officer to tell the truth.)

22 MR. KAUFFMAN: Absolutely.

23 VICE CHAIRPERSON WOLFF: Thank you.

24 I think I'll remember those words next time.

25 (Laughter.)

1 MS. HARRIGFELD: I apologize.

2 DIRECT EXAMINATION

3 OF KEVIN KAUFFMAN

4 BY MS. KARNA HARRIGFELD, ESQ., representing Stockton East  
5 Water district:

6 Mr. Kauffman, could you please state your name  
7 for the record.

8 MR. KAUFFMAN: Yes. My name is Kevin Kauffman.

9 MS. HARRIGFELD: Is Stockton East Exhibit 1 a  
10 true and correct copy of your written testimony?

11 MR. KAUFFMAN: Yes, it is.

12 MS. HARRIGFELD: Are you aware of any errors or  
13 corrections that need to be made to Stockton East Exhibit  
14 1?

15 MR. KAUFFMAN: No, I am not.

16 MS. HARRIGFELD: Is Stockton East Exhibit 2 and 3  
17 exhibits relied on in preparing your written testimony?

18 MR. KAUFFMAN: Yes, they were.

19 MS. HARRIGFELD: Mr. Kauffman, would you briefly  
20 summarize your written testimony for us.

21 MR. KAUFFMAN: I'd be happy to.

22 I'd be happy to.

23 Honorable Board Member and Vice Chair Wolff and  
24 members of staff. Thank you for allowing me to address  
25 you today. I do intend to summarize the statement.

1 I am a civil engineer in the State of California.  
2 I've been working for Stockton East since 1999, and I'm  
3 their General Manager.

4 As you may or may not know, Stockton East is a  
5 water conservation district enabled by our Legislature  
6 here in California to address the critically overdrafted  
7 groundwater basin below its boundaries.

8 Reports authored by the Department of Water  
9 Resources and consultants hired by San Joaquin County and  
10 ourselves have confirmed that this condition of critical  
11 overdraft and associated saline contamination of the  
12 aquifer continues today.

13 The \$1.7 billion agricultural industry and  
14 regional economy around San Joaquin County is at risk if  
15 Stockton East and the rest of the water agencies in the  
16 county do not follow their missions as established by the  
17 Legislature.

18 Through the efforts of many entities in San  
19 Joaquin County, Stockton East has secured a primary  
20 surface water supply from the Calaveras River. This  
21 supply is expected to shrink as development occurs in  
22 Calaveras County.

23 Stockton East also receives water from a CVP  
24 contract through the Bureau on the Stanislaus River. This  
25 is proven to be somewhat unreliable due to the capricious

1 allocation methods employed by Reclamation since 1995.

2           The history provided in my written testimony  
3 explains how the decision of the State Board since 1958  
4 has supported Placer, Sacramento, and San Joaquin counties  
5 benefiting from the flows of the American River.

6           Decision 1356 contemplated that Reclamation would  
7 enter contracts with interested parties to assure all  
8 surface water demands in these counties were met prior to  
9 allocating this water outside of these three counties.

10           Stockton East authorized entering such a contract  
11 on March 29th of 1972. With approval of the Regional  
12 Office of Reclamation, this contract was sent to  
13 headquarters in Washington DC, never to be seen again.

14           I want to conclude my testimony by respectfully  
15 recommending that this Board not revoke the Reclamation's  
16 Auburn-Folsom South Unit permit at this time. San Joaquin  
17 County water interests need time to negotiate a contract  
18 with Reclamation to bring us some much needed surface  
19 water supply. We suggest at least a three-year period to  
20 complete these negotiations, and would be happy to  
21 annually update the Board on our progress.

22           Clearly Stockton East and San Joaquin County are  
23 third-party beneficiaries to the Reclamation permit. It  
24 would be unfair for these permits to be revoked without  
25 giving us the opportunity to develop a project for the



1 benefit of our community.

2 And I thank you for your attention, Mr. Vice  
3 Chair, and happy to address any questions.

4 VICE CHAIRPERSON WOLFF: Thank you.

5 Do we have any questions from the prosecution  
6 team?

7 STAFF COUNSEL ROSE: No.

8 VICE CHAIRPERSON WOLFF: None.

9 How about the Bureau of Reclamation?

10 MR. TURNER: No questions.

11 VICE CHAIRPERSON WOLFF: CSPA?

12 CROSS EXAMINATION

13 OF KEVIN KAUFFMAN

14 BY MR. MICHAEL JACKSON, ESQ., representing the California  
15 Sportfishing Protection Alliance:

16 Mr. Kauffman, my name is Mike Jackson and I'm  
17 here on behalf of the California Sportfishing Protection  
18 Alliance.

19 You indicated that you have -- that Stockton East  
20 serves the City of Stockton?

21 MR. KAUFFMAN: Yes, we do.

22 MR. JACKSON: And you indicated you have two  
23 existing water supplies: One is a water supply that you  
24 purchase from Calaveras Water District?

25 MR. KAUFFMAN: Actually it's not a purchase

1 contract. It's a contract with Reclamation that we share  
2 with Calaveras County Water District.

3 MR. JACKSON: Okay. And what is the face value  
4 of that contract?

5 MR. KAUFFMAN: I believe it's for 84,100  
6 acre-feet.

7 MR. JACKSON: And then you have a New Melones  
8 water supply?

9 MR. KAUFFMAN: Correct.

10 MR. JACKSON: And what is the face value of that  
11 water supply?

12 MR. KAUFFMAN: Seventy-five thousand acre-feet.

13 MR. JACKSON: Now, did you or did the City of  
14 Stockton recently -- were you recently granted a water  
15 right for direct diversion from the San Joaquin River?

16 MS. HARRIGFELD: I'd object to that question.

17 VICE CHAIRPERSON WOLFF: Mr. Jackson, why are you  
18 asking that question?

19 MR. JACKSON: I detect that you are -- I think  
20 your words were sort of impressed with their problems.  
21 And --

22 VICE CHAIRPERSON WOLFF: Sympathetic.

23 MR. JACKSON: Sympathetic to their problems. And  
24 so I wanted to determine the extent of their problems so  
25 that maybe that sympathy wouldn't cause you to extend

1 Auburn water rights.

2 MS. HARRIGFELD: There's absolutely no reference  
3 to the water right permit of the City of Stockton in any  
4 of our testimony.

5 MR. JACKSON: And the rules allow me to ask  
6 questions outside the scope of the --

7 VICE CHAIRPERSON WOLFF: Objection overruled. I  
8 began this trouble. We'll just have to finish it through.  
9 It won't take that long, I don't think.

10 MR. JACKSON: No, sir.

11 MR. KAUFFMAN: So the question was: Is it  
12 Stockton East's permit or is it the city's? It's the  
13 city's permit, if that's the question.

14 MR. JACKSON: And what is the face value of the  
15 city's permit, if you know?

16 MR. KAUFFMAN: I know an average number.

17 MR. JACKSON: What is the average number?

18 MR. KAUFFMAN: It's approximately 28,000  
19 acre-feet.

20 MR. JACKSON: Okay. The latest examination of  
21 what Auburn water would cost indicates that it would be  
22 around \$350 an acre-foot. Is that your understanding?

23 MR. KAUFFMAN: For the city's water? I'm sorry.  
24 Auburn or the city's? I lost track.

25 MR. JACKSON: Water from Auburn.

1           MR. KAUFFMAN: Oh, water from Auburn. I'm not  
2 sure what the number is for Auburn.

3           MR. JACKSON: Okay. How much water are you  
4 obligated to deliver to the City of Stockton at the  
5 present time?

6           MR. KAUFFMAN: Stockton East Water District has a  
7 contract with three urban contractors to deliver a minimum  
8 of 20,000 acre-feet through our drinking water treatment  
9 plant.

10          MR. JACKSON: And that includes the City of  
11 Stockton, the -- and who else?

12          MR. KAUFFMAN: It's the City of Stockton, the  
13 California Water Service Company, and San Joaquin County  
14 county service areas.

15          MR. JACKSON: All right. Thank you very much.  
16 No further questions.

17          VICE CHAIRPERSON WOLFF: County of San Joaquin?

18          MS. GILLICK: Yes. DeeAnn Gillick for San  
19 Joaquin County parties.

20                            CROSS EXAMINATION

21                            OF KEVIN KAUFFMAN

22 BY Ms. DeeAnne Gillick, ESQ., representing County of San  
23 Joaquin and the San Joaquin County Flood Control and Water  
24 Conservation District:

25           Hi, Kevin.

1           Of Stockton East Water District's current  
2 contract for Hogan water, how much does the district  
3 currently receive?

4           MR. KAUFFMAN: It varies from year to year. I  
5 don't know what the average is. But the -- it's based on  
6 a contract and it's an allocation between the two  
7 districts, the Calaveras Water District and ourselves. We  
8 first deduct for riparian use and then it's split 56 1/2  
9 percent to Stockton East Water District and the remainder  
10 to Calaveras County Water District.

11           MS. GILLICK: Is that amount to San Joaquin --  
12 Stockton East Water District going to remain or will it be  
13 decreased in the future?

14           MR. KAUFFMAN: The expectation is it would be  
15 decreased in the future as Calaveras County Water District  
16 uses more of their allocation?

17           MS. GILLICK: Stockton East Water District has a  
18 contract for delivery of Stanislaus River water? You  
19 indicated face value was 75,000 feet.

20           MR. KAUFFMAN: That's correct.

21           MS. GILLICK: On an average, how much water has  
22 the district received pursuant to that contract?

23           MR. KAUFFMAN: Good question. I don't know off  
24 the top of my head what the average is.

25           MS. GILLICK: Okay. Does Stockton East receive

1 the 75,000 acre-feet on a yearly basis?

2 MR. KAUFFMAN: No, we do not.

3 MS. GILLICK: Is it anticipated by the district  
4 that you will receive that 75,000 acre-feet in the future?

5 MR. KAUFFMAN: That would depend on the quality  
6 of our attorneys.

7 (Laughter.)

8 MS. GILLICK: Is the Bureau delivering 75,000  
9 acre-feet of water to the district this year?

10 MR. KAUFFMAN: No. The allocation is zero.

11 MS. GILLICK: Okay. Does the district anticipate  
12 unless policies change at the Bureau that you will have  
13 deliveries under that contract?

14 MR. KAUFFMAN: I'm not sure I understood the  
15 question.

16 MS. GILLICK: Does the district anticipate that  
17 unless there's a change in position of the Bureau or  
18 operation by the Bureau of the Stanislaus River that the  
19 district would receive water under that contract, or the  
20 extent the district would receive water?

21 MR. KAUFFMAN: We had estimated that on average  
22 the district -- the contracts on the CVP would be minimal  
23 based on the hydrology of the Stanislaus River. First in  
24 line is the Central San Joaquin Water Conservation  
25 District for that water. So Stockton East is always

1 second in priority to that contract.

2           So, we anticipated that there wouldn't be a lot  
3 of years when we would receive water from that contract,  
4 if that answers your question.

5           MS. GILLICK: Is that anticipation also based  
6 upon the Bureau's current operation of the Stanislaus  
7 River and for release of water for purposes other than  
8 contract purposes -- water supply contract purposes?

9           MR. KAUFFMAN: That's our contention.

10          MS. GILLICK: Are you aware of any other surface  
11 water supplies that are delivered within San Joaquin  
12 County?

13          MR. KAUFFMAN: None that we haven't applied for.

14          MS. GILLICK: Are you familiar if North San  
15 Joaquin Water Conservation receives its surface water  
16 supply contract?

17          MR. KAUFFMAN: On the Mokelumne River?

18          MS. GILLICK: Yes.

19          MR. KAUFFMAN: Yes, I am. Thank you.

20          MS. GILLICK: And do you know the amount that  
21 they're receiving currently?

22          MR. KAUFFMAN: They have a contract for up to  
23 20,000 acre-feet.

24          MS. GILLICK: Okay. And then it was also  
25 referenced for the -- the Delta Diversion Project by the

1 City of Stockton indicated it was in the 20,000 acre-feet  
2 range; is that correct?

3 MR. KAUFFMAN: Twenty-eight thousand acre-foot  
4 range, that's correct.

5 MS. GILLICK: Is the City of Stockton currently  
6 building that project?

7 MR. KAUFFMAN: No.

8 MS. GILLICK: And why is that?

9 MR. KAUFFMAN: They are --

10 MS. GILLICK: Are you aware of why that is?

11 MR. KAUFFMAN: My understanding is they are in  
12 final design and completing the permit stage.

13 MS. GILLICK: Is the City of Stockton having  
14 difficulty -- are you aware if the City of Stockton's  
15 having difficulty getting agreement from the Department of  
16 Fish and Game for construction of that project?

17 MR. KAUFFMAN: I understand that's the permit  
18 that's holding up the project, that's correct.

19 MS. GILLICK: Are you familiar with the  
20 supplemental water needs of San Joaquin County based upon  
21 the studies of the district and of the county?

22 MR. KAUFFMAN: Yes, I am.

23 MS. GILLICK: And are you familiar with the  
24 current supplemental water needs amount that's been  
25 projected?



1 MR. KAUFFMAN: Yes, I am.

2 MS. GILLICK: What is that amount?

3 MR. KAUFFMAN: It depends on which study you  
4 read. But it's between 150,000 acre-feet and 220,000  
5 acre-feet.

6 MS. GILLICK: Is that projection taking into  
7 account all of the available surface water supplies that  
8 they're currently available to the county?

9 MR. KAUFFMAN: Yes, they do.

10 MR. KAUFFMAN: Thank you.

11 VICE CHAIRPERSON WOLFF: Any questions from  
12 Friends of the River?

13 MR. STORK: Ronald Stock again with Friends of  
14 the River.

15 Friend's of the River got its start in a very  
16 emotional and difficult struggle to keep the New Melones  
17 Dam from being filled. So I'm going to ask pardon from  
18 the eminences in the sky who are watching to be  
19 left-brained about this.

20 CROSS EXAMINATION

21 OF KEVIN KAUFFMAN

22 BY MR. RONALD STORK, representing Friends of the River:

23 But I guess my first question is: Was the New  
24 Melones Dam constructed?

25 MR. KAUFFMAN: Yes, it was.

1           MR. STORK: And the reservoir is fully  
2 operational; that is, it can be filled?

3           MR. KAUFFMAN: Yes, it is.

4           MR. STORK: Are you -- well, is it your position  
5 as well that the Bureau of Reclamation has the ability and  
6 authority under state water law and federal policy to  
7 execute a contract and deliver water under that contract  
8 for Auburn-Folsom South Unit water when Auburn Dam has not  
9 been constructed nor the Folsom South Canal constructed  
10 into San Joaquin County? It's a very similar question  
11 that I asked --

12          MR. KAUFFMAN: -- to Mel -- to Dr. Lytle, right?

13          MR. STORK: Right.

14          MR. KAUFFMAN: I'm not personally aware of -- I  
15 had never called the Bureau of Reclamation to ask them if  
16 they would issue us a contract. All of that discussion  
17 occurred prior to my duration at Stockton East.

18          MR. STORK: And have you consulted with the State  
19 Water Resources Control Board on whether or not a water  
20 right could support contract deliveries from the United  
21 States of America when the project has not been  
22 constructed?

23          MR. KAUFFMAN: And I have personally not done  
24 that, no.

25          MR. STORK: And are you familiar with

1 Reclamation's communications with Placer County Water  
2 Agency that they are unable to deliver the executed  
3 contract that they executed with the PCWA for  
4 Auburn-Folsom South Unit water when the project has not  
5 been constructed?

6 MR. KAUFFMAN: No I'm not familiar with those  
7 discussions.

8 MR. STORK: Okay. Thank you

9 VICE CHAIRPERSON WOLFF: Thank you.  
10 Sacramento County?

11 MS. DUNN: No questions.

12 VICE CHAIRPERSON WOLFF: Auburn Dam Council?

13 MR. SCHAEFER: No questions.

14 VICE CHAIRPERSON WOLFF: South Delta Water  
15 Agency?

16 MS. GILLICK: No questions.

17 VICE CHAIRPERSON WOLFF: You've been already in  
18 your two positions.

19 San Luis and Delta-Mendota Water Authority and  
20 the Westlands Water District?

21 Not present.

22 Friends of the North Fork?

23 MR. GARABEDIAN: No questions.

24 VICE CHAIRPERSON WOLFF: American River  
25 Authority?

1 MR. WILLIAMS: No questions.

2 VICE CHAIRPERSON WOLFF: Any redirect?

3 MS. HARRIGFELD: Just one question.

4 REDIRECT EXAMINATION

5 OF KEVIN KAUFFMAN

6 BY MS. KARNA HARRIGFELD, ESQ., representing Stockton East

7 Water district:

8 Mr. Kauffman, on an average annual basis, how  
9 much water is delivered to our urban contractors through  
10 the Stockton East Water District water treatment plant?

11 MR. KAUFFMAN: On an average basis, I'm not sure  
12 off the top of my head. It was in the mid-40s, 42 to  
13 45,000 acre-feet. But it's gone up slightly in the last  
14 couple of years because of the enhancements to the water  
15 treatment plant. But somewhere in that range.

16 VICE CHAIRPERSON WOLFF: Does anyone want to  
17 recross?

18 No recross.

19 MS. HARRIGFELD: I would move Stockton East  
20 Exhibits 1 through 3 into the record.

21 VICE CHAIRPERSON WOLFF: Any objections?

22 They're accepted.

23 MS. HARRIGFELD: Thank you.

24 VICE CHAIRPERSON WOLFF: Before you step down,  
25 Mr. Kauffman, I want to apologize for a small error I

1 made. The oath is not just "I swear to tell the truth"  
2 but "I swear to tell the truth in this proceeding." But  
3 you made the larger oath. So the rest of your life and in  
4 all circumstances you have now sworn to tell the truth.

5 (Laughter.)

6 MR. KAUFFMAN: Only when I'm speaking to you, Mr.  
7 Vice Chair.

8 VICE CHAIRPERSON WOLFF: Well, I appreciate that.  
9 Then in the hallways I'll take it you're under oath.

10 Thank you, sir.

11 (Laughter.)

12 VICE CHAIRPERSON WOLFF: I think it's time to  
13 take a short break before we go with the Friends of the  
14 River case.

15 So we'll take a ten-minute break, back at roughly  
16 10 after.

17 Thank you.

18 (Thereupon a recess was taken.)

19 VICE CHAIRPERSON WOLFF: I'm going to call the  
20 meeting back to order, please. And we'll proceed with the  
21 case in chief of Friends of the River, et al.

22 We have both locations being used. The case in  
23 chief is usually made from up there. The cross is made  
24 from here.

25 MR. BASOFIN: Okay. Mr. Stork is going to be

1 doing our opening argument and I'll be doing our direct  
2 examination. Would you like us --

3 VICE CHAIRPERSON WOLFF: I see, I see. Then you  
4 should you're going to do your direct examination.

5 Haven't the direct examiners -- yeah, they've been sitting  
6 there. All right, that's fine. Getting a little tired.

7 Go ahead.

8 MR. STORK: Ron Stork with Friends of the River.

9 Friends of the River, save the American River  
10 Association, and Defenders of Wildlife are in support of  
11 revoking the water right for the Auburn Dam. We believe  
12 that it's long since overdue. We believe that there has  
13 been no diligence established, and there are abundant  
14 grounds both in the public interests and in just  
15 compliance with the Water Code to revoke the water right.

16 The purpose -- I mean we kind of competed with  
17 San Joaquin County on the thickest application -- or  
18 statements. I think we beat them; we had 380 some pages,  
19 of which many actually had maps, but obviously not good  
20 enough for Dr. Wolff. So we're going to support your  
21 admission of that exhibit.

22 I think the role that we tried to provide the  
23 Board was to really flesh out the history and the detailed  
24 reasons why Reclamation, the U.S. Congress, the courts --  
25 the federal courts of the United States, collectively the

1 United States of America have put this project in cold  
2 storage. They are no longer prepared to proceed on this  
3 project, which is relevant to the Board's deliberations on  
4 revocation and it's clearly relevant to any potential  
5 Board deliberations on extension of the permit.

6 I think our testimony will show not just the  
7 history of why we got here and where we came from, but who  
8 indeed are responsible for those actions and what are the  
9 realistic prospects and likelihood that that situation of  
10 not continuing with this project will continue. And we  
11 believe that indeed there are no prospects for the  
12 construction and operation of this facility made possible  
13 by this water right for the indefinite future.

14 So that's what we're up to. And we really  
15 appreciate the opportunity to go through all of our old  
16 boxes and take out 40-year-old documents.

17 MR. BASOFIN: Okay. So Friends of the River,  
18 SARA, Defenders of wildlife has two witness. I will begin  
19 with direct examination of Mr. Stork and then move on to  
20 Mr. Minton.

21 DIRECT EXAMINATION

22 OF RONALD STORK

23 BY MR. JOSH BASOFIN, representing Friends of the River, et  
24 al.:

25 Mr. Stork, can you state your name and place of

1 employment.

2 MR. STORK: Ronald Stork, Friends of the River.

3 VICE CHAIRPERSON WOLFF: Please turn on your  
4 microphone.

5 MR. STORK: There's a green light now. Thank  
6 you.

7 Ronald Stork, Friends of the River. Did you need  
8 my address?

9 VICE CHAIRPERSON WOLFF: No.

10 MR. BASOFIN: And how long have you been employed  
11 there?

12 MR. STORK: Just a hair short of 21 years.

13 MR. BASOFIN: And can you briefly describe your  
14 role at Friends of the River.

15 MR. STORK: I've been working on a whole host of  
16 issues. But since 1992, one of my principal  
17 responsibilities has been all things American River,  
18 including Auburn Dam issues; that's Congressional,  
19 administrative, FERC licensing, even water rights issues.

20 I've also been very involved in Central Valley  
21 flood control issues. I served on DWR's Floodplain  
22 Management Task Force, actually Governor Wilson's Flood  
23 Emergency Action Team Citizens Advisory Committee, and  
24 most recently DWR's Independent Review Panel on Central  
25 Valley flooding.



1 MR. BASOFIN: Mr. Wolff, I apologize. Before I  
2 move on, I haven't stated my appearance as of yet.

3 I'm Josh Basofin on behalf of FOR, SARA,  
4 Defenders. And I've given my information to the court  
5 reporter.

6 Thank you, Mr. Stork. Moving on.

7 Have you reviewed your written testimony before  
8 today?

9 MR. STORK: I have.

10 MR. BASOFIN: And is it a true and accurate  
11 representation of your testimony?

12 MR. BASOFIN: Yes, it is.

13 MR. BASOFIN: Can you please briefly summarize  
14 that testimony.

15 VICE CHAIRPERSON WOLFF: Before we proceed, let's  
16 just be clear for the record.

17 I believe you've amended the testimony twice; is  
18 that correct?

19 MR. STORK: I did.

20 VICE CHAIRPERSON WOLFF: All right. So we have a  
21 second amended testimony before us.

22 Have all the parties received -- all the parties  
23 were served?

24 MR. Stork: Yes, they were.

25 VICE CHAIRPERSON WOLFF: All the parties have

1 that and will be cross-examining off of that testimony?

2 I'll assume so unless I hear otherwise.

3 Go ahead.

4 MR. TURNER: May I ask one question?

5 VICE CHAIRPERSON WOLFF: Please.

6 MR. TURNER: The testimony that I have --

7 VICE CHAIRPERSON WOLFF: I'm sorry. We need a  
8 microphone.

9 MR. TURNER: The written testimony that I have is  
10 identified "X-1 corrected," and it was supposedly by Ron  
11 Stork and Jonas Minton. But Mr. Stork is going to be  
12 presenting the summary of the entire testimony  
13 independently?

14 MR. STORK: Mr. Minton and I will be presenting  
15 sequentially the testimony.

16 MR. TURNER: Thank you.

17 VICE CHAIRPERSON WOLFF: And I believe we have an  
18 X-2, is that correct?

19 MR. STORK: Correct.

20 VICE CHAIRPERSON WOLFF: We have an X-2.

21 Mr. Turner, do you have X-2?

22 MR. STORK: We'd be happy to give him a second  
23 copy. But we did serve him X-2. The only difference  
24 between X-2 and corrected were a few typographical errors.

25 VICE CHAIRPERSON WOLFF: I see. All right.

1           So if he asks questions off of the submission 1,  
2 he won't missing anything in your testimony?

3           MR. STORK: He'll be perfectly fine.

4           VICE CHAIRPERSON WOLFF: All right. Please  
5 proceed.

6           MR. BASOFIN: Okay. Mr. Stork, again could you  
7 please briefly review your written testimony.

8           MR. STORK: Our testimony provides a chronology  
9 and an explanation of the decisions of the United States  
10 of America, the holder of the water right, to stand down  
11 key features of the Auburn-Folsom South Unit Project at  
12 issue in this revocation hearing.

13           Like the Holy Trinity, one God - three persons,  
14 the federal government consists of three branches, each  
15 having a role in putting this project in cold storage.  
16 Responding to the enthusiastic recommendation of the  
17 Executive Branch - yes, the Executive Branch can actually  
18 talk to the Congress - the Congress authorized this  
19 project in 1965 and funded its construction, which stopped  
20 in 1975 because of seismic safety concerns, never to  
21 resume.

22           A part of President Carter's hit list, the  
23 project has never been able to recover from President  
24 Reagan's cost-sharing reforms which demanded greater  
25 financial participation from aspiring non-federal

1 partners, some of whom are participating in this hearing.

2           President George Herbert Walker Bush's  
3 Administration opposed the Corps-expandable Auburn Dam  
4 because of environmental concerns, as did President  
5 Clinton.

6           After a major reclamation study, in 1998  
7 Reclamation concluded that it could identify no federal  
8 role in this project, is not proposing any federal action  
9 to meet the area's water needs, and has told the Congress  
10 that the project is on indefinite hold. That has been at  
11 least for a decade.

12           Requiring Congressional reauthorization since the  
13 Reagan Administration, 12 authorization or reauthorization  
14 bills have been introduced, first in 1983, in the  
15 Congress. Only one bill has ever cleared a Congressional  
16 committee, a representative Doolittle bill to transfer all  
17 right, title, interest in and to the Auburn Dam to the  
18 State of California.

19           Hardly diligence. Passed one committee but never  
20 saw action on the floor.

21           And another Auburn Dam authorization provision in  
22 1992, after first failing in committee, made it to the  
23 House floor and was voted down 273 to 140.

24           A federal district court has effectively enjoined  
25 the completion of the Folsom South Canal, the major

1 service area of this project. The U.S. Supreme Court in  
2 the New Melones decision affirmed, reaffirmed later by the  
3 Congress in CVPIA, that the CVP is subject to state water  
4 law.

5           The Lower American River is now a state and  
6 federal wild and scenic river. The North Fork American  
7 River above the Auburn project lands is a federal wild and  
8 scenic river. And the bureaus of the Department of  
9 Interior, both Reclamation and Land Management, have found  
10 the project lands to be eligible for wild and scenic  
11 rivers and national recreation area status.

12           This year, the Secretary of the Interior,  
13 Reclamation's boss, and Governor Schwarzenegger, Governor  
14 of California, broke ground on a \$1 1/2 billion project to  
15 improve Folsom Dam's flood control performance, a project  
16 that was actually authorized by the Congress several times  
17 and is now being funded. That project coupled with SAFCA,  
18 Sacramento Area Flood Control Agency, levee improvements  
19 downstream exceed the design flood capacity or performance  
20 of Reclamation's proposed facility. It also meets the  
21 standard project flood, the estimated worst-case flood for  
22 flood control planning purposes. And we really applaud  
23 Reclamation's vigorous involvement in moving this project  
24 forward to protect the citizens of Sacramento and the  
25 Capital of the State of California.

1           At the dedication, the Secretary of the Interior  
2 informed the assembled dignitaries that the project being  
3 dedicated that day, short of building an ark, was the best  
4 the federal government could do for the citizens of  
5 Sacramento.

6           Today there are no Reclamation, Interior or  
7 Administration initiatives to redesign, reformulate or  
8 reauthorize or finance construction of the Auburn-Folsom  
9 Dam -- or Folsom South Canal extension. There's, as near  
10 as I can tell, no interest in Reclamation in executing  
11 contracts for projects that don't exist.

12           There are no champions in the leadership or  
13 influential positions in the Congress, including either of  
14 California's senators, who might wish to seek to  
15 reauthorize the project. And those who have done so in  
16 the past are either retiring or now in the minority party  
17 and were unsuccessful when they were in the majority.

18           There are no plausible flood control cost-sharing  
19 partners, the folks with the real money for this project,  
20 because they're building a really good project right now  
21 themselves.

22           Aspiring water and power customers, although they  
23 remain plucky about the virtues of the project, as you can  
24 see here today, have been unable to persuade Reclamation  
25 or OMD that a viable project exists. Regional water

1 interests are doing other things. And this year  
2 Reclamation restored the North Fork of the American River  
3 to its historic channel, and the public had its river  
4 back.

5 That's my summary.

6 VICE CHAIRPERSON WOLFF: Thank you very much.

7 MR. BASOFIN: Thank you, Mr. Stork.

8 And one final question for you. Based on your  
9 testimony and in your opinion and based on your historical  
10 analysis, has the Bureau of Reclamation diligently sought  
11 to put the water allocated under its water right permits  
12 to beneficial use?

13 MR. STORK: Reclamation has reached the  
14 conclusion that it needs cost-sharing partners. It  
15 reached that conclusion in the early eighties. It was  
16 unable to achieve cost-sharing partners for this project  
17 in the 1980s -- by the end of the 1980s. It made another  
18 stab at trying to get the project going with the American  
19 River Water Resources Investigation, and concluded finally  
20 that there was no federal role for building Auburn Dam.

21 So in my judgment, Reclamation has stood down on  
22 this project completely, and they are -- and to call that  
23 diligently prosecuting a project is impossible in my  
24 judgment.

25 MR. BASOFIN: Thank you.

1 Moving on to Mr. Minton.

2 DIRECT EXAMINATION

3 OF JONAS MINTON

4 BY MR. JOSH BASOFIN, representing Friends of the River, et  
5 al.:

6 Mr. Minton, could you state your name and place  
7 of employment.

8 MR. MINTON: Jonas Minton, Planning and  
9 Conservation League, Sacramento, California.

10 MR. BASOFIN: And how long have you been employed  
11 at the Planning Conservation League?

12 MR. MINTON: Four years.

13 MR. BASOFIN: And can you briefly describe your  
14 role at the Planning Conservation League.

15 MR. MINTON: I advise that environmental  
16 nonprofit on matters of regional and statewide water  
17 significance.

18 MR. BASOFIN: And have you held other positions  
19 or position relating to water supply or water supply  
20 projects?

21 MR. MINTON: Relevant to this proceeding I'd  
22 served as Deputy Director of the California Department of  
23 Water Resources. I served as Executive Director of the  
24 Sacramento Water Forum. I served as General Manager of  
25 the El Dorado County Water Agency. I also served as staff



1 to the American River Authority.

2 MR. BASOFIN: Thank you.

3 Mr. Minton, have you reviewed your joint written  
4 testimony?

5 MR. MINTON: Yes.

6 MR. BASOFIN: And is that written testimony a  
7 true and accurate representation?

8 MR. MINTON: Yes.

9 MR. BASOFIN: Can you please briefly summarize  
10 that testimony.

11 MR. MINTON: Let me briefly highlight three items  
12 from the written testimony which is part of the record  
13 when it is submitted.

14 The Bureau of Reclamation has in fact already  
15 found that it has no interest in pursuing Auburn Dam. In  
16 1995, I was loaned from the California Department of Water  
17 Resources to the Bureau of Reclamation. They'd  
18 established the American River Water Resources  
19 Investigation and set up a study management team.

20 So their I joined members of the Bureau staff,  
21 staff from Placer, El Dorado, Sacramento counties, to look  
22 at a range of alternatives for Auburn Dam. So we looked  
23 at projects ranging in size from 400,000 acre-feet stored  
24 up to the full 2.3 million acre-feet originally  
25 envisioned.

1           We also studied as part of that investigation a  
2 conjunctive use alternative that did not rely on a new dam  
3 and reservoir at Auburn.

4           Let me read from Exhibit -- I believe this is  
5 X-28. This is the record of decision that came out of the  
6 American River Water Resources Investigation. I'll read  
7 the key sentence, found on the first page: "Reclamation  
8 has not identified a federal role for meeting the future  
9 water needs of the American Water Resource Investigation  
10 study area. Therefore, a federal program is not being  
11 selected."

12           The second point I'll briefly touch upon is how  
13 water supply needs for this region have been met absent an  
14 Auburn Dam and reservoir.

15           As Executive Director for the Sacramento Water  
16 Forum, I worked with over 20 interest groups within this  
17 region to negotiate an agreement, a 400-page agreement for  
18 meeting the region's water supply needs out to the year  
19 2030. That is found in your Exhibit SC 4, Sacramento  
20 County 4. Projects under that agreement are either  
21 constructed or under construction, and it is believed that  
22 they will provide for this region's needs to that period  
23 of 2030.

24           The third point from my testimony I would bring  
25 to your attention is Exhibit X-48, our last one. And this

1 is actually Appendix 3 of the State Water Resources  
2 Control Board Draft Strategic Plan. And this is the --  
3 known as the pie chart, distribution of water rights by  
4 diversion amount.

5 And in summary, it reveals that there are already  
6 over 200 million acre-feet of some type of water right  
7 already in existence in California. That's about three  
8 times the average annual precipitation -- runoff -- pardon  
9 me -- in California, which demonstrates that there are far  
10 more water rights than there is water available.

11 That concludes my highlights.

12 MR. BASOFIN: Thank you, Mr. Minton.

13 That concludes our direct examination.

14 I would ask -- I have some exhibits after cross.

15 VICE CHAIRPERSON WOLFF: Do we have  
16 cross-examination from the prosecution team?

17 STAFF COUNSEL ROSE: No cross.

18 VICE CHAIRPERSON WOLFF: Bureau of reclamation?

19 MR. TURNER: No questions.

20 VICE CHAIRPERSON WOLFF: CSPA.

21 CROSS EXAMINATION

22 OF RONALD STORK AND JONAS MINTON

23 BY MR. MICHAEL JACKSON, ESQ., representing the California  
24 Sportfishing Protection Alliance:

25 MR. JACKSON: Mr. Stork, there have been parties

1 that are against revocation in this proceeding that have  
2 cited flood protection for Sacramento as a justification  
3 for not revoking the water rights permits?

4           Could you describe the present of the American  
5 River Flood Control Program and its relationship to Auburn  
6 Dam.

7           MR. STORK: The flood control program for the  
8 Sacramento region is -- at least with regard to the  
9 American River is being led by the Sacramento Area Flood  
10 Control Agency, the Bureau of Reclamation, and the U.S.  
11 Army Corps of Engineers.

12           That project -- or those projects have been  
13 authorized -- they've been authorized several times in the  
14 last several years. The projects have been under  
15 construction really since about 1988 on levees. The  
16 Bureau of Reclamation broke ground, as I said -- and we  
17 were very happy they did -- in January of this year on a  
18 \$1 1/2 billion dam safety flood control spillway adequacy  
19 project for the American River.

20           The performance of that flood control project is  
21 to be able to handle the design flood and inflow design  
22 flood into Folsom Dam of about a half a million cubic feet  
23 per second or more. The record inflow into Folsom Dam  
24 included in the 1862 flood is approximately 300,000  
25 acre-feet peak of the inflow design hydrograph. So the

1 project that is underway should be able to regulate  
2 American River flows to flows considerably in excess of 50  
3 percent larger than any experience in the history of  
4 watershed.

5           There are also significant efforts being made to  
6 improve the reliability of the area levees which protect  
7 the Cal EPA building. Fortunately we're on the second  
8 floor here. But it's still a good idea.

9           And the Sacramento Area Flood Control Agency, you  
10 will notice, has -- at least at my last check has not  
11 submitted a policy statement nor are they appearing before  
12 this Board to plea for the importance of retaining the  
13 Bureau's water rights on Auburn Dam. Very frankly, they  
14 have moved on. And they are being quite successful in  
15 moving forward on fast construction schedules with the  
16 cooperation of federal agencies and the Department of  
17 Water Resources, in which it's releasing large amounts of  
18 state funds, bonds funds to the area.

19           So a lot is happening. And this Board should  
20 feel good about that. And Friends of the River has been a  
21 strong -- and Save the American River Association and  
22 Defenders have also been strong supporters of that.

23           MR. JACKSON: Mr. Stork, you've been very active  
24 in Washington in regard to Auburn Dam over the 21 years.

25           Could you describe the Congressional environment

1 and, in particular, the positions in regard to Auburn Dam  
2 of the Senators from California, the Speaker of the House  
3 from California, and the committee chairs from California?

4 MR. STORK: The Congressional environment starts  
5 with Reclamation, the Department of Interior. I was  
6 astonished to here today that at least some Reclamation  
7 employees don't believe that Reclamation and the  
8 Department have a role in advising Congress. But I can  
9 assure you they do. And the folks in Washington are aware  
10 that Reclamation is not asking or requesting a project.  
11 It is not -- they are not undertaking any additional  
12 studies to support authorization of this project.

13 And it's intriguing, when the Corps of  
14 Engineers -- when the Corps of Engineers in 1992 advanced  
15 the Auburn Dam Project, I mean expandable Auburn Dam, that  
16 is, a flood control dam that could later have been  
17 converted into a reclamation dam with water rights, the  
18 Congress was quite interested in knowing what the opinion  
19 of the Corps of Engineers was. It was also quite  
20 interested in knowing what the opinion of the  
21 Administration was. The Administration, interestingly  
22 enough, did not support Auburn Dam in 1992.

23 In 1996, the Corps lower echelon supported a dam  
24 and their higher echelons did not, nor did the Army. And  
25 in both cases Congress thought that was a very important

1 thing to know, and decided not to reauthorize -- or  
2 authorize new Auburn dams.

3           During much of that time, not 1992 but -- well,  
4 let's take 1992. That was a Democratic Congress,  
5 Republican President. Republican President opposed the  
6 dam on environmental grounds. And the Democratic  
7 Congress, even though important democrats were supporting  
8 the project from Sacramento, turned it down.

9           In 19 -- and the republicans actually voted about  
10 half and half, half with Doolittle and half with  
11 republican chairs of the committee who supported the dam -  
12 the Public Works Committee.

13           In 1964, half the republicans in the --

14           MR. MINTON: '64?

15           MR. STORK: In 1994. How can I forget that.

16           Sorry, 1996, half the republicans in the Public  
17 Works Committee, in spite of vigorous lobbying by the  
18 leadership, voted to oppose Auburn Dam. And --

19           MR. JACKSON: What is the present circumstance,  
20 to your knowledge?

21           MR. STORK: The present circumstance is of course  
22 it's a complete non-starter. There is no interest in any  
23 positions of significance in doing anything more with  
24 Auburn Dam. Both of California's senators have opposed  
25 Auburn Dam, and in one case even has had the opportunity

1 to vote against Auburn Dam. That was Senator Boxer when  
2 she was a member of the House of Representatives.

3 The committee chairs are all opposed to Auburn  
4 Dam. And the ranking members of the committees are no  
5 longer Californians, who really don't have a dog in this  
6 fight.

7 MR. JACKSON: Well, Mr. Minton, are you a member  
8 of the Delta -- I'm sorry. I'm looking at my clock over  
9 here and I don't want it to run out.

10 Mr. Minton, are you a member of the Delta Vision  
11 stakeholder group appointed by Governor Schwarzenegger?

12 MR. MINTON: Yes.

13 MR. JACKSON: To your knowledge, Exhibit X-48,  
14 the distribution of water rights by diversion amount which  
15 you mentioned in your testimony, do you know whether or  
16 not the State Water Resources Control Board staff were  
17 asked by Delta Vision staff to provide that information to  
18 them?

19 MR. MINTON: Yes, they were.

20 MR. JACKSON: And do you know why that  
21 information was requested?

22 MR. MINTON: The Delta Vision Blue Ribbon Task  
23 Force has expressed its concerns that one of the causes of  
24 the decline of the pelagic organisms in the Delta is  
25 related to upstream diversions. So it's not just the



1 water diverted by the exporters but a significant  
2 reduction in the amount of water entering the Delta  
3 available for the ecosystem there.

4 MR. JACKSON: After they received that  
5 information, has Delta Vision included Auburn Dam in their  
6 vision of California's water future?

7 MR. MINTON: No.

8 MR. JACKSON: Do you know why not?

9 MR. MINTON: They have focused on the dam  
10 proposals -- the surface water storage proposals  
11 identified in the CALFED Record of Decision. Those five  
12 do not include Auburn Dam.

13 MR. JACKSON: Do either you, Mr. Minton, from  
14 your work at the Department of Water Resources, or you,  
15 Mr. Stork, from your work with Friends of the River and  
16 all of the local agencies that you describe in your  
17 curriculum vitae, do either of you know whether or not  
18 Reclamation is allowed to contract for water from  
19 facilities that have not yet been built?

20 MR. STORK: I have been told repeatedly by Placer  
21 County Water Agency that they are not able to receive  
22 water under a contract for a facility that has not been  
23 constructed. I probably had that conversation several  
24 hundred times with them.

25 MR. JACKSON: Thank you.

1 No further questions.

2 VICE CHAIRPERSON WOLFF: Thank you.

3 County of San Joaquin.

4 MS. GILLICK: Good afternoon. DeeAnne Gillick on  
5 behalf of the County of San Joaquin entities.

6 CROSS EXAMINATION

7 OF RONALD STORK AND JONAS MINTON

8 BY Ms. DeeAnne Gillick, ESQ., representing County of San  
9 Joaquin and the San Joaquin County Flood Control and Water  
10 Conservation District:

11 Mr. Minton, you've indicated you had a role in  
12 the Sacramento Water Forum; is that correct?

13 MR. MINTON: Yes.

14 MS. GILLICK: What is role that you play with the  
15 forum?

16 MR. MINTON: I was the Executive Director  
17 managing the negotiations.

18 MS. GILLICK: Are you aware if San Joaquin County  
19 participated in the Water Forum?

20 MR. MINTON: San Joaquin County was not a member  
21 of the Sacramento Water Forum.

22 MS. GILLICK: Do you know if San Joaquin County  
23 indicated that it wanted to participate in the Water  
24 Forum?

25 MR. MINTON: I do not have that as a specific

1 recollection. There were side conversations with both San  
2 Joaquin County and the East Bay Municipal Utility related  
3 to the use of East Bay MUD's water contract from the  
4 American River.

5 MS. GILLICK: Are you aware if San Joaquin County  
6 sought to participate in the forum but was not allowed to  
7 participate in the forum as a member?

8 MR. BASOFIN: I object. I'm not seeing the  
9 relevance of this line of questioning.

10 VICE CHAIRPERSON WOLFF: Ms. Gillick.

11 MS. GILLICK: It was part of his direct testimony  
12 that he spoke to -- and I just want to clarify who the  
13 parties were and --

14 VICE CHAIRPERSON WOLFF: Fair enough.

15 Overruled.

16 MS. GILLICK: Again, were you aware San Joaquin  
17 County sought to participate in the forum and was not  
18 allowed to participate?

19 MR. MINTON: I don't have that recollection. It  
20 may be, but I don't recall it.

21 MS. GILLICK: Okay. Mr. Stork, you indicated in  
22 your cross-examination question response to Mr. Jackson  
23 that there's -- see if this is a correct interpretation --  
24 that there is no current Congressional support for the  
25 project?

1 MR. STORK: There's no meaningful Congressional  
2 support. There are supporters of Auburn Dam in the  
3 Congress, but they're not in a position to authorize the  
4 project.

5 MS. GILLICK: Are you aware of USBR Exhibit 2,  
6 which is a letter from California Congressional members --

7 MR. STORK: I'm very aware --

8 MS. GILLICK: -- supporting the Auburn Dam  
9 Project?

10 MR. STORK: I'm very aware of that.

11 MS. GILLICK: Okay. Thank you.

12 VICE CHAIRPERSON WOLFF: Thank you.

13 Stockton East Water District?

14 MS. HARRIGFELD: No questions.

15 VICE CHAIRPERSON WOLFF: Sacramento County?

16 MS. DUNN: No questions.

17 VICE CHAIRPERSON WOLFF: Auburn Dam Council.

18 MR. SCHAEFER: My name is Mike Schaefer from  
19 Auburn Dam Council.

20 CROSS EXAMINATION

21 OF RONALD STORK AND JONAS MINTON

22 BY MR. MICHAEL SCHAEFER, representing Auburn Dam Council:

23 Mr. Minton, you mentioned that you found there's  
24 no interest in Auburn from the Bureau of Reclamation -- no  
25 interest in Auburn.

1           And I'm wondering, how do you answer the fact  
2 that Auburn is here today -- I'm sorry, Auburn -- from the  
3 Bureau of Reclamation. How do you answer the fact that  
4 the Bureau of Reclamation is here today asking for the  
5 Board not to revoke the Auburn project because they're  
6 trying to protect the interests that they have in it?

7           MR. MINTON: Let me first address the predicate  
8 of your question. I did not find that the Bureau had no  
9 interest in it. I was reading verbatim from the record of  
10 decision from the Bureau of Reclamation. I was merely a  
11 member of the study management team. It was their  
12 conclusion, not my personal conclusion.

13           I think I could reconcile those, however, as  
14 saying that after looking at the various possibilities for  
15 an Auburn Dam, they conclude there was no federal  
16 interest. What I heard today from the Bureau's testimony  
17 is that they wish to not have the Bureau revoke the permit  
18 to leave an option open. That is not the same as saying  
19 that they're going to build it or build it in a time  
20 certain.

21           MR. SCHAEFER: You said the Bureau. You meant  
22 the Board, I think.

23           MR. MINTON: Yeah, thank you.

24           MR. SCHAEFER: I'd like to follow up on the San  
25 Joaquin County not being a member of the Water Forum. It

1 was my understanding -- and help me out, as you were the  
2 Executive Director -- was there an effort to eliminate  
3 Auburn from the conversations that took place, you know,  
4 in the Water Forum meetings?

5 MR. MINTON: Early in the Sacramento Water Forum  
6 process, around 1994, 1995, the subject of Auburn Dam came  
7 up. And the Water Forum agreement specifically addresses  
8 Auburn Dam by saying they're not going to address it, that  
9 they're going to be neutral on that subject. It was a  
10 divisive issue at the time. And there was interest  
11 amongst the various stakeholders - these included some  
12 people who were Auburn Dam supporters as well as Auburn  
13 Dam opponents - in seeing what things they could agree on  
14 without having to fight the battle of Auburn Dam. And so  
15 by putting consideration of Auburn Dam outside of that  
16 fora, they were able to come up with such an agreement.

17 MR. SCHAEFER: Okay. Ron, you mentioned that the  
18 Bureau has a role in advising Congress. And you didn't  
19 know that until today that that wasn't allowed. It wasn't  
20 advising -- of course the Bureau of Reclamation always  
21 advises Congress. Don't you agree with that? Or do you  
22 find that -- I mean -- okay, let me ask it this way. I'm  
23 sorry, I'm not sure I know the procedure here.

24 But if Congress talks to the Bureau, they can  
25 talk back, right? Do you agree with that?

1           MR. STORK:  If Congress asks Reclamation a  
2 question, Reclamation could answer.

3           MR. SCHAEFER:  Yeah, okay.

4           If they ask for advice, can the Bureau give them  
5 advice, do you think?

6           MR. STORK:  I think Reclamation can give advice  
7 unless they're told not to by the Department of Interior  
8 and the President.

9           MR. SCHAEFER:  Okay.  Thank you.

10          And then Mike Jackson asked you if the Bureau of  
11 Reclamation can contract for water from facilities not  
12 built.

13          What is the procedure of the Bureau of  
14 Reclamation in contracting for water?  And I'll ask either  
15 one of you.  Can they -- what I'm asking is -- many times  
16 they sign a contract before a facility is built.  In fact,  
17 isn't it the policy of the federal government to sell the  
18 water before they can build the project?

19          MR. STORK:  I believe that in this case they  
20 executed a contract with Placer County Water Agency for  
21 117,000 acre-feet before Auburn Dam was constructed since  
22 the contract exists and the dam doesn't.  So at least at  
23 one time Reclamation's policy was to do that.

24          However, Reclamation also appears to have a  
25 policy, at least as related to me by Placer County Water

1 Agency, to not deliver water that they've contracted for  
2 from facilities that they have not yet constructed. So I  
3 think that's an important distinction there.

4 MR. SCHAEFER: Delivering water, not contracting  
5 for the water?

6 MR. STORK: Right. And I believe also Reclamation  
7 has a contracting freeze currently, established by the  
8 Central Valley Project Improvement Act, which required  
9 Reclamation to undertake a number of things before they  
10 could execute new water services contracts. And it's my  
11 understanding they have not completed those things. And I  
12 believe they're also under an injunction from Judge Wanger  
13 in the Fresno District Court right now not to execute any  
14 new water service contracts.

15 Reclamation has not implemented -- or sold any  
16 new water services contracts outside of Fazio contracts I  
17 think since they attempted to market a million and a half  
18 acre-feet of water I think in 1987.

19 MR. SCHAEFER: Mr. Stork, you mentioned what your  
20 job was with the Friends of the River.

21 Is it a fair statement to say that you would like  
22 to see Auburn put to rest?

23 MR. STORK: The dam, yes. The town is a nice  
24 town.

25 (Laughter.)



1           MR. SCHAEFER:  Auburn Dam.

2           It's interesting as we saw a copy of your letter,  
3 that went to your friends of the river all over the United  
4 States and outside the State of California and everything,  
5 stating that "let's put another nail in the coffin."

6           MR. STORK:  Yes.

7           MR. SCHAEFER:  And this is -- and it looks like,  
8 and I'm hearing, that you're very adamant about putting  
9 another nail in the coffin.

10          MR. STORK:  I don't believe the Auburn Dam  
11 Council believes that the revocation in the water rights  
12 would be a significant impediment to the Bureau in getting  
13 that project underway again.

14          MR. SCHAEFER:  Would the Friends of the River be  
15 willing to answer to the people that could be flooded out  
16 in our next disastrous flood as to why they oppose such a  
17 project?

18          MR. STORK:  I'd be happy to answer that.

19          I think I've just testified that Reclamation, to  
20 its credit, and the Department of Interior has worked with  
21 the Corps and SAFCA to put together a project that is  
22 envisioned to be able to handle the standard project  
23 flood, an estimate of the worst likely flood that one  
24 might see on the American River, and I think it's very  
25 commendable of Reclamation to do that.

1           MR. SCHAEFER:  What protection would that one  
2 provide?

3           MR. STORK:  It would handle a flood -- a design  
4 flood of over half a million cubic feet per second, and it  
5 will go into Folsom.

6           MR. SCHAEFER:  And what flood protection would  
7 that be in number of years or percent or however --

8           MR. STORK:  It's not fair to characterize that  
9 for a whole host of reasons, of kind of technical reasons  
10 which the National Academy of Science has weighed in on,  
11 which I've been very involved with some of these Academy  
12 issues and in the Central Valley flood control starting in  
13 the interagency panel.  The interagency panel on Central  
14 Valley flooding that just released its report, that I  
15 served on, recommended that the target for flood control  
16 projects in the Central Valley be the standard project  
17 flood.  Trying to assign probabilities to floods much  
18 larger than have ever occurred is an exercise in  
19 speculation that the National Academy has said don't do,  
20 and the Corps has accepted.  And so the official flood  
21 hydrology for the American River stops at 200.  So any  
22 estimate beyond that is speculative.

23           The National Academy suggested that the curve  
24 bends.  Then they're smarter than I am.

25           MR. SCHAEFER:  Well, Mr. Stork, along that line,

1 if you look at the curve, it doesn't bend on the American  
2 River. It actually goes up. Do you agree with that, that  
3 we've had some pretty major floods since Folsom was built?  
4 Do you agree with that?

5 MR. STORK: We have had large events since Folsom  
6 was built. And we had a very large event in 1962.

7 MR. SCHAEFER: More so than any other flood that  
8 was designed when the Corps designed the flood control  
9 project at Folsom that was authorized in 1944?

10 MR. STORK: It's the Corps of Engineers'  
11 position -- and I'm not going to disagree with them --  
12 that they designed the original Folsom Dam project, not  
13 the one that they're modifying, but the original Folsom  
14 Dam project being mindful of the estimated size of the  
15 1862 flood. And it is their belief when they designed it  
16 that Folsom Dam could handle the 1862 flood.

17 Obviously we're increasing the performance levels  
18 at Folsom Dam by about 50 percent or more, depending on  
19 operational decisions. So we're having a lot of  
20 redundancy built in. And in this circumstance I think  
21 that's a good thing given the population center here.

22 MR. SCHAEFER: Do you know what the original  
23 flood -- the size of Folsom, which was only a flood  
24 control project, was designed for?

25 MR. STORK: The original design for Folsom, if

1 you look at it from the standpoint of the peak of the  
2 inflow design hydrograph, was 340,000 cubic feet per  
3 second. It has subsequently moved up a bit, even in the  
4 absence of physical changes, because of operational  
5 changes at Folsom. But the original design flood was 340.

6 The estimates for the 1862 range from 260 to 320,  
7 more or less, if you look at the peak of the design  
8 hydrograph.

9 VICE CHAIRPERSON WOLFF: Mr. Schaefer, I  
10 appreciate the line of questioning. But are you getting  
11 close to the end?

12 MR. SCHAEFER: I'm at the end.

13 Thank you very much.

14 VICE CHAIRPERSON WOLFF: I don't mean to cut you  
15 off. If you have a question or two more, that's fine.

16 MR. SCHAEFER: Well, I think the one point that  
17 is clear, it's my understanding - and check me if I'm  
18 wrong - has there ever been a dam in your opinion that has  
19 been built too big?

20 MR. STORK: Yes.

21 MR. SCHAEFER: Okay. Could you tell me which  
22 one?

23 MR. STORK: New Melones.

24 VICE CHAIRPERSON WOLFF: That's probably a  
25 fitting ending.

1 MR. SCHAEFER: Thank you very much.

2 VICE CHAIRPERSON WOLFF: We do have world views  
3 clashing here.

4 South Delta Water Agency?

5 MS. GILLICK: No comment.

6 VICE CHAIRPERSON WOLFF: San Luis and  
7 Delta-Mendota Water Agency and Westlands Water District?

8 Friends of the North Fork?

9 MR. GARABEDIAN: No questions.

10 VICE CHAIRPERSON WOLFF: American River  
11 Authority?

12 MR. WILLIAMS: No questions.

13 VICE CHAIRPERSON WOLFF: Any questions from  
14 staff?

15 I actually have one. I'm also sympathetic to  
16 your concerns, just as I am to those of the water supply  
17 interests, if you will.

18 I'm well aware of why David Brower in his  
19 literary description of hell placed dams at the center.  
20 Rivers are not just channels through which water flows,  
21 but are places where lots and lots of living creatures  
22 live or, you know, live near. And I understand why a  
23 group called Friends of the River or Defenders of Wildlife  
24 would want the dam permit revoked.

25 But I'm a little unclear with the remedy in this

1 case. I mean I understand sort of ideologically,  
2 philosophically. But like with the water supply  
3 interests, I could almost flip the argument over and it  
4 gets a little unclear to me.

5           Isn't CEQA the primary protection here, I mean  
6 whether the -- you know, even with the dam permits in  
7 place, they're going to have to go through CEQA, and  
8 that's where impacts would be reviewed. So why is CEQA  
9 not an adequate protection for environmental concerns on  
10 the river?

11           MR. STORK: The purpose of CEQA is to describe  
12 environmental impacts. Decision makers can make decisions  
13 and select alternatives that are not the environmentally  
14 preferred alternative. There is such a thing as  
15 overriding considerations.

16           So from a process perspective, CEQA helps  
17 decision making, but it doesn't ultimately decide the  
18 issue.

19           Also, the issue of CEQA, in this case I think  
20 that there are differing views. I mean you've had folks  
21 here today assert that they can contract with water for  
22 projects that haven't been constructed yet, water that may  
23 indeed be needed somewhere else, for which may not require  
24 State Board review. So I think from our perspective, from  
25 a process perspective, I think it's very important for the

1 Bureau -- sorry -- for the State Board to -- when there  
2 are abundant grounds for revocation for a water right that  
3 would have diverted almost a million acre-feet of water on  
4 land, taking it from rivers in a stressed system, that  
5 it's time to revoke the licenses -- or the permit. And if  
6 someone decides to build that project, to entertain making  
7 a water right decision -- the full water right decision,  
8 not just an amendment or a permit extension, but a full  
9 water right decision in the modern context, in the modern  
10 era, reviewing the issues that are in front of the Board  
11 that the Board can see in the future, and not a board that  
12 existed before many of the people in this room were born.

13 MR. MINTON: Mr. Wolff, if I might add.

14 The concern here is not only the environment of  
15 the American River, but the impacts of a held water right  
16 on resolution of another important environmental issue in  
17 California, the fate of the Bay-Delta Estuary. And for  
18 those of us working more hours than we really would like  
19 to have to, but it's certainly justified, to try to  
20 resolve those environmental issues, it becomes much more  
21 complicated to identify possible flows, conveyance options  
22 and so forth with this kind of a massive water diversion  
23 as an unknown. So actually by not revoking, the Board  
24 makes that process more difficult. And that is very  
25 challenging for us. There is a cost to not revoking.

1 VICE CHAIRPERSON WOLFF: Thank you.

2 Would you like to move your exhibits?

3 MR. BASOFIN: Yes. We would like to move Friends  
4 of the River, SARA, Defenders of Wildlife Exhibits 1  
5 through 56, noting that Exhibits 1 and 25 have been  
6 corrected.

7 VICE CHAIRPERSON WOLFF: And with respect to  
8 Exhibit 1, there was a second correction.

9 MR. BASOFIN: Correct.

10 VICE CHAIRPERSON WOLFF: Any objection?

11 Exhibits are accepted.

12 (Thereupon Friends of the River Exhibits  
13 X-1 through X-50 were received into evidence.)

14 VICE CHAIRPERSON WOLFF: Thank you.

15 We'll now move to Sacramento County case in  
16 chief.

17 MS. DUNN: Sandra Dunn on behalf of Sacramento  
18 County Water Agency and Sacramento County. Thank you for  
19 the opportunity to participate here today.

20 Consistent with the Water Forum agreement,  
21 Sacramento County is not here to testify for or against  
22 revocation of the Auburn Dam. We're here to testify  
23 because of our concern with regard to the unintended  
24 consequences of revoking the permits.

25 Sacramento County has worked very hard to



1 preserve and to facilitate flows for the Lower American  
2 River and for the protection of public trusts and  
3 beneficial uses on the American River and for the County  
4 of origin, and we want to make sure that by revoking these  
5 permits that some consideration is given to preserving  
6 those flows for those purposes.

7           The testimony from Sacramento County will be  
8 given by Keith DeVore, Director of the Department of Water  
9 Resources, Sacramento County, and by Tom Gohring, who is  
10 the current Executive Director for the Water Forum.

11           Keith will testify to the Sacramento County's  
12 longstanding interest as administrator of the American  
13 River Parkway in establishing and protecting the Lower  
14 American River. Mr. DeVore will also testify to  
15 Sacramento County's interest financially in the Freeport  
16 Regional Water Project and securing a water supply for the  
17 county and area of origin.

18           Mr. Gohring will testify to the efforts put into  
19 the development of the Water Forum agreement and its  
20 co-equal objectives of a safe, reliable water supply as  
21 well as protecting the fisheries, wildlife, recreation,  
22 aesthetic values of Lower American River. And Mr. Gohring  
23 will specifically testify to the current efforts to  
24 establish flows in the Lower American River.

25           And with that, we'll proceed with our testimony.

1 MR. DeVORE: Good afternoon. My name is Keith  
2 DeVore. I'm Director of -- I'm sorry.

3 MS. DUNN: Let me -- it's the afternoon. We're  
4 all getting anxious to go home. We can see that this is  
5 going to be done.

6 DIRECT EXAMINATION

7 OF KEITH DeVORE

8 BY MS. SANDRA DUNN, representing Sacramento County and  
9 Sacramento County Water Agency:

10 Mr. DeVore, could you please state your name and  
11 your address for the record.

12 MR. DeVORE: My name is Keith DeVore, County of  
13 Sacramento, Sacramento, California.

14 MS. DUNN: And what is your current position with  
15 Sacramento County?

16 MR. DeVORE: I'm Director of the Department of  
17 Water Resources.

18 MS. DUNN: And have you had an opportunity to  
19 review what's marked as Sacramento County Exhibit No. 1,  
20 your written testimony?

21 MR. DeVORE: I have.

22 MS. DUNN: And are there any corrections that  
23 need to be made to that testimony?

24 MR. DeVORE: There are two minor corrections that  
25 need to be made. And should I make them now or --

1 MS. DUNN: Yes.

2 MR. DeVORE: Okay. On the first page about  
3 three-quarters of the way down we refer to the American  
4 River Parkway Plan that's provided in Sacramento County.  
5 Should be Exhibit 3.

6 And the second correction on the second page, in  
7 the middle of the page, refers to "Reclamation's  
8 operations of Folsom Dam by Decision" -- It should be 893  
9 instead of 892.

10 MS. DUNN: And with those corrections, is it a  
11 true and accurate representation of your testimony?

12 MR. DeVORE: Yes.

13 MS. DUNN: Okay. If you would proceed to  
14 summarize your testimony.

15 MR. DeVORE: My name is Keith DeVore. I'm  
16 Director of Water Resources for the County.

17 Sacramento County's interest is in preserving the  
18 water under Reclamation's permits for the benefits of the  
19 American River watershed. It's twofold.

20 First, the county's committed to protecting the  
21 flows in the Lower American River, and any decision made  
22 by the State Water Resources Control Board regarding  
23 Reclamation's permits must be protective of the Lower  
24 American River.

25 Second, any water made available by the State

1 Water Resources Control Board must be prioritized for use  
2 within the American River watershed.

3 Sacramento County has the principal  
4 responsibility for administration and management of the  
5 American River Parkway pursuant to Urban American River  
6 Parkway Preservation Act.

7 The American River Parkway's a unique regional  
8 asset with the American River being its central focus.

9 The Lower American River is classified as, quote,  
10 recreation river with the state and federal wild and  
11 scenic river system. Sacramento County's American River  
12 Parkway Plan provides management, guidance, and direction  
13 for all state departments, including the State Water  
14 Resources Control Board, in carrying out their respective  
15 responsibilities under the State Wild and Scenic Rivers  
16 Act and the Urban American River Parkway Preservation Act.

17 Sacramento County's in the process of updating  
18 its American River Parkway Plan. A copy of the final  
19 draft plan is provided an exhibit to this testimony.

20 One of the important goals of the final draft  
21 plan is to, quote, preserve, protect, interpret, and  
22 improve the natural, archeological, historical, and  
23 recreational resources of the parkway, including an  
24 adequate flow of high quality water, anadromous and  
25 resident fisheries, migratory and resident wildlife, and

1 diverse natural vegetation. To accomplish that objective,  
2 the Parkway Plan sets forth certain water flow policies.  
3 Policy 4.1 states that it's the intent of the Parkway Plan  
4 that available water flows protect the Lower American  
5 River resources. These resources specifically identified  
6 for the protection of the water flows include, quote,  
7 water quality; appropriate water temperatures; water  
8 recreation; aesthetics; riparian, vegetarian, fisheries  
9 and other aquatic species, end quote.

10 MR. TURNER: Excuse me for a second, if I might,  
11 Mr. --

12 VICE CHAIRPERSON WOLFF: I'm sorry. Well, you  
13 need to come to the microphone.

14 MR. TURNER: I believe we had provided that the  
15 witnesses were not supposed to just read their written  
16 testimony. I understand that's exactly what is being  
17 done. And I was wondering if this is going to be a  
18 summary or just a recitation of what was already in  
19 writing.

20 VICE CHAIRPERSON WOLFF: Well, as long as he's  
21 done within five minutes, I'll allow it, even though it is  
22 a bit boring.

23 MR. DeVORE: Sorry. It's a short statement.

24 The water flow policy also incorporates the  
25 minimum flow regime agreed to by Reclamation and the Water

1 Forum in 2005 known as the flow management standards for  
2 the Lower American River.

3           The Water Forum stakeholders and Reclamation are  
4 currently working towards implementation of the flow  
5 management standards. Till such time as the flow  
6 management standards are fully enforceable, conditions  
7 adopted in Decision 1400, D-1400 are of critical  
8 importance.

9           Decision 1356 approved Reclamation permits to  
10 appropriate water for the Auburn Dam Project. In Decision  
11 1356 the State Water Resources Control Board reserved  
12 jurisdiction to formulate terms and conditions relative to  
13 minimum flows for the recreational purposes and the  
14 protection and enhancement of fish and wildlife.

15           Acting upon its reserve jurisdiction, the State  
16 Water Resource Control Board established minimum flows in  
17 D-1400. In D-1400 the State Water Resources Control Board  
18 concluded the flow requirements imposed on Reclamation's  
19 operation of Folsom Dam by Decision D-893 were inadequate  
20 and therefore minimum flow requirements were necessary for  
21 the entire reach of the American River from Nimbus Dam to  
22 the Sacramento River in order to be protective of fish and  
23 wildlife.

24           However, because the State Water Resources  
25 Control Board did not reserve continuous jurisdiction when

1 it issued D-893, the State Water Resources Control Board  
2 determined it only had authority to improve D-1400 minimum  
3 flow standards on Reclamation's Auburn Dam permits. While  
4 D-1400 flow standards do not apply to Folsom Dam and  
5 reservoir, the State Water Resources Control Board made it  
6 clear in its reconsideration of D-1400 that minimum flows  
7 were to be supplemented by sufficient releases at Nimbus  
8 from the direct flow counted for under the Auburn Dam  
9 permits or through release storage of Auburn.

10           Furthermore, Reclamation has historically been  
11 willing to meet the minimum flow standards as a  
12 discretionary matter.

13           With the proposed revocation of the Auburn Dam  
14 permits, any enforceable requirement to meet the higher  
15 minimum flow standards will be eliminated and it may be a  
16 year or two before the American River flow management  
17 standards are fully implemented.

18           As the local agency responsible for the American  
19 River Parkway, the jewel of the region, Sacramento County  
20 cautions the State Water Resources Control Board to ensure  
21 that its actions do not result in a less protection for  
22 the Lower American River.

23           VICE CHAIRPERSON WOLFF: Thank you, Mr. DeVore.

24           MS. DUNN: Can I ask a couple of questions to  
25 follow up?

1           Mr. DeVore, can you tell me what the current  
2 status is of the draft of American River Parkway Plan?

3           MR. DeVORE: The American River -- draft plan is  
4 before the board of supervisors on August 13th of this  
5 year.

6           MS. DUNN: And I'd also like to ask Mr. DeVore a  
7 couple of questions to clarify some of the earlier  
8 testimony today with regard to the Freeport Regional Water  
9 Project.

10           Can you tell me what the assumptions were when  
11 the Freeport project was developed with regard to East Bay  
12 MUD's use of the facility?

13           MR. DeVORE: Yeah, the assumptions were that East  
14 Bay MUD would use their portion of the facility  
15 approximately three in ten years. And those -- and that  
16 use was predicated upon storage on the Mokelumne River  
17 system. So 500,000 acre-feet of storage was expected as  
18 inflow to the Mokelumne River system. Then that was the  
19 trigger -- if it was less than that, that was the trigger  
20 upon which East Bay MUD could use the Freeport Regional  
21 Water Project.

22           MS. DUNN: So is there capacity available in the  
23 facility in years other than just simply wet years --

24           MR. DeVORE: Yes. There is --

25           MS. DUNN: -- if an agreement is reached with the



1 joint power agencies?

2 MR. DeVORE: There's capacity in normal years and  
3 there could even be an event on the Mokelumne River, which  
4 was, quote -- the Mokelumne River was okay but the  
5 American River was dry.

6 MS. DUNN: Okay. Thank you.

7 DIRECT EXAMINATION

8 OF TOM GOHRING

9 BY MS. SANDRA DUNN, representing Sacramento County and  
10 Sacramento County Water Agency:

11 Mr. Gohring, could you please state your name for  
12 the record.

13 MR. GOHRING: I'm Tom Gohring.

14 MS. DUNN: And your address?

15 MR. GOHRING: I work at 660 J Street, Suite 260,  
16 Sacramento, California.

17 MS. DUNN: And what is your current position?

18 MR. GOHRING: I'm Executive Director of the  
19 Sacramento Water Forum.

20 MS. DUNN: And have you reviewed Sacramento  
21 County Exhibit No. 2 and is it accurate and correct?

22 MR. GOHRING: Yes and yes.

23 MS. DUNN: And would you please summarize your  
24 written testimony.

25 MR. GOHRING: Sure. As Jonas Minton testified a

1 little while ago, when the Water Forum was created its  
2 members could not come to agreement on the issue of Auburn  
3 Dam. As a result, I'm not here today to talk to you about  
4 whether you should revoke the Auburn Dam permit. Instead  
5 I'm here to talk about some of the consequences that we're  
6 concerned about if you revoke those permits.

7           The Water Forum currently has about 40 members,  
8 including Sacramento County. Those members are a diverse  
9 group that represent environmental organizations, business  
10 interests, public agencies, and water purveyors here  
11 in the region.

12           When we signed the agreement, all of our members  
13 agreed to support a variety of projects. Some of them  
14 were brick and mortar projects that have to do with  
15 diverting water from our surface water system. But we  
16 also included projects to protect the aquatic resources of  
17 the Lower American River, specifically the development and  
18 implementation of a more protective flow standard for the  
19 Lower American River and a declaration of full and  
20 appropriate -- declaration of full appropriation status  
21 for the American River.

22           MR. JACKSON: Mr. Wolff, I was trying to wait for  
23 an opportunity. I'm going to object to the admission of  
24 this evidence on the grounds that the witnesses have just  
25 testified that they're not here in regard to the

1 revocation of Auburn Dam's rights. And so I don't know  
2 how this testimony can come in and be used in a decision  
3 that they specifically said they're not here to testify  
4 to.

5 VICE CHAIRPERSON WOLFF: Ms. Dunn.

6 MS. DUNN: Our testimony relates to the  
7 unintended consequences of what happens if the State Board  
8 does revoke the permits. We're concerned that by making a  
9 decision to revoke these permits, they'll be  
10 unappropriated water that may be available when it has  
11 been the Sacramento County and the Water Forum's  
12 impression or assumption that that water would be  
13 preserved for purposes of protecting the Lower American  
14 River. We're concerned that making that water available  
15 for appropriation will mean that someone else will come  
16 along and appropriate that water that would otherwise be  
17 used for flows.

18 VICE CHAIRPERSON WOLFF: I understand. It seems  
19 to me the information is relevant to the policy issue.

20 Overruled.

21 But if you could -- you are repeating many of the  
22 items in your testimony. If you could summarize the key  
23 items.

24 MR. GOHRING: The key item is if you revoke the  
25 Auburn Dam permits, please protect any water supply under

1 those permits to be available for the Lower American River  
2 flow standard and other beneficial uses in the place of  
3 use -- excuse me -- in the area county of origin.

4 Thanks.

5 VICE CHAIRPERSON WOLFF: Any further questions,  
6 Ms. Dunn?

7 MS. DUNN: No, that's it.

8 VICE CHAIRPERSON WOLFF: Thank you. I appreciate  
9 the point.

10 Cross-examination, prosecution team?

11 STAFF COUNSEL ROSE: No questions.

12 VICE CHAIRPERSON WOLFF: USBR?

13 MR. TURNER: No questions.

14 VICE CHAIRPERSON WOLFF: CSPA?

15 CROSS EXAMINATION

16 OF KEITH DeVORE AND TOM GOHRING

17 BY MR. MICHAEL JACKSON, ESQ., representing the California  
18 Sportfishing Protection Alliance:

19 Just to make sure that the record is clear, Mr.  
20 DeVore, that in your role as Water Manager for Sacramento  
21 County, you have no position in regard to whether or not  
22 these water rights should be revoked by the State Board;  
23 is that correct?

24 MR. DeVORE: That's correct.

25 MR. JACKSON: And, Mr. Gohring, the Sacramento

1 River Forum has no position in regard to whether or not  
2 these water rights should be revoked or not?

3 MR. GOHRING: Correct.

4 MR. JACKSON: Now, in regard to the fish flows  
5 that were established by the Sacramento Water Forum, are  
6 those flows being met today?

7 MR. GOHRING: Yes.

8 MR. JACKSON: How?

9 MR. GOHRING: Through operations by the Bureau of  
10 Reclamation of the Folsom Nimbus complex.

11 MR. JACKSON: Do you have any reason to believe  
12 that that -- is there a contract with the Bureau of  
13 Reclamation to meet the Water Forum fish flows?

14 MR. GOHRING: No.

15 MR. JACKSON: Do you have any reason to believe  
16 that the existing situation in which those flows  
17 established by the Water Forum are being met would change  
18 no matter what the Board does here?

19 MR. GOHRING: I worry that any number of changes  
20 in the future could endanger those protective flows.

21 MR. JACKSON: And that would require the -- I  
22 mean is your worry that the Bureau would stop doing what  
23 it's doing today to meet the flows?

24 MR. GOHRING: That's a possibility.

25 MR. JACKSON: Is there any other way that the

1 flows would not be met other than the Bureau simply  
2 refusing to release the water out of Folsom?

3 MR. GOHRING: No.

4 MR. JACKSON: Thank you.

5 VICE CHAIRPERSON WOLFF: County of San Joaquin?

6 MS. GILLICK: No questions.

7 VICE CHAIRPERSON WOLFF: Stockton East?

8 MS. HARRIGFELD: No questions.

9 VICE CHAIRPERSON WOLFF: Friends of the River?

10 CROSS EXAMINATION

11 OF KEITH DeVORE AND TOM GOHRING

12 BY MR. RONALD STORK, representing Friends of the River:

13 Hi. My name is Ronald Stork. I'm with Friends  
14 of the River.

15 Is it true that I'm an original member of the  
16 Water Forum, dating back from 1993?

17 MR. GOHRING: I have no recollection of that.

18 MR. DeVORE: It is true.

19 MR. STORK: Thank you. Welcome, and good to see  
20 you here.

21 Is it possible for Reclamation using Auburn Dam  
22 water rights from a facility that has not been constructed  
23 to support the flows in the Lower American River? Auburn  
24 Dam has not been built. Can I ask you, how the flows on  
25 the Lower American River can be -- how Reclamation -- can

1 Reclamation operationally support flows on the American  
2 River?

3 MR. DeVORE: No.

4 MR. STORK: Okay. Thank you.

5 VICE CHAIRPERSON WOLFF: Auburn Dam Council?

6 MR. SCHAEFER: Mike Schaefer, Auburn Dam Council.

7 CROSS EXAMINATION

8 OF KEITH DeVORE AND TOM GOHRING

9 BY MR. MICHAEL SCHAEFER, representing Auburn Dam Council:

10 Keith, I need to ask you. You really are out  
11 there and trying to protect the gem of the American River  
12 Parkway. At what flows does the water start causing  
13 damage to the parkway?

14 MR. DeVORE: Flood flows?

15 MR. SCHAEFER: Um-hmm.

16 MR. DeVORE: It depends. They vary. Different  
17 damage at different levels.

18 MR. SCHAEFER: Well, I know that in 1995 and  
19 1997, you experienced severe damage to the parkway.

20 MR. DeVORE: Correct.

21 MR. SCHAEFER: Washed out parts of the trails and  
22 roads and even I think the parking area down at Watt.  
23 But I understand it's somewhere in the order of less than  
24 50,000 cubic feet per second.

25 So do you negotiate with the Bureau? Do you have

1 any kind of communication with them to help minimize  
2 losses to your parkway by the way they operate Folsom?

3 MR. DeVORE: No.

4 MR. SCHAEFER: You don't, not at all?

5 MR. DeVORE: (Witness shakes head.)

6 MR. SCHAEFER: Okay. Interesting.

7 Would you like to negotiate with them to minimize  
8 it?

9 (Laughter.)

10 MR. SCHAEFER: Have you ever tried? Have you  
11 ever tried to talk with them -- people up at Folsom?

12 VICE CHAIRPERSON WOLFF: Let's try one question  
13 at a time, please.

14 What's your first question?

15 MR. SCHAEFER: Would you like to negotiate with  
16 them to minimize flows? Do you think they have it in  
17 their capability to help you preserve some of your  
18 facilities when the flows are at that damaging versus  
19 non-damaging level?

20 MR. DeVORE: I think that this is a compound  
21 question. It's difficult to answer yes or no. It depends  
22 on the flows and -- but certainly not at the expense of  
23 other potential damage.

24 MR. SCHAEFER: I was a member of the Bureau of  
25 Reclamation, and I know that we talked seriously with



1 Sacramento County Parks and Rec when we got into that.  
2 And it is an opportunity. They're a friendly group of  
3 people, so I recommend it.

4 Thank you.

5 VICE CHAIRPERSON WOLFF: Thank you.

6 South Delta Water Agency?

7 MS. GILLICK: No questions.

8 VICE CHAIRPERSON WOLFF: San Luis and  
9 Delta-Mendota Water Authority and Westlands Water  
10 District?

11 Friends of the North Fork?

12 MR. GARABEDIAN: Good afternoon. Michael  
13 Garabedian with Friends of the North Fork. I have a  
14 couple of questions for Mr. DeVore.

15 CROSS EXAMINATION

16 OF KEITH DEVORE AND TOM GOHRING

17 BY MR. MICHAEL GARABEDIAN, ESQ., representing Friends of  
18 the North Fork:

19 The American River Parkway Plan, as I understand  
20 it, is a plan to preserve, protect, interpret, and improve  
21 the natural archeological, historic, and recreational  
22 resources of the parkway, isn't that true?

23 MR. DEVORE: That's correct.

24 MR. GARABEDIAN: What is the geographic extent of  
25 the parkway?

1           MR. DeVORE: It runs from the mouth of the  
2 Sacramento River up to Nimbus Dam.

3           MR. GARABEDIAN: Does Sacramento County have  
4 concerns about the natural protection, preservation,  
5 interpretation, and improvement of the natural  
6 archeological, historic, and recreational resources  
7 upriver from the parkway?

8           MR. DeVORE: We don't have responsibility up  
9 there.

10          MR. GARABEDIAN: Does the county have any  
11 policies, programs, or actions it's taken in efforts to  
12 preserve, protect, interpret, or improve those resources  
13 above the parkway?

14          MR. DeVORE: Within Sacramento County, most of  
15 that's a state jurisdiction.

16          MR. GARABEDIAN: But has the county perhaps  
17 looked at policies, programs, procedures of states or  
18 other bodies, taken a role in any effort to concern about  
19 its -- to support its citizens who might recreate or do  
20 that kind of activity above the parkway?

21          MR. DeVORE: Yes.

22          MR. GARABEDIAN: Can you describe some of those?

23          MR. DeVORE: I'm not intimately familiar with the  
24 details. But the county has been involved in various  
25 plans by the state and expansions and discussions

1 regarding the aquatic center and that type of plan.

2 MR. GARABEDIAN: Thank you.

3 No further questions.

4 VICE CHAIRPERSON WOLFF: Thank you.

5 American River Authority?

6 Not present?

7 MR. WILLIAMS: No questions.

8 VICE CHAIRPERSON WOLFF: No. questions.

9 Ms. Dunn, do you have any redirect?

10 MS. DUNN: I just have a couple of questions to  
11 follow up with Mr. Gohring.

12 REDIRECT EXAMINATION

13 OF KEITH DeVORE AND TOM GOHRING

14 BY MS. SANDRA DUNN, representing Sacramento County and  
15 Sacramento County Water Agency:

16 You were asked a question with regard to the  
17 Bureau's current meeting the minimum stream flows in the  
18 Lower American River. Is that a voluntary action by the  
19 Bureau?

20 MR. GOHRING: Yes.

21 MS. DUNN: And are you currently in the process  
22 of trying to reach agreement on some sort of an  
23 enforceable agreement on minimum stream flows?

24 MR. GOHRING: Yes.

25 MS. DUNN: That's all my questions.

1 I'd like to at this point in time move to enter  
2 into evidence Exhibits 1 through 6 of the Sacramento  
3 County Water Agency's. Not 7 and 8.

4 VICE CHAIRPERSON WOLFF: Before I respond to  
5 that, is there any recross?

6 Yes, only on the question that was asked.

7 MR. SCHAEFER: Yes.

8 BY MR. MICHAEL SCHAEFER, representing Auburn Dam Council:

9 Mr. Gohring, what is Decision 863 and how much  
10 flow down the American River is the Bureau presently  
11 required to release?

12 MR. GOHRING: I'm going to guess you're referring  
13 D-893?

14 MR. SCHAEFER: D-893. I'm sorry.

15 MR. GOHRING: Decision 893 is the current  
16 protection -- flow protection for the Lower American  
17 River. It requires a flow to the mouth of 250 or 500  
18 cubic feet per second, depending on year type -- excuse  
19 me -- time of year. And it allows for some relaxation  
20 even below that under some situations.

21 MR. SCHAEFER: And that's not really acceptable  
22 for the county standards for flow in the American River  
23 Parkway?

24 MR. GOHRING: I wouldn't --

25 MR. DeVORE: Correct, that's not --

1 MR. SCHAEFER: That's not acceptable.

2 MR. DeVORE: -- not acceptable.

3 MR. GOHRING: And a report of referee from the  
4 State Water Resources Control Board came to the same  
5 conclusion. It is not sufficiently protective.

6 MR. SCHAEFER: So what is the Bureau of  
7 Reclamation, under no agreement, now releasing and meeting  
8 as far as flows in the Lower American River?

9 MR. GOHRING: The flow standard that we have  
10 developed in cooperation with them requires minimum flows  
11 between 800 and 2,000 cubic feet per second, again  
12 depending on both time of year and a set of hydrologic  
13 conditions. That is true in most years. Under certain  
14 conditions the flow standard allows an off-ramp condition  
15 that would in essence default back to the minimums of  
16 D-893 or other flows to be -- above those to be negotiated  
17 in realtime.

18 MR. SCHAEFER: And how do those flows relate to  
19 Decision 1400?

20 MR. GOHRING: I don't have an easy answer for you  
21 on that one.

22 MR. SCHAEFER: Okay. Decision 1400 is an action  
23 by the Board that is supposed to become effective if an  
24 Auburn Dam is built?

25 MR. GOHRING: That's my understanding.

1           MR. SCHAEFER: Okay. And Auburn Dam is not  
2 built, but the Bureau of Reclamation is trying to meet  
3 those flows.

4           Okay. Thank you.

5           VICE CHAIRPERSON WOLFF: Thank you.

6           So do we have any objections to entering the  
7 exhibits?

8           The exhibits are accepted.

9           (Thereupon Sacramento County Exhibits  
10 SC-1 through SC-8 were received into evidence.)

11          VICE CHAIRPERSON WOLFF: So we have one more  
12 party. I think if we take one more break and come back  
13 for that party, we may well be able to wrap this up today.

14          Let's take a ten-minute break.

15          (Thereupon a recess was taken.)

16          VICE CHAIRPERSON WOLFF: Let's please commence  
17 the hearing again. Calling the hearing back to order.

18          We'll start with the case in chief of the Auburn  
19 Dam Council.

20          MR. SCHAEFER: Mr. Chairman, my name is Mike  
21 Schaefer from the Auburn Dam Council. And I'd like to  
22 introduce Jim Streng and Larry Boll, who will be here to  
23 testify today. And the roadwork we're laying is Larry  
24 Boll will be first and will give a history.

25          /////

1 DIRECT EXAMINATION  
2 OF MR. LARRY BOLL AND JIM STRENG  
3 BY MR. MICHAEL SCHAEFER, representing Auburn Dam Council:  
4 Well, first of all let me ask you. Larry, can  
5 you state your name and address for the record.  
6 MR. BOLL: I am Larry Boll at 2344 Via Camino in  
7 Carmichael 95608.  
8 MR. SCHAEFER: And, Jim Streng, can you give your  
9 name and address.  
10 MR. STRENG: Jim Streng, 8756 Bluff Lane, Fair  
11 Oaks.  
12 MR. SCHAEFER: Do you want to give your name  
13 again for -- there you go.  
14 MR. STRENG: Jim Streng, 8756 Bluff Lane, Fair  
15 Oaks.  
16 MR. SCHAEFER: Okay. And do you feel that the  
17 document you have before you is substantially what was  
18 submitted to the Board?  
19 MR. BOLL: Yes.  
20 MR. SCHAEFER: Jim, you too?  
21 MR. STRENG: Yes.  
22 MR. SCHAEFER: Okay. The purpose that we're here  
23 for is to definitely, without question, oppose the  
24 revocation of the permits for the Bureau of Reclamation.  
25 And Larry will talk swiftly on the history of the

1 Auburn Dam Council and the background of the Auburn Dam  
2 and the lack of funding and also the need for Auburn to  
3 protect the Lower American River.

4 Jim Streng is a member of the Auburn Dam Council  
5 and SARA, and he's going to express a concern for water  
6 rights decision without a Plan B.

7 And then I'm going to exchange places with Larry,  
8 and then I will testify as a need for extending the water  
9 right permits to provide some continuity in the solution  
10 of the benefits listed in the Auburn-Folsom South Unit and  
11 additional needs that have recently been identified and  
12 also a concern for a premature decision on it.

13 So with that, Larry.

14 MR. BOLL: My name is Larry Boll. I'm a retired  
15 engineer from the Bureau of Reclamation, a former project  
16 superintendent at Folsom Dam with oversight  
17 responsibilities for the Auburn Dam Project as well.

18 I believe the water right permits for the Bureau  
19 of Reclamation should be extended. Auburn Dam is needed  
20 more today than when it was first authorized. Most of the  
21 delays for completing the project were not the fault of  
22 the Bureau. The Vietnam War delayed funding for a number  
23 of years, President Carter then stopped funding nearly all  
24 water projects in the west, the Oroville earthquake  
25 resulted in modifying the design of the Auburn Dam as well



1 as modifications to Folsom Dam, and federal cost-sharing  
2 guidelines have all contributed significantly to the  
3 delay. The project remains congressionally authorized and  
4 there is considerable congressional interest in completing  
5 it.

6 A briefly review of the history of the project is  
7 in order. Auburn Dam and Folsom Dam as well were both  
8 part of the original State Water Plan formulated in the  
9 1920s. Folsom Dam was authorized initially as a  
10 flood-control-only project in 1944, with a reservoir  
11 capacity of approximately 400,000 acre-feet. It was  
12 reauthorized in 1949 as a multipurpose project with a  
13 reservoir capacity of about a million.

14 When the dam was nearing completion in December  
15 1955 the largest flood in the 20th Century to date hit the  
16 Sacramento area, and Folsom reservoir filled within a  
17 week, preventing a major flood in the American River  
18 floodplain. The damage prevented more than paid the  
19 entire cost of the Folsom project.

20 There was a group of local men that worked  
21 closely with Congressman Bizz Johnson as well as Clair  
22 Engle, and with other local congressmen they worked to get  
23 Auburn Dam authorized. When they saw the 1955 flood,  
24 there was a group of men that worked with these  
25 congressmen to seek Auburn Dam authorization, seeing the

1 flood and how quickly it filled Folsom. And their efforts  
2 were instrumental in getting the Auburn project authorized  
3 in 1965.

4           The Auburn Dam Council has actively sought to get  
5 the project completed ever since.

6           We believe flood protection in the American River  
7 floodplain is inadequate. Even after the present  
8 modifications to Folsom Dam are complete, Sacramento will  
9 still have less flood protection than any major city  
10 in the United States, including New Orleans and Cedar  
11 Rapids, Iowa.

12           With a yearly average flow in the American River  
13 of some 2.6 million acre-feet, Folsom reservoir is simply  
14 too small to provide safe flows downstream in times of  
15 heavy precipitation. The capital city of the most  
16 populous state in the union needs a high level of flood  
17 protection, and that can only be provided with an Auburn  
18 Dam.

19           California's critically short of its water needs  
20 now and more so in the future. The Central Valley is the  
21 most productive agricultural valley in the world. And we  
22 need to maintain our ability to produce food in this  
23 valley. We are overdrafting the groundwater basins by  
24 some 2 million acre-feet per year. And it will require  
25 more surface water storage to meet future needs. And

1 there are precious few sites available. Auburn is one of  
2 the best.

3 Folsom Dam and reservoir are inadequate to meet  
4 the future water needs of the region. The desired minimum  
5 flows in the Lower American River cannot be provided  
6 without an Auburn Dam. Temperature control of the water  
7 in the river for the fall run of the chinook salmon cannot  
8 be provided in most years, including this year.

9 Folsom Lake State Park is the most popular state  
10 park in California. And in spite of low reservoir levels  
11 during the summer and fall, it remains so.

12 The Auburn Dam would significantly enhance all of  
13 these environmental issues.

14 Power generated from Auburn, up to 800 megawatts,  
15 would be an excellent source of peaking power for the  
16 region. The large Folsom reservoir downstream provides  
17 great flexibility as to just when the power at Auburn  
18 would be generated. The energy's renewable. It is a  
19 resource that lasts for over 100 years longer than any  
20 other major source of generation.

21 We believe the environmental benefits of Auburn  
22 more than offset the detriments of flooding the canyons  
23 behind the dam. The flood protection, water supply, the  
24 Lower American River flows and temperature control, and  
25 the ability to help maintain suitable water quality in the

1 Delta are all significant environmental benefits of  
2 Auburn.

3 VICE CHAIRPERSON WOLFF: Could you wrap it up,  
4 sir.

5 MR. BOLL: Building this facility will greatly --  
6 the cost of building this facility will greatly exceed the  
7 initial investment. We need to complete it soon.

8 MR. SCHAEFER: Thank you, Larry.

9 Jim.

10 MR. STRENG: I'm Jim Streng.

11 VICE CHAIRPERSON WOLFF: Mr. Streng, if you could  
12 give me the high points of your testimony, I'd appreciate  
13 it, because the entire ten minutes was used up I believe  
14 with just reading the previous testimony. And I actually  
15 have read all the testimony. I don't want to shortchange  
16 you, but I appreciate hearing the high points to refresh  
17 my memory.

18 MR. SCHAEFER: You said ten minutes or five  
19 minutes?

20 VICE CHAIRPERSON WOLFF: I thought it was set at  
21 ten originally.

22 MR. SCHAEFER: It was only five for Mr. Boll.

23 VICE CHAIRPERSON WOLFF: I see. My mistake. I  
24 stand corrected.

25 MR. SCHAEFER: Okay.

1           VICE CHAIRPERSON WOLFF: All right. I still  
2 would appreciate the high points though, because it's  
3 getting a little -- I'm getting tired here at the end of  
4 the day. But go ahead.

5           MR. STRENG: I don't have a lot to say.

6           VICE CHAIRPERSON WOLFF: Well, say the important  
7 stuff.

8           MR. STRENG: I've been a member of the Auburn Dam  
9 Council for 22 years. My company, Streng Bothers Homes,  
10 build homes in Sacramento and Yolo counties. I was a  
11 member of the Sacramento County Board of Supervisors from  
12 1986 to 1992. I'm also a member and a supporter of the  
13 Save the American River Association. I have great respect  
14 and admiration for much of the work the Save the American  
15 River Association has done and is doing to protect the  
16 American River. However, I'm not representing them today.

17           Sacramento County had a referendum on the 1990  
18 election ballot that asked voters if they favored or  
19 opposed building of an Auburn Dam. The result of the  
20 controversial election was that Sacramento voters  
21 overwhelmingly supported building of an Auburn Dam. I  
22 believe an election today would be lopsided in favor of an  
23 Auburn Dam.

24           An issue similar to the one before you today  
25 occurred three years ago. CalTrans in the 1970s planned

1 and acquired rights of way for transportation corridors in  
2 northeast Sacramento County that would have connected  
3 highways I-80 and US 50. The county had a public hearing  
4 on whether to support the plans. Supporters of the  
5 transportation plans suggested that highways might not  
6 have been needed in the 1970s. However, they pleaded that  
7 the rights of way be preserved because they might have  
8 been needed in the future. Unfortunately the Sacramento  
9 County Board of Supervisors voted to ask CalTrans to  
10 abandon the rights of way, and the state sold all the  
11 rights of way.

12           Now, 30 years later, most Sacramento citizens  
13 realize a very bad decision had been made. The existing  
14 traffic congestion on Sacramento's surface streets could  
15 have been avoided.

16           I view the work plans and land that exist today  
17 for the Auburn Dam the same as I viewed the state's rights  
18 of way in the seventies. It doesn't cost anything or hurt  
19 anyone to save the work and plans that exist now for an  
20 Auburn Dam.

21           Most of us expect there will be droughts, floods,  
22 and electric power shortages in the future. There may be  
23 other solutions that could solve these problems. But  
24 probably one of the best solutions is to build the Auburn  
25 Dam.

1           Please keep the option of a future Auburn Dam  
2 alive.

3           Thank you.

4           VICE CHAIRPERSON WOLFF: Thank you for being so  
5 to the point. I appreciate it.

6           And I apologize again for the misunderstanding on  
7 time.

8           Mr. Schaefer, you wanted to testify as well?

9           MR. SCHAEFER: Yes. First of all, let me say  
10 that Larry Boll's is Exhibit ADC-1 and Jim Streng's is  
11 ADC-3 and I'm going to be giving ADC-2.

12                                 DIRECT EXAMINATION

13                                 OF MICHAEL SCHAEFER

14 BY MR. LARRY BOLL, representing the Auburn Dam Council:

15           You left a warm seat here, Mike.

16           For the record, would you state your name please,  
17 Mr. Schaefer.

18           MR. SCHAEFER: My name is Michael Schaefer and I  
19 am a -- I live at 7 -- where do I live? -- 7050 Walnut  
20 Avenue, Orangevale, California 95662.

21           MR. BOLL: And will your testimony be  
22 substantially as submitted to the Board?

23           MR. SCHAEFER: Yes.

24           MR. BOLL: And would you summarize that for us,  
25 please.

1           MR. SCHAEFER: Okay. Well, good afternoon. I'm  
2 Mike Schaefer. I'm a registered civil engineer. And I've  
3 had 40 years of professional engineering in mainly water  
4 resources. This is with the Bureau of Reclamation for 35  
5 years. And most of that time was spent in California.

6           After my retirement I worked for San Joaquin  
7 County Flood Control Agency. But I worked for the County  
8 of San Joaquin Public Utilities and I was assigned to the  
9 Flood Control Agency. My job was a senior staff engineer  
10 overseeing the contracts we had that helped the City of  
11 Stockton and the county in withdrawing some 73,000 parcels  
12 of land from a proposed flood plan by FEMA.

13           So to today I'm addressing and opposing your  
14 Board's proposed revocation of those four water permits  
15 you issued to the Bureau of Reclamation for the federal  
16 Folsom South Unit. These permits are essential for  
17 construction and for the future operation of the  
18 Auburn-Folsom South Unit.

19           As you know, the government has not deauthorized  
20 any part of the AFSU. And to revoke these permits at this  
21 time, I consider it as premature decision making.  
22 California's facing a water crisis because there has been  
23 no major water project since the 1970s. And there is  
24 no -- we don't think there's any cost to your Board to  
25 extend these permits. But by revoking them will add



1 considerably to the cost if an Auburn Dam -- and when an  
2 Auburn Dam is built.

3           In fact, we believe, without surprise to the  
4 water community, that Auburn Dam has only been put on the  
5 back burner. The question is not if but -- if the dam  
6 will be built, but rather when, how big, and by who.

7           I believe the control boards like The Water  
8 Resources Control Board should strive to keep requirements  
9 in order rather than take actions that will set progress  
10 back that has already been made.

11           The needs for a multipurpose dam have continued  
12 although changed since 1965. We've all agreed on that.  
13 It's even now more in demand. The need for additional  
14 agricultural water is changing to domestic water needs.  
15 An additional 1,000 new residents per day are coming into  
16 California, and they need clean water and clean electrical  
17 power.

18           And then the California -- I'm sorry -- the flood  
19 protection in the Sacramento area is still the poorest in  
20 any large metropolitan area this size in the U.S.

21           As our focus -- as the state's focus is now on a  
22 solution to the Delta's problems, additional upstream  
23 storage is essential. Those problems include subsidence,  
24 they include earthquakes, or a sea level rise.

25           A fourth problem can be the power of a judge who

1 can reoperate the inflow-outflow of the Delta, which  
2 affects downstream needs of some 23 million people and 10  
3 million acres of agriculture.

4           In 2007, the courts ruled to help the Delta  
5 smelt. And that affected 500,000 acre-feet of outflow at  
6 a cost of 125 million to the California's economy.

7           To protect the water supply passing through the  
8 Delta, there are plans that are being considered to reduce  
9 the impact of any natural occurring event. They include a  
10 peripheral canal, they include improving the levee system,  
11 and also additional upstream storage reservoirs. And  
12 those upstream storage reservoirs are necessary for the  
13 additional releases that will be required to help the  
14 hydraulic barriers stay on the west side of the Delta.

15           To address the concern that a potential  
16 earthquake would affect Auburn Dam -- it was mentioned  
17 this morning and I'm putting this into my testimony -- in  
18 1980 the Secretary of Interior did announce that the  
19 Bureau of Reclamation redesign the dam to a concrete  
20 gravity dam. And that would withstand 6.5 magnitude  
21 earthquake and a horizontal movement of 9 inches. This  
22 criteria met all federal and state scientists and their  
23 expert consultants in design criteria.

24           Do I still have five minutes, Mr. Chairman? I  
25 think I do.

1           VICE CHAIRPERSON WOLFF: Your five minutes just  
2 expired. Do you still have five minute more, you're  
3 asking?

4           Yes, could I still have five minutes more? I  
5 thought we got ten minutes.

6           VICE CHAIRPERSON WOLFF: No, you have five  
7 minutes for each witness.

8           MR. SCHAEFER: Okay. Then I need to wrap up.

9           Well, all of these projects today if they were  
10 authorized tomorrow would take some 10 to 25 years or more  
11 to complete and planning. And that would take -- what it  
12 would take for the environmental impact reports, for the  
13 planning studies, for the design, and then the  
14 construction of these projects.

15           And it's just fortunate that in the 1930s through  
16 the 1960s -- the early sixties our planners were not  
17 shortsighted in water needs and required development.

18           The fear of today's water community is that it's  
19 going to take a major crisis to move our lawmakers to fix  
20 what we know should be fixed today. And so I ask again  
21 that the Board takes no action against a project that will  
22 play a critical role in helping solving California water  
23 shortage.

24           VICE CHAIRPERSON WOLFF: Thank you.

25           MR. SCHAEFER: Thank you. Thank you for that

1 time.

2 VICE CHAIRPERSON WOLFF: Of course.

3 We have cross-examination from the prosecution?

4 STAFF COUNSEL ROSE: I have no questions.

5 VICE CHAIRPERSON WOLFF: Bureau of Reclamation?

6 MR. TURNER: No questions.

7 VICE CHAIRPERSON WOLFF: CSPA?

8 CROSS EXAMINATION

9 OF MICHAEL SCHAEFER AND LARRY BOLL

10 BY MR. MICHAEL JACKSON, ESQ., representing the California  
11 Sportfishing Protection Alliance:

12 Mr. Schaefer, in your testimony you indicated  
13 that you believe it would take 10 to I think you said 25  
14 years to build up stream storage. Do you believe that it  
15 would take the same 10 to 25 years to build up stream  
16 storage at Auburn?

17 MR. SCHAEFER: Yes, I do.

18 MR. JACKSON: So what you're asking the Board to  
19 do is to keep these water rights open for 25 years?

20 MR. SCHAEFER: As long as it takes for this to  
21 get done. If there is progress being made, yes, 25 years.

22 MR. JACKSON: All right. Well, let's talk a  
23 little about the progress.

24 Why hasn't there been a bill proposed since the  
25 democrats took over the House?

1 MR. SCHAEFER: I don't know. I'm not a democrat.

2 But I know that they had --

3 (Laughter.)

4 MR. JACKSON: So in your opinion would it take  
5 the democrats losing control of the House before you could  
6 begin the program?

7 MR. SCHAEFER: I have no comment on that. It  
8 takes people with forward-thinking minds who know what the  
9 needs are and what can be done to fix it.

10 MR. JACKSON: Now, all of -- did you see the item  
11 4, I believe it was, the list of people who are junior to  
12 this program who are waiting for their water rights?

13 MR. SCHAEFER: Yes.

14 MR. JACKSON: Isn't it kind of unfair to them to  
15 wait the 25 years until Congress decides that there's no  
16 more democrats?

17 MR. SCHAEFER: I think Congress will probably be  
18 making that decision before 25 years.

19 MR. JACKSON: Right. Ten years out?

20 MR. SCHAEFER: Maybe, if that's what it takes.

21 MR. JACKSON: And all of those other people who  
22 have made applications, some you heard, as in 1990, they  
23 should simply wait?

24 MR. SCHAEFER: If that's in order. If the Water  
25 Rights Board can't find another way to help them, I think

1 that's in order.

2 MR. JACKSON: You've talked about the fact that  
3 you believe additional upstream storage is necessary for  
4 California's water problems. As someone who sat through  
5 the stakeholder negotiation in CALFED, Auburn was never  
6 considered as one of the options under CALFED. Do you  
7 have any idea why that was true?

8 MR. SCHAEFER: I was not there. I don't know  
9 why. I understand it was an agreement that those people  
10 representing the environmental convinced the rest of them  
11 that if there was going to be progress, that they should  
12 not speak of the Auburn project. It became the "A" word  
13 just like peripheral canal became the "P" word. But that  
14 doesn't mean it can't be re-resurrected.

15 MR. JACKSON: All right. Well, after CALFED sort  
16 of went nose up, well, they're now trying the Delta  
17 Vision. Can you explain why Auburn has not been part of  
18 Governor Schwarzenegger's Delta Vision?

19 MR. SCHAEFER: No, I do not know that, why. I  
20 did not talk with the Governor. I'm sorry.

21 MR. JACKSON: You've indicated that -- I believe  
22 this was Mr. Boll's testimony -- that the problems for  
23 Auburn started with the Vietnam war?

24 MR. BOLL: That was one of the delays for funding  
25 Auburn.

1 MR. JACKSON: And that was in 19 --

2 MR. BOLL: That was in the late sixties.

3 MR. JACKSON: Late sixties and early seventies.

4 And then President Carter, you mentioned, as  
5 someone who sort of took the project off line?

6 MR. BOLL: He had his famous hit list of water  
7 projects in the 17 western states, and Auburn was on that  
8 list.

9 MR. JACKSON: All right. And we agree that there  
10 would be -- you've talked about the existing  
11 appropriation -- or existing authorization. That  
12 authorization came attached to some cost sharing -- or to  
13 a cost limitation, did it not, at 425 million?

14 MR. BOLL: The original authorization did, yes.

15 MR. JACKSON: And so the dam couldn't be built  
16 today for \$425 million, could it?

17 MR. BOLL: No, it could not.

18 MR. JACKSON: All right. And now there's federal  
19 cost-sharing guidelines, which you pointed out, that would  
20 require that water users contribute money to the Auburn  
21 project so that the federal taxpayers didn't have to pay  
22 it all?

23 MR. BOLL: Yes, there would be cost sharing by  
24 non-federal partners.

25 MR. JACKSON: Looking around this room as

1 somebody who spends an awful lot of time in hearings, it's  
2 fair to say that there are no federal contractors here  
3 asking for this water right not to be revoked from the  
4 Central Valley Project users. Why is that?

5 MR. BOLL: Is that a true statement?

6 MR. JACKSON: Well, I don't see the big  
7 irrigation districts who you folks said were dependent  
8 upon water. You talked about the problems in the Delta.  
9 I don't see them here. I don't see Friant. I don't see  
10 Westlands. I don't see Delta-Mendota. Why is that?

11 MR. BOLL: You'd have to ask them why they chose  
12 not to be here.

13 MR. JACKSON: I also don't see the state  
14 contractors here supporting the position that this  
15 shouldn't be revoked because California needs the water.  
16 Do you know why that is?

17 MR. BOLL: I do not.

18 MR. JACKSON: I don't see DWR here to support the  
19 need for these water rights. Do you know why that is?

20 MR. BOLL: I do not.

21 MR. JACKSON: I don't see the Metropolitan Water  
22 District of Southern California, the 25 million people you  
23 all talked about. Do you know why that is?

24 MR. BOLL: They're outside of the Central Valley  
25 Project.



1           MR. JACKSON: And so this would only be useful  
2 for the people who are within the Central Valley Project,  
3 correct?

4           MR. BOLL: It is an authorized project within the  
5 Central Valley Project.

6           MR. JACKSON: And so, you know, we have the San  
7 Joaquin folks here and some of the upstream water users  
8 have made policy statements. But I guess I'm saying, how  
9 do you know anybody really wants this water anymore?

10          MR. BOLL: The water demands in California are  
11 increasing and the water table is decreasing and the  
12 population is increasing. That means water.

13          MR. JACKSON: And so given those facts, do you  
14 have any explanation for why they're not here?

15          MR. BOLL: They chose not to attend for whatever  
16 reason. I haven't talked with all of those.

17          MR. JACKSON: Okay. We talked a little about the  
18 building of Auburn and what it might mean to flood  
19 control. And I want to ask one question and then I'll  
20 sort of quit.

21                 One of you very knowledgeable gentleman pointed  
22 out that there was a design at one point in which they  
23 could build a concrete dam that would withstand a 6.5  
24 magnitude earthquake. Is that correct?

25          MR. SCHAEFER: The dam as it was designed was not

1 for a 6.5 magnitude earthquake. It was the dam that was  
2 redesigned in the late seventies that Secretary Andrus  
3 said will be able to withstand the 6.5. First of all the  
4 Secretary gave the Bureau of Reclamation direction to  
5 redesign that thin concrete double-arch dam to a concrete  
6 gravity dam which followed one called GS-3. And that is a  
7 concrete gravity dam, and that is the dam that can  
8 withstand a 6.5 magnitude earthquake with a horizontal  
9 movement of nine inches.

10 MR. JACKSON: All right. Now, I want you to  
11 consider what would happen to the City of Sacramento if we  
12 built an Auburn Dam to withstand a 6.5 magnitude  
13 earthquake and we had a 7.2 earthquake.

14 MR. SCHAEFER: What are you asking? What would  
15 happen to --

16 MR. JACKSON: Putting that much water up above  
17 the City of Sacramento in an earthquake situation like  
18 that would make the problem worse, not better, would it  
19 not?

20 MR. SCHAEFER: Are we on an earthquake fault that  
21 is subject to a 7.2 earthquake?

22 MR. JACKSON: I think there's people all over the  
23 world who are asking the question after large earthquakes,  
24 "Why didn't somebody tell us that we were on a fault that  
25 could have an earthquake of that size."

1           MR. SCHAEFER: Well, do you know if there's a  
2 fault under Auburn?

3           MR. JACKSON: I don't. And my time's up.

4           MR. SCHAEFER: Okay.

5           MR. JACKSON: So thank you.

6           VICE CHAIRPERSON WOLFF: Thank you all. Not only  
7 do we have people changing seats but we have witnesses  
8 asking questions. It's all just fine. It's all just  
9 fine. We're getting to the end of the day.

10           (Laughter.)

11           VICE CHAIRPERSON WOLFF: County of San Joaquin?

12           MS. GILLICK: No questions.

13           VICE CHAIRPERSON WOLFF: Stockton East Water  
14 District?

15           MS. HARRIGFELD: No questions.

16           VICE CHAIRPERSON WOLFF: Friends of the River?

17           MR. STORK: Just a very few.

18           VICE CHAIRPERSON WOLFF: That's fine.

19           MR. STORK: Once again, my name is Ronald Stork  
20 with Friends of the River.

21           First of all, I want to apologize to Mike.  
22 Exhibit 43 has an image of your likeness. I mean it's a  
23 nice photograph of you. And if you have a better copy,  
24 I'd be happy to incorporate it into my at least personal  
25 records of the Auburn Dam thing, because it's kind of a

1 copy of a copy. So hopefully you saved that nice  
2 Sacramento Bee article of you. But we do have it in the  
3 hearing record.

4 CROSS EXAMINATION

5 OF JIM STRENG AND MICHAEL SCHAEFER

6 BY MR. RONALD STORK, representing Friends of the River:

7 And I'm really pleased to ask this question of  
8 Mr. Streng.

9 I have frequently attended Save the American  
10 River Association meetings. And you were thought of very,  
11 very fondly and highly for your good work on protecting  
12 the American River Parkway. And that's still the case,  
13 even though we may be having a disagreement here.

14 MR. STRENG: Thank you.

15 MR. STORK: Are you aware of any reason why the  
16 Department of the Interior needs a water right at Auburn  
17 Dam to continue to hold and even acquire new land in the  
18 Auburn Dam Project land area?

19 MR. STRENG: No.

20 MR. STORK: As far as you know, that's just a  
21 call that the Department of Interior has to make on  
22 whether it was just to purchase land or sell land or  
23 acquire land or hold land?

24 MR. STRENG: I'm really not familiar with  
25 anything the Department of the Interior is doing, buying

1 or selling land?

2 MR. STORK: The reason why I asked that question  
3 is because you were using the CalTrans example of holding  
4 land for highways. And I just was unsure whether or not  
5 you knew of any reason why a water right was required for  
6 the Interior to hold land.

7 MR. STRENG: No.

8 MR. STORK: I wasn't going to ask this question.  
9 But I actually have a bunch of copies of it, so I might as  
10 well. With regard to the seismic safety issues that Mike  
11 brought up.

12 I have a copy which I've forwarded to the  
13 witnesses, and I have enough copies to actually hand out  
14 to all of the parties as well as the seven copies to the  
15 Board, of a letter from the Commissioner of the Bureau of  
16 Reclamation who notes that if Auburn Dam is selected for  
17 more detailed analysis in the American River water  
18 resources investigation - which is what he's talking about  
19 here - a comprehensive reevaluation of earthquake safety  
20 issues would be conducted using an independent body of  
21 scientists and the like.

22 So at least, Mike, as you're quickly reviewing  
23 this letter from the Commissioner, would you say that  
24 Reclamation is showing a degree of caution about  
25 re-reviewing these issues if Auburn Dam is ever selected

1 by Interior as a project they want to construct?

2 MR. SCHAEFER: Of course that's caution. Ron,  
3 the Commissioner would be unwise to say that we wouldn't  
4 ever look at the earthquake issue; but because earthquakes  
5 come and go and you want to always consider the most  
6 recent ones in the areas around the project you're  
7 building. So that is why there would be a reevaluation of  
8 anything that might change the opinion of what was decided  
9 in 1980. Just like flood control.

10 MR. STORK: Good. And I think that's a very  
11 responsible position for the Bureau to take and the  
12 Commissioner to take.

13 I'd actually like to -- I don't know if this is  
14 kosher or not, but I'd actually like to move the admission  
15 of this two-page letter from the Commissioner of the  
16 Bureau of Reclamation on Auburn Dam safety issues and the  
17 desirability for future studies if Auburn Dam is ever  
18 selected.

19 VICE CHAIRPERSON WOLFF: How would you like to  
20 number the exhibit, Mr. Stork?

21 MR. STORK: X-51.

22 VICE CHAIRPERSON WOLFF: I'm sorry?

23 MR. STORK: X-51.

24 VICE CHAIRPERSON WOLFF: X-51. And if you could  
25 provide copies of that to everyone else, so that if they

1 have any comments or questions they want to ask --

2 MR. STORK: I can do that right now.

3 VICE CHAIRPERSON WOLFF: -- we need to give them  
4 that opportunity.

5 MR. STORK: And that's all the questions that I  
6 have.

7 VICE CHAIRPERSON WOLFF: Thank you.  
8 Sacramento County?

9 MS. DUNN: No questions.

10 VICE CHAIRPERSON WOLFF: South Delta Water  
11 Agency?

12 MS. GILLICK: No questions.

13 VICE CHAIRPERSON WOLFF: San Luis and  
14 Delta-Mendota Water Authority and Westlands Water  
15 District?

16 Not present.

17 Friends of the North Fork?

18 MR. GARABEDIAN: No questions.

19 VICE CHAIRPERSON WOLFF: And the American River  
20 Authority

21 MR. WILLIAMS: No questions.

22 VICE CHAIRPERSON WOLFF: Mr. Schaefer, did you  
23 want to do any redirect testimony?

24 MR. SCHAEFER: No, Mr. Chairman. I think we're  
25 finished.

1 VICE CHAIRPERSON WOLFF: All right. Thank you.

2 Would you like to move your exhibits in to  
3 evidence?

4 MR. SCHAEFER: Yes, I'd like to submit ADC 1, 2,  
5 and 3 into evidence.

6 VICE CHAIRPERSON WOLFF: Any objections?

7 They're accepted.

8 (Thereupon Auburn Dam Council Exhibits  
9 ADC-1 through ADC-3 were received into  
10 evidence.)

11 VICE CHAIRPERSON WOLFF: Does everyone have a  
12 chance to look at the letter from the Department of the  
13 Interior?

14 I'll take a moment just be sure people have it  
15 and no one objects to the letter being submitted into  
16 evidence.

17 May I ask while people are looking at that, do  
18 any parties wish to submit rebuttal evidence?

19 The prosecution wishes to call rebuttal  
20 witnesses.

21 MR. GARABEDIAN: Friends of the North Fork would,  
22 yes.

23 VICE CHAIRPERSON WOLFF: Would like to call  
24 rebuttal witnesses.

25 I think Sacramento County listed some people as



1 well.

2 Did you want to call rebuttal witnesses, Ms.

3 Dunn?

4 MS. DUNN: No, we don't.

5 VICE CHAIRPERSON WOLFF: I'm sorry. Was that a

6 yes or a no?

7 MS. DUNN: It was a no.

8 VICE CHAIRPERSON WOLFF: It was a no.

9 So we have two parties that wish to call rebuttal  
10 witnesses.

11 Let's begin with the prosecution.

12 REBUTTAL EXAMINATION

13 OF MS. KATHY MROWKA

14 BY MR. DAVID ROSE, STAFF COUNSEL, representing the State

15 Water Board, Division of Water Rights Prosecution Team:

16 Ms. Mrowka, would revoking these permits provide

17 a basis for modifying the declaration of full

18 appropriation for the Lower American River to expand the

19 season of availability? That is to say, that water's

20 available for more of the year.

21 MS. MROWKA: No, it would not do so. The Lower

22 American River is declared to be fully appropriated during

23 the summer months basically due to wild and scenic rivers

24 status. The Auburn Dam permits are for diversion from

25 November 1st to about July 1st. So these seasons do not

1 overlap.

2           STAFF COUNSEL ROSE: Could the Board declare an  
3 order revoking the permits at issue that the Lower  
4 American River is fully appropriated for longer? That is,  
5 that water is available for less of the year.

6           MS. MROWKA: No. There is an established  
7 two-part process for revising the declaration that a water  
8 body is fully appropriated. First, there has to be a  
9 Board order or decision that makes the finding that the  
10 water source is fully appropriated for -- usually it's for  
11 a certain period of time, such as a number of months.  
12 That's usually made in a forum where you're evaluating  
13 whether or not to approve a new application for diversion  
14 and use of water.

15           And at that time, the Board refused the issue of  
16 availability of unappropriated water.

17           The second step is that after there's a Board  
18 order or decision finding that a source is fully  
19 appropriated, then there's a separate proceeding to revise  
20 the declaration of fully appropriated streams.

21           STAFF COUNSEL ROSE: Ms. Mrowka, could revoking  
22 or not revoking the permits at issue provide a basis for  
23 revising the declaration of full appropriation for the  
24 Lower American River?

25           MS. MROWKA: No. A revocation proceeding is an

1 evaluation of diligence on development of the project, the  
2 progress in putting the water to use in compliance with  
3 the terms of the permit. A revocation proceeding does not  
4 reach the issue of quantities of water that remain  
5 available for appropriation, such as you would have to do  
6 for a finding that a surface stream is fully appropriated.

7 STAFF COUNSEL ROSE: What kind of proceeding  
8 might provide a basis for revising the declaration of full  
9 appropriation?

10 MS. MROWKA: When the State Water Board reviews  
11 whether or not to approve new applications to divert  
12 water, at that point the issue of full appropriation would  
13 be reached. There would be a full evaluation of the water  
14 supply, prior rights, needs for public trust uses, and all  
15 of those elements that go into making a determination that  
16 a stream system is fully appropriated.

17 STAFF COUNSEL ROSE: I don't have any more  
18 questions.

19 VICE CHAIRPERSON WOLFF: Any rebuttal cross?

20 With no rebuttal cross, thank you very much.

21 Mr. Garabedian. Am I saying it right?

22 MR. GARABEDIAN: Yes. I find myself -- we didn't  
23 expect rebuttal to go today, so I find myself in a  
24 position of putting myself on as a witness.

25 VICE CHAIRPERSON WOLFF: Why not.

1 (Laughter.)

2 REBUTTAL EXAMINATION

3 OF MICHAEL GARABEDIAN

4 TO REBUTTAL

5 MR. GARABEDIAN: I'm Michael Garabedian,

6 President of Friends of the North Fork.

7 The question I'm addressing is the issue of the

8 need for resolution of Auburn Dam water rights now.

9 You've heard a host of comment today about groups  
10 wanting to keep the question of Auburn Dam water rights  
11 unresolved, to delay achieving the clarity that you can by  
12 revocation, to keep uncertainty about these water rights  
13 for many years to come. I want to briefly address the  
14 reservoir area and upriver costs of not resolving the  
15 Auburn Dam water rights just a few minutes here.

16 The Bureau of Reclamation is very much like an  
17 absentee landlord who's paying a manager to take care of  
18 their ownership interest in the land, with all of the  
19 attendant problems that that brings.

20 The Friends of the North Fork has followed and is  
21 involved in the revision of the Auburn State Recreation  
22 Area General and Resource Management Plan, last updated  
23 around 1992. And the status of the Auburn Dam casts a  
24 great deal of uncertainty over that process. It's  
25 interesting to talk about the American River Parkway Plan

1 being very close to fruition, whereas we can't achieve  
2 that kind of clarity for the ASRA.

3 I'll give you one other example, and then we  
4 expect to address these issues in our brief.

5 The Placer County has proposed the North Fork  
6 American Trail from the confluence of the North Fork and  
7 the Middle Fork up to Ponderosa Road. Because of the  
8 Bureau's concerns that new facilities should not be  
9 located below the reservoir level, below the take line,  
10 the planning efforts are to put this trail above the  
11 potential reservoir line. That is what they strive for.  
12 This means that the trail is proposed in some areas in  
13 some of the steepest side slopes of the canyon, at least  
14 one place well over 70 percent side slopes. The  
15 uncertainty is forcing bad planning. But it affects  
16 planning at the county level and all other levels.

17 We really cannot move ahead with a new vision for  
18 the North Fork while the Auburn Dam water rights are in  
19 limbo.

20 Thank you.

21 VICE CHAIRPERSON WOLFF: Thank you.

22 My counsel asks whether you took the oath. Did  
23 you take it.

24 MR. GARABEDIAN: I did.

25 VICE CHAIRPERSON WOLFF: You did take it?

1 MR. GARABEDIAN: Most certainly.

2 VICE CHAIRPERSON WOLFF: All right. Is there any  
3 rebuttal cross-examination?

4 Seeing none.

5 Thank you, Mr. Garabedian.

6 MR. GARABEDIAN: Thank you.

7 VICE CHAIRPERSON WOLFF: Returning now to the  
8 letter from the U.S. Department of the Interior.

9 Does anyone object to accepting it as an exhibit?

10 No objections. It is so accepted.

11 Amazingly we've come to the end of the hearing, I  
12 believe. What am I leaving out?

13 SENIOR STAFF COUNSEL HEINRICH: The staff  
14 exhibits. I'd like to move staff exhibits 1, 2, 3, and 5  
15 into the record.

16 VICE CHAIRPERSON WOLFF: Any objections?

17 They're accepted.

18 (Thereupon the Staff Exhibit 1-3 and 5  
19 were received into evidence.)

20 VICE CHAIRPERSON WOLFF: With respect to Exhibit  
21 4, because the staff were not able to finish the table and  
22 list all of the potentially affected water rights, actual  
23 or pending, from the Freeport Bend and down to the  
24 location where water quality is no longer adequate for  
25 municipal or agricultural supply, I'm going to hold the

1 evidentiary record open long enough for them to do that.

2 They're simply going to list what is in the records.

3           They have asked to have until a week from Friday  
4 to do that. Unless someone objects, I think that's  
5 reasonable.

6           We'll then give people one week thereafter.

7 We'll send out the modified exhibit, we'll give one week  
8 thereafter to submit corrections to it, et cetera, before  
9 we close the evidentiary part of this project.

10           The reason I want all that information in the  
11 record is that I'm still very unclear on the overall water  
12 supply impact of the decision. It's quite clear that  
13 revoking the permits has some water supply implications  
14 for the project specifically and the beneficiaries of the  
15 project. But it may also have water supply implications  
16 for other parties. And so I'd like in your closing briefs  
17 for people to be as clear on that issue as possible, to  
18 directly address that issue.

19           If the information in Exhibit 4 is irrelevant,  
20 then that's fine. You know, no need to use it. But I  
21 wanted to have it there in case someone thinks it's  
22 relevant and, you know, make your case. I have no idea  
23 whether that cuts for or against revocation as a policy  
24 matter or not.

25           Of course we also have the issue of diligence.

1 And we'll take that up accordingly as a board.

2 With that, I want to thank you all for coming.

3 And then I'm going to talk about the length of time for  
4 the closing briefs.

5 I want to thank you all for coming. I was told  
6 by several people who I asked about internally to our  
7 system about this notion of allowing what could have been  
8 included as policy statements but allowing them into the  
9 evidentiary portion of the hearing. And I was told by one  
10 person, "Absolutely not. You've got to be crazy. That'll  
11 be a zoo. It'll go on for days. People will be  
12 fighting." And it hasn't been like that at all. In fact,  
13 we're done in one day. And I found the testimony and the  
14 cross-examination and so forth extremely helpful. So I  
15 want to thank you all for your civility and your focus. I  
16 think it help the Board to make a much more solid  
17 decision, whatever that decision is.

18 And so then with respect to closing briefs, we  
19 typically require them two to four weeks after the  
20 transcript's available. I understand the transcript may  
21 be available in a couple of weeks. I was thinking to  
22 allow three weeks for closing briefs after the transcripts  
23 are available.

24 Would anyone like longer?

25 MR. TURNER: If I might ask, Mr. Wolff. Are the



1 closing -- are the subjects to be addressed, the issues to  
2 be addressed in the closing brief up to the discretion of  
3 all the parties, or are there any specific issues that you  
4 do want to specifically have addressed by any or all the  
5 parties in their briefs?

6 VICE CHAIRPERSON WOLFF: Well, clearly each party  
7 should summarize their case with respect to the issues in  
8 the hearing notice: Diligence and the -- if diligence  
9 does not exist, whether we should or should not revoke the  
10 permits. So those are in the hearing notice and you  
11 should address them of course.

12 One particular area where I would think I and  
13 other members of the Board will benefit is the water  
14 supply issue, in general. Not just from the dams, but the  
15 overall consequences for water supply of either revocation  
16 or a choice to not revoke.

17 Beyond that, I have no guidance for you.

18 So is three weeks after the transcripts are  
19 available acceptable to all -- suitable?

20 No one feels the need for more time?

21 I'd also like to have some page limits, maybe 15  
22 or 20 pages, something like that. Let's say 15 pages.  
23 Does anyone have any concerns about that, it might be too  
24 short?

25 If you do, I'm glad to have a longer limit. But

1 I would like some sort of limit.

2 We'll say 15 pages, 12 point font, standard  
3 margins and so forth.

4 Thank you very much.

5 When I was much younger I wrote something in 10  
6 point font and gave it to a senior person in a firm I was  
7 associated with. And he told me that I'd failed miserably  
8 because I wasn't aware of the font size that an older  
9 person could read. And he had no idea what I'd been  
10 talking about. He couldn't read it. So that's why I  
11 bother to tell you the font size. I'm now older.

12 So unless there are any further questions about  
13 procedure, the hearing is adjourned.

14 Thank you all.

15 (Thereupon the State Water Resources  
16 Control Board public hearing adjourned  
17 at 4:36 p.m.)

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## 1 CERTIFICATE OF REPORTER

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

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

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

13 IN WITNESS WHEREOF, I have hereunto set my hand  
14 this 29th day of July, 2008.

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JAMES F. PETERS, CSR, RPR

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