



STATE WATER RESOURCES CONTROL BOARD

PUBLIC HEARING

PHASE 2

TO REVIEW THE UNITED STATES BUREAU OF RECLAMATION WATER  
RIGHTS PERMITS (APPLICATION 11331 AND 11332) TO DETERMINE  
WHETHER ANY MODIFICATIONS IN PERMIT TERMS OR CONDITIONS  
ARE NECESSARY TO PROTECT PUBLIC TRUST VALUES AND  
DOWNSTREAM WATER RIGHTS ON THE SANTA YNEZ RIVER BELOW  
BRADBURY DAM (CACHUMA RESERVOIR)

THURSDAY, OCTOBER 23, 2003  
9:00 A.M.

JOE SERNA CAL/EPA BUILDING  
SIERRA HEARING ROOM  
SACRAMENTO, CALIFORNIA

REPORTED BY:

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|    |                              |      |
|----|------------------------------|------|
| 1  | INDEX                        |      |
| 2  |                              | PAGE |
| 3  | RESUMPTION OF HEARING:       | 499  |
| 4  | AFTERNOON SESSION:           | 607  |
| 5  | DEPARTMENT OF FISH AND GAME: |      |
|    | OPENING STATEMENT            |      |
| 6  | BY MR. BRANCH                | 500  |
| 7  | DENNIS MCEWAN                |      |
|    | DIRECT EXAMINATION           |      |
| 8  | BY MR. BRANCH                | 506  |
|    | ROBERT G. TITUS              |      |
| 9  | DIRECT EXAMINATION           |      |
|    | BY MR. BRANCH                | 513  |
| 10 | MARCIN WHITMAN               |      |
|    | DIRECT EXAMINATION           |      |
| 11 | BY MR. BRANCH                | 520  |
|    | CROSS-EXAMINATION OF PANEL:  |      |
| 12 | BY MR. WILKINSON             | 527  |
|    | BY MR. PALMER                | 576  |
| 13 | BY MR. CONANT                | 585  |
|    | BY MR. KRAUS                 | 586  |
| 14 | BY BOARD STAFF               | 596  |
|    | REDIRECT EXAMINATION         |      |
| 15 | BY BRANCH                    | 599  |
|    | RE-CROSS-EXAMINATION         |      |
| 16 | BY MR. WILKINSON             | 600  |
|    | BY MR. SELTZER               | 602  |
| 17 |                              |      |
| 18 |                              |      |
| 19 |                              |      |
| 20 |                              |      |
| 21 |                              |      |
| 22 |                              |      |
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SACRAMENTO, CALIFORNIA

THURSDAY, OCTOBER 23, 2003, 9:00 A.M.

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H.O. SILVA: Good morning. Why don't we get started.

We want to clear up yesterday's evidence issue.

MR. WILKINSON: Thank you, Mr. Silva.

Yesterday when the Cachuma Member Units sought to introduce their Exhibits 200 to 246, there was objection to one exhibit, which is Exhibit 226. That is the testimony of Jean Baldrige on Panel V. The basis for the objection was that there were two references in the 48 pages of testimony to unpublished data. One was on Page 24; the other was on Page 44. And both references were to Santa Ynez River Technical Advisory Committee data that had been collected. Both references were multiple references. In other words, there were other published sources referenced for the statements made on those pages.

I have checked with Jean Baldrige who tells me that the unpublished data confirms, again, the conclusions that were reached from the published data. And so we would be willing to strike the reference to the SYRTAC unpublished data on Page 24 and the SYRTAC unpublished data on Page 44.

H.O. SILVA: That satisfactory?

1 MS. KRAUS: That would be satisfactory. We  
2 have no objection to that.

3 H.O. SILVA: With that, we will complete the  
4 evidence.

5 MR. WILKINSON: So 226 is in evidence?

6 H.O. SILVA: Yes, with those modifications.

7 MR. WILKINSON: Thank you.

8 H.O. SILVA: Now we go to Fish and Game.

9 Mr. Branch.

10 MR. BRANCH: Thank you.

11 Good morning, Mr. Silva, Board staff. My name is  
12 Harllee Branch, staff counsel to the California Department  
13 of Fish and Game. The Department appears before you today  
14 as the trustee agency of fishing and wildlife resources in  
15 the state of California. As such, it is our agency's  
16 mission to protect such public trust resources on behalf  
17 of the people in the state. As such our mission  
18 encompasses all the trust resources within the Santa Ynez  
19 watershed, including steelhead trout, and other species,  
20 aquatic terrestrial.

21 As you may sense from the tone of the proceedings so  
22 far, the Department is undertaking a bit of an awkward and  
23 delicate balancing act. On one hand, our agency took a  
24 significant role in the development of the Fish Management  
25 Plan beginning with activities under the fishery MOU in

1 1993 and continuing all the way through the release of the  
2 plan. Our agency continues to dedicate staff to the  
3 ongoing collaborative process, to implementation studies  
4 and actions for fish and wildlife.

5 On the other hand, we are appearing before you  
6 in this proceeding to also inform you that we think that  
7 more needs to be done. The Fish Management Plan and the  
8 Biological Opinion issued by NOAA Fisheries are a good  
9 start towards the restoration of steelhead and other  
10 public trust resources in the Santa Ynez River Watershed.  
11 There has been cooperation between agencies and entities  
12 with very divergent interests. Frankly, our agency is  
13 well aware that progress will never be made in improving  
14 this watershed for all interests without such cooperation.

15 However, the Department must emphasize to the Board  
16 that we do not believe the Fish Management Plan and the  
17 Biological Opinion in and of themselves achieve the  
18 ultimate goal of restoration of steelhead and other public  
19 trust resources. Essentially, the Department is here to  
20 inform you and illustrate to you through our testimony and  
21 our cross-examination of other parties what the Fish  
22 Management Plan and the Biological Opinion are, and we are  
23 here to inform you of what they are not. They are a good  
24 start, but they are not full restoration.

25 Again, the Department is in a very delicate

1 position. We want to assure the Board and other parties  
2 in this room that we do not intend to disrupt or disband  
3 the ongoing cooperative efforts to study and implement the  
4 adaptive management measures contained in the Fish  
5 Management Plan and the Biological Opinion. Ideally, the  
6 vehicles that are in place will ultimately accomplish the  
7 restoration of the Santa Ynez steelhead run and provide  
8 optimum habitat for as many public trust resources as is  
9 possible. The Department is simply alerting the Board to  
10 the fact that the vehicle that is in place needs certain  
11 additional parts in the engine, additional fuel, for it to  
12 really fire on all cylinders.

13 Specifically, the FMP and BO are interim. They do  
14 not reach the goal. The Department, amongst other  
15 measures that will be made specific in our closing  
16 argument, believes the following actions need to happen.  
17 Keep in mind this is not an exhaustive list of what needs  
18 to happen; it is simply the high points.

19 First, we ask that measurable success criteria be  
20 mandated by the Board. We need to be able to determine if  
21 the measures in the BO and the FMP are actually making  
22 improvements. Ideally we would like to see success  
23 criteria that include signs of a movement towards full  
24 anadromy in a viable population size. That would be a  
25 great start.

1           Second, we ask that ongoing studies be mandated by  
2           the Board. These will ideally highlight additional  
3           measures that might be taken to help restore the fishery  
4           and other trust resources while reasonably balancing other  
5           water users. The Department needs to satisfy our mission  
6           to make sure that Fish and Game Code Section 5937 is  
7           satisfied for Cachuma operations. Fish ultimately need to  
8           be in good condition below Bradbury Dam. Adequate  
9           goal-oriented studies may help us get there. We will be  
10          more specific about such study requests in our closing  
11          argument.

12          Also, and very importantly, the feasibility of  
13          passing steelhead around Bradbury Dam into habitat in the  
14          upper watershed needs to be adequately investigated. It  
15          has not been. Full anadromy and full restoration of the  
16          Santa Ynez steelhead run will not happen without the  
17          connectivity of upstream and downstream habitat. For that  
18          to happen we need at least to put honest an adequate  
19          effort into finding out how to do that. The Department  
20          pledges its full cooperation in such efforts.

21          You have already heard testimony that studies and  
22          other actions are ongoing by agencies and other entities  
23          in this room. However, the Department believes that the  
24          Board needs to mandate ongoing actions and impose a date  
25          certain for completion in order for this whole process to

1 work. Frankly, it is the opinion of the Department that  
2 the FMP was able to be completed and submitted to the  
3 Board when it was because it was the anticipation of all  
4 the cooperating parties that the Board would visit public  
5 trust issues in these very hearings.

6 We ask the Board to again use its power in such a  
7 manner, to revisit the public trust issues at a date  
8 certain in the future so a determination can ultimately be  
9 made as to whether the flow and nonflow-related measures  
10 in FMP or BO are actually achieving success and, quote,  
11 protecting public trust resources.

12 The Board noticed as one of the key hearing issues  
13 what flows are necessary to protect public trust  
14 resources. And the honest answer right now, in the  
15 Department's opinion, is nobody knows. At this point we  
16 can implement the FMP and the BO measures that we think  
17 might get us toward achieving protection, but we will  
18 never know for certain whether sufficient protection is  
19 occurring until we revisit the issue to make that  
20 determination based on adequate studies and data and  
21 measurable success criteria.

22 If we can put the Department's position in this  
23 hearing as simply as possible, we can sum up the testimony  
24 of our agency as concisely as we can, it will be to say  
25 this: We have a start. We have a foundation, but more

1 needs to be done. This process needs to continue; we are  
2 not finished. That is the thrust of the testimony you  
3 will hear from the Department's witnesses this morning.  
4 We ask you again to mind the following point: For the  
5 process to continue in a satisfactory manner the Board  
6 needs to specifically retain its reserved jurisdiction to  
7 protect the public trust resources, outline the future  
8 measures that need to be undertaken by all the parties and  
9 mandate a return to these issues at a date certain in the  
10 future. Otherwise, the Department is very concerned that  
11 work on protecting the public trust may ultimately  
12 languish. To be as candid as possible, the Board is a  
13 force that protects steelhead and other public trust  
14 resources in this context and this process needs a fair  
15 broker, an independent intermediary. You are that broker,  
16 that intermediary that holds the power of public trust in  
17 relation to water trust resources.

18 I conclude by respectfully requesting you to use  
19 that power and that role to ensure that all of us in this  
20 room stay on task and ultimately reach our goal.

21 Thank you.

22 At this time I would like to take care of a  
23 procedural issue. Our witnesses were not here on Tuesday  
24 morning. They need to be sworn in.

25 (Oath administered by H.O. Silva.)

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DIRECT EXAMINATION OF DEPARTMENT OF FISH AND GAME

BY MR. BRANCH

MR. BRANCH: Good morning, Mr. McEwan.

MR. MCEWAN: Morning.

MR. BRANCH: Could you please state your name and position for the record.

MR. MCEWAN: My name is Dennis McEwan. I am a senior environmental scientist in the native anadromous and watershed branch in the Department of Fish and Game.

MR. BRANCH: Mr. McEwan, is DFG Exhibit 1 a true and correct representation of your testimony in this proceedings?

MR. MCEWAN: Yes.

MR. BRANCH: Is DFG Exhibit 3 a true and correct statement of your qualifications?

MR. MCEWAN: Yes, it is.

MR. BRANCH: Mr. McEwan, were you the lead author on the Steelhead Restoration and Management Plan for California?

MR. MCEWAN: That is correct, I was.

MR. BRANCH: Can you please, as concisely as possible, give an overview of this plan, highlighting the reason for its creation and its purpose?

MR. MCEWAN: Sure. The steelhead plan which

1 the department published in 1996 was basically created for  
2 two reasons. First was to address the need for  
3 restoration for steelhead statewide because there had been  
4 such a precipitous decline over the past 50 to a hundred  
5 years. And secondly, the other reason for its creation  
6 was to fulfill the Department's obligations through or was  
7 in the Salmon and Steelhead Anadromous Fishery Program Act  
8 of 1988. This act declares that it is the policy of this  
9 state to significantly increase the natural production of  
10 salmon and steelhead. And DFG was directed, through that  
11 act, to develop a plan and a program to double naturally  
12 spawning populations of salmon and steelhead throughout  
13 the state.

14 As part of that, several legislators and some  
15 prominent stakeholder groups wanted to see in that program  
16 a plan specifically addressing steelhead restoration, and  
17 this was a plan that was produced for that reason.

18 The population decline that I spoke of in the plan  
19 we had identified the major reason for that decline being  
20 freshwater habitat loss and degradation. The steelhead  
21 plan provides some general guidelines for salmon and  
22 steelhead restoration -- excuse me, for steelhead  
23 restoration and management, and it identifies requirements  
24 specific to steelhead that are intended to augment current  
25 and more specific restoration plans, watershed restoration

1 plans and things --

2 MR. BRANCH: Let me interrupt you for a  
3 second.

4 Does the steelhead plan include any sections that  
5 specifically address steelhead in the Santa Ynez River?

6 MR. MCEWAN: Yes.

7 MR. BRANCH: Did you personally author that  
8 section of the plan?

9 MR. MCEWAN: Yes.

10 MR. BRANCH: Can you describe generally the  
11 Santa Ynez River section of the plan, including the  
12 management objectives and recommendations that are  
13 therein?

14 MR. MCEWAN: Sure. The section regarding the  
15 Santa Ynez River falls within the steelhead objectives for  
16 the South Coast region. The state -- in the plan the  
17 state is divided into three regions: the North Coast  
18 region, Central Valley and South Coast. Of course falls  
19 into the South Coast section. It includes a very brief  
20 history of actions on the Santa Ynez, the water projects,  
21 development of water projects and other effects that have  
22 had an affect on steelhead. It discusses very briefly  
23 some of the past State Board actions dealing with flow and  
24 other issues. But the centerpiece is really a list of  
25 several objectives and recommendations for the restoration

1 of steelhead within the Santa Ynez. I just would like to  
2 go through those.

3 MR. BRANCH: Yes, please.

4 MR. MCEWAN: Objective number one was that DFG  
5 would seek a permanent flow regime from Bradbury Dam to  
6 restore the steelhead resource to a reasonable level and  
7 to maintain it in a good condition. This includes  
8 providing adequate stream flows for adult and juvenile  
9 migration and main stem spawning and rearing.

10 The second objective was to investigate the  
11 feasibility of providing adult and juvenile passage around  
12 Bradbury Dam and to implement any actions accordingly.  
13 Nearly all of the historical spawning and rearing habitat  
14 is located upstream of Bradbury Dam. Therefore, we  
15 concluded that the plan blocked access to those former  
16 spawning and rearing areas has been a major factor in its  
17 decline in the Santa Ynez River and continues to be a  
18 significant limiting factor.

19 The plan also identified several short-term efforts  
20 to restore Santa Ynez River steelhead. One of which was  
21 to restore and enhance spawning and rearing habitat  
22 conditions in some of the downstream tributaries,  
23 tributaries that still remain open to steelhead that come  
24 into the river below Bradbury Dam. These are, for  
25 example, Hilton Creek, Alisal and Salsipuedes Creek and

1 several other tributaries.

2 Another short-term recommendation was to provide  
3 adequate interim releases from Lake Cachuma. A third was  
4 to investigate, continue to investigate the status, of  
5 steelhead in the lower system and habitat needs of  
6 steelhead in the lower system.

7 And fourthly, to investigate the feasibility of  
8 modifying the release scheduling of water released from  
9 Bradbury Dam so that it provides benefits to fish and  
10 wildlife.

11 MR. BRANCH: Mr. McEwan, the objectives and  
12 recommendations you just described, would I be correct in  
13 saying are separated into short- and long-term goals?

14 MR. MCEWAN: Yes, that is correct.

15 MR. BRANCH: Could you briefly explain the  
16 difference between those?

17 MR. MCEWAN: In my opinion, long-term  
18 objectives are those that tend to restore important  
19 ecosystem functions and connectivity.

20 MR. BRANCH: Can I interrupt you for just a  
21 second.

22 What do you mean by ecosystem connectivity?

23 MR. MCEWAN: Connectivity allows basically the  
24 connection between the various ecosystems parts downstream  
25 versus upstream, flow, continuing to provide connectivity

1 to areas that steelhead need to get to so steelhead can  
2 get to, things of that nature.

3 MR. BRANCH: Please continue.

4 MR. MCEWAN: As I was saying, long-term  
5 objectives are those that restore important function and  
6 connectivity so that the full expression of live history,  
7 evolutionary potential of southern steelhead can be  
8 expressed. These long-term objectives or recommendations  
9 are intended to be more or less permanent, primary  
10 restoration actions.

11 The short-term objectives, because they are  
12 relatively smaller in scope and scale, are those that are  
13 intended to be implemented in the immediate near future  
14 and short-term objectives are focused on specific habitat.

15 MR. BRANCH: In relation to the long-term  
16 objectives that you described, one of them was seeking a  
17 permanent flow regime from Bradbury that will restore  
18 steelhead to a reasonable level and maintain it in good  
19 condition, correct?

20 MR. MCEWAN: Correct.

21 MR. BRANCH: That phrase uses the term "good  
22 condition." Are you familiar with Fish and Game Code  
23 Section 5937?

24 MR. MCEWAN: Yes.

25 MR. BRANCH: So by putting that recommendation

1 in your plan did you intend that to express the fact that  
2 the Department ultimately seeks 5937 compliance for  
3 Cachuma operations?

4 MR. MCEWAN: Yes.

5 MR. BRANCH: I want to go to the short-term  
6 objectives a little bit. Did you envision these  
7 short-term efforts as the ultimate restoration goal offer  
8 steelhead for the Santa Ynez?

9 MR. MCEWAN: No, I did not.

10 MR. BRANCH: And what were they intended  
11 instead to accomplish?

12 MR. MCEWAN: The short-term objectives that I  
13 just mentioned I think were intended to provide smaller  
14 scale, incremental habitat improvements that would ideally  
15 halt further degradation of the steelhead population until  
16 larger, long-term measures can be implemented.

17 MR. BRANCH: There is some discussion about  
18 trap and truck in smolt capturing in your plan?

19 MR. MCEWAN: Yes.

20 MR. BRANCH: You said that those measures were  
21 probably the only feasible measure to restore access to  
22 upstream spawning habitat. Do you recall that?

23 MR. MCEWAN: Yes.

24 MR. BRANCH: What was your statement based on?

25 MR. MCEWAN: I think at the time my statement

1 was based on strictly the height of the dam and dimensions  
2 of the dam and the fact that, to my knowledge, there had  
3 not been any fish ladders constructed over a dam of that  
4 size to date.

5 MR. BRANCH: Mr. McEwan, to the best of your  
6 knowledge, have any official complete feasibility studies  
7 been undertaken to date in regards to restoring upstream  
8 access?

9 MR. MCEWAN: To the best of my knowledge, they  
10 have not.

11 MR. BRANCH: Thank you.

12 Morning, Dr. Titus.

13 DR. TITUS: Good morning.

14 MR. BRANCH: Could you please state your name  
15 and position for the record?

16 DR. TITUS: My name is Robert Titus. I am a  
17 staff environmental scientist with California Department  
18 of Fish and Game.

19 MR. BRANCH: Is DFG Exhibit 4 a true and  
20 correct representation of your testimony for this  
21 proceeding?

22 DR. TITUS: Yes.

23 MR. BRANCH: Is DFG Exhibit 5 a true and  
24 correct statement of your qualifications?

25 DR. TITUS: Yes, it is.

1                   MR. BRANCH: Mr. Titus, did you participate in  
2 the development of the Fish Management Plan?

3                   MR. TITUS: Yes, I did.

4                   MR. BRANCH: How long did you work on that  
5 preparation?

6                   DR. TITUS: From April 1993, when I first came  
7 to work for the Department, until about June of 1999.

8                   MR. BRANCH: As briefly as possibly, can you  
9 describe the sort of activities and duties that you  
10 performed?

11                   DR. TITUS: Sure, I can. I was involved in  
12 the beginning of the Santa Ynez River Technical Advisory  
13 Committee process and the early development of a study  
14 plan to develop fish management -- fish habitat management  
15 alternatives for the lower river, which culminated in our  
16 review of the public review draft of the lower Santa Ynez  
17 River Fish Management Plan.

18                   MR. BRANCH: Let me interrupt you. Are you  
19 familiar with the final Fish Management Plan that was  
20 released in 2000?

21                   DR. TITUS: Yes, I am.

22                   MR. BRANCH: Let me ask you: In your opinion,  
23 what are the flow recommendations in the final FMP  
24 designed to accomplish?

25                   DR. TITUS: I think the flow recommendations

1 are designed to contribute to the maintenance of the  
2 existing fishery resources in the Lower Santa Ynez and to  
3 provide some measure of improvement in the main stem  
4 habitat conditions for steelhead, depending on water  
5 availability. The Department has been supportive of all  
6 the actions proposed in the FMP, including those  
7 implemented since 1993 and to the extent that we also  
8 provided funding for some of the restoration actions that  
9 have been completed. For example, in the Salsipuedes  
10 Creek drainage for fish passage improvement. And we also  
11 feel that these actions may contribute to the state's  
12 overall responsibility of protecting public trust  
13 resources in the lower drainage.

14 However, it is important to keep in mind that the  
15 extent to which the FMP recommending actions are -- confer  
16 actual benefits to steelhead habitat conditions and  
17 steelhead population can only be assessed once those  
18 actions have been fully implemented. At that time  
19 responses can be monitored and reviewed not only in the  
20 steelhead population, but in the supporting aquatic  
21 ecosystem. Currently the FMP lacks identifiable benchmark  
22 metrics to determine the success of the proposed actions.  
23 And such -- and those sort of success criteria will be a  
24 necessary next step for sound implementation and  
25 evaluation of the plan actions.

1                   MR. BRANCH: As far as benchmarks, what sort  
2 of benchmarks may serve as an indicator of success in the  
3 implementation of the FMP?

4                   DR. TITUS: I think for starters a clear shift  
5 back toward anadromy would be the primary indicator of  
6 having achieved a threshold level of success in these  
7 restoration actions for steelhead. Just to give the Board  
8 an idea of how productive the Santa Ynez River system was  
9 for steelhead prior to construction of the Cachuma  
10 project, the system provided habitat for large enough  
11 steelhead population to support a highly visible and  
12 popular sport fishery of adults that were returning from  
13 the Pacific Ocean on their upstream migration to the  
14 spawning grounds.

15                   This sport fishery was broadly popularized in  
16 articles as late as 1947 in *Outdoor Life*, for example, in  
17 an article by Meers. In an earlier writing by Holden in  
18 1910 he described steelhead attaining sizes as large as 20  
19 pounds in the Santa Ynez River population, which is large  
20 by any measure in California, and these fish would migrate  
21 as far as the headwaters for spawning and where resident  
22 forms of the species were also found. So I think it is  
23 safe to say that the Santa Ynez River was broadly  
24 recognized as basically a good fishing spot for steelhead  
25 through the first half of the 20th century.

1           And while the information in the FMP and data  
2           collected by the SYRTAC in recent years document spawning  
3           migrations of trout in the lower system, including what I  
4           would regard as steelhead-sized individuals and the  
5           production of smolts, there continues to be a continued  
6           lack of anadromy as the dominant life history pattern in  
7           the steelhead population. That is based in part on a  
8           cursory exam of the data collected by the SYRTAC during  
9           the last four years.

10                   MR. BRANCH: Dr. Titus, in your opinion, what  
11           do you think should be the general framework for  
12           ultimately defining future steelhead restoration goals?  
13           You named a couple in your testimony. Could you just  
14           quickly name what those are?

15                   DR. TITUS: The Department currently has not  
16           established a specific numerical management goal for  
17           restoration of steelhead in the Santa Ynez. However, the  
18           statewide Steelhead Management Plan does provide a general  
19           blueprint for both short- and long-term management or  
20           restoration goals that are ultimately intended to restore  
21           the species. And the focal point, again, of that plan is  
22           a goal of investigating fish passage around Bradbury Dam  
23           and to allow access to the upper watershed once again.

24                   MR. BRANCH: You mentioned 597 in your  
25           testimony. Does that also provide a general framework?

1 DR. TITUS: Yes, I think it does. Obviously  
2 5937 is a primary guiding policy for the Department of  
3 Fish and Game in addressing instream issues below dams.

4 MR. BRANCH: Dr. Titus, that section mentions  
5 fish in good condition?

6 DR. TITUS: Right.

7 MR. BRANCH: Is there a preferred definition  
8 that the Department goes by at this point in time?

9 DR. TITUS: For the current application, no.  
10 The Department has formulated a definition of good  
11 condition for resident brown trout in Mono Lake  
12 tributaries in previous Board proceedings. And I think --  
13 but I think that the tiered ecosystem based approach of  
14 Dr. Peter Moyle for defining good condition is perhaps  
15 most applicable for the Santa Ynez River system for  
16 achieving sustainable production of the species there.

17 Namely that restoring conditions to favor an  
18 anadromous life cycle in steelhead will be enhanced by  
19 continuing to make improvements in the system that benefit  
20 the native cool water fish community, including steelhead.  
21 And I will also strongly feel that the MOU process and  
22 implementation of FMP actions provides an important  
23 nucleus for continued facilitation of those sorts of  
24 improvements.

25 MR. BRANCH: My last question is: In your

1 opinion will the recommended actions in the FMP achieve  
2 recovery of the steelhead run?

3 DR. TITUS: My simple answer to that question  
4 would be no. It is important to note that the development  
5 of the FMP and the development of a formal recovery plan  
6 under the federal Endangered Species Act for steelhead in  
7 the Southern California ESU are two very distinct  
8 processes.

9 The FMP process represents the first level of  
10 restoration actions intended to address some of the  
11 immediate impediment to steelhead production in the Santa  
12 Ynez River system that will come out of the first several  
13 years of studies on the existing fishery resources and  
14 supporting habitat conditions. In contrast the scale of  
15 ESA recovery planning process would include all historical  
16 steelhead streams in the Southern California ESU and which  
17 would produce a blueprint for steelhead conservation  
18 throughout that region, and this is a task that could  
19 include the Santa Ynez River FMP and the associated  
20 stakeholder-based consensus process to facilitate public  
21 support and implementation of actions for that system.

22 I would like to make just one final point. That  
23 while full recovery of steelhead in the Santa Ynez River  
24 would need to include restoration of access for steelhead  
25 to the upper watershed, that is to the main stem and

1 tributaries above Lake Cachuma, that pursuit should not be  
2 to the exclusion of continuing to make improvements in the  
3 lower system including tributaries and the lagoon from the  
4 standpoint of maintaining biodiversity of steelhead and  
5 other important public trust fish wildlife resources in  
6 the Santa Ynez drainage.

7 MR. BRANCH: Thank you.

8 DR. TITUS: That concludes my testimony.

9 MR. BRANCH: Thank you, Dr. Titus.

10 Morning, Mr Whitman. Can you please state your name  
11 and position for the record?

12 MR. WHITMAN: Marcin Whitman. I'm an  
13 associate hydrology engineer with Fish and Game.

14 MR. BRANCH: Is DFG Exhibit 7 a true and  
15 correct representation of your testimony in this  
16 proceeding?

17 MR. WHITMAN: Yes, it is.

18 MR. BRANCH: Is DFG Exhibit 8 a true and  
19 correct statement of your qualifications?

20 MR. WHITMAN: Yes.

21 MR. BRANCH: I have a long question for you.  
22 Have you read the October 2nd, 2000 report prepared by the  
23 Santa Ynez River Technical Advisory Committee, an upper  
24 basin work group, entitled Upper Basin Actions for the  
25 Protection and Enhancement of Southern Steelhead in the

1 Santa Ynez River, included as Appendix E of the Lower  
2 Santa Ynez River Fish Management Plan?

3 MR. WHITMAN: Yes, I have. And my short  
4 answer is yes.

5 MR. BRANCH: Are you familiar with Section 4  
6 of that report?

7 MR. WHITMAN: Yes.

8 MR. BRANCH: In your opinion, is that  
9 evaluation adequate in regards to making a final  
10 determination as to the feasibility of providing fish  
11 passage around Bradbury?

12 MR. WHITMAN: No. As we have heard here, the  
13 report itself indicates -- it is clear that Appendix E is  
14 not, nor was it intended to be, a comprehensive and  
15 conclusive study. Instead, it serves as a quick cursory  
16 investigation into this matter.

17 MR. BRANCH: Could you describe what you  
18 believe are the elements of a proper feasibility study for  
19 passage around Bradbury --

20 MR. PALMER: Excuse me. I would like to enter  
21 an objection to the balance of the testimony. It's  
22 completely irrelevant, immaterial, to the issues. He goes  
23 on to describe studies in general and does not relate at  
24 all to anything having to do with this proceeding.

25 MR. BRANCH: I am trying to make the point that

1 the feasibility studies have not been done and that  
2 studies, cursory studies, have happened in the past and to  
3 compare them to what a correct study was like.

4 MR. PALMER: He's made the statement. The  
5 rest of his testimony is not relevant.

6 H.O. SILVA: I'm going to overrule. To me it  
7 is relevant.

8 MR. BRANCH: Thank you.

9 Describe the elements of a proper feasibility study,  
10 Mr. Whitman.

11 MR. WHITMAN: In my opinion, proper study has  
12 several -- starting with the proper study design, and I  
13 elaborate on this and I am just going to touch the high  
14 points because there is a concern with moving on quickly  
15 here.

16 Selection of proper and complete staff, acquisition  
17 of primary data and methodology for that referenced in my  
18 written testimony there. Familiarization of staff with  
19 project site, identification of main problem or need.  
20 Staff needs to have a good working knowledge of the  
21 subject, of the project, of the site and to be looking at  
22 it in a watershed context. That's especially important.  
23 And a distinction of fish passage projects.

24 That's usually followed by a brainstorming phase,  
25 and it is often helpful in that phase to decide your core

1 team and introduce outside experts to help stir up the  
2 creativity, followed by a winnowing process, come down to  
3 promising alternatives, and in that ranking process  
4 important to articulate the assumptions made in that  
5 ranking. Then those are moved forward to preliminary  
6 design.

7 MR. BRANCH: Are there any pitfalls you think  
8 should be avoided?

9 MR. WHITMAN: Several. The first is the most  
10 nebulous to get a grip on. That is the lack of an earnest  
11 desire to achieve the goal. When you go about a task like  
12 this, it takes concerted effort. There is a lot of  
13 difficulties and you have to push through on those. And  
14 that's been demonstrated by cooperation between the  
15 fisheries agencies and the Bureau of Reclamation,  
16 especially their Denver staff on several projects  
17 throughout California.

18 Another pitfall to avoid is exploring too narrow  
19 scope of alternatives or premature dismissal of possibly  
20 valid concepts. By that time it is the ones that have an  
21 obvious flaw. As you go further down in investigating  
22 alternatives, it turns out that obvious flaws is an easier  
23 one to correct, that one that looked like it was a winner  
24 in the beginning had more subtle and more difficult flaws  
25 to correct.

1           Another pitfall to avoid is dismissal of concept due  
2           to a lack of an existing precedent. I can cite several  
3           projects in California because fish passage just like any  
4           other industry goes on under development improvement.  
5           Several projects in California at the time of construction  
6           were unprecedented, pushed the state of the art, such as  
7           Potter Valley, Glenn-Colusa Irrigation District, Red Bluff  
8           Diversion Dam, Parrott-Phelan Dam on Butte Creek, and the  
9           reasons for them pushing or how they were are cited in my  
10          written testimony.

11                       MR. BRANCH: Thank you.

12                       MR. WHITMAN: Another dismissal of some  
13          alternatives solely because some testing needs to be done  
14          to close data gaps. If you go up above to those that I  
15          have just listed, you will see that a lot of those need to  
16          develop additional data and dismissal of alternatives due  
17          to standing agency policies. Again, looking back at some  
18          of those projects, for example Potter Valley, generally  
19          don't allow pumping in a bypass. Potter Valley, it was  
20          clear among all the agencies that that was the best way to  
21          achieve protection of the resource, and that was allowed  
22          in that case.

23                       MR. BRANCH: In your opinion, should the  
24          possibility of significant expense in and of themselves be  
25          determining factors whether to pursue the study of

1 feasibility of fish passage at Bradbury?

2 MR. WHITMAN: No. Instead should turn on the  
3 importance to the project in question and the level of the  
4 need for fish passage. Expense and effort, in and of  
5 themselves, should not, in my opinion, be ultimate  
6 determining factors. There's a lot of projects I have  
7 worked on that have great expense in protecting fishery  
8 resources in California and several of them the Bureau of  
9 Reclamation facilities. For example, the Red Bluff drum  
10 screens to improve over the previous protection of  
11 juvenile salmonids was \$14,000,000; 10,000,000 also at Red  
12 Bluff for an experimental pumping plant. I am also  
13 familiar with the Shasta temperature control which reduces  
14 temperature mortality in juvenile stages, winter-run, and  
15 that was accomplished at a cost of 50,000,000. GCID  
16 improved fish protection for juveniles there, including  
17 the bypass and integrated control across the entire  
18 Sacramento River at a cost of \$76,000,000. ACID recently  
19 had improvement both in its ladders and its fish screens  
20 at a cost of 18,000,000. And again this is not an  
21 exclusive list, but also throw in RD 108, an unscreened  
22 diversion that was screened for a cost of 12,000,000.

23 Clearly fish passage and protective facilities can  
24 represent significant expense and effort. However, all  
25 those projects were implemented despite apparent obstacles

1 due to the relative importance of the project to the area  
2 and the significance of the fisheries involved. If I may  
3 speak in that context to the Cachuma project, it's  
4 obviously provided substantial benefits to the people of  
5 the South Coast and the rest of the state in its 47-year  
6 history, and we've seen presentations of how valuable that  
7 project is. That value has been recently repeatedly  
8 affirmed in \$30,000,000 on size of retrofit and  
9 \$500,000,000 in the coastal branch of the California  
10 Aqueduct. Obviously, we are still ready to throw  
11 substantial resources into this project.

12           It is crucial to the success of the Santa Ynez  
13 steelhead that effective passage around Bradbury is  
14 accomplished and is dictated by common sense and by  
15 biological evidence gathered to date. The destructive  
16 effect on the biology of the natural processes of the  
17 river system is well-documented in the numerous  
18 publications. As we've heard, the management plan  
19 highlights the importance of this issue, stating that lack  
20 of passage around Bradbury is probably the most  
21 significant limiting factor for steelhead in the basin.  
22 The greatest quality and quantity of spawning and rearing  
23 habitat above the dam. Reestablishment of steelhead in  
24 this range would provide for the best natural interplay  
25 between resident and anadromous populations as a vital

1 part of the southern steelhead survival strategy. The  
2 fact that the southern ESU is listed as endangered seems  
3 to heighten the importance reestablishing this passage.

4 So it is my opinion that the Cachuma Project and  
5 pressing need for fish passage justifies feasibility  
6 studies and potential construction of fish passage  
7 facilities and the limitation of fishing passage  
8 operations despite significant expenditure of money,  
9 resources and effort.

10 MR. BRANCH: Thank you, Mr. Whitman.

11 That concludes my direct testimony of these  
12 witnesses. I will make them available for  
13 cross-examination. I would also like to remind all  
14 parties that none of these witnesses have ever worked at  
15 Lake Davis.

16 H.O. SILVA: Thank you.

17 The Bureau.

18 MR. WILKINSON: Mind if we switch places?

19 H.O. SILVA: That is fine.

20 ---oOo---

21 CROSS-EXAMINATION OF DEPARTMENT OF FISH AND GAME

22 BY CCRB

23 BY MR. WILKINSON

24 MR. WILKINSON: Let me start by asking a  
25 question for all of you. Can any of you tell me how many

1 steelhead, all life stages were in the Santa Ynez River  
2 this year?

3 MR. MCEWAN: This year?

4 MR. WILKINSON: This year.

5 MR. MCEWAN: All life stages

6 MR. BRANCH: Objection. It calls for a guess.  
7 I don't know how relevant.

8 H.O. SILVA: If they know, they can respond.  
9 If they don't know, they can say they don't know.

10 MR. WILKINSON: Can any of you tell me what  
11 flows are required in the Santa Ynez River to restore  
12 steelhead?

13 MR. MCEWAN: No.

14 MR. WILKINSON: Is that a no?

15 MR. MCEWAN: Correct.

16 MR. WILKINSON: Can any of you tell me what a  
17 viable population size is for steelhead in the Santa Ynez  
18 River?

19 DR. TITUS: No.

20 MR. MCEWAN: I would like to address that if I  
21 could. I don't think that there is anybody here that can  
22 tell you what that number is because the National Marine  
23 Fisheries Service recovery process is working on that now.  
24 But I would venture to say it is more than a hundred fish.

25 MR. WILKINSON: Mr. McEwan, I am glad you

1 mentioned the recovery process. It is a fact, is it not,  
2 or is it at least your understanding that the recovery  
3 process that is underway by NOAA, among other things, is  
4 designed to develop objective, measurable criteria to  
5 restore steelhead?

6 mr. MCEWAN: The recovery process --

7 MR. BRANCH: Object. This is a question for  
8 NOAA Fisheries not for Fish and Game.

9 MR. WILKINSON: I am asking for his  
10 understanding.

11 H.O. SILVA: His understanding. If you don't  
12 have an understanding, say you don't know.

13 MR. MCEWAN: Can you repeat the question?

14 MR. WILKINSON: Is it your understanding that  
15 the recovery process which is now underway by NOAA  
16 Fisheries is intended to, among other things, develop  
17 objective, measurable criteria which will result in the  
18 restoration of steelhead?

19 MR. MCEWAN: I think I'd have to say that I  
20 have general knowledge of the recovery process, but I  
21 don't know that I would want to make that statement in the  
22 affirmative.

23 MR. WILKINSON: So you don't know, then,  
24 whether the recovery plan would produce objective,  
25 measurable criteria; is that correct?

1                   MR. MCEWAN: I believe that it does in the  
2 second phase of the recovery process, but NOAA Fisheries  
3 can describe that a lot better than I can.

4                   MR. WILKINSON: Do you have any reason to  
5 believe, Mr. McEwan, that the NOAA Fisheries people will  
6 not complete the recovery plan that is now underway?

7                   MR. BRANCH: That is just kind of a vague  
8 question.

9                   H.O. SILVA: If he doesn't know, he says, "I  
10 don't know."

11                  MR. MCEWAN: I don't know. I don't know what  
12 can happen in the future. I know recovery plan and  
13 processes have taken quite a while in the past. So I  
14 don't know, a lot of things could change.

15                  MR. WILKINSON: Well, maybe we will ask NOAA  
16 later whether they have any intention to finishing the  
17 plan that they have now started.

18                  Dr. Titus, is my understanding correct that you  
19 served on the Santa Ynez River Technical Advisory  
20 Committee for about seven years?

21                  DR. TITUS: For six or seven years, yes.

22                  MR. WILKINSON: Can you tell me what the  
23 purpose of the Technical Advisory Committee is?

24                  DR. TITUS: It was to provide technical  
25 oversight of the studies undertaken per the study plan

1 that was developed by that committee for investigations to  
2 ultimately develop a fish habitat management alternatives  
3 for the lower Santa Ynez River.

4 MR. WILKINSON: Was the fish Technical  
5 Advisory Committee chaired by the Department of Fish and  
6 Game?

7 DR. TITUS: It was initially. I am not sure  
8 at what point that chair was taken over by someone else.

9 MR. WILKINSON: In your role on the Technical  
10 Advisory Committee were you one of the principal authors  
11 of the long-term study plan to develop management  
12 alternatives for the Lower Santa Ynez River?

13 DR. TITUS: Yes, I was.

14 MR. WILKINSON: The purpose of that study plan  
15 was to identify in a systematical way flow and nonflow  
16 actions to improve conditions for public trust resources?

17 DR. TITUS: Yes, it was.

18 MR. WILKINSON: Was the purpose of the study  
19 plan also to develop an understanding of constraints that  
20 might exist on the Santa Ynez River with respect to  
21 improving public trust resources?

22 DR. TITUS: I believe so.

23 MR. WILKINSON: What were the constraints that  
24 were identified with respect to the Santa Ynez?

25 DR. TITUS: The first one that would come to

1 mind would be relative to water availability, for example.  
2 Relative to water supply needs, otherwise balancing those  
3 competing needs in the system.

4 MR. WILKINSON: Limited water supplies?

5 DR. TITUS: Yes.

6 MR. WILKINSON: Was temperature also a  
7 constraint?

8 DR. TITUS: Could be, certainly.

9 MR. WILKINSON: Predation?

10 DR. TITUS: Could be, yes.

11 MR. WILKINSON: And it is your view that the  
12 study plan was a reasonable first step to gather  
13 information, data on the lower Santa Ynez?

14 DR. TITUS: I think so.

15 MR. WILKINSON: In fact, wasn't the Fish  
16 Management Plan developed from the scientific data that  
17 was actually produced by a study plan that you helped  
18 design?

19 MR. TITUS: That and I think other sources of  
20 information, yes.

21 MR. WILKINSON: In addition to identifying  
22 reasonable flow and nonflow actions to improve habitat,  
23 did the study plan also result in the identification of  
24 actions that were not reasonable for restoring steelhead?

25 DR. TITUS: I don't know that it did that

1 explicitly.

2 MR. WILKINSON: Your testimony, your written  
3 testimony I believe it was, also mentions that the  
4 Department of Fish and Game was a signatory to the  
5 memorandum of understanding for cooperation and research  
6 and fish maintenance; is that correct?

7 DR. TITUS: Yes.

8 MR. WILKINSON: That is how you came to  
9 oversee the data collection on the Santa Ynez River?

10 DR. TITUS: That's correct.

11 MR. WILKINSON: You served on the biological  
12 subcommittee of the Technical Advisory Committee; did you  
13 not?

14 DR. TITUS: Yes.

15 MR. WILKINSON: Did you also serve on the  
16 Hilton Creek Subcommittee?

17 DR. TITUS: Yes, I did.

18 MR. WILKINSON: Were other members of the  
19 Department of Fish and Game involved in the Technical  
20 Advisory Subcommittee?

21 DR. TITUS: Yes.

22 MR. WILKINSON: Can you tell us who they were,  
23 what committees they served on?

24 DR. TITUS: Bill Snyder our former program  
25 leader served on the TAC and on the biology subcommittee.

1 Morris Cardenas with the Department's South Coast region  
2 served on the TAC, possibly the biology subcommittee and  
3 the Hilton Creek work group. Dwayne Maxwell with the  
4 Department's South Coast region served on -- I'm not sure  
5 which subcommittees exactly, but some of those committees  
6 or at least one of them. He was also involved.

7 MR. WILKINSON: Was it the Hilton Creek  
8 Subcommittee that identified actions to improve Hilton  
9 Creek for steelhead?

10 DR. TITUS: I'm sorry, could you repeat the  
11 question.

12 MR. WILKINSON: Was it the Hilton Creek  
13 subcommittee that developed the actions that were designed  
14 to improve habitat for the steelhead on Hilton Creek?

15 DR. TITUS: Yes.

16 MR. WILKINSON: And a number of those actions  
17 have already been implemented; isn't that right?

18 DR. TITUS: Some of them have, yes.

19 MR. WILKINSON: Other Hilton Creek actions are  
20 proposed for implementation of the Fish Management Plan,  
21 right?

22 DR. TITUS: Yes.

23 MR. WILKINSON: You also commented, did you  
24 not, on the Draft Fish Management Plan that was developed  
25 for the Santa Ynez River?

1 DR. TITUS: Yes, we did.

2 MR. WILKINSON: And the Draft Fish Management  
3 Plan included proposed flows for steelhead passage,  
4 rearing and migration; did it not?

5 DR. TITUS: Yes, it did.

6 MR. WILKINSON: Did you comment that any of  
7 those flows that were proposed for passage were  
8 inadequate?

9 DR. TITUS: We had addressed that in review of  
10 a report that addressed that issue specifically prior to  
11 its inclusion in the FMP, provided input on that report.

12 MR. WILKINSON: Provided input on the report.  
13 Did you comment that any of the proposed flows for passage  
14 were inadequate?

15 DR. TITUS: No, not at that time.

16 MR. WILKINSON: Did you comment that any of  
17 the flows that were proposed for rearing were inadequate?

18 DR. TITUS: I don't believe so.

19 MR. WILKINSON: Did you comment that any of  
20 the flows that were proposed for outmigration were  
21 deficient?

22 DR. TITUS: No.

23 MR. WILKINSON: It is a fact, is it not, that  
24 the flows in the Fish Management Plan will contribute to  
25 the maintenance of the existing fishery resources in the

1 Santa Ynez River?

2 MR. BRANCH: Objection. That's already been  
3 asked and answered and had direct testimony.

4 H.O. SILVA: Overruled.

5 DR. TITUS: I would agree that it is a fact  
6 that those actions have the potential for contributing to  
7 improvements.

8 MR. WILKINSON: They will improve main stream  
9 habitat conditions below Bradbury Dam, will it not?

10 DR. TITUS: They have that potential, yes.

11 MR. WILKINSON: Isn't it also true that the  
12 actions that are proposed in the Fish Management Plan and  
13 the actions implemented since 1993 will likely contribute  
14 to the state's responsibility to protect public trust  
15 resources?

16 DR. TITUS: Yes.

17 MR. WILKINSON: Isn't it also true, Dr. Titus,  
18 that the actual effectiveness of the Fish Management Plan  
19 can only be determined following full implementation of  
20 the plan?

21 DR. TITUS: I would agree with that.

22 MR. WILKINSON: That hasn't happened yet,  
23 though, has it?

24 DR. TITUS: No.

25 MR. WILKINSON: We need time to allow for the

1 actions proposed in the FMP to materialize; is that right?

2 DR. TITUS: I would agree with that.

3 MR. WILKINSON: How much time do you think is  
4 likely going to be required for us to fully implement and  
5 evaluate the actions that have been proposed in the Fish  
6 Management Plan?

7 DR. TITUS: I have a hard time off the top of  
8 my head guessing at that.

9 MR. WILKINSON: Can I ask, would it be ten  
10 years or more?

11 DR. TITUS: I would think so.

12 MR. WILKINSON: At this point we've only just  
13 completed the Draft EIR/EIS on the Fish Management Plan;  
14 isn't that correct?

15 DR. TITUS: Right.

16 MR. WILKINSON: I think in your testimony you  
17 stated that the Fish Management Plan lacks identifiable  
18 benchmarks and metrics to determine the success of  
19 implementation, correct?

20 DR. TITUS: Yes, I do.

21 MR. WILKINSON: Was that one of your comments  
22 on the final draft Fish Management Plan?

23 DR. TITUS: I don't believe that we provided  
24 comments on the final draft. We being our program. By  
25 that point in time, which would have been just prior to

1     October 2000 when the final plan was issued, the  
2     Department's leave for review for the matters of the Santa  
3     Ynez River have been transferred to our South Coast  
4     region. And I don't know to what extent they commented to  
5     that effect.

6                   MR. WILKINSON: So you don't know whether  
7     anyone from Fish and Game commented on the final draft  
8     Fish Management Plan that was deficient because it lacked  
9     metrics or measurable criteria; is that correct?

10                  DR. TITUS: That is fine.

11                  MR. WILKINSON: I think you testified also  
12     that a clear shift back toward anadromy would be an  
13     indicator of threshold of success in the restoration of  
14     steelhead; is that right?

15                  DR. TITUS: Yes.

16                  MR. WILKINSON: Would you agree that we are  
17     already seeing evidence of smoltification of steelhead  
18     juveniles on the Santa Ynez Tuesday?

19                  DR. TITUS: Yes.

20                  MR. WILKINSON: Would you also agree that  
21     evidence of smoltification could indicate that we are  
22     starting now to shift back toward anadromy as the dominant  
23     life history strategy?

24                  DR. TITUS: That would be a start.

25                  MR. WILKINSON: That kind of shift is not

1 going to happen immediately, is it?

2 DR. TITUS: Not necessarily. Depending on the  
3 condition available for the fish, you could, if conditions  
4 were optimal for steelhead production and for completion  
5 of the anadromous life cycle, you might see a response  
6 within one or two generation cycles of the fish.

7 MR. WILKINSON: One or two generation cycles.  
8 And the generation cycle for the fish is how long?

9 DR. TITUS: Say on average three years.

10 MR. WILKINSON: So we are talking six year  
11 probably at a minimum before we start to see a shift in a  
12 major way?

13 DR. TITUS: I would say that is reasonable.

14 MR. WILKINSON: Do you support the actions  
15 that are in the Fish Management Plan?

16 DR. TITUS: Sorry?

17 MR. WILKINSON: Do you support the actions  
18 that are in the Fish Management Plan?

19 DR. TITUS: Yes.

20 MR. WILKINSON: In fact, don't many of those  
21 actions involve the removal of passage barriers?

22 DR. TITUS: Yes, they do.

23 MR. WILKINSON: Would you agree that flow by  
24 itself is not going to restore the steelhead on the Lower  
25 Santa Ynez River?

1 DR. TITUS: I would agree with that.

2 MR. WILKINSON: Is it also true that the Fish  
3 Management Plan actions are going to provide important  
4 nucleus for facilitating improvement that benefit native  
5 cool water fish?

6 DR. TITUS: Yes.

7 MR. WILKINSON: Steelhead is a native cool  
8 water fish, isn't it?

9 DR. TITUS: Yes, it is.

10 MR. WILKINSON: In fact, the Fish Management  
11 Plan is going to include actions that contribute to  
12 recovery of steelhead; is that right?

13 DR. TITUS: I think they would. They have  
14 that potential.

15 MR. WILKINSON: In fact, isn't it true that  
16 the Fish Management Plan includes the kind of actions that  
17 could be part of a recovery plan?

18 DR. TITUS: That is possible.

19 MR. WILKINSON: It seeks a broader  
20 distribution of fish beyond the main stem; isn't that  
21 right?

22 DR. TITUS: Yes.

23 MR. WILKINSON: That would be the kind of  
24 action that would be included in a recovery plan?

25 DR. TITUS: I would assume that it could be.

1           MR. WILKINSON: It could also include  
2 sufficient flows for passage?

3           DR. TITUS: The recovery plan?

4           MR. WILKINSON: No, the Fish Management Plan.

5           DR. TITUS: I's sorry, could you restate the  
6 question?

7           MR. WILKINSON: The Fish Management Plan  
8 includes sufficient flows for passage of steelhead in the  
9 Lower Santa Ynez River?

10          DR. TITUS: That I don't know for sure.

11          MR. WILKINSON: We are going to find that out  
12 when we test it?

13          DR. TITUS: That's right.

14          MR. WILKINSON: Does it provide suitable  
15 oversight of oversummering conditions for smolts?

16          DR. TITUS: Could you be more specific?  
17 Oversummering habitats, certainly I think in some parts of  
18 the system there is that potential, yes.

19          MR. WILKINSON: That is again something we are  
20 going to learn when we implement the Fish Management Plan?

21          DR. TITUS: I agree with that, yes.

22          MR. WILKINSON: I think your testimony also  
23 stated that full recovery of steelhead must include the  
24 restoration of access to the upper watershed; is that  
25 right?

1 DR. TITUS: Yes.

2 MR. WILKINSON: From your experience in  
3 helping to develop the Fish Management Plan and your  
4 review of the Fish Management Plan, is there anything in  
5 that plan that would foreclose access by steelhead to the  
6 upper river?

7 DR. TITUS: I am not sure I understand the  
8 question.

9 MR. WILKINSON: Is there anything in the plan  
10 that prevents steelhead from accessing the upper river?

11 DR. TITUS: Anything in the plan that would  
12 not allow the development? No, I don't believe so.

13 MR. WILKINSON: I think you talked a little  
14 bit about the historical population of steelhead on the  
15 river?

16 DR. TITUS: Yes.

17 MR. WILKINSON: I don't recall that being part  
18 of your written testimony, but let me show you an article  
19 nonetheless.

20 MR. BRANCH: May we have this exhibit marked?

21 H.O. SILVA: Is that new?

22 MR. WILKINSON: It is.

23 MR. BRANCH: Do we have an exhibit number yet  
24 for this?

25 MR. WILKINSON: This would be our next in

1 order, which I believe would be Member Unit Exhibit 247.

2 This is a copy of article from the Santa Barbara News  
3 Press dated March 2, 1952. I am sure you can get the  
4 whole thing on there.

5 MR. BRANCH: Mr. Silva, to note for the  
6 record, I will make a hearsay objection. First to Warden  
7 Bedwell who can't be cross-examined here.

8 MR. WILKINSON: Warden Bedwell is not around.  
9 My understanding of the Administrator Code is that hearsay  
10 evidence is permissible.

11 MR. BRANCH: I am asking to note the  
12 objection.

13 H.O. SILVA: It is noted.

14 MR. WILKINSON: In 1952, Dr. Titus, am I  
15 correct that Bradbury Dam was not yet closed or completed  
16 at that point?

17 DR. TITUS: I believe so.

18 MR. WILKINSON: 1952 also followed the  
19 conclusion of a drought period from 1947 to 1951; is that  
20 right?

21 DR. TITUS: Yes, it is.

22 MR. WILKINSON: Would you read the highlighted  
23 material, please, that is in the article?

24 DR. TITUS: Game Warden R.E. Bedwell reports  
25 it --

1                   MR. BRANCH: I am going to object. I think  
2 this is here. I don't think we need Mr. Titus to read it  
3 for us. We can all read IT.

4                   MR. WILKINSON: I will read it then.

5                   H.O. SILVA: Actually, some people that can't  
6 see it so I --

7                   MR. BRANCH: Have they been given an exhibit  
8 by Mr. Wilkinson?

9                   H.O. SILVA: I don't see what the issue is.  
10 Let's just proceed. He can read it.

11                   DR. TITUS: Game Warden R.E. Bedwell  
12 reports that it has been at least five  
13 years since there has been any fish in the  
14 river and by now the cycle of their return  
15 has been broken. The fish which used to  
16 go up the stream are either dead or out of  
17 the habit of using the Santa Ynez for  
18 spawning, he declared.           (Reading)

19                   MR. WILKINSON: Thank you very much.

20                   Mr. McEwan, I have some questions for you as well.  
21 In your testimony you describe the general strategies of  
22 the steelhead plan that you coauthored; is that right?

23                   MR. MCEWAN: Yes, that is correct.

24                   MR. WILKINSON: And to increase, as I  
25 understand it, natural production, the steelhead plan

1 strategies are to restore degraded habitat; is that right?

2 MR. MCEWAN: Yes, that's correct.

3 MR. WILKINSON: Restore access to historical  
4 habitat that may be blocked?

5 MR. MCEWAN: Yes.

6 MR. WILKINSON: Review angling regulations to  
7 ensure that steelhead are not overharvested?

8 MR. MCEWAN: Correct.

9 MR. WILKINSON: Maintain and improve hatchery  
10 runs?

11 MR. MCEWAN: Yes.

12 MR. WILKINSON: And develop and facilitate  
13 research to address efficiencies in information?

14 MR. MCEWAN: That's correct, yes.

15 MR. WILKINSON: Isn't it true that the  
16 alternatives report and the Fish Management Plan both are  
17 consistent with all of those objectives?

18 MR. MCEWAN: I can't answer that question.  
19 It's been several years since I looked at the Fish  
20 Management Plan, and I am not that familiar with it.

21 MR. WILKINSON: You are not familiar with the  
22 fact that the Fish Management Plan attempts to restore  
23 degraded habitat?

24 MR. MCEWAN: I am familiar in a general nature  
25 with the Fish Management Plan. I would say, yes, that is

1 a true statement.

2 MR. WILKINSON: Doesn't it also seek to  
3 restore access to habitat by removing passage barriers?

4 MR. MCEWAN: I believe that it does, yes.

5 MR. WILKINSON: In fact, the alternatives  
6 report recommended closing the fishery downstream of  
7 Bradbury Dam, did it not?

8 MR. MCEWAN: I have no knowledge of that. I  
9 don't believe I have looked at the alternative report. If  
10 I had, it was three or four years ago.

11 MR. WILKINSON: Do you know whether the  
12 fishery is closed downstream of Bradbury?

13 MR. MCEWAN: I'm almost positive that it is.

14 MR. WILKINSON: Is the Fish Management Plan  
15 helping to maintain steelhead runs?

16 MR. BRANCH: I would object. That is outside  
17 the scope of his knowledge.

18 MR. WILKINSON: He is coauthor of the plan,  
19 the Santa Ynez portion of the plan.

20 H.O. SILVA: Again, the witness can say I  
21 don't know.

22 MR. MCEWAN: Can you repeat the question?

23 MR. WILKINSON: Is the Fish Management Plan  
24 helping to maintain steelhead runs in the Santa Ynez  
25 River?

1 MR. MCEWAN: From my knowledge I would say  
2 that it probably is, yes.

3 MR. WILKINSON: From your knowledge isn't it  
4 true that the Fish Management Plan also is helping to  
5 develop scientific data on the Santa Ynez River steelhead?

6 MR. MCEWAN: Yes, I would say that is a true  
7 statement.

8 MR. WILKINSON: Were you a reviewer of the  
9 final draft Fish Management Plan?

10 MR. MCEWAN: Trying to recall. It's -- I  
11 could have been, but I just don't recall.

12 MR. WILKINSON: Do you recall ever commenting  
13 to the Santa Ynez Technical Advisory Committee that the  
14 Fish Management Plan is inconsistent and incompatible with  
15 the strategies of the steelhead plan?

16 MR. MCEWAN: No, I did not.

17 MR. WILKINSON: Did you ever tell the  
18 Technical Advisory Committee that the Fish Management Plan  
19 is inconsistent with the Department of Fish and Game's  
20 effort to seek a permanent flow regime from Bradbury Dam?

21 MR. MCEWAN: No, I don't believe I did.

22 MR. WILKINSON: Your testimony also discussed  
23 several objectives for restoring steelhead on the Santa  
24 Ynez River. One of those was a permanent flow regime for  
25 the river; is that right?

1 MR. MCEWAN: That's correct.

2 MR. WILKINSON: Would such a flow regime take  
3 into account the hydrology of the stream?

4 MR. MCEWAN: Yes, it would.

5 MR. WILKINSON: A flashy stream like the Santa  
6 Ynez River might have a different permanent flow regime  
7 than the larger more permanent perennial stream?

8 MR. MCEWAN: Given all of the conditions that  
9 are currently existing in the Santa Ynez River, I am not  
10 sure that it is as cut and dry as that. On a general  
11 nature, flashy streams occur in Southern California as  
12 part of natural hydrology, natural environment steelhead  
13 evolved with. However, they also evolved with having  
14 access to their headwaters. And when you point -- when  
15 you construct that access for a dam like Bradbury, you  
16 change the whole dynamic. So that a flashy stream  
17 becomes, even though they evolve with that situation, they  
18 are now limited to downstream areas, and it becomes even  
19 more critical that water be provided in those areas.

20 In other words, the main stem of these rivers in  
21 Southern California were primarily, although there was  
22 some spawning and rearing in the main stem, they were  
23 primarily used as migration corridors to get to the upper  
24 reaches. So the fact they were flashy wasn't as great a  
25 concern for steelhead, so to speak, as it is in northern

1 areas where there is a more steady -- more steady  
2 state-type of flow regime. But when you put a dam on  
3 those migration corridors, you effectively -- you have to  
4 change that lower river then into a spawning and rearing  
5 section more or less because they are blocking most of the  
6 spawning and rearing habitat.

7 MR. WILKINSON: So the dam and the reserve  
8 behind it would also be something that you would want to  
9 take into account in developing a permanent flow regime;  
10 is that right?

11 MR. MCEWAN: Yes, definitely.

12 MR. WILKINSON: Conditions in the reservoir  
13 might be important as well?

14 MR. MCEWAN: Yes.

15 MR. WILKINSON: You wouldn't want to have  
16 water that is too hot coming out of the dam?

17 MR. MCEWAN: That is correct.

18 MR. WILKINSON: You would also have to have a  
19 plan in place for droughts, critical dry years?

20 MR. MCEWAN: For steelhead?

21 MR. WILKINSON: Yes.

22 MR. MCEWAN: You would definitely have to take  
23 that into consideration, yes.

24 MR. WILKINSON: Isn't it a fact that the  
25 Department of Fish and Game through Bill Snyder and others

1       helped design the study that is implemented by the Santa  
2       Ynez River Technical Advisory Committee to develop flow  
3       regimes in the lower Santa Ynez?

4               MR. BRANCH:  Objection.  Mr. McEwan didn't  
5       work on the plan.

6               MR. WILKINSON:  If he doesn't know, he can  
7       tell me.

8               H.O. SILVA:  I think if the witness doesn't  
9       know, he can just say I don't know.

10              MR. MCEWAN:  Can you repeat the question?

11              MR. WILKINSON:  Isn't it a fact that the  
12       Department of Fish and Game through Mr. Bill Snyder helped  
13       design the Santa Ynez River Technical Advisory Committee  
14       studies that were used to develop the flow regime for the  
15       river below Bradbury?

16              MR. MCEWAN:  I believe Dr. Titus answered that  
17       question in the affirmative already.

18              MR. WILKINSON:  Do you know whether Department  
19       of Fish and Game personnel actually came to Santa Barbara  
20       County to help train the project biologist in how to make  
21       the measurements required for a flow study?

22              MR. MCEWAN:  Perhaps that would be a better  
23       question for --

24              MR. WILKINSON:  Dr. Titus?

25              DR. TITUS:  Yes.  The geomorphologist on our

1 program at that time did assist with getting those studies  
2 off the ground.

3 MR. WILKINSON: And the data that were derived  
4 from those studies were used to develop the flow regime  
5 for the Lower Santa Ynez; isn't that correct?

6 DR. TITUS: Yes, you could say that.

7 MR. WILKINSON: The Fish Management Plan  
8 includes a permanent flow regime, does it not?

9 DR. TITUS: I am not sure what a permanent  
10 flow regime really means.

11 MR. WILKINSON: Let's take it another step,  
12 then. Does the Biological Opinion -- that sets a  
13 long-term flow regime; isn't that right?

14 DR. TITUS: That is my understanding.

15 MR. WILKINSON: Do you know the length of, the  
16 term of the Biological Opinion?

17 DR. TITUS: I don't.

18 MR. WILKINSON: Does 50 years strike you as  
19 being about right?

20 DR. TITUS: No idea.

21 MR. WILKINSON: Do any of you know the term of  
22 the Biological Opinion? None of you.

23 Going back to Mr. McEwan. Your testimony I believe  
24 was also that the feasibility providing adult and juvenile  
25 passage around Bradbury Dam should be investigated?

1 MR. MCEWAN: Yes.

2 MR. WILKINSON: What are the issues that you  
3 think are likely to arise in that kind of an  
4 investigation?

5 MR. MCEWAN: Well, it's hard to really  
6 identify specific issues in the absence of doing the  
7 investigation. But certainly there are many issues that  
8 probably have to be dealt with. One is the -- just the  
9 physical nature of a barrier, how are we going to do.

10 MR. WILKINSON: The height of the dam.

11 MR. MCEWAN: The height of the dam and other  
12 dimensions. The physical size of the reservoir. The  
13 availability of the habitat upstream. The socio-economic  
14 issues that may be involved with moving fish into that  
15 area that they have not been in in a while.

16 MR. WILKINSON: Would predation in the lake be  
17 an issue?

18 MR. MCEWAN: Yes.

19 MR. WILKINSON: Would the handling of fish be  
20 an issue?

21 MR. MCEWAN: In what way?

22 MR. WILKINSON: Simply the fact that we are  
23 applying -- it's an intensive process potentially in terms  
24 of actually planting fish. We trap and track them.

25 MR. MCEWAN: It could be. But there are ways

1 of maybe ameliorating that.

2 MR. WILKINSON: Would the capture of  
3 downstream potential migrants be an issue?

4 MR. MCEWAN: Yes.

5 MR. WILKINSON: Would the capture of adults  
6 and juveniles both be an issue, upstream and downstream?

7 MR. MCEWAN: I guess I don't know what you  
8 mean by "issue." Do you mean would it be a problem, would  
9 it be something to deal with? It could be a problem. It  
10 may not be a problem. It would be consideration, let's --  
11 I guess I would say that.

12 MR. WILKINSON: Are you familiar with the term  
13 "fully seeded"?

14 MR. MCEWAN: Yes, I am.

15 MR. WILKINSON: Could you describe for us what  
16 that term refers to?

17 MR. MCEWAN: Fully seeded means that the  
18 habitat is -- the fish are fully utilizing the habitat  
19 that is available.

20 MR. WILKINSON: Do we know whether the habitat  
21 downstream of Bradbury Dam is fully seeded, Mr. McEwan?

22 MR. MCEWAN: To my knowledge, I would say no.  
23 I believe there are tributaries that come into the Santa  
24 Ynez River below the dam that aren't being utilized.

25 MR. WILKINSON: If the available habitat

1 downstream of Bradbury Dam is not fully seeded, does it  
2 not make sense to fully develop that habitat first before  
3 we get into the issues of passage around the dam?

4 MR. MCEWAN: First? No, I would not agree  
5 with that.

6 MR. WILKINSON: You would not agree with that?

7 MR. MCEWAN: No, I would not. I think it is  
8 important to continue to do work on those tributaries.  
9 But providing passage upstream, if it is feasible, is  
10 something that I believe is critical to the restoration  
11 and recovery of all southern steelhead stocks. That is  
12 where the permanent water is; that is the refugia. That  
13 is where they need to get to.

14 MR. WILKINSON: I think your testimony also  
15 was that certain short-term efforts to restore steelhead  
16 habitat should also be undertaken.

17 MR. MCEWAN: Yes.

18 MR. WILKINSON: One of the things you also  
19 mentioned was restoring and enhancing spawning and rearing  
20 habitat conditions and helping Alisal and Salispuedes  
21 Creek?

22 MR. MCEWAN: Yes, correct.

23 MR. WILKINSON: The Fish Management Plan  
24 provides for that, doesn't it?

25 MR. MCEWAN: I believe that it does.

1                   MR. WILKINSON: In fact, restoration actions  
2 have already taken place in Hilton and Salispuedes Creeks,  
3 have they not?

4                   MR. MCEWAN: I know they have in Hilton, and I  
5 would assume they have in Salispuedes.

6                   MR. WILKINSON: On the second short-term  
7 action you recommended was providing adequate interim  
8 releases from Lake Cachuma needed for fisheries  
9 investigations and to maintain steelhead habitat.

10                  Do you recall that?

11                  MR. MCEWAN: I'm sorry, could you repeat that  
12 question?

13                  MR. WILKINSON: Yes, it was a long one. The  
14 second short-term action that you recommended was to  
15 provide adequate interim releases from Bradbury?

16                  MR. MCEWAN: Yes.

17                  MR. WILKINSON: Needed for fishery  
18 investigations and to maintain steelhead habitat?

19                  MR. MCEWAN: Correct.

20                  MR. WILKINSON: Doesn't the Fish Management  
21 Plan also do that?

22                  MR. MCEWAN: I believe it does.

23                  MR. WILKINSON: You also said that short-term  
24 efforts should include investigating steelhead status and  
25 habitat needs; is that right?

1 MR. MCEWAN: Correct.

2 MR. WILKINSON: The Member Units appointed a  
3 full time fisheries biologist about ten years ago, didn't  
4 they?

5 MR. MCEWAN: That's correct.

6 MR. WILKINSON: They pay for him every year,  
7 right?

8 MR. MCEWAN: I don't know the arrangements. I  
9 assume so.

10 MS. REES: Yes, we do.

11 MR. WILKINSON: Mr. Engblom has been studying  
12 steelhead status and habitat needs for that length of  
13 time, has he not?

14 MR. MCEWAN: To my knowledge, he has.

15 MR. WILKINSON: You also said that feasibility  
16 of modifying downstream water releases should be  
17 investigated, again as a short-term effort, correct?

18 MR. MCEWAN: I'm sorry, Mr. Engblom said  
19 that?

20 MR. WILKINSON: No. You said that feasibility  
21 -- this is one of your short-term actions, as I understand  
22 it. Modifying downstream water releases should be  
23 investigated?

24 MR. MCEWAN: Yes, correct.

25 MR. WILKINSON: In fact, haven't downstream

1 releases already been modified to provide, for example,  
2 for ramping flows?

3 MR. MCEWAN: I can't answer that. I don't  
4 know.

5 MR. WILKINSON: Do you know whether the  
6 schedule of downstream releases if modified by the  
7 Settlement Agreement that we talked about yesterday is to  
8 ensure that the Above Narrows Account release will be made  
9 for at least 65 days a year?

10 MR. MCEWAN: Based on the testimony I heard  
11 yesterday, I believe that is correct, yes.

12 MR. WILKINSON: When those releases are made,  
13 they replace the need for releases, don't they?

14 MR. MCEWAN: I can't answer that. Not  
15 necessarily I guess would be the general answer.

16 MR. WILKINSON: To the extent that is water  
17 used that is for a water rights purpose, water rights  
18 release, does that leave more water in the reservoir for  
19 fish purposes to be used later on?

20 MR. MCEWAN: I'm sorry, would you repeat that?

21 MR. WILKINSON: If you make a water rights  
22 release and it serves the purpose of providing for fishery  
23 purposes, doesn't that mean that there is going to be more  
24 water -- it's a conjunctive use, more water in the  
25 reservoir to be used later for fishery purposes?

1 MR. MCEWAN: Yeah, that could very well be.

2 MR. WILKINSON: Isn't it also true, Mr.  
3 McEwan, that a wide variety of flow releases were  
4 examined in the EIR/EIS for contract renewal that was  
5 developed in 1995?

6 MR. MCEWAN: I'm sorry, are you talking about  
7 the 1995?

8 MR. WILKINSON: The contract renewal of the  
9 EIR/EIS.

10 MR. MCEWAN: I don't believe I reviewed that.

11 MR. WILKINSON: Isn't it true, nonetheless,  
12 Mr. McEwan, that each and every one of the short-term  
13 actions that you have identified in your testimony has  
14 already been undertaken?

15 MR. MCEWAN: I would say that they are being  
16 worked on, that there have been measures taken, yes. I  
17 would agree to that. Whether it's been done to completion  
18 I can't say. I would say, yeah, they have definitely been  
19 working on those measures that have been identified in the  
20 plan. And I believe Ms. Baldrige testified yesterday  
21 that the steelhead plan was used in the formulation of the  
22 fishery management plan. I am glad to see it's getting  
23 some use.

24 MR. WILKINSON: I am glad it is, too. I am  
25 glad to see that you recognize that it is.

1           Mr. McEwan, I think your testimony also described  
2 Fish and Game's long-term objective of restoring  
3 connectivity in the Santa Ynez River?

4           MR. MCEWAN: Yes, correct.

5           MR. WILKINSON: And I think you stated that  
6 the long-term objective of connectivity is part of the  
7 goal of ensuring compliance with Fish and Game Code  
8 Section 5937?

9           MR. MCEWAN: Repeat that.

10          MR. WILKINSON: Was it your testimony that the  
11 long-term objective of connectivity is part of the goal to  
12 ensuring compliance with Fish and Game code Section 5937?

13          MR. MCEWAN: Yes, I believe it was.

14          MR. WILKINSON: Isn't it true that the Member  
15 Units worked with the Department of Fish and Game to  
16 develop the fish passage investigation that was carried  
17 out under the Santa Ynez River Technical Advisory  
18 Committee?

19          MR. MCEWAN: Fish passage investigation over  
20 Bradbury Dam or the other --

21          MR. WILKINSON: Fish passage below the dam.

22          MR. MCEWAN: I'm not sure. I don't know.

23          MR. WILKINSON: You don't know that.

24          MR. MCEWAN: Could have been, but I don't  
25 know.

1                   MR. WILKINSON: Have you reviewed the  
2 hydrologic analyses that have been undertaken by the  
3 Technical Advisory Committee to develop flow  
4 recommendations?

5                   MR. MCEWAN: No, I have not.

6                   MR. WILKINSON: Have you reviewed the analyses  
7 that were part of the biological assessment submitted by  
8 the Bureau of Reclamation that examined hydrologic  
9 conditions within the Santa Ynez?

10                  MR. MCEWAN: No.

11                  MR. WILKINSON: Have you reviewed the data  
12 that was prepared as part of the biological assessment  
13 that examined the natural rescission of flows within the  
14 watershed that affects the duration of passage  
15 opportunities?

16                  MR. MCEWAN: No, I have not. If I can just  
17 add something to those three questions you've just asked  
18 and some others. I have not been in the steelhead  
19 position for three years. So as of just about almost  
20 three years now I have been in a different position  
21 working in the Department of Fish and Game. So it is -- I  
22 believe those have come out in that period of time.

23                  MR. WILKINSON: Are you saying you have not,  
24 for example, seen Mr. Engblom's data from the monitoring  
25 studies that he has conducted over the last few years that

1 indicate that steelhead are migrating upstream and  
2 downstream all the way to Hilton Creek?

3 MR. MCEWAN: I believe that, yeah, I actually  
4 saw evidence of that that was produced before I left the  
5 position. I believe before 2001.

6 MR. WILKINSON: Would that suggest to you that  
7 connectivity is, in fact, occurring now in the Lower Santa  
8 Ynez River?

9 MR. MCEWAN: Yeah, that would suggest that  
10 connectivity is occurring in the Lower Santa Ynez River.  
11 However, I still have a major concern about the majority of  
12 the historical habitat that exists in that system above  
13 Bradbury Dam. And although some of the tributaries  
14 downstream -- that come into the river downstream of  
15 Bradbury Dam do provide this permanent water refugia; the  
16 vast majority of that is above Bradbury Dam. Until you  
17 can provide access to a good portion of historical habitat  
18 that is in the higher elevation above the dams, unless you  
19 can do that, there will continue to be, I believe, a very  
20 great extension risk to fish in the system, in the entire  
21 system.

22 DR. TITUS: May I add something to that  
23 response?

24 MR. WILKINSON: Sure.

25 DR. TITUS: I have looked at some of the data

1 from the last few years. And while there is evidence of  
2 upstream migration of adult drop in the system, their  
3 origin from where they are migrating is -- I haven't seen  
4 any information that says that they are actually coming in  
5 from the ocean. Other than that there are a handful of  
6 individuals that by virtue of their size and some previous  
7 scale reading that we have done looking for signs of ocean  
8 rearing, there would be the relatively few. In fact,  
9 about eight that have been captured in the trapping  
10 operation on Salispuedes and Hilton Creeks during the last  
11 four years that were in that size range.

12 So beyond that, we don't know whether there is  
13 actual connectivity with the Pacific Ocean. There may be  
14 within the Lower Santa Ynez River system, but necessarily  
15 with the Pacific.

16 MR. WILKINSON: Would the size range of fish  
17 that were captured suggest to you that they were fish that  
18 had come from the ocean?

19 DR. TITUS: Those eight fish that were above  
20 about 20 inches, the likelihood of them being freshwater  
21 residents is relatively low. In lieu of any other  
22 information regarding where they had reared, that would be  
23 my guess.

24 MR. WILKINSON: Your guess is that they did  
25 come from the ocean?

1 DR. TITUS: That they came from the ocean.

2 MR. WILKINSON: Thank you.

3 Mr. McEwan, are you familiar with the proposal to  
4 surcharge Cachuma Reservoir?

5 MR. MCEWAN: Generally, yeah, if it is the  
6 same proposal that was proposed in the mid '90s, yeah.

7 MR. WILKINSON: Would you agree that  
8 surcharging the reservoir is likely to increase the  
9 opportunity to provide passage for fish below Bradbury  
10 Dam?

11 MR. MCEWAN: I would -- I guess my answer to  
12 that is it couldn't hurt and it very well may help.  
13 Whether it will for certainty, I can't say.

14 MR. WILKINSON: Did you raise your concern  
15 about compliance with Section 5937 with the Santa Ynez  
16 River Technical Advisory Committee after you reviewed the  
17 Draft Fish Management Plan?

18 MR. MCEWAN: I believe I already testified  
19 that I was not -- I am not certain that I reviewed that  
20 document. In fact, I think that I didn't.

21 MR. WILKINSON: Do you know whether anyone at  
22 Fish and Game raised that concern when the Draft Fish  
23 Management Plan was being circulated?

24 MR. MCEWAN: I don't know.

25 MR. WILKINSON: Has the Department of Fish and

1 Game adopted a definition of the term "good condition"?

2 MR. MCEWAN: Do you mean by adopted put in  
3 policy as that will be our definition?

4 MR. WILKINSON: Correct.

5 MR. MCEWAN: Not to my knowledge.

6 MR. WILKINSON: Have they sought an opinion,  
7 they being Fish and Game, from the Attorney General as to  
8 the meaning of good condition?

9 MR. MCEWAN: I don't know the answer to that.

10 MR. WILKINSON: Would you agree with me that  
11 different biologists might have a different definition of  
12 the meaning of the term "good condition"?

13 MR. MCEWAN: Yeah, I think so, although  
14 Dr. Moyle and Ms. Baldrige, Mr. Taylor and  
15 Dr. Marquette's definition seems to be gaining acceptance.

16 MR. WILKINSON: Mr. Whitman, I have the  
17 impression from your testimony that you believe that the  
18 report of the Santa Ynez River technical advisory's upper  
19 basin work group was intended to be final and conclusive.

20 Is my impression correct?

21 MR. WHITMAN: Can you repeat that.

22 MR. WILKINSON: Maybe we can have Esther read  
23 it back.

24 (Record read as requested.)

25 MR. WHITMAN: No, not if I understand the

1 question.

2 MR. WILKINSON: That was not intended to be  
3 the final word on fish passage, is that your  
4 understanding?

5 MR. WHITMAN: That is my understanding.

6 MR. WILKINSON: Isn't it a fact that the  
7 Adaptive Management Committee that has been established as  
8 a consequence of the Biological Opinion has already said  
9 that additional analysis of fish passage will be part of  
10 its ongoing process?

11 MR. WHITMAN: I do not have direct knowledge  
12 of that.

13 MR. WILKINSON: Do you know whether the Fish  
14 Management Plan itself provides for an additional study of  
15 fish passage around the dam?

16 MR. WHITMAN: If we are speaking of the same  
17 study, it references that as a possible future action.

18 MR. WILKINSON: Are you familiar with the  
19 Adaptive Management Committee?

20 MR. WHITMAN: From what I've heard here.

21 MR. WILKINSON: Do you know whether NOAA  
22 Fisheries people are included on that committee?

23 MR. WHITMAN: I would have to go back and take  
24 a list. I think there is somebody from NOAA on there.

25 MR. WILKINSON: Is there someone from Fish and

1 Game on the committee?

2 MR. WHITMAN: Which committee is this again?

3 MR. WILKINSON: The Adaptive Management  
4 Committee.

5 MR. WHITMAN: I'm really not sure which  
6 committee Mary is serving.

7 MR. WILKINSON: What was your answer?

8 MR. WHITMAN: Yes.

9 MR. WILKINSON: Do you know whether the Fish &  
10 Wildlife Service has a representative on the Adaptive  
11 Management Committee?

12 MR. WHITMAN: I do not know.

13 MR. WILKINSON: Are you familiar with the  
14 Biological Opinion that was issued by the NOAA Fisheries  
15 group on September 11th, 2000?

16 MR. WHITMAN: I have cursory familiarization of  
17 that.

18 MR. WILKINSON: You previously worked at NOAA,  
19 did you not?

20 MR. WHITMAN: I sure did.

21 MR. WILKINSON: With your general familiarity  
22 of that opinion, would you agree that the Biological  
23 Opinion focuses primarily on downstream actions from  
24 Bradbury Dam?

25 MR. WHITMAN: Yes.

1                   MR. WILKINSON: Given the focus of the  
2 Biological Opinion on downstream actions, do you believe  
3 it was reasonable for the Fish Management Plan also to  
4 look first at resolving downstream issues on Santa Ynez  
5 River?

6                   MR. WHITMAN: As I understand, they have two  
7 different purposes. So I can't see what was reasonable in  
8 terms of that. There is a correlation there, but not a  
9 direct correlation. They have two different, as I  
10 understand, goals.

11                  MR. WILKINSON: Do you think it would have  
12 been reasonable for the Technical Advisory Committee,  
13 given the focus of the Biological Opinion on downstream  
14 actions, to have given a minor importance to those  
15 actions?

16                  MR. WHITMAN: I think they should be making  
17 their own technological assessment.

18                  MR. WILKINSON: In your testimony you noted  
19 that you have worked on a number of fish passage  
20 facilities on a number of projects; is that right?

21                  MR. WHITMAN: Correct.

22                  MR. WILKINSON: You mentioned Keswick Dam?

23                  MR. WHITMAN: Yes.

24                  MR. WILKINSON: Is there a fish ladder at  
25 Keswick?

1 MR. WHITMAN: No.

2 MR. WILKINSON: You also mentioned

3 Anderson-Cottonwood Irrigation District's diversion dam.

4 Is there a fish ladder there?

5 MR. WHITMAN: Yes.

6 MR. WILKINSON: How high is the dam?

7 MR. WHITMAN: Dam, I think it is about -- I'm

8 thinking about with flashboards out, flashboards in, did

9 you want --

10 MR. WILKINSON: What is the height of the dam?

11 MR. WHITMAN: The sill is about five feet high

12 above the base level and then there is flashboard added to

13 that, and they can control the level of the flashboards.

14 MR. WILKINSON: About five feet high?

15 MR. WHITMAN: Yeah.

16 MR. WILKINSON: How high is Bradbury Dam?

17 MR. WHITMAN: Over 150 feet.

18 MR. WILKINSON: Isn't it closer to 300 feet?

19 MR. WHITMAN: Yeah.

20 MR. WILKINSON: I think you mentioned there is

21 a fish ladder at San Clemente Dam. Did you design that?

22 MR. WHITMAN: No.

23 MR. WILKINSON: Would you like to repeat that,

24 maybe?

25 Can you tell me how tall San Clemente Dam is?

1                   MR. WHITMAN: San Clemente Dam is about a  
2 hundred feet high.

3                   MR. WILKINSON: Have you ever worked on a fish  
4 ladder for a dam that is 300 feet high?

5                   MR. WHITMAN: No.

6                   MR. WILKINSON: Are you aware of any dam in  
7 the world that has a fish ladder where the dam is over 300  
8 feet high?

9                   MR. WHITMAN: That has been completed?

10                  MR. WILKINSON: Yes.

11                  MR. WHITMAN: No.

12                  MR. WILKINSON: Now as part of your testimony,  
13 your written testimony, you noted that there are certain  
14 unique requirements at Bradbury Dam with respect to fish  
15 passage. Can you tell us what the unique requirements are  
16 that you referred to?

17                  MR. WHITMAN: I don't think I could give you  
18 an exhaustive list right now. Certainly things that come  
19 into passage of Bradbury Dam is flashy flows, handling the  
20 sediment, reservoir concerns.

21                  MR. WILKINSON: Would that include the  
22 fluctuating reservoir pool?

23                  MR. WHITMAN: Yes.

24                  MR. WILKINSON: How much does the reservoir  
25 pool fluctuate at Bradbury?

1 MR. WHITMAN: Depends on what year.

2 MR. WILKINSON: Would it be over 50 feet?

3 MR. WHITMAN: Yes.

4 MR. WILKINSON: Predation in the lake, would  
5 that also be a problem?

6 MR. WHITMAN: That would be a concern.

7 MR. WILKINSON: Ambient temperatures, would  
8 that be a concern?

9 MR. WHITMAN: That would be something you  
10 would need to look at.

11 MR. WILKINSON: Juvenile migration through a  
12 six-mile long reservoir filled with predators; would that  
13 be a concern?

14 MR. WHITMAN: If you chose to have them  
15 migrate through the reservoir, yes, that would be a  
16 concern that you would look at.

17 MR. WILKINSON: Topography at the dam site,  
18 would that be a concern as well?

19 MR. WHITMAN: Yeah, that is something you need  
20 to address.

21 MR. WILKINSON: I think we talked about the  
22 height of the dam. Any other concerns that might come up  
23 and be part of these unique requirements you describe?

24 MR. WHITMAN: Yeah.

25 MR. WILKINSON: As I understand your

1 testimony, it is the fact that it might require millions  
2 of dollars and substantial effort to overcome these  
3 circumstances, that should not be a determinative factor;  
4 is that correct?

5 MR. WHITMAN: I don't think that should be the  
6 sole determining factor.

7 MR. WILKINSON: In other words we have a large  
8 enough checkbook we ought to be able to overcome any of  
9 the unique circumstances?

10 MR. BRANCH: Objection. Argumentative.

11 H.O. SILVA: I would agree. I would sustain  
12 that.

13 MR. WILKINSON: Mr. Whitman, if the public  
14 interest is the overriding consideration for the State  
15 Board, and I will give you my assurance that that is  
16 overriding consideration for the Board, shouldn't cost  
17 always be a consideration?

18 MR. WHITMAN: I did not say not to include  
19 cost as a factor.

20 MR. WILKINSON: So your answer is it should be  
21 a consideration?

22 MR. WHITMAN: It should be one of the  
23 considerations.

24 MR. WILKINSON: I would like to ask you a  
25 couple questions about the examples you cited where

1 millions of dollars were spent on fish passage.

2 MR. BRANCH: Can I interrupt for just one  
3 second? Can we get a time check on how long this cross  
4 has been going on?

5 H.O. SILVA: I think you should start --

6 MR. WILKINSON: I am about finished. I don't  
7 have much more.

8 H.O. SILVA: I was about to give him a time  
9 check.

10 MR. WILKINSON: I think I was well within  
11 it.

12 H.O. SILVA: It's close to an hour.

13 MR. BRANCH: It's been so entertaining, the  
14 time has just flown by.

15 MR. WILKINSON: Thanks, Harllee. I knew you  
16 would understand. I do only have about five minutes left,  
17 maybe less.

18 One of the projects that you mentioned, I think in  
19 your written testimony at least, was the Red Bluff  
20 diversion, Red Bluff Project, let me put it that way.

21 Do you understand the question?

22 MR. WHITMAN: Yes.

23 MR. WILKINSON: That was in your testimony?

24 MR. WHITMAN: Yes.

25 MR. WILKINSON: Was that a fish screen

1 project?

2 MR. WHITMAN: Part of it was.

3 MR. WILKINSON: Was it also a fish passage  
4 project?

5 MR. WHITMAN: Yes.

6 MR. WILKINSON: You mentioned Shasta, where I  
7 think \$50,000,000 was spent?

8 MR. WHITMAN: Uh-huh.

9 MR. WILKINSON: Was that a fish passage  
10 project?

11 MR. WHITMAN: Yeah.

12 MR. WILKINSON: That was a temperature  
13 curtain, wasn't it?

14 MR. WHITMAN: That is correct.

15 MR. WILKINSON: Did the Glenn-Colusa project  
16 involve passage over a dam?

17 MR. WHITMAN: No.

18 MR. WILKINSON: It involved a fish screen,  
19 didn't it?

20 MR. WHITMAN: Yes, it did.

21 MR. WILKINSON: And the Reclamation District  
22 108 Project, did that involve fish passage over a dam?

23 MR. WHITMAN: No, it didn't.

24 MR. WILKINSON: It was also a fish screen?

25 MR. WHITMAN: That is correct.

1                   MR. WILKINSON: Isn't it a fact that the only  
2                   example that you cited where there was actually fish  
3                   passage over a dam was the Anderson-Cottonwood Dam?

4                   MR. WHITMAN: No.

5                   MR. WILKINSON: The Anderson-Cottonwood  
6                   Irrigation Dam, though, did involve fish passage, did it  
7                   not, over a dam?

8                   MR. WHITMAN: That's correct.

9                   MR. WILKINSON: And it required \$18,000,000 to  
10                  reconstruct an already existing fish ladder?

11                  MR. WHITMAN: Two fish ladders.

12                  MR. WILKINSON: \$18,000,000.

13                  MR. WHITMAN: And I think the screens were  
14                  part of that, although I would have to go back and look at  
15                  that. Those split off of that. I think the screens were  
16                  also part of the reconstruction of screens.

17                  MR. WILKINSON: Mr. Whitman, you're an  
18                  engineer; is that right?

19                  MR. WHITMAN: That is correct.

20                  MR. WILKINSON: You are not an economist?

21                  MR. WHITMAN: That's correct.

22                  MR. WILKINSON: So your assumptions about the  
23                  economic benefits of the Cachuma Project are not based on  
24                  any economic study, are they?

25                  MR. WHITMAN: No, I am not making a value

1 judgment on that.

2 MR. WILKINSON: Let me ask this of you in your  
3 engineer capacity: You heard your counsel pledge the  
4 Department of Fish and Game's full cooperation with regard  
5 to fish passage.

6 MR. BRANCH: He is attempting to cross-examine  
7 my opening statement here. I don't think that is really  
8 in play, is it?

9 MR. WILKINSON: I am not going to  
10 cross-examine your opening statement, Counsel. I am just  
11 simply --

12 MR. BRANCH: This is --

13 H.O. SILVA: Let me hear the question first.

14 MR. WILKINSON: Mr. Whitman, would you be  
15 willing to commit to the State Board right here that you  
16 will provide technical engineering support to the Adaptive  
17 Management Committee as it begins its studies of fish  
18 passage?

19 MR. WHITMAN: That is beyond my sphere of  
20 influence. You would have to ask my manager about that.

21 H.O. SILVA: I would be in agreement.

22 MR. WILKINSON: That is all I have.

23 Thank you.

24 H.O. SILVA: Thank you.

25 Take about ten minutes, 10:45.

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(Break taken.)

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CROSS-EXAMINATION OF DEPARTMENT OF FISH AND GAME

BY BUREAU OF RECLAMATION

BY MR. PALMER

MR. PALMER: Just a few follow-up. Start with you, Mr. McEwan. Steve Palmer representing Bureau of Reclamation. Just wanted to make sure I understand your testimony.

In your testimony, it is actually on Page 8 if you need to refer to that. And you answered part of this question from Mr. Wilkinson, in your Paragraph 28 you respond to question regarding Fish and Game Code 5937. You say: Yes, it is my understanding that the Department of Fish and Game intends to seek eventual Fish and Game Code 5937 compliance for all dam operations throughout the state where this section is applicable.

Can you point to me what report or policy or other Fish and Game document this statement comes from?

MR. MCEWAN: Section 5937 is a section of Fish and Game Code. We, the Department strives to uphold the Fish and Game Code, so I think on that basis, the fact that it is part of Fish and Game Code, would mean that it is a Department directive to follow.

MR. PALMER: There is no written policy that

1 expresses the Department's intent as is expressed in this  
2 statement?

3 MR. MCEWAN: To my knowledge, that is correct.  
4 But I think you can probably consider it policy, the fact  
5 that it is in the code.

6 MR. PALMER: It is only the statute that you  
7 know, that there is any written guidance; is that correct?

8 MR. MCEWAN: To my knowledge, yeah, that is  
9 correct.

10 MR. PALMER: In your next paragraph, 29, in  
11 response to another question related to Fish and Game Code  
12 5937, you state: It is the Department's ultimate goal to  
13 bring the Bureau operation of Bradbury Dam into compliance  
14 with Section 5937. So, again, the basis for that is  
15 simply the statute; the Department has no other written  
16 guidance that you just testified, right?

17 MR. MCEWAN: Other than what is in the  
18 steelhead plan itself. And that is in the steelhead  
19 plan.

20 MR. PALMER: Does the steelhead plan mention  
21 Fish and Game Code 5937?

22 MR. MCEWAN: I believe that it does. Yes, it  
23 does mention 5937. I'm looking to see if it is in the  
24 Santa Ynez River portion of that. I believe that it does.

25 MR. PALMER: If you can point that out to us,

1 please.

2 MR. MCEWAN: I don't see that it does in that  
3 section, but to my recollection it does address 5937 in  
4 other parts of the steelhead plan.

5 MR. PALMER: Were you going to provide that  
6 entire plan as one of your exhibits for this proceeding?

7 MR. MCEWAN: I believe that NOAA Fisheries  
8 did. Is that correct? Our exhibit was basically just the  
9 section dealing with Santa Ynez, but I believe I saw it as  
10 an exhibit.

11 MR. PALMER: So the portion of the plan you  
12 submitted does not reference Fish and Game Code Section  
13 5937; is that correct?

14 H.O. SILVA: I thought he already said that.

15 MR. PALMER: I thought you said it did not.

16 MR. MCEWAN: Yeah, I don't believe that -- now  
17 that I see it, now that I read it, I don't believe it  
18 actually uses the numbers 5937.

19 MR. PALMER: Would it be fair to say that  
20 there is no written policy of any kind from the Department  
21 that discusses as an implementation of Fish and Game Code  
22 5937 that requires it to achieve a permanent flow regime  
23 for Bradbury Dam; is that correct?

24 MR. MCEWAN: Can you repeat that, please?

25 MR. PALMER: There is no written policy or

1 other guidance from the Department --

2 MR. BRANCH: Excuse me, I think this has been  
3 established.

4 H.O. SILVA: I think he already answered the  
5 question. I think you can proceed.

6 MR. PALMER: Define for me in that same  
7 statement when you use the term "permanent flow regime."  
8 What is that?

9 MR. MCEWAN: Well, a permanent flow regime  
10 would be one that would establish a permanent flow in the  
11 Santa Ynez River to some extent, and I don't know what  
12 that -- what the actual flow that would be. At this point  
13 I can't tell you that.

14 MR. PALMER: Has the Department of Fish and  
15 Game ever notified the Bureau of Reclamation that it is  
16 not in compliance with the Department's Code 5937?

17 MR. MCEWAN: I don't know the answer to that.

18 MR. PALMER: If it had, who would have done  
19 that from the Department?

20 MR. MCEWAN: I don't know the answer to that.  
21 It could have been regional folks. Could have been some  
22 of our staff, enforcement. Probably enforcement in our  
23 Region 5 office. But I don't know for certain.

24 MR. PALMER: Is Fish and Game Code 5937 a  
25 criminal statute?

1 MR. MCEWAN: I don't know.

2 MR. BRANCH: Calls for a legal conclusion.

3 H.O. SILVA: I agree.

4 MR. PALMER: If he doesn't know, that is fine.

5 H.O. SILVA: He said he didn't know.

6 MR. PALMER: You are not aware of the

7 Department having issued any kind of notice to the Bureau

8 that they are out of compliance with 5937?

9 MR. BRANCH: Asked and answered.

10 H.O. SILVA: I agree, he already answered the

11 question.

12 MR. PALMER: Do you know how the Department

13 intends to bring the Bureau into compliance with 5937 for

14 Bradbury Dam?

15 MR. MCEWAN: Well, as a general rule, the

16 Department works in forums such as this, in this body who

17 actually sets flow requirements. That is one way to do

18 it.

19 MR. PALMER: In your written testimony on Page

20 6, Paragraph 20, you discuss or you reference that you

21 reviewed published accounts, reports and other

22 documentation regarding historical and current conditions

23 in the lower Santa Ynez River, consulted with various

24 experts on land and water use and biological resources of

25 the Santa Ynez River.

1           In hopes to make this simpler, are those published  
2 accounts reports and other documentation that you referred  
3 to, would they be listed in a bibliography of some kind as  
4 part of the steelhead plan?

5           MR. MCEWAN: Yes, they would.

6           MR. PALMER: Would there be any other reports  
7 that are not listed in that bibliography that you are now  
8 referring to?

9           MR. MCEWAN: It was over ten years ago that I  
10 drafted this. But I can say that I was pretty diligent  
11 about -- like most of us in this business, we cite where  
12 we get these statements, and I was pretty diligent about  
13 doing that. I believe that the steelhead plan, talking  
14 off my head, has the -- the whole plan itself has, I want  
15 to say, 30 some-odd pages of references.

16          MR. PALMER: That is fine. I just wanted to  
17 know where I would like to find those.

18          MR. MCEWAN: Yeah, that would be the place.

19          MR. PALMER: Dr. Titus, couple questions for  
20 you, please.

21           I assume, and correct me if I am wrong, the  
22 Department intends to participate with NOAA Fisheries in  
23 the development of its recovery plan. Would that be a  
24 true statement?

25          DR. TITUS: I believe so, through the

1 technical recovery team process.

2 MR. PALMER: Do you know whether the  
3 Department intends to prepare its own restoration recovery  
4 plan for the steelhead?

5 DR. TITUS: I don't know that.

6 MR. PALMER: I would like to ask you the same  
7 question. I think you may have addressed this, but I  
8 wasn't clear on your answer, regarding also a permanent  
9 flow regime. Can you define that for me?

10 DR. TITUS: I don't know.

11 MR. PALMER: You referenced that in your  
12 testimony as well, but you don't have a definition?

13 DR. TITUS: I don't believe so.

14 MR. PALMER: Let me find how you reference  
15 that, maybe that will help.

16 On Page 5 of your written testimony you are  
17 referencing the objectives in the steelhead plan which I  
18 think used that term.

19 DR. TITUS: I reference the steelhead plan,  
20 but I have not used that term.

21 MR. PALMER: Do you know when the steelhead  
22 plan uses that term, it says Department will seek a  
23 permanent flow regime, do you know what that means?

24 MR. BRANCH: Didn't he ask that already?

25 DR. TITUS: I don't know what that means.

1                   MR. PALMER: I was asking about his testimony.  
2 I didn't want to take the time to go to the source  
3 document.

4                   You don't know what it means, then?

5                   One more for you Mr. McEwan, please.

6                   I believe it was your testimony that the habitat  
7 above Bradbury Dam was very important?

8                   MR. MCEWAN: That is correct.

9                   MR. PALMER: How do you know the extent of  
10 that habitat or its importance?

11                  MR. MCEWAN: Got a half hour? My presentation  
12 on that, but I will be short.

13                  MR. PALMER: Can you identify studies that have  
14 been made, something that we can refer to to save time?

15                  MR. MCEWAN: I think the best work on this are  
16 those studies that have to deal with the life history of  
17 steelhead and on a more general nature the ecology of  
18 species that exist at the margins of their range.

19                  In Southern California under natural conditions  
20 those -- the habitat conditions and environmental  
21 conditions are much more variable than they are towards  
22 the interior part of the range of steelhead, which would  
23 be, guessing Washington, British Columbia, something like  
24 that. Because you have such a high variability of habitat  
25 conditions that necessitates the need for those steelhead

1 populations to get into those areas where habitat  
2 conditions are more stable. And that is the upstream  
3 areas where there is permanent water. The flashy nature  
4 that's been described, used to describe the lower river  
5 systems in Southern California, such as the Ventura, the  
6 Santa Clara, the Santa Ynez, and to a certain extent that  
7 is part of the natural history that steelhead evolved  
8 with. They dealt with that by using those systems as  
9 migration corridors and getting up into the higher reaches  
10 where there was permanent water.

11 So from that basis and the fact that Cachuma or  
12 Bradbury Dam is built at a fairly low elevation, that  
13 leads me to conclude, as I was the steelhead expert in the  
14 Department, that those upstream areas are extremely  
15 valuable to the persistence of steelhead and rainbow trout  
16 populations. Without access to those upstream areas you  
17 render the entire population extremely vulnerable to  
18 drought and other climatic phenomenon that they could deal  
19 with when they had access, they can't deal with now. So  
20 the extension risks goes up considerably by not having  
21 access to the upstream reaches.

22 MR. PALMER: Have you conducted any studies to  
23 determine which of those upstream reaches are suitable  
24 habitat?

25 MR. MCEWAN: No, I have not.

1 MR. PALMER: That is all I have.

2 H.O. SILVA: Thank you.

3 Santa Ynez.

4 ---oOo---

5 CROSS-EXAMINATION OF DEPARTMENT OF FISH AND GAME

6 BY SANTA YNEZ RIVER CONSERVATION DISTRICT

7 BY MR. CONANT

8 MR. CONANT: Ernest Conant for Santa Ynez  
9 River water Conservation District. I have just one real  
10 quick question for this panel, addressed to Mr. Whitman.

11 Assuming there was a typical fish ladder somewhere  
12 in the world that is 300 feet in height, do you have any  
13 estimate of how much water it would take to operate that  
14 fish ladder?

15 MR. WHITMAN: Fish ladders operate under a  
16 very wide range of flows. It depends. You could have a  
17 fish ladder that's an effective fish ladder operating for  
18 as little as five cfs. We also have ones that, depending  
19 on the site and conditions and the hydrology, that are  
20 designed to operate to well over 250 cfs. Both in  
21 California.

22 MR. CONANT: The taller ones that exist,  
23 wherever they are --

24 MR. WHITMAN: Height is a separate parameter  
25 than cue on a fish ladder. It's like, do you want it to

1 be red and do you want to chose to have releases.

2 MR. CONANT: Do you have any estimate for this  
3 particular location?

4 MR. WHITMAN: No, because I haven't even made  
5 the conclusion that a fish ladder is the best way to  
6 provide fish passage.

7 MR. CONANT: Thank you.

8 H.O. SILVA: Thank you.

9 Lompoc, do you have any questions?

10 MR. MOONEY: No questions.

11 H.O. SILVA: Santa Barbara County, do you have  
12 any questions?

13 MR. SELTZER: No questions.

14 H.O. SILVA: Cal Trout -- NOAA, any questions?

15 MR. KEIFER: No questions.

16 H.O. SILVA: Cal Trout.

17 ----oOo----

18 CROSS-EXAMINATION OF DEPARTMENT OF FISH AND GAME

19 BY CALIFORNIA TROUT

20 BY KAREN KRAUS

21 MS. KRAUS: Mr. Titus, you were asked to read  
22 from a Santa Barbara News Press article a statement. Do  
23 you know the statement to be accurate, the statement that  
24 you read?

25 DR. TITUS: Accurate in what sense?

1 MS. KRAUS: In what it concludes.

2 DR. TITUS: Well, it is a newspaper quote from  
3 a Fish and Game warden about general conditions in the  
4 Santa Ynez River and steelhead population. That's about  
5 what I would take it at that face value.

6 MR. MCEWAN: Could I add something to that?  
7 Just to reiterate what Rob said and Dr. Titus said, and  
8 maybe some more comments on that.

9 This was a warden, not a biologist. This was 1952,  
10 I believe. Predates one of the most settable studies done  
11 on steelhead started in the mid '50s going through the  
12 early '60s, which gave us much more knowledge than we had  
13 about steelhead at that time that newspaper -- this  
14 newspaper publication. Most people thought of steelhead  
15 just another salmon. If this were a salmon run, that  
16 would be a true statement, after five years you would not  
17 see salmon. But this is steelhead, a very different  
18 creature and one that has been able to withstand  
19 historical droughts, but some have estimated through the  
20 last centuries in Southern California.

21 So I really take that with a grain of salt, that a  
22 five-year drought could cause the extension of a run of  
23 steelhead in an area where they have persisted for tens of  
24 thousands of years with drought as a natural factor.

25 MS. KRAUS: Thank you.

1           For Mr. McEwan and Mr. Titus, could you characterize  
2           the phrase "permanent flow regime" as meaning a permanent  
3           regime of flows that have been verified as adequate to  
4           restore and maintain steelhead in good condition and as a  
5           public trust resource?

6           I am not asking you to actually characterize it that  
7           way, would that be one way to define the term "permanent  
8           flow regime"?

9           MR. MCEWAN: Yes.

10          MS. KRAUS: Would you want to add anything to  
11          that characterization?

12          MR. MCEWAN: Could you read it again, please?

13          MS. KRAUS: A permanent regime of flows that  
14          have been verified as adequate to restore and maintain  
15          steelhead in good condition and as a public trust  
16          resource.

17          MR. MCEWAN: I think I might want to add to  
18          that, flows that would attempt to help establish at least  
19          some of the ecological function of the river system  
20          itself, channel maintenance, migration flows, things of  
21          that nature. That could be added to that definition. I  
22          am not sure it would be added in this particular case, but  
23          as a general rule.

24          MS. KRAUS: Thank you.

25          Mr. McEwan again, your reference to connectivity

1 relates to the whole Santa Ynez River Watershed; is that  
2 correct?

3 MR. MCEWAN: Yeah, in one way, yeah.

4 MS. KRAUS: Due to the construction of  
5 Bradbury Dam there are two connectivity issues, then. One  
6 regarding below the dam and one for above the dam. Is  
7 that correct?

8 MR. MCEWAN: Are you talking about the  
9 different lifestages, adults moving up and juveniles  
10 moving down?

11 MS. KRAUS: I'm talking about your use of the  
12 term "connectivity" now, and whether that also involves  
13 above dam issues.

14 MR. MCEWAN: Above and below dam, I would say  
15 that is correct.

16 MS. KRAUS: Thank you.

17 Mr. McEwan again, does variability of conditions by  
18 itself provide reason to preclude formulating a beneficial  
19 flow regime?

20 MR. MCEWAN: Can you read that again, please?

21 MS. KRAUS: Would the variability of conditions  
22 in itself, which you were describing earlier in response  
23 to a cross-examination question, would that provide a  
24 reason to not formulate a permanent flow regime?

25 MR. MCEWAN: No, I can't say that it would.

1 MS. KRAUS: Thank you.

2 Mr. Titus, does the Bradbury Dam preclude access to  
3 the upper watershed for steelhead below dam?

4 DR. TITUS: Does it block access? Yes, it  
5 does.

6 MS. KRAUS: Do you know whether the Fish  
7 Management Plan includes any provisions that address the  
8 impact of Bradbury Dam on access for fish below the dam?

9 DR. TITUS: I think the FMP assumes that  
10 Bradbury Dam is a blocked up stream migration, if not  
11 exclusively stated.

12 MS. KRAUS: Thank you.

13 Again for Mr. Titus. Does the existence of eight  
14 fish that may have returned to the Santa Ynez River from  
15 the ocean represent or establish connectivity as adequate  
16 to protect public trust resources?

17 DR. TITUS: No.

18 MS. KRAUS: Mr. Whitman, did you intend to  
19 suggest in your testimony that a fish ladder is the only  
20 solution for fish passage around Bradbury Dam?

21 MR. WHITMAN: No.

22 MS. KRAUS: Do you think it is important to  
23 have a mandatory completion date for fish passage  
24 comprehensive feasibility study?

25 MR. WHITMAN: Yes. It can often take quite a

1 while to flush out the facts and if it is something  
2 planned for long a future. There has been facilities in  
3 the Delta. For example, they are fish facilities, not  
4 ladders, but there is ladders under development for a  
5 number of years and fish facilities in the Delta have been  
6 under development for decades.

7 MS. KRAUS: Thank you.

8 Back to you, Mr. Titus.

9 Are you familiar with a method for determining fish  
10 habitat characteristics that is referred to as top width  
11 or wetted width?

12 DR. TITUS: I have general familiarity.

13 MS. KRAUS: Do you know what time period that  
14 methodology was developed, approximately?

15 DR. TITUS: I think for the wetted perimeter  
16 or wetted width method, as it is sometimes referred to as,  
17 I have seen a reference to Nelson 1980 for use in Montana  
18 streams. I don't know if it was developed before that  
19 time or not.

20 MS. KRAUS: Are you familiar with a method  
21 called IFIM that examines the relationship between flow  
22 and fish habitat?

23 DR. TITUS: Yes, I am.

24 MS. KRAUS: Are you familiar with a method  
25 called PHABSIM, that examines the relationship between

1 flow and fish habitat?

2 DR. TITUS: I have general familiarity, yes.

3 MS. KRAUS: Could you just explain generally  
4 what the terms IFIM and PHABSIM stands for?

5 DR. TITUS: IFIM is the -- stands for the  
6 instream flow incremental methodology that was developed  
7 by the U.S. Fish & Wildlife Service. Most common  
8 reference I see to reference of the method is Phobe  
9 [phonetic] 1982.

10 The method PHABSIM is a component of IFIM. It  
11 stands for physical habitats simulation system which is  
12 essentially a modeling component of the IFIM for  
13 simulating physical habitat conditions in streams. The  
14 main parameters that are used in the modeling are depths,  
15 velocities, substrate and cover, which are -- the model  
16 has been developed primarily for use in salmonid streams,  
17 in those attributes. Those attributes are recognized as  
18 primary habitat attributes specifically for salmonids.

19 MS. KRAUS: As between the top width  
20 methodology and the IFIM methodology, and you have  
21 identified PHABSIM as a component of that methodology,  
22 which methodology provides the most useful information  
23 regarding the relationship between flows and habitat for  
24 steelhead spawning and rearing?

25 MR. WILKINSON: Mr. Silva, I have let this go

1 a little while. It seems to me this is way beyond  
2 anything that was in either the written or the oral direct  
3 testimony. I realize that there is some flexibility  
4 there, but this is not remotely related to any of this.

5 H.O. SILVA: Doesn't have to be limited to.

6 MS. KRAUS: As I understand it, I can ask  
7 questions that are relevant to the proceeding.

8 H.O. SILVA: I agree. Proceed.

9 MS. KRAUS: Should I restate the question?

10 DR. TITUS: Please do.

11 MS. KRAUS: Which methodology, as between the  
12 top width method and the IFIM methodology which includes  
13 PHABSIM, which of those provides the most useful  
14 information regarding the relationship between flows and  
15 habitat for steelhead spawning and rearing?

16 DR. TITUS: The methods are different. The  
17 top width method is useful for describing some basic  
18 attributes of what we refer to as meso habitat units in  
19 streams, riffles, runs, pools, glides, that sort of thing.  
20 It involves measurement of the width of the wetted stream  
21 and can include other attributes like the depth of a  
22 stream at that point in the habitat unit in its deepest  
23 portion and maybe some measurement of current velocity.  
24 It works relatively well for characterizing the habitat  
25 unit with regard to those parameters at different flow

1 stages. So it is descriptive in that sense. PHABSIM is  
2 maybe best characterized as being more inclusive because  
3 it does specifically integrate depth, velocity, substrate  
4 cover, and relates those parameters to what we refer to as  
5 micro habitat and stream salmonids; that is at a finer  
6 scale than what is addressed with the top width method.

7 I think another really distinguishing characteristic  
8 of the PHABSIM and IFIM from the top width method is that  
9 in terms of relating the measurements of those habitat  
10 parameters to actual fish use, that one of the primary  
11 outputs of PHABSIM is our -- is weighted usable area. It  
12 is a relative depiction of the amount of habitat that  
13 would be available under different flow conditions in a  
14 given habitat unit type, and those -- what goes into the  
15 generation of what are typically the curves for that are  
16 what are referred to as habitat suitable criteria for a  
17 given species and lifestage.

18 So what the model does is interface information on  
19 those habitat measurements to what that translates into at  
20 least theoretically for fish use. And what that  
21 information is useful for is, for example, in negotiating  
22 flows. That typically is in descriptions of IFIM. It is  
23 described as being a negotiating tool for where flow  
24 management standards are being developed.

25 MS. KRAUS: Thank you.

1           For Mr. Titus and others on the panel as well.  
2           There has been some suggestion that additional studies  
3           should be conducted and your testimony has given some  
4           specifics what Fish and Game would recommend.

5           Do you think it would be helpful if the State Water  
6           Resources Control Board imposed deadlines for the  
7           completion of those studies and inserted those into the  
8           Cachuma Project water rights permits?

9           DR. TITUS: I would say that it could be  
10          depending on the particular issue.

11          MS. KRAUS: Anyone else.

12          MR. MCEWAN: I would think it would be, yes.

13          MR. WHITMAN: It would be helpful.

14          MS. KRAUS: May I take one second to consult  
15          with my colleagues?

16          H.O. SILVA: Well, yes, just not too long.

17          MS. KRAUS: Thank you.

18          Just a few additional questions. These are for the  
19          panel generally. Answer them if they fall within your  
20          purview.

21          Do you agree that the Fish Management Plan and the  
22          Biological Opinion are interim measures and do not  
23          guarantee full recovery of steelhead and restoration of  
24          public trust resources?

25          DR. TITUS: I would agree that they are very

1 interim measures. In terms of that we want to see them  
2 implemented and basically see what sort of response we get  
3 in terms of steelhead reproduction.

4 MS. KRAUS: Also for the panel. Do you agree  
5 that the Fish Management Plan and Biological Opinion lack  
6 measurable success criteria to determine whether adequate  
7 improvements have been made to achieve full anadromy of a  
8 viable population size?

9 DR. TITUS: I think I addressed that in my  
10 testimony, so I would agree with that.

11 MS. KRAUS: That is all the questions I  
12 have.

13 H.O. SILVA: Thank you.  
14 Staff?

15 ----oOo----

16 CROSS-EXAMINATION OF DEPARTMENT OF FISH AND GAME  
17 BY BOARD STAFF

18 MR. FECKO: Dr. Titus, I am going to address  
19 these to you, but if anyone else knows the answer I'd  
20 appreciate you jumping in.

21 Are you aware of a sport fishery in the upper  
22 watershed of the Santa Ynez River above Lake Cachuma?

23 DR. TITUS: I believe there is a sport fishery,  
24 yes.

25 MR. FECKO: Do you know what sort of fish are

1 found in that or a part of that sport fishery, what sort  
2 of game fish?

3 DR. TITUS: Rainbow trout.

4 MR. FECKO: I think it is my understanding  
5 that the Department has actually stocked fish in the Upper  
6 Santa Ynez River; is that correct?

7 DR. TITUS: I believe so.

8 MR. FECKO: And they're still stocking fish;  
9 is that correct?

10 DR. TITUS: I don't know that for certain.

11 MR. MCEWAN: I don't know for certain either,  
12 but I don't believe that we are. If I can just add.  
13 Because of the concern for restoration of southern  
14 steelhead and population decline and the listing, the  
15 Department has really changed its stocking practices down  
16 there and has curtailed them in many places. I believe  
17 Santa Ynez is one.

18 MR. FECKO: Is it your belief that if  
19 steelhead were moved to the Upper Santa Ynez River through  
20 whatever method was found feasible, would the game fish  
21 that exist there now, the resident rainbow trout, would  
22 they have to be moved or is that on a genetic study that  
23 hasn't been done yet?

24 MR. MCEWAN: Quite frankly, I don't see the  
25 removal of any fish upstream happening because of this

1 process, if we were to institute passage. Again, I think  
2 that the studies will give us some direction. But just  
3 thinking off the top of my head, I don't believe that they  
4 would even be a problem there. And let's just say I  
5 don't -- let's just leave it at that.

6 MR. FECKO: Did I hear you say earlier that  
7 you believe fishing is not allowed in the lower Santa Ynez  
8 River; is that right? Does anyone on the panel know?

9 MR. BRANCH: Would you state for which  
10 species?

11 MR. FECKO: I'm sorry, for steelhead in the  
12 Lower Santa Ynez River.

13 MR. MCEWAN: I would have to go back and look  
14 at the regulations. It's been such a long time. Wait a  
15 minute. Let me think here. I think I wrote the  
16 regulations. I am almost positive that everything below  
17 the Highway 154 Bridge is closed.

18 MR. FECKO: Would you assume that if steelhead  
19 were moved above the dam in some fashion that fishing  
20 would probably not be allowed up there either?

21 MR. MCEWAN: No, you can't make that  
22 conclusion. The flexibility of the Endangered Species Act  
23 does allow in some cases for fishing, if it is determined  
24 that angling is not a cause of the decline or will not  
25 impede its recovery. There are some examples of that,

1 particularly the Lahontan cut-throat trout is a listed  
2 species, I believe threatened under the Endangered Species  
3 Act, and there is a fishery. We still have fisheries for  
4 catching and release fishery for steelhead in many parts  
5 of the state and areas where they are listed.

6 MR. FECKO: Thank you.

7 H.O. SILVA: Thank you.

8 Redirect?

9 MR. BRANCH: I think just one question based  
10 on what Mr. Fecko was asking.

11 ---oOo---

12 REDIRECT EXAMINATION OF DEPARTMENT OF FISH AND GAME

13 BY MR. BRANCH

14 MR. BRANCH: Mr. Fecko asked you about fishing  
15 above the dam. This may be beyond your knowledge. If it  
16 is, just let me know.

17 But is it possible for the Department to prohibit  
18 the fishing for steelhead above the dam while still  
19 allowing fishing for other species?

20 MR. MCEWAN: It is -- that is a very tricky  
21 question because you get into a definition of steelhead  
22 that our enforcement folks could use. But we have done  
23 things like that by imposing size restrictions, and this  
24 is based on the assumption that an adult steelhead will be  
25 of a certain size when it gets into the river and,

1       therefore, if we have a maximum size that people can  
2       catch, anything below that would be allowed for them to  
3       retain. I see probably maybe a greater possibility is  
4       catch and release fishing.

5                   MR. BRANCH: This may go beyond the scope of  
6       anyone's knowledge, but I will just put it out there.

7                   Is it correct that different sorts of rulers would  
8       be used, to say, for trout as opposed to bass?

9                   MR. MCEWAN: Yeah. You gear restrictions on  
10      -- there are many methods the Department has to minimize  
11      the take or capture or impacts to nontarget species in the  
12      fishery. Gear restriction, timing would be one.  
13      Seasonality of when fishing is allowed. Size restrictions  
14      would be another.

15                   MR. BRANCH: That concludes my redirect.

16                   H.O. SILVA: Recross limited to -- very  
17      limited to redirect.

18   ----oOo----

19                   RE CROSS-EXAMINATION OF DEPARTMENT OF FISH AND GAME

20   BY CCRB

21   BY MR. WILKINSON

22                   MR. WILKINSON: This goes to the upstream  
23      issue of fishing.

24                   Are any of you aware of a radio announcement in the  
25      Santa Barbara area that occurred last Thursday that

1 indicated there was a regular stocking by the Department  
2 of Fish and Game through the summer in Lake Cachuma and  
3 the Santa Ynez River upstream?

4 MR. BRANCH: Counsel is testifying. These  
5 people don't live in Santa Barbara. How are they going to  
6 hear the radio?

7 H.O. SILVA: I think it is related. That is  
8 fine.

9 MR. MCEWAN: Could you repeat that, please.

10 MR. WILKINSON: Any of you aware of a radio  
11 announcement that took place last Thursday in Santa  
12 Barbara advising people that steelhead or that there had  
13 been regular stocking of trout by the Department of Fish  
14 and Game in Lake Cachuma and the Santa Ynez through the  
15 summer?

16 MR. MCEWAN: No, I am not aware of any  
17 announcement.

18 MR. WILKINSON: Thank you.

19 Mr. Whitman, in your answer to a couple questions  
20 that came up.

21 MR. BRANCH: Objection. This is beyond the  
22 scope.

23 H.O. SILVA: Is it related to fishing and  
24 lures?

25 MR. WILKINSON: Fishing and lures.

1 H.O. SILVA: That was the redirect.

2 MR. WILKINSON: All right. No further  
3 questions.

4 H.O. SILVA: Thank you.  
5 Bureau?

6 MR. PALMER: No questions.

7 H.O. SILVA: Santa Ynez?  
8 Lompoc?

9 MR. MOONEY: No.

10 H.O. SILVA: Santa Barbara?

11 MR. SELTZER: Just one question.

12 H.O. SILVA: Fishing lures?

13 ----oOo----

14 RE-CROSS-EXAMINATION OF DEPARTMENT OF FISH AND GAME

15 BY COUNTY OF SANTA BARBARA

16 BY MR. SELTZER

17 MR. SELTZER: If steelhead were introduced  
18 above the dam, you testified that under -- there is  
19 flexibility under the Endangered Species Act and fishing  
20 might be allowed.

21 Are there any permits required in order to allow  
22 fishing for steelhead if they are introduced above the  
23 dam?

24 MR. MCEWAN: Permits?

25 MR. SELTZER: Are there any required for that

1 practice?

2 MR. BRANCH: Clarification. Do you mean  
3 licenses?

4 MR. SELTZER: Any kind of take permit; is  
5 there any type of review under California law that you are  
6 aware of that would require an incidental take permit to  
7 allow that kind of fishing practice to continue?

8 MR. MCEWAN: No, not under California law that  
9 I am aware other than a fishing license.

10 H.O. SILVA: Thank you.

11 NOAA?

12 MR. KEIFER: No.

13 H.O. SILVA: Cal Trout?

14 All right.

15 MR. BRANCH: At this time I would like to move  
16 DFG Exhibits 1 through 9 into evidence. Are there  
17 objections?

18 H.O. SILVA: Any objections?

19 We are ready for NOAA. You had an issue. Can you  
20 explain it to me. Can we start now or did you want to  
21 wait?

22 MR. BRANCH: Can we dissolve the panel?

23 H.O. SILVA: Oh, yes, I'm sorry. I am not a  
24 fisherman, so I wasn't going to ask any questions.

25 MR. KEIFER: Due to a very recent development

1 in a highly controversial matter that's of great  
2 importance to the agency, Mr. Lecky will probably not be  
3 joining us today. That presents us with a witness and  
4 evidence management issue. And I request the indulgence  
5 of the Board till approximately 2:00 for us to work out  
6 issues that we need before we can proceed.

7 H.O. SILVA: Can you start without him or is  
8 it a matter of getting ready for the panel?

9 MR. KEIFER: It is a matter of getting ready  
10 for the panel because Mr. Lecky's testimony is part  
11 factual, part policy and part opening statement that  
12 really lays out how the panel is going to proceed.

13 H.O. SILVA: He is your main witness?

14 MR. KEIFER: He was an opening. There was a  
15 reason that he was going to be the opening witness, and we  
16 need to rework that.

17 MR. WILKINSON: I ask whether Mr. Lecky will  
18 be here at all today or is he --

19 H.O. SILVA: I was going to ask.

20 MR. KEIFER: I believe Mr. Lecky is in Long  
21 Beach at the moment and he will not be coming to  
22 Sacramento today.

23 MR. WILKINSON: If it will help, we would  
24 certainly be willing to stipulate that NOAA could reserve  
25 the presentation of his testimony for the second phase of

1 the second phase.

2 H.O. SILVA: That is what I was thinking, but  
3 it sounds like it is integral to the presentation of the  
4 panel.

5 MR. KEIFER: The problem that that presents,  
6 as I said, Mr. Lecky's testimony is in part factual,  
7 evidentiary. It is part policy that we thought was better  
8 for testimony, and it is part opening statement that lays  
9 out how the panel is going to proceed. It is important  
10 that if Mr. Lecky participates, that he be the first  
11 witness. So if the suggestion is that we hold off until I  
12 believe it is November 12th and 13th, then our other  
13 witnesses, because of the way our presentation is  
14 formulated, will have to go after Mr. Lecky.

15 MR. WILKINSON: I have no objection to that  
16 either.

17 MR. KEIFER: In which case we have another  
18 conflict on those dates for some of our witnesses.

19 H.O. SILVA: Tell you what, can we have a  
20 pow-wow with all the attorneys for a second? See what we  
21 want to do.

22 Off the record.

23 (Break taken.)

24 (Discussion held off the record.)

25 H.O. SILVA: For the benefit, we have decided

1 to give NOAA until 1:30 to come back. One of the  
2 alternatives is that they could present part of their case  
3 today. The preferred alternative is they could come back  
4 on the 12th or 13th. So they would come back and let us  
5 know by 1:30.

6 We will reconvene at 1:30.

7 (Luncheon break taken.)

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1 AFTERNOON SESSION

2 ---oOo---

3 H.O. SILVA: Mr. Keifer, what are the results  
4 of your discussions?

5 MR. KEIFER: We have resolved the conflicts  
6 for the other witnesses and we would respectfully request  
7 the Board's indulgence to put on our entire case in chief  
8 on November 13th.

9 H.O. SILVA: Not the 12th, the 13th?

10 MR. KEIFER: We would prefer the 13th. That  
11 is the way we resolved our staff conflicts, rather than  
12 the 12th.

13 H.O. SILVA: There is no way you can go on the  
14 12th?

15 MR. KEIFER: No, it is impossible.

16 H.O. SILVA: Why is it impossible?

17 DR. LEE: I will be on my way back from  
18 Arizona.

19 H.O. SILVA: Can you give your presentation  
20 today? Is he the only one that has a conflict on the  
21 12th?

22 MR. WILKINSON: If -- perhaps --

23 H.O. SILVA: I guess I don't want to waste  
24 another day.

25 MR. WILKINSON: I'm wondering if whether Mr.

1 Lee could give his testimony on the 13th and NOAA can go  
2 on the 12th with the rest of the witnesses.

3 H.O. SILVA: Then we'd get crossed up with the  
4 cross-examination timing-wise. I think it would be  
5 disjointed.

6 MR. KEIFER: Mr. Lee was one of the final  
7 witnesses for NOAA, and that particular -- most of us on  
8 November 12th and Mr. Lee on the final day would be  
9 acceptable to us.

10 H.O. SILVA: Is that acceptable to the rest of  
11 the parties, if we break it up, everybody but Mr. Lee?

12 Okay. I would rather do that, have you come up for  
13 sure 9:00 on the 12th and we can leave the County to the  
14 end. And I would like to have Cal Trout ready to go in  
15 case we have enough time on the 12th to begin their case  
16 in chief. And hopefully we can wrap it up by the 13th  
17 with Lee and rebuttals so that -- also, the other thing is  
18 that we reserved the 14th also, the same room. So now I  
19 want everybody ready to go on the 14th, plenty of notice.  
20 Have your rebuttals ready on the 14th. Perhaps even the  
21 afternoon of the 13th if we have enough time. I want to  
22 wrap this up 12th, 13th and 14th if we can. We will shoot  
23 for those three days.

24 We will go 9:00, 12th, NOAA. No more excuses.

25 MR. KEIFER: Thank you, Mr. Silva.

1                   H.O. SILVA: And then Mr. Lee the first thing  
2                   on the 13th. Ready to go. Depending on the timing, but  
3                   ready to go on the 13th.

4                   Again, I apologize for the timing.

5                   Any questions?

6                   MS. KRAUS: One clarification. If NOAA  
7                   finishes their case in chief -- if they finish with  
8                   everybody except for Dr. Lee, you will be asking Cal Trout  
9                   to start that day and have us complete our case in chief  
10                  before we go to Dr. Lee?

11                  H.O. SILVA: Depends on the timing; it's going  
12                  to be hard to tell.

13                  Yes, I agree maybe the best thing is maybe -- I  
14                  don't want to interrupt. If we started on the 12th with  
15                  yours, we should finish up yours before we go back to  
16                  Dr. Lee. Just to keep it flowing, and we will go back to  
17                  Dr. Lee.

18                  MR. WILKINSON: That's acceptable to us.

19                  H.O. SILVA: I think it will flow better, so  
20                  why don't we do that.

21                  Again, apologize everybody for the afternoon.

22                  MR. WILKINSON: One last thing, Mr. Silva. We  
23                  had promised a couple of days ago that we would have the  
24                  corrected Steve Mack exhibit, 207 of Member Units, and we  
25                  have that. I would like to offer that into evidence.

1 Certainly have copies for all the parties here as well.  
2 There were two tables that you recall that were needing  
3 correction because the numbers were slightly off. We have  
4 done that. If there is no objection, I have copies.

5 MS. KRAUS: I have no objection. I actually  
6 have a similar request.

7 H.O. SILVA: Come to the microphone.

8 MS. KRAUS: I realized this morning that some  
9 copies of Cal Trout's Exhibit No. 1, which is the  
10 September 19th, 2001 letter from Rebecca Lent to Harry  
11 Schueller may not be complete copies. So I would like to  
12 submit the corrected copy.

13 H.O. SILVA: Okay. That is fine.

14 Any other issues for discussion?

15 Hearing none, we are adjourned until 9:00 on  
16 November 12th, same room.

17 Thank you.

18 (Hearing adjourned at 1:35 p.m.)

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1 REPORTER'S CERTIFICATE

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

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7

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

12 That I thereafter caused my shorthand writing to be  
13 reduced to printed format, and the pages numbered 499  
14 through 610 herein constitute a complete, true and correct  
15 record of the proceedings.

16

17 IN WITNESS WHEREOF, I have subscribed this  
18 certificate at Sacramento, California, on this 18th day of  
19 November, 2003.

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ESTHER F. SCHWARTZ  
CSR NO. 1564