

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

In the Matter of:)
)
)
Public Hearing to Consider Water Right)
Applications 31487 and 31488 filed by)
the United States Bureau of Reclamation)
and Petitions to Change License 3723)
(Application 5169) of Washoe County)
Water Conservation District, License)
4196 (Application 9247) of Truckee)
Meadows Water Authority, and Permit)
11605 (Application 15673) and License)
10180 (Application 18006) of the United)
States Bureau of Reclamation Truckee)
River Watershed)
~~~~~ )

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SACRAMENTO, CALIFORNIA

VOLUME V

THURSDAY, JULY 29, 2010

9:03 A.M.

LINDA KAY RIGEL, CSR  
CERTIFIED SHORTHAND REPORTER  
LICENSE NUMBER 13196

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P R O C E E D I N G S

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CO-HEARING OFFICER DODUC: Now we're ready to go back on the record. Good morning everyone.

Before we get to Mr. Van Zandt's rebuttal witnesses, I believe there was a couple of housekeeping items. Want to take care of that now? Was Mr. Palmer going to address an issue?

Good morning, Mr. Palmer.

MR. PALMER: Good morning.

I think what this one item now is there's one correction to the coordinate exhibit that we presented yesterday, and the corrections are on Petitioner and Applicants Exhibit 25 and 26. And I'll read those.

We're going to be providing you corrected --

CO-HEARING OFFICER DODUC: Please go ahead and read it into the record.

MR. PALMER: Thank you.

Looking at Exhibit 26, and on the first page under points of rediversion c) Derby Dam. For the township and range, the range was flipped it should be 23 East and not 32. So it should read Range 23 East.

And then the easting for Derby Dam just below, that the last digit 5 should be a 6. So that easting would read 2380516 feet.

1           Then the northing just to the right of that  
2 should read -- instead of what's there, it should read  
3 14884928. There was some transposition going on there.

4           Then the last correction is on the next page of  
5 Exhibit 26 under e) for Carson Diversion Dam. And the  
6 northing should be, instead of what's there, 14849892.

7           And I believe those are all the corrections we  
8 have, and the same would be made on Exhibit 25, exact  
9 same changes.

10           CO-HEARING OFFICER DODUC: Okay with that, Mr.  
11 Lindsay?

12           CHIEF LINDSAY: Yes, that's it. Thank you.

13           CO-HEARING OFFICER DODUC: Great. Thank you,  
14 Mr. Palmer.

15           MR. PALMER: Thank you.

16           CO-HEARING OFFICER DODUC: And a question for  
17 Mr. Van Zandt.

18           I had the opportunity last night to look over  
19 the rebuttal reports submitted, and in particular the  
20 rebuttal report for Dr. Knox.

21           Please explain to me why this was not covered  
22 as part of your direct case-in-chief? Why you're  
23 presenting this at rebuttal.

24           MR. VAN ZANDT: I think the primary thrust of  
25 Dr. Knox's report is about analyzing the water

1 availability analysis report. He looks primarily at the  
2 methodology that was used in the Environmental Impact  
3 Statement and Impact Report with regard to the Water  
4 Resources appendix.

5 That methodology is significantly different  
6 from the methodology that was used in the water  
7 availability analysis.

8 We did not have access to the water  
9 availability analysis until the exhibits were exchanged,  
10 so we did not have time for him to include that in his  
11 direct testimony in our case-in-chief.

12 And he also goes into an explanation of the  
13 methodology that he would recommend to be used to do the  
14 water availability analysis of that Mr. Shahroody did  
15 not use in USBR 20 or 21.

16 CO-HEARING OFFICER DODUC: So Dr. Knox had the  
17 opportunity sometime between yesterday afternoon when he  
18 was being cross-examined and when this was submitted to  
19 us to review the water variability analysis and prepare  
20 this testimony?

21 MR. VAN ZANDT: Well, he did two things.

22 One was obviously we got the water variability  
23 analysis in the end of June. But he wanted to wait to  
24 refine his report until we heard Mr. Shahroody testify  
25 to make sure that he covered all the areas Mr. Shahroody

1 addressed in his direct testimony.

2 CO-HEARING OFFICER DODUC: Well, I will stand  
3 corrected. I was under the impression that when he was  
4 asked on cross-examination whether he reviewed the two  
5 water quality analyses his answer, as I recall, was no.

6 So I was curious as to his preparation of his  
7 testimony. But I will take your response under  
8 advisement. Anyone have anything to add on this topic?

9 MR. DePAOLI: Good morning, Hearing Officer  
10 Doduc and Chairman Hoppin.

11 I was going to add to this topic, but I also --  
12 and I'm not sure if you want to hear it now -- I also  
13 would object to the rebuttal of Mr. Mahannah as well as  
14 the rebuttal of Dr. Knox.

15 CO-HEARING OFFICER DODUC: Please go ahead.

16 MR. DePAOLI: And I would explain why.

17 The Notice information that we were provided  
18 was that rebuttal evidence is new evidence used to rebut  
19 evidence presented by another party.

20 Rebuttal evidence is limited to evidence that  
21 is responsive to evidence presented in connection with  
22 another party's case-in-chief, and it does not include  
23 evidence that should have been presented during the  
24 case-in-chief of the party submitting the rebuttal  
25 evidence.

1           And that I think is a provision that fosters  
2 the policy of the State Board as in 23 Cal Code of  
3 Regulations 648.4 that there be no surprise testimony  
4 introduced.

5           And finally, rebuttal evidence should not be  
6 repetitive evidence.

7           In dealing first with the rebuttal report of  
8 Mr. Mahannah, Exhibit 287, under water availability  
9 analysis for Stampede Reservoir, the first four -- the  
10 first four pages are virtually repeats out of his direct  
11 testimony to page 4. That chart that's there is  
12 identical to a chart in his direct testimony.

13           What follows after that including the  
14 transcript from the 1996 hearing on Application 9330 is  
15 simply another way of framing the argument that the  
16 water availability analysis should have taken into  
17 account the Pyramid Tribe's unappropriated water permit.  
18 It's just presenting that same thing in a different way.

19           What follows then regarding the flaws about the  
20 water availability analysis -- and I would disagree that  
21 the water availability analyses were not available until  
22 June.

23           They have been in the State Board's files since  
24 sometime in 2007, as I recall, and criticisms of them  
25 could have been gotten from the files and presented as

1 part of the party's direct case-in-chief.

2           And it puts the rest of us in the position of  
3 not having had this to be able to address with our own  
4 rebuttal.

5           In addition to that, Mr. Shahroody was asked  
6 about all of these things, and I don't think what is  
7 presented contradicts anything that he said when we was  
8 asked about them in terms of did he consider the  
9 physical capacity of the reservoir and those sorts of  
10 things, and he readily explained he didn't and explained  
11 why he didn't.

12           The part of the Mahannah report that related to  
13 Mr. Van Camp's testimony is related to the fact that the  
14 watersheds at Stampede, Independence and BOCA are  
15 different in size. Mr. Van Camp admitted that on  
16 cross-examination. But to the extent that there is any  
17 rebuttal here that may be appropriate, it may be that.

18           The next one related to Mr. Mahin's testimony.  
19 And I will say over the last four-plus days we have put  
20 in front of this Board many old Nevada issues, some new  
21 Nevada issues. And now with this rebuttal, they would  
22 like to put in front of this Board an issue that hasn't  
23 yet occurred in Nevada.

24           That is how the State Engineer ought to deal  
25 with a change to store water quality credit water, a

1 change that hasn't been filed.

2           How the 25 percent rule under the Orr Ditch  
3 Decree should or shouldn't be applied, that rebuts  
4 nothing that Mr. Main testified about in his direct  
5 examination, and it is simply -- the issue hasn't even  
6 been joined yet in Nevada, and I don't know that you  
7 need to be hearing about it here.

8           I think if you look at the summary and  
9 conclusions page of Mr. Mahannah's report, this all sort  
10 of pops right out.

11           The first three conclusions relate to  
12 consumptive use. And the way things all happened here,  
13 Mr. Mahannah rebutted what Mr. Bergfeld testified to in  
14 Nevada before Mr. Bergfeld testified here, so to speak,  
15 in the sense that his testimony in Nevada came after  
16 those reports.

17           So those first three have nothing to do with  
18 rebuttal.

19           If you look at 4, 5, and 6, they are all  
20 repetitive of his direct testimony.

21           Number 7 is a criticism of the water  
22 availability which was in the State Board's files, as is  
23 8.

24           Number 9, at least theoretically, relates to  
25 Mr. Van Camp's testimony.

1           Number 10 is repetitive of the direct  
2 testimony. We heard much about what the Nevada State  
3 Engineer has said about what's fully appropriated and  
4 what isn't.

5           Number 11, I'm not sure where that he comes  
6 from, but it certainly doesn't rebut anything that was  
7 involved in any of anybody's case-in-chief.

8           The same is true with Dr. Knox's Exhibit 304.  
9 The first part of 304 is, you know, another repeat of  
10 the Judge Maddox decision in the Third Judicial District  
11 Court.

12           That was in his direct testimony. It is  
13 repetitive of what is in Mr. Mahannah's direct  
14 testimony. It is repetitive of what is in  
15 Mr. Mahannah's rebuttal.

16           The interference with Nevada water rights is a  
17 recasting of a part of Dr. Knox's direct testimony.

18           And the physical capacity is a criticism that  
19 was easily made from the water availability analyses  
20 that were in the State Board's files for many years.

21           The comparison between the EIS and EIR,  
22 whatever that is, it's not rebutting anything presented  
23 by anyone's case-in-chief. It is sort of new evidence  
24 completely, and exactly what it's supposed to mean I'm  
25 not sure.

1           And then the last part about the estimates of  
2 water available for storage is again further criticism  
3 of the water availability analyses which was all  
4 available in the Board's files.

5           And your recollection is exactly the same as  
6 mine, which is that the answer on cross-examination was  
7 that he had not reviewed the water availability analysis  
8 in preparation for this hearing.

9           Thank you.

10          CO-HEARING OFFICER DODUC: Thank you.

11          Any other comments from the parties?

12          MR. PALMER: We support Mr. Depaoli's  
13 statements.

14          CO-HEARING OFFICER DODUC: That was Mr. Palmer  
15 in support.

16          MR. PAGNI: Michael Pagni on behalf of Washoe  
17 County Water Conservation District. We would join in  
18 the objections as well.

19          CO-HEARING OFFICER DODUC: Mr. Pagni in  
20 support.

21          MR. TAGGART: Paul Taggart for the City of  
22 Fernley. We join in that motion.

23          MR. MIXSON: Good morning. Chris Mixson for  
24 the Pyramid Lake Paiute Tribe. We also join.

25          MR. SODERLUND: Eric Soderlund, California

1 Department of Water Resources. We also support  
2 Mr. DePaoli's motion.

3 CO-HEARING OFFICER DODUC: Let me confirm with  
4 staff. Mr. Murphey, Mr. DePaoli made a comment that  
5 both water availability analyses was part of State Water  
6 Board exhibits. I believe he said 8? Would you please  
7 confirm that?

8 ENGINEERING GEOLOGIST MURPHEY: It would  
9 actually be State Water Board Exhibits 5 and 6 where the  
10 water availability analyses are.

11 CO-HEARING OFFICER DODUC: Mr. Van Zandt, I'll  
12 allow you another opportunity to respond.

13 MR. VAN ZANDT: I think it's kind of ironic  
14 that we're objecting to rebuttal evidence. I can only  
15 surmise from that there must be something important in  
16 these documents that they want to hide from the Board.

17 But the reality is that we enjoyed several  
18 objections during the direct testimony for our  
19 case-in-chief when we were swayed from the written  
20 direct testimony, so we were not ever allowed to pursue  
21 anything that even approached what the testimony of the  
22 other side was or even their exhibits, of course, which  
23 we did not see until the end of June when the exhibits  
24 were exchanged.

25 I think it's interesting that Mr. DePaoli has

1 pointed to the fact that the water availability analysis  
2 was requested by the Board and submitted some years ago,  
3 all without notice to the protestants.

4 Of course that was not an ex parte contact. It  
5 was a request by the staff to comply with California law  
6 and provide that analysis.

7 But the protestants had absolutely no notice  
8 that that had occurred until we saw a letter from  
9 Mr. Murphey to one of the Applicants and Petitioners  
10 that referenced some report that Mr. Shahroody had  
11 prepared.

12 So that was the first notice we got, and that  
13 happened just a couple months before the hearing  
14 convened.

15 So we did not have the opportunity, obviously,  
16 in that time period to do any kind of analysis of that.  
17 Nor I think is it our burden to do that in our direct  
18 case-in-chief for two reasons.

19 One is that's a Petitioner/Applicant exhibit.  
20 We don't know exactly how it's going to be used. We  
21 don't even know it's going to be submitted. We get to  
22 the hearing, of course, and they do testify about it.

23 Now we have a more complete picture of what the  
24 water availability analysis is and what it means and how  
25 the Petitioners and Applicants interpret it. And now

1 for the first time we have the ability for our experts  
2 to sit down.

3           And for the convenience of the Board -- we  
4 didn't have to do this; we could have just put, you  
5 know, oral testimony on in rebuttal -- we provided a  
6 written rebuttal report which literally was prepared in  
7 the last three or four days.

8           So I think what's being attempted here is to  
9 kind of turn the procedures on their head and prevent  
10 the Protestants from supplying information to the Board  
11 based on the Petitioners and Applicants case-in-chief  
12 which, by my reading of the rules and the procedures of  
13 the Board, the whole idea of rebuttal here is to present  
14 our analysis and our criticisms of the information in  
15 evidence that was presented in the case-in-chief by the  
16 other side.

17           Now, there's some indication that there may be  
18 some duplication. The only reason that there may be a  
19 little bit of duplication is because you can't just  
20 launch off into talking about this without kind of  
21 setting, you know, the background and the stage.

22           We're not going to spend any time in our direct  
23 testimony along that background because the Board is  
24 well aware of that; but for purposes of completeness of  
25 the report, there are additional facts and information

1 that the Board is aware of already that are included in  
2 the report. But we're not going to spend any time on  
3 that.

4 The real issues have to do with the true  
5 analysis of the -- primarily the water availability  
6 analysis and the methodology that was used and an  
7 alternative -- two alternatives, one for Mr. Mahannah  
8 and one from Dr. Knox, that criticize both the  
9 methodology and the result that the government reached  
10 in its water availability analysis.

11 As to Mr. Mahin's testimony with regard to the  
12 25 percent rule, I think we established on  
13 cross-examination that in his direct testimony he has  
14 information that indicates that the 25 percent rule is  
15 applied to the Water Quality Settlement Agreement water  
16 that he was testifying about.

17 And for us to rebut that, then we have to  
18 provide information to the Board on what the basis for  
19 the 25 percent rule is and why we don't think it should  
20 be applied in these situations.

21 So again, I think these are legitimate rebuttal  
22 reports. We do not intend to repeat anything we've said  
23 before, and we just want to make sure that we have in  
24 front of the Board the legitimate criticisms and  
25 alternative methods that we believe are more appropriate

1 in this case for the Board's full consideration.

2 Thank you.

3 CO-HEARING OFFICER DODUC: Thank you, Mr. Van  
4 Zandt.

5 Let's go off record. We'll take a short  
6 five-minute break while I confer with my Co-Hearing  
7 Officer and counsel. Don't go too far. Thank you.

8 (Recess)

9 CO-HEARING OFFICER DODUC: We'll go back on the  
10 record now.

11 After conferring with my Co-Hearing Officer,  
12 this is our ruling on the rebuttal witnesses.

13 With respect to the rebuttal witness Dr. Ken  
14 Knox, I am not allowing his testimony. I find that both  
15 water availability analyses was available within the  
16 State Board files. It was introduced on April 19th in  
17 our Notice. The arguments in Dr. Knox's rebuttal report  
18 could have been presented in case-in-chief, and it is  
19 repetitive.

20 And for those reasons, I am not allowing the  
21 testimony of Dr. Ken Knox.

22 With respect to the testimony of Mr. Chris  
23 Mahannah, I am allowing that testimony. I find that it  
24 is addressing the direct testimony of several, I believe  
25 three, of the witnesses presented by the joint parties.



1 you prepared a rebuttal report?

2 MR. MAHANNAH: Yes. It's been identified as  
3 TCID-287.

4 MR. VAN ZANDT: Thank you. And is this a true  
5 and correct copy of TCID-287?

6 MR. MAHANNAH: Yes, it is.

7 MR. VAN ZANDT: Okay. Are there any changes?

8 MR. MAHANNAH: No.

9 MR. VAN ZANDT: Thank you. And have you also  
10 prepared a summary of TCID-287 to present to the Board?

11 MR. MAHANNAH: Yes, I have a PowerPoint  
12 presentation.

13 MR. VAN ZANDT: Please proceed.

14 MR. MAHANNAH: Thank you.

15 So just on quick summary, I'm going to address  
16 the water availability analysis for Prosser and  
17 Stampede, mainly focusing on Stampede because it's a  
18 larger reservoir and the issues presented in Stampede  
19 also are apparent in Prosser as well.

20 Talk about Independence issues, TMWA  
21 Exhibit 30, Mr. Van Camp's testimony, and the Water  
22 Quality Settlement Agreement, and Claim 3 unappropriated  
23 water, which was Mr. Mahin's testimony on TMWA 4-0, and  
24 offer some summary and conclusions.

25 Try not to be repetitive, but first bullet

1 point here, the water availability analysis, is  
2 deficient for the following reasons.

3 It assumes the tribe's instream flow permit can  
4 be stored without a valid Nevada permit. There's been  
5 no change application filed to store that water.

6 It assumes a flow regime 1 which is roughly  
7 half of what was permitted in those instream flow rights  
8 below Derby Dam.

9 Neglects to consider the physical or flood  
10 limit capacities of the reservoir.

11 And it's a static historic analysis. He took  
12 selected years, selected months and looked at  
13 end-of-month historical data. He did not look at any  
14 future conditions under TROA.

15 One of the primary tenants of TROA is to keep  
16 more water upstream in storage so in future conditions  
17 those end-of-month storage values will be higher which  
18 will change the analysis.

19 Seeks to store additional water which is within  
20 the permitted storage allotment in Stampede Reservoir of  
21 126,000 which is their existing permit.

22 Water availability analysis used flow regime 1  
23 which when you total the monthly values is approximately  
24 251,000 acre feet. And I read you yesterday out of  
25 their attachments to the unappropriated water

1 applications what they thought was required for instream  
2 flow for Cui-ui and LCT as well as maintaining Pyramid  
3 Lake.

4 Both myself, Mr. Shahroody, Buchanan, Strekal,  
5 Wagner -- all those folks testified in 9330 in 1996. I  
6 believe in -- it was two or three hearings, but the real  
7 deal happened in 1996.

8 Ironically, they were critical of me using  
9 their own data for a demand below Derby of the 204,000  
10 acre feet which is roughly in line with what flow  
11 regime 1 is of 251,000.

12 What I did in 9330 was look at water  
13 availability at Derby, subtracted out their Claim 1 and  
14 2 rights, additional decreed rights below Derby, plus  
15 what they said at the time under TCID 289 was required  
16 for fish flow.

17 They presented testimony that that 204,000 was  
18 a bare minimum and that they needed -- and I'll just  
19 read -- I think it's instructive -- out of the  
20 transcript. This is Mr. Strekal answering a question  
21 from Mr. Van Zandt. He says:

22 I think you're assuming that 204,000 acre  
23 foot number is adequate for either  
24 maintenance of certain population or for  
25 recovery. And I've also made the

1 statement that that number is inadequate,  
2 so no I would not say that.

3 Further, Mr. Wagner testifies:

4 In order for the lake to achieve that  
5 level, it needs an inflow about 525,000  
6 acre feet for the next 20 years, and then  
7 it needs a minimum of 410,000 acre feet  
8 to maintain that level. The reason that  
9 that's required is to allow fish passage  
10 so that they could get up the river to  
11 spawn.

12 He's referring to that Delta passage.

13 CO-HEARING OFFICER DODUC: Mr. Mahannah, if you  
14 could get closer to the microphone.

15 MR. MAHANNAH: Okay.

16 There was cross-examination of Mr. Shahroody  
17 regarding recovering Winnemucca Lake, to refill  
18 Winnemucca Lake which is 60 feet above the current level  
19 roughly.

20 I didn't quite understand his answer, but I  
21 have been at a Nevada Water Resource Association annual  
22 conference where Mervin Wright has testified that that's  
23 one of their goals, to refill Pyramid Lake to fill  
24 Winnemucca Lake.

25 The Nevada State Engineer earlier this year

1 published a net consumptive use report that published  
2 open water evaporation for Pyramid Lake of 5 acre feet  
3 per acre. Or 4.4 when you subtract off effective  
4 prescription.

5 If you use 5 times 120,000 acres, that's  
6 roughly 600,000 acre feet of evaporation.

7 Further, in the testimony in 9330, Mr. Wagner  
8 talks about the flows required for reestablishment of  
9 riparian vegetation and states they need 700 to 4,000  
10 cfs below Derby.

11 Chart unfortunately is a bit hard to read, but  
12 what I've got here is the -- on the left side what was  
13 permitted in cfs per month, and in those -- when those  
14 ranges for May, March, April, May, June, those are  
15 actually broken down into weekly rates as well.

16 So if you look over to the right side, that's  
17 what they've used in the water availability analysis.  
18 It's roughly half the amount of water. And the maximum  
19 flow's a thousand cfs. So that's in direct conflict  
20 with their testimony saying needed 4,000 cfs for  
21 cottonwood regeneration.

22 WATER RESOURCE CONTROL ENGINEER McCUE: Excuse  
23 me. Is this chart in your rebuttal exhibit?

24 MR. MAHANNAH: Pardon me?

25 WATER RESOURCE CONTROL ENGINEER McCUE: Is this

1 chart in your rebuttal exhibit?

2 MR. MAHANNAH: The chart on the left is. The  
3 chart on the right is a table in Mr. Shahroody's direct  
4 report, flow regime 1.

5 WATER RESOURCE CONTROL ENGINEER McCUE: Can you  
6 identify it for the record?

7 MR. VAN ZANDT: USBR 20.

8 WATER RESOURCE CONTROL ENGINEER McCUE: Thank  
9 you.

10 And what about in your testimony? I'm sorry.  
11 The chart on the left you said was in your rebuttal  
12 testimony? What page?

13 MR. MAHANNAH: Yes, it is on -- on the top of  
14 page 4.

15 WATER RESOURCE CONTROL ENGINEER McCUE: Thank  
16 you.

17 MR. MAHANNAH: So they didn't include the  
18 permitted demand, nor did they include their own Claim 1  
19 and 2 rights below Derby or, for that matter, other  
20 decreed rights below Derby in their analysis.

21 Moving on to the storage capacity limit.  
22 Stampede's capacity to 26,500 or the flood capacity of  
23 204,500 which is what the Army Corps says needs to be  
24 maintained from April -- I'm sorry -- November 1st  
25 through April 10th with some flex on the tail end

1 depending on the type of water year, i.e., in flood  
2 years that 204,500 is extended out further at the  
3 discretion of the Bureau. I believe Chad Blanchard  
4 testified to that last week.

5           Prosser, same deal. Capacity 29,840. Flood  
6 capacity roughly a third, 9840 over that same time  
7 frame, so roughly a third.

8           The availability analysis didn't address the  
9 capacity limit. In USBR 7, Table 3, and I call it  
10 revised, which is Exhibit TCID 298, and I'll summarize  
11 this. We don't really need to go to that exhibit. This  
12 is a summary of that table.

13           On the left side, these are the years  
14 Mr. Shahroody said there was water availability. And  
15 then if you cumulatively added up what he said was  
16 additional water available, these are the -- basically  
17 the capacity you would need in the reservoir to capture  
18 that available water.

19           And you'll see in 1983 that was the max. They  
20 need roughly double the size of the reservoir to capture  
21 that.

22           And the reason for this is when you look  
23 through his Table 3, especially in a lot of these flood  
24 years, Stampede is -- the end-of-month storage going  
25 into the runoff season, I mean, many times is -- it's

1 almost full.

2           The column on the right is for Prosser.  
3 It's -- that's even more extreme, especially because of  
4 that flood limit of roughly a third of the capacity of  
5 the reservoir.

6           1982, they would have needed 145,000 acre foot  
7 capacity reservoir or five times the physical capacity  
8 and 15 times the flood capacity.

9           This next table -- I realize there's a lot of  
10 data here. But what I did here was the second column  
11 there is Table 19 -- or Table 3, Column 19 out of  
12 Mr. Shahroody's report which is the additional amount of  
13 available water in Stampede.

14           And then what I have got is Column 19-A which  
15 is in TCID 300 where I've deducted the monthly amount  
16 permitted by the Nevada State Engineer below Derby,  
17 their unappropriated water amounts, and I limited the  
18 storage capacity to either the physical or flood  
19 capacity depending on the month and applied the same  
20 logic that Mr. Shahroody did in his analysis. And you  
21 can see it has a dramatic result.

22           The maximum for Mr. Shahroody in 1983, a flood  
23 year, he had almost 200,000 acre feet available water.  
24 When you apply those limitations, you get roughly 29,000  
25 acre feet.

1           The minimum stayed the same, at 0 in 2003, and  
2 the average over this time frame, Mr. Shahroody's was  
3 80,700. And when you apply the limit, it drops it to  
4 11,000.

5           So in my mind, it's a huge deficiency in the  
6 analysis.

7           Additional issues. Obviously, if this is the  
8 crest of your dam, you can't store water up here.  
9 That's fairly obvious. Mr. Shahroody, he admitted that  
10 on cross, but that's fine in a theoretical sense.

11           What -- the title of his Table 3: Estimates of  
12 Available Water For Storage in Stampede Reservoir.  
13 That's the whole purpose here is to store this water.  
14 If you don't have the room to store it, to me it's a  
15 meaningless analysis.

16           Historical analysis of select years does not  
17 represent future conditions. We covered that.

18           The WAAs. If you look through Table 3, he  
19 includes water that is already within the 126,000  
20 permitted allotment, so that should be deducted out.

21           When you look through the BOR progress reports  
22 that are submitted to the Board, there is 37 years of  
23 record. The average over -- this is in TCID 301. I've  
24 summarized all those, the beginning -- January 1  
25 beginning then the max.

1           For each year, the average is about 38,000  
2 feet. There was only one year in 1995 where we had a  
3 huge year. The water did go. It spilled so there was  
4 additional water actually beyond the physical capacity  
5 because of the spill. That year, the increase in  
6 storage was about 167,000.

7           All other years it was less than 126.

8           This was during years where there was dry years  
9 where there was low levels end-of-month storage in  
10 Stampede and then followed by wet years, so there was an  
11 opportunity for them to have stored water for sure.

12           Moving to Mr. Van Camp's testimony. TCID 195  
13 is Ms. Mahaney's memorandum. I'll just read a portion  
14 of that. It says:

15           Accordingly when considering a request to  
16 change a point of diversion to a  
17 different tributary, the Division must  
18 evaluate whether the proposed change will  
19 initiate a new water right by enlarging  
20 the existing right, example by increasing  
21 the amount of water that the appropriator  
22 could divert or by adding a new source.

23           She went on to outline several factors to  
24 consider whether it involved the same source, the  
25 hydrologic connectivity, geographic scale of the

1 proposed change, water availability and no injury.

2           Regarding -- and this relates to the  
3 Independence petition and the BOCA and Stampede where  
4 they want to move water back and forth between those  
5 and -- Independence Creek, when you look at the record,  
6 there was a short record at the beginning part of the  
7 century pre dam construction. There was periods in  
8 there where there was no flow in Independence Creek.

9           When I took a cursory look at the -- did a mass  
10 balance of the change in storage at Independence and  
11 then the -- Independence Creek, the outflow -- there was  
12 evidence that there was times during droughts, even with  
13 the reservoir there, that Independence Creek wouldn't  
14 have flowed.

15           Geographic scale. There is a considerable  
16 difference. Stampede's roughly 15 miles downstream of  
17 Independence. BOCA's 21 miles downstream. The  
18 watershed area and contributing area is vastly  
19 different, about 7.8 square miles for Independence, 129  
20 square miles for Stampede. In other words, Stampede's  
21 about 17 times as large.

22           So if I could bring up, switch to TCID 295.  
23 It's a map. This is similar to the map that I showed  
24 yesterday, TCID 265.

25           And this is off Cal water's sub watershed area.

1 So you can see Independence watershed here. And then  
2 all of these kind of orange-ish -- these are  
3 subwatersheds to Stampede Reservoir. There is the dam  
4 over here.

5 And then these are the subwatersheds for BOCA.  
6 There's the dam there. These the subwatersheds for  
7 Stampede and Stampede Dam -- I'm sorry. Prosser is down  
8 here.

9 Page 12 of my rebuttal report, I have  
10 summarized each of these watersheds. And I actually  
11 went up there last weekend before last and took  
12 photographs, looked this country over again. I've been  
13 up there prior to that.

14 But there is 15 subwatersheds that are  
15 contributing to BOCA, 12 contributing to Stampede, each  
16 of which have their own tributaries to the Little  
17 Truckee River.

18 If we could switch back to the PowerPoint  
19 please.

20 And also we don't need to bring it up, but at  
21 pages 13 through 15 of my report are some photographs I  
22 took on July 17th of the Independence and Little Truckee  
23 River watersheds showing the comparison and differences.

24 So, in summary, the geographic scale and water  
25 availability at Independence are vastly different due to

1 the large difference in contributing watershed areas.  
2 Redistribution of storage from BOCA and Stampede which  
3 have a greater yield than the Independence water has the  
4 potential to expand the yield and storage potential.

5 We also had testimony from Ms. Phillips and I  
6 believe Mr. Blanchard as well as Mr. Van Camp about the  
7 practice of releasing in the fall Independence water to  
8 BOCA and Stampede which are much larger reservoirs which  
9 will essentially make room in Independence to capture  
10 additional water that, had that release not have been  
11 made, would have resulted in more spills.

12 Moving on to Mr. Mahin's testimony, the water  
13 quality settlement. He testified they have acquired a  
14 considerable amount of water rights from the Truckee  
15 Division of the Newlands Project, Claim 3 rights with a  
16 1902 priority.

17 They want to store that water in upstream  
18 reservoirs. Granted, they haven't filed an application  
19 yet, just like the tribe hasn't on unappropriated water.

20 However, they want to store it. That was his  
21 testimony. They want to carry it over.

22 So effectively, what they're going to be able  
23 to do is to have -- by that carryover storage, they're  
24 going to create what Mr. Knox in Colorado refers to as a  
25 super water right.

1           In other words, it's a water right with  
2 essentially the same priority, but because of storage  
3 and carryover it's going to provide a firmer yield than  
4 the similarly situated remaining Claim 3 rights in the  
5 Truckee Division. In my mind, that's just not right.

6           CO-HEARING OFFICER DODUC: Mr. Mahannah, I'll  
7 give you a few minutes to wrap up.

8           MR. MAHANNAH: Okay. I'm getting close.

9           Same deal for the tribe's unappropriated water.  
10 That's the most junior right. 1984 is when they filed  
11 that application. If they store that and carry it over,  
12 it has the potential to perhaps become a better water  
13 right than a 1902 priority water right.

14           So storage of these water rights would  
15 constitute a new right in my opinion and should not be  
16 loud.

17           25 percent rule. Mr. Mahin testified about how  
18 they would divert that.

19           There was testimony on cross out of the Orr  
20 Ditch Decree. The plain reading of that is that it  
21 applies to direct diversion of irrigation rights, not  
22 retention for storage or instream flow purposes.

23           So allowing one to store 25 percent per month  
24 without considering the initial use of that right and  
25 its respective consumptive use or return flow pattern

1 has a potential to harm downstream rights.

2           And I don't believe the Orr Ditch Decree  
3 contemplated a large user, i.e., the tribe, calling on  
4 large blocks of water. Claim 1 and 2 are 30,000 foot  
5 plus whatever they have acquired under WQSA, and they're  
6 calling on that at 25 percent per month.

7           And as Mr. Schank testified, that dried up the  
8 Truckee Division for I believe six weeks was his  
9 testimony last year.

10           That provision in my opinion in the Orr Ditch  
11 Decree was for farmers A, B, C, and D to manage their  
12 respective water for farming practices; i.e., if a guy  
13 wanted to plant a fall crop, he could save it till later  
14 in the year. If he knew it was going to be a  
15 water-short year, he could divert more at the beginning  
16 of the season.

17           I don't believe that it was intended to be used  
18 the way it's currently being administered.

19           So just in summary, items 1, 2, and 3 I've  
20 covered on my direct.

21           4, we've talked about, the water availability  
22 analysis are flawed for the reasons I previously stated.

23           Feel the petitions to change will initiate a  
24 new water right.

25           Pursuant to the California Code, the Petitioner

1 shall establish to the satisfaction of the Board that  
2 the change will not operate an injury to any legal user  
3 of water.

4 The Petitioner's own evidence, i.e., the  
5 results of the model, have showed increased shortages.

6 At a minimum --

7 CO-HEARING OFFICER DODUC: Wrap up now,  
8 Mr. Mahannah.

9 MR. MAHANNAH: At a minimum, if you don't deny  
10 the applications, I feel that they should -- you should  
11 delay action until the Nevada applications to change the  
12 tribe's -- to store the tribe's unappropriated water  
13 should be deferred to that.

14 And then finally, if the Board does approve the  
15 application of petitions, then water storage should be  
16 available for use in the Newlands Project to prevent  
17 shortages.

18 CO-HEARING OFFICER DODUC: Thank you.

19 Anything else, Mr. Van Zandt?

20 MR. VAN ZANDT: That's all I have. Thank you.

21 CO-HEARING OFFICER DODUC: Any questions at  
22 this time? Okay.

23 Please go join your witness, and if I could ask  
24 the joint attorneys who are doing cross to come up.

25 MR. PALMER: The others can chime in, but no

1 cross.

2 CO-HEARING OFFICER DODUC: No cross from  
3 Mr. Palmer. Mr. DePaoli?

4 MR. DePAOLI: I have no cross. The record is  
5 fine on all of this.

6 CO-HEARING OFFICER DODUC: Okay.

7 MR. PAGNI: I have no cross either.

8 MR. MIXSON: No cross.

9 CO-HEARING OFFICER DODUC: Mr. Soderlund?  
10 There is only Mr. Taggart.

11 MR. TAGGART: I guess so.

12 CO-HEARING OFFICER DODUC: Especially  
13 Mr. Taggart. Let me rephrase that.

14 Welcome, Mr. Taggart.

15 MR. TAGGART: Thank you.

16 --o0o--

17 CROSS-EXAMINATION BY MR. TAGGART

18 FOR CITY OF FERNLEY

19 --o0o--

20 MR. TAGGART: Good morning, Mr. Mahannah.

21 MR. MAHANNAH: Good morning, Mr. Taggart.

22 MR. TAGGART: You had a table that I hadn't  
23 seen before. You were comparing two tables, I think one  
24 in your rebuttal report and one that may be in a  
25 different -- or no. I think -- well, you had a table up

1 there I that haven't seen before today which adjusted  
2 the potential water availability based on capacity and  
3 the unappropriated water being delivered below Derby.  
4 Do you recall that?

5 MR. MAHANNAH: Yes.

6 MR. TAGGART: And I just want to clarify that  
7 in that scenario you're assuming that the tribe's  
8 unappropriated water would not be stored in Stampede,  
9 correct?

10 MR. VAN ZANDT: I want to make sure we have the  
11 right table that you're talking about, Mr. Taggart. Is  
12 it page 8 of Mr. Mahannah's TCID 287?

13 MR. TAGGART: Thank you, Mr. Van Zandt. Yes.  
14 That is the one I'm referring to.

15 MR. VAN ZANDT: Thank you.

16 MR. TAGGART: So do you remember my question?

17 MR. MAHANNAH: If you could restate it, that  
18 would be helpful.

19 MR. TAGGART: This is assuming that the tribe's  
20 unappropriated water is not being stored at Stampede,  
21 correct?

22 MR. MAHANNAH: Yeah. This is assuming that  
23 it's still being utilized as an instream flow right  
24 below Derby.

25 MR. TAGGART: Okay. You testified about an --

1 I think you called it a super water right in Claim 3.  
2 And my question for you is that -- is it essentially  
3 your opinion that if any water user in Claim 3 does not  
4 want to utilize upstream storage, then no water user in  
5 Claim 3 can utilize upstream storage? Is that your  
6 opinion?

7 MR. MAHANNAH: I think my opinion is if some  
8 are going to use upstream storage, then all should be  
9 able to use upstream storage.

10 MR. TAGGART: So if all have a right to use  
11 upstream storage, that would allow for individuals to  
12 exercise that right?

13 MR. MAHANNAH: I think that was the last bullet  
14 in my summary, that if upstream storage could be  
15 available, made available to the Newlands Project, that  
16 would help the situation.

17 MR. TAGGART: And my last -- the last questions  
18 I have have to do with the 25 percent rule.

19 And you believe, do you not, that the Orr Ditch  
20 Decree rule regarding the use of 25 percent of a water  
21 right in any one month should not be applied to any  
22 manner of use other than irrigation; is that your  
23 opinion?

24 MR. MAHANNAH: I think that's the plain reading  
25 of the -- what it says on page 87 of the decree.

1 MR. TAGGART: Well, the Nevada State Engineer  
2 disagreed with your opinion, did he not?

3 MR. MAHANNAH: Yeah, and I don't think --

4 MR. TAGGART: Did he or didn't he?

5 MR. MAHANNAH: He has disagreed with that. But  
6 it's -- that issue is on appeal. And I don't think it's  
7 a surprise to anybody that we disagree with the State  
8 Engineer.

9 MR. TAGGART: I just want to be clear for the  
10 record. You made this argument to the Nevada State  
11 Engineer, correct?

12 MR. MAHANNAH: In December, yes.

13 MR. TAGGART: Okay. In TMWA Exhibit 1-5, at  
14 page 7, I just want to point the Board to the Nevada  
15 State Engineer's rejection of this argument in a  
16 paragraph entitled 25 Percent Per Month Restriction.

17 The State Engineer wrote there that the  
18 Protestants argue --

19 CO-HEARING OFFICER DODUC: And you have a  
20 question, Mr. Taggart?

21 MR. TAGGART: I don't have a question. I just  
22 want to point that out to the Board, that this issue has  
23 been addressed.

24 CO-HEARING OFFICER DODUC: Noted. Thank you.

25 MR. MAHANNAH: Well, I disagree that it's

1 been --

2 MR. TAGGART: I don't have a question to you  
3 right now, Mr. Mahannah.

4 Then you indicated that -- I think you  
5 indicated that water was not available for six weeks for  
6 irrigation in the Truckee Division last year based on  
7 Mr. Schank's testimony, correct?

8 MR. MAHANNAH: I believe that was his testimony  
9 last week.

10 MR. TAGGART: Isn't it true that the period  
11 that water was not available was the same period that  
12 rates, Floristan rates, could not be met in the river,  
13 and that's what was a major factor in why water was not  
14 available for irrigation in the Truckee Division?

15 MR. MAHANNAH: That may have had something to  
16 do with it.

17 But when the tribe calls on Claims 1 and 2 or  
18 WQSA water or when Fernley files a temp to move it for  
19 instream flow and call on it at 25 percent per month,  
20 that takes a lot of water out of that Floristan rate  
21 that has to pass Derby.

22 MR. TAGGART: Even when Floristan rates aren't  
23 being met?

24 MR. MAHANNAH: I believe so, yeah.

25 MR. TAGGART: And are you aware that most of

1 the water users in Fernley for farming purposes in that  
2 period of time wanted to use their water on the weekends  
3 and not during the week?

4 MR. MAHANNAH: I was -- I'm not aware of the  
5 specifics. I was relying on what Mr. Schank said. And  
6 even regardless --

7 MR. TAGGART: Well --

8 MR. MAHANNAH: -- of what he said --

9 MR. VAN ZANDT: Has --

10 MR. MAHANNAH: Can I finish my answer please?

11 MR. TAGGART: You answered the question I asked  
12 you.

13 MR. VAN ZANDT: I would like to allow the  
14 witness to answer, please.

15 CO-HEARING OFFICER DODUC: Mr. Taggart, hold on  
16 a second. Continue, Mr. Mahannah.

17 MR. MAHANNAH: I think as I stated in my  
18 rebuttal testimony, it's not too difficult to grasp the  
19 logic that when you have one large user that's acquired  
20 rights and combined them into one large pot of water and  
21 calls on them at one particular point in diversion, that  
22 that can cause harm.

23 MR. TAGGART: Well, in reaching your  
24 conclusion, did you analyze the weekly hydrographs for  
25 water in the canal during that six-week period of time?

1 MR. MAHANNAH: No. I think I've already stated  
2 that.

3 MR. TAGGART: And did you analyze the water  
4 delivery patterns in the Truckee Division during that  
5 period of time?

6 MR. MAHANNAH: No, I did not.

7 MR. TAGGART: And did you determine whether or  
8 not calls for water at individual farms in Fernley were  
9 made on the weekends versus during the week?

10 MR. MAHANNAH: No, I did not.

11 MR. TAGGART: Okay. And are you aware that  
12 many of the farming areas in Fernley are now small plots  
13 of land; they're no longer large farms? Are you aware  
14 of that?

15 MR. VAN ZANDT: Relevancy.

16 CO-HEARING OFFICER DODUC: I'll allow the  
17 question.

18 MR. MAHANNAH: Yeah. The City of Fernley has  
19 acquired water as well as the tribe, and Reno/Sparks,  
20 Washoe County have acquired a significant amount of  
21 water from the Truckee Division.

22 MR. TAGGART: That's completely nonresponsive.  
23 I move to strike.

24 My question was: Are you aware that many of  
25 the farms in Fernley are no longer large farms but have

1 been divided up into small areas for farming?

2 MR. MAHANNAH: In a general sense, that's true.  
3 I don't do any work for Fernley so I would -- just  
4 driving through there, it's being urbanized.

5 MR. TAGGART: Wouldn't you agree that if all  
6 those individual small farms called for all of their  
7 water only on the weekends that would cause a problem  
8 for water delivery because if all the demand occurred in  
9 a two-day period instead of a seven-day per that would  
10 make it difficult to deliver water to all the farms?

11 MR. MAHANNAH: Well, there was also calls  
12 further downstream for Swingle Bench on the Truckee  
13 Division. Whether they were calling on weekends, I  
14 don't have that knowledge sitting here right now.

15 MR. TAGGART: Without regard to that, can you  
16 answer my question?

17 CO-HEARING OFFICER DODUC: He answered your  
18 question.

19 MR. TAGGART: Okay. I have no further  
20 questions. Thank you.

21 CO-HEARING OFFICER DODUC: Thank you.

22 Any redirect, Mr. Van Zandt?

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REDIRECT EXAMINATION BY MR. VAN ZANDT

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MR. VAN ZANDT: Mr. Mahannah, Mr. Taggart asked you about the so-called super water right for Claim 3 and if any other water user under Claim 3 wanted to store water upstream and everybody had that available to them, if that would take care of the issue.

And my question to you is: In your recommendation to the Board on storage, potential storage for Claim 3 upstream, would that necessarily have to include a carryover storage right to become a super water right?

MR. MAHANNAH: Yes.

MR. VAN ZANDT: And Mr. Taggart asked you about the 25 percent rule, and I think you wanted to explain a little bit more about the status of the 25 percent rule with regard to the Nevada State Engineer determination and the subsequent appeal.

Could you explain that, please.

MR. MAHANNAH: Yeah. I just wanted to make the point that that is not a done deal. That decision is currently under appeal.

And Mr. Taggart, Mr. DePaoli, all the attorneys in this room have appealed many State Engineer's

1 decisions and won on a variety of occasions.

2 So the fact that I disagree with the State  
3 Engineer, that shouldn't be news to anybody.

4 MR. VAN ZANDT: And Mr. Taggart mentioned to  
5 you these weekly hydrographs and calls on water on the  
6 weekends, and the existence of small plots of land in  
7 Fernley.

8 Would any of those factors necessarily change  
9 your opinion with regard to the exercise of these large  
10 deliveries of water downstream of Derby and its impact  
11 on diversions into the Newlands Project?

12 MR. MAHANNAH: No.

13 MR. VAN ZANDT: That's all I have.

14 CO-HEARING OFFICER DODUC: Any recross?  
15 Mr. Taggart?

16 MR. TAGGART: No.

17 CO-HEARING OFFICER DODUC: Thank you.

18 Mr. Van Zandt, at this time would you like to  
19 move your rebuttal exhibits into evidence?

20 MR. VAN ZANDT: I would like to move TCID 287,  
21 288, 289, 291, 292, 294, 295, 298, 299, 300, and 301  
22 into evidence.

23 CO-HEARING OFFICER DODUC: Objections?

24 MR. PALMER: Yes. Mainly for clarification.

25 TCID Exhibit 289. I'm not sure what that is or

1 where it comes from. It's a page out of something.  
2 Maybe we could have the entire report, whatever this is  
3 from, into the record please, for context?

4 CO-HEARING OFFICER DODUC: Mr. Van Zandt?

5 MR. VAN ZANDT: Yes.

6 Mr. Mahannah, can you identify TCID Exhibit 289  
7 for the record, please.

8 MR. MAHANNAH: Yes.

9 It's a little bit difficult to read. The  
10 footnote there -- that's my handwriting on the bottom.  
11 And I believe the title of this document is Simulated  
12 Water Management and Evaluation Procedures For Cui-ui,  
13 published by Chet Buchanan and Thomas Strekal in 1988,  
14 both of whom were witnesses at this hearing as well as  
15 in 9330.

16 MR. VAN ZANDT: What is the source of Table 1,  
17 which is Exhibit 289?

18 MR. MAHANNAH: I believe it's out of that  
19 document. I -- I don't know that I have the entire  
20 document here with me, but I could look when we get back  
21 on the office and provide that if I have it.

22 MR. VAN ZANDT: Okay.

23 CO-HEARING OFFICER DODUC: That would be fine.

24 Any other objections, Mr. Palmer?

25 MR. PALMER: Maybe just because I haven't had

1 time to look at it very carefully, but TCID 291. Again,  
2 I'm not sure where this comes from, need a little  
3 explanation.

4 MR. VAN ZANDT: Mr. Mahannah, can you identify  
5 the source of TCID Exhibit 291?

6 MR. MAHANNAH: Yes.

7 This came as a result of some inquiries with  
8 State Board staff on how you define storage. And this  
9 is what I believe is referred to as the 30-day rule  
10 Title 23, Division 3 CCR Section 657.

11 And I believe this is how the Board calculates  
12 storage in more modern times in reservoirs.

13 CO-HEARING OFFICER DODUC: Are you asserting  
14 this is a Board document?

15 MR. MAHANNAH: It was provided. It was  
16 e-mailed to me by staff.

17 MR. VAN ZANDT: So this comes out of the  
18 records of the State Water Resources Control Board?

19 MR. MAHANNAH: I would assume so because it was  
20 e-mailed to me from Board staff.

21 SENIOR STAFF COUNSEL MAHANEY: If I may  
22 clarify.

23 In TCID 292, you have an e-mail from Kate  
24 Gaffney to you. Are you saying that this is an  
25 attachment to that e-mail?

1           MR. MAHANNAH: That's correct. If you read  
2 down through the back-and-forth, she says attached is  
3 the policy for determining -- determination of storage  
4 in a water year.

5           CO-HEARING OFFICER DODUC: Thank you, Mr.  
6 Mahannah. Next, Mr. Palmer?

7           MR. PALMER: So this is a State Board document,  
8 this attachment?

9           SENIOR STAFF COUNSEL MAHANEY: I believe he is  
10 testifying that State Board staff sent him that document  
11 as an attachment to the e-mail.

12          MR. PALMER: Well, I'd continue the objection  
13 because State Board staff is not here to testify, and we  
14 have no idea of the validity of this document and what  
15 it purports to show. So I object to that being entered  
16 into evidence.

17          CO-HEARING OFFICER DODUC: Objection is noted.  
18 Anything, Mr. DePaoli?

19          MR. DePAOLI: I would object to all the  
20 exhibits for the reasons I stated orally initially.

21                 And I would further object on hearsay grounds,  
22 particularly with respect to the rebuttal testimony as  
23 well as the transcript that was attached and much of the  
24 oral testimony.

25          CO-HEARING OFFICER DODUC: Thank you,

1 Mr. DePaoli.

2 Since I've gotten your name right once, I still  
3 hesitate to use it again and blow it. Mr. Pagni.

4 MR. PAGNI: Yes. Perfecto.

5 I would join in Mr. Palmer and Mr. DePaoli's  
6 objections.

7 CO-HEARING OFFICER DODUC: Mr. Mixson.

8 MR. MIXSON: I join in the objections.

9 CO-HEARING OFFICER DODUC: Mr. Soderlund -- oh,  
10 Mr. Taggart is next.

11 MR. TAGGART: We join as well. Thank you.

12 MR. SODERLUND: We join as well. Thank you.

13 CO-HEARING OFFICER DODUC: Thank you.

14 As we discussed yesterday, and Ms. Mahaney will  
15 provide further details on, you'll have been requested  
16 to provide us with your list of objections to TCID's  
17 exhibits for their direct and the reasons for your  
18 objections.

19 I would ask that you also add to that list your  
20 objections on these rebuttal exhibits as well.

21 And with that, I don't believe there is  
22 anything else. Mr. Van Zandt?

23 MR. VAN ZANDT: No further witnesses.

24 CO-HEARING OFFICER DODUC: Okay. Mr. Palmer?

25 MR. PALMER: If it's appropriate now, we have

1 the corrected coordinate documents.

2 We have five hard copies and a CD, everything  
3 redone with the corrections we read into the record this  
4 morning. So I can provide that.

5 CO-HEARING OFFICER DODUC: Being mindful of  
6 Mr. Van Zandt's cautionary note yesterday regarding  
7 these coordinates, are we sure they're correct this  
8 time?

9 MR. PALMER: That's what I understand.

10 CO-HEARING OFFICER DODUC: Okay. Thank you,  
11 Mr. Palmer.

12 At this time, I'm going to ask Ms. Mahaney to  
13 go over some procedural matters with respect to what  
14 comes next after the conclusion of this wonderful  
15 hearing.

16 Ms. Mahaney.

17 SENIOR STAFF COUNSEL MAHANEY: I'm going to go  
18 over three matters.

19 First are the objections to TCID's exhibits.  
20 If the joint parties would identify the exhibits that  
21 they are objecting to and the grounds for those  
22 objections, we would like to receive that by 5 o'clock  
23 on Friday, tomorrow, July 30th.

24 You don't need to write a brief. However, just  
25 enough detail to explain to us and to Mr. Van Zandt the

1 basis for your objection. It may be very brief. We  
2 just want to make sure we understand which exhibits you  
3 are objecting to and the ground for those objections.

4 Mr. Van Zandt, we would like your response by  
5 5 o'clock on Tuesday, August 3rd.

6 MR. VAN ZANDT: That would be fine except I  
7 have jury duty on the 2nd, so can we push it to  
8 Wednesday?

9 SENIOR STAFF COUNSEL MAHANEY: Okay. So  
10 5 o'clock on Wednesday, August 4th.

11 We anticipate ruling on those objections early  
12 in the week of August 9th.

13 Next, I'd like to go over closing briefs. My  
14 understanding from the court reporter is that we should  
15 have the transcript, the full official transcript,  
16 within approximately two weeks.

17 So approximately August 12th will give you  
18 three weeks after the transcripts are available to  
19 submit your briefs.

20 Early in the week of August 9th, we will send  
21 out a letter specifying the requirements for the briefs,  
22 any page limits, and something to think about as you  
23 prepare for those, for drafting your briefs.

24 Of course you may address the issues in the key  
25 hearing notice, but we will also likely request briefing

1 on certain issues, and those issues will be identified  
2 when we send out the request -- the information  
3 regarding the briefs early in the week of August 9th.

4 So just a heads-up we may ask very specific  
5 questions.

6 We will also send out notification when the  
7 transcripts, when the full transcripts, are available  
8 and confirm the date of availability. But roughly, it  
9 will be around September 2nd or so, just to give you a  
10 ballpark. But again, we will confirm those dates.

11 Finally -- does anyone have questions about  
12 anything so far? Okay.

13 Finally, we don't normally do this, but since  
14 many of you have not appeared before the Board or have  
15 not appeared frequently, I'm just going to very briefly  
16 walk through the process for how the Board adopts an  
17 order and the Petition For Reconsideration process.

18 The State Water Board meets twice a month. It  
19 holds Board meetings. What will happen is, once an  
20 order is drafted, the Board may consider that order at a  
21 closed session. That closed session will be identified  
22 on the Board's agenda.

23 It may consider the item at more than one  
24 closed session, so you may see multiple agendas with  
25 that listed as a closed session item.

1           The Draft Order will be sent out to the public,  
2 and the public will be given an opportunity to comment  
3 on it. Those comments will be considered at a Board  
4 meeting.

5           If the Board adopts the order, that will then  
6 trigger a reconsideration period of 30 days where the  
7 parties will have an opportunity to petition for  
8 reconsideration on variation grounds.

9           The reconsideration statute and regulations  
10 will be identified in the cover letter sent out with the  
11 order. But if you want to look at them ahead of time,  
12 they begin at Water Code Section 1122 and begin at  
13 California Code of Regulations, Title 23, Section 768.

14           The Board has 90 days after it has adopted an  
15 order to act on a Petition For Reconsideration.

16           We do not lose jurisdiction if we do not meet  
17 that 90-day deadline, but roughly that's what we will be  
18 looking at in acting on any Petitions For  
19 Reconsideration.

20           Any questions?

21           MR. VAN ZANDT: Just a question on the briefs.

22           Will there be -- both parties will submit  
23 briefs at the same time with one response? Is that  
24 the --

25           SENIOR STAFF COUNSEL MAHANEY: No. Just



1 CERTIFICATE OF REPORTER

2 I, LINDA KAY RIGEL, a Certified Shorthand  
3 Reporter of the State of California, do hereby certify:

4 That I am a disinterested person herein; that  
5 the foregoing STATE WATER RESOURCES CONTROL BOARD  
6 hearing was reported in shorthand by me, Linda Kay  
7 Rigel, a Certified Shorthand Reporter of the State of  
8 California, and thereafter transcribed into typewriting.

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

12 IN WITNESS WHEREOF, I have hereunto set my hand  
13 this August 13, 2010.

14

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LINDA KAY RIGEL, CSR  
Certified Shorthand Reporter  
License No. 13196

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