HEARING

STATE OF CALIFORNIA

WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

IN THE MATTER OF:                   )
   Hearing to Consider a Petition )
to Change the Place of Use involving) Water Right Permits 16478, 16479, )
   16481, 16482, and 16483                     )
   (applications 5630, 14443, 14445A, )
   17512, and 17514A) of the California) Department of Water Resources and )
   Water Right Permits 11315, 11316, )
   11885, 11886, 11887, 11967, 11968, )
   11969, 11970, 11971, 11972, 11973, )
   12364, 12721, 12722, 12723, 12725, )
   12726, 12727, 12860, and 15735 )
   (Applications 13370, 13371, 234, )
   1465, 5638, 5628, 15374, 15375, )
   15376, 16767, 16768, 17374, 17376, )
   5626, 9363, 9366, 9367, 9368, 15764 )
   22316) and License 1986(Application) )
   000023) of the United States Bureau )
   of Reclamation.                               )

VOLUME I

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1001 I STREET

COASTAL HEARING ROOM

SACRAMENTO, CALIFORNIA

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| PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345        |
CO-HEARING OFFICER BAGGETT: Good morning.

Welcome to this hearing regarding the Department of Water Resources and Bureau of Reclamation's petition to consolidate the places of use of the State Water Project and the Central Valley Project by amending certain water rights held by the two petitioners.

I'm Art Baggett, member of the Board. With me is our Chair, Charles Hoppin. Also present today are Dana -- our Staff Counsel Dana Heinrich, Staff Engineer Ernie Mona, and Environmental Scientist Jane Farwell.

I think you all know the evacuation procedures. It looks like we have an audience of well accomplished experts at evacuation in the State Water Board. If there's an emergency, follow the exit signs, across the street to the park. And take your valuable.

This hearing is being held in accordance with a public notice dated March 30th, 2009 and the pre-hearing conference we held on April 16th.

This hearing will afford participants who have filed a notice of intent to appear an opportunity to present relevant oral testimony and other evidence that address the following key issues:

First, should the subject petition to change the place of use under the specified licenses and permits of...
Reclamation and the Department be approved?

Second, if the subject petition is approved, what, if any, terms and conditions of the approval should be imposed?

Third, would approval of the subject petition be subject to any appropriate terms and conditions, initiate a new right or injure other legal users of water?

Fourth, would approval of the subject petition unreasonably affect water quality for fish, wildlife, or other in-stream beneficial uses?

Fifth, are the proposed changes in the public interest?

Sixth, what would be the effects or impacts to the State of California if the proposed changes are not approved?

This hearing is being webcast to the public and some parties are participating by teleconference. It's also being recorded on both audio and video -- on audio and video.

A court reporter is present to prepare a transcript of the proceedings. If you'd like a copy, you can make separate arrangements.

So when you speak, if you could speak clearly into the mike so everyone can hear, that would be helpful.

And, likewise, if you have a card to present the
Before we begin the evidentiary portion, we will hear from any speaker who wishes to make a policy statement in these proceedings. If you wish to make a policy statement, please fill out a blue card and hand it to the staff if you have not done so.

The board also accepts written policy statements, and we have a number of those. If you have written copies, please give them to our staff.

If you have cell phones, could you please turn them off. This will be the last warning.

(Laughter.)

CO-HEARING OFFICER BAGGETT: Speaking of cell phones, I should probably do the same.

A policy statement is a non-evidentiary statement. It's subject to the limitations listed in our hearing notice. A person making policy statements must not attempt to use their statements to present factual evidence, either orally or by introducing a written exhibit. They should be limited to five minutes or less.

So when we call your name, if you could come up to the microphone and proceed, that would be helpful.

With that, we'll begin with the policy statements.

I think we have the Assemblyman. You're up
first.

Good morning. Good morning.

ASSEMBLY MEMBER ARAMBULA: Good morning. Good morning to all of you. My name is Juan Arambula. I have the pleasure of representing the 31st District in the State Assembly. Basically it's the Fresno and surrounding areas. And I'm here today to share a few words regarding what's going on in my district, and hoping that you are able to take it into account in terms of your work and your deliberations.

You know, when I was in grad school, I studied statistics and I always found them a little boring and dry. But I'd like to share some statistics with you today and try to bring them to light in terms of what is currently going on in the Central Valley.

We hear about zero allocation for the west side of the San Joaquin Valley in terms of water from the Federal Project. We hear about unemployment rates of 40 percent or greater in several communities on the west side. And more recently we've heard that there may be an increase from zero allocation to 10 percent allocation of water for this region of central California.

What I'm here to do is to share with you what this means in terms of people. I represent communities such as Mendota and Firebaugh, San Joaquin, Tranquility,
and other unincorporated communities that have been devastated, that have unemployment rates approaching twice what the unemployment rate was during the Great Depression. Back in the thirties we mobilized our nation to deal with an unemployment rate of approximately 25 percent. And yet in many of these communities the unemployment rate is nearly double that amount. It is having a devastating impact on the workers, on the local merchants, on the ability of cities to provide services to their residents.

And I am one of the individuals in the State Assembly who has been tasked with trying to find a long-term solution to the problems facing the State in terms of its water delivery. But that is in the long term. And as was said during the 1930s, during the Great Depression, people lead in the short-term, and they cannot wait to have us in the Legislature find a long-term solution. They need some help right now.

It seems to me that there may be some consideration that you can give to short-term solutions that will help our people survive until we find a more permanent long-term solution. And I would encourage you to give every possible consideration to what can be done to help people now. My folks are suffering. They are going through some very, very difficult times.
There was one lady, a farmworker, who said recently at a public meeting, "I don't want charity. I don't want to be a burden on anybody." And while we have been able to provide some emergency food to her and to other thousands of families on the west side, her comment was, "I appreciate the food and it does help my family. But it doesn't allow me to buy Pampers for my children. It doesn't allow me to buy medicine for my children. It doesn't allow me to have the income that I need to pay the rent and to take care of other necessities.

So on her behalf and on behalf of the literally tens of thousands of farm workers that have been impacted, not only by the drought, but also because of recent federal court decisions, I urge you to please give consideration to what you can do in the short term to provide relief to these very hard working and very deserving individuals.

So thank you again for allowing me this time to share with you a personal perspective on what is going on in the Central Valley. And we certainly encourage you to give every consideration to realistic practical proposals that can be of help to them.

Thank you very much.

CO-HEARING OFFICER BAGGETT: Thank you.

I have a couple other policy statements.
Michael from the Public Trust Alliance.

MR. WARBURTON: Good morning. I'm Michael Warburton, the Executive Director of the Public Trust Alliance, a project of the nonprofit Resource Renewal Institute.

I'm here to say that the consolidated place of use changes to water project permits and licenses are not in the public interest at this time. It might make sense at some future time if we knew anything about the scale of the project and could design believable protections for public rights. But rushed through without consideration, this will almost undoubtedly result in continued high levels of Delta exports that will place public trust resources at risk.

The new place of use, while attractive to upstream right-holders and newly enabled purchases, will almost certainly result in greater pressure on source water supplies.

If you think of the projects as a straw reaching into the State's water, these changes will have the legal impact of increasing the force of suction in a system already overappropriated upstream where substantially more rights to water are recognized than there is actual water in nature.

The changes will enable a few more years of
sketchy math that always seems to cheat the environment.
We can do a lot better than this.
Since our founding in 2001, the Public Trust
Alliance has been calling attention to the Public Trust
Doctrine as a valuable tool to defend our most valuable
heritage and give signposts for a reasonable path forward
from crisis. The doctrine reflects fundamental public
interests inherent in the property that will be affected.
It can't be ignored.

While more specific laws should be enough to
guide responsible action, my organization is gravely
concerned that emergency-inspired overreaching for the
benefit of private right-holders will be substituted for
deliberate debate and defense of public interests in this
proceeding.

Neither the State Water Project nor the
Reclamation Act were intended to create a dynasty of water
marketers. But that could be the result of the changes in
rights being considered here.

From our perspective, insuring responsible action
is what this hearing is about. The legal obligation of
the State Water Resources Control Board is to oversee not
only an efficient allocation of public water, but a
responsible one as well.

The very capacity of our land to support life is
at stake in public decisions like this. And we don't want
to see transparency or accountability diminished for
short-term convenience. We want to make sure that future
generations of Californians will live in an ecologically
viable California. In a time of economic and climatic
crisis, it becomes more important to concentrate on the
contours of long-term responsibility than to grasp for
fleeting short-term indicators or maximizing current
market gains which bear little relation to long-term
public value.

Unfortunately, there's a lot of political
pressure and a seeming willingness to abandon deliberate
negotiation in favor of adopting, under the pressure of a
perceived emergency, new legal conditions that have been
sought by water contractors for a long time.

We're being told that the merged place of use
definitions will only affect water already in the project.
But what it will probably do is open the projects to new
water that would never come in without relaxed standards.
Without other institutional supports, merged place of use
makes accounting and transparency of transfers far more
difficult. Past experience with the petitioners showed
the costs will most likely be borne by our environment.

In other planning processes our organization has
tried to articulate enduring public interests, both
designated legal trustees and public beneficiaries.

We see the continuing jurisdiction of the State Board not as a meaningless recitation included in all State licenses but as a concrete legal responsibility.

Our Supreme Court has made it clear many times over that no matter how much some people might wish that public obligations would just disappear, there's a required public inquiry when trust resources are involved. And there is an affirmative obligation to project trust values whenever feasible.

These resources are at extreme risk at the historically high levels of water exports that California has maintained in the last several years.

A few points to think about in the case coming up:

The status of the emergency, which is being relied upon to justify accelerated action, is very much in the hands of the petitioners themselves and their own definitions and enforcement actions. That's not a recipe for public credibility or anything approaching responsible public regulation. Now is not the time to respond to calls for more flexibility by relaxing boundaries for accountability without fundamental protections for public rights.

The financial industry wanted a little
flexibility when they told us it was just common sense to allow the merger of banking, investment bank, and insures businesses when strict separation had been required in the past. Now we're beginning to find out what it means to lose public accountability in financial markets. And it's going to get a lot worse before it gets better.

We can't afford the do the same thing with our water and the ecological systems that ultimately support us. You can't just declare bankruptcy and reorganize when you're playing with species extinction.

In California water, the separation between the operations of federal and State projects have generated different standards of accountability, benefit and repayment in addition to the simple geographic district boundaries. Federal regulators and contractors have ignored State responsibilities. And even the application of science has been suspended to the extent that it was even very recently difficult to get judicial notice of reality.

The public has good reasons not to trust these regulators, who've gotten cozy with their contractors. We all know about the revolving doors which find professionals negotiating on behalf of the public one minute and just a few minutes later walking into executive positions on contractors' staffs.
There's a tremendous need for transparency and clear boundaries for accountability. Regulatory energy would be far better applied solving these fundamental problems rather than creating zones of uncertainty and accounting difficulty. We're now grappling with an economic crisis where people don't even know the value of the homes they lived in for many years, and many of lost any hope of a protected retirement.

But we're not just in an economic crisis. As a society, we're just beginning to see the scale of the damage to our legal institutions and our public understanding of the rule of law.

The former president of a major stock exchange has pleaded guilty to running the biggest Ponzi scheme in history.

Last week a television news commentator described different official legal approaches to State-sanctioned torture as a policy difference between the Bush and Obama administrations. There's very real risks that people in our State will take those words at face value and think that's the extent of what's going on.

If the legal profession itself gets too lax on the concept of rule of law, everybody loses. I just read a tentative ruling by a San Diego judge in a CEQA case that reminded me in that town the developer always wins.
when public assets are being given away.

The rhetoric that people are hearing from public authorities is becoming less and less believable in nearly every forum. The only cure for this situation is increased transparency so people can see for themselves how closely the rhetoric matches the reality that they lived with.

A trumped-up emergency should not be used to avoid environmental analysis of long-term water transfers. Yet that seems to be the direction that this is going. If this relaxation of institutional boundaries of accountability is accomplished under the guise of this year's drought emergency, it will be done at the cost of adopting the legal standard of a banana republic and to deliberately place in California's most precious assets a completely foreseeable risk. We don't need to do that. It's not in the public interest.

I hope that the evidence presented and examined here will lead to a responsible decision that supports the health of Californians in the long term. We owe that to our children and grandchildren.

CO-HEARING OFFICER BAGGETT: Thank you.

With that, I have four written policy statements. But you could have an opportunity to give a summary, if you'd like.
Friant Water Authority.

MR. OTTEMÖELLER: Good morning, Board Member Baggett, Chairman Hoppin. Thank you for the opportunity to address the Board this morning on the hearing before you to temporarily consolidate the places of use of the Friant -- of the federal and State project service areas.

My name is Steve Ottemöeller. I'm the Water Resources Manager for the Friant Water Authority and the Friant Water Users Authority. I'll summarize our policy statement here briefly.

We are in full support of this consolidated change in the place of use for the two projects. We believe it will provide some necessary and very important flexibility within the next year to two years to allow the projects and the managers to deal a little bit better with the situation that they're facing.

The Friant Water Authority, as you know, is located on the east side of the San Joaquin Valley, and for the most part -- well, entirely our ability to use the water on the San Joaquin River and distribute it to the north and south of the San Joaquin River along the east side is dependent on an exchange of water rights that the United States Bureau of Reclamation undertook in the 1930s.

Although we are sometimes considered
hydrologically separate from the rest of the Central Valley Project, we received a strong warning this year as we were looking at the water supply situation, and seeing that there was a strong potential that the United States would have to use San Joaquin River water to serve some of the west side farmers, the exchange contractors, on whose rights are supplies is based.

As it turns out, there has been just enough rain and precipitation that that's not an issue. But as we were preparing for that, one of the things we were trying to figure out how we could do would be find ways to move water from the east side to the west side without enduring some of the high losses that would occur in the San Joaquin River.

One of the mechanisms that we envisioned was moving the water down south through the Friant Kern Canal into Kern County and exchanging that water with State Project water that would be sitting in San Luis Reservoir. That would have required a change in place of use, and we initially supported this largely on that basis.

Since that time, as I noted, we don't need that particular tool for our own water supply. But we do have neighbors on the west side who still only have a 10 percent water supply, 10 percent of their contract supply. This change in place of use would allow an
exchange, which I think you will hear in more detail in
testimony, but we want to highlight it here, whereby
districts on the Friant side would send some of their
water down to the Friant Kern Canal through the Cross
Valley Canal and into the aqueduct. That water would be
delivered to State water contractors, who would then
exchange that water back up into San Luis. The primary
purpose for that exchange mechanism is to facilitate some
groundwater pumping within Westlands to enhance their
supply. And it's a mitigation for water quality.

There would be no net loss of water to the Friant
system because the water would be brought back either
later this year or next year. So particularly with
respect to that transfer we're talking a short-term
exchange, no impact to the environment, nobody's losing
any water, and we're helping the folks on the west side.

I would emphasize and hope that you would make
sure you don't I guess overstate what's happening here.
Again, this is a temporary change in the place of use for
the projects. It will facilitate doing things on a timely
basis to take advantage of whatever opportunities are
available.

In my 20 years' experience in dealing with
California water issues, I sincerely doubt that there
would be any significant increase, if at all, in terms of
total water certainly not moving from north to south. It will facilitate water being moved to places it's normally moved, but just done on an expedited basis. And we would encourage you to approve the petition.

CO-HEARING OFFICER HOPPIN: If you could clarify one point for me. You mentioned a moment ago that the water you would send to the west side would be returned later in the year. Would you give us just a brief overview of that mechanism.

MR. OTTEMOELLER: A couple of mechanisms are available. One would be that the water would be sent down the California Aqueduct back into the Cross Valley Canal, moved east to the Friant Kern Canal where there is a 500 cubic foot per second inter-tie. It'd basically be moving water back the same way it went there. And then water would be delivered back to Friant districts at the southern end of the Friant Kern Canal.

Water could also be returned to the east side through an exchange with the Tulare Lake Basin Water Storage District, who has some water rights on the Kings River through multiple exchanges involving Fresno ID and the City of Fresno. Some of that water could be brought back and delivered back to the Friant districts. So those -- we're working on those arrangements right now. We think they're both feasible and likely.

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CO-HEARING OFFICER HOPPIN: Thank you.

CO-HEARING OFFICER BAGGETT: Thank you.

With that, I have three parties who are parties for purpose of cross-examination who'd like to make policy statements as opposed to opening statements. So as long as you realize you won't get an opening statement also, well, you can do it now.

We have the County of San Joaquin and then Mr. Herrick after that.

MS. GILLICK: Good morning. DeeAnne Gillick on behalf of the County of San Joaquin and the San Joaquin County Flood Control and Water Conservation District. I did submit a written policy statement on behalf of the county and will do a summary this morning.

Due to the unique water conditions and shortages that the State is currently experiencing, the county does not object to the temporary petition to consolidate the places of use.

The county is concerned about everyone who is suffering through water shortages during this drought year, including the areas within the County of San Joaquin.

However, the county is gravely concerned about the CVP and State Water Project's continuing failure to observe the State -- and the State Water Board's failure
to enforce the permit conditions applicable to DWR and the
USBR relative to the CVP and the State Water Project,
particularly those regarding salinity control.

The petition that's before you today must be
conditioned, and they must be meaningful conditions placed
upon the Bureau and the DWR to meet those water quality
control standards.

You know, this year, in 2009, there have been
repeated violations of the water quality control standards
in January, February, March, and April. DWR represents
that there's no violations or have represented that
there's no violations, when, you know, the readings are to
the contrary.

In addition, the county has not received any
reports from the Bureau or DWR indicating that there's
been violations of standards. And that's a direct
inconsistency with the CDO order from 2004, in which the
county, the State Board and the other parties to the CDO
hearing were to receive reports.

This is just evidence of DWR's and the Bureau's
attitude that it's not important to meet the salinity
standards and it's not important to comply with the State
Board Order's simple reporting. That's not even
occurring.

The initial modeling indicates that even in these
years of droughts the salinity standards within the Delta can be met with modifications to the barrier systems and other things. The South Delta Water Agency and the Central Delta Water Agency have presented and been in dialogue attempting to get these implementation changes made. We encourage the State Board to require these changes so that the salinity standards can actually be met even in these times of droughts, consistent with the initial modeling. And it's just important that, you know, even if these transfers occur, that the salinity standards and the conditions on the CVP and the State Water Project continue.

As you know, two-thirds of the legal Delta's been located within San Joaquin County. San Joaquin County has a vested interest in the important and critical water issues that are facing this state.

And we encourage the State Board to place meaningful conditions and to enforce those conditions so that the water system within the State can operate and operate properly.

Thank you.

CO-HEARING OFFICER BAGGETT: Thank you.

Mr. Herrick.

MR. HERRICK: Thank you, Mr. Chairman, Board member. My name is John Herrick. I'm representing the
South Delta Water Agency, the Central Delta Water Agency, and then Lafayette Ranch.

As a representative of farmers, we certainly understand the problems going on in the State and the horrible impacts that are resulting from the shortage of water.

However, we can't agree to the urgency process as a method by which we constantly change the rules, either temporarily or now they're sought for two years.

You'll recall that in D-1641, we spent many days over a consolidated place of use which included lands that had been receiving water. That process included an EIR functionally equivalent document, I think it was. But it had a big large analysis of the effects that happens when you change the place of use for the projects.

And instead, we're going through this chain of urgency petitions. And we saw last year that the need to comply with standards in order to do joint point was waived. This year the projects sought to waive the -- be relieved from the obligation to meet the outflow standard's protection for fish.

And these are all emergency actions. Emergency means that it's an expedited process, it means that there's very little environmental review, if at all. And it leads to a very, very poor policy for the State.
The foundation of the projects has to be planning ahead. And it should not be excused that there is no planning ahead. After two years of drought last summer, if the projects thought that transfers were needed to ease some of the problems for a third drought year, if it occurred, they could have gone through the normal process, which would have required full environmental review, rather than this process, which as far as I can tell, has virtually no environmental review.

The policy underlying this consolidated point of use is directly contrary to the area of origin statutes of the State. The projects are seeking to facilitate a shortage -- excuse me. The projects are seeking to fulfill a shortage of supply through purchases from other areas. That's not what's supposed to happen here. The projected supplies of the projects are intermittent - they're not firm supplies - so that they have to provide for long-term problems that occur repeatedly. And that's not what they're doing.

I will note that the CVPIA encourages transfers among federal project operators. But CVPIA says transfers shall only occur if the water is that which was previously lost or previously consumed. So there's not supposed to be a net increase in use from the transfer. And that's exactly what's proposed here, that people will shift to
groundwater, they'll exchange, they'll get water back.
That's the wrong policy. That's increasing use on a short supply.

I would also note that D-1641 requires that the projects be in compliance with both State and Federal Endangered Species Act as part of their permit terms.

We know right now that the State Project still doesn't have a tape permit under State Environmental -- excuse me -- Endangered Species Act. So when the documents presented indicate that they promise to abide by the rules of D-1641, they can't.

As DeeAnne Gillick just said about -- on behalf of the county, none of this action has anything to do with meeting the current obligations of the projects, because they're not planning to do that. They're not seeking relief from environmental review in order to do emergency actions in order to meet south Delta water quality standards. They didn't seek emergency actions in order to meet fishery standards. What the projects would like to do is to get transfer water for certain CVP SWP contractors. They're not planning on meeting the water quality standards, which are conditions to their permits including San Luis and their export pumps.

I would like to note that the baseline for this two-year change should not be the fact that water has been
delivered to various areas, as is pointed out and it will
be seen in later testimony.

Water's been delivered to lots of areas in
various quantities during wet times, flood times. That's
not the baseline against which to judge changing the rules
right now in order to supply water to areas.

And the reason that's important is, we're in the
process of reviewing the Bay-Delta standards. So as we go
forward on that, we will have a consolidated place of use
for both projects with no environmental review, and that
will be the baseline for changes to the water quality
control plan for the Bay-Delta. That doesn't seem
appropriate.

This is very unique, this request for two-year
approval. Temporary changes are for one year in duration,
I believe, not two years.

So we're going to escape environmental review for
transfers a year from now even if it's not a drought year.
I don't see the basis for that request.

I would like to note a couple things which I
believe we'll find out when the testimony comes. And,
that is, first, the Governor's drought proclamation
apparently waived Water Code Section 13247 with regards to
State agencies complying with water quality control plans.
I don't see how that will affect somebody's permit terms
and conditions even though those are part of a water
quality control plan. But we'll see as the
cross-examination.

And, secondly, it remains to be seen how this
proposal affects joint point of diversion. I don't know,
but I hope we'll find out, because joint point of
diversion requires the standards be met. There was a
petition last year, as you petitioned. There's been no
similar petition this year even though he know the
standards will not be met in the south Delta. So we'll
have to wait and see what the project's position is on
that.

I would also note that the cease and desist
order, I believe 2004, specifically said, if you want to
pump additional water and not be in compliance with water
quality control standards, you need to go through an
environmental review. That is wholly missing from this
process.

Thank you very much.

CO-HEARING OFFICER BAGGETT: Thank you.

Does defenders wish to make a policy statement at
this point?

We have your written policy statements. So if
you could summarize, that would be appreciated.

MR. BASOFIN: Just to clarify. Is it my
understanding that we won't be able to make an opening
statement?

CO-HEARING OFFICER BAGGETT: You can have your
choice. You can't do both.

MR. BASOFIN: Okay. I think I'd prefer to rely
on written statements and make an opening statement later.

CO-HEARING OFFICER BAGGETT: Okay. Would you
identify yourself for the record.

MR. BASOFIN: Sorry. Joshua Basofin, Defenders
of Wildlife.

CO-HEARING OFFICER BAGGETT: Very good.

The last one we have a policy statement which
we'll enter into the record from Mr. Baiocchi. And he's
notified us he won't be participating today, but he has
submitted a written policy statement for the record.

Mr. Rubin.

MR. RUBIN: Hearing Officer Baggett. I would
like to raise a couple of issues before we turn to the
evidentiary portion of the proceeding. Is now the right
time?

CO-HEARING OFFICER BAGGETT: Sure. You might as
well. I was going to wait till later, but this is fine.

MR. RUBIN: Well, there's one that I think I need
to raise now. And then depending on how you want to
handle it, we could raise it as testimony is presented.
But I would like to move the hearing officers to cancel a number of protests that were filed. And specifically the protest filed by the Salmon and Steelhead Association, the Defenders of Wildlife, the Public Trust Alliance, and South Delta Water Agency, and Central Delta Water Agency.

And I'll explain -- I should have indicated for the record that my name is Jon Rubin. I'm an attorney for the San Luis & Delta-Mendota Water Authority and Westlands Water District.

The reason I move the hearing officers to cancel the protests is because the protests essentially have been abandoned, as I look at it. Those protests were filed. No cases-in-chief have been proposed and will be presented to you to support the bases for the protest. And so in -- I don't believe that there will be evidence presented by the protestant to support the protest; and, therefore, pursuant to the Water Code and the California Code of Regulations, you are required to cancel the protests.

I have another issue. But if anyone else wants to respond --

CO-HEARING OFFICER BAGGETT: Well, let's resolve that one first.

Do any of the parties have -- I mean you're all parties to the proceedings, so is the protest -- it's a
good point.

MR. HERRICK: John Herrick for South Delta, Central Delta, Lafayette Ranch.

I don't know why we have to go through this every time.

We're not required to put on a case-in-chief.

This was an expedited proceeding. We looked into doing certain things. We tried to get rebuttal witnesses, which, well, let's just say, were uncooperative.

If the other parties putting on evidence put on sufficient evidence that either supports or contradicts our case, that is the evidence supporting our case. So I don't think it's appropriate to dismiss them.

Thank you.

CO-HEARING OFFICER BAGGETT: Let's let the other parties respond. Then you can respond all at once, Mr. Rubin.

MR. BASOFIN: Joshua Basofin, Defenders of Wildlife.

It's my understanding that a party is not required to put on a case-in-chief in order to retain its protest. It may be that the Board may decide in its discretion that the weight of the protest is not as great if witnesses or testimony is not submitted. But I have seen nothing in the Water Code to indicate that a protest
MR. WARBURTON: Well, Public Trust Alliance is not abandoning its protest. And counsel for this charade has actually come forth to the Board in other proceedings and with due process objections. And the Board has sometimes a conflict of interest between its representing of the public and its prosecution of certain water-related matters.

And I think that there's a real danger in the representations here that the public is well represented at times. And the roots of our protest on the Public Trust Alliance are for public rights. And this counsel has in the past talked to -- he cited a case, the Morongo Band, while -- you know, as evidence of this conflict of interest.

CO-HEARING OFFICER BAGGETT: And that's been resolved.

MR. WARBURTON: And we protest the legal representations here. And we have no intention of abandoning any protest.

CO-HEARING OFFICER BAGGETT: Great. Understand.

CO-HEARING OFFICER BAGGETT: Last comment, Mr. Rubin?

MR. RUBIN: I would like to note that the protests that were filed to which I'm moving for
cancellation address issues that are beyond what any of
the other protests raise. And so for me as somebody that
supports the petitions, it makes it impossible to know
what are the ripe issues, and particularly if there's no
testimony to support the claims.

One thing I would like to add is that South Delta
Water Agency, Central Delta Water Agency filed their
protest based upon injury to vested rights. And
presumably they would need to come in and explain which
vested rights are being injured and how. And they're not.

CO-HEARING OFFICER BAGGETT: I appreciate that.
We'll be ruling on the protest issue as part of
the final order. So I think we'll take that into
submission. Because there's no requirement for a
case-in-chief to be presented, as I think defenders
pointed out, that's correct.

But many of these issues raised in the protest
will be addressed in the final order. And I think that
will provide a resolution to it at that point.

So they will not be withdrawn.

You had a second issue?

MR. RUBIN: Yes. And I do also want to move the
hearing officers to strike all of the protests as well the
testimony that was submitted in opposition of the
petitions. Reading through the testimony that was

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submitted in opposition of the petitions, I couldn't find any evidence that's relevant to this proceeding with the focus where it should be; and, that is, what is the potential impact to legal users of water, whether the petition will cause unreasonable impacts to fish and wildlife, and whether the petition is in the public interest.

Yes, there are complaints that are raised. But none of them are focused on whether the change -- or the changes that are being requested will cause any issues that would bar you from approving the petition. There are gross complaints. There are complaints about the Drought Water Bank, which is outside of the scope of this proceeding. There are complaints about general operations of the Central Valley Project, State Water Project. Again, those are outside of the scope of this proceeding. There are complaints about how water might be used, whether it might be used reasonably or unreasonably. Again, that's outside the scope of this proceeding.

The question that you are faced with is whether the change, adding to the Central Valley Project and State Water Project additional places of use, will cause injury to a legal user of water, cause unreasonable impact to fish and wildlife, or cause -- or be contrary to the public interest.
I would like to raise along the lines of the last issue, public interest, one other argument. And, that is, there are some witnesses that are proposing testimony that attempts to address the public interest issue. I believe that too at least to a large degree is outside of the scope of this proceeding. You have a Declaration of Drought from the Governor. I think the declaration has a legal effect.

And to the extent you challenge the declaration of the Governor, this is not the forum. There may be another forum, but this is not it. And there's specific findings that the Governor makes and direction that he provides. And I think that those have the effect of law.

Thank you.

CO-HEARING OFFICER BAGGETT: Thank you.

Let's save some time here. We likewise will not rule on these now. I think we'll have to rule on this evidence point by point when it comes up for whether it's relevant or not.

Whether the Drought Water Bank in particular is relevant, I would argue it might not be. But I think general operations I think clearly can be relevant, and we're going to have to hear it on a case by case because that's a baseline to which all this is reacting.

Mr. Jackson.
MR. JACKSON: Yeah, Michael Jackson representing
the California Sportfishing Protection Alliance.
I just want to make sure that I get my say on
this if you're going to take it under submission. Because
if you did that at the end of the hearing, I wouldn't be
able to tell you this at any point.
First, the testimony of both CSPA and the
California Water Impact Network are relevant to the six
questions which you asked.
Secondly, it's the vagueness of the petition that
makes it a little hard to connect up what's going on here.
It's a temporary petition out of order. It's an urgency
petition for something that's no longer urgent. It's a
petition that is so vague that it's impossible to tell
where the water's coming from, where it's going, how it's
going to be used. And it anticipates that there will be a
ton of other water coming into this process after you do
the approval.
And that certainly makes it difficult to provide
evidence of individual effects to fish wildlife,
individual effects to the public interest, or individual
effects to somebody's water right when the vagueness of
the petition and the falsity of the information in it,
given the fact that it's now rained for about a month and
a half, lead us to believe that this is basically a
request for you to rubber stamp whatever they want to do.

And so to make it a ruling on relevance seems to me to be impossible, because the petition and the information in it is no longer relevant to the situation.

CO-HEARING OFFICER BAGGETT: No, I appreciate that. And I think we do need to hear historical information, we do need to hear about general operations. I think that is extremely relevant and important to this proceeding.

I'd like to restate, we're going to have to deal with this, as painful as it is, as the individual testimony is presented. I don't see how we can make blanket rulings at this early venture in the proceedings.

So with that, anything else?

MR. RUBIN: This should be easier to deal with the -- Jon Rubin for San Luis & Delta-Mendota Water Authority and Westlands Water District.

Based upon the testimony that has been submitted, the San Luis Delta-Mendota Water Authority will not be presenting a case-in-chief, nor will Westlands or Santa Clara Valley Water District. We've coordinated. I will be asking questions on behalf of the San Luis & Delta-Mendota Water Authority and Westlands Water District. Santa Clara will be participating through the San Luis & Delta-Mendota Water Authority, which it is a
CO-HEARING OFFICER BAGGETT: Thank you.

MR. RUBIN: I do have a statement. But we'll make it as an opening statement, if you would prefer.

CO-HEARING OFFICER BAGGETT: That would be fine.

So let's move to the evidentiary portion. Before hearing the cases-in-chief, we'll hear the opening statements. Then we'll hear the case-in-chief by the various participants.

With that, they'll present their case-in-chief and cross-examination in the following order. We'll begin with the Department of Water Resources, followed by the Bureau, then San Luis & Delta-Mendota Water Authority, Santa Clara Valley Water District, Westlands Water District, CSPA, California Water Impact Network. Mr. Baiocchi's no longer presenting. And then South Delta Water Agency and Central Delta and Lafayette Ranch, followed by the County of San Joaquin, and then lastly Defenders of wildlife.

Is there anyone else? I think that's all the participants I have at this point.

At the beginning of each case-in-chief the participant may make an opening statement, as we talked about earlier. And please -- and summarizing the participant's position and what evidence they intend to
establish.

After the opening statements we'll hear from the participants' witnesses. And the witnesses should identify their written testimony as their own and affirm that it's true and correct; also note that they've taken the oath.

The direct testimony will be followed by cross-examination by other participants, Board staff and the hearing officers. And the redirect testimony and recross, limited to the scope, as always, of the redirect testimony. After all the cases-in-chief, the participants may present rebuttal evidence.

Participants are encouraged to be efficient, as always. And we will be limited to the times as noted in the pre-hearing, unless there is cause to grant an exception.

Participants' presentations will be subject to the following limits:

Five minutes for the opening.

Oral presentation of direct testimony at 20 minutes per witness.

Cross-examination, one hour per witness or panel. And, again, additional time may be allowed with a showing of good cause.

Each participant will be permitted five minutes
for a closing oral argument, as we agreed to in the
pre-hearing.

If you wish to submit a written closing brief or
statement, we would ask that those will be due Tuesday,
April 28th, following the hearing.

After the hearing record is closed, we'll prepare
a proposed order for consideration by the Board. If the
Board adopts an order, any person who believes the order's
in error will have 30 days within which to submit a
written petition for reconsideration.

So with that, I will now invite appearances by
the parties in the evidentiary portion.

Will those making appearances please state your
name, address, and whom you represent so the court
reporter can enter that information.

The Department of Water Resources.

MR. SODERLUND: Good morning. Erick Soderlund
S-o-d-e-r-l-u-n-d for Department of Water Resources. My
address is 1416 9th Street, Room 1104, Sacramento,
California 95814.

And what else?

CO-HEARING OFFICER BAGGETT: That's all.

MR. SODERLUND: Thank you.

CO-HEARING OFFICER BAGGETT: Bureau of
Reclamation.
MS. AUFDEMGERGE: Amy Aufdemberge representing 
the United States Bureau of Reclamation. We will actually 
be presenting with a panel with DWR.

CO-HEARING OFFICER BAGGETT: Do you -- oh, you 

San Luis/Delta-Mendota.

MR. RUBIN: John Rubin, the Law Firm of 
Diepenbrock - Harrison, for the San Luis & Delta-Mendota 
Water Authority and the Westlands Water District; address
is 400 Capitol Mall, 18th floor, Sacramento, California.

Santa Clara, as I indicated before, will not be presenting
a case. And I don't believe there's anyone here
representing Santa Clara directly. I will be representing
Santa Clara as a member of the San Luis & Delta-Mendota
Water Authority.

CO-HEARING OFFICER BAGGETT: Thank you.

California Sports Protection Alliance.

MR. JACKSON: It's actually the fishing part of
the sports we're trying protect.

Michael Jackson representing the California
Sportfishing Protection Alliance. The mailing address is
Box 207, Quincy, California 95971. Thank you.

CO-HEARING OFFICER BAGGETT: Thank you.

California Water Impact Network.

MS. JACKSON: Julia Jackson representing the
CO-HEARING OFFICER BAGGETT: Thank you.

South Delta.


CO-HEARING OFFICER BAGGETT: Thank you.

County of San Joaquin.

MS. GILICK: DeeAnne Gillick representing the County of San Joaquin and the San Joaquin County Flood Control and Water Conservation District in Stockton. I have a card.

CO-HEARING OFFICER BAGGETT: And, lastly, Defenders of Wildlife.


CO-HEARING OFFICER BAGGETT: Thank you.

With that, will all those who plan to testify please stand and raise your right hand for the oath.

(Thereupon the witnesses was sworn, by the Hearing Officer, to tell the truth, the whole truth and nothing but the truth.)

CO-HEARING OFFICER BAGGETT: Thank you.
With that, we'll begin with the testimony -- I think we'll allow you to do the opening statement before you present your panel. We'll just go in the order as we've noted earlier.

So with that, let's just start with the -- try to get the Department of Water Resources case-in-chief in and then we'll take a break after you've had your witnesses.

MR. SODERLUND: Chairman Hoppin, Board Member Baggett. Good morning. My name is Erick Soderlund, and I'll be representing the California Department of Water Resources during this proceeding.

Before I get into the substantive part of my opening statement, I did want to kind of provide a brief overview of the case-in-chief of the Department we'll be presenting this morning.

And, importantly, if it's okay with the Board and pleases the Board, the Department of Water Resources and the U.S. Bureau of Reclamation would like to present a consolidated and coordinated case-in-chief.

CO-HEARING OFFICER BAGGETT: And that's fine and appreciated.

MR. SODERLUND: So with that, we will have three witnesses testifying this morning. First we'll have John Leahigh, Chief of the State Water Projects Operations Branch. And he will testify -- or provide a brief
overview of the update -- a brief overview and update of the current hydrology and go into the operations as to any impacts that this petition may or may not have to project operations.

Second we will have Ron Milligan of the U.S. Bureau of Reclamation and Central Valley Operations Manager. And he will also provide an update of the current hydrology, but with a little bit more of a focus on CVP, Central Valley Project, and also go into some of the exchanges/transfers that are identified in the petition that are more focused or solely CVP operations.

And then last, but definitely not least, we have Maureen Sergent, who works in the Department's State Water Project Analysis Office, and will provide testimony on several other transfers/exchanges that were identified in the petition, including some aspects of the movement of water north to south and through the Delta.

Once the three witnesses have summarized their testimony, we expect the three to be cross-examined as a panel.

And with that, I would like now to move on to the more substantive part of my opening statement. And in this opening statement I'd like to briefly address four topics as a summary of our case-in-chief and the evidence we intend to offer.
The four topics are:

Why are we here?

What are we asking for?

What are the effects of approving the requested change?

And what are the benefits of approving the petition?

First, why are we here?

There's basically essentially two reasons why we're here. First, we are in a drought. We're still in a drought. The evidence offered today will demonstrate that California is still in its third year of drought. Essentially we have missed out -- over the last three years we've missed out on one normal year's worth of statewide runoff. We've averaged about 60 percent statewide runoff for the past three years. And in light of that lack of water, we've also had increased demand as compared to other drought periods. I believe 9 million was presented in the Governor's proclamation as the increase in population since the last drought.

We also have increased regulatory restraints -- constraints that decrease the project's ability to move what water we have.

And as the testimony will demonstrate, all that combined leads to fairly dire circumstances for water
suppliers and water users this year, particularly south of
the Delta.

Also, we are here because of the Governor's
proclamation. On February 27th, 2009, the Governor
declared a state of emergency -- or actually proclaimed a
state of emergency and declared a drought.

In that proclamation he directed the Department
of Water Resources to work with the Bureau of Reclamation,
among other agencies, to help respond to the drought and
mitigate its effects. And part of that specifically was
to facilitate transfers.

The Governor's proclamation goes so far to even
specifically identify this very petition. And the
evidence offered today will demonstrate that this petition
furthers the Governor's directives and is an important
tool in responding to the current drought.

Second item is, what are we requesting?

We are requesting a consolidated place of use for
two years. As the evidence will demonstrate, a
consolidated place of use is more than just a simple
transfer. It's more than just a change in place of use or
a change in place of diversion. But at the same time, I
think the evidence will also demonstrate that the focus of
what the effects are are a little bit narrowed with this
petition.
The effects of this petition are demonstrated by what is the difference between putting CVP water on SWP surface areas and vice versa.

Which goes into the third point, what are the effects of the requested change? And, first of all, the testimony will make a distinction between actions that are taken south of the Delta versus actions that are taken to facilitate movement of water through the Delta.

First of all, south of the Delta exchanges and transfers. It will be demonstrated that historical deliveries -- or delivers for this year are going to be well below historical deliveries. And, therefore, any water that is moved to a particular service areas or water district that is facilitated by this petition, that water that is delivered will still be well below historical deliveries. And therefore, any effects of water such as ag discharges or anything that goes along those lines, I think it will be demonstrated that those effects, as compared to historical averages, historical operations, will be minimal.

As far as north to south transfers, or transfers that move water through the Delta, evidence will demonstrate that the movement of water between State water contractors and CVP contractors will still likely occur absent approval of this petition. And, as such, the only
difference between granting or denying this petition is where the water goes; which is, just as explained, minimal effects south of the Delta. Whether the water is moved to Kern or whether the water is moved to Westlands, the difference in that is minimal and not likely to injure any legal user or cause unreasonable effects to fish and wildlife.

However, even if the Board chooses to take an approach that, but for this petition, contractors and south of Delta contractors -- or movement of water between settlement contractors north of the Delta to contractors south of the Delta would not happen, again but for this petition, the evidence is still sufficient to demonstrate that the effects of this petition are not likely to injure other legal users. That evidence will be demonstrated through the constraints that the operations are under currently.

D-1641, biological opinions - and those are the main sources of the objectives, of the standards, of the measures, of the alternatives that the Department and the Bureau of Reclamation must abide by when operating the projects - still apply. And the testimony will demonstrate that moving any water north to south under this petition will not cause the operations to go outside the constraints that were set up by D-1641 in the
biological opinions.

And, more importantly, were analyzed by the biological opinions in D-1641 -- those standards and objectives were analyzed and are intended to protect against injury to other legal users and fish and wildlife. And, therefore, the Department's position is this petition will not injure -- will not cause the projects, the operations to go outside the constraints that it is under and therefore will not likely injure other legal users.

And then, lastly, what are the benefits? The benefits of this petition are to facilitate transfers. It's low allocations. The testimony will demonstrate that there are historically low allocations for south of the Delta users. And so whatever water that can be moved, whatever water that can be put south of the Delta, it is -- this petition will remove one obstacle to get that water to its highest use, to where it is needed most.

And with that, we will start the panel.

CO-HEARING OFFICER BAGGETT: Would the Bureau like to make an opening statement?

MS. AUFDEMBERGE: No.

CO-HEARING OFFICER BAGGETT: So the Bureau is passing on the opening statement.

With that, let's proceed with the panel. Like I said, we'll get to your case-in-chief, then we'll take a
quick recess.

So proceed.

MR. SODERLUND: So again we will start with John Leahigh.

DIRECT EXAMINATION

OF MR. JOHN LEAHIGH

BY MR. ERICK SODERLUND, ESQ., representing the State Department of Water Resources:

Mr. Leahigh, will you state your full name for the record.

MR. LEAHIGH: Yes. John Leahigh. Last name is spelled L-e-a-h-i-g-h.

MR. SODERLUND: And will you state your current position.

MR. LEAHIGH: Yes, Chief of State Water Project Operations and Planning Office.

MR. SODERLUND: Thank you.

And have you reviewed DWR Exhibit 03, which is also identified as your testimony?

MR. LEAHIGH: Yes.

MR. SODERLUND: And does it accurately reflect your testimony?

MR. LEAHIGH: Yes.

MR. SODERLUND: At this time would you like to provide any updates or corrections to that testimony?
MR. LEAHIGH: No.

MR. SODERLUND: Thank you.

And at this time would you like to please summarize your testimony.

MR. LEAHIGH: Okay.

Good morning, Board Member Baggett, Chairman Hoppin, and board staff.

As counsel indicated, my role here is to give a summary of background of where we stand with regards to the hydrology and a little bit on how that may affect operations.

As you recall, back -- both the Sacramento and San Joaquin River basins are coming off two back-to-back critically dry or dry years. Unfortunately water year 2009 has started out -- started out well below average, with the concern peaking in January, which is typically the biggest precip producer, came in only a third of normal precipitation. Fortunately in early February weather patterns did change and for about a 30-day period, until early March, precip was above average, with March coming in slightly above average.

Because of the increased precipitation on the latest April first snow survey, both the Sacramento and the San Joaquin River basins were upgraded from a critically dry year to a dry year.
However, precipitation to date is still well below average - 88 percent. In fact, snow pack is -- and this may be actually a slight difference from the testimony this is updated information - 65 percent of average snowpack.

Anticipated runoff for the remainder of the year is -- at the median conditions, based on the April 1st forecast, was 70 percent.

But more importantly, 2009 will be the third consecutive dry or critically dry year for both Sacramento and San Joaquin water basins.

One effect that this has had is record low storage in the major upstream reservoirs. Both Shasta and Oroville remain approximately 1.7 million acre-feet below average as of the end of March. Also, more significantly, San Luis Reservoir is only 53 percent of average to date.

Now, this is partly due to the fact that early on -- earlier in the winter we had a late start in filling San Luis because of the dry hydrology. We come into February and March, and the wetter period is when we also have the more restrictions on the pumping and we're not able to make any progress in filling San Luis.

All of these factors have resulted in very low water supply allocations for both projects. The State Water Project allocation of -- currently at 30 percent
matches the lowest M&I allocation on record, which is 1991. And also CVP's allocation is very low. Other droughts have been of longer duration - late eighties, early nineties - and some have been of greater single-year intensity - 1977, for instance. But this year remains severe in terms of fulfilling the needed supplies. The largest contributing factor for this gap between the supply and demand is partially increasing demand, as was noted, increased population of estimated 9 million residents since 1991. The other part contributing to this gap is increased restrictions that have been applied to the operations since 1991, including the Bay-Delta core -- the water quality control plan, the new biological opinions since 1991.

So these factors make the Governor's proclamation, the state of emergency, still highly relevant.

In order to deal with the shortages, water transfers and exchanges are a big part. Facilitating water transfers across the Delta will not affect the project's ability to meet all the terms and conditions of the water rights or any other new requirements related to the Delta smelt biological opinion or other future biological opinions.
Approval of this petition will provide 
operational flexibility to allow water agencies to quickly 
and efficiently get water supplies to the areas in 
critical needs -- with critical needs. 

Thank you. That concludes my testimony.

CO-HEARING OFFICER BAGGETT: It might be better 
if the attorney move to this table who's asking the 
questions, whoever the -- I mean if you move over here, 
you can actually look at your witnesses. And then we'll 
do the cross, we'll do the same thing. Whoever's doing 
the cross can sit up there.

This room is a little awkward. I apologize.

MS. AUFDEMBERGE: Amy Aufdemberge for U.S. Bureau 
of Reclamation.

The next witness on this panel will be a witness 
from the Bureau of Reclamation - Ron Milligan.

And I have a little housekeeping issue to 
straighten up first. We identified the written testimony 
of Ron Milligan as BOR-1 in our witness and exhibit list. 
And that demarcation was inadvertently left off this 
testimony. So we'd just like to have this testimony 
marked as BOR-1.

CO-HEARING OFFICER BAGGETT: If there's no 
objection, so noted.

/////
DIRECT EXAMINATION

OF MR. RON MILLIGAN

BY MS. AMY L. AUFDEMBERGE, ESQ., representing the U.S. Bureau of Reclamation:

Ron, can you please state your name and your qualifications to testify at this hearing.

MR. MILLIGAN: My name is Ron Milligan. I am the operations manager for the Central Valley Project with the Bureau of Reclamation. I've had this position -- I've worked with Bureau of Reclamation since 1999 and have worked in this position since the year 2004. I've testified before the Board at other hearings.

MS. AUFDEMBERGE: Do you have before you a document that you've marked BOR-1?

MR. MILLIGAN: Yes, I do.

MS. AUFDEMBERGE: Is that a true and correct copy of your testimony?

MR. MILLIGAN: Yes, it is.

MS. AUFDEMBERGE: Can you please summarize your testimony.

MR. MILLIGAN: Sure. I will summarize it, and then I won't belabor any points that John has already made in his testimony.

Clearly, we are in the third year of dry conditions within both the Sacramento and San Joaquin
valleys. There has been -- there was significantly more
cancellation back in January of this year, with -- in early
February, with very, very dry conditions. We were
entering about the 11th month of very low runoff and below
normal precipitation. There was some improvement from
mid-February into March that has provided some significant
improvement in storage conditions in the reservoirs within
the Sacramento and San Joaquin valleys.

Unfortunately given the current regulatory regime
in protections for various species, San Luis Reservoir has
been extremely low and is currently only about half full,
which has led to just a 10 percent allocation for water
surface contractors in the ag service sector for the CVP.

I think those and the accompanying 30 percent
allocation on the State Water Project side is indicative
of the difficulty in being able to move water from north
to south through the winter months. And as we enter into
the summer, where we typically have opportunities to
export water and move water from north to south, those
will not be enough under the current -- under typical
operations to be able to up those allocations

So under these types of circumstances there are
some opportunities that do arise that allow for some
exchanges. I will characterize them mostly as that,
because a number of the parties would like to see their
water returned in the other -- in the out-year, which
would be covered by this petition.

But I will highlight a couple of those as they
relate to the CVP. These are mostly or entirely south of
the Delta. In summary, Kern County with an exchange to
Westlands, there's some water currently within Kern County
Water Agency's control that they could make available to
move back to Westlands Water District. This could be
expedited because of the low allocations by a consolidated
place of use.

In addition to that, east side CVP contractors,
i.e., the Friant Division, would have some ability to move
some water from the Friant Division to the west side as an
exchange, and possibly with the ability to enhance some
groundwater pumping programs that are being discussed and
facilitate that exchange with some State water
contractors, and then bringing the water back to the
Friant Division. Friant Division currently is at 100
percent of its Class 1 supplies; 0 percent, Class 2.

So there are some opportunities to take some
water from the east side and get it to the west side and
then bring it back again later in the fall or next winter.

There's also some exchanges with some water
districts that are actually adjacent to each other on the
west side, where one district happens to be a State water contractor, the other district a CVP contractor. In these cases there are a number of owners that actually have plans in both districts. This would facilitate some movement of water between the two districts in a way that would allow the limited supplies to be put on the most important or the most critical needs in terms of cropping for permanent crops.

An example of that is Del Puerto Water District with Oak Flat Water District, who happens to be a State Water Project contractor, as one example.

And then there's some other examples of being able to -- let's say, more readily be able to take some water out of the Semitropic water bank to provide it back to both the City of Tracy and to San Luis Water District. Again, with the low allocations, it's difficult to produce the exchanges that are necessary to get the water out of the bank in a manner that was envisioned when these proposals were put together.

Again, Reclamation is -- the circumstances are developing day by day and week by week. Since the time we've put this petition together, you know, some hydrologic conditions have changed. But I think the flexibility of a consolidated place of use certainly still has great value in allowing the different districts to be
creative and find ways to move the limited water supplies
that are available.

And I encourage the Board to improve the
petition. And we're certainly here to answer any
questions about how this may work.

CO-HEARING OFFICER BAGGETT: Thank you.

MR. SODERLUND: If you don't mind, I'll just do
it from right here.

Our last witness for this panel is Maureen
Sergent with the Department of Water Resources.

DIRECT EXAMINATION

OF MS. MAUREEN SERGENT

BY MR. ERICK SODERLUND, ESQ., representing the State
Department of Water Resources:

And, Maureen, could you state your name and your
current position.

MS. SERGENT: Maureen Sergent. I am a senior
engineer in the State Water Project Analysis Office at the
Department of Water Resources headquarters building.

MR. SODERLUND: And, Ms. Sergent, have reviewed
DWR Exhibit -04

MS. SERGENT: Yes, I have.

MR. SODERLUND: And does it accurately reflect
your testimony?

MS. SERGENT: Yes, it does.
MR. SODERLUND: At this time do you have any updates or corrections?

MS. SERGENT: No, I don't.

MR. SODERLUND: And would you now please summarize your testimony.

Thank you.

MS. SERGENT: Good morning, Board members and Board staff.

Although the water supply conditions have improved from the time we filed the petition, there are still several areas of state that are really in critical need, including primarily the San Joaquin Valley and southern California.

They remain critically short with allocations from the Bureau at 10 percent and the project at 30 percent.

And what the Department is attempting to do with this petition is allow movement of water between some of those areas to apply, as Ron mentioned, to certain portions of the valley that have crops that may not survive. Some areas have crops that are annual crops and can be fallowed. Other's are permanent crops. And so the districts are attempting to find creative ways to get through this next year.

One of those activities that the Department is
involved in and trying to help with that effort is the
Drought Water Bank. It was created to facilitate
acquisition of water supplies due to the current
conditions coupled with the increased regulatory
restrictions. DWR is currently negotiating contracts with
willing sellers for transfer of water made available from
agencies on the Sacramento the and Feather rivers through
crop idling and ground water substitution.
Consolidation of the project's place of use will
facilitate the implementation of the bank in the event
that some of that water being transferred by the
contractors will be done under the water rights of DWR or
Reclamation, and only that portion that exceeds their
individual water rights. In such occasions the transfer
quantity, a portion of it could be project water. Likely
the bulk of it will be done under their individual water
rights.
As appropriate, these agencies are already
filing -- have already filed or will soon file petitions
for change in place of use with the Water -- with the
Water Board as well.
The current petition for change will only affect
that portion of the water -- of any transfer to the bank
that includes project water. Water provided that is
outside that available under the agency's individual
rights, the petition will allow the delivery of State
Water Project or CVP supplies to the consolidated place of
use downstream of Barker Slough banks or Jones pumping
plants.

The existing proposals we have for transferable
water to the water bank are approximately 80,000
acre-feet. One thing I could update is it is now slightly
over 80,000 acre-feet of transferable water. The total
quantity provided to the bank is just under a hundred
thousand acre-feet, but there is a depletion factor
applied to any groundwater substitution which brings it
down to 80,000. This number is soft, at best, right now,
because we do not have any signed contracts at the moment.
Some of those agreements -- one agreement was submitted
the day we prepared this testimony. And the numbers
change as we evaluate the proposals.

So at this time it looks like we have about
somewhere just slightly over 80,000 thousand acre-feet.
We don't anticipate that the amount of project water will
be more than 10,000 acre-feet of that portion.

Some other transfers and exchanges that will be
facilitated by this are exchanges between State Water
Project and CVP contractors. The only water that will be
facilitated -- only movement of water facilitated by this
that comes from north of the Delta to the south is that
small portion of Drought Water Bank water. The rest of
the water that will be facilitated -- or transfers and
exchanges that will be facilitated by this will be between
State Water Project and CVP contractors for water that is
already exported south of the Delta and is within the
current State Water Project and CVP allocations for this
year. It will not affect the allocations of water for
this year.

Ron mentioned a few of the transfers. I'd like
to just talk about a few of the other ones that involve
State Water Project contractors. One is Empire Westside
Irrigation District. And a transfer from landowners that
have land within Empire Westside, they also have land
within Westlands Water District. And they would like to
move up to a thousand acre-feet of their State Water
Project's supply into Westlands Water District's. They
have -- they grow annual crops in Empire Westside and they
have permanent crops on their land within Westlands Water
District. This will allow them to move water to that area
which is only receiving a 10 percent supply in Westlands.

And if additional local supplies are not
available from the Kings River to Empire Westside, then
that land in Empire would be fallowed.

Santa Clara Water District is a State Water
Project and CVP contractor. They receive their State
Water Project supply from the South Bay Aqueduct. They receive their CVP supply through San Luis Reservoir in the San Filipe Division.

Due to the pumping of stripes and the shortages that were discussed and San Luis Reservoir, the water levels are well below normal. At Santa Clara CVP supplies are typically conveyed through San Luis to the Pacheco pumping plant. As storage levels drop below 300,000 acre-feet, capacity of the pumps is limited. In addition, there's an April algae problem that develops which affects the water quality for Santa Clara's supply.

As the reservoir level drops, it reaches the point of the plant's lower intake and they can no longer deliver water to Santa Clara through San Luis reservoir.

What DWR and Reclamation propose to do is that DWR would pump water at banks and deliver State Water Project water to Santa Clara through the South Bay Aqueduct. Bureau would still pump Santa Clara's water at Jones pumping plant and deliver that to O'Neill forebay. But that water would then be used within the State Water Project place of use. It would be an equal exchange of CVP and State Water Project water for Santa Clara.

Ron already mentioned the Del Puerto exchange. Those two districts are immediately adjacent and have similar property owners. They also have similar drainage
characteristics.

Arvin Edison Groundwater Storage District does a banking operation. Metropolitan Water District has water supplies that it has banked in years when it had a little additional water.

And in order -- typically the water is removed from groundwater storage by pumping and delivered to the aqueduct. This consolidated place of use would allow the return of some of that water with Arvin Edison's CVP supply in exchange for pumping the groundwater that currently exists that was previously banked.

The transfers and exchanges described above illustrate the type of exchanges to be facilitated by the consolidated place of use. DWR and Reclamation anticipate that more needs and opportunities for changing where SWP or CVP water is supplied may be developed, which could benefit from the consolidated place of use. In order for this petition to also cover any future transfers or exchanges, DWR and Reclamation propose the following parameters within which any projects for this petition would be conducted.

Any project involving a transfer of SWP or CVP water through the Delta, DWR and Reclamation will continue to operate the projects in accordance with the 2008 Delta smelt biological opinion, which analyzed the effects of up
to a maximum of 600,000 acre-feet of transfers exported
only from July through September. The criteria and
protective measures contained in D-1641 as well as the
biological opinions for the protection of Sacramento River
winter-run chinook salmon, spring-run chinook salmon, and
steelhead.

Carriage loss will be deducted from any transfer
through the Delta. The total quantity of water delivered
to SWP or CVP contractors as a result of the change will
not exceed historic averages. No transfer or exchange
will take place that results in a net loss of San Joaquin
River or Sacramento River flow. And no transfer or
exchange will take place that results in the net loss of
any east side CVP water from the San Joaquin Valley.

DWR and Reclamation will develop, in coordination
with the Board staff, a reporting plan that will account
for all water transferred or exchanged under the
provisions of any order approving the consolidated place
of use. The reporting plan will include the parties to
the transfer or exchange, how much water is to be
transferred, how the water will be made available, the
facilities required to effect the transfer, any
anticipated changes to stream flow or drainage resulting
from the transfer, and how the transfer will affect the
overall water supply of the agencies receiving transfer
water.

In summary, due to the critically dry supply conditions in '09, water agencies are actively pursuing supplemental water supplies to mitigate the impacts of the loss of project supplies, particularly in the San Joaquin Valley where some districts are receiving only 10 percent.

With the exception of the limited amount of project water to be delivered under the Drought Water Bank, anticipated to be less than 10,000 acre-feet, the proposals facilitated by the requested consolidation of the CVP and State Water Project use will not result in an increase in pumping from the Delta or the total quantity of project water delivered south of the Delta.

That concludes my testimony.

MR. SODERLUND: And that concludes the Department and Bureau's case-in-chief.

CO-HEARING OFFICER BAGGETT: Very good.

Let's take a ten-minute recess. And then we'll come back with cross-examination beginning with San Luis Delta.

(Thereupon a recess was taken.)


I think, Mr. Rubin, you're up first.
CROSS EXAMINATION

OF MR. JOHN LEAHIGH, MR. RON MILLIGAN,

AND MS. MAUREEN SERGENT

BY MR. JON D. RUBIN, ESQ., representing the San Luis &

Delta-Mendota Water Authority and the Westlands Water

District:

Good morning. John Rubin for San Luis &

Delta-Mendota Water Authority and Westlands Water

District.

I have a series of questions and I'll present

them -- some of them are better if the witnesses for the

Department of Water Resources could answer. I think it's

more specific to your knowledge. And then there's others

for Mr. Milligan.

My first question to the Department of Water

Resources. The Department has been presented with

proposals for the sale of water appropriated pursuant to

water rights held for operation of the State Water

project?

MS. SERGENT: Yes.

MR. RUBIN: And those proposals are part of the

Drought Water Bank; is that correct?

MS. SERGENT: Yes.

MR. RUBIN: For the purposes of my question I'll

refer to that water as Drought Water Bank SWP water.
MS. SERGENT: Okay.

MR. RUBIN: The Department of Water Resources has also been presented with proposals for the sale of water appropriated pursuant to water rights held for operation of the Central Valley Project; is that correct?

MS. SERGENT: Yes, it is.

MR. RUBIN: And again that is for sale to the Drought Water Bank?

MS. SERGENT: Yes.

MR. RUBIN: For the purposes of my question I'll be referring to that water as Drought Water Bank CVP water.

MS. SERGENT: Okay.

MR. RUBIN: Of the water that the Department of Water Resources may purchase for the Drought Water Bank, what is the maximum amount that might be Drought Water Bank SWP water?

MS. SERGENT: It's currently estimated at about 5 to 6,000 acre-feet.

MR. RUBIN: Do you believe that there is sufficient demand by those who hold State Water Project contracts that all of the Drought Water Bank SWP water could be purchased by those who hold the SWP contracts?

MS. SERGENT: Yes. Demand far exceeds supply.

MR. RUBIN: Is it your opinion that if the
Drought Water Bank SWP water were purchased by those who hold State Water Project contracts, it would not be necessary to change the place of use designated in the water rights held by the Department of Water Resources for operation of State Water Project?

MS. SERGENT: Yes.

MR. RUBIN: Of the water that the Department of Water Resources may purchase for the Drought Water Bank, what is the maximum quantity that might be Drought Water Bank CVP water?

MS. SERGENT: That estimate is still very soft. It could be from a thousand acre-feet to up to 10,000 acre-feet possibly.

MR. RUBIN: Do you believe that there is sufficient demand by those that hold Central Valley Project contracts that all of the Drought Water Bank CVP water could be purchased by those that hold the Central Valley Project contracts?

MS. SERGENT: Yes, there is.

MR. RUBIN: Is it your opinion that if the Drought Water Bank CVP water were purchased by those that hold Central Valley Project contracts, it would not be necessary to change the place of use designated in the water rights held by the United States Bureau of Reclamation for operation of the Central Valley project?
MS. SERGENT: Yes.

MR. RUBIN: Based on your testimony today, you would agree then that if the State Water Resources Control Board were to deny the petitions that are the subject of this hearing, it is likely that there would be no change in the quantity of water the Department of Water Resources would purchase for the Drought Water Bank?

MS. SERGENT: Yes, that's correct. There might be a reallocation -- a difference in the way the water's allocated. But there would be no change in pumping.

MR. RUBIN: Would there be a change in the quantity of water that the Department might purchase?

MS. SERGENT: No.

MR. RUBIN: And based upon your testimony today, you would agree that if the State Water Resources Control Board were to deny the petitions that are the subject of the hearing, it is likely that there would no change in the quantity of water the Department of Water Resources may sell through the Drought Water Bank?

MS. SERGENT: That's correct.

MR. RUBIN: I'm going to ask you a few questions - and I apologize - it's going to require a little bit of assumptions on your part. And so I'll run through the assumptions and then ask my question.

MS. SERGENT: Okay. I'll do my best.
MR. RUBIN: Hopefully you can follow it.
I ask that you consider two circumstances. The first circumstance assumes that the State Water Resources Control Board denies the petitions that are the subject of the hearing.

MS. SERGENT: Okay.

MR. RUBIN: And the denial precludes all of the transfers that are described in the petitions that are the subject of this hearing.

MS. SERGENT: All right.

MR. RUBIN: The second circumstance. I ask that you assume that the State Water Resources Control Board approves the petitions that are the subject of this hearing.

MS. SERGENT: All right.

MR. RUBIN: And that all of the transfers described in the petition that are the subject of this hearing occur.

MS. SERGENT: Okay.

MR. RUBIN: Based upon those two circumstances, would the quantity of water the Department of Water Resources conveys through the Delta at its Harvey O. Banks pumping plant or any other State Water Project facility change under the second circumstance as compared to the first?
MS. SERGENT: No, it would not.

MR. RUBIN: Now, I have a second hypothetical.

My first hypothetical focused on the transfers.

If we assume all of the same circumstances except under the first the State Board denies the petition and the denial excludes the exchanges --

MS. SERGENT: Okay.

MR. RUBIN: -- and under the second circumstance the Board grants the petition that allows for all of the exchanges to occur.

MS. SERGENT: Now, are you talking about exchanges south of the -- the exchanges between the contractor or are we still talking about the Drought Water Bank?

MR. RUBIN: Exchanges that are contemplated in the petition.

MS. SERGENT: All right.

MR. RUBIN: So I'm asking under two circumstances. The first, the Board denies the petitions and the denial precludes the exchanges that are described in the petition.

MS. SERGENT: Okay.

MR. RUBIN: And under the second the State Board approves the petition and all of the exchanges occur.

MS. SERGENT: Okay.
MR. RUBIN: Based upon those circumstances, would the quantity of water that the California Department of Water Resources conveys through State Water Project facilities change under the second circumstance as compared to the first?

MS. SERGENT: No.

MR. RUBIN: Ms. Sergent, I ask you to look to page 2 of your written testimony, which has been marked as Exhibit DWR-04, I believe.

MS. SERGENT: Okay.

MR. RUBIN: On page 2 of your written testimony you have a statement in the last paragraph of the page. It looks like an incomplete paragraph that continues on to page 3. There's a sentence -- the second sentence on page -- in the last paragraph on page 2 that reads, "The proposed exchanges and transfers among SWP and CVP contractors south of the Delta will not result in additional diversions by the projects."

Do you see that statement?

MS. SERGENT: Yes.

MR. RUBIN: By projects, you mean the State Water Project and the Central Valley Project?

MS. SERGENT: Yes, I do.

MR. RUBIN: And by diversions you mean conveyance of water from north of Delta to south of Delta?
Okay. Ms. Sergent, I have a few more questions for you. And I think that will conclude my questions to the Department of Water Resources.

You're familiar with the Drought Water Bank?

MS. SERGENT: Yes, I am.

MR. RUBIN: Are you familiar with the Drought Water Bank that occurred in 1994?

MS. SERGENT: Yes, I am.

MR. RUBIN: In 1994 did the Department of Water Resources purchase any water from any person or entity within Butte County?

MS. SERGENT: Yes, we did.

MR. RUBIN: And do you know the quantity of water that the Department purchased from a person or entity within Butte County?

MS. SERGENT: It was slightly over 80,000 acre-feet.

MR. RUBIN: And do you know that if the 80,000 acre-feet was surface water or groundwater?

MS. SERGENT: It was groundwater.

MR. RUBIN: And now turning back to the Drought Water Bank --

MS. SERGENT: It was groundwater exchange.
MR. RUBIN: Thank you.

Turning back to the Drought Water Bank in 2009, do you know if there's any water that's being proposed for purchase from Butte County?

MS. SERGENT: Yes.

MR. RUBIN: And what quantity of water is being proposed for purchase from Butte County?

MS. SERGENT: At this time it's approximately 6,000 acre-feet of crop idling. There is no groundwater exchange water being purchased from Butte County.

MR. RUBIN: Thank you.

Mr. Leahigh or Ms. Sergent, I have a question for you. In the testimony the Department of Water Resources submitted there was an indication of the allocation for State Water Project contractors, is that correct?

MR. LEAHIGH: Yes.

MR. RUBIN: And that current allocation -- projected allocation is what?

MR. LEAHIGH: Yes, I believe in the testimony -- yes, it had increased. The current State Water Project allocation's 30 percent.

MR. RUBIN: I'm sorry, 30 percent?

MR. LEAHIGH: 30 percent, 3-0.

MR. RUBIN: Under any circumstance is there a potential for that allocation to increase?
MR. LEAHIGH: There is -- we will reevaluate the water supply conditions once we get the May 1st update. At this time though we would not anticipate an increase, because of the amount of precip we've seen in April has been -- has actually been less than half of average. At this point, as I said, we don't anticipate an increase. Although one would be possible. If there is an increase, it would likely be a marginal amount, say, maybe 5 percent.

MR. RUBIN: And, Mr. Leahigh or Ms. Sergent, if there were an increase, although -- well, if there were an increase, would any of your opinions or conclusions change?

MS. SERGENT: No.

MR. LEAHIGH: No, a 35 percent still represents a very low allocation.

MR. RUBIN: Thank you.

Mr. Milligan, I now turn to you. And my questions may seem very similar to the ones I've have previously asked. But I'm focusing on the Central Valley Project. And I would like for you to provide answers to the same set of hypotheticals that I asked Ms. Sergent but specific to the Central valley Project. And my first question related to transfers, and ask that you consider two circumstances.
The first circumstance is that the State Water Resources Control Board denies the petitions that were the subject of this hearing and the denial precludes all transfers described in the petitions.

And then the second circumstance is that the State Water Resources Control Board approves the petitions that are the subject of this proceeding and that all transfers described in the petitions occur.

My question to you is based on those two circumstances. Would the quantity of water the United States Bureau of Reclamation conveys through its C.W. Jones pumping plant change under second circumstance as compared to the first circumstance?

MR. MILLIGAN: No, it would not.

MR. RUBIN: And second set of hypotheticals relate to the exchanges.

And like the questions I asked previously, the first circumstance involves a denial by the Board of the petitions and the denial precludes the exchanges.

The second circumstance is the State Water Resources Control Board approves the petitions and all of the exchanges described occur.

Based upon those the circumstances, would the quantity of water the United States Bureau of Reclamation conveys through its C.W. Jones pumping plant change under
the second circumstance as compared to the first?

MR. MILLIGAN: No, it would not.

MR. RUBIN: And, Mr. Milligan, is there a potential for an increase to the allocation for Central Valley Project agricultural water service contractors south of the Delta this year?

MR. MILLIGAN: Yes, there is.

MR. RUBIN: And what is the potential increase?

MR. MILLIGAN: In our allocation announcements for last week we indicated if we were to receive closer to normal precipitation through April -- the end of April into May, we could potentially see a 15 percent allocation for ag service south of the Delta.

MR. RUBIN: If that increase were to occur, would any of your testimony today change?

MR. MILLIGAN: No it would not.

MR. RUBIN: Mr. Milligan, I have one last question.

Are you familiar with the Central Valley Project water districts that are involved in -- excuse me. Strike that.

Mr. Milligan, are you familiar with the Central Valley Project districts that discharge to the San Joaquin River?

MR. MILLIGAN: Yes, I am.

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MR. RUBIN: Do you know if those districts discharge pursuant to some sort of regulatory oversight?

MR. MILLIGAN: Yes, I do.

MR. RUBIN: Would anything in the petition before the Board in your opinion change the requirements of those districts to meet the regulatory oversight for drainage discharges?

MR. MILLIGAN: No, not that I'm aware of.

MR. RUBIN: I just have one more question. And I will ask this of either the Bureau of Reclamation or the Department of Water Resources. Did the -- well, let me ask it separately to avoid a compound question.

Did the United States Bureau of Reclamation file the petition that's the subject of this hearing pursuant to any urgency provisions in the Water Code?

MR. MILLIGAN: The Bureau of Reclamation did file this petition. Is that the question?

MR. RUBIN: Do you know if it was pursuant to an urgency -- any of the urgency provisions in the Water Code? And if you don't know, that's an acceptable answer.

MR. MILLIGAN: There was some discussion whether to do this as an urgency change petition or otherwise. So I do not recall.

MR. RUBIN: Ms. Sergent or Mr. Leahigh, do you
know if the Department of Water Resources filed the
petition pursuant to any urgency provisions in the Water
Code?

MS. SERGENT: We did not. The petition was
filed -- it's a 1700 petition for change. It is not an
urgency change.

MR. RUBIN: Thank you.

I have no further questions.

CO-HEARING OFFICER BAGGETT: Thank you.

Next, Mr. Jackson, CSPA.

MR. JACKSON: As a housekeeping matter, I'd like
to confirm that the testimony of Frances Mizuno, Cindy
Kao, and Tom Glover is no longer submitted? Is that what
happened?

MR. RUBIN: John Rubin for the San Luis &
Delta-Mendota Water Authority.

While the testimony in written form was filed as
part of this proceeding, I indicated earlier that we will
not be presenting the witnesses or offering any of their
testimony into evidence.

CO-HEARING OFFICER BAGGETT: Very good. Thank
you.

If you'd like to go over to the desk, Mr.
Jackson.

MR. JACKSON: Yes.
MR. SODERLUND: Real quick. This is Erick Soderlund For the Department of Water Resources. And I have another housekeeping question.

The petition and its exhibits were submitted as an exhibit to the hearing. And I was wondering if the Board would prefer some verification by the witnesses to that petition as it's accurate or to get it into the record, just to ensure that if there's any cross-examination on the petition, that it's relied on. I leave it up to your discretion or other parties. I don't even know -- if it's a confusing question, then I'll --

CO-HEARING OFFICER BAGGETT: The petition speaks for itself. It's been filed with us, you know.

MR. SODERLUND: Thank you.

CO-HEARING OFFICER BAGGETT: Verification on that.

Mr. Jackson, proceed.

MR. JACKSON: Thank you, sir.

CROSS EXAMINATION

OF MR. JOHN LEAHIGH, MR. RON MILLIGAN,

AND MS. MAUREEN SERGENT

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

Mr. Milligan, as the operations officer for the Mid-Pacific Region of the Bureau of Reclamation, you have
access to all of the models and records that are in custody of the Bureau?

MR. MILLIGAN: I'm not sure that I have access to all records and models of the Bureau. But I probably could get access to ones that are germane to my position, yes.

MR. JACKSON: All right. In your testimony on page 1 under the heading "Need For Consolidation of CVP and SWP Places of Use" you indicate that 2009 has the potential to be one of the most severe drought years in California's recorded history. What do you mean by that, sir?

MR. MILLIGAN: In terms of this, I would characterize that as in terms of the allocation to water service contractors south of the Delta.

MR. JACKSON: So it's certainly not one of the more severe drought years in California recorded history at the present time, correct?

MR. MILLIGAN: I think in terms of a third dry or critically dry year I think it could be characterized as a drought. The severity is somewhat magnified by the timing of inflows, particularly this year, into the Delta and current regulatory regime.

MR. JACKSON: Speaking about this current regulatory regime, you've used that term a couple of times
in your testimony, as do the other witnesses. Are you
talking about the fact that Judge Wanger told you you had
to slow pumping and obey the law?

MR. MILLIGAN: No, I'm not.

MR. JACKSON: What are you talking about?

MR. MILLIGAN: In an historic perspective to,

let's say, 1977 or the 1988 to 1992 drought, the current
biological opinion terms and conditions, terms and
conditions as they relate to D-1641, have a set of
regulatory requirements on the projects that don't allow
the projects to, let's say, respond as quickly as we might
have to other drought circumstances. So the tests of
whether you're in a drought situation in terms of, let's
say, upstream reservoir storages, snow pack or runoff, may
not be readily applicable to our situation right now as
compared to the past droughts that folks usually point to.

MR. JACKSON: But that's not caused by the
drought, I take it; that's caused by changes in the laws
and regulations that help you operate your project?

MR. MILLIGAN: That they guide our operations.

And then also the demands have changed in a number of ways
since 1992, for example.

MR. JACKSON: Yes. But as far as the drought is
considered, in terms of the testimony, are you still
standing by the testimony that 2009 has the potential to
be one of the most severe drought years in California's
recorded history?

MR. MILLIGAN: I think in terms of delivery to
major area south of the Delta, that is true.

MR. JACKSON: All right. Now, let's talk about
the major areas south of the Delta.

You operate the Friant system as well?

MR. MILLIGAN: The Friant system is primarily
operated out of our Fresno office. But clearly I have
interactions with the operators there.

MR. JACKSON: And they're receiving 85 percent of
their water this year?

MR. MILLIGAN: They are receiving 100 percent of
their Class 1 supply.

MR. JACKSON: All right. So it's not then you're
talking about -- when you're talking about drought impacts
in the San Joaquin, the east side's okay?

MR. MILLIGAN: The east side has a vastly
improved water supply situation this year. But I am
talking about the west side Delta-Mendota --

MR. JACKSON: The San Luis unit?

MR. MILLIGAN: The San Luis unit and the
Delta-Mendota Canal folks.

MR. JACKSON: Okay. Now, the exchange
contractors are getting a hundred percent of their water?
MR. MILLIGAN: They are getting a hundred percent of their contract supply, yes.

MR. JACKSON: Why do they get a hundred percent of their water and Westlands only gets 10?

MR. MILLIGAN: The contract for the exchange contractors is linked to the unimpaired Shasta inflow. For this particular year, if that inflow was above approximately 3.3 million acre-feet, that would trigger the full supply under their settlement contract.

MR. JACKSON: And so that would -- the inflow did trigger the full supply --

MR. MILLIGAN: It did.

MR. JACKSON: -- under their settlement contract? Do you have a duty to operate according to your contracts in terms of priority?

MR. MILLIGAN: We have, I would say --

MR. RUBIN: I'm going to object to the question. I apologize, Mr. Milligan, for interrupting you. But the question assumes facts that are not in evidence.

CO-HEARING OFFICER BAGGETT: Mr. Jackson.

MR. JACKSON: He indicates he operates according to contracts. And as identified, one place in the San Joaquin -- two places in the San Joaquin Valley that are getting a hundred percent of water, and yet there's an area in the San Joaquin that is only getting 10 percent of
the water. And I want to know why.

MR. RUBIN: That doesn't address the objection that I raised. Again, the question had assumed a fact that was not presented into evidence. And the response doesn't explain where that fact comes from.

CO-HEARING OFFICER BAGGETT: Okay. I understand. Mr. Jackson, do you want to rephrase your question.

MR. JACKSON: Sure.

Is the Bureau simply picking on the west side by giving them no water when everybody else is getting all their water?

MR. RUBIN: I'm going to object to the question. Again, there's no fact that everyone else is getting their water.

MR. JACKSON: I'm sorry, sir. I established the fact that the exchange contractors are getting a hundred percent of their water. And the Friant water contractors are getting a hundred percent of their Class 1 water. And now I'm wondering why it was divided up in that fashion to leave the west side with only 10 percent.

CO-HEARING OFFICER BAGGETT: Could you rephrase the question to state that, instead of everyone is getting -- I will sustain the objection because it was sort of broad and vague. If you could be more specific
with who everyone is, that would be I think helpful.

MR. JACKSON: Sure.

Is there a contractual reason that Friant's
getting more water than the San Luis & Mendota water
users?

MR. MILLIGAN: The current allocations are based
on a number of set of obligations. But currently the
contractual obligations to the settlement contractors
clearly chose them at the hundred percent. There's a
number of precedents and past practices, along with
obligations under the contracts, that bring us to the
current allocation of a hundred percent Class 1 versus a
10 percent of the contract quantities on the west side.

MR. JACKSON: All right. So the situation on the
west side in the federal Central Valley system is caused
by a combination of lack of available water and the
contract provisions themselves, is that right?

MR. MILLIGAN: Some would also say to some degree
the place of use as it's outlined in the -- by the Board,
which has some -- could also come into play, because it
relates to the Friant division versus the west side.

MR. JACKSON: All right. Now, Mr. Leahigh, you
indicated in your testimony that southern California is
receiving the lowest amount of M&I water delivery in
history. Is that what you said?
MR. LEAHIGH: What I said was that the current 30 percent allocation matches the lowest historical allocation for the M&I contractors. And that's in terms of percent of their requests.

MR. JACKSON: All right. Is that caused by the severity of this drought or the changes in the contracts in the Monterey agreement in which urban California gave away a drought water preference?

MR. LEAHIGH: Well, it's -- I mean it's a combination of factors. It's the dry hydrology. As you noted, there was a change in the mid-nineties as far as the allocation between M&I and agricultural contractors for the State Water Project.

MR. JACKSON: So it shouldn't be a surprise that this is a low delivery since that's what the Metropolitan bargained for in Monterey, that they would forgo drought deliveries in exchange for something else in wet years?

MR. RUBIN: I'm going to object to the question. Calls for speculation, at a minimum.

MR. JACKSON: I don't think it calls for speculation. He indicated that was one of the reasons.

MR. RUBIN: Well, what -- well, one part of the question that clearly calls for speculation is the negotiation position of the Metropolitan Water District of Southern California. And I don't think that Mr. Leahigh
is in a position to testify to that.

CO-HEARING OFFICER BAGGETT: I would sustain that.

Could you rephrase the question to --

MR. JACKSON: Sure.

Is the lowered M&I delivery in this dry cycle accentuated for the Metropolitan service area by the fact that they gave up Section 18A in the preexisting State contracts?

MR. LEAHIGH: Well, again, there's a number of factors why that allocation is so low. It is the hydrology. It is the increased regulatory requirements on the exports. And to a certain extent the reallocation between urban and ag has an effect as well.

MR. JACKSON: Did you make any attempt to tease out which of those effects was the cause for the 30 percent delivery?

MR. LEAHIGH: They are all causes for the 30 percent delivery.

MR. JACKSON: How much of --

MR. LEAHIGH: I couldn't tell you.

MR. JACKSON: Now, you indicated in your -- Mr. Milligan, you indicate in your testimony that the change that's asked for here will not result in the delivery of more water to any water supplier than would have been
delivered historically.

Do you mean historically in droughts? Or do you mean historically as an average of wet years and dry years and normal years?

MR. MILLIGAN: That would be as an average of both -- average of all years and probably from the few places that I've looked at as it relates to past drought years.

MR. JACKSON: Did you check before you filed this to -- or as part of the filing of this petition to consolidate the place of use of the two projects to determine what the delivery was to the San Luis/Delta-Mendota unit in the '76-'77 drought cycle?

MR. MILLIGAN: Not as it relates to this filing, no.

MR. JACKSON: Do you know whether or not they received any water in the '76-'77 drought?

MR. MILLIGAN: Some of those were very low.

MR. JACKSON: So that it's not a surprise to have a low delivery to that area this year?

MR. MILLIGAN: Surprise is probably not the right word. But clearly it was -- the severity of, let's say, leading into the year, my thoughts were that we would be at a higher allocation than we are currently.

If we had received the hydrology similar to a '77
type of year, then I would say we're probably at or about
where I would have anticipated that. But given we'd had
some wetter conditions, this would -- the low allocation
is out of the norm.

MR. JACKSON: What is the norm that you're
talking about?

MR. MILLIGAN: What I would have -- set of
circumstances given, this particular set of snowpack,
hydrologic conditions, I would have anticipated a
higher -- a higher allocation to the west side.

MR. JACKSON: And what is -- is there anything
other than the D-1641 and the Wanger decision that is
causing it to be less? Or is it all this regulatory
situation?

MR. RUBIN: I'm going to object to the question
on grounds that it misstates facts or facts that are not
in evidence or is ambiguous. The reference to Judge
Wanger's opinion, it's not clear what opinion. I'm not
sure if the testimony has elicited whether it's in
effect --

CO-HEARING OFFICER BAGGETT: I appreciate that.
Sustained.

Can you rephrase the question with more
specificity.

MR. JACKSON: Would you lay out what this
regulatory -- change regulatory circumstance is that you believe is causing there to be less water available to people on the west side of the San Joaquin.

MR. MILLIGAN: The runoff that we have seen this particular year with the very dry fall, coming off of a very, very dry spring of last year, below normal December, very low precipitation and runoff in January, limited the ability under D-1641 to make deliveries of water. And that scenario looked very much like a 1977-type of circumstance if that were to continue on through February and March of this year.

And those conditions didn't continue. We did get some wet weather, particularly though in the Sacramento River basin. The thing that limited, let's say, the project's ability to take advantage of some very high flows -- inflows to the Delta as represented by some very high Freeport flows, up in the 40, 50,000 cfs range, was the continued low flows on the San Joaquin River at Vernalis. And at that time concerns about Old and Middle River criteria as it relates, not to Judge Wanger's decision but the current biological opinion to protect Delta smelt, did constrain exports during that time. And there was a window there of about four weeks to five weeks where, let's say, under D-1641 circumstances some additional exports could have been achieved, but it would
have resulted in some very high Old and Middle River negative flows. And those were modulated so that we could have some lasting protections for some adult Delta smelt particularly during that period.

So those are the types of things that, because the year was so compressed I think in terms of its runoff, this one opportunity that I think the projects probably had to make up some ground, we weren't able to do that in its fullest extent because of that Old and Middle River constraint.

MR. JACKSON: And so you didn't take as much water as you maybe theoretically could have, because you were attempting to obey the law?

MR. MILLIGAN: We were complying with the biological opinion. And we were in consultation with Fish and Wildlife Service through this period as to what would be a protective set of actions.

MR. JACKSON: And there's nothing unusual about that, you normally operate in coordination with the folks who have influence on your permits?

MR. MILLIGAN: We -- it is not unusual for us to work very closely with Fish and Wildlife Service and NOAA Fisheries and Fish and Game, particularly in our winter and spring operations.

The unusual -- the extremely unusual factor this
period of time was how low the San Joaquin River flows
were in comparison to the Sac River flows.

MR. JACKSON: Now, the San Joaquin River flows
are controlled by, among others, the Bureau of
Reclamation, correct, at both Friant and New Melones?

MR. MILLIGAN: We have -- we are making releases
at New Melones that influence flows at Vernalis, as well
as there's the other tributaries. And then there's the
unimpaired flow.

MR. JACKSON: So basically this low San Joaquin
situation was not a surprise to the Bureau, given this
water year and its obligations at both New Melones and
Friant?

MR. MILLIGAN: I would say that the word
"surprise" is probably not appropriate. But I did find it
somewhat unusual the low San Joaquin River flows that we
were seeing. Clearly, all the reservoirs on the San
Joaquin system were trying to recover storage from the
last two dry years. And although we were seeing a little
bit of weather in the basin, clearly minimal reservoir
releases from all the reservoirs, coupled with a very dry
basin led to some very low Vernalis flows for this time of
year.

MR. JACKSON: You indicate in your testimony on
page 2 that the CV projects that require this coordinated
place of use include the Drought Water Bank; is that correct?

MR. MILLIGAN: Yes, the Drought Water Bank would be an action that would benefit from the consolidated place of use.

MR. JACKSON: Well, I was interested in the word "that would benefit," because your testimony was that it would require it. Is that right? You could not do the Drought Water Bank if you didn't have the coordinated place of use?

MR. MILLIGAN: I don't believe that we could transfer water from a CVP user to a State Water Project user. That provision of the bank would not be able to happen.

MR. JACKSON: Now, you indicated that there are CVP contractors who could use the same amount of water within their regular -- within their regular contractual relationship, in response to Mr. Rubin's cross-examination, is that --

MR. MILLIGAN: Yes.

MR. JACKSON: So at this point, you don't need the coordinated place of use to make use of the water; it's simply to pick and choose where it goes?

MR. MILLIGAN: It's to be consistent with the tenants of the Drought Water Bank in terms of that set of
MR. JACKSON: All right. Does the Governor's drought emergency control the Bureau of Reclamation's water distribution in any fashion?

MR. MILLIGAN: The drought proclamation as a layman's read of it does not.

MR. JACKSON: Now, calling your attention to the -- and, Ms. Sergent, jump in if you'd like to answer these questions -- to the exchange to facilitate conveyance of water to Santa Clara Valley. Why do you need a consolidation of the place of use of the two projects when you could probably do that with a change in the point of diversion from San Filipe to the South Bay Aqueduct?

MS. SERGENT: The consolidated place of use will facilitate the transfer, because we can deliver State Water Project water an equivalent amount through banks and the South Bay Aqueduct. The Bureau can deliver that same quantity of water to O'Neill. And that amount of water can be used in the State Water Project place of use south of O'Neill.

MR. JACKSON: All right. But in terms of taking care of Santa Clara Valley, the water, no matter what system may go through, goes to the same place?

MS. SERGENT: If San Luis gets low enough, the
Bureau cannot deliver that water through San Luis.

MR. JACKSON: All right. But when it delivers the water -- when the water is delivered either slough San Luis by the federal government or by the state government, it goes to Santa Clara Valley Water District's place of use?

MS. SERGENT: Yes.

MR. JACKSON: All right. So it's a question of which spigot you use to go to the same place of use?

MS. SERGENT: The same amount of water will be a --

MR. RUBIN: I'm sorry. I'm going to object to the question. I don't believe any witness has testified that Santa Clara Valley Water District -- excuse me -- the place of use under the United States Bureau of Reclamation's permits for the area within Santa Clara is the same as the place of use under the Department of Water Resources' permits within Santa Clara's area. Maybe not so artfully stated. But no witness has testified that within the Santa Clara area the place of use is the same under the Bureau's permits as the Department of Water Resources' permits.

CO-HEARING OFFICER BAGGETT: Okay. We'll note that. But can the witness answer within your knowledge?

MS. SERGENT: I'm just trying to emphasize that
the same amount of water is going to Santa Clara. But the
need for this petition is because the Bureau cannot
deliver that water through San Luis. So the project will
be able to pump that water and deliver it to Santa Clara
instead of delivering that same quantity to southern
California. The Bureau would pump the same amount of
water it would deliver to Santa Clara through San Luis,
deliver that to the Department at O'Neill. And that water
would be delivered to the State Water Project place of use
south of O'Neill, a portion of which is not within the
current CVP place of use.

MR. MILLIGAN: I might add that although San Luis
Reservoir may or may not get low enough where we would not
be able to make the delivery. Clearly there may be some
concerns of the potential for some algae content within
that water. And then given the combination of a low CVP
allocation and a low State Water Project allocation, this
may allow Santa Clara Valley some additional flexibility
to move water within their system by having the delivery
through south bay.

MR. JACKSON: Did you do any environmental review
of the extent of the algae problem for this change of
place of use?

MR. MILLIGAN: No.

MR. JACKSON: Calling your attention to another
proposed transfer, which I guess is to transfer water
into -- I guess this is Westlands groundwater into the
State aqueduct, Mr. Leahigh. Was there any review done of
the quality of the Westlands water that would be entering
the State aqueduct?

MR. LEAHIGH: Actually I do not know.

MR. JACKSON: Does anyone from the Bureau know
whether or not there was any environmental review of the
groundwater that is going to be pumped out and put into
the State aqueduct?

MR. MILLIGAN: I do know that in a similar
program that they had last year, they had very significant
monitoring of the quality of the water that went into the
aqueduct. And my assumption is that that would occur
again this year.

MR. JACKSON: Do you know whether it did?

MR. MILLIGAN: I don't think that they've begun
the pumping yet.

MR. JACKSON: Do you know whether there's been
any environmental analysis of that pumping and its effects
on the water quality in the aqueduct?

MR. MILLIGAN: I think that the information that
I have from both Westlands and the State water contractors
that are as equally as concerned about the overall quality
and impact have set up a monitoring program so they can
monitor that. And in addition, I think one of the proposals was to include some quantity of water that could be made available from the Friant system to help also compensate for those quality concerns.

MR. JACKSON: That's an outline of what one could do. Do you know whether or not there's been an environmental analysis of the problem that you just identified?

MR. MILLIGAN: If you're specifically saying a -- let's say, a CEQA level analysis?

MR. JACKSON: Yes.

MR. MILLIGAN: I don't believe so.

MR. JACKSON: Or a NEPA analysis if -- since there are federal contractors involved in the exchange.

MR. MILLIGAN: I am not aware of a completed NEPA analysis.

MR. JACKSON: You indicate that in the required -- and I think, Mr. Milligan, you're the person who attempted to identify whether there would be injury to legal users, water quality, or fish and wildlife in your testimony.

This change in place of use, sort of a merger of the places of use of the two projects, has it ever been done before?

MR. MILLIGAN: I'm not aware on the scale that --
as it relates to this petition.

MR. JACKSON: Okay. Normally, changes would require NEPA analysis in regard to the effects on other water users, water quality, or fish and wildlife. Has it been done in this -- in this circumstance?

MR. RUBIN: I'm going to object to the question. It's Compound or it assumes facts that are not in evidence.

CO-HEARING OFFICER BAGGETT: It's sustained on the compound.

Could you break the question down please.

MR. JACKSON: Sure.

Have you done any NEPA analysis of the effects on water quality in the Delta of this change of place of use?

MR. MILLIGAN: No. But based on my understanding of the proposals and the volumes of water, that these would fall within the, let's say, existing NEPA coverage that we have to operate the project, and I believe that we would also be in compliance with their existing biological opinions.

MR. JACKSON: Now, biological opinion is a different thing than a NEPA analysis.

MR. MILLIGAN: Yes, it is.

MR. JACKSON: And so I'd like to keep -- I don't conflate the two.
MR. MILLIGAN: Sure.

MR. JACKSON: So question was, have you done any NEPA analysis in regard to water quality and the effects that could potentially happen from this change in place of use petition?

MR. MILLIGAN: We have not done any specific analysis. Again, from my understanding of how we would operate under these proposals, I do not see something that's outside the existing realm of our operations for the project.

MR. JACKSON: Well, let's talk about a little about the existing realm of the operations of your project.

Have you met all D-1641 water quality standards this year?

MR. MILLIGAN: We've met our permit terms and conditions. There have been some exceedances of south Delta salinity. There was Tracy Road -- Old River at Tracy Road from a period of time in December into March that had an exceeded, and we provided a report to the Board. We are currently envisioning that several of the stations for south Delta salinity would have exceedances that we feel are outside the -- outside the control of the projects beginning of April.

MR. JACKSON: Let me ask it I guess in a
different way then to see that I understand your answer.

You violated D-1641 standards from December until

March; is that correct?

MS. AUFDEMBERGE: Objection. He did not testify

about any violation.

CO-HEARING OFFICER BAGGETT: Sustained.

MR. RUBIN: I'm going to object on a different

grounds. I'm trying to be patient here. But I don't

think Mr. Jackson has laid the foundation for the

relevancy of his questions.

MR. JACKSON: The foundation for the relevancy is

what is the baseline environmental condition by which this

man's coming to the conclusion that there will be no

difference with or without this project.

CO-HEARING OFFICER BAGGETT: Overrule that

objection.

But sustain the first objection by the Bureau.

MR. JACKSON: So --

CO-HEARING OFFICER BAGGETT: There was no --

MR. JACKSON: D-1641 has a set of standards in

it?

MR. MILLIGAN: Yes, it does.

MR. JACKSON: And one of those standards is a

provision in regard to salinity?

MR. MILLIGAN: It has a number of provisions with
regard to salinity.

MR. JACKSON: Have any of -- has the Bureau and DWR's operations in the Delta in the months of December through March been higher at any time than the salinity standard of 1 EC?

MR. MILLIGAN: There have been some stations that had have an exceedance of 1.0 EC. It is the -- and then the analysis of the two projects collectively that those were outside of the ability of the projects to bring into compliance.

MR. JACKSON: Now, you indicated that during that time period everyone was -- the dam owners were attempting to rebuild their storage, weren't they?

MR. MILLIGAN: I testified that during this time period on the San Joaquin River and probably at some flows on some areas of the Sacramento were trying to build storage from two years of below normal conditions.

MR. JACKSON: And one of the ways that you could have met the EC standard in the Delta would be to release more of that storage to do so, correct?

MR. MILLIGAN: I --

MS. AUFDEMBERGE: Objection.

MR. MILLIGAN: -- disagree.

MS. AUFDEMBERGE: Let's see if I -- he didn't testify that he felt that it was an obligation to meet the
CO-HEARING OFFICER BAGGETT: Answer the question.

I think -- so overrule the objection. You've already answered, unless you want to strike the answer. But I --

MR. JACKSON: No, I don't want to strike the answer. I'll follow up the answer.

It is the Bureau's position that they don't have to meet the 1.0 EC standard under D-1641?

MR. MILLIGAN: Specifically --

MR. RUBIN: I'm going to object to the question as to location. I mean there's no indication what standard --

CO-HEARING OFFICER BAGGETT: I would sustain.

Mr. Jackson, it's a little broad. I mean you've got to be specific.

And, secondly, before the objection's raised, I don't know if this witness is the one who's going to make the legal opinion that they violated an order of this Board.

But proceed -- just rephrase your question.

MR. JACKSON: Is it the Bureau's position that they do not have to stop collecting water in their reservoirs in situations in which they cannot meet the Vernalis standard?

MR. MILLIGAN: The Vernalis standard was met
during this time. The Old River at Tracy Bridge is a very
difficult station. It's been shown in some evidence to
this Board and some evaluation by my staff and DWR staff
that increased flows beyond meeting the standard at
Vernalis would have limited utility in reducing the
salinity at that particular station. And it appeared that
the primary cause of that exceedance was the fact that our
pumping was constrained significantly during this
timeframe. Typically when pumping's a little bit higher,
better quality water from the Sacramento River is drawn
further to the south and actually improves the quality
there. So our curtailment to meet other D-1641 EI ratio
type requirements plus protection for Delta smelt probably
contributed more to the exceedance.

MR. JACKSON: And so this is a problem
that -- let me withdraw that.

Do you know whether or not that problem will be
increased by the additional pumping caused by the maximum
potential of the Drought Water Bank and the coordinated
consolidated place of use?

MR. MILLIGAN: Actually, I would anticipate that
if -- to the extent that there was any increased pumping
associated with this proposal, that it would probably
improve the quality in this part of the Delta.

MR. JACKSON: You indicate in your no-injury
finding that all water exported at the State and Central Valley pumping plants will be pumped consistent with the criteria contained in D-1641. Does that mean that you will not pump at any time in which you are not meeting the Brandt Bridge standard?

MR. MILLIGAN: It means that we will comply with our permit terms and conditions.

MR. JACKSON: When you say that you will pump the water consistent with the criteria contained in D-1641, which criteria are you considering in that conclusion?

MR. MILLIGAN: The ones outlined -- it's the collective of what's required within our permit terms and conditions.

MR. JACKSON: The outflow requirement?

MR. MILLIGAN: That would be one.

MR. JACKSON: Water quality at Brandt Bridge?

MR. MILLIGAN: To the extent controllable by our project, yes.

MR. JACKSON: Why is it that in response to that question, it sounds like you're getting ready for something that's uncontrollable?

MR. SODERLUND: I'll object to that question as vague.

CO-HEARING OFFICER BAGGETT: Sustained.

MR. JACKSON: Do you expect that you will be able
to meet the standard for the rest of the summer?

MR. MILLIGAN: We are preparing a document for
the Board that would indicate that we expect that there
are going to be some exceedances of these particular
standards. The report's consistent with the requirements
of the cease and desist order. And we feel that those
exceedances will be outside of the control of the two
projects.

MR. JACKSON: Now, the Drought Water Bank talks
about the potential for transferring 600,000 acre-feet of
water, does it not?

MS. SERGENT: The 600,000 acre-feet is what we
would be within, the quantity that was analyzed in the
biological opinion. So we would not exceed that quantity.
We did not say that 600,000 acre-feet would be transferred
by the Drought Water Bank.

MR. JACKSON: Do you know how much water will be
transferred under this petition for a consolidated place
of use?

MR. RUBIN: I'm going to object to the question
as asked and answered.

CO-HEARING OFFICER BAGGETT: I would sustain.

She just answered that question.

MR. JACKSON: I don't believe she did. But I'll
ask it differently.
Have you identified all of the potential transfers that will be part of the Drought Water Bank and this consolidated place of use?

MS. SERGENT: We are still getting proposals as we speak. So I can't say that we have all of the transfers that might possibly go through the Drought Water Bank. Again, this petition only covers that portion of the water transferred under the bank that would be considered project water. It does not cover all the other water, the bulk of which is being provided to the bank, that is going to go under individual water rights of the agencies making the water available.

MR. JACKSON: Including your agency?

MS. SERGENT: This petition would cover any water that would be considered project water.

MR. JACKSON: Do you have, Mr. Milligan, any way of knowing what the effect will be that's caused by the consolidated -- the consolidated place of use in the event that this is the third year of a five-year drought?

MR. RUBIN: I'm going to object to the question. It's vague and ambiguous. The question began, "Do you have any way of knowing..."

CO-HEARING OFFICER BAGGETT: I would sustain. Can you rephrase with a little more specificity or at least foundation.
MR. JACKSON: Do you know what will happen next year in regard to the amount of water that will be available?

MR. MILLIGAN: No.

MR. JACKSON: Do you know whether or not this program will take water that would be useful next year for fish and wildlife?

MR. MILLIGAN: My understanding of the types of proposals that are being contemplated, the answer to that would be no. I don't believe there are any.

MR. JACKSON: You don't believe that there's any water that would be useful next year?

MR. MILLIGAN: I don't believe that there's any water in play here that would be a lost resource that may be useful for fisheries next year.

MR. JACKSON: Do you know whether or not there is any water that is being taken this year that would be available for legal water users next year -- other legal water users?

MR. MILLIGAN: I don't believe so.

MR. JACKSON: Is there any water that's going to be taken out of the Central Valley Project storage that would not be taken out of storage but for this program?

MR. MILLIGAN: Certainly not at Shasta. I would say I don't believe that -- I would be able to say that
there would not be any from Folsom or New Melones. I'd have to think a little bit about the San Luis Reservoir potentially the timing of someone using their water this year or carrying it over into the next.

MR. JACKSON: And Friant?

MR. MILLIGAN: I don't believe that there would be water that would damage a water user from Friant's system, no.

MR. JACKSON: All right. What is the purpose for having a two-year program? Why did you request two years instead of just one?

MR. MILLIGAN: The advantage of two years was that there were a number of these that are not -- they're probably more an exchange category, that would benefit from -- it may take it -- it will go into next year before the water could be returned through the system. So if it went into the fall of 2010, that this -- that this would allow for the return of the water under an exchange. I would envision the transfers would occur in this particular year.

MR. JACKSON: So you're not anticipating using this consolidated place of use for a second year of transfer?

MR. MILLIGAN: I am not.

MR. JACKSON: How about the State?
MS. SERGENT: The purpose of the two year, as he said, was sometimes there's a transfer in one year and a return of that same quantity in the next year. At this point, today, we're not anticipating -- we have no idea what next year looks like. But the purpose of having the two-year transfer was so that some of these returns could be accommodated by the one petition.

MR. JACKSON: I have no further questions of this panel.

CO-HEARING OFFICER BAGGETT: Thank you.

CWIN.

CROSS EXAMINATION

OF MR. JOHN LEAHIGH, MR. RON MILLIGAN,

AND MS. MAUREEN SERGENT

BY MS. JULIA JACKSON, ESQ., representing California Water Impact Network:

Sorry. I'm getting my notes together.

And I apologize if some of these questions are a little bit repetitive.

We wanted to be begin with asking about the future projects that are identified in the petition.

There now have been some questions regarding upcoming requests for water. At this time before the Board, is there any way to identify the full scope of where the transfers will be coming from and who they'll be going to?

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MS. SERGENT: Any future transfers, we anticipate -- there's no way to identify them now, but they would all be similar to the ones that are described here, that we'd be between State Water Project and CVP contractors south of the Delta.

MS. JACKSON: And where would the water be coming from exactly, what facilities?

MS. SERGENT: Similar to the ones that are described here, they would be diverted through probably Jones or Banks or coming from the Friant system.

MS. JACKSON: Would any water be coming out of the Shasta or Oroville reservoirs?

MR. MILLIGAN: Most of these would be some form of forbearance or conversion to some groundwater pumping. Where the source of the water that would have been delivered may have been from Shasta or from Oroville, the water that's actually being made available to the bank is the product of that farming decision within those particular areas. It all happens downstream of the reservoirs.

MS. JACKSON: But it would not increase any deliveries from Shasta or Oroville?

MR. MILLIGAN: I can speak for Shasta, that these would not increase or, let's say, lower the storage in Shasta carried into next year.
MS. JACKSON: Would it lower the storage in the next two years?

MR. MILLIGAN: No.

MS. JACKSON: No. Okay.

MR. LEAHIGH: And that would be the same case for Oroville. There'd be -- these transfers would not affect that storage in Lake Oroville.

MS. JACKSON: Okay. Thank you.

And when do you anticipate knowing who the end users of this water will be?

MS. SERGENT: Which water are you talking about?

MS. JACKSON: Project water under this petition, who the water will be going to.

MS. SERGENT: It depends on the individual transfer. We have water going to Empire Westside -- Empire Westside to Westlands. Each transfer is different. But it would be to individuals, State Water Project or CVP contractors.

MS. JACKSON: Do you know how many transfers are possible over the next two years?

MS. SERGENT: We don't at this time. We don't have any new transfers other than the ones that are identified here. But we cannot guaranty that there won't be another proposal.

MS. JACKSON: Okay. Do you know whether
nonproject water transferred under a drought water bank
will use CVP and/or SWP facilities that will require State
Water Resources Control Board permit approval?

MS. SERGENT: Any transfers that are happening
that are not State Water Project or CVP are going under
their own water rights. So that is not a subject of this
petition.

MS. JACKSON: Okay. This question's for
Milligan.

If there is a fourth dry winter, will you likely
be able to meet the temperature objectives like in the
Trinity?

MS. AUFDEMBERGE: I'll object. That calls for
speculation.

MR. RUBIN: I would also object on relevancy
grounds. Mr. Milligan has already testified that none of
the programs that are being contemplated this year will
affect Shasta storage.

CO-HEARING OFFICER BAGGETT: Both are sustained.

I think we've had that question.

So please refrain. If you want to be more
specific beyond what the witness has already answered.

MS. JACKSON: At the risk of asking the same
question again, do you know if you'll meet -- there's a 56
degree temperature compliance on the Sacramento River. Do
you know at this time whether you'll meet that compliance
this year?

MR. RUBIN: I'm going to object to --

MS. AUFDEMBERGE: Objection.

MR. RUBIN: I'm going to object to the question.

I'm sorry, Ms. Aufdemberge.

MS. AUFDEMBERGE: Speculation and vague.

CO-HEARING OFFICER BAGGETT: Well, I'll overrule

it. I don't think it's vague.

MS. AUFDEMBERGE: Well --

MR. RUBIN: I'm going to object on relevancy

grounds.

CO-HEARING OFFICER BAGGETT: I would overrule. I

think it's relevant, I mean since the issue of whether

they're going to comply with a water right. Whether this

witness knows the answer I guess is another issue and it

might require some speculation. But I think the

question's clearly relevant.

Why doesn't counsel try to maybe rephrase the

question. I think we've asked -- it's been asked before.

But if you want to rephrase it with more specificity, that

would be helpful.

MS. JACKSON: Well, if this is outside of the

panel's area of knowledge, then please feel free to say

that.
CO-HEARING OFFICER BAGGETT: So you can answer within your knowledge.

MR. MILLIGAN: Would you please repeat the question? And I will answer it.

MS. JACKSON: Yes. Okay.

Do you know currently whether you will be able to meet the 56 degree temperature compliance on the Sacramento River?

MR. MILLIGAN: We are currently working with the Sac River Temperature Task Group. We have a set of runs and anticipated temperature regime, that we should be able to meet a temperature compliance point set in the river consistent with that. The exact compliance point for the available temperature -- cold water pool at Shasta is yet to be finalized by the task group. We'll probably wait until next month's both runoff forecasts and also temperature profile at Shasta to set the compliance point.

MS. JACKSON: Okay. And then in consideration of acreage limitations under the Central Valley Project, has there been any analysis under this petition for compliance with acreage limitations contained in reclamation water?

MR. MILLIGAN: The same requirements for acreage limitation under reclamation law would still be in effect.

MS. JACKSON: Under the joint system?

MR. MILLIGAN: Yes, under these particular
transfers, those would still be under effect.

MS. JACKSON: Okay. If increased deliveries did
go to the Westlands Water Agency, would those increased
deliveries increase the contaminated agricultural drain of
water?

MR. RUBIN: I'm going to object to the question
as ambiguous, assumes facts that are not in evidence.
Also an incomplete hypothetical.

CO-HEARING OFFICER BAGGETT: I would sustain on
the latter.

Would you please maybe rephrase the hypothetical
and state that that's what it is if that's the intent.

MS. JACKSON: Yes. This is a hypothetical.

If Westlands was to receive more water under this
petition than they were going to receive without it, would
that increase of water, to the best of your knowledge,
increase the amount of contaminated ag water runoff?

MR. RUBIN: I'm going to object again. Assumes
facts that are not in evidence. I mean --

CO-HEARING OFFICER BAGGETT: I'd overrule.

Just -- it's a hypothetical. This expert may or may not
be able to answer it.

Answer it to the best of your knowledge and
ability.

MR. MILLIGAN: I do not know if the additional --
any additional water, be a transfer or otherwise, or an
increase in allocation, from 10 to 15 percent, would be
applied to drainage impacted lands within Westlands. My
assumption is, given the time of the year and the low
allocation, that these waters will probably be applied to
permit crops, probably trees in orchards, probably have
very limited impact on drainage impacted lands.

And none of those, to my knowledge, are draining
to the San Joaquin River.

MS. JACKSON: Okay. I believe that’s all my
questions.

Thank you.

CO-HEARING OFFICER BAGGETT: Thank you.

South Delta. Mr. Herrick.

MR. HERRICK: Thank you, Mr. Chairman, Board
members. John Herrick for South Delta, Central Delta, and
Lafayette Ranch.

This should be a little briefer since there were
many questions already asked.

CROSS EXAMINATION

OF MR. JOHN LEAHIGH, MR. RON MILLIGAN,
AND MS. MAUREEN SERGENT

BY MR. JOHN HERRICK, ESQ., representing South Delta Water
Agency, Central Delta Water Agency, and Lafayette Ranch:

Mr. Milligan, let me start with you based on the
last questions that were made.

Has the Bureau done any analysis which would indicate if the petition is granted, there will be additional drainage to the San Joaquin River?

MR. MILLIGAN: No.

MR. HERRICK: And same question for the Department.

Has anybody in the Department done any analysis that if the petition is granted, whether or not there will be additional drainage into the San Joaquin River?

MS. SERGENT: No.

MR. HERRICK: Mr. Milligan, has the Bureau consulted with Fish and Wildlife Service with regards to this petition?

MR. MILLIGAN: I've had informal conversations with Fish and Wildlife Service. They have indicated that if the program stays within the limitations that were outlined in the biological opinion, that they would feel that we are -- we would not be endangering Delta smelt.

MR. HERRICK: And did they issue any sort of documentation or opinion or something that is being presented here today supporting that?

MR. MILLIGAN: No, they have not.

MR. HERRICK: Okay. Do you know if they were asked by the Bureau to appear today in support of this
MR. MILLIGAN: I don't believe they were.

MR. HERRICK: Okay. And then the same questions with regard to NOAA fisheries. Did the Bureau do any consultation with NOAA Fisheries -- I guess it's NMFS?

Sorry.

MR. MILLIGAN: I say usually -- I go either way with that too. It depends on --

MR. HERRICK: I don't know which is correct anymore.

MR. MILLIGAN: Neither do they, from my conversations with them.

CO-HEARING OFFICER BAGGETT: Strike that answer. Please answer the question.

MR. MILLIGAN: Yes.

MR. HERRICK: Sorry.

MR. MILLIGAN: Again, they have indicated that as long -- to be very cautious, to stay within the limitations as outlined in their existing biological opinion.

But, no, they have not provided any additional documentation about this particular proposal.

MR. HERRICK: Thank you.

For the Department, did they ask -- excuse me.

Do you know if the Department asked Department of
Fish and Game to appear and make any comments with regards to the petition pending before the Board?

MR. LEAHIGH: As far as I know, they were not asked.

MR. HERRICK: There were some questions with regard to the water quality standards in the south Delta. And the reason I bring these up is I believe both in Mr. Leahigh's testimony and Mr. Milligan's testimony, you generally state - and I'm not trying to misstate it - that you intend to comply with all regulatory restrictions during the time if the petition is granted; is that correct?

MR. MILLIGAN: Yes.

MR. HERRICK: And, Mr. Leahigh, is that the same answer for you?

MR. LEAHIGH: Yes, that is our answer as well.

MR. HERRICK: Is one of those permit conditions the water quality objectives for fish and wildlife beneficial uses during the, I'll say, pulse flow period this spring?

MR. MILLIGAN: Yes.

MR. HERRICK: And could you explain to us your understanding of what pulse flow is required this spring?

MR. MILLIGAN: My understanding of the -- that this is a VAMP offramp year, and that in fact that there
is not identified a pulse flow -- a 31-day pulse flow this particular year.

MR. HERRICK: And, Mr. Milligan, when you say offramp, that refers to one of the terms in the San Joaquin River agreement; is that correct?

MR. MILLIGAN: It does.

MR. HERRICK: And that term generally states that depending on current and prior years' hydrology, that the contributory agencies may be relieved of the burden of providing water towards a pulse flow?

MR. MILLIGAN: That is one use of the term.

There's also some indication of that within the text of D-1641.

MR. HERRICK: So it's your position that D-1641 has a provision that, when applicable, results in no pulse flow being required?

MR. MILLIGAN: Yes.

MR. HERRICK: Could you just generally reference what portion of D-1641 you're referring to?

MR. MILLIGAN: I don't have my document in front of me with some tabs. But in the discussion about the pulse flow period, I do believe that there is reference made to years that are cumulative dry or critically dry years in a fashion that's very similar to what's in the San Joaquin River agreement, that there's a period of time
where the exports are at -- they're limited to one-to-one Vernalis flows and that there really is no indication of a required pulse during this period.

MR. HERRICK: Is that consistent with the 2006 Water Quality Control Plan for the Bay-Delta?

MR. MILLIGAN: I believe it is.

MR. HERRICK: Do you believe it's consistent with the implementation plan in the 2006 Water Quality Control Plan?

MR. MILLIGAN: I believe that it is. But I can't say that I have more recent -- as recently as I've read the text within D-1641 on this issue.

MR. HERRICK: Mr. Leahigh, does the Department have any different position with regards to pulse flows this spring than were just stated by Mr. Milligan on behalf of the Bureau?

MR. LEAHIGH: No.

MR. HERRICK: I'll avoid going over the same ground. We talked about the water quality standards. This is for both the Department and the Bureau. Didn't the water quality standard at Vernalis and the three interior Delta stations switch to .7 as of April 1st this year?

MR. MILLIGAN: Yes, they did.

MR. HERRICK: And the 30-day running average is...
well above that -- is the 30-day running average well
above that for both the Tracy Old River Station and the
Brandt Bridge Station?

MR. MILLIGAN: Yes, it is. I will defer to John
if he -- I believe the -- I'm uncertain on the Brandt
Bridge.

MR. LEAHIGH: Well, yeah, I think that's correct,
that the -- the 30-day running averages are -- well, okay.
I think there's one station where the 30 day running
average is currently over the .7. Although, for that
particular standard there's a transitional period that's
recognized under D-1641 in which a running day average
would not apply until you get those many days within the
new period.

So what I'm saying is technically the 30-day
running average would not be required to be .7 until the
30th of April.

MR. HERRICK: Do you have any anticipation that
the 30-day running average for the Brandt Bridge Station
will be met as of the 30th of April?

MR. LEAHIGH: I think it's going to be close.
Actually that particular station was freshening up quite a
bit and may actually meet the .7.

MR. HERRICK: How is it freshening up with
limited exports and low San Joaquin River flows?
MR. LEAHIGH: Well, San Joaquin flows are low. Although there has been a slight increase as of recent -- recently. Also probably depends on where we are in the tidal -- spring neap tidal cycle.

MR. HERRICK: Let's move over to the Tracy Old River Bridge standard. Do you anticipate that on the 30th of April, the Tracy Old River Bridge standard will be met on the 30-day running average?

MR. LEAHIGH: Of all the stations in the south Delta, that one is probably least likely to be less than the .7.

MR. HERRICK: Is that a yes or a no?

MR. LEAHIGH: We -- we currently -- we've been evaluating exactly where that standard will be as of the 30th of April.

MR. HERRICK: Are you aware, Mr. Leahigh, that the 2006 Water Quality Control Plan clarifies that the standards are to apply throughout the channels, not just at the monitoring stations?

MR. LEAHIGH: I believe there's some language to that effect in D-1641. I don't know the exact language.

MR. HERRICK: What actions are the Department taking to -- if any, in an attempt to meet the Brandt Bridge Station?
MR. LEAHIGH: We're limited in what actions we can take due to the constraints that we currently have on our exports due to -- earlier it was due to the new Old and Middle River flow requirements due to the biological opinion. And more recently it's due to the one-to-one Vernalis export constraint that we're currently operating under.

MR. HERRICK: Well, if you exported less, wouldn't more water flow through the south Delta?

MR. LEAHIGH: Actually some of -- well, some of the modeling that we've actually produced for other workshops and hearings for the Board have shown that increased exports actually improve the water -- the circulation, water quality conditions in the south Delta. And as I noted, we are restricted on our exports at the current time.

MR. HERRICK: But that wouldn't be the case if there was a pulse flow at the -- excuse me. That wouldn't be the case if there were a pulse flow on the San Joaquin River and exports were at zero, would it?

Let me phrase that.

Wouldn't the pulse flow waters then move through the south Delta rather than stay there?

MR. LEAHIGH: Well, it's hard to say which scenario would actually be of more benefit to the...
conditions in the south Delta, whether it be increase in
the exports or higher flows on the San Joaquin with zero
exports. That would be speculative as far as which would
be better for water quality.

MR. HERRICK: Is the Department undertaking any
actions in order to attempt to meet the Tracy Old River
standard this summer?

MR. LEAHIGH: I think one thing that the
Department is planning on doing is to, as we have in past
years, look at different gate openings on the temporary
barriers in the south Delta, and in an attempt to balance
the needs for water levels with water quality, taking
advantage of certain tidal cycles, keep some of those flap
gates tied open in order to provide a little bit better
circulation patterns to improve water quality when those
opportunities present themselves.

MR. HERRICK: Isn't DWR planning on raising the
Middle River barrier in order to improve flows in the
south Delta in an attempt to control salinity levels?

MR. LEAHIGH: Yes. And I know we have been
working with South Delta Water Agency as far as looking at
what may be a more efficient design for the temporary
barriers in the south Delta in order to improve the
circulation and therefore the water quality.

MR. HERRICK: Those changes to the barriers
though require additional or supplemental permitting from
the fisher agencies, is that correct?

MR. RUBIN: I'm going to object to the question.

I've been trying to be patient here. But, again, I don't
see the relevance here of the questions. The witnesses
has testified in terms of the position of the United
States Bureau of Reclamation/Department of Water Resources
to compliance with terms and conditions in their water
rights. If there's an issue that Mr. Herrick has, it
seems to me that it's not related to the scope of this
proceeding, but issues that may be raised outside of this
proceeding.

MR. HERRICK: Mr. Chairman, the testimony
specifically discusses that the Department and the Bureau
intend to meet their regulatory requirements.

CO-HEARING OFFICER BAGGETT: I understand.

MR. HERRICK: And so questions along those lines
would appear to be directly relevant.

CO-HEARING OFFICER BAGGETT: I would overrule in
terms of the issue. I would sustain in terms of the
specific question. I think the witnesses have answered
many of these questions. So if you've got additional or
relevant -- you know, additional questions, you know,
proceed. But I think there's already been a lot of
discussions on whether they intend or can or the history
of complying with the water right and water quality
standards in the permit terms to their knowledge.

So if you've got something additional to what's
already been asked, you know, proceed.

MR. HERRICK: I will, Mr. Chairman. The point
I'm getting at, which I'll be there briefly, deals with
the preference of actions by the Department and the Bureau
to either help exports or to meet permit conditions.

CO-HEARING OFFICER BAGGETT: I think I
understand. So if you could just proceed and maybe just
get there.

MR. HERRICK: Mr. Leahigh -- well, if I get there
quickly, then the objection will be lack of foundation.

CO-HEARING OFFICER BAGGETT: I understand. And
let's assume the foundation was laid by the two previous
lines of questions and then what you asked already.

MR. HERRICK: Mr. Leahigh, has DWR asked for a
reconsultation on its permits dealing with the barriers in
order to raise the Middle River barrier yet?

MR. LEAHIGH: Actually I'm not aware if we have
or not as far as -- I'm not sure if that analysis has been
completed as far as what would be the most efficient
configuration for the barriers.

MR. HERRICK: Well, how did DWR decide to
petition for a consolidated place of use before it decided
to petition for a permit change to change the barriers' operations?

MR. LEAHIGH: Well, as I stated, DWR staff has been working with South Delta water agency in trying to improve those -- that temporary barrier program to provide better circulation. That's been ongoing for some time. I think we would -- when that's finalized, we'll make the attempt to put that into place as soon as we can.

MR. HERRICK: Would DWR be agreeable to the approval of this condition based upon getting authority to raise the Middle River barrier?

MR. LEAHIGH: I don't see the connection between the two.

MR. HERRICK: Well, if raising the Middle River barrier allowed you to meet the Tracy Old River Road standard, then that would allow the Bureau and DWR to meet their permit conditions.

MR. RUBIN: I'm going to object to the question. I think it assumes facts that are not in evidence, misstates the testimony that's been provided.

MR. HERRICK: Well, that's not correct. He asked me -- he wasn't sure, so I clarified what I was meaning. So it wasn't stating facts not in evidence.

MR. RUBIN: Mr. Herrick's question kind of gets to the issue that we're all dancing around, and that's the
difference of opinion in terms of responsibility. And
that's the basis for my objection.

CO-HEARING OFFICER BAGGETT: I understand. I
think it's an appropriate line of question. If the
witness can answer within the scope or just say they don't
know the answer, I mean that's -- I think it's an
appropriate question to ask. If it's not something that
any of the witnesses are familiar with, then they can so
state.

MR. LEAHIGH: I don't think that that should be a
criterion upon which approval of this petition should be
granted.

MR. HERRICK: Mr. Milligan, would you have a
similar -- would you have the same answer?

MR. MILLIGAN: John, would you repeat your
question.

MR. HERRICK: Would you be agreeable to having
the approval of the petition before the Board conditioned
upon the installation of an additional foot on the Middle
River barrier?

MR. MILLIGAN: I don't think I'd make that
connection. But I am probably one who's looked at the
particular information and I'm not entirely sure that the
additional foot that's been discussed in the past, John,
 isn't currently within the -- what was analyzed as part of
the biological opinion. So we may be -- I don't know that
there really is a -- what needs to be done there or if
there actually has to be something done. Clearly I think
that there is some improvement that we have seen over the
last couple of years with operating -- so called operating
the temporary the flap gates to improve the circulation in
the south Delta.

MR. HERRICK: Mr. Milligan, are you familiar with
the cease and desist order issued against DWR and the
Bureau?

MR. MILLIGAN: Yes, I am.

MR. HERRICK: Would you agree that one of the
provisions there says that the Department and the Bureau
are required to I think it's mitigate the effect -- excuse
me -- the threatened violations of the south Delta
standards by July 1st, 2009?

MR. RUBIN: I'm going to object to the question.

I think the document speaks for itself. If Mr. Herrick
has some questions that --

MR. HERRICK: You know, we can take all day if we
want to. But, you know, introducing the next line of
questioning, asking if he's familiar, it seems perfectly
appropriate to me.

I know we're playing a game --

MR. RUBIN: Well, no, no, no. It's one thing to
ask a witness if he's familiar with a document. But Mr. Herrick makes a statement about is he familiar with a statement that's in the document. And, frankly, I don't have the document in front of me to know whether he's assuming a statement, if he's stating it correctly. And so --

CO-HEARING OFFICER BAGGETT: Okay. I appreciate --

MR. RUBIN: He would have to ask the witness if it includes that statement or if he knows if there's a statement to the --

CO-HEARING OFFICER BAGGETT: I would sustain. Could you rephrase the question, since the document is not before us, as either a hypothetical or assuming the statement, and then phrase it that way, Mr. Herrick.

MR. HERRICK: Mr. Milligan, these next questions are trying to elicit your understanding of the effects of the petition, because I'm not clear from the documents themselves.

Is it your understanding that if the petition is granted, then transfers or exchanges among CVP and SWP contractors would not require any further petitions before this Board?

MR. MILLIGAN: That would -- I would not a hundred percent assume that. I would look very closely as
to how the -- in the Board's approval of this petition if
they were to provide a similar guidance about would there
need to be further approval on specific transfers or a
collective of transfers as they relate to CVP north to
south or the cross of CVP to State water contractors or
vice versa.

MR. HERRICK: Who would that decision be left up
to, I mean filing that additional petition? Would the
Bureau be making a decision if someone comes to them and
asks to transfer water to a CVP or SWP contractor?

MR. MILLIGAN: I guess that
depends -- hypothetically speaking, I don't know exactly
how the wording from the Board would be on that. We'd
probably have to look at that and evaluate that as we got
it.

MR. HERRICK: Would it be your -- do you have an
understanding to whether or not a transfer or exchange
between CVP and SWP contractors under this petition would
require compliance with joint point-of-operation rules and
restrictions if the export pumps were being used?

MR. MILLIGAN: I guess that would depend on the
water being moved and probably the origin of the water. I
could -- I'd probably have to think that one through a
little bit, John.

MR. HERRICK: Okay. Mr. Leahigh -- It's Leahigh,
isn't it? I'm sorry.

MR. LEAHIGH: Yes, Leahigh.

MR. HERRICK: Everybody on earth calls you Leahigh. I apologize.

Same question I had to Mr. Milligan. Is it your -- do you have an understanding as to whether or not joint point-of-diversion restrictions would apply to any exchange or transfer between CVP and SWP under this petition?

MR. LEAHIGH: My understanding is that the exchanges of project water that would be subject to this petition would not require any joint point of diversion.

MR. HERRICK: And let me rephrase this pending objection that will come up.

So it's your understanding then that if the petition would be granted, that joint point could occur -- excuse me -- that that water could be transferred via the export pumps even if southern Delta standards were being violated; is that correct?

Let me rephrase that.

One of the conditions of joint point is compliance with permit terms and conditions; is that correct?

MR. LEAHIGH: There are terms and conditions in D-1641 that cover joint point of diversion, correct.
MR. HERRICK: And last summer the Bureau and DWR had an urgency petition to allow joint point notwithstanding violations or exceedances of water quality standards in the south Delta which are permit conditions of the two parties here; is that correct?

MR. RUBIN: I'm going to object to the question on grounds of it's compound and ambiguous. I think that if Mr. Herrick restates it characterizing the issue as an exceedance or a violation, it might resolve my objection.

CO-HEARING OFFICER BAGGETT: I would agree it's compound.

Can you rephrase it please.

MR. HERRICK: Mr. Leahigh, do you have an understanding of whether or not joint point restrictions will apply this summer to transfers of water through the export pumps if the petition is granted?

MR. LEAHIGH: Well, as was stated, some of the transfers involve project water. And my understanding is that the transfer -- the pumping of project water -- State Water Project project water would be pumped at Banks pumping plant, project water of the CVP would be pumped at Jones pumping plant, and therefore no joint point of diversion would be required.

MR. HERRICK: So is it your conclusion then that if there are exceedances of southern Delta salinity...
standards, the transfers contemplated by this petition could move forward?

MR. LEAHIGH: Yes.

MR. HERRICK: Same question with regard to exchanges.

MR. LEAHIGH: Yes.

MR. HERRICK: Same question with regard to non-CVP or SWP water north of the Delta which might be then transferred under this petition.

MR. LEAHIGH: Yeah, I believe that that is outside the scope of this petition, does not deal with nonproject water under individual water rights holders.

MR. HERRICK: And of course project water for both projects includes large amounts of people downstream whose water is either stored or controlled by the CVP or SWP dams upstream; is that correct?

MR. LEAHIGH: I am not sure I understand the question.

MR. HERRICK: Well, let's say a contractor -- excuse me. Let's say a district along the Sacramento River which has its own water right but the Bureau provides that water through releases from Shasta Dam. Maybe this is better for Mr. Milligan.

Is it your understanding that that district would then -- would that district's water be considered CVP
water for the purposes of this petition?

MR. MILLIGAN: That has been how we've looked at
it, John.

MR. HERRICK: Mr. Milligan, do you contemplate
any -- does the Bureau contemplate any other urgency
petitions this year with regard to existing permit
conditions of the Bureau?

MR. MILLIGAN: The --

MS. AUFDEMBERGE: I object. I mean if it's -- if
those urgency petitions are related to this petition, then
it would be relevant. But if they're not, how -- I object
on relevancy.

MR. HERRICK: Well, the relevancy is the
Department and the Bureau are telling the Board that
they're going to comply with all their permit terms and
conditions. And if they're planning on filing an urgency
petition next week for one of those, that would be
misleading.

CO-HEARING OFFICER BAGGETT: I would overrule.

Please answer.

It's incredibly relevant. Please answer, to the
best of your ability or if you know.

MR. MILLIGAN: There is possibility that,
depending on how circumstances develop, that the projects
may ask for some relief via an urgency change petition.
MR. HERRICK: Relief from what?

MR. MILLIGAN: Potentially, depending on how X-2 requirements may fall out, if that required a great deal of water to be taken out of storage upstream reservoirs that may relate to cold water pool, I could easily see that being something that we may contemplate a change petition for.

MR. HERRICK: And, Mr. Leahigh, the same question. Are there any other -- besides what Mr. Milligan said, are there any other topics about which an urgency petition is being contemplated by DWR?

MR. LEAHIGH: At this point I don't foresee any from DWR's perspective.

MR. MILLIGAN: We are sorting out - I might add just for full disclosure - sorting out the need for potentially a joint point petition.

MR. HERRICK: Thank for your honesty.

MS. SERGENT: Yes, it is.

MR. HERRICK: I'm not sure I understand that, in that if the petition is granted, isn't there a possibility that other parties who would have had to file their own petition for transfers now might be able to do it more
expeditiously under the umbrella of this petition's authorization?

MS. SERGENT: No.

MR. HERRICK: No?

MS. SERGENT: The other parties who are providing water to the water bank are -- many of them have already filed with the Water Board. This only covers project water. It does not cover anyone else's water rights. Those parties are going individually to the Water Board.

MR. HERRICK: So you're sure that no State water contractor upstream of the Delta might want to transfer or sell water either later this year or next year?

MS. SERGENT: State water contractor?

MR. HERRICK: Yes. Doesn't --

MS. SERGENT: State Water Project contractors are not providing water for sell to the water bank.

MR. HERRICK: No, I wasn't talking about the water bank. I said you're confident then that no upstream user of State Water Project water might want to sell water either this year or next year?

MS. SERGENT: I don't anticipate it. There's no way to say 100 percent that that wouldn't happen. But with allocations this low, our State Water Project contractors are in a situation where they don't have much project water to move south. And it would be within the
State Water Project's existing water rights. It would not be a subject of this petition.

MR. HERRICK: Well, if somebody receives State Water Project from -- somebody receives water from Oroville Dam, isn't it possible that if the drought continues that there's some financial incentive for them to transfer/exchange their allocation rather than put it to use themselves?

MS. SERGENT: I'm sorry. I'm not understanding your question. Are you saying that a State Water Project contractor would be selling its Table A supply to a CVP contractor?

MR. HERRICK: Well, I'm suggesting that the blanket authority of this petition creates the incentive for somebody upstream of the Delta who's not receiving all their water to sell that limited amount to somebody downstream of the Delta because there's a large profit to be had. You don't agree with that incentive?

MS. SERGENT: No, I don't.

(Laughter.)

MR. HERRICK: And just quick follow-on from other questions.

Mr. Milligan, there's been no analysis then of -- excuse me -- there's been no NEPA analysis of any of the potential actions under this petition?
MR. MILLIGAN: No independent NEPA analysis or, I'd say, any NEPA analysis of this movement of water. As I understand, these particular exchanges or transfers, that they would fall within the -- well, let's say, the historical operations of the CVP.

MR. HERRICK: Has the Bureau done any analysis of the transfers under this petition when compared against what would happen in the absence of the petition, not historical transfers but what would happen in the absence of the petition?

MR. MILLIGAN: Well, we aren't quite sure what all the -- the fullest extent of the potential transfers, particularly as they relate to CVP contractors. I believe they fall within the analysis that we did for the biological opinions. So our analysis that we did recently in our biological assessment I think would cover the Delta operations as they relate to this. Clearly we've done some analysis as it relates to the amount of acres that may be idled and how that may affect something like a giant garter snake perhaps.

MR. HERRICK: Mr. Leahigh, the same question to you. Has the Department -- or maybe it's for Ms. Sergent. I'm sorry. Has the Department done any analysis comparing the effects of the petition being granted with the state of affairs this year if the petition is not granted?
MS. SERGENT: I'm sorry. I'm still not understanding the question. Did we analyze what would happen where?

MR. HERRICK: Well, let me back up then.

The purpose of an analysis would be to compare the effects of one action as against a nonaction -- not taking that action.

I'm asking if the Department has done an analysis of the effects resulting from granting the petition when compared to the condition this year, not granting the petition?

MS. SERGENT: We did not do an individual analysis.

MR. HERRICK: And, lastly, the -- I guess this is for the Department.

Do you recall the -- maybe it's for Mr. Milligan. I'm sorry. Do you recall the issues from D-1641 regarding Santa Clara Valley -- Santa Clara Water District's area of use issues?

MR. MILLIGAN: No, I don't, John.

MR. HERRICK: Okay. Does the Department recall that?

MR. LEAHIGH: No.

MR. HERRICK: Okay. That's all I have.

Thank you, Mr. Chairman.

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CO-HEARING OFFICER BAGGETT: Thank you.
San Joaquin have any questions? Or how many
minutes before you --
MS. GILLICK: I don't know --
CO-HEARING OFFICER BAGGETT: I'm just trying to
determine when to break for lunch. If it's going to --
well, continue. While you're walking up, if we can get
done with this series, maybe I should ask defenders how
long they anticipate.
MR. BASOFIN: Fifteen minutes.
MS. GILLICK: I mean I'd say 5, 10, 15 minutes.
CO-HEARING OFFICER BAGGETT: 5, 10, 15. Well,
let's proceed with San Joaquin and see how it goes, and
then -- because I'd like to break by 1 at the latest.
MS. GILLICK: Okay. Thank you.
DeeAnne Gillick on behalf of the County of San
Joaquin.
CROSS EXAMINATION
OF MR. JOHN LEAHIGH, MR. RON MILLIGAN,
AND MS. MAUREEN SERGENT
BY MS. DeeAnne GILLICK, ESQ., representing County of San
Joaquin, San Joaquin County Flood Control and Water
Conservation District:
Ms. Sergent, in your testimony I believe on page
7 you refer to CVP Eastside Contractors. Does the CVP
Eastside Contractors include the New Melones unit, if you know?

MS. SERGENT: No.

MS. GILLICK: It does not?

MS. SERGENT: It does not.

MS. GILLICK: Mr. Milligan, on behalf of the Bureau, does the CVP Eastside unit include the New Melones contractors?

MR. MILLIGAN: The Eastside Division as it's described in the CVP does include that. But as it's described in the petition is really the Friant Division.

MS. GILLICK: So you're limiting the statements in the petition in your testimony regarding the Eastside CVP as the Friant --

MR. MILLIGAN: -- the Friant Division, yes.

MS. GILLICK: And so those references in your testimony in the petition do not refer to any implications to the New Melones contractors?

MR. MILLIGAN: That is correct.

MS. GILLICK: And, Ms. Sergent, do you concur or agree with those statements?

MS. SERGENT: Yes.

MS. GILLICK: In both Ms. Sergeant's testimony and Mr. Milligan's, you make a statement that this petition will not increase net flows to the San Joaquin
River and the Sacramento River; is that correct?

MS. SERGENT: Say will not increase?

MS. GILLICK: The flows within the San Joaquin River.

MR. MILLIGAN: I don’t recall that necessarily in the testimony. But the answer is, no, it would not increase San Joaquin River flows.

MS. GILLICK: Okay. How are you going to ensure that the increase -- there will not be any increases to the San Joaquin River flows?

MS. SERGENT: Are you referring to increased drainage?

MS. GILLICK: That’s the reference to -- I assume that flows means the increased drainage, correct.

MS. SERGENT: I think what we stated in the petition and in our testimony that it would not increase above average historic averages.

MS. GILLICK: So has the Department or the Bureau done any modeling to determine whether or not this petition will increase any drainage -- typical drainage to the San Joaquin River?

MS. SERGENT: We did not specifically analyze that, because it was so far below historic average deliveries to this area.

MS. GILLICK: Mr. Milligan, is that correct?
MR. MILLIGAN: I don't -- I concur with that. I don't believe any of these particular deliveries were targeted for folks that would have drainage to the San Joaquin within the grasslands area.

MS. GILLICK: And, Mr. Milligan, do you know if any of -- as a result of this petition, whether there will be any increased obligation on New Melones for water quality releases?

MR. MILLIGAN: I don't believe there would be. Again, I don't believe that any -- I'm not aware of any of these deliveries that were going to be made to a district but then ultimately drained to the San Joaquin River.

MS. GILLICK: For again both parties, DWR and the Bureau, and I believe, Mr. Leahigh, there was testimony you provided previously. To your knowledge, are DWR and -- strike that.

To your knowledge, have the water quality standards been met or been violated in 2009?

MS. AUFDEMBERGE: Objection. Clarify. Violated by whom?

MS. GILLICK: Well, have they been met --

CO-HEARING OFFICER BAGGETT: Right, I would sustain that, but -- I mean we've already been through this I don't know how many times. So if you've got some new questions related to this, I would like that.
MS. GILLICK: Well, I'm not certain how detailed we went to. So if I repeat, I will try to circumvent that.

CO-HEARING OFFICER BAGGETT: If you could do it quickly please. We've discussed this at length already.

MS. GILLICK: Have the standards been violated in 2009? Both -- the salinity standards? Foundational questions for both parties.

MR. LEAHIGH: Well, as was stated earlier, one of the salinity standards has been exceeded in the south Delta starting back in December of 2008. But the projects have met the terms and conditions of D-1641.

MS. GILLICK: And I believe there was a discussion that on January 1st the salinity standards at all measuring locations and throughout the Delta goes to .7, is that correct -- throughout the southern Delta?

MR. LEAHIGH: Standard changes to .7 south Delta, yes.

MS. GILLICK: And does either the Bureau or DWR - and I believe there's testimony on behalf of DWR - whether or not those standards are going to be expected to be met at the 30-day running average of that .7 standard?

MR. RUBIN: I'm going to object.

MR. SODERLUND: I'm going the object.

MR. RUBIN: Sorry, Erick.
MR. SODERLUND: Well, go for it.

MR. RUBIN: I think the question was ambiguous.

It was worded in the passive, questioning whether they
would be met. It's not clear whether they --

CO-HEARING OFFICER BAGGETT: I understand. And
we've already been through these a lot.

Could you please restate the question. And if
there's new information on these standards that hasn't
already been asked at least twice today, that would be
appreciated.

MS. GILLICK: I believe there was testimony
earlier -- and I don't want to --

CO-HEARING OFFICER BAGGETT: There was, and
that's why saying if you've got new information --

MS. GILLICK: Well, I could try not to restate
what was said or I'm trying to have the witnesses do that
as my foundation questions.

That it is anticipated that at least one or some
of the standards as anticipated may not be met in the
southern Delta this year. I believe that was the previous
testimony. Am I correct, Mr. Leahigh? Is that a correct
recitation?

MR. LEAHIGH: Well, the previous -- I think the
previous testimony was that, yes, the standard goes to .7
on a 30-day running average, which would begin the end of
April. And I think testimony was that conditions are improving rapidly, and whether or not we will be able to -- whether or not those standards will be met is being evaluated even as we speak.

MS. GILLICK: In the evaluation on whether or not you're going to be able to meet those standards, is either the Department or USBR considering any purchase of water for the purposes of meeting water quality standards?

MR. RUBIN: I'm going to object to the question. It misstates the testimony.

The question again that was asked previously was passive. The question was whether the objectives would be met. The question that I'm objecting to now turns the testimony and characterizes the testimony as whether the Department or the Bureau will meet the objectives. And it's not clear in my mind whether --

CO-HEARING OFFICER BAGGETT: Okay. I understand.

I will sustain that. If council wants to ask, assuming or if conditions state or as a hypothetical that the standards will be violated, how do they intend to address their portion of those standards, that would be appropriate.

MS. GILLICK: Yeah, I believe Mr. Leahigh just indicated that -- you know, I don't know the exact language he said. I can't recite that right now. But
there was an indication that it may be problematic to meet one of the standards. So based upon that, and I'll use that as hypothetical, has the Department or DWR considered any water purchases in order to meet the water quality standards for the upcoming year?

MR. LEAHIGH: The Department has not considered any water purchases for meeting the standard.

MS. GILLICK: Mr. Milligan?

MR. MILLIGAN: No.

MS. GILLICK: Has the Department or -- first of all, has the Department considered any modifications of the barrier problem -- of barriers in order to meet southern Delta salinity standards this year?

MR. LEAHIGH: Well, as I stated earlier, there is a process in place where Department staff are working with South Delta Water Agency and looking at what could be a more efficient configuration of the temporary barrier program in the south Delta, which may not necessarily -- still may not necessarily allow those standards to be met but could possibly improve salinity conditions in the south Delta. We also, as I stated earlier, plan to do as we have in past years, reoperate the flap gates in ways that balance the needs for stage and circulation for water quality in the south Delta.

MS. GILLICK: Has there been modeling done
that -- you know, some modifications to the barriers might improve water quality standards in the south Delta?

MR. LEAHIGH: Yes, that is part of that process.

There's ongoing modeling efforts.

MS. GILLICK: And has the modeling indicated that modifications with the barrier programs would improve water quality standard in the south Delta?

MR. LEAHIGH: Well, also as I stated earlier, I'm not sure that there -- that that process has come to a conclusion yet as far as what the best configuration would be for those. I think it's ongoing at this time.

MS. GILLICK: Has some of the modeling results indicated that it could improve water quality?

MR. LEAHIGH: I have not been personally involved in that modeling effort. But I imagine that there are different configurations where you will have trade-offs between benefits to water quality versus stage. And those trade-offs are part of what's being evaluated.

MS. GILLICK: And, Mr. Milligan, has the Bureau been involved in any of those analyses to improve salinity in the south Delta based on the barrier program?

MR. MILLIGAN: We have been. Clearly it seems to improve the circulation of water and flows in the south Delta. The actual 30-day running average as it relates to the gauging stations probably hasn't shown a high
significance in improvement there. But clearly the
circulation does seem to be much better with actually
managing the flap gates.

MS. GILLICK: And does the Bureau have any plans
to implement the modifications -- any modifications of
those barrier flap gates?

MR. MILLIGAN: That is a DWR program. But we
stand ready to assist them in any way we can.

MS. GILLICK: Are joint -- Mr. Milligan, are
joint points of diversion currently occurring?

MR. MILLIGAN: No.

MS. GILLICK: Is it anticipated that joint points
of diversion will occur this year?

MR. MILLIGAN: It is possible that the CVP could
have some water that we could take advantage of moving via
joint point, yes.

MS. GILLICK: That completes my questioning.

CO-HEARING OFFICER BAGGETT: Thank you.

Let's try to do defenders, so then when we come
back, it could be moved to redirect. So why don't
defenders come on up.

See if we can get it done in ten minutes.

MR. BASOFIN: Josh Basofin on behalf defendant
errs of wildlife.

/////
CROSS EXAMINATION

OF MR. JOHN LEAHIGH, MR. RON MILLIGAN,
AND MS. MAUREEN SERGENT

BY MR. JOSHUA BASOFIN, ESQ., representing the Defenders of Wildlife:

I just have a few brief questions for Mr. Milligan.

Good afternoon, Mr. Milligan.

MR. MILLIGAN: Good afternoon.

MR. BASOFIN: First, you stated earlier the rationale for the request to have this petition for consolidating places of use in effect for two years is to allow for return water to go back in 2010; is that correct?

MR. MILLIGAN: Yes.

MR. BASOFIN: Okay. Is that rationale stated in the petition itself?

MR. MILLIGAN: I don't believe it is.

MR. BASOFIN: Okay. Is there a reason why you didn't include that?

MR. MILLIGAN: Well, at the time the petition was being drafted, it was -- there was -- we were trying to decide whether to do this under the current form or whether to do it as an urgency change petition. But the idea of the -- but clearly one of the advantages of a
little longer length of time was to allow for the return of water as it related to these exchanges south of the Delta. If we had gone in another way, we probably could have accommodated those exchanges in a way that we wouldn't have to do it, but it would make it much more complicated.

MR. BASOFIN: Okay. Is there any other potential reason that would necessitate the two-year period of time?

MR. MILLIGAN: No. I could ask Maureen. But I don't believe that there's any anticipated transfers from north to south that are contemplated within this petition for next year.

MS. SERGENT: No.

MR. BASOFIN: Okay. Turning to a fishery issue. Will there be any cold water of 56 degrees Fahrenheit left in the Shasta reservoir for this year's Sacramento River fall-run chinook salmon to spawn in the fall?

MR. MILLIGAN: Again, as I stated before, the Sac River Temperature Task Group is evaluating what the proper -- or the most appropriate temperature compliance point is for the summer. That is one of the considerations that they're taking into account.

I believe that there will be. We certainly have seen improvement in both the volume at Shasta Lake and
then also the cold water pool. So I believe that there
will be.

MR. BASOFIN: Okay. Are you aware that this
petition was filed under Section 1700 of the California
Water Code?

MR. MILLIGAN: Yes.

MR. BASOFIN: Okay. Are you also aware that that
section requires the petitioner to include all information
reasonably available to the petitioner that can be
obtained from Department of Fish and Game concerning the
extent, if any, to which fish and wildlife would be
affected?

MR. MILLIGAN: I believe that's a general
requirement of the petitions that we file.

MR. BASOFIN: Mr. Milligan, has the Bureau of
Reclamation -- is it true that the petition will
facilitate transfers of water from crop idling projects in
the Sacramento Valley in part?

MR. MILLIGAN: That's my understanding, yes.

MR. BASOFIN: And has the Bureau of Reclamation
issued a biological assessment regarding the impact of
those crop idling practices on giant garter snake?

MR. MILLIGAN: Yes, we have.

MR. BASOFIN: And has the Bureau of Reclamation
released environmental assessment in finding no
significant impact that concerns in part those crop idling practices and their effect on giant garter snake?

MR. MILLIGAN: I believe we have.

MR. BASOFIN: Okay. And has the Bureau of Reclamation initiated consultation with the U.S. Fish and Wildlife Service regarding those crop idling practices and their effect on giant garter snake?

MR. MILLIGAN: We did that prior to issuing the EA FONSI and --

MR. BASOFIN: Okay. So is it accurate to say that information on crop -- from crop idling practices on giant garter snake is readily available to you?

MR. MILLIGAN: Well, yes, because Bureau of Reclamation provided the analysis.

MR. BASOFIN: Okay. And so why is it that that analysis was not included in the petition?

MR. MILLIGAN: Because that wasn't finalized till last week. I'm afraid it was conducted and completed after the petition was filed.

MR. BASOFIN: I have no further questions.

CO-HEARING OFFICER BAGGETT: Thank you.

With that, I know I have a number of questions. I think counsel and some of our staff do, and I think probably my co-hearing officer. So why don't we take lunch and then we'll ask those, and then come back for any
redirect if you anticipate redirect -- a small redirect.

Okay so let's take -- can we do a short lunch?

How about come back -- let's come back at a quarter to; 45

minutes we'll meet back and start promptly at a quarter
till 2.

(Thereupon a lunch break was taken.)
AFTERNOON SESSION

CO-HEARING OFFICER BAGGETT: Okay. Let's go back on the record. We're with I think questions from the hearing officers and our staff is where we left off. So with that, I guess we can start down with Ernie and Dana.

WATER RESOURCES CONTROL ENGINEER MONA: I'll start.

CO-HEARING OFFICER BAGGETT: Dana.

QUESTIONS OF

MR. JOHN LEAHIGH, MR. RON MILLIGAN,

AND MS. MAUREEN SERGENT

BY BOARD AND STAFF

SENIOR STAFF COUNSEL HEINRICH: I have one question. This is for either Ms. Sergent or Mr. Milligan. I'm confused and I'm hoping you can clarify something. You testified on direct that with respect to the Drought Water Bank there would be somewhere around 5 to 6,000 acre-feet of State Water Project water that is likely to be sold to the Drought Water Bank and approximately 10,000 acre-feet of CVP water. But then in response to questions from Mr. Herrick, you seem to be saying that there wouldn't be any State Water Project or CVP allocation sold to the Drought Water Bank. So can you clear that up for me?

MS. SERGENT: Yes, that was one area where the
questioning got a little confusing, and I thought it could
use some clarification.

What I believe Mr. Herrick was asking was, would
this consolidated place of use create a market for more
State Water Project water to be sold that isn't described
in this petition? And that's why I answered no.

There's -- project water is delivered north of
the Delta under two groups of agreements. One is a water
rights settlement agreement that we have with a number of
parties along the Feather River. And then we have
long-term State Water Project water supply contracts with
a group of several contractors north of the Delta.

The water supply contracts -- the water
settlement agreements provide that those districts can
transfer water under those agreements with our approval.
And the settlement contractors who have any interest in
transferring water have already approached the Department
and are doing so under the Drought Water Bank. The
long-term State Water Project contractors cannot sell
State Water Project water to a CVP contractor.

SENIOR STAFF COUNSEL HEINRICH: Okay. And the
same with the 10,000 acre-feet of CVP water, that is, CVP
contract water that's going from one CVP contractor to the
Drought Water Bank and potentially to an SWP customer?

MS. SERGENT: And those settlement agreements,
Ron can explain, have both a base and a project supply.
And that's the project portion of that water that is anticipated to go into the Drought Water Bank. And we don't have firm numbers on those yet because we don't have signed agreements and we're still in discussions with those districts.

SENIOR STAFF COUNSEL HEINRICH: Okay. Thank you. That helps.
CO-HEARING OFFICER BAGGETT: Any other questions?
I've got a few.
What I'm trying to unravel, in your petition you ask -- you stated that you were going to calculate the carriage water loss because you -- but yet you don't anticipate a change in the Delta or any Sac Valley water. So why is carriage water even relevant?

MS. SERGENT: What that was trying to show is that if we have -- we acquire 10,000 acre-feet of water north of the Delta, we are not going to export 10,000 acre-feet. We are going to account for the water that it takes to move it across the Delta. And we're not going to be exporting more water than we anticipate we would be able to deliver to the --

CO-HEARING OFFICER BAGGETT: Right. But doesn't that trigger new carriage water calculations?

MS. SERGENT: There is a carriage water component
to each --

CO-HEARING OFFICER BAGGETT: But only if it's coming across the Delta, right?

MS. SERGENT: Yes, that's right.

CO-HEARING OFFICER BAGGETT: And I thought all these were below Delta transfers in the San Joaquin side.

MS. SERGENT: That may be where the confusion comes. That applies only to those transfers that are moving across the Delta.

CO-HEARING OFFICER BAGGETT: But I thought we heard earlier that there weren't any, for this was all San Joaquin River place-of-use changes.

MS. SERGENT: There is a small component of the Drought Water Bank water that would be project supply.

CO-HEARING OFFICER BAGGETT: Oh. And how much is that?

MS. SERGENT: It's anticipated to be under 10,000 acre-feet of water.

CO-HEARING OFFICER BAGGETT: Okay. Well, that's new information.

So it's under 10,000 acre-feet. Okay.

MS. SERGENT: We expect it to be under 10,000 acre-feet of water.

CO-HEARING OFFICER BAGGETT: Well, I mean that's a whole different petition, it seems to me. So we've
definitely got to -- maybe you can clarify this at some point, because I think --

MS. SERGENT: That was the Drought Water -- that's the Drought Water Bank portion that's described in the petition.

CO-HEARING OFFICER BAGGETT: Okay. Second question.

It appears this is really only an 18-month transfer, not a two-year transfer. I'm trying to understand why it's two years from now when -- I understand the payback issue, which is raised in the petition and your testimony this morning. And that's why it needs to be more than an urgency petition.

What time period does it really have to be? Is it 18 months, 12, 13 months, 24 months exactly? I mean it appears to me it's really not a two-full-year change you're asking for. You're asking -- you really need less than 24 months. And that's what I'm trying to figure out. I mean you can see the point. We don't want this vague petition that's sort of open-ended all over the place. And we want as specific as possible.

MR. MILLIGAN: Maybe for clarity, I believe that for the exchanges, particularly the ones that are south of the Delta, I could envision where we may need to go to the fall of 2010 to actually get the water delivered back,
particularly as it relates to the Friant Division.

Because they will probably send some water over. But for the capacity to clear up with a cross valley canal, it may become the fall of the next year.

CO-HEARING OFFICER BAGGETT: So that's 17 months.

MR. MILLIGAN: Thereabouts.

CO-HEARING OFFICER BAGGETT: Okay. Anyway, I think that's something that's worth nailing down exact -- with more specificity.

The third question, that came to up in my mind was, it appears that there is a change in joint point anticipated. So, one, I think you've clarified to some extent for me the Sac Valley transfer issue is less than 10,000 acre-feet. So is that -- I guess, one, if there's a change in joint point anticipated, is it limited to less than 10,000 acre-feet?

MS. SERGENT: The joint point use is not contemplated as part of this --

CO-HEARING OFFICER BAGGETT: I understand that.

But it came up that you -- it appeared to me the testimony was that you're contemplating possibly coming back. And so I guess that brings up two questions: Is why would that be necessary to come back if you weren't transfer Sac Valley water? It sounds like there is that anticipation up to 10,000 acre-feet, one.
Two, is that an urgency or a long-term change in joint point you're contemplating?

And I guess third, while we're at it, are there any other changed petitions you're contemplating because of this?

MS. SERGENT: Okay. The 10,000 acre-feet is not a joint point issue. The reason the we're requesting -- or including that 10,000 in this petition is that without it, we'd have to designate. Okay, if this portion of the water bank water comes from -- is project supply from a CVP contractor, it would have to be delivered to a CVP user.

And then the same would go for State Water Project contractor. If any water is acquired that has a project component, say, water project, it would go to the other contractor -- to a State Water Project contractor.

So he --

CO-HEARING OFFICER BAGGETT: So joint point's not necessary for this petition.

MS. SERGENT: Joint point is not necessary for this petition. None of these have anything to do with any capacity constraint at Jones and therefore needing to pump CVP water at the State Water Project facilities. This is delivering water that -- the project will deliver its water at Banks and CVP will -- or the Bureau will deliver
that water at Jones. And joint point is not included as
part of this action.

CO-HEARING OFFICER BAGGETT: I guess it was the
Bureau that brought up the joint point issue anyway, it
wasn't DWR.

MR. MILLIGAN: It is. And it is possible that
Reclamation may have some CVP water to -- that it may find
it useful to have joint point capacity to move it as part
of a CVP supply. But that's again independent of the
Drought Water Bank.

CO-HEARING OFFICER BAGGETT: So let me see if I
understand this then. The testimony as I recall was that
there were no Shasta or Oroville water or levels affected
by this petition before us now, correct?

MR. MILLIGAN: That's correct.

CO-HEARING OFFICER BAGGETT: So that water may be
anticipated to be used to transfer from the Bureau to
DWR -- I'm trying to understand how this joint point --

MR. MILLIGAN: Well, the joint point --

CO-HEARING OFFICER BAGGETT: -- came about if
it's not related to this. If this petition has absolutely
nothing to do with --

MS. SERGENT: One thing that might help clarify
this. The water that would be moved under this petition
for the Drought Water Bank that would be either project or
CVP water -- State Water Project or CVP water, that's water that's being made available by districts upstream that are doing some action this year --

CO-HEARING OFFICER BAGGETT: I understand.

MS. SERGENT: -- to make the water available. So the water would have been delivered to those districts and used within that district if not for this. So it won't have any additional draw on either State Water Project or CVP facilities, because that water would have been used within the Sac Valley. So --

CO-HEARING OFFICER BAGGETT: I understand that.

MS. SERGENT: -- it's not an additional.

CO-HEARING OFFICER BAGGETT: And it will also be limited to less than 10,000 acre-feet and you will do carriage water calculations for that amount.

MS. SERGENT: Right. And then again we anticipate less than 10,000 acre-feet. We don't have the final numbers for that just yet.

CO-HEARING OFFICER BAGGETT: So then why is joint -- joint point came up from the Bureau's perspective, and I'm trying to --

MR. MILLIGAN: It came up only from in response to Mr. Herrick, which asked, do you have anything else out that you're going to ask the Board for?

CO-HEARING OFFICER BAGGETT: Right.
MR. MILLIGAN: Not related to this but that might be out there. And there was the possibility of maybe, depending on how X-2 requirements may stack up in May or potentially June, that we would probably need to do due diligence to see if that was going to make a big draw on cold water pool as an example. But that's certainly not a decision that's been made yet from the project's perspective.

Another one was the potential of anything related to joint point. Because Reclamation may have some water in storage at Folsom that we may have utilized our full capacity at Jones and there may be some additional capacity available at Banks, completely independent of the Drought Water Bank.

CO-HEARING OFFICER BAGGETT: In which case you wouldn't be filing for a change of place of use because it would go to your contractor south of the Delta --

MR. MILLIGAN: That's correct

CO-HEARING OFFICER BAGGETT: -- one would assume.

MR. MILLIGAN: Yes.

CO-HEARING OFFICER BAGGETT: But you would need to be able to convey it through --

MR. MILLIGAN: Yeah. We would benefit from the use of joint point in that circumstance.

CO-HEARING OFFICER BAGGETT: Okay.
CO-HEARING OFFICER HOPPIN: Ms. Sergent, when would you anticipate having your final numbers on the Drought Water Bank? I mean it's almost the 1st of May.

MS. SERGENT: That's true. We have most likely all the water that we are going to acquire from districts proposing to idle farmland. We may still get additional proposals from individuals that will potentially idle fourth year alfalfa starting on July 1st. We can't move water through the Delta until July. So the groundwater substitution agreements, we may continue to get a few of those, because they wouldn't start pumping until July 1st.

But within the next month or so we should know the full scope of any proposals that we're going to get.

CO-HEARING OFFICER HOPPIN: That's a fair enough answer.

Thank you.

CO-HEARING OFFICER BAGGETT: I have no other questions at this point.

Does anybody else?

Okay. With that, do you have any redirect, the Bureau or DWR?

MR. SODERLUND: After some of the clarifications from the Board and Board staff, Department of Water Resources doesn't have redirect on its own, but invites Ms. Aufdemberge, as she does a couple questions for
redirect, to open it up to DWR staff as well.

CO-HEARING OFFICER BAGGETT: Proceed.

MS. AUFDEMBERGE: I just have a couple questions for Ron Milligan.

And I'm going to need CSPA Exhibit 1H.

Actually it's 2H.

REDIRECT EXAMINATION

OF MR. RON MILLIGAN

BY MS. AMY L. AUFDEMBERGE, ESQ., representing the U.S. Bureau of Reclamation:

Mr. Milligan, do you recognize Exhibit 2H?

MR. MILLIGAN: Yes, I do.

MS. AUFDEMBERGE: What is it?

MR. MILLIGAN: This is a printout of some information that's available on Reclamation's CVO website. It is a summary of water allocations for the CVP for a number of years back. It has 1977 and then includes information about the allocations each year after that.

MS. AUFDEMBERGE: So does 1H reflect a true and correct allocation of water to those that receive CVP water pursuant to long-term contracts?

MR. MILLIGAN: It does. It's -- there may be some unique spots in some of the years as they relate to some of the contract provisions. But overall this was the allocation as it was announced each of the years.
MS. AUFDEMBERGE: Does it include 1977?

MR. MILLIGAN: It does.

MS. AUFDEMBERGE: Can you tell me about the allocation for 1977?

MR. MILLIGAN: The allocation in 1977 from the project was a 25 percent allocation to ag service contractors. And M&I contractors that year got a range of 25 to 50 percent. It was depending on their historic use. The exchange contractors were shorted to -- in the Sac River settlement contractors were shorted to 75 percent. And Friant Class 1 was 25.

MS. AUFDEMBERGE: So with the CVP agricultural water service contractors south of the Delta was their allocation higher in 1977 than it will be this year?

MR. MILLIGAN: Actually it will be. Currently we have a 10 percent allocation for ag service contractors south of the Delta.

MS. AUFDEMBERGE: You were asked several questions regarding allocations of contractors in different CVP units or divisions; is that correct?

MR. MILLIGAN: Yes

MS. AUFDEMBERGE: Is the Friant Division allocation based on the same hydrologic condition as the San Luis unit?

MR. MILLIGAN: No, the San Luis unit is based on
a combination of storage at San Luis reservoir and anticipated pumping rates that we'll see in the Delta.

The allocation to the Friant Division is based on hydrologic conditions primarily in the upper San Joaquin River watershed and storages in Millerton Lake.

So typically barring a circumstance where we may need to call on the San Joaquin River system to make up the allocation to the exchange contractors, the two will be kept separate, until you get into the very wet years where Millerton may have to spill. And then those waters are captured quite often at Mendota Pool.

MS. AUFDEMBERGE: Does the Friant Division receive more water than Class 1 water?

MR. MILLIGAN: They do. Typically the Friant Division will receive their Class 1 water allocation and some allocation that's characterized as Class 2. That's roughly about 35 to 40 percent.

MS. AUFDEMBERGE: So do you know what percent of average will the Friant contractors receive this year?

MR. MILLIGAN: If the allocation ends at 100 percent Class 1 and no Class 2, that's roughly 60 percent of what they historically would receive.

MS. AUFDEMBERGE: Are you familiar with the water quality at Vernalis for salinity?

MR. MILLIGAN: Yes.
MS. AUFDEMBERGE: Have the water quality salinity standards at Vernalis been exceeded this year?

MR. MILLIGAN: No, they have not.

MS. AUFDEMBERGE: Do you anticipate any exceedances in 2009?

MR. MILLIGAN: We do not anticipate an exceedance at Vernalis water quality, no.

MS. AUFDEMBERGE: And that's salinity --

MR. MILLIGAN: Salinity.

MS. AUFDEMBERGE: What sort of factors or causes are out there that might cause degradation of salinity standards below Vernalis?

MR. MILLIGAN: From Vernalis downstream to the other three south Delta salinity stations, a combination of return flows either from ag use, some return flows from M&I treatments, and some -- sometimes related to the tides.

MS. AUFDEMBERGE: Can you identify anything in the petition that would affect Reclamation's ability to meet the terms and conditions of its water rights?

MR. MILLIGAN: No, I have not seen anything.

MS. AUFDEMBERGE: Finally, there's been testimony regarding an EA FONSI for -- and the BO for land fallowing north of the Delta. And Reclamation would offer to make those available for this hearing. And we believe that the
Board could take judicial notice of those two documents.

CO-HEARING OFFICER BAGGETT: Is there any objections from -- without seeing the document, it's hard to --

MR. HERRICK: John Herrick from South Delta. I would just say when -- you're going to make a decision tomorrow, aren't you?

CO-HEARING OFFICER BAGGETT: Make a decision?

No, we won't have a draft order for at least two weeks.

MR. RUBIN: I have no objection to the State Board taking official notice of the documents. I would object if it would delay your consideration. And so they are public documents, they've been subject to whatever, you know, public review requirements exist in law. And therefore if the Board's inclined to take official notice, I have no objections. But, again, if it would delay your consideration, I would raise an objection.

CO-HEARING OFFICER BAGGETT: We'll decide before we're done tomorrow. If you could give us a copy of the documents, it would be helpful, and make them available to parties.

Any other...

Is that all? Okay.

With that, recross.

Mr. Rubin
MR. RUBIN: I have none.

CO-HEARING OFFICER BAGGETT: All right. CSPA.

Only got one witness. This is fair game, I guess.

MR. JACKSON: These questions are addressed to the person who testified that there's only 10,000 acre-feet of water that's in the Drought Water Bank program that's going to be transferred across the Delta.

MR. RUBIN: I'm going to object to the question. I think it's outside of the redirect.

CO-HEARING OFFICER BAGGETT: I would sustain. That wasn't what Mr. -- we've only got one witness who testified on redirect. And I don't think he --

MR. JACKSON: Actually this in response to questions that you asked --

CO-HEARING OFFICER BAGGETT: Right.

MR. JACKSON: -- which seemed to me to elicit an answer that isn't true factually. And I wanted to try to straighten that out before you --

CO-HEARING OFFICER BAGGETT: Redirect is their opportunity. If you've got information for your rebuttal, I guess you could bring it in then, Mr. Jackson. But that wasn't a question --

MR. JACKSON: Okay.

CO-HEARING OFFICER BAGGETT: -- under their

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redirect. So you can straighten those out then.

Try to keep some semblance of a record here.

CalWIN, do you have any questions of Mr. Milligan?

MS. JACKSON: No.

CO-HEARING OFFICER BAGGETT: South Delta?

MR. HERRICK: No questions.

CO-HEARING OFFICER BAGGETT: Okay. San Joaquin?

MS. GILICK: No questions.

CO-HEARING OFFICER BAGGETT: No questions.

Defenders?

MR. BASOFIN: No questions.

CO-HEARING OFFICER BAGGETT: Okay. Any questions on the redirect?

None.

With that, exhibits to enter into the record?

MR. SODERLUND: Yeah, the Department of Water Resources would like to move Exhibits DWR-01 through 08 into the record.

I do want to note that the biological opinion for the land fallowing was included in our exhibit list, but the FONSI or EA was not.

CO-HEARING OFFICER BAGGETT: So we've got a biological opinion already in the record. Then I'll leave that up to the Bureau whether they think it's necessary to
Okay. Any objection to DWR's exhibits?

If not, they're admitted.

(Thereupon the above-referenced exhibits were admitted.)

CO-HEARING OFFICER BAGGETT: Bureau.

MS. AUFDEMBERGE: We just submit BOR-1 into evidence.

CO-HEARING OFFICER BAGGETT: Okay. Any objection?

MR. RUBIN: No. But I was going to suggest, if I could, that we -- either CalSPA move for 2H, move that into evidence or have it renumbered for the record to make sure it's clear that it's in at this point since it was referred to and proper foundation was laid.

CO-HEARING OFFICER BAGGETT: Very good.

Okay. Does CalSPA want to enter it now?

MR. JACKSON: We'll move 2H.

CO-HEARING OFFICER BAGGETT: Okay. And is there any objection to CalSPA admitting their Exhibit 2H into the record as long as the -- along with the Bureau's exhibits?

If not they're all admitted.

(Thereupon the above-referenced exhibits were admitted.)
CO-HEARING OFFICER BAGGETT: And in terms of the FONSI, it sounds like that's the only thing. Is that worth us still considering?

MS. AUFDEMBERGE: Yeah, I think so.

CO-HEARING OFFICER BAGGETT: Okay. So if you could get us a copy and distribute to the parties, we'll decide by tomorrow before we close.

Thank you.

With that, Mr. Jackson is up, I believe. Or -- you have no case-in-chief, correct, Mr. Rubin?

MR. RUBIN: I don't. But as I indicated earlier, I --

CO-HEARING OFFICER BAGGETT: You want to do an opening statement?

MR. RUBIN: -- an opening statement, policy -- I could wait. I mean however you'd prefer. It really is a kind of a policy statement, and therefore I could have made it earlier. I can make it at any time during the proceeding.

MR. JACKSON: He can make it now. I mean he's up.

CO-HEARING OFFICER BAGGETT: Okay. You're on for an opening/policy statement.

Mr. Rubin, continue.

MR. RUBIN: Jon Rubin for San Luis &
Delta-Mendota Water Authority and Westlands Water District.

And I ask the hearing officers to keep this proceeding focused on a single overriding issue. And the issue is, should the State Water Resources Control Board grant the subject petition to change the places of use designated in the water rights for the Central Valley Project and the State Water Project?

The critical low water allocation to Central Valley Project and State Water Project contractors warrants approval of the petition. Opponents seek to cloud this proceeding with complaints about how people characterize the current hydrologic conditions, complaints about the Drought Water Bank, by reiterating their long-standing objections to the State Water Project and the Central Valley Project; and with claims water may be used unreasonably.

The opponents of the subject petition ignore two principal points that have been elicited through testimony by the United States Bureau of Reclamation and the California Department of Water Resources.

The two points are:

1) Action by the State Water Resources Control Board whether it grants or denies the petition will not change the quantity of water purchased or sold by the
Drought Water Bank; and

2) Action by the State Water Board again whether it grants or denies the petition will not change the quantity of water conveyed through the Delta by the United States Bureau of Reclamation or the California Department of Water Resources.

The opponents of the subject petition also ignore the undisputed fact that there's simply insufficient water supply south of the Delta to meet critical core demands. Once those points are made, the complaints and the objections raised by the opponents and, hence, the testimony they will present becomes irrelevant. They will fail to present any evidence that undermines the testimony of the United States Bureau of Reclamation and the California Department of Water Resources. Substantial evidence that they've presented supports the State Water Resources Control Board's finding that the petition, if granted, will not injure any legal user of water, will not have an unreasonable impact on fish and wildlife, and is in the public interest. And for these reasons the San Luis & Delta-Mendota Water Authority and Westlands Water District respectfully request that the State Board grant the petition.

I would like to take this opportunity, if you don't mind, to address a question that Mr. Baggett raised
to the panel for the Department of Water Resources and the Bureau of Reclamation. And that is a timing issue.

The San Luis & Delta-Mendota Water Authority and Westlands Water District could accept a modification in the petition to reduce the time. I think the issue that was raised is the issue that we're faced with. And, that is, the need for additional time beyond this water year to complete any exchanges.

It appears as though a one-year period from the time that an order is issued may be sufficient. But I think the issue that Ron Milligan raised is something that we still haven't been able to work through. And, therefore, it sounds like if this is of concern to the Board, the hearing officers, that there's a way to accommodate the issue.

But there's definitely an ability to refine the petition in terms of its length. But the most important factor that we need to deal with is ensuring that the exchanges can be completed, the ones that start this year.

Thank you.

CO-HEARING OFFICER BAGGETT: Thank you.

Mr. Jackson.

Continue.

MR. JACKSON: Yes, sir. My name is Mike Jackson and I'm appearing on behalf of the California Sportfishing
protection Alliance.

We will have two witnesses. I will begin by making a short opening statement. And then the two witnesses will testify in the order of Lynn Barris and then Mr. Jennings.

The purpose of the testimony will be to point out that it is not necessary to do a consolidation of the places of use of the Central Valley Project and the State Water Project in this particular year.

First of all, there has been no such consolidation ever granted by this Board in its history. This is a very large request, even if it deals, as we have heard today, with a small amount of water.

The purpose of the consolidation in the petition is extremely vague, and there is no supporting data that we can find that makes it necessary to do the consolidation. And so our testimony will go toward convincing the Board members that the consolidation is an unnecessary act and that it really doesn't accomplish much of anything.

The testimony of the witnesses will also highlight the vague nature of this particular approval and will suggest various conditions, if in fact you decide to go through with this approval, that will keep it from being as potentially dangerous as it seems to be from the
first reading.

The evidence will indicate that it really doesn't make any difference whether or not the consolidation happens, because all of the acts that are described in the petition and, in fact, in the evidence put forward by the projects this morning indicates that they can do these projects without having to consolidate the places of use.

There is no environmental review. I think that's fair to say, both from what our testimony will say and also from the testimony this morning. There has been no identification of exactly where the water's going to come from, where the water's going to go. And therefore it's almost impossible to tell you what the effects are going to be in regard to fish and wildlife, other water rights holders.

But we do intend to tell you what's happened in the past. Because since this petition for consolidation is so open-ended, other water transfers within the time period can be effectuated this year under this petition for consolidation and actually could be effectuated next year if the full term were to be granted.

The first witness will be Lynn Barris, who will describe what happened to her and her water right the last time there was a Drought Water Bank.

The second witness, Mr. Jennings, will describe
the existing conditions and the fact that the petition requests that we rely on the existing standards of D-1641 to deal with any problems for fish and wildlife. Those standards were in effect when the Delta died and don't seem to be very protective.

Those standards are regularly violated and don't seem to be enforced. Those standards were not designed with this kind of consolidated place of use in mind. And, consequently, we believe that it would be arbitrary and capricious for this Board on the basis of this record to approve this project.

And that said, I'll turn it over now to the witnesses.

Mrs. Barris, were you sworn earlier today?

MS. BARRIS:  No.

MR. JACKSON: Would you please.

(Thereupon Ms. Lynn Barris was sworn, by the Hearing Officer to tell the truth, the whole truth and nothing but the truth.)

DIRECT EXAMINATION

OF MS. LYNN BARRIS

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

MR. JACKSON: Ms. Barris did you help prepare your testimony which is CSPA I believe No. 4?
MS. BARRIS: Yes, I did.

MR. JACKSON: And is that true and correct to the best of your knowledge?

MS. BARRIS: Yes. Yes, it is. Although I was a little taken back by Ms. Sergent this morning when she indicated that there was only 85,000 acre-feet of groundwater pumped during the '94 bank, because my neighbors across the road from my orchards pumped 85,000 acre-feet of groundwater. That would be the Western Canal Water District. My neighbors to the south, Richvale Irrigation District, pumped 20,000 acre-feet. And I don't really have the totals of the rest of the water bank that occurred in Butte County. But since my neighbors across the road pumped 85,000 themselves - Western Canal - I thought I should bring that up.

MR. JACKSON: Would you please summarize your testimony for the Board members and staff please.

MS. BARRIS: Shorter than this?

MR. JACKSON: No.

MS. BARRIS: Oh, okay. Well, actually I'm going to read this, because I've been advised that I could just run on if I don't read what is in this short amount.

MS. BARRIS: Hello. And thank you for having me here today.

My name is Lynn Barris. My husband and I own
land on which we grow almonds in two locations in Butte County. Like most of my neighbors, I get my water from groundwater -- from the groundwater table beneath my land. One piece of my land is 42 acres of almond -- one of my farms is 42 acres of almonds on Gage Road near the town of Nelson, commonly referred as to Cherokee Strip. The land on the other side of the road is rice land within the Western Canal Water District.

The purpose of my testimony is to tell the State Board members what happened on my neighbors and me in 1994, the last time DWR attempted a large-scale drought water transfer program.

There had been small drought -- there had been a small water bank in 1991 and '92, very small ones. In 1992 I was called to the Butte County Grand Jury to serve on the Grand Jury. And you're probably aware that when your on a grand jury, you get to choose the subjects that you'd like to investigate. And my husband suggested that we investigate water sales out of our county.

This was the first time that, you know, we'd been aware of the possibility that we would be impacted in drought years because large scale water transfer programs would be going south into the western San Joaquin Valley.

Because of the new fears of the local people about the drought water transfer programs, the Grand Jury
formed a committee to interview water districts, water attorneys, and landowners about the water transfers.

The Grand Jury was assured by the water experts that there would be no effects to the groundwater table and that no one's right to use water on their land would be affected by such programs.

The Grand Jury report was released in May of 1994 by June of 1994, I got up one morning and turned on my water faucet -- my water in my house and I had no water to brush my teeth with, to make coffee with, or anything else, because my neighbors had started pumping groundwater because they sold their surface water.

I could not count on the water for my crops. And the same thing was happening to my neighbors and the adjacent area known as the Cherokee Strip. We attempted to get the irrigation districts in the neighborhood - they are in my neighborhood - to stop the groundwater substitution for the surface water they had sold for big bucks. But we were told we should just get lawyers and sue them.

During this time, I do have to mention there was one fourth generation farmer that lost his farm during the water bank because he couldn't flood up his fields and water his crops.

Lawyers were hired by the groundwater users. The
lawyers had meetings with DWR, explained the damage. And in fact DWR came in and shut down the irrigation districts' wells for two days - only two days.
The groundwater didn't immediately come back.

And so DWR declared that it wasn't them that had caused the problem, because it didn't bounce back when they quit pumping.

The rest of the summer in 1994 created turmoil in Butte County that still divides the community today.

Essentially the divide is between those who get money for these transfers and everyone else who rely on groundwater for their water supply, which includes the almond, walnut, and pistachios farmers that make up the majority of Butte County agricultural income.

People helped their neighbors during this time and we all worked hard to stay on our land. At my house the water table would be fluctuating from all this pumping of groundwater. And so there would be days when I wouldn't have water in my home and we would run garden hose a quarter mile away to some other farm that actually had groundwater -- whose well was working, and we'd be able to take water in to our home tank have water at our house.

And this went on through the pumping program for the drought -- state drought water bank.
The town of Durham, of which I live in -- I live
in the country and have a domestic well. But the town
that is two miles away, they have three municipal wells.
And one of their wells became so contaminated by the
lowering -- by the precipitous lowering of the water
table, that that whole town had to ration their water.

Since 1994, we have not experienced other
deaclines in our groundwater level. And if hydrographs are
steadied from DWR throughout the history of my area, we
have been able to weather through all of the droughts.
And we live in a very sustainable area where our streams
and our aquifers work together and we can -- we support
our municipalities and our agriculture and our
environment.

Today DWR is proposing another water transfer
program. There are no environmental documents for this
water bank since the Governor declared a drought emergency
and suspended CEQA review of the project.
The 2009 water bank is much bigger than the 1994
water bank. And quite honestly, I do know that up till
last Tuesday my neighboring water district that I've
mentioned here were still deciding if they were going to
sell water and pump groundwater or not.

So, you know, the facts aren't in about how much
of this water is going to flow.
The 2009 water bank is much bigger than the 1994 water bank. And this petition for change in place of use of water in the state and federal projects will enable many more people to contract to take water from the Sacramento Valley.

The underground water also provides water from most of the cities on the east side of the Sacramento Valley. Butte Bounty has an estimated 17,000 domestic wells. It is absolutely impossible to get drinking water to all these households that are scattered through these rural areas.

DWR does not even have correct records for the amount of wells, because up until the eighties people didn't have to register their wells. At one time my husband and I managed some other orchards in our area and during the '96 -- during the '96 period I was associated with about 11 wells. And out of the 11 wells, not one of them had been registered at DWR. They were all pre this law going in.

And so the reason I can come up with 17,000 domestic wells is because we did -- those of us that cared about groundwater went to the Public Health Department and worked with the manager there, who kind of could figure out how many of these homes are actually on domestic wells. To this day, DWR will use the number of there's
about 10,000 people. But I firmly believe that the 17,000
number was correct.

After reviewing the notices of hearing for -- the
notice of hearing for this hearing, it is clear to me that
anyone using groundwater in Sacramento Valley is at risk
of having the Drought Water Bank program cause damage to
their ability to use groundwater on their land.

I am informed and believe that the State Board
has a no-injury rule for changes in place of use and
therefore this petition should not be approved.

Thank you. And I kept it really short, if you
know me.

CO-HEARING OFFICER BAGGETT: Thank you.

DIRECT EXAMINATION

OF MR. BILL JENNINGS

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

MR. JACKSON: Mr. Jennings, were you sworn
earlier today?

MR. JENNINGS: Yes, I was.

MR. JACKSON: Is your testimony a true and
correct recitation of the facts as you know them?

MR. JENNINGS: As I know them.

MR. JACKSON: Would you summarize your testimony,
sir.
MR. JENNINGS: Yes. In summary, the petition is vague. It's largely a concept, containing little specific details. There's no environmental review. There's no real project description. I mean certain transfers are identified, others are left open-ended, anticipated. It's claimed that no Shasta/Oroville water will be used. But I mean there's no prohibition against that. I mean, you know, there's -- it's claimed that stream flow will not be affected. But we don't know that.

I mean, you know, I'm astonished that we're dealing with a vague phantom, I mean without a corporal body. I mean a concept without the details. Now, if you put the limitations on there and define them, that's one thing. But right now, it's -- and we're responding to it as an amorphous open-ended concept. And certainly the uncertainty increases in the potential second year. I mean will transfers beyond payback occur?

You know, if it's not prohibited, I mean we could expect it. I mean, after all, next year could turn out to be the wettest year on record.

Certainly this year is a below normal but it's not a critical year. Precipitation statewide is 80 percent of average. Snow water equivalent at least as of the writing of this was 83 percent of average. Major reservoir storages ranged from 73 to 112 percent of
average.

And certainly drought cannot be considered an unforeseen emergency, because it's a common and expected occurrence in California.

It's preposterous to claim that environmental water quality laws should be suspended to address conditions that occur a quarter to a third of the time.

Water rights far exceed unimpaired runoff or available supplies. The projects have promised to -- are contracted for water they know they can't reliably deliver. You know, cynically they've pedaled water contracts like Wall Street mortgage brokers have hawked subprime and variable rate mortgages. Average CVP and State Water Project exports between 2000 and 2008 significantly increased over the 1980s and 1990s. State Water Projects in 2009 compare favorably to previous drought years when it wasn't necessary to consolidate place of use or dispense CEQA or Bay-Delta plan requirements.

CVP exports in '09 also compare rather favorably to previous drought years. Although I acknowledge that south of Delta ag contractors --

CO-HEARING OFFICER HOPPIN: Bill, I don't mean to interrupt.

Would you define "favorably".
MR. JENNINGS: Well, when you go through -- and
in my testimony I broke down and compared what deliveries
to Westlands and others were. In fact, let me break down
out of my formal testimony. But I mean, you know, when
you're looking at --

CO-HEARING OFFICER BAGGETT: Point us to an
exhibit.

MR. JENNINGS: You know, for example, deliveries
to Kern Water Agency in the dry critical year of '07 where
it's 96 percent of the average. I mean, you know --

CO-HEARING OFFICER BAGGETT: Which exhibit --

MR. JENNINGS: Yeah, I've got -- which --

CO-HEARING OFFICER BAGGETT: You said --

MR. JACKSON: This is the testimony itself.

MR. JENNINGS: I left my exhibits back there.

And I probably should go get them.

CO-HEARING OFFICER BAGGETT: Okay.

MR. JENNINGS: As I was going to say, I certainly
understand that south of Delta agricultural contractors
are receiving proportionately less perhaps because the
Sacramento River rights and exchange and Friant
contractors are receiving proportionately more than they
did in some previous low water years. And 1992 would be
an example.

And I think you can find that on -- reference our
Exhibit 4H, which was already just brought into the record by the Bureau.

Drought impacts have been exacerbated by the project's failure to learn and profit from lessons of the past. They've offered the projects without considering the possibility subsequent dry years.

I mean State water runoff was only -- statewide runoff was only 53 percent of average in '07, yet exports were over 99 percent of the 2000-2006 average exports. And indeed exceeded the averages in the 1980s and 1990s.

Indeed, exports to southern California in 2007 were 105 percent of the average between 2000 and 2006. The blunder was again repeated in 2008 when statewide runoff was only 58 percent of averages, but State Water Project deliveries were 95 percent, 90 percent, and 67 percent of the average deliveries in the eighties, nineties, and the 2000-2007 period respectively.

I mean from this I mean it's just clear that water's been promised that can never be reliably delivered. And the burden of water shortages falls most heavily on contracts predicated on junior water rights, as it should be under our seniority system. The State lacks a functioning drought management system that anticipates inevitable drought sequences, acts to minimize impacts to the environment or the public, and that specifies how
1  impacts will be distributed in these inevitable drought
2 years.
3
4  The proposed emergency transfers run the risk of
5 reducing or eliminating the safety margin in the event
6 next year, 2010, is a critically dry year. It's this kind
7 of disregard for the future that got us into the present
8 situation. Drought impacts have been exacerbated by the
9 enormous increase in the planting of perennial crops that
10 required assured sources of water in lands that are 100
11 percent subjected to interruptible sources of water. If
12 you are interested, I could certainly go into the amount
13 of almonds and perennial crops planted south of Delta.
14 It's a wake-up call.
15
16  I don't believe I need to reiterate the sorry
17 state of Central Valley fisheries except to observe that
18 the biological tapestry of this estuary and its
19 tributaries is hemorrhaging. Salmonid and pelagic
20 fisheries that God nurtured over millennia are being
21 destroyed in mere decades. We're witnessing the most
22 rapid disintegration of a large estuary in modern history.
23
24  It's beyond dispute that State and federal
25 actions, including D-1641 and the Bay-Delta Plan and the
26 various biological opinions, have been ineffective and
27 woefully inadequate in addressing this catastrophe. The
28 decline has persisted. Despite any absence of an adequate
project description, based upon my experience and in the
record, and based upon the amorphous nature of this
process, I believe that the petition if approved has
everseous potential to accelerate the further decline of
these seriously degraded fisheries.

If reservoir storage -- transfer of reservoir
storage will inevitably increase cold water pools and
increase the likelihood of adverse impacts from excessive
temperatures, especially where reservoirs are below
carry-over storage targets. Now, if this isn't within it,
you can prevent that, you can restrict that. But it's not
restricted in the proposal now.

Transfer of pumped groundwater from areas
adjacent to east side streams containing critical habitat
will potentially lower in-stream flow during sensitive
life stages. Now, if that's not going to happen this
year, then you can prevent that, I mean to the extreme.
But in the way the project's described now, it's
open-ended.

There's no existing or biological opinion for
salmonids that hasn't been reputed by the courts. You
understand, we don't have a Salmon biological opinion.
It's due in June and we have no idea how they're going to
comply with it or whether they're going to appeal it or
contest it or what. There's no existing biological
opinion for green sturgeon. Neither DWR or the Bureau have secured an incidental take permit or consistency determination pursuant to the California Endangered Species Act for Salmon or Delta smelt or long-fin smelt. And compliance with CESA is a pre-condition -- a condition of the water rights permits. CESA goes quite beyond the federal Clean Water Act. It requires full mitigation. You can easily condition this on the Bureau or the DWR securing a take permit. They have to have it. Their water rights already require it.

I don't believe it's necessary to relate ad nauseam the massing existing pollution of Central Valley waterways. I mean most of these projects have been identified, exhaustively documented over the last 10 to 30 years. Hundreds of additional pollutant water body impairments are proposed to be included on the updated 303(d) list.

It's undeniable that the best efforts of the water boards have utterly failed to prevent or restore or resolve the pervasive pollution of Central Valley waterways. And so, again, despite the absence of an adequate project description, which we don't have, just based upon experience and review of the record, I have to believe that the petition has the potential to exacerbate impacts to water quality.
Changes in hydrology, I mean inescapably alter -- and transport contaminants. Water transfer is causing alteration of timing and quantity of in-stream flow. I mean we have no idea on this timing when it's going to go or anything. Will it potentially alter the assemblative capacity of downstream waters?

And does the reductions of these assemblative capacity increases pollutant concentration and consequently pollutant concentration increases and temperature reduction, you know, and temperature and pollutants or reductions in dissolved oxygen during critical life stages of sensitive species could adversely affect fisheries of the beneficial uses.

Transfers will likely diminish storage that would otherwise be available to mitigate water quality impact. I mean again if we're not going to transfer any storage, I mean let's say so. Increased exports or water over levels that would occur in the absence of petition approval, you know, could very well increase salinity in south Delta channels. I mean we don't have -- we have not -- the Board has reluctantly failed to enforce the cease and desist order over salinity violations in the -- in the south Delta.

And certainly increases in water deliveries below -- beyond levels that would occur in the absence of
the petition. And that's got to be the baseline, what
would occur, you know, if the petition is approved in the
absence of petition, not what would occur with a normal or
an average year. But what would occur this year with all
of the other considerations of the drought in absence or
approval of the condition?

And so if water is applied to agricultural lands,
impair soils, selenium-laced soils that would not be
otherwise applied, there will be an increased loading to
the environment, either loading to environment or tail
order discharges to waterways. It could be either/or.
And, you know, this could occur. And if you're going to
prohibit that, I mean, you know, you could do so.

We do believe that approval is a de facto new
water right. For the first time CVP storage will serve
urban areas. It allows urban areas to acquire water from
streams where they know storage or mitigation
responsibilities. I mean there's no terms and conditions
to protect in-stream resources. And it's going into a
whole new world, and there needs to be a real
justification for going here.

Based upon experience and review of the record, I
just can't see how the petition can -- petition approval
can be in the public interest. It's a two-year project.
We certainly can't reliably predict the need for an
expedited -- for next year. If we want to limit it to payback, perhaps supplying scarce water in the midst of a multi-year drought. Although there's got to be a consequence to payback. I mean, you know, if there's going to be a transfer next year, what are the consequences there?

Supply and scout serious water in the midst of a multi-year dry cycle to irrigate perennial crops on drainage impaired lands subject to low priority contracts from low priority water rights holders can only accelerate efforts to plant permanent crops in these areas.

It's the creek future demands for assured water supplies to increase the economic consequences of the inevitable drought cycles. And we need to be -- you know, there's been a huge increase in the need for permanent supplies in areas that experience 100 percent and eruptible sources of water. And we need to be very careful about going past thresholds that are irreversible.

The merging of two massive water projects in an abbreviated hearing process without benefit of environmental review I think significantly risks -- increases risk to the environment and the public. The suspension of rules by proclamation in a period of endemic water pollution and collapsing fisheries would be precedent setting and undermine the public's belief that
decision makers and regulators can be relied upon to enforce the law.

Certainly, it seeks to address the over-appropriation of this petition and it seeks to address the over-appropriation of water in California by suspending laws under the guise of an emergency. And that cannot be in the public interest.

It will encourage DWR and the Bureau to ignore real world drought planning and facilitate bad planning that relies upon suspension of crucial environmental laws like a half baked plan that's thrown before you, you know, without benefit of any economic analysis. You know, a little prudent planning would have eliminated -- would have prevented this. I mean we don't even know if there's going to be some emergency provision, you know, request coming later this year. They should know that by now.

It's certainly unfairly benefits one area of the State and redirect impacts to other areas. I mean and we're talking about benefiting the west side, the impacts could be the Sacramento Valley, the east side of the San Joaquin. I mean it reduces the margin of safety.

Certainly should 2010 be a critically dry year, should we be trying to export every -- or to apply every last drop of water?

And so, you know, based upon, you know,
experience and review of the record, I would say that
there should be some terms and conditions included, the
first of all is a requirement to get an actual project
description so that you know what to prohibit and approve.
It certainly should be limited to one year. I think it
should exclude lands with the most junior contract water
rights subject to interruptible water supplies. Either it
should recruit some sort of prohibition against loading to
the environment or impaired lands receiving water. It
should require the Bureau and DWR to evaluate and identify
remaining reservoir storage and potential harm to
fisheries from elevated temperatures and low in-stream
flow during sensitive life stages of sensitive species.
But, again, you can prohibit -- or a prohibition against
any use of water that's stored in reservoirs.
I mean I was a little -- I was fascinated in the
Bureau's response that for a Sacramento contractor that
happens to store water in Shasta is considered CVP water.
Well, I mean we need to clarify is that going -- which
plan or proposal that comes under.
I think that none of the requirements of D-1641
should be suspended. VAMP pulse flow, which apparently
has been suspended this year, we're not meeting VAMP, and
that's an impact. Interior Delta salinity standards
certainly should be complied with as well as we'd have
serious concerns of any future limitation on X-2 or the IE ratio.

And certainly you can require the Bureau and DWR to obtain an incidental take permit, make a consistency determination. I was told that they did ask DFG to come, and DFG wouldn't -- refused. But, anyway -- and I think that to require DWR and the Bureau to bring any new application for water beyond that specifically identified back to the Board for consideration. And, you know, they really need to identify the timing and the quantity and the source of these waters.

I guess that I've talked enough, haven't I, Art?

CO-HEARING OFFICER BAGGETT: Yeah, you probably got your 25, 30 minutes in.

We should have given you a script.

No, it's helpful. We've got your written comments and are familiar with them.

Anything else, Mr. Jackson, or should we --

MR. JACKSON: Nothing else.

CO-HEARING OFFICER BAGGETT: Open up for cross-examination.

We'll start out with the DWR and then followed by USBR.

MR. SODERLUND: Erick Soderlund on behalf of the Department of Water Resources.
CROSS EXAMINATION
OF MS. LYNN BARRIS

BY MR. ERICK SODERLUND, ESQ., representing the State Department of Water Resources:

Ms. Barris -- Mrs. Barris?

MS. BARRIS: Yes.

MR. SODERLUND: I just have a few questions for you.

MS. BARRIS: Oh, good.

MR. SODERLUND: In your testimony you claim that the 2009 Drought Water Bank is going to be much bigger than the 1994 Drought Water Bank.

MS. BARRIS: Yes, I've seen the documents. And if you look at your documents at DWR, it indicates that the optimum would be 340,000 acre-feet of water -- of groundwater.

MR. SODERLUND: Of groundwater?

MS. BARRIS: Yes. I think it's 500,000 or 600,000 acre-feet of water altogether. But 340,000 of that would be groundwater if you could do the whole thing.

MR. SODERLUND: Are you familiar with what the numbers that are currently planned for groundwater substitution coming out of Butte County are for the 2009 Drought Water Bank?

MS. BARRIS: I understand that the numbers are
low at this point. But I do know that as late as last Tuesday, Western Canal Water District was still meeting and deciding what they were going to do. So I don't think the numbers have been firmed up at all. Everything seems to be in flux not knowing what's going to happen with the drought proclamation, with different litigation and such.

MR. SODERLUND: And in comparing the 2009 Drought Water Bank with the 1994 Drought Water Bank, is it your opinion that the Department of Water Resources has not provided more protection for this particular Drought Water Bank?

MS. BARRIS: Oh, that is such a good question, because I feel that they have provided the exact same safety net that we had in 1994. I'm hearing the exact same language without the exact same CEQA documents. I mean it's really the same. It's lip service to the communities and -- it was a horrible experience in '94. It changed -- it changed that whole flavor of the area. And it's still that way today. And, no, 2009 does not shape up any better for us groundwater users. We honestly feel we have not one iota of protection more than we had in 1994.

MR. SODERLUND: So it is your belief that the groundwater substitution for the 2009 Drought Water Bank will be the same as or worse than 1994?
MS. BARRIS: I really don't know. I'm not -- I'm not privy to what numbers will come out this year. But I do know from following other speeches in the news that DWR is preparing for their 2010 water bank right now. And as I said, the 2009 one hasn't gone over, as far as I know, very well for DWR yet. But I do believe it is, because there are so many things changing. But the idea that the 2010 water bank is going to be talked about and kind of then put in steps so it won't come down to the end of April in 2010 and they don't -- they don't have their water secured.

MR. SODERLUND: And hypothetically if there is zero acre-feet that come from a groundwater substitution that comes out of Butte County, would that satisfy your concerns for the 2009 Drought Water Bank in particular with your community?

MS. BARRIS: You mean -- I'm sorry, did you say there would be zero groundwater substitution?

MR. SODERLUND: Correct.

MS. BARRIS: No, not really, because we have -- we're home to the giant garter snake up there. And it depends on -- land is fallowed to protect the giant garter snake. I can't talk for everyone else. I can only talk for my area in Butte County. But if the refuges and the garter snakes and all the rest of our critters are...
protected and there's not groundwater substitution, then I would honestly think I had something to look at that might be proactive.

MR. SODERLUND: And again hypothetically speaking, if there was zero groundwater substitution coming out of Butte County, would the effects that you analyzed or talked about or discussed in your written testimony, would those be significantly lessened, maybe even be nonexistent?

MS. BARRIS: It would be less than 1994. But I have to say that between 1994 and now we have -- we have discerned that the aquifer that underlies Butte County goes just a small part over across the river into Glenn-Colusa Irrigation District, who are also working on the State Drought Water Bank and are ramping up pumping projects, which we know will affect us on the other side of the Sacramento River, because some of the tests that have been done, some isotopic tests that have been done have proven that the water that they were pulling up in the pumping tests at Glenn-Colusa were coming from the eastside foothills in Butte County. So as far as DWR goes, for the State Water Project, if there is no groundwater substitution and everything was taken care of, yeah, there would be less damage than in 1994. But with Glenn-Colusa Irrigation District added into the mix, it's
still very iffy for us.

MR. SODERLUND: Thank you. That's all the questions I have.

Thanks.

CO-HEARING OFFICER BAGGETT: Thank you.

The Bureau?

MS. AUFDEMBERGE: No questions.

CO-HEARING OFFICER BAGGETT: No questions.

Mr. Rubin, do any of your clients have questions?

MR. RUBIN: Can't pass up the opportunity to talk to Mr. Jennings.

(Laughter.)

MR. JENNINGS: I'm glad. I was beginning to feel neglected.

(Laughter.)

CROSS EXAMINATION OF

MS. LYNN BARRIS AND MR. BILL JENNINGS

BY MR. JON D. RUBIN, ESQ., representing the San Luis &

Delta-Mendota Water Authority and the Westlands Water

District:

Ms. Barris, let me ask you a couple of questions first, if you don't mind.

MS. BARRIS: You're not going to make me cry, are you?

MR. RUBIN: I hope not.
MR. RUBIN: My name is --

CO-HEARING OFFICER HOPPIN: Let's make a deal here. You won't make him cry, will you?

(Laughter.)

MS. BARRIS: Okay. I'll try.

MR. RUBIN: That might be the more likely scenario.

(Laughter.)

MR. RUBIN: Good afternoon. My name is Jon Rubin. I'm an attorney with the San Luis & Delta-Mendota Water Authority and Westlands Water District. I have just a couple of questions for you. Were you here this morning when the panel for the Department of Water Resources and the Bureau of Reclamation testified?

MS. BARRIS: For part of it. I came about 10:30 I believe.

MR. RUBIN: Were you here when I asked questions of the witnesses for the Department of Water Resources and the Bureau of Reclamation?

MS. BARRIS: Yes.

MR. RUBIN: Do you recall me asking several questions regarding the effect that action by the State Board might have on the transfers and exchanges that are
proposed in the petition that's at issue today?

MS. BARRIS: Yes. And I heard their answers.

And -- if that was the next question. Yes. And because I
know that the amount of water that's going to be moved is
still in flux and we have no idea, the answers didn't make
any -- I mean they didn't ring true.

MR. RUBIN: Were you here when I asked the panel
some questions about the Drought Water Bank?

MS. BARRIS: Um-hmm, yes.

MR. RUBIN: Are you familiar with the Drought
Water Bank that's being proposed for 2009?

MS. BARRIS: Yes, I am.

MR. RUBIN: Have you provided the Department of
Water Resources or the Bureau of Reclamation with any
comments on the proposed Drought Water Bank?

MS. BARRIS: Substantial comments through Butte
Environmental Council. And actually we have a meeting
with Don Glaser at 5 o'clock if I'm out of here. But we
have commented -- we have commented up the kazoo on the
Drought Water Bank.

MR. RUBIN: And your concerns today are really
with the Drought Water Bank, correct?

MS. BARRIS: They are. But it's also about this
joint use. I actually understand what this will mean to
us.
MR. RUBIN: Can you explain to me what you mean by joint use?

MS. BARRIS: Well, the CVP and the -- that the Bureau and DWR being able to exchange water and joint use of their water.

MR. RUBIN: And you're concerned with the joint use as you've described it for what reason?

MS. BARRIS: Because I believe it will allow more water to -- more needed water, that we need in northern California. Because contrary to popular belief, we're not sitting on all this surplus water up there that we're just holding on to and don't want it to go south. We're sitting on water that we're actually using. And my belief is that that will allow more water to head out of the Sac Valley where it's really needed also.

MR. RUBIN: And have you done any studies to determine why the change that's before the State Board will cause more water to be moved south of the Delta?

MS. BARRIS: It's just my intuition from being around water issues and CALFED and water buffaloes for the last -- since the water bank.

MR. RUBIN: Thank you very much. I have no further questions. And I'm happy neither of us are crying.

(Laughter.)
Mr. Jennings, please don't make me cry.

(Laughter.)

MR. RUBIN:

MR. JACKSON: Oh, that'd be worth seeing, both of you.

(Laughter.)

MR. RUBIN: Mr. Jennings, If I understand your testimony today, you have concluded that between 2000 and 2007 the amount of water conveyed through the Delta by the Central Valley Project and State Water Project increased dramatically?

MR. JENNINGS: Where on my testimony is that?

What are we referring to?

If you mean the average annual exports between 2000 and 2007, both CVP and SWP were -- the average was six million acre-feet I think between that period.

MR. RUBIN: Yeah, the statement that I was reading is on page 7 of your written testimony. And there's a heading: "There has been a significant increase in SWP and CVP export in recent decades." And I believe the last sentence reflects a conclusion on your part that exports dramatically increased between 2000 and 2007.

MR. JENNINGS: Yeah, I mean -- and I guess that -- between 2000-2007 what I was saying is that period, that wet cycle period, they've increased over
MR. RUBIN: And, Mr. Jennings, from where did you obtain data to support that statement?

MR. JENNINGS: Well, several places. But I was -- at this point I was using a chart that had been prepared by Spreck Rosekrans, a mathematician-hydrologist for environmental defense. I think I included that as an exhibit.

Should I -- I have my exhibits back at my chair. Can I go get those?

MR. RUBIN: If it would be helpful, I would recommend that.

MR. RUBIN: Mr. Jennings, there's a reference on page 5, to maybe provide some assistance, to Exhibit 2G.

MR. JENNINGS: 2G, yes.

MR. RUBIN: Which is a document that appears Mr. Rosekrans prepared.

MR. JENNINGS: Yes.

MR. RUBIN: Mr. Jennings, are you familiar with the data that's presented on Exhibit 2G?

MR. JENNINGS: Spreck presented it. It's been used in other hearings. I've talked to Spreck about it. But I didn't collect it.

MR. RUBIN: Would you be -- do you know if the data on this exhibit is true and correct?
MR. JENNINGS: And what data is that?

MR. RUBIN: The data that's reflected on CalSPA Exhibit 2G.

MR. JENNINGS: Well, do I have the exhibit table?

MR. RUBIN: It's the exhibit that's on the screen before you here in the hearing.

MR. JENNINGS: Oh, the exhibit's correct, yes.

MR. RUBIN: And how do you know that the data in Exhibit 2G is correct?

MR. JENNINGS: Well, Mr. Rosekrans in fact told me he had prepared it. And he had used it, also I think day flow data that he pulled off from DWR.

MR. RUBIN: Thank you.

Mr. Jennings, I now ask that you turn to Exhibit CalSPA 2H. This was an exhibit that I think Ron Milligan discussed to some degree.

MR. JENNINGS: Um-hmm.

MR. RUBIN: Do you have that before you?

MR. JENNINGS: Yes.

MR. RUBIN: In 1977 -- excuse me -- 1975, what was the allocation to Central Valley Project agricultural water service contractors who were located south of the Delta?

MR. JENNINGS: In '95.

MR. RUBIN: No, 1975
MR. JENNINGS: 1975. Well, I don't think that it
states that.

MR. RUBIN: I ask you to draw your attention to a
very small box on the left side I believe the first page
of CalSPA Exhibit 2H. Is there a note there that says,
"No deficiencies on water deliveries until 1990"?

MR. JENNINGS: Oh, yes, yes.

MR. RUBIN: Is it your understanding that except
for 1977 there was no deficiencies on water deliveries
until 1990 for the Central Valley Project?

MR. JENNINGS: Well, I don't have that
information on which -- I mean the chart says it. But I
don't -- I can't independently verify that of course. I
mean is this deficiencies -- we're talking about
deficiencies of requests or allocations based on requests?

MR. RUBIN: Well, it's --

MR. JENNINGS: I mean I'd have to know what the
requests were to know whether there was a deficiency in
the allocation.

MR. RUBIN: Mr. Jennings, maybe I could ask my
question again.

In 1975, was there any deficiencies in the
allocation to Central Valley Project agricultural water
service contractors located south of the Delta?

MR. JENNINGS: Well, this chart doesn't go to
1975. It just simply refers to -- it says no deficiencies on water deliveries until 1990.

I took it to mean that between '77 and 1990 there were no deficiencies. You said '75.

MR. RUBIN: Okay. So it's your understanding 1978 there was a hundred percent allocation to agricultural water service contractors south of the Delta?

MR. JENNINGS: Based on what was on the Bureau's website that I took this from. This is what this says. And I can't go beyond that.

MR. RUBIN: You're not sure if the data is correct that's on Exhibit CalSPA 2H?

MR. JENNINGS: I'm presuming that this is what the Bureau claims they provided and delivered.

MR. RUBIN: And, Mr. Jennings, I apologize. I don't mean to be difficult here. Part of the reason I'm asking my questions is to understand some of the statements that you make in testimony. As an example, on page 8 of your written testimony, you indicate that exports to Westlands in 2007 were 94.5 percent of the wet cycle average between 2000 and 2006. Do you see that statement?

MR. JENNINGS: Um-hmm.

MR. RUBIN: What do you mean by exports to Westlands?
MR. JENNINGS: Well --

MR. RUBIN: Let me rephrase my question, Mr. Jennings.

By referencing exports to Westlands, do you mean allocations to Westlands?

MR. JENNINGS: What I was referring to is information I gathered from the -- in the petition for change submitted by DWR and the Bureau. They had their water deliveries. And you had State water deliveries -- well, you had State Water Project and then you had the CVP project. And the deliveries --

MR. RUBIN: Mr. Jennings, just to make sure the record's clear, are you looking at Exhibit 2 to the petition that was filed by the Department of Water Resources and the Bureau of Reclamation?

MR. JENNINGS: Exhibit 2, yes.

And so I'm --

MR. RUBIN: So Mr. Jennings --

MR. JENNINGS: -- looking at Westlands Water District, in 2007, 928,571. And I think that I took the average of that 2,000 -- that period there, you know, it ran 944,862, 9/15, you know.

MR. RUBIN: That's very helpful.

Mr. Jennings, turning back to Exhibit 2H --

CalSPA Exhibit 2H. There is some data on this exhibit
that indicates an allocation to agricultural contractors
south of the Delta in 2007; is that correct?

MR. JENNINGS: Yes, that's correct.

MR. RUBIN: And the allocation to agricultural
water contractors south of the Delta was 50 percent in
2007?

MR. JENNINGS: South of Delta was 50 percent.

MR. RUBIN: And do you know what contract supply
Westlands has, maximum contract supply?

MR. JENNINGS: No, I do not.

MR. RUBIN: Let me represent to you that the
Westlands contract is 1.15 million acre-feet maximum
allocation. Can you explain to me how Westlands received
their 50 percent allocation in 2007, yet the Exhibit 2
reflects a water supply of 928,571 acre-feet?

MR. JENNINGS: When you say Exhibit 2 --

MR. RUBIN: Excuse me. Exhibit 2 to the
petition, referring back to the document that we were
speaking to just before this question.

MR. JENNINGS: This is Exhibit 2 of the petition
of -- I have no idea, I mean in the sense that --

MR. RUBIN: Is it possible that the difference is
because Westlands was able to acquire additional supplies
through transfers?

MR. JENNINGS: It's possible.
MR. RUBIN: Thank you.

And in fact if you look at Exhibit 2 to the petition, there's a number of footnotes at the top of the table where it says CVP south of Delta contractors, and then there's a 1, 2, and 3. Do you see that?

MR. JENNINGS: Yes.

MR. RUBIN: And if you turn to the last page of Exhibit 2, there's comments. One that reads, "Deliveries to contractors may include a variety of water supplies including water available under CVP contracts, water available through transfers," et cetera.

MR. JENNINGS: Yes.

MR. RUBIN: Thank you.

Mr. Jennings, if I understand again your testimony correctly, you believe California has overcommitted its supplies?

MR. JENNINGS: Well, I mean -- and that's based on a statewide unimpaired runoff of 77, 78 million acre-feet by half a billion acre-feet of the face value of water rights, a Delta watershed unimpaired runoff of 29 million acre-feet, and I think there's some 240 -- a face value of some 245 million acre-feet of storage and diversion rights for that water.

MR. RUBIN: I appreciate that answer to my question. I tried to phrase it to allow you to answer yes.
or no, because I did have some follow-up questions. And I
think your answer may have answered questions that I
intended to ask.

And so I beg your pardon if I'm going to ask you
to repeat part of your answer.

But, again, you do believe California has
overcommitted its water supplies?

MR. JENNINGS: Yes.

MR. RUBIN: And your belief is supported by a
comparison of California's average unimpaired runoff with
an amount of water under diversion and storage rights.

MR. JENNINGS: And the fact that -- and not even
being able to meet full allocations of the requests for
water, we're watching fields fallow and fish spiral
towards extinction.

MR. RUBIN: I believe on page 9 of your written
testimony you have some of this discussion; is that
correct?

Page 9 on the last complete paragraph -- or last
paragraph on page 9.

MR. JENNINGS: Yes.

MR. RUBIN: Now, again, part of your conclusion
that California's overcommitted is based upon a comparison
between the average unimpaired runoff with an amount of
water under water rights?
MR. JENNINGS: Yeah. I mean but -- and that's not precise. I mean because even the identified face value of water rights isn't what actually exists there, because there's a lot of riparian and 314 rights that have never surfaced, they've never felt the need to identify them. And so I'm not sure the State even knows the full extent of the rights to water.

MR. RUBIN: Mr. Jennings, I wanted to get a little bit to this issue of -- there's an exhibit that's attached to your testimony. It's CalSPA Exhibit 2K. Do you have that before you?

There's a copy of it on the screen here in the hearing room.

MR. JENNINGS: Yes.

MR. RUBIN: Did you prepare CalSPA Exhibit 2K?

MR. JENNINGS: I took it off the website of Delta Vision as a letter that had been sent from the -- also there was a -- I think the previous month they had the request to the State Board and then there was the request from the State Board. And this was in fact the response from the State Board to Delta Vision.

MR. RUBIN: So either -- I assume that a State Board staff person prepared this document?

MR. JENNINGS: I would assume.

MR. RUBIN: And in this document there is a
discussion between annual unimpaired or natural flow
versus water rights; is that correct?

MR. JENNINGS: Yes.

MR. RUBIN: And in this document, there are three
primary reasons given why the face value of water rights
is greater than actual diversions; is that correct?

MR. JENNINGS: Which paragraph are you looking
at?

MR. RUBIN: I was looking at page 2 to page 3 in
your testimony. I don't know if there was a reference.

So --

MR. JENNINGS: Yeah, I mean there's a general
discussion.

MR. RUBIN: And I apologize for going back and
forth but I would ask that you -- I have another question
regarding your testimony. I believe part of your
testimony is that the California fishery populations are
collapsing. Is that your opinion?

MR. JENNINGS: Well, I mean just looking at the
numbers of -- whether it's Salmonid or our pelagic
fisheries. But I think one of my exhibits was the last --
the summary of the fall mid-water trawl data that shows
the indices that represent populations of pelagic species.

MR. RUBIN: Mr. Jennings, I'm not trying to make
things more complicated. I'm just laying a little bit of
a foundation. I believe on page 11 you indicate that Central Valley fishery populations are collapsing, and I just wanted to lay the foundation.

Do you believe that to be true?

MR. JENNINGS: I believe that to be true.

MR. RUBIN: All right. And if I understand your written testimony, you believe that the California -- excuse me -- Central Valley fishery populations are collapsing principally because there is a lack of high quality water, is that true?

MR. JENNINGS: I think certainly the POD workgroup of actually findings of the State Board, I mean there are three principal causes that are generally attributed. And I think that ample good, clean water affects virtually all three of them.

MR. RUBIN: Mr. Jennings, Let me ask that you'd turn to page 11 and 12 of your written testimony. Page 11 there's a section that's headed "Central Valley fishery populations are collapsing."

MR. JENNINGS: Yes.

MR. RUBIN: And when I read that paragraph continuing on to page 12, I understood a conclusion on page 12 at the end of the first complete paragraph that said, "Lack of adequate flows of high quality water were identified as a principal cause." And reading earlier,
the principal cause relates to a collapse in fisheries?

MR. JENNINGS: Right.

MR. RUBIN: And the basis for your statement there is exclusively, if I understand --

MR. JENNINGS: Well, actually that was Dr. Moyle's statement.

MR. RUBIN: That's what I understand.

Do you agree with Dr. Moyle?

MR. JENNINGS: I think it's a principal cause.

MR. RUBIN: And you base that on Dr. Moyle's study that's referenced in footnote 15?

MR. JENNINGS: Well, no. I mean I've certainly taken issue with Peter before. But I mean just based on 30 years of fishing, where we have clean ample flows of fresh water -- fresh, clean water, we have fish; where we don't have those, we don't have fish.

MR. RUBIN: And so your statement on page 12 is not based upon Dr. Moyle's report that's referenced in footnote 15?

MR. JENNINGS: It's partially based on Dr. Moyle's report, partially based on POD. I mean, you know, I've got book shelves of studies and reports that it was generically based upon.

MR. RUBIN: Mr. Jennings, are you familiar with Dr. Moyle's report that's referenced in footnote 15 of
your written testimony on page 12?

MR. JENNINGS: Well, I mean I've read it.

MR. RUBIN: And I believe it's an exhibit - it's 2L?

MR. JENNINGS: Yes. Certain -- the conclusion as to -- and what I included on there was that 20 of the 31 living taxa are expected to -- are in danger of extinction within the next 50 to 100 years.

MR. RUBIN: Did Dr. Moyle indicate that lack of adequate high quality flows were a principal cause of the decline of fish

MR. JENNINGS: Within the body of that report he did, and he certainly told me that personally.

MR. RUBIN: Did he conclude that anything else was affecting fish?

MR. JENNINGS: There are always multiple factors affecting fish?

MR. RUBIN: Mr. Jennings, if you don't mind, I'm going to approach and give you a copy of portions of Dr. Moyle's report. Is that okay?

MR. JENNINGS: Um-hmm.

MR. RUBIN: I have extra copies for the hearing officers. It includes sections of the report that were not included as part of the exhibits.

CO-HEARING OFFICER BAGGETT: If you intend to
offer them as evidence, it would probably be helpful.

MR. RUBIN: Mr. Jennings, before you do you have

a document that I will mark as Exhibit SLDMWA 1, which is

a report that Dr. Moyle prepared regarding salmon,

steelhead, and trout in California?

MR. JENNINGS: Yes, commission by Cal --

MR. RUBIN: Is this the same report that is

marked as exhibit -- CalSPA Exhibit 2L?

MR. JENNINGS: Yes. Yes, I think that 2L is part

of the abstract of that.

MR. RUBIN: Mr. Jennings, I ask that you turn to

page 68 of the report.

Do you see page 68?

MR. JENNINGS: Um-hmm.

MR. RUBIN: And there's a section that's entitled

"Factors affecting status," is that correct?

MR. JENNINGS: Right.

MR. RUBIN: And if I understand the way that this

report was prepared, this is factors that are affecting

Central Valley Steelhead, correct?

MR. JENNINGS: That's what it says here.

MR. RUBIN: And according to this report, Dr.

Moyle concludes that many stressors have contributed to

the decline.

MR. JENNINGS: Dr. Moyle concludes that and I
conclude that. I mean that's -- yes.

MR. RUBIN: And so while adequate flows of high water quality may be a cause, it may not be the principal cause?

MR. JENNINGS: It was identified as a principal cause. I think there are a number of principal causes.

MR. RUBIN: Thank you.

And that applies not only for Central Valley Steelhead but all fish species that are dependent upon the Delta?

MR. JENNINGS: Yes.

MR. RUBIN: Thank you.

Mr. Jennings, on page 15 of your written testimony, you have a statement that's in the second complete paragraph that says, "Approval of the petition could exacerbate exceedances of salinity standards in the Delta." Do you see that statement?

MR. JENNINGS: Where is that now?

MR. RUBIN: It's on page 15 -- if I understand this correctly, page 15, the second complete paragraph of your written testimony, which is CalSPA Exhibit 2.

MR. JENNINGS: Okay.

MR. RUBIN: It's highlighted up on the screen here in the hearing room.

MR. JENNINGS: Okay.
MR. RUBIN: By "exacerbate," do you mean cause salinity levels to increase?

MR. JENNINGS: Yes, in the sense that that depended upon -- again I'm qualifying that by depended upon where the transfers -- you know, where they're sourced, the quantity, the timing, and all of the factors that are not identified in the petition, it could exacerbate, yes.

MR. RUBIN: Mr. Jennings, you heard today a description of a number of transfers and exchanges, correct?

MR. JENNINGS: Yes.

MR. RUBIN: And those transfers and exchanges were described in the petition that was submitted by the Department of Water Resources and the Bureau of Reclamation, correct?

MR. JENNINGS: And that was also mentioned that it could include as other unidentified transfers.

MR. RUBIN: Mr. Jennings, the transfers and exchanges including those involving the Drought Water Bank, do you believe any of those will cause salinity levels in the southern Delta to increase?

MR. JENNINGS: Well, it would depend upon more information. I mean if you were talking about water that's already in San Luis and would need to be refilled
in San Luis, being transferred somewhere, I mean I could -- you might build a hypothetical. But, again, without knowing the details of the quantities and the sources and the timings and all of that that you would find in a normal project description, you know, this is essentially kind of thrown up ad hoc. And I'm not trying to be, you know, clever here. I'm just simply saying I don't see enough information to assure me that that -- to allay my concerns that approval could exacerbate. And if you notice, I said it could exacerbate.

MR. RUBIN: Now, Mr. Jennings, I just have one more question for you.

On page 5 of your written testimony, you include a statement - and I'll paraphrase - and let me know if I'm characterizing your testimony correctly - that you believe that in past periods of water shortage consolidation of the place of use was not necessary?

MR. JENNINGS: Yes.

MR. RUBIN: Do you believe that in times of water shortage changes to the place of use were not necessary?

MR. JACKSON: If you know.

MR. JENNINGS: You know, I'm not sure that -- I mean I'm unaware of it having been employed in the past.

MR. RUBIN: I'm sorry. Can you repeat your answer.
MR. JENNINGS: The easy answer is I don't know.

I mean --

MR. RUBIN: And so it would be a surprise to hear that changes to place of use is a common tool to alleviate the impacts of water shortages?

MR. JENNINGS: Other than a temporary transfer, approved and that goes through a board process?

MR. RUBIN: If you don't understand my question, I could rephrase it.

MR. JENNINGS: Rephrase it, please.

MR. RUBIN: Would it be a surprise to you to learn that short-term changes in the place of use designated under the Department of water resources or the Bureau of Reclamation's water rights, it was used frequently to address water shortages in the San Joaquin valley.

MR. JENNINGS: By that, are you meaning a process that went through the State Board for approval or just a decision between agencies?

MR. RUBIN: My question to you is, would you be surprised to learn that the Department of Water Resources and the Bureau of Reclamation have petitioned the State Water Resources Control Board for changes in their water rights to modify the place of use in order to alleviate the effects of water shortages?
MR. JENNINGS: No, that would not surprise me.

MR. RUBIN: Thank you. I have no further questions.

CO-HEARING OFFICER BAGGETT: Does CWIN have any question?

MS. JACKSON: No, we don't.

CO-HEARING OFFICER BAGGETT: South Delta?

CROSS EXAMINATION

OF MR. BILL JENNINGS

BY MR. JOHN HERRICK, ESQ., counsel representing the South Delta Water Agency, Central Delta Water Agency and Lafayette Ranch as follows:


Just a couple. I'll be real brief.

Mr. Jennings, in your testimony, you discuss the baseline issues of comparing the project and the no project; is that correct?

MR. JENNINGS: Yes.

MR. HERRICK: And in your review of the petition, is there any analysis of the effects resulting from the project or the petition when compared to a no project or no petition?

MR. JENNINGS: Absolutely not. I mean, there's
virtually no analysis at all in the petition.

MR. HERRICK: Do you think it's inadequate analysis to say that the amount of water delivered under the petition should be compared against historic deliveries of water to various areas for various uses?

MR. JENNINGS: Certainly.

MR. HERRICK: Do we know from the -- I think you -- let me rephrase that.

Do we know from any of the materials submitted by the petitioners what the effects are of the petition when compared against no-project condition?

MR. JENNINGS: No.

MR. HERRICK: And why is that important when analyzing the proposed petition?

MR. JENNINGS: Well, I mean, you need to have a baseline to know if, in fact, the petition -- the project approved as a result of this petition would be beneficial, would be harmful. I mean, certainly given the highly degraded state of this estuary and its tributaries and the water quality problems that have been identified, every project that involves modifying the hydrology, modifying the flow patterns and storage patterns needs to be seriously examined in a thorough environmental review.

Not to do so is simply foolish.

And I could find no environmental evasion. 
examination, no baseline data, no comparison against a
baseline. Any evaluation of this project as to its
probable or potential harm, environmental harm or for that
mat harm to the public health and water quality impacts.

MR. HERRICK: So hypothetically, if one of the
projects that DWR and Reclamation anticipate might follow
from this petition actually does deliver water to lands
that drain, either surface or subsurface to the San
Joaquín River, that might affect San Joaquin River
salinities; is that correct?

MR. JENNINGS: That could certainly affect San
Joaquín River salinity, either immediately or through
groundwater migration, but I mean it could affect it
immediately. And given the low stream flows in the San
Joaquín River this year, problems could be exacerbated.

MR. HERRICK: And those effects might include the
amount of water released from New Melones to dilute the
salt?

MR. JENNINGS: Certainly can include that.

MR. HERRICK: And those effects include the salt
concentrations in the southern Delta?

MR. JENNINGS: It would almost certainly, I think
could -- I mean, yes, it could certainly include that.

MR. HERRICK: And would either one of those
effects potentially adversely affect the legal user of
water?

MR. JENNINGS: It would certainly affect them.

You know, I almost daily was on the website watching the salinity at Tracy at Old River and watched it literally daily in violation, I mean, for almost three months.

MR. HERRICK: And although those are pop --

MR. JENNINGS: And anticipate it again this summer.

MR. HERRICK: And although those are possible effects, the petition does not tell us any specifics about whether those will or will not occur isn't that correct?

MR. JENNINGS: It provides no data, no analysis, not even conjecture. I mean, it just simply says that it will comply with D-1641.

MR. HERRICK: Would you conclude from that, that the Board would not have sufficient information to conclude whether or not granting the petition affects legal users?

MR. JENNINGS: I can't imagine how the Board could conclude that they have sufficient information to evaluate the environmental impacts of this proposal.

MR. HERRICK: Would you have that same conclusion with regards to impacts to fisheries?

MR. JENNINGS: Yes.

MR. HERRICK: Thank you.
CO-HEARING OFFICER BAGGETT: Thank you.
County of San Joaquin.

MS. GILICK: No questions.

CO-HEARING OFFICER BAGGETT: Defenders of Wildlife?

MR. BASOFIN: Yes.

CROSS EXAMINATION
OF MR. BILL JENNINGS
BY MR. JOSHUA BASOFIN, representing the Defenders of Wildlife as follows:

MR. BASOFIN: Joshua Basofin Defenders of Wildlife.

I just have a few questions for Mr. Jennings.

Good afternoon, Mr. Jennings.

MR. JENNINGS: Good afternoon.

MR. BASOFIN: Mr. Jennings, you indicated in your testimony that you felt the project -- I'm sorry, you felt the petition and other materials have not adequately described the project; is that correct?

MR. JENNINGS: Yes, I do not believe we had an adequate project description.

MR. BASOFIN: Representatives of the Bureau today have, in turn, indicated that there might be groundwater pumping in the Sacramento valley. And that hypothetically there may not be groundwater pumping in the Sacramento
valley.

So I'm going to do the opposite and say hypothetically, assuming there is groundwater pumping in the Sacramento valley, is it your belief that such pumping would affect the stream flow in the Sacramento River and its tributaries due to hydrological connections with the aquifers?

MR. JENNINGS: Absolutely. And, in fact --

MR. RUBIN: I'm going to object to the question. I apologize. I'm trying to be respectful to Mr. Jennings. And I understand he has a long history in the Bay-Delta and dealing with water issues. But maybe Mr. Jackson needs to ask some more questions about Mr. Jennings' background to qualify him to answer a question like that. I mean, I have severe concerns, I raised them early on in terms of relevancy and the ability for some of these people to testify on such broad issues. And this is really pushing it.

MR. BASOFIN: My question directly related to Mr. Jackson's direct testimony in which he indicated that hydrological connections with Sacramento valley rivers would affect stream flow.

MR. JACKSON: I'm a little confused. I'm not a witness. And I didn't testify to anything.

CO-HEARING OFFICER BAGGETT: I agree. And I
don't recall -- I mean, the issue of this hearing hasn't been hydrological connectivity between the Sac and -- Sacramento River and groundwater. I mean --

MR. JENNINGS: Actually, I think I had spoken about Butte Creek.

CO-HEARING OFFICER BAGGETT: If you want to relate it to Butte Creek, that would be acceptable. But we didn't get into this broad groundwater issues in this proceeding. I think that is beyond the scope of --

MR. JENNINGS: I mean one of the concerns that have been raised in environmental comments --

CO-HEARING OFFICER BAGGETT: So let me go back. Why don't rephrase the question related to his testimony regarding Butte Creek and then --

MR. BASOFIN: Mr. Jennings, is it your opinion that groundwater pumping from aquifers in the Sacramento valley may affect stream flow in Butte Creek?

MR. JENNINGS: It's my understanding that there -- it does.

MR. BASOFIN: And would that affect on-stream flow into Butte Creek adversely -- potentially adversely affect listed central valley Chinook Salmon and Steelhead Trout.

MR. JENNINGS: Well, certainly given the importance of Butte and these eastside tributaries towards
spring run, that it's something -- anything that has the
potential to lower or modify stream flow in these
tributaries, where so much of our critical habitat, our
spawning habitat should be evaluated carefully.

MR. BASOFIN: Okay. And is it your opinion that
such groundwater extraction has the potential to adversely
affect central valley Chinook salmon and Steelhead trout
throughout all or part of their range.

MR. JENNINGS: To that, I mean, I have some
knowledge of Butte and the lower tributaries there.
Obviously, any activity that lessons groundwater accretion
has an impact, but I wouldn't begin to hazard a -- I mean,
I think it's uncertain.

MR. BASOFIN: To your knowledge, has the Bureau
of Reclamation initiated formal or informal consultation
with the National Marine Fisheries Service regarding
potential impacts to central valley salmonids?

MR. RUBIN: I'm going to object to the question.

I believe --

MR. JENNINGS: I don't know.

MR. RUBIN: I believe -- I withdraw my objection.

CO-HEARING OFFICER BAGGETT: Strike the
objection.

MR. BASOFIN: No further questions.

CO-HEARING OFFICER BAGGETT: Thank you.
Is there any redirect Mr. Jackson?

MR. JACKSON: No redirect, sir.

We would like to submit 1, 2, 3, and 4, and the attachments to 2. Bill, that's 2A through --

MR. JENNINGS: I don't have my exhibit list here. Do you have it?

SENIOR WATER RESOURCES CONTROL ENGINEER LINDSAY:

It's coming.

CO-HEARING OFFICER BAGGETT: We've got it 2-O.

MR. JENNINGS: Yes.

MR. JACKSON: Through 2-O.

CO-HEARING OFFICER BAGGETT: Are there any objections, seeing Mr. Rubin standing?

MR. RUBIN: Yes, I raised objections with the testimony that's been provided. I believe it's all irrelevant with the exception of complaints on vagueness or that the project description is inadequate. I don't believe any of the testimony raises issues that are specific to those before the Board. Reliance upon the emergency exemption has nothing to do, I think, with this proceeding. If there's an issue with the drought proclamation, then take it to another forum, but it's not here. I think the other elements of the testimony are not specific to the effects that the change might have.

In terms of the exhibits, I don't believe there's
an adequate foundation for any of them. It raises an
issue with the testimony as well. But basically, as I
understand it, Mr. Jennings pulled a bunch of documents,
one of which he prepared, none of which he could attest
to being true or accurate and relied upon that to support
his statement in his testimony.

And I don't think Mr. Jackson has laid an
adequate foundation for Mr. Jennings to make the
statements in his testimony nor to allow for the entry of
the exhibits into evidence.

I'm sorry, Michael, just to make sure that it's
clear. I should have been more clear in terms of my
objections.

I have no objections to CalSPA 3 and 4.

CO-HEARING OFFICER BAGGETT: Well, at this point,
while we've had an opening, we'll accept 3 and 4 into the
record. If there's no other objections. Now, let's go
back to Mr. Jackson.

MR. JACKSON: Does he have a objections to CalSPA
1, which is a CV?

CO-HEARING OFFICER BAGGETT: Well, let's just go
1 through -- we'll accept Exhibit 1 okay. Now, we are
down to and its attachments.

MR. JACKSON: Now we're down to 2 through 2-O.

CO-HEARING OFFICER BAGGETT: Correct.
MR. JACKSON: First of all, all of these documents are documents that the State Board could take judicial notice of under your rules. They're all government documents. They all come -- I mean, they all come from records that are kept in the normal course and scope of business. A number of them are documents which could become relevant because they were prepared by the petitioners in this case and are obviously responsive to the testimony of not only Mr. Jennings but of Mr. Milligan and everyone else who testified.

CO-HEARING OFFICER BAGGETT: I mean, some of the documents maybe are hearsay. We can -- this Board has very broad hearsay rules. We can take them, you know, under our hearsay restrictions, not being able to use them as a finding to cite in the order. A number of these are news articles. Again, it's hearsay. I'll allow --

MR. RUBIN: There's another --

CO-HEARING OFFICER BAGGETT: Wait.

Mr. Herrick, you were up first.

MR. HERRICK: Just briefly.

I believe Mr. Jennings' testimony, including his exhibits, tried to address and was ordered along the line of the questions the Board asked. And so I think it's appropriate under that.

Secondly, this is -- not sort of. This is an
expedited process. And so preparing witnesses' testimony
is very difficult on the short-term. And I think the use
of documents, which either are or are not hearsay, is
appropriate given the Board's latitude in these matters,
and the Board can certainly see that an article from say
the San Francisco Chronicle is not submitted for the truth
of the matter asserted that granting the petition does
something, but it's just part of that public discourse and
the public trust, which we're trying to protect, which Mr.
Jennings is referring to. And I think they are
appropriate.

Thank you.

CO-HEARING OFFICER BAGGETT: I mean, I would
concur with many of those comments. This is an expedited
proceeding. We could sit here and go through everyone of
these line by line and delay this whole order by another
month or 2. I mean, I'm not going to do a --

MR. RUBIN: I understand that

CO-HEARING OFFICER BAGGETT: -- blanket --

MR. RUBIN: But --

CO-HEARING OFFICER BAGGETT: -- dismissal of all
these exhibits, without going through them line -- you
know, page by page.

MR. RUBIN: The problem that we face is the issue
that I tried to raise through cross examination. You have
partial documents. Mr. Jennings can't attest to the truth
of the matter asserted. It leads to potentially
misleading results from the Board itself. And that's my
concern.

I mean, frankly a lot of these documents I think
are helpful to my client. But you have a circumstance
where you have a single page of a document. I'm doing to
raise the same issue for CWIN. You have a single page of
a document that may or may not have different
explanations, might be able to provide different context,
what it was prepared for. And if you want to take it with
the idea that it's either -- that it's hearsay, and
therefore can't be relied upon, and it's not being
asserted for the truth of the matter, that's one thing.
But to have it just purely admitted, we're going to -- if
we're in front of a court, those are as if somebody
testified. And without having the full document, and
frankly, without having the time to go through the full
document, it makes it very difficult for us as well.

CO-HEARING OFFICER BAGGETT: I think we will
accept the testimony as evidence. It will be noted for
the record and on the record that it will only be given
the weight to which it is credible evidence. If it's one
page of a multi -- a treatise, then, I think, the Board
will treat it as such. Without the corroborating

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information, I think many of you have practiced before us
know that that's how we, in fact, do write our orders.

Secondly, hearsay will be treated as hearsay. I think Mr. Herrick did make -- he was on point. I mean, this is an expedited proceeding. We are trying to, you know, follow our own rules as tight as we can, yet understanding the need to get something -- some order written and crafted in a fairly short turn around on something of major significance like this.

These are great public policy issues that have been raised. And we will take those just as they are, as public policy issues. If that's what they are, we won't be using those for the truth of the matter or to support a factual statement in the record.

So with that, we'll accept all the exhibits into the record as noted.

(Thereupon the above-referenced documents were admitted.)

CO-HEARING OFFICER BAGGETT: And, Mr. Rubin, I think you had one other -- did you want to enter your exhibit that you used in cross?

MR. RUBIN: Mr. Jennings testified to the point that I was trying to use that document for, so we don't need to unless it will be helpful.

CO-HEARING OFFICER BAGGETT: Very good.
MR. JENNINGS: I would have put the full exhibit in. I was trying to spare everyone the paper of putting these full exhibits. I must say --

CO-HEARING OFFICER BAGGETT: I appreciate. We accepted them.

MR. JENNINGS: I just want you to know that I could have put the whole documents in, but I didn't.

MR. JACKSON: Stop arguing. You won.

CO-HEARING OFFICER BAGGETT: He's going to have to have a seminar with his colleague in the hall to understand how to be brief.

Thank you, Mr. Jennings. It's appreciated.

With that, let's take a -- come back at 4 o'clock and we will do the last case in chief.

(Thereupon a recess was taken.)

CO-HEARING OFFICER BAGGETT: Okay. If we're ready, let's go back on the record. I don't know if you have an opening statement and then your 2 witnesses.


I just have a very short opening statement. And then I'll turn it over to our witnesses Tom Stokely and Tim Stroshane.

The California Water Impact Network does not support the consolidation at this time. Consolidation is
not required in the current water year. Dams and reservoirs are below average, due to bad planning, which drew down reservoir levels significantly, resulting in a deficit that's only now recovering. 2009 is closer to an average rain year than rainfall levels in drought years. Tim Stroshane will testify today that 2009 precipitation levels for the Sacramento River basin are actually 86 percent of average. With San Joaquin River Basin reaching 89 percent of normal during the October to March period.

Critical data is missing from this petition, including specific times, transfers, amounts, sources and end users of water within the requested consolidated system.

Both DWR and the Bureau testified today they do not know what petitions will be made for this water to whom and to where this water will go. Witnesses today will testify about the practical problems of ensuring protection for fish and wildlife when so little is actually known about the proposed transfers. Evidence will show that a consolidated system is not necessary during this alleged drought, as no such system has ever before been operated during drought years that have been far more severe as this.

Further, the U.S. Fish and Wildlife Service biological opinion regarding the 2009 drought water bank
acknowledged that the giant garter snake will be adversely impacted by the transfers, which was not included or amended in the present petition.

To allow approval of the transfers not yet identified and quantities not yet determined, defies common sense and legal justification. After hearing the testimony today and evidence presented in this hearing, it's our hope that the Board will deny petitioner's request as not in the public interest.

And at this time we will turn to Mr. Tom Stokely.

Oh, sorry. Tim is going first. I apologize.

DIRECT EXAMINATION
OF MR. TOM STROSHANE

BY MS. JULIA JACKSON, ESQ., counsel representing the California Water Impact Network as follows:

MS. JACKSON: Mr. Stroshane, were you sworn earlier today?

MR. STROSHANE: Yes, I was.

MS. JACKSON: And have you reviewed your testimony marked as Exhibit 1?

MR. STROSHANE: Yes, I have.

MS. JACKSON: And when it was written, was that testimony true and correct to the best of your knowledge?

MR. STROSHANE: Yes, it is.

MS. JACKSON: Would you please summarize your
testimony.

CO-HEARING OFFICER BAGGETT: Okay. Mr. Rubin.

MR. RUBIN: Yeah, I'd like to step in here and ask, before I raise objections, for the witness to summarize his expertise. I read the exhibit with the witness's statement of qualifications. And I'm having difficulty understanding how the witness is qualified to testify on any of the subject matters within his testimony.

MR. STROSHANE: My qualifications lie in being a professional planner, capable of reading complex documents and interpreting them, both from the standpoint of policy and law. My qualifications also stem from my education, which was at UC Santa Cruz in Environmental Studies and in Earth Sciences, where I took 6 courses in the Earth Sciences Program dealing with groundwater, engineering, geology, stratigraphy and sedimentation, hydrology, and a couple of other courses, mineralogy among them. So I'm quite familiar with these subjects.

MR. RUBIN: With that, I raise my objection. I don't believe Mr. Stroshane -- if I'm pronouncing it correctly.

MR. STROSHANE: Stroshane.

MR. RUBIN: Stroshane, excuse me -- is qualified to testify to any of the issues that are in his testimony.
Particularly, as an expert witness in this proceeding.

   CO-HEARING OFFICER BAGGETT: We'll allow for a
   response first.

   MS. JACKSON: Mr. Stroshane has extensive
   knowledge and experience in water-related issues. He can,
   better than I, describe his involvement with SPILLWAY and
   his education in water rights and water policy in the
   State.

   MR. RUBIN: Hearing Officer Baggett, I took a
   quick look SPILLWAY, I don't think anything in there can
   qualify him as an expert on the issues. And again, his
   resume identifies areas of his expertise, and it looks as
   though professionally he's been with the City of Berkeley
   Housing Department in their planning department. And I
   don't see how that qualifies him to provide any testimony
   to you on the issues that are the subject of this
   proceeding.

   MS. JACKSON: A witness can be qualified as an
   expert, not only from their educational background, but
   from their depth of personal experience. Mr. Stroshane
   absolutely fits that requirement for an expert in this
   proceeding.

   MR. STROSHANE: May I elaborate on that?

   CO-HEARING OFFICER BAGGETT: Sure.

   MR. STROSHANE: I'd like to.
I wrote my senior thesis for UC Santa Cruz Environmental Studies Program on Peripheral Canal and related issues in 1981. I have kept abreast of the State's water issues since that time. In 1997, I took interest in CALFED while I was working at the City of Berkeley. Beginning in 1998, I started attending CALFED meetings, observing the proceedings, writing articles for local magazines in the bay area about the subject of CALFED and what it meant for northern California.

Beginning in 2000, having tired of trying to pitch articles to editors, I started my own newsletter, the -- that I, in 2001, made available on line. It's called SPILLWAY.

The articles in SPILLWAY reflect the fact that I read government documents about water and try to understand them very carefully. I interview people who are knowledgeable about them for those articles. And the articles themselves are footnoted, each one of them pertaining to lawsuits or CALFED or any one of a number of other subjects are all footnoted my having read these documents.

CO-HEARING OFFICER BAGGETT: I think, at this point, he's not offering -- the witness is not offering original research projects that have been peer reviewed. I mean he's offering his interpretation of other's work.

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MR. RUBIN: But again --

CO-HEARING OFFICER BAGGETT: I don't see the harm provided here. We're not relying on the factual basis of his research or his testimony.

MR. RUBIN: I think what you've heard from the witness is he an advocate and maybe he's developed good advocacy skills. And if you want to take his testimony as that, that's one thing. It's a brief, for lack of a better word. And if you want to take it for that, then that's one issue. But it's being offered as expert testimony in this proceeding, and not only, I don't think, can it be considered expert testimony, I question whether it can be considered testimony or whether it's just an advocacy piece. It's not presenting you with evidence. It's presenting you with an argument that he wants to advance.

MR. JACKSON: If I could, Mr. Baggett.

CO-HEARING OFFICER BAGGETT: Yes.

MR. JACKSON: The testimony of both witnesses -- and I guess we're going to go through this on both of them -- is in direct response to the following -- to the questions that were asked by the Board.

CWIN chose to bring forward people who work for them, in the same way that the general managers and resource managers of all of the water districts that
testify here come forward. They are not -- they're not
all scientists who write independent peer-reviewed
documents. But these folks have answered the questions
that you asked, which was the purpose of the testimony.

And in that regard, since they're working for a
recognized environmental group, they're not much different
than the witnesses who testify on behalf of the Bureau or
on behalf of the -- well, the Bureau testified, I guess,
for U.S. Fish and Wildlife Service.

MR. RUBIN: I think that, just for the record,
there is clearly a difference. You have a person from the
Department of Water Resources who operates the State Water
Project, explaining how they're going to operate the State
Water Project. You have the same thing for the Bureau of
Reclamation.

Here, you have 2 people -- and I'm not raising my
objections because they might be employed by CWIN, either
directly as a board member or staff member or as a
consultant. The question is whether they have any
particular knowledge, expertise that will help address the
issues before you, help bring evidence to you that will
help you decide this matter.

And I don't think that they do. I don't think
their resume says it. I don't think their testimony says
it. What their testimony says is we are advocates for a
position and we're advocating for it. And I respect that, but it doesn't bring you evidence. The evidence that they do bring is exhibits and it raises the same issue that I raised earlier today.

CO-HEARING OFFICER BAGGETT: And I think we can listen to the testimony presented. We can take the exhibits under the same conditions, which we did the prior testimony. And I think we can decipher, in fact, what is science and expert testimony offered versus what is policy or a summary of that.

MR. RUBIN: And rather than go through this again, I do have the same concerns --

CO-HEARING OFFICER BAGGETT: I understand.

MR. RUBIN: -- with Mr. Stokely. And so I assume your ruling here applies --

CO-HEARING OFFICER BAGGETT: It will apply to both of them so we can proceed. It will apply to all the evidence as submitted.

And I think the documents -- a numbers of these would be taken under official notice, if we so desire. So we'll proceed and we'll take them under those same admonitions.

With that, continue, Ms. Jackson.

MS. JACKSON: Mr. Stroshane, will you now please summarize your testimony.

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MR. STROSHANE: Yes, I will.

My name is Tim Stroshane and good afternoon to
Chairman Hoppin and Hearing Officer Baggett.

The California Water Impact Network believes that
the petition should not be approved. We maintain that
California is not in a drought considered by historical
measures. Precipitation conditions are closer to
historical averages rather than to drought conditions, as
shown by evidence in one of our exhibits that was a report
prepared by the Department of Water Resources for the
Governor at the end of March.

Snowpack, as of March 27th, which is stated in
that same report, was at 87 percent of average. Runoff
conditions are now considered by the Department of Water
Resources to be considered dry, instead of critical. And
even in the 1987 to '91 runoff conditions were worse than
current -- than current period.

Some federal reservoirs within the central valley
project do exceed average conditions right now. And state
terminal reservoirs, I'm speaking of Pyramid and Castaic
Lake, as reported on DWR's website at the time my
testimony was prepared, are either exceed or are close to
historical average storage.

The petition has not been subjected to adequate
environmental review. DWR, in our opinion, improperly
exempted the 2009 drought water bank environmental
review -- rather the 2009 -- the description of the 2009
water bank from environmental review, based on emergency
claims.

Eight other projects are listed in the petition
that have -- that are included in the petition have not
been disclosed for environmental review purposes. And the
merger of the projects place of use represent
establishment of a water market without authorization of
Congress for the California Legislature.

Further more, no assurance that water supplied
through the drought water bank or through the petition
will not be used wastefully or unreasonably. And this
point is discussed more fully in Mr. Stokely's testimony.

The petition is avid to establish a 2-year
timeframe, during which water marketing to facilitate
water transfers and to more effectively utilize the
operational flexibility of the combined facilities appears
to be the purpose and less a justification for alleviating
dry conditions and low water allocations.

It's alleged to be needed to alleviate lost
supplies of lowest priority water right and water service
contractors in the western San Joaquin valley.

Much agricultural land of intended recipients
discharges impaired drainage that the 1985 State Water
Board considered a public nuisance. If the Bureau was to continue supplying water to these lands, which are included in the 2009 drought water bank, without supplying a drainage solution, this could be, in the State Board's own words in 1985, be considered an unreasonable use of water.

We feel that the petition should not be approved, also because dry and drought conditions should not be seen as disastrous and the subject of emergency declarations. Recurring dry periods -- recurring dry conditions require a long-term commitment to retrofit our cities and farms to increase water use efficiency dramatically.

I'm going to skip over my suggested conditions. I think Mr. Jennings and Mr. Stokely will have those covered for us.

Approval of -- in answer to question 3 of the State Board in the hearing notice, approval would initiate a new right and injure other legal users of water. Concerning the creation of a new right, we argue that the petition asks the State Water Board for approval to create a unified market for water transfers. This is unprecedented in size. And I believe one of the engineers for the Department of Water Resources also noted that in terms of the scale of what's being asked, this was unprecedented. The market would be among public water
agencies on behalf of low-priority water rights and contractors private interests.

As I said before, it's unauthorized by Congress or the State Legislature. The State Water Board must protect public trust resources and uphold the Constitutional prohibition on waste and unreasonable use. And we believe that this petition will complicate that -- the ability of the State Water Board to ensure those things are upheld.

We also maintain that petition approval will make their -- yeah, I just said that. Sorry.

Secondly, in answer to the question about whether this would injure other legal users of water, we believe that injury is likely to Sacramento valley groundwater users. Willing sellers north of the Delta must agree to sell surface water, but have the option to substitute groundwater to bring their crops to harvest increasing pressure on aquifer resources.

Others reliant on subsurface supplies would be injured if increased groundwater pumping lowers their groundwater elevations. Existing groundwater elevations in both the Sacramento and San Joaquin valley are already at drought period lows, as indicated in the Department of Water Resources own report to the Governor on March 30th. This could potentially injure large numbers of groundwater
reliant farmers as Lynn Barris testified on behalf of the
California Sportfishing Protection Alliance.

In answer to the State Board's 4th question, we
believe that approval would unreasonably affect water
quality, fish, wildlife or other instream beneficial uses.
Bill Jennings has gone into great length about this. I
will not repeat his concerns with Delta smelt and
salmonids.

What I want to note that increased groundwater
pumping could potentially deplete Sacramento tributary
streams, warming water in those streams, and reducing
critical habitat for anadromous fisheries, especially if
sufficient groundwater pumping lowers groundwater
elevations to a point where streams no longer receive
water from aquifers.

Crop idling would dry out rice fields, as
acknowledged in the Fish and Wildlife Service's biological
opinions. And those are considered to be critical habitat
for the giant garter snake, causing adverse significant
impacts of unknown scale. Potentially -- the proposal --
or crop idling could potentially fallow up to 55,000 acres
under the drought water bank alone. The petition
acreage -- the acreage under the petition, which would be
fallowed as a result of actions under the petition, could
be more.
There's no information according to the Fish and Wildlife Service on the size or age class of giant garter snake populations in the Sacramento valley. Yet Fish and Wildlife Service biological opinion finds no jeopardy from the drought water bank. Yet, greater impacts could be possible under petition's 8 additional other -- additional and other unspecified future projects.

The impacts of rice field idling could also have effects on reproduction, recruitment and survival of giant garter snake. And I quote from the Fish and Wildlife Service's biological opinion, "...well beyond the one year project timeframe."

My reading of the Fish and Wildlife Service's report is that they were dealing with the drought water bank. The petition's timeframe, which they didn't appear to be responding to directly, is, of course -- they ask -- the petition asks for a 2-year timeframe on this. So impacts could be larger than the Fish and Wildlife Service has disclosed to this point.

The petition should, at a minimum, be delayed in our opinion. So that an Environmental Impact Statement and Report would be prepared to inform the State Water Board decision makers fully and properly.

In answer to question 5 in the hearing notice, the petition does not and will not serve the public.
interest. We consider it to be an end-run around the existing water rights priority system that protects all legal water right holders and all users of water in California. In other words, all of us.

It would give DWR and U.S. Bureau of Reclamation and their water customers and suppliers an enlarged market, water market, that would reward poor water management. It would provide contractors holding lowest priority water rights and contracts to irrigate lands -- with lowest priority water to irrigate lands that the State Water Board has found at least twice to be the primary cause of south Delta salinity problems and would be an unreasonable use of water. I'm referring to the State Board's water quality order 85-1 and Decision 1641.

Rewarding growers for planting permanent orchard and vineyard crops on lands with the lowest priority water contracts would represent -- that are 100 percent interruptible supplies could be a reward for unwarranted risky business decisions.

It would represent a bailout that poses the same moral hazard that the United States faces now with the bailout of large financial institutions and auto industries. Will we be here again in another year or 5 years talking about the same issues?

The effects of not approving the petition.
We recommend that -- well, we would argue that not approving the petition would enable the State Board to maintain clear responsibility for the U.S. Bureau of Reclamation for compliance with southern Delta salinity objectives and other requirements of D-1641.

It would prevent Sacramento valley groundwater elevations from declining further under pressure from groundwater substitution transfers that are otherwise encouraged by the petition.

It would prevent injury to groundwater reliant farms and communities in the Sacramento valley. And it would prevent impacts to Sacramento River tributary streams and prevent the loss of cold water and critical habitat in those streams needed by anadromous fisheries.

It would prevent the loss of irrigated rice fields, to which giant garter snakes have adapted and depend on for habitat.

Finally, we want to point out that Department of Water Resources and UC Davis researchers confirm that the bulk of these impacts are confined to the western San Joaquin valley as described above. And that the national and international economic recession are having far larger impacts on unemployment and incomes in our statewide economy, including agriculture than is California's dry hydrologic conditions.
That's the conclusion of my testimony at this point.

CO-HEARING OFFICER BAGGETT: Thank you.

MR. STOKELY: Ready?

I'm Tom Stokely. I just wanted to --

DIRECT EXAMINATION

OF MR. TIM STOKELY

BY MS. JULIA JACKSON, ESQ., counsel representing the California Water Impact Network as follows:

MS. JACKSON: Mr. Stokely, were you previously sworn?

MR. STOKELY: Yes.

MS. JACKSON: And have you reviewed your testimony, Exhibit number 3?

MR. STOKELY: Yes.

MS. JACKSON: And, at the time, that you prepared it, was everything true and correct to the best of your knowledge?

MR. STOKELY: Yes.

MS. JACKSON: Can you please summarize your testimony?

MR. STOKELY: Sure. I'm Tom Stokely. I just wanted to be clear that I no longer work for Trinity County. So no one should hold the County of Trinity responsible for my statements here today. They do not pay
Just a little clarification. I did work for 10 years on the environmental documents for the Trinity Record of Decision. I was a witness in Water Right Order 9005. I participated in Water Quality Order 8918. I participated in the hearings by the regional board and the State Board in development of the basin plan amendment for temperature objectives on the Trinity River. Back in the early nineties, I participated in the Sacramento River temperature task group that the Bureau convenes to look at temperatures for Salmon in the Sacramento and Trinity rivers. And I was also a witness in the D-1641 hearings.

Thank you.

I am going to talk some in my testimony about the Trinity River division and potential impacts that. And I wanted to clarify that the reason for that is because the permits that are being considered as part of this subject petition do include the Bureau's permits for the Trinity River.

CWIN does not believe that the drought is An emergency under CEQA, but it's, in fact, a case of bad planning and misleading water accounting. Our Exhibit 3A contains our arguments as to why we believe this project and the drought water bank are not -- do not qualify for an exemption under CEQA. DWR has a very nice little
description of a drought on their website and it's not a
sudden unexpected occurrence, similar to the language in
CEQA.

As far as over-allocation of water, I've
certainly known for some time that the CVP water supply
was over-allocated. In working on the Trinity Record of
Decision back in 2000, I was kind of amazed when I saw the
language that's in my testimony on page 3 that says that
the Trinity Record of Decision was unknown at that time,
and that it would not affect the promise of a 10 to 15
percent increase to south Delta agricultural service
contractors.

And that was, in fact, contradicted by my exhibit
3C, which is a figure from the final Trinity environmental
document that showed a 4 percent reduction in water
deliveries to south of Delta agricultural service
contractors. So right there between what CALFED promised
and what Trinity indicated, there was a 19 percent
deficiency in south of Delta CVP ag service water
supplies.

Of course the over-allocation of water was
discussed earlier by Mr. Jennings in his testimony when he
talked about your strategic plan.

We are very concerned about impacts on upstream
reservoirs. It was certainly news to me today, it was

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never in the petition that there would be no change in
storage in Shasta reservoir. But as I was researching
this I did -- and I did not know that there would not be
an impact, and I'm still not convinced. But I believe
that all efforts should be made to conserve cold water in
Shasta reservoir this year.

Past biological opinions on the winter run
Chinook Salmon have required or targeted a 1.9 million
acre foot carry-over storage in Shasta on September 30th.
That is not going to be met this year. I talked to Paul
Fujitani who's the chief of CVP operations, and at the
time that I talked to him 2 weeks ago, he indicated to me
that he did not think they were going to have adequate
cold water resources to protect the fall run Chinook in
the Sacramento River that begins to spawn around October.
That they would -- he told they would basically meet the
60 degree temperature objective for winter run in
September and after their cold water resources would be
exhausted.

So again CWIN is very concerned that if this
petition were to cause additional reservoir depletion, it
would impact the ability to meet temperatures on the
Sacramento River pursuant to Water Right Order 9005.

And additionally, when I talked to Mr. Fujitani,
I asked him if the temperature control device on Shasta
dam had some leakage and it didn't work as well as they
had expected. And he indicated affirmatively that that
was the case.

CO-HEARING OFFICER BAGGETT: Mr. Rubin.

MR. RUBIN: Can I ask the witness to identify
where in the testimony he is -- the written testimony he's
indicated the discussions he's had with Mr. Fujitani.

MR. STOKELY: Sure. 3F, Exhibit 3F, page 6,
middle of the page.

And so when I talked to Mr. Fujitani, I asked him
questions about the temperature control device. He said
that it leaks and that the model temperature outputs were
not the same as the actual, but they used some kind of
professional judgement in determining how to operate. I
also asked him if the Trinity Dam auxiliary outlet, which
is the outlet on the bottom of Trinity Dam that's used to
provide cold water for fish -- the regular outlet is about
150 higher. When the reservoir gets cold, it pulls warm
water from the bottom -- or from the upper thermocline
into the river. In the past, they have opened that up to
provide cold water for fish. When I asked him, he said
that it maybe damaged and that it's use on a regular basis
is questionable.

Therefore, we already have an existing problem
for meeting temperatures on the Sacramento River, in that
carryover storage is low, the temperature control device
doesn't work, so you already don't have all of the tools
that have been used in the past to meet cold-water
requirements.

So the recommendation would be that any approval
of the petition should include a condition that the
project not result in further depletion of cold-water
supplies at Shasta or Trinity beyond what would have
occurred in the absence of approval.

As far as the Trinity River goes, I have an
Exhibit 3F that shows that it's likely that temperature
objectives there will be met in 2009. Although, it's
questionable whether they'll be able to provide auxiliary
bypass releases. The Trinity River is a separate
watershed. And I quote in here from my Exhibit 3N, a
letter from the Department of Fish and Game, that quotes
that a single-source of supply from the 2 basins requires
needs for beneficial uses in the basin of origin to be met
first. Then needs can be supplied to the other basin. My
inference is that the water in the Trinity River would be
a priority for Trinity River fish before Sacramento River
fish.

That letter and other information has indicated
that, in the past, the State Board had promised a Trinity
River Water Right Order in Water Quality Order 8918

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years ago. And there has not been one to this date. So even though Trinity River temperatures look like they may be met this year, according to my testimony on page 8, the existing protections for the Trinity River contained in Water Right Order 9005 only include Trinity exports to the Sacramento River for the purpose of temperature control. They do not include any other project purpose.

 Also, the basin plan temperature objective for the Trinity River of 60 degrees from July 1st to September 14th has never been implemented in a Water Right Order.

 So what I'm saying is that the Trinity River is vulnerable. And if you're going to approve a petition, it would be a good idea to firm up the protections for the Trinity River before you might commit any other water.

 So another recommendation would be that any approval of the project not result in any further depletion of cold water supplies in Trinity reservoir beyond what would have occurred in the absence of approval. And a Trinity Water Right specific -- and a Trinity-specific water-right hearing should be scheduled as promised 20 years ago.

 As I was looking into the issues here, I wasn't aware of this, but it turns out there may be a potential for another large fish kill on the Lower Klamath River this year, similar to what we had in 2002. As I
identified in my testimony on page 11 and pulled out of Exhibit 3I, which was a letter by Doug Schleusner, who was the former executive director of the Trinity River Restoration Program.

In 2003, the restoration program developed 3 criteria that would trigger a proposed late summer/fall flow release on the -- from Trinity Reservoir to the Lower Klamath River which it feeds into, in order to protect spawning Trinity fish from being killed in another similar episode.

And the 3 triggers were run size, larger than 110,000 fish, as shown in one of my exhibits. The run projected this year is 130,000 fish at the mouth of the Klamath and Trinity River. Discharge would be less than 3,000 cfs at Terwer, which is on the Lower Klamath River. And this year the Trinity is a dry year and the Klamath is a below average year, I believe, is what I said in here.

Let's see. Below normal year. So Trinity is dry. Klamath is below normal. The run is a little larger than the average mentioned in that item. And, of course, cold-water storage is substantially lower than it was in 2003, 2002 or 2004.

So there are these 3 triggers, run size, river discharge, water temperature. I do believe there is a
potential for it to occur this year. We don't know that it would happen for sure. But my recommendation to you would be a condition that, again, the project not deplete cold water in Trinity anymore than it is, and that you order Reclamation to reserve up to 36,000 acre feet, in the event that conditions to meet the Trinity River restoration program's 3 triggers for late summer/fall release would be necessary. Hopefully, it would not be necessary, but I believe that it would be prudent to do so. And again, this relates to the petition, if it were to further deplete cold-water storage in Trinity.

The final part of my testimony is that as Mr. Stroshane discussed a lot of the water under this petition that would be subject to these various transfers would go to agricultural service contractors in the western San Joaquin Valley who are contractors under the junior water rights of the Bureau of Reclamation and the Department of Water Resources.

On page 13 I have a nice quote from the Board in D-1641, where you found that the CVP was the principal cause of salinity exceeding the objectives at Vernalis. There's been a lot of discussion today about would this project create more drainage water. And I'm not going to tell you how much more drainage water it would create. But I did introduce into evidence Exhibit 3P, which is an
excerpt from the Broadview Water contract assignment

environmental assessment that the Bureau of Reclamation did. And they estimated that by stopping irrigation of
9,200 acres, that would result in a reduction of 1,500 pounds of selenium, 17,000 tons of salt, and 52,000 pounds of boron, loading to the Grasslands Bypass Project.

That's not to say that those exact numbers would apply in this case. It would depend on irrigation rates, soils, the location of the project. And it may not even go into the San Joaquin River if it were somewhere such as Westlands, the drainage water may go into the deeper aquifers or perhaps just the semi-confined aquifer.

But it can be concluded that it would increase, by an undisclosed amount, additional contaminated drainage water. Since the San Joaquin River is already listed as a 303(d) waterbody for boron, selenium and electrical conductivity, you might want to think twice before approving an action that would increase those constituents going into the San Joaquin River or its aquifers.

I introduced some other evidence. It was one page out of a National Economic Development Analysis for the Bureau of Reclamation San Luis Drainage; EIS; and basically I took some -- I put some other numbers on there because I multiplied the annual numbers by 50. But basically the preferred alternative that would retire
200,000 acres would have a negative cost-benefit ratio of $780 million over a 50-year life of the project.

Whereas the alternative with the greatest amount of land retirement, which would retire roughly 300,000 acres had a positive cost benefit of $182 million over a 50-year life of the project. I quote information from the U.S. Geological Survey, which indicates land retirement is a key strategy.

Again, what this petition would do would be to reward people who planted permanent crops and drainage impaired lands with a hundred percent uninterruptible water supply. CWIN does not believe that's good water policy for the state.

And I also included a feasibility report for the San Luis Drainage Feature Reevaluation. And basically it said to implement the action alternative that was chosen, it would require significant increases in subsidies for the San Luis unit contractors.

And a couple other items. Just to note that the USGS did a report, Professional Paper 1646, which is Exhibit 3U. And they estimated that if you finish the San Luis Drain, stop putting selenium in the aquifer, but dump 43 and a half thousand pounds a year into the Bay-Delta with the completed San Luis Drain, it would still take 63 to 304 years to drain the accumulated selenium out of the...
aquifers of the western San Joaquin valley.

So there's a huge salt imbalance. Exhibit 3X shows that. Again, we believe the petition to deliver more water to any of these lands could increase salt loading in the river, San Joaquin River.

And finally, the Pacific Institute did do a report on agricultural water conservation, Exhibit 3V. And they estimated that if you retired about a million -- I say 1.3 in here. I looked at again, I believe it was 1.5 million acres. No, this is correct what they had. 1.3 million acres of drainage problem lands would result in water savings of about 3.9 million acre feet while also reducing clean-up costs.

So we also recommend that you eliminate drainage problem areas from receiving water transfers in order to minimize salt, selenium and boron discharged to the San Joaquin River, its tributaries and aquifers.

And that is the end of my summary of my testimony. Thank you.

CO-HEARING OFFICER BAGGETT: Does DWR, Bureau?

No.

Mr. Rubin, and with the understanding that, you know, the previous ruling stands in terms of relevancy.

MR. RUBIN: Yeah. Unfortunately, I'm faced with
the circumstance where I'm not sure how much weight you might be giving any of this testimony, so I have to --

CO-HEARING OFFICER BAGGETT: I was waiting for the objections, but...

MR. RUBIN: They're on the record. And that's why I -- rather than disrupt the proceeding --

CO-HEARING OFFICER BAGGETT: The relevancy objections.

But continue.

MR. RUBIN: Well, if I need to reiterate my objections, I can, but --

CO-HEARING OFFICER BAGGETT: No.

CROSS EXAMINATION

OF MR. TIM STROSHANE

BY MR. JON RUBIN, ESQ., counsel representing the San Luis & Delta-Mendota Water Authority, Santa Clara Valley Water District, and Westlands Water District as follows:

MR. RUBIN: Mr. Stroshane, I have some questions for you, first.

Am I correct to state that you believe California's experience -- is not experiencing a drought?

MR. STROSHANE: Yes, we are experiencing dry conditions.

MR. RUBIN: And you base that on 4 factors; is that correct?
MR. STROSHANE: Yes.

MR. RUBIN: And those 4 factors are presented in your written testimony on page 1, 2 and 3 and include precipitation, snowpack, runoff, reservoir storage; is that correct?

MR. STROSHANE: Yes.

MR. RUBIN: I'm sorry?

MR. STROSHANE: Yes.

MR. RUBIN: You do not base our belief on the current allocation of -- to Central Valley Project water service contractors that are located south of the Delta?

MR. STROSHANE: That's correct.

MR. RUBIN: Do you believe that the State Water Resources -- if the State Water Resources Control Board were to grant the petition, there would be an unreasonable effect to water quality?

MR. STROSHANE: Given testimony today from the Department of Water Resources and the State Water -- and the U.S. Bureau of Reclamation, I don't think we can really know.

MR. RUBIN: But in your testimony on page 9, I believe that you conclude that the -- if -- excuse me, I believe that you conclude that if the State Water Resources Control Board were to approve the petition, there would be an unreasonable effect on water quality.
MR. STROSHANE: That is my testimony.

MR. RUBIN: You also believe that there would be
an unreasonable effect on fish and wildlife.

MR. STROSHANE: Yes.

MR. RUBIN: Is it my understanding that you
maintain those beliefs because the petition is proposed at
times when the population of Delta smelt and anadromous
fish are near extinction?

MR. STROSHANE: Yes.

MR. RUBIN: And specifically, your concern with
the movement of water through and south of the Delta?

MR. STROSHANE: Could you restate the question?

MR. RUBIN: And specifically, are you concerned
with the movement of water through and south of the Delta?

MR. STROSHANE: Yes.

MR. RUBIN: And you also believe -- excuse me,
let me restate that.

You also maintain your belief that the petition
will unreasonably affect water quality, fish and wildlife,
because it may deplete groundwater levels in the
Sacramento valley?

MR. STROSHANE: Because of the connectivity
between groundwater levels and stream flows.

MR. RUBIN: Were you present this morning when
the United States Bureau of Reclamation testified?
MR. STROSHANE: Yes.

MR. RUBIN: And were you present this morning when the California Department of Water Resources testified?

MR. STROSHANE: Yes.

MR. RUBIN: Do you disagree with the testimony provided by the United States Bureau of Reclamation and the Department of Water Resources, that the transfers, exchanges -- excuse me, strike that.

Do you disagree with the testimony of the Department of Water Resources and the Bureau of Reclamation that the granting of the petition that's the subject of this proceeding will not affect the amount of water that's conveyed through and south of the Delta?

MR. STROSHANE: I neither agree nor disagrees, because the testimony I heard this morning also indicated that they didn't know for sure what exactly the total amount of water would be available through the drought water bank and so on and so forth. There was a lot of uncertainty left.

MR. RUBIN: Did you read the petition that the United States Bureau of Reclamation and the Department of Water Resources put out?

MR. STROSHANE: Yes, sir, I did.

MR. RUBIN: Are you aware of specific transfers
and exchanges that are described in that petition?

MR. STROSHANE: Yes, I am.

MR. RUBIN: And are you aware of the drought water bank that's also described in the petition?

MR. STROSHANE: Yes, I am, sir. I contributed to the comments that were made on the environmental review documents, such as they were, back in March.

MR. RUBIN: I believe that the testimony this morning by the Bureau of Reclamation, Department of Water Resources indicated that the drought water bank and the exchanges and transfers that are described -- let me rephrase that question.

Let me ask you specifically. Do you believe that the granting of this petition that's before the Board for the drought water bank for the transfers and exchanges that are described specifically will affect the amount of water that's moved through and south of the Delta?

MR. STROSHANE: I do believe that it could. And again, as I said before, I neither disagree nor agree with what I heard this morning, because everything is still quite uncertain, even at this late date.

MR. RUBIN: Is it your understanding that demands for water within the San Joaquin valley will go unmet this year?

MR. STROSHANE: Say that again, sir?
MR. RUBIN: Is it your understanding that demands
for water within the San Joaquin valley will go unmet this
year?

MR. STROSHANE: It's my understanding that
requests for water from the San Joaquin valley will go
unmet, yes.

MR. RUBIN: Is it your belief that unmet water
demands can be met through conservation?

MR. STROSHANE: In specific circumstances, sure
it can be.

MR. RUBIN: Well, I ask you to turn to page 11 of
your written testimony. And specifically about halfway
through the page on page 11, you indicate that while the
beneficiaries of the 2009 drought water bank and other
projects within the petition include urban water
contractors with either the SWP or CVP, their needs can
readily be met through more aggressive water conservation.
Is that correct?

MR. STROSHANE: Yes. That's as I stated it.

MR. RUBIN: And therefore --

MR. STROSHANE: You did leave out the phrase,
"within the framework of existing supplies."

MR. RUBIN: So it's your understanding with the
existing supplies, aggressive water conservation can meet
the needs of those that might be beneficiaries of the
drought water bank or the transfers or exchanges that are described in the petition?

MR. STROSHANE: That was a very long question, could you restate it, please.

MR. RUBIN: Can I ask the reporter to do so.

(Thereupon the court reporter read back the record.)

MR. STROSHANE: I'm sorry, since you had trouble could you repeat it?

MR. RUBIN: I'll restate my question. My question -- and again, I'm not trying to play any games here. I'm just trying to understand your statement.

MR. STROSHANE: And I'm trying to understand your question.

MR. RUBIN: If I understand your statement, what you say here in your written testimony on page 11, is that with more aggressive water conservation and the existing supplies, the beneficiaries of the 2009 drought water bank and other projects within the petition can have their needs met?

MR. STROSHANE: This is -- yes. And another way of stating this is that -- it's been stated in other ways today by other testifiers that with more effective planning for droughts and related dry conditions, that there are a number of strategies that have been pointed
out in a variety places, where within existing supplies,
the needs of all -- perhaps, all of California's
agricultural customers, as well as urban customers, could
be met.

MR. RUBIN: And again, I'm trying to understand
your testimony today. Are you saying on page 11 that in
2009, those that are in need of additional water, can have
those needs met with the existing supply and through
conservation?

MR. STROSHANE: Yes, that's my opinion.

MR. RUBIN: Okay. And how much unmet needs are
there for M&I water, Municipal Industry water, that are
currently going unmet?

MR. STROSHANE: I'm not familiar with the exact
allocation for this year. I know it's low for the San
Joaquin valley.

MR. RUBIN: Well, let's just focus on urban water
users. You're saying -- you recognize there's currently
an unmet need, correct?

MR. STROSHANE: Um-hmm.

MR. RUBIN: You have to answer yes or no.

MR. STROSHANE: Oh, I'm sorry. Yes.

MR. RUBIN: And how much is that unmet need?

MR. STROSHANE: I don't know for certain.

MR. RUBIN: Therefore, how can you conclude that
conservation can meet that unmet demand?

MR. STROSHANE: I am relying on the research and work of others.

MR. RUBIN: And who's concluded that?

MR. STROSHANE: The Pacific Institute, other organizations --

MR. RUBIN: Is there a specific document that the Pacific Institute prepared that says in 2009, the unmet demands can be met through conservation?

MR. STROSHANE: They didn't refer specifically to 2009, but their work called More with Less does urge a variety of agricultural conservation measures that could save quite a bit of water.

MR. RUBIN: Let's talk about that because you made a transition in your response from my questions that focused on municipal and industrial to agricultural water users, and specifically agricultural water users in the San Joaquin Valley.

So it's your understanding that there's currently unmet demand within the San Joaquin valley for agricultural purposes?

MR. STROSHANE: Yes.

MR. RUBIN: And what is the quantity of unmet demand?

MR. STROSHANE: The unmet requests I'm not sure
of. I'm aware that there have been numerous news reports
and considerable testimony before Congress as well as this
body, that there are needs there and that the Department
of Water Resources included some estimate of that need in
their report to the Governor.

MR. RUBIN: Now, putting aside the fact that you
don't know a number, in terms of the unmet need or demand,
do you still believe that water conservation can be
implemented to satisfy the unmet need or demand in 2009?

MR. STROSHANE: No. I don't -- I'm not saying
that at this time.

MR. RUBIN: Do you think water conservation is a
tool that should be used in the San Joaquin valley?

MR. STROSHANE: Certainly. And I'm aware that it
already is.

MR. RUBIN: Okay. And what level of irrigation
efficiency exists within the San Joaquin valley?

MR. STROSHANE: I don't know the level. I know
some of the techniques that are used.

MR. RUBIN: And what are some of those
techniques?

MR. STROSHANE: Well, they use extensive drip
irrigation, particularly in the Panoche Water District. I
was on a field trip there earlier this year and saw
numerous orchards utilizing that technology.
MR. RUBIN: Would it surprise you to learn that the farmers within the San Joaquin valley have one of the highest seasonal application efficiency rates in the nation?

MR. STROSHANE: No.

MR. RUBIN: Now, I believe in your testimony you indicate that the San Joaquin River is an impaired body?

MR. STROSHANE: Yes.

MR. RUBIN: And you also believe that the western San Joaquin valley contributes much of the salts that make the San Joaquin River an impaired water body?

MR. STROSHANE: Yes. My reference, I believe, was to an exhibit that I included, that was also in a report by the Department of Water Resources in an appendix. The Department of Water Resources submitted a report to, I believe, the Legislature, I'm not positive of that. But there was a map in there -- I can -- it was exhibit --

MR. RUBIN: Is it Exhibit 1J to your written testimony?

MR. STROSHANE: The excerpt from DWR's compliance report on D-1641. Yes, sir.

MR. RUBIN: And so you base your statement that much of the salts that make the San Joaquin River an impaired water body based upon Exhibit 1J?
MR. STROSHANE: Yes, but there are other sources of information that I'm aware of. I believe this was also -- well, I'll just say I'm aware that there were other sources of information?

MR. RUBIN: What other sources do you rely upon to support statement or your belief

MR. STROSHANE: I chose to use this D-1641 compliance report.

MR. RUBIN: Is it your belief that in 2009, much of the salts that make the San Joaquin River an impaired water body will come from the western San Joaquin valley?

MR. STROSHANE: I have no knowledge of such a thing, because I have no idea - and I don't think anybody here knows - how much water will actually be allocated, whether through direct allocation or through transfers, if this petition is approved.

MR. RUBIN: Turning to --

CO-HEARING OFFICER BAGGETT: Mr. Rubin, let's do a time check.

MR. RUBIN: We can go off the record for a second.

(Thereupon a discussion occurred off the record.)

MR. RUBIN: Mr. Stroshane, getting back to Exhibit 1J -- CWIN Exhibit 1J, you said that that was a document that the Department of Water Resources prepared; is that correct?
MR. STROSHANE: That's correct.

MR. RUBIN: And when did the Department of Water Resources prepare this document?

MR. STROSHANE: I don't remember the exact date. It was prepared in response to a legislative directive, but I don't remember the year, sir.

MR. RUBIN: It relates to D-1641, is that correct?

MR. STROSHANE: That's correct.

MR. RUBIN: And what year was D-1641 issued?

MR. STROSHANE: It was issued in 2000. The final version was issued in 2000.

MR. RUBIN: And I assume you're relying specifically on Table C-3 to support your position; is that correct?

MR. STROSHANE: Yes. As well as, the map, Figure C-4 on page 39, which is the second page of that exhibit.

MR. RUBIN: And do you know what data were used to develop tables C-3 and C-4 on CWIN Exhibit 1J.

MR. STROSHANE: No, sir. I placed my faith and trust in the Department of Water Resources that this was valid information on their part.

MR. RUBIN: Well, and I -- okay. You don't know if the data reflects any actions, investments that have been made to address salinity discharge the west side of
the San Joaquin valley since D-1641 was issued, do you?

MR. STROSHANE: The map is -- it includes the
Grassland area -- on my version it's the lower -- I guess,
it's the southwestern portion, section -- Area 7 of this
map. As you're aware, the Grasslands Bypass Project has
done much to divert selenium tainted -- saline-tainted
drainage water around the Grasslands area. And those
waters are treated and concentrated within the Grasslands
drainage area.

MR. RUBIN: I appreciate your answer. But my --
I think It didn't respond to the question I asked of you.
And the question that I asked of you is, you don't know
whether the data that's presented in Table C-3 and C-4 of
CWIN Exhibit 1J, reflects current investment programs that
may affect the amount of salt that's discharged through
subsurface drainage water from the San Joaquin River?

MR. STROSHANE: No, I cannot be certain.

MR. RUBIN: Thank you.

Now, if I understand your testimony here today,
you disagree with researchers from the University of
California, Davis, who concluded that the impacts from
water shortages this year will reach up to 1.15 billion
dollars; is that correct?

MR. STROSHANE: That's correct.

MR. RUBIN: And the basis for your disagreement
is primarily a report that the Department of Water
Resources prepared?

MR. STROSHANE: That's correct. And they did
that revision of their analysis, I believe, in concert
with the UC Davis researchers.

MR. RUBIN: Well, if I understand it correctly,
the DWR report that you base your disagreement with the
research from UC Davis has been marked as Exhibit CWIN 1A;
is that correct?

MR. STROSHANE: That's correct.

MR. RUBIN: I believe that the basis for your
decision -- disagreement with the research from the UC
Davis staff is based upon -- strike that, let me make sure
the record is clear.

You base your disagreement with the UC Davis
researchers based upon information presented on page 17 of
Exhibit CWIN-1A; is that correct?

MR. JACKSON: Yes, I'm going to object to the
form of this question, on the grounds that you base your
disagreement with. In fact, it states facts not in
evidence. In fact, the use UC Davis investigators have
changed their opinion based on later data, so it misstates
the facts.

MR. RUBIN: Mr. Jackson is trying to testify
here, I guess. I asked questions, the witness answered

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them. And I'm using his answers to follow through. I mean, I asked specifically whether the witness disagrees with the research.

CO-HEARING OFFICER BAGGETT: Continue.

MR. RUBIN: He said he did. I asked him why. He said the report. Now, I'm asking him if the section in the report, page 17, is the reason he developed that disagreement.

CO-HEARING OFFICER BAGGETT: Continue.

MR. STROSHANE: Are you referring to the revenue loss part?

MR. RUBIN: Well, my question to you --

MR. STROSHANE: The section of the report, sir, that starts on page 17 and continues after jumping over a map on page 18 reflects significant reductions in the economic effects that were originally reported in January by the UC Davis researchers. So I wanted to make -- I wanted to include that information in my testimony so that the State Water Board would be aware of it.

MR. RUBIN: And again, that is the basis for your disagreement with the work that the UC Davis researchers did?

MR. STROSHANE: Yes, sir. I placed my faith and trust in this document.

MR. RUBIN: Now, I ask that you turn to page 19.
If I read this section correctly, there's a number of losses that are not reflected in CWIN Exhibit 1A, correct?

MR. STROSHANE: You're on page 19, sir?

MR. RUBIN: That's correct.

MR. STROSHANE: Just a moment.

Yes, go ahead.

MR. RUBIN: I asked you a question regarding the information in CWIN Exhibit 1A. The question was that there are a number of losses that are expected that are not incorporated into the specific dollar amounts that are identified; is that correct?

MR. STROSHANE: You're referring to the groundwater pumping costs?

MR. RUBIN: Well, let me go through this. If I read the report correctly on page 19, after the report identifies a specific dollar amount losses that may result from the water shortage this year, it identifies a number of impacts that are excluded from those losses, correct?

MR. STROSHANE: I'm sorry. Restate your question once more.

I'm sorry.

MR. RUBIN: Let's walk through this a little bit. Maybe I'm a bit tired this afternoon.

If I understand CWIN Exhibit 1A, on page 17, the report identifies economic impacts of the drought in 2009.
And those economic -- is that correct?

MR. STROSHANE: Yes.

MR. RUBIN: And those economic impacts are initially identified as dollar losses correct?

MR. STROSHANE: Yes. They come in the form of revenue loss on page 17. There's mention of income loss. Associated total employment loss, which is another way of stating unemployment, and groundwater pumping cost increases.

MR. RUBIN: After they go through all of those losses and provide a dollar -- a projected or estimated dollar amount from the losses, there's a narrative, correct?

MR. STROSHANE: Um-hmm.

MR. RUBIN: And in that narrative they identify additional impacts that are excluded from the analysis above, correct?

MR. STROSHANE: Correct.

MR. RUBIN: Now, turning back to the work that the UC Davis researchers performed. Do you know if their estimate of impacts included those excluded by the Department of Water Resources in Exhibit CWIN-1A?

MR. STROSHANE: You're referring to the final exhibited in my testimony?

MR. RUBIN: I'm referring to the work that the UC
Davis researchers conducted.
MR. STROSHANE: Okay. So this item? This exhibit? I have it as my 18th exhibit, but I don't know what the letter is for that.
MR. STROSHANE: CWIN-1R.
MR. RUBIN: Restate my question.
MR. STROSHANE: Yes, please. We were finding it and I lost it.
MR. RUBIN: Let's make sure the record is clear. Because on page 14 of your written testimony is where you discuss the work that the UC Davis researchers performed. I didn't see anything on page 14 or 15 that referred to 1R, but maybe it's referred incorrectly as Exhibit 17, at the bottom of page 14?
MR. STROSHANE: That refers to material from the California Statistical Abstract, which would be CWIN-1Q.
MR. RUBIN: Well, let's make sure the record is clear. Again, there's research that UC Davis performed, correct?
MR. STROSHANE: Yes.
MR. RUBIN: Is there an exhibit that's attached to your written testimony that reflects that research?
MR. STROSHANE: Yes, it's CWIN-1R.
MR. RUBIN: Okay. So getting back to my question previously.

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Do you know if the estimate of economic impacts rendered by the UC Davis researchers excluded those impacts that were also excluded by the Department of Water Resources in Exhibit CWIN-1A.

MR. STROSHANE: I do not know for sure, because I have not seen beyond the newsletter form of the report that was provided by the UC Davis researchers from -- that I directly requested the research. I was hoping for a study from them. I requested it. I was sent this newsletter. That's all I've seen.

MR. RUBIN: Thank you.

MR. STROSHANE: So I couldn't tell from what I was given.

MR. RUBIN: I have not further questions for this witness and presume we're going to break. And I can commence tomorrow for questions for Mr. Stokely.

CO-HEARING OFFICER HOPPIN: Well, you've got your teeth all sharpened up here this afternoon. Ms. Jackson, would you like to submit your second witness today and then we'll continue to tomorrow?

MS. JACKSON: Yes, please.

CO-HEARING OFFICER HOPPIN: Would everyone like to defer to Mr. Rubin or is there someone else that would like to cross Mr. Stokely?

Seeing none.
MR. RUBIN: I don't have very many questions, so this should work well in terms of timing.

CROSS EXAMINATION OF MR. TOM STOKELY

BY MR. JON RUBIN, ESQ., counsel representing the San Luis & Delta-Mendota Water Authority, Santa Clara Valley Water District, and Westlands Water District as follows:

Now, Mr. Stokely, good afternoon almost evening.

After reading your testimony, am I correct to state that you believe granting the petition will cause an increase in drainage water containing selenium, salt and boron?

MR. STOKELY: Any application of water to drainage problem lands will create a certain amount -- a certain volume of drainage water that contains the constituents in the soil --

MR. RUBIN: But turning to page 13 of your written testimony.

MR. STOKELY: Yes.

MR. RUBIN: The last complete paragraph on page 13 states that, "...it can be concluded that water transferred under the subject petition would increase by undisclosed amount, contaminated drainage water created by the western San Joaquin valley's drainage problem lands", correct?
MR. STOKELY: Yeah. I should point out that it could be concluded that water transferred to drainage problem lands not any lands.

MR. RUBIN: And you believe the drainage water will contain selenium, salt and boron, correct?

MR. STOKELY: Yes.

MR. RUBIN: And you base that belief, if I understand it correctly, on the information presented in a report, which was marked as Exhibit CWIN-3P.

MR. STOKELY: Let me double check and make sure that's correct.

Yes.

MR. RUBIN: As I read your testimony, I didn't see any other documents that you refer to or referenced to support the beliefs that we've just talked about, is that correct?

MR. STOKELY: That's correct.

MR. RUBIN: Now, if I understand Exhibit 3P, CWIN Exhibit 3P correctly, it's a draft Environmental Assessment for a contract assignment?

MR. STOKELY: Yes.

MR. RUBIN: And the draft Environmental Assessment was prepared in 2004?

MR. STOKELY: I don't recall offhand. I guess, yes, there it is, 2004.
MR. RUBIN: And specifically April 2004?
MR. STOKELY: Yes.
MR. RUBIN: And so if I'm doing my math correctly, the draft report that you relied upon for your statements is 5 years old?
MR. STOKELY: Yes.
MR. RUBIN: And the report deals again with a contract assignment, and assignment of a water service contract?
MR. STOKELY: Yes.
MR. RUBIN: The report does not address the petitions that are now before the State Water Resources Control Board?
MR. STOKELY: That is correct, yes.
MR. RUBIN: Now, Mr. Stokely, it's your position that some of the drainage water that you think will be produced if the petition is granted will reach the San Joaquin River?
MR. STOKELY: It depends on where the water is applied. It may not go into the San Joaquin River. It may go into a shallow or deep aquifer.
MR. RUBIN: Okay. So when I read this last paragraph -- last complete paragraph on page 13, you did not intend the reader to make an assumption when they read the first sentence with the second sentence? An
assumption being that some of the drainage water would be
discharged into the San Joaquin River and therefore could
be a significant undisclosed impact?

MR. STOKELY: It could be. We don't know that it
is.

MR. RUBIN: That's my point. You don't know if
there would be any discharges -- increased discharges to
the San Joaquin River?

MR. STOKELY: That's correct, because there's
been no analysis of that in this petition.

MR. RUBIN: And you didn't perform any analysis?

MR. STOKELY: No, I did not.

But I think the State Board ought to know before
they approve it.

MR. RUBIN: If I understand your testimony, it's
based primarily upon an inference, isn't that what you
indicate in the second paragraph on page 13?

MR. STOKELY: Yes.

MR. RUBIN: Now, Mr. Stokely, I have one other
question for you. If I understood your testimony here
today, oral testimony and maybe part of your written
testimony, but CWIN opposes the petition for public
interest reasons. And one of those public interest
reasons is it would reward farmers who planted permanent
crops on drainage-impaired lands; is that correct?
MR. STOKELY: Yes.

MR. RUBIN: And how many permanent crops have been planted on drainage-impaired lands in the last 5 years?

MR. STOKELY: I don't have the specific information. But I know as I've driven up and down I-5 I've seen new orchards go in over the last 10 years.

MR. RUBIN: And what do you base a conclusion that those orchards are on lands that are drainage impaired?

MR. STOKELY: Because I'm familiar with the maps in the Rainbow Report of drainage problem areas in the western San Joaquin valley. And basically that goes from pretty much the northern end of the San Joaquin valley down to the southern end of the Tulare basin. They have different characteristics, but all those lands have some sort of drainage problem, some worse than others.

MR. RUBIN: Do you recall the scale of the maps that you are recalling that were the Rainbow Report?

MR. STOKELY: Yes.

MR. RUBIN: And just to give a sense to me, because I don't recall the maps.

MR. STOKELY: It would be similar to this map here, our Exhibit X, where it shows the San Joaquin valley and all the boxcar loads of salt being brought into the
basin through irrigation. It's approximately that scale.

MR. RUBIN: And the map that you're referring to

Exhibit 1 -- CWIN Exhibit 1X, which has --

MR. STOKELY: 3X.

MR. RUBIN: Excuse me, 3X, which has a depiction

of -- is that central California?

MR. STOKELY: Yeah, central California basically

from the bay area down to the southern end of Kern and

Tulare.

MR. RUBIN: And so, Mr. Stokely, based upon your

testimony today, you would be surprised to learn that

there has been no permanent crops planted on

drainage-impaired lands within Westlands?

MR. STOKELY: I would be surprised if there were

no permanent crops planted on drainage problem lands, not

necessarily drainage-impaired lands. There is a

difference in my mind.

MR. RUBIN: Thank you. I have no further

questions.

CO-HEARING OFFICER HOPPIN: Thank you. Do you

have a redirect?

MS. JACKSON: No thank you?

CO-HEARING OFFICER HOPPIN: Recross?

Okay. Pardon my legal faux pas there.

We will -- Mr. Baggett mentioned that we would
get together at 9 o'clock tomorrow morning. Is there
anyone that would be inconvenienced by getting together at
8:30 tomorrow morning?

MR. JACKSON: 8:30 would be better. I'm do in
court in Yuba county at 11:30.

CO-HEARING OFFICER HOPPIN: So we have an end
game.

MR. RUBIN: Are we on the record or off?

CO-HEARING OFFICER HOPPIN: We're off the record.
(Thereupon a discussion occurred off the record.)

CO-HEARING OFFICER HOPPIN: We're back on the
record.

Just be thankful you don't have to deal with me
all day on this or we'd be here for a week.

MS. JACKSON: CWIN would, at this time, like to
submit Exhibits 1, 1A, 1B, 1C, 1D, 1E, 1F, 1G, 1H, 1I, 1J,
1K -- I shouldn't have started this way. Sorry. 1M, 1N,
through the end of the Exhibits at 3 -- 4.

CO-HEARING OFFICER HOPPIN: Any objections?

MR. RUBIN: Well, I would just want to reiterate
my objections and highlight the problem that we're facing
right now with the ruling by the Hearing Officers.

As an example, one of the exhibits, which has
been marked as Exhibit 3F, it's apparently notes that have
been taken by somebody of a conversation with Paul
Fujitani, arguably. It's hearsay. We have no way of

testing the truth. It was testified as truth. And I

understand the liberal rules that the Board has, but it

highlights how difficult it is for us before the Board to

deal with these types of exhibits and it highlights the

basis for my objection.

MS. JACKSON: Mr. Stokely did testify to that
today. I believe those could come in under the reported
recollection exception, especially considering the
relatively broad evidentiary rules that you have here.

Additionally, I think that the Board has already
ruled on the relevance and admissibility. However,
obviously, it's within the Board's discretion to decide
what weight, if any, they are going to give to that
section of the testimony. Therefore, I don't think that
it's necessary to have it stricken from the record.

CO-HEARING OFFICER HOPPIN: Mr. Rubin, I'm not
going to strike it from the record because my legal
counsel to my right has jumped ship on me for the day, but
we will take into consideration the weight of the evidence
presented.

(Thereupon the above-referenced documents were
admitted.)

CO-HEARING OFFICER HOPPIN: So thank you.

8:30 tomorrow morning.
MS. JACKSON: Thank you, sir.

(Thereupon the Water Rights Hearing recessed at 5:19 p.m. to reconvene at 8:30 on Tuesday, May 28, 2009.)
CERTIFICATE OF REPORTER

I, JAMES F. PETERS, a Certified Shorthand Reporter of the State of California, and Registered Professional Reporter, do hereby certify:

That I am a disinterested person herein; that the foregoing California State Water Resources Control Board, Division of Water Rights hearing was reported in shorthand by me, James F. Peters, a Certified Shorthand Reporter of the State of California, and thereafter transcribed into typewriting.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 6th day of May, 2009.

JAMES F. PETERS, CSR, RPR
Certified Shorthand Reporter
License No. 10063