

STATE WATER RESOURCES CONTROL BOARD

PUBLIC HEARING

CALIFORNIA DEPARTMENT OF FISH AND GAME'S
LOWER YUBA RIVER FISHERIES MANAGEMENT PLAN

AND A COMPLAINT BY

THE UNITED GROUP AGAINST YUBA COUNTY WATER AGENCY
AND OTHER DIVERTERS OF WATER FROM THE LOWER YUBA RIVER
IN YUBA COUNTY

THURSDAY, MARCH 9, 2000

PAUL R. BONDERSON BUILDING

SACRAMENTO, CALIFORNIA

9:00 A.M.

Reported by:

MARY R. GALLAGHER, CSR #10749

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A P P E A R A N C E S

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THURSDAY, MARCH 9, 2000, 9:00 A.M.

SACRAMENTO, CALIFORNIA

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H.O. BROWN: Call the hearing back to order.

Staff, you're still up.

MR. FRINK: Yes, good morning, Mr. Brown.

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CROSS-EXAMINATION OF YUBA COUNTY WATER AGENCY

BY STAFF

MR. FRINK: Good morning, Mr. Wilson.

MR. WILSON: Good morning.

MR. FRINK: Let's see, on Tuesday I was asking some questions about the waterfowl habitat flooding in Yuba County. Sorry, if the questions were a little hurried. I was operating under the naive hope that maybe we could get through it on Tuesday and you wouldn't have to come back.

But I wondered does Yuba County Water Agency have a goal of providing a specific number of acres of waterfowl habitat?

MR. WILSON: Oh, we do not.

MR. FRINK: And do you know the reason that the quantity of water shown in your Exhibit 27 for waterfowl habitat in 1999 was, substantially, more than the amount shown in the proceeding here for 1988?

MR. WILSON: I do not.

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1 MR. FRINK: Okay. Now, I understand that the method
2 that you used in preparing your estimate present water
3 demand for determining the amount of water that is needed
4 for waterfowl habitat, was to assume that 90 percent of
5 the rice acreage would be flooded for waterfowl habitat
6 and rice straw decomposition; is that correct?

7 MR. LILLY: Wait. Excuse me. Mr. Brown, I'm going
8 to object. When he said, "your method," that implies that
9 Mr. Wilson prepared it. And the testimony has shown that
10 that was, actually, prepared by Mr. Grinnell and
11 Mr. Robertson. So I would appreciate it if Mr. Frink
12 clarified that.

13 H.O. BROWN: Thank you, Mr. Lilly.

14 Mr. Frink.

15 MR. FRINK: Yes. Please, consider the question so
16 amended, in using "your," I was referring to the method
17 that Yuba County Water Agency, or its consultants used.

18 MR. WILSON: In regards to the figures that were
19 provided in the exhibits, it's my understanding that it
20 was 90 percent of the rice acreage.

21 MR. FRINK: Okay. And I believe you said on Tuesday
22 that you didn't know the specific number of acres of rice
23 planted in 1999 in Yuba County Water Agency service area;
24 is that correct?

25 MR. WILSON: That is correct, yes.

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1 MR. FRINK: And I assume you don't have those
2 numbers for 1998 either?

3 MR. WILSON: From the Ag Commissioner's report,
4 there is a number in that report. You know, whether
5 that -- that's really the only number that I have.

6 MR. FRINK: So for getting the best information on
7 rice acreage planted in 1998 you'd consult the Ag
8 Commissioner's report?

9 MR. WILSON: That's correct.

10 MR. FRINK: Does that include some areas outside of
11 the -- does that include some areas that receive water
12 from other sources than Yuba County Water Agency?

13 MR. WILSON: I do not know that.

14 MR. FRINK: Okay. You mentioned that there are some
15 areas outside of Yuba County that Yuba County Water Agency
16 delivers water to. Do you know if any of those areas
17 include rice acreage?

18 MR. WILSON: Some of the areas I believe do, yes.

19 MR. FRINK: Do you have an approximate estimate on
20 how many acres of rice outside of Yuba County are supplied
21 with water by Yuba County Water Agency?

22 MR. WILSON: This is -- it's an educated guess.

23 MR. FRINK: Yes.

24 MR. WILSON: Probably 300 acres.

25 MR. FRINK: Okay. As I understand it the need for

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1 water for rice straw decomposition has increased, because
2 the amount of rice acreage land that can be burned has
3 been reduced; is that correct?

4 MR. WILSON: That is correct, yes.

5 MR. FRINK: Are there any rice fields, to your
6 knowledge, that are burned first and then flooded?

7 MR. WILSON: Yes.

8 MR. FRINK: And why are the fields flooded if the
9 rice straw has already been burned?

10 MR. WILSON: I'm assuming it's for waterfowl
11 habitat.

12 MR. FRINK: Are some of the fields that are burned
13 first and then flooded used for duck clubs?

14 MR. WILSON: I do not know that, but I would assume
15 that that's probably the case.

16 MR. FRINK: Do you have an estimate of the number of
17 acres that are flooded in Yuba County that are used for
18 duck clubs?

19 MR. WILSON: I do not.

20 MR. FRINK: To your knowledge, is use of water for
21 waterfowl habitat or duck clubs authorized as a purpose of
22 use in Yuba County Water Agency's water rights permits?

23 MR. LILLY: I'm going to object. Calls for a legal
24 conclusion.

25 H.O. BROWN: Restate the question, Mr. Frink.

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1 MR. FRINK: I asked if to Mr. Wilson's knowledge if
2 use of water for waterfowl habitat or duck clubs is
3 specified as a purpose of use in the Water Agency's water
4 right permits.

5 MR. LILLY: And I'll still make the same objection.
6 It calls for a legal conclusion. I mean among other
7 things it depends on what the legal definition of
8 "irrigation" is.

9 MR. FRINK: May I respond?

10 H.O. BROWN: Mr. Cook.

11 MR. COOK: Did you recognize me?

12 H.O. BROWN: Yes, I did.

13 MR. COOK: Mr. Brown, Mr. Wilson is, one, the
14 administrative officer responsible for the activities of
15 the Yuba County Water Agency. Two, he has presented
16 evidence of what the statute permits that the Yuba County
17 Water Agency to do and what the Yuba County Water Agency
18 has decided it will do. And has, in fact, submitted
19 resolutions of the Yuba County Water Agency to that
20 affect.

21 I think if anyone would know the ability, or what
22 the Yuba County Water Agency would be willing to do, or
23 conduct, or what activities it would be able to perform,
24 it would be Mr. Wilson.

25 Thank you.

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1 H.O. BROWN: I'm going to rule in Mr. Frink's favor.

2 Do you still wish to speak, Mr. Baiocchi?

3 MR. BAIOCCHI: Yes.

4 H.O. BROWN: Please.

5 MR. BAIOCCHI: Thank you, Mr. Brown. I believe
6 that's going to lead to a legal conclusion. I mean,
7 what's stated in the terms and conditions of their water
8 right permits and licenses is as a matter of fact and it's
9 in the file for the State Water Resource Control Board.

10 In many cases, wildlife is so stated as a purpose
11 of use. Recreation is stated as a purpose of use. So,
12 you know, I think it's a good question that Mr. Frink has
13 brought up.

14 Thank you.

15 H.O. BROWN: Thank you, Mr. Baiocchi. I agree.

16 Answer the question if you know the answer,
17 Mr. Wilson.

18 MR. WILSON: I don't know.

19 MR. FRINK: Okay. Mr. Wilson, are any fields
20 flooded for waterfowl habitat with any of the County Water
21 Agency's service area which crops other than rice are
22 grown?

23 MR. WILSON: I do not, personally, know that, but
24 I've been told that.

25 MR. FRINK: In looking over the numbers in Exhibit

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1 S-YCWA-27, it was apparent that the number of acre-feet of
2 water supplied to the various districts and the various
3 uses changes from year to year.

4 Does Yuba County Water Agency prepare an
5 Environmental Impact Report, or a negative declaration for
6 the changes in the amounts of water it delivers for
7 various uses each year?

8 MR. WILSON: We do not. The quantities are fully
9 within the contract amounts and within the amounts that
10 are, as I understand, within our water rights permits.
11 And so, you know, the year's operations change depending
12 on season of rains and various changes, but to answer your
13 question specifically, no.

14 MR. FRINK: Okay. When did Yuba County Water Agency
15 and PG&E first begin to deviate from the schedule of water
16 releases that are called for in the power purchase
17 agreement?

18 MR. WILSON: PG&E in the early years of the contract
19 was substantial -- taking substantial amounts of energy
20 from the project in excess of the contract. And starting
21 in the early to mid '80s the Agency started requiring PG&E
22 to operate within the parameters of the contract.

23 MR. FRINK: Okay. But my understanding is right now
24 that the releases for hydropower generation often are
25 somewhat later in the season than would be required under

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1 strict compliance with the contract; is that correct?

2 MR. WILSON: They, at times by mutual agreement with
3 PG&E and Yuba County Water Agency, for the multiple
4 benefits of each of us we have agreed to deviate from
5 that.

6 MR. FRINK: What years did Yuba County Water Agency,
7 or water users within Yuba County Water Agency rely on
8 increased use of groundwater to offset the surface water
9 from the Yuba River that was transferred to other areas
10 outside of Yuba County?

11 MR. MINASIAN: Could I object? The question is
12 unclear, unless it's specified whether or not the
13 groundwater was, actually, made by the member entities.
14 Yuba County Water Agency only got involved, because they
15 were cooperating with DWR.

16 So my question is: Is the question unclear
17 unless it asks Mr. Wilson if the groundwater was
18 transferred at the request of DWR by the member units
19 rather than the Agency?

20 H.O. BROWN: Good point, Mr. Minasian. Perhaps,
21 Mr. Wilson could clear that up.

22 If you don't mind, Mr. Frink, I would like to add
23 that to Mr. Wilson's question.

24 MR. FRINK: Yes. Mr. Wilson, Mr. Minasian was
25 asking, if I understand his question, he wanted some

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1 clarification on the roles of the various entities in the
2 transfers of water and the increased use of groundwater.

3 So would you care to elaborate and give us just a
4 short explanation on how the program worked? I think that
5 would be helpful.

6 MR. WILSON: The Agency's role was to facilitate the
7 transfers. The individual districts and their individual
8 landowners participated in the exchange program.

9 And since the water that -- the service water
10 then that was staying in the system to satisfy the needs
11 of other parts of the State, was water that was under the
12 Agency's water permits. The Agency had to come to the
13 State Board and get a permit to transfer that surface
14 water to these entities. And the entities themselves,
15 then, gave up a portion of their service water that they,
16 otherwise, would have taken and in lieu of that pumped
17 groundwater.

18 MR. FRINK: Okay. I appreciate that explanation.
19 You mentioned the other day that I believe it's the water
20 districts that receive water from Yuba County Water Agency
21 are billed a fixed amount regardless of the amount of
22 water they receive. Is that correct?

23 MR. WILSON: That is correct.

24 MR. FRINK: Now, the year that this increased use of
25 groundwater occurred in order to enable the transfer of

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1 surface water, in that year did Yuba County Water Agency
2 view -- excuse me, did Yuba County Water Agency bill the
3 districts for surface water as if it had been delivered?

4 MR. WILSON: I am not -- I'm not sure on that. I
5 think so, but I would have to go back and check the
6 records to be certain.

7 MR. FRINK: And who received the payment for the
8 water that was transferred out of Yuba County Water
9 Agency's service area?

10 MR. WILSON: The districts received the bulk of it.
11 The Agency retained a portion of that to offset the
12 Agency's cost of getting the permit to do the transfer and
13 the subsequent studies that were required as a condition
14 of the transfer.

15 MR. FRINK: To your knowledge, did the individual
16 farmers then receive money from the districts?

17 MR. WILSON: I have no idea of how the districts
18 internally handled it.

19 MR. FRINK: I wonder if you know who, actually, had
20 to pump the groundwater, was that done by the districts,
21 or the individual farmers?

22 MR. WILSON: To my knowledge, it was done by the
23 individual landowners.

24 MR. FRINK: Okay. And you were looking a minute
25 ago, I think, to determine the years that these

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1 groundwater transfers occurred, or transfers that were
2 enabled by the increased use of groundwater.

3 MR. WILSON: Yes. That was in 1991 and 1994.

4 MR. FRINK: 1991 and 1994?

5 MR. WILSON: Let me check and verify that with one
6 other source. This is a summary from an exhibit, but let
7 me check the actual delivery. 1991.

8 MR. FRINK: Uh-huh.

9 MR. WILSON: And 1994.

10 MR. FRINK: To your knowledge, has Yuba County Water
11 Agency ever declined to provide water to any of the
12 districts, or other regular customers within its service
13 area, because it had insufficient water available to meet
14 their requested amount?

15 MR. WILSON: Yes.

16 MR. FRINK: What year was that?

17 MR. WILSON: 1997.

18 MR. FRINK: Is that the only year --

19 MR. WILSON: Excuse me, 1977. That's the only one
20 that I am aware of.

21 MR. FRINK: Okay. And do you recall the approximate
22 amount of water that was requested that the Agency was
23 unable to provide?

24 MR. WILSON: I do not. I can -- I have with me the
25 amount that was provided; but how much was requested,

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1 I'm -- I could figure it out, but I don't have it in that
2 form.

3 MR. FRINK: Okay. It's not important right now. I
4 appreciate it though. I believe you mentioned Yuba County
5 Water Agency had applied for funding for temperature
6 control device at Englebright Reservoir. Who did Yuba
7 County Water Agency make that application to?

8 MR. WILSON: That was Proposition 204 money. And we
9 made that, I believe, to the Department of Water
10 Resources.

11 MR. FRINK: Okay. And what is the current status of
12 the application?

13 MR. WILSON: The application for the funds?

14 MR. FRINK: Yes.

15 MR. WILSON: Okay. The Department of Water
16 Resources, I believe, is part of the conditions of 204,
17 needs verification from your Board, that purposes of these
18 funds is appropriate with the goals and requirements of
19 the State Board.

20 And I believe the State Board did this. We have
21 been negotiating with the Department of Water Resources
22 for a method of -- a contract so we can utilize these
23 funds.

24 MR. FRINK: Do you know the proximate amount of
25 funds that would be required to do the temperature control

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1 device?

2 MR. WILSON: We did, but with the recent actions of
3 National Marine Fisheries in regards to endangered species
4 and some experiences that we had this last year, I think
5 we probably need to substantially increase the estimate,
6 because our water management plan that we had contemplated
7 for the project is probably not going to work under the
8 current conditions.

9 MR. FRINK: Under the application as submitted, is
10 it your understanding that all the money for building the
11 temperature control device would come from Proposition 204
12 funds?

13 MR. WILSON: No.

14 MR. FRINK: Where would the rest of the money come
15 from?

16 MR. WILSON: From the Agency's water transfer
17 capital improvement fund.

18 MR. FRINK: Do you know the approximate breakdown of
19 the cost?

20 MR. WILSON: With what the original estimates were,
21 there was approximately a million-and-a-half dollars out
22 of 204. And by the time we paid for the design costs,
23 which we've incurred so far, the total cost was probably
24 going to run in the \$1.8 billion. I think now that's an
25 unrealistic figure, because we're going to have to

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1 substantially change our water management plan.

2 MR. FRINK: Okay. So Yuba County Water Agency
3 having incurred the design costs and the project proposal
4 costs, but at the time you submitted the application it
5 was hoped that DWR would cover the construction costs?

6 MR. WILSON: No. We were still short about 150,000.

7 MR. FRINK: Okay. Was there a feasibility study
8 prepared for the temperature control device?

9 MR. WILSON: There was a preliminary design study
10 that was done.

11 MR. FRINK: Do you recall the main conclusions of
12 that study?

13 MR. WILSON: Basically, yes.

14 MR. FRINK: Okay. Could you summarize those
15 conclusions?

16 MR. WILSON: That by the installation of this
17 device -- I think I previously may have misstated what the
18 conclusion was in the report. It was that the increase
19 below Englebright Dam, or the reduction in temperature
20 potential below Englebright Dam varied upon the time of
21 year from zero to six degrees Fahrenheit.

22 MR. FRINK: Okay. The conclusion was that the
23 increase in temperature varied from zero to six degrees,
24 is that --

25 MR. WILSON: No.

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1 MR. FRINK: I'm sorry.

2 MR. WILSON: As I stated that, I'm sure was very
3 confusing. I think I started out by saying increased, I
4 was thinking increase in benefit. The reduction in
5 temperature depending on the seasons and conditions was
6 anticipated from zero to six degrees Fahrenheit.

7 MR. FRINK: Okay. I wonder since the ability of
8 Yuba County Water Agency to meet the temperature requests
9 for the water temperature requirements that the Department
10 of Fish and Game has recommended has been an issue and
11 since this feasibility study has been prepared, could Yuba
12 County Water Agency provide a copy of that report to the
13 Board?

14 MR. LILLY: We already have, but we'll give you
15 another one if you can't find the last one. It was
16 submitted in connection with the Prop 204 request. But
17 since it's already in the Board's file, we'll be happy to
18 give you another one and have it marked for this hearing,
19 if that's what you want.

20 MR. FRINK: Yes, I would like that. There's many
21 programs with the Board and we're not always ensured who
22 has what information.

23 MR. WILSON: Yes, we will provide that.

24 MR. FRINK: Okay. I appreciate that. I believe
25 that's all I have. Thank you, Mr. Wilson.

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1 Ms. Low.

2 MR. WILSON: You're welcome.

3 MS. LOW: Good morning, Mr. Wilson.

4 MR. WILSON: Good morning.

5 MS. LOW: I have a few questions here. In Exhibit
6 19 Yuba County Water Agency has proposed a new minimum
7 instream flow regime for the Lower Yuba River; is that
8 correct?

9 MR. WILSON: That is correct.

10 MS. LOW: Okay. I'm wondering on the analysis of
11 this particular flow proposal, has YCWA analyzed the
12 impacts of this proposed flow recommendation, the one in
13 Exhibit 19, on the water supply available for consumptive
14 use?

15 MR. LILLY: And I'm going to object to the question
16 on the grounds of relevance. We've had this argument
17 before, Mr. Brown, but we continue to take the position
18 that a comparison of impacts on consumptive uses and a
19 comparison of reductions in instream flows from wet years
20 to dry years is not an appropriate comparison. This
21 project was built to supply the water for consumptive uses
22 and not for instream flow requirements.

23 H.O. BROWN: Alice, can you restate that question?
24 Let's try it one more time.

25 MS. LOW: Could I -- could I let you know where I'm

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1 going with this question? Would that be helpful?

2 H.O. BROWN: I think it would.

3 MS. LOW: I'm interested in knowing whether there's
4 adequate information in the hearing record, at this point,
5 to adequately analyze all of the impacts and make a fair
6 comparison of the YCWA flow recommendations with the Draft
7 Decision flow -- minimum flows and other proposals that
8 are on the table.

9 I'm wondering if there's adequate information for
10 the Board to fairly analyze the impacts of various minimum
11 flow recommendations.

12 H.O. BROWN: If you, gentlemen, would excuse me and
13 let me suggest a concern that I have, this ties into your
14 question, is that one of the things that the Board will
15 have to determine somewhere along the way is the value in
16 the use of the water that's being diverted for transfers.

17 And if that is of extremely high value, it would
18 seem like it may better serve your position. On the other
19 hand, if it's of low value, it may not serve your position
20 as well and may more favor the other position.

21 There needs to be somewhere along the way a
22 comparison of value of what the transferred water is being
23 used for as opposed to what it's being proposed to be used
24 for by the staff's drafted decision and the other
25 proponents.

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1 Now, with that, Mr. Baiocchi, you may add to
2 that.

3 MR. BAIOCCHI: Mr. Brown, with respect to
4 Mr. Lilly's objection, under the purposes of use for Yuba
5 County Water Agency's water rights permits and licenses
6 that are on file here, Fish and Wildlife protection and
7 enhancement are part of that project. So I disagree with
8 them. It's built right into the water rights.

9 H.O. BROWN: Thank you, Mr. Baiocchi.

10 MR. BAIOCCHI: Thank you.

11 H.O. BROWN: Mr. Minasian.

12 MR. MINASIAN: Member Brown, before you is whether
13 or not this is appropriate and relevant to this
14 proceeding. Your comments were directly on point, which
15 is:

16 When we do a proceeding of this nature and we do
17 not have the Department of Fish and Game, NMFS, and the
18 U.S. Fish and Wildlife Service writing an environmental
19 impact assessment, or an environmental impact report to
20 analyze all of these impacts, you and Ms. Low are left to
21 attempt to piecemeal and prepare an EIR through oral
22 testimony. That is, obviously, one of the things that we
23 will argue to you in the closing brief.

24 The problem we have here and the problem
25 Mr. Lilly has and the reason why I believe you should

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1 sustain Mr. Lilly's comment and objection to the question
2 is we cannot prepare an adequate EIR by oral testimony of
3 the staff asking questions like this and Mr. Wilson
4 attempting to respond to them.

5 We have to have a very carefully prepared set of
6 documents, which are typically done through an EIR. And
7 if one of these fish agencies would simply say, we want to
8 condemn a part of the water rights and the water uses in
9 Yuba County and analyze the impacts, we would have that
10 document.

11 Obviously, that last comment is in the nature of
12 argument, but I believe the objection should be sustained
13 for that reason.

14 H.O. BROWN: Thank you, Mr. Minasian.

15 Mr. Cook.

16 MR. COOK: Mr. Brown, I think the question related
17 to consumptive uses. And so far in the hearing, as I
18 understand it, consumptive uses have been used based upon,
19 or from the diversions of water from the Yuba River
20 itself, basically, through the north and south canal.

21 Whereas, transfers, I don't know that we've
22 gotten into the out-of-basin transfers on the question.
23 The out-of-basin transfers, as I understand it, have been
24 dealt with up to now in this hearing as something
25 different.

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1 But, in any event, on consumptive uses, the
2 fundamental question in my mind, at least, is the question
3 of the public trust under the Mono Lake decision. And
4 it's, essential, as I see it, to determine whether or not
5 the consumptive uses, or diversions from the Yuba River
6 what impact those will have on the instream uses, to wit,
7 the impact on the salmon and the impact on the steelhead.

8 I don't think that it's possible to totally
9 separate consumptive uses from their impact on the
10 instream uses. And I think they should both be considered
11 together under the public trust.

12 Thank you.

13 H.O. BROWN: Thank you, Mr. Cook.

14 Mr. Baiocchi.

15 MR. BAIOCCHI: Mr. Brown, I'm concerned with
16 Mr. Minasian's objection, et cetera. The hearing is a
17 result of a complaint that I filed on behalf of four
18 organizations. And to the best of my knowledge, EIR's
19 have never been required to be prepared for complaints.

20 Secondly, we have a hearing record, 1992, 14 days
21 of hearing of which the Department of Fish and Game
22 provided a lot of testimony. And they provided the Board
23 with a management plan. So there's a lot of evidence,
24 whereby, the Department of Fish and Game spent years in
25 studying the Lower Yuba River and the fisheries and is so

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1 contained in their management plan. And, secondly, the
2 Draft Decision provides a lot of information on the
3 evidence.

4 H.O. BROWN: Thanks, Mr. Baiocchi.

5 MR. BAIOCCHI: Thank you.

6 MR. CAMPBELL: Mr. Brown?

7 H.O. BROWN: All right. Please.

8 MR. CAMPBELL: Member Brown, Matthew Campbell of the
9 Attorney General's Office on behalf of the Department of
10 Fish and Game. I think I stood, also, to say good
11 morning. I haven't seen you in a while.

12 H.O. BROWN: It's nice to have you here,
13 Mr. Campbell.

14 MR. CAMPBELL: I would also like to oppose
15 Mr. Lilly's objections for the reasons stated by the other
16 members in opposition, or parties in opposition, but also
17 based on the rules of evidence as applied to this
18 proceeding.

19 Technical Rules of Evidence as applied in a court
20 of civil law are not applicable here. In an
21 administrative proceeding like this, it's incumbent upon
22 the administrative tribunal to broadly seek the facts.
23 And an objection for relevance is, generally, not
24 well-taken in this type of forum.

25 Particularly, where the questioning would not

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1 lead to an undue consumption of time in the proceeding,
2 which I doubt would happen from this line of questioning.

3 I think that the Board should take a broad view
4 of this proceeding and allow the question and get as much
5 information as possible upon which to base its decision.

6 H.O. BROWN: Thank you, Mr. Campbell.

7 Mr. Frink.

8 MR. FRINK: Yes, Mr. Brown. The speculation about
9 the type of environmental document that may be required I
10 think is premature until the Board has some idea of what
11 actions it may, actually, require need to be taken.

12 The issue I think is the relevance of the
13 question that this Ms. Low asked. In this hearing --
14 well, in the earlier hearing, Yuba County Water Agency put
15 on extensive evidence about what they believed the impacts
16 of the Department of Fish and Game's proposal would be.

17 In this hearing, Yuba County Water Agency has put
18 on extensive evidence about what they believe the impacts
19 of the provisions of the Draft Decision would be. And
20 that's entirely appropriate. Yuba County Water Agency has
21 suggested alternative flow requirements and provisions for
22 protection of fish. And that's entirely appropriate, too.

23 Ms. Low's question went to any analysis that Yuba
24 County Water Agency may have been done, or any evidence
25 that they may have on the impacts of their own proposal.

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1 And I think that is extremely relevant and the question is
2 entirely appropriate.

3 H.O. BROWN: Thank you, Mr. Frink.

4 Mr. Lilly, you get the last word.

5 MR. LILLY: Thank you. And I'm glad we're having
6 this discussion, because this really is one of the central
7 issues of this hearing. And first of all, just let me
8 respond to Mr. Campbell.

9 The Government Code Section 11512, Subdivision
10 (C), the second sentence starts out,

11 (Reading):

12 "Any relevant evidence shall be admitted."

13 And, therefore, clearly the relevance standard is
14 appropriate for this hearing, notwithstanding
15 Mr. Campbell's statements.

16 The more important issue, though, here is really
17 what's going on here. And I really appreciate your
18 comments, Mr. Brown, because I think they really do get to
19 the crux of the issue here.

20 And I have to say I think we see the issue
21 differently than, perhaps, the way you just stated it.
22 Value of water may be a relevant consideration in many of
23 this Board's proceedings. But, here, even if this Board
24 were to conclude that increasing instream flows to enhance
25 the fisheries in the Lower Yuba River to respond to

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1 impacts that were not caused by the Yuba River Project was
2 a higher value of water than using that same water instead
3 to supply farmers in Yuba County to use that water for
4 irrigation, we're not saying that this is the case, but
5 even hypothetically if the Board were to conclude that,
6 that still does not mean that it would be appropriate for
7 the Board to order that reallocation of that water.

8 Basically, what the Board would be doing is
9 ordering an involuntary reallocation of a significant
10 portion of the yield of New Bullards Bar Reservoir and the
11 Yuba River Project from consumptive uses for farmers in
12 Yuba County to instream flow enhancement purposes. And we
13 stand by our position that that would not be an
14 appropriate decision, or action by this Board under
15 California law.

16 And, therefore, since the questions that staff is
17 asking really go exactly to that issue of what is the
18 relative -- what are the relative deficiencies, I think
19 was one of their questions, and really what is the varying
20 values of the water, we stand by our position that that is
21 not a relevant inquiry under the legal standards that this
22 Board must follow in this proceeding.

23 H.O. BROWN: Thank you, Mr. Lilly.

24 Both sides are very persuasive on this issue.
25 This is not an easy call, but I'm going to overrule the

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1 objection and allow the question. And I would like the
2 question restated.

3 MS. LOW: Restated the question is: Has Yuba County
4 Water Agency analyzed the impact of the proposed flow
5 recommendations in Exhibit 19 on consumptive water supply
6 within the Yuba County Water Agency?

7 MR. WILSON: No.

8 MS. LOW: Has Yuba County Water Agency analyzed the
9 impacts of these same flow recommendations on power
10 revenues?

11 MR. WILSON: No.

12 MS. LOW: Has Yuba County Water Agency, or their
13 consultants, analyzed the impacts of the proposed flow
14 recommendation on waterfowl habitat?

15 MR. WILSON: No.

16 MS. LOW: Has Yuba County Water Agency, or their
17 consultants, analyzed the impacts of this flow proposal on
18 the ability to make water transfers?

19 MR. WILSON: No.

20 MS. LOW: And has Yuba County Water Agency, or their
21 consultants, analyzed the impacts of the proposed flow
22 recommendations, on carryover storage levels at New
23 Bullards Bar Reservoir?

24 MR. LILLY: If you don't know, just say you don't
25 know.

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1 MR. WILSON: I don't know.

2 MS. LOW: And has Yuba County Water Agency analyzed
3 the impacts of the proposed flow recommendation on economy
4 in Yuba County?

5 MR. WILSON: No.

6 MS. LOW: If the Board were to order Yuba County
7 Water Agency's proposed minimum flows, do you think there
8 is adequate information in this hearing record for the
9 Board to analyze the specific effects of the proposed YCWA
10 minimum flow recommendations?

11 MR. LILLY: And I'm going to object to the term
12 "specific effects" as vague and ambiguous.

13 H.O. BROWN: I agree, Ms. Low.

14 MS. LOW: If the Board were to order YCWA's proposed
15 minimum instream flows, do you think there is adequate
16 information in this hearing record for the Board to
17 analyze the effects of the proposed YCWA's proposed
18 recommendation?

19 MR. LILLY: Same objection. We still don't know
20 what effects whether we're talking instream, off stream,
21 power, air pollution, hydropower revenues, water transfer,
22 or what.

23 H.O. BROWN: I'll permit you to confer. And if the
24 answer is no, then it's a moot issue.

25 MR. WILSON: Could you restate the question, please?

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1 MS. LOW: Okay. If the Board were to order Yuba
2 County Water Agency's proposed minimum instream flows, do
3 you think there is adequate information in this hearing
4 record for the Board to adequately analyze the effects of
5 the proposed minimum instream flow on power revenues,
6 consumptive water supply, waterfowl habitat, water
7 transfer availability, carryover storage level in New
8 Bullards Bar, and Yuba County economy?

9 MR. WILSON: Generally, no. There may be enough if
10 you wanted to do some calculations that you could
11 determine the carryover storage impact.

12 MS. LOW: Okay. So there would be adequate
13 information to get those calculations?

14 MR. WILSON: For the items that you had identified,
15 I think there's enough information presented and with the
16 modeling work that you have done, I think you could do
17 that.

18 MS. LOW: Thank you.

19 MR. LILLY: Is that just for carryover storage?

20 MR. WILSON: That's for carryover storage, yes.

21 MS. LOW: Okay. Thank you.

22 MR. FRINK: I do have just one follow-up question,
23 Mr. Wilson, and I believe Mr. Mona has some.

24 Earlier in the hearing, I believe Mr. Grinnell
25 mentioned that Yuba County Water Agency's flow proposals

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1 would result in deficiencies to Yuba County Water Agency.
2 And we got into a discussion if the Board could obtain
3 copies of those modeling results.

4 Is it your testimony today that neither Yuba
5 County Water Agency, nor it's consultants, have done any
6 model runs of the flow proposals that Yuba County Water
7 Agency is making?

8 MR. WILSON: I'm not sure whether the consultants
9 did them or not, I do not know. We do not have the
10 results, if they did do the results. There have been no
11 modeling efforts by the Agency. I have done some
12 back-of-the-envelope calculations and have some general
13 ideas.

14 MR. FRINK: But you testified that you believe you
15 could run those results through the model that
16 Bookman-Edmonston has prepared, or you could run the
17 proposed flows through the model that Bookman-Edmonston
18 has prepared as a way of analyzing those impacts?

19 MR. WILSON: I think it's, technically, possible.

20 MR. FRINK: Okay. Thank you.

21 MR. MONA: It appears that Mr. Frink has covered all
22 the areas which I'm interested in. But I would like to
23 take a short moment to, again, thank Mr. Wilson for his
24 cooperation during his pre-hearing field tour. It made
25 for very smooth operations. Thank you.

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1 MR. FRINK: That completes staff questions.

2 H.O. BROWN: All right. I have a couple of
3 questions.

4 ---oOo---

5 CROSS-EXAMINATION OF YUBA COUNTY WATER AGENCY

6 BY THE BOARD

7 H.O. BROWN: Do you have any recharge areas that
8 you've been working with up in the Yuba area?

9 MR. WILSON: Not directly. Most of the agricultural
10 lands in Yuba County are heavy clays. That's part of the
11 reason that there is a fair amount of rice grown. From
12 our looks at attempting groundwater management through the
13 30/30 plan, it appears that in some of the creek beds that
14 exist and along existing natural flow channels there are
15 some percolating possibilities and opportunities.

16 And to that degree, we have tried to encourage
17 the districts to maintain water in these creeks, wetlands,
18 bogs when they have the ability to do so.

19 H.O. BROWN: When you make water transfers and use
20 groundwater in lieu of surface water to irrigate those
21 lands, that could be conceived as an in-lieu conjunctive
22 use program.

23 Have you done any analysis on the potential
24 incremental yield of the area by having such an in-lieu
25 type of program?

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1 MR. WILSON: Out of the experience in 1992, it gave
2 us an opportunity to gather a lot of data on what the
3 response was from that. And we did a considerable amount
4 of modeling. We have not done any rigorous analysis on
5 what a long-term sustainability would be on a groundwater
6 exchange program, conjunctive use.

7 But it appears there are, at least, short
8 operation opportunities of some quantity. But to answer
9 your question, no, we have not done a long-term yield
10 analysis.

11 H.O. BROWN: Did you monitor any of the standing
12 water levels before and after your transfer programs to
13 see what effect the groundwater pumping had on the
14 groundwater levels?

15 MR. WILSON: Yes. We did an extensive modeling
16 program on that.

17 H.O. BROWN: And what did the basins pull down to,
18 what were they when they started, approximately?

19 MR. WILSON: The south basin, particularly, we had
20 more data there. The south basin at the start of the '92
21 event, was probably -- the standing ground water elevation
22 was in the range of -- it varied. But the average was
23 probably in the elevation, sea level elevation of 30. And
24 at the conclusion of the '92 event, it was down to about a
25 minus 40 sea level elevation.

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1 H.O. BROWN: So you dropped about --

2 MR. WILSON: So we pulled it down about 70 feet in
3 that event.

4 H.O. BROWN: Have those levels come back up now
5 since then?

6 MR. WILSON: Yes, they have, generally. Yeah.

7 H.O. BROWN: All right. Does it appear, then, to be
8 a program that might have some benefit as being able to
9 put together a consumptive use, or in lieu, or increase in
10 yield?

11 MR. WILSON: There are opportunities. There the
12 cost of doing that is substantially greater than the cost
13 of the surface water supply, but physically there are some
14 opportunities.

15 H.O. BROWN: The pumping water level, then, if
16 you're 30 down to a minus 40, what's the pumping water
17 level from the ground about, 120?

18 MR. WILSON: On the average in Yuba County it's in
19 the range of 70 to 100 feet.

20 H.O. BROWN: So power cost could be 12, \$15 an
21 acre-foot?

22 MR. WILSON: The energy costs are at least that,
23 yes.

24 H.O. BROWN: Any redirect from Mr. Lilly?

25 MR. LILLY: Yes. I have a few questions.

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1 H.O. BROWN: Okay. And, again, I'll remind all
2 others that recross is, however we're liberal on cross,
3 recross is to be directed at the redirect.

4 With that in mind, proceed, Mr. Lilly.

5 ---oOo---

6 REDIRECT EXAMINATION OF YUBA COUNTY WATER AGENCY

7 BY MR. LILLY

8 MR. LILLY: First of all, Mr. Wilson, I think you
9 misspoke in response to your questions -- in your
10 responses to Mr. Brown's questions. And I think we need
11 to clarify the record.

12 When you were referring to the 1992 groundwater
13 substitution, did you, actually, mean the 1991, because
14 you previously testified --

15 MR. WILSON: Yes, I'm sorry, I did mean 1991. Thank
16 you.

17 MR. LILLY: Just thought we ought to get that clear.
18 Second clarification I would like you to make, Mr. Wilson,
19 in response to questions from Mr. Cunningham on Tuesday,
20 you talked about the estimates of the amounts of water
21 that the Agency would have in surplus to transfer to
22 out-of-county users under different scenarios.

23 Do you recall that testimony?

24 MR. WILSON: I remember the question. I don't
25 remember who the questioner was.

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1 MR. LILLY: Okay. Well, at one point I think
2 there -- there, of course, are different assumptions
3 involved and I think you may have misspoke. But I'm just
4 going to show you Page A-5 from S-YCWA-16A. And I would
5 like you to clarify which scenario the estimates show that
6 there would be approximately 60,000 acre-feet of
7 transferable water for out-of-county users?

8 MR. WILSON: That would be under the current 1965
9 Fish and Game instream flow requirements and present level
10 of demand.

11 MR. LILLY: And that's, basically, scenario one in
12 the Bookman Edmundston modeling?

13 MR. WILSON: Correct.

14 MR. LILLY: And scenario two, which I believe the
15 testimony was, was the 1965 agreement with the estimated
16 full development demands. What would the transferable
17 amounts be under that scenario?

18 MR. WILSON: In approximately 60 percent of the
19 years, 3,000 acre-feet.

20 MR. LILLY: Okay. So if you said something before
21 regarding present level demands, or full-development
22 demands, is your testimony, in fact, based on this table
23 on Page A-5?

24 MR. WILSON: That's correct.

25 MR. LILLY: Last line of questioning, Mr. Wilson,

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1 Mr. Frink asked several questions on Tuesday about the
2 appropriateness of using the historical diversion data
3 from the early -- or approximately 1997 and into the late
4 1980 periods in comparison to present level demands.

5 Has there been an increase in the acreage that
6 the Agency has served, or provided water from the Lower
7 Yuba River between the late 1980's and the present?

8 MR. WILSON: That is correct.

9 MR. LILLY: Okay. And has that been reflected in
10 LAFCO-approved annexations to some of the local water
11 districts?

12 MR. WILSON: That's correct.

13 MR. LILLY: And, then, has that also been reflected
14 in amendments of the Agency's contracts with some of these
15 local water districts?

16 MR. WILSON: That is correct.

17 MR. LILLY: And if you could tell me for Brophy
18 Water District, what was the increase in acreage that is
19 now under contract with the Agency?

20 MR. WILSON: From 1989 to date there's been an
21 increase of 3668 acres added.

22 MR. LILLY: In Brophy?

23 MR. WILSON: In Brophy Water District.

24 MR. LILLY: Okay. And what has been the increase
25 since the late 1980's to the present in Ramirez Water

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1 District?

2 MR. WILSON: 341 acres.

3 MR. LILLY: And what has been the increase in acres
4 from the late 1980s to the present in South Yuba Water
5 District?

6 MR. WILSON: 1283 acres.

7 MR. LILLY: And, then, has there also been a -- or
8 did the Agency have any contract at all with the Dry Creek
9 Mutual Water Company in the late 1980's?

10 MR. WILSON: No.

11 MR. LILLY: When was that contract between Dry Creek
12 Mutual Water Company and the Agency executed?

13 MR. WILSON: I believe in '96.

14 MR. LILLY: Okay. That would be 1996?

15 MR. WILSON: 1996, yes.

16 MR. LILLY: Thank you. And how many acres of land
17 are covered by the Agency's contract with Dry Creek Mutual
18 Water Company?

19 MR. WILSON: 5244.

20 MR. LILLY: And have all of those acres received
21 surface water supplies from the Lower Yuba River yet?

22 MR. WILSON: No.

23 MR. LILLY: What is going on? What's the schedule
24 for development and what has to happen for there to be a
25 full development of a surface water supply to the Dry

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1 Creek Mutual Water Company?

2 MR. WILSON: For Dry Creek their distribution system
3 was completed at the end of this construction year. For
4 1998 and '99 they were able to serve a small part of their
5 district. The bulk of the district -- excuse me, not
6 district --

7 MR. LILLY: Mutual Water Company?

8 MR. WILSON: Mutual Water Company's area will come
9 on line this coming season, but still they will be
10 probably another three years before they have service to
11 all of their area.

12 MR. LILLY: Okay. But within approximately three
13 years you anticipate full service of the Yuba River water
14 to the Dry Creek Mutual Water Company service area?

15 MR. WILSON: That's my estimates, yes.

16 MR. LILLY: Okay. Thank you. I have no further
17 questions on redirect.

18 H.O. BROWN: May I see the hands of those who wish
19 to recross.

20 Okay. Mr. Baiocchi, why don't you go first.

21 MR. BAIOCCHI: Mr. Brown, my concerns are not
22 specific questions on recross -- is that I have two
23 concerns.

24 First concern is that -- first concern is that
25 Mr. Lilly was coaching the witness and provided him with

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1 the answer when he referred to '92, '91. And I realize
2 that you're very liberal, but I want that to be placed
3 into the record.

4 Number two, Mr. Cunningham is not here this
5 morning, he may be here this afternoon. okay. I cannot
6 speak for the Attorney General's Office, but I can speak
7 as a public member. And I believe that Mr. Cunningham
8 should have the availability of cross-examining
9 Mr. Wilson on his redirect answers.

10 And I think that would be reasonable, because
11 Mr. Campbell has just walked into the proceedings. Now,
12 that's up to Mr. Campbell to either support that or not,
13 but we represent a public interested organization.

14 Thank you.

15 H.O. BROWN: Thank you, Mr. Baiocchi.

16 Mr. Campbell, I'll get to you in a minute.

17 Mr. Cook, you were up.

18 MR. COOK: Mr. Brown, this does not necessarily
19 relate to the recross, but I think it's an appropriate
20 time to raise a request that I have: Mr. Wilson remains a
21 witness. In the cross-examining -- on the original
22 cross-examining of Mr. Wilson, I used a plaque for an
23 overhead, which was Figure 1 of the Draft Decision.

24 I talked to staff and, apparently, the Draft
25 Decision is not in the record, or is not evidence in the

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1 record in this proceeding, at least, so far.

2 And so I, inadvertently, did not include the
3 overhead that I had, which was part of the Draft Decision,
4 as an exhibit. And to that extent, Mr. Wilson did testify
5 about it at some length. And I would like to at this time
6 ask that that particular document be introduced as my
7 number next in order.

8 H.O. BROWN: Have your exhibits been admitted into
9 evidence?

10 MR. COOK: The other exhibits?

11 H.O. BROWN: Yes.

12 MR. COOK: Yes, I think they've all been accepted.

13 H.O. BROWN: So you would like to add this exhibit?

14 MR. COOK: Yes. I'd like to add this as an
15 additional exhibit, even though it's part of the Draft
16 Order, it's Figure 1 of the Draft Order but, apparently,
17 it's not in evidence, at least, so far.

18 H.O. BROWN: All right. I understand.

19 Do you have that exhibit, Ernie? Do you know
20 which one we're talking about?

21 MR. MONA: We can get a copy of it. I don't have
22 it --

23 MR. COOK: I have a copy on my desk, if you would
24 like me to provide it.

25 MR. MONA: It comes out of the Draft Decision.

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1 H.O. BROWN: Make sure that we're all on the same
2 page here.

3 MR. FRINK: Yes, we do have a copy of the figure
4 Mr. Cook is referring to. And I believe that all the
5 parties are aware of what it is as well. It's simply a
6 map.

7 H.O. BROWN: Mr. Minasian, would you like to see it?

8 MR. MINASIAN: Let's just all be clear. Mr. Cook is
9 marking this as his exhibit, it will be given a number.
10 It's very important that we do not include the proposed
11 decisions and the staff hearing -- draft staff hearing
12 report, because we would, then, have an opportunity to
13 examine Board Members and staff members that might have
14 been involved. So we all understand that we're talking
15 about a document, one page?

16 H.O. BROWN: One-page document, Mr. Frink?

17 MR. FRINK: Yes. I agree with Mr. Minasian. The
18 Draft Decision and the previous staff analysis of the
19 record from the earlier hearing, are not evidentiary
20 exhibits. But there is a map in there that Mr. Cook asked
21 some questions on, I think the record would be clear if
22 that map is given an exhibit number.

23 H.O. BROWN: Are there any objections to the
24 addition of that exhibit into evidence?

25 MR. LILLY: Mr. Brown, I do not object to that

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1 exhibit being marked as one of Mr. Cook's exhibits and
2 received into evidence for the purpose of clarifying prior
3 testimony.

4 However, I do want to note that while the Draft
5 Decision and staff analysis, certainly, are not
6 evidentiary exhibits, they are part of the administrative
7 record in this proceeding. They are in the files that
8 State Board staff has already offered into evidence -- or
9 into the record for this proceeding. So while they're not
10 evidentiary, they are part of the record of this
11 proceeding.

12 H.O. BROWN: Thank you, Mr. Lilly.

13 Give it a number. Do you have a number?

14 MR. MONA: Yes, sir. We'll identify it as S-Cook-5.

15 H.O. BROWN: All right. Can you make copies for
16 everyone in case everyone doesn't have a copy and bring
17 them in after lunch for distribution?

18 MR. COOK: Mr. Brown, I have a number of copies at
19 my desk. I'm not sure I have enough, but if anyone wishes
20 a copy, I think I can provide them.

21 H.O. BROWN: If you would put them on the corner of
22 the desk there.

23 MR. COOK: All right.

24 H.O. BROWN: And those who wish a copy may pick one
25 up, Mr. Cook. Thank you.

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1 There being no further objections, I will allow
2 that to be admitted into evidence.

3 MR. COOK: And I apologize for not having brought
4 this up in a timely manner.

5 H.O. BROWN: Thank you, Mr. Cook.

6 Mr. Campbell.

7 MR. CAMPBELL: Member Brown, I would like to respond
8 to Mr. Baiocchi's comments and request. Mr. Cunningham
9 was called away this morning to handle a hearing in
10 Placerville. And he's expected back after the lunch
11 break.

12 And he, obviously, knows this case. He knows his
13 own cross-examination. And his representation of the
14 Department of Fish and Game is likely to be benefited from
15 his ability to do recross-examination of Mr. Wilson if he
16 should so choose, but on the other hand, I'm cognizant of
17 the Board's need to press forward and the value of time.

18 So I will leave it to your discretion, Member
19 Brown, to decide whether to provide that opportunity to
20 counsel for Fish and Game.

21 H.O. BROWN: Thank you, Mr. Campbell.

22 MR. CAMPBELL: Thank you.

23 MR. GALLERY: Mr. Brown?

24 H.O. BROWN: Mr. Gallery.

25 MR. GALLERY: Mr. Brown, I'd like to speak briefly.

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1 I understand the points, but my witnesses for Brophy have
2 been here two days waiting two days and South Yuba
3 witnesses have been -- part of the witnesses have been
4 here two days waiting and we would sort of like to get on
5 with it and go as quickly as possible.

6 My impression from Mr. Lilly's recross was really
7 to clarify some earlier testimony. Nothing was new. He
8 was trying to clear up some errors that could have caused
9 a little trouble in the record. So I don't really see the
10 need to stop. Let Mr. Cunningham come back and read the
11 transcript. I don't see the need to take that time and go
12 through that again. I would urge you not to allow that.

13 H.O. BROWN: Thank you, Mr. Gallery.

14 We've tried to accommodate several schedules
15 during this hearing and we will continue to do that. I am
16 cognizant of the time that this is taking. And I'm going
17 to talk to all of you in just a few minutes about that
18 issue to see what we can do to speed up this hearing.

19 But, Mr. Lilly, can you and Mr. Wilson
20 accommodate Mr. Cunningham for, I would say, probably
21 three or four minutes at the most --

22 MR. CAMPBELL: At the most.

23 H.O. BROWN: -- after lunch? Will Mr. Wilson be
24 here?

25 MR. LILLY: Mr. Wilson will be here. Obviously,

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1 we'll reserve our right to object at that time. Our main
2 concern will be that recross be limited to the scope of
3 redirect. And I think Mr. Gallery correctly pointed out
4 our redirect was very limited.

5 H.O. BROWN: That's right.

6 Yes, Mr. Campbell.

7 MR. CAMPBELL: Yes. I appreciate providing that
8 opportunity to Mr. Cunningham. And I do not know for a
9 fact whether he will have any recross.

10 H.O. BROWN: All right. Will you inform
11 Mr. Cunningham, specifically, what the recross was and
12 Mr. Cunningham knows to address his questions,
13 specifically, to the recross.

14 And then after lunch, I will ask you to
15 accommodate Mr. Cunningham for a few moments to give him
16 the opportunity to make that recross.

17 Is there anyone else who wishes to recross?

18 MR. FRINK: Three short questions, Mr. Brown.

19 H.O. BROWN: Mr. Frink, please.

20 ---oOo---

21 RECCROSS-EXAMINATION OF YUBA COUNTY WATER DISTRICT

22 BY STAFF

23 MR. FRINK: Yes, Mr. Wilson, I just wanted to
24 clarify about the additional acreage that has been added
25 into Yuba County Water Agency's service area. You

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1 mentioned, additionally, Brophy Water District, Ramirez
2 Water District, and South Yuba Water District. And you
3 gave figures for each area.

4 Is it your understanding that all of those
5 additional areas that have been added to your service area
6 within those three water districts have, actually, been
7 receiving surface water from Yuba County Water Agency?

8 MR. WILSON: I do not know that for a fact, but I
9 would assume that the majority of them have.

10 MR. FRINK: Okay. And, then, the fourth area that
11 you mentioned was the Dry Creek Mutual Water Company. And
12 you stated, I believe, 5244 acres have been added there to
13 your service area; is that correct?

14 MR. WILSON: That is correct.

15 MR. FRINK: And do you know how many of those acres
16 have received water in either 1998 or 1999 in Yuba County
17 Water Agency?

18 MR. LILLY: And I'm going to object. I don't think
19 Mr. Frink intended, but the question is unclear when he
20 says, "have received water," but there's the issue of
21 groundwater versus Yuba River water. And I think he meant
22 Yuba River water, but I'd ask him to clarify.

23 H.O. BROWN: Mr. Frink?

24 MR. FRINK: Yes, I will clarify.

25 How many of those acres have received surface

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1 water from Yuba County Water Agency?

2 MR. WILSON: I am not -- I do not know the
3 acreage -- in the YCWA-27. It identifies a quantity of
4 water in 1998 and 1999 that were delivered to these lands.
5 But the exact acreage that those were applied to, I do not
6 know.

7 MR. FRINK: Okay. I appreciate it. The quantity of
8 water would be sufficient. Thank you.

9 H.O. BROWN: Thank you, Mr. Frink.

10 All right. Mr. Lilly, do you have any additional
11 exhibits you wish to add?

12 MR. LILLY: Yes. We would like to offer at this
13 time Exhibits S-YCWA-1, S-YCWA-11, S-YCWA-22, and
14 S-YCWA-27.

15 H.O. BROWN: What was the first one?

16 MR. LILLY: 1.

17 H.O. BROWN: All right. Are there any objections to
18 the admission of those exhibits into evidence?

19 MR. GEE: Mr. Brown?

20 H.O. BROWN: Mr. Gee.

21 MR. GEE: Mr. Brown, at the beginning of these
22 continued hearings on February 22nd concern was raised by
23 certain parties as to the scope of this hearing,
24 specifically, as to the out-of-basin -- proposed
25 out-of-basin water transfers.

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1 And I believe those concerns were raised by the
2 State Water Contractors as well as the Department of Water
3 Resources. And they at that time -- and correct me if I'm
4 wrong -- had raised some premature objections to certain
5 evidence. And that evidence relates to S-YCWA-11 and
6 S-YCWA-22.

7 H.O. BROWN: 22 and 11?

8 MR. GEE: That's right. And I, at this time, would
9 like to raise similar objections to that evidence for
10 those very reasons, that they bear upon issues that have
11 not been noted. And that is, specifically, the proposed
12 out-of-basin water transfers.

13 And I would ask the Board to strike that portion
14 of Mr. Wilson's oral testimony as well as the written
15 portion of the testimony in S-YCWA-11 as they relate to or
16 refer to those proposed out-of-basin water transfers.

17 And, specifically, part five of S-YCWA-11, part
18 six, part nine; the attachments three, four, and five of
19 S-YCWA-11. And for the same reasons, I move to strike
20 S-YCWA-22.

21 As to S-YCWA-11, Mr. Wilson's testimony, that
22 portion relates to additional flood control. And I think
23 it came out during cross-examination of Mr. Wilson's
24 testimony that flood control is not one of the mandates
25 required of the Agency. And for that reason I would ask

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1 that testimony be stricken.

2 H.O. BROWN: Okay. Thank you, Mr. Gee.

3 Are there any other objections? Mr. Lilly.

4 MR. LILLY: Mr. Gee's objections are inappropriate.
5 First of all, regarding out-of-basin water transfers,
6 Mr. Gee, himself, spent several minutes asking many
7 questions about the Agency's dominion and control over
8 water out of basin. And, therefore, it would not now be
9 appropriate to strike the direct testimony that gave rise
10 to his cross-examination questions.

11 Furthermore, his objection is far too broad.
12 Sections five, six, and nine deal with far more than just
13 the narrow issue of whether or not the Agency can retain
14 dominion and control over water that passes Marysville
15 from the Yuba River into the Feather River.

16 They also address the entire issue of the value
17 of the storage, carryover storage for future water
18 transfers and the value of that water to the Agency,
19 which, of course, is relevant to the impacts on that that
20 would occur from higher instream flow requirements. So
21 the objection is far too broad in that regard.

22 As to the narrow issue of dominion and control of
23 water out of basin, we believe -- we also object -- we,
24 also, believe that Mr. Gee's objection is incorrect,
25 particularly, because he raised the issue and discussed it

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1 at length in his cross-examination.

2 But, also, because the ultimate reasonableness of
3 any decision by this Board on instream flows will be
4 affected, potentially very dramatically, by whether or not
5 the Agency has the ability to dispose of that water, or
6 basically to have someone else use that water under an
7 order from the State Board. So we believe that the
8 evidence is relevant.

9 As we discussed the first day of the hearing, we
10 are, certainly, not asking the Board to rule on the
11 petition for change, which is in Exhibit S-YCWA-22. The
12 purpose of submitting that exhibit for this proceeding is
13 just to offer the evidence that the Agency intends to
14 retain control over that water and intends to ask the
15 Board in a subsequent proceeding to approve the transfers
16 that are related to that petition.

17 And, particularly, with this Board, as several
18 lawyers have said today, with the broad rules on the
19 admissibility of evidence it would not be appropriate to
20 exclude these objected to exhibits.

21 H.O. BROWN: Thank you, Mr. Lilly.

22 Mr. Gee, your objections are noted and in the
23 record. I'm going to allow those exhibits into evidence.

24 And thank you, Mr. Wilson.

25 MR. LILLY: And with that we're done with our direct

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1 case. Obviously, we will reserve our right to submit
2 rebuttal evidence after all the other parties' direct
3 cases.

4 H.O. BROWN: Yes.

5 Mr. Minasian. While Mr. Minasian is stepping up
6 to the table, we have three additional days reserved,
7 March 6th, 7th and April 19th. We're going to cancel
8 April 19th.

9 MR. FRINK: Excuse me, Mr. Brown. I believe it's
10 April 3rd, 4th, and 19th.

11 H.O. BROWN: Correct. That's correct. I sometimes
12 do that to Mr. Frink to make sure he pays attention, also.
13 It's April 3rd, 4th, and 19th. The 19th is cancelled.

14 Is there anyone here that thinks we can't finish
15 in two days after today?

16 MR. LILLY: Just because no one else isn't standing
17 up doesn't mean they don't agree with me, Mr. Brown. I
18 think we'll know much better by the end of today, but I,
19 certainly, think there's a possibility. Because of the
20 cross-examination and, particularly, the cross-examination
21 of Yuba County Water Agency's witnesses by many parties
22 far exceeded the 20-minutes limit, I think there's a
23 definite possibility that we're going to take a
24 considerable more time and not finish in the next couple
25 days.

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1 H.O. BROWN: All right. If we can't finish in two
2 more days, we'll reevaluate that at the end of the day.
3 But the days I set aside for consideration is May 1 and 2,
4 one or the other.

5 Mr. Morris.

6 MR. MORRIS: Mr. Brown, I'm sitting here very
7 nervous, because a couple of my people are up next, or
8 after these two. And I'm not exactly sure how long
9 everybody is going to take. And one of my witnesses is
10 definitely not available today and we were hoping to put
11 everybody on as a panel.

12 So I wanted to give you a little warning that
13 if -- talking to all the other parties that are up next,
14 we didn't think we would get our witnesses today, but I am
15 concerned about that. And I was going to ask your
16 indulgence if it's getting late in the day and they're not
17 here. But I wanted you to take that into consideration.

18 H.O. BROWN: All right. Mr. Morris, as we proceed,
19 would you, please, remind me later on in the day and if we
20 can accommodate your schedule, we surely will.

21 MR. MORRIS: I appreciate that, Mr. Brown. Thank
22 you.

23 H.O. BROWN: Okay. I'm going to ask all of you,
24 this is a very difficult hearing. I'm trying to give it
25 as much time as necessary to make sure all of you have the

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1 opportunity to get your information and concerns on the
2 record. This is extremely important to everyone here and,
3 certainly, to the Board.

4 At the same time, I'm going to ask you to do what
5 you can to speed it up to where we don't take undue delays
6 with the witnesses and advantage of each other's time.
7 You've been very succinct and to the point. And I would
8 appreciate you continuing in that vein. Let's see if we
9 can move it along.

10 With that spirit in mind, Mr. Minasian, you're
11 up.

12 MR. MINASIAN: Thank you, Mr. Board Member Brown, I
13 believe Mr. Mathews was sworn on the first day, but Mr.
14 Rue has not. If you could swear Mr. Rue.

15 H.O. BROWN: Stand, please. Raise your right hand.
16 You promise to tell the truth in these proceedings, if you
17 do answer, I do?

18 MR. RUE: I do.

19 H.O. BROWN: Please, be seated.

20 ---oOo---

21 DIRECT EXAMINATION OF SOUTH YUBA WATER AGENCY AND

22 CORDUA IRRIGATION DISTRICT

23 BY MR. MINASIAN

24 MR. MINASIAN: We'll start with you, Mr. Mathews.

25 Is Exhibit 2.1 a statement of your qualifications?

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1 MR. MATHEWS: Yes.

2 MR. MINASIAN: And, Mr. Mathews, generally, are you
3 the president of the Cordua Irrigation District, Board of
4 Directors and have been so for many decades?

5 MR. MATHEWS: That's correct.

6 MR. MINASIAN: And are you, also, a farmer in the
7 Cordua Irrigation District and in the Hallwood Water
8 Company and in the Ramirez areas?

9 MR. MATHEWS: That is correct.

10 MR. MINASIAN: About how many acres do you and your
11 families farm?

12 MR. MATHEWS: We farm approximately 6,000 acres in
13 about six districts.

14 MR. MINASIAN: Would you summarize your testimony
15 starting with the issue of the feasibility of groundwater
16 substitution in the Cordua Irrigation District and the
17 experience of Cordua in 1991 and in 1994 in participating
18 with the Department of Water Resources' request that
19 groundwater be pumped to alleviate problems in the other
20 area of the state?

21 MR. MATHEWS: You want --

22 MR. MINASIAN: Just, generally, did you participate?

23 MR. MATHEWS: Yes.

24 MR. MINASIAN: Okay. And is there sufficient well
25 capacity in the Cordua Irrigation District to make up the

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1 deficiencies that would occur under the proposed
2 Department of Water Resources' recommended flow regime, or
3 the recommended flow regime in the proposed decision?

4 H.O. BROWN: Mr. Cook?

5 MR. COOK: I have to object to this particular
6 question. A deficiency -- it assumes facts not in
7 evidence -- well, at least, not resolved. It says that
8 assuming that -- it says: Can you make up the difference
9 in the shortages of water? I hope I get this question
10 correct, but I think it assumes a fact that there will be
11 shortages of water which is, certainly, their case. But
12 they're assuming something as a fact, which is not,
13 necessarily, proven at this point.

14 H.O. BROWN: Thank you, Mr. Cook.

15 Perhaps, you could restate your question.

16 MR. MINASIAN: I'd be glad to.

17 Mr. Mathews, did the Cordua Irrigation District
18 participate in the groundwater pumping at the request of
19 DWR in both '91 and '94?

20 MR. MATHEWS: Yes.

21 MR. MINASIAN: And what capacity were the landowners
22 able to develop from the wells in those years?

23 MR. MATHEWS: Approximately 75 -- approximately 7500
24 acre-feet, we pumped in 1991. And approximately 9500
25 acre-feet was pumped in 1994.

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1 MR. MINASIAN: And you understand that under the
2 proposed decision the amounts of groundwater that would
3 have to be utilized to replace the deficiency amounts
4 would be approximately 18,000 acre-feet per year, do you
5 not?

6 MR. MATHEWS: Yes, I do.

7 MR. MINASIAN: And do you have an opinion and an
8 observation in regard to the feasibility of doing that and
9 what problems would occur in the vicinity of Cordua if
10 that was attempted?

11 MR. MATHEWS: The Cordua Irrigation District lies
12 along the foothills of the Sierra-Nevada. It is not a
13 deep soil out in the alluvial areas in the center of the
14 valley. When we pumped in 1991 on the east part of our
15 district, is subdivisions which is on a hill. I think it
16 has approximately 60 homes. When we pumped in the second
17 week, the people of the homes had an association meeting
18 and invited me to come up.

19 Well, I live down in the center of the district.
20 And before I could go up there our pump well -- our
21 domestic well had, also, run out of water. So I had to
22 take some soap to the swimming pool before I went up
23 there. So we were quite concerned with the effect that we
24 would have on the district up there.

25 And it was Cordua's position that if anyone had

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1 well trouble, we weren't looking to see what kind of
2 trouble it was. We would have well people up there the
3 next morning. And about three or four different wells had
4 trouble during that season. We fixed them the next
5 morning.

6 And when we went to participate with the State,
7 again, in 1994, the people from the association came to
8 our district meeting. We said we would handle it the same
9 way. And they said as long as you handle it that way
10 there would be no objection to you pumping.

11 But, yes, I guess the thing is when we're pumping
12 9,000 acre-feet we have an effect on domestic wells in a
13 substantial part of our district, which is inhabited by
14 houses.

15 MR. MINASIAN: And, Mr. Mathews, during periods in
16 which deficiencies are declared for Cordua, they're also
17 declared for Ramirez, Brown's Valley, and Hallwood in the
18 same vicinity, are they not?

19 MR. MATHEWS: Yes. The Brown's Valley is primarily
20 to the east of us; Ramirez is to the north; and Hallwood
21 is to the south.

22 MR. MINASIAN: Would it be possible to drill
23 additional wells and pump 18,000 acre-feet in Cordua
24 instead of the approximately 7 to 9?

25 MR. MATHEWS: It's our assumption -- and we've been

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1 monitoring the wells since 1991 on a two-month basis both
2 on our area and adjacent wells -- is that we think if we
3 try to pump 18,000 we would have effects that we couldn't
4 mitigate with the neighbors.

5 MR. MINASIAN: Now, in addition to irrigation,
6 Cordua Irrigation District provides water for waterfowl
7 habitat and straw decomposition. We're going to try not
8 to duplicate the testimony of Dr. Reid.

9 But would you describe to the Board what you
10 believe the effects of the inability to get water at full
11 capacity in October as a result of conditions upon
12 fluctuation of flows in the Yuba River could be upon
13 waterfowl and straw decomposition within the District?

14 MR. MATHEWS: The Cordua District is -- starting
15 back in the late '30's -- started flooding rice fields and
16 pasture for duck clubs. The area is now almost 100
17 percent flooded for either straw decomposition, or duck
18 clubs, but primarily for duck clubs or habitat.

19 Because of the landowners' preference, we plant
20 early varieties of rice. We plant it early. We take it
21 off early. And we start flooding for ducks in September.
22 When we flood for ducks in September, there is very few
23 other areas in the State that have flooded lands.

24 And we've had duck populations where they're
25 literally shoulder to shoulder on the fields. By being

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1 shoulder to shoulder on their fields and being warm, it's
2 quite -- I don't know quite the right way to say it --
3 it's quite crowded. So we can't just flood the field and
4 leave the water there. We have to run the water through
5 the fields.

6 And when you get to the area when you wonder why
7 our water use is almost as high on a monthly basis for
8 flooding duck fields against rice fields, it is primarily
9 because of the botulism and cholera, which we've
10 experienced.

11 MR. MINASIAN: Would it be feasible in your view to
12 replace the surface water with well water and obtain the
13 same invertebrate growth, the same habitat for early
14 season waterfowl within the Cordua Irrigation District?

15 MR. MATHEWS: If you'll see from the chart that I
16 believe the Yuba County Water District submitted, where
17 you look at the daily diversions for Cordua, you'll see
18 that we're diverting in the area of 180 to as high as a
19 little over 200 in late September and early October. And
20 our well capacity is only 80 cfs.

21 So if you tried to decrease the large flows to
22 flood the, approximately, 9,000 acres, you would not flood
23 it. It would not have a place for the ducks in the
24 flyway. And it would put even more pressure of giving the
25 shoulder-to-shoulder competition with the ducks that would

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1 be there.

2 MR. MINASIAN: Mr. Mathews, is the Cordua Irrigation
3 District working with the Department of Fish and Game to
4 consider methods of alternating the function of the screen
5 from a trap that allows marking and release and
6 documentation of fish to one that operates on an automatic
7 or continuous basis?

8 MR. MATHEWS: Yes, we are. We've had discussions,
9 primarily, on the phone with Mr. Nelson. We've met on the
10 river. We're quite -- we believe the present screen
11 modified and updated would work to satisfy the
12 requirements that we keep the smolt, or small fish out of
13 our diversions.

14 MR. MINASIAN: Now, Mr. Mathews, attached to your
15 testimony are a number of exhibits. They're grouped as
16 Exhibit 4, 1 through 3, and 5, 1 through 3.

17 Is one of those exhibits in each set an aerial
18 photograph of a field in a typical year? This one is
19 Exhibit 5, 1999, Aloha. Is that what we would call the
20 cold-water entrance to the rice fields within your area?

21 MR. MATHEWS: Yeah. This is a field that's on the
22 lower end of our district, in fact, almost at the extreme
23 northeast corner of the District. It's a 211-acre field.
24 It has about 12 levees in it. So the first field is
25 approximately 10 acres.

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1 And if you'll see where the water comes in, that
2 the water is so cold it wouldn't even grow in the first
3 part. As the water starts to warm up, you know, through
4 the fluctuations of day and night, you'll see we finally
5 get some rice to grow. But you'll see on later exhibits
6 that there is no rice that is harvestable.

7 MR. MINASIAN: Now, Mr. Mathews, does your family
8 have one of the few harvesters that can monitor the actual
9 production by foot as it goes across a harvesting field in
10 California?

11 MR. MATHEWS: Yeah. They developed a technology in
12 the Midwest and we started with it approximately three
13 years ago where you put a GPS system on the harvester,
14 which locates its position every few seconds. It, also,
15 has weight scales on the elevators and a sampler that
16 tells you the moisture of the rice.

17 So you get dry yields, instantaneously. And you
18 can find where your yields run anywhere from 20 sacks to
19 100 sacks in the acreage and you can find out where the
20 problems are. And then we try to figure out what's
21 causing them.

22 MR. MINASIAN: Attached to your testimony is a study
23 done by the Department of Fish and Game in 1962 in which
24 they were studying shad. And it had temperatures in the
25 Yuba River at Daguerre Point; did it not?

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1 MR. MATHEWS: Yes, that is correct.

2 MR. MINASIAN: And that's before Bullards Bar was in
3 existence; is that correct?

4 MR. MATHEWS: That's correct.

5 MR. MINASIAN: And is Exhibit 3.1 a graph prepared
6 from that information in which the red line represents the
7 temperature of the water at Daguerre from May 1 on, before
8 Bullards Bar, in a particular year?

9 MR. MATHEWS: That is correct.

10 MR. MINASIAN: Now, is Exhibit 6 a similar map with
11 a black -- or graph with a black line which shows the
12 proposed decision's temperature from May 1?

13 MR. MATHEWS: That's correct.

14 MR. MINASIAN: And the red line, which is 1962?

15 MR. MATHEWS: Yes.

16 MR. MINASIAN: And did you and my staff put on the
17 temperatures in 1997, 1998, and 1999?

18 MR. MATHEWS: That's correct.

19 MR. MINASIAN: Okay. Now, did you, based upon the
20 experience in 1997, 1998/99, attempt to utilize the John
21 Deere GPS system to demonstrate if there was any
22 relationship between lowering temperature in the Yuba
23 River in the growing season and effects on your crop
24 production?

25 MR. MATHEWS: Yes, we did.

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1 MR. MINASIAN: Okay. Now, you know there's a
2 relationship, don't you, between water temperature and
3 production?

4 MR. MATHEWS: Yes. The university has a general
5 rule of thumb that the rice grows between 65 degrees and
6 95 degrees. Colder than 65 degrees, the rice wouldn't
7 grow. It grows, obviously, better when you're up closer
8 to the higher end of the scale.

9 MR. MINASIAN: And you've also correlated this to
10 your overall production on all your acreage in your area
11 and upon cross-examination, you'll be able to answer
12 questions about whether or not temperature reduction in
13 the Yuba River has an effect upon the volume of the crops,
14 and therefore, the profitability in the Cordua area?

15 MR. MATHEWS: Yes, we do.

16 MR. MINASIAN: Mr. Rue, your qualifications are not
17 properly stated, are they? You are a graduate of law
18 school, but not of the Hastings Law School?

19 MR. RUE: That's right, Mr. Minasian. I graduated
20 from Davis in 1974.

21 MR. MINASIAN: Okay. Mr. Rue, other than that, your
22 qualifications are correct; are they not?

23 MR. RUE: Yes, they are.

24 MR. MINASIAN: And you farm in the southern Yuba
25 County and in areas of Sutter County; do you not?

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1 MR. RUE: Presently, I do not farm in Sutter County,
2 just Yuba County, southern Yuba County.

3 MR. MINASIAN: Mr. Rue, have you been active for a
4 number of years in issues relating to economics and trade
5 in regard to rice?

6 MR. RUE: Yes, I have.

7 MR. MINASIAN: And are you also a director of the
8 South Yuba Water District?

9 MR. RUE: Yes, I am.

10 MR. MINASIAN: And you've been such since the
11 beginning of the District?

12 MR. RUE: Yes. I've been president since we formed
13 the District.

14 MR. MINASIAN: Mr. Rue, would you like to summarize
15 your testimony?

16 MR. RUE: Well, I think the salient point here is
17 that two things have happened since 1992 that probably
18 bear on this whole issue. One, in 1991 during the drought
19 our district as well as others in Yuba County, of course,
20 as has been previously testified to, joined in pumping
21 groundwater so that we could put water into the State
22 water bank out of the Yuba Project.

23 I was one who was very concerned at the outset of
24 that proposal that we would overdraft the aquifer, not
25 only to our detriment, but to those around us that did not

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1 have surface water and, of course, have been able to
2 continue to be productive on their lands, because the
3 groundwater tables have come up, much to the benefit of
4 those that were outside the District.

5 And after a lot of discussion, we came up, at
6 least, in our district with a requirement that we would
7 not pump more than two and a half acre-feet. At that
8 time, we were trying to take our best guess at what we
9 thought might be a safe yield.

10 Our experience during that time was that, number
11 one, we weren't able to pump that much water. We didn't
12 have quite that much capacity. So I guess all the earlier
13 discussion and agony over that was probably brought moot,
14 because we couldn't do it, in any event. But more
15 tellingly, we did have a significant drop in our pumping
16 levels.

17 Our pumping levels started out in the 65 to 75
18 range. And it wasn't long before many of our wells were
19 in the 130 to 140 range. Previously, to our -- in our
20 district getting surface water in the mid 1980's, our
21 pumping levels were falling on an annual basis. And the
22 only reason we were able to pump that deep in 1991 was
23 that the equipment that we had, fortunately, was still in
24 place, had been lowered so that we could pump water up to
25 140 to 150 feet.

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1 But based on that, we were -- prior to these
2 hearings -- very concerned that in any natural calamity
3 that would cause us to have to pump, that we would
4 certainly experience a shortfall based on groundwater.

5 MR. MINASIAN: And based upon that, Mr. Rue,
6 partially upon experience in '91, was a decision made by
7 South Yuba Water District in 1994 not to pump groundwater
8 for the State DWR Program?

9 MR. RUE: Yes. We were -- we were concerned about
10 two things in that regard, is that the groundwater
11 availability was much less than we expected. And we were
12 afraid we were going to -- which we did in '91 -- impact
13 those around us. And at the same time, the ultimate costs
14 of that pumping were higher than we anticipated.

15 MR. MINASIAN: Mr. Rue, Chairman -- or Hearing
16 Officer Brown asked a question in regard to possible
17 groundwater pumping costs. At this point in time, do you
18 have a rough estimate of those costs?

19 MR. RUE: Well, as I have pumped directly inside the
20 district groundwater recently, we relied on some
21 information that came from the Solano Irrigation District
22 that has lift -- a water lift similar to what we have.

23 And their number that they utilized was about a
24 power factor of about \$29 an acre-foot. Using that number
25 plus a sinking fund for both the repair and replacement of

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1 the pump and the well, I would kind of guesstimate that
2 our costs are probably in the range of \$35 to \$37 an
3 acre-foot when you talk about fully-loaded cost.

4 MR. MINASIAN: And your testimony includes a range
5 that occurred in 1991 when the pumping occurred. And you
6 also wanted to make a point about the need to maintain
7 pumps on standby. And the presence of that is not in
8 that?

9 MR. RUE: Well, yeah, our power costs were in the
10 18 -- it was estimated -- I heard some earlier discussion
11 about \$15 to \$18 range. Our costs at that time were in
12 the \$18 to \$20 range, just power costs not including any
13 repair and maintenance.

14 In addition to that, if we were required at -- at
15 present, we are not -- our pumps are not hooked up to the
16 PG&E, because they have minimum contract charges each
17 year. And it would cost approximately \$15 -- \$1500 per 60
18 horsepower pump a year whether you turn it on or not.

19 So in our case, we do not have any of the pumps
20 hooked up to the PG&E at present, because it's a
21 considerable expense. And if we were required to have
22 these pumps on standby, of course, we would be suffering
23 that \$1500 cost per 60-horsepower pump, which would equate
24 to about -- one of those pumps and wells for about every
25 100 acres. So you would increase your cost by that amount

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1 every year whether you turned them on or not.

2 MR. MINASIAN: Mr. Rue, would this be the
3 appropriate time to turn to your testimony that's given on
4 behalf of Cordua, Brophy, and South Yuba in regard to the
5 economic conditions of rice culture since 1992 and the
6 potential impact of the frequency of deficiencies in which
7 well water might have to be pumped to replace surface?

8 MR. RUE: Well, as we're aware a lot is trumpet
9 about the lack of inflation, but the CPI, of course, is
10 made up of many different factors. And those of us that
11 aren't necessarily using imported goods, but using things
12 like power and things that are made in this country have
13 experienced inflation over the last eight or nine years.

14 Two things that have happened to us in the
15 farming game, at least, in the rice business, that has
16 particularly impacted us more than just this average
17 incremental rate increase in inflation, has been, of
18 course, the need to dispose of the straw, because in prior
19 years, of course, we were allowed to burn. Now, we have
20 to mechanically treat the fields so that the straw, in
21 fact, will degrade.

22 And, additionally, there have been significant
23 costs in our herbicide program that we're seeing, greater
24 than the costs of inflation in other items. The cost of
25 straw degradation varies, of course, depending on soil

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1 type, depending on weather, but an average cost of \$35 to
2 \$45 per acre fully loaded is probably a fairly good one.

3 In the case of our chemical and herbicide
4 programs, due to the fact that we have in California very
5 stringent regulations with respect to herbicide use and
6 with respect to water quality not found in other areas,
7 our cost of herbicides tend to be higher for the same
8 product here in California than you would experience
9 elsewhere, because of the additional level of regulatory
10 examination that occurs in California.

11 And as a result of all that, the costs of
12 herbicides has probably increased along with the
13 inflation, that would be normally in the neighborhood of
14 \$50 per acre. So when you total up all this experience
15 you're going to arrive at a cost to raise rice in
16 California of around \$635 to \$645 an acre and that's
17 before you get to land cost and water costs.

18 MR. MINASIAN: Has there also been a corresponding
19 change in regard to the amount of subsidies, or support
20 payments that are made as a basis of national policy --
21 and by the way, you, actually, on behalf of the rice
22 industry travel all over the world to provide advice to
23 the U.S. Trade Representatives, do you not, and the rice
24 industry?

25 MR. RUE: Yes. I'm on the Trade Policy

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1 International Trade Committee. I'm chairman of that
2 committee for the rice federation and serve on -- as a
3 member of the Trade Environmental Advisory Policy
4 Committee to the U.S.T.R. as well.

5 MR. MINASIAN: In general, the subsidy payments are
6 going down?

7 MR. RUE: You're probably aware of in the press, the
8 latest farm bill has set a contractual rate of payments
9 that's not coupled to production. And the rate of
10 payments decline over the life of the farm bill designing
11 to move agriculture off a system of direct payments and
12 into a system that it was at its outset. Move them to a
13 market-driven revenue stream.

14 MR. MINASIAN: So --

15 MR. RUE: The amounts of money, for example, in the
16 year 2000 is in the neighborhood of \$2 and \$2.60 per ASCS
17 yield. It falls to \$2.10 in 2001. Falls roughly to \$2 in
18 2002. And that's the expiration of the farm bill and the
19 contract.

20 MR. MINASIAN: And the payments since 1992 has,
21 actually, gone down substantially per acre; has it not?

22 MR. RUE: Yes. They started out at \$2.94 and they
23 will fall to \$2 over the course of the farm bill.

24 MR. MINASIAN: Now, overall to bring it to
25 conclusion, using a land value of 2000 to \$2500 per acre,

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1 assuming that a landowner was required to pump two years
2 out of seven, based on your current capacity and operation
3 and maintenance of wells, what economic viability exists
4 on rice land to do that per acre?

5 MR. RUE: Well, given the current level of
6 government payment plus a value of \$8.60 per 100 weight
7 for the rice and approximately 80 dry sacks -- a sack
8 being 100 weight, 8000 weights of dry rice produced per
9 acre, and including the costs if you were in a dry year,
10 you would have a total cost before land expense of around
11 735 to around \$740 an acre.

12 Your gross would be in the neighborhood of 880 to
13 835 acre. You would have a cash flow net of \$90 to \$100
14 per acre. If you take land value at roughly \$2,000 or
15 2500 an acre, at a return of eight percent, before fixed
16 cost to the land of taxes, et cetera, you would have an
17 economic loss of around 50 to \$80 an acre.

18 MR. MINASIAN: Okay.

19 MR. RUE: Could be as high as 100, if you use the
20 higher value, of course.

21 MR. MINASIAN: And so is it your conclusion that a
22 requirement, if deficiencies occur two out of the seven
23 years, that the rice acreage within both the north and
24 south areas, if required to pump groundwater and at
25 current conditions and the declining subsidy payments

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1 would become negatives in terms of borrowing money from
2 banks, or in terms of financing a reasonable rent upon the
3 land's value?

4 MR. RUE: Well, I think you would find -- obviously,
5 you're going to find a declining base, economic base to
6 operate from. As we all know, people, especially
7 agriculture, will operate as long as they have some
8 contribution to fix over the variable.

9 And while that would continue for a while, you
10 will ultimately see the changing of the farming complex
11 from one that grows higher -- grows higher-valued crops
12 that are able to have some value added locally to probably
13 the least input crops, which most likely would be some
14 type of dry grazing.

15 MR. MINASIAN: Mr. Rue, final area of your testimony
16 involves your observation in regard to what the potential
17 constraint on diversions out of the Yuba River after
18 October 15 could mean to waterfowl in terms of capacity.

19 And there's an exhibit which is prepared by my
20 office which is attached, which tries to bring into
21 relationship the effect. If you have a constraint you
22 can't flood as many acres as fast and maintain as many
23 acres.

24 Have you also brought with you certain charts
25 that show variable values in -- and that chart is at one

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1 cfs to one acre. You've also brought a chart based upon
2 1.1 cfs to 1.4, and we can vary that. But does the
3 mathematics of it bring you to a conclusion in regard to
4 what will happen to waterfowl habitat in your area, or in
5 the north area if the constraint to avoid fluctuations of
6 flow in the Yuba River after October 15 results in the
7 inability of the Agency to give more capacity than 200
8 cfs?

9 H.O. BROWN: Mr. Minasian?

10 MR. MINASIAN: Yes.

11 H.O. BROWN: It's past time for the break. Would
12 you like the answer to that question before the break, or
13 after the break?

14 MR. MINASIAN: Actually, it's our last question we
15 have, if you would allow us to finish.

16 H.O. BROWN: Sure.

17 MR. RUE: South of the river, percentage, historical
18 average would be. And based on that calculation we came
19 up, just for the purposes of trying to determine exactly
20 what the impact would be on the winter waterfowl flooding
21 and our conclusion, which can be demonstrated with either
22 one of the rates of acres flooded per cfs diverted, but as
23 you can see by the two charts Exhibit 1.4 and Exhibit 1.5,
24 it's approximately 40 percent would be able to be flooded
25 in the same manner. That, obviously, could be at the

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1 higher rate.

2 And as you extend that out, of course, with the
3 need to maintain that ground flooded at some point, of
4 course, which I didn't do the calculations, we probably
5 would not be able to flood the acres that we could at the
6 higher rate and maintain them.

7 MR. MINASIAN: And you and Mr. Mathews will be ready
8 to answer questions regarding the effects of what the
9 slowing flooding rate has on food production, invertebrate
10 production, rice decomposition, and the attraction of
11 waterfowl; is that correct?

12 MR. RUE: Yes, we will.

13 MR. MINASIAN: Now, we talked a lot about waterfowl
14 in North Yuba County. You have a lot to say about that in
15 South Yuba County; do you not?

16 MR. RUE: Yes, Mr. Minasian. In the South Yuba
17 County area that, historically, has been flooded --
18 actually, is largely on the grounds that I farm.

19 And we've had entries to study that -- but I came
20 back to the farm to -- because I wanted to farm and manage
21 the lands for the wildlife. So I have always thought that
22 those people needed to expend their efforts and assets and
23 resources in areas that weren't being aggressively managed
24 for the benefit of the wildlife.

25 So we have had a tremendous early population of

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1 waterfowl in our area. And, further, we staged some of
2 our flooding so that we're able to maintain fresh habitat
3 throughout the waterfowl wintering period.

4 And it's very important to me, because we don't
5 have data other than my personal observation, but that
6 doesn't mean that it's not just as important.

7 MR. MINASIAN: Thank you.

8 MR. RUE: It's, obviously, important to those in the
9 waterfowl area, because I've been approached on numerous
10 occasions to sell wildlife easements. My attitude was
11 that I was providing the easements in any event and
12 intended to. And my son is attending Davis and is leaning
13 towards wildlife biology. And that's something that our
14 family is very interested in.

15 MR. MINASIAN: Thank you.

16 Our witnesses will be ready for cross-examination
17 after the break.

18 Thank you for the delay.

19 H.O. BROWN: All right. We'll be back here at 11:00
20 o'clock.

21 (Recess taken from 10:49 a.m. to 11:02 a.m.)

22 H.O. BROWN: We'll come back to order. Okay.

23 Mr. Minasian, are you ready for cross?

24 MR. MINASIAN: My witnesses are.

25 H.O. BROWN: Mr. Gee.

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1 MR. GEE: Thank you, Mr. Brown.

2 ---oOo---

3 CROSS-EXAMINATION OF SOUTH YUBA WATER AGENCY

4 AND CORDUA IRRIGATION DISTRICT

5 BY U.S. DEPARTMENT OF INTERIOR, FISH AND WILDLIFE SERVICE

6 BY MR. GEE

7 MR. GEE: Mr. Mathews, Mr. Rue, Mr. Minasian, my
8 name is Edmund. And I'm an attorney with the U.S.
9 Department of the Interior. And I have questions for
10 Mr. Mathews. So I'll start with Mr. Mathews.

11 Mr. Mathews, on your Exhibit 2, which is your
12 written testimony, on paragraph three on Page 1, the first
13 sentence there seems to suggest that the Draft Decision
14 assumes that reductions in surface -- excuse me, surface
15 deliveries will be absorbed by landowners. Do you see
16 that?

17 MR. MATHEWS: Yes.

18 MR. GEE: Where in the Draft Decision is that
19 assumption made? Is this your understanding of the Draft
20 Decision, or -- I'm wondering if you can point where in
21 the Draft Decision that particular --

22 MR. MATHEWS: I've got some pages of the Draft
23 Decision, but you'll see in my testimony I refer to
24 different pages, but this one does not refer to a page.

25 MR. GEE: If you can show me --

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1 MR. MATHEWS: Oh, you want me to show you?

2 MR. GEE: Right.

3 MR. MATHEWS: It's my understanding, in general of
4 the Draft Decision, that when you have substantially more
5 water committed to the river and you have a time like we
6 described to you what happened to us in '77, that there is
7 not enough water to meet both the fish and the wildlife.
8 So we won't use the water for the wildlife.

9 MR. GEE: So this is your understanding --

10 MR. MATHEWS: Yes.

11 MR. GEE: -- of what the Draft Decision says?

12 MR. MATHEWS: Yes.

13 MR. GEE: Mr. Mathews, correct me, you testified
14 that you farm approximately 6,000 acres of land; is that
15 right?

16 MR. MATHEWS: Yes -- it says 5,000. It's closer to
17 6- -- 5- to 6 depending on how you relate my brothers and
18 nephews.

19 MR. GEE: I see. And of that acreage, how many
20 acres are used for farming rice?

21 MR. MATHEWS: All of them.

22 MR. GEE: And, then, how much water in acre-feet is
23 then used to flood that acreage each year?

24 MR. MATHEWS: Well, it depends on the -- what
25 districts we're in and what type of soils. We have some

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1 soils that are quite tight that we get -- we consider zero
2 percolation. We farm in other areas where the water will
3 percolate into the ground during the growing season. So I
4 would say we have anywhere from a little over four
5 acre-feet per acre, to six or seven acre-feet per acre,
6 depending on the soils in the district.

7 MR. GEE: Given those figures, maybe I should
8 clarify my question. When I say, "flooding the acreage,"
9 I mean for rice straw decomposition of the waterfowl
10 habitat?

11 MR. MATHEWS: Pardon me, I thought you were talking
12 about growing rice.

13 MR. GEE: Okay.

14 MR. MATHEWS: For the waterfowl habitat, I could
15 probably speak better with respect to Cordua, where I'm
16 most familiar.

17 MR. GEE: Please, do so.

18 MR. MATHEWS: We start flooding in Cordua in the
19 middle to latter part of September. We flood -- in fact,
20 we still have some fields we haven't drained. We have
21 some fields we keep until March 15th. We keep a lot of
22 the fields until the 1st of March. Some fields we drain
23 around the 1st of February. The irrigation district in
24 Cordua, traditionally, in the first week or two weeks of
25 January.

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1 MR. MINASIAN: I would say he's an expert on water
2 use in Cordua, rice farming, waterfowl habitat,
3 maintenance for waterfowl habitat and some impacts of
4 temperature and others on crops.

5 MR. BAIOCCHI: Okay.

6 MR. MINASIAN: Is that helpful? That's what he's
7 being offered for.

8 MR. BAIOCCHI: Thank you.

9 Do you have expertise in fisheries?

10 MR. MATHEWS: Been trout fishing over in Downieville
11 every year. From the time I learned how to swim in
12 Downieville, I fished in the upper Yuba River. I consider
13 myself an expert in trout fishing. But as far as ocean
14 fishing, I would know nothing about that.

15 MR. BAIOCCHI: But you're not a fishery biologist?

16 MR. MATHEWS: Not at all.

17 MR. BAIOCCHI: Okay. Are you a hydrologist?

18 MR. MATHEWS: In my capacity of Cordua Irrigation
19 District, we've had to make many decisions on what the
20 average yield would be before the Bullards Bar Dam.
21 There, the hydrology of Yuba River -- I'm not trained in
22 college as a hydrologist.

23 MR. BAIOCCHI: Thank you. You farm about 6,000
24 acres?

25 MR. MATHEWS: That's correct.

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1 MR. BAIOCCHI: Okay. And how many duck clubs are
2 there on those 6,000 acres?

3 MR. MATHEWS: Approximately, 600 duck clubs.

4 MR. BAIOCCHI: And what is your net revenue for
5 charging those people to hunt on your properties?

6 MR. MATHEWS: I farm 6,000 acres. I do not own
7 6,000 acres. I farm primarily as a custom-farming basis.
8 On those lands are about 15 duck clubs. We cash rent some
9 lands and percentage rent some land, but the bulk of the
10 land I farm is called custom farming people. So --

11 MR. BAIOCCHI: Those people who own the lands
12 receive a revenue for -- from the duck clubs, those 15
13 duck clubs, correct?

14 MR. MATHEWS: The people that I farm for, the 15
15 duck clubs, they're all proprietary owned. None of them
16 are commercial duck clubs, if you want to call it that
17 way.

18 MR. BAIOCCHI: So they have the availability of
19 hunting for no fees at all; is what you're saying?

20 MR. MATHEWS: Well, they own the land. They hire me
21 to farm the rice. And after I harvest the rice, then I
22 manage the water for them on the duck club and they hunt
23 the ducks.

24 MR. BAIOCCHI: Thank you. Now, with respect to
25 return flows from your lands, you know, when you discharge

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1 water out of the fields --

2 MR. MATHEWS: Yes.

3 MR. BAIOCCHI: Where does that water go?

4 MR. MATHEWS: In the area of Cordua it goes into
5 Jack Slough.

6 MR. BAIOCCHI: And Jack Slough is a --

7 MR. MATHEWS: Jack Slough then comes into the north
8 side of Marysville, comes into the Feather River
9 approximately a mile and a half where the Yuba River
10 enters the Feather.

11 MR. BAIOCCHI: So, theoretically, then the water
12 that is used by you, the District, that you're leasing is
13 an interbasin transfer of water? In other words you're
14 taking Yuba River water, using it, and then you're
15 returning the water to the Feather River as opposed to the
16 Yuba River?

17 MR. MATHEWS: I'd let someone else tell you what
18 interbasin is. I think they're all in the same basin.

19 MR. BAIOCCHI: Okay. Thank you very much. Now,
20 with respect to Exhibit 3, included as an exhibit, a
21 letter or -- wherever it might be. Let me see if I can
22 find it. Exhibit 3 relates to American shad?

23 MR. MATHEWS: That's correct.

24 MR. BAIOCCHI: Okay.

25 MR. MATHEWS: I fished for shad many years before

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1 the New Bullards Bar was built.

2 MR. BAIOCCHI: Thank you. And it's called, "Notes
3 on the Shad Run in the Yuba River, 1963." Apparently, it
4 was prepared by the Department of Fish and Game?

5 MR. MATHEWS: Yes. I believe it's also referred to
6 in their power purchase contract. So that's why I got it
7 in. That was the only temperatures that we could find.
8 We thought there were more temperatures when they built
9 Bullards Bar, but that was the only one that we could
10 find.

11 MR. BAIOCCHI: Now, are you aware that what
12 determines the shad run -- you indicated that you fished
13 for shad for many years on the Yuba.

14 Are you aware of the fact that flows determine --
15 the attraction flows in the Yuba determine the amount of
16 American shad entering the Yuba River? Are you aware of
17 that?

18 MR. MATHEWS: I'm aware that it's an effect, that's
19 part of it. I'm not --

20 MR. BAIOCCHI: Yes. It's related to flows and not
21 necessarily water temperatures?

22 MR. MATHEWS: I'm not an expert to know what the
23 relationship between the two are.

24 MR. BAIOCCHI: All right. And that was so stated in
25 testimony by Mr. Mitchell on behalf of Yuba County Water

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1 Agency.

2 MR. MATHEWS: I was not here that day, sir.

3 MR. BAIOCCHI: Okay. Thank you very much. And you
4 make a case in here concerning that you would like to see
5 a warmer water for rice production, right? And you
6 indicated -- is that correct, sir?

7 MR. MINASIAN: I don't think that's a proper
8 characterization. Misstates the evidence. He was simply
9 saying there is an effect.

10 MR. BAIOCCHI: Okay. Let's go to the testimony,
11 because it's pretty clear. On page -- well, on Page
12 number 10, under 6.0 of your testimony under,

13 (Reading):

14 "Water temperature requirements, Bullards Bar
15 Dam and variable inlets installed to be able to
16 warm water for crop production during control
17 periods and managed fishery resources."

18 That's your statement; is that correct?

19 MR. MATHEWS: That's correct.

20 MR. BAIOCCHI: And then under Section 6.1, you
21 state,

22 (Reading):

23 "And I have observed the effects of cold water
24 upon rice production."

25 MR. MATHEWS: That's correct.

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1 MR. BAIOCCHI: Okay. So you've made a case that you
2 would prefer to have warmer water flowing down the Lower
3 Yuba River for diversions to your property, or the
4 properties that you manage?

5 MR. MATHEWS: I don't think that's what it says.

6 MR. BAIOCCHI: Okay. Tell me what it says.

7 MR. MATHEWS: What it says is that if you have
8 colder water it affects the growing yield of the rice. I
9 don't believe I'm stating in here that I have a preference
10 for one or the other.

11 MR. BAIOCCHI: Okay. Thank you. On Page 9 -- on
12 Page 9 under 5.4 of your testimony, you make a statement,
13 (Reading):

14 "I can think of no clear example of fish
15 biologists being willing to destroy duck
16 populations set in this term."

17 Could you, please, explain yourself.

18 MR. MATHEWS: It refers to the area that if the
19 Draft Decision goes forward, that there will be -- let me
20 see if I can say it right. We will not have water in some
21 years to flood ducks.

22 So if the issue is if we need more water for the
23 fisheries, and I don't believe from the testimony that
24 I've seen and heard and read that we don't have better
25 fisheries now than before Bullards Bar was built, that if

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1 the Draft Decision were to go ahead and we then did not
2 have the water to put on the land for ducks, that we would
3 be hurting the ducks and not being proven that we will
4 help the fisheries. I believe that's what my testimony
5 is.

6 MR. BAIOCCHI: But you can use wells to pump water
7 for allowing that; isn't that true?

8 MR. MATHEWS: As you heard in my testimony, in the
9 Cordua where we used over 200 second feet to flood for
10 ducks and our well capacity is 80 second feet, I think
11 it's an easy multiplication for you to make that
12 approximately two-thirds of the land would not be flooded
13 in a timely manner.

14 MR. BAIOCCHI: Okay. Thank you. Now, I'm looking
15 for a statement that you made here concerning pre- and
16 post-project at New Bullards Bar. And I'm going to find
17 it. On page 12, it's a two-page -- Page 12 under 5.4,
18 (Reading):

19 "In the period of the 1950s and '60s the salmon
20 populations and steelhead populations were
21 numerous and healthy in the Yuba River."

22 It's at the top, it's quoted.

23 MR. MATHEWS: Yes, that's correct.

24 MR. BAIOCCHI: Thank you. Are you aware of the fact
25 that going back historically, particularly with steelhead

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1 and also spring-run salmon, that they migrated above New
2 Bullards Bar Dam?

3 MR. MATHEWS: New Bullards Bar Dam was preceded by
4 the Old Bullards Bar Dam, approximately a mile and a half
5 difference --

6 MR. BAIOCCHI: Okay.

7 MR. MATHEWS: Let me finish, please.

8 MR. BAIOCCHI: Okay.

9 MR. MATHEWS: And New Bullards Bar Dam was built in
10 the middle '60s. The Old Bullards Bar Dam was built in
11 the early '20's. Both of those dams could not have had,
12 as you call them, spring run, I call them salmon, because
13 in the 1940's they had built Englebright. So you better
14 phrase your question as to what area --

15 MR. BAIOCCHI: Well, prior to the construction of
16 any dam on the Yuba River it being either -- the North
17 Yuba River, wasn't there a potential that spring-run
18 chinook salmon and steelhead trout migrated up into the
19 headwaters of the North Yuba River for spawning and
20 rearing purposes? Wouldn't that be a reasonable
21 conclusion prior to any dams?

22 MR. MATHEWS: I also -- obviously, I was born in
23 1938. So I was not born before the dams were put in.

24 MR. BAIOCCHI: Okay.

25 MR. MATHEWS: I've also seen data that there might

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1 have been some falls inside of the Narrows where the fish
2 couldn't have gotten up there. But I agree with you, I've
3 also seen pictures where salmon going over the falls,
4 obviously, above Bullards Bar.

5 MR. BAIOCCHI: Thank you. I'm going to move on to
6 Mr. Rue.

7 Mr. Rue, I have a few questions for you. Now, in
8 your testimony, you cite various, apparently, studies that
9 were not included as exhibits. An example under 5.1,
10 "Solano Irrigation District keeps detailed records."

11 Is there any reason why you did not submit those
12 as exhibits?

13 MR. RUE: I was in the discussion with Mr. Minasian
14 about this issue of pumping costs. He informed me that he
15 had access to this data from Solano Irrigation District
16 and gave me that data. And I included it in my testimony.

17 MR. BAIOCCHI: But it wasn't included into the
18 record?

19 MR. RUE: Pardon me?

20 MR. BAIOCCHI: It wasn't included as an attachment,
21 or as an exhibit to your testimony?

22 MR. RUE: I did not provide that attachment.

23 MR. BAIOCCHI: Thank you. And you're a businessman,
24 right?

25 MR. RUE: Well, I guess I would like to think so.

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1 MR. BAIOCCHI: Businessman, right, that's making a
2 buck, right, making a living for his family, right?

3 MR. RUE: Well, I'm a farmer.

4 MR. BAIOCCHI: Well, you're a farmer. Okay. How
5 many people -- and you, let's see, farm about 2,000 acres;
6 is that correct?

7 MR. RUE: Yes.

8 MR. BAIOCCHI: All right.

9 MR. RUE: A little more than that, actually, because
10 we have some pasture.

11 MR. BAIOCCHI: What's your workforce?

12 MR. RUE: It depends on the time of year.
13 Obviously, in the springtime and the fall we have more
14 employees than we do at other times that are full-time.

15 MR. BAIOCCHI: How many would those -- what would be
16 the numbers, you know, if you could kind of ballpark it?

17 MR. RUE: There's probably 15 or 16 people.

18 MR. BAIOCCHI: 15 to 16?

19 MR. RUE: In the spring, or in the fall.

20 MR. BAIOCCHI: Thank you. And what kind of --
21 I'm -- well, you've opened a door on costs, so I'm trying
22 to get into what do you pay those people? You pay them an
23 hourly rate; is that true?

24 MR. RUE: The people that come, say, for -- come for
25 the spring work or the fall work and they make anything

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1 from a low of \$7 an hour to a high of \$13.

2 MR. BAIOCCHI: Thank you.

3 MR. RUE: That's on -- I think it should be noted
4 that that's on an ag pay scale. And during that time, of
5 course, because of planting and the culture needs of rice
6 and farming as well -- I mean harvesting as well in the
7 fall that we, generally, work seven days a week. And we
8 normally put in 10- to 12-hour shifts. And so the monthly
9 income in this time is more in the range of 4 to \$500 a
10 month.

11 MR. BAIOCCHI: Okay. Thank you. What was your net
12 profit in 1995 for yourself?

13 MR. RUE: 1995?

14 MR. BAIOCCHI: Yes, sir.

15 MR. RUE: I can't recall that right off the top of
16 my head.

17 MR. BAIOCCHI: Would it be less than a half million
18 dollars, or more than a half a million dollars?

19 MR. RUE: I wish I could answer that it was more,
20 but it was much less, unfortunately.

21 MR. BAIOCCHI: Okay. What about 1996?

22 MR. RUE: Much less.

23 MR. BAIOCCHI: 1997?

24 MR. RUE: Much less.

25 MR. BAIOCCHI: 1998?

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1 MR. RUE: Much less.

2 MR. BAIOCCHI: So what profit do you make? What is
3 your net profit per acre?

4 MR. RUE: Well, and I should -- I should tell you
5 just so you understand, to keep the scope of the numbers,
6 that some of the land that I farm, I said I farmed 2000
7 acres, that includes some land that I farm for others as
8 well.

9 But normally what you -- you'd like to think that
10 you could make \$100 an acre. In reality, it tends to be
11 \$50 to \$60 an acre.

12 MR. BAIOCCHI: 50 to \$60 an acre?

13 MR. RUE: Uh-huh.

14 MR. BAIOCCHI: Thank you.

15 MR. RUE: And that's after paying all the expenses
16 and paying some rent, too.

17 MR. BAIOCCHI: For your information, my people are
18 farm people. Now, what I need to know is about return
19 flows. Where does the water that -- when you discharge
20 the water from your fields, where does it go?

21 MR. RUE: Our water goes into the drainage, which is
22 called -- it's been intercepted. It's called the
23 all-American canal. And that discharges into the Bear
24 just above its confluence with the Feather at the southern
25 end of Yuba County.

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1 MR. BAIOCCHI: Okay. So Yuba River water is used
2 for your operations and then it's diverted to -- when it's
3 discharged out of the field, to the Bear River?

4 MR. RUE: Yeah. That's correct.

5 MR. BAIOCCHI: Thank you. And how many duck clubs
6 are there on the lands that you --

7 MR. RUE: There are three.

8 MR. BAIOCCHI: Three?

9 MR. RUE: Uh-huh.

10 MR. BAIOCCHI: And do you collect fees from that at
11 all?

12 MR. RUE: No. I don't own those properties.

13 MR. BAIOCCHI: Okay. Now, you were schooled as an
14 attorney, right?

15 MR. RUE: Yes, sir.

16 MR. BAIOCCHI: And on Page 5, it's so noted as
17 Exhibit 1, did you make a statement,

18 (Reading):

19 "Because the relationship between additional
20 water and colder water for fishery needs is not
21 established in the evidence, either before 1992
22 or after," et cetera.

23 And then you go on. Okay. Have you ever
24 reviewed the management plan that was prepared by the
25 Department of Fish and Game for the Lower Yuba River?

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1 It's called the Lower Yuba River Fishery Management Plan.

2 MR. RUE: Years ago, in a cursory sense I did.

3 MR. BAIOCCHI: But you don't believe that was part
4 of the record of the 1992 hearing?

5 MR. RUE: I believe that it is.

6 MR. BAIOCCHI: Pardon me?

7 MR. RUE: I said I believe that it is.

8 MR. BAIOCCHI: Thank you. Okay. Then, following
9 that sentence -- let me read it into the record what you
10 state and tell me if it's correct or incorrect.

11 (Reading):

12 "If the fishery agencies see the benefits of
13 this water developed by our efforts and those
14 of the Yuba River for the fisheries, they,
15 certainly, should be willing to pay the cost of
16 private property taken for those benefits."

17 Could you, please, explain why you make that
18 statement?

19 MR. RUE: Well, as you know, the Bullards Bar
20 Project goes back to the inception of the water agency
21 back in the late '50s, a desire to develop the water
22 resources for the benefit of the county. And -- which
23 included not only providing water service for irrigation
24 and development of agriculture, but flood control as well.

25 And it just seems to me as a practical matter,

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1 that when we're talking about using water that has, in
2 effect, been created because it's been stored by a capital
3 project that all of us in the county supported, and they
4 want to use part of the stored water for the fishery, in
5 fact, to the detriment of those who supported, conceived,
6 and constructed the project, then they should be willing
7 to compensate those who are being impacted, those that
8 have made those investments not only of capital but of
9 their lives.

10 MR. BAIOCCHI: Okay. Thank you. Are you aware of
11 the fact that Yuba County Water Agency's water rights
12 purpose of use are for fish and wildlife protection and
13 enhancement? That's the purpose of use of the project.
14 Are you aware of that, sir?

15 MR. LILLY: Excuse me, Mr. Brown. I have to object.
16 The document speaks for itself. And I believe
17 Mr. Baiocchi has mischaracterized the water rights
18 documents. They, certainly, have many different purposes.

19 H.O. BROWN: Mr. Baiocchi?

20 MR. BAIOCCHI: That's part of the record. That's
21 part of the water rights which is part -- you know, I just
22 asked him a question: If you knew that?

23 H.O. BROWN: I think it's an appropriate question.

24 MR. RUE: Yes, I'm aware that's one of the purposes.

25 MR. BAIOCCHI: Thank you very much. That concludes

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1 it right on time.

2 H.O. BROWN: Thank you, Mr. Baiocchi.

3 MR. BAIOCCHI: Thank you very much.

4 H.O. BROWN: Mr. Sanders.

5 ---oOo---

6 CROSS-EXAMINATION OF SOUTH YUBA WATER AGENCY

7 AND CORDUA IRRIGATION DISTRICT

8 BY SOUTH YUBA RIVER CITIZEN'S LEAGUE

9 BY MR. SANDERS

10 MR. SANDERS: Good afternoon, gentlemen -- or good
11 morning, I guess. I'm Larry Sanders. I work for South
12 Yuba River Citizen's League, SYRCL. I'm their attorney.
13 I'm going to start with Mr. Mathews.

14 Who owns the water being diverted at the north
15 diversion?

16 MR. MATHEWS: Who owns the water?

17 MR. SANDERS: Yeah.

18 MR. MATHEWS: I'm not a water rights lawyer, but I
19 believe the common interpretation is that the people.

20 MR. SANDERS: Okay. Let me see if I can --

21 MR. MATHEWS: This is by general.

22 MR. SANDERS: Yeah. That's fine. Let me rephrase
23 it to see if we can get to where I'm going. The Cordua
24 and Hallwood Irrigation Companies own the rights to use
25 the water that's being converted at the north canal; is

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1 that correct?

2 MR. MATHEWS: In my layman's sense, I would say
3 you're right.

4 MR. SANDERS: Okay. And who, actually, physically
5 owns the north canal?

6 MR. MATHEWS: The Cordua and the Hallwood.

7 MR. SANDERS: Okay.

8 MR. MATHEWS: We have joint ownership for part of
9 it. And then we have our respective ownership for the
10 rest of it.

11 MR. SANDERS: Okay. Fair enough. And who maintains
12 the canal?

13 MR. MATHEWS: We do.

14 MR. SANDERS: And does Cordua or Hallwood own a fish
15 screen?

16 MR. MATHEWS: No, we do not. The fish screen was
17 put in almost 20 years ago when they were doing a study
18 for the peripheral canal. And they were designing
19 different types. They, actually, put different
20 modifications on it a number of times.

21 Then when they had high fish -- or outmigration,
22 I guess you would call it, they staffed it every year. As
23 soon as the migration goes down, as you'll see from some
24 of the different studies, you know, they, then, do not
25 operate it year-round.

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1 MR. SANDERS: Okay. So if DFG removed their fish
2 screen, would Cordua install its own fish screen?

3 MR. MATHEWS: We're hoping that we can work with DFG
4 to update that screen in its present location. And we
5 would, eventually, be of the opinion that we're going to
6 have to, eventually, take over the maintenance and
7 operation of it.

8 MR. SANDERS: Okay. But currently does Cordua --
9 does Cordua participate in the funding of operations and
10 maintenance of the fish screen?

11 MR. MATHEWS: No, we do not.

12 MR. SANDERS: Does Cordua have a program to minimize
13 impacts to salmonids resulting from operation of the north
14 canal?

15 MR. MATHEWS: No.

16 MR. SANDERS: Do you know if Cordua diverts water
17 through the north canal at times when the DFG screen is
18 not in operation?

19 MR. MATHEWS: Yes, we do.

20 MR. SANDERS: Okay. And can you speculate on
21 whether fish enter into the north canal when Cordua is
22 irrigating and DFG is not operating the fish screen?

23 MR. MATHEWS: The counts we've seen when they're
24 operating it is -- when the counts go down to a certain
25 point, they cease operation. And when you see the counts

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1 going down, when I say "to a certain point," there's still
2 counts. So the answer to your question would be, yes.

3 MR. SANDERS: Okay. Now, what about this summer,
4 does Cordua have any plans to prevent salmon and steelhead
5 from entering the canal after DFG -- both before or after
6 DFG stops operating their --

7 MR. MATHEWS: In discussions with Fish and Game one
8 of their costs of operating the screen is that they have
9 to bring in a portable generator to run the wipers on the
10 screen. Because its a portable generator, they have to
11 staff it 24 hours a day.

12 We're in the process of bringing power to them so
13 that they will be able to operate the screen with
14 nongenerator power. And their feeling is this would
15 reduce their costs. And we would speculate they might be
16 able to staff it longer, but I cannot speak for them. But
17 I've never heard that they're going to staff it for a
18 period of time longer than when the May migration is going
19 up.

20 MR. SANDERS: Okay. And Cordua has no plans to
21 staff it or fund the staff, does it?

22 MR. MATHEWS: Not at this point, but working with
23 them to try to develop a screen that we can afford to
24 operate, because our feeling is -- at least our feeling
25 is, that eventually, we're going to be like the Sacramento

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1 River. We're going to be required to have a
2 fully-screened diversion. And we would like to get there
3 as soon as we could.

4 MR. SANDERS: Okay. Now, let's see, you're not an
5 expert on fisheries biology; is that correct?

6 MR. MATHEWS: That's correct.

7 MR. SANDERS: And you're, likewise, not an expert on
8 hydrology?

9 MR. MATHEWS: To the point that I can tell you
10 months of flow, months of impaired flows, those terms,
11 those things, we've gained a lot of experience in over the
12 last 20 years.

13 MR. SANDERS: Okay.

14 MR. MATHEWS: If an expert is somebody that's 50
15 miles away from home and carries a briefcase, I'm not one.
16 But if you want to ask questions on how the river works, I
17 can give you credible answers.

18 MR. SANDERS: Sure. But you're, certainly, an
19 expert farmer even though you don't carry a briefcase.

20 MR. MATHEWS: I guess.

21 MR. SANDERS: Okay. And you're testifying
22 basically -- you're testimony is about farming and how
23 this proposal relates to farming?

24 MR. MATHEWS: I'm also testifying as the president
25 of the Cordua Irrigation District, on how this proposal

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1 affects our district which affects all the farmers in our
2 area.

3 MR. SANDERS: Fair enough.

4 MR. MATHEWS: It's not just a farmer's testimony.

5 MR. SANDERS: Right, I understand.

6 MR. MATHEWS: I have been a director of the Cordua
7 since 1964, or fall of '63. Before that, my father was
8 there. I was in on many discussions in the '50s when
9 there wasn't enough -- a dry year would come along, they
10 would work with PG&E on the Old Bullards Bar, put extra
11 boards in to try to keep a little extra water, work with
12 PG&E. And the operation of Old Bullards Bar and the
13 narrow -- not the -- yeah, the Englebright Reservoir so we
14 could have enough water to operate during the year.

15 MR. SANDERS: Okay.

16 H.O. BROWN: Mr. Sanders, this is your time, of
17 course, to use it as you want. And if you want a short
18 answer, or a "yes" or "no" --

19 MR. SANDERS: I'm trying to be polite and --

20 H.O. BROWN: Yes.

21 MR. SANDERS: -- I don't want to cut Mr. Mathews
22 off.

23 MR. MATHEWS: I'm not trying --

24 MR. SANDERS: Forgive me for cutting you off in the
25 future. We are just trying to move through this --

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1 H.O. BROWN: Wait a minute. When I talk, everyone
2 listens, because Mary can only do one at a time. She's
3 good.

4 It's your call. If you want a short answer, just
5 let Mr. Mathews know and you can move on.

6 MR. SANDERS: Okay. Thank you, Mr. Brown.

7 So your expert Mr. Reid testified about the
8 impacts of this decision to waterfowl.

9 MR. MATHEWS: That's correct. But -- yes.

10 MR. SANDERS: Okay.

11 H.O. BROWN: Quick study.

12 MR. SANDERS: Okay. Well, then I'm going to go to
13 Page 6 of your testimony. The paragraph labeled number
14 five, the first, second, third, fourth paragraph down --
15 or fourth sentence down, I'm sorry.

16 (Reading):

17 "These practices have developed over decades
18 and result in Cordua being the primary location
19 for birds migrating to feed during the early
20 portions of migration period."

21 That's your testimony?

22 MR. MATHEWS: That's correct.

23 MR. SANDERS: Okay. Have you conducted surveys?

24 MR. MATHEWS: The Fish and Game -- pardon me, I
25 misspoke. I think it was the California CWA probably as

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1 long as eight or nine years ago, I'm not sure when it
2 started, would tag birds primarily on the west -- or on
3 the east side of the valley.

4 They were primarily hence spring. And then they
5 would go around with radiotelemeters. In conversations
6 with the man making the telemetering, one year they tagged
7 like 40 birds. And something like 32 of those birds were
8 in the District 10 area. One time early in the thing --
9 and this man --

10 MR. SANDERS: Okay.

11 MR. MATHEWS: -- was quite amazed that something
12 that started on the west side of the valley, they all
13 wound up in this District 10 area.

14 MR. SANDERS: District 10, okay. But your expert
15 testified that District 10 had about 3,000 acres of
16 wetland that were not farmed. So --

17 MR. MATHEWS: Our expert took his information off --
18 we call it something like the, "North American Basin
19 Plan." And I tried to -- I read his testimony on Sunday
20 before his testimony and I knew it was an error. And I
21 talked to the CWA people after he testified and we have
22 much -- we have better documents by what we pay and what
23 we flood than he was testifying to.

24 MR. SANDERS: Okay. Okay.

25 MR. MATHEWS: And I believe you have those

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1 documents, too.

2 MR. SANDERS: Right. Okay. Similar question, I'm
3 going to paragraph 5.2 on Page 7. In your -- it says, the
4 last sentence,

5 (Reading):

6 "In my observation there will be no other place
7 for those birds to go since Butte, Sutter,
8 Colusa, and Glenn County farmers have often not
9 even commenced harvesting by the time we are
10 ordinarily, substantially finished flooding the
11 fields."

12 "No other place to go." So are there wetlands
13 that are not rice fields in the District 10 area?

14 MR. MATHEWS: There -- he uses the word 3,000 acres,
15 there's not 3,000 acres. If you looked in Cordua -- I
16 think I've got my -- let me see. We have less than 500
17 acres of wetlands in Cordua. There's no wetlands in
18 Hallwood. There's some wetlands in B.V.I.D. that have
19 been developed in the last few years.

20 But I would think it's still in that 400-acre
21 area. And there's approximately 150 acres in Ramirez. So
22 that would be the total wetlands in the District 10 area.

23 MR. SANDERS: Okay. On Page 10 of your testimony,
24 under, "Water Temperature Requirements," paragraph 6.0.

25 //

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1 (Reading):

2 "Everyone agrees that the temperatures of
3 waters in the Yuba River in the state of nature
4 cannot sustain temperatures you are seeking to
5 employ here."

6 What do you mean by, "everyone agrees"?

7 MR. MATHEWS: When the state of nature as you've
8 seen by the charts, when you have a low water year and
9 you're swimming in Downieville, headquarters of the north
10 Yuba, and if you are trying to have 60-degree temperature
11 at Daguerre Point, you would think the water at
12 Downieville would have to be colder than 60.

13 When you swim in the swimming hole all summer, it
14 is nowhere near 60 degrees, it's much warmer. So in the
15 state of nature, I would suggest that everyone would have
16 to agree that the waters that they're asking for at
17 Daguerre Point of 60 would be colder than the state of
18 nature. Now, maybe you could find someone who doesn't
19 agree with that.

20 MR. SANDERS: Have you reviewed the temperature data
21 personally?

22 MR. MATHEWS: At --

23 MR. SANDERS: The temperature data comparing, say,
24 the temperatures in the Lower Yuba, or Daguerre, or
25 anywhere in the Lower Yuba for that matter, before the

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1 construction of Bullards Bar?

2 MR. MATHEWS: Yes. When we were involved with the
3 screening, we thought -- we had more data in 1962 that we
4 defined this one shed, we just weren't able to come up
5 with the data.

6 St. Maurice was our engineer at the time and was
7 going to help represent Cordua on how they were going to
8 operate the louvers. That was our discussions in the '62,
9 '65 area. He's dead now. And we asked his firm if they
10 could find more data and we couldn't find the data that we
11 reviewed at the time.

12 MR. SANDERS: Okay. On Page 12, that first
13 paragraph in quotes, it says,

14 (Reading):

15 "In the period of the '50s and '60s the salmon
16 populations and steelhead populations were
17 numerous and healthy."

18 On what basis do you make this statement?

19 MR. MATHEWS: I did not make this statement. This
20 is a quote. It's my observation in the year, like, 1965
21 there was so little water in the Yuba River during the
22 summertime that Wilbur Ranch had to take the bulldozer and
23 construct a dam to keep the water just for their pump.
24 And no water was going over through Daguerre Point at that
25 point.

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1 So if you had a healthy salmon industry you would
2 expect that there would have been flows in the area below
3 the Daguerre Point Dam. And, in fact, in that year the
4 Fish and Game asked Cordua, when there was a little bit of
5 extra flow, if they could take the water down through Jack
6 Slough, because they constructed a device at the mouth of
7 the Yuba to keep the fish out, because they would go up
8 there and die.

9 MR. SANDERS: Okay. We --

10 MR. MATHEWS: Tell me, "short answer." I'm not
11 trying to get --

12 MR. SANDERS: Let me just go back to something you
13 said. You didn't write this. Who wrote this?

14 MR. MATHEWS: This quote right here?

15 MR. SANDERS: This quote, yeah.

16 MR. MATHEWS: This is a quote that Paul Minasian
17 found.

18 MR. MINASIAN: Yeah. It's in the staff report.

19 MR. SANDERS: In the staff report?

20 MR. MINASIAN: Yeah.

21 MR. SANDERS: Do you have any idea where?

22 MR. MINASIAN: I'm sorry, I didn't cite the page.

23 MR. SANDERS: Well, so the staff report says,

24 (Reading):

25 "Is it possible that man's arrogance towards

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1 millions of years' of adaptation by fish and
2 crops alike and an attitude that we can know
3 better than nature" --

4 MR. MINASIAN: No. No.

5 MR. SANDERS: -- "what is good, causing us to assume
6 that cold water is better for the environment."

7 MR. MINASIAN: Right. You're absolutely right. The
8 quotation should end before "analysis" -- right before --
9 right after the word, "decision." Yeah. You're
10 absolutely right.

11 MR. FRINK: Excuse me, Mr. Minasian.

12 MR. MINASIAN: Yeah.

13 MR. FRINK: I believe right before that it talked
14 about --

15 H.O. BROWN: Mr. Campbell?

16 MR. CAMPBELL: Based on this, is this witness asking
17 to amend his written testimony?

18 MR. MINASIAN: Yes. Thank you, Mr. Campbell.

19 H.O. BROWN: Thank you, Mr. Campbell.

20 Mr. Frink.

21 MR. FRINK: Yes, Mr. Brown. I'm still a little
22 unclear. You said the quote should end after the word,
23 "decision."

24 MR. MINASIAN: Yes.

25 MR. FRINK: Well, that sentence refers to,

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1 (Reading):

2 "Water temperatures during both the periods
3 before Bullards Bar and after Bullards Bar were
4 substantially warmer than the temperatures
5 proposed to be maintained in May, June, July,
6 and August of each year in the staff report and
7 the proposed decision."

8 I don't think the staff report and proposed
9 decision talked about the flows proposed to be maintained
10 in the staff report and proposed decision.

11 Do you know where this information came from?

12 MR. MINASIAN: I believe that the quotation should
13 end after the word, "date." And the indentation should
14 end at that point. I'll find it for you and give you the
15 page number. I apologize.

16 H.O. BROWN: Mr. Campbell.

17 MR. CAMPBELL: I'd also like to make an argument
18 that based on this exchange that we've had here, that the
19 witness is not completely familiar with his own testimony
20 relative to the knowledge of his attorney.

21 And on that basis, number one, I would request
22 that it be stricken; or in the alternative, that the Board
23 note about this infirmity in the testimony. And on that
24 basis, I'd take a look -- adjudge the credibility of this
25 witness' testimony.

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1 H.O. BROWN: Thank you, Mr. Campbell.
2 Mr. Minasian?
3 MR. MINASIAN: Yeah. That's fair.
4 H.O. BROWN: All right.
5 MR. MINASIAN: This is not central to his testimony.
6 H.O. BROWN: Thank you, both of you gentlemen.
7 Proceed.
8 MR. LILLY: Excuse me, Mr. Brown.
9 H.O. BROWN: Mr. Lilly.
10 MR. LILLY: We need clarification whether this --
11 both Mr. Campbell and Mr. Minasian referring to this
12 testimony, I assume that they're referring to just Page
13 12, not the entire exhibit. I would appreciate it if the
14 record would be clear on that point
15 MR. MINASIAN: That's right.
16 H.O. BROWN: Mr. Minasian, what's your --
17 MR. MINASIAN: That's correct.
18 H.O. BROWN: Mr. Campbell.
19 MR. CAMPBELL: That is correct, but it's within the
20 Board's discretion to decide or understand that the rest
21 of this witness' testimony may, also, be so -- be
22 undermined by the obvious lack of knowledge on this
23 particular point
24 H.O. BROWN: Thank you, Mr. Campbell.
25 MR. CAMPBELL: Thank you.

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1 H.O. BROWN: Mr. Lilly.

2 MR. LILLY: And we suggest on that point that
3 Mr. Campbell's suggestion, statement, or objection is
4 improper. And that if he believes that other parts of
5 Mr. Mathews' testimony are not substantiated, or not,
6 actually, his testimony, his proper vehicle is through
7 cross-examination rather than attempting to just have the
8 Board not recognize the testimony.

9 H.O. BROWN: Mr. Campbell.

10 MR. CAMPBELL: I'm not asking the Board to not
11 recognize the testimony. I'm just pointing out the
12 Board's discretion to evaluate the credibility of this
13 witness based on this particular infirmity in his
14 testimony.

15 And it's not necessary for me to take up the time
16 of this Board and these parties to go further through that
17 in cross-examination.

18 H.O. BROWN: Thank you, Mr. Campbell.

19 Your concerns are so noted, all three of you.

20 Please, proceed, Mr. Sanders.

21 MR. SANDERS: Okay. So let me just go back to
22 "state of nature" for one minute. When you refer to state
23 of nature, are you talking about before or after
24 California was settled by European-Americans?

25 MR. MATHEWS: I'm primarily referring to before New

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1 Bullards Bar was built.

2 MR. SANDERS: Okay. But what about before or after
3 Englebright?

4 MR. MATHEWS: Again, I was born in 1938.
5 Englebright was built in 1940. I think my testimony would
6 have to be after Englebright.

7 MR. SANDERS: Okay.

8 MR. MATHEWS: As my experience.

9 MR. SANDERS: Do you know if it's true that before
10 Englebright was constructed, salmon and steelhead were
11 able to migrate into the upper Yuba watershed?

12 MR. MATHEWS: I have seen a picture that shows the
13 salmon jumping a fall. I assume that's your total
14 knowledge, too, so -- unless you're substantially older
15 than I am.

16 MR. SANDERS: Yeah, no personal knowledge, for sure.
17 So you do understand -- it is your understanding that
18 Englebright created a barrier to -- an impenetrable
19 barrier to fish passage?

20 MR. MATHEWS: I think that would be self-evident.

21 MR. SANDERS: Okay. Good. So in the state of
22 nature, were salmon and steelhead trapped in the Lower
23 Yuba River, or could they migrate above Englebright?

24 MR. MATHEWS: I've stated my state of nature starts
25 in 1940.

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1 MR. SANDERS: Okay. Fair enough. I'm going to move
2 to Page 15 now. And there's -- you'll see that there is
3 a, I guess, the -- there's a portion of a sentence from
4 Page 14. And, then, there's the first full sentence, the
5 second full sentence, and then I'm going to refer to the
6 third sentence.

7 (Reading):

8 "If temperatures below the state of modifying
9 nature existed in the Yuba River and the period
10 of the '50s and '60s are desirable for fish,
11 please, make sure that before ordering such a
12 lot-step requirement that the Yuba County Water
13 Agency maintain a maximum uniform temperature
14 in the water which is five to ten degrees below
15 historical levels, that is that it, in fact,
16 serves a purpose; because somewhere in the
17 world, at least, 18 to 20 people per acre are
18 going to die, because no food was produced on
19 each cold water affected acre in Cordua."

20 Could you tell me what you mean by that sentence?

21 MR. MATHEWS: I guess real quick, without making a
22 long explanation, there's about 400 million metric tons of
23 rice raised in the world. It takes about 220 pounds to
24 give people a daily caloric intake. That equates to four
25 million people. So rice is a major crop to the world. So

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1 if you -- if there's a food shortage in the world any time
2 you don't grow something, it would equate into those
3 numbers.

4 MR. SANDERS: Well --

5 MR. MATHEWS: I could be more detailed, but I'm
6 trying to make a short answer.

7 MR. SANDERS: Right. Right. Where did you get that
8 number, "18 to 20 people"?

9 MR. MATHEWS: You want me to go back to the four
10 million and work backwards, or do you want me to --

11 MR. SANDERS: Okay. Hold on. I guess what I'm
12 trying to get at is: Where do you get the data? Have you
13 personally studied the world economy, or what?

14 MR. MATHEWS: You use the assumption, and they come
15 off the statistics, that last year there were 390 million
16 metric tons of rice, whole rice raised. If you use the
17 label on the bag of how many calories there is to a cup of
18 rice and if you multiply it out, four billion people will
19 exist in the world out of the six eating primarily rice as
20 their primary caloric intake. Now, if you want me to go
21 to a blackboard, I could do all the numbers. I don't
22 think you want --

23 MR. SANDERS: No, that's fine.

24 MR. MATHEWS: I don't think you want me to spend all
25 the --

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1 MR. SANDERS: Do you happen to know if that
2 particular methodology that you just described would be
3 the same methodology that say an agricultural economist
4 would use to determine this number?

5 MR. MATHEWS: I came up with the number, because I
6 was asked to speak at the Gianini Graduate School at
7 Berkeley. And I needed something to start the class with
8 on how to do it. And I used that thing and nobody in the
9 class challenged me, including the instructor.

10 MR. SANDERS: Okay. Do you know -- what did you
11 say, 400 million metric tons of rice? Is that produced a
12 year?

13 MR. MATHEWS: In the world.

14 MR. SANDERS: In the world?

15 MR. MATHEWS: That's milled tons.

16 MR. SANDERS: Okay. How much is produced at the
17 Cordua Irrigation District?

18 MR. MATHEWS: Okay. That's a fair question. If we
19 had 9,000 acres and we had four tons to the acre, that
20 would be 36,000 tons. And if you multiplied it by 60
21 percent that would be milled rice.

22 MR. SANDERS: 36,000 by 60 percent?

23 MR. MATHEWS: Yes.

24 MR. SANDERS: I have to do my math here right on the
25 spot.

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1 MR. MATHEWS: Say, 20,000 tons.

2 MR. SANDERS: I see Mr. Rue has a calculator, maybe
3 he could help us out.

4 MR. RUE: No.

5 MR. MATHEWS: My father always told me if you had to
6 use a calculator, the other person would out figure you.

7 MR. SANDERS: You're doing it now.

8 MR. MATHEWS: Okay.

9 MR. MINASIAN: Approximately --

10 MR. SANDERS: Is that approximately --

11 MR. MATHEWS: -- 20,000 --

12 MR. SANDERS: Is that approximately --

13 THE COURT REPORTER: Okay. You're going to have to
14 speak one at a time.

15 MR. SANDERS: I'm sorry.

16 Is that approximately 20,000 metric tons?

17 MR. MATHEWS: Yes.

18 MR. SANDERS: Of the 400,000 metric tons on the
19 world market, so what share of the world market is made up
20 of Cordua Irrigation District rice?

21 MR. MATHEWS: I want to guess 2/100ths of one
22 percent, or 2000ths of 100 percent.

23 MR. SANDERS: So if Cordua Irrigation District
24 suddenly stopped producing rice -- I'm sorry.

25 I'm sorry, Mr. Brown. I'll withdraw that

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1 question.

2 MR. MATHEWS: Thank you.

3 MR. SANDERS: Okay. I'm going to move on to
4 paragraph 6.2. The second sentence which starts on Page
5 15 and goes on to 16.

6 (Reading):

7 "At this level, microorganisms consumed by
8 waterfowl that are grown on flooded fields will
9 simply be suppressed in production by
10 temperature of any surface water available for
11 use for waterfowl habitat."

12 What microorganisms are you talking about?

13 MR. MATHEWS: They are primarily invertebrates.
14 They come from the breakdown of the rice in the soil. And
15 the ducks consume the invertebrates to build up protein
16 instead of starch, where they would take just the actual
17 grains of rice.

18 MR. SANDERS: Okay. And you don't happen to know
19 which species of invertebrates?

20 MR. MATHEWS: Their Latin-names, no, I do not.

21 MR. SANDERS: Okay. And have you personally
22 conducted any studies about the effects of various
23 temperatures on the production of invertebrates?

24 MR. MATHEWS: No, only with conversations with other
25 people, the CWA, or the California Waterfowl Association's

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1 biologist.

2 MR. SANDERS: Okay. Now, these are questions,
3 actually, for both Mr. Rue and Mr. Mathews. And I think
4 I'm just going to ask the question and then have each of
5 you give an answer. If that's okay with Mr. Brown.

6 Do you have a program to conserve water in the
7 district, in your respective districts? Mr. Rue, first
8 then Mr. Mathews.

9 MR. RUE: Yes. We've -- our district has adopted a
10 30/30 plan. It includes conservation aspects.

11 MR. SANDERS: How about you, Mr. Mathews?

12 MR. MATHEWS: Yes. We've also done the well plan.
13 We, also, have a policy that if you want to discharge
14 water, there's a way to discharge it into your neighbor's
15 field without letting it get into Jack Slough, that's
16 going to be the requirement.

17 MR. SANDERS: Okay. Do you have a program to
18 monitor agricultural return flows in your district?
19 Again, Mr. Rue then Mr. Mathews.

20 MR. RUE: We do not other than on an informal basis.

21 MR. MATHEWS: We instruct our ditch tender that if
22 he observes any major spill coming out of the field, he
23 will warn the grower that he's going to turn that much
24 water out, off at the headgate. So that we try not to
25 have people irrigate in a wasteful manner.

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1 MR. SANDERS: Okay.

2 MR. RUE: Mr. Sanders, I would add when I said
3 "informal," we're talking about an operational policy,
4 some kind of a metering device --

5 MR. SANDERS: Something written?

6 MR. RUE: Yes.

7 MR. SANDERS: Okay.

8 MR. RUE: That would meter on a daily basis.

9 MR. SANDERS: Okay.

10 MR. RUE: So we do not have a daily metering.

11 MR. SANDERS: Okay. Fair enough. Do you have a
12 program to increase efficiency of the water use within
13 your district?

14 MR. RUE: What did you say?

15 MR. SANDERS: A program to increase the efficiency
16 of water use within your district?

17 MR. RUE: I guess if that means the efficient
18 application of water and lack of unnecessary spillage
19 return, yes, we do.

20 MR. SANDERS: Okay.

21 MR. MATHEWS: In our district since we noted that
22 our water rights are supposed to be at 72,000 and last
23 year we used 72,900, we've put \$20,000 separate in our
24 budget to connect all of the fields to their neighbors.
25 We did this in 1977. We are going to reinstitute that and

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1 insist that the water cannot go into the drain, if it's
2 possible to get it to other fields.

3 H.O. BROWN: How much longer, Mr. Sanders?

4 MR. SANDERS: Ten, 15 minutes.

5 H.O. BROWN: Good time to take a break, or do you
6 want to go on?

7 MR. SANDERS: I think now is as good of a time as
8 any.

9 H.O. BROWN: All right. Be back here at 1:00.

10 (Luncheon recess.)

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THURSDAY, MARCH 9, 2000, 1:00 P.M.

SACRAMENTO, CALIFORNIA

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H.O. BROWN: Come back to order.

Mr. Sanders.

MR. SANDERS: Thank you, Mr. Brown.

Okay. We're just going to continue where we left off. I'm going to ask questions for the two of you to answer. First, Mr. Rue and then Mr. Mathews.

Are you familiar with Yuba County Water Agency's agricultural water management program submitted by SYRCL-2?

MR. RUE: I can't say that I am. I can't tell you that I haven't seen it, but offhand I don't recognize --

MR. SANDERS: That's fine.

MR. RUE: -- having read it.

MR. MATHEWS: That would be my same answer, too.

MR. SANDERS: Okay. Are you aware of any threatened or endangered species that occupy the rice fields in Yuba County within your districts?

MR. MATHEWS: Approximately 20 years ago when the endangered species was an issue on bald eagles, one of the bald eagles died on our property approximately a quarter mile from our house with cholera on Christmas Eve night.

MR. SANDERS: Okay.

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1 MR. RUE: We have had a lot of discussions about the
2 giant garter snake. I don't know if that's threatened.
3 It is one that we are concerned with, I can tell you that.

4 MR. SANDERS: Okay. That's fine. Now, this is --
5 I'm going to ask you to speculate on what the farmers
6 within your member districts, how they would react.

7 Would the farmers in your district oppose
8 critical habitat designation for giant garter snake if
9 that designation included the rice fields in Yuba County?

10 MR. MATHEWS: I can speak within our area, when you
11 get designated you're limited on what times you can clean,
12 drain ditches, what time you can mow your fields. You
13 have a lot of limitations. We farm, as I said, for duck
14 clubs.

15 So we're quite concerned about, you know, habitat
16 and nesting area, but we would not want to invite in a
17 whole regime of things that we couldn't do which we
18 presently do that make our habitat profitable.

19 MR. SANDERS: Fair enough.

20 MR. RUE: I think it's fair to say that any increase
21 in regulation that is -- is and can be inflexible would,
22 certainly, be resisted. However, I think it should be
23 noted that the rice industry, in general, has been very
24 aware of its role as a habitat for not only the giant
25 garner snake, but many other species as well.

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1 So to say that someone would resist designation
2 as critical habitat would not mean to say that the spirit
3 that that designation represents, certainly, isn't felt by
4 those that would be involved.

5 MR. SANDERS: Okay. Are either of you familiar with
6 vernal pools?

7 MR. RUE: Yes, I am to a degree. I mean, I'm not an
8 expert, but I know what they are.

9 MR. SANDERS: Okay. And do they exist within your
10 district?

11 MR. RUE: Yes, they do.

12 MR. SANDERS: And what about you, Mr. Mathews?

13 MR. MATHEWS: There's still probably a few left. I
14 would say that 98 percent of our district has been leveled
15 or releveled. So it's into farmlands, or artificial
16 wetlands. So they would probably not classify as a vernal
17 pool. As I understand it a vernal pool, from nature, it
18 hasn't been disturbed.

19 MR. SANDERS: Okay. And your testimony is that most
20 of the vernal pools within your district have been
21 destroyed?

22 MR. MATHEWS: If they were there to begin with.

23 MR. SANDERS: Okay. Now, do you know if any of the
24 farmers within either of your districts use special
25 management practices to avoid impacts to threatened or

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1 endangered species on their property?

2 MR. RUE: Is that a word of art, Mr. Sanders? If it
3 is, I don't know if that is something other than --

4 MR. SANDERS: Special management practices?

5 MR. RUE: Yeah, if that means something other than
6 what the common vernacular would be --

7 MR. SANDERS: Just the common vernacular.

8 MR. RUE: I would say --

9 H.O. BROWN: Hold on just a minute. Mr. Frink,
10 could you come up.

11 Off the record for a minute.

12 (Off the record from 1:05 p.m. to 1:06 p.m.)

13 H.O. BROWN: Mr. Sanders, what is this question
14 leading to as it relates to the issue at hand?

15 MR. SANDERS: I'm moving through it rapidly, but
16 basically the parties claim that they take management
17 practices to benefit one species of wildlife. That is --
18 that is the waterfowl.

19 And I'm just curious to know whether it's -- they
20 also manage other -- for other wildlife species,
21 particularly, those that are threatened and endangered
22 like the salmon and steelhead.

23 H.O. BROWN: Mr. Frink.

24 MR. FRINK: Well, in terms of salmon and steelhead,
25 I don't believe that the individual farmers control the

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1 diversions. So that would be irrelevant, I think, in
2 terms of asking the individual farmers, Mr. Brown.

3 If there were questions about other endangered
4 species on their property, I guess, that is marginally
5 relevant. Are you about to wrap up this area?

6 MR. SANDERS: Yes, I am about ready to wrap it up.
7 But I would, also, note that their waterfowl expert
8 yesterday testified about the giant garter snake as being
9 one of the species that utilizes these flooded fields. So
10 I'm curious to know whether they protect these species or
11 not.

12 H.O. BROWN: All right. You're right. Proceed.

13 MR. SANDERS: Thank you, sir.

14 Though, I'm going to move right along. Flooded
15 rice fields are attractive habitat for waterfowl; are they
16 not?

17 MR. MATHEWS: Yes.

18 MR. RUE: Yes.

19 MR. SANDERS: And you testified that duck clubs use
20 the rice fields for hunting; is that correct?

21 MR. MATHEWS: Yes.

22 MR. SANDERS: So, in other words, you flood the rice
23 fields to attract more birds so that they can be shot; is
24 that correct?

25 MR. RUE: In our case, Mr. Sanders, I can't speak

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1 for everybody but I can only speak from my personal
2 experience. Of the acreage that we flood we, actually,
3 hunt probably about 20 percent of it. The balance of the
4 acreage is all left undisturbed. And the reason we do
5 that is because of the long-term viability of the species
6 that utilize that. And that's our approach.

7 So I think for you to make a statement like that,
8 I would have to say that's incorrect, because that's not
9 how we manage the habitat.

10 MR. SANDERS: Okay.

11 MR. MATHEWS: I would say the same thing. We have
12 farmers with like a 500-acre ranch. They take a 100-acre
13 field, put it into permanent artificial habitat. Last
14 year they took another 150 acres so they're down to 200
15 acres out of their 500 acres they're farming.

16 There's only five people that hunt it
17 occasionally. So my answer would be the same that they're
18 more interested in the resource than they are of putting
19 meat in their freezer.

20 MR. SANDERS: Okay. Who manages waterfowl
21 populations and regulates hunting in California?

22 MR. MATHEWS: It's my understanding that the federal
23 people set up guidelines that our California Game
24 Commission comes up with a plan, they advertise it for a
25 certain amount of time and then they finalize it.

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1 MR. RUE: I would just say -- you know, I can only
2 tell you that the answer to that would be, obviously, the
3 federal, state authorities and private interests all
4 participate in that activity.

5 MR. SANDERS: Okay. Just a few more questions.

6 Mr. Rue, you testified that the government
7 support for rice is down \$60 an acre; is that correct?

8 MR. RUE: Yes. Actually, more if you go back more
9 years; but, yes, it is.

10 MR. SANDERS: Okay. So you still receive how many
11 dollars per acre from the federal government?

12 MR. RUE: In the year 2000 it's approximately \$140
13 an acre. It changes depending on what one's established
14 yield is. But using a round number, it's about \$140.
15 Next year it will fall to, approximately, 116 or \$117.
16 The year after that it will fall to around \$110 to \$108.
17 And, then, it will go to zero after that.

18 MR. SANDERS: And what's the price of rice currently
19 on the world market?

20 MR. RUE: The world market price of rice would be --
21 is difficult to say in the sense there are many different
22 varieties and types of rice. And the rice we grow in
23 California is not generic to world supply. But on
24 average, the price of rice -- you calculate it back to a
25 farmer, whether he be in Thailand or the United States,

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1 the Thai patty rice price ranges between five and a
2 quarter and seven and quarter dollars per 100 weight.

3 MR. MATHEWS: To put it in perspective, the world
4 market price of finished white rice, ready to eat, is in
5 the area of 200 to \$250 a metric ton.

6 MR. SANDERS: I guess what I'm getting at is: Would
7 it be economical to farm rice in Yuba County without a
8 government subsidy?

9 MR. RUE: If you assume the trade barriers that are
10 in place and the subsidies that exist around the world
11 outside this country all remain in place, the answer is
12 that it would be very difficult to compete
13 internationally.

14 That's not to say that you couldn't compete,
15 because, certainly, the varieties of rice that we grow do
16 have higher value than what I would call
17 generic-world-price rice. So assuming all other trade
18 rates and subsidies stay in place, it would make for a lot
19 heavier going than we're experiencing right now, which is
20 no picnic.

21 MR. SANDERS: Okay.

22 MR. MATHEWS: If I could add to that?

23 MR. SANDERS: Sure. Sure.

24 MR. MATHEWS: With some special varieties and the
25 lower rents, we farm some stuff without subsidies already.

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1 MR. SANDERS: Okay. So Mr. Rue, does Yuba County
2 produce a significant portion of the world rice?

3 MR. RUE: Well, I've not run the numbers,
4 Mr. Sanders, but it's important to note that the amount of
5 rice that's produced in the world, something like three
6 percent, is, actually, traded across international
7 boundaries.

8 Most of the rice produced in the world is
9 consumed within 8 to 12 kilometers of where it's,
10 actually, grown. So when you factor all that back and
11 calculate the amount of rice that the U.S. represents as a
12 component of that, it's a lot higher number than would be
13 apparent when you look at 390 million tons of production
14 versus what we produce locally.

15 MR. SANDERS: Okay. So for what you just said,
16 would you agree with Mr. Mathews' statement on Page 15 of
17 his testimony that,

18 (Reading):

19 "18 to 20 people per acre are going to die for
20 each acre that goes out of production in Yuba
21 County"?

22 MR. RUE: Well, I wouldn't purport to be an expert.
23 I can only tell you that to the degree that total food
24 production of rice is reduced, that's about what an acre
25 of rice could feed. And so, I guess, if you're somebody

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1 that's -- that doesn't have an adequate caloric intake, I
2 suppose that would be a real statement to them.

3 MR. SANDERS: But you just testified, didn't you,
4 that Yuba County rice is not generic to world supply?

5 MR. RUE: On a commercial sense.

6 MR. SANDERS: On a commercial sense. So did not --

7 MR. RUE: If you're talking about -- excuse me.

8 MR. SANDERS: So given the economics of the world
9 rice market, for every acre of rice taken out of
10 production in Yuba County, do 18 to 20 people perish?

11 MR. RUE: I couldn't give you the answer to that.
12 That involves things like -- I mean, what is the level of
13 food aid around the world that we participate in? How is
14 that targeted? Which areas are impacted over all that?
15 So to make that statement, up or down, assumes lots of
16 things that we would have to set in place in order to
17 answer that accurately.

18 MR. SANDERS: That's exactly my point. Thank you
19 very much, sir.

20 I'm done, Mr. Brown.

21 H.O. BROWN: Thank you, Mr. Sanders.

22 Mr. Cook.

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CROSS-EXAMINATION OF SOUTH YUBA WATER AGENCY
AND CORDUA IRRIGATION DISTRICT

BY MR. COOK

MR. COOK: Gentlemen, I believe we've gone through this question and answer process once before back in 1923. Do you recall that?

MR. MATHEWS: Might be '92.

MR. COOK: Did I say '92 or 102? Well, in any event, I'm going to try to ask questions of individuals. Hopefully, I can direct them toward that individual, but we'll just see how it works out.

I would also appreciate anything that you can answer with a "yes" or "no" answer, if you could do so. It will help speed this whole thing along. And I'll try to make my questions adequate so you can do that, if it's possible. I don't claim to be perfect at that.

Mr. Rue, do you own or operate 300 acres of pasture land?

MR. RUE: We own some and then operate some by leasing it, yes.

MR. COOK: How much do you own?

MR. RUE: Of pasture?

MR. COOK: Yes.

MR. RUE: We're -- that's an interesting

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1 statement -- question, because we have -- we just started
2 a rotation program. We started raising organic rice in
3 the last several years. So we've started a rotation
4 program that we're rotating legumes, which is like
5 clovers, with rice to try to stay in an organic rotation.

6 So the amount of acreage that we own that is in
7 pasture, or has been in pasture, is probably about 350
8 acres.

9 MR. COOK: Now, is this pastureland within the South
10 Yuba Water District?

11 MR. RUE: Yes, sir.

12 MR. COOK: Is it irrigated?

13 MR. RUE: Yes, sir.

14 MR. COOK: And are you irrigating for the purpose of
15 pasture, or for this attempting to grow organic rice, or
16 both?

17 MR. RUE: Well, you have to irrigate the pasture to
18 grow the pasture. And then you -- you rotate out of the
19 pasture to raise the rice.

20 MR. COOK: What is the source of the water for the
21 pasture?

22 MR. RUE: The Yuba River.

23 MR. COOK: And you get that through the South Yuba
24 Water District?

25 MR. RUE: Yes.

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1 MR. COOK: And is that water acquired by the water
2 district from the Yuba County Water Agency at the cost of
3 \$1.25 per acre base and \$3.25 -- I don't recall what the
4 word that was used is, but there are those two figures; is
5 that correct?

6 MR. RUE: That's correct. Plus the O&M cost.

7 MR. LILLY: Excuse me, Mr. Brown. I think there was
8 a misstatement of testimony. Mr. Cook said, "per acre."
9 The testimony, previously, was per acre-foot. And it
10 would probably be better if the record clarified that.

11 H.O. BROWN: Mr. Cook.

12 MR. COOK: I will add acre-foot. I'm sorry?

13 MR. RUE: I probably should have corrected you. I'm
14 sorry.

15 MR. COOK: Thank you. What is the amount of water
16 that you use for irrigated pasture in a year?

17 MR. RUE: I've never calculated that. I couldn't
18 exactly tell you.

19 MR. COOK: Do you have any idea of how much water
20 per acre you would use?

21 MR. RUE: The only thing, I could refer to,
22 Mr. Cook, would just be my recollection of university
23 studies that talk about consumptive-use pattern -- of
24 pasture on our types of soil. And I'm afraid that
25 recollection is not great. We have always -- we have

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1 assumed, I guess, that the use on pasture is not unlike
2 that on rice.

3 MR. COOK: Thank you. Now, do you have habitat
4 flooding in the fall and, I guess, in early January for
5 this pastureland?

6 MR. RUE: No. We don't flood the pasture land.

7 MR. COOK: Is the pastureland leveled, or is it
8 rolling contour?

9 MR. RUE: We just, as a matter of fact, took the
10 last of the contours out this last year. So it's been an
11 ongoing process. As you know, I testified that the
12 groundwater level had dropped throughout the '70s and
13 early '80s. And we had some well failures and weren't
14 able to capitalize the renewal of those wells.

15 So after we -- and that's one of the reasons we
16 were working to get surface water as promised by the
17 Bullards Bar Project back in the '60s so that we could,
18 again, put our land back in production.

19 MR. COOK: Based on your written testimony, am I
20 correct in stating that your detailed economic figures
21 related to the rice land, but you don't have any relating
22 to the pastureland?

23 MR. RUE: That's correct. I didn't put any in the
24 testimony.

25 MR. COOK: Do you have any way of estimating

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1 approximate cost and revenue for the pasture land?

2 MR. RUE: I could do that, I suppose, if I sit down
3 and calculate it out. I have not done that.

4 MR. COOK: Would you say -- you've testified about
5 changing from high-value crops to lower-valued crops. In
6 that context, would you say that the pastureland is a
7 high-value crop or a low-value crop?

8 MR. RUE: In the sense of the local economy, I think
9 that it takes fewer inputs, because you're primarily,
10 obviously, using livestock to graze, at least, in our
11 case. We don't put up silage. And in the case of the
12 context that my testimony was given, was under the
13 assumption that the entire irrigation regime would be
14 impacted. And that the alternative would be some type of
15 dry, or minimum water farming.

16 MR. COOK: Well, then -- I'm not sure. Are you
17 saying, then, that the pastureland is a high-value crop,
18 or a low-value crop?

19 MR. RUE: My testimony is that the amounts of inputs
20 that it takes are fewer; therefore, the amount of gross
21 value generated is lower. The net is not dissimilar to
22 rice.

23 MR. COOK: And do you receive any government
24 subsidies for pastureland?

25 MR. RUE: No, we do not.

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1 MR. COOK: Do you own or operate 2,000 acres of rice
2 land?

3 MR. RUE: Yes.

4 MR. COOK: And is that rice land within the South
5 Yuba Water District?

6 MR. RUE: Yes.

7 MR. COOK: And are there some 8,000 acres of rice
8 land within the South Yuba Water District?

9 MR. RUE: Yes, something like 8,000. That's an
10 approximation, Mr. Cook.

11 MR. COOK: Now, the 2,000 acres, do you own a
12 portion of that, or all of that?

13 MR. RUE: I own a portion of that.

14 MR. COOK: And about what portion do you own of the
15 2,000 acres?

16 MR. RUE: Is this relevant?

17 MR. COOK: I think you've testified, Mr. Rue, about
18 2,000 -- I'm quoting from your written testimony. You've
19 come up with the 2,000 acres. And you've gone into minute
20 detail on the economics. And I, again, ask:

21 What portion of the 2,000 acres is owned by you?

22 MR. RUE: We own about 1300 acres.

23 MR. COOK: Thank you.

24 MR. RUE: I should add that that's my family,
25 includes my nephew and, you know, all of us.

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1 MR. COOK: And that's probably an approximation,
2 too. I'm not asking for a specific number.

3 MR. RUE: That's a close number.

4 MR. COOK: Thank you. You used the word in rice
5 farming of "fragility." Do you recall using that word?

6 MR. RUE: Yes.

7 MR. COOK: And would you describe your meaning of
8 that term?

9 MR. RUE: Could you --

10 MR. COOK: It's on --

11 MR. RUE: -- refresh what page that is on?

12 MR. COOK: It's on Page 1, item 3.0. It's almost in
13 the middle of the page toward the left.

14 MR. RUE: Yeah. It's -- that must be a new word,
15 Mr. Cook, but it's relatively the economics of agriculture
16 are fragile. The returns are very narrow. And as long as
17 you don't have any extraordinary climatic conditions, it's
18 on a -- I would call it on an even keel.

19 But the margins are so narrow, that any dramatic
20 increase in price, or reduction of yield can cause a
21 tremendous economic dislocation, because there's just not
22 much margin to deal with. So that's what "fragility"
23 meant there.

24 MR. COOK: Thank you. Now, do you irrigate this
25 2,000 acres that you own, or operate with water from the

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1 Yuba County Water Agency?

2 MR. RUE: Comes from the Yuba River, yes, through
3 the Agency.

4 MR. COOK: That's through the south canal?

5 MR. RUE: Yes.

6 MR. COOK: And that water is, also, at the cost --
7 to the district of \$1.25 and \$3.25 for the two different
8 types?

9 MR. RUE: Per acre-foot, yes.

10 MR. COOK: Per acre-foot, yeah.

11 MR. RUE: Uh-huh.

12 MR. COOK: Now, is it your testimony you used well
13 water in 1991 to aid the Department of Water Resources and
14 the State Water Project in meeting shortfalls due to the
15 drought?

16 MR. RUE: Yes, sir.

17 MR. COOK: Did you receive pumping costs for the
18 substantive well operation from the State?

19 MR. RUE: We received the water. I believe -- if my
20 recollection is correct, and I -- I'm going to tell you
21 that this is just my recollection, it may not be exactly
22 accurate. It seems to me that the payment was made to the
23 Yuba County Water Agency. They, subsequently, paid the
24 water district. And the water district, then, paid the
25 landowners based on how much water they actually pumped.

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1 MR. COOK: Well, did that include the costs of
2 drilling wells and installing pumps and pipes?

3 MR. RUE: Well, there was not a separate payment for
4 that. If you had to do that as a landowner, that was
5 your -- no one -- none of that was allocated. You either
6 got paid if you did; and you got paid if you already had
7 the assets in place.

8 MR. COOK: I assume, then, the payments were based,
9 to a certain extent, on the capital costs as well as the
10 immediate costs at the time?

11 MR. RUE: The payments were made based on how much
12 water you pumped.

13 MR. COOK: And the amount of the payment was based
14 on both capital costs and the costs of operation at that
15 time; is that right?

16 MR. RUE: The amount -- what the district did was
17 held back a certain amount of money in the event that
18 there was any impacts outside the District. And the rest
19 of the money was passed through.

20 MR. COOK: Well, with respect to the water that you
21 relinquished to the State, did you receive payment for
22 that water?

23 MR. RUE: To the degree that this payment stream,
24 that I just described, yes.

25 MR. COOK: I mean over and above the costs of

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1 pumping, did it include payment for the water itself?

2 MR. RUE: The amount of money that was forwarded to
3 the water district, they retained a certain amount and
4 they passed the balance through.

5 MR. COOK: But you had some idea of the amount that
6 you received; did you not?

7 MR. RUE: Yes.

8 MR. COOK: And the amount of payment that you
9 received, did that include payment for the water that you
10 were, in fact, relinquishing?

11 MR. RUE: Well, I think that you can say all of it
12 was received, because of the water we relinquished. The
13 replacement that -- costs of that water were solely up to
14 the landowner.

15 MR. COOK: Well, can you tell me how much you
16 received through this money that came originally from the
17 State?

18 MR. RUE: I believe it was in the neighborhood of 80
19 or \$90 an acre-foot. I can't remember exactly.

20 MR. COOK: And the water that you relinquished was
21 being paid to the Yuba County Water Agency at \$1.25 and a
22 dollar -- and \$3.25; is that right?

23 MR. RUE: That's correct.

24 MR. COOK: Would you repeat that, again, the amount
25 that you said you received?

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1 MR. RUE: 80 to \$90, if my recollection is correct.

2 MR. COOK: Thank you. So that was a very profitable
3 operation for you; was it not?

4 MR. LILLY: I object --

5 MR. RUE: Not as much as we thought.

6 H.O. BROWN: Okay. Mr. Lilly.

7 MR. LILLY: I'm going to object that that assumes
8 facts not in evidence. He has no evidence of their
9 pumping costs, or the cost of the replacement water. So
10 for Mr. Cook to say that is incorrect --

11 H.O. BROWN: Mr. Cook is building a pretty good
12 foundation here. I'll allow the question.

13 MR. RUE: I said our costs were, certainly, a lot
14 higher than we expected in more than one way. There were
15 the direct costs of pumping, rehabilitating all the
16 equipment that that entailed. We had -- when we installed
17 the surface water supply, naturally, that delivered the
18 water to different portions of the property than had been
19 with the pumps.

20 So we had to expend a lot of money in conveyance
21 in order to get the pumped water back into the system so
22 we could adequately utilize it. And, then, secondly, the
23 indirect costs, I suppose you could call, is that we did
24 not -- were not able to generate the amount of waters out
25 of the wells that we expected to. And, therefore, our

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1 whole cropping pattern was impacted.

2 MR. COOK: Now, I'm having a little difficulty
3 understanding all of the details of the costs of
4 production that you have in your written testimony.
5 That's my problem, but, perhaps, I could simplify it if I
6 can get to some later conclusions.

7 I believe, and correct me if I'm wrong, I believe
8 that you have concluded that current revenue is some \$845
9 an acre for the rice area, for the rice land; is that
10 correct?

11 MR. RUE: Yes. Using the assumptions that I made,
12 that's correct, on Page 6, paragraph 10.

13 MR. COOK: Uh-huh. And that, also, costs if you
14 pump -- if you're forced to pump from wells, would be a
15 total cost, including the cost of the wells, would be some
16 \$750 per acre; is that correct?

17 MR. RUE: That's correct.

18 MR. COOK: And, then, in addition to that, you added
19 a rental factor which would be eight percent of a value, I
20 think you said, 2,000, \$2500 an acre; is that correct?

21 MR. RUE: Yes, sir.

22 MR. COOK: Based on those figures, is it your
23 testimony that in the event of well use you would have a
24 return amounting to a negative 50 to \$90 an acre; is that
25 correct?

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1 MR. RUE: On an economic basis, yes, sir.

2 MR. COOK: Well, when you say "an economic basis,"
3 does that have something to do with reality, or is that --

4 MR. RUE: Well, I mean I guess if your statement is
5 would there be positive cash flow if you had no land rent,
6 no land cost, the answer is, yes, there would be positive
7 cash flow. But when you calculate -- you notice I didn't
8 include in here any of the costs of carrying the land. I
9 used a return of eight percent.

10 MR. COOK: Yeah.

11 MR. RUE: Now, that assumes that whoever it is that
12 holds the land, whether it's the farmer that holds it and
13 farms it, or that he rents, it those people are paying 20
14 to \$25 an acre in property taxes and all the related costs
15 of maintenance for that property.

16 MR. COOK: I understand. That's perfectly correct
17 as near as I can determine.

18 Now, with the negative with these assumptions of
19 rental and the other, the negative would be between 50 to
20 \$90 an acre I think you said. Would it be fair to round
21 that off and say on an average that it would be \$70 an
22 acre, that's just going halfway between the two?

23 MR. RUE: I think, Mr. Cook, based on the fact that
24 this whole conclusion is based on an assumption that the
25 rice, actually, brings \$8.60 at the market, that it would

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1 MR. COOK: Well, then, you know, for purposes of the
2 discussion, we'll just say 75. Would that be all right?

3 MR. RUE: That's fine.

4 MR. COOK: And we can say 75 on the other if you
5 want.

6 MR. RUE: That's okay.

7 MR. COOK: So with well pumping, your testimony, I
8 think, has the effect that there would be \$70 an acre, or
9 let's say, \$75 an acre negative revenue; and after
10 subtracting well pumping costs, you would have an
11 additional \$75 an acre.

12 Based on your current status, because you're not
13 pumping now, are you?

14 MR. RUE: Based on this example, yes.

15 MR. COOK: Okay. And so does that mean, then, at
16 the present time that you have, for economic purposes, a
17 zero revenue?

18 MR. RUE: Like I said, that agriculture is a
19 close-run thing. Overall, rice income has fallen over the
20 last several years due largely in part to the economic
21 straits worldwide as well as the fact that a portion of
22 our crop in California is exported. And that the trade
23 barriers have not reduced as fast as we thought they
24 would. And export subsidies that are employed by others,
25 so, yes, it's a close run thing, Mr. Cook.

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1 MR. COOK: Now, do you receive government subsidies
2 in the amount of \$155 an acre?

3 MR. RUE: In the example that we used, that's the
4 number. That was for last year. It's reduced for the
5 coming year.

6 MR. COOK: I think you just testified a few minutes
7 ago that in the year 2000 you expect \$140 an acre. And
8 then it will go to 116 an acre, and then 110 an acre. And
9 then in 2003, I think you testified, it would be zero?

10 MR. RUE: If nothing changes.

11 MR. COOK: That's right. So you would have no
12 subsidies, then, in the year 2003. So at the present
13 time, if we have a zero revenue based on these
14 calculations of economics, in 2003, if everything else
15 stays the same, except subsidies you would have a negative
16 of \$155?

17 MR. RUE: That's right.

18 MR. COOK: Now, is it -- well, withdraw that.

19 You've testified that since 1992 that all the
20 factors bearing on revenue have been on the wrong side?
21 In other words, costs have increased and revenue has
22 decreased. That's correct, isn't it?

23 MR. RUE: That's correct.

24 MR. COOK: And so do you expect that to continue?

25 MR. RUE: Now, Mr. Cook, you realize why I spent a

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1 lot of time on international trade policy on behalf of
2 producers in the United States.

3 MR. COOK: So --

4 MR. RUE: And spend a lot of time with the U.S.T.R.,
5 because it's critical to us that we get a level playing
6 field internationally.

7 MR. COOK: But it's not just internationally, is it,
8 it's cost of weed control for chemical, weed control, and
9 it's costs of straw removal, or whatever term it is that
10 you use for that.

11 MR. RUE: Yes. It's all these factors. And, again,
12 Mr. Cook, the industry is aggressive in trying to come up
13 with different cultural practices that will reduce our
14 costs. So we're aggressively working on all of those as
15 always.

16 MR. COOK: You're fighting against this inevitable
17 thing, I mean it's not inevitable, if you're successful.
18 But, in any event, you're fighting against this loss of
19 revenue over a continuing basis in the future?

20 MR. RUE: Yes. Probably not unlike any other
21 business.

22 MR. COOK: That's true. But in the past, of course,
23 you haven't been very successful, have you?

24 MR. RUE: Well, we've made some gains.

25 MR. COOK: But you've been losing every year

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1 according to your testimony as I read it.

2 MR. RUE: Yes, we've had a reduction.

3 MR. COOK: Assuming that subsidies are ended,
4 assuming that we don't have favorable trade policies,
5 assuming that costs of chemicals for weed control increase
6 rather than decrease, and assuming that prices don't go
7 up, the future looks pretty bleak for rice production;
8 does it not?

9 MR. RUE: Making all those assumptions, yes.

10 MR. COOK: Now, there's one additional factor I
11 didn't mention. In addition to the crop subsidies, these
12 figures we've been using, you do mention something about
13 disaster payments which are in addition to that; is that
14 right?

15 MR. RUE: Yes. The last two years, for the first
16 time, they have had a disaster program related to markets
17 for rice.

18 MR. COOK: Now, let me ask this: Without subsidies
19 from the citizens of the country, rice production would
20 not be economically profitable whatsoever, would it?

21 MR. RUE: It, certainly, would impact the level of
22 production.

23 MR. COOK: Well, based on your figures, certainly,
24 even if that \$155 is deducted, you're in a
25 negative-revenue situation, that's even with the water

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1 that you have today?

2 MR. RUE: Yes.

3 MR. LILLY: Excuse me, Mr. Brown. I'm going to
4 object that that assumes that if the subsidy were not
5 there, there would be the same amount of reduction in
6 price. And there's no evidence in support of that.

7 MR. COOK: Well --

8 H.O. BROWN: Mr. Cook.

9 MR. COOK: I would like to, based on his figures, in
10 which he used the \$155 and which he calculated the amount
11 of revenue based on the economics, and that was based on
12 the use of well water; and if he doesn't need to use well
13 water, which at the present time he's not doing, then,
14 would the lack of subsidies not put him into a negative
15 revenue position?

16 I think that's a legitimate question based on
17 what his testimony is.

18 H.O. BROWN: Yes. You asked it and then the answer
19 was, yes.

20 MR. MINASIAN: It's been given.

21 MR. RUE: Yeah.

22 H.O. BROWN: Where are you headed with this,
23 Mr. Cook?

24 MR. COOK: Well, I'm -- fundamentally, I'm trying to
25 cross-examine on the testimony that he presented about the

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1 economics of the loses that he would receive if he's
2 forced to go into the well-water situation, which meant
3 that he testified about the entire economics of rice
4 production that he's faced with.

5 And I'm looking at the future potential that even
6 with the water that he has today, that the rice production
7 is probably, if not today, in the near future will be
8 uneconomical.

9 H.O. BROWN: And then what?

10 MR. COOK: Well, that, I think, Mr. Brown, rebuts
11 the position that he has taken that he must have water
12 from -- surface water to keep a viable operation going
13 economically. And that if surface water flow is reduced
14 that it will be a losing proposition.

15 My point is: It will probably be a losing
16 proposition even if he retains the surface water.

17 H.O. BROWN: Yeah. You may continue.

18 MR. COOK: Okay. Thank you.

19 I'll do what I can to speed this up. Now, do you
20 know the market value of the water that you received from
21 the Yuba County Water Agency?

22 MR. MINASIAN: Beyond the scope of the direct, I
23 believe.

24 MR. LILLY: And I'm going to object. That's a vague
25 and ambiguous question. There's so many different markets

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1 for water in California. It's vague and ambiguous unless
2 some market is specified.

3 H.O. BROWN: Mr. Campbell.

4 MR. CAMPBELL: I'd like to respond to
5 Mr. Minasian's objection. In this proceeding
6 cross-examination may exceed the scope of direct
7 examination. With regard to Mr. Lilly's objection, I
8 believe that if the witness understands the question, that
9 he can answer it.

10 H.O. BROWN: Thank you, Mr. Campbell.

11 I understood the question. If you understand it,
12 then answer it.

13 MR. RUE: Yeah. You asked me if I knew what the
14 value of the water is?

15 MR. COOK: Yes, sir.

16 MR. RUE: The answer to that is, no, I do not.

17 MR. COOK: Well, let me ask this, then: Do you know
18 the amount of money that the Yuba County Water Agency has
19 received from selling water, or transferring water out of
20 the basin?

21 MR. RUE: In general, yes, but I don't know how that
22 relates to whatever water I deal with.

23 MR. COOK: Doesn't it relate to what agencies, or
24 districts, or whoever uses the water is willing to pay?

25 MR. RUE: I understand that, certainly. That's

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1 called the market.

2 MR. COOK: And you understand, also, that's many
3 times greater than the amount of money that the South Yuba
4 Water District pays for the water they receive from the
5 Yuba County Water Agency?

6 MR. RUE: Yes.

7 MR. COOK: Now, you indicated, or you have testified
8 in your written statement that you -- that the Yuba
9 County -- or the Yuba River Water Project was developed
10 through your efforts, or the efforts of people in your
11 position in Yuba County; isn't that true?

12 MR. RUE: That's right. The citizens of Yuba
13 County.

14 MR. COOK: Now, isn't it true that the Yuba River
15 Water Project was paid for by contributions from the
16 State, contributions from the Federal Government, and the
17 ratepayers of Pacific Gas and Electric Company?

18 MR. RUE: Yeah. The revenue stream was from the
19 sale of power, that's correct.

20 MR. COOK: So how much did the local owners who
21 received this water contribute towards this project?

22 MR. RUE: Well, when you go back to the late '50s,
23 the citizens of the county organized the water agency in
24 order to pursue the development of the resources of the
25 river and provide flood control that was badly needed.

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1 We had a -- property tax amount was added to all
2 the real property. And all the governmental entities
3 supported the development of that. You ask -- you know,
4 we receive the water from the Yuba County Water Agency.
5 Our view is that the Agency made requests for permits and
6 designed the water supply and water storage components of
7 that with the benefit of the lands in the county at mind.

8 So to that degree, we don't view that we get the
9 water from the Agency, but through the Agency, because all
10 of us enjoy the benefits of all those permits and
11 activities.

12 MR. COOK: In fact, I assume the South Yuba Water
13 District and the Brophy District originally owned the
14 south canal; did they not?

15 MR. RUE: Yes, we did.

16 MR. COOK: And you sold that to the Yuba County
17 Water Agency?

18 MR. RUE: The Agency took ownership and they
19 reimbursed our embedded costs.

20 MR. COOK: And what did they pay for that sale?

21 MR. RUE: It seems to me, if I recall correctly,
22 that our component of that was around 1.8 million or 2
23 million. And I may not have the exact number, but it's in
24 that range. I think we borrowed 2.2 million and the
25 balance of that bond is what they took over.

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1 MR. COOK: Now, just a couple quick questions and
2 I'll try to finish this up just as rapidly as possible.
3 With respect to water that is used on the rice fields,
4 what happens to it when you drain the fields?

5 MR. RUE: To the degree that there is water -- well,
6 you mean, in the fall at the end of the crop?

7 MR. COOK: Don't you drain down the fields prior to
8 harvest?

9 MR. RUE: Is that the time frame you're talking
10 about?

11 MR. COOK: Yes. In other words -- let me set a
12 little bit better foundation. You plant the rice in the
13 spring. And there's water on it. And then you later on
14 as the rice develops to a certain stage, you drain the
15 water off. Is that right?

16 MR. RUE: Well, that's why I asked you if you meant
17 at the end of the -- at the end of the growing stage of
18 the rice, where it's maturing into grain, yes, we drain
19 the water. Generally speaking, what we try to do is to
20 anticipate when that time will be and begin to block the
21 fields back. And the water stays in the fields and is
22 transpired and evaporates.

23 So that when we, actually, go to drain the water,
24 if we do our job correctly and we make the proper
25 assumptions, what water there is in the fields, sometimes

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1 there's not very much at all, we drain into the drains and
2 it runs out the bottom of the District.

3 MR. COOK: And that goes down to the Bear River,
4 hence to the Feather, and on down the stream?

5 MR. RUE: Yeah.

6 MR. COOK: And does that water have residue of the
7 chemicals for weed control?

8 MR. RUE: No, it does not.

9 MR. COOK: What happens to that weed control
10 chemicals?

11 MR. RUE: There's a holding time and holding period
12 for that that the Department of Pesticide Regulation
13 decrees with the use of those chemicals. And you're
14 required to hold them until the half life, or whatever you
15 call it, the degradation process of that chemical occurs.
16 So that when you release the water, you don't have any
17 residue, it goes out.

18 MR. COOK: It has all disappeared?

19 MR. RUE: Well, as near as I know. I'm not going to
20 say that there isn't some minute amount that is
21 detectable, but it's, certainly, below any of the
22 standards.

23 MR. COOK: And what about the temperature, is the
24 temperature fairly high at that point?

25 MR. RUE: It can be, depending on the weather, of

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1 course.

2 MR. COOK: And the warmer water would then transfer
3 on down into the lower streams?

4 MR. RUE: That's correct.

5 MR. COOK: And I think, Mr. Mathews, your testimony
6 was fairly direct on the question of warm water for rice.
7 That, basically, rice is produced better and cheaper with
8 warm water than with cold water; is that correct?

9 MR. MATHEWS: I don't know about the word,
10 "cheaper." The yield is very dependent on the
11 temperature.

12 MR. COOK: Yes. So the higher temperature, within
13 reason, the better the yield?

14 MR. MATHEWS: Yeah. And what my testimony was is
15 the models they've set up is rice grows between 65 degrees
16 and 95 degrees.

17 MR. COOK: Right. And even below 65, they won't
18 germinate at all, I assume?

19 MR. MATHEWS: That's why we entered those pictures.

20 MR. COOK: Yeah. So really, then, is it in your, or
21 the owners' of the rice lands in the north Yuba County, is
22 it in these owners' economic interest to have as warm a
23 water as possible in the Yuba River?

24 MR. MATHEWS: During the growing season, yes.

25 MR. COOK: And when that water is drained, it

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1 transfers into the Feather River; does it not?

2 MR. MATHEWS: Yes. But you realize by the pictures
3 you've seen in our exhibits that once the water goes
4 through the first or second check, the water then becomes
5 whatever the average ambient temperature is at the time.

6 Very much like the river temperature, when you
7 have days where you get 105 or 110 degrees and 90 degrees
8 at night, the river has a certain temperature, even though
9 you've released it at a colder temperature. Where if you
10 have a cool spell, where the maximum temperature is 80
11 degrees and the minimum is 55 degrees, you have an
12 entirely different regime in the river by the ambient air.

13 MR. COOK: Now, when you have the water on the rice
14 fields while the rice is growing, what do you have, about
15 a foot of water on the rice fields?

16 MR. MATHEWS: No. We try to plant in approximately
17 four inches of water. Then, approximately ten days before
18 hitting, there's a critical time where if the nighttime
19 temperatures dips down to 55 degrees, which we're talking
20 now in the area of the 15th of July, the pollen is
21 sterilized when it comes out of the head ten days later.

22 So the recommendation and the actuality is we
23 take our four inches of water up to eight and even 12
24 inches of water in the field, so that we get the benefit
25 of the warmth in the daytime and the caloric sync, I guess

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1 would be the right word, to make sure that if you get a
2 night colder than 55, the head of the rice being under
3 water would be at the warmer temperature which would still
4 be maybe in the '60s.

5 MR. COOK: So as far as the water on the rice fields
6 is concerned, it's over a wide area at a shallow depth and
7 not moving, for the most part. And the ambient
8 temperature should be substantially higher than the water
9 in the moving river, which is of some substantial depth
10 compared to the rice fields. And, therefore, the water in
11 the rice field should be substantially higher than the
12 river; should it not?

13 MR. MATHEWS: That would be correct.

14 MR. COOK: And, then, when the water is drained off
15 of the rice fields into Jack Slough and then down to the
16 Feather, it would normally be hotter, or warmer, than the
17 water going down the Lower Yuba into the Feather?

18 MR. MATHEWS: As I remember, in the Yuba County's
19 testimony that they showed the differences between the
20 water at the Smartsville gauge, or below Englebright; the
21 temperature of the water at Daguerre Point; the
22 temperature of the water three miles below Daguerre Point;
23 and I believe it's approximately ten miles from Daguerre
24 Point to the Feather River, and at each stage the water is
25 warming.

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1 So the water in the rice field, though the only
2 time when we drain which is the end of August, could
3 approach that temperature, but I mean I'm not sure exactly
4 when you say, "warmer," if that's a significant amount.

5 MR. COOK: Well, I guess -- I realize you're not a
6 hydrologist, but you have testified to a certain extent on
7 temperature. What I'm basing my question on is your
8 response that the low level of water in these wide areas
9 of rice fields would probably heat up more than water
10 flowing in the river. I think you agree with that, don't
11 you?

12 MR. MATHEWS: Yeah. You have to realize that the
13 water in a rice field is at a four-inch depth, in 36
14 inches of a rice field is substantially shaded, where the
15 water in the river has basically no shade. So if you
16 use -- I used to be a physics major in college, not a
17 hydrologist.

18 But I could suggest to you that a stream flowing
19 that absorbs all of the sunlight, where the rice is going
20 to transpire and the water could stay cooler. Rather than
21 answering your question, yes, I think it's arguable you
22 could come up with different conclusions.

23 MR. COOK: So you're talking now about, somewhat,
24 mature rice --

25 MR. MATHEWS: The rice usually shades the water out

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1 approximately 15 to 25 days after it's planted.

2 MR. COOK: Thank you, Mr. Brown. I have no further
3 questions.

4 H.O. BROWN: Thank you, Mr. Cook.

5 Mr. Lilly.

6 ---oOo---

7 CROSS-EXAMINATION OF SOUTH YUBA WATER AGENCY

8 AND CORDUA IRRIGATION DISTRICT

9 BY YUBA COUNTY WATER AGENCY

10 BY MR. LILLY

11 MR. LILLY: Good afternoon, Mr. Mathews and Mr. Rue.
12 I'll start with you, Mr. Mathews.

13 Questions were asked earlier in this hearing
14 about how often the cropping pattern changes on various
15 lands within Yuba County Water Agency's service area.

16 Does land that's planted to rice, do you ever --
17 or does anyone ever plant that to other crops?

18 MR. MATHEWS: In the Cordua Irrigation --

19 MR. LILLY: Closer to the microphone.

20 MR. MATHEWS: In the Cordua Irrigation District we
21 approximately have 10,000 acres gross in the district.
22 The figure -- and we have them for each year for the last
23 five years, SYRCL wanted them, I thought they were going
24 to bring them in -- is in the 9,000 acre area.

25 The 9,000 is constant -- we've had fields that

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1 have been planted continuously since 1954, never been out
2 of rice. I would say that 90 percent of the fields, other
3 than what we had in set-asides in the '80s in the
4 government programs, are planted every year to rice.

5 The reason for this is there's no percolation in
6 the soil. So if you tried to plant wheat, or trees, or
7 anything else it would die. So it's very nice for rice
8 and very uneconomical for any other crop other than
9 irrigated pasture. You could slope it with enough slope
10 so the water wouldn't scald when you irrigate it, you
11 could raise irrigated pasture.

12 MR. LILLY: And, Mr. Rue, is that reasoning similar
13 in the South Yuba District as far as lands that are
14 planted to rice?

15 MR. RUE: Yes. Most of the fields have been limited
16 to a similar rotation program, would be difficult.

17 MR. LILLY: And, Mr. Mathews, I noticed from the
18 reports, there aren't very many acres in your district
19 that are planted to trees, but there are some; is that
20 correct?

21 MR. MATHEWS: Yeah. On the border of our district
22 where you get closer to the river, there's some trees.
23 And there's a few, talking less than 100 acres, where
24 there's high red dirt ridge, where the trees get enough
25 drainage, where they can grow, but not well.

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1 MR. LILLY: And for trees, is it feasible to rotate
2 crops on a year-to-year basis?

3 MR. MATHEWS: Yeah, if you have land that will grow
4 trees, you have land that you can rotate to other crops.

5 MR. LILLY: What I'm getting at, once you've planted
6 trees is it then economical to take out the trees and
7 plant other crops on a regular basis?

8 MR. MATHEWS: No. Once you've made the investment
9 of trees, you're four or five years into the economics of
10 getting them to production. And if you had to take them
11 out at that point, you would not be able to recoup your
12 costs.

13 MR. LILLY: Now, there has been a lot of discussion
14 in this hearing about water conservation. I'll start with
15 you, Mr. Mathews. What sorts of practices are appropriate
16 for trying to reduce the amounts of water that are
17 necessary to irrigate rice in Yuba County?

18 MR. MATHEWS: The biggest event over the last 10 to
19 20 years, is they used to take the -- not rolling lands,
20 but reasonably flatlands with a slope on them. So you had
21 many curved checks going on contours. And by the nature
22 of it, you had shallow water and deepwater in the same
23 basin, so to speak.

24 And it was very difficult to get the right amount
25 of water to the bottom without spilling it. Now, we've

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1 gone to short-stature varieties, higher -- or varieties
2 that take less days to grow. We've laser-leveled the
3 fields where they're perfectly flat. So if you have a
4 field that's a half a mile long, other than a wind shift,
5 you'll get four inches on one end and four inches on the
6 other, which makes it very easy to manage the water so you
7 don't spill anything.

8 On top of that, we have chemicals. We put a
9 pesticide on before we flood. The requirement is you have
10 to wait 28 days before one drop of water can leave the
11 field. Approximately 10 to 20 days into that period we
12 put another material that's called Ordran monilate.
13 Again, we have a 28-day hold period.

14 So you have 45 days, approximately, that you
15 can't spill a drop. By this time, the rice is up,
16 healthy, and you're talking in the middle of June. So
17 with any cautious irrigating on leveled fields, we don't
18 spill any water until we're ready to drain.

19 MR. LILLY: Are there any other feasible methods by
20 which you could further reduce your water consumption in
21 the irrigation of rice?

22 MR. MATHEWS: Yes. In the '77 drought we had even
23 less water than we needed. We plumbed most of the fields
24 to the adjacent landowner. This year in our Cordua budget
25 we've allocated \$20,000 to redo all of this plumbing. So

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1 that the requirement to the landowner will be if he has to
2 spill something after the 15th of June, he will give it to
3 his neighbor and his neighbor will be required to reduce
4 that intake from the Cordua ditch. And going through the
5 system that should also get us down to almost zero spills
6 until the time of draining. And as Mr. Rue has testified,
7 when we go to drain, we try to drain very little, because
8 the field is planted, if you've got a lot of water you
9 can't get it out very fast.

10 MR. LILLY: Okay. So other than these methods that
11 you already have implemented or will be implementing very
12 soon, is there really anything else that you can do to try
13 to reduce the water consumption?

14 MR. MATHEWS: No. We've gone to the flat fields,
15 the shorter stature, the shorter growing time, and as long
16 as we minimize the amount of water before draining, which
17 is in our best interest, we've basically consumed all the
18 water in the fields without anything entering the drains.

19 MR. LILLY: And, Mr. Rue, is there anything in the
20 South Yuba Water District that could be done to further
21 reduce the amounts of water that are applied to the rice
22 fields in your district?

23 MR. RUE: With respect to rice, the conditions are
24 much the same as in Cordua.

25 MR. LILLY: Okay. And have you implemented the

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1 similar laser leveling and other techniques that
2 Mr. Mathews has just described?

3 MR. RUE: Yes, we have.

4 MR. LILLY: Now, Mr. Mathews, I think you briefly
5 touched on this in your earlier testimony, but I think a
6 little more explanation is necessary.

7 I think you said that during the waterfowl
8 flooding season that the requirement in Cordua Irrigation
9 District alone was 200 cubic feet per second for the
10 flooding rate. Do I have that number correct?

11 MR. MATHEWS: Yes, you do. I can refer the staff to
12 the sheet.

13 MR. LILLY: Do you have a page number?

14 MR. MINASIAN: This is Exhibit 1.2 to the testimony
15 of Michael Rue.

16 MR. LILLY: Okay.

17 MR. MINASIAN: It is the diversion rates for the
18 various districts in 1999, as an example. And it has
19 historic diversion rates as well.

20 MR. LILLY: Well, I was going to start with
21 Mr. Mathews. Let me just ask the question more generally.
22 I think you testified previously that even if every well
23 within the Cordua Irrigation District was running, you
24 would not be able to pump water at the rate similar to the
25 fall flooding rate that you currently receive from the

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1 Yuba River; is that correct?

2 MR. MATHEWS: That is correct.

3 MR. LILLY: And are there any adverse effects on the
4 waterfowl habitat and rice straw decomposition if the
5 flooding has to be applied at a slower rate?

6 MR. MATHEWS: The habitat, you would not be able to
7 flood the habitat, so the ducks would have nowhere to go.
8 You would also be flooding in a colder regime, so you
9 wouldn't get the breakdown of the rice. Rice is very high
10 in silicate. So it takes warmth and dirt, or clay to make
11 it decompose. And that's what releases all of the
12 invertebrates.

13 MR. LILLY: Okay. So, basically, you're saying that
14 flooding -- if some of the flooding had to occur in
15 November instead of October, that these adverse impacts
16 would occur because the ambient temperatures would be
17 cooler in November than in October?

18 MR. MATHEWS: That is correct.

19 MR. LILLY: Now, Mr. Mathews, approximately how many
20 acres within the Cordua Irrigation District presently are
21 planted to rice?

22 MR. MATHEWS: The 1999 figures -- and these figures
23 are 8495.9 acres, that is the net amount of acreage in
24 each basin. It does not include roads, ditches, levees.
25 It's the net acres. So if you added another ten percent

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1 to the net acres, you would get closer to the actual acres
2 on the farm. But our charging is to take it off the ASCS
3 maps which delineate just the rice field itself.

4 MR. LILLY: So the actual irrigated acres is
5 approximately 8,500?

6 MR. MATHEWS: Yes, for rice.

7 MR. LILLY: For rice within Cordua Irrigation
8 District?

9 MR. MATHEWS: For the 1999 year.

10 MR. LILLY: All right. Now, there previously was
11 questions asked about Exhibit S-YCWA-27, which has the
12 amounts of water that were supplied to each water
13 district, including the amounts supplied for waterfowl
14 habitat. And I noticed for 1999 the figure for Cordua
15 Irrigation District is 21,930 acre-feet for waterfowl
16 habitat.

17 Do you have that in front of you?

18 MR. MATHEWS: Yes, I do.

19 MR. LILLY: Okay. Can you -- that comes out, I
20 believe, to something over two acre-feet per acre; is that
21 correct?

22 MR. MATHEWS: That's correct. I would --

23 MR. LILLY: Okay.

24 MR. MATHEWS: Go ahead.

25 MR. LILLY: Okay. Maybe that wasn't all applied to

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1 rice, is that part of the problem?

2 MR. MATHEWS: My testimony was going to be if you
3 will look at the exhibit that we talked about with
4 Mr. Rue, you'll notice in the first part of September the
5 diversions in the river went down to 23 second feet. Then
6 they went up to 41 second feet. Then they go up to 165
7 second feet, that's all in the month of September.

8 So we, as the district, would submit to you
9 that's not water for rice, that's water for waterfowl --
10 or, I guess, it would be better to say for the wildlife in
11 the winter water component.

12 MR. LILLY: Okay. So some of that water may not
13 have, actually, been applied to rice fields?

14 MR. MATHEWS: The great bulk was not applied to
15 rice.

16 MR. LILLY: In September?

17 MR. MATHEWS: In September. So your number of
18 21,900 would be higher. I see you grimace.

19 MR. LILLY: Well, maybe I should clarify it.
20 According to Mr. Wilson the waterfowl habitat is water
21 applied after October 15. So I don't think that number
22 would include the September numbers.

23 MR. MATHEWS: That's what I'm trying to say, but in
24 Cordua, as we testified, we flood some of the first rice
25 fields in the state. And we apply it in September before

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1 other areas apply it. And that's why we get the
2 tremendous numbers of ducks coming in in the month of
3 September.

4 MR. LILLY: Okay. Well, let me -- I'm trying to go
5 through this fairly quickly. Please, just explain: Do
6 you need, on average -- it appears to be still more than
7 two acre-feet per acre for waterfowl habitat?

8 MR. MATHEWS: Yes.

9 MR. LILLY: And why is that?

10 MR. MATHEWS: We've tried to put water into a field
11 even if you put it in 10 to 12 inches deep, and if the
12 field was disked you might wind up with the use of 1.4 or
13 1.5 just to flood the field to the 10 to 12 inches.

14 But if you put it in in September and block the
15 field up, within a very short period of days like three or
16 four days, the water will turn so sour that you risk
17 having the ducks get sick. And we've gotten ducks sick
18 before.

19 We're very attuned to not doing that. If the
20 Fish and Game wants to testify later, they got into a
21 situation even as late as January in the Sacramento
22 Bypass, they lost 50,000 birds. So we want to make sure
23 in District 10 that we don't husband the resource and then
24 have something like that happen.

25 MR. LILLY: So, basically, are you saying that to

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1 present -- excuse me, to prevent waterfowl disease some
2 circulation, or pass through of the waterfowl habitat
3 water is required?

4 MR. MATHEWS: Very much so.

5 MR. LILLY: Okay. And is that -- so is that the
6 explanation --

7 MR. MATHEWS: That's the explanation why we would
8 use 20 to 25,000 acre-feet in a three-month period for
9 duck habitat. Wherein, rice we're using four and a half
10 to five for the entire summer.

11 MR. LILLY: All right. Thank you both, gentlemen.

12 I have no further questions.

13 H.O. BROWN: Okay. We're going to take an early
14 break this afternoon and be back here in 12 minutes.

15 (Recess taken from 2:13 p.m. to 2:23 p.m.)

16 H.O. BROWN: Come back to order.

17 Let's see, Mr. Gallery.

18 ----oOo----

19 CROSS-EXAMINATION OF SOUTH YUBA WATER AGENCY

20 AND CORDUA IRRIGATION DISTRICT

21 BY BROPHY WATER DISTRICT

22 BY MR. GALLERY

23 MR. GALLERY: I just have a few questions of
24 Mr. Mathews. The first is: Mr. Mathews, there's an
25 Exhibit 6, a graph with colored lines on it, Exhibit 6 of

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1 Cordua Irrigation District. Could that be put up on the
2 overhead?

3 MR. MINASIAN: Yes.

4 MR. GALLERY: As I understand that exhibit,
5 Mr. Mathews, the colored lines drawn on the graph have
6 corresponding colors tying them to the years in the lower
7 part of the graph?

8 MR. MATHEWS: That is correct.

9 MR. GALLERY: And the lines then show that in 1998,
10 the water temperatures were down in the range of 55 to 60
11 degrees?

12 MR. MATHEWS: That's correct.

13 MR. GALLERY: And these were temperatures at
14 Daguerre Dam?

15 MR. MATHEWS: That's correct.

16 MR. GALLERY: And, then, the yellow lines show in
17 1999, the temperature had gone up. Was that higher maybe
18 five degrees or so?

19 MR. MATHEWS: That's correct.

20 MR. GALLERY: And up at the top is a green line,
21 1997. That appears to the highest temperature line in
22 1997?

23 MR. MATHEWS: That's correct.

24 MR. GALLERY: And do you have up there how your
25 price yield corresponded to those temperatures in those

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1 years?

2 MR. MATHEWS: Yeah. '97 was the highest state yield
3 average that we had. And it was also the highest yield
4 that I've ever had. And you'll see that '89 is in 100
5 weights per acre, or to put it in a more common
6 definition, approximately four and a half tons to the
7 acre.

8 In '98, which was the coldest year that we had,
9 my yield was three and a half tons to the acre. And the
10 '99, which is in the middle, it was still cold by what the
11 rice needed, would be in the area of just under four tons
12 to the acre.

13 MR. GALLERY: So that really indicates that the
14 temperature has a significant impact on your yield to
15 rice?

16 MR. MATHEWS: Very much so, but it also related to
17 the type of weather year that you have. So if you have a
18 year that has a warm May, June, and July, that affects,
19 obviously, the river temperatures and the other
20 temperatures.

21 But the unique part of that is when you look at
22 the statewide yield, the yields on the Yuba River were
23 dramatic to the temperatures in the -- the temperature at
24 Daguerre Point, overriding the statewide yield.

25 MR. GALLERY: Thank you. Is that graph with the

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1 handwriting on it a part of your exhibits?

2 MR. MINASIAN: No, it's not. This is the exhibit.

3 MR. GALLERY: I see.

4 MR. MINASIAN: This is something he'd written on to
5 remind himself.

6 MR. GALLERY: I see. Then I had just a few
7 questions on the genesis of the Yuba River Project.

8 Mr. Mathews, you've been up there all of your
9 life, have you?

10 MR. MATHEWS: That's correct.

11 MR. GALLERY: You were there in the '50s when the
12 Agency Act was brought in to existence?

13 MR. MATHEWS: Yeah. Even before that, I was with
14 the Boy Scouts when the river broke. In 1950 to 1955 I
15 was a senior in high school and we filled the sacks on the
16 District 10 levee. And then went in and mucked out
17 houses. And, then, thereafter, the '87 flood, helped muck
18 out houses. By mucking out housing where you take a big
19 shovel and go into somebody's house and there's six inches
20 of silt and you have to just shovel it out with everything
21 else that's in the house.

22 MR. GALLERY: Did the 1955 flood have something to
23 do with the creation of the Agency?

24 MR. MATHEWS: Very much so. It was the moving force
25 that the whole county came together and said that we

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1 cannot have catastrophes like this again. At that time
2 they were building -- it was when the water bonds had
3 passed or were passing, to build Oroville Dam, there was
4 nothing to happen on the Yuba River. And the county came
5 together and said we need to have a dam on the Yuba River,
6 also.

7 MR. GALLERY: So that the Agency was, actually,
8 organized both for the purpose of flood control and
9 additional water supplies?

10 MR. MATHEWS: Very much so. If it was just to be
11 for the farmers and a water supply, there would not have
12 been enough impetus in the county to tax ourselves during
13 all these years to make it work; or had it had been the
14 other way, if it was just flood control without the
15 component of having irrigation especially for the south
16 county, the Act would not have passed locally. When they
17 final voted on it, it passed on an area of 11 to 1 or
18 something like, 92 percent voted for it.

19 MR. GALLERY: And the Agency Act authorized the
20 Agency to levy a tax of ten cents per 100, did it?

21 MR. MATHEWS: That's correct. And it's been levied
22 since the Act formed and it's still being levied today.

23 MR. GALLERY: So both the city folks and the farmers
24 have continued to pay tax for the operation of the Agency
25 since it was organized?

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1 MR. MATHEWS: That's correct.

2 MR. GALLERY: And, then, the financing of the Yuba
3 River Project itself, that was financed, essentially,
4 through the issuance of revenue bonds?

5 MR. MATHEWS: That's correct, but in order to get to
6 the revenue bonds the Agency had to be able to go out and
7 hire engineers, hire feasibility studies. So the
8 taxing -- the sole income of the Agency came from the
9 taxpayer to get it started.

10 After the dam was built, there was still no money
11 to finish the project, so we continued the tax on the
12 entire county. And then, eventually, we were able to
13 build the South Canal. They never did build the North
14 Canal, which was part of the original Agency Act, we
15 didn't have enough money to build it even after the second
16 bid.

17 MR. GALLERY: The actual voters' authorization of
18 the project was in the form of approving the issuance of
19 revenue bonds to build the project?

20 MR. MATHEWS: That is correct.

21 MR. GALLERY: And what was that vote on the revenue
22 bond issue, do you have any recollection?

23 MR. MATHEWS: Maybe they just voted for the revenue
24 bonds not the Act, but the vote they had was 11 to 1.

25 MR. GALLERY: I see. Were you on the Agency at any

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1 time during this period of time?

2 MR. MATHEWS: In the formation, I was on the -- my
3 father was on the actual original agency, before the
4 supervisors took it over. I was on a subcommittee that
5 was helping make the alignment for the North Canal.

6 MR. GALLERY: And the project that was put before
7 the voters for approval in voting on the revenue bonds,
8 that included not only the New Bullards Bar Dam but canals
9 from the Yuba River to take the water supply to the south
10 county and also a canal to the north county; is that
11 correct?

12 MR. MATHEWS: And the diversion works and the fish
13 screens on the river.

14 MR. GALLERY: And the project was built and
15 completed in about 1965?

16 MR. MATHEWS: No. The final negotiations finished,
17 I think, in '65. They started impounding the first water
18 in about '69. So, actually, the construction started in
19 65/66 year.

20 MR. GALLERY: In the construction of the project
21 there was no canal included into the south county area?

22 MR. MATHEWS: No. I think the first time in '63 or
23 '64, they went out to bid with the whole package. They
24 had a lot of interest and no one came back with a bid
25 package. They refined it a little bit more.

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1 Another group of us became involved. And we
2 found a different way to route the river. And we were
3 able to build a south diversion and complete canal system
4 in the neighborhood of four and a half million. And
5 Mr. Rue and Mr. Baggett were much more involved in that
6 than I was.

7 MR. GALLERY: And that's the canal that went through
8 the gold runs?

9 MR. MATHEWS: That's correct.

10 MR. GALLERY: \$28 million canal project took the
11 water out higher up on the river and took it down through
12 the Beale Air Force Base?

13 MR. MATHEWS: Yeah. One project was on the low side
14 of Beale Air Force Base. And the other would have gone
15 through Beale Air Force Base at a higher elevation.

16 MR. GALLERY: So Brohpy went ahead and built the
17 canal in the 1980's and then the Agency took it over from
18 them in around 1990 and reimbursed them for their costs;
19 is that correct?

20 MR. MATHEWS: That's correct.

21 MR. GALLERY: That's all I have. Thank you.

22 H.O. BROWN: Thank you, Mr. Gallery.

23 Let's see, Mr. Bezerra.

24 MR. BEZERRA: Thank you.

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CROSS-EXAMINATION OF SOUTH YUBA WATER AGENCY
AND CORDUA IRRIGATION DISTRICT
BY BROWNS VALLEY IRRIGATION DISTRICT
BY MR. BEZERRA

MR. BEZERRA: Good afternoon. My name is Ryan Bezerra. I represent Browns Valley Irrigation District. I just have a few questions. They're for Mr. Rue.

Mr. Rue, do the south county -- excuse me, the South Yuba Water District annex about 1283 acres of land in 1993?

MR. RUE: Yes. I don't know if that is the exact number, but it's certainly in the neighborhood, yes.

MR. BEZERRA: Is that annex of land currently being irrigated with Yuba River water?

MR. RUE: It is -- is not --

MR. BEZERRA: Is the majority of it?

MR. RUE: I believe so. I don't have the exact number. Thank you very much.

H.O. BROWN: Mr. Morris?

MR. MORRIS: No questions.

H.O. BROWN: Mr. Campbell?

MR. CAMPBELL: I don't have any questions.

H.O. BROWN: Staff?

MR. FRINK: Yes, I do.

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CROSS-EXAMINATION OF SOUTH YUBA WATER AGENCY
AND CORDUA IRRIGATION DISTRICT
BY STAFF

MR. FRINK: I'll preference that I did have rice at lunch. I enjoyed it very much. The Division of Water Rights supplies a substantial quantity of rice for the Hunger Relief Program every year in the winter; although, not necessarily from your district, from one of the cooperatives in the area.

MR. MINASIAN: Our question is: When you don't have the rice, will you eat their fish?

MR. FRINK: I like both.

Mr. Mathews, Mr. Rue discussed his District's participation in the groundwater substitution programs in 1991 and 1994. Were the individual farmers in your district compensated for their participation in the groundwater substitution program?

MR. MATHEWS: Yes, but I think you need to make a distinction. It's my recollection that Mike Rue's district only participated in '91 and not '94.

MR. FRINK: Okay.

MR. MATHEWS: If that's part of your question.

MR. FRINK: No. I do appreciate the clarification. In your district, the district participated --

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1 MR. MATHEWS: We participated in both years.

2 MR. FRINK: Okay. And were the individual farmers
3 compensated each year?

4 MR. MATHEWS: Yes. It was a program primarily run
5 by the farmers with the District acting as the
6 clearinghouse and the water agency acting as the
7 clearinghouse above that one.

8 MR. FRINK: Okay. And do you recall the per
9 acre-foot amount that the farmers received for the
10 groundwater they pumped?

11 MR. MATHEWS: I believe it's going to be around --
12 it's my recollection that the first year it was around \$98
13 an acre-foot. And it seems as if the second year it was
14 around \$48 an acre-foot.

15 MR. FRINK: Okay. Okay. Each of you have testified
16 that your districts have adopted water conservation
17 programs. Do either of those programs establish
18 quantified water conservation goals that each of the
19 districts is attempting to achieve start?

20 With you Mr. Mathews.

21 MR. MATHEWS: As I testified earlier, when we saw
22 these numbers come up with Mr. Wilson that we were -- I
23 don't know whether you want to call it water right --
24 water allocation of 72,900. Our contract on a normal year
25 is for 60,000 of our base water, 12,000 from the Agency.

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1 So we over it.

2 So we took those numbers and told our growers we
3 have to find a better way to make sure we don't do this
4 again. So that's why we allocated the money to replumb
5 all the fields together. A lot of the fields you plumb
6 together, especially if you have a good neighbor, because
7 the water temperature is -- I think Mr. Cook pointed
8 out -- with the water coming out of the field is,
9 obviously, going to be the air temperature which is what
10 the rice is used to, rather than taking the colder water
11 from the river. So reusing the water in the summertime
12 growing rice is a very good thing, because it increases
13 your yield.

14 MR. FRINK: Okay. And when did you undertake that
15 effort?

16 MR. MATHEWS: We did it originally in 1977 to make
17 sure that there would be zero spills. That was the year
18 that we didn't have enough water. We weren't even sure
19 that we had enough water to mature the crop that we
20 planted.

21 MR. FRINK: Okay.

22 MR. MATHEWS: So that year we came, for the first
23 time, zero spills. Now since the Department of Pesticide
24 has all these mandates, we just instruct our ditch tender
25 that we try to make sure that we have no spill during the

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1 year.

2 MR. FRINK: And what was the period of time that you
3 focused on laser leveling within your district?

4 MR. MATHEWS: In my own case I think I bought my
5 first laser leveler around 1980, '79 or '80.

6 MR. FRINK: Okay. I guess I'll ask you the same
7 sort of questions, Mr. Rue. Has your district established
8 a quantified water conservation goal as part of your water
9 conservation program?

10 MR. RUE: You're talking about to reduce the amount
11 of water that we take?

12 MR. FRINK: Yes.

13 MR. RUE: By a quantified number?

14 MR. FRINK: Yes.

15 MR. RUE: No, we have not adopted a quantified
16 number.

17 MR. FRINK: Okay. Okay. Now, this may get
18 involved, but at this point I don't really understand the
19 billing that each of your districts -- the billing each of
20 your districts has with Yuba County Water Agency.

21 Is it correct, that each of your districts is
22 billed a flat amount of surface water from Yuba County
23 Water Agency each year?

24 MR. MATHEWS: Yes.

25 MR. RUE: Yes.

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1 MR. FRINK: Now, Mr. Mathews, you spoke about 60,000
2 acre-foot base amount one year. And that year you
3 received 12,000 acre-feet in addition to that. Was there
4 an additional charge for the 12,000 acre-feet?

5 MR. MATHEWS: The Yuba County Water Agency -- pardon
6 me. The Cordua Irrigation District's water rights go back
7 to before the turn of the Century.

8 MR. FRINK: And that covers the 60,000 acre-foot
9 base decline?

10 MR. MATHEWS: In the negotiations, in 19- -- I
11 believe around 1969 or '70, we have used 72,000 acre-feet,
12 the ten years prior to New Bullards Bar being built. We
13 thought our allocation with the Agency should be 72,000.

14 The Agency made a persuasive argument that our
15 water right was a run-of-the-river type of right and that
16 they should have some number less. We negotiated that
17 they would agree that our water right, you know, free, so
18 to speak.

19 That they would give us the 60,000, we would buy
20 12,000. The 60,000 has a deficiency clause of 20 percent.
21 If the river goes below 50 percent or 40 percent, I don't
22 know and, of course, the 12,000 we have the same
23 deficiency everyone else does. That would go down to 50
24 percent in a dry year.

25 MR. FRINK: Okay. And you are billed a flat amount

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1 that is based on the assumption that in the average year
2 you're going to need 12,000 acre-feet.

3 MR. MATHEWS: Yeah. We're billed for the 12,000
4 whether we use it or not.

5 MR. FRINK: Okay.

6 MR. MATHEWS: And we've paid it every year since
7 1970 or '72, whatever year that was.

8 MR. FRINK: And, Mr. Rue, how does the contract with
9 your district and Yuba County Water Agency work?

10 MR. RUE: Yeah, our contract is the same as for the
11 12,000 acres that Cordua has, in that we are billed the
12 contract amount each year.

13 MR. FRINK: Okay. And how much water is covered
14 under the contract?

15 MR. RUE: You know, I can't recall that exactly.
16 It's 30- some thousand. I think it's 30,000 some
17 acre-feet. I can't give you the exact number.

18 MR. FRINK: Does the amount of water that each of
19 your districts are billed for include the water delivered
20 for waterfowl habitat as well as the water that's
21 delivered for irrigation?

22 Mr. Mathews, start with you.

23 MR. MATHEWS: Yeah. When you see the figure on
24 Mr. Wilson's report, the 72,900, that is the total amount
25 of water we used. And, obviously, you see we used some in

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1 November/December.

2 The Agency has always given us the right that if
3 we conserve some water in July, we can use it -- we can
4 move the different months. The contract has a specified
5 amount per month, for the months of April through October,
6 I believe. And then we are allowed to move the other
7 water rights around.

8 Not being an attorney -- but we have somebody
9 here -- the other part of it, we get involved about this
10 November/December, if that's where you're going, part of
11 Cordua's rights are pre-1914 rights. So we always thought
12 we had the ability to use the water in November and
13 December, also.

14 MR. FRINK: Okay. And, Mr. Rue, is it the case with
15 your district that the relevant number to look at in terms
16 of the amount of water that you receive from the District
17 and are billed for, is the total number shown on the far
18 right-hand column of Yuba County Water Agency's Exhibit
19 27?

20 MR. RUE: Well, we're billed for the full amount of
21 the contract. This amount of the water is less than the
22 contract amount.

23 MR. FRINK: Okay. But there is no distinction
24 between water that you receive for waterfowl habitat and
25 water that you receive for irrigation?

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1 MR. RUE: I don't believe so.

2 MR. FRINK: Within each district, is each individual
3 farmer billed a set amount each year regardless of how
4 much water he or she uses?

5 MR. RUE: In the case of South Yuba, we have an
6 assessment that covers 90 percent of our acres. You take
7 the gross acreage on the farm, you take 90 percent of
8 that, the assessment is applied to that number.

9 MR. FRINK: And that's what the farmer is billed
10 for?

11 MR. RUE: That's what he's billed for.

12 MR. FRINK: Is there any adjustment made for farmers
13 who use either more or less water than was assumed to be
14 necessary at the time the contract was entered into?

15 MR. RUE: No. Our policy has been that to the
16 degree that water is not used and it's able to be put to
17 use elsewhere, there would be a credit and a corresponding
18 charge.

19 But because -- as I describe in my testimony --
20 we have not gotten the entire acreage inside the District
21 back up with a conveyance system, an internal conveyance
22 system that, in fact, serves every acre, we've had a
23 little extra water every year. So really that situation
24 has not really occurred.

25 MR. FRINK: Eventually, then, your district is

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1 moving toward a system of where farmers who use less water
2 will receive an economic incentive?

3 MR. RUE: That's correct.

4 MR. FRINK: And those who use more water, an
5 economic disincentive?

6 MR. RUE: That's correct. And, obviously, to the
7 degree that there's an economic incentive external to the
8 District, that would accrue back through the District to
9 the landowner, that would apply as well.

10 MR. FRINK: How soon do you think that situation
11 will occur where the amount that the farmers are billed is
12 dependent, in part, on the amount of water that they use?

13 MR. RUE: I really don't know the exact timetable
14 for investment that some of the individuals have. Our
15 conveyance system that the District owns is fairly
16 straightforward and simple. And it's each property
17 owners's obligation, to the degree that he needs to, to
18 move the water around his property. And so as you know
19 that all takes capital. And there's repayment involved.
20 And so each landowner has a schedule investment that I'm
21 not completely aware of.

22 MR. FRINK: Mr. Mathews, in your district, are the
23 landowners billed a set amount regardless of the amount of
24 water they use?

25 MR. MATHEWS: No. In our district we have different

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1 rates for like summer habitat and rice and pasture and
2 trees. Part of our district is -- we push the water north
3 of the canal. The grower has to then lift it out of the
4 canal with electric pumps. His fields are so plumbed that
5 when those fields drain, they drain back into the same
6 area, which stays in our district. There's no way that
7 water can be wasted in the areas that have the pumps.

8 The areas on the lower side of the ditch where
9 you'd have gravity feed, they have the ability to take
10 water into the field and drop it out the bottom end of the
11 drain, which we would consider a waste. So that's where
12 we have the -- have said to the ditch tender that if he
13 sees a spill going out of the bottom, he informs the
14 grower that he's going to turn off the headgates until he
15 readjusts his fields so he doesn't spill.

16 MR. FRINK: Okay. In the area in which the return
17 flow enters the drain, is there a per acre-foot charge for
18 the water that grows in that area of use?

19 MR. MATHEWS: No. You mean like the Imperial Valley
20 where they have a deduction for what goes out the bottom,
21 or something --

22 MR. FRINK: No.

23 MR. MATHEWS: -- or a charge for what --

24 MR. FRINK: No. Let me rephrase the question. I'm
25 not interested, in this question, in the amount that

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1 actually leaves the field.

2 MR. MATHEWS: Okay.

3 MR. FRINK: I'm focusing on the amount that is
4 diverted for irrigation. But in the area in which -- in
5 the area that drains into a drain and the water is lost
6 for further use, are farmers who are located in that area
7 billed on the amount of water that they use?

8 MR. MATHEWS: No. Everybody in our district is
9 billed a flat amount per acre.

10 MR. FRINK: All right. Mr. Mathews, are you
11 familiar with the analysis that Yuba County Water Agency
12 and its consultants have done on the impacts which the
13 proposed decision could have on surface water availability
14 from the Agency?

15 MR. MATHEWS: I've looked at some of their charts.
16 I've not read the entire numerous chronicles of it.

17 MR. FRINK: Mr. Rue, are you familiar with that
18 analysis?

19 MR. RUE: I'm just familiar with the representation
20 of what we believe the deficiencies will be based on that.

21 MR. FRINK: Okay. Have either of you or your
22 districts done any separate, independent analysis or
23 modeling of the effects of the provisions of the proposed
24 water right decision on the surface water supplies that
25 your districts would receive?

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1 MR. MATHEWS: We have not.

2 MR. FRINK: Is that the case with you, Mr. Rue, as
3 well?

4 MR. RUE: No. We have accepted the analysis.
5 That's what's been reported to me.

6 MR. FRINK: Excuse me, just a minute. You may have
7 explained this some already, but a couple days ago when
8 Dr. Reid was in he testified about the sequential flooding
9 of fields for waterfowl habitat.

10 Is that the practice in your district,
11 Mr. Mathews, or do you try to flood, basically, the whole
12 waterfowl habitat at the same time?

13 MR. MATHEWS: We flood, basically, the whole
14 waterfowl habitat as quick as we can.

15 MR. FRINK: Okay. And how long do you keep it
16 flooded?

17 MR. MATHEWS: We still have some fields that are
18 flooded as we speak. Some of the grower/duck clubs that I
19 farm for, let me drain the water on the 1st of March, some
20 other ones let me drain it on the 15th of February, even
21 though that's substantially later than that the duck
22 season, which usually ends around the 15th or 20th of
23 January.

24 MR. FRINK: Okay. What is the reason for keeping
25 the fields flooded longer?

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1 MR. MATHEWS: So the ducks have a place to winter
2 before they're starting to go back to Canada.

3 MR. FRINK: Okay. And how about in your district,
4 Mr. Rue, do you engage in sequential flooding of the
5 waterfowl habitat areas, or do you try to do it all,
6 basically, at the same time?

7 MR. RUE: No. We tend to use a sequential pattern.
8 You have to understand that, of course, each landowner
9 manages his land accordingly. But as a general statement,
10 you could say that we do sequentially flood.

11 MR. FRINK: And are you able to reroute the water
12 that is drained off of one field for the use on a second
13 and third field, sequentially?

14 MR. RUE: Yes, to a degree. Yes.

15 MR. FRINK: Mr. Mathews, I wasn't clear about the
16 discussion between yourself and Mr. Lilly about the use of
17 water for waterfowl habitat that begins as early as
18 September. And I understood you explained that that water
19 is diverted for waterfowl habitat beginning in September.

20 What I wasn't clear on, and I'm not sure you can
21 answer this or not, but is it your understanding that
22 the -- that in Yuba County Water Agency's Exhibit 27, the
23 waterfowl habitat numbers for the acre-feet of water used
24 for waterfowl habitat, would those include or exclude the
25 water you use in September?

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1 MR. MATHEWS: If I understand your question right,
2 Donn Wilson of the Agency has used a cutoff date of
3 October 15th and arbitrarily said that water before that
4 was used for farming. And the water after October 15th
5 was used for waterfowl habitat.

6 MR. FRINK: Okay.

7 MR. MATHEWS: That is not the understanding that
8 Cordua uses. That's why I wanted to point that out so
9 everyone understood that you can see when the diversion --
10 you have the daily chart in front of you. I think it's
11 called Exhibit 12, Page 2 of Mike Rue's testimony.

12 MR. FRINK: I did look at that at the time you were
13 discussing it with Mr. Lilly.

14 MR. MATHEWS: Yeah. You'll notice that in July, the
15 big water months, we used the maximum diversion of 195
16 second feet. July is a high water month and rice, as I
17 also testified to earlier, raising the water.

18 You'll notice that by the end of August we're
19 down to 100 feet. And, then, right after the 1st of
20 September when we are starting to drain fields, we have
21 our diversions all the way down to 24 feet, 24 cfs.

22 MR. FRINK: Okay. I think that answers my question
23 there. I was wondering: Do you have Exhibit S-YCWA-27
24 handy?

25 MR. MINASIAN: Yes.

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1 MR. FRINK: Now, the reason I was confused is,
2 beginning in 1988 through '92, I guess there is a footnote
3 that indicates water delivered after October 15th is
4 considered waterfowl habitat. On the remaining pages, it
5 did not include that footnote.

6 And do you know -- and, perhaps, you're not the
7 right person to ask on this, perhaps we'll get it
8 clarified from Mr. Wilson later on -- but do you know if
9 the waterfowl habitat numbers on the years '93 through '99
10 include any water delivered before October 15th?

11 MR. MATHEWS: It's my understanding that all the
12 numbers on this thing are using approximately the
13 October 15th designation. That's my understanding of
14 that.

15 MR. FRINK: Okay.

16 MR. MATHEWS: The charts I have in front of me --
17 and I had another one, but I left it on my desk -- had
18 each of the years. And it's my recollection that each of
19 those years we're using this approximate October 15th
20 date. So the numbers that appear on the chart are
21 different than what we consider we use for waterfowl
22 habitat. So it would decrease the use for rice and
23 increase the use for habitat.

24 MR. FRINK: And do you have an estimate of the
25 additional amount of water that would be used in your

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1 district for waterfowl habitat that isn't reflected in the
2 waterfowl habitat numbers in Exhibit S-YCWA-27?

3 MR. MATHEWS: Using the charts for '99, you would
4 add an additional 3658 for the month of October. And a
5 good part of the 6,000 in September would be used for the
6 ducks and would come off of the rice.

7 MR. FRINK: Okay. Mr. Rue, in your district is
8 water diverted for waterfowl habitat before October 15th?

9 MR. RUE: In some cases, yes.

10 MR. FRINK: Is it a substantial quantity?

11 MR. RUE: It, quite frankly, depends on the year.
12 We're a little further south than Cordua. And we're a
13 little more susceptible to Delta breezes. Sometimes -- so
14 it depends on the -- it just depends on the climatological
15 conditions that year. Sometimes we do flood earlier and
16 sometimes our harvest is a little bit delayed.

17 MR. FRINK: Okay. I wonder if each of you gentlemen
18 could estimate the approximate amount -- I believe you
19 gave the amounts that were flooded for waterfowl habitat
20 in 1999, at least, Mr. Mathews did.

21 But could you give those numbers, again, as well
22 as the additional waterfowl habitat that did not involve
23 flooding of rice fields? Excuse me, I'll rephrase that.

24 It's my understanding that the waterfowl habitat
25 flooding involves both rice fields and other lands in some

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1 instances; is that correct?

2 MR. MATHEWS: That's correct.

3 MR. FRINK: Do you have an estimate on the
4 breakdown?

5 MR. MATHEWS: I can give it to you within a tenth of
6 an acre.

7 MR. FRINK: That's very good.

8 MR. MATHEWS: In -- at least, if our charges were
9 correct -- we had 423.4 acres we called "summer wildlife."
10 This would be areas that were not planted to rice, were
11 not pasture, or trees, but were flooded for summer
12 waterfowl habitat. Using the same number in '98 --

13 MR. FRINK: Excuse me. Excuse me. Would all the
14 other area that is flooded for waterfowl habitat within
15 your district, be rice fields, everything except for that
16 423.4 acres?

17 MR. MATHEWS: Right. The summer wildlife becomes
18 known as winter wildlife, so the winter water would be the
19 water you use on your rice fields. And I'm not sure --
20 our secretary did this -- whether the 7700 includes the
21 400 -- it doesn't appear that it does.

22 It would look like the winter water and the
23 summer water are separate. So, in other words, the
24 flooded water winter habitat would be both the 7730 that
25 we have on this chart and the 423 acres, approximately,

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1 8200 acres.

2 MR. FRINK: I'm still a little unclear, but --

3 MR. MATHEWS: Let me add, we have rice on 8500
4 acres. We had winter habitat flooded of around, say, 8300
5 acres.

6 MR. FRINK: And that included both rice land and
7 this other land?

8 MR. MATHEWS: Yeah.

9 MR. FRINK: Mr. Rue, do you have a similar breakdown
10 for the flooding of waterfowl habitat land in your
11 district?

12 MR. RUE: I don't have it as exact as Cordua keeps
13 it. We have nonrice habitat. We've had some conservation
14 easements dedicated in our district. And both dedicated
15 easements and the privately held land that's managed for
16 wildlife, I'm going to say is in the neighborhood of 325
17 to 400 acres roughly. That's my estimate. You know,
18 that's my knowledge of some of the exact acreage in the
19 easements, plus an estimate on the privately-managed
20 habitat.

21 MR. FRINK: So it's approximately 325 acres that
22 aren't planted in rice, are flooded for waterfowl habitat
23 each year?

24 MR. RUE: That's not right.

25 MR. LILLY: I'm going to object. That misstates his

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1 testimony. He said, "325 to 400." That's different than
2 saying 325.

3 H.O. BROWN: Okay.

4 MR. RUE: 325 to 400..

5 MR. FRINK: Okay. I certainly appreciate the
6 clarification, because I'm not following, the numbers
7 aren't all that clear.

8 MR. RUE: Certainly.

9 MR. FRINK: Okay. I believe that's all the
10 questions that I have. Thank you.

11 MS. LOW: I just have a few questions for you,
12 Mr. Mathews. In Exhibit 2 your testimony deals with the
13 effects of water temperature on rice production. And --

14 MR. MATHEWS: Can you wait until I find it?

15 MS. LOW: Yes. Yes.

16 MR. MATHEWS: Exhibit 2, is that the one that was on
17 there -- could you show us what it is?

18 MS. LOW: It's in the packet that Cordua --

19 MR. MATHEWS: Could you show us what it looks like?

20 MR. MINASIAN: We've got it. Which paragraph,
21 Alice?

22 MS. LOW: I guess it -- let's see, the temperature
23 discussion, I think, starts on Page 10.

24 MR. MATHEWS: I thought you were trying to find a
25 chart.

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1 MS. LOW: Oh, no, nothing specific.

2 MR. MATHEWS: Pardon me.

3 MS. LOW: No, nothing that specific. My question
4 is: In your data from the Lower Yuba River you included
5 factors -- you really can't separate out the effects of
6 water temperatures from other factors that would be
7 influencing rice production in the years that you report
8 production figures. Is that correct?

9 MR. MATHEWS: If I could elaborate a little bit. We
10 looked in every way we could to try to analyze our
11 fertilizer programs, our tillage programs. We went so far
12 as to get the daytime hours between 65 degrees and 95
13 degrees from Davis and backed it up for the last five
14 years, it was not because we didn't try to find other
15 factors.

16 This factor that I showed on the screen was the
17 closest factor we had. To use an example, the last five
18 years, not counting this last year, the hours for May 1
19 until -- I think we did it on August 27th -- was in the
20 area of 3,000 to 3400 hours in that temperature. This
21 year on that same day, it was something like 390. So the
22 temperature in the growing range was substantially
23 different this year.

24 MS. LOW: Okay. Yeah, but it's awfully hard from a
25 few years of data to really separate out all those

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1 different factors that could influence --

2 MR. MATHEWS: I fully agree with you. It's not a
3 finite science. But I wanted to urge you, I mean, I
4 didn't just pick one factor. We did try to analyze
5 everything that we could find.

6 MS. LOW: I understand. Uh-huh. I was going to ask
7 you: Are you aware of any studies that have separated out
8 the effects of temperature of irrigation water on rice
9 production from other factors that may be influencing
10 production?

11 MR. MATHEWS: Not that we've been able to find.

12 MS. LOW: Okay. You're not aware of any specific
13 studies. Thank you.

14 MR. MONA: A couple questions for Mr. Rue. Sir,
15 does Yuba County Water -- not Yuba County, South Yuba
16 Water District, do they measure water diverted or
17 rediverted from the south canal at all points of the
18 diversions?

19 MR. RUE: Not at all points.

20 MR. MONA: Could you elaborate a little bit exactly
21 where those waters are measured?

22 MR. RUE: Our system is, essentially, a main canal
23 and the landowners take water off the main canal. The
24 water is measured into the District. And, then, each of
25 the outlets coming out of the main canal are measured

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1 until it reaches 40 Mile Road. And at that point we
2 arrive at the number in the main canal by subtraction,
3 given the metering at the start less the water that's
4 metered out.

5 And at that point, it enters the property that I
6 farm and operate. And, hopefully, that's the amount that
7 we've ordered. And, then, the end of the ditch is on the
8 property that we operate as well. And the ditch tender
9 monitors the bottom to see if we're spilling over, you
10 know, a minimal amount that you would have to have in the
11 system. Of course, it's 11 miles long, it's not going to
12 be perfect.

13 And at the same time that we don't run out of
14 water. And so to say we measure every outlet, isn't
15 exactly correct. We, certainly, measure all the way down
16 until we can arrive at the bottom and have a finite
17 number.

18 MR. MONA: Do you keep a continuous record of those
19 measurements?

20 MR. RUE: Yes. The ditch tender does.

21 MR. MONA: One final question, does Yuba County --
22 South Yuba Water District divert, currently, water from
23 Reeds Creek?

24 MR. RUE: We have an operating arrangement with
25 Brophy, which is part of our water management plan, in

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1 that their return flows that come down Reeds Creek to
2 South Yuba, we treat that as one of our points of
3 diversion.

4 So the properties that we have that are along
5 Reeds Creek and All American Canal are able to utilize
6 those waters and try to maximize the use before they leave
7 the District.

8 MR. MONA: Thank you very much.

9 H.O. BROWN: Do you have any redirect?

10 MR. MINASIAN: Nope.

11 H.O. BROWN: All right. How about your exhibits?

12 MR. MINASIAN: Yeah. I'd ask for admission of the
13 curriculum vitae of Michael Rue, Exhibit 1.1 with the
14 correction in regard to his articulation; the testimony of
15 Mr. Rue, which is Exhibit 1; exhibit 1.2, which is the
16 statement of diversions in 1999 of all member units of the
17 Yuba County Water Agency.

18 1.3 and 1.4, which are a typical or sample effect
19 of the constraint upon diversion after October 15. And
20 1.5 which is part of that same example.

21 H.O. BROWN: Okay. 1.0, 1.1, 1.2, 1.3, 1.4, and
22 1.5.

23 Mr. Sanders, you rise.

24 MR. SANDERS: Mr. Brown, I do have one objection to
25 one paragraph of Mr. Mathews' testimony. I'd like to

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1 first remind you that Mr. Mathews did make a policy
2 statement at the outset. And this is supposed to be
3 testimony.

4 MR. MINASIAN: Okay. These are Rue exhibits. I'll
5 be glad to --

6 MR. SANDERS: I'm sorry, I thought you were on
7 Mathews.

8 H.O. BROWN: No.

9 MR. MINASIAN: No, I'm sorry.

10 MR. SANDERS: I could stop or I can continue right
11 now.

12 H.O. BROWN: No. Let's wait until Mr. Minasian
13 offers the others into evidence.

14 MR. SANDERS: Sure.

15 H.O. BROWN: And then we can see which ones you have
16 a concern for.

17 MR. SANDERS: Okay.

18 H.O. BROWN: Is that it for Mr. Rue?

19 MR. MINASIAN: Yes, that's for Mr. Rue.

20 H.O. BROWN: Let's take those, because it seems that
21 there might be an objection on Mr. Mathews.

22 MR. MINASIAN: Absolutely.

23 H.O. BROWN: Are there any objections to the
24 offering of these exhibits into evidence as stated, 1.0 to
25 1.5, Mr. Rue?

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1 Seeing none, they're so accepted. Okay. Go
2 ahead.

3 MR. MINASIAN: Okay. And in regard to the Cordua
4 Irrigation District's exhibits:

5 Mr. Mathews' testimony, which is Exhibit 2 except
6 that I would suggest that we simply strike the paragraph
7 that is in dispute on Page 11, which is a hypothesis at
8 the end of Paragraph 6.3, at the very bottom of 11 and on
9 Page 12, down to the word, "environment," which
10 erroneously included quotation marks. And it doesn't give
11 a page at the staff report, but one could be misled by it.

12 H.O. BROWN: All right. Does that satisfy your
13 concerns, Mr. Sanders, on that exhibit?

14 MR. SANDERS: No, it doesn't.

15 H.O. BROWN: All right. Go ahead, Mr. Minasian.

16 MR. MINASIAN: Then, 2.1, which is the curriculum
17 vitae of Mr. Mathews; exhibit 3 which is the Department of
18 Fish and Game 1962/63 shad report; 3.1, which is a graph
19 of the temperatures measured by DFG at the Daguerre Point
20 in 1962; Exhibit 4, 4.1, 4.2, 4.3, which are aerial
21 photographs and the John Deere mapping system for the
22 yield on the Budge Ranch.

23 Exhibit 5, which is the aerial photograph of
24 Aloha Farms; 5.1 through 5.3, which are the correlating
25 John Deere yield studies for the Aloha Farms; and Exhibit

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1 6, which is the drawing that includes the '62, '97, '98,
2 '99 temperature records that are available at the Daguerre
3 Point.

4 H.O. BROWN: Okay. I have the exhibits from 2.1
5 through, as mentioned, to Exhibit 6. Are there objections
6 to the admission of any of those into evidence?

7 MR. SANDERS: Well, I have an objection to Exhibit
8 2.

9 H.O. BROWN: All right.

10 MR. SANDERS: Mr. Mathews' testimony.

11 H.O. BROWN: Exhibit 2.

12 MR. SANDERS: Specifically, paragraph G --

13 H.O. BROWN: Hold that thought for just a minute.
14 Are there any objections to any of the other exhibits?

15 Seeing none -- do you have one?

16 MR. FRINK: It's not an objection, it is a
17 clarification, Mr. Brown.

18 H.O. BROWN: Clarification.

19 MR. FRINK: Yes. All the exhibit numbers that
20 Mr. Minasian would be proceeded by an "S" and a "dash"
21 with the abbreviation for each of the districts. But in
22 order that this record be clear and that the exhibits in
23 this hearing be separate from the earlier hearing, all of
24 the exhibits are proceeded by an "S" and a "dash."

25 H.O. BROWN: All right. Mr. Minasian?

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1 MR. MINASIAN: Yes. Absolutely.

2 H.O. BROWN: All right. With the exception of
3 Exhibit 2, are there any objections to the offering of the
4 other exhibits? Seeing none, they're so accepted.

5 Okay. Mr. Sanders, Exhibit 2.

6 MR. SANDERS: Thank you, Mr. Brown. As I was saying
7 before, Mr. Mathews did take the opportunity to make a
8 policy statement at the outset of this hearing. And this
9 is supposed to be testimony. Of course, expert testimony
10 is supposed to be within the realm of the expert's
11 experience.

12 And Mr. Mathews is truly an expert on many
13 subjects, I will grant that. However, this paragraph G,
14 beginning on Page 14 and going on to 15, this isn't
15 testimony. This is his opinion. And if -- he had every
16 right to express his opinion in the policy statement.
17 But, truly, we find it very objectionable to suggest that
18 what this Board is doing here may result in 18 to 20
19 people per acre dying. There is nothing in the record to
20 support that figure.

21 And, in fact, Mr. Rue -- I don't want to
22 mischaracterize his testimony on cross-examination -- but,
23 he, certainly, was unwilling to support this statement
24 that 18 to 20 people will die as a result -- per acre,
25 will die as a result of this.

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1 We find it truly objectionable. And would
2 request that it be stricken, this entire paragraph be
3 stricken from the record.

4 H.O. BROWN: That's paragraph G, Page 15.

5 MR. SANDERS: Paragraph G, beginning at 14 and
6 through -- pretty much to the bottom of Page 15.

7 H.O. BROWN: All right. Mr. Minasian.

8 MR. MINASIAN: Yes. We testified to the fact that
9 the rice produced on these acres produces calories. We
10 don't know -- and this Board can take judicial notice of
11 fact that there are not enough calories produced in the
12 world to feed everybody. And so it is a reasonable
13 extension that if we reduce production and do not have
14 calories for people to consume, that somewhere someone
15 will not have something to eat.

16 Now, if that's objectionable to make that
17 extension, I'll --

18 H.O. BROWN: All right. Thank you, Mr. Minasian.

19 Mr. Frink, do you have a response?

20 MR. FRINK: Well, I'm not quite sure how I feel
21 about paragraph G, but Mr. Minasian's statement that a
22 reduction in calories means somebody somewhere in the
23 world will die, I don't believe the Board can take
24 official notice of that.

25 There's millions of dollars spent each year to

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1 get the calories out of our food. I think it's
2 commonly -- I think it's commonly accepted that most of
3 the hunger and starvation in the world most years is not a
4 result of an absolute shortage of food or calories, but
5 rather it's a distribution problem.

6 H.O. BROWN: Okay. Thank you, Mr. Frink.

7 Would you change that to an opinion, Mr. Mathews?

8 MR. MINASIAN: Yes. It is an opinion.

9 H.O. BROWN: Would that be acceptable to you,
10 Mr. Sanders?

11 MR. SANDERS: Well, frankly, it's not. As I said
12 experts are supposed to testify on the -- or are allowed
13 to give expert opinion based on matters within their realm
14 of his expertise. It's just not within his realm of
15 expertise.

16 Looking at his curriculum vitae, there is no
17 "Ph.D." on there, or "Master's degree," that qualifies him
18 as an economist, or an agricultural economist and
19 agronomist. I don't know what sort of expert you would
20 need to testify on, "18 to 20 people going to die," but if
21 that's his opinion, he should have made it in the -- in
22 his policy statement. He's not an expert on that subject.

23 H.O. BROWN: All right. Thank you, Mr. Sanders.
24 You have made a very strong point.

25 Mr. Minasian, any final response?

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1 MR. MINASIAN: No. No. I submit it.

2 H.O. BROWN: There's enough on the record right now
3 to draw concern to the statement, Mr. Sanders. And I'll
4 go ahead and leave it in as Mr. Mathews' opinion that he's
5 entitled to.

6 H.O. BROWN: All right. Mr. Gallery.

7 THE COURT REPORTER: Mr. Brown, may I get the
8 panelists' names real quick?

9 H.O. BROWN: Okay. We're going to go off the record
10 for a moment.

11 (Off the record.)

12 H.O. BROWN: All right. We're back on the record
13 Mr. Gallery.

14 MR. GALLERY: Mr. Brown, Brophy's two witnesses need
15 to be sworn, Mr. Baggett and Mr. Burton.

16 H.O. BROWN: Please raise your right hand. Do you
17 promise to tell the truth during these proceedings, if you
18 do answer, I do?

19 MR. BURTON: I do.

20 MR. BAGGETT: I do.

21 H.O. BROWN: Please, be seated.

22 ----oOo----

23 DIRECT TESTIMONY OF BROPHY WATER DISTRICT

24 BY MR. BURTON AND MR. BAGGETT

25 MR. GALLERY: Mr. Brown, Mr. Baggett, is the

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1 director of the Brophy Water District and a long time rice
2 grower in the district. His testimony is primarily to
3 tell the Board what, in practical terms, the imposition of
4 deficiencies that are proposed would do to the cost of
5 growing rice. The rice growers are required to maintain a
6 stand by system for the pumping of water to makeup for
7 surface water shortages when those occur.

8 Mr. Burton, who is the engineer for the District,
9 is going to address a subquestion that came up in the
10 Draft Decision about the District diverting water from
11 Reeds Creek and whether there was a water right for that
12 diversion.

13 H.O. BROWN: All right.

14 MR. GALLERY: So Mr. Baggett, taking you first, do
15 you have S-Brophy Water District Exhibit 1 in front of
16 you --

17 MR. BAGGETT: Yes, I do.

18 MR. GALLERY: -- the testimony of William Baggett?

19 MR. BAGGETT: Yes, I do.

20 MR. GALLERY: And that is testimony that you
21 prepared for presentation in this proceeding?

22 MR. BAGGETT: Yes, it is.

23 MR. GALLERY: And do you affirm that that testimony
24 is true and correct?

25 MR. BAGGETT: Yes, I do.

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1 MR. GALLERY: Would you go ahead and give us a
2 summary of your testimony.

3 MR. BAGGETT: My name is William A. Baggett. My
4 address is 7605 Highway 70, Marysville. I am a farmer
5 within Brophy Water District and have been the director
6 since 1983. I have been farming in Brophy Water District
7 since 1980. I'm currently farming approximately 700 acres
8 of rice.

9 Both myself and Director Arthur Bertilinni
10 testified in this these hearings in 1992. My testimony
11 this time is addressed to the impacts we would suffer as a
12 result of deficiencies in our water supply that apparently
13 would be imposed if the increased fish requirements, as
14 proposed in the State Board's Draft Decision were placed
15 in the water rights permits of Yuba County Water Agency.

16 The new constraints, those instream flows
17 required and imposed on the agencies diversion would
18 require farmers in Brophy Water District to go back to
19 pumping groundwater many years, which could take us back
20 to the prospect of further overdraft.

21 But even beyond that, they would create major new
22 economic burdens on the growers in the district. The cost
23 of maintaining groundwater pumping facilities on standby
24 every year for the use only in the years when deficiencies
25 are imposed.

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1 These are hidden costs and go beyond just the
2 cost of power in pumping the groundwater when pumping is
3 required. My Brophy Water District costs, including water
4 in my rice field is \$25 an acre, plus \$20 an acre for PG&E
5 for power cost from the ditch for a total cost of \$45 an
6 acre.

7 If the fish flow requirement imposed in the State
8 Board Draft Decision were imposed on Yuba County Water
9 Agency, then the cost of my water from the District would
10 go up to \$81.25 per year, every year.

11 The increase costs would be just for standby
12 charges and O&M on deep wells in all years even when no
13 groundwater was pumped. In the years where I would have
14 to pump groundwater, my costs would even be higher.

15 MR. GALLERY: And, Mr. Baggett, in Brophy Water
16 District the water is delivered from the Agency's main
17 canal into the Brophy distribution system; is that
18 correct?

19 MR. BAGGETT: Correct.

20 MR. GALLERY: And that distribution system consists,
21 in part, of artificial canals and in part stream channels
22 that flow through the District?

23 MR. BAGGETT: That's correct.

24 MR. GALLERY: And whether you're on a District
25 artificial ditch or along the stream channel, the Brophy

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1 growers have to pump the Agency water out of that
2 distribution channel on to their fields; is that correct?

3 MR. BAGGETT: Correct.

4 MR. GALLERY: All right. Then, does that complete
5 the summary of your testimony?

6 MR. BAGGETT: Yes, it does.

7 MR. GALLERY: Maybe I'll just go ahead and take
8 Mr. Burton. If that's all right, Mr. Brown?

9 H.O. BROWN: Sure.

10 MR. GALLERY: Mr. Burton, you're the engineer for
11 the Brophy Water District?

12 MR. BURTON: Yes.

13 MR. GALLERY: And you have prepared testimony that
14 has been marked Exhibit Brophy Exhibit S-2?

15 MR. BURTON: Yes.

16 MR. GALLERY: And do you affirm that testimony is
17 true and correct?

18 MR. BURTON: It is.

19 MR. GALLERY: And, then, in addition, you provided a
20 summary of your qualifications. And that's marked
21 S-Brophy Exhibit 2-A; is that correct?

22 MR. BURTON: I don't know if that's true or not.

23 MR. GALLERY: I'm handing you a copy of S-Brophy
24 Exhibit 2-A. Is that a summary of your qualifications?

25 MR. BURTON: Yes, it is.

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1 MR. GALLERY: All right. And have you prepared a
2 summary of your testimony?

3 MR. BURTON: I have.

4 MR. GALLERY: Have you also prepared a map in
5 connection with your testimony, which is marked
6 S-Brophy-3, entitled, "Map of Assumed Lands along Reeds
7 Creek"?

8 MR. BURTON: Yes.

9 MR. GALLERY: And have you -- do you have a
10 transparency of S-Brophy Exhibit 3 with you that you can
11 put on the overhead?

12 MR. BURTON: Yes. It's right here.

13 MR. GALLERY: Do you want to put that up? And I'd
14 ask you in testifying if it's convenient to refer to the
15 overhead in connection with your summary but, essentially,
16 your testimony was to address the question of what water
17 rights might be -- support the presence -- support the
18 diversion of water out of Reeds Creek; is that correct?

19 MR. BURTON: Yes.

20 MR. GALLERY: And the overhead depicts lands along
21 Reeds Creek and a section of Reeds Creek, but does it
22 include all of Brophy Water District, or just a section of
23 the District through which Reeds Creek flows?

24 MR. BURTON: Just that portion of the District.

25 MR. GALLERY: Yeah. And then Reeds Creek as it

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1 flows through and out of Brophy Water District it flows
2 into the neighboring South Yuba Water District; is that
3 correct?

4 MR. BURTON: Yes, it does.

5 MR. GALLERY: Would you go ahead and summarize your
6 testimony?

7 MR. BURTON: Sure. My name is Kit Burton. I'm an
8 engineer for the Brophy Water District. I designed and
9 supervised construction of the portion of the irrigation
10 system that supplies water to Brophy Water District.

11 And like Mr. Gallery said, my testimony relates
12 to the question of whether water is diverted from Reeds
13 Creek by farmers within Brophy Water District. And if so,
14 should a permit be obtained for that diversion.

15 I prepared this information, Exhibit C, that
16 shows that a very substantial amount of acreage lies along
17 Reeds Creek within Brophy Water District that is probably
18 riparian to Reeds Creek. And that whatever water that is
19 naturally occurring in Reeds Creek that may be commingled
20 with the Yuba River water, if there is any water in Reeds
21 Creek at that time, could be diverted under riparian
22 right.

23 MR. GALLERY: Mr. Burton, water is delivered from
24 the Agency into Reeds Creek for distribution, also?

25 MR. BURTON: That is correct.

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1 MR. GALLERY: Yes.

2 MR. BURTON: Right. The south canal system includes
3 Reeds Creek as a portion of delivery to that part of
4 Brophy Water District. And because of that fact, there
5 will be some commingling of water that will occur to the
6 extent that there is natural water in Reeds Creek.

7 The map that you see, I prepared from certified
8 copies of the master title plans from the Bureau of Land
9 Management in Sacramento. And the original land patents
10 that touched Reeds Creek at the time of patent are colored
11 yellow.

12 This land here is the yellow coloration. And
13 this didn't reproduce very well, but there is the yellow
14 coloration, those are the lands that were originally
15 riparian to Reeds Creek. After that I went to the Yuba
16 County Tax Assessor's Office and I got copies of the
17 current assessor's parcels. And those parcels that
18 currently contact Reeds Creek I showed on the map as blue.
19 This is a blue area --

20 H.O. BROWN: You need to identify where on the map
21 you're directing so the Court Reporter can make note of
22 it.

23 MR. BURTON: Okay. Well, I'm pointing to areas on
24 the map that are colored blue. As an example, this parcel
25 here (indicating) is colored blue, because it currently is

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1 part of an assessor's parcel that contacts Reeds Creek.

2 I, also, at the same time obtained copies of the
3 original government survey maps from the BLM, which showed
4 the location of the Reeds Creek Canal at that time. With
5 one small exception, where Reeds Creek was realigned in
6 this area here. The rest of the canal is pretty much
7 exactly where it was at the time of original patent.

8 Where the blue area is colored on the map,
9 overlap the yellow colored areas on the map, the resulting
10 coloration is green. And there are about 2,000 acres
11 of -- excuse me, 2,600 acres of original patented lands
12 that were riparian to Reeds Creek, which are colored
13 yellow; and about 2,000 acres that shown in green.

14 Those 2,000 acres are presumed to be still
15 riparian. Now, I understand that in order for lands to
16 retain their original riparian status they have to be
17 continuously contacting the stream from the time of
18 original patent.

19 I have not conducted a chain of title search for
20 each of these parcels, but in my experience in the area
21 and the fact that these are principally agricultural
22 parcels, it's my opinion, that if a title -- chain of
23 title search were to be done that very few of these lands
24 shown in green would be shown to be still -- I mean, very
25 few would not be still riparian.

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1 The water to Brophy Water District that -- I have
2 it backwards here. At this point I'm showing -- I'm
3 pointing to a spot on Reeds Creek on North Beal Road, or
4 Camp Beal Road. This is the point where water from the
5 main canal crosses Reeds Creek and there is an opportunity
6 for water to be commingled with Reeds Creek water.

7 From this point, there is some water during the
8 irrigation season that is delivered to Brophy Water
9 District down Reeds Creek. That water is pumped out of
10 Reeds Creek by the landowners that have their own pumps in
11 the channel and they use that water for irrigation.

12 My conclusion based on that is, and the results
13 of the map, is that whatever natural water occurs in Reeds
14 Creek can be pumped by those landowners under their
15 riparian right.

16 MR. GALLERY: Does that conclude your summary,
17 Mr. Burton?

18 MR. BURTON: Yes.

19 MR. GALLERY: That's the extent of our testimony,
20 Mr. Brown.

21 H.O. BROWN: All right.

22 MR. GALLERY: We're ready for cross-examination.

23 H.O. BROWN: Thank you, Mr. Gallery.

24 Mr. Gee.

25 MR. GEE: Mr. Brown, I have no cross-examination.

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1 H.O. BROWN: Thank you, Mr. Gee.

2 MR. GEE: Thank you.

3 H.O. BROWN: Mr. Baiocchi?

4 MR. BAIOCCHI: Thank you.

5 ---oOo---

6 CROSS-EXAMINATION OF BROPHY WATER DISTRICT

7 CALIFORNIA SPORTFISHING PROTECTION ALLIANCE

8 BY MR. BAIOCCHI

9 MR. GEE: Good afternoon. My name is Bob Baiocchi.
10 I'm an agent for California Sportfishing Protection
11 Alliance. And I have some questions. I'll first go to
12 Mr. Burton.

13 In reading your testimony, it appears to me based
14 on certain statements that you're not sure whether or not
15 it's riparian rights; is that true?

16 MR. BURTON: There is a possibility that some of
17 these lands could have been split up and then reconnected
18 to appear that they have always been in contact with Reeds
19 Creek. And I have not done a title search to establish
20 that that is not true.

21 MR. BAIOCCHI: Thank you. Have you done any
22 hydrology analysis on Reeds Creek to determine the daily
23 and monthly flows in that watershed?

24 MR. BURTON: I prepared a report for Brophy Water
25 District at the beginning of the irrigation project, which

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1 analyzed the flow in Reeds Creek and the watershed, the
2 area that collects water -- that delivers water to that
3 section of Reeds Creek.

4 I don't have any figures on daily flows, but I
5 can tell you that there's very, very little flow that
6 occurs in Reeds Creek during the irrigation season.

7 MR. BAIOCCHI: That's why I raised the question
8 about summer flows. Are you aware of any diversions in
9 the upper stream portion to Reeds Creek above the Brophy
10 Water District?

11 MR. BURTON: I'm aware, in general, where the
12 watershed boundary lie.

13 MR. BAIOCCHI: But you never have inspected,
14 personally, the upstream portions of that -- of Reeds
15 Creek?

16 MR. BURTON: Well, I haven't walked the whole
17 perimeter of that watershed boundary, no.

18 MR. BAIOCCHI: Are you aware if there's any fish,
19 wildlife, aquatic species that live in Reeds Creek?

20 MR. BURTON: I couldn't -- I couldn't list them for
21 you, no.

22 MR. BAIOCCHI: And to the best of your
23 knowledge, there wasn't a fish, wildlife, or aquatic
24 resource analysis prepared for that stream?

25 MR. BURTON: I did not do such an analysis.

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1 MR. BAIOCCHI: Okay. Thank you very much. Now, in
2 the downstream reaches below Reeds Creek as it flows out
3 of the District boundary, that is a tributary to what
4 stream, or what waterway?

5 MR. BURTON: The water from Reeds Creek flows into
6 the -- that's sometimes called the All American Canal. I
7 have referred to it in the past as the Western Pacific
8 Interceptor Canal.

9 MR. BAIOCCHI: Okay. All right. And that is a
10 tributary to --

11 MR. BURTON: Bear River.

12 MR. BAIOCCHI: Feather River. Thank you.

13 MR. BURTON: Bear River.

14 MR. BAIOCCHI: Farris?

15 MR. BURTON: Bear.

16 MR. BAIOCCHI: I'm sorry. I'm hard of hearing.

17 MR. BURTON: Like a grizzly bear.

18 MR. BAIOCCHI: Okay. Oh, Bear River. Got it.

19 Okay. Thank you.

20 Do you know any anadromous fish that migrate up
21 Reeds Creek?

22 MR. BURTON: I don't know that.

23 MR. BAIOCCHI: Okay. Do you know if by the District
24 diverting all of the water out of Reeds Creek, if there is
25 any downstream impact to riparian diverters below the

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1 District boundary?

2 MR. BURTON: Did you say the District diverting all
3 of the water out of Reeds Creek?

4 MR. BAIOCCHI: Okay. Let me reframe the question.
5 When the District diverts water out of Reeds Creek, are
6 there any impact to downstream riparian water diverters or
7 users?

8 MR. BURTON: I would say probably not.

9 MR. BAIOCCHI: Do they take all the water out of
10 Reeds Creek?

11 MR. BURTON: No.

12 MR. BAIOCCHI: How do we know it goes dry in the
13 summertime? How do we know? How do you know it goes dry
14 in the summertime?

15 MR. BURTON: Well, Reeds Creek is like many other
16 creeks in the area that survive on precipitation. And in
17 the summertime there isn't enough to sustain a flow in
18 Reeds Creek.

19 MR. BAIOCCHI: But it could be from upstream
20 diversion, or, et cetera; isn't that true?

21 MR. BURTON: I don't know of any sources of water
22 that would -- that supply water to Reeds Creek upstream.

23 MR. BAIOCCHI: Okay. Thank you. Statements of
24 diversion and use, has the District filed statements of
25 diversion and use --

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1 MR. BURTON: I don't know the answer.

2 MR. BAIOCCHI: -- with the Division of Water Rights
3 for appropriations? What would be the appropriation
4 season of diversion of use; do you know that?

5 MR. LILLY: Excuse me. I'm going to object. That
6 misstates prior testimony. The prior testimony would be
7 the diversion would be under riparian rights, not
8 appropriative rights. So appropriation is incorrect.

9 H.O. BROWN: Mr. Baiocchi.

10 MR. BAIOCCHI: That has not been established yet
11 whether this is an unauthorized use of the State's water,
12 or whether it's a riparian.

13 Mr. Burton is here to try to provide some
14 evidence whether it might be riparian, but if you read his
15 testimony, he's not sure of himself. The point I'm trying
16 to find out is, you know, the diversion season, the amount
17 of diversion, things like that.

18 H.O. BROWN: I'll allow the question.

19 Answer it if you know it.

20 MR. BAIOCCHI: Thank you.

21 MR. BURTON: What I can tell you is that water is
22 diverted from Reeds Creek at sometimes not during the
23 normal irrigation season. Sometimes there is natural
24 water in Reeds Creek. And that water can be diverted by
25 landowners that have their pumps in Dry Creek during those

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1 times.

2 MR. BAIOCCHI: Okay. Have you recommended to the
3 District that you would do the chain of title study?

4 MR. BURTON: No, I haven't.

5 MR. BAIOCCHI: Okay. Thank you. I'll move on to
6 Mr. Baggett.

7 Mr. Baggett, you're the owner of 700 acres?

8 MR. BAGGETT: No. I farm 700 acres.

9 MR. BAIOCCHI: You don't own it?

10 MR. BAGGETT: No. I own 140.

11 MR. BAIOCCHI: I see. Thank you. Are there any duck
12 clubs on those lands?

13 MR. BAGGETT: Yes.

14 MR. BAIOCCHI: How many would that be?

15 MR. BURTON: I'm the one that floods for duck clubs.

16 MR. BAIOCCHI: Do you have a workforce of people
17 that help cultivate the rice?

18 MR. BAGGETT: In planting the rice we do it in
19 seasons. We have a planting season and a harvesting
20 season.

21 MR. BAIOCCHI: Yes, sir.

22 MR. BAGGETT: And during those times we employ
23 probably six to eight people.

24 MR. BAIOCCHI: Thank you. One of the concerns that
25 I have -- and maybe you can answer this, you may not be

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1 able to do -- in cross-examination it was brought up about
2 seepage. Now, from the point of diversion to the point of
3 use in the Brophy Water District -- first of all -- strike
4 that.

5 Is the south canal lined? "Lined," means is it
6 cement lined so there's no seepage or leakage?

7 MR. BAGGETT: No, it isn't.

8 MR. BAIOCCHI: There is not. Secondly, from the
9 point of diversion to the point of use, you know what I'm
10 saying? From the point of diversion, measured point of
11 diversion to the point of use, do you know the amount of
12 seepage?

13 MR. BAGGETT: No, I don't.

14 MR. BAIOCCHI: There's never been any studies to
15 determine the amount of seepage?

16 MR. BAGGETT: Not to my knowledge.

17 MR. BAIOCCHI: Theoretically, the seepage could be
18 20 percent, 30 percent?

19 MR. BAGGETT: I have no idea.

20 MR. BAIOCCHI: You have no idea. Mr. Burton, would
21 you happen to have that information available? Have you
22 done any studies on that with the seepage and leakage
23 problems on the south canal from the point of measurement
24 to the point of use?

25 MR. BURTON: I don't have any specific numbers to

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1 give you, no.

2 MR. BAIOCCHI: But have you studied that at all?

3 MR. BURTON: No, I haven't made a study of that.

4 MR. BAIOCCHI: Okay. Thank you very much. Now, the
5 return flows, Mr. Baggett, as to the return flows, when
6 the water is discharged out of the rice fields, where is
7 it diverted to?

8 MR. BAGGETT: Usually back into --

9 MR. BAIOCCHI: Back into Bear Creek?

10 MR. BAGGETT: Well, it goes into Reeds Creek and
11 other parts of the system, because ours are all lift. And
12 you usually have to drain them back in if we have a
13 diversion. We're restricted to that, in holding our water
14 and everything like that.

15 MR. BAIOCCHI: What about the entire District
16 though, would you have that knowledge, where that return
17 flow goes?

18 MR. BAGGETT: Our return would go down into South
19 Yuba Water District.

20 MR. BAIOCCHI: I understand --

21 MR. BAGGETT: They all go --

22 MR. BAIOCCHI: It goes --

23 THE COURT REPORTER: Okay. Okay. You're cutting
24 each other off.

25 MR. BAIOCCHI: I'm going too fast for you?

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1 THE COURT REPORTER: No. You're cutting each other
2 off. All the questions are getting cut off.

3 H.O. BROWN: Back up a couple questions.

4 THE COURT REPORTER: Thank you, Mr. Brown.

5 H.O. BROWN: Go ahead and start over. Remember, one
6 at a time.

7 MR. BAIOCCHI: Okay. Let's start with the return
8 flows.

9 MR. BURTON: Okay.

10 MR. BAIOCCHI: And I asked questions concerning
11 whether Mr. Baggett --

12 H.O. BROWN: Let me clarify this, this is
13 Mr. Baiocchi's turn to ask the questions. And so he's
14 kindly on the point here. So if he's talking, it's
15 probably best for you to back you off and let him finish.

16 MR. BAGGETT: Yes.

17 H.O. BROWN: Go ahead Mr. Baiocchi.

18 MR. BAIOCCHI: Thank you. Anyway, we're discussing
19 return flows. And you indicated, if I'm correct, that the
20 return flows for the Brophy Water District enter into the
21 South Yuba Water District. And from there the water goes
22 to whatever was so stated in the cross-examination
23 concerning South Yuba Water District?

24 MR. BAGGETT: That's correct.

25 MR. BAIOCCHI: Okay. You said, yes, okay. Thank

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1 you.

2 MR. BURTON: Yes.

3 MR. BAIOCCHI: That concludes my questions.

4 Thank you.

5 H.O. BROWN: Thank you, Mr. Baiocchi.

6 Mr. Sanders.

7 ---oOo---

8 CROSS-EXAMINATION OF BROPHY WATER DISTRICT

9 BY SOUTH YUBA RIVER CITIZEN'S LEAGUE

10 BY MR. SANDERS

11 MR. SANDERS: I just have three or four questions.

12 And I invite either of you to answer them, though from the
13 sounds of it, Mr. Burton will be the guy answering, well,
14 maybe not, I don't know.

15 Does Brophy have measuring devices installed at
16 all diversion points along Reeds Creek?

17 MR. BURTON: I know that they have some measurement
18 devices, but I don't know if there is a measurement device
19 on every single one.

20 MR. SANDERS: Okay. And does it make a difference
21 if I say, "Reeds Creek" or "the canal," are we talking
22 about the same thing when I say, "Reeds Creek"?

23 MR. BAGGETT: No.

24 MR. BURTON: No.

25 MR. SANDERS: Okay.

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1 MR. BURTON: The canal is a man-made diversion. And
2 Reeds Creek is a natural water course.

3 MR. SANDERS: Okay. But Brophy takes all of
4 their -- do you take all of your water out of Reeds Creek,
5 or there's enough --

6 MR. BAGGETT: No. No, we don't.

7 MR. SANDERS: Okay.

8 MR. GALLERY: Mr. Chairman, maybe to clarify it,
9 Mr. Sanders probably should use the term, "main canal," if
10 you're talking about the main delivery system from the
11 river. Brophy itself has some distribution canals
12 delivering its water and also uses Reeds Creek and other
13 some other natural channels.

14 H.O. BROWN: Thank you, Mr. Gallery.

15 MR. SANDERS: Okay. Okay. So does Brophy maintain
16 a continuous record of diversions from Reeds Creek?

17 MR. BAGGETT: No, I don't think so.

18 MR. SANDERS: Does Brophy have measuring devices
19 installed at all diversion points along its diversion --
20 diversion channels, along its system of diversion
21 channels?

22 MR. BAGGETT: No, it doesn't.

23 MR. SANDERS: Okay. Does Brophy determine what the
24 natural flow is in Reeds Creek?

25 MR. BURTON: Do they measure it?

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1 MR. SANDERS: Yes.

2 MR. BURTON: I don't believe so.

3 MR. SANDERS: Do you know if all of the diversion
4 points on Reeds Creek are listed as points of rediversion
5 in Yuba County Water Agency's water rights permit?

6 MR. BURTON: I don't know the answer to that.

7 MR. GALLERY: Mr. Brown, I guess I'd have to object
8 to that. Brophy is the consumer district. And the points
9 for diversion of the Agency, the wholesale agency delivers
10 water to the District. And, then, the District in turns
11 deliveries it to its landowners. And there's no water
12 rights of the parent agency which names each diversion of
13 the farmer supporting the diversion.

14 H.O. BROWN: Thank you for that clarification,
15 Mr. Gallery.

16 Mr. Sanders.

17 MR. SANDERS: I withdraw the question and that's it.

18 Thank you.

19 H.O. BROWN: Thank you, Mr. Sanders.

20 Mr. Cook.

21 ---oOo---

22 CROSS-EXAMINATION OF BROPHY WATER DISTRICT

23 BY MR. COOK

24 MR. COOK: Mr. Burton, I would like to ask you a few
25 questions relating to your Exhibit 3, which is the map.

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1 MR. BURTON: Okay.

2 MR. COOK: And for the purpose of the record, I'd
3 like to ask some technical questions, which I think should
4 not create a serious problem, but first I would like to
5 know:

6 What township and range we are talking about
7 here? I can't find it on the map.

8 MR. BURTON: Well, I'm tempted to guess at 14 north
9 four or five east, but without looking at -- I might have
10 something in here, if it's of sufficient importance for me
11 to dig it out. I don't see anything right off the bat
12 that tells me the answer to that.

13 MR. COOK: Is there any way you could obtain that
14 information and supply it for purposes of this hearing?

15 MR. BURTON: Certainly.

16 H.O. BROWN: All right. Let's make that an exhibit,
17 Mr. Gallery. You can mail it out to the parties.

18 MR. GALLERY: Yes.

19 H.O. BROWN: Give it a number, staff.

20 MR. MONA: That exhibit should be numbered
21 S-Brophy-4.

22 H.O. BROWN: Okay.

23 MR. GALLERY: That will identify the township and
24 range which is depicted on Brophy Exhibit 3; is that
25 correct?

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1 H.O. BROWN: That could be in the form of a letter,
2 or map, whatever is convenient to you, Mr. Gallery.

3 MR. GALLERY: Yes.

4 MR. COOK: You realize, Mr. Burton, that in
5 reviewing any of the original patents it's essential to
6 know the township?

7 MR. BURTON: Yes.

8 MR. COOK: I'd like to, also for the purpose of the
9 record, go through the various sections so we know
10 precisely what we're talking about. I'm talking about the
11 sections that you have colored on your map that would
12 indicate the areas that you feel are riparian.

13 Beginning with Section 25. Section 25 is the
14 entire north half of that section; is that correct?

15 MR. BURTON: I believe the Section 25 that you're
16 referring to is this section here (indicating).

17 MR. COOK: Yes.

18 MR. BURTON: Isn't that correct?

19 MR. COOK: That's correct. And the area that you're
20 referring to riparian is the north section?

21 MR. BURTON: That is correct.

22 MR. COOK: And with respect to Section 26 you're
23 talking about the northeast quarter and the southeast and
24 southwest quarter; is that correct?

25 MR. BURTON: The northeast quarter, that's the

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1 southwest quarter; and the north half of the southwest
2 quarter.

3 MR. COOK: The south half of the southeast quarter
4 is yellow. Did you exclude that?

5 MR. BURTON: I colored it yellow because it was a
6 portion of patented lands that were riparian to Reeds
7 Creek.

8 MR. COOK: Well, what about the northeast quarter of
9 Section 26, wouldn't that also be riparian to Reeds Creek?

10 MR. BURTON: Yes.

11 MR. COOK: Isn't it true, then, that all three
12 quarters, the northeast, the southeast, and the southwest
13 are lands that you contend are riparian to Reeds Creek?
14 Would you point that out on the map please? Thanks.

15 MR. BURTON: This line right here divides the
16 southeast quarter of Section 26 into north and south half.

17 MR. COOK: Yes, sir.

18 MR. BURTON: The north half is green indicating
19 riparian. The south half is yellow indicating it was
20 riparian at time of patent, but is not now part of a
21 parcel which touches Reeds Creek.

22 MR. COOK: Are you, then, testifying that Reeds
23 Creek has changed its location, then, from the time of the
24 patent?

25 MR. BURTON: No, I'm not.

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1 MR. GALLERY: Mr. Chairman, I think that Mr. Cook
2 could be confused. The green is also -- has an underlying
3 yellow color.

4 You understand that, Mr. Cook? So that the green
5 was originally yellow. And he's showing -- he's
6 over-colored the yellow with green to delineate the
7 riparian. Do you understand that?

8 MR. COOK: Oh, I see. So, in other words, the plain
9 yellow indicates that it never was riparian; is that what
10 you're saying?

11 MR. BURTON: No. That's not correct. The plain
12 yellow were the areas that were riparian at the time of
13 patent.

14 H.O. BROWN: Okay. Hold it.

15 Mr. Campbell.

16 MR. CAMPBELL: I would like to suggest to the Board
17 that it make it clear for the record that Mr. Gallery is
18 seeking to provide some clarification to facilitate the
19 questioning. And he's not seeking to answer the questions
20 himself. He's done this on a number of occasions.

21 H.O. BROWN: Yes.

22 MR. CAMPBELL: And at some point, I think it would
23 be going too far in that it would be incumbent upon this
24 party to provide witnesses that can actually answer these
25 questions. There's a line that can and should be drawn at

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1 some point. I'm not sure we're there, yet, but in my
2 opinion, we're very close.

3 H.O. BROWN: Again, I ask you that if there's a
4 question, or objection address them to me. And I'll go
5 ahead and intervene and determine how to handle it.

6 Mr. Baiocchi.

7 MR. BAIOCCHI: Yeah, Mr. Brown, I agree with
8 Mr. Campbell. There's times when Mr. Gallery appears to
9 be testifying. Thank you.

10 H.O. BROWN: Okay. I have a question.

11 Mr. Frink, where are we headed with this
12 riparian, if there's no water in the summer, what's the
13 point here?

14 MR. FRINK: I have -- I don't have the specific
15 provisions of the Draft Decision in front of me, but I
16 believe there was a portion of the Draft Decision that
17 asked for clarification of the water rights on Reeds
18 Creek. Although, there may be no water in the summer,
19 there may be water during some portions of the irrigation
20 season that was not supplied by Yuba County Water Agency.

21 I believe what Mr. Burton intended to do was to
22 identify parcels that adjoin Reeds Creek and that, in his
23 opinion, would have a riparian right to any natural flow
24 that may be in Reeds Creek. And I think that might help
25 resolve one issue that was addressed in the Draft

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1 Decision.

2 H.O. BROWN: All right. And, Mr. Cook, you're
3 questioning which parcels might be; is that right?

4 MR. COOK: Well, actually, with respect to the
5 riparian rights that were claimed, it's my understanding
6 that, one, a parcel must be and have been adjacent to a
7 waterway.

8 And that as a result of that, the party that is
9 the owner of the adjacent parcel is entitled to withdraw
10 water from the waterway for use on the specific land that
11 is adjacent to the waterway.

12 And that in the event of subsequent subdivisions
13 of the land, the portion that no longer touches the creek,
14 as I understand it, no longer has riparian rights. And
15 that it is, therefore, important to know, one, which
16 parcels may have originally been riparian, what has been
17 the state of ownership, what has been any subdivision of
18 the parcel, and what water is taken from the waterway for
19 use on the specific parcel not anywhere else.

20 I don't believe riparian water can, then, be
21 diverted down -- down the waterway. So I think it's
22 important to find out, very specifically, what parcels are
23 being claimed as riparian. And, then, I have to go into
24 the questions of what the diversions are and where the
25 water is being used.

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1 H.O. BROWN: You think this witness has that
2 knowledge?

3 MR. COOK: Well, he is alleging riparian ownership.
4 And if he doesn't have that knowledge, then, I think that
5 this exhibit should not be admissible in evidence. I
6 don't think any of his testimony should be admissible,
7 unless he knows precisely -- he has already testified that
8 he doesn't know the chain of title.

9 And, apparently, he doesn't know -- and I want to
10 clarify all that. Apparently, he doesn't know whether
11 there have been subdivisions in the past. And I haven't
12 been able to ask, yet, if he knows what diversions exist,
13 or where the water is being used. And if they're being
14 used, in fact, on the adjacent parcel where -- from the
15 diversions.

16 I think those are vital to determine whether
17 there are riparian rights. And if there are no riparian
18 rights, then, of course, if the water from Reeds Creek is
19 being used -- no matter whether it's temporary or for a
20 portion of the year only -- that water that's being used
21 requires a permit from the Water Board, if it's not
22 riparian is how I understand it.

23 H.O. BROWN: You have cleared that up, Mr. Cook.
24 Thank you very much.

25 Go ahead, Mr. Gallery.

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1 MR. GALLERY: Mr. Chairman, Mr. Burton's testimony
2 is clear he's depicting 2,000 acres of lands which are
3 depicted on his Exhibit 3 in green as being probably
4 riparian to Reeds Creek. Now, I don't know what's so
5 confusing to Mr. Cook, but that's what the exhibit clearly
6 shows and that is what Mr. Burton's testimony shows.

7 Now, if Mr. Cook wants -- and as Mr. Burton has
8 indicated, he has not done a complete deed-by-deed
9 year-by-year chain of title search. He came to the
10 conclusion that there probably hasn't been a significant
11 severance of these lands down through the chain of title,
12 but it's not an absolute, 100-percent conclusion.

13 And that seems to me to be pretty persuasive
14 testimony that a substantial part, if not all of that
15 green land is riparian. If Mr. Cook wants to ask about
16 whether that land is taking water from Reeds Creek, or
17 those landowners are pumping from Reeds Creek, he can ask
18 that and we'll have the answer.

19 H.O. BROWN: If that's the claim, I'm going to
20 allow Mr. Cook to proceed with his questions, unless you
21 want to change my mind, Mr. Campbell.

22 MR. CAMPBELL: No, I do not. I just want to, at
23 this point, object. I think Mr. Gallery now has crossed
24 the line. He is attempting to testify.

25 He's not been offered and sworn as a witness.

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1 Nothing that he says here today can form the basis of any
2 evidence upon which this Board can base a decision. So I
3 would ask that his comments, these last comments be
4 stricken.

5 What his characterizations of his witnesses'
6 evidence are completely irrelevant and inappropriate to
7 this portion of the hearing.

8 H.O. BROWN: Thank you, Mr. Campbell. You've got
9 that concern on the record and it is shared. And with
10 that in mind, I'm going to allow those remarks to remain
11 on the record.

12 And with that caveat, Mr. Cook, you can proceed.

13 MR. COOK: Thank you, Mr. Brown.

14 Well, clearing up this Section 26, and I'll try
15 to go as rapidly as I can, you were testifying that in
16 your judgment the southwest quarter and the northeast
17 quarter and the north half of the southeast quarter are
18 riparian according to your green color; is that correct?

19 MR. BURTON: That is correct.

20 MR. COOK: And, then, we go to Section 34, I believe
21 it is. And on 34 we have the northeast quarter and the
22 north half of the southeast quarter and the southeast
23 quarter of the southeast quarter as riparian area; is that
24 correct?

25 MR. BURTON: That is correct?

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1 MR. COOK: If I'm proceeding too fast be sure to
2 tell me.

3 MR. BURTON: No. You're doing fine.

4 MR. COOK: On Section 35 we have, I think, the
5 northeast quarter, the southwest quarter, the south half
6 of the south half of the northwest quarter; is that
7 correct? I notice the colors are different there and
8 there may be some problems.

9 MR. BURTON: In Section 35 it looks like the
10 northerly three quarters of the northwest quarter are
11 green. And a diagonal portion on the west side of the
12 southwest quarter of Section 35 are green. None of the
13 rest of Section 35 is shown as green.

14 MR. COOK: Now, going to Section 2 of the township
15 immediately to the south of the first township we've been
16 discussing, although, I don't know the township and range
17 numbers, in Section 2 we're talking about the west half;
18 are we not?

19 MR. BURTON: The west half of Section 2 is part
20 yellow and part green. I would say that, perhaps,
21 two-third -- the westerly two-thirds of that half is green
22 and the easterly two-thirds -- although, it's not a
23 straight line -- is yellow.

24 MR. COOK: Going to Section 3, it appears to, I
25 believe, all be included other than the northwest quarter

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1 and the -- the northwest quarter; is that correct?

2 MR. BURTON: The -- it's true. The northwest
3 quarter is entirely blue. And, substantially, all of --
4 well, all of the of the northeast quarter is green.
5 Substantially, all of the southeast quarter is green. And
6 the east half of the southwest quarter is green.

7 MR. COOK: Now, going to Section 25, again -- by the
8 way, the section numbers are listed on your map, are they
9 not?

10 MR. BURTON: Yes, they are.

11 MR. COOK: They're part of the base map and so
12 they're part of the printed portion?

13 MR. BURTON: Yes. The base map was taken from a
14 USGS quadrant map.

15 MR. COOK: With respect to Section 25, are there any
16 diversions out of Reeds Creek onto any portion of Section
17 25 that's listed here?

18 MR. BURTON: Yes, there are.

19 MR. COOK: Where are the diversions?

20 MR. BURTON: There are two diversions. They are
21 very close to each other. One other each side of the line
22 that divides Section 25 into east and west halves. And
23 those diversions are on the south side of Reeds Creek.

24 MR. COOK: Now, where do those diversions -- what is
25 the direction in which those diversions proceed?

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1 MR. BURTON: I'm pointing on the transparency to the
2 point where those two diversions are located. There's a
3 diversion that takes water from Reeds Creek onto this
4 parcel, which is the easterly one. And the other pump is
5 located at this point on Reeds Creek and takes water to
6 the westerly portion of that green area.

7 MR. COOK: Is the water that is diverted there
8 limited to the north half of Section 25?

9 MR. BURTON: Do you mean do the -- do the persons
10 that own the property use that water only for the north
11 half of that area?

12 MR. COOK: Yes, sir.

13 MR. BURTON: I can't say that, whether they do or
14 not.

15 MR. COOK: What you're, basically, saying, then, is
16 it could be used for lands outside of the north half of
17 Section 25?

18 MR. BURTON: Well, to the extent that water from the
19 Yuba River is pumped out of Reeds Creek, I would expect
20 that that water would be used on all the property that's
21 owned by that particular individual.

22 MR. COOK: Is there any way to identify the water
23 out of Reeds Creek that comes from the Yuba River and
24 water that comes down Reeds Creek from its source?

25 MR. BURTON: During -- there are times when natural

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1 water in Reeds Creek can be commingled with water from the
2 Yuba River.

3 MR. COOK: And is to answer the question is: You
4 don't know whether the water from Reeds Creek is used
5 exclusively on the north half Section of 25?

6 MR. BURTON: I think that would be very difficult
7 for anybody to determine.

8 MR. COOK: Well, on Section 26, are there any
9 diversions from Reeds Creek?

10 MR. BURTON: Section 26 there are, I believe, three
11 diversions. And they are located at approximately this
12 area (indicating).

13 MR. COOK: That would be the line separating the
14 north and south halves of Section 26?

15 MR. BURTON: Yes. The lines separating Section 26
16 where they cross Reeds Creek.

17 MR. COOK: And what is the direction in which those
18 diversions travel?

19 MR. BURTON: There is -- I believe, there is one
20 diversion that diverts water into -- into this area where
21 there is no coloration. There is one diversion which
22 diverts water into the -- oops, into this area, which is
23 the north half of the southeast quarter of Section 26.
24 And the other diversion diverts water into the southwest
25 quarter of Section 26.

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1 MR. COOK: When you first mentioned that water was
2 diverted into an area that's not colored, you were talking
3 about the northwest -- let us see if I'm correct, the
4 northwest quarter of Section 26; were you not?

5 MR. BURTON: Yes.

6 MR. COOK: And the water that was delivered into the
7 remaining areas of Section 26, is it limited for use in
8 Section 26 only?

9 MR. BURTON: The water that's delivered into Reeds
10 Creek for use by the Brophy Water District during the
11 irrigation season is used at all lands -- used on all
12 lands within the boundaries of Brophy Water District.

13 MR. COOK: And that water has been commingled with
14 water coming from the source of Reeds Creek; is it not?

15 MR. BURTON: At -- sometimes it is possible that
16 that's the case.

17 MR. COOK: In fact, at any time that water is coming
18 down Reeds Creek from its source it would be commingled;
19 would at not?

20 MR. BURTON: There is a good chance that it would be
21 commingled, yes,

22 MR. COOK: Moving along on to Section 35, are there
23 any diversions within Section 35?

24 MR. BURTON: Not that I know of -- well, excuse me.
25 I think there's a diversion at this point, which I'm

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1 pointing to the extreme southwest corner of Section 35
2 where Reeds Creek crosses. I believe there's a diversion
3 at that point.

4 MR. COOK: I see. And in what direction does that
5 diversion move?

6 MR. BURTON: That diverts water to the west.

7 MR. COOK: And --

8 H.O. BROWN: Mr. Cook?

9 MR. COOK: Yes, sir.

10 H.O. BROWN: Mr. Frink has a suggestion that may
11 help. Let's hear it.

12 MR. FRINK: Mr. Cook, it appears that the intent of
13 your questions is to identify some lands that are
14 receiving water diverted from Reeds Creek that have not
15 been identified as riparian lands on Mr. Burton's exhibit;
16 is that correct?

17 MR. COOK: Well, I think so. In other words, we had
18 the comment, previously, that we're talking about
19 something that's probably riparian. So we have a problem
20 with that.

21 Secondly, we have a problem that riparian rights
22 limit the water that is riparian to the riparian parcel.
23 And if the water then is transported to other places, it's
24 not riparian.

25 MR. FRINK: Agreed. I wonder, Mr. Gallery, would

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1 you stipulate that you are not contending that all the
2 water diverted from Reeds Creek by Brophy Water District
3 is being used on riparian parcels, that the only riparian
4 parcels that you allege water from Reeds Creek is being
5 used on are those identified on Mr. Burton's exhibits?

6 MR. GALLERY: Yes. I would stipulate that the only
7 riparian lands along Reeds Creek in Brophy are these shown
8 in green. The water that comes down Reeds Creek consist,
9 primarily, of Yuba River water and some small doses of
10 Reeds Creek water.

11 Our point is that there is more than enough
12 riparian land along Reeds Creek owned by Brophy landowners
13 who are pumping out of Reeds Creek to more than consume
14 any riparian flow that would be in there. Now, the
15 riparian water is not red and the river water blue.

16 So to say that a particle of Reeds Creek water is
17 only used on those green lands, we can't be sure that that
18 is happening. We're just saying as a practical matter,
19 the riparian lands have a much higher need than Reeds
20 Creek can provide. And we think this ends the
21 questioning.

22 MR. FRINK: Is that satisfactory, Mr. Cook?

23 MR. COOK: Well, not totally. I think that a
24 stipulation to the effect that water travelling down Reeds
25 Creek from its source may or may not be transported to

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1 riparian land, that stipulation would be fine. It may be
2 transported adjacent to the creek. And I haven't gotten
3 into the ownership and the subdivision question, yet.

4 But, in any event, I don't think we know what
5 water is transported where. And if you have riparian
6 rights you, at least, need to know what water it is that
7 you're talking about. And I think that there's no
8 question but what water down Reeds Creek, some of it is
9 being used outside of riparian rights, if any, and that I
10 think that it would be essential to find out -- to obtain
11 a permit for such use and to find out what water there is.
12 I'm trying not to be over technical, but I think it is
13 very important.

14 H.O. BROWN: Mr. Minasian.

15 MR. MINASIAN: Could I suggest that the problem we
16 may have is in regards to the questions going beyond the
17 scope of these hearings. And so let me try to suggest a
18 solution which is not a voluntary one, but it's in the
19 nature of an objection that questioning along this line
20 would go beyond the scope.

21 One, Mr. Cook has done an excellent rendition of
22 California Water Law, I didn't find much fault with it.
23 The problem is we didn't notice this hearing to bring all
24 the riparians on Reeds Creek in.

25 The only subject to be decided here is whether or

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1 not there is some need for some point of rediversion by
2 the Yuba County Water Agency. And so it doesn't matter
3 how many acres of riparian water there is, or the
4 quantity, or the quantity of the blue or the green.

5 So my suggestion is that Walter -- his evidence
6 so far has been to the basic testimony provided by
7 Mr. Gallery which provides a prima facie case. But when
8 we get into riparian rights, quantifying them and figuring
9 out how many there are, we have to give notice to all
10 those riparians.

11 H.O. BROWN: Mr. Baiocchi.

12 MR. BAIOCCHI: Mr. Brown, it does not go beyond the
13 scope of hearing. The door was opened when they made the
14 filing. Secondly I'm concerned about the unreasonable use
15 of the State's water under Article 10, Section 2 of the
16 State's Constitution.

17 I'm concerned about the aquatic environment of
18 Reeds Creek. There's a lot to this. And there's -- and
19 based on my cross-examination, they have not done any
20 analysis. I don't want to see this just simply dropped.
21 It's a big issue.

22 H.O. BROWN: Mr. Campbell.

23 MR. CAMPBELL: I would agree with Mr. Minasian's
24 suggestion, only if Brophy Water District withdraws its
25 testimony entirely from this hearing. Having submitted

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1 its testimony, asserting or suggesting a riparian right it
2 is, certainly, within the rights of the other parties to
3 test that suggestion.

4 H.O. BROWN: Thank you, Mr. Campbell.

5 Mr. Gallery.

6 MR. GALLERY: Mr. Brown, the issue came up in the
7 Draft Decision as it was Brophy Water District's -- were
8 Brophy District landowners diverting some Reeds Creek's
9 water without a permit. And it seemed clear to me that
10 there was enough riparian land along Reeds Creek that was
11 using any flow that Reeds Creek possibly carries in
12 irrigation season, that this really should be a non-issue.

13 Now, we're just trying to demonstrate that here
14 with this evidence. And we don't mean to go into what all
15 lands along -- up and down Reeds Creek, the fact is that
16 there are riparian lands down in Yuba Water District below
17 us that are riparian Reeds Creek, also. And if we
18 couldn't use of that Reeds Creek natural flow, the South
19 Yuba folks could sure help us using anything that we
20 didn't use in their lands that are riparian.

21 So it seems to me we're going far afield on a
22 non-issue here that really is not what the Board is here
23 having this supplemental hearing for. It's wasting a lot
24 of time, needlessly.

25 H.O. BROWN: Thank you, Mr. Gallery.

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1 Mr. Campbell.

2 MR. CAMPBELL: Mr. Gallery's statements seem to me
3 to sound like an apology for the lack of quality, depth,
4 and analysis contained within the testimony and exhibits
5 that the Brophy Water District has submitted to the Board
6 as part of this hearing.

7 I don't think that's a proper reason for not
8 allowing a party to demonstrate, for this Board through
9 cross-examination, the lack of quality of that purported
10 evidence. And I think it's completely within Mr. Cook's
11 rights to take us through it step-by-step and as
12 efficiently as he can.

13 H.O. BROWN: Mr. Baiocchi.

14 MR. BAIOCCHI: Mr. Brown, I concur with
15 Mr. Campbell, but what we don't know, what the Board
16 doesn't know is whether the flows in that stream during
17 the wintertime are 100 second feet, 500 second feet, 1,000
18 second feet. There's no analysis. So there could be a
19 significant amount of water diverted from Reeds Creek that
20 would, actually, conflict with statements by Brophy that
21 they just don't have enough water.

22 H.O. BROWN: Thank you. Thank you, Mr. Baiocchi.

23 Mr. Frink.

24 MR. FRINK: Yes, Mr. Brown. I think what
25 Mr. Gallery has attempted to do here is, actually, aimed

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1 at complying with a proposed provision in the Draft
2 Decision to demonstrate the basis of right for some
3 diversions from Reeds Creek. It's apparent that there's
4 still a disagreement on the extent of that right and so
5 forth.

6 I think it's utterly impossible, in the context
7 of this hearing, to attempt to, basically, adjudicate all
8 of the riparian rights that may attach to Reeds Creek. I
9 think that the evidence that they have presented is
10 responsive, in part, to what was proposed in the Draft
11 Decision. I don't think that we're going to be able to
12 totally resolve the whole issue in the context of this
13 hearing. And I think it is extremely time-consuming.

14 H.O. BROWN: Thank you, Mr. Frink.

15 Mr. Cook, is there any stipulation that would
16 satisfy you on this issue?

17 MR. COOK: I believe that if the issue was withdrawn
18 for future consideration on its own merits and that the
19 evidence presented on this issue here is totally withdrawn
20 and stricken from the record, that it may not be the
21 satisfactory solution, because this was an issue that was
22 raised, but it is complicated.

23 And what I'm attempting to do, Mr. Brown, is to
24 determine whether riparian rights do, in fact, exist and
25 if so, what riparian rights. And we have so far nothing

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1 really to tell us what we need to know to determine
2 whether riparian rights even exist. And if so, where the
3 water can be used for those riparian rights.

4 And so I would move, actually -- although, I
5 haven't been able to finish cross-examination going into
6 ownership, subdivisions, and original patents, and the
7 rest, I would move at this time that based on the
8 information that we have presented, unless something
9 stronger is going to come up, that this whole line of
10 testimony be stricken.

11 H.O. BROWN: All right. Mr. Gallery, I'm going to
12 let it be your choice. You can fight this battle at
13 another date withdrawing as being suggested, or leave it
14 in and Mr. Cook you can proceed.

15 Your choice, Mr. Gallery.

16 MR. GALLERY: Well, Mr. Brown, I intend to leave it
17 in. We have made a prima facie showing here that there's
18 2,000 acres of lands along Reeds Creek that are probably
19 riparian to Reeds Creek. And I think that's completely
20 responsive to the Board's inquiry and Draft Decision.

21 And to sit here and talk about doing a title
22 search on 2,000 acres of lands, which would cost many
23 thousands of dollars and take an enormous amount of time,
24 is gone off the page of reason. I think we presented
25 enough here to resolve this issue for the Board's

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1 purposes. If Mr. Cook wants to challenge the riparian
2 status of those lands separately, he can do that in a
3 lawsuit.

4 H.O. BROWN: Mr. Cook, I'm going to allow you to
5 proceed, but I'm going to ask that you to stay within or
6 near the allotted time that we have been granting others
7 on similar types of issues. How much more time do you
8 need?

9 MR. COOK: I would think maybe 15 minutes.

10 H.O. BROWN: You have 15 minutes. Please, proceed.

11 MR. COOK: Very well. One, you conducted no chain
12 of title search?

13 MR. BURTON: That's correct.

14 MR. COOK: Two, how many owners are involved in this
15 land that's shown in green or yellow?

16 MR. BURTON: On the order of the magnitude of maybe
17 30.

18 MR. COOK: And do you know if there have been any
19 subdivisions of the parcels that you have shown on here
20 which were, I think, the original patents?

21 MR. BURTON: That, I don't know.

22 MR. COOK: Do you know the volumes of diversions
23 that you mentioned out of Reeds Creek?

24 MR. BURTON: The rate of flow, is that what you're
25 talking about?

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1 MR. COOK: Well, the volume of water that's being
2 taken out, either acre-foot or whatever?

3 MR. BURTON: No, I don't.

4 MR. COOK: And without going to the -- I was almost
5 finished with the various section numbers, but basically
6 is it fair to state that you're not sure what water is
7 going where?

8 MR. BURTON: I don't have any way to identify
9 whether the water that's being pumped is natural water
10 from Reeds Creek, or is Yuba River water.

11 MR. COOK: And you don't know where the water that's
12 taken out of these diversions, ultimately, ends; do you
13 not? Is that a fair question?

14 MR. BURTON: The drainage --

15 MR. COOK: Well, not the drainage. Where it is used
16 for irrigation purposes.

17 MR. BURTON: Well, I just pointed out to you a
18 number of diversions that are used directly on those green
19 lands.

20 MR. COOK: Yes. Some is used on the green lands and
21 some is used elsewhere; is that right?

22 MR. BURTON: There are some diversions that use
23 water on lands that are not shown in green, yes.

24 MR. COOK: On Section 25, do you know the ownership
25 of the green parcels, the north half of Section 25?

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1 MR. BURTON: I might have that in my notes, but I
2 don't have it on the tip of my tongue.

3 MR. COOK: Do you know if there's more than one
4 ownership?

5 MR. BURTON: I think that there are two owners on
6 that green land in Section 25. I think there's one owner
7 to the east and one owner to the west.

8 MR. COOK: Have you gone so far as to even look at
9 the assessor's parcel map to determine whether or not
10 there is any division of those parcels?

11 MR. BURTON: I believe I testified that I obtained
12 the assessor's maps from the tax assessor's office and
13 that was the basis of the preparation of the map.

14 MR. COOK: I thought you indicated that these were
15 the original patents?

16 MR. BURTON: I'll say this, again, the original
17 patent are shown in yellow. The current assessor's
18 parcels that are touching Reeds Creek are shown in blue.
19 When you take something that's yellow and put something
20 that's blue over the top of it you get green.

21 MR. COOK: You --

22 MR. BURTON: That was the basis of my map.

23 MR. COOK: You are saying that the yellow represents
24 the original patents from the United States?

25 MR. BURTON: That is correct.

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1 MR. COOK: Going down to Section 2, I notice quite a
2 few unusual, or nonsection lines. I don't know what
3 township we're talking about here, or I haven't seen the
4 township plaque, but it's ordinarily that you don't
5 receive that type of a patent from the Federal Government,
6 do you?

7 MR. BURTON: Are you talking about this area?

8 MR. COOK: Yes, sir.

9 MR. BURTON: Well, you see, what happened there was
10 the entire west half of Section 2, I just traced that out.
11 That entire west half of Section 2 was originally patented
12 and riparian to Reeds Creek.

13 When I went to the assessor's office, I found
14 that the current assessor's parcels that touch Reeds Creek
15 have a shape that looks like this. Now, I'm tracing
16 around that jagged line that you observed.

17 MR. COOK: Yes.

18 MR. BURTON: And those are blue areas. And when you
19 superimpose the blue over the yellow it becomes green.
20 And that's the reason for that jagged line.

21 MR. COOK: Thank you.

22 Mr. Brown, I have no further questions. I would
23 like to make a motion to strike this witness' testimony on
24 the ground that there's no evidence adequate to establish
25 the existence of any specific parcel as riparian, or to

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1 establish any portion of water that has been diverted to
2 riparian lands, or there has been no testimony of who is
3 the owner of any of these parcels and where the water is
4 being used, which was alleged to be riparian.

5 And that, as a result, I would ask that this
6 entire testimony, including the exhibits of Mr. Burton, be
7 excluded or stricken.

8 H.O. BROWN: Thank you, Mr. Cook.

9 I'll get to you in just a minute, Mr. Gallery.

10 MR. BAIOCCHI: Mr. Brown.

11 H.O. BROWN: Mr. Baiocchi.

12 MR. BAIOCCHI: Thank you. The simple solution is to
13 require the Brophy Water District to file a water rights
14 application, in my view. And that's how -- in my closing
15 statements, I'm going to hit that real hard.

16 H.O. BROWN: Thank you.

17 MR. BAIOCCHI: Thank you.

18 H.O. BROWN: Thank you.

19 Mr. Morris.

20 MR. MORRIS: Again, I want to stay out of this, but
21 I think Brophy Water District has presented adequate
22 testimony to show the general character of these lands are
23 riparian. The fact that Mr. Cook or others take issue
24 with that, they should go after them in the rebuttal
25 testimony. They should bear the burden of doing that.

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1 H.O. BROWN: Thank you, Mr. Morris.

2 Mr. Gallery.

3 MR. GALLERY: Yes, Mr. Brown, I'm familiar with some
4 of the Board's own adjudication of water rights and
5 streams. It's been the practice, as I understand it, that
6 the Board itself in adjudicating riparian rights on
7 streams has been satisfied with the showing of, A, that
8 the land was originally riparian to the stream; and, B,
9 today it's in one single track of ownership which is
10 contiguous to the stream. And that's been more than prima
11 facie presented to the Board.

12 I think that Board has enough evidence to -- that
13 was sufficient to determine it to be riparian. So to me
14 we have shown ample evidence here that these lands are
15 primarily -- probably riparian. And that's responsive to
16 the Board's question in this Draft Decision. So that I
17 respectfully submit that Mr. Cook's motion should be
18 denied.

19 H.O. BROWN: Thank you.

20 Mr. Frink. We've heard from you, Mr. Cook.

21 MR. FRINK: Yes, Mr. Brown. I wouldn't speculate
22 right now on what the Board may conclude that the evidence
23 has shown. But I think the evidence clearly was offered
24 in an intent to be responsive to an issue identified in
25 the Draft Decision. I think it's relevant. I think it

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1 should be admitted.

2 H.O. BROWN: All right. I'm persuaded by Mr. Morris
3 and Mr. Frink, Mr. Gallery, the evidence will be admitted.
4 The opposing view will have an opportunity to discuss it
5 in rebuttal. And your concerns are noted on the record.
6 And the Board will give it the proper weight of evidence.

7 MR. COOK: Could I make one additional comment, not
8 in contradiction to your ruling, but I think that there
9 might be a supplemental ruling just to simplify.

10 H.O. BROWN: All right. On that basis, I'll allow
11 it, Mr. Cook.

12 MR. COOK: Well, I believe that if evidence is in,
13 if there's anything that it proves is it proves that water
14 flowing down Reeds Creek from its source is commingled
15 with Yuba water and it is being utilized and diverted for
16 purposes of the Yuba River water.

17 And, if anything, this evidence establishes the
18 fact that a permit is essential for whatever water is
19 flowing down Reeds Creek from its source that is being
20 diverted from Reeds Creek.

21 H.O. BROWN: Thank you, Mr. Cook.

22 All right. Mr. Lilly. How did you stay out of
23 that, Mr. Lilly?

24 MR. LILLY: I knew better than to waste any more of
25 your time, Mr. Brown.

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1 MR. COOK: Mr. Brown.

2 H.O. BROWN: Mr. Cook.

3 MR. COOK: I really am trying to be a gentlemanly as
4 I know how, sometimes I'm not all that great at it. But
5 I've heard continuously comments of, "Waste of time," and
6 "Wait until we get to the important issues." And I
7 believe Counsel should be asked gently, if necessary, to
8 please, reframe from making assertions to someone's case
9 because they don't disagree.

10 H.O. BROWN: Mr. Cook, you are a gentleman in the
11 way you present your case. And I would think that it
12 would be far from anyone in this hearing room to observe
13 otherwise. I almost ruled in your favor, it was close.
14 So nobody should be too sure of that last decision. The
15 Board will give it the proper weight of evidence. The
16 arguments were persuasive on both sides.

17 MR. COOK: Thank you.

18 H.O. BROWN: Mr. Lilly.

19 ----oOo----

20 CROSS-EXAMINATION OF BROPHY WATER DISTRICT

21 BY YUBA COUNTY WATER AGENCY

22 BY MR. LILLY

23 MR. LILLY: Thank you, Mr. Brown. I have some
24 questions for Mr. Baggett. You can take the overhead off
25 the projector if you want to turn it off, Mr. Burton. I

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1 don't have any questions about that.

2 Mr. Baggett, Donn Wilson testified this morning
3 that between 1989 and 1996 approximately 300,600 acres
4 were annexed to the Brophy Water District and then that
5 the Brophy Water District's contract with the Yuba County
6 Water Agency was amended to reflect that increase in
7 acreage. Were you here this morning to hear that
8 testimony?

9 MR. BAGGETT: Yes, I was.

10 MR. LILLY: And are you familiar with those acres
11 that were annexed to Brophy Water District between 1989
12 and the present?

13 MR. BAGGETT: Yes, I was.

14 MR. LILLY: Okay. And before those acres were
15 annexed to the Brophy Water District, were they irrigated?

16 MR. BAGGETT: Yes, they were.

17 MR. LILLY: And what was the source of water for
18 irrigation before they were annexed to Brophy Water
19 District?

20 MR. BAGGETT: Deep wells.

21 MR. LILLY: Okay. And, then, after the acres were
22 annexed to Brophy Water District, were they continued to
23 be irrigated?

24 MR. BAGGETT: Yes, they were.

25 MR. LILLY: And what was the source of water for the

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1 irrigation after the annexation to the Brophy Water
2 District?

3 MR. BAGGETT: Surface water.

4 MR. LILLY: Is that surface water from the Yuba
5 River?

6 MR. BAGGETT: Yes, it is.

7 MR. LILLY: Now, aside from those lands, are there
8 other lands within the Brophy Water District that could be
9 irrigated but that are not being irrigated today?

10 MR. BAGGETT: Yes, there is.

11 MR. LILLY: And approximately how many acres within
12 the Brophy Water District are potentially irrigateable,
13 but not presently being irrigated?

14 MR. BAGGETT: About 5,000 acres.

15 MR. LILLY: And is there -- or are there any plans
16 for those acres to be irrigated with Yuba River surface
17 water in the future?

18 MR. BAGGETT: I think there is, yes.

19 MR. LILLY: And could you elaborate what those plans
20 are?

21 MR. BAGGETT: Well, I think they're paying a charge,
22 \$2 surcharge to the whole land in the district so that
23 they can, I think, when the economy is right to develop
24 them out, put it to pasture.

25 MR. LILLY: And are those lands geographically

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1 located where they could receive Yuba River water?

2 MR. BAGGETT: Yes, they are.

3 MR. LILLY: Thank you, Mr. Brown, I have no further
4 questions.

5 And thank you, Mr. Baggett.

6 H.O. BROWN: Mr. Minasian?

7 MR. MINASIAN: No questions, Mr. Brown.

8 H.O. BROWN: Mr. Bezerra?

9 MR. BEZERRA: No questions, Mr. Brown.

10 H.O. BROWN: Mr. Morris?

11 MR. MORRIS: No questions, Mr. Brown. Thank you.

12 H.O. BROWN: Mr. Cunningham?

13 MR. CUNNINGHAM: No questions, Mr. Brown.

14 Mr. Brown, I'd also like to thank you for your acceptance
15 of my interim appearance here today and your courtesy to
16 Mr. Campbell. I do apologize, I had to be two places at
17 one time.

18 H.O. BROWN: Mr. Campbell is a most-welcomed
19 participant in our hearing. And he also asked that we
20 reserve you some time.

21 MR. CUNNINGHAM: Yes, sir. Thank you.

22 H.O. BROWN: I intend to do that as soon as we're
23 through here with these witnesses.

24 MR. CUNNINGHAM: Thank you.

25 H.O. BROWN: Staff?

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1 MR. FRINK: I just have one question of Mr. Baggett,
2 Mr. Brown.

3 ---oOo---

4 CROSS-EXAMINATION OF BROPHY WATER DISTRICT

5 BY STAFF

6 MR. FRINK: Mr. Baggett, you state your testimony is
7 based on, and I quote,

8 (Reading):

9 "In part on the deficiencies that are shown in
10 the analysis of the Yuba County Water Agency's
11 consultant Bookman-Edmonston Engineering."

12 My question is: Did you do, or have you reviewed
13 any other analyses of water supply deficiencies that could
14 result in the Yuba County Water Agency service area from
15 higher instream flows for fish?

16 MR. BAGGETT: State that again.

17 MR. FRINK: Your written statement indicates that
18 your testimony is based,

19 (Reading):

20 "In part on the water supply deficiencies
21 identified by Bookman Edmonston."

22 My question is simply: Have you done, or
23 reviewed any other analyses of water supply deficiencies
24 that might occur in the Yuba County Water Agency service
25 area?

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1 MR. BAGGETT: No, I haven't.

2 MR. FRINK: Okay. That's all the questions. Thank
3 you.

4 H.O. BROWN: Is that it, staff?

5 MR. FRINK: Yes.

6 H.O. BROWN: Mr. Gallery, do you have any redirect?

7 MR. GALLERY: No redirect.

8 H.O. BROWN: Do you have exhibits that you'd like to
9 offer?

10 MR. GALLERY: Yeah. I'd like to offer into evidence
11 S-Brophy-1, the testimony of Baggett; S-Brophy-2, the
12 testimony of Burton; S-Brophy-2-A, qualifications of
13 Burton; S-Brophy-3, map of assumed lands along Reeds
14 Creek. And I will, in addition, submit an S-Brophy-4,
15 identifying the township in which Exhibit 3 lands are
16 shown.

17 H.O. BROWN: Thank you, Mr. Gallery.

18 Are there any objections to the admission of
19 those exhibits into evidence? Seeing none -- oh,
20 Mr. Cook.

21 MR. COOK: The only objection is what I, previously,
22 asked that certain things be stricken. I reserve that,
23 but beyond that, I don't have any.

24 H.O. BROWN: That's noted in the record, Mr. Cook,
25 and we'll take due note of that. Thank you.

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1 All right. Those exhibits are then accepted into
2 evidence. Now, we have --

3 MR. GALLERY: Mr. Brown, I did overlook one thing on
4 Mr. Baggett's testimony, which is Exhibit 1 -- S- Exhibit
5 1 for Brophy, on the last page, Page 5, we had a word
6 correction to make.

7 I forgot to ask Mr. Baggett on that. And on Page
8 5 there's a heading which reads, "Groundwater supply will
9 support the increased pumping that would result from the
10 pre-proposed deficiencies." We wanted to strike out the
11 second will, w-i-l-l, on that exhibit.

12 H.O. BROWN: All right. Any objection to that?
13 Okay. Those amendments are so noted and they will be
14 admitted.

15 Thank you, gentlemen. It's been a long day.

16 MR. BAGGETT: Thank you.

17 MR. BURTON: Thank you.

18 H.O. BROWN: We appreciate your participation and
19 help in these matters.

20 Now, Mr. Lilly, Mr. Wilson, we have some recross
21 on the redirect by Mr. Cunningham.

22 As I know you're aware, Mr. Cunningham, recross
23 is limited to the redirect.

24 MR. CUNNINGHAM: Yes, I am, thank you. And I'll do
25 my best. I have Mr. Campbell's notes and I see the very

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1 limited scope of redirect that Mr. Lilly provided.

2 H.O. BROWN: All right.

3 MR. CUNNINGHAM: I think I have less than half of
4 the questions.

5 H.O. BROWN: Please, proceed. Continue.

6 ---oOo---

7 RE-CROSS-EXAMINATION OF YUBA COUNTY WATER AGENCY
8 BY U.S. DEPARTMENT OF INTERIOR, FISH AND WILDLIFE SERVICE

9 BY MR. CUNNINGHAM

10 MR. CUNNINGHAM: Bear we, Mr. Wilson, I do
11 appreciate your courtesy for staying here this long. I
12 have just a very few questions.

13 I understood in your redirect you did talk about
14 an annexation event that took place where the Agency
15 annexed lands, I guess, now to be included within the
16 Agency or other properties or districts; is that right?

17 MR. WILSON: It's not singular.

18 MR. CUNNINGHAM: Okay. Could you explain that
19 answer for me, please?

20 MR. WILSON: I believe you said, "an annexation."

21 MR. CUNNINGHAM: Oh, I'm sorry. Or annexations, so
22 there were several annexations?

23 MR. WILSON: These were not to the Agency, these
24 where various member districts.

25 MR. CUNNINGHAM: Member units of the Agency --

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1 MR. WILSON: That is correct.

2 MR. CUNNINGHAM: -- is that what they are? And I
3 think these happened in '88 or '89, is that about the
4 approximate time?

5 MR. WILSON: Let me get the list on that.

6 MR. CUNNINGHAM: Okay.

7 MR. WILSON: If you could repeat your question.

8 MR. CUNNINGHAM: The timing of these annexations
9 were approximately 1998 and 1999; is that correct?

10 MR. WILSON: They occurred in four different years,
11 1989, 1993, 1994, and 1996.

12 MR. CUNNINGHAM: Okay. And each of these times
13 these were lands that were added to one of the member
14 units or districts of the Agency?

15 MR. WILSON: For three of the districts, yes. One
16 was a total district coming into the Agency.

17 MR. CUNNINGHAM: Okay. So a new district?

18 MR. WILSON: It was a mutual water company.

19 MR. CUNNINGHAM: Is that Dry Creek?

20 MR. WILSON: That is Dry Creek Mutual Water Company.

21 MR. CUNNINGHAM: Okay. And as each of these
22 companies were brought into the water provision area of
23 Yuba County Water Agency, were new contracts negotiated
24 for the division of water to these new lands?

25 MR. WILSON: Contracts were not negotiated. The

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1 contracts were amended to include additional acreage and
2 additional allocation of water.

3 MR. CUNNINGHAM: Okay. So I assume amended for the
4 three agencies -- for the three districts that were
5 already a part of the Agency service area?

6 MR. WILSON: That is correct. The existing
7 contracts were amended.

8 MR. CUNNINGHAM: And then was there a new contract
9 for the Dry Creek Mutual Water Company?

10 MR. WILSON: That is correct.

11 MR. CUNNINGHAM: Okay. Do any -- at the time of the
12 amendments to the three existing district contracts, were
13 any amendments made to reflect a possibility of changing
14 the price of water provided in the future based upon new
15 demands upon the Agency and the new costs attributable to
16 the Agency's delivery?

17 MR. WILSON: They were admitted under the same
18 provisions as the existing contract.

19 MR. CUNNINGHAM: Okay. As to the contract that you
20 entered into with the Dry Creek Mutual Water Company, is
21 there a term or condition of that contract that allows you
22 to alter the price of water delivered to reflected changed
23 or altered costs of delivery of that water, or obtainment
24 of that water?

25 MR. WILSON: The conditions are the same as in all

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1 the other contracts.

2 MR. CUNNINGHAM: And those terms and conditions are
3 the ones that you indicated earlier in your
4 cross-examination, I believe, on Tuesday?

5 MR. WILSON: That is correct.

6 MR. CUNNINGHAM: Thank you. I have no further
7 questions for Mr. Wilson.

8 Thank you very much, Mr. Wilson. Mr. Lilly,
9 thank you for the courtesy as well.

10 H.O. BROWN: Okay, Mr. Cunningham.

11 MR. CUNNINGHAM: Mr. Brown, while I have the
12 microphone could I take care of a piece of housekeeping?
13 I do have with me today copies of the study that we keep
14 trying to get here that we were asked to bring two weeks
15 ago. This is -- and you'll -- this is the study by
16 Misters Chech, C-h-e-c-h, and Myrick, M-y-r-i-c-k.

17 Mr. Frink, you'll have to remind me, are these
18 going to be part of the Department of Fish and Game's
19 exhibit, or the Board's exhibit?

20 MR. FRINK: I'm looking to Mr. Mona for this. Was
21 it given an exhibit number?

22 MR. MONA: Yes, it was given SDFG-36.

23 MR. CUNNINGHAM: 36, thank you. I have six copies
24 for the Board and copies for everybody else as well as.

25 H.O. BROWN: That's already been admitted into

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1 evidence?

2 MR. MONA: No, sir.

3 MR. CUNNINGHAM: I think we identified it.

4 H.O. BROWN: It's not been admitted, yet?

5 MR. CUNNINGHAM: I don't think it's been admitted
6 yet.

7 H.O. BROWN: All right.

8 MR. CUNNINGHAM: We can --

9 H.O. BROWN: Would you like to offer it in?

10 MR. CUNNINGHAM: It's your choice. We could choose
11 to ask that it be admitted for bookkeeping, or wait until
12 the Department of Fish and Game --

13 H.O. BROWN: We'll wait until you admit the other
14 evidence, Mr. Cunningham.

15 MR. CUNNINGHAM: Thank you, sir.

16 MR. MONA: You can give us copies now.

17 H.O. BROWN: Okay. Some more business, when we come
18 back on the 3rd of April, Mr. Bezerra, will you have
19 direct, any direct on the 3rd of April?

20 MR. BEZERRA: Yes, Mr. Brown.

21 H.O. BROWN: Okay. We'll start with you when we
22 return. We're going to have the 3rd and 4th of April to
23 finish. If we can't finish by the 3rd or 4th, we have two
24 dates set aside. The 19th is canceled. So we have May 1
25 or 2, or both. So schedule May 1 and 2 and hope that

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1 we're through April 4th.

2 Mr. Lilly.

3 MR. LILLY: And just for the record, Mr. Brown, I do
4 appreciate you accommodating my request on April 19th. It
5 turned out Mr. Baiocchi also had a problem on that date.
6 It was one of the few things he and I agreed on in this
7 hearing, but we did both agree the 19th would be a bad
8 date.

9 H.O. BROWN: We're still on the record and that's
10 good to have in there.

11 Wait a minute, one more. Mr. Minasian.

12 MR. MINASIAN: Mr. Brown, Mr. Gee was good enough to
13 point out and Mr. Fleming was good enough to cooperate. I
14 forgot to copy two pages out of the exhibit, which was the
15 Roper and Scarnecchia study. And I'll have that for
16 everybody on the 3rd.

17 H.O. BROWN: All right. So noted. Anything else?

18 Mr. Cook.

19 MR. COOK: Yes, just a question on closing
20 argument --

21 H.O. BROWN: Yes, sir.

22 MR. COOK: -- will that be limited to written
23 document, or will there be any oral opportunity to present
24 a closing argument?

25 H.O. BROWN: Mr. Frink.

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1 MR. FRINK: I believe that the hearing notice
2 indicated that it would be limited to a written statement,
3 or legal brief, but certainly the Hearing Officer could
4 alter that.

5 H.O. BROWN: We'll discuss that some more on the
6 3rd, Mr. Cook.

7 MR. COOK: I'm sorry, I didn't hear that.

8 H.O. BROWN: We'll discuss that some more on the
9 3rd.

10 MR. COOK: Okay. Thank you.

11 H.O. BROWN: Anything else. Mr. Gee?

12 MR. GEE: No, Mr. Brown.

13 H.O. BROWN: Okay. This hearing is adjourned until
14 the 3rd of April.

15 (The proceeding concluded at 4:44 p.m.)

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REPORTER'S CERTIFICATE

STATE OF CALIFORNIA)
) ss.
COUNTY OF SACRAMENTO)

I, MARY R. GALLAGHER, certify that I was the Official Court Reporter for the proceedings named herein, and that as such reporter I reported in verbatim shorthand writing those proceedings; that I thereafter caused my shorthand writing to be reduced to typewriting, and the pages numbered 1509 through 1778 herein constitute a complete, true and correct record of the proceedings.

IN WITNESS WHEREOF, I have subscribed this certificate at Sacramento, California, on this 18th day of March, 2000.

MARY R. GALLAGHER, CSR #10749

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