

HEARING

STATE OF CALIFORNIA

WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

In the Matter of:)
 To Determine Whether to)
Reconsider Order WR 2006-0018-DWR)
Denying North San Joaquin Water)
Conservation District's Petition)
for Extension of Time Application)
(12842) Mokelumne River Tributary)
to San Joaquin River, San Joaquin)
County.)
_____)

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THURSDAY, JUNE 21, 2007

9:05 A.M.

JAMES F. PETERS, CSR, RPR
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LICENSE NUMBER 10063

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

BOARD MEMBERS

Mr. Arthur Baggett

Mr. Charlie Hoppin

STAFF

Ms. Erin Mahaney, Senior Staff Counsel

Ms. Jean McCue, Water Resources Control Engineer

Mr. Ernie Mona, Water Resources Control Engineer

NORTH SAN JOAQUIN WATER CONSERVATION DISTRICT

Herum Crabtree Brown

BY: MS. KARNA HARRIGFELD, ESQ.
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DEPARTMENT OF FISH AND GAME

Ms. Nancee Murray, Senior Staff Counsel
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ALSO PRESENT

Assemblyman Greg Aghazarian

Mr. Rob Alcott, East Bay Municipal Utility District

Senator Dave Cogdill

Mr. Bill Fuhs

Ms. DeeAnne Gillick, County of San Joaquin

Mr. Arthur Godwin, City of Stockton

Senator Michael Machado

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APPEARANCES CONTINUED

ALSO PRESENT

Assemblyman Alan Nakanishi

Mr. Dante John Nomellini, Central Delta Water Agency,
South Delta Water Agency

Mr. Bryan Pilkington

Supervisor Ken Vogel, San Joaquin County

Ms. Jeanne Zolezzi, Stockton East Water District

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BOARD MEMBER BAGGETT: Good morning. I think let's get started here.

This is the time and place for the hearing to receive evidence -- got the wrong comment. Just a second -- time and place for a hearing to receive evidence relevant to the determining whether to reconsider order water right 2006-0018-DWR denying the North San Joaquin Water Conservation District's petition for extension of time to complete beneficial use of water permit -- under permit number 10477, Application number 12842.

This hearing is being held in accordance with the notice of public hearing dated April 16th, 2006. I'm Art Baggett a member of the State Board, and with me is my colleague and co-hearing officer Charles R. Hoppin.

Also present are the staff assigned to assist us at this hearing. We have a staff attorney, Erin Mahaney; and staff engineers Jean McCue and Ernie Mona.

The hearing provides parties who have filed a notice of intent to appear an opportunity to present relevant testimony and other evidence that addresses the 3 key issues contained in the hearing notice. I won't repeat those issues word for word here, but to summarize the key issues address is whether the State Board should take an action with respect to the Division Chief's denial

1 in the above order for the extension of time, and whether
2 the District has demonstrated good cause for an extension
3 of time. And if so, what period of time extension is a
4 appropriate, and what action should the State Board take
5 and what conditions should be imposed in granting any
6 extension of time.

7 After the hearing record is closed, we will
8 prepare a proposed order for consideration by the full
9 Board. After the Board adopts an order, any person who
10 believes the order is in error will have 30 days within
11 which to submit a written petition for reconsideration by
12 the full Board

13 At this time, I'd ask Erin to cover any
14 procedural items and introduce the staff exhibits.

15 SENIOR STAFF COUNSEL MAHANEY: Good morning. A
16 court reporter from Peters Shorthand Reporting services is
17 here. If you would like to obtain a copy of the
18 transcript, you should make your own arrangements with the
19 court reporter.

20 Next I'm going to offer into evidence by
21 reference the staff exhibits identified in the April 16th,
22 2007 hearing notice. If there are no objections, I ask
23 that Exhibits SWRCB-1, which are the water right files
24 related to Application 12842; and SWRCB-2, the State Water
25 Resources Control Board Order WR 2006-0018-DWR be accepted

1 into evidence.

2 BOARD MEMBER BAGGETT: Are there any objections
3 from any of the parties?

4 If not, they're admitted.

5 (Thereupon Exhibits SWRCB-1 and SWRCB-2
6 were received in evidence.)

7 BOARD MEMBER BAGGETT: Before we begin the
8 evidentiary proceedings, we'd like to hear from any
9 speaker who wishes to make a non-evidentiary policy
10 statement, and fill out a blue card, which I think we've
11 got a number of. The Board will also accept written
12 policy statements, and we have a number of those already.
13 It's not an evidentiary statement. It is subject to
14 limitations identified in the notice. Persons making
15 policy statements must not attempt to use those statements
16 to present factual evidence orally or introduce written
17 exhibits.

18 So, at this point, I know we've got a few folks
19 that need to get back across the street. So would
20 Assemblyman Nakanishi.

21 ASSEMBLYMAN NAKANISHI: Mr. Chair and members,
22 good morning. I am Assemblyman Alan Nakanishi and I
23 appreciate the opportunity to provide this policy
24 statement for this hearing on Water Rights Order
25 2006-0018-DWR North San Joaquin Water Conservation

1 District patient for extension of time of Water Right
2 Permit 10477, Application 12842.

3 I fully support the State Water Resources Control
4 Board's granting reconsideration and approving the
5 District's petition of extension for change. As you are
6 aware, the eastern San Joaquin groundwater basin is in a
7 state of critical overdraft. Numerous entities within San
8 Joaquin county are undertaking efforts to obtain the use
9 of surface water for various sources.

10 The water right permit held by North San Joaquin
11 Water Conservation District is a crucial component of the
12 long-term solution to resolving the critical status of the
13 groundwater basin. The Division of Water Rights failed to
14 consider these key policy components, when it rendered its
15 decision. We believe highly probative evidence will be
16 submitted today that would provide the State Water Board
17 with evidence it needs to make the required findings, that
18 the District has demonstrated good cause for an extension
19 of time, that granting the petition for extension of time
20 is in the public interest.

21 The District has exercised due diligence that the
22 District's failure to comply with previous time
23 requirements has been occasioned by obstacles that could
24 not be reasonably avoided; and finally, that satisfactory
25 progress will be made if an extension of time is granted.

1 We look forward to your action in the matter and
2 appreciate this opportunity to comment.

3 Thank so very much.

4 BOARD MEMBER BAGGETT: Thank you.

5 Supervisor Ken Vogel.

6 SAN JOAQUIN COUNTY SUPERVISOR VOGEL: Good
7 morning. It's my pleasure to address the Board in this
8 issue on Application 12842. I'm Ken Vogel. I'm a
9 Supervisor from San Joaquin County, the 4th District,
10 which represents all the north, all the east parts of the
11 county and includes in it, in totality, the North San
12 Joaquin Water District.

13 I'm here today to support the North San Joaquin
14 Water Conservation District and request that its petition
15 for extension of time be granted by the State Water Board.
16 I am proud to represent San Joaquin County, including its
17 vibrant agriculture industry, which is the 7th largest
18 agriculture producing county in the state of California
19 and the 8th largest in the nation, with an estimated value
20 of almost \$1.7 billion last year.

21 The agricultural area within North San Joaquin
22 greatly contributes to this vibrant industry. A
23 dependable water supply, imperative to support the
24 county's agricultural economy, is essential for the
25 sustainability of our over 650,000 inhabitants and we are

1 growing.

2 San Joaquin County has long supported the efforts
3 to secure water -- surface water rights for use within the
4 county to support its industries and municipalities.

5 Although major river systems flow through the county, such
6 as the Mokelumne, the Calaveras, the Stanislaus and the
7 San Joaquin River, and we are on part of the Delta, there
8 is limited surface water supplies used within this county.
9 Therefore, the residents and industries within San Joaquin
10 count rely heavily on groundwater from a groundwater basin
11 which is critically over-drafted.

12 The county is suffering from a lack of dependable
13 surface water supply and has had to rely far too long on
14 ground water as a principal source of water for both
15 agricultural and municipal uses. Due to the county's
16 critically over-drafted groundwater basin, it's imperative
17 that additional surface water supplies be delivered to
18 decrease the existing demands on the groundwater basin,
19 including my 3 deepwater wells that I have as a farmer.

20 North San Joaquin's Mokelumne River water right
21 can provide up to 20,000 acre feet of relief to our
22 over-drafted basin. It is important to the well-being of
23 San Joaquin County that the State Water Board provide
24 North San Joaquin this opportunity to fully develop the
25 20,000 acre feet of surface water.

1 Over the years, North San Joaquin has struggled
2 to develop and use this water right. This is due to a
3 variety of factors that I'm sure the District will explain
4 to you today. However, I am aware the District has
5 recently passed a water charge. The Board of Supervisors
6 unanimously supported this water charge and as the County
7 owns property, which will be in the District will be
8 subject also to this charge.

9 The new charge will allow the District to
10 implement its plans to deliver surface water to willing
11 farmers and to develop groundwater recharge projects to
12 fully utilize its existing water rights. The District has
13 real plans to develop and use this water and I urge the
14 State Board to provide the District additional time to
15 implement these projects.

16 The County of San Joaquin's existing leadership
17 statement on water resources development adopted by the
18 Board in the year 2001, provides that the County of San
19 Joaquin will defend water-right filings on behalf of the
20 individual water agencies and provides that the County
21 will support and encourage water agencies within the
22 county to use existing water rights for beneficial use
23 within the county.

24 This is exactly what North San Joaquin is trying
25 to do at this hearing before you today, defend its water

1 rights in order to beneficially use the water within our
2 county.

3 It is vitally important for the future of San
4 Joaquin county that all existing water supplies be
5 protected and utilized. The County supports these efforts
6 by North San Joaquin to put its existing water right to
7 beneficial use within the county.

8 I urge you to grant North San Joaquin's petition
9 for extension of time so their surface water rights may be
10 put to this beneficial use.

11 And I thank you for your time

12 BOARD MEMBER BAGGETT: Thank you.

13 We have Bill Fuhs. Is that correct? And then
14 Bryan Pilkington.

15 MR. FUHS: My name is Bill Fuhs. I'd ask you to
16 vote no on giving more water to this district. This is a
17 public agency, but they keep it very private. I've been
18 trying to get their records for three months. It's not on
19 the Internet. It's not in the library. I finally went to
20 a public meeting and said where can I see their records.
21 What are you going to do with this water? What are you
22 going to do with the money? How does East Bay MUD fit in?

23 They told me to go to Mr. Steffani's bedroom and
24 get the records. I have talked to their lawyers since
25 then. They'll give me the records but only after this

1 meeting. I hope that you'll vote no till they get their
2 act together.

3 BOARD MEMBER BAGGETT: Thank you.

4 Mr. Pilkington.

5 MR. PILKINGTON: Good morning. I'd like to thank
6 the Board for giving me an opportunity to be here today
7 and to express my personal opinions regarding the Water
8 District. My name is Bryan Pilkington. And I am science
9 specialist and a professional educator with the Lodi
10 Unified School District. I live at 13100 Victor Road in
11 Lockeford. I've lived in Lockeford for 20 years. I grow
12 hay and raise cattle on my family ranch.

13 The citizens of North San Joaquin County
14 recognize the importance of water in our community. I am
15 here today to request that the Mokelumne River water stay
16 in San Joaquin county for the public benefit.

17 However, I have serious concerns about the due
18 diligence of the North San Joaquin Water Conservation
19 District to utilize the Mokelumne River water for public
20 benefit. Over 50 years ago this District entered into an
21 agreement to construct facilities to utilize water for the
22 public benefit. This project was to be completed in 1970,
23 which is now 37 years past the agreed completion date.

24 At the April 30th meeting and subsequent board
25 meetings, this District was asked if they displayed and

1 demonstrated diligence in bringing water for public use
2 during the past 50 years. This District was asked many
3 times in writing to explain what they have accomplished
4 over the past 50 years. This District could not and would
5 not answer these questions.

6 In 1956 this District agreed to construct the
7 necessary facilities to utilize the water by 1970. The
8 district is now 37 years late. The question remains, has
9 this District demonstrated due diligence for the public
10 benefit during the past 50 years?

11 Fifty years ago this District had a plan to
12 utilize water for the public benefit. How many failed
13 schemes to put this water to beneficial use has this
14 district contrived? Now, 37 years past the 1970
15 completion date of their agreement they have another plan.
16 However, upon closer inspection, you will find that the
17 District's new plan involves a very complex network of
18 agreements with many other districts. This new plan
19 resembles a patch work, a hodge-podge and even resembles a
20 smoke screen to demonstrate that this District can use the
21 water for public benefit.

22 The question remains, has this district
23 demonstrated due diligence for the public benefit during
24 the past 50 years?

25 Has this District ever demonstrated a successful

1 long-term planning?

2 This District has planned for many decades
3 without a successful record of beneficial water use. Now
4 the District will tell you they have a workable plan.
5 However, upon closer inspection of the District Manager's
6 testimony, you will discover that their water usage plans
7 are based upon assumptions and not facts. Is it
8 reasonable to trust a district that bases its future plans
9 on assumptions and not facts?

10 Can a reasonable person have faith in a district
11 that is assuming 15 miles of creeks and assuming 200 acres
12 of?

13 This District has had 50 years to plan a project
14 and is basing the new plans on assumptions. The District
15 relies upon agreements with other agencies hoping they
16 will perform in order for this District to put the water
17 to beneficial use. This District is far more skilled at
18 last-minute requests than planning long-term projects.

19 On December 29th of 2000, 2 days before
20 expiration, they asked for another 10-year renewal for
21 extension of time. On Monday, April 23rd, only 7 days
22 before the notice to vote to finance this 10-year plan,
23 the District decided to tell the public -- only 7 days
24 before, to tell the public about the project. Seven days.

25 On May 14th only 32 days ago, the District used a

1 potentially illegal assessment method to finance their
2 beneficial water use plan that is 37-years past completion
3 date. Only yesterday, Wednesday, June 20th, the District
4 decided to disclose the truth and the facts about the
5 District being 37 years late to complete the beneficial
6 water project. And, again, here's a newspaper of
7 yesterday describing what is going on in the District.

8 Since 1956, 2 generations of citizens have grown
9 up in San Joaquin county. Has this District put the water
10 to beneficial use?

11 Since 1956, hundreds of thousands of farm land --
12 acres of farm land have disappeared. Has this District
13 put the water to beneficial use?

14 Since 1956, the population of San Joaquin county
15 has more than doubled. Has the District put the water to
16 beneficial use?

17 Since 1956, the cost of construction has
18 increased by over 500 percent. And has the District put
19 the water to beneficial use?

20 Since 1956, this District has compiled a list of
21 excuses why they did not put the water to beneficial use.
22 Does the District's new plan resemble the many failed
23 plans of the past 50 years? The question remains, has the
24 North San Joaquin Water Conservation District demonstrated
25 due diligence for the public benefit during the past 50

1 years?

2 Thank you for giving me the opportunity to
3 address the Board.

4 BOARD MEMBER BAGGETT: Thank you for coming.

5 With that, I think that's all the cards, aside
6 from parties. We had a number of parties who requested to
7 make policy statements only. So maybe we'll do those
8 right now before we get into the evidentiary portion of
9 the hearing. East Bay Municipal Utility District. And
10 then I have the City of Stockton after that.

11 MR. ALCOTT: Good morning, Mr. Chairman and Mr.
12 Hoppin and members of the staff. My name is Rob Alcott.
13 I am the Director of Water and Natural Resources with East
14 Bay MUD. We've filed a policy statement. It was posted a
15 couple days ago. I have copies here for those that would
16 like a copy. I'd just like to briefly summarize that
17 statement.

18 In this proceeding, North San Joaquin Water
19 Conservation District is asking the State Board, in
20 effect, to reconsider a prior denial of an extension
21 request, so that they have sufficient time to build and
22 utilize water under their permit 10477.

23 As you know, this is a permit for Mokelumne River
24 water. Mokelumne River is East Bay MUD's primary source
25 of water supply. It serves municipal needs in our service

1 area to over 1.3 million people.

2 The District elected to file a policy statement
3 in this matter. We haven't recommended or proposed a
4 specific solution. However, in that policy statement we
5 do ask that this Board not take any action that would
6 adverse an ongoing process under way in the region, called
7 the Mokelumne River Forum process.

8 The Mokelumne River Forum process, as you may
9 know, is a program that's designed after the Sacramento
10 Water Forum. It's our effort, through a facilitated
11 discussion and deliberation to arrive at a regional
12 solution to water resource needs along the Mokelumne. The
13 problems, as with most river systems in California are
14 linear. You can't isolate a spot on the river and say
15 we're going to solve that problem without affecting folks
16 upstream and downstream.

17 The Mokelumne Forum is a gathering of a number of
18 parties from country agencies, including Amador, Calaveras
19 and Alpine counties, the folks way on the outer end in
20 East Bay MUD and importantly many of the folks that are
21 here in this room.

22 The Forum has been ongoing for 5 or 6 years.
23 We've really accelerated our progress in the past couple
24 of years. DWR is funding facilitator services, and they
25 are stepping up to the plate to fund the feasibility study

1 for a project that the Forum members themselves have
2 endorsed to a regional conjunctive use project. It's
3 called the I-RCUP, the Integrated Regional Conjunctive Use
4 Project. The concept is that in wet years we have an
5 opportunity to use some State Board reservations permit
6 filings that go back to 1927, a relatively high priority.

7 We have East Bay MUD's facilities have been
8 developed on the river for regulation and storage. And we
9 have a circumstance in San Joaquin that is problematic,
10 but on the other side it's also an opportunity. We have
11 an over-drafted groundwater basin, which presents
12 opportunities for storage. And in wet years we would hope
13 to develop a project that is supported by all the parties,
14 allows wet year storage of excess flows for dry-year use.

15 We're about to undertake an effort to develop a
16 detailed scope of work. We're looking at a couple million
17 dollar effort here. DWR is behind us. There's a letter
18 policy statement that was filed by Mr. Woodling here. I
19 think is very consistent with that.

20 And again, in conclusion, we're looking simply
21 for no adverse action by the Board in this proceeding that
22 would frustrate the efforts of the Forum to work on that
23 I-RCUP project.

24 And if you'll permit me, I want to reflect back
25 on a conference I attended last November. It was a

1 veteran State Board member that spoke at that conference
2 about water issues. The observation was somewhere along
3 the lines that it's problematic for agencies and cities
4 and counties to expect State and federal agencies to get
5 in the middle of some pretty complicated regional
6 conflicts and sort through them in a timely way and in a
7 manner that satisfies the needs of all the parties. You
8 guys live and breathe that day in day out. I've had an
9 opportunity to use that quote several times.

10 The recommendation was that folks work
11 collaboratively together, locally within the region, sort
12 through the issues, come up with solutions and present
13 those solutions to those agencies that have the power to
14 implement them. The Mokelumne River Forum program is our
15 effort to bring these disparate parties together. It's a
16 God awful-long process and it's very complicated. But
17 we've made good progress. We got a lot of support and
18 we're hopping this bears a lot of fruit to everybody's
19 benefit in the future.

20 Thank you very much.

21 BOARD MEMBER BAGGETT: Thank you.

22 Does the City of Stockton wish to make a policy
23 statement?

24 What about Central Delta Water Agency? Mr.
25 Nomellini or do you want to do an opening statement or

1 just a policy statement?

2 MR. NOMESELLINI: No, I think we can do this as a
3 policy statement.

4 Members of the Board, I'm Dante John Nomellini.
5 I'm the manager and counsel for the Central Delta Water
6 Agency. I'm appearing today on behalf of both the Central
7 Delta Water Agency and South Delta Water Agency. Mr.
8 Herrick is unable to be here.

9 Our involvement on river issues has been
10 longstanding, I think even before the oldest Board Member
11 up there. And in San Joaquin county, of course, we have
12 our own internal up-river down-river normal conflicts and
13 we've been struggling for years to sort all those out.

14 And believe it or not, and I know Mr. Baggett,
15 you're not aware of the detail of which we've been working
16 together in San Joaquin county to come up with a regional
17 solution to the groundwater basin problems in Eastern San
18 Joaquin county. The Delta interests have committed
19 themselves to this process and we've been in it. It
20 hasn't been easy.

21 We support an extension of time for North San
22 Joaquin, because we think there is an opportunity for
23 progress on the horizon. We know there are other issues
24 outstanding before the Board involving the river. And
25 rather than allow this thing to slip in total conflict, we

1 think a little patience on your part would allow us to
2 struggle a little bit more in the mud here and maybe sort
3 it out for you, at least regionally.

4 San Joaquin county, Eastern San Joaquin County's
5 difficulties stem from the fact that the Folsom South
6 Canal was never completed. When I started in the practice
7 of law in the water field, Eastern San Joaquin Country was
8 relying on a supplemental water supply from the American
9 River through the Folsom South Canal. Your predecessor
10 Water Rights Board rendered junior an application by the
11 North San Joaquin Water Conservation District that gave
12 East Bay MUD a priority, based primarily on the fact that
13 Eastern San Joaquin County was going to be supplied from
14 the American River.

15 And all the plans kind of went awry when they
16 didn't get that. And East Bay MUD being, you know, a
17 municipal supplier ended up even with the water contract
18 from the American River supply. So East Bay MUD is pretty
19 well taken care of.

20 We spent a lot of time in hearings before this
21 Board to try and sort out some of the river issues. And
22 then this Board didn't act on it except in D-1641, you
23 accepted the FERC settlement. And you know our view of
24 that, because we challenged that through the legal
25 processes. And we lost and you won on that issue.

1 But East Bay MUD, I think, has taken care of
2 itself and this Board has taken good care of it on the
3 river. And their analysis of their own water supply
4 includes a third dry year that nobody else has in their
5 planning. And so we're confident that what we're doing is
6 not really going to aggravate East Bay MUD's situation. I
7 think they are now earnestly working locally to have a
8 solution.

9 The eastern San Joaquin groundwater basin, as
10 pointed out by East Bay MUD representatives, has an
11 opportunity for storage. The view of the -- our view in
12 the Delta is that we need to have our counter-parts
13 upstream have a solution, because other wise we're going
14 to end up fighting amongst ourselves as well as fighting
15 with you. We would rather work towards a solution. We've
16 got to get this groundwater basin in a situation where
17 it's fairly stable and then there's a storage opportunity
18 for conjunctive use for others.

19 But East Bay MUD for us in the Delta is kind of
20 the worst diversion, although we can tolerate it as part
21 of a group effort, because their water goes into a pipe
22 and goes all the way across the Delta in a pipe. Even our
23 adversaries to the south met in the valley. Up till now
24 their water goes through the Delta when they take it. So
25 there's some secondary benefit. If we ever end up with a

1 peripheral canal, our view would change substantially on
2 that, but right now their water supply goes through the
3 Delta.

4 So we think there's an opportunity here and we
5 would ask that you not disrupt it too much by not granting
6 the extension. We're going to be back before you at some
7 stage on the question with regard to the extension for
8 East Bay MUD. And we have protests filed on that. And we
9 are working. We believe East Bay MUD is working. It's
10 hard. And we would urge you to grant this extension, even
11 if -- you know, subject to your review as to the progress
12 and these things. And North San Joaquin, we haven't
13 always agreed with everything they've done. And they
14 haven't done it perfectly. And it's a struggle. They've
15 got a scattered district. And there are changes occurring
16 in agriculture where people are going away from surface
17 supply to groundwater-run drip systems, which are more
18 efficient, but more detrimental to the groundwater
19 overdraft.

20 So, anyway, we're here to urge support. Let you
21 know that the Delta interests are participating, and we
22 have been participating for years with Eastern San Joaquin
23 County, including North San Joaquin. And we have an
24 opportunity to do some good and bring something back to
25 you that may work on the river.

1 Thank you.

2 BOARD MEMBER BAGGETT: Thank you.

3 BOARD MEMBER HOPPIN: Mr. Nomellini?

4 Mr. Nomellini?

5 Given your vast experience that even exceeds Mr.
6 Baggett's tenure, when you look at the North San Joaquin
7 and the well recognized groundwater deterioration there,
8 do you see the footprint for a groundwater recharge system
9 as you go through your negotiations with the other
10 parties?

11 MR. NOMELLINI: I do. And it's going to depend
12 on integrating some regulatory storage in order to get the
13 job done. You know, we're looking at wet period supply.
14 And part of the problem that occurs when you don't have a
15 firm supply, it's hard to build a lot of facilities. You
16 almost have to have dual facilities.

17 And parts of San Joaquin county are easier to
18 develop that system, because of the distribution. And
19 it's going to take an integration with North San Joaquin.
20 And I think that's what's working here in the county, at
21 least the part that I participate on the Groundwater
22 Banking Authority, you know, where we're trying to put
23 together the plans. There's an integrated regional water
24 management plan being produced at that level that
25 integrates these features.

1 So I think there's an opportunity to do it. It
2 isn't easy. It's just not an automatic, because an
3 intermittent supply it's difficult to put all the
4 structures in to do it. But I think the fact that North
5 San Joaquin has put together a financing mechanism, albeit
6 if it's got imperfections, the fact that they've actually
7 moved in that direction is good, but it's going to take an
8 integrated effort in the community to make it work and I
9 think that's under way.

10 BOARD MEMBER HOPPIN: Thank you for your comment.

11 BOARD MEMBER BAGGETT: Thank you. I've got the
12 County of San Joaquin at the pre-hearing stated that they
13 want to do a policy statement. Do they?

14 And then Stockton East, do you intend to do a
15 policy statement also?

16 MS. GILLICK: Supervisor Vogel was here doing a
17 policy statement, but I was prepared to do like an opening
18 statement or to reiterate that. So if it's appropriate, I
19 think it's in the same context to do it now.

20 BOARD MEMBER BAGGETT: Feel free to do it now.
21 I'd like to do all the policy statements before we get
22 into the evidentiary portion of the hearing.

23 MS. GILLICK: Well, Supervisor Vogel was here and
24 did do a policy statement.

25 BOARD MEMBER BAGGETT: So that's fine. And we've

1 got your written comments also.

2 BOARD MEMBER BAGGETT: Stockton East.

3 SENIOR STAFF COUNSEL MAHANEY: Going back. Could
4 you state your name, Ms. Gillick, for the record -- for
5 the court reporter.

6 MS. GILLICK: I'm sorry. It's DeeAnne Gillick on
7 behalf of the County of San Joaquin and the county
8 parties.

9 MS. ZOLEZZI: Good morning, board members, staff.
10 My name is Jeanne Zolezzi. I'm general counsel for
11 Stockton East Water District this morning making a policy
12 statement.

13 The Key Hearing Issue 1, this morning asks what
14 action the Board should take with respect to the Division
15 Chief's denial of North San Joaquin's petition for
16 extension of time.

17 Stockton East Water District believes the State
18 Board should withdraw that order and grant the requested
19 extension of time, because to do other wise would not be
20 in the public interest.

21 The District, in our opinion, has met the only
22 requirement in the Water Code, Section 1398, that the
23 State Board has to establish in order to grant an
24 extension, and that is that good cause exists. And
25 there's ample good cause under the circumstances. There

1 are other criteria in the regulations that the Board has
2 adopted and we believe those are very important and that
3 the District has also met those.

4 Section 843 of Title 23 that the time extension
5 must be in the public interest and that the District has
6 exercised due diligence, we believe, have all been met and
7 you will see that evidence be put on today.

8 We think the most important thing, though, is
9 that when the State Board evaluates that evidence, the
10 Board must first and foremost consider the direction given
11 in the regulations in Section 841. And that section
12 states that in determining the period of time to be
13 allowed to build diversion works and apply the water to
14 full beneficial use, the particular conditions surrounding
15 each case will govern. In every case, the matter must be
16 pressed with due diligence considering the size of the
17 project and the obstacles to be overcome.

18 And that's where we believe North San Joaquin
19 differs from many of the permits that you've considered
20 for extensions of time before. Due diligence requirements
21 are not the same for every permittee. Today North San
22 Joaquin will be asking you to consider the size of the
23 project compared to the size of the district. They will
24 ask you to consider the due diligence requirements in
25 light of the obstacles that they have had to overcome.

1 Finally, they'll ask you to consider the particular
2 conditions surrounding this case, which are very unique in
3 the State of California.

4 In 1948, as you know, the District filed an
5 application for water that was senior to East Bay MUD's
6 application. But the Board nevertheless granted East Bay
7 MUD's application senior to the District's, leaving the
8 District with only a temporary permit for supply of
9 surplus water. The Board has had to deal with that
10 supply. And since that time, North San Joaquin has had to
11 deal with one obstacle after another placed in its way to
12 try to use that intermittent surplus water.

13 The first 7 years after the permit was issued,
14 they spent negotiating an agreement with East Bay MUD to
15 determine exactly when water would be available. And that
16 was essential, because under the permit that they had,
17 they were allowed to take water that was surplused to East
18 Bay MUD's needs, but no way to determine what was surplus,
19 so they wouldn't know when to divert, so they entered into
20 an agreement with East Bay MUD.

21 That was successfully done. And then for the
22 next 15 years the District built its initial distribution
23 system and got landowners to start using that system. And
24 I think it's important to note that the State Board staff
25 has documented that in 1973 North San Joaquin had used

1 nearly 10,000 acre feet of water. It Was not 9,486 acre
2 feet. So in less than 16 years after the permit was
3 issued, the District had used nearly 50 percent of its
4 water. That is real progress. That is due diligence.

5 Unfortunately, because of a series of
6 circumstances that followed after 1973, they couldn't
7 build on that success, because of the limitations of the
8 permit and because of hydrologic circumstances. During
9 the drought period in the late seventies, the District
10 received no water for a series of years. And after the
11 initial buildup of those landowners using almost 10,000
12 acre feet of water, they had no water whatsoever.

13 These farmers now realize that this was not a
14 reliable source of water. And as Dante Nomellini
15 mentioned, that they either had to build a very expensive
16 dual system or go back to groundwater. Many of those
17 landowners went back to groundwater. And these are the
18 particular conditions of this situation. These are the
19 obstacles that had to be overcome.

20 Just a few years later when water was once again
21 available and the District should have been starting to
22 build up again its surface water use, the District was hit
23 with a 7-year period of no water from 1986 to 1992. And,
24 of course, this lack of additional supply forced
25 additional customers to go back to groundwater.

1 PG&E charges a land owner for their well to be
2 on-line, regardless of whether they're using it or not.
3 So if you're using surface water, you're still paying for
4 your well to be ready if you need it. And so instead of
5 paying for 2 systems, many of those landowners just said
6 I'm going back to my well. It's there every year.

7 So when the drought ended in '93, North San
8 Joaquin should have been able to go back to its landowners
9 and say look we have water. Let's do something to get you
10 to use it. Let's try to push this water use in the
11 District again and build back up to that 10,000 acre foot
12 use and beyond.

13 But another obstacle was thrown in its way. In
14 1992, this Board held a hearing that put North San
15 Joaquin's water rights at issue along with Woodbridge
16 Irrigation District and East Bay MUD considering what
17 water would be needed in the river for fish and wildlife.
18 The District new and the State Board confirmed in
19 correspondence that its water right was at risk. And
20 until a decision was issued on that hearing, it couldn't
21 go out to landowners and say look we've got this surplus
22 water. We've got to put it to use. It's available,
23 because they didn't know if it would be there the next
24 day. They didn't know what the State Board was going to
25 rule on their water right.

1 The District waited for 9 years for a decision on
2 that with this cloud hanging over its head that it
3 couldn't go out and tell its landowners that it had a
4 surplus water system available. It didn't know. The
5 State Board did not issue a decision on those hearings.
6 Instead, in 2001, 9 years later, the State Board notified
7 North San Joaquin that D-1641 had resolved all the issues
8 surrounding those 1992 hearings. And then the District
9 new that its water rights for that time period were not at
10 risk.

11 So it went back out in 19 -- in 2001, excuse me,
12 and started its work again. And I think you can see and
13 you will see from the testimony today, that from 2001 the
14 District has worked nonstop to put that water to use. It
15 has implemented projects, adopted 2 separate financing
16 mechanisms to get this done. In 2001 they sought
17 legislative authority to impose an acreage charge. That
18 legislation became effective in 2003. And in 2003 they
19 levied the charge.

20 Over the past 15 years, the District has
21 implemented 4 pilot conjunctive use projects that are
22 under way and are active every time water is available.
23 In 2007, this year, the District imposed a groundwater
24 charge. And this year they had 4 more conjunctive use
25 pilot projects ready to go on line, which can't be

1 implemented because they received no water this year.

2 So, in conclusion, in determining due diligence,
3 the State Board is required to take into consideration
4 these particular conditions surrounding each case. And
5 due diligence differs from case to case and permit to
6 permit. You have to consider the obstacles to be
7 overcome. And in reality this tiny district has
8 accomplished a tremendous amount over this past 50 years
9 and it has the gumption to complete the job.

10 The groundwater basin is not in a good condition
11 and it depends on this water and it depends on North San
12 Joaquin to put it to use. Given the unique circumstances
13 of this permit, the fact that it was senior in time but
14 was turned out to be junior to East Bay MUD, the fact that
15 it can only take water when it's surplus to East Bay MUD's
16 needs, and it is unreliable, they've really done a
17 tremendous job.

18 So we believe that because the only requirement
19 in the Water Code is that the State Board find good cause
20 that that exists, that you will hear that that exists
21 today in the testimony and that the public interest
22 requires that North San Joaquin be allowed to finish the
23 job that it started.

24 Thank you very much.

25 BOARD MEMBER BAGGETT: Thank you. Any other

1 policy statements?

2 If not, then I'll move to the evidentiary portion
3 of the hearing for presentation of evidence and related
4 cross examination by the parties who have submitted notice
5 of intent to appear.

6 We will hear first from the parties' case in
7 chief in the following order: North San Joaquin Water
8 Conservation District, then the Department of Fish and
9 Game.

10 Prior to the cases in chief, a representative of
11 the party may make an opening statement summarizing the
12 objectives of the case and the major points and the
13 proposed evidence is intended to established and the
14 relationship between those points and the key issues.

15 After an opening statement, we will hear
16 testimony from each of the party's witnesses. Before
17 testifying, the witness should identify their written
18 testimony as their own and affirm that it is true and
19 correct. Witnesses should summarize the key points in the
20 testimony and please do not read the testimony. We have
21 copies of it. Direct testimony will be followed by cross
22 examination by other parties, board staff, myself and my
23 colleague, Mr. Hoppin. Redirect testimony may be
24 permitted followed by recross. And, of course, the
25 redirect and recross is limited to the scope of the cross

1 examination and redirect testimony respectfully.

2 After the cases in chief, there may be rebuttal
3 evidence by the parties. We would like to encourage you
4 to be efficient in this case and the procedures set forth
5 in the Board's regulations and hearing notice. I think
6 we've gone over those in the preparing. You're familiar
7 with those. We encourage the parties' witnesses to
8 summarize again. I guess I can't over-emphasize that.
9 Summarize the testimony so that we can spend more time on
10 the cross examination, if necessary.

11 We will allow for closing briefs 14 days after
12 the transcripts are released. And we'll talk about that
13 after we conclude the hearing this morning. And we'll
14 notify you of those due dates.

15 With that in mind, I would invite the appearances
16 by the parties who are participating in the evidentiary
17 portion of the hearing. Will those make an appearance
18 state your name, address and whom you represent so the
19 court reporter can enter this information in the record.

20 So first North San Joaquin County Water
21 Conservation District.

22 MS. HARRIGFELD: Good morning. Karna Harrigfeld,
23 2291 West March Lane in Stockton, California, 95207. And
24 I represent North San Joaquin Water Conservation District.

25 BOARD MEMBER BAGGETT: The Department of Fish and

1 Game.

2 MS. MURRAY: Nancee Murray. Address is 1416 9th
3 Street, 12th floor, Sacramento, 95814. And I represent
4 the Department of Fish and Game.

5 BOARD MEMBER BAGGETT: Stockton East Water
6 District.

7 MS. ZOLEZZI: Jeanne Zolezzi, Stockton East Water
8 District, 2291 West March Lane, Suite B100, Stockton,
9 California, 95207.

10 BOARD MEMBER BAGGETT: Central Delta Water Agency
11 and South Delta Water Agency.

12 MR. NOMESELLINI: Dante John Nomellini. I think
13 we're content with our policy statement for the Board. I
14 think the hearing will proceed more rapidly and probably
15 unnecessary for us to partake in the cross examination.

16 Thank you.

17 BOARD MEMBER BAGGETT: Well, thank you.

18 County of San Joaquin, San Joaquin County Flood
19 Control Water Conservation District and Mokelumne River
20 Water and Power Authority.

21 MS. GILLICK: Good morning. DeeAnne Gillick
22 representing all of the county parties which you just
23 mentioned, the County of San Joaquin, the San Joaquin
24 County Flood Control and Water Conservation District,
25 Mokelumne River Water and Power Authority, which is a JPA

1 of those 2 members. P.O. Box 20, Stockton, California,
2 95201.

3 And I don't know if you -- I think Karna is
4 prepared to do the opening statement, so I'll let her
5 proceed, and then we'll --

6 BOARD MEMBER BAGGETT: Thank you.

7 And last, I have the City of Stockton.

8 MR. GODWIN: Arthur Godwin for the City of
9 Stockton. The Address is 700 Loughborough Drive, Suite D,
10 Merced, California, 95348.

11 BOARD MEMBER BAGGETT: I will now administer the
12 oath. Will those persons who plan to testify today,
13 please stand and raise your hand.

14 MS. MURRAY: Can I just say that Fish and Game's
15 witnesses are coming a little later, so we'll have to
16 possibly do this again.

17 BOARD MEMBER BAGGETT: If you'd remind us at that
18 point.

19 (Thereupon the witnesses were sworn,
20 by Board Member Baggett, to tell the truth.)

21 BOARD MEMBER BAGGETT: Thank you.

22 We'll now begin with testimony of the parties.
23 First we'll hear the opening statement from North San
24 Joaquin.

25 MS. HARRIGFELD: Good morning. Karna Harrigfeld

1 on behalf of North San Joaquin Water Conservation
2 District.

3 At the outset, I would like to thank the Board
4 for granting our petition for reconsideration and
5 providing us with this opportunity for a hearing on this
6 very important issue.

7 Often times San Joaquin county water interests
8 have divergent views on water policy issues. I am very
9 proud to report that San Joaquin County is here today and
10 we are presenting a united front with respect to the issue
11 of our petition for extension of time.

12 San Joaquin county is in a very unique geographic
13 location. We have the Stanislaus, Calaveras, Mokelumne
14 and San Joaquin Rivers as well as the Delta all running
15 through our county. There are a number of rivers,
16 however, the surface water dedicated to the interests in
17 the county is rather scarce.

18 As the State Board knows, the eastern San Joaquin
19 county groundwater basin is in a state of critical
20 overdraft. And this has been due in large part to our
21 lack of surface water resources. The resulting effect of
22 our groundwater condition is we have a huge underground
23 reservoir that is ready and able to accept surface water
24 surplus flows that are available on the Mokelumne,
25 Calaveras and Stanislaus Rivers. And the county agencies

1 have been aggressively pursuing those supplemental
2 sources, as well as attempting to put North San Joaquin's
3 contractual water to us.

4 Utilization of surplus surface flows is a
5 difficult situation. For over 10 years, San Joaquin
6 County and North San Joaquin Water Conservation District
7 have been working on conjunctive use projects. As a
8 region, we have achieved many of our conjunctive use
9 program objectives, but there are many regulatory
10 obstacles that stand in our way. Conjunctive use is a
11 very complex process that can't simply be completed
12 overnight.

13 We have had to seek legislation, financing and
14 land acquisitions, as well as regulatory permits to ensure
15 that our conjunctive use program is implemented. A key
16 component to the regional solution for the State Water
17 Board to grant -- a key component to the regional solution
18 is for the State Water Board to grant North San Joaquin's
19 petition for extension of time for this 20,000 acre feet
20 of water.

21 We have submitted substantial written testimony,
22 and we understand that you have reviewed that testimony.
23 And our intent today is to present a very focused
24 presentation. Instead of having the witnesses provide a
25 summary, I will be asking them a series of questions to

1 facilitate the process.

2 Just by way of brief background, North San
3 Joaquin Water Conservation District has a permit, 10477.
4 It was issued in 1956. It is for the diversion of 80,000
5 cfs. We have a storage right of up to 20,000 acre feet of
6 water. As some of the previous speakers have mentioned,
7 North San Joaquin filed their water right prior in time to
8 East Bay MUD. However, East Bay MUD was granted a
9 priority for municipal use. The water granted under our
10 water right -- would you like me to stop and have these
11 guys?

12 BOARD MEMBER BAGGETT: How much longer do you
13 have?

14 MS. HARRIGFELD: I have a ways.

15 BOARD MEMBER BAGGETT: Okay, then I think we
16 will, if you don't mind --

17 MS. HARRIGFELD: No. No. I would prefer to have
18 that.

19 BOARD MEMBER BAGGETT: With that, we notice we
20 have a few members of the Senate and the Assembly. Would
21 you like to make any comments, Senator Machado, Senator
22 Cogdill?

23 BOARD MEMBER HOPPIN: We do apologize about
24 making you wait so long to speak, Senator.

25 SENATOR MACHADO: Mr. Hoppin, this is always a

1 pleasure to be here and an honor before such a
2 distinguished panel.

3 The issue that's before you today is one of great
4 importance to San Joaquin county. San Joaquin county
5 essentially has no indigenous water. And yet water goes
6 through the county many different ways to other sources.
7 San Joaquin county is growing. And over the past 12 years
8 that I have been up here, the county has been working to
9 try to form the type of cooperation and collaboration that
10 can work to bring water into the county to offset the
11 extreme overdraft that's taking place on the eastern side
12 of the county to provide protection for salt water
13 intrusion coming from the west, and also to meet some of
14 the significant water quality challenges in the Delta.

15 North San Joaquin has made great strides in terms
16 of trying to develop the revenue stream necessary to
17 implement the projects that will enable them to use the
18 water made available to them off of the Mokelumne. They
19 have also been party to discussions with other parties on
20 the eastern side of the Water District, the municipalities
21 particularly Stockton and Lodi, in terms of how we can put
22 that water to beneficial use. Further more, the
23 discussions have expanded beyond that to work with East
24 Bay MUD with what water they might also have available to
25 be able to come into that area.

1 At times the County has not necessarily been able
2 to demonstrate the harmony necessary to bring forth the
3 type of collaboration to facilitate the project necessary
4 to take advantage of the opportunity for outside water or
5 water coming in that would be made available from this
6 application. To date though, there's been significant
7 progress between all parties in trying to achieve a
8 unified voice that's going to be consistent with
9 integrated regional water management plans, that's going
10 to be consistent with the Forum discussion that's taking
11 place along the Mokelumne River, that's going to be
12 supportive of long-term efforts with such as the More
13 Water Project, in terms of trying to ensure for the people
14 of San Joaquin county that there can be an adequate supply
15 of quality water going forward.

16 Further more, I think it also is a step for the
17 cooperation of the county with other agencies outside the
18 county to facilitate the resources of the county to be
19 made available for conjunctive use projects in the future
20 and other type of water projects that can assist in not
21 only meeting the needs of San Joaquin county, but also in
22 the very crucial need of trying to affect the water
23 quality and water quantity within the Delta.

24 So I ask that you give due consideration for this
25 request and that look at it not in terms of what has not

1 been able to be accomplished in the past but the steps
2 that have been taken to date and the path that they're
3 willing to follow going forward to put this water to use
4 and put this water to use in a collaborative fashion for
5 the benefit of the people of San Joaquin county and beyond
6 that.

7 Thank you very much.

8 BOARD MEMBER HOPPIN: Senator, can I ask you a
9 question?

10 SENATOR MACHADO: Yes.

11 BOARD MEMBER HOPPIN: I don't think you'll see
12 any indifference here about the concerns that you've
13 raised. One issue that you did mention and something that
14 I have concern with and I don't know the solution to it,
15 when we talk about this District, which is, I hate to use
16 the word impoverished, but it's certainly not a wealthy
17 district. And you talk about the enhancement of the
18 revenue stream, the harmony word, what I see going on here
19 affects the entire county. And I would think an integral
20 part of what hopefully will happen would be a coordination
21 and an encouragement of this harmony, if you will. Mr.
22 Nomellini spoke of it earlier.

23 So often in cases like this folks will recognize
24 the need and then when it comes down to the revenue
25 stream, everyone gets deaf. And I would certainly hope

1 that if we're able to move forward on this issue in a
2 progressive way that those of you standing by the podium
3 will help encourage this harmony, if you will, because
4 that is kind of out of our control and it certainly would
5 be an integral part of the solution.

6 SENATOR MACHADO: I can't agree more. You and I
7 come from the vantage point of being practitioners in
8 local water districts dealing with local politics that
9 often times can have blinders on as to what can be
10 achieved by associating with others to coalesce the
11 resources.

12 I think that's very important. And I think your
13 statement is very on point, because we can't continue to
14 keep coming up and asking for individual considerations,
15 silos if you will, and expect that we're going to promise
16 that we're going to perform. You're absolutely right,
17 North San Joaquin does have some fiscal challenges, but I
18 think it's important for the County to realize it's not
19 what a district gets that's important, it's what the
20 District brings to the County that's important and that
21 all parties in the County gain, even though they may not
22 be within the political boundaries of that district.

23 And the discussions to date have been to try to
24 overcome the political boundaries and be able to come up
25 and represent in a unified voice, not only the need for,

1 but also the fact that they're willing to -- the parties
2 that are saying that this is something that should be
3 supported are also willing to participate in a fiscal way
4 to be able to provide the infrastructure and the means to
5 put this water to good use.

6 And that is really the challenge that the County
7 faces. If it fails to do that and it fails to act in a
8 demonstrative way in a timely manner, I believe that
9 actions that have been proposed by this Board and others
10 whose support has been there, can legitimately go away and
11 be people understand that you can only do so much for so
12 long, and at that point you have to move on.

13 By granting this request, you'll put the burden
14 on them to demonstrate that they can work collaboratively
15 and can put this together. If they don't, then I realize
16 too there's going to be other demands that have to be met
17 and they've had their place in line. If they fail to take
18 it, someone else will probably legitimately come after
19 them.

20 BOARD MEMBER HOPPIN: Thank you, sir.

21 BOARD MEMBER BAGGETT: Thank you.

22 SENATOR COGDILL: Thank you, very much. I
23 appreciate the opportunity to come and speak before you
24 today on this important issue. Obviously, I'm here to
25 request that you grant the extension and to continue to

1 allow San Joaquin District the opportunity to work through
2 the myriad of problems that exist trying to accomplish
3 what it is they're trying to accomplish, what you want to
4 see them accomplish and what obviously we'd all like to
5 see. And I think the best way to do that is to provide
6 them with a little bit of additional time to do that.

7 Those of us that come out of local government and
8 have represented, in some cases, very small special
9 districts of one form or another know how difficult it is
10 to meet sometimes a one-size-fits-all criteria that comes
11 out of the State of California. And I think that's one of
12 the issues that we're dealing with here. I think progress
13 has been made and efforts are obviously continuing to make
14 more progress. And I would certainly hate to see us
15 stifle that, at this point in time, by not granting this
16 extension. And I know your patience may be growing thin
17 on this, but again that's what we're here for today is to
18 just ask your indulgence and to support this request for
19 the extension and provide the District a little bit more
20 time to meet the requirements.

21 BOARD MEMBER BAGGETT: For the court reporter,
22 that's Senator Cogdill.

23 SENATOR COGDILL: Thank you.

24 BOARD MEMBER BAGGETT: Assemblyman Aghazarian.

25 ASSEMBLYMAN AGHAZARIAN: Thank you. Assemblyman

1 Aghazarian, 26th Assembly District.

2 I just want to echo what my distinguished
3 colleagues from the Senate have set forth. This is a
4 unique opportunity to move the ball forward in a sense.
5 We have finally a meeting of the minds that has been
6 allusive over the years, certainly in my political
7 lifetime and, I think, in virtually most of the people in
8 this room's participation of it.

9 We're at a situation where people are working
10 together. There is a collaboration of ideas, a
11 collaboration of concepts that's working toward resolving
12 the issue, not just from a personal point of view but from
13 a regional point of view. San Joaquin county, Stockton
14 East, North San Joaquin, the City of Stockton, everybody
15 has skin in the game on this. Everybody wants to see a
16 positive solution. We're finally to the point where we
17 have the basis to move forward, and that's why we're
18 asking for the indulgence of this Board to grant this
19 extension, to work with us on this petition to let this
20 grow into fruition. And I think, looking back on it,
21 we'll all be very proud of the progress we made and
22 actually and hopefully we will have solved a problem.

23 So with that, I ask for your positive
24 consideration on this petition. Thank you.

25 BOARD MEMBER BAGGETT: Thank you.

1 With that, back to the opening statements. And
2 I'd like to try to get through the 2 openings statements
3 and then we'll take a break and set up for the witnesses.

4 MS. HARRIGFELD: Okay. Wonderful.

5 As I was mentioning, the State Water Resources
6 Control Board granted North San Joaquin a temporary right.
7 This temporary right is very unique. I am not aware of
8 any other temporary rights that are granted pursuant to
9 1462. The temporary nature of this right as was
10 previously discussed in some of the other policy
11 statements has been problematic to utilize. We go a
12 series of years in which we don't receive any water. The
13 extended drought of 1987 to '92 left our district 6 years
14 without water. Essentially, that forced our farmers to
15 put in groundwater wells. And we really haven't fully
16 recovered from that drought. A lack of a consistent water
17 supply and the drought have really proved to be obstacles
18 beyond the District's control.

19 We believe North San Joaquin Water Conservation
20 District has exercised due diligence under the
21 circumstances. We have built infrastructure. We have put
22 water to use. We have tried to work collaboratively with
23 our other sister agencies in coming up with programs to
24 put the water into the ground.

25 Finally, the District has positioned itself with

1 the recent enactment of our groundwater charge to really
2 make things happen. The groundwater charge was imposed on
3 May 14th of this year. We conducted a Prop 218 protest
4 proceeding and we will be proceeding with imposition of
5 the charge this year.

6 I'd like to know turn to the key issues briefly.
7 Key Issue number 1 is, what should we do with Water Rights
8 Order 2006-0018?

9 We believe it should be modified. There are a
10 number of sections, and I won't go into detail right now
11 of the specific modifications. If want to do closing
12 arguments, I'll highlight those during our closing.

13 Key Issue number 2, I'm going to briefly
14 highlight some of the relevant testimony that goes to
15 address the findings that the Board needs to make in order
16 to grant our petition for re -- or grant our petition for
17 extension of time.

18 First is whether the District has demonstrated
19 good cause for an extension of time. The testimony and
20 exhibits that we have presented show that the District has
21 demonstrated good cause. For example, we have used our
22 best efforts to utilize an undependable supply. Modeling
23 estimates from East Bay MUD show that we get water about
24 50 percent of the years.

25 We have worked collaboratively with other

1 agencies and we really believe that this groundwater
2 charge will facilitate our ability to build the
3 infrastructure necessary to increase deliveries to our
4 irrigation customers, as well as build recharge projects
5 to put water into the ground.

6 The time extension must be in the public
7 interest. Dr. Mel Lytle and Kevin Kauffman as well as
8 others will be providing testimony on the status of the
9 groundwater basin and why granting the extension is a
10 crucial component to implementation of groundwater
11 recharge programs in our community.

12 The next finding is exercise due diligence. We
13 believe through the testimony of Bud Adams and Pete
14 Weinzheimer and others, we will show that we've exercised
15 due diligence in the construction of facilities in the
16 maximization of the water that we do have available.

17 I think also as Ms. Zolezzi mentioned, it is
18 important to weigh due diligence with the uniqueness of
19 our water right, the fact that we don't receive water
20 every year, I think, is a key distinction that you need to
21 balance when looking at whether or not due diligence has
22 been exercised.

23 The next finding that the Board's required to
24 make is that failure to comply with the previous time
25 extension has been occasioned by obstacles beyond our

1 control.

2 Ed Steffani and Pete Weinzheimer will testify as
3 to the unique nature of our water right, as well as the
4 1992 Mokelumne River Water Rights hearing. That put both
5 East Bay MUD, Woodbridge and North San Joaquin's water
6 rights essentially on the chopping block. We had 9 years
7 where nothing was done. We had no idea whether or not our
8 right would be affected.

9 The last prong is satisfactory progress will be
10 made. As I mentioned a couple times today, we believe
11 that through the collaboration with the other water
12 agencies, as well as the imposition of the new charge, we
13 will have the resources necessary to ensure that our
14 10-year plan that we have proposed will be implemented and
15 we will see real progress -- not real progress. We'll see
16 the 20,000 acre feet when it's available going into the
17 ground.

18 We have farmers who have indicated that they
19 would be willing to return to surface water. One of the
20 provisions of our 10-year plan is to have incentives for
21 installation of dual systems, so they can either utilize
22 surface water or groundwater.

23 And finally, we have had preliminary discussions
24 with a number of municipalities. And in the interim while
25 we're building up to the 20,000 acre feet, there could be

1 opportunities to transfer water to those municipalities
2 for their limited use. Both the City of Stockton and the
3 City of Lodi rely heavily on groundwater. Both entities
4 are building water treatment plants that we could provide
5 water to in certain years.

6 Key Issue number 3 is what is the appropriate
7 time period?

8 We believe a 10-year extension should be granted.
9 Alternatively, at a future point in time, you will be
10 considering East Bay MUD's petition for extension of time.
11 Since our water right is so linked to East Bay MUD, it is
12 temporary and subsidiary to theirs. You could -- if you
13 so wanted, you could put the time length for our water
14 right to be coexistent with theirs. They requested a
15 40-year extension.

16 What conditions, if any, would be in the public
17 interest?

18 I'm not aware of any conditions required for the
19 public interest. You raised a question as with respect to
20 CEQA. The District prepared a negative dec under CEQA
21 guidelines Section 15231. As a responsible agency, the
22 lead agency's determination is conclusively presumed to
23 comply with CEQA.

24 The next issue you raise is with respect to
25 adverse water quality, public trust. We don't believe

1 that there are any conditions. There's no evidence in the
2 record. There's no conditions that need to imposed with
3 respect to that issue.

4 And the last is whether or not there would be any
5 injury to a legal user of water. No one protested our
6 petition for extension of time. So we don't believe that
7 there's any evidence in the record that there would be an
8 injury.

9 I think, finally -- and I'm not aware if it's in
10 the record and I just wanted to make a note of it. We
11 included it as a revised exhibit. Congressman Cardoza
12 submitted a letter of support. He sent it directly to the
13 Chair, Ms. Tam Doduc. So I have copies of that and that
14 has been included. So I just wanted to make you aware of
15 it.

16 BOARD MEMBER BAGGETT: It's in the record. As a
17 policy statement, it's in the record.

18 MS. HARRIGFELD: I was actually a letter of
19 support.

20 SENIOR STAFF COUNSEL MAHANEY: Yeah, and you
21 submitted it as one of the late exhibits this week.

22 MS. HARRIGFELD: Yes, I did.

23 And the final question is DWR submitted a policy
24 statement. They weren't here to appear, so I just wanted
25 to make you aware that DWR is supportive of our extension.

1 BOARD MEMBER BAGGETT: We are all familiar with
2 that and have read that statement.

3 MS. HARRIGFELD: Good. Thank you.

4 BOARD MEMBER BAGGETT: I do have -- well, I don't
5 know if we should do it now or latter. You did enter a
6 number of late exhibits and modifications. I think
7 those --

8 MS. HARRIGFELD: There were --

9 BOARD MEMBER BAGGETT: We do have to deal with
10 that, since they were past the deadline.

11 MS. HARRIGFELD: Yes.

12 BOARD MEMBER BAGGETT: So I guess I would see, do
13 you have any comments to make, and then see if there's any
14 objection. If there's no objections, then I think they'll
15 be entered.

16 MS. MURRAY: We're not even at that point. Fish
17 and Game will object to that late addition of out-of-time
18 exhibits. At the time when they ask to move them in,
19 we'll try to discuss them.

20 BOARD MEMBER BAGGETT: Okay. We can delay that
21 till then.

22 MS. HARRIGFELD: Correct.

23 MS. MURRAY: I mean if you want to do it now, and
24 we just object. They were out of time. We have had no
25 time to respond to them. There does not seem to be

1 justification.

2 BOARD MEMBER BAGGETT: Why don't we deal with it
3 after we take a break. But I would like to deal with it
4 sooner than later, so we don't end up -- so we can rule on
5 it, but let's do it after the break so you're both ready.

6 With that --

7 BOARD MEMBER HOPPIN: Karna, I have a question.

8 You know, you and previous speakers have
9 identified some of the challenges, if you will, with your
10 water rights, as far as the surplus condition and what
11 have you, the challenges you faced in the past with
12 drought. Certainly, we've had drought conditions and
13 certainly we have surface water that is tapped to the
14 maximum, even when we don't have a drought. So hopefully
15 aside from the legal reasons you've given to request an
16 extension, hopefully, at some point, during the course of
17 the day, we're going to talk about how you're going to
18 meet those challenges and work within the limitations that
19 you've got in front of you, because I don't know if
20 there's much we can do about some of those. So as we
21 forward, while I realize there are challenges, they aren't
22 necessarily an excuse, I need to know how you're going to
23 specifically deal with the difficult situation, if you
24 will, at some point.

25 MS. HARRIGFELD: Okay. Great. Thank you.

1 BOARD MEMBER BAGGETT: With that, would the
2 Department of Fish and Game like to make an opening
3 statement?

4 MS. MURRAY: Good Morning. My reading glasses
5 are new, so I'm going to be up and down and all around.

6 My name is Nancee Murray, and I'm a senior staff
7 counsel with the Department of Fish and Game in this
8 proceeding. The California Department of Fish and Game
9 filed a timely notice of intent to appear and testimony
10 and is a party to this proceeding.

11 The Department's testimony in this matter really
12 only addresses a portion of Key Hearing Issue number 1,
13 what action, if any, should the State Water Board take
14 with respect to Division Chief's denial, in Order of Water
15 Right 2006-018-DWR of the North San Joaquin Water
16 Conservation District's petition for extension of time and
17 what modification or actions are recommended?

18 The Department strongly urges the Water Board to
19 adopt order WR 2006-018-DWR. And we applaud your effort
20 to be flexible in interpreting their request to provide
21 the District with a means to implement their initially
22 proposed conjunctive use project.

23 In our testimony we have suggested relatively
24 modest changes to the order. First, George Heise, a civil
25 engineer and the Department's fish screen expert suggests

1 changes to the wording of ordering paragraph 3 that he
2 believes will make the construction and operation of the
3 fish screen more efficient.

4 Michael Healey, the Department's biologist
5 assigned to this region, recommends that the proposed
6 order be changed to specifically require adequate
7 measuring devices, not only at the proposed new diversion,
8 but also he recommends that the proposed order be amended
9 to require measuring devices at the existing diversions
10 also be mandatory.

11 DFG understands that the District reports its
12 diversions in acre feet and therefore does -- they
13 apparently have some measuring devices, but we believe
14 that it's time to now go back and make measuring
15 requirements mandatory and use 21st century technology.

16 So, again, the Department lauds the State Water
17 Board staff for the tremendous amount of time, effort,
18 thought and care that went into creating this proposed
19 order. As it was so eloquently stated by a member of the
20 public earlier today, a new plan was recently received out
21 of time and without really time for the Department to
22 evaluate it fully, and it seems to rely on many
23 assumptions.

24 The District is asking for 10 years of an
25 extension. It does seem that the District responds to

1 deadlines, and we urge that the 2 years in the proposed
2 order seems fine and should be adequate. Ten is just
3 giving them 9 years and 364 days to wait.

4 The Department of Fish and Game supports the
5 proposed order and really suggests only minor changes in
6 its written testimony.

7 BOARD MEMBER BAGGETT: Thank you.

8 With that, let's take till 10:30 and then we'll
9 allow -- if the first witnesses -- it would probably be
10 better if you could have the witnesses -- if you are going
11 to ask them questions, have all of them up here. I think
12 if the counsel can be over here, that way the court
13 reporter can have a visual survey of the parties for
14 taking notes.

15 So with that, let's take 12 minutes and come back
16 at 10:30 with the case in chief from North San Joaquin.

17 (Thereupon a recess was taken.)

18 BOARD MEMBER BAGGETT: Okay, are we ready?

19 Let's proceed.

20 MS. HARRIGFELD: Good morning. I'd like to start
21 with Dr. Mel Lytle.

22 DIRECT EXAMINATION

23 OF DR. MEL LYTLE, MR. KEVIN KAUFFMAN,

24 AND MR. JOHN PULVER,

25 BY MS. KARNA HARRIGFELD, ESQ., representing the North San

1 Joaquin Water Conservation District:

2 Do you want to raise your hand so the Board
3 Members know.

4 DR. LYTTLE: Good morning.

5 MS. HARRIGFELD: Could you please state your
6 name?

7 DR. LYTTLE: It's Mel Lytle.

8 MS. HARRIGFELD: Could you take a look at North
9 San Joaquin Exhibit number 2. Is that a true and correct
10 copy of your written testimony?

11 DR. LYTTLE: That's correct.

12 MS. HARRIGFELD: There were a number of exhibits
13 referred to in your written testimony 14, 15, 17, 18 and
14 19, is that correct, you relied on those?

15 DR. LYTTLE: That's correct.

16 MS. HARRIGFELD: Could you please state your
17 occupation?

18 DR. LYTTLE: I'm the water resources coordinator
19 for San Joaquin County.

20 MS. HARRIGFELD: How long have you held that
21 position?

22 DR. LYTTLE: Just about 5 and a half years.

23 MS. HARRIGFELD: Could you briefly describe the
24 nature of the Eastern San Joaquin County groundwater
25 aquifer for us?

1 DR. LYTTLE: I think primarily what we're trying
2 to understand is the -- in 1980 the groundwater basin
3 underlying the eastern part of the county was identified
4 in the California Department of Water Resources bulletin
5 118-80 as one subject to critical conditions of overdraft.

6 MS. HARRIGFELD: What was the overdraft caused
7 from?

8 DR. LYTTLE: Primarily it was an over-reliance on
9 groundwater. And what that has done has resulted in
10 approximately 150,000 acre feet of overdraft annually, and
11 what is projected to increase to potentially 175,000 acre
12 feet based on our best groundwater modeling to date.

13 MS. HARRIGFELD: What has the County done to
14 secure surface water supplies?

15 DR. LYTTLE: The County, as far as trying to
16 develop surface water supplies, has worked with local
17 water agencies. And we've long recognized that we've
18 had -- we had to decrease the reliance on the groundwater.
19 County entities have attempted to secure reliable surface
20 water supplies for many years. However, these efforts to
21 obtain surface water supplies have been largely fruitless.

22 MS. HARRIGFELD: Could you describe the American
23 River water process that the County went through?

24 DR. LYTTLE: Sure. In significant part, the
25 County's lack of adequate surface water supply stems from

1 an interplay between State and federal actions, which
2 collectively directed the County to pursue the American
3 River as the most economical viable source of surface
4 water upon the completion of the Folsom South Canal as
5 part of the CVP project's Folsom south unit. However, the
6 Folsom South Canal extension into the county was never
7 constructed, thus precluding the county from ever getting
8 our receiving American River water.

9 MS. HARRIGFELD: Could you describe the
10 surroundings of Decision 858 and the State Board's order
11 on the Mokelumne River?

12 DR. LYTTLE: Yeah, from my best understanding of
13 Decision 858, it was issued on July 3rd of 1956, a couple
14 of years before I was born. The State Engineer found that
15 North San Joaquin should receive water from the American
16 River through this Folsom South Canal and that this course
17 should be -- would be cheaper and more dependable than the
18 Mokelumne River, which flowed through North San Joaquin.

19 As a result of these findings, North San Joaquin
20 was granted only a temporary permit to use water from the
21 Mokelumne River and denied a requested permanent right in
22 favor of East Bay MUD Water Right application, which was
23 Junior to North San Joaquin's and which exported water out
24 of the Mokelumne basin into the East Bay MUD service area.

25 MS. HARRIGFELD: So subsequent to that decision,

1 the county interests were directed to the American River.
2 Could you describe the efforts that San Joaquin County has
3 made for American River water?

4 DR. LYTTLE: You know, it mostly stemmed from a
5 lot of effort as far as based on Decision 893 adopted on
6 March 18th of 1958. Then states Water Board -- State
7 Water Rights Board at the request of the Bureau of
8 Reclamation denied those permits. The Board in granting
9 the permits for the Bureau of Reclamation for the Folsom
10 South project conditioned the permit to allow time for
11 parties desiring water within Placer, Sacramento and San
12 Joaquin counties to negotiate a water supply contract.

13 San Joaquin County interests did diligently
14 negotiate for contracts, approved those contracts, signed
15 them, but they were not approved at the federal level by
16 the Bureau of Reclamation.

17 MS. HARRIGFELD: So essentially you were denied a
18 water right. You went to the Bureau to try to contract
19 for that water and you were so denied?

20 DR. LYTTLE: That's correct.

21 MS. HARRIGFELD: Okay. Let's turn now to San
22 Joaquin County efforts to address the groundwater
23 overdraft problem. Could you provide us with a brief
24 summary of the County efforts?

25 DR. LYTTLE: The County -- I'm trying to briefly

1 describe what the County efforts have been to solve the
2 overdraft problem. San Joaquin County has done a lot over
3 the last 10 years to try to address this problem. The
4 County has completed a number of planning documents and
5 also entered into agreements. One of those agreements has
6 to deal with the DWR integrated storage investigation
7 program.

8 Another one, the establishment of the North
9 Eastern San Joaquin County Groundwater Banking Authority,
10 the adoption of a countywide surface water management
11 plan, as well as the initiation of a USGS joint salinity
12 study.

13 MS. HARRIGFELD: Those are all detailed in your
14 written testimony, each one of those and what the purpose
15 is and when they were adopted?

16 DR. LYTTLE: That's correct.

17 MS. HARRIGFELD: So we'll go -- in an effort for
18 brevity, we will move on.

19 Could you briefly highlight the Eastern San
20 Joaquin Groundwater Management Plan?

21 DR. LYTTLE: Yeah, I'd be happy to. The
22 groundwater management plan was adopted by the GBA in
23 2004. The GBA is an agency that consists of 11 member
24 agencies in San Joaquin County, and consists of the Cities
25 of Stockton and Lodi, the water districts, North, San

1 Joaquin, Stockton East Water District as well as Central
2 San Joaquin Water District. It includes the Delta
3 Agencies, Central and South Delta, as well as the County
4 and the City of Stockton and Lodi.

5 Over about -- beginning in about late -- well,
6 early 2003 the GBA took on the development of a
7 groundwater management plan for the eastern basin. We
8 realized the issues of critical groundwater overdraft, as
9 well as saline intrusion. And the local agencies felt it
10 was very important to develop a plan, a management plan,
11 that was compliant with Senate Bill 1938 that developed
12 basin management objectives for the groundwater basin.

13 It was about a year and a half effort. It took
14 about \$650,000 to complete. Forty-five different
15 stakeholder agencies participated in the actual
16 development of the plans. And it was adopted by the GBA
17 as well as San Joaquin County in 2004.

18 MS. HARRIGFELD: Does the groundwater management
19 plan identify integrated conjunctive use program as a key
20 element of the management plan?

21 DR. LYTLE: As we developed the management plan
22 we found that an integrated program was essential for us
23 to help solve some of these problems of overdraft, as well
24 as the saline intrusion issue. Because, as we've already
25 heard earlier, that we understand that the water supply

1 available to San Joaquin county is intermittent, we won't
2 be able to receive it constantly, and so we'd have to be
3 able to conjunctively use it. And that program is
4 specifically designed to do that.

5 MS. HARRIGFELD: Has North San Joaquin Water
6 Conservation District been involved in these efforts?

7 DR. LYTTLE: That's correct. North San Joaquin is
8 a key member of the GBA, and they were instrumental in
9 developing the groundwater management plan, as well as
10 most recently an integrated regional water management
11 plan, which I have a draft copy before you today, that I
12 won't read from. But just to let you know that these
13 agencies are working very cooperatively to try to develop
14 the plans necessary to help solve this problem and support
15 the use of additional surface water in the area.

16 MS. HARRIGFELD: Great. Thank you.

17 Are there any questions?

18 BOARD MEMBER BAGGETT: I think I'd prefer just to
19 go through the whole panel and then we'll see if there's
20 any questions from my colleagues or staff.

21 MS. HARRIGFELD: Certainly.

22 Mr. Kauffman, could you state your name for the
23 record?

24 MR. KAUFFMAN: My name is Kevin Kauffman.

25 BOARD MEMBER BAGGETT: Your mike.

1 MS. HARRIGFELD: Could you take.

2 MR. KAUFFMAN: I got it on now. It's Kevin
3 Kauffman.

4 MS. HARRIGFELD: Could you take a look at North
5 San Joaquin Exhibit number 10. Is this a true and correct
6 copy of your testimony?

7 MR. KAUFFMAN: Yes, it is.

8 MS. HARRIGFELD: There were a number of exhibits
9 referred to in your testimony, North San Joaquin Exhibit
10 10, 40, 30 and 35. Did you rely on those in developing
11 your testimony for today?

12 MR. KAUFFMAN: Yes, I did.

13 MS. HARRIGFELD: Okay. Could you please state
14 your occupation for the record?

15 MR. KAUFFMAN: I'm a water utility manager
16 currently employed by the Stockton East Water District.

17 MS. HARRIGFELD: What is Stockton East Water
18 District?

19 MR. KAUFFMAN: Stockton East Water District is a
20 water conservation district, essentially a sister agency
21 to North San Joaquin County Water District. And what I
22 mean by that is we share common goals, we share a common
23 boundary and we share a common groundwater subbasin.

24 MS. HARRIGFELD: How long have you been involved
25 with North San Joaquin in working to utilize surface water

1 supplies?

2 MR. KAUFFMAN: I've been involved personally
3 working with North San Joaquin since taking on the
4 position as general manager at Stockton East, and that was
5 in July 1 of 1999, so about 8 years. And I understand the
6 relationship between Stockton East and North San Joaquin
7 has occurred in solving the basin problems for a much
8 longer period than that.

9 MS. HARRIGFELD: Have you achieved your
10 objectives in trying to utilize the local water supplies
11 available to the entities?

12 MR. KAUFFMAN: As a region, we have achieved a
13 lot of our goals, but not all of our goals. Conjunctive
14 use is a very complex process that cannot be completed
15 overnight. And we've made progress, but no we're not a
16 hundred percent there.

17 MS. HARRIGFELD: Could you describe for us the
18 Farmington recharge program?

19 MR. KAUFFMAN: Certainly. What we call the
20 Farmington Groundwater Recharge and Seasonal Habitat
21 Program, it is a program that is very important to the
22 eastern San Joaquin county groundwater basin. And it's
23 goal is to take all available surface water, whether it
24 from water rights or contracts, and put it to beneficial
25 use and sometimes storing it temporarily in the ground, so

1 that during dry periods it could be extracted and made
2 available when the demands for surface water are high and
3 the surface water is not available.

4 MS. HARRIGFELD: When was the program authorized?

5 MR. KAUFFMAN: It was authorized as a study
6 initially in 1996. It received further congressional
7 authorization in what's called the Water Resources
8 Development Act of 1999, where it received an
9 authorization of \$25 million to construct conjunctive use
10 and groundwater recharge projects.

11 MS. HARRIGFELD: After Congress authorized the
12 groundwater recharge program, what efforts have occurred
13 subsequent to the authorization and the appropriation of
14 funds?

15 MR. KAUFFMAN: Well, there was a study started in
16 1996 to look at the feasibility of changing the use of
17 Farmington Dam into a storage rather than a flood control
18 facility, which led to an additional study for using the
19 facility as a conveyance for surface water, for
20 groundwater recharge projects. Once authorized by
21 Congress, and the money made available, the focus changed
22 and the San Joaquin county water interests that were
23 involved in the study at that time basically nominated
24 Stockton East to be the lead local sponsor.

25 So Stockton East signed a project cooperation

1 agreement with the Corps of Engineers to complete the
2 study and to, when funds became available, actually build
3 conjunctive use and groundwater recharge projects.

4 MS. HARRIGFELD: What region does the project
5 cover?

6 MR. KAUFFMAN: That's shown on Exhibit NSJ-40.
7 It also has a label on it of Figure 1. And there's a
8 shaded area on this exhibit that generally describes the
9 area that is best for doing groundwater recharge and
10 conjunctive use projects. And it can be generally
11 described as the area east of Highway 99, west of Jack
12 Tone Road, south of the Mokelumne River, and north of
13 Temple Creek.

14 MS. HARRIGFELD: Exhibit 41 is the study report,
15 and it shows the elements of the base project. Do you
16 want to briefly highlight those elements?

17 MR. KAUFFMAN: I'd be happy to. That's the 11 by
18 17 exhibit labeled NSJ-41, and this is also labeled Plate
19 10. And you can see the label on it says Farmington
20 Groundwater Recharge Seasonal Habitat Study Elements of
21 Base Project. And what it's supposed to illustrate or
22 intends to illustrate is a map obviously of the portion of
23 San Joaquin county, the eastern portion of the San Joaquin
24 county, as well as the surface water storage reservoirs
25 out to the east. And highlighted in the rectangular boxes

1 there are identification of where the water supply would
2 come from for the Farmington program. And also in the
3 non-shaded boxes -- some of them are non-shaded -- is the
4 location of where the water would be stored in the ground.
5 And I would point specifically just south and east of Lodi
6 there there's the North San Joaquin County Water District
7 flooded fields area as well.

8 MS. HARRIGFELD: What local recharge projects has
9 Stockton East implemented?

10 MR. KAUFFMAN: Stockton East itself has
11 implemented, with the help of local county water agencies,
12 other local county water agencies and the State of
13 California, put in a 60-acre -- originally it was a pilot
14 recharge facility at the drinking water treatment plant at
15 Stockton East, as well as a 6 mile, 60 inch diameter
16 reinforced concrete pipeline to convey water, not only to
17 the drinking water treatment plant and the recharge
18 fields, but also to agricultural customers along the
19 alignment of the 6-mile pipeline.

20 So that this is both for direct recharge, which
21 would occur on the 60-acre pilot project, which is now a
22 demonstration project and in lieu of groundwater recharge
23 by treating the water through the drinking water treatment
24 plant at Stockton East and delivering it to its urban
25 contractors within the city of Stockton. And then in lieu

1 also of taking it off the pipelines and delivering it to
2 agricultural users, who would use that water for
3 irrigation in lieu of pumping additional groundwater.

4 MS. HARRIGFELD: Great. The final area I want to
5 cover is the Eastern Water Alliance.

6 MR. KAUFFMAN: Yes.

7 MS. HARRIGFELD: What is the Eastern Water
8 Alliance.

9 MR. KAUFFMAN: The Eastern Water Alliance is a
10 joint power authority formed by 3 water conservation
11 districts that cover the eastern San Joaquin county basin,
12 namely Stockton East Water District, North San Joaquin
13 County Water District and Central San Joaquin County Water
14 District.

15 MS. HARRIGFELD: Did Senator Machado sponsor a
16 bill to assist the Eastern Water Alliance?

17 MR. KAUFFMAN: Yes, he did. That was Senate Bill
18 833. And what that bill provided, among other things, was
19 the ability of this joint powers agency to implement a
20 plan implement charge so that when the Alliance put
21 together their master plan that they would have the
22 ability to put a plan implementation charge on landowners
23 in order to fund and implement the plan itself.

24 MS. HARRIGFELD: Is the Eastern Water Alliance
25 currently working on that management plan?

1 MR. KAUFFMAN: Yes.

2 MS. HARRIGFELD: Great.

3 Thank you.

4 MR. KAUFFMAN: In cooperation with the other
5 agencies at in the county.

6 MS. HARRIGFELD: Alrighty. Mr. Pulver, could you
7 please state your name for the record?

8 MR. PULVER: Yes. That's John Pulver

9 MS. HARRIGFELD: Could you take a quick look at
10 NSJ-11, is that a true and correct copy of your testimony?

11 MR. PULVER: Yes, it is.

12 MS. HARRIGFELD: Contained in your written
13 testimony is reference to a number of exhibits 42, 43, 44,
14 45, 46 and 47. Did you use those exhibits to prepare your
15 testimony?

16 MR. PULVER: Yes, I did.

17 MS. HARRIGFELD: Please state your occupation?

18 MR. PULVER: I'm currently a water resources
19 consultant. I retired from county service in year 2000,
20 at which time I was the water resources coordinator, the
21 same job that Mel has right now.

22 MS. HARRIGFELD: I want to talk with you real
23 briefly about the 1992 State Water Board hearings
24 regarding the Mokelumne River. Did you participate in
25 those hearings?

1 MR. PULVER: Yes, I did.

2 MS. HARRIGFELD: You participated on behalf of
3 the County?

4 MR. PULVER: That's correct, yes.

5 MS. HARRIGFELD: Did the County also assist North
6 San Joaquin Water Conservation District in those hearings?

7 MR. PULVER: Yes, they did.

8 MS. HARRIGFELD: What was the purpose of the 1992
9 hearings?

10 MR. PULVER: As said in the notice of hearing was
11 to receive evidence that will assist the State Water Board
12 in determining the measures needed to protect fish and
13 public trust resources in the Lower Mokelumne.

14 MS. HARRIGFELD: What was the County's biggest
15 issue regarding the 1992 hearings? What were you folks
16 worried about?

17 MR. PULVER: The County's greatest concern was
18 that North San Joaquin water right would be adversely
19 impacted and conditioned with releases for fish and
20 wildlife on the Mokelumne River.

21 MS. HARRIGFELD: Do you recall when a decision
22 was rendered in the 1992 hearings? Was there ever a
23 decision specifically on the 1992 hearings?

24 MR. PULVER: I don't believe -- no decision was
25 issued specific to the 1992 Mokelumne River hearing. The

1 State Water Board did not formally resolve the matter
2 until 2001.

3 MS. HARRIGFELD: Okay. I'd like you to take just
4 a quick look at Exhibits 43 and 44. Forty-three is a
5 letter from the Division of Water Rights the Chief. The
6 letter essentially states that the Mokelumne River
7 hearings would be concluded and that there was no reason
8 for a decision in light of the adoption of D-1641,
9 correct?

10 MR. PULVER: That's correct, yes.

11 MS. HARRIGFELD: Okay. Could you explain how the
12 State Board's Decision 1641 resolved the Mokelumne River
13 issues? Could you turn to page NSJ-45 page 63. The State
14 Board made some findings.

15 MR. PULVER: Yes. Among other things, Decision
16 1641 approved the joint settlement agreement on the
17 Mokelumne River, which had previously been approved by the
18 Federal Energy Regulatory Commission in 1998 and indicated
19 that the State Water Board would take no further action
20 regarding the 1992 hearing on the Mokelumne River.

21 MS. HARRIGFELD: During the time of these
22 hearings, were the San Joaquin county parties undertaking
23 efforts to develop projects to utilize surface water?

24 MR. PULVER: Yes. In 1996, the East San Joaquin
25 Parties Water Authority was formally formed as a joint

1 powers agency, which included all of the water agencies in
2 the eastern portion of San Joaquin county.

3 MS. HARRIGFELD: Was North San Joaquin Water
4 Conservation District a member?

5 MR. PULVER: Yes.

6 MS. HARRIGFELD: Could you describe real briefly
7 what's referred to in your testimony as the MARS Report?

8 MR. PULVER: In March 1996 a report was prepared
9 to formulate and evaluate the alternatives for a joint
10 project by East Bay Municipal Utility District and the
11 east San Joaquin parties. The report was titled the
12 Mokelumne Aquifer Recharge and Storage Project, which is
13 were the MARS name comes from.

14 MS. HARRIGFELD: What did the report address?

15 MR. PULVER: The MARS report considered 11
16 potential water sources and various recharge facility
17 options, including agriculture, in-lieu recharge and
18 injection. This included usage within North San Joaquin
19 Water Conservation District.

20 MS. HARRIGFELD: So it's safe to say that since
21 1996, the County has undertaken significant efforts
22 collaboratively to try to develop conjunctive use projects
23 to put surface water in the ground?

24 MR. PULVER: That's correct.

25 MS. HARRIGFELD: Great. Thank you.

1 BOARD MEMBER BAGGETT: Okay. It's probably
2 simpler, since we have the 3 witnesses up here, to see if
3 there's any cross examination.

4 Fish and Game?

5 MS. MURRAY: No.

6 BOARD MEMBER BAGGETT: Any of the other parties?
7 Do you have any questions?

8 QUESTIONS OF

9 DR. MEL LYTLE, MR. KEVIN KAUFFMAN

10 AND MR. JOHN PULVER

11 BY BOARD AND STAFF

12 BOARD MEMBER HOPPIN: Mr. Lytle, maybe you're the
13 appropriate one. If someone else is, you can pass the
14 buck to them. But as you were collaboratively working on
15 your groundwater studies and groups and what have you, was
16 there any thought given to limiting development in these
17 areas until this issue was resolved or was that just kind
18 of a sidebar?

19 DR. LYTLE: Limiting development?

20 BOARD MEMBER HOPPIN: Yes. I mean we hear about
21 the development and the population increases. And I would
22 assume with that there would be a corresponding demand for
23 groundwater, unless there are other supplies available.
24 Was there any consideration given to the overdraft of the
25 groundwater in this area when development was occurring or

1 is just continuing irregardless?

2 DR. LYTLE: That's a difficult question in the
3 sense that we're working as sort of collaborative agencies
4 together in the GBA to develop the plan to help solve the
5 overdraft. The GBA itself is not a land-use authority.
6 And so we're -- our hands are tied in the sense that we
7 don't have direct authority to exercise on land-use and
8 how that happens. But we do make recommendations as far
9 as not necessarily on where development occurs, but the
10 protection of potential groundwater recharge sites and
11 areas.

12 And this is -- and it's an evolving thing, in the
13 sense that as we develop the ground water management plan
14 that was discussed in the plan itself, how do you deal
15 with increased development over an overdrafted basin and
16 it's even more so in this recent integrated regional water
17 management planning effort. But still I think that we're
18 still grappling with, as well as the rest of the state, on
19 how do you integrate land use and water resources in a way
20 that makes sense. And I don't think -- we haven't
21 broached the topic completely in San Joaquin county
22 either, but I think that's something that the State has to
23 definitely recommend on how that happens. But we're very
24 concerned about it. We understand that, you know,
25 increased development over an overdrafted basin may not

1 make sense, but we're also looking for ways to solve that
2 solution as well.

3 BOARD MEMBER BAGGETT: Please.

4 MR. KAUFFMAN: Member Hoppin, if I could add in,
5 Kevin Kauffman again. I can't let a question like that go
6 by without stating what we always state when these type of
7 issues come up is San Joaquin County, as a whole, is
8 fairly developed water wise, because of its extremely
9 profitable -- our economic basin that is agriculture.
10 Whether development occurs or not, the demands don't
11 necessarily increase for water if that's any concern.

12 Thank you.

13 MR. PULVER: Just as I recall, during the time I
14 was water resources coordinator, a county ordinance was
15 adopted as part of the development standards that if
16 someone comes in with a new development, they have to
17 identify their water supply source and to demonstrate that
18 that does not have a negative impact on the existing water
19 supplies. As far as I know, that ordinance is still in
20 effect.

21 BOARD MEMBER HOPPIN: Thank you.

22 BOARD MEMBER BAGGETT: Any other questions from
23 staff?

24 If not --

25 MS. HARRIGFELD: Thank you.

1 BOARD MEMBER BAGGETT: There's no redirect?

2 MS. HARRIGFELD: No.

3 I'd like Bud Adams, Fred Weybret and Pete
4 Weinzheimer.

5 Thank you.

6 DIRECT EXAMINATION

7 OF MR. BUD ADAMS, MR. FRED WEYBRET AND

8 MR. PETE WEINZHEIMER

9 BY MS. KARNA HARRIGFELD, ESQ., representing the North San
10 Joaquin Water Conservation District:

11 All right, Mr. Adams, I'm going to start with
12 you. Could you please state your name for the record.

13 MR. ADAMS: My name is Stewart, S-t-e-w-a-r-t --

14 Are we cooking now?

15 (Laughter.)

16 MR. ADAMS: My name is Stewart C. Adams, Jr.

17 S-t-e-w-a-r-t, commonly known as Bud.

18 MS. HARRIGFELD: Could you take a look at NSJ
19 Exhibit number 5, is this a true and correct copy of your
20 testimony?

21 MR. ADAMS: Yes, it is. And I would like to make
22 one brief comment as it relates to this. This is my
23 statement and my testimony. And it contains the litany of
24 the horror cases our District has gone through since 1960
25 all the way through to acquire a supplemental supply of

1 surface water.

2 And it shows the due diligence that this District
3 has done, but yet we've been frustrated in every attempt
4 every way we go. And I want to comment and compliment
5 Jeanne Zolezzi and Dan Nomellini for giving you some of
6 the background on this.

7 But for purposes of minimizing the testimony in
8 the time, we're not going to get in detail with that, but
9 I would urge you to review the testimony. And I thank you
10 very much.

11 BOARD MEMBER BAGGETT: Thank you.

12 MS. HARRIGFELD: Just a point of record.
13 Contained in your testimony are a number of references to
14 Exhibits 70, 71, 20, 21, 43, 22 and 23. Did you rely on
15 those in preparing your testimony today?

16 MR. ADAMS: Yes, I did. Seventy and 71 you
17 indicated at the internet, the balance are attached.

18 MS. HARRIGFELD: Great. Thank you.

19 MS. HARRIGFELD: What was your position at the
20 District?

21 MR. ADAMS: I'm relationship with the District?

22 MS. HARRIGFELD: Um-hmm.

23 MR. ADAMS: I was the attorney for nearly 40
24 years.

25 MS. HARRIGFELD: Over the 40-year period, how do

1 you believe the District has exercised due diligence?

2 MR. ADAMS: Well, we have done due diligence in
3 working out game plans to try to take the water source
4 that was available to us and implement those by contracts
5 in to working on transactions for contracts with East Bay
6 MUD to store. Also working successfully with the farmers
7 to put in pipeline systems to take the water out of the
8 Mokelumne River through Pixley Slough, put in separate
9 line transactions so they could take the water.

10 And East Bay MUD allowed us use of the pipe --
11 organized to allow use of the pipeline would have been
12 very economical, but that particular transaction failed,
13 because we endeavored to enter into an implementation
14 agreement with the facilitator including CalSPA and
15 Mokelumne River Association.

16 We went down to East Bay on 5 different
17 occasions, put that transaction completely together.
18 Everybody was in accord. Mokelumne River Association
19 CalSPA also agreed. I mean, they rendered no objection.
20 But in order for that thing to be enforceable, it has to
21 be signed by all parties.

22 And what happened we went before East Bay MUD
23 Board, they approved it. The contract was drafted. We
24 sat around the table, and we were all ready to sign it,
25 and CalSPA representatives and Mokelumne River Association

1 representatives got up, walked out of the room. And that
2 blew the whole thing right out of the water. And if you
3 don't think we were devastated by this transaction.

4 But it was another game plan to minimize draws on
5 the Mokelumne River. And it all came and hit North San
6 Joaquin. And we, through everyone of these things, the
7 American River and et cetera were all -- got the bottom
8 line of the barrel. No permanent water supply. We are
9 the orphan district and we desperately need your help.

10 MS. HARRIGFELD: Why is it imperative that the
11 State Water Board grant the District's petition for
12 extension of time?

13 MR. ADAMS: Excuse me? But I have a very serious
14 hearing problem.

15 MS. HARRIGFELD: I said, why is it imperative
16 that the State Water Board grant the District's petition
17 for extension of time?

18 MS. HARRIGFELD: Well, right now, I think we have
19 a -- I think we're in a situation right now that they have
20 thoroughly implemented a plan with the groundwater charge
21 that will give them the financial ability to go ahead and
22 implement use of that 20,000 acre feet per year, because
23 without a groundwater charge, we will now be able to make
24 water available when it is available on an interim basis
25 to the water users without charge, and those are the

1 people who are pumping.

2 And in so doing, we can use that amount of water
3 that's available. And if there's any supplemental supply,
4 the balance can be used for percolation into the ponding
5 basins and can have total utilization of that 20,000 acre
6 feet. And that's the best thing that could ever happen to
7 our area, because of this seriously overdrafted
8 groundwater basin.

9 MS. HARRIGFELD: Thank you, Mr. Adams.

10 I'd like to move on to Mr. Weybret.

11 Mr. Weybret, could you please state your name for
12 the record?

13 MR. WEYBRET: Fred Weybret.

14 MS. HARRIGFELD: Could you take a look at North
15 San Joaquin Exhibit number 6. Is this a true and correct
16 copy of your testimony?

17 MR. WEYBRET: Yes, it is.

18 MS. HARRIGFELD: How long have you been on the
19 Board of Directors at the District?

20 MR. WEYBRET: I've been on the Board for 31 years
21 now.

22 MS. HARRIGFELD: What has the District recently
23 done to increase revenues available to the District?

24 MR. WEYBRET: As others' have testified to, in
25 the last few months we have been able to, through

1 Proposition 218, we've been able to implement a
2 groundwater charge for the users in our area, which is
3 going to significantly help our financial situation to
4 make use of the water that is available to us.

5 MS. HARRIGFELD: Was it a difficult decision for
6 the District? Were some of the smaller landowners in
7 opposition to it?

8 MR. WEYBRET: There is some opposition to it.
9 People either don't feel that there's a serious enough
10 problem or that don't want to pay. There's considerable
11 support. I've had a great many of the larger more
12 responsible growers in the area compliment me and the
13 Board on our efforts to take positive action to try to do
14 something to utilize this water and get it into the
15 underground basin.

16 MS. HARRIGFELD: Do you think with the
17 implementation of the new groundwater charge that the
18 District will be able to implement the 10-year plan for
19 putting the 20,000 acre feet of water to use?

20 MR. WEYBRET: I think there's no question about
21 it. Our general manager and our board of directors are
22 positively dedicated to this goal.

23 MS. HARRIGFELD: Great. Thank you.

24 Now binder.

25 All right. I'd like to turn to Mr. Weinzheimer.

1 Could you please state your name for the record?

2 MR. WEINZHEIMER: Conrad Weinzheimer.

3 MS. HARRIGFELD: Could you take a look at North
4 San Joaquin Exhibit number 4. Is this a true and correct
5 copy of your statement -- of your testimony?

6 MR. WEINZHEIMER: Yes, it is.

7 MS. HARRIGFELD: Please state your relationship
8 with North San Joaquin Water Conservation District?

9 MR. WEINZHEIMER: I've been with the Water
10 District since 1976. I became Watermaster, I think, in --
11 I don't know, maybe 4 or 5 years after I went to work for
12 the District.

13 MS. HARRIGFELD: Could you describe what your
14 responsibilities are at the District?

15 MR. WEINZHEIMER: Yes. I maintain the
16 facilities. I distribute the water. I do the collecting.
17 I do the billing. Just about everything.

18 MS. HARRIGFELD: Could you briefly describe the
19 District's existing pumping facilities?

20 MR. WEINZHEIMER: We have 2 pumping stations. On
21 the south side they consist of two 100 horsepower pumps,
22 one 75 horsepower pump and two 40 horsepower pumps. On
23 the north side there are 3. There's a 30 horsepower, a 50
24 horsepower and a 125 horsepower.

25 MS. HARRIGFELD: How does the intermittent supply

1 available under Permit 10477 affect customer demands?

2 MR. WEINZHEIMER: Well, if we don't have water,
3 they have to make other arrangements. And part of the
4 problems we've had with this is that like somebody else
5 mentioned about maintaining dual systems, if you lock off
6 your pump because you're anticipating getting surface
7 water, you lock off the pump to avoid having to pay the
8 standby charge, that pump has to be off for an entire
9 year. If you have it turned on before the year is up, you
10 have to pick up all the back standby charges.

11 The other thing that's hurt us is when we had the
12 drought, people who had been relying on the surface water
13 then had to reactivate their wells and pumps. PG&E
14 required a 3-year contract before they would heat them up.
15 So once they've agreed to this 3-year contract, even if we
16 have water, they weren't coming back within that 3-year
17 period because they paid PG&E for this.

18 MS. HARRIGFELD: Can you take a look at North San
19 Joaquin Exhibit number 59. This exhibit describes the
20 monthly diversions from 1958 through 2005, correct?

21 MR. WEINZHEIMER: Yes, it does. And what would
22 you like me to discuss?

23 MS. HARRIGFELD: Could you just talk real briefly
24 about the substantial decline of use after the '87 to '92
25 drought? Was it effectively because of what you just

1 said, people had to sign up with PG&E for a 3-year period
2 and --

3 MR. WEINZHEIMER: Yeah, I think that's it. And
4 then they began to realize how unreliable our source was
5 and started to work towards a more reliable situation.

6 MS. HARRIGFELD: So if the Board was interested
7 in taking a look at our monthly diversions for the course
8 of this transaction, '59 would be the place where they
9 would take a look?

10 MR. WEINZHEIMER: Right. Right.

11 MS. HARRIGFELD: I want to call your attention to
12 pages 5 and 6 of 59. This is East Bay MUD's modeling for
13 the Bay/Delta water rights hearings. It's a simulation of
14 implementation of the joint settlement agreement and how
15 much water North San Joaquin would be available to North
16 San Joaquin.

17 In looking at this, the modeling results,
18 approximately how much of the time does North San Joaquin
19 receive water based on East Bay MUD's modeling?

20 MR. WEINZHEIMER: I think -- I'm not really
21 entirely familiar with this, but I think it's about 50
22 percent of the time.

23 MS. HARRIGFELD: Okay. And my final question for
24 you is do you believe that surface water usage will be
25 increased with the imposition of the groundwater charge

1 and our ability to construct additional facilities?

2 MR. WEINZHEIMER: I would highly think so,
3 because we'd be able to serve a wider area. And I'm sure
4 there's a lot of interest in surface water.

5 MS. HARRIGFELD: Great. Thank you.

6 QUESTIONS OF

7 MR. BUD ADAMS, MR. FRED WEYBRET AND

8 MR. PETE WEINZHEIMER

9 BY BOARD AND STAFF

10 BOARD MEMBER HOPPIN: I have one question.
11 Several speakers have mentioned PG&E and standby charges
12 and the 3-year contract. Is it safe to assume that all of
13 the groundwater in this area is diverted with electric
14 pumps? There's no gearheads or other sources?

15 MR. WEINZHEIMER: You know, there is -- some
16 pumps are running on diesel. I don't think there's a very
17 big number in our district. I know of maybe a handful
18 myself.

19 BOARD MEMBER HOPPING: So the majority of them
20 are electric?

21 MR. WEINZHEIMER: Yes, sir.

22 BOARD MEMBER BAGGETT: Any cross examination,
23 Fish and Game or the other parties?

24 MS. MURRAY: No.

25 BOARD MEMBER BAGGETT: Any other questions?

1 MR. PILKINGTON: May we have the opportunity to
2 cross examine?

3 BOARD MEMBER BAGGETT: No. You had to file
4 notice of intent to be a party to ask questions. I
5 apologize. That's the way that we have to keep the record
6 straight. And so only parties who filed a notice of
7 intent to be a party have an opportunity to cross examine.

8 Staff, any questions?

9 Any redirect?

10 Thank you.

11 Next.

12 MS. HARRIGFELD: Ed Steffani and John Ferreira.

13 DIRECT EXAMINATION

14 OF MR. ED STEFFANI AND MR. JOHN FERREIRA

15 BY MS. KARNA HARRIGFELD, ESQ., representing the North San
16 Joaquin Water Conservation District:

17 Mr. Steffani, could you please state your name
18 for the record?

19 MR. STEFFANI: Ed Steffani.

20 MS. HARRIGFELD: Could you take a look at North
21 San Joaquin Exhibit number 1. Is this a true and correct
22 copy of your testimony?

23 MR. STEFFANI: Yes.

24 MS. HARRIGFELD: Contained in your written
25 testimony are a number of exhibits, 18, 24, 25, 26, 27,

1 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38. Did you use
2 those to --

3 MR. STEFFANI: Yes.

4 MS. HARRIGFELD: Great. Thank you.

5 Can you please state your relationship with North
6 San Joaquin Water Conservation District?

7 MR. STEFFANI: I'm the manager.

8 MS. HARRIGFELD: How long have you been a
9 employed with the District?

10 MR. STEFFANI: Since 1999 when I retired from
11 Stockton East and foolishly agreed to try to help North
12 San Joaquin.

13 (Laughter.)

14 MS. HARRIGFELD: What are your primarily
15 responsibilities for the District?

16 MR. STEFFANI: The engineering work and the
17 overall management of the District.

18 MS. HARRIGFELD: Could you turn to North San
19 Joaquin Exhibit number 24, the District's Water Right
20 Permit. Could you tell us what it authorizes?

21 MR. STEFFANI: This is the '92 extension. It
22 authorizes the diversion of up to 80 cfs and up to 20,000
23 acre feet per year of diversion and/or storage.

24 MS. HARRIGFELD: Is Permit 10477 unique?

25 MR. STEFFANI: Yes, it is, because it involves

1 temporary unreliable source of water.

2 MS. HARRIGFELD: Are you aware of other permits
3 in the state that are temporary in nature?

4 MR. STEFFANI: I am not aware.

5 MS. HARRIGFELD: How does the temporary nature of
6 the water right affect the District?

7 MR. STEFFANI: Well, you've heard the previous
8 testimony.

9 MS. HARRIGFELD: Actually, that wasn't testimony.
10 It was just policy statements, so feel free to expand.

11 MR. STEFFANI: All right. You're talking about
12 the fact that the water is available only about 50 percent
13 of the time. Basically, the District can make no long
14 range plans. It's difficult if it -- it has been
15 difficult if not impossible to maintain users. It's
16 certainly impossible to pick up new users. It has been.

17 MS. HARRIGFELD: When did the -- when did the
18 District file the petition for extension of time? Were
19 you involved in that?

20 MR. STEFFANI: Yes. That was December of 2000.

21 MS. HARRIGFELD: And then, in addition, you filed
22 an additional petition in 2004. What was that petition
23 for?

24 MR. STEFFANI: The 2004 petition was to add a
25 point of diversion to pump water to, what we call, the

1 CALFED demonstration recharge project. We applied for a
2 CALFED grant, I believe, in 2000. We received the grant
3 for a half a million dollars to do a demonstration
4 recharge project on the north side of the Mokelumne River
5 with the idea that we would extract half of that water
6 during dry years and put it back into the river to
7 contribute to the Delta inflow.

8 Apparently, CALFED agreed that was a good idea,
9 so they did give us the grant, but we needed to get a new
10 point of diversion to install a pump to do this job.

11 MS. HARRIGFELD: Were there any protests filed on
12 the petition for extension of time?

13 MR. STEFFANI: The extension of time? No.

14 MS. HARRIGFELD: Okay. I'd like to move on to
15 what the District's been doing since 2001. Could you take
16 a quick look at Exhibit number 26, which is legislation
17 that was adopted. What did AB 2955 authorize?

18 MR. STEFFANI: This authorized an acreage charge
19 to increase the District's revenue. Again, it was an
20 effort to generate revenue, so that we could start using
21 more water.

22 MS. HARRIGFELD: Has the District implemented the
23 acreage charge?

24 MR. STEFFANI: Yes. Yes, we've collected that
25 since 2003.

1 MS. HARRIGFELD: Approximately, how much money is
2 raised?

3 MR. STEFFANI: \$45,000 a year.

4 MS. HARRIGFELD: Since 2001, what additional
5 projects have been implemented to put the 20,000 acre feet
6 of water to use?

7 MR. STEFFANI: Well, we've done a number of small
8 scale -- what I call small scale recharge projects. You
9 know that you can't sit in your office and pick out
10 recharge sites and to know ahead of time that they're
11 going to work. You've got to go out and try it. It's the
12 only way you'll ever know if recharge will work. So we've
13 done a number of those over the last few years.

14 MS. HARRIGFELD: What about projects planned for
15 2007. Did you have a number of projects planned?

16 MR. STEFFANI: Yes, we did. The most exciting
17 one we called the Tecklenburg recharge project, a very
18 sandy 10-acre area. But, of course, this year we have no
19 water, so we couldn't do anything this year.

20 MS. HARRIGFELD: What about the Micke Grove or
21 Gill Creek?

22 MR. STEFFANI: Yes, we were going to implement a
23 small recharge project at Micke Grove, the county park.
24 There's a sand whole -- what we call a sand hole on the
25 site. And our preliminary tests showed a recharge rate of

1 almost 3 feet per day, which is very good. We had made
2 arrangements with the County and the Parks to do this, but
3 again no water, so we can't do it.

4 MS. HARRIGFELD: Moving on to some additional
5 efforts of the District to put its water to full
6 beneficial use. Have you expanded the boundaries to
7 increase the acreage?

8 MR. STEFFANI: Yes. The original district was
9 about 50,000 acres. The adjoining 100,000 acres were
10 annexed 2 or 3 years ago. So now the District boundaries
11 go all the way out to the Amador, Calaveras and Sacramento
12 county lines.

13 MS. HARRIGFELD: Dr. Lytle spoke briefly about
14 the GBA. Is North San Joaquin involved with the GBA
15 efforts?

16 MR. STEFFANI: Oh, yes.

17 MS. HARRIGFELD: What about the Eastern Water
18 Alliance, how have you been participating with the other
19 water entities?

20 MR. STEFFANI: And the Alliance was my idea, by
21 the way. It's kind of a unique arrangement where the 3 of
22 us, the 3 districts, have agreed to work on primarily
23 recharge projects, but it requires a unanimous agreement.
24 So 2 districts can't gang up on the third and so on, so it
25 requires unanimous consent, and it has been very

1 successful so far.

2 MS. HARRIGFELD: And currently you're working on
3 a master plan?

4 MR. STEFFANI: That is correct.

5 MS. HARRIGFELD: Let's now turn to the District's
6 new groundwater charge in the engineering report. That's
7 North San Joaquin number 37.

8 Can you talk about the average annual overdraft
9 within our District boundaries? We had Mel Lytle talk
10 about the eastern San Joaquin groundwater basin as a
11 whole. But specifically to our District, what do we see?

12 MR. STEFFANI: We believe the average annual
13 redraft in North San Joaquin, is currently 50,000 acre
14 feet per year.

15 MS. HARRIGFELD: When is overdraft greater?

16 MR. STEFFANI: In drier years.

17 MS. HARRIGFELD: And what's the average natural
18 recharge?

19 MR. STEFFANI: Well, I'll switch to talk about
20 the entire eastern basin, because we've got good hard data
21 for the entire basin, but we don't have good hard data by
22 District. So the eastern side of the county is about
23 600,000 acres. The water use is about 800,000 acre feet a
24 year, so we are overdrafting, approximately 200,000 acre
25 feet per year from the eastern part of the basin.

1 But it's going to get worse. And some of you
2 have talked about this earlier. There's 50,000 of the
3 100,000 acres that we have annexed that is currently not
4 irrigated, but we have new ag activity going in that area
5 every day. So the overdraft is going to get worse and
6 worse and worse unless we do something.

7 MS. HARRIGFELD: What's the only realistic way to
8 deal with the overdraft situation?

9 MR. STEFFANI: Because there is no more firm
10 water practically anywhere in the state, we've got to
11 somehow capture and use the wet year water. It is not
12 practical to try to use that wet year water for
13 irrigation, unless you've got all kinds of surface
14 storage. The only practical way to use a lot of water
15 during wet years when it's available is with recharge,
16 spreading basins, and that's where we're heading. The
17 10-year budget you mentioned awhile ago is a step in that
18 direction, where we intend to construct recharge basins
19 both on the north and the south side of the river.

20 MS. HARRIGFELD: When did the District decide to
21 proceed with the groundwater charge?

22 MR. STEFFANI: Last fall.

23 MS. HARRIGFELD: What was required in order to
24 implement the groundwater charge?

25 MR. STEFFANI: A lot of blood, sweat and tears.

1 (Laughter.)

2 MS. HARRIGFELD: Did you prepare an engineer's
3 report?

4 MR. STEFFANI: Yes.

5 MS. HARRIGFELD: Did you conduct the Prop 218
6 protest proceeding for implementation of a charge for your
7 charge?

8 MR. STEFFANI: The District Board did, yes.

9 MS. HARRIGFELD: Now that the new groundwater
10 charge is authorized, what do you -- how is the District
11 going to use the 820,000 budget that we think will occur
12 from the groundwater charge?

13 MR. STEFFANI: Well, as the exhibit shows,
14 there's a lot of different kinds of projects. One of them
15 is to begin repairing the existing distribution systems,
16 which are falling apart. Secondly, to encourage -- with
17 loans and grants to encourage farmers to build dual
18 systems, so that they can use the water when it's
19 available and then use their well when it's not available.

20 Part of the funding would go to eliminate the
21 current surface water charge for existing ag. So there
22 would be no charge for surface water now that we've got
23 the groundwater charge revenue. That will encourage --
24 hopefully will encourage a lot of these people who used to
25 use surface water to come back on. That plus our helping

1 build and financing and paying for dual systems. That
2 will use some of the water, but it won't use all of it.
3 We're still going to have to build recharge basins. And
4 those basins will require new pumping facilities in the
5 river. Pipelines from the pumping stations to -- we want
6 to go to 2 creeks. We want to pump water to Bear Creek on
7 the south and Coyote Creek on the north. Those creeks, in
8 turn, supply other small streams that we can use for
9 conveyance to reach recharge sites, spreading basins.

10 MS. HARRIGFELD: Could you take a look at North
11 San Joaquin Exhibit number 18. Dr. Lytle briefly
12 mentioned this \$2 million study that the County has
13 undertaken on sources of high chlorides in the area.

14 You've reviewed this study, what essentially does
15 the study conclude?

16 MR. STEFFANI: This is the USGS study. It
17 concludes that we do, in fact, have saline waters moving
18 into the area as our groundwater levels fall. We've
19 suspected this for years and years. And now the USGS is
20 documenting exactly what's happening. That study shows
21 that with status quo, if we don't start using more surface
22 water, we're going to take the -- let me backup.

23 Historically, the groundwater gradient has been
24 from east to west. Groundwater has moved toward the
25 Delta. Because we have pumped the basin down so low on

1 the east side, we have reversed that gradient. So now
2 we're pulling in poor quality water from the west, and
3 that gradient gets worse every year.

4 MS. HARRIGFELD: Thank you. The final area I
5 would like to cover is the District's petition to change
6 the place of use, purpose of use filed on June 1st. You
7 talked a little bit about it, but could you highlight what
8 the intent was behind filing the petition for change?

9 MR. STEFFANI: Yes.

10 MS. MURRAY: Excuse me. This is Nancee Murray
11 with the Department of Fish and Game. I object. We
12 received that exhibit yesterday.

13 MS. HARRIGFELD: I'm not referring to the
14 Exhibit. And it actually is in the public record.

15 BOARD MEMBER BAGGETT: What is your objection?

16 MS. MURRAY: I object. I object that it is not a
17 party to this proceeding. It's not part of the staff
18 exhibits. Those exhibits were, as I understood it, were
19 of the date of the notice of intent not things that were
20 added subsequently. Maybe, you can clarify that.

21 SENIOR STAFF COUNSEL MAHANEY: I think in our
22 notice we didn't indicate when. I think those exhibits
23 were -- or, I'm sorry, the petition was dated June 1st,
24 which was the last day for filing exhibits, so arguably at
25 least that would be covered as part of the record.

1 MS. MURRAY: That exhibit was not served on the
2 parties on June 1st.

3 MS. HARRIGFELD: That is correct. It was not
4 served, but it is in the records of the State Board.

5 BOARD MEMBER BAGGETT: Yeah, I mean I think the
6 State Board can take official notice of our own records if
7 we so choose. What is your intent of using this as an
8 exhibit?

9 MS. HARRIGFELD: I was just highlighting the fact
10 that there were -- there are additional regulatory changes
11 that need to be made in order for us to implement the full
12 10-year budget. We are expanding the place of use. We
13 have added, as Mr. Steffani mentioned, 100,000 additional
14 acres. So, basically, in -- whenever we process the
15 petition, we need to ensure that we will legally be able
16 to use this water. We were in the process of preparing it
17 during these proceedings and he references everything
18 that's contained in it in his exhibit.

19 BOARD MEMBER BAGGETT: So the intent of the
20 exhibit, as far as evidence, as I understand it, is to
21 demonstrate, I guess, that the District is, in fact,
22 complying applying for -- not for necessarily the truth of
23 all the information within the exhibit or whether we've
24 approved the exhibit, just the fact that they have applied
25 for a change of place of use and purpose of permit?

1 MS. HARRIGFELD: That is correct.

2 BOARD MEMBER BAGGETT: If that's the intent of
3 the exhibit, do you have any problem with that?

4 MS. MURRAY: As long as it's not used to somehow
5 refer to that, that it's going to be approved or happen.

6 BOARD MEMBER BAGGETT: Right. The Board
7 obviously can't --

8 MS. HARRIGFELD: Right. It will be done through
9 a separate process

10 BOARD MEMBER BAGGETT: Right. It will be a
11 separate process.

12 MS. MURRAY: And that's my point, is it a
13 completely separate process that we'll have a right to
14 participate in?

15 BOARD MEMBER BAGGETT: Of course.

16 SENIOR STAFF COUNSEL MAHANEY: Right. That
17 change petition hasn't even been noticed yet.

18 BOARD MEMBER BAGGETT: So we will accept the
19 exhibit and the evidence for the intent of demonstrating,
20 I guess, the good faith or the fact that the District has,
21 in fact, applied through a process, not that we have
22 granted that change of place of use or the Board has taken
23 no action, just the fact that they've applied.

24 MS. MURRAY: Okay.

25 MS. HARRIGFELD: Mr. Steffani, could you briefly

1 highlight what we're asking for in the petition?

2 MR. STEFFANI: Yes. First to expand the place of
3 use to cover the newly annexed area; to include the areas
4 within Stockton East and Central San Joaquin Water
5 Conservation Districts, so that we can pursue the goals of
6 the Farmington Recharge Project. We've also included the
7 spheres of influence of the Cities of Lodi and Stockton
8 with the thought that some of our water could be used by
9 municipalities.

10 We have also, in that same filing -- also it is
11 an underground storage supplement that we need in order to
12 recharge and then extract. This will enable us to
13 implement the 10-year budget.

14 MS. HARRIGFELD: Thank you. In light of all of
15 the information submitted, do you believe that the
16 District has shown sufficient information to grant the
17 petition for extension of time?

18 MR. STEFFANI: God yes. What would you expect me
19 to say?

20 (Laughter.)

21 MR. STEFFANI: We've done our damndest. We
22 really have.

23 MS. HARRIGFELD: Thank you.

24 MR. STEFFANI: Now, before you shut me off,
25 something I heard earlier about -- you know, we've been

1 waiting all these years for Folsom South. It wasn't only
2 the Mokelumne permit that was granted on the basis of the
3 Folsom South Canal maybe happening some day. You are all
4 aware of and familiar with the Stockton East, Central San
5 Joaquin, New Melones Project. When those 2 districts
6 contracted with the Bureau for temporary -- where I have
7 heard that word before? -- temporary supply from New
8 Melones. Temporary until what? Until Folsom South Canal
9 water is available. And that was as recent as the early
10 eighties.

11 So, anyway, I'll shut up. I just want to make
12 sure you remembered that stuff.

13 MS. HARRIGFELD: Thank you.

14 Mr. Ferreira, could you please state your name
15 for the record?

16 MR. FERREIRA: Yes. John D. Ferreira.

17 MS. HARRIGFELD: Could you take a look at
18 Northern San Joaquin Exhibit number 7, is that a true and
19 correct copy of your testimony?

20 MR. FERREIRA: Yes, it is.

21 MS. HARRIGFELD: What is your relationship with
22 North San Joaquin?

23 MR. FERREIRA: I'm a Board of Director.

24 MS. HARRIGFELD: How long have you lived in the
25 District?

1 MR. FERREIRA: All of my life, so 33 years.

2 MS. HARRIGFELD: Why did you choose to serve on
3 the Board?

4 MR. FERREIRA: Well, I felt that I had to be
5 proactive in helping to fix our critically overdrafted
6 groundwater basin, which I firmly believe the best
7 solution to that is to use surface water in lieu of
8 groundwater on our facilities. And I felt that I could be
9 an added, I guess, voice to helping fix that, versus just
10 sitting back and throwing up my hands and letting someone
11 else try to fix the problem for me.

12 MS. HARRIGFELD: Why do you think farmers have
13 relied on surface water in lieu of the -- relied on
14 groundwater in lieu of the surface water?

15 MR. FERREIRA: In the past, within the San
16 Joaquin -- North San Joaquin Water District there has not
17 been a firm supply of surface water. And as you know, I
18 don't know if Mr. Hoppin up there, I believe he's a
19 farmer. When you have your crops planted in the ground
20 and you need to get water onto them, you have to have
21 water. And if you don't have a firm supply, then you're
22 going to look elsewhere to either groundwater in order to
23 irrigate your crops. And so they have not used surface
24 water because it has not been available to them.

25 MS. HARRIGFELD: What is the District doing to

1 encourage the landowners to use surface water in wet
2 years?

3 MR. FERREIRA: One thing that we're trying to
4 do -- there's a couple things. One is to set aside money
5 for dual systems, so that in wet years farmers will use
6 the surface water in lieu of the groundwater, which is a
7 huge benefit. If we could put 20,000 acre feet on it --
8 you know, for farmers to use it for irrigation, that's
9 20,000 acre feet of groundwater that stays in the
10 groundwater basin and does not get extracted. As well as
11 the surface water you put onto the ground, 70 percent of
12 it, according to the figures that I've seen from Stockton
13 East, goes back into the groundwater basin over time.

14 And the second one is we are giving -- those
15 surface water users, if we do get surface water, those who
16 choose to use surface water are taking away, as Ed
17 mentioned earlier, groundwater -- the surface water charge
18 as an effort to get them to come back on to using surface
19 water when it is available.

20 MS. HARRIGFELD: What will happen if the District
21 is stripped of its water rights?

22 MR. FERREIRA: If the District is stripped of its
23 water rights, you basically don't need the District for
24 anything. I mean the point of the District is to protect
25 the groundwater basin and to get surface water when it is

1 BOARD MEMBER HOPPIN: Yeah. You said something
2 about 80 --

3 MR. STEFFANI: Yeah, 80 second feet.

4 BOARD MEMBER HOPPIN: That's on a daily basis?

5 MR. STEFFANI: Yes.

6 BOARD MEMBER HOPPIN: When water is available,
7 does that cap hamper your ability to take care of the
8 projects you're asking to take care of? I mean, is that a
9 limiting factor? It seemed from a previous speaker's
10 testimony about pumping capacity that you've got capacity
11 far in excess of 80 cubic feet per second, but maybe not
12 all these facilities are able to be utilized. Could you
13 speak to that just a bit. What I need to know is whether
14 that cap, in fact, limits your ability to accomplish your
15 groundwater recharge goals, even if water is available?

16 MR. STEFFANI: Well, if we could use the entire
17 80 second feet that we can pump from the 2 stations, fine,
18 but we don't think we can. We think we have to add 2 more
19 pumps, 2 more points of diversion just below Camanche.

20 To give you a feeling for the numbers, 80 second
21 feet is 160 acre feet a day. If we had a way to use or
22 recharge what we can pump at the existing points of
23 diversion, over 200 days, that's 32,000 acre feet. So,
24 yeah, there's enough right there, but because we can't
25 use, we don't believe we can use all the water in that

1 area, we've got to go out further. We've got to add 2
2 more pumps. We believe that 30 to 40 second feet will be
3 required for each of the 2 proposed new pumps.

4 MR. FERREIRA: I have one more thing I'd like to
5 add. I just wanted to let the Board know that, as a
6 family, we have made the conscious decision, approximately
7 about 4 years ago, to put in a mile and a half of pipeline
8 on our property that recently was being serviced with
9 groundwater and is now currently being serviced with
10 surface water from Stockton East. It was about 150 acres
11 more at our expense, because of the fact that we
12 believe -- that we want to be part of the solution not
13 part of the problem. I just wanted to add that.

14 BOARD MEMBER BAGGETT: Any questions?

15 WATER RESOURCES CONTROL ENGINEER MONA: I have
16 one question for Mr. Steffani. Mr. Steffani, it sounds
17 from your testimony that you have a lot of work to do.
18 And I just wondering is the 10-year period of time that
19 you're requesting an extension for really a sufficient
20 period of time or do you need -- or do you think you're
21 going to be able to accomplish all this work in the 10
22 years you're requesting.

23 MR. STEFFANI: I think we can do it in 10 years.
24 If I'm going to be involved, we better do it in 10 years.

25 (Laughter.)

1 SENIOR STAFF COUNSEL MAHANEY: Mr. Steffani, I'd
2 like to just clarify something. You were talking about a
3 10-year extension. My understanding that the, and correct
4 me if I'm wrong, the extension that -- the petition for
5 extension of time that is the subject of this proceeding
6 was until 2010?

7 MS. HARRIGFELD: That is correct. What we will
8 be requesting a modification would be 20 years from the
9 date in which this order is approved. It took the State
10 Board 7 years to --

11 MR. STEFFANI: Ten years, right?

12 MS. HARRIGFELD: So 10 years from the date of the
13 order is what we will be looking for.

14 SENIOR STAFF COUNSEL MAHANEY: Thank you.

15 BOARD MEMBER BAGGETT: Any other questions?

16 Any redirect?

17 MS. HARRIGFELD: No.

18 BOARD MEMBER BAGGETT: Thank you.

19 MS. HARRIGFELD: Do you want to press on? We
20 have 4 more that should be pretty quick.

21 BOARD MEMBER BAGGETT: Yeah, I'd like to.

22 MS. HARRIGFELD: Can Rich Prima, Mark Madison,
23 Joe Valente, Larry Mettler.

24 /////

25 DIRECT EXAMINATION

1 OF MR. RICH PRIMA, MR. MARK MADISON,
2 MR. JOE VALENTE AND MR. LARRY METTLER
3 BY MS. KARNA HARRIGFELD, ESQ., representing the North San
4 Joaquin Water Conservation District:

5 Mr. Prima, could you please state your name for
6 the record?

7 MR. PRIMA: Richard Prima.

8 MS. HARRIGFELD: Richard Prima. Thank you.

9 Could you take a look at North San Joaquin Water
10 Conservation District Exhibit number 13?

11 MR. PRIMA: Yes.

12 MS. HARRIGFELD: Is this a true and correct copy
13 of your testimony?

14 MR. PRIMA: Sorry, for the microphone.

15 Yes, it is.

16 MS. HARRIGFELD: Contained in your written
17 testimony are a number of exhibits 49, 50, 51, 52 through
18 58. Did you utilize those exhibits in preparing your
19 testimony?

20 MR. PRIMA: Yes, I did.

21 MS. HARRIGFELD: Please state your occupation?

22 MR. PRIMA: I'm a licensed civil engineer and I'm
23 the Public Works Director for the City of Lodi.

24 MS. HARRIGFELD: How long have you been employed
25 with the City of Lodi?

1 MR. PRIMA: I've been the director since 1998 and
2 I started with the City in 1975.

3 MS. HARRIGFELD: Does the City rely on
4 groundwater as a sources of water?

5 MR. PRIMA: Yes, it does, 100 percent.

6 MS. HARRIGFELD: Why does the City of Lodi
7 support North San Joaquin's efforts to develop a
8 dependable source of surface water?

9 MR. PRIMA: The City has had a long-standing
10 policy of attempting to support the adjacent water
11 agencies in bringing in surface water recognizing the
12 importance of the Mokelumne River in recharge in the area,
13 and as a cost effective way of providing water for the
14 region, allowing the City to continue to use groundwater.

15 MS. HARRIGFELD: Your written testimony contains
16 a number of examples of how the City has assisted North
17 San Joaquin and other local agencies. Would you highlight
18 a couple of those?

19 MR. PRIMA: Well, I could -- I'm going to go
20 through all of them, but I can start with 1948 when the
21 District started to get formed. The landowners approached
22 the Lodi City Council and asked for financial assistance
23 to help form the District, and the Council granted the
24 funds to them.

25 We've continued to supply funds throughout the

1 years to help with their various legal battles. And most
2 recently have formally supported the District's, both the
3 acreage charge and the groundwater assessment that was
4 recently passed. And I should add that those were not
5 only staff recommendations but full support from the City
6 Council.

7 MS. HARRIGFELD: Could you take a look at North
8 San Joaquin Exhibit number 56. This is the City's urban
9 water management plan. What is the City's current
10 projected groundwater use?

11 MR. PRIMA: Well, our current use is slightly
12 over 17,000 acre feet per year. And our projections to
13 2030 are 25,100 acre feet per year.

14 MS. HARRIGFELD: How has the City helped to
15 correct the groundwater basin overdraft?

16 MR. PRIMA: Well, in addition to supporting local
17 efforts for surface water, the City has recently entered
18 into a contract with the Woodbridge Irrigation District
19 for a surface water supply of 6,000 acre feet per year.

20 MS. HARRIGFELD: What development project did the
21 City approve in 2006?

22 MR. PRIMA: Well, the project that the City
23 Council has initiated the steps to implement a drinking
24 water treatment plant that would directly utilize the
25 Woodbridge supply that we've purchased.

1 MS. HARRIGFELD: Would the treatment plant allow
2 the City to utilize North San Joaquin water as well?

3 MR. PRIMA: It could do that. That is one of the
4 issues that we had with North San Joaquin earlier when we
5 talked about ways the City could utilize their water, that
6 because of the rather infrequent nature of their supply
7 that it was not feasible to expend that kind of -- tens of
8 millions of dollars to build a plant to use water on that
9 basis. And with the firm supply from Woodbridge, we would
10 have the capacity to use additional water when it's
11 available.

12 MS. HARRIGFELD: Great. Thank you very much.

13 Mr. Madison, could you please state your name for
14 the record?

15 MR. MADISON: Mark J. Madison.

16 MS. HARRIGFELD: Is North San Joaquin Exhibit
17 number 12 a true and correct copy of your testimony today?

18 MR. MADISON: Yes, it is.

19 MS. HARRIGFELD: There was one North San Joaquin
20 number 48 is an exhibit to your testimony. Did you
21 utilize that in preparing your testimony?

22 MR. MADISON: Yes, I did.

23 MS. HARRIGFELD: Could you please state your
24 occupation?

25 MR. MADISON: I'm the director of municipal

1 utilities for the City of Stockton.

2 MS. HARRIGFELD: How long have you been employed
3 by the City?

4 MR. MADISON: I've worked at the City since 1990.
5 I've been the director since 2002.

6 MS. HARRIGFELD: Does urban development within
7 the city and over east San Joaquin county have an impact
8 on the groundwater overdraft?

9 MR. MADISON: Any activity that withdraws
10 groundwater from the basin has an impact to the
11 groundwater basin. But generally speaking, urban
12 development does not exacerbate the groundwater problem.
13 As ag areas are -- ag acreages are converted to urban,
14 urban uses generally use less groundwater than ag does.

15 MS. HARRIGFELD: How are the existing water
16 demands from the City met?

17 MR. MADISON: Currently, we use both surface
18 supplies and groundwater sources. About 60 percent of our
19 water demands are made up or served by surface supplies
20 and about 40 percent are from our groundwater wells.

21 MS. HARRIGFELD: What, is the City's goal with
22 respect to future groundwater use?

23 MR. MADISON: We would like to reduce the amount
24 of groundwater that we pump. We presently have about 70
25 active water wells between the City of Stockton and the

1 California Water Service Company that are the 2
2 predominant purveyors in the Stockton urban area.

3 And we presently withdraw at a rate of about .6
4 acre feet per acre per year and we would like to adopt a
5 long-term objective of not to exceed that amount. The
6 safe yield or the sustainable yield of the groundwater
7 basin has been declared to be somewhere between .75 and 1
8 acre feet per acre per year and we would like to stay well
9 below that, at least 20 percent.

10 MS. HARRIGFELD: Are the existing supplies
11 sufficient to meet your current demands?

12 MR. MADISON: Yes, they are.

13 MS. HARRIGFELD: Are existing water supplies
14 sufficient to meet your future demands?

15 MR. MADISON: No, they are not. As we continue
16 to grow, we'll need additional water. And we plan to
17 obtain additional surface supplies through the Delta Water
18 Supply Project possibly making arrangements with North San
19 Joaquin or other entities for water transfers in district.
20 Of course, we can't underestimate the importance of water
21 conservation and the use of nonpotable supplies as well.

22 MS. HARRIGFELD: Does the Delta Water Supply
23 Project involve construction of a treatment plant?

24 MR. MADISON: Yes, it does. The Delta Water
25 Supply Project involves 4 basic components, an intake

1 facility to be located at the southwest tip of Empire
2 Tract, a raw water conveyance pipeline to take the water
3 from the intake facility to a water treatment plant, a
4 water treatment plant itself and then distribution mains
5 to deliver treated water into the city's transmission
6 system.

7 MS. HARRIGFELD: Is the City producing --
8 pursuing additional water supplies?

9 MR. MADISON: Yes, we are. Of course, our major
10 activity right now is advancing the Delta Water Supply
11 Project, but we've also pursued other supplies from
12 various districts, including North San Joaquin,
13 Woodbridge, Oakdale Irrigation District, South San Joaquin
14 Irrigation District and even Central.

15 MS. HARRIGFELD: So North San Joaquin's water
16 supply could be taken to your treatment plant and utilized
17 out in that Pixley Slough area?

18 MR. MADISON: Absolutely. It's a very good
19 possibility that we could make use of that water.

20 MS. HARRIGFELD: Why has the City not approached
21 North San Joaquin prior to this time?

22 MR. MADISON: Well, we didn't have the facilities
23 in place to treat that water and use it for potable
24 purposes. But now that we're in design on the Delta Water
25 Supply Project and the project really is imminent at this

1 point, I mean, the possibility of using that supply is
2 very strong.

3 MS. HARRIGFELD: Great. Thank you.

4 MR. MADISON: You're welcome.

5 Alrighty. Mr. Mettler, could you please state
6 your name for the record?

7 MR. METTLER: Larry Mettler.

8 MS. HARRIGFELD: North San Joaquin Exhibit number
9 8, is that a true and correct copy of your testimony?

10 MR. METTLER: Yes, it is.

11 MS. HARRIGFELD: Could you please state your
12 occupation?

13 MR. METTLER: I'm a farmer.

14 MS. HARRIGFELD: How long have you lived within
15 North San Joaquin Water Conservation District?

16 MR. METTLER: 62 years.

17 MS. HARRIGFELD: How many acres do you own or
18 manage?

19 MR. METTLER: We currently are managing 800
20 acres, of which 250 we own.

21 MS. HARRIGFELD: Do you use surface water to
22 irrigate your acreage?

23 MR. METTLER: Yes, we do.

24 MS. HARRIGFELD: How long have you been utilizing
25 surface water?

1 MR. METTLER: Since it was available when the
2 pipeline was first put in.

3 MS. HARRIGFELD: During the drought in '87 to
4 '92, what water source did you rely on to irrigate your
5 crops?

6 MR. METTLER: We used groundwater.

7 MS. HARRIGFELD: When water became available in
8 1993, did you transition back to surface water?

9 MR. METTLER: No, we did not, except
10 yes -- correct. We did go back to surface water on a
11 portion of the acreage, yes.

12 MS. HARRIGFELD: Would you utilize surface water
13 for all of your acreage if it became available?

14 MR. METTLER: Certainly would.

15 MS. HARRIGFELD: Why are you an advocate for
16 utilization of surface water?

17 MR. METTLER: Well, there's a number of reasons.
18 One is I believe it's our duty to use surface water when
19 available to slow down the overdraft. The other reason, I
20 think it's important economically for us, because, for
21 one, we can use surface water with a smaller pumping
22 charge. When you're pumping deep, it costs more money.
23 And so the economic aspect is pretty important, too.

24 MS. HARRIGFELD: Did you support imposition of
25 the groundwater charge by North San Joaquin?

1 MR. METTLER: Yes, I did.

2 MS. HARRIGFELD: How could the revenue from the
3 charge help farmers put surface water into the ground?

4 MR. METTLER: Well, I think there's a lot of
5 ways. I mean, you need some money to move forward and
6 that's what this should do. And there's dual systems.
7 There's all kinds of different ways and things of projects
8 that could be done, and money to work towards cost-sharing
9 grants and different ways of putting that money to use and
10 without naming projects I guess that's about it.

11 MS. HARRIGFELD: How is surface water a key to
12 survival of the farming community within the District?

13 MR. METTLER: Well, we need surface water even if
14 it's not all the time, because when it's not there, we can
15 still pump, but when it is available, we need to have it,
16 because that's the only way to slow down the overdraft.
17 You have to pump less. That's the way to slow it down.

18 MS. HARRIGFELD: Thank you.

19 Mr. Valente, could you please state your name for
20 the record.

21 MR. VALENTE: Joe Valente.

22 MS. HARRIGFELD: Exhibit North San Joaquin number
23 9, is this a true and correct copy of your testimony?

24 MR. VALENTE: Yes, it is.

25 MS. HARRIGFELD: Exhibit 39, the 2005 crop report

1 was attached to your testimony. Did you utilize that in
2 preparing your testimony today?

3 MR. VALENTE: Yes.

4 MS. HARRIGFELD: And you're wearing 2 hats today.
5 Could you state for the record your occupation?

6 MR. VALENTE: I'm a vineyard manager Kautz Farms
7 in Lodi. I'm also president of the San Joaquin Farm
8 Bureau.

9 MS. HARRIGFELD: How long have you been the
10 vineyard and orchard manager for Kautz Farms?

11 MR. VALENTE: 28 years.

12 MS. HARRIGFELD: Could you tell us a little bit
13 about Kautz Farms?

14 MR. VALENTE: Kautz Farms originally was a
15 diversified farming. John started off right out of high
16 school with no college education. He started growing 23
17 acres of tomatoes. Today, we farm over 5,000 acres of
18 wine grapes and 60 acres of cherries.

19 MS. HARRIGFELD: How many acres does Kautz
20 Farms -- how man of the acres that Kautz Farms owns
21 utilized surface water?

22 MR. VALENTE: If it was available, there's about
23 a thousand acres we could utilize it on.

24 MS. HARRIGFELD: And currently you're using water
25 on how many acres?

1 MR. VALENTE: None. All well water.

2 MS. HARRIGFELD: What was the impact of the
3 6-year drought on Kautz Farms?

4 MR. VALENTE: There was 2 impacts that we did.
5 At that time, we converted all our vineyards over to drip
6 irrigation and also put in wells to deviate the lack of
7 water, surface water.

8 MS. HARRIGFELD: How many groundwater wells does
9 Kautz own along Pixley Slough?

10 MR. VALENTE: Approximately 4.

11 MS. HARRIGFELD: Do you have the capability to
12 return to surface water?

13 MR. VALENTE: With a little bit of maintenance,
14 yes, we could.

15 MS. HARRIGFELD: How will the District assist you
16 in returning to surface water?

17 MR. VALENTE: Hopefully, financially. And also
18 there's some grant money through the NRCS that could be
19 available. We did apply for an equip program. The only
20 thing we're on hold, because it's -- you know, to go
21 forward without having any water doesn't make a whole lot
22 of sense.

23 MS. HARRIGFELD: Could you briefly explain what a
24 dual system is, we've heard a lot about that today?

25 MR. VALENTE: A dual system is where you could

1 pump either well water or water out of a creek. A lot of
2 our property is adjacent to the creek or Pixley Slough, so
3 we can pump right out of that.

4 MS. HARRIGFELD: What is Kautz Farms position on
5 using surface water?

6 MR. VALENTE: John has been an advocate on
7 surface water. On one of his properties, there was a,
8 from North San Joaquin, research project that he had been
9 involved with.

10 MS. HARRIGFELD: Now, if you could shift gears
11 and put your Farm Bureau hat on. How many members of the
12 Farm Bureau do you represent?

13 MR. VALENTE: It's around 5,000. I think in one
14 of the testimonies it mentioned 6,000, but it fluctuates.
15 Right now, we're at around 5,000.

16 MS. HARRIGFELD: Do your members rely on surface
17 water?

18 MR. VALENTE: The County is very unique. We have
19 the foothills, the Delta. There's a variation of all
20 methods.

21 MS. HARRIGFELD: To understand the significance
22 to San Joaquin County of their agricultural production, I
23 wanted to take a brief look at North San Joaquin Exhibit
24 number 39. The 2005 crop report, what was the gross value
25 of the agricultural production in San Joaquin county?

1 MR. VALENTE: \$1.7 billion.

2 MS. HARRIGFELD: In looking at the report, the
3 San Joaquin County identified 10 of its greatest crops.
4 Could you briefly go through those 10 crops, what are
5 they?

6 MR. VALENTE: Dairy, number 1, wine grapes,
7 almonds, tomatoes, walnuts, cherries, cattle and calves,
8 hay, wood ornamentals and asparagus.

9 MS. HARRIGFELD: Please describe your
10 understanding of the impact of the overdrafted groundwater
11 basin on lands within the District?

12 MR. VALENTE: We're depleting our underground
13 water. But also with the salt water intrusion from the
14 Delta, our water quality is, you know, sacrificing there.

15 MS. HARRIGFELD: How do you believe the District
16 is addressing this overdraft?

17 MR. VALENTE: Well, I think, you know, for a
18 number of years now, they've been looking at recharge
19 projects. And, you know, the fee that they just
20 implemented and the fee that they did, I believe in 2000,
21 2001, the \$40,000 they collected, they've been looking at
22 it for a number of years now.

23 MS. HARRIGFELD: What do you think the ag
24 community's position is on the critical overdraft?

25 MR. VALENTE: It's very important. I mean, in

1 order to grow a crop, you have to have water. You know,
2 it's really vital to have water.

3 MS. HARRIGFELD: What do you think landowners
4 need to put more surface water to use?

5 MR. VALENTE: We need a reliable water source.
6 You know, you can't be a couple years on and a couple
7 years off. It doesn't make sense.

8 MS. HARRIGFELD: What was the Farm Bureau's
9 position on imposition of the groundwater charge?

10 MR. VALENTE: On a charge we took a neutral
11 position.

12 MR. HARRIGFELD: And now that it is being
13 implemented, is the Farm Bureau supportive of its
14 implementation?

15 MR. VALENTE: It hasn't gone through, you know,
16 our committees and back to the Board.

17 MS. HARRIGFELD: From your perspective, what do
18 you think of -- would happen to the District if its water
19 rights were taken away?

20 MR. VALENTE: It would dissolve.

21 MS. HARRIGFELD: All right. Thanks.

22 Questions?

23 BOARD MEMBER BAGGETT: Cross examination --

24 MS. MURRAY: (Shakes head.)

25 BOARD MEMBER BAGGETT: -- from any of the

1 parties?

2 If not, do you have any questions, Charlie?

3 Staff have any?

4 MS. HARRIGFELD: I endeavored to keep this brief.

5 BOARD MEMBER BAGGETT: You did well. Thank you

6 With that -- so that ends -- I guess, exhibits,

7 let's enter those into evidence?

8 MS. HARRIGFELD: Yes, 1 through 60.

9 MS. MURRAY: And I just wanted to clarify 60 is
10 not going to be actually entered because it's a staff
11 exhibit?

12 BOARD MEMBER BAGGETT: That's 70 -- was is it 60
13 or 70?

14 MS. HARRIGFELD: Sixty.

15 BOARD MEMBER BAGGETT: Sixty. All right. We can
16 enter that, take official notice of that. We will take
17 official notice of 60 but you will enter all the others.

18 BOARD MEMBER BAGGETT: One through 60; is that
19 correct? Does that make sense, Jean?

20 I through there was another --

21 SENIOR STAFF COUNSEL MAHANEY: Did you send 61
22 and 62 by E-mail.

23 MS. HARRIGFELD: Yeah, we're not -- we don't
24 intend to enter those.

25 BOARD MEMBER BAGGETT: You don't?

1 MS. HARRIGFELD: No.

2 BOARD MEMBER BAGGETT: Okay, so it' just 60. And
3 the Congressman's letter is in the record as a public
4 policy statement.

5 MS. HARRIGFELD: It is in the record.

6 BOARD MEMBER BAGGETT: One through 59.

7 It's not an exhibit. It's a policy statement.

8 SENIOR STAFF COUNSEL MAHANEY: Yeah, I think we
9 need a little more clarification here. You did identify
10 an Exhibit 60, which is an item in the staff records, but
11 are you identifying it separately as an exhibit or not?

12 MS. HARRIGFELD: Well, if we're allowed to
13 identify it as an exhibit, fine. If you just want to say
14 it's part of the State Board's existing record, that's
15 fine as well.

16 BOARD MEMBER BAGGETT: That's what Fish and Game
17 requested and that's what --

18 MS. MURRAY: That's what we're requesting, so
19 you'll be entering Exhibits 1 through 59.

20 BOARD MEMBER BAGGETT: That's exactly what I
21 guess the ruling was, that we will take official notice.
22 So it's not Exhibit 60, but it is in the record as a State
23 Board exhibit. And the Congressman's letter is not an
24 exhibit, but is entered as a public policy statement.

25 SENIOR STAFF COUNSEL MAHANEY: And you're not

1 enter Exhibit 61? And does that same approach apply to 70
2 and 71 that were available on the Division's website?

3 MS. HARRIGFELD: Yeah, they were available on
4 line.

5 BOARD MEMBER BAGGETT: So they are not exhibits.

6 Very good.

7 (Thereupon NSJ-1 through NSJ-59 were
8 received into evidence.)

9 With that, let's take a break for lunch. Then
10 before -- we can go off the record.

11 (Thereupon a lunch break was taken.)

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1 AFTERNOON SESSION

2 BOARD MEMBER BAGGETT: Back on the record.

3 MS. HARRIGFELD: Good afternoon. Karna
4 Harrigfeld.

5 For the record, I want to object to the
6 introduction of Exhibits 1 and 2 from the Department of
7 Fish and Game. Mr. Heise's testimony is to revise
8 paragraph 3 of order -- paragraph 3 of page 11. This
9 paragraph deals with the conjunctive use project. We
10 didn't petition to reconsider the conjunctive use project.
11 And in the State Board's order granting the
12 reconsideration, I'll read to you from footnote number 1.

13 It says, "In its order, the Division also
14 conditionally approved changes in the place of use, place
15 of storage sought by the District. The District has not
16 petitioned for reconsideration of the Division's approval
17 of those changes and those changes will not be considered
18 in this proceeding."

19 So adding a permit condition to something that is
20 not at issue is -- it's irrelevant.

21 BOARD MEMBER BAGGETT: Ms. Murray.

22 MS. MURRAY: My response is that Key Issue number
23 1 is what action, if any, should the Water Board take with
24 respect to order WR 2006-18? And then in the second
25 sentence, what modifications or actions are recommended

1 and what is the basis for such modifications or actions?

2 We are responding to Key Hearing Issue number 1.

3 BOARD MEMBER BAGGETT: And which was -- the
4 public trust was --

5 MS. HARRIGFELD: No, public trust is Key Issue
6 number 3. They are attempting to modify a project
7 approval that we did not seek reconsideration, so it's not
8 at issue today.

9 MS. MURRAY: The Key Hearing Issue new 1 is very
10 broad.

11 BOARD MEMBER BAGGETT: But if we were going to
12 grant a time extension of 10 and I think it was even
13 suggested 40 years, we might want to consider additional
14 permit terms as a condition of that extension. Would you
15 not agree?

16 MS. HARRIGFELD: I do agree. However, we're
17 talking about 2 separate things -- 2 separate petitions
18 that we processed that are both in Decision 2006-0018.
19 The first section of Decision 2006-0018 deals with the
20 petition to add a point of diversion and add storage.
21 Those we did not petition for reconsideration. And the
22 State Board expressly recognized that, that those would
23 not be at issue in this reconsideration hearing.

24 So while I respect that the Key Issue number 1 is
25 rather broad, the bottom line is, you know, in your order

1 granting this hearing, you said that those issues
2 were -- that the approval of the adding the point of
3 diversion and the additional putting the water into the
4 ground would not be the subject of the hearing.

5 BOARD MEMBER BAGGETT: Ms. Murray, do you have
6 anything else to add?

7 MS. MURRAY: The only thing is that we could say
8 that it also is responsive to 3D, which is if the State
9 Board grants the extension of time, does it result in
10 adverse environmental impacts and what can you do to avoid
11 or mitigate those impacts?

12 MS. HARRIGFELD: But you specifically represented
13 when we were at the prehearing conference that the only
14 item you would be addressing is Key Issue number 1.

15 BOARD MEMBER BAGGETT: That is correct.

16 MS. MURRAY: That is correct.

17 BOARD MEMBER BAGGETT: I think from our
18 perspective we can consider it without anybody raising the
19 issue. We have to consider the public trust issue. I
20 feel that's an obligation of this Board. And I would
21 rather have evidence --

22 MS. HARRIGFELD: Well, how is a measuring device
23 a public trust issue? And I guess that goes --

24 MS. MURRAY: Listen to our testimony and you may
25 find out.

1 BOARD MEMBER BAGGETT: I think I will overrule
2 the objection and allow Fish and Game to continue.

3 DIRECT EXAMINATION

4 OF MR. GEORGE HEISE AND MR. MICHAEL HEALEY

5 BY MS. NANCEE MURRAY, SENIOR STAFF COUNSEL, representing
6 the Department of Fish and Game:

7 Okay. George, we are going to go first with you.
8 Would you please state your and spell --

9 MS. HARRIGFELD: They need to take the oath.

10 MS. MURRAY: Thank you for reminding me.

11 BOARD MEMBER BAGGETT: Both.

12 (Thereupon the witnesses were sworn, by
13 Board Member Baggett to tell the truth.)

14 MS. MURRAY: I'm still missing one, but I'll have
15 to do that later.

16 BOARD MEMBER BAGGETT: Well, I hope they're here
17 soon.

18 MS. MURRAY: Okay. George, please state and
19 spell your name and briefly describe your professional
20 qualifications?

21 MR. HEISE: My name is George Heise. The last
22 name is spelled H-e-i-s-e. I'm a senior hydraulic
23 engineer with the California Department of Fish and Game.
24 I head up the Fisheries Engineering Program in our
25 regional operations division. I've been engaged in this

1 capacity for the past 18 years. I'm a licensed civil
2 engineer in California and Arizona.

3 Prior to that, I was involved -- or I was
4 employed by an international consulting engineering firm
5 working in the area of hydropower development.

6 For the Department of Fish and Game in the
7 Fisheries Engineering Program, I've been involved in the
8 design, design review, and permitting of fish passage
9 facilities, fish screens, fish ladders and other types of
10 facilities.

11 MS. MURRAY: And is CDFG Exhibit 1 a true and
12 correct copy of your testimony?

13 MR. HEISE: Yes, it is.

14 MS. MURRAY: And have you read Order 2006-18-DWR?

15 MR. HEISE: Yes, I have.

16 MS. MURRAY: And do you have a recommended change
17 to that order and could you briefly describe what your
18 recommendation is?

19 MR. HEISE: Yes. I have a recommendation on the
20 order, paragraph number 3 on page 11. And the wording of
21 my proposed change is in my testimony. I'll just
22 summarize it right here. Basically, I'm making 4 points.
23 The first one is to remove language regarding alternatives
24 to fish screening. The second is that the plans that are
25 developed for the fish screen are developed in

1 consultation with the Department of Fish and Game, and
2 that the Department of Fish and Game representatives
3 review and approve of the final design.

4 That if there's a failure of the fish screens,
5 that the Department of Fish and Game will be notified
6 along with the Water Board within 48 hours of such a
7 failure.

8 And finally, that if a failure exists that within
9 48 hours, that the District will provide a plan for the
10 repair of the fish screen and a schedule of how quick that
11 would be affected.

12 MS. MURRAY: And what is the basis for this
13 recommended change?

14 MR. HEISE: Well, the basis for the
15 recommendations are on the first point, we don't feel that
16 there is really a suitable alternative to fish screening.
17 And our policy is for positive fish screens on diversions
18 from the State waters.

19 On the second point, we would like to be able to
20 review the plans as they're being developed to ensure that
21 the District doesn't backtrack on -- or have to backtrack
22 on design which proves to be unsuitable to the Department,
23 that the criteria are met.

24 On the third point, for the notification we would
25 like Fish and Game to be notified as well as the Water

1 Board, so that we can evaluate the performance of the fish
2 screening methodologies. And to ensure that fish are
3 being safely -- are being accommodated safely as intended.

4 And then finally in providing a plan within 48
5 hours, that that would be a proactive step on behalf of
6 the District to show that they're engaged in the process
7 and that an unscreened diversion would be in place no
8 longer than necessitated by the emergency.

9 MS. MURRAY: Okay. And is that the end of your
10 testimony?

11 MR. HEISE: That is it.

12 MS. MURRAY: Okay.

13 Michael, would you please state and spell your
14 name and briefly describe your professional
15 qualifications?

16 MR. HEALEY: Michael Healey with the Department
17 of Fish and Game. It's Michael, M-i-c-h-a-e-l. Healey,
18 H-e-a-l-e-y.

19 I'm a graduate from Humboldt State University.
20 I've worked for the Department for about 15 years now, 9
21 of which were conducting fishery sampling in the south
22 Delta as they relate to special water projects.

23 I'm currently the District fisheries biologist
24 for Sacramento and San Joaquin counties. I have multiple
25 assignments with that related to fisheries management, of

1 which I'm the Department representative on several river
2 groups as they relate to water management and fisheries
3 protection, including the Mokelumne River Technical
4 Advisory Committee, the American River Operations Group,
5 the American River Task Force, and, in addition, in the
6 past, I have participated in the Calaveras River Fish
7 Group.

8 MS. MURRAY: Is CDFG Exhibit 3 a true and correct
9 copy of your testimony?

10 MR. HEALEY: Yes, it is.

11 MS. MURRAY: To your knowledge, what aquatic
12 species are present in the Mokelumne River?

13 MR. HEALEY: There's about 38 aquatic fishery
14 species in the Mokelumne River, of which 5 are anadromous.
15 These would include the Chinook Salmon, Steelhead, Pacific
16 lamprey, American shad and striped bass.

17 MS. MURRAY: And have you read order 2006-18-DWR?

18 MR. HEALEY: Yes.

19 MS. MURRAY: And do you have a recommendation
20 regarding a modification to that order?

21 MR. HEALEY: As I understand it, it's a point of
22 new diversion for the permittee, ordering -- I guess
23 ordering paragraph 7 needs to be revised to require the
24 permittee to install some measuring devices, not only the
25 quantities of water to be placed into underground storage,

1 but at the rate of direct diversion.

2 MS. MURRAY: Okay. And, in addition, do you have
3 any other suggested change to that order?

4 MR. HEALEY: Yeah. In addition to measuring
5 devices at each authorized diversion should help determine
6 if the permittee is complying with the applicable fish
7 bypass requirements that may be included in the permit.

8 MS. MURRAY: Okay. And in your paragraph 11, do
9 you have one last recommendation?

10 MR. HEALEY: Yes, I do. I recommend that order
11 WR 2006-0018 be amended to include the permit term that
12 amends permit 10477, clearly requires the permittee to
13 install devices satisfactory to the State Water Resources
14 Control Board, capable of measuring the direct diversions
15 amount and rate at each diversion and any bypass flows
16 that may be acquired to the permit.

17 MS. MURRAY: And does that conclude your
18 testimony?

19 MR. HEALEY: Yes.

20 Questions?

21 BOARD MEMBER BAGGETT: Any cross examination?

22 CROSS EXAMINATION

23 OF MR. GEORGE HEISE AND MR. MICHAEL HEALEY

24 BY MS. KARNA HARRIGFELD, ESQ., representing the North San
25 Joaquin Water Conservation District:

1 I just have one question. Were either of you
2 aware that North San Joaquin Water Conservation District
3 has measuring devices to measure what we are diverting at
4 our pumping plants?

5 MR. HEALEY: Are you asking me or George?

6 MS. HARRIGFELD: Either one of you.

7 MR. HEALEY: I'm not aware.

8 MR. HEISE: To my understanding, I know that
9 there was a process by which the Watermaster for the
10 District estimates the flows that are being pumped.

11 MS. HARRIGFELD: They are not estimated. We have
12 a measuring device on our pumping facilities.

13 BOARD MEMBER BAGGETT: Is that a question?

14 MS. MURRAY: Yeah, I object.

15 (Laughter.)

16 BOARD MEMBER BAGGETT: Sustained.

17 MS. HARRIGFELD: All right. That was it.

18 BOARD MEMBER BAGGETT: Okay.

19 MS. MURRAY: I move that our exhibits be entered
20 into evidence.

21 BOARD MEMBER BAGGETT: Well, let's way and see if
22 there's any other questions, first.

23 Questions?

24 Any other parties?

25 City of Stockton?

1 Okay.

2 MS. MURRAY: Now, I move that they be entered
3 into evidence?

4 BOARD MEMBER BAGGETT: Any objections?

5 All right, then they are so entered.

6 (Thereupon Exhibits DFG-1 through DFG-4
7 were received into evidence.)

8 BOARD MEMBER BAGGETT: I think that's it.

9 Any closing comments by either of the parties or
10 any rebuttal testimony, first?

11 MS. MURRAY: No rebuttal.

12 MS. HARRIGFELD: Good afternoon. Karna
13 Harrigfeld. North San Joaquin Water Conservation
14 District. In my opening statement I did not go through
15 the proposed changes that I would like to see made to
16 Water Rights order 2006-0018, so I'd like to go over those
17 now.

18 But before I start, I understand that Congressman
19 McNerney provided a letter of support today that was faxed
20 to Ms. Tam Doduc. I got an E-mail copy of it just for the
21 record. I'll let you know it's in your files.

22 BOARD MEMBER BAGGETT: A policy statement, that's
23 fine.

24 MS. HARRIGFELD: We believe that there needs to
25 be several revisions to 2006-0018.

1 First, dealing with Section 3.6. The issue of
2 unauthorized diversion and use is subject to a separate
3 proceeding to be held this afternoon. Assuming that the
4 District prevails in the CDO/ACL, we would request that
5 Section 3.6 be deleted and the other references in the
6 order be deleted.

7 Section 4.4, based on the testimony and exhibits
8 submitted here, the District has both the specific plans
9 and funding in place to construct projects, so we would
10 like to see Section 4.4 revised to grant the District's
11 petition for extension of time to complete construction.

12 Section 4.5. Based on the testimony and
13 exhibits, Section 4.5 should be revised to identify the
14 facts that we have submitted supporting the District's
15 exercise of due diligence, the list of obstacles that
16 could not reasonably be avoided, and also the facts
17 supporting the satisfactory progress will be made if the
18 petition is granted.

19 Section 4.6 should also be amended to reflect
20 that the State Board has considered the public trust
21 resources and found that there is no evidence in the
22 record that granting the petition for extension of time
23 would have adverse impacts on public trusts.

24 Finally, based on the outcome of the CDO/ACL on
25 the issue of bypass flows, we would specifically -- and

1 the fact that a subsequent order of the Board has been
2 entered regarding public trust resources on the Mokelumne
3 River, we would request that permit 10477 Term 23 be
4 deleted.

5 And, I assume, we're going to be filing closing
6 briefs?

7 BOARD MEMBER BAGGETT: What I would suggest is
8 that in the closing brief, you --

9 MS. HARRIGFELD: I will include those issues --

10 BOARD MEMBER BAGGETT: As well as where in the
11 record or the evidence or the testimony, if you could cite
12 to supporting documents. Both parties, I meant Fish and
13 Game and yourself, if you you've got -- I think it's
14 always preferable from my experience to have -- if you've
15 got permit terms you want to change, underline and strike
16 outs are helpful and also citing the record and the
17 testimony to support those changes. I mean, it just makes
18 life easier for all of us. And as you know it all comes
19 to the Board in a draft order anyway, so you'll get a
20 chance to comment further if we have errors or changes you
21 think -- either party thinks needs to be made.

22 But I think it would be appreciated if you could
23 do the underline strike out with both of the changes both
24 parties have recommended and where in the record or what
25 supports it.

1 MS. HARRIGFELD: Thank you.

2 BOARD MEMBER BAGGETT: Any closing?

3 MS. MURRAY: I'll do it in a closing brief.

4 BOARD MEMBER BAGGETT: Okay. With that, if
5 there's no additional comments on this hearing, I think
6 we'll conclude it.

7 (Thereupon the Division of Water Rights hearing
8 adjourned at 1:20 p.m.)

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1 CERTIFICATE OF REPORTER

2 I, JAMES F. PETERS, a Certified Shorthand
3 Reporter of the State of California, and Registered
4 Professional Reporter, do hereby certify:

5 That I am a disinterested person herein; that the
6 foregoing California State Water Resources Control Board,
7 Division of Water Rights hearing was reported in shorthand
8 by me, James F. Peters, a Certified Shorthand Reporter of
9 the State of California, and thereafter transcribed into
10 typewriting.

11 I further certify that I am not of counsel or
12 attorney for any of the parties to said hearing nor in any
13 way interested in the outcome of said hearing.

14 IN WITNESS WHEREOF, I have hereunto set my hand
15 this 9th day of July, 2007.

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JAMES F. PETERS, CSR, RPR

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Certified Shorthand Reporter

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