

11331

STATE WATER RESOURCES CONTROL BOARD

PREHEARING CONFERENCE

PHASE 2 OF THE CACHUMA PROJECT HEARING

TUESDAY, MAY 13, 2003  
1:00 P.M.

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

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REPORTED BY:

ESTHER F. SCHWARTZ  
CSR NO. 1564

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APPEARANCES

STATE WATER RESOURCES CONTROL BOARD:

PETER SILVA, HEARING OFFICER

STAFF:

KATHERINE MROWKA  
GITA KAPAHI

COUNSEL:

DANA DIFFERDING

AUDIENCE PARTICIPANTS:

STEPHEN R. PALMER  
GREGORY WILKINSON  
ARTHUR KIDMAN  
DONALD MOONEY  
ERNEST CONANT  
HARLEE BRANCH  
KAREN KRAUS  
LINDA KROP (Telephonically)  
MARK CAPELLI  
JOE BLUM

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1 SACRAMENTO, CALIFORNIA

2 TUESDAY, MAY 13, 2003, 1:00 P.M.

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4 HEARING OFFICER SILVA: Good afternoon and  
5 welcome to this prehearing conference on Phase 2 of the  
6 Cachuma Project hearing. In Phase 1 of the hearing the  
7 State Water Resources Control Board received evidence from  
8 the U.S. Bureau of Reclamation's petitions to change the  
9 authorized place and purpose of use for the water right  
10 permits for the Cachuma Project, Permit Nos. 11308 and  
11 11310.

12 In Phase 2 the State Water Board is scheduled to  
13 receive evidence on the issue of whether modification to  
14 Permits 11308 and 11310 are necessary to protect public  
15 trust values and downstream water rights on the Santa Ynez  
16 River below Bradbury Dam.

17 I am Peter Silva, Vice Chair of the State Board.  
18 Also present are -- I don't see -- Vickie is not here,  
19 Assistant Chief. The hearing team members are Dana  
20 Differding, Staff Counsel; Kathy Mrowka, Senior Engineer;  
21 and Gita Kapahi, Senior Environmental Specialist.

22 This prehearing conference is being held in  
23 accordance with the public notice dated April 14th, 2003.  
24 If you intend to speak today, please fill out a blue  
25 speaker card. Most of you have. Those that you haven't,

1 give it to our staff. If you are not sure whether you  
2 wish to speak, fill out a card and mark it "If Necessary"  
3 so we can plan our time. If you have written comments,  
4 please give them to the staff as well.

5 The purpose of this prehearing conference to receive  
6 comments from the parties and other participants on the  
7 following issues:

8 Whether any of the key issues identified in the  
9 hearing notice for Phase 2 of the hearing should be  
10 modified in light of the recent Settlement Agreement  
11 reached between the Cachuma Conservation Release Board and  
12 Santa Ynez River Water Conservation District, the Santa  
13 Ynez River Water Conservation Improvement District No. 1,  
14 and the City of Lompoc;

15 Whether to allow changes in witnesses identified on  
16 previously submitted Notices of Intent to appear for Phase  
17 2;

18 This schedule for conducting the hearing; and  
19 Finally any other appropriate procedural issues.

20 The goal of this prehearing conference is to ensure  
21 that the prehearing proceeds in an orderly expeditious  
22 manner. If you have any opinions regarding procedural  
23 matters that will further this goal, such as appropriate  
24 time limits on cross-examination or rebuttal testimony, or  
25 any stipulations of fact the parties may be willing to

1 enter into, we would be interested in hearing them.

2 Because this is not a hearing, there will not be  
3 cross-examination, and the participants should not attempt  
4 to discuss the merits of the issues that will be  
5 considered during Phase 2 of the hearing at this time.  
6 All the parties will have the opportunity to present their  
7 evidence and cross-examine opposing witnesses during the  
8 hearing.

9 The Board will not announce any decision today  
10 regarding the matters to be discussed during this  
11 prehearing conference. Following this prehearing  
12 conference, the Board will issue a supplement hearing  
13 notice that will list the hearing dates, contain deadlines  
14 for submission of Phase 2 exhibits and, if necessary,  
15 address any unresolved procedural issues identified during  
16 this prehearing conference.

17 We ask that participants limit their presentation to  
18 maximum of 20 minutes. In the interest of time  
19 participants should avoid repeating the details already  
20 presented by any other participant whenever possible and  
21 simply stipulate their agreement. Alternatively,  
22 participants with the same interest are encouraged to make  
23 joint presentations.

24 A Court Reporter is present and will prepare a  
25 transcript. If you are speaking and giving us a card, if

1 you could please also provide your business card to the  
2 Court Reporter. If you want a copy of the transcript, you  
3 can make arrangements directly with the Court Reporter.

4 I think we are ready to go. I have all the blue  
5 cards. I think everybody who is here has put in a blue  
6 card, pretty much. I think I will forego the  
7 introductions. Why don't we get straight into -- if you  
8 don't mind, get straight into the comments. Twenty  
9 minutes max, if you would.

10 First we have Steve Palmer, the Bureau of  
11 Reclamation.

12 MR. PALMER: Afternoon. Thank you. Steve  
13 Palmer with the Solicitor's Office of the Department of  
14 the Interior here on behalf of the Bureau of Reclamation.

15 I have just have a few comments and then would defer  
16 to some of the other parties for the particular details.  
17 As you mentioned, particular issues for this prehearing  
18 referencing the Settlement Agreement that has been  
19 provided to the Water Resources Control Board and some  
20 other miscellaneous procedural issues.

21 Briefly just for reference, to mention that the  
22 Bureau of Reclamation has permits for the operation of the  
23 Cachuma Project/Bradbury Dam that were issued by the  
24 Board's predecessor in 1958. This process which we are  
25 involved in today has been a rather extensive one,

1 beginning back in the time of issuance of the permits and  
2 initially set and attempting to address issues on the  
3 affects to downstream water rights and later on issues  
4 arose as to affects on the public trust under the  
5 California Public Trust Doctrine.

6 The last formal order issued by the Board regarding  
7 these permits for the Cachuma Project to the Bureau was  
8 Order 94-5, which set the stage for why we are hear today  
9 and the hearing on Phase I and the upcoming hearing on  
10 Phase 2.

11 In 94-5 the Board essentially set the stage for  
12 hopefully the information gathering that is necessary to  
13 establish final, although not necessarily permanent,  
14 permit terms for the operation of the Cachuma Project  
15 regarding these downstream water rights and public trust  
16 resources.

17 The Phase 1 hearing was held in year 2000 regarding  
18 a proposed change of place of use and that order is still  
19 pending as I understand it. I was not directly involved  
20 in the 2000 hearing.

21 Coming more to recent times, the various parties  
22 concerned with the reliability of the Cachuma Project,  
23 protection of downstream water rights and meeting the  
24 requirements of the California Public Trust Doctrine  
25 engaged in settlement process that culminated in the

1 Settlement Agreement that was forwarded to the Board in  
2 February this year. Those parties are the same parties  
3 that Mr. Silva listed in issue number one: Cachuma  
4 Conservation Release Board, the Santa Ynez River Water  
5 Conservation District, the Santa Ynez River Water  
6 Conservation District Improvement, District No. 1, and the  
7 City of Lompoc.

8 The Bureau of Reclamation, although not a party to  
9 the Settlement Agreement, did review the Settlement  
10 Agreement and determined it would support the Agreement as  
11 an appropriate means to resolve these long-standing issues  
12 relating to the lower Santa Ynez River and the operations  
13 of the Cachuma Project and Bradbury Dam. The Bureau also  
14 determined that the Settlement Agreement was compatible  
15 with the continued operations and maintenance of Bradbury  
16 Dam. This position was conveyed to the Board by the  
17 Bureau in its letter of March 21st, 2003.

18 It is Reclamation's position, and it believes, that  
19 the Settlement Agreement resolves the Board's key issues  
20 in the original 2000 notice for Phase 1 and 2 hearing.  
21 And those issues are 4, 4A and B, 5, 5A and B and then 6.  
22 I will discuss a little more in a moment.

23 Reclamation requests that the Board adopt the  
24 proposed modifications to its permits. Those are permits  
25 11308 and 11310, also referred to Application Nos. 11331



1 and 11332 as shown in the enclosure No. 1 to the Bureau's  
2 March 2003 letter. This enclosure includes or this letter  
3 also included corresponding modifications that were deemed  
4 necessary to what is referred to as the USBR Exhibit 1,  
5 which was part of Order 89-18. This is enclosure two to  
6 the letter from the Bureau from March this year.

7 As I mentioned, I will let the parties of the  
8 Settlement Agreement provide more detail on that  
9 particular agreement.

10 I just want to briefly comment as to the California  
11 Public Trust Doctrine and how that is dealt with in the  
12 Settlement Agreement. The Settlement Agreement  
13 recognizes, certainly, the importance of the Biological  
14 Opinion NOAA Fisheries issued to the Bureau of Reclamation  
15 concerning the effect of the operation of the Cachuma  
16 Project on the endangered steelhead and, of course, as  
17 well as the ongoing fish management plan.

18 Reclamation would request that the Board consider  
19 the obligations and commitments of Reclamation to the  
20 parties of the Settlement Agreement concerning the public  
21 trust issues as addressed in those documents. And that,  
22 in fact, the majority, we believe, of the Board's key  
23 issues, 3, 3A and 3B, are addressed in those documents and  
24 request that the issues that Board chooses to set for a  
25 hearing in Phase 2 consider those documents and perhaps it

1 might be able to narrow the scope of what it needs to be  
2 presented at the hearing.

3 As far as I mentioned one additional comment on key  
4 issue 6B. It is the Bureau's position that in that  
5 regards the change of place of use and the California  
6 Public Trust Doctrine, that that has been addressed in the  
7 Phase 1 hearing, and there was testimony provided that  
8 indicated that there would be no effect because of the  
9 nature of that change, not affecting any changes in  
10 operation or delivery of water. And hopefully, the Board  
11 will see that that issue does not need further testimony.

12 And a brief comment on the second issue for the  
13 prehearing, which was stated whether to allow changes in  
14 witnesses identified on the previously submitted notices  
15 of intent to appear for Phase 2, and certainly the Bureau  
16 does not disagree that witnesses can be added or modified  
17 for the parties that have previously filed notices, but  
18 would question whether additional parties should be added  
19 who did not file notice of intent. They should not be the  
20 case. We really do not have a problem with witness  
21 changing for parties.

22 I will conclude at that point and refer to the next  
23 and reserve the opportunity to come back if additional  
24 comments is necessary.

25 H.O. SILVA: Any questions?

1 Thank you.

2 Next we have Greg Wilkinson for the Settlement  
3 Agreement parties.

4 MR. WILKINSON: Mr. Silva, staff, good  
5 afternoon. My name is Greg Wilkinson. I am here in a  
6 somewhat unusual capacity today. Typically, I represent  
7 the Improvement District No. 1, which I think is the  
8 client I have with the longest possible name. It is the  
9 Santa Ynez River Water Conservation District, Improvement  
10 District No. 1. But today I am representing the settling  
11 parties, and I want to be fairly precise in terms of who  
12 they are.

13 They include ID No. 1. They include Santa Ynez  
14 River Water Conservation District, which is also called  
15 the Parent District, in the basin district that includes  
16 ID No. 1. The Cachuma Conservation Release Board, which  
17 is comprised of four entities: the City of Santa Barbara,  
18 Goleta Water District, Carpenteria Valley Water District  
19 and the Montecito Water District. And finally, also a  
20 settling party, the City of Lompoc.

21 And the last one is of some importance here because  
22 I think it is worthwhile to go back to the sort of genesis  
23 of the Settle Agreement. It was actually described in the  
24 Board's order WR 94-5. In that order the Board made a  
25 number of findings, and Finding No. 15 is a relevant one

1 for purposes understanding where this Settlement Agreement  
2 comes from. In that finding the Board said the Cachuma  
3 Project Authority, the predecessor to the member units --  
4 it existed at the time of 94-5 and no longer does exist.

5 It said the Cachuma Project Authority and the City  
6 of Lompoc have agreed by a contract, dated September 30,  
7 1993, and subsequently extended, to negotiate in good  
8 faith toward an agreement which addresses and resolves the  
9 City's water quality and water quantity concerns  
10 associated with the Cachuma Project's impacts, if any, on  
11 the Santa Ynez River in the context of the overall water  
12 supply needs of the City and the CPA members.

13 Subsequently, the Board of Directors CPA  
14 elected to discharge CPA's obligations under the contract  
15 by and through the Cachuma member units. As provided in  
16 the contract technical and policy committees have been  
17 established through which the parties continue to  
18 negotiate. And then in the operative part of WR 94-5 the  
19 Board included a requirement that not later than February  
20 1, 2000, the date which frankly was not met, that the  
21 parties, the permittee, I should, the Bureau should submit  
22 to the Board staff, among other things, information  
23 developed and conclusions reached, if any, during the  
24 negotiations among the Cachuma member units and the City  
25 of Lompoc, according to the process in Finding No. 15

1 hereof.

2 Well, the Settlement Agreement took a long time to  
3 negotiate. By the time that year 2000 rolled around we  
4 had not finished, and there were a number of iterations  
5 and processes that took place. But I am pleased to tell  
6 you that by the end of 2002 we have agreement that was  
7 submitted to the Board. And we are in concurrence with  
8 the Bureau that the Agreement does take off the table a  
9 number of the issues which were set forth as key issues in  
10 the September 25, 2000 hearing notice. We agree that, for  
11 instance, Issue 4, which is the issue that raises the  
12 issue of water quality and in its subparts it also asks  
13 about water quality, is an issue that exists in the key  
14 hearing issue list in the earlier notice, because of the  
15 protest filed by the City of Lompoc. We believe that  
16 Issue 4, because of Lompoc's signature on the Settlement  
17 Agreement, is now resolved. As we have set forth in the  
18 handout that I provided to you, there are two paragraphs  
19 in the Settlement Agreement, and we've quoted here on Page  
20 2 of the handout. Paragraph 1.1 and Paragraph 1.5 of the  
21 Settlement Agreement provides the indication by the  
22 parties that they are in agreement that releases made  
23 pursuant to WR 89-18 and modified as provided in this  
24 agreement will adequately protect downstream water rights  
25 and will not significantly adversely affect water quality

1 otherwise available to downstream water rights holders.

2 Lompoc was the only party that raised the protest  
3 that provided the basis for that key issue. It has now  
4 agreed along with the other settling parties that that is  
5 no longer an issue. And we think that that should be  
6 sufficient to remove Issue 4 from the key issue list.

7 In addition, key Issue 5 raised the issue of water  
8 quantity available to serve prior rights. Again, that key  
9 issue was raised because of protest that had been filed by  
10 the City of Lompoc with regard to the Bureau's permits.  
11 And again, Lompoc has now signed on to the Settlement  
12 Agreement. We again quoted the portions of the Settlement  
13 Agreement again in Paragraph 1.1, which we believe deals  
14 with that issue and removes it from the key issue list, in  
15 our opinion.

16 Finally -- well, not finally, but in addition, Issue  
17 6, which dealt with the change of place of use and change  
18 of purpose of use petitions that were the subject of Phase  
19 1, again it was the City of Lompoc which filed a protest  
20 to those petitions. And as part of the Settlement  
21 Agreement it's provided that Lompoc, and I'm quoting,  
22 hereby withdraws its objection to the Cachuma Project  
23 change in place and purpose of use presented in connection  
24 with Phase 1 of the 94-5 hearings.

25 During Phase 1, as you may recall, Mr. Silva,

1 because I think you sat in on those hearings, there was  
2 some issue about the City of Solvang. You may remember  
3 that Solvang attempted to present testimony, and there  
4 were objections to the testimony that Solvang had  
5 presented. And my recollection is that the testimony was  
6 kept out. Now subsequently to the Settlement Agreement  
7 the City of Solvang has also provided information to the  
8 Board. I think they sent a letter that you may or may not  
9 have received. I do have copies of that that indicates  
10 that they now support the Settlement Agreement. In fact,  
11 they have adopted a resolution that supports the  
12 Settlement Agreement. And if you give me a second or two  
13 I will get copies of that for you as well.

14 So you will see that in the letter that Chris  
15 Campbell, the attorney for Solvang, has indicated the  
16 city's support of Settlement Agreement. Resolution 03-652  
17 adopted approving the operation Settlement Agreement. So  
18 any protests that were filed with regard to the change of  
19 place of use, purpose of use petitions that were the  
20 subject of Phase 1, we believe have now been withdrawn.

21 So in addition to Issues 4 and 5, we think that  
22 Issues 6 and 6A have been resolved. And we also support  
23 the Bureau's contention that with regard to Issue 6B,  
24 which asks public trust impacts of the change of place of  
25 use, purpose of use petition, we think that that has been

1 resolved on the basis of the testimony which was  
2 undisputed that the change of place of use, purpose of use  
3 petition, if granted, will not alter the operations of the  
4 Cachuma Project. There won't be any additional  
5 diversions; there won't be any changes in releases over  
6 historic conditions. We think again that has been  
7 resolved.

8 Now with respect to the Issues 3 and 3A through 3D,  
9 which are the public trust issues, we are certain that you  
10 are going to receive testimony or at least comment this  
11 afternoon that those issues are not resolved, and we would  
12 tend to agree with that. Those are probably going to be  
13 the issues that will occupy the bulk of the proceedings  
14 that you will have before you when the hearing is actually  
15 conducted.

16 What we would suggest, though, is that in  
17 considering those issues, as you will do during the  
18 hearing, that you need to take into account not only the  
19 Settlement Agreement, but also the Biological Opinion that  
20 has been issued by the Marine Fisheries Service, Fishery  
21 Management Plan that has been approved and adopted and is  
22 being implemented by the member units. And in addition to  
23 that the various memoranda of understanding that have been  
24 entered into. The most recent one having a number of  
25 parties, including the Department of Fish and Game and



1 U.S. Fish and Wildlife Service, which supports and agrees  
2 to the implementation of the Biological Opinion.

3 So we think there are a number of documents which  
4 will come into play as you consider those public trust  
5 issues.

6 Briefly, dealing with the other issues that have  
7 been raised in your prehearing notice. We concur with the  
8 Bureau that we believe it is appropriate to allow changes  
9 in the witnesses that were previously designated by the  
10 parties. It's been three years. People have changed  
11 jobs. People have different assignments. We think it is  
12 totally appropriate to allow for changes in the witnesses.  
13 But we think those changes should be made and allowed only  
14 for parties who have filed notices of intent to appear.

15 As for the schedule for conducting the hearing, it  
16 is a little hard to estimate not knowing what kind of  
17 opposition, if any, we are going to receive or the Bureau  
18 will receive as part of the hearing. We think that  
19 because some of the documents are somewhat complex, that  
20 may be testified about during the hearing, some of the  
21 witnesses on direct may require more than 20 minutes. But  
22 we think that the Bureau, and we coordinated a little bit  
23 as you can imagine, could probably put on our case in  
24 chief within one to three days, depending upon the length  
25 of the cross-examination and the need for redirect

1 testimony.

2 You have also asked about any other appropriate  
3 procedural issues, and we think there are a couple of  
4 those that we would like you to consider. One is whether  
5 to allow additional parties to the hearing who filed no  
6 previous notice of intent to appear. Well, in your  
7 September 25th, 2000 hearing notice, you made it very  
8 clear notices of intent to appear had to be filed for both  
9 Phase 1 and Phase 2, that they were due on October 11th of  
10 2000. If they weren't submitted by that date, that was  
11 going to be treated as an intent not to appear by the  
12 Board. We think that that is the appropriate way to treat  
13 late filed notices. We have no objection to people who  
14 have filed late notices making a policy statement. We  
15 think that is reasonable enough. But to now have to face  
16 new parties at this late date we think would be unfair and  
17 inappropriate, and we think the Board ought to stick to  
18 the guns that it set forth in its earlier hearing notice.

19 We also have to question about how you're going to  
20 treat your CEQA document. The Board staff and the Board  
21 has decided it is going to prepare an EIR as part of the  
22 hearing process. And it is our sense that the hearing, we  
23 believe, should occur after the Draft EIR is out and after  
24 the comment period has been completed. We don't think,  
25 though, that there needs to be testimony presented at the

1 hearing beyond the written comments which you would  
2 receive as part of normal comment process. We don't think  
3 there needs to be oral testimony on the comments on the  
4 EIR at the hearing. We think that getting the DEIR out,  
5 getting the written comments in ought to be sufficient.  
6 If the Board wants to conduct a special proceeding to  
7 receive oral testimony, that is fine. But we think that  
8 having testimony on the draft EIR at the hearing really  
9 opens a Pandora's box and we don't think you need to do  
10 that. You should, obviously, take the written comments.

11 Finally, with regard to the issue of post hearing  
12 briefing, we have a few comments on that. We think that  
13 it is reasonable to expect that there will be post hearing  
14 briefing. We would propose a 15-page limit on briefs.  
15 Attorneys can sometimes get carried away without that kind  
16 of a limit. We think that the brief should be filed and  
17 sent to the Board relatively quickly. We would propose  
18 within 20 days following the availability of transcripts.  
19 And if there is an opportunity for reply briefs, we  
20 suggest that it be limited to five pages.

21 So with that, I will sit down unless you have  
22 questions.

23 H.O. SILVA: Staff, questions?

24 Thank you.

25 Art Kidman, Cachuma Conservation Release Board.

1 MR. KIDMAN: Thank you, Mr. Silva. My name is  
2 Art Kidman. My client is the Cachuma Conservation Release  
3 Board. The CCRB is, as Mr. Wilkinson mentioned, comprised  
4 of the four municipal water purveyors who are on the South  
5 Coast of Santa Barbara County. Together with ID 1, they  
6 comprise then the five member units of the Cachuma  
7 Project.

8 The CCRB is one of the settling parties. We concur  
9 entirely in the presentation that Mr. Wilkinson has given  
10 you. Let me just reiterate what I think are real key  
11 points in terms of what we would hope to have come out of  
12 the prehearing conference today and be part of the  
13 supplemental notice of hearing.

14 First of all, the parties should be limited to those  
15 parties who have filed a Notice of Intent to appear.  
16 There are certain parties on your list for a service who  
17 have asterisks. Those parties did not present notice of  
18 intent to appear on a timely basis. Those parties should  
19 be confined to the presentation of policy statements and  
20 not be allowed to participate in presenting a case in  
21 chief or cross-examination of witnesses.

22 The parties that did file timely notices of intent  
23 should be allowed to update their witness lists. As has  
24 been noted, we have had now nearly two years go by since  
25 the original notice of hearing and at least a year and a

1 half since we submitted the Notices of Intent to appear.  
2 Parties have changed very significantly, at least among  
3 the member units. I can say that for sure, and I believe  
4 that Reclamation has also experienced changes as your  
5 Board staff. And certainly the entire Board membership  
6 has -- well, with the exception of yourself. So we think  
7 that new witness lists should be permitted.

8 There are certain issues that should either be  
9 precluded. I don't know what is going to be presented by  
10 those who come after me. But the notice hearing and Order  
11 WR 94-5 are pretty clear that what we are talking about  
12 here are modifications in the terms and conditions for the  
13 operation of the Cachuma Project as those terms and  
14 conditions relate to downstream issues of water rights and  
15 public trust. So, obviously, there are a variety of  
16 environmental issues and other issues that can be raised  
17 by parties that have some relationship to the Cachuma  
18 Project, but don't have to do with the terms and  
19 conditions of these permits. And consequently, we think  
20 that things like that should there be some measures  
21 provided to transport steelhead trout around Bradbury Dam,  
22 that is not anything to do with the terms and conditions.  
23 It may be a perfectly legitimate environmental issue that  
24 needs to be addressed somewhere, but not before the State  
25 Water Resources Control Board. And we would like to be

1 able to make sure that there is some issue preclusion  
2 relative to that. And there are other types of issues  
3 that also don't relate to downstream water releases.

4 As Mr. Wilkinson has indicated, everybody has been a  
5 little bit mystified within the Cachuma Project ranks as  
6 to how the State Board, not what we call the 94-5  
7 hearings, how those hearings will relate to the CEQA  
8 process that has been initiated by the Board. And  
9 hopefully we will either get some clarification on that  
10 today or as a result of the supplement hearing notice, get  
11 some understanding of that. We believe that it would be  
12 important to have a draft document and all of the comments  
13 completed before the hearing is conducted, and probably  
14 before the hearing is actually noticed. And the sort of  
15 open sesame type of process that is envisioned under CEQA  
16 is not appropriate to be part of the due process. So  
17 while the two are going on, maybe simultaneously, they are  
18 related, obviously the Board needs to comply with CEQA in  
19 some form before it makes its -- before it takes action on  
20 what might be called a CEQA project. We concede that, but  
21 that the cross-examination of your EIR doesn't seem to be  
22 -- as would be allowed in a water right hearing, doesn't  
23 seem to be appropriate.

24 And lastly, there has been significant resolution  
25 and narrowing of the issues as a result of the Settlement

1 Agreement, and I might add for some emphasis, that Order  
2 WR 94-5 makes reference to a separate collaborative  
3 process besides what was characterized as Lompoc and CPA,  
4 as Mr. Wilkinson described it to. A separate  
5 collaborative process was envisioned under what we  
6 referred to the fish MOU, which was back in 1994, had just  
7 gone through its first chapter under a 1993 fish MOU.  
8 There were Chapters 2, 3, 4, and then ultimately there is  
9 now a chapter that has as an MOU that have been signed by  
10 many parties, most all of the water supply parties and all  
11 of the official State of California and federal government  
12 entities that are involved. And the resources issues have  
13 either agreed to that MOU or have agreed to a Biological  
14 Opinion that has been promulgated between the -- or after  
15 consultation between the Bureau of Reclamation and the  
16 National Marine Fisheries Service. And in addition to  
17 that, the parties have agreed to a Fish Management Plan  
18 which dovetails with the Biological Opinion. So I cannot  
19 represent to you and do not believe that all of the fish  
20 issues that may be within the scope of your hearing notice  
21 have been resolved by those things, because there are  
22 parties, there are advocates who did not become part of  
23 the Biological Opinion Fish Management Plan process. But  
24 a large number of the parties that were in dispute back in  
25 1990 when Chairman Don Maughan conducted the hearing on

1 this process and then again in 1994, parties that were in  
2 dispute are now in agreement even on the public trust  
3 issues.

4 So we think there has been a lot of issues that have  
5 been resolved. We think that there are some issues that  
6 ought not to be opened up at all because they are outside  
7 the scope of the original hearing notice. The parties  
8 should stand pat as they were in 2000, but the witness  
9 list should be allowed to be changed, and we need some  
10 clarification of how CEQA fits into this.

11 Thank you very much.

12 H.O. SILVA: Thank you.

13 William Hair, Cachuma Operations and Maintenance  
14 Board.

15 UNIDENTIFIED AUDIENCE MEMBER: No comment.

16 H.O. SILVA: Thank you.

17 Don Mooney, City of Lompoc. Is it Lompoc or Lompoc?

18 MR. MOONEY: The City. I believe Lompoc.

19 Somebody will correct me if I am wrong. Probably tell my  
20 client. I often refer to them as The City to be safe.

21 Again, my name is Don Mooney. I am an attorney  
22 representing the City of Lompoc. We are a signatory of  
23 the Settlement Agreement, and my comments will be very  
24 brief. But what I want to point out is the hearing notice  
25 that originally went out really dealt with two issues.



1 There is a lot of key issues identified, but there are two  
2 primary areas. That is the public trust issues and the  
3 water rights issues.

4 We believe -- and the City was the primary if not  
5 the only participant or protestant on the water rights  
6 issues. And to that extent the Settlement Agreement, we  
7 believe, resolves our concerns with regards to the water  
8 rights issues and the water quality issues as they pertain  
9 to water rights in terms of TDS, groundwater recharge. On  
10 that basis we would encourage the Board when they reissue  
11 the notice or amend the hearing notice, that Key Issues, I  
12 believe, 4, 5 and 6 have been resolved and the Board  
13 should take note of that in an amended hearing notice.

14 Thank you.

15 H.O. SILVA: Thank you.

16 Ali Shahroody.

17 MR. SHAHROODY: I would speak if necessary.

18 H.O. SILVA: Okay.

19 MR. SHAHROODY: Fine.

20 H.O. SILVA: Also, if necessary, Ernest  
21 Conant.

22 MR. CONANT: Let me just state briefly, Ernest  
23 Conant, representing the Santa Ynez Water Conservation  
24 District, sometimes referred to as the parent district.

25 The boundaries of the district encompass the --

1 essentially encompass the entire watershed downstream of  
2 Bradbury Dam. And the district is the entity through your  
3 prior orders that is responsible for ordering releases for  
4 the benefit of downstream water right holders.

5 We, of course, are a party to the Settlement  
6 Agreement and participated extensively in its drafting.  
7 And also I would add the other entities, principally Santa  
8 Ynez Water Conservation District No. 1, City of Buellton,  
9 City of Solvang, of course, City of Lompoc, whom you heard  
10 from, have all been in that loop and are in agreement with  
11 the Settlement Agreement.

12 So I think we have essentially, as Mr. Mooney just  
13 related, taken care of the water rights issues that were  
14 identified as Issues No. 4 and 5 in the prior notice along  
15 with Issue No. 6 dealing with the change in place of use  
16 and purpose of use.

17 So unless there are any questions, I will leave it  
18 at that and join in the comments of the four prior  
19 speakers.

20 H.O. SILVA: Thank you.

21 Harlee Branch, Fish and Game.

22 MR. BRANCH: Afternoon Vice Chair Silva.  
23 Harlee Branch with Fish and Game.

24 I should be fairly brief. Our overarching concern  
25 is basically that we get the opportunity to submit a

1 revised witness list. I think previous parties have come  
2 up here and expressed --

3 H.O. SILVA: There is no problem.

4 MR. BRANCH: We are basically going to delete  
5 two people and four.

6 H.O. SILVA: You made everybody happy.

7 MR. BRANCH: We really want to make clear at  
8 this point in time the Department is planning to put on a  
9 policy statement by one of its regional managers.  
10 However, our plan is sort of contingent on what ends up  
11 being in the EIR. If there is something, quote-unquote,  
12 unexpected in the EIR, we may put on a case with technical  
13 witnesses.

14 In regard to some other procedural issues, I think  
15 again I am echoing what people said before. We would like  
16 the EIR released before the hearing takes place so there  
17 is an opportunity for public comments. So we get enough  
18 time to perhaps put together an evidentiary case following  
19 the certification of the EIR.

20 Finally, based on some recent discussions between  
21 the Department and some other parties to the hearing, we  
22 wanted some clarification in regards to issue number  
23 three, which is the public trust resource questions, I  
24 think 3A through D.

25 Many of those questions are framed in terms of,

1 quote-unquote, protection of public trust resources. And  
2 there has been some discussion as to what exactly that  
3 means. Does that mean maintenance of the status quo,  
4 basically making things no worse, maintaining current  
5 populations or are we talking about recovery species?  
6 Because if protection means recovery, I think some of the  
7 parties to this hearing are going to have to go back to  
8 the drawing board and put on completely different cases.  
9 In any revised notice perhaps the Board could make that  
10 issue clear.

11 H.O. SILVA: We will look at that and do that,  
12 clarification.

13 MR. BRANCH: And I believe that is it.

14 Thank you.

15 H.O. SILVA: Thank you.

16 We have people by phone. Do you want to do that  
17 now? We have one other person. Linda or Karen.

18 MS. KRAUS: Linda, she will speak in  
19 conjunction with my testimony. I will start.

20 H.O. SILVA: Go ahead.

21 MS. KRAUS: My name is Karen Kraus. I am here  
22 on behalf of CalTrout, and I am joined by colleagues in  
23 Santa Barbara, Linda Krop and Brian Troutwine [phonetic].  
24 Linda will be addressing some of the items identified in  
25 the agenda for today's conference at the end of the

1 testimony.

2 I will just be going basically in order of those  
3 items that you've identified. With respect to whether any  
4 key issue have been modified or eliminated by the recent  
5 Settlement Agreement, CalTrout's position is that the  
6 Settlement Agreement does not resolve any of the key  
7 issues. Those issues identified in the notice for Phase  
8 2, both public trust issues and the downstream water  
9 rights issues, are interrelated. If we accept the  
10 Settlement Agreement as conclusive regarding even  
11 downstream water rights releases, we perpetuate the very  
12 same management approach that has the Lower Santa Ynez  
13 River since construction of the dam. That is  
14 appropriative water rights decisions made without  
15 consideration of public trust resources. This management  
16 approach is no longer valid under the National Audubon  
17 Decision from 1983. In that decision the California  
18 Superior Court held and clearly stated that the state has  
19 an affirmative duty to consider public trust resources as  
20 part of any appropriation decision and specifically noted  
21 that an appropriative water right system administered  
22 without consideration of the public trust may cause  
23 unnecessary and unjustified harm to the trust interests.  
24 At a minimum, however, CalTrout certainly does not believe  
25 that any of the public trust key issues identified in that

1 2000 notice have been modified, narrowed or eliminated in  
2 any way. The terms of the Settlement Agreement indicate  
3 that the signing parties agree to implement that agreement  
4 consistent with the Fish Management Plan and the  
5 Biological Opinion which have already been referenced here  
6 today for you. These terms are nothing new. They simply  
7 confirm what we know already at the time that the notice  
8 for the hearing was issued.

9 At that time both the Biological Opinion and Fish  
10 Management Plan were part of our universe regarding this  
11 hearing and we already expected that the parties would  
12 implement the Biological Opinion. It's federal law for  
13 the Bureau of Reclamation to follow the requirements  
14 issued in that Biological Opinion. We already expected  
15 that the parties to the Settlement Agreement would agree  
16 to implement the Fish Management Plan as they have already  
17 told you that the signatories to the Memorandum of  
18 Understanding that lead to the creation of that plan. So  
19 the only thing that this Settlement Agreement does is  
20 confirm what we already knew. The parties to the  
21 Settlement Agreement are all willing to live with the  
22 Biological Opinion and the Fish Management Plan.

23 If CalTrout felt that those documents sufficiently  
24 resolve the public trust issues confronting the Board in  
25 this case, we would not have filed a notice of intent to

1 appear in the first place.

2 THE COURT REPORT: Excuse me, I need a second  
3 to fix my machine.

4 H.O. SILVA: Go ahead.

5 MS. KRAUS: In fact, CalTrout does not believe  
6 that either of the documents at issue today do actually  
7 resolve the key public trust question that was identified  
8 by the Board in 2000. And that is what measures are  
9 necessary to ensure the protection of public trust  
10 resources. Neither document adequately addresses the full  
11 scope of public resources that were actually identified in  
12 the notice. That includes resources other than just  
13 steelhead.

14 In addition, CalTrout does not believe that either  
15 document is sufficient to support a decision by the Board  
16 that public trust resources will be protected.

17 The Biological Opinion was developed for a specific  
18 limited purpose, to determine whether operation of the dam  
19 under certain conditions proposed by Reclamation would  
20 result in what is termed jeopardy, jeopardizing the  
21 continued existence of the steelhead. The jeopardy  
22 determination is a determination that the proposed project  
23 will not make things worse for an already endangered  
24 species, and that is an important determination. It is  
25 important to ensuring the survival of the steelhead, but

1 it does not take the important next step. It does not  
2 identify the measures necessary to ensure that steelhead  
3 will be removed from the list of endangered species, and  
4 so it does not address that key issue raised in the notice  
5 of public hearing.

6 The closest the Biological Opinion does come to  
7 addressing these issues is in the conservation  
8 recommendations and, tellingly, these are not part of the  
9 Settlement Agreement.

10 The Fish Management Plan similarly has limitations.  
11 It's inadequate to support a determination by the Board  
12 that the public trust resources will be protected. In  
13 particular, this document, although it does identify many  
14 management actions for the lower river that will hopefully  
15 result in improved habitat and improved numbers of  
16 steelhead, does not include any measurable population  
17 based performance standards to evaluate the success or  
18 failure of the recommended actions.

19 The lack of these standards is not consistent with  
20 peer reviewed science and importantly for the Board.  
21 Without such standards the Board has no reasonable basis  
22 to gauge whether the plan's management actions will  
23 actually improve and restore steelhead population.

24 Protecting public trust resources is not just  
25 about making sure that things don't get worse, and it is



1 not just about improving them slightly. The objective of  
2 protecting public trust resources is to promote the public  
3 interest in those resources. And in this case that means  
4 ensuring the public's right to the fishery that once was  
5 and ensuring the ecological integrity of the Santa Ynez  
6 River providing food and habitat for species so that it  
7 functions as a healthy ecological unit.

8 Neither the Biological Opinion nor the Fish  
9 Management Plan are going to get us there.

10 And just following up an earlier comment, CalTrout  
11 does not believe that any issues are precluded by the  
12 notice in 2000. The questions that were raised for  
13 purposes of public trust resources, specifically questions  
14 3A and 3B were quite broad and don't preclude any items  
15 being raised in the hearing itself.

16 Regarding changes in witnesses, I echo what  
17 everybody else already told you. We would also like an  
18 opportunity to update our witness list. Several of our  
19 witnesses that were identified in our notice of intent to  
20 appear are no longer available. In addition, we would ask  
21 that submission of amended witness list be deferred until  
22 release of the draft EIR because that document will  
23 clarify and focus the issues that are going to be at play  
24 in the hearing itself.

25 On other procedural issues. We request that all

1 items related to these proceedings, including the Draft  
2 EIR, staff report, exhibits, anything else, we ask that  
3 they be made available on the Board's website. We do  
4 think that it appropriate to issue a new notice of hearing  
5 and invite parties to participate who may not have raised  
6 their hand in 2000. We think that it is appropriate given  
7 that we already know there is one party out there who does  
8 want to participate, and that is the National Marine  
9 Fisheries Service. A significant amount of time has  
10 passed since that notice was issued. And given that we  
11 have an imminent release of an EIR document coming out  
12 which will significantly clarify the issues that the Board  
13 is dealing with, we think it is very likely that that  
14 document will alert people who may not have been --  
15 thought their participation was warranted in light of the  
16 fairly broad questions raised in the notice of hearing  
17 itself.

18 CalTrout also requests that the hearing itself be  
19 held locally in Santa Barbara County. I think these  
20 issues are very significant to the local community and  
21 that would facilitate their ability to participate in this  
22 process. If holding the hearing locally is not feasible  
23 for the Board, we ask that at a minimum there be a public  
24 meeting prior to the hearing itself so that local  
25 interested parties will have an opportunity to address the

1 Board. And lastly on the miscellaneous category, we ask  
2 that the Board conduct a site visit to the Santa Ynez  
3 River to a location below the dam so that you all can view  
4 for yourself current management of the river; and we  
5 suggest that at the time of the visit flow releases should  
6 be no greater than 1.5 cubic feet per second at the  
7 Highway 154 Bridge. This is in accordance with current  
8 management requirements, and it is the minimum flow called  
9 for in the Fish Management Plan.

10 That concludes my comments. I will -- my colleague,  
11 Linda Krop, will address the schedule for the hearing and  
12 in particular some questions about the CEQA process.

13 H.O. SILVA: One comment you made about new  
14 parties, you would want to have new parties come in now  
15 and not just have policy statements made? You want to  
16 expand it.

17 MS. KRAUS: We think that new parties should  
18 be provided the opportunity to present a case in chief if  
19 they believe it is warranted.

20 H.O. SILVA: Thank you.

21 We have Linda on the speaker phone.

22 MS. KROP: This is Linda Krop from the  
23 Environmental Defense Center, Executive Director Chief  
24 Counsel.

25 Can you hear me?

1 UNIDENTIFIED VOICE: Yes.

2 MS. KROP: I kind of go in and out. Just yell  
3 if you can't hear me.

4 Thank you for the opportunity to participate in this  
5 prehearing conference. I am going to address the CEQA  
6 process, and previous parties have also asked for  
7 clarification. In addition to asking for clarification  
8 regarding the CEQA process. I would like to offer some  
9 recommendations that would provide for meaningful  
10 opportunities for comment and full disclosure to the  
11 public to the State Board members prior to decision  
12 making.

13 Some of my recommendations are as follows and these  
14 reflect the CEQA processes that we have participated in  
15 with other CEQA agencies. We would request that there be  
16 a public comment period, obviously, on the Draft EIR, and  
17 we would specifically request a little bit longer period  
18 than usual, given the complexity of these issues and the  
19 number parties involved. We would request 60 days to  
20 comment on the draft EIR. We would request that the State  
21 Board hearing actually be held following the release of  
22 the Final EIR as opposed to the Draft EIR, so that the  
23 public would have an opportunity to review all of the  
24 information and so would the State Board members, meaning  
25 that there would be an opportunity to have comments on the

1 Draft EIR and also be able to review the comments on the  
2 draft, the responses to the comments and the proposed CEQA  
3 findings. Those are all the CEQA documents that would  
4 have to be considered by the State Board and will have to  
5 be circulated for some kind of public comment.

6 We would recommend possibly holding a public meeting  
7 or workshop on the Draft EIR as another opportunity for  
8 the public to be involved in the process and to receive  
9 the information included in the draft. But for the State  
10 Board CEQA hearing it seems like the State Board would  
11 have to wait until the Final EIR, including the responses  
12 to comments, any proposed CEQA findings are available. So  
13 we are not quite sure how that would fit in with the  
14 drafting the order. We seek clarification on that.

15 If the Board wants to hold a hearing on the Final  
16 EIR and proposed findings separate from the draft order,  
17 that the hearing be held on the final EIR and CEQA  
18 findings and then that when the Draft Order is released  
19 that there be another comment period on the Draft Order.  
20 An alternative way to proceed would be for the Board to  
21 consider the Final EIR, Draft CEQA findings and a Draft  
22 Order all at the same time, and then the public could  
23 comment on the full package of information. And then we  
24 would agree with previous parties that it would be helpful  
25 to have a post hearing briefing schedule as well.

1           Those are our recommendations on the CEQA process.  
2           I would be happy to answer any questions that you may  
3           have.

4           H.O. SILVA: Thank you. None at this time.

5           First of all, let's get through all the witnesses and  
6           then we can --

7           Did you have a comment?

8           MS. DIFFERDING: Just one thing, if you could  
9           please spell your name for the Court Reporter.

10          MS. KROP: Linda, L-i-n-d-a; Krop, K-r-o-p.

11          MS. DIFFERDING: Thank you.

12          H.O. SILVA: Thank You.

13          Mark Capelli.

14          MR. CAPELLI: Good afternoon. My name is Mark  
15          Capelli. I am with the National Marine Fisheries Service,  
16          and we would like to provide some comments today regarding  
17          the issues that were outlined in the recent notice for the  
18          prehearing conference.

19          NOAA Fisheries has expressed an interest in these  
20          water rights hearings in a letter addressed to the State  
21          Board staff in 2001. That outlined some of the issues  
22          that are raised by this water right hearing. I won't go  
23          into that at all today. What I want to do today is talk  
24          about the four issue areas that were identified in the  
25          prehearing notice.

1           The first relates to the modification of key issues.  
2           The supposition that none of these key issues should be  
3           removed at this time. The public trust issues are not  
4           completely resolved by either the Settlement Agreement or  
5           Biological Opinion or the Fisheries Management Plan. The  
6           downstream water rights, appropriative water rights and  
7           groundwater rights are also unresolved simply because the  
8           public trust question hasn't been resolved and hasn't been  
9           answered.

10           The public trust interest in the water resources and  
11           the fishery resources of the Santa Ynez River are not  
12           limited to the area above the dam. They include areas as  
13           well as above. Those issues haven't been resolved.

14           With regard to the hearing schedule, we think the  
15           hearing should not be held until the Draft EIR has been  
16           circulated and there has been adequate time for public  
17           comments, and we would suggest at a minimum 60 days for  
18           that public comment.

19           With respect to the change of witnesses. NOAA  
20           Fisheries has submitted a notice of intent to appear by a  
21           policy statement. However, we have not had a chance to  
22           see the Draft EIR. And we would like to add witnesses  
23           that would provide material testimony on the issues raised  
24           in that EIR as well as in the issues identified in the  
25           existing hearing notice.

1           There is another procedural matter that has been  
2 discussed and we would like to let the Board know what our  
3 view of that is, and that is the way the material  
4 witnesses are organized for the actual hearing. If NOAA  
5 Fisheries presents material testimony, we would do so  
6 individually as a separate entity, not as part of a panel  
7 or organized presentation.

8           Those are the four key issues, and the position that  
9 we would like to inform the Board about. I think the most  
10 important, most fundamental is the question of adding  
11 additional witnesses and providing material testimony as  
12 opposed to a policy statement. I think there are  
13 compelling reasons why NOAA Fisheries should be party to  
14 this hearing. You have already heard the previous witness  
15 refer to the Biological Opinion, which will figure very  
16 heavily in the discussion of public trust interests, and  
17 how those resolve. As the author of that Biological  
18 Opinion we think we should be able to comment on it and  
19 comment on the way that opinion may be interpreted.

20           Additionally, we are just now completing an updated  
21 status review of the listed steelhead in Southern  
22 California and throughout the state, and there is  
23 information that will be available that is germane to the  
24 issues raised by this hearing and those matters we think  
25 should also be considered formally as part of this hearing



1 process.

2 So those are the points that we would like to make  
3 at this point. Again, NOAA Fisheries has a strong  
4 interest in these hearings, a strong interest in the Santa  
5 Ynez River, a strong interest in recovering steelhead in  
6 this system, and these hearings are an integral part of  
7 that in the plan and recovery process.

8 Thank you very much.

9 H.O. SILVA: Thank you. Any questions?

10 That's all the cards I have, a couple if necessary.  
11 Anybody else didn't fill out a card or is compelled to say  
12 something?

13 If not, what I would like to do, we had a number of  
14 issues brought up today, mostly process, but also related  
15 to the content of the hearing. What I would like to do,  
16 if you don't mind, is take a long coffee break, maybe till  
17 2:30. I would like to resolve as many of these as we can  
18 today. Some of them obviously require a little more  
19 discussion internally. I feel the majority of these we  
20 could probably resolve today.

21 I also want to give you information on what our  
22 proposal for a schedule, if everything goes according to  
23 plan, regarding the environmental document. And I will  
24 let you comment on what we say, so perhaps we can at least  
25 come to a common ground with some of these issues that we

1 all can agree today.

2 Is that okay for everybody?

3 Take a coffee break, and let's start promptly at  
4 2:30.

5 Thank you.

6 (Break taken.)

7 H.O. SILVA: Thank you all for coming back.

8 What I would like to do is first go over our  
9 tentative schedule for the environmental document and then  
10 how it impacts our hearing process, and I would like to go  
11 through all of the issues that were brought up and the  
12 ones that we feel we can resolve today, and then timing on  
13 resolving the rest.

14 First with respect to the schedule, again this is  
15 the environmental document, so we have to put a lot of  
16 caveats on this. Our intent, our hope is to have both the  
17 release of the draft environmental document and the same  
18 day, July 1st, and on the same day have the release of the  
19 hearing notice.

20 We do agree with the 60-day comment period. And so  
21 by our calculation it would be August 29th, close of  
22 business, would be 60 days to receive comments, which is  
23 also it's a Friday, so it sort of makes sense. If I am  
24 wrong, let me know. Obviously, we will adjust it once we  
25 get the final hearing notice sent out.

1           Given that schedule, we have already set up just  
2 because of our internal issues with getting rooms here in  
3 the building. We set up September 8th, 9th and 10th as  
4 the first three days of the hearing. It would be in  
5 Sacramento. And again that is just because we need to  
6 have advance time to get rooms here in this building.  
7 And, again, that could change if things change and the  
8 environmental document, and that pushes everything out.  
9 Right now those are the tentative schedules.

10           Let me go over the first two items, which I think  
11 are the most important that were brought up this  
12 afternoon. One is the issue of whether to allow new  
13 parties to come into the process, and the other one, the  
14 settlement of issues, in other words, whether Issues 3, 4  
15 and 5 have been settled or not.

16           First with respect to the new parties. It is a big  
17 issue. I don't want to decide that today. I am concerned  
18 that we had sort of a late request. And given the  
19 importance of this issue, and on the other hand given the  
20 importance of the parties requesting the NOI -- again, I  
21 don't want to make that call today. I want to consult  
22 with some of my colleagues on the Board and see where we  
23 go on that. But given the importance, I think I want to  
24 have that party submit a request within a week. That  
25 would be May 30th -- I'm sorry, May 20th, within a week,

1 May 20th, to submit a request. So that gives us time to  
2 look at that. And also I want to get an early start on  
3 responding also to settlement of the issues because I  
4 think parties would want to have our early response on  
5 that issue. So once we receive that request from any new  
6 party or parties, we want to resolve both of those issues  
7 by May 30th.

8 So we will get a letter out to the parties, I will  
9 talk about it later, electronically also by May 30th on  
10 those two issues. My feeling, those two are the most  
11 important ones that have been brought up today. I am  
12 assuming that all of you would want to have a response  
13 from us as soon as possible on those two issues.

14 Let me go through some of the other -- first of all,  
15 why don't I break it up. Should I go through all issues  
16 or do you want to comment on those two right now?

17 First of all, I think we've covered the 60-day  
18 comment period after the EIR, covered that earlier. With  
19 respect to having a hearing after the Final EIR, I don't  
20 think we want to think that far out. We're assuming that  
21 we are going to have to be holding hearings on the Final  
22 EIR anyway, regardless of this hearing or not. So we will  
23 just play it by ear regarding that issue.

24 On the electronic release of information, staff has  
25 said they are willing to do it. However, it is a two-way

1 street. It is my understanding we would expect if we do  
2 it for the parties, we need information from the parties  
3 electronically so we he can get enough information  
4 likewise. I don't know how we do that.

5 Do we put that in a hearing notice of what kind of  
6 format we need electronically?

7 MS. DIFFERDING: In the last hearing where we  
8 tried to go as electronic as possible, it was an option  
9 for the parties to submit things electronically, if they  
10 were capable of doing that. We encouraged them to. But  
11 they also had the option of submitting things hard copy if  
12 they didn't have the ability to submit electronically.  
13 And then we posted the exhibits on a website that was  
14 accessible to the parties. I guess it is up to the  
15 division whether they have the resources to do that in  
16 this hearing.

17 Gita is nodding probably yes.

18 H.O. SILVA: Again, it is a two-way street.  
19 We would probably ask you for submittals in electronic  
20 format if feasible.

21 On the issue of site visit, I'm all for it. As a  
22 matter of fact, what we will commit to do is have some  
23 tentative dates, if not a final date, for a site visit  
24 once we have the July 1st release of the hearing notice in  
25 the area.

1           The issue of a local meeting, we will decide that  
2 later. I have mixed feelings about it. I think a site  
3 visit is doable. I am not sure about a local meeting.  
4 But we will announce that in the hearing notice on July  
5 1st.

6           On the issue of the briefs, the final briefs, we  
7 also agree we would like to have limitation on pages. I  
8 think somebody brought up 15 pages. If you want to  
9 comment on that, that would be great. We have done  
10 anywhere from 10 to 20, I think, in the past. Actually,  
11 what is more important that that is the kind of type you  
12 use. I think before we pegged it some court.

13           MS. MROWKA: We have done so, yes.

14           H.O. SILVA: We will put that in the hearing  
15 notice, but if you want to comment on that that is fine.  
16 I think that is it, unless I missed something. You can  
17 also let me know if I missed any issue that was brought  
18 up. I think that is the ones that I wrote down. I will  
19 welcome any comments, yea or nay, or indifference on any  
20 of these issues. If I don't hear any comments, that means  
21 you are all in agreement with what I said:

22           MR. PALMER: Steve Palmer. The question from  
23 Bureau was with regard to your statement about the local  
24 meeting. Was that intended to be -- the question I  
25 thought was to hold the hearing locally, just no to that.

1 Are you thinking of a workshop-type setting there or is  
2 this something more --

3 H.O. SILVA: What I said was on the site visit  
4 I said okay. We've done those in the past. Actually they  
5 have been very helpful to the hearing officer and staff.  
6 We will have a date, hopefully certain by July 1st, either  
7 a tentative date or set date for that by the July 1st  
8 hearing notice.

9 On the local meeting I thought the request was to  
10 have part of the hearing or all of the hearing in the  
11 local area. Quite frankly I am leaning against that, but,  
12 again, we will decide by July 1st.

13 MR. KIDMAN: Maybe you could tell us a little  
14 bit about the rules for the site visit. Once before we  
15 encountered that on the Palma, and that one ended up being  
16 not done. So there is a lot of concern about who has  
17 access to the Board and --

18 H.O. SILVA: Let me go through that. That is  
19 a good question.

20 MR. KIDMAN: Also relative to the site visit,  
21 I believe there would be a great deal of concern over the  
22 mandatory releases and what you see by doing that depends  
23 on the time of the year and a lot of factors.

24 H.O. SILVA: I did forget about that one  
25 comment. That is a great question. In the past we have

1 done it -- I think we have done it three or four times at  
2 least that I have been on. Actually, it worked quite  
3 well. We do have to post them as a Board meeting in case  
4 we get three Board Members. We also do it also to invite  
5 the public. The public is welcome. The only caution,  
6 obviously, is the ex parte communication. So when we go  
7 out to the site we can't talk about the project itself,  
8 data regarding the project, but nothing regarding the  
9 hearing issues, per se. So it is a little touchy, but we  
10 found in the past it has been very helpful. It is  
11 manageable. It usually takes staff and an attorney to  
12 keep us honest. Certainly the public is welcome. What we  
13 try to do is have -- we will stop at different places and  
14 allow everybody to interact at that point. So everybody  
15 is aware of what everybody else said during the process.  
16 If you orchestrate it right, it is very manageable, and  
17 it's worked out very well in the past.

18 With regard to the mandatory releases, I don't want  
19 to go there. I'd rather just show up. It's going to be  
20 hard enough to set up the site visit without getting to  
21 those kinds of -- and I am not sure we have the authority,  
22 anyway, to require it. I don't really want to go there.  
23 So I guess I will rule on that. We are not going to  
24 request any mandatory releases, just set up a date and,  
25 again, hopefully, have a final date for you by July 1st.



1 We will set it up with the local agencies to make sure  
2 they are available.

3 Did you have a question on that?

4 MS. KRAUS: Karen Kraus for CalTrout. Just one  
5 clarification on the release in place. What we wanted to  
6 make sure is that it would be in accordance with the  
7 current management requirements at the time of the year  
8 that you are visiting. We suggested 1.5 cfs because we  
9 know that that is also one of the minimum flows in the  
10 Fish Management Plan and thought that would be helpful.  
11 But at a minimum we just wanted to make sure you're seeing  
12 an accurate representation of how the river is currently  
13 managed.

14 H.O. SILVA: Again, I will leave it up to  
15 local agencies, what they want to do when we are there.  
16 Again, I don't think I want to get into a situation of  
17 having them doing something special for us. I just want  
18 to show up and look at their operations. That is the  
19 intent, is to look at the sites on the ground and see what  
20 happens on the ground.

21 We don't want to get into the issues, that is what I  
22 am concerned about. When we get out there, I don't -- it  
23 is touchy. Realize it is very touchy about getting  
24 information versus getting into the merits of the issues.

25 MR. WILKINSON: Mr. Silva, Greg Wilkinson. We

1 didn't hear a comment from you on the issue of new  
2 witnesses from --

3 H.O. SILVA: I'm sorry. That was a no  
4 brainer. We left that one out. We have no problem. We  
5 are going to go with that. Changes in your number of  
6 witnesses and who they are.

7 MR. WILKINSON: Did you also intend to allow  
8 comment on some of the witnesses who spoke after we did  
9 with regard, for example, with the issue of whether  
10 certain issues have been resolved. You have heard enough  
11 on that at this point or would you like some comment on  
12 that?

13 H.O. SILVA: I think we've heard enough. I am  
14 pretty aware of the issues. I think we can make a call  
15 without that.

16 Any other clarifications, comments, questions on the  
17 process?

18 Well, again, thank you for your comments. This  
19 really has helped.

20 MR. BLUM: This is Joe Blum, NOAA Fisheries.  
21 Do you want NOAA Fisheries to send the request solely to  
22 the Water Board or to all parties?

23 H.O. SILVA: To all the parties, please.

24 MR. CAPELLI: We want to make sure we have a  
25 complete list of the parties.

1 H.O. SILVA: Why don't you contact our staff  
2 right after the meeting. They can get it to you.

3 MS. MROWKA: Mr. Silva, it is on the website.

4 MR. CAPELLI: So we can use that as a list?

5 H.O. SILVA: Correct.

6 Any other things to be brought up?

7 MS. KRAUS: Karen Kraus for CalTrout. You may  
8 have addressed this when I was trying to deal with the  
9 phone issue. It sounds like there will be a 60-day public  
10 comment period on the Draft EIR and then a notice issued  
11 for the hearing.

12 H.O. SILVA: What I said was that the Draft  
13 EIR we hope will come out July 1st and the same day we  
14 will have a hearing notice come out.

15 MR. KRAUS: My question was, when are we  
16 required to submit written testimony and other exhibits  
17 for the hearing?

18 H.O. SILVA: That will be in the hearing  
19 notice.

20 Thank you very much, and the prehearing is  
21 adjourned.

22 (Prehearing adjourned at 2:50 p.m.)

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REPORTER'S CERTIFICATE


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STATE OF CALIFORNIA                    )  
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I, ESTHER F. SCHWARTZ, certify that I was the official Court Reporter for the proceedings named herein, and that as such reporter, I reported in verbatim shorthand writing those proceedings;

That I thereafter caused my shorthand writing to be reduced to printed format, and the pages numbered 3 through 51 herein constitute a complete, true and correct record of the proceedings.

IN WITNESS WHEREOF, I have subscribed this certificate at Sacramento, California, on this 30th day of May, 2003.

  
\_\_\_\_\_  
ESTHER F. SCHWARTZ  
CSR NO. 1564