

BEFORE THE  
CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

Board Meeting Item Four: )  
Consideration of a Proposed )  
Resolution to Adopt )  
Amendments to the Water )  
Quality Control Plan for the )  
San Francisco Bay/Sacramento- )  
San Joaquin Delta Estuary )  
and Adopt the Final )  
Substitute Environmental )  
Document )  
\_\_\_\_\_ )

JOE SERNA, JR.-CaleEPA Building

COASTAL HEARING ROOM

1001 I STREET

SACRAMENTO, CALIFORNIA

Wednesday, November 7, 2018

9:47 A.M.

**Volume 2**

Reported by: Gigi Lastra

APPEARANCES

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

Division of Water Rights

Board Members Present:

Felicia Marcus, Chair

Steven Moore, Vice Chair

Dorene D'Adamo

Tam M. Doduc

E. Joaquin Esquivel

Jeanine Townsend, Clerk to the Board

STAFF PRESENT

Eileen Sobeck, Executive Director

Jonathan Bishop, Chief Executive Director

Eric Oppenheimer, Chief Deputy Director

Andy Sawyer, Assistant Chief Counsel

Phil Crader, Division of Water Rights

Erin Foresman, Division of Water Rights.

Tina Cannon Leahy, Office of Chief Counsel

Erin Mahaney, Office of Chief Counsel

Yuri Won, Office of Chief Counsel

ALSO PRESENT:

PUBLIC COMMENTERS

Adam Gray, Assemblymember, 21st District

Charlies Bonham, California Fish & Wildlife Department

Karla Nemeth, Department of Resources

APPEARANCES (Cont.)

John Buckley, Central Sierra Environmental Resource Center

Nick Blum, Modesto Irrigation District Board

Doug Obegi, Natural Resources Defense

Chris Shutes, California Sportfishing Protection Alliance

Michael Carlin

Jay Ziegler, Nature Conservancy

Brian Johnson, Trout Unlimited

Gary Bobker, Bay Institute

Ben Eichenberg, San Francisco Baykeeper

Cindy Charles, Golden West Women Flyfishers

Thaddeus Bettner, Glenn-Colusa Irrigation District

Rebecca Akroyd, San Luis and Delta Mendota Water Authority

Maryann Warmerdam, Rural Counties

Gail Delihant, Western Counties Growers Association

Rachel Zwillinger, Defenders of Wildlife

Michael Frantz, Turlock Irrigation District

Peter Drekmeier, Tuolumne River Trust

Phil McMurray, Merced Irrigation District

John Mensinger, Modesto Irrigation District

Teresa Hardy, Sierra Club Water Committee

Chris Scheuring, California Farm Bureau Federation

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P R O C E E D I N G S

9:47 A.M.

SACRAMENTO, CALIFORNIA

WEDNESDAY, NOVEMBER 7, 2018

CHAIR MARCUS: All right. Sorry for the delay, I was trying to figure out how to proceed this morning in a way that's most useful to people and their time. So forgive me if it's -- we take -- we may take more breaks than we normally do and it may -- you'll have to bear with us as we just figure out how to go with the flow and what -- and what we hear. And I'm actually looking forward to hearing from quite a few people this morning on a number of items.

So sorry. Good morning. And to many of you welcome back. I'm Felicia Marcus, as many of you, chair of the State Water Resources Control Board.

With me are my fellow board members. To my left, Vice Chair Steven Moore who apparently did a rendition of the three main points yesterday that will stay in the ages or go down in the ages but I have to watch the tape to see it because I wasn't able to be here.

To his left, Board Member Deedee D'Adamo.

1 To my right, Board Member Tam Doduc.

2 And to her right, Board Member Joaquin

3 Esquivel.

4 Before we get to today's meeting, I want

5 you to take a minute for those of you have been

6 here a million times, I could say recite after

7 me. Although you probably can't recite after

8 what Steven said yesterday. And don't listen to

9 that.

10 Please pick the -- look and see where the

11 exit nearest you is and if you hear an emergency

12 sound, it's probably an emergency or a drill.

13 Please gather your stuff and your friends and

14 proceed carefully out of the building, down the

15 stairs. If you can't use the stairs, someone

16 will come and help guide you to a protected area.

17 And there are areas on every floor that are fire

18 rated for quite some time.

19 We meet over in Cesar Chavez Park near

20 10<sup>th</sup> and J. If you want to wait with us for the

21 all clear, that would be great.

22 Also, please try to silence your

23 noisemaking devices. I -- for some reason, it's

24 been bedeviling me even I put on do not disturb.

25 So I think I have it right, so my apologies if it

1 buzzes through.

2 Restrooms are out the door to my left and  
3 then down a hall.

4 And I know someone told me where the  
5 over -- do we have overflow folks or?

6 MS. TOWNSEND: Mezzanine floor, right  
7 here.

8 CHAIR MARCUS: On the mezzanine floor.  
9 And we have videos up there. Okay. Terrific. I  
10 just -- I know someone e-mailed me that back, but  
11 I didn't get to check.

12 So forgive me, this is the continuation  
13 of a hearing so I need to go through perhaps more  
14 than folks might like, but I do think it's  
15 important to remind people of the reasons that  
16 we're here.

17 We started this particular meeting on  
18 August 21<sup>st</sup> and 22<sup>nd</sup> and continued it to today.  
19 Our purpose is to consider adopting amendments to  
20 the Bay-Delta Water Quality Control Plan that  
21 would update water quality objectives that  
22 address flows in the lower San Joaquin River for  
23 Fish and Wildlife beneficial uses and salinity  
24 levels in the southern delta for agricultural  
25 beneficial uses as well as programs of

1 implementation for these objectives.

2           At the same time, we're considering  
3 adoption of the Proposed Final Substitute  
4 Environmental Document which is the environmental  
5 analysis that supports the proposed amendments.  
6 Substitute Environmental Document is a mouthful,  
7 so during this meeting, we'll refer to it as the  
8 SED.

9           Many of you were here for the first two  
10 days of this particular meeting as well as the  
11 meetings we've had in the past. Thank you for  
12 your participation, those were a particularly  
13 good two days. And thanks for taking the time to  
14 join us again today. We heard a lot of  
15 thoughtful discussion, even more thoughtful than  
16 we had heard before and a healthy exchange of  
17 information.

18           And I hope that those who couldn't be  
19 here in person were able to follow on our  
20 webcast. If you missed it and you're interested  
21 in watching that meeting, both days are available  
22 from the home page and the State Water Board's  
23 website. They are listed chronologically under  
24 the board link on the page titled videos. If you  
25 have trouble finding them, our staff will be



1 happy to provide you with the link. And we have  
2 staff up here -- do we have staff out in the  
3 hallway as well? In the overflow?

4 MS. TOWNSEND: Yes, we do.

5 CHAIR MARCUS: If you have trouble  
6 finding someone to talk to you, just talk to  
7 Ms. Townsend, she'll find you someone.

8 This meeting is being held in accordance  
9 with the public notice dated July 6, 2018 as  
10 revised on August 15<sup>th</sup>, 2018. That August 15<sup>th</sup>  
11 notice indicated that final action by the board  
12 on this item would be continued to a future board  
13 meeting. The board issued the notice after very  
14 careful consideration and in recognition of the  
15 complexity of the issues before us.

16 We also hoped that the additional time  
17 would prove useful to the parties involved in  
18 discussions on voluntary agreements. The board  
19 recognized and still recognizes the voluntary  
20 agreements to improve ecological conditions can  
21 provide more durable solutions by bringing  
22 together other tools to the table such as habitat  
23 restoration of many kinds. There's more than  
24 that. We look forward to hearing more about  
25 progress on voluntary agreements today.

1           And most important I want to emphasize  
2 that even if the board should act today, there's  
3 still good opportunities for voluntary agreements  
4 in the future. It is a part and parcel of the  
5 construct of the proposal.

6           As you're no doubt aware by now, however,  
7 we received a letter late yesterday from the  
8 Governor and the new Governor-Elect asking for  
9 more time to work on those settlements prior to  
10 action. We're going to need to consider this  
11 request in the course of today's work as my  
12 colleagues and I get the chance to discuss it and  
13 hear from the administration and stakeholders  
14 today. And we can only do it in public -- in a  
15 public meeting.

16           So bear with us. As I've said before,  
17 this is our only chance to talk to more than one  
18 other board member and on this particular topic.  
19 Because it's a continuation, we need to discuss  
20 it and we should discuss together but we're going  
21 to want to hear from the administration with a  
22 little more illumination.

23           And we're going to want to hear from the  
24 stakeholders as well in terms of their thoughts  
25 on that request and what can be accomplished in

1 that period of time before I think we consider  
2 what we ought to do.

3           Since today is a continuation of the --  
4 well, sorry, let me move back and make sure there  
5 are things I have to say versus just the things I  
6 want to say.

7           Consideration of today's action also  
8 comes after significant public engagement,  
9 including multiple opportunities for written and  
10 oral comments. These included five earlier days  
11 of public hearing and a six-month written comment  
12 period on the draft plan amendments and draft  
13 recirculated SED and two days of oral comments  
14 and a three-week written comment period on  
15 changes to the draft plan amendments as reflected  
16 in the Proposed Final Plan Amendments that we  
17 made available when the July 6 notice was  
18 released.

19           Since today is a continuation of the  
20 August 21<sup>st</sup> and 22<sup>nd</sup> meeting days where all of the  
21 board members were present, it will not be  
22 helpful to repeat previous comments or to make  
23 new comments on the older documents. We're not  
24 accepting further written comments, and the oral  
25 comment period on the Proposed Final Amendments

1 closed at the end of the August 22<sup>nd</sup>, 2018  
2 meeting.

3           There are some things I know I need to  
4 say but I'm going to hold them until after we --  
5 we consider the request. Let me make sure I have  
6 everything said. Please be aware the meeting's  
7 being recorded so it's also important to speak  
8 into the microphone. That, as many of you know  
9 from having been here before, that means speak  
10 close enough for it to be picked up but not so  
11 close that it picks up the Ps with a pop pretty  
12 much.

13           Many of you have filled out the blue  
14 speaker cards, we appreciate that. I'm actually  
15 at the -- before we go to public comment, I'm  
16 going to give these back to -- back to the board  
17 secretary so that you're going to -- the clerk --  
18 so that you have a chance, these are public  
19 comments on the Plan. I anticipate we will also  
20 have public comments on the request and that  
21 may -- it may not be as efficient to just go  
22 through every card we have here. Or, I'm just  
23 thinking on the fly, I could go through and then  
24 people could decide to come up if they want to  
25 comment on the request.

1 UNKNOWN SPEAKER: That's all.

2 CHAIR MARCUS: Whatever? All right.

3 Let's see, I may -- it's one of those things I  
4 may have to take another break on. Okay.

5 When we do get to those cards, I'll take  
6 them roughly in the order received. And that  
7 roughly is just sometimes people need to leave,  
8 particularly as the day goes on. But I take them  
9 roughly in the order received which should help  
10 you have a sense of when you'll be called. And  
11 I'll call people five cards in advance so they  
12 have a sense of where they are.

13 So I think what we'll do is we'll start  
14 at the request of the California Natural  
15 Resources Agency. We'll have a presentation from  
16 the Departments of Water Resources and Fish and  
17 Wildlife on the status of voluntary settlements  
18 and the request before us. We then have to  
19 consider that request, and I'm going to -- as I  
20 said, I'd like to hear from the parties to those  
21 conversations and allow for some public comment  
22 here.

23 After the public comment, board members  
24 will discuss any motion on the proposal further.  
25 I'll take a moment for board members after the

1 request, but I anticipate that we will have some  
2 comments, we will hear from the public and then  
3 we'll have discussion amongst ourselves. As I  
4 said, we may also take breaks to allow staff to  
5 develop language depending on the nature of our  
6 discussion and the ideas presented, either on the  
7 request or on eventual plan amendments.

8           And should we decide to consider final  
9 action today, we'll also hear public comment, of  
10 course, on that final action which will proceed  
11 in a similar way. Sorry, that's a little  
12 disjointed, but that's basically how we'll handle  
13 it procedurally.

14           But before we begin, I'd still like to  
15 say a few words about why we're here today, to  
16 remind people of that. And acknowledge the  
17 concerns that are being expressed across the  
18 spectrum of people about whether what's proposed  
19 goes too far or doesn't go far enough.

20           As I've said before, this is really hard.  
21 Anyone who comes and says that it's simple one  
22 way or the other clearly doesn't understand it  
23 and clearly doesn't understand the legitimate  
24 concerns that have brought us here on all sides.

25           The Delta's important to all of us and

1 the whole watershed is. And science has shown  
2 for far too long that the Delta is in an  
3 ecological crisis. Addressing this crisis means  
4 changes to how we manage water, and we have to  
5 figure out how to be more precise in managing  
6 water for the ecosystem, for farms, and for  
7 communities, and how to make each drop count for  
8 as much as we possibly can for multiple societal  
9 interest.

10 We also have to figure out how to do it  
11 together in a transparent and more collaborative  
12 way which may be even harder than the science.  
13 Today isn't about detailing exactly how we get  
14 there but it's about moving that ball forward.  
15 Coming to a decision has been far too many years  
16 in the making. And while it's an important step  
17 to getting the Delta ecosystem on a path to  
18 recovery, it's still just the beginning.

19 If the board decides to act today, we'll  
20 establish a framework with many opportunities  
21 during implementation to refine the action and  
22 work together. I know this is not how it's been  
23 framed by others, but it has always been our  
24 intent.

25 If we don't act today, we will reconvene

1 in approximately 30 days with the same mission  
2 and the same determination and potentially a  
3 little further ahead. We're in a new era where  
4 we can't fight for 10 or 20 years over a static  
5 plan on paper that sets rules by calendar and  
6 then walk away for another 10 or 20. We need to  
7 have a new framework for constant engagement and  
8 evolving work using newer tools and technology  
9 along with a healthier dose of transparency and  
10 real rewards for collaboration.

11 I also want to emphasize that the  
12 proposal before us to begin with represents a  
13 compromise. In 2009, the legislature passed the  
14 Delta Reform Act which required the board to  
15 conduct a public process to identify the flows  
16 that would be necessary in the Delta ecosystem if  
17 fishery protection was the sole purpose for which  
18 the waters were used. Specifically that report  
19 suggests 60 percent unimpaired San Joaquin River  
20 inflow from February through June.

21 We've acknowledged that the Delta Flow  
22 Criteria Report only represents one of many  
23 factors that we need to balance. In considering  
24 potential changes to the Bay-Delta objectives, we  
25 must take into account past, present, and



1 probable future beneficial uses of water,  
2 economics, and other considerations. That's part  
3 of what makes it so hard.

4           The comments and concerns you've raised  
5 are really valuable parts of the balancing  
6 process and it was important to hear from as many  
7 of you as possible. And to help make that  
8 possible, we had numerous public meetings and  
9 provided several lengthy public comment  
10 opportunities including, as noted above, a  
11 historic six-month period for written comments,  
12 the longest in the state board's history.

13           We've heard equally and heard heartfelt  
14 concerns about the potential impacts of these  
15 changes on the individual people, farms,  
16 businesses, and communities of California, and  
17 we've acknowledged those concerns. We heard  
18 equally heartfelt concerns about the potential  
19 impacts of not acting on the rivers and the  
20 Delta, on fisheries, on Native American life  
21 ways, on the livelihoods of fishermen and  
22 fisherwomen, on our recreational economy, and on  
23 the threat of draconian regulatory restrictions  
24 on water diversion and response to endangered  
25 species issues. We also acknowledge those

1 concerns and they drive us as well. They're all  
2 valid, this is just hard. And it requires a  
3 sturdy constitution and a healthy dose of empathy  
4 for people and for nature as well as the  
5 creativity to navigate it. And that's the ball  
6 we need to keep our eye on as we move forward.

7           Now I think I want to turn to the  
8 representatives from the Natural Resources Agency  
9 to start. And again, forgive me if I stop and  
10 start and have different breaks because it has  
11 been a moving -- things are moving in interesting  
12 and different ways and so just trying to adapt,  
13 take it in, and consider it all fairly.

14           Thank you. Thank you for coming. Thank  
15 you for your efforts over time, and eager to hear  
16 how you belief -- how you believe it's going.

17           MR. BONHAM: Good morning. It's true, my  
18 name's Chuck Bonham and I'm the director of the  
19 California Department of Fish and Wildlife.

20           CHAIR MARCUS: That is true.

21           MR. BONHAM: True.

22           CHAIR MARCUS: True.

23           MR. BONHAM: I suppose this morning all  
24 eyes are on us. I'm going to use simple  
25 language. I want to cut through the noise. I'm

1 going to go slow and I will be deliberate because  
2 in this situation, words really matter.

3           This is it. No more time beyond the next  
4 35 days. The Chair referenced a letter. I would  
5 like to read from that letter so that all the  
6 eyes on us understand something that has happened  
7 and is pretty remarkable.

8           Yesterday, Chair Marcus, you received a  
9 letter from Governor Brown and our now Governor-  
10 Elect Newsom. Among other things it says, quote,  
11 "We respectfully request a postponement of this  
12 item until December 12<sup>th</sup>, 2018."

13           Second, it says, "During this time, we  
14 pledge to actively and meaningfully engage to  
15 bring this vital matter to a successful closure."

16           Third, it says, "We agree that the need  
17 to improve our aquatic ecosystems is urgent. A  
18 lasting and well-thought-out solution will  
19 benefit all Californians and our environment."

20           As the director of the California  
21 Department of Fish and Wildlife this morning, I  
22 ask you for this limited continuance. It's the  
23 right thing to do. Those three parts of this  
24 letter are amazing. It asks for a limited  
25 continuance until December 12<sup>th</sup>. I'm authorized

1 to testify before you this morning that the Brown  
2 administration will not seek another delay.

3           Second, the Governor and Governor-Elect  
4 are the right leaders at the right time in the  
5 most amazing state in the United States of  
6 America. They are bold, they know how to  
7 complete bold things.

8           CHAIR MARCUS: Oh, I thought you said  
9 old, I knew that had to be wrong. Sorry.

10           MR. BONHAM: Going slow and deliberate.

11           CHAIR MARCUS: Sorry.

12           MR. BOHNAM: Because words matter.

13           CHAIR MARCUS: They are bold, yes. Thank  
14 you. To boldly go.

15           MR. BONHAM: They do amazing things. In  
16 their letter to you, they've given you a personal  
17 pledge about their engagement in the next 35  
18 days.

19           Third, the Governor and the Governor-  
20 Elect agree with the need to improve our aquatic  
21 ecosystems and that is an urgent need.

22           Let me anticipate a couple questions.  
23 Maybe you're skeptical. Maybe some of us are  
24 cynical. I've been around this rodeo a long time  
25 like you. I was here on August 22<sup>nd</sup>. One of you

1 may be getting ready to ask me, what's changed?

2 I think three things have changed. In  
3 the last two months since you gave us additional  
4 time, in my professional judgment, we've made  
5 more progress than in the prior two years  
6 combined. You'll have to take me at my word. I  
7 know that's a leap of faith and it relies on  
8 trust.

9 Second, this letter, it speaks for itself  
10 as do my comments a moment ago. Third, the Brown  
11 administration will not seek another delay. Are  
12 these issues easy? Absolutely not.

13 Let me end with a few thoughts that are  
14 just from my heart and then ask Director Nemeth  
15 to correct any errors. It's okay to care about  
16 agriculture in our rural communities. It's okay  
17 to care about salmon, rivers, and the  
18 environment. In fact, I've dedicated my entire  
19 professional career to do that. Of course water  
20 is essential to these values. It's okay to reach  
21 across historical divides and forge solutions.  
22 And I think me being here today puts at risk some  
23 friendships I count on dearly in the  
24 environmental community, but I understand that.  
25 It's also okay to give in order to get.

1 Compromise makes the world go around, especially  
2 in our infamous water wars.

3           You have incredibly hard jobs. You're an  
4 independent board. Your charge is to figure out  
5 the wise balance beneficial use of water. It's  
6 vital to all, fought for by many, including me.  
7 This is profoundly serious business. I trust in  
8 your process, I trust in your judgment, today  
9 it's your decision.

10           Chair Marcus, I realize the difficulty  
11 you face providing over this fractious argument  
12 and these polarized positions. In the most  
13 important part of my heart, I wish many people  
14 had not said the things they've said about you in  
15 an ad hominem way.

16           CHAIR MARCUS: Comes with the territory.

17           MR. BONHAM: So thank you for your  
18 service. The time is right now. A further  
19 limited continuance will greatly assist us in  
20 getting this done. That's my request to you as  
21 director of the California Department of Fish and  
22 Wildlife. And with that, let me pause.

23           MS. NEMETH: Good morning, Chairwoman  
24 Marcus and members of the board. My name is  
25 Karla Nemeth, I'm the director of the Department

1 of Resources.

2           And in all seriousness, I think you can  
3 probably see why Chuck is a good person to  
4 follow, but he's also a tough act to follow. So  
5 I want to -- I want to associate myself with his  
6 comments directly, particularly his expressions  
7 of empathy.

8           And in that sense, I also want to  
9 acknowledge your opening comments, Chairwomen,  
10 about the complexity of the issues, the  
11 difficulty of the issues, and the legitimacy of  
12 all the interests that have been expressing what  
13 they believe to be the best outcome for  
14 California, for communities, economies, and the  
15 environment for many years now on this topic. So  
16 it is not without great deliberation that -- that  
17 I too appear before you today to seek this very  
18 limited continuance of the Phase I proceeding.

19           As director, I have been engaged  
20 primarily in discussions with staff at the  
21 Department of Water Resources since the Water  
22 Board put out its Phase II framework in July  
23 which was very important document to help  
24 motivate the Department to start developing  
25 potential solutions for environmental

1 improvements in the Delta estuary.

2           In a limited way over the course of the  
3 last several weeks, I've begun to engage in  
4 discussions with the water users that represent  
5 water rights holders in the Phase II watershed --  
6 watersheds and tributaries. And I think we have  
7 an opportunity to do something generational in  
8 how we manage water in California and how we  
9 manage that water comprehensively across the Bay-  
10 Delta watershed and that is to build upon the  
11 good work that DFW and I had been engaged in my  
12 former capacity at the California Natural  
13 Resources Agency to develop tributary agreements,  
14 instream flow improvements, and physical  
15 restoration projects across essentially nine  
16 different tributaries to the Delta.

17           And we have an opportunity to align the  
18 improvements we seek in those tributaries with  
19 improvements that we seek down in the Delta  
20 estuary. Align in terms of volume, timing,  
21 availability of fresh water flows together with  
22 physical restoration that spans essentially the  
23 estuary all the way up into these critical  
24 watersheds.

25           And that's an outcome that for me is



1 very, very exciting. It enables us to address  
2 the issues that have so deeply challenged native  
3 species in California, our native fisheries,  
4 salmon, and other fish species down in the Delta  
5 in a comprehensive way that acknowledges the  
6 extent of their habitat. And that will  
7 ultimately enable us to make better investments.  
8 Make better use of our investments in water.  
9 Make better use of our investments in habitat  
10 restoration because of an ability to approach it  
11 in this comprehensive way.

12           And so for that reason, I think there is  
13 a level of coordination among parties we seek to  
14 settle with in the San Joaquin tributaries with  
15 approaches that we may take in Phase II. And it  
16 is our intention to be able to describe that in  
17 much greater level of detail within the next 34  
18 days. And the opportunity that that presents and  
19 the commitment expressed by Governor Brown and  
20 our newly Governor-Elect Newsom is a -- is -- has  
21 the potential for an historic moment. And I can  
22 commit to you today that I will continue my  
23 effort, roll up my sleeves over the course of the  
24 next several weeks to see if we can bring this to  
25 closure. So thank you.

1           CHAIR MARCUS: Thank you. I have a  
2 couple of questions, if you don't mind. I  
3 appreciate you directly coming out and saying you  
4 won't ask for another request because obviously  
5 we've had many requests in the past and I  
6 appreciate your comments on what may be  
7 different.

8           What can you say to folks who have not  
9 been in these rooms, including us, to give us  
10 hope? We've had hope of it but that another 30  
11 days will at least bring more -- you can't bring  
12 us into the room because we have to decide if  
13 it's comparable at some point to our regulation  
14 or we would have to figure out how to create an  
15 open door for whatever progress you can make.  
16 There are folks who have not been in that room.  
17 And because of the confidentiality agreements you  
18 have, which I understand in some deals are  
19 important to get people to certain place. And I  
20 imagine we will hear that. You have a lot of  
21 skepticism on the part of people who really don't  
22 know what's going on in there.

23           And I think one of the questions that  
24 will come to mind is how will more people, even  
25 if it's not the five of us, how will more people

1 including some of our staff who've worked long  
2 and hard and have a tremendous amount of  
3 expertise and other have a vista on what it is  
4 that you're doing in the next 30 days.

5 MR. BONHAM: Three immediate responses to  
6 your question.

7 First, my expectation is that speakers  
8 and public comment after the two directors will  
9 confirm their commitment to getting this done in  
10 the next 35 days. If that's how public comments  
11 play out primarily from those districts in the  
12 San Joaquin Valley, I think that's an important  
13 moment.

14 Second, I trust your process. You have  
15 subsequent process. When we come back in 35 days  
16 with a package, we will be expected to prove  
17 comparability. We will be expected to show you  
18 the framework that illustrates the combination of  
19 restoration, baseflows, pulse flows, creative  
20 revenue structures, landscapes, scale-changing  
21 activities from basically Redding to almost  
22 Fresno will be equal or better than a point along  
23 a continuum of percent of unimpaired flow. If I  
24 fail in that case before you, don't accept it.

25 Third, no more delay.

1           CHAIR MARCUS: But my -- thank you. But  
2 my question goes to engagement of folks in your  
3 discussions. You've spent a lot of time in  
4 discussion, but not with as broad a group of  
5 people. So you're going to have skepticism even  
6 from people who want you to succeed like us who  
7 just don't know what's in the black box.

8           MR. BONHAM: Which is why I think my  
9 second point is perhaps most important. You have  
10 subsequent important public process. The content  
11 of whatever is developed should be judged through  
12 your public process when we prove comparability  
13 or not. We lay out the science. And each party  
14 should retain their right to give you their  
15 opinion on that package when we put it in front  
16 of you.

17           CHAIR MARCUS: I guess my question has to  
18 go with opening the door to the discussions, what  
19 your plan is.

20           MS. NEMETH: Chairwoman, I would respond  
21 in this way. A couple of things. I think  
22 referencing our comments about the complexity of  
23 the issues we're trying to resolve, the  
24 complexity of water users that -- that would be  
25 involved in a settlement is -- addressing that

1 complexity is no small task.

2 CHAIR MARCUS: No, it isn't.

3 MS. NEMETH: Particularly as it relates  
4 to processes of engagement. And the Department  
5 will continue to be a focal point for water users  
6 to work with one another and work with me to make  
7 sure that as we develop solutions, we're  
8 generating buy-in across the water user  
9 community.

10 CHAIR MARCUS: All right.

11 MS. NEMETH: With that said, I also think  
12 that one of the important statements in the  
13 letter from Governor Brown and Governor-Elect  
14 Newsom is their consideration for the urgent need  
15 to develop a plan that can provide improvements  
16 to the environment as quickly as possible.

17 Given that that's one of their objectives  
18 and that they are willing to commit the time and  
19 energy to see this effort to conclusion, I would  
20 expect that Governor Brown certainly will be  
21 asking his two appointees the disposition of the  
22 environmental community that is very engaged --  
23 and no community is a monolith so I think there's  
24 various degrees of skepticism around whether or  
25 not we can put something together that is going

1 to meet expectations, but I am -- I am convinced  
2 that Governor Brown will be seeking the counsel  
3 from his two appointees about engaging with the  
4 environmental community and he will want to  
5 understand the breadth of the opinions of that  
6 community.

7 MR. BONHAM: I would take that a step  
8 further.

9 CHAIR MARCUS: That's kind of the  
10 question I'm asking.

11 MR. BONHAM: Understood. I would take  
12 that a step further. To get to where we are  
13 today has been shaped by input. Input from the  
14 water community as well as input from the  
15 environmental and conservation community. It's  
16 been a discussion over approximately two years  
17 where many of our leading most constructive  
18 thoughtful organizations have weighed in on  
19 possible solutions and details. And I don't see  
20 that changing which is very consistent with the  
21 director's comment a moment ago.

22 I would also argue that in my experience  
23 in eight years, Governor Brown knows how to take  
24 input across all sectors of California to then  
25 help think through what's the wisest best outcome

1 for all Californians? And I would expect he  
2 continues to do that here, including seeking  
3 input directly from conservation organizations.

4 CHAIR MARCUS: Okay. Let me turn to --  
5 before we go to comments, I want to turn to any  
6 questions that my colleagues may have.  
7 Questions? Question? Yes.

8 VICE CHAIR MOORE: Thank you. I  
9 appreciate your articulation of how momentous it  
10 is to have the Governor, the sitting Governor and  
11 the Governor-Elect weigh-in in this process, and  
12 the words that were used. And -- and -- and so  
13 that -- that sets I think upon us all in a  
14 positive way because it really validates all of  
15 our staff's efforts, the efforts of folks working  
16 on this vexing problem, and everyone's commitment  
17 to finding paths forward that meet multiple  
18 objectives.

19 I had the chance to talk with the  
20 Governor last night for some 20 minutes or longer  
21 and so I know there's a genuineness to his  
22 commitment to be personally engaged. That's what  
23 he assured me.

24 But the Governor-Elect has a lot on his  
25 plate. There are a lot of things that he needs

1 to do in the next month to do his job as the  
2 future governor.

3           How would you answer the skepticism that  
4 he'll -- of the level of his engagement giving  
5 all -- given all that's on his plate?

6           MR. BONHAM: I can't speak for the  
7 Governor-Elect, I wouldn't presume to.

8           I stand by my earlier comments that I  
9 personally think both he and the current governor  
10 are bold leaders who get amazing things done.  
11 You have a written testament from them that they  
12 will be engaged.

13           I also think from a broader perspective  
14 as to a matter of good government, there should  
15 be good coordination and seamless transition.  
16 And this is an issue of such importance to so  
17 many parts of California, I would put it in the  
18 ledger as particular careful attention to good  
19 coordination and good transition.

20           The way I judged the letter they  
21 submitted to you last night is give us a limited  
22 continuance, we're going to work like crazy to  
23 get this done.

24           VICE CHAIR MOORE: And I would also share  
25 that he assured me personally that he would



1 recognize the importance of a water budget for  
2 the environment in these discussions. And I --  
3 I'm here as a witness to our discussion and  
4 that's what I'll be looking for in -- in whatever  
5 comes out in these voluntary settlements.

6 But you mentioned instream flows and  
7 that's a form of that. I'll look forward to more  
8 discussion.

9 CHAIR MARCUS: Yeah, no, we'll probably  
10 have to have quite a bit.

11 Yeah. Please.

12 MS. D'ADAMO: I just want to start by  
13 thanking both Governor Brown and Governor-Elect  
14 for sending a letter and for the commitment that  
15 you, Director Bonham, outlined.

16 I for one am very excited about the  
17 possibilities that this may provide. And so I'm  
18 really struck by something you said, Director  
19 Bonham that you've got to give in order to get  
20 and would just be interested in your comments to  
21 help us make that determination in that we, too,  
22 not just the parties that you're working with,  
23 but we too, I think, could look at this in terms  
24 of giving in order to get.

25 We are at this point prepared to have

1 action on the Plan today unless a determination  
2 is made to postpone the decision. So maybe you  
3 could help refresh us with respect to some of the  
4 things that you talked about when you were here  
5 last. As far as the potential for us to get more  
6 than what we have in the current proposal with  
7 these voluntary agreements.

8 MR. BONHAM: I'll try.

9 MS. D'ADAMO: Without getting into the  
10 specifics.

11 MR. BONHAM: I'll try. August 22<sup>nd</sup> is on  
12 tape so that's probably the best record of what I  
13 previously said.

14 What gets me excited is a system-wide  
15 outcome. An outcome that's not divided into  
16 phases that marches through a lengthy proceeding.  
17 What has me interested and excited is immediate  
18 implementable results out in the field for the  
19 benefit of Fish and Wildlife that our rural and  
20 working landscape communities can also embrace.

21 So in my head what I see is literally a  
22 map that has hundreds of identified restoration  
23 projects from Redding almost to Fresno in each of  
24 the three to nine, ten major tributaries to our  
25 mammoth Sacramento and San Joaquin Rivers

1 including a clear description of restoration  
2 commitments at least in the northern Delta if not  
3 across more of the Delta landscape. Those would  
4 be projects which are well vetted, well  
5 understood, and universally mostly adopted as the  
6 right thing to do.

7 I also see in a future outcome something  
8 unprecedented which Director Nemeth is trying to  
9 produce. A structure that allows us to know  
10 there'll be a funding commitment to complete that  
11 kind of massive restoration promptly. It's not  
12 just a promise to do it, it's an actual schedule  
13 with revenue behind it. Then you take that  
14 aspect, which alone would be amazing, and you  
15 build it in with a flow regime.

16 In my view, in each tributary -- each  
17 tributary, including the Sacramento mainstem, the  
18 Mokelumne is an example, the Stanislaus is the  
19 example, the Yuba needs some form of flow  
20 schedule that all parties can look to. It  
21 produces certainty, it produces operational  
22 reliability, but it should also produce and  
23 understanding in the environmental community, it  
24 will be sufficient for managing the lifecycle  
25 needs of the salmon and other native fish.

1           And then I would argue, as I did on  
2 August 22<sup>nd</sup>, you add to that baseflow very  
3 specific use of volumes of water at certain times  
4 of year. Get us back what we've largely lost.  
5 The thing we've lost in the Central Valley is a  
6 habitat type which is the relationship right at  
7 the river and the floodplain. We used to have  
8 fish go up on that thing and eat bugs and get so  
9 fat, dumb, and happy when they swim out to the  
10 ocean, more of them would come back. We've  
11 largely lost that.

12           So the third aspect we're arguing and  
13 negotiating for and I think it's warmly embraced  
14 is the use of water for a real functional  
15 outcome, inundation of floodplain to get salmon  
16 up there to grow them larger. It takes water.  
17 But I think if you step back, give us 35 days, we  
18 can emerge with a schedule, a framework, possible  
19 revenue structure top to bottom for that kind of  
20 restoration, those kinds of baseflows combined  
21 with that kind of significant, and this is where  
22 they'll need to be a give or a get, significant  
23 commitments of water to activate floodplain. And  
24 in my judgment, your process is the defense for  
25 your skepticism because I will have to bring that

1 with the willing parties and prove it's  
2 comparable to the benefits from a specific  
3 percent on impaired flow. And we should have  
4 that debate.

5           Sorry. Your turn.

6           CHAIR MARCUS: And how -- oh, go ahead.  
7 Go ahead.

8           BOARD MEMBER ESQUIVEL: Where that --

9           CHAIR MARCUS: Go ahead, please.

10          BOARD MEMBER ESQUIVEL: If I can --

11          CHAIR MARCUS: Please.

12          BOARD MEMBER ESQUIVEL: You know what,  
13 I'm sort of challenged in some of that, though,  
14 is regrettably the misinformation around the  
15 board's proposal.

16          CHAIR MARCUS: Uh-huh.

17          BOARD MEMBER ESQUIVEL: Because if you're  
18 going to bridge the, you know, quantify benefits  
19 there, then there has to be some acknowledgement  
20 that the boards work and the proposal is not junk  
21 science, it's not flawed fundamentally, but there  
22 can be disagreements, certainly. But as I  
23 understand the board's proposal, it is based on  
24 habitat activation, as the watersheds currently  
25 exist.

1           So to the extent -- and I think it's an  
2 important point you made that you can get the  
3 millions of dollars of restoration of changing  
4 what that watershed looks like or that habitat  
5 gets activated, you can perhaps have a different  
6 flow regime than the one that's been analyzed by  
7 the state board and its staff.

8           So I think that is what is exciting is  
9 that there's a potential to be added. But again,  
10 I have grave concern that, you know, the public  
11 discourse around how we find ourselves here  
12 before this vote. It's a challenge and God  
13 speed. I -- and so I know it's -- it's not --  
14 it's not an easy one.

15           We talked about the complexity of water  
16 rights and having to go through those. And this  
17 board understands those, this staff does insofar  
18 as we have to administer the water rights and the  
19 rest of the watersheds as well in this state.

20           And so, you know, I find myself with, you  
21 know, concern about how -- how we engage in other  
22 watersheds that are just as critical, that are --  
23 that are having the same sort of discussion about  
24 how we best account for ecosystem needs. How we  
25 work collaboratively with landowners and other

1 water users in ways that minimizes what our  
2 obvious conflicts. And to the extent that this  
3 is an opportunity for a generational shift as  
4 someone who feels strongly it's from a different  
5 generation. I think we're -- we're hungry --

6 CHAIR MARCUS: I'm going to call you a  
7 show off again like I always do when you do that.  
8 Sorry.

9 BOARD MEMBER ESQUIVEL: Sorry to my other  
10 board members.

11 But I think there is a -- there is a  
12 thirst and desire to have that generational  
13 shift. To be able to -- to move past what is the  
14 easy politicization of these discussions and get  
15 to something meaningful to bring certainty and  
16 realizes -- and folks can hopefully realize they  
17 don't have to be so afraid, even though they're  
18 being told that they should be.

19 MR. BONHAM: Board member, I share your  
20 thinking about misinformation and it's up there  
21 with me for the regret on some of the commentary  
22 that's been lobbed at you individually as board  
23 members.

24 As an example, it's just not correct to  
25 suggest the state's uninterested in predator

1 control or other physical habitat restoration. I  
2 expect those to be cornerstone elements of the  
3 product we bring you in 35 days. So my hope is  
4 in subsequent comments you'll hear enough from  
5 our important water community to validate this  
6 commitment to get it done in 35 days.

7 BOARD MEMBER DODUC: Thank you. I've  
8 thought of something to say after all. Thank you  
9 both directors for your commitment to this  
10 effort, for your investment of time, energy,  
11 personal sacrifices.

12 I can relate, Doctor -- I mean, Director  
13 Bonham, I used to have friends in the ad  
14 community. I hope I still do, but we will see.

15 And Director Nemeth, I remember a  
16 conversation we had I guess almost a year now  
17 where I expressed my very strong support for  
18 these agreements and my very strong support for  
19 your efforts in your former role and now  
20 continuing as director of DWR on these things  
21 seeing it as a true solution to get the results  
22 that we all want to achieve for the benefit of  
23 all Californians. So thank you for your  
24 continuing commitment to that.

25 And I really appreciate the director's



1 earlier comment today about words being -- words  
2 matter. Words do matter and I am very  
3 appreciative of the letter that we received last  
4 night. I have perused it very carefully, paying  
5 attention to the words and there's a lot in it  
6 that really warms my heart and make me very  
7 confident in process going forward.

8           And hearing your comments earlier today,  
9 Director Bonham, also was very helpful. I was  
10 especially impressed by the number of times you  
11 repeatedly say trust in our, meaning the board's,  
12 public process.

13           And I know that you know that part of the  
14 proposal as the chair pointed earlier of the  
15 Water Quality Control Plan update is the process  
16 for considering any Voluntary Settlement  
17 Agreements that may come after the board act,  
18 should we act on this matter and the  
19 consideration and incorporation as appropriate of  
20 those VSAs into any future amendment. That is  
21 part of the public process in which you have  
22 voiced your trust.

23           So my question to you is, should the  
24 board decide to act on what is proposed before us  
25 today, does your trust in our public process

1 remain?

2 MR. BONHAM: My answer is it's up to you  
3 as a board what you will do today. I request --

4 BOARD MEMBER DUDOC: I'm not asking  
5 about -- I'm not asking for your suggestion or  
6 your advice, I'm asking as the director, I'm  
7 asking your opinion because you've said you trust  
8 in our process. You've advised us to trust our  
9 own process in considering any VSA that may be  
10 brought to us 30 days from now. So should we act  
11 today, do you still have faith in our public  
12 process?

13 MR. BONAHAM: I believe in California, I  
14 believe in its public servants. I request a  
15 postponement for 35 days.

16 BOARD MEMBER DUDOC: In other words, you  
17 decline to answer. Thank you.

18 BOARD MEMBER D'ADAMO: May I, Chair?

19 CHAIR MARCUS: Yeah, sure.

20 BOARD MEMBER D'ADAMO: Maybe I could  
21 prompt you to answer it in a different way, not  
22 necessarily on the issue of trust. But one of  
23 the things that I thought in my question that you  
24 might bring up and your answer, your response was  
25 very helpful on you give to get potentially

1 something way more and you talked quite a bit  
2 about restoration. But one of the things that  
3 you didn't mention and maybe you could talk a  
4 little bit about timing of actually getting  
5 projects on the ground and instream flows in the  
6 river under a VSA process as opposed to our  
7 process.

8 MS. NEMETH: Thank you. Yeah, that is  
9 one of the I believe key benefits. And I think  
10 we share that, that -- the need is urgent so we  
11 do need to have a voluntary agreement that  
12 enables -- enables us to implement right away.

13 I think that the work that we're doing  
14 now if we come to a conclusion, a successful  
15 conclusion by the middle of December, I know that  
16 there is additional work that the board needs to  
17 do particularly with its Phase 2 documentation.  
18 But my hope would be that we would bring  
19 something to this board in December that has  
20 enough detail and enough support across the water  
21 user community north of the Delta, south of the  
22 Delta, east of the Delta, also with environmental  
23 groups that would enable you all to embrace that  
24 framework and continue your process in a way that  
25 enables the parties to do a significant amount of

1 prework, if you will.

2           There will be a lot of details to  
3 continue to sort out to make it actionable and  
4 enforceable and all of those things. But for  
5 some of the ideas that we're contemplating, I  
6 think there would be significant need to start  
7 working early in the part of next year to enable  
8 us to establish funding mechanisms to get -- to  
9 put us in a position to start implementing after  
10 the board completed its process which I believe  
11 in our last discussion with staff, the timing for  
12 that was potentially July of 2019. Therefore we  
13 would be in a position to start implementing in  
14 the last half of 2019.

15           MR. BONHAM: So to confirm my view, I  
16 would be negotiating with the expectation we're  
17 improving stream flows by the time we get to end  
18 of 2019, certainly at some point in 2020.  
19 Whether we may need to phase in to that over  
20 time, I do think a benefit is that kind of  
21 immediate improvement compared to inevitably what  
22 would happen otherwise, contentious litigation  
23 and more administrative procedures.

24           CHAIR MARCUS: You're welcome. Whatever  
25 you need.

1           VICE CHAIR MOORE: Thank you, I  
2 appreciate the discussion very much.

3           As I was listening to how you see this  
4 unfolding, and I want to acknowledge all the  
5 benefits that you articulated, they are exciting.  
6 You know, the idea of alignment, connectivity of  
7 tributaries, it's part of what we've been trying  
8 to encourage.

9           But just from a process standpoint, one  
10 of the points of discussion you're to hear us  
11 have today and we'll be talking with stakeholders  
12 about is how, then, the VSAs would fold into our  
13 process and what modifications, if any, would be  
14 needed to the Water Quality Control Plan. And a  
15 board item, you know, an agenda item before the  
16 state board that would have the package of  
17 commitments, the financing somewhat fleshed out,  
18 and the actual language changes recommended to  
19 the Water Quality Control Plan that will comport  
20 with the settlement agreements that have been  
21 made. So that will be part of that process.

22           CHAIR MARCUS: And also meet Porter-  
23 Cologne.

24           VICE CHAIR MOORE: Yes, exactly.

25           CHAIR MARCUS: Uh-huh.

1           VICE CHAIR MOORE:  And so, you know, in  
2 terms of scheduling and your vision of when that  
3 might happen, you know, as far as when you could  
4 come to the board and then -- and achieve those  
5 goals in the later part of 2019.

6           MR. BONHAM:  Yes.  So my -- my quick  
7 thought would be first, we will come back in 35  
8 days or less.  I do think a framework is the  
9 right word choice with sufficient details across  
10 all the major operable terms.  There would be a  
11 need for subsequent, you know, procedure in front  
12 of you.  We've discussed that.

13           Second, my expectation is you could  
14 finish that as you move through the first part of  
15 2019, perhaps by the middle part of 2019.

16           Third, this allows me to come back to  
17 Ms. Doduc and say, look, I get you want me to  
18 ask -- you want me to answer a question based on  
19 the premise you will approve today.  All I'm  
20 saying is you will either act and approve or  
21 potentially you could take delay.  Whatever you  
22 do, I'll adapt to that and keep at the effort to  
23 produce the right outcome for California.  But I  
24 am telling you in direct terms, I'm asking for a  
25 continuance.

1           CHAIR MARCUS:  And maybe I should take a  
2 break before I ask this question so I get the  
3 wording right, I'm not as good as you are at word  
4 choice.

5           Do you envision coming -- whatever you do  
6 envision coming back, it's been a herculean  
7 effort and there are more people to bring in to  
8 this party, so to speak, such as it is.  And  
9 frequently you spend the most time in the  
10 beginning with folks who have the most trouble  
11 with something, and I do think both -- it does  
12 feel to those on the outside that the needs of  
13 Fish and Wildlife despite all the great -- I know  
14 where your heart is, Director Bonham, that it  
15 comes second because they don't scream as loud or  
16 there aren't as many of them, et cetera.  So  
17 you're going to -- we're going to hear some real  
18 concerns.

19           And there's also a need to update this  
20 Water Quality Control Plan.  And I know there are  
21 people out there who want it to just go away and  
22 have an agreement instead for a lot of stuff.

23           We have to update this Plan and there has  
24 to be a regulatory frame, whatever word you need  
25 to use and what we've tried to propose is a

1 regulatory frame that we think works and allows  
2 for voluntary settlements.

3           Do you envision, and we're open to this,  
4 coming with amendments to that regulatory frame?  
5 All of which would take time to consider. Notice  
6 and comment, we do things out in the open.

7           Or with the voluntary settlement that  
8 would meet -- hopefully would meet what we've  
9 laid out or maybe be outside the constraints but  
10 be so cool that we want to consider a process to  
11 reup through our -- it's not -- I'm not -- I hate  
12 using the word process because it sounds like  
13 we're just into the process. But this is a  
14 process that we've all engaged in over the  
15 decades and there were some who wish it didn't  
16 exist.

17           But the fact that it does may be a big  
18 part in addition to your efforts to why we where  
19 we are today. But I want your assurance that  
20 when you come back, if we do give this  
21 continuance, that we will -- you will not be  
22 asking us to set aside a regulatory framework,  
23 whether ours or ours with some adjustment or ask  
24 us to move on and consider something while we  
25 have what we're suggesting in place so that there



1 is an update to the Water Quality Control Plan  
2 and not endless delay.

3           Because I know you'll hear from people,  
4 and you mentioned skepticism that this -- not  
5 that the Governor and the Governor-Elect are  
6 insincere. They are -- it's awesome to have them  
7 ask to do this and it is awesome if we can get  
8 the prodigious energy particularly of this  
9 Governor, the incoming Governor is going to have  
10 a lot of other things on his plate to focus on  
11 these issues on behalf of furthering the needs to  
12 balance the environment as well as other water  
13 uses in a more intelligent way.

14           But there are some who I think are hoping  
15 that our process will go away. I think that's  
16 getting a bit to what -- maybe a different form  
17 of what Board Member Doduc was asking. And I  
18 just want your assurance that that is not what  
19 you're going to negotiate and come back to us on.  
20 No regulatory framework or just postpone,  
21 postpone, postpone a regulatory framework that  
22 can serve as an important assurance or -- I know  
23 people hate the word backstop, I'm happy to call  
24 it anything else. But that's -- that is the guts  
25 of what we're about and we've been trying to

1 craft one that has an opening for all these good  
2 things because it's what we really want but it  
3 can't just go away.

4 MR. BONHAM: Yeah.

5 CHAIR MARCUS: So it is I think important  
6 for people out there to hear what it is you have  
7 in mind even if it's not fully baked. And  
8 frankly, your commitment to that as opposed to  
9 what some people I know want which is that it  
10 just goes away, which puts us in an impossible  
11 position.

12 MR. BONHAM: Here's my personal  
13 commitment to you. I think you should update the  
14 Plan, it's long overdue. And I hope in 35 days  
15 we bring you a framework that is complementary to  
16 your work product but establishes the package  
17 approach is a better way to go.

18 I'm not yet clear in my own mind some of  
19 the inevitable hurdles and discussions that will  
20 emerge between now and 35 days from now and some  
21 of those technical important details.

22 The last thing I'll say is the letter  
23 you received last night from the Governor and the  
24 Governor-Elect says, "For many months state  
25 agencies, water districts, and others had been

1 working hard to achieve voluntary agreements that  
2 would meet the requirements of the amendments set  
3 for adoption."

4 CHAIR MARCUS: All right. Here's my  
5 suggestion. I do think complex matters,  
6 particularly ones that come up require a little  
7 bit of thought and breaks.

8 I am going to -- I hate to do this to  
9 you, Jeanine. I'm going to give this pile back  
10 to you. And we're going to take a 15-minute  
11 break. And there's a good café downstairs. I --  
12 people should get sustenance, coffee, you know,  
13 liquid, whatever you need for a little while.

14 Let Ms. Townsend know by noting on your  
15 card if you want to -- we'll pull them out if you  
16 want to talk about this issue first or want your  
17 cards reserved for if we choose to act or  
18 consider action on the proposal just so that I'm  
19 not calling a lot of names. And then we'll come  
20 back and hear from all of you and then I'm sure  
21 we'll have -- we'll have more questions.

22 And what I'm hoping to hear is something  
23 a little different from what we've heard all  
24 along. And, again, I'm a lawyer, a combatant,  
25 probably settled more deals than anybody I know

1 in different arenas and it's odd to not -- as  
2 we've -- it's odd to not be in that room for me  
3 because usually I'm the one who's being the  
4 Border Collie doing it.

5           But I do know that there are contacts in  
6 which people feel they need to say certain  
7 things, particularly at a microphone. But we  
8 have had a tremendous amount of hyperbole, I  
9 would say, and inaccuracy about what we've  
10 proposed. And I will be interested in hearing  
11 true commitment to settlement and to improving  
12 Fish and Wildlife and the goals we have rather  
13 than I think some of the perhaps understandable  
14 but not as helpful posturing that we've seen.  
15 And I'd say that on all sides.

16           But I really -- I really am looking to  
17 hear what people pledge or hope to accomplish if  
18 they're for this and what they're concerned about  
19 if they're against it. And I -- and then we'll  
20 probably take another break because I'm going to  
21 need to really be able to listen and consider it.  
22 This is a very unusual setting. I know -- I'll  
23 just say it right now, I know for many -- it did  
24 for me at first -- that have been in the world,  
25 it plays into the narrative of previous Water

1 Board attempts to actually do its job when they  
2 weren't able to do that. I think we're at a  
3 different place, but I think people need to be  
4 mindful that that is the fear and the worry that  
5 people have.

6 I do think this may be different, but I  
7 want to hear where people are because I think --  
8 I think there are many legitimate ways folks can  
9 argue what we should or should not do today and  
10 what will lead to the solution we seek. But I do  
11 think we need to have a very healthy dose of  
12 respect, not just for the request we've gotten  
13 but the manner in which we've gotten it as well  
14 as the assurance this will be the last time.

15 But I would lying if I didn't say I had  
16 concerns about it, maybe because I have been  
17 around too long. And I think we really do need  
18 to spend some time with this to really be talking  
19 about what we're talking about now. And we may  
20 need, you know, more assurances than people may  
21 think we need considering the extraordinary offer  
22 in a way that we've gotten. But bear with us as  
23 we listen to all of you because that will be  
24 important in us making our decision.

25 So let's take a 15-minute break.

1 MS. NEMETH: Thank you.

2 CHAIR MARCUS: Thank you.

3 (Off the record at 10:53 a.m.)

4 (On the record at 11:12 a.m.)

5 CHAIR MARCUS: You turn the -- it's on  
6 now? Okay. Great.

7 Sorry for the delay. I hope those were  
8 all productive conversations that you've made  
9 incredible breakthroughs that you can share with  
10 us when you come up.

11 A reminder. I'm a back bencher myself in  
12 rooms, but you're supposed to be in a seat in  
13 case the fire marshal comes in. They don't like  
14 that. I apologize, because I like doing that  
15 myself.

16 All right. I think I have -- I haven't  
17 gone through to see how many. I have the cards  
18 of people who have indicated it. I do have I  
19 know at least a couple of elected officials that  
20 haven't marked their card but they're not back in  
21 the room yet. I want to get to my -- we always  
22 ask for them first. So.

23 I'll just do my best going through the  
24 list as it comes in. Let me just look for a  
25 second. And I've kept it in order so if we go to

1 consideration today, you'll still be in the same  
2 order. We don't have as many. So.

3 Assemblyman, I was just asking, you --  
4 you didn't mark your card on the continuance, but  
5 would you like to speak on the continuance or you  
6 want to wait for the proposal?

7 Okay. Please come --

8 BOARD MEMBER D'ADAMO: Madam Chair --

9 CHAIR MARCUS: Yeah.

10 BOARD MEMBER D'ADAMO: -- it was my  
11 understanding that --

12 CHAIR MARCUS: Oh, I forgot. I need a  
13 motion. Sorry, this is all different.

14 I need a motion. I don't need a second,  
15 but it would be better to have a motion that you  
16 are then speaking to the motion.

17 So do I have a motion?

18 BOARD MEMBER D'ADAMO: Yes. I would --  
19 in light of the letter that we received from  
20 Governor Brown and Governor-Elect Newsom and the  
21 commitments that we've received today from  
22 Directors Bonham and Nemeth, I would move that  
23 the board postpone consideration of this item to  
24 our regularly scheduled December 11<sup>th</sup> meeting.

25 CHAIR MARCUS: Oh, thank you, you got the

1 date right. Good. Thank you.

2 All right. Hi.

3 ASSEMBLYMAN GRAY: Good morning, Chair  
4 Marcus --

5 CHAIR MARCUS: Good morning, Assemblyman.

6 ASSEMBLYMAN GRAY: -- board members.

7 Thank you for the opportunity to address the  
8 topic before you this morning of the continuance.

9 I think frankly it's an incredible  
10 development to have both the Governor and the  
11 Governor-Elect engaged in this important process,  
12 seeking to pull parties together and find an  
13 outcome that is plus, plus.

14 You know, they're certainly from my point  
15 of view and I've been before this board many  
16 times to discuss this issue, moving forward with  
17 the current Plan puts everybody in the position  
18 to lose. Extension, more time to discuss,  
19 negotiate, look at something that can address  
20 topics frankly beyond even the authority of this  
21 board is only a potential for gain on all sides  
22 and certainly would encourage the board to heed  
23 those encouragement from the Governor and the  
24 Governor-Elect.

25 I've worked closed with both parties.



1 Certainly this Governor's delivered some pretty  
2 incredible advances for California bringing  
3 people together and I've seen him get engaged  
4 one-on-one. He's certainly been engaged one-on-  
5 one with not just myself but constituents in my  
6 district and important stakeholders in  
7 discussions. So encourage that decision today.

8           Again, I think we all have something to  
9 gain by giving ourselves more time to work out  
10 the details. Thank you.

11           CHAIR MARCUS: Thank you.

12           And will you set the time at three  
13 minutes on this. Because we -- in case we --

14           Supervisor Olsen was here. I don't know  
15 if she wants to speak about this. Do you? I  
16 just know you two have been so involved, I don't  
17 want to just --

18           ASSEMBLYMAN GRAY: Yeah, Supervisor was  
19 here representing the county. Unfortunately, she  
20 had to leave to another meeting. But also wanted  
21 to echo the comments I share of supporting a  
22 continuance and more time for negotiation.

23           CHAIR MARCUS: Great.

24           All right. Mr. John Buckley from the  
25 Central Sierra Environmental Resource Center.

1           MR. BUCKLEY: Good morning. John Buckley  
2 with CSERC.

3           So after so many years of this process as  
4 has been shared earlier today, this board has  
5 provided an incredible amount of opportunity for  
6 input and feedback. Has put out very clearly  
7 what was proposed, and the proposal that's before  
8 you is very clear. And yet today because we have  
9 two agency representing each way, I strongly  
10 respect because they've asked for delay, now  
11 you're being asked for delay after all these  
12 years for 35 more days.

13           And the concern I have is that delay has  
14 been a priority strategy for plan opponents  
15 throughout this entire process. It's been very  
16 clear. And whatever your particular priority, if  
17 you don't like the Plan, delay has been one  
18 logical approach. So my concern is if this  
19 matter is delayed, is it truly likely to result  
20 in water interests making more progress at the  
21 voluntary agreement discussions, or is it simply  
22 going to be providing more political momentum  
23 that will make you feel it's necessary to except  
24 whatever voluntary agreements come forward even  
25 if they're very rough as a framework and don't

1 provide the specificity in the details that  
2 actually allows you to know whether they're  
3 comparable to what you now have on the table.

4           So our center has had a long history of  
5 decades of working and achieving middle ground  
6 collaborative solutions and that would be our  
7 desire in this. If there's a way to meet the ag  
8 interest, if there's a way to meet the water  
9 interest, wildlife interest, that's great. The  
10 challenge I have and why I'm actually not  
11 supporting you delaying for 35 days is I fear  
12 that instead of it coming to a better outcome, it  
13 simply will provide opportunity for more lobbying  
14 and opportunities for more pressure to not accept  
15 the Plan that's now on the table and to extend --  
16 to instead accept more nonflow measures that are  
17 more palatable to interests that are strongly  
18 entrenched.

19           What I would suggest is that if you do  
20 decide to delay action, that you make it very  
21 clear that the framework that comes back before  
22 you must be specific enough and detailed enough  
23 so that at that meeting, rather than delaying  
24 months into the new year, you'll be able to judge  
25 whether or not it does or does not meet the

1 requirements that you believe are necessary to be  
2 compatible with your scientific evidence and with  
3 all of the middle ground balance that you've  
4 attempted to put into this Plan.

5           So I do not oppose beneficial outcome if  
6 that's possible. But coming back with something  
7 that's crude and very rough in framework that  
8 doesn't provide that specificity, I would hope  
9 you would not accept. Thank you.

10           CHAIR MARCUS: Thank you.

11           Oh, Nick Blum, Modesta Irrigation  
12 District Board president.

13           MR. BLUM: Thank you for considering  
14 this. I just wanted to basically point out that  
15 we have been working on this for a number of  
16 years. The districts have been very productive,  
17 I think, in trying to negotiate with the  
18 directors and with the people that were in the  
19 room.

20           We did feel that there was a lot of times  
21 we were basically negotiating with ourselves.  
22 But I do believe that if we do have a  
23 postponement, this will put a finite date on  
24 whether we can come to an agreement. Now I hope  
25 and I pray that we do come to an agreement that

1 is amicable for everyone. There is that cynical  
2 side of me that doesn't think that will happen in  
3 32 days or whatever it is we're talking about.  
4 However, I do believe that with that finite date  
5 with the Governor and the Governor-Elect's  
6 signatures on the bottom of that letter, that  
7 they are and hopefully they will be engaged with  
8 us trying to come up with an agreement that is  
9 palatable for everyone.

10 We heard Mr. Bonham say that, you know,  
11 we need to get some floodplain areas. Well,  
12 yeah, if we do river restorations, we can make  
13 those things happen. And at MID and TID, we've  
14 had the science, we've done the studies. We know  
15 our river. We know where and how we can make  
16 these floodplain areas available for the fish.  
17 We're probably the most studied river in the  
18 nation and so we know how to do these things.  
19 The problem is is we haven't had a whole lot of  
20 people listening to what our science shows.

21 Now I'm not bashing your guys's -- your  
22 staff science, but --

23 CHAIR MARCUS: A two-way street sort of  
24 on that.

25 MR. BLUM: Exactly. And the thing is is

1 we've never been able to sit in a room and  
2 discuss our science, improve our science and with  
3 a -- with an honest listen and I think that's --  
4 that's necessary. And I think with -- if we do  
5 have the Governor and the Governor-Elect involved  
6 in this situation, you'll have someone with a  
7 little bit more clout that can basically say,  
8 look, I agree. I -- this is proven science.

9 I mean, our science is on our river. Now  
10 I'm not going to say anything about the other  
11 rivers. But our river, we know it and we know  
12 how to get more fish. We know how to run that  
13 river so that we can have enough water for not  
14 only the urban but also the farm areas.

15 We know what we're doing. We've been  
16 doing it for a hundred years. And if you look at  
17 the fish numbers we have this year -- we haven't  
18 changed the way that we run the river and the  
19 fish numbers this year are on track for a record  
20 number of fish coming back into our river.

21 So it's not just the water and that's why  
22 we have our science to prove that. And that's  
23 why I would encourage a delay and hopefully this  
24 does come out because nobody wants to see this in  
25 court for the next ten years. We would all like

1 to see some shovels in the ground. Get the fish  
2 population back to where it should be, could be.  
3 And allow the urban and the farm communities to  
4 retain the water that they're using. Thank you.

5 CHAIR MARCUS: I was going to do these in  
6 fives. This way you don't have the chance to  
7 know what's coming up next. I'm sorry.

8 Doug Obegi from NRDC. Followed by Chris  
9 Shutes from the California Sportfishing  
10 Protection Alliance. Followed by Michael Carlin  
11 from the San Francisco Public Utilities  
12 Commission.

13 Hi.

14 MR. OBEGI: Good morning, Madam Chair,  
15 board members, staff, colleagues, and friends.  
16 My name is Doug Obegi, I'm an attorney with the  
17 Natural Resources Defense Counsel.

18 I've spent the last ten years in my  
19 career working on this Plan amendment as have  
20 most everyone else who's in this room. And I'm  
21 here today to urge you to oppose delaying this  
22 decision yet again after ten years of public  
23 process. And particularly to oppose delaying a  
24 decision in a public forum to defer negotiations  
25 to a private back room deal.

1           We are open to voluntary settlements that  
2 will achieve the salmon doubling objective that  
3 has been in the Plan since 1995 and that this  
4 Plan amended -- amendment is required to achieve.  
5 And we agree that a mix of flow and nonflow  
6 measures can help achieve that objective,  
7 particularly things like floodplain habitat  
8 restoration.

9           But in our view, the board taking action  
10 is a necessary prerequisite to an effective and  
11 durable settlement. When we look around, what  
12 has happened in the west and particularly in  
13 California, virtually all of the major  
14 settlements have come as a result of a board or  
15 commission taking action, a court ordering  
16 action, and the parties coming together to find  
17 out how best to implement and achieve those  
18 objectives.

19           And we think that an essential part of  
20 that is not just funding for habitat restoration  
21 and increase flows but also funding for  
22 improvements in water management to reduce and  
23 avoid the water supply impacts that occur.

24           Now I don't know what's in the voluntary  
25 settlement negotiations that the state has been



1 conducting with certain parties because we refuse  
2 to sign a confidentiality agreement because we  
3 believe that these kind of negotiations need to  
4 be conducted in public and transparently.

5           But I would ask you to ask Chuck and  
6 others who have been participating a couple of  
7 questions based on what he's presented and others  
8 have presented publically. And the first is  
9 whether that negotiation is intended to actually  
10 achieve the salmon doubling objective. The state  
11 has previously been talking about a much lower  
12 objective that forestalls or gives up on  
13 restoring our salmon runs and the thousands of  
14 jobs that they -- that depend on them.

15           The second is that the state seems to be  
16 relying on a model for a floodplain inundation  
17 that's never been peer reviewed and really was  
18 never intended to actually evaluate the effects  
19 of flow on salmon in these negotiations. And I  
20 think better understanding those tools and your  
21 responsibilities under the Health and Safety Code  
22 are important.

23           And finally from our perspective after  
24 ten years of process and studies in these rivers  
25 as well as throughout the west, if they're -- I

1 would love to see a settlement that required less  
2 flow than what is needed -- that what is proposed  
3 in the board's proposal but I've never seen any  
4 credible science that would suggest that that's a  
5 possibility in terms of achieving the doubling  
6 objective.

7 And for those reasons --

8 CHAIR MARCUS: You can wrap if you want.

9 MR. OBEGI: -- I urge you to vote to  
10 approve the plan today, let the parties continue  
11 to negotiate as they have the ability to do so  
12 for months and let the parties continue to do so.  
13 And if they have a voluntary settlement that will  
14 achieve the doubling objective, bring it back and  
15 let all of us evaluate it. Thank you.

16 CHAIR MARCUS: Thank you.

17 Mr. Shutes. He'll be followed by  
18 Mr. Carlin. And then followed by Jay Ziegler.

19 MR. SHUTES: Good morning, Chris --

20 CHAIR MARCUS: He'll be followed by Brian  
21 Johnson.

22 MR. SHUTES: Sorry.

23 CHAIR MARCUS: Sorry.

24 MR. SHUTES: Good morning.

25 CHAIR MARCUS: Hi.

1 MR. SHUTES: Chris Shutes with the  
2 California Sportfishing Protection Alliance.

3 I wonder if we could bring up the graph  
4 at the top of page 9, the reply to comments. If  
5 not, it's shown here, most of you have it. It's  
6 a bar graph that shows the relative amounts of  
7 flow proposed by the Tuolumne River Management  
8 Plan existing flows 20 percent and 40 percent of  
9 unimpaired February through June. This is the  
10 required flow.

11 Today you're being asked once again to  
12 delay adoption of the San Joaquin flow and  
13 Delta -- south Delta salinity components of the  
14 Bay-Delta Plan. Yet whether you act today or  
15 wait a month, a year, a decade, these bars in  
16 this graph are not going to get closer. What the  
17 district in the city of San Francisco have  
18 proposed in the past and will continue to propose  
19 is not going to bridge the gap. The outcome for  
20 flows is going -- not going to substantially  
21 change. The prospect for voluntary agreements  
22 has failed in the past because water users have  
23 never tried to make your framework for flows work  
24 for them. They've played all or nothing and time  
25 has run out.

1           Resources and the Department of Fish and  
2 Wildlife have not pushed the water users to make  
3 your framework work for them, they have abandoned  
4 it.

5           You heard Director Bonham say today  
6 baseflows and pulse flows. So what this looks to  
7 me like is 50 cents on the dollar and you don't  
8 even have the amounts from the delta flow  
9 criteria report which would be half again as much  
10 as the blue bars on the graph and which would  
11 bring it down to 33 cents on the dollar.

12           We all agree that floodplain inundation  
13 is important. The question is how much? Without  
14 water on the floodplain, it's simply new  
15 terrestrial habitat. We have a water budget.  
16 Again, the question is how much?

17           Your delay today will throw the work of  
18 the last nine years out. It will undermine your  
19 staff, your science, and above all, the integrity  
20 of the Water Board as a regulatory agency. It  
21 will undermine your ability to act and adopt and  
22 implement the Sacramento and Bay-Delta portions  
23 of the Bay-Delta Plan.

24           This has long since not been a science  
25 argument, it has become a political argument.

1 And it's not just a question of letters from the  
2 Governor or the Lieutenant Governor, it's also  
3 been interventions in this and related processes  
4 by senators, congress people, cabinet officials,  
5 and other folks in the federal administration.

6 Please do not let politics overwhelm this  
7 board and its process. Trust your process.

8 Please move to adopt today. Thank you very much.

9 CHAIR MARCUS: Thank you.

10 Mr. Carlin. Followed by Mr. Ziegler and  
11 Mr. Johnson. You're clipped together so I'm not  
12 sure if you both wish to speak. Followed by Gary  
13 Bobker.

14 MR. CARLIN: Good morning. I think I  
15 touched the mic. I'm standing here before you  
16 today to support the postponement of your action  
17 today. And I say that with all due respect to --

18 CHAIR MARCUS: You've brought your own  
19 electromagnetic force.

20 MR. CARLIN: I don't know what it is.

21 CHAIR MARCUS: I mean, I know you're  
22 charming, Michael, but that's pretty impressive.

23 MR. CARLIN: I don't know what it is.

24 CHAIR MARCUS: Do you have like an Apple  
25 watch or something or? Yeah.

1 MR. CARLIN: (Indiscernible.)

2 CHAIR MARCUS: It's my mic? Oh, it's me.

3 I'm turning my --

4 MR. CARLIN: So I stand here before you  
5 because we are (sic) been intimately involved in  
6 the negotiation process with the Department of  
7 Fish and Wildlife and the Department Water  
8 Resources and it has been very fruitful the past  
9 two months. We have been getting to -- to yes.

10 We have a couple of challenges still  
11 ahead of us and that's why this time is actually  
12 necessary for us to work through those  
13 challenges. And we need to figure out how  
14 this -- this Voluntary Settlement Agreement  
15 actually fits into your Plan.

16 It's a little bit unknown right now  
17 because we don't know all the elements of  
18 Voluntary Settlement Agreement, you know, and we  
19 look at your Plan and we want to see how the two  
20 fit together.

21 But there are some elements that, you  
22 know, have been talked about today that I think  
23 are really important. Floodplain activation and  
24 restoration, it's part, you know, it's part of  
25 something that we're looking at. Functional

1 flows, another portion of what we're looking at.  
2 How do we use that water? Instead of just  
3 looking at bar charts saying, hey, this is just a  
4 big block of water, how do you actually parse out  
5 that water to get the right flow at the right  
6 time to get the right biological response? And  
7 that's something that we're kind of looking at.

8           I think one of the big things that we are  
9 also looking at is what is the revenue structure  
10 of a voluntary settlement? I think one of the  
11 things that has fallen down in the past is like  
12 there wasn't a guaranteed revenue structure to  
13 implement whatever is agreed to by the parties.  
14 And I will say that San Francisco is going to  
15 fund their fair share of any Voluntary Settlement  
16 Agreement from now until we finish whatever time  
17 frame we have on that agreement.

18           So I think it's important that you  
19 understand we're working very diligently. There  
20 are things that we still don't agree on but I  
21 think we can get there in the next 35 days. I  
22 also say that we are reaching out to other  
23 parties that haven't been involved. We have been  
24 engaging them in discussions outside of the  
25 Voluntary Settlement Agreement process in San

1 Francisco to talk about other things that we need  
2 to do to improve our water supply reliability.  
3 What kind of projects are we going to start  
4 proposing to build -- to make more water  
5 available to our customers? And those are things  
6 that we are actively engaged in.

7           So I stand here before you I hope that  
8 you will pass the motion to postpone, and I'd be  
9 glad to answer any questions you might have.

10           CHAIR MARCUS: When you say we, do you --  
11 you include folks in the environmental community,  
12 folks in the Delta, other people who want to  
13 engage.

14           MR. CARLIN: Yes.

15           CHAIR MARCUS: Is that? There's a lot of  
16 catch up needed there.

17           MR. CARLIN: Well, I think --

18           CHAIR MARCUS: As well as with us, which  
19 is hard with these confidential -- I mean, it  
20 puts -- there's a lot of guess, I hear peeks  
21 around the curtain from people, but all I get are  
22 moods and innuendo which as you know is difficult  
23 for us because out in the public, you and others  
24 have to -- or feel you have to go low on flow.  
25 And it's alarming because we know we do need more



1 flow.

2           So having a real conversation about all  
3 the things flow does including temperature and  
4 the rest of the San Joaquin River is important.  
5 And I don't expect you to negotiate against  
6 yourself at a microphone, but I do worry that we  
7 have these warring world views and never the  
8 twain shall meet. In my view, the only way it  
9 happens is if people get into a room and actually  
10 listen to each other. And you happen to live  
11 somewhere where you've got everybody in the same  
12 arena. So I guess my expectations of you are  
13 higher than for others. I apologize for that.

14           MR. CARLIN: I don't know whether I'm  
15 supposed to answer or.

16           CHAIR MARCUS: Yeah. You could say thank  
17 you, but it's probably better to answer a little  
18 bit.

19           MR. CARLIN: Well, I think for me  
20 personally, I will meet with anybody anytime to  
21 discuss, you know, what we're trying to achieve  
22 here. Some people feel that we're not being  
23 intellectually honest at some points in time or  
24 our science is flawed. And those are all  
25 legitimate, you know, things that people feel

1 they need to say and I have to acknowledge that.

2 But on the other hand, I will tend to  
3 talk to people like how do we get to yes? How do  
4 we get to a solution that works for everybody?  
5 And everybody is going to have to give a little  
6 and nobody's going to be satisfied in the end  
7 that I got the best deal possible. It's like  
8 we're all going to take a hit, if you want to  
9 look at it that way.

10 And I think that we're getting to that  
11 point. And there still needs to be a little bit  
12 more give and take that has to occur but I think  
13 that we can come up with something that is  
14 manageable, sustainable, fundable, you know,  
15 going into the future.

16 CHAIR MARCUS: I don't expect all of you  
17 to pledge allegiance to the board but I would  
18 like at some point. I won't make you do it here.

19 MR. CARLIN: You've made me do it in the  
20 past so I think I'm covered.

21 CHAIR MARCUS: All right. Thanks.

22 Mr. Ziegler.

23 MR. ZIEGLER: Madame Chair, board  
24 members, I am Jay Ziegler with the Nature  
25 Conservancy. I am also here today on behalf of

1 voluntary settlement participants from the NGO  
2 community, including American Rivers, Trout  
3 Unlimited, the Nature Conservancy, Environmental  
4 Defense Fund, and Defenders of Wildlife.

5           Collectively, our organizations want to  
6 be optimistic about a settlement agreement. We'd  
7 like to be hopeful, but our experience, rather,  
8 takes us to a place of great apprehension and  
9 fear about the delay of implementation on the  
10 Phase I SED.

11           I say that in recognition that together  
12 with Governor Brown, Governor-Elect Newsom,  
13 frankly all parties in this room today, are  
14 groups of strong believers in Voluntary  
15 Settlement Agreements and the promising of  
16 achieving better, faster restoration outcomes as  
17 well as broader ecological conservation  
18 scientific understanding of what we're doing in  
19 the tributaries and what's happening in the Bay-  
20 Delta ecosystem.

21           Our experience, however, in the Phase I  
22 negotiations leads us to be very apprehensive  
23 that necessary contributions can be put forward  
24 on behalf of the affected water interests in the  
25 absence of board action.

1           Candidly, your action today in Phase I --  
2 and it would be our hope that you take a vote on  
3 the Phase I program of implementation that is  
4 before you and condition that action upon  
5 implementation on December 12<sup>th</sup> or a day after  
6 your next scheduled meeting. Unless the board  
7 changes the dynamic and puts a real impetus on  
8 the need for action in the next 35 days, we can't  
9 see a change that results in a Voluntary  
10 Settlement Agreement that is correspondent,  
11 comparative, and frankly implemented --  
12 implementable by this board with the necessary  
13 enforcement authority behind that action.

14           So it would be our hope today, and again,  
15 based on our experience, we are hopeful but  
16 concerned and worried that a dynamic in the  
17 negotiation has to change in order to produce a  
18 Voluntary Settlement Agreement for the Phase I  
19 SED that reflects the thoughtfulness of the  
20 board's order.

21           And we would also recognize that this has  
22 been a deliberative process for the past nine  
23 years. An inclusive process that has included  
24 all parties, different scientific perspectives.  
25 We may debate your board scientists, we may

1 debate science findings of other parties, even  
2 our own, but the imperative in this moment, we  
3 believe, is for action. And that this board  
4 needs to put forward a Phase I SED vote  
5 determination, condition that upon the ability or  
6 provide the ability in the room for voluntary  
7 settlement participants to bring something back  
8 to you before December 11 that meets the  
9 objectives of the order that is before you.

10           So we do thank you for your deep  
11 deliberative process and consideration of  
12 multiple perspectives and we also understand the  
13 anxiousness in the room on both sides. But  
14 absence the imperative for action in a way that  
15 really changes the dynamic and helps us all get  
16 to yes, get to a meaningful additional flow  
17 component that can achieve the doubling objective  
18 set forth 23 years ago, we cannot see this  
19 process succeeding on its own in the next 35  
20 days. So thank you for your consideration.

21           MR. JOHNSON: Good morning. Thank you,  
22 my name is Brian Johnson and I'm with Trout  
23 Unlimited and with Jay and the groups that he  
24 mentioned.

25           And I will not repeat everything that he

1 said because he was speaking for us but I'm going  
2 to repeat a specific suggestion because it may  
3 have gone by quickly and people may have -- may  
4 have missed it.

5           So we're requesting -- and I'm reading  
6 from what we wrote. Apology if it's a bit  
7 stilted. Request that the board take action on  
8 Phase I today. Vote on the Water Quality Control  
9 Plan update and proposed program implementation  
10 before you, but make the vote effective  
11 December 12<sup>th</sup> unless the board votes at that time  
12 to incorporate in some way into the program  
13 implementation a voluntary agreement presented to  
14 the board at that time. Thank you.

15           CHAIR MARCUS: I have it on now, right?

16           Mr. Bobker. Followed by Ben Eichenberg  
17 from the Baykeeper. Followed by Cindy Charles  
18 from Golden West Women Flyfishers.

19           MR. BOBKER: Thank you, Madam Chairwoman.  
20 Gary Bobker, program director at the Bay  
21 Institute.

22           We've been involved in these proceedings  
23 from the beginning. We've also been involved at  
24 various times in the voluntary settlement  
25 negotiations.

1           You know, there's no argument that  
2 negotiations between parties to achieve  
3 agreements should occur. And there's no argument  
4 really that if we're able to improve the physical  
5 landscape with large-scale floodplain restoration  
6 that that's a good thing. And if that affects  
7 flow requirements to achieve the benefit of Fish  
8 and Wildlife beneficial uses, that's a good  
9 thing. That's not really in doubt.

10           I mean, the question here is what does it  
11 take to get that? What's -- what's the solution  
12 space? And the board science, the science of  
13 Fish and Wildlife agencies, and the science of my  
14 organization and many others with some pretty  
15 deep scientific skills has been to identify that.  
16 With the current landscape, you know, we need --  
17 we need flows that are at the what you've said as  
18 the ceiling of protection in your proposed flow  
19 range. You know, we need to do that or better.

20           If we do large-scale floodplain  
21 restoration, it's possible that we can drop down  
22 into the lower part of that range or the upper  
23 part of your range. And we all want to see that  
24 happen. But there is absolutely no scientific  
25 basis today to think that any combination of

1 flow, floodplain, and other measures is going to  
2 result in a settlement which is scientifically  
3 defensible which meets the beneficial uses  
4 thresholds that is outside of the enormous  
5 solution space that you've identified in your 30  
6 to 50 percent flow range.

7           So you can send a message to the parties  
8 that are negotiating that says go ahead,  
9 investigate things out of the -- outside of this  
10 enormous solution space that we've identified in  
11 order to avoid litigation from those parties.  
12 But you know that's probably going to result in  
13 litigation by other parties, including probably  
14 some of the folks in that room.

15           Or you can actually do something that I  
16 think will result in successful negotiations. I  
17 don't know in 35 days or in 60 days or whatever.  
18 And that is to adopt today. Because you have  
19 established an enormous solution space and you  
20 need to send a message to these parties make your  
21 proposed solution work in that solution space.

22           So with all due respect to some of my  
23 colleagues, you don't need to bend over backwards  
24 and do little flips about what you're going to do  
25 on December 12<sup>th</sup>, adopt today and send a message



1 to these parties, bring us a voluntary settlement  
2 that works within the enormous space we've given  
3 you. And if you can't do that, nothing you do is  
4 going to be successful. Thank you.

5 CHAIR MARCUS: Thank you.

6 Mr. Eichenberg. Followed by Ms. Charles.  
7 Followed by Thad Bettner from Glenn-Colusa  
8 Irrigation District.

9 MR. EICHENBERG: Hello, Madam Chair,  
10 board members. My name is Ben Eichenberg, I'm  
11 staff attorney for San Francisco Baykeeper.

12 Thank you for your time and for your  
13 continued commitment against steadily amounting  
14 odds to achieving a final Water Quality Control  
15 Plan for the Bay-Delta.

16 I submit to you that we don't need more  
17 studies or negotiations to understand the Bay-  
18 Delta's needs. The Bay-Delta needs freshwater  
19 flow and therefore needs a water budget as has  
20 been pointed out. Without more water, the  
21 current ecological collapse we are witnessing  
22 will only accelerate. If we want more than an  
23 algae choked monoculture in the Delta and a  
24 consequently drastically diminished San Francisco  
25 Bay, we need a plan that restores sufficient

1 fresh water flows.

2           Director Bonham referenced trust in  
3 public process. Public process requires trust as  
4 he pointed out, and continual delays erode that  
5 trust. It has been nearly two years since the  
6 Natural Resource Agency's goal of voluntary  
7 agreements by December 31<sup>st</sup>, 2016 should have been  
8 met, but we have seen nothing.

9           The other thing about trust I would  
10 remind the board of is the proverb never trust to  
11 another what you should do yourself. California  
12 has entrusted this decision to the State Water  
13 Resources Control Board, not to Director Bonham,  
14 Director Nemeth, former Secretary Babbitt, the  
15 irrigation districts, or anyone else involved in  
16 the Voluntary Settlements Agreements or involved  
17 in pressuring people involved in those  
18 agreements, senators and Governors-Elect.

19           As has been -- as it has been pointed out  
20 many times by this board and others, the current  
21 proposal is already a compromised position.  
22 Fifty percent of unimpaired flow is what is  
23 needed. Moreover, flow standard should exist  
24 year-round, not just February through June, and  
25 standards should also include specific

1 temperature requirements.

2           Without a plan in place, there is little  
3 or no incentive for water users to compromise.  
4 We are unlikely to see such compromise absent  
5 strong action by this board. Voluntary  
6 agreements are still possible and far more likely  
7 after a decision on Phase I. Perhaps parties are  
8 claiming that settlement discussions will cease  
9 because they are -- they will be engaged in  
10 litigation. Well, I have every confidence that  
11 these parties can walk and chew gum at the same  
12 time.

13           As you know, most litigation ends in  
14 settlement and many of these parties have the  
15 resources to engage in settlement at the same  
16 they are briefing their cases. And there is a  
17 risk that delay will weaken the board's position  
18 in that same litigation. It's even possible that  
19 weakening is the reason some parties are pushing  
20 for this delay.

21           Regardless of any continuance, the board  
22 must reject any settlements that would provide  
23 less than the minimum flow specified in the  
24 proposed adaptive range as all settlements must  
25 fulfill the salmon doubling objective. There's

1 no scientific evidence, new or old, that any  
2 combination of flows below the adaptive range,  
3 even if combined with new habitat will protect  
4 salmon as another fish wildlife beneficial uses.

5 We've been waiting more than 20 years for  
6 a plan that will provide a roadmap to recovery.  
7 It's time to make the tough choices and protect  
8 the public's rights and the public's resources.  
9 As you have said, this should be the board's  
10 highest priority. Thank you.

11 CHAIR MARCUS: Thank you.

12 Ms. Charles. Followed by Mr. Bettner.

13 And Mr. Rubin, you're attached to  
14 Mr. Bettner, do you want to speak too?

15 MR. RUBIN: I don't think I do  
16 (indiscernible).

17 CHAIR MARCUS: Okay. I know these cards  
18 all came in to try and put them in a certain  
19 order. So just trying to be clear.

20 Hi.

21 MS. CHARLES: Hello. I'm Cindy Charles,  
22 I'm the conservation chair for the Golden West  
23 Women Flyfishers.

24 I fished the Tuolumne for years and have  
25 seen what has been lost. I actually don't fish

1 the lower Tuolumne anymore. And the reason is  
2 because I don't want to stress out what little  
3 wild fish that are left there.

4 I've been involved in issues on the river  
5 for years and haven't seen much fish recovery in  
6 spite of some habitat projects done here and  
7 there. I strongly believe the fish need higher  
8 flows. I feel you need to approve the plan today  
9 to move forward. Voluntary agreement talks can  
10 still go on.

11 I'm skeptical of what is going on behind  
12 the closed doors on that, but I believe that  
13 action needs to be taken today and no further  
14 delays. And if a voluntary agreement does appear  
15 and it includes all the necessary elements that  
16 the environmental groups have been asking for,  
17 then I'd be greatly happy.

18 So that's pretty much all I would like to  
19 say today. Thank you.

20 CHAIR MARCUS: Thank you.

21 Mr. Bettner. Followed by Rebecca Akroyd  
22 from San Luis and Delta Mendota Water Authority.  
23 Followed by Maryann Warmerdam from Rural  
24 Counties.

25 MR. BETTNER: Good morning, Chairwoman

1 Marcus and board members.

2 CHAIR MARCUS: You've got a band.

3 MR. BETTNER: I do have -- yeah, we have  
4 a little -- we have a gang here.

5 I'm here representing over 25 watering  
6 seas that are currently involved in the Phase II  
7 process. And as you know, there is a direct  
8 linkage to the actions that you take in Phase I  
9 and how they affect Phase II.

10 So while we're not directly engaged in  
11 Phase I proceedings, we do have concerns about  
12 your process going forward, particularly how we  
13 engage on the two tributaries and the Delta.

14 So with that, we do have a letter that  
15 I'd like to submit to you. But I'd like to just  
16 go ahead and read that letter and then if any of  
17 my members would like to make additional  
18 comments, if you have questions, we're here for  
19 that.

20 So dear members of the State Water  
21 Resources Control Board, the underside -- the  
22 undersigned public watering seas that contract  
23 for Central Valley Project and State Water  
24 Project urge the State Water Resources Control  
25 Board to delay the scheduled November 7, 2018

1 vote to adopt both Phase I Water Quality Control  
2 Plan for the San Francisco, Sacramento, San  
3 Joaquin Delta Estuary and the Final Substitute  
4 Environmental Document.

5           The United States Bureau of Reclamation  
6 and the California Department of Water Resources  
7 have been working diligently in making  
8 significant process with the CVP NSWP public  
9 watering seas and other agencies on voluntary  
10 agreements. These agreements will allow for  
11 immediate improvements in the protection of water  
12 quality, substantial improvements and conditions  
13 for fish within the Bay-Delta sustainable and  
14 collaborative government structure and secured  
15 funding for implementation.

16           The agreements will be part of a  
17 comprehensive effort to improve water supply  
18 reliability in California and to further the  
19 protection, restoration, and enhancement of the  
20 Sacramento River and the San Joaquin River  
21 watersheds and Delta ecosystem.

22           The State Water Board's adoption of the  
23 resolution and final SED on November 7<sup>th</sup> would  
24 severely hinder the effort to reach voluntary  
25 agreements which would implement important

1 features that cannot at this time be included in  
2 the current staff recommendation.

3           As such, to allow for the continuation of  
4 this historic effort, the undersigned entities  
5 respectfully request that the State Water Board  
6 defer action till its December 11<sup>th</sup>, 2018 meeting.

7           And again, we have about 25 agencies that  
8 have signed this document that are subject to a  
9 confidentiality agreement.

10           So again, I think we are working hard on  
11 a process as both Director Bonham and Nemeth  
12 mentioned. We're working with them, a lot of  
13 time has been spent, evenings, weekends, to try  
14 to get to an agreement. We want to deliver that  
15 too. We believe it's a package that's best for  
16 the environment. Again, that will include robust  
17 funding. A government structure that we believe  
18 we can immediately implement. I think that's  
19 true in Phase I on the San Joaquin and on the  
20 Sacramento Bay-Delta system as well. So that's  
21 our commitment. And again, we'd ask that you  
22 defer your action today. Thank you.

23           CHAIR MARCUS: I know you've -- just a  
24 quick question because I know you work with a lot  
25 of people. You -- you've all spent a lot of



1 time, I just heard about all the hours you've  
2 spent and only rumorous outlines of what it is  
3 you're talking about because of the  
4 confidentiality agreements. I am assuming that  
5 you at some point will be opening that tent.  
6 Because even folks who have been in the  
7 confidentiality agreement are just now being  
8 brought in to conversations. And my fear --

9 MR. BETTNER: No, the tent --

10 CHAIR MARCUS: -- that comes from some of  
11 this is that one set of players are going to come  
12 up --

13 MR. BETTNER: No.

14 CHAIR MARCUS: -- with a deal and then  
15 dump it on our laps at the end. I have  
16 confidence that the Governor is going to talk to  
17 everybody because he's going to talk to everybody  
18 whether they're in a room or not.

19 MR. BETTNER: Yeah, our --

20 CHAIR MARCUS: If he -- once he gets in,  
21 he's going to get in.

22 MR. BETTNER: Yeah, our (indiscernible)  
23 of the tent has been open, people have been  
24 invited and it's their choice to come into the  
25 tent or not. I understand some have decided not

1 to but we believe we're still in the discussion  
2 of putting the program together. We have ideas,  
3 plans, but those are not set in concrete. So I  
4 think as other folks get invited to tent, we're  
5 certainly willing to incorporate, you know, their  
6 proposals, interests, questions, et cetera.

7 CHAIR MARCUS: I would say you should be  
8 talking to people well outside the tent too.

9 MR. BETTNER: Understood. Right.

10 CHAIR MARCUS: Because we have to be  
11 talking to everybody and that actually includes  
12 us.

13 MR. BETTNER: Appreciate that. Yeah.  
14 Okay. Thank you.

15 CHAIR MARCUS: Thank you very much.

16 Ms. Akroyd. Followed by Ms. Warmerdam.  
17 Followed by Gail Delihant.

18 MS. AKROYD: Thank you. Rebecca Akroyd  
19 for the San Luis and Delta Mendota Water  
20 Authority.

21 The Water Authority has provided  
22 extensive comments on the Proposed Phase I  
23 Amendments in the SED in the past. Our comments  
24 have consistently raised concerns with the  
25 proposed approach to the amendments and we

1 believe that there is a better way.

2           As the directors, Thad Bettner, and  
3 others have explained, the Bureau of Reclamation  
4 and DWR have been diligently working with a  
5 number of agencies on voluntary agreements. We  
6 believe these agreements if finalized would  
7 provide a better way for the Water Board to  
8 protect beneficial uses of water in the Bay-Delta  
9 watershed. For that reason, the Water Authority  
10 echoes the request made by Governor Brown,  
11 Governor-Elect Newsom, and others for the State  
12 Water Board to postpone action on the Phase I  
13 amendments in SED until the State Water Board's  
14 December meeting. Thank you.

15           CHAIR MARCUS: Ms. Warmerdam.

16           MS. WARMERDAM: Madam Chair, members, my  
17 name is Maryann Warmerdam, I'm a legislative  
18 advocate for Rural Counties.

19           And we're here today to respectfully  
20 request your favorable consideration submitted by  
21 the Governor and the Governor-Elect to postpone  
22 this particular consideration to December.

23           As you know, the implications to our  
24 rural community served by the tributaries of the  
25 San Joaquin as well as the Sacramento River has

1 severe implications to their long-term economic  
2 well-being. And we believe it is warranted to  
3 take the time to consider the opportunities that  
4 VSAs hold forward and allow not only the  
5 regulated community but also all the stakeholders  
6 to come to an agreement that has long-lasting  
7 sustainable opportunities for not only the state  
8 of California, the communities of the Central  
9 Valley, but also for the Bay-Delta itself. Thank  
10 you.

11 CHAIR MARCUS: Ms. Delihant. Followed by  
12 Rachel Zwillinger from Defenders of Wildlife.

13 MS. DELIHANT: Hi, I'm Gail Delihant.  
14 I'm with Western Growers Association. We're a  
15 statewide organization of growers who grow your  
16 fresh produce.

17 And I'm here today, thank you for  
18 considering the Governor and the Governor-Elect's  
19 request to postpone your vote. Just based on the  
20 conversation today and the testimony so far, it  
21 does I think warrant 30 days delay. It would be  
22 a travesty to have to spend a ton of money in  
23 court. And so today we're here to ask you to  
24 please postpone your vote for 30 days.

25 CHAIR MARCUS: Ms. Zwillinger

1 MS. ZWILLINGER: Hi, I'm Rachel  
2 Zwillinger with Defenders of Wildlife.

3 First I want to say I fully support the  
4 comments of my colleagues Mr. Ziegler and  
5 Mr. Johnson today in requesting action today with  
6 defer -- with a deferred effective date until  
7 December.

8 And I just want to add an underscore and  
9 I think that all of my colleagues would agree,  
10 the importance of broadening the tent and making  
11 these negotiations and discussions inclusive. I  
12 think you've heard today and are fully aware that  
13 there are a broad range of stakeholders with deep  
14 expertise and unique perspectives that have a lot  
15 to offer. And it is my hope that -- that we can  
16 come back in December with something that is  
17 truly supportive by a broad range of stakeholders  
18 and that can be durable in the long term.  
19 Thanks.

20 CHAIR MARCUS: All right. That concludes  
21 the number of people who wish to comment on the  
22 continuance item.

23 I want to turn to my colleagues and ask  
24 if you want to do questions or -- again, I think  
25 breaks are helpful. At least for me because I'm

1 listening to everybody, I need to go back and  
2 look at my notes. But I want to defer to my  
3 colleagues in want they might want to put into  
4 the mix.

5 UNKNOWN SPEAKER: I'm afraid we might  
6 have missed one commenter in particular, maybe  
7 others.

8 CHAIR MARCUS: Yeah.

9 UNKNOWN SPEAKER: I know Michael  
10 Frantz --

11 CHAIR MARCUS: Did you want to speak?

12 UNKNOWN SPEAKER: -- had intended on  
13 speaking.

14 CHAIR MARCUS: Oh, I'm sorry. I just  
15 missed it, then. In terms of did you -- oh, it  
16 doesn't say continuance on it. Absolutely. You  
17 were towards the beginning. Sorry.

18 MR. FRANTZ: Good morning, Chair Marcus  
19 and members of the board. I already forgive you  
20 for forgetting my blue card.

21 CHAIR MARCUS: I was giving a lot of  
22 directions there.

23 MR. FRANZ: My name is Michael Frantz and  
24 I'm Turlock Irrigation District director. I'm a  
25 farmer from a little bitty town called Hickman

1 which is located on the Tuolumne River.

2 Most of you know that I have been an  
3 advocate and a proponent for a Voluntary  
4 Settlement Agreement for some time as has my  
5 agency that I represent, Turlock ID.

6 We have been a steadfast partner at the  
7 table under the leadership of Director Bonham.  
8 We're there because we believe that we could have  
9 ecosystem improvement while maintaining our  
10 community's water supply reliability. So I'm  
11 optimistic and grateful that Governor Brown and  
12 the Governor-Elect have weighed in on this. And  
13 I respectfully ask that you continue this vote  
14 until the upcoming meeting in December.

15 With the Governor's involvement, I'm  
16 confident that we can continue to move forward.  
17 We have -- I'll echo Director Bonham's comments  
18 that we have moved measurably in the last 60 days  
19 and I think that's a good foreshadow as what we  
20 could potentially do in the next 35. So with  
21 that, I'll thank you very much.

22 CHAIR MARCUS: Thank you. Are you  
23 opening -- are you opening to broadening the tent  
24 as well?

25 MR. FRANTZ: No. It's -- I don't have to

1 tell you how complicated the situation is in my  
2 own home town.

3 CHAIR MARCUS: Yeah, I can imagine.

4 MR. FRANTZ: We've got five water  
5 agencies on the -- as farmer agencies plus the  
6 city and county of San Francisco. And so we  
7 certainly -- I became focused primarily on  
8 continuing to get my constituency and keep them  
9 working in concert, in alignment. And I think  
10 that we're open to suggestions but currently  
11 we're trying to be as productive as we can with  
12 the configuration we have.

13 CHAIR MARCUS: Thank you. Are there --  
14 oh, and he has -- two more? All right.

15 UNKNOWN SPEAKER: (Indiscernible) and I  
16 have another card.

17 CHAIR MARCUS: All right. No problem.  
18 Mr. Drekmeier.

19 MR. DREKMEIER: So I just learned that  
20 District 10 was called for Josh Harder.  
21 Actually, I'm just kidding, I wanted to make sure  
22 everyone was awake.

23 (Laughter)

24 MR. DREKMEIER: Sorry about that.

25 CHAIR MARCUS: And, sir, you have to



1 state your name and organization for the record.

2 MR. DREKMEIER: Peter Drekmeier with the  
3 Tuolumne River Trust.

4 And I want to thank staff for a great  
5 response to oral communications from last  
6 meeting. That was really helpful to clear up  
7 some of the misinformation out there and there is  
8 a lot.

9 I think you all heard that last week the  
10 San Francisco Board of Supervisors approved a  
11 resolution in support of moving forward and there  
12 was a lot of back and forth that went into that.  
13 And going into the meeting, we thought we had an  
14 agreement that everyone was on board that it  
15 asked for -- encouraging you to vote today and to  
16 encourage the continual exploration of Voluntary  
17 Settlement Agreements. And the resolution was  
18 approved unanimously by the Board of Supervisors.  
19 A couple of days later the SFPUC changed their  
20 mind and encouraged the mayor to veto that. So  
21 that was very disappointing.

22 But I think that is the right approach  
23 that you move forward, you approve the plan today  
24 and allow the Voluntary Settlement Agreements to  
25 proceed. The only reason you wouldn't go forward

1 today is if you think somehow these ecosystems  
2 could survive with less than 30 percent  
3 unimpaired flow. That's a pretty low threshold  
4 30 percent. And if we can't work within those  
5 bounds, we being the Water Agency's  
6 Environmental, et cetera, we're not going to have  
7 healthy ecosystems. I mean, 30 percent is  
8 already very low.

9           A lot of us have worked on this for  
10 years. A lot of you have been thinking about  
11 this for years. Board Member Steven Moore has  
12 been involved in this for years and I believe  
13 this might be your last meeting, perhaps next  
14 week. I think Board Member Moore should have the  
15 right to vote on an issue that he's put a lot of  
16 time and thought into and we would like to have  
17 him weigh-in.

18           So it was mentioned earlier that we might  
19 have a record return of salmon this year. We're  
20 on course to have 3500, maybe 4,000 salmon. As  
21 recently as 1944, we had 130,000 and that was  
22 after decades of mining, logging, ranching dams  
23 on the river that cut off 85 percent of the  
24 habitat. Nonnative predators that were  
25 introduced in the late 1800s. So the big change,

1 Don Pedro, New Don Pedro, 2 million acre feet.  
2 You had dam -- rimmed dams going in on the other  
3 rivers and cutting off the flow, the lifeblood of  
4 the Bay-Delta.

5           So really hope you'll take action today.  
6 Sometimes it's tough to be a leader but you are  
7 really a phenomenal group, each one of you. And  
8 this will help the process. This will help  
9 jumpstart voluntary settlements. We haven't been  
10 engaged, I'm not super optimistic, I haven't seen  
11 movement from the other side. Already the 40  
12 percent unimpaired flow is a real compromise, but  
13 we're willing to give it a chance. But within  
14 the parameters of the 30 to 50 percent range. So  
15 I hope you will take that to heart and Board  
16 Member Moore, I hope you get a chance to weigh in  
17 on this. Thank you very much.

18           CHAIR MARCUS: Thank you.

19           Phil McMurray from Merced Irrigation  
20 District. Followed by Teresa Hardy from the  
21 Sierra Club Water Committee. And Chris Scheuring  
22 from the Farm Bureau.

23           MR. MCMURRAY: Good afternoon, members of  
24 the board.

25           I apologize, I missed the announcement in

1 the process as well. So I do apologize for that.

2 I'm Phil McMurray, I'm general counsel  
3 with Merced Irrigation District.

4 And I'm going to keep my comments very  
5 short and sweet and to the point and just say  
6 that on behalf of Merced, we appreciate the  
7 letter from Governor Brown and Governor-Elect  
8 Newsom yesterday asking that the board's decision  
9 be delayed. And we would appreciate this board's  
10 action to delay that vote as well.

11 We have been very active in the  
12 negotiations, of course. And I'll just kind of  
13 reiterate what some folks before me have said.  
14 That there have been some very positive things  
15 said in the negotiations but there is still a lot  
16 of work to do. But we are confident about that  
17 and we feel strongly that a settlement really is  
18 the only way to make sure that all the interests  
19 involved, including the economy in our area, our  
20 senior water rights, and the salmon on the Merced  
21 are all -- are all protected.

22 So I'll wrap up by saying thanks again to  
23 Governor Brown and Governor-Elect Newsom for  
24 their pledge to be involved and -- and for their  
25 support. And we obviously will be dedicated to

1 working towards a settlement as well. Thank you.

2 CHAIR MARCUS: Ms. Hardy. Hi.

3 MS. HARDY: Good afternoon, my name is  
4 Teresa Hardy.

5 I attended the last public comment and I  
6 sat next to a group of Native Americans and I  
7 don't see them here today. It could be that they  
8 anticipated that you would make a decision as  
9 well as some of the members of the Sierra Club  
10 who have also worked, attended many FSPUC (sic)  
11 meetings even at short notice and who were here  
12 last time.

13 It's been said today there's a give and a  
14 get. The give today is we need to -- you need to  
15 go forward on your vote today. The get is yes,  
16 there can be transparency and continued input for  
17 a lot of people who still have, you know,  
18 important contributions to make. But as Peter  
19 Drekmeier said, we need to set a parameter,  
20 that's today. We need to set that 30 to 50, we  
21 need to continue to listen to people.

22 But another speaker also said that you  
23 have already created the solution space, and  
24 within that solution space, the voluntary  
25 settlements can continue to be explored.

1           I just think what Native Americans have  
2 said since, you know, since they owned this land  
3 and tended it and took care of it, rivers are our  
4 life blood and you have to go back to that and  
5 what is it that our rivers really need? They  
6 need water.

7           You need to hold up to what you were  
8 going to do today. Yes, it's great that Governor  
9 Brown and incoming Governor Newsom will support  
10 it, that's wonderful news to hear but let them  
11 support it on the parameters that so many people  
12 have worked on for so long and believe in  
13 yourself and believe that you can make right  
14 decisions. Thank you.

15           CHAIR MARCUS: Mr. Scheuring.

16           MR. SCHEURING: Madam Chair, members of  
17 the board. I'm very simple today. Chris  
18 Scheuring from the Farm Bureau.

19           And I'm just here to add the voice to the  
20 California Farm Bureau Federation in support of  
21 the continuance. The world is not a perfect  
22 place, but it's the best path for you today.  
23 Thank you.

24           CHAIR MARCUS: Are there any more?

25           Okay. I'm inclined to take a short break

1 again, but question if other people would like to  
2 say something before the break or ask any  
3 questions. All right.

4 Let's say ten minutes just to look at  
5 notes, et cetera, and think about it.

6 (Off the record at 12:09 p.m.)

7 (On the record at 12:24 p.m.)

8 CHAIR MARCUS: All right. Hello. All  
9 right. We are back at 12:23, :24 p.m.

10 And I want to open it up, I really do  
11 want to hear from my colleagues, this obviously  
12 very difficult and interesting. And well, that's  
13 all I'll say at the moment. Some really  
14 interesting.

15 I want to turn to Board Member Doduc.

16 BOARD MEMBER DODUC: Thank you, Chair  
17 Marcus. I have to admit I sort of exerted  
18 pressure and exercised my best privilege as, I'm  
19 looking at Board Member Joaquin now as the  
20 longer -- longest serving board member at the  
21 moment and actually perhaps of all time on this  
22 board. I've been here --

23 CHAIR MARCUS: You have the record, I  
24 think.

25 BOARD MEMBER DODUC: Yeah.

1 CHAIR MARCUS: Yeah.

2 BOARD MEMBER DODUC: Definitely been here  
3 the last 10 plus years as we worked on this plan  
4 amendment and even before that in the 1990s as a  
5 member of the board's Bay-Delta team.

6 And I will use the same word that  
7 Director Bonham used this morning in terms of the  
8 letter that we received from Governor Brown and  
9 Governor-Elect Newsom. It is amazing. It is an  
10 amazing letter. And because words do matter, I  
11 read it very carefully, at least 10, 20 times by  
12 now. And really want to express my thanks to the  
13 Governor and to the Governor-Elect for this  
14 letter for three main reasons.

15 One, this to me indicate -- well, we know  
16 that Governor Brown has always placed a high  
17 priority on water issues and on Bay-Delta issues.  
18 And by signing on to this letter, Governor-Elect  
19 Newsom has indicated the same.

20 I think it is an amazing recognition and  
21 it gives me a lot of comfort knowing that with  
22 the change administration that we'll still  
23 continue to be a great deal of priority placed on  
24 and commitment to resolving water and Delta  
25 issues. I think we've learned from, you know, in



1 the past eight years at least that these are very  
2 complex problems that requires leadership not  
3 only from the board but the governor and the  
4 entire administration including those from the  
5 Resources Agency. Excuse me. So for that, I'm  
6 very grateful for this letter.

7           And secondly, as Director Bonham pointed  
8 out, there are commitments and phrases in this  
9 letter that really reinforces and support what  
10 the board and the board staff has developed and  
11 proposed. Words such as improved stream flows  
12 and restoration. Improved aqua -- or the  
13 ecosystem, the aquatic systems. And I think my  
14 favorite phrase at all in referring to the  
15 voluntary agreements that it would meet the  
16 requirements of the amendments set forth for  
17 adoption. That those agreements would meet the  
18 requirements of the amendment set for adoption.

19           I have not seen such stronger written  
20 language of support from the Governor or from  
21 anybody but from the Governor and the incoming  
22 Governor for the staff proposal that is before us  
23 today. So I am very grateful for that.

24           And then finally, I am extremely humbly  
25 grateful for the way this is framed. Governor

1 Brown and Governor-Elect Newsom made this a  
2 request of this board.

3 CHAIR MARCUS: Yeah.

4 BOARD MEMBER DODUC: It was not a  
5 direction because this is a policy matter, not  
6 adjudicatory matter. But it was a request made  
7 to us and to me that symbolizes both Governors'  
8 recognition and respect for this board as an  
9 independent board. An independent board of five  
10 members appointed by the governor, confirmed by  
11 the senate, serving staggered fixed terms to  
12 ensure continuity.

13 But also to ensure the diversity and  
14 perspective and experience that would come to  
15 bear for this board. While we as individual's  
16 board members may have different opinion,  
17 different perspective, and may not always agree,  
18 I've always felt and I still do that as a board,  
19 we together through our deliberations and the  
20 transparency of those deliberations make the best  
21 decisions possible even though they may not  
22 always be ones that I strongly push for. So I  
23 think it was very heartening to see that reflect  
24 -- reflected in the tone of the letter that was  
25 sent to us last night.

1           The only thing that I would say  
2 disappointed me a little -- actually, a lot in  
3 this letter is it seems to reflect what I've been  
4 hearing from many of the water users -- water  
5 agency representative that somehow the idea that  
6 the board acting on this Water Quality Control  
7 Plan today would somehow negate any effort on  
8 Voluntary Settlement Agreements.

9           I cannot think of anytime where we could  
10 -- or any way we could have been more firm or  
11 strong in indicating our commitment to those  
12 agreements. I think we've each have individually  
13 voiced that commitment. We've directed staff and  
14 staff incorporated into the program  
15 implementation a mechanism for incorporating any  
16 Voluntary Settlement Agreements.

17           And I -- Director Bonham this morning  
18 used the term personal pledge. I will make you a  
19 personal pledge I plan to be, all things God  
20 willing, serve out my term on this board at least  
21 through January 2021. And during that time, I  
22 welcome Voluntary Settlement Agreements. The  
23 sooner the better, within 35 days is great. And  
24 I commit to you that I will open -- I will  
25 welcome those settlement agreements with open

1 arms, with open hearts, with open minds. I want  
2 to hear them, I want to hear how they could help  
3 all of us achieve the outcomes that we want to,  
4 and we will act as quickly as possible to analyze  
5 as appropriately, to consider and include them in  
6 any future amendment. You have my personal  
7 pledge on that.

8 I do not see why our moving ahead and  
9 establishing the requirements to which these  
10 negotiations, according to both governors,  
11 Governor and Governor-Elect, would meet somehow  
12 sabotage that effort.

13 I think it does come down to a matter of  
14 trust and some of you might recall a few years  
15 ago I made this speech from my heart about trust  
16 and trusting some in the water community to do  
17 what's right during the drought. To do what's  
18 right for not only themselves but their neighbors  
19 and for Californians. And it turned out that  
20 they did step up. They did do, you know, what was  
21 necessary.

22 So today, my appeal to I guess my  
23 colleagues on the board is we need to trust in  
24 ourselves, we need to trust in our process. If  
25 we don't, how can we trust -- how can we ask

1 others to trust that process and to trust us. We  
2 have committed to reviewing, considering, and  
3 incorporating any Voluntary Settlement Agreements  
4 that are appropriate, that make the objectives to  
5 which we said. I make that a personal pledge,  
6 and I would encourage, I believe you all support  
7 that, but I would strongly, strongly encourage us  
8 to take action today on the Water Quality Control  
9 Plan but as always, reaffirm our commitment, our  
10 support for Voluntary Settlement Agreements, and  
11 our very strong intention to receive them whether  
12 it be in 35 days or, you know, whenever and  
13 consider them appropriately and act  
14 appropriately.

15 But I believe we need to indicate and to  
16 send that very strong and clear message that we  
17 trust in our process, that we trust in our words,  
18 that we trust in our actions, and that others  
19 must do the same.

20 CHAIR MARCUS: Thank you. Others?

21 VICE CHAIR MOORE: I have a question.

22 CHAIR MARCUS: Question's fine. We're  
23 just talking here.

24 VICE CHAIR MOORE: Well good. One of the  
25 items that came up during the comments brought

1 forward by the environmental perspective but  
2 there's a broad range in that family, was the  
3 idea of proposing an effective date. That if we  
4 were to adopt the Water Quality Control Plan  
5 amendments today, there might be a mechanism to  
6 delay implementation in some form to allow the  
7 space for folks to come forward with a deadline  
8 baked into the action to encourage folks coming  
9 together.

10           And then I presume, then, we would have  
11 the ability at that point if we delayed the  
12 effective date to actually in a package in  
13 December withdraw the adoption and adopt  
14 something in place or commit, you know, retain  
15 the adoption and commit to amending the Plan  
16 consistent with the framework that's proposed in  
17 a timely manner.

18           So my questions is, is that a viable  
19 mechanism to consider today --

20           MR. SAWYER: Yes, it is.

21           VICE CHAIR MOORE: -- adoption?

22           MR. SAWYER: Of course the item  
23 currently -- the motion currently before you is  
24 whether to postpone but this is relevant to  
25 whether to postpone. The details of how we do it

1 would be done later if you did not postpone.

2           The plan does not take effect until  
3 approved by the Office of Administrative Law. So  
4 if you wanted to take that approach of making  
5 sure its effectiveness is delayed in order to  
6 allow and report back after the December 11<sup>th</sup>  
7 meeting, you could direct the staff not to submit  
8 the Plan to Office of Administrative Law until  
9 say December 13<sup>th</sup>.

10           Also direct that there be an agenda item  
11 on the December 11<sup>th</sup> board meeting to permit any  
12 necessary revisions to the Plan or to direct one  
13 on still not submitting at that point.

14           VICE CHAIR MOORE: Well, it does factor  
15 into a decision to postpone and it is relevant  
16 to, you know, as I weigh the decision to  
17 postpone, what kind of mechanism could be in the  
18 offering to meet the spirit of encouraging  
19 Voluntary Settlement Agreements which I've always  
20 strongly supported. But recognizing motivation,  
21 incentive to come to the table.

22           Folks indicated in their comments from  
23 the water user perspective that adoption would  
24 somehow hinder that process that would -- that's  
25 mystifying to me. Because the history of the

1 State Water Board is the durable agreements have  
2 come after adoption. Like the Yuba accord  
3 everybody loves to talk about.

4           So I'm mystified that somehow an adoption  
5 with this -- these type of flexibilities built in  
6 would somehow hinder the ability of parties to  
7 come together to come up with an agreement to  
8 propose before this board and this board could  
9 change the Water Quality Control Plan it adopts  
10 today or in December.

11           Can someone explain to me how that would  
12 hinder people getting together?

13           BOARD MEMBER D'ADAMO: Well, I guess that  
14 goes to me.

15           So I was prepared to just make some  
16 comments about why I think we ought to postpone  
17 action. But if my colleagues are seriously  
18 considering moving forward with adoption today,  
19 then yes, I'll -- I'll let you know what my sense  
20 is about why going forward is not advisable.  
21 Aside from the fact that it would not, you know,  
22 yes, we have a process that we need to respect,  
23 everyone needs to respect our process. But we  
24 have a Governor that has been actively engaged  
25 and is committing to be actively engaged. He's



1 not going to be in office for much longer. And  
2 then we have an incoming governor that is  
3 committed to being actively engaged. And I  
4 absolutely respect their request and their  
5 leadership. They are advising or requesting us  
6 to delay.

7           We're not involved in these confidential  
8 discussions that are underway. I don't know to  
9 what extent Governor Brown or Lieutenant Governor  
10 Newsom have been involved, but I have enough  
11 respect for their leadership to assume that they  
12 wouldn't send a letter lightheartedly, and they  
13 are telling us that this additional time could  
14 result in a productive discussion that would  
15 result in us actually receiving an VSA.

16           And so for me, that's the goal. VSAs  
17 now, not at some point in the future. So of  
18 course this has been a subject of a lot of  
19 discussion over the last several weeks. I  
20 actually was prepared to come here until we  
21 received that letter last night. As you know, I  
22 was preparing a series of amendments that I was  
23 planning on offering had we gone to adoption. Or  
24 if we do, I would be doing that.

25           But on the top of my list is that I was

1 going to ask for and make a motion for a delay.  
2 And the reason I think that's so important is  
3 because there's important momentum underway right  
4 now. The parties are at the table. I don't know  
5 what sort of progress they've made but we've all  
6 been told that they've been making progress. So  
7 if they started here and now they're here and  
8 they're telling us they're making progress, shame  
9 on us not to give them a little more time. If  
10 they're saying that they can within 30 days or  
11 whatever the timeframe is, short timeframe, close  
12 on that, then let's give them the opportunity.

13           Now knowing that these are very  
14 challenging difficult negotiations, there's the  
15 how much water, how much habitat, how much money?  
16 And then there's the issue of enforceability,  
17 backstop, whatever you want to call it. Those  
18 are big issues. So I am concerned that even with  
19 progress, maybe they don't quite get there.  
20 Well, then I'm counting on the words in this  
21 letter. Governor Brown said he will be engaged  
22 and committed to this process. And Lieutenant  
23 Governor Newsom said that as well. And so I am  
24 just really excited about their commitment to  
25 engage because in the event that they can't quite

1 get there, I think that with their leadership, we  
2 stand the best shot at it.

3           And for me also the reason I oppose the  
4 question of Directors Bonham and Nemeth about  
5 what else, you know, you give to get. What's the  
6 get? We know what the get is on nonflow measures  
7 and funding but it's an important get on  
8 timeframe.

9           These rivers are in my back yard. I've  
10 told many of you that before. They need  
11 restoration. They need additional functional  
12 flow. They need it now, 2019, 2020, whatever the  
13 date is. That's way better than going through  
14 protracted litigation process and an event -- and  
15 an eventual settlement.

16           I wouldn't disagree with you, Board  
17 Member Moore, but it's an issue of when and there  
18 is some urgency. Urgency to act but not just to  
19 act because the process and because we have the  
20 authority to do so, but to act in a meaningful  
21 way where we actually get change on the ground.

22           CHAIR MARCUS: To the youngster.

23           MR. ESQUIVEL: Yeah, I have a hard time  
24 knowing how best to contribute to this discussion  
25 in a way that brings us to success. And I think

1 part of the problem is, you know, what does a  
2 successful outcome look like? And we're trying  
3 to figure that out here.

4           You know, what I do want to point out is  
5 I think that this board has demonstrated an  
6 incredible amount of flexibility. We have an  
7 incredible amount of flexibility for the charges  
8 of inflexibility and otherwise an inability to  
9 want to look at the complexities of these  
10 watersheds and realize that it isn't just a flow  
11 component but it is the many other stressors that  
12 we find ourselves with and needing to have a more  
13 sophisticated understanding.

14           We have that flexibility, we've  
15 demonstrated in the past. And I believe  
16 wholeheartedly that moving forward, we would  
17 still have the flexibility to bring in a  
18 Voluntary Settlement Agreement.

19           That being said, we do find ourselves  
20 with a request from the current Governor, the  
21 incoming Governor and it is a reasonable one  
22 given the amount of time that has been put into  
23 all of this. But I share Board Member D'Adamo's  
24 concern that 30-some odd days is a tall order and  
25 do we set ourselves up for a situation in 30 days

1 when people feel then past that date that a  
2 voluntary settlement is impossible, that the art  
3 of the impossible disappears after this one  
4 herculean moment which is incredible, again, to  
5 have the attention of the governors.

6 But I'm looking past 30 days to 60 days,  
7 past to the next year, to the next five years, to  
8 the next ten years. And the question becomes how  
9 do we set ourselves up for success, for communal  
10 success here? And so this is a difficult vote,  
11 it's a difficult moment. It's -- there's a lot  
12 of -- again, I want to emphasize the incredible  
13 amount of flexibility the board has demonstrated  
14 that we continue to.

15 And I join Board Member Doduc in saying  
16 that I commit to VSAs wholeheartedly. That I  
17 want them to be successful, that I want us to  
18 move past some of the really tired, tired  
19 narratives that dominate so much of the  
20 discussions around how do we provide for our  
21 ecosystems.

22 You know, folks continue to say that  
23 we've tried flows, you know, we've tried to  
24 account for more water in these ecosystems, and  
25 that's not the case. Everyone knows that the

1 agreement in 1995 with the update of the Bay-  
2 Delta Water Quality Control Plan then was that  
3 the CBP and the State Water Project would by and  
4 large meet those water quality objectives and  
5 we'd leave the tributaries, we'd leave the rest  
6 of this and massive watershed that takes up our  
7 state alone. And that compromise hasn't worked.

8           And so it's time we get serious, it's  
9 time we all see ourselves. And, you know, these  
10 are enormously complicated issues, but they're  
11 similar issues that other western states face,  
12 that other -- other regions in this world face  
13 when we talk about the constraints and the  
14 challenges faced with climate change, with a need  
15 to shift the way we manage our water resources.

16           But if not -- if not California, if not  
17 this incredible group of people sitting here in  
18 this room that are committed to your communities,  
19 that are committed to being all here in 10, 20  
20 years together still yet enjoying hopefully a  
21 thriving ecosystem.

22           And so, yeah, again, I'm challenged by  
23 the issues. I want to emphasize the flexibility  
24 we have, that we continue to have, that we  
25 embrace, you know, this other way, this

1 generational shift. But we all have to be honest  
2 with ourselves as to what it is that is being  
3 proposed. And there needs to be transparency in  
4 the process and it needs to be, you know, and  
5 that's as Director Bonham said, I suppose that's  
6 our role in his -- in his faith and our processes  
7 thereafter and again, looking beyond these next  
8 30 days and realizing we do have an opportunity  
9 that it affords in my opinion a delay.

10           Although I agree wholeheartedly that we  
11 would still have the flexibility to adopt  
12 anything even with moving forward. But I think  
13 that I want to respect the strong opinion of  
14 others that feel that somehow our vote would then  
15 stop all those discussions which again I don't  
16 agree in premise. But. Yeah.

17           CHAIR MARCUS: All right.

18           Yeah, please, go ahead.

19           BOARD MEMBER DODUC: Just a quick  
20 response. First of all, thank you, Board Member  
21 D'Adamo. I know that we don't always agree but I  
22 hope you know that I very much respect you and  
23 your contribution to the board and all the  
24 matters that come before us. You've helped us  
25 improve up on the action that we eventually take.

1 And I'm sure that it will apply here as well.

2 I also want to also say if I didn't make  
3 it clear that I do very much respect the opinions  
4 and request that was made by Governor Brown and  
5 Governor-Elect Newsom. And I under -- I  
6 appreciate that they and those who are involved  
7 in negotiations are privileged information that  
8 we do not have and if all members participating  
9 in those negotiations had come to us in agreement  
10 with the request for delay, that would have been  
11 extremely persuasive to me, but not all parties  
12 did. We had a significant numbers of parties who  
13 are negotiating on those settlement agreements  
14 who came in and publically asked us to move  
15 ahead.

16 And so again, not being party to what's  
17 going on, based on the experience that I've had,  
18 based on the history of the board's action and  
19 nonaction when it comes to Bay-Delta, mindful of  
20 the request being made by the Governor and  
21 incoming Governor, and very much appreciative of  
22 the fact that they made the request and left it  
23 to our discretion, that's my basis for asking  
24 that we move forward. That we move forward with  
25 a commitment to work with all parties and should



1 a settlement be proposed to us in December, we  
2 would welcome that, we will consider that, and we  
3 will take the appropriate next steps then.

4 But I don't want another month or two  
5 months or three months of this question of the  
6 board -- will the board act or not --

7 CHAIR MARCUS: Uh-huh.

8 MS. DODUC: -- be hanging out there. We  
9 need to demonstrate our commitment to this effort  
10 and this effort includes Voluntary Settlement  
11 Agreements.

12 Let's just take that question off the  
13 table, let's move forward, and tell everyone  
14 we're serious about moving forward not only with  
15 the subjectives but with the VSAs.

16 VICE CHAIR MOORE: Board Member Doduc,  
17 what do you think about the effective date  
18 mechanism that was proposed?

19 BOARD MEMBER DODUC: I understand what  
20 Mr. Sawyer said and should we get to that stage  
21 today, I do not oppose that, I would support  
22 that.

23 CHAIR MARCUS: All right. I think this  
24 is -- this word may seem too small but it's been  
25 one of the most interesting and challenging

1 issues I've faced in a long time. I know for  
2 some people it seems simple and I think everybody  
3 comes at it with their own narrative. And I look  
4 around the room and I can speak a lot of your  
5 narratives. It's almost like I can see the  
6 bubble over in that reality and they're separate  
7 and they're in parallel and they've been talking  
8 past each other for a very long time.

9           And I think part of what we've been  
10 trying to do and say and I really appreciate  
11 particularly Board Member Doduc, but everybody's  
12 thoughtful concerns, particularly how you read  
13 the letter and how you articulated the reality of  
14 what we've been proposing. But also the  
15 recognition and I appreciate this as well that  
16 we've been asked rather than told or attempted to  
17 be told that everybody has their own narrative on  
18 this.

19           And I worry with a lot of fears that  
20 there may be people in the room who feel that  
21 delay is a win and that somehow that means the  
22 board will never act or that it doesn't mean  
23 anything or that folks who fear that -- or hope  
24 that they do or fear that that would be the case.  
25 And -- and others who are actually believing that

1 the engagement of the Governor will make a  
2 difference to everybody being heard.

3           And again, there are sort of fears and  
4 concerns. The narrative I know that many of us  
5 in the field have is of the board not being  
6 allowed to act. And that is -- or being  
7 attempted to not act. And I'm actually not  
8 seeing this here. I think the challenge is I  
9 would prefer to act and have the Governors help  
10 in getting further on a voluntary settlement  
11 because I think it is a request to put in 30 days  
12 of his prejudice. I don't know how much time. I  
13 appreciate the request from the incoming Governor  
14 caring about water is unusual I have to say  
15 historically and I think is a good sign. I don't  
16 know how much time he'll personally have to  
17 engage but I think coming in if it's to help  
18 advance the ball is something that is -- it's  
19 hard to say no to. But I do have this challenge  
20 of what happens in 30 days?

21           And I have to say it's very important, I  
22 think, for the reasons Board Member Doduc said to  
23 act because I do think there's room in what we've  
24 put out there to act. To act within the range  
25 that we've talked about, that large range that

1 Mr. Bobker talked about. There is always an  
2 opportunity for folks to come in with something  
3 different but with support that we would then  
4 consider and go out and to process in front of  
5 everybody on, and we've always been clear about  
6 that but that there needs to be a process.

7 I think -- I fear the people who think  
8 that delay means that the arguments they've been  
9 making will somehow magically be heard and our  
10 responses or our science or our concerns  
11 dismissed. I would disabuse them of that. And  
12 so I have as many fears as anyone else.

13 And I probably have as much or more  
14 desire than anybody in this room to act on this  
15 over decades of both watching the board, having  
16 to stand in in the place of the board when it  
17 failed to act. Being saddened by the nature of  
18 the discourse and frankly being a little  
19 frustrated at not knowing what's in that black  
20 box and feeling that a lot of the issues of flow  
21 and others things that we know are important for  
22 a lot of reasons including I'll just say  
23 temperature, for example, and an ecological  
24 approach that we've been seeking is important.

25 I also think that our proposal in itself

1 in the noise of a miscommunication about it,  
2 whether the recent flurry of discussion about how  
3 legally we can't go lower than 40 which I think  
4 is completely wrong but I think has a number of  
5 people in a twist is unfortunate. Again, I think  
6 the discourse on this has been not surprising but  
7 disappointing and not where we need to get.

8           So I see all of those challenges and I  
9 see the challenges of in 30 days we're not going  
10 to have -- there's no way to have something fully  
11 baked that would be able to have that regulatory  
12 backstop or whatever we want to call it. I'll  
13 call it a banana. I know people hate that but we  
14 need to update this Plan and I appreciate and I  
15 believe that the Governor understands that we  
16 need to update the Plan.

17           So it's -- I have all my fears from  
18 knowing people and fears about the worst case  
19 scenarios and my own desire in the narrative to  
20 be able to take this across the transom as  
21 someone who may well not be here very much  
22 longer. And I feel very, very strongly about a  
23 lot of that.

24           But I do see with this historic and  
25 unusual request from a Governor and a Lieutenant

1 Governor asking for 30 days, it's very hard to  
2 say no, don't give it a try to get us closer in  
3 30 days. And I understand and I think we're  
4 right that there's plenty of room in what we've  
5 proposed which again, I think people will write  
6 about this as a historic proposal, both in terms  
7 of its invitation to voluntary settlements and  
8 its ecological approach, et cetera.

9           So I think I want to act today more than  
10 anyone else in the room and I feel very  
11 comfortable with where we are, and I know  
12 everybody isn't. I think it's there. But I do  
13 think that we -- I am willing and actually  
14 welcome the attempt of the Governor to try and  
15 get us a little bit closer to that in the way  
16 only he can and hasn't been engaged. And I have  
17 to have faith that he will also do it on behalf  
18 of fish and with respect to what we've done and  
19 give us the time and more people in the room the  
20 time to talk to. Because I think he will talk to  
21 people outside of those rooms and should to get  
22 that bigger sense.

23           And if you know him, you know he'll talk  
24 to anybody anywhere anytime. And so I think a  
25 request to have 30 days, as much as I don't want

1 to say yes to it because of how long this has  
2 been, that does have to do with my narrative and  
3 my tiredness, and my concern and my fears, and I  
4 have to balance that with a request for 30 days  
5 on behalf of a historic request that does have  
6 more acknowledgement in it than preceding ones.

7           So though it is very difficult for me to  
8 say, I think it is -- that request is reasonable  
9 and I think it may get us to a closer and more  
10 inspiring place. If it's still where we are now,  
11 then we have to act. And we have to act and then  
12 folks want to litigate. Folks are going to  
13 litigate either way, but for me, the bottom line  
14 is got to be that we do have a Plan adoption in  
15 December that's real and I could have it be this  
16 one. I want it to be this one, I think it could  
17 work very well but I have to keep my mind open to  
18 whatever comes in. But something not coming in  
19 or request for time does not work for me because  
20 time's up.

21           Again, if the Governor were asking for  
22 indefinite delay, I would say no. I think I  
23 don't want to do the 30 days but I do think we  
24 should give the Governor that chance to do what  
25 he's asking to do in recognition of both his

1 respect for our ability and desire and need to do  
2 this work. But I also understand that he's  
3 coming into it more fresh. So what seems obvious  
4 to those of us who have been in here about what  
5 we've been proposing all along and the room for  
6 it is perhaps a tactical discussion. I think it  
7 could absolutely help to have us to adopt. I  
8 think it could absolutely -- we could go forward.  
9 But I understand his desire to just be able to  
10 have his 30 days to have at it and then let us do  
11 what we want to do with his blessing.

12           And so in what has been a very hard day  
13 or two of mulling it over, while I'm not happy  
14 about where we are on the one hand, I am happy to  
15 have the engagement and a desire to give it the  
16 college try to at least get us closer maybe to  
17 articulating a vision that can get us off the  
18 warring narratives and factions.

19           And I will say to the extent that people  
20 don't move off their narratives and continue to  
21 both mischaracterize what we've proposed or I  
22 think not be open and I think honest in their  
23 assessment of the need for water for fish, et  
24 cetera, I'd just say I will come back with even  
25 more vigor and determination in December.



1           And I don't make this decision lightly, I  
2 make it out of respect for the man and the --  
3 both men -- and the offices but also with respect  
4 that it is a request and that it is a very short  
5 request. And that I find it hard to say no to,  
6 though I would -- another part of me would like  
7 to. And I know that will confuse some people.

8           I have agonized over it a lot but you  
9 have to step back and say in the bigger picture  
10 when you have a Governor and an incoming Governor  
11 just asking for a short delay to get into it and  
12 give it a go. I want to give them the chance to  
13 bring everybody together a little better, but it  
14 has to be people who are inside that tent, one  
15 thing, not all of whom have brought in as much as  
16 others but also people outside the tent.

17           And I do have commitment for that as well  
18 as more of our team and our staff and an  
19 understanding of what we've actually proposed  
20 which I think the Governor's also new to and I  
21 appreciate his respect for our role and what it  
22 is we have to do.

23           So I find it hard to say no to a short  
24 delay as much as it makes my heart sink with fear  
25 and worry. The upside is we get closer to a

1 better comprehension which moves us even if we  
2 then have to go forward to a better -- a better  
3 place to move on to the forward to the VSAs we've  
4 asked for.

5           Because I do think that we, as I said  
6 when we opened, we have to change the channel on  
7 how we do this. Though water wars and the  
8 vitriol, and the talkers have to give way to the  
9 people on the ground who want to do things. And  
10 there are people out other who want to do things  
11 but the prevailing dynamic makes it hard for them  
12 to do it.

13           And I'm hoping the Governor can help  
14 change that a little. Because otherwise people  
15 don't want to negotiate them -- against  
16 themselves or even recognize the fact that we've  
17 already come out with a pretty fair -- a pretty  
18 fair proposal.

19           So again, probably too many words and too  
20 much of my feelings as opposed to just short  
21 decision. I find this very hard and anyone who  
22 thinks it's simple isn't thinking through the  
23 layers of it. And so I just think on balance, I  
24 want to be appreciative of this letter, the  
25 request, and the offer for all the reasons that

1 Board Member Doduc said.

2 And so reluctantly I will -- but with  
3 hope, I will -- I will support giving it a --  
4 giving it a try but with my eyes wide open on a  
5 firm commitment to act in December.

6 BOARD MEMBER DODUC: I think this is time  
7 we can call the vote.

8 CHAIR MARCUS: I want to just sit here in  
9 a moment of --

10 VICE CHAIR MOORE: Somebody has to --

11 CHAIR MARCUS: -- silent marination and  
12 reflection.

13 VICE CHAIR MOORE: Somebody has to second  
14 the vote.

15 CHAIR MARCUS: This is one of those  
16 things where I need that poster that said I want  
17 to believe. And I do. I want to believe. And  
18 thank you. Oddly enough, much of what you said  
19 even though it differs from what you asked has  
20 helped me with this.

21 So I call on the better angels of  
22 everyone's nature and see what happens. If it's  
23 more of the same, then we will have wasted 30  
24 days of ours, yours, and the Governor's time. If  
25 it is appreciably different and moves the dialog,

1 we'll at least be closer to a vision of what  
2 could be.

3           VICE CHAIR MOORE: Well, yeah, and as I  
4 mentioned before, I did have a discussion with  
5 the Governor and I would just distill it down to  
6 this. He says give me a chance, give me 30 days,  
7 you know, recognizing that I won't be here in 30  
8 days. Very respectful to me, always a request,  
9 not a direction. So it means a lot to me  
10 personally in my relationship with him. And I  
11 would honor that but -- and also the fact that he  
12 has my phone number.

13           (Laughter)

14           VICE CHAIR MOORE: I'll still have a  
15 beating heart and a pulse after I'm off the board  
16 and I offer myself up to the governor to be able  
17 to bounce back ideas as he mulls over these  
18 details.

19           CHAIR MARCUS: You can be in the tent  
20 now.

21           BOARD MEMBER DODUC: And just for the  
22 record, in case anyone thinks that I'm dissing  
23 the Governor --

24           CHAIR MARCUS: I think it's fabulous.

25           BOARD MEMBER DODUC: -- the Governor did

1 not call me.

2 (Laughter)

3 BOARD MEMBER DODUC: But also given the  
4 tremendous respect I have for the chair in  
5 regards to her statement and her support for  
6 continuance, I will abstain from voting on this  
7 item. My philosophy always is if I cannot  
8 support the Governor and my chair, I will  
9 abstain.

10 CHAIR MARCUS: Well, with that, do I have  
11 a motion?

12 BOARD MEMBER DODUC: You have a motion.

13 CHAIR MARCUS: And do I -- right. I'm  
14 just doing -- do I have a second?

15 BOARD MEMBER ESQUIVEL: Second the  
16 motion.

17 CHAIR MARCUS: Any further discussion?

18 All right. This item will come back on  
19 December 11.

20 And in the meantime, I do expect a lot of  
21 work and --

22 | MR. SAWYER: I'm sorry, I didn't hear  
23 | the vote.

24 CHAIR MARCUS: We have to say it -- oh.  
25 All in favor?

1 BOARD MEMBER D'ADAMO: Aye.

2 VICE CHAIR MOORE: I will abstain as

3 well.

4 CHAIR MARCUS: All right. Favor?

5 BOARD MEMBER ESQUIVEL: Aye.

6 CHAIR MARCUS: All right. Aye.

7 So the motion carries and we will be back

8 December 11<sup>th</sup>, hoping to have something very

9 different in front of us.

10 (Whereupon, at 1:07 p.m., the public meeting

11 was adjourned.)

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**REPORTER' S CERTIFICATE**

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were reported by me, a certified electronic court reporter and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 12th day of December, 2018.



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Eduwiges Lastra  
CER-915

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I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were transcribed by me, a certified transcriber.

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IN WITNESS WHEREOF, I have hereunto set my hand this 12th day of December, 2018.



Jill Jacoby  
Certified Transcriber  
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