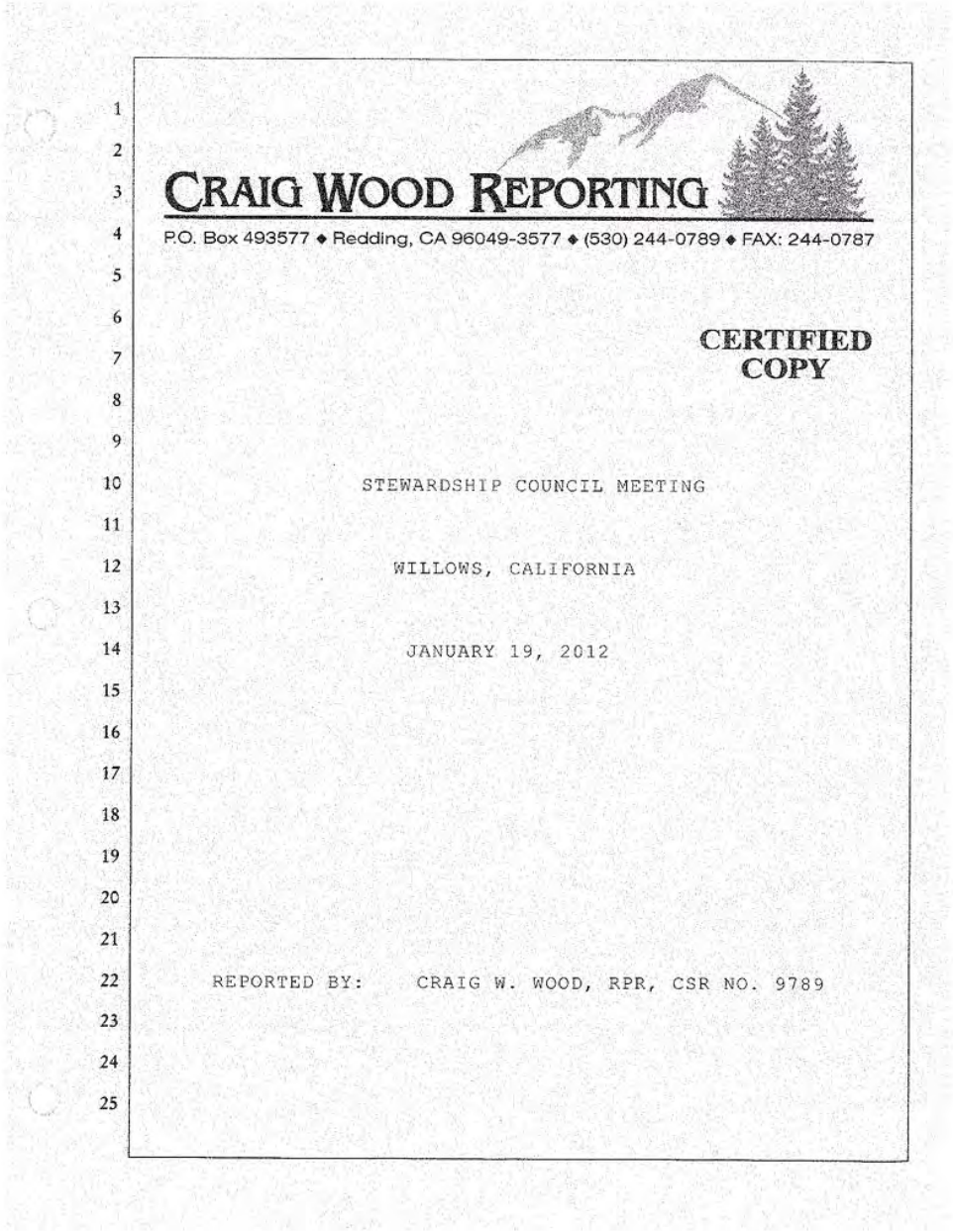
I115 Willows transcript



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STEWARDSHIP COUNCIL MEETING

WILLOWS, CALIFORNIA

JANUARY 19, 2012

REPORTED BY: CRAIG W. WOOD, RPR, CSR NO. 9789

No comments

- n/a -

PROCEEDINGS

MR. ISENBERG: Ladies and gentlemen, again a couple people came in after we started. If you are going to speak tonight, we'd deeply appreciate it if you could fill out in advance one of these blue forms and carefully put your names so we can get the correct spelling. And if you're representing an organization, the organization you're representing. What I'll do is call on you in the order in which these forms have been presented to me and we'll go through it like that if you don't mind.

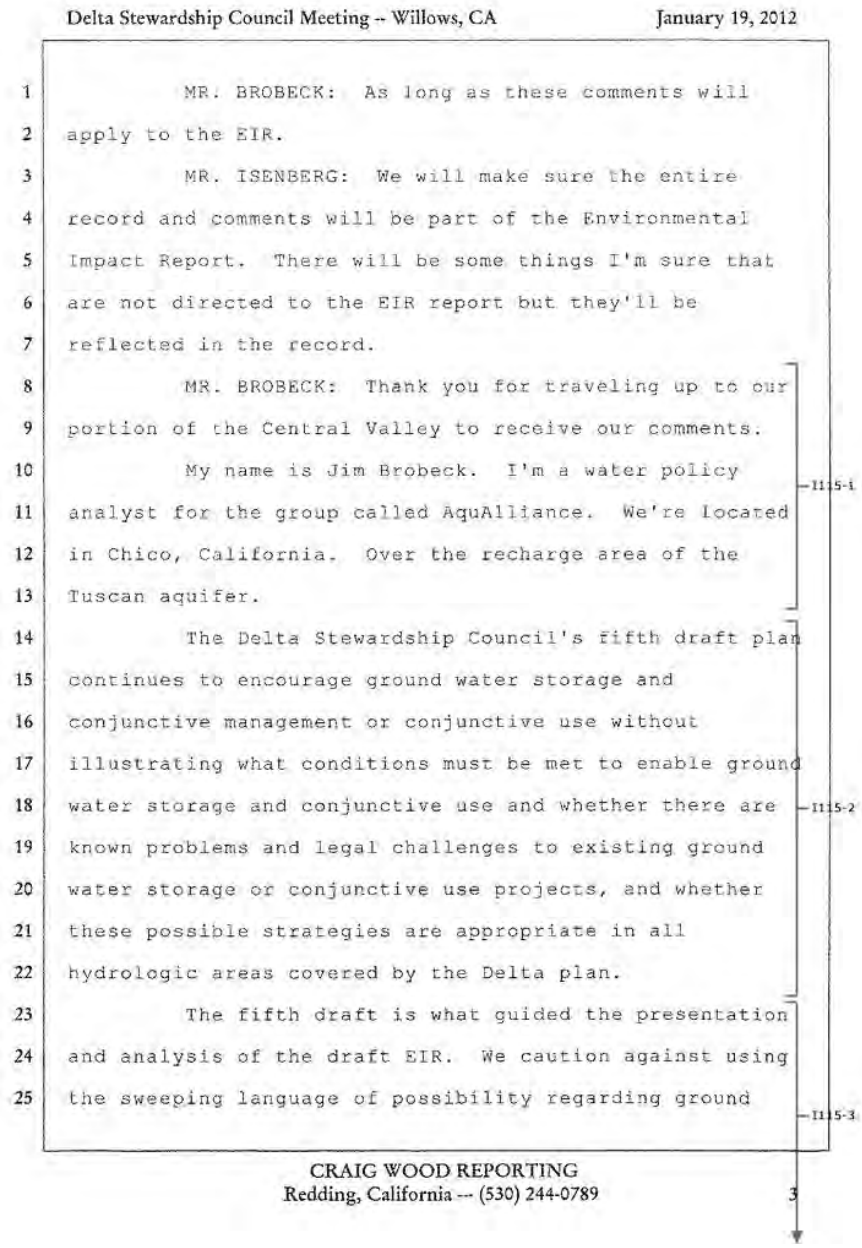
First is Mr. Brobeck from the AquAlliance. Mr. Brobeck.

MR. BROBECK: Chairman, is this the comment period for the EIR?

MR. ISENBERG: It could well be. I noticed you wanted to comment on both the Delta plan and the EIR. We're keeping track of this and we will transcribe this entire process. We've had this question before in the other four meetings up and down the state. My recommendation is since you're the first one up, why don't you cover both your points if that's appropriate. On the other hand, if you prefer to wait, we could easily do that.

No comments

- n/a -



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MR. BROBECK: As long as these comments will apply to the EIR.

MR. ISENBERG: We will make sure the entire record and comments will be part of the Environmental Impact Report. There will be some things I'm sure that are not directed to the EIR report but they'll be reflected in the record.

MR. BROBECK: Thank you for traveling up to our portion of the Central Valley to receive our comments.

My name is Jim Brobeck. I'm a water policy analyst for the group called AquAlliance. We're located in Chico, California. Over the recharge area of the Tuscan aquifer. I115-1

The Delta Stewardship Council's fifth draft plan continues to encourage ground water storage and conjunctive management or conjunctive use without illustrating what conditions must be met to enable ground water storage and conjunctive use and whether there are known problems and legal challenges to existing ground water storage or conjunctive use projects, and whether these possible strategies are appropriate in all hydrologic areas covered by the Delta plan. I115-2

The fifth draft is what guided the presentation and analysis of the draft EIR. We caution against using the sweeping language of possibility regarding ground I115-3

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Response to comment I115-1

Comment noted.

Response to comment I115-2

The Revised Project, which is the November 2012 Final Draft Delta Plan, was analyzed in the Recirculated Draft Program EIR (Volume 3 of the Draft Program EIR) which was circulated for public review and comment from November 30, 2012, through January 14, 2013. The issues covered by Fifth Staff Draft Delta Plan recommendation WR R9 are now covered by Final Draft Delta Plan recommendation WR R10, which states that water suppliers that receive a significant percentage of their long-term water supplies from groundwater sources should develop and implement sustainable groundwater management plan consistent with recommendations in DWR Bulletin 118, as described in Appendix C. Water suppliers that use conjunctive use programs generally would use groundwater for a large portion of their water supplies (Table C-12, pp. C-13 to C-14; Final Draft Delta Plan, p. 111). Impacts due to water supply projects that would be encouraged by the Delta Plan, including groundwater projects, are analyzed in Sections 3 through 21 of the EIR. The analysis in this EIR assumes that groundwater water supplies would not become overdrafted because the proposed Delta Plan encourages establishment of balanced groundwater management programs. Therefore, it is assumed that other water supplies, including recycled water, local water storage facilities, ocean desalination, water use efficiency and conservation, and water transfers, would be used to meet the water demands projected in adopted general plans. The EIR also recognizes that portions of the agricultural areas in the San Joaquin Valley could be fallowed or retired due to the lack of water supplies to replace reduced water supplied from the Delta, if any. The impact assessments in Sections 3 through 21 evaluate the construction and operation of local and regional water supplies, and conclude, in most cases, that there may be significant and adverse impacts.

Response to comment I115-3

The EIR describes existing conditions in Sections 3 through 21 of the DEIR. Section 3 of the EIR discusses existing groundwater overdraft conditions in many areas of California. Please refer to response to comment I115-2.

water storage and conjunctive use when, as the plan discusses, "The current status of ground water management throughout California is unknown and remains so today." In addition serious impacts from current and historic practices have already altered some ground water basins severely, so the depth of uncertainty and acknowledgment of past failures should accompany any suggestions of ground water storage and conjunctive use associated with this plan. I115-3

The Sacramento River is California's largest river and its watershed's contribution to the State's economy and communities is unquestioned. But it is not invincible to the activities of man. The Sacramento River and its tributaries have many impaired segments on the 303(d) list. Its salmon runs are still struggling to survive. It's home to many more imperiled species, and the farms and communities within its boundaries have significantly stretched the water resources for the Sacramento valley. An early attempt at conjunctive use in 1994 revealed the folly of moving forward with large ground extractions when little was, and still is, known about the hydrologic region. I115-4

In 1994 the drought water bank followed seven years of low annual precipitation. One of our local water districts, Western Canal, and other irrigation

Response to comment I115-4

Please refer to responses to comment I115-2 and I115-3.

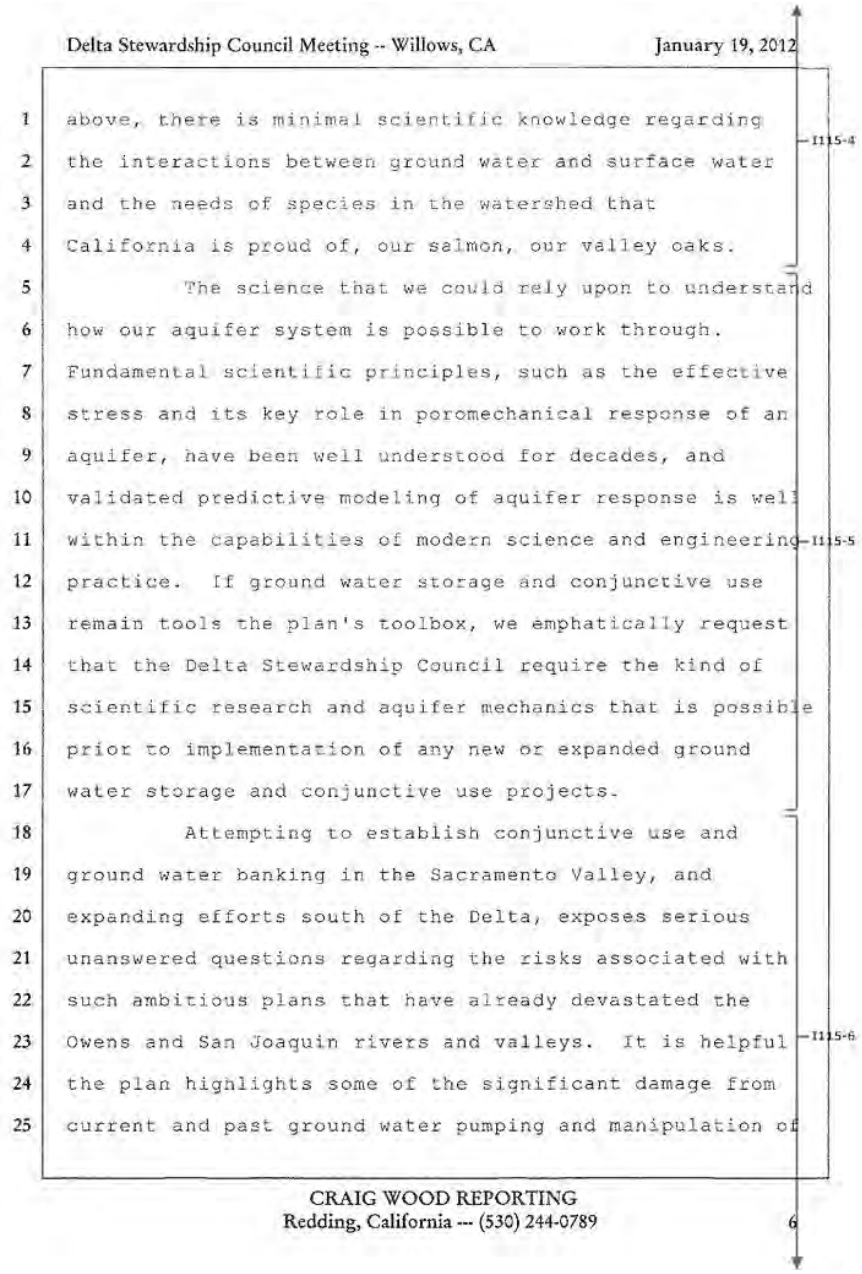
districts in the area exported 105,000 acre feet of water extracted from the Tuscan aquifer to buyers outside the area. This early experiment in the conjunctive use of ground water resources, conducted without the benefit of project level environmental review, caused a significant and immediate adverse impact on the environment. Until the time of the water transfers, ground water levels had dropped during peak irrigation and low precipitation periods, but the Tuscan aquifer had sustained the normal demands of domestic and agricultural users in our area. The water district's 1994 extractions, however, lowered ground water levels precipitously throughout the Durham and Cherokee areas of eastern Butte County. The water level fell and the water quality deteriorated in the wells serving the City of Durham. Irrigation wells failed on several orchards in the Durham area. One farm never recovered from the loss of its crop and later entered bankruptcy. Residential wells dried up in the upper-gradient areas of the aquifers as far north as Durham during that early experiment.

I115-4

Seventeen years later, the plan's proposed ground water storage and conjunctive use proposals had the potential to cause significant impacts in both the areas of origin and the receiving areas. As I noted

No comments

- n/a -



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above, there is minimal scientific knowledge regarding the interactions between ground water and surface water and the needs of species in the watershed that California is proud of, our salmon, our valley oaks. I115-4

The science that we could rely upon to understand how our aquifer system is possible to work through. Fundamental scientific principles, such as the effective stress and its key role in poromechanical response of an aquifer, have been well understood for decades, and validated predictive modeling of aquifer response is well within the capabilities of modern science and engineering practice. I115-5 If ground water storage and conjunctive use remain tools the plan's toolbox, we emphatically request that the Delta Stewardship Council require the kind of scientific research and aquifer mechanics that is possible prior to implementation of any new or expanded ground water storage and conjunctive use projects.

Attempting to establish conjunctive use and ground water banking in the Sacramento Valley, and expanding efforts south of the Delta, exposes serious unanswered questions regarding the risks associated with such ambitious plans that have already devastated the Owens and San Joaquin rivers and valleys. I115-6 It is helpful the plan highlights some of the significant damage from current and past ground water pumping and manipulation of

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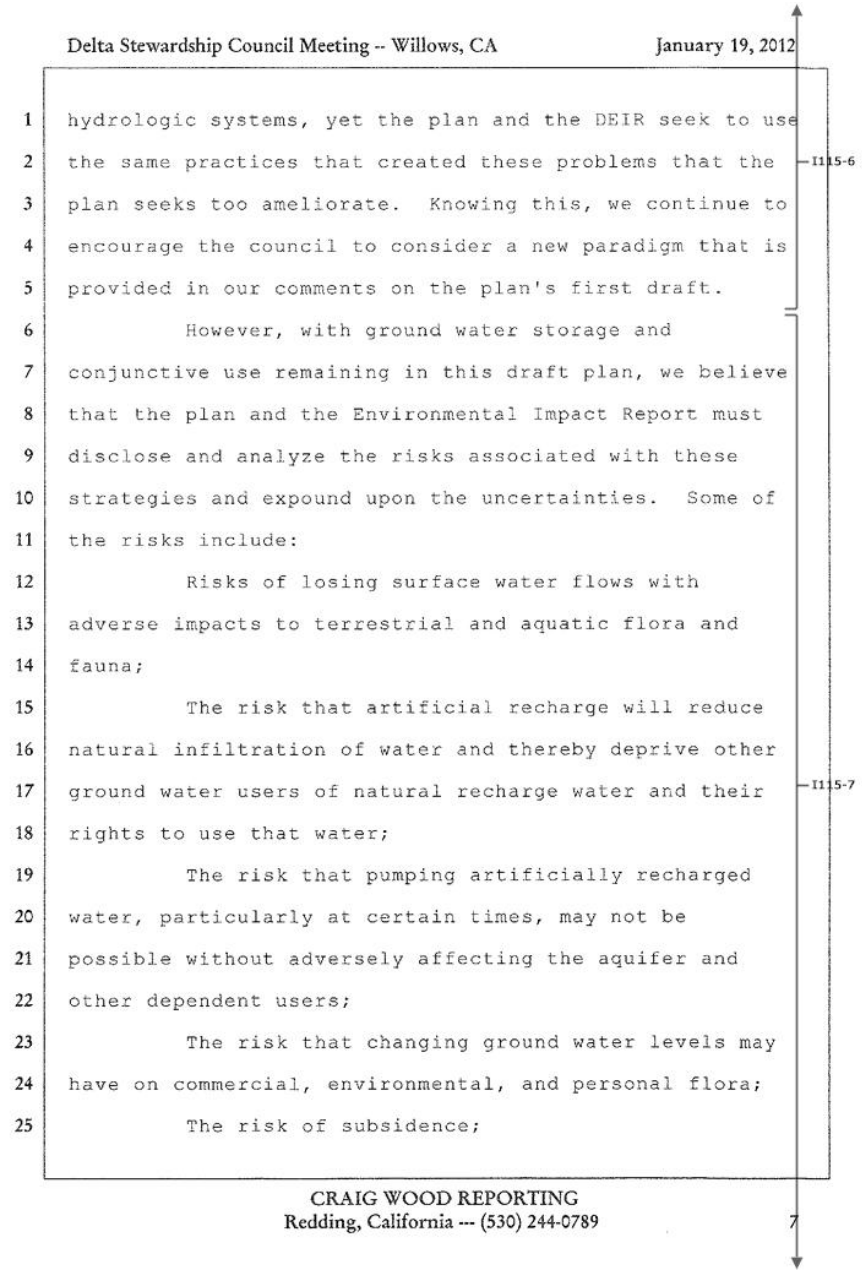
Response to comment I115-5

This is a comment on the project, not on the EIR. Final Draft Delta Plan Chapter 2, The Delta Plan, concerns Science and Adaptive Management in the Delta (Final Draft Delta Plan, pp. 42 – 45). In addition, each chapter of the Final Draft Delta Plan contains a section on Science and Information Needs.

Response to comment I115-6

Please refer to response to comment I115-2.



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hydrologic systems, yet the plan and the DEIR seek to use the same practices that created these problems that the plan seeks too ameliorate. Knowing this, we continue to encourage the council to consider a new paradigm that is provided in our comments on the plan's first draft. I115-6

However, with ground water storage and conjunctive use remaining in this draft plan, we believe that the plan and the Environmental Impact Report must disclose and analyze the risks associated with these strategies and expound upon the uncertainties. Some of the risks include:

Risks of losing surface water flows with adverse impacts to terrestrial and aquatic flora and fauna;

The risk that artificial recharge will reduce natural infiltration of water and thereby deprive other ground water users of natural recharge water and their rights to use that water; I115-7

The risk that pumping artificially recharged water, particularly at certain times, may not be possible without adversely affecting the aquifer and other dependent users;

The risk that changing ground water levels may have on commercial, environmental, and personal flora;

The risk of subsidence;

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Response to comment I115-7

Sections 3 and 11 of this EIR discuss the significant adverse water quality and seepage conditions that may result from implementation of the proposed Delta Plan. Please refer to response to comment I115-2.

The Delta Plan assumes implementation of WR R10 that would result in preparation of sustainable groundwater management plans, as identified in DWR Bulletin 118 and Water Code section 10753, by water agencies. The groundwater management plans must include: 1) basin management objectives; and 2) a program for monitoring and management of groundwater levels, groundwater quality, land surface subsidence, and changes in surface water flow and water quality that directly affects groundwater or is caused by groundwater pumping.

The risk of mobilizing hazardous waste plumes that exist in the aquifer system;

The risk of contaminating ground water with lower quality recharge water;

The risk of leaching contaminants into a ground water basin. I115-7

I could go on with the risks. Legal risks, hydrologic risks, water quality risks. I'll close at this and I'll provide these written comments to your clerk tonight. I thank you for listening to my comments on this.

MR. ISENBERG: Thank you very much. And also for everyone, it's very helpful if after you make verbal comments if you could ship us an e-mail or written summary of or amplification of it. In the future that will also become part of the official record and will make sure that we understand the record that you make. That would be very useful.

Mr. Brobeck, you had a couple things. I'm not responding to anything on the draft environmental impact report. For legal reasons we cannot. But I think it's at least useful to reference the statute that created us and the legislative mandate that is directing our activities. And for any of you who picked up the statute, you might want to take a look at page 20.

No comments

- n/a -

One of the major elements in the Delta plan is an effort, as Mr. Coolidge indicated, to use the limited authority in the Delta plan to further the State objectives that had been identified in law. We are not amending the law in the Delta plan, we're simply reflecting it. Water Code section 85021, part of this legislation, is kind of a fundamental legislative declaration, now state law, on how we will accomplish over the next decades a balance of water use. And I think it might be useful just to read it.

The policy of the State of California is to reduce reliance on the Delta in meeting California's future water supply needs through a statewide strategy of investing in improved regional supplies, conservation, and water use efficiency. Each region that depends on water from the Delta watershed shall improve its regional self-reliance for water through investments in water use efficiency, water recycling, advanced water technologies, local and regional water supply projects, and improve regional coordination of local and regional supply water supply efforts. That's the statute.

The Delta plan does not attempt to mandate what each agent area of the state must in fact do for water use efficiency or conservation. There was a law passed and currently with the law that created us to say to urban

No comments

- n/a -

water districts you must reduce your use by 20 percent by the year 2020. A non-quantifiable companion was dealing with agricultural water. That's existing law.

Our authority when it exists is only if the activity falls within the definition of covered action. And the statute is full of that. But it must occur in whole or in part within the Delta and so on and so forth. There are all kinds of exemptions for it.

What the Delta plan talks about is strengthening the hand of regional solutions to water problems as opposed to trying to micromanage from the state level what every water district everywhere in California must do. We were not granted that authority, we make no attempt to claim that we are. But the notion that people with covered actions are complying with this law is important and we ask them to make a good demonstration of good faith efforts to achieve at that.

You've undoubtedly looked at our draft language in the fifth draft Delta plan where we deal with ground water, we include information on ground water overdraft, in particular the Tulare basin which is significant in this discussion. We propose no regulations in that regard. We don't believe the legislature gave us that authority.

On the other hand, it's hard to imagine

No comments

- n/a -

California as a state is going to get through the next 90 years -- that's our plan -- unless all of us use water prudently and wisely so that we can achieve these goals that are now officially state policy. I understand there will be different arguments about the issue. One of the things that your written comments may want to address is if you think we have legal authority based in statute that indicates we may do something, tell us what it is. We expect a considerable amount of time exploring that subject, and we'd like ideas, suggestions, and recommendations.

Thank you, they were very good comments.

The next speaker is Mr. Robert Eberhardt, also from Chico.

MR. EBERHARDT: Thank you. Hey everybody, I'm from Chico. I'm an almond guy and actually an X-ray tech. I was married into an almond farming family. I understand everybody needs water. I don't mind sharing our water. If we have extra water, that's one thing. But there was an article written in the Bee, I gave everybody a copy, that was very disturbing. I115-8

MR. ISENBERG: I should say, Mr. Eberhardt has copies available for people in the audience and also for us. Mr. Coolidge has a copy of the article. Keith, what's the date of the Sacramento Bee article?

Response to comment I115-8

Comment noted.

MR. COOLIDGE: January 8.

MR. ISENBERG: January 8. Of this year. That, as with all written documents submitted by anyone in public, will become part of the official record. Noting that for the purpose it will be part of the written record.

MR. EBERHARDT: Anyway, it was highly disturbing to me the article. I would like to quote some sentences in the article and have some of these water people comment, if we may.

It says, "A one sentence provision inserted in the 2012 budget bill by U.S. Dianne Feinstein will allow a handful of powerful San Joaquin Valley water oligarchs to sell federally subsidized ag water in a private market for as much as 150 times more than what they paid for it. This relaxation of publicly owned water supplies for private gain strips out protections approved by Congress in 1992." I115-9

It goes on to say that, "The Feinstein legislation allows high water flows in the Sacramento and San Joaquin rivers to be diverted to a private water market rather than replenishing the Delta and bay." I mean, that's what kind of cleans the bay out in the wintertime.

"The legislation makes it easier to move

Response to comment I115-9

Comment noted.

federally subsidized --" says $20 an acre foot water -- "from growers with federal project water contracts to private interests with water rights. Once in the hands of these buyers, the water can be resold in the open market to the highest bidder."

It goes on to say, "The Kern Water Bank was originally owned by the State of California and built to store water in high water years to provide agriculture with water in drought years and to leave more in the Delta. In 1994, Resnick," this billionaire from Southern California, "persuaded the state to turn over the invaluable public resource to the Kern County Water Agency. Within a short time the water agency turned over control of the water bank to a handful of local water districts. When the dust settled, Resnick's Paramount Farming controlled more than 50 percent. The U.S. Bureau of Reclamation recently admitted the Resnick Kern Water Bank is on the list of beneficiaries of Feinstein's deregulation measure. I115-9

"In addition, Feinstein's budget rider streamlines environmental review of these privatized water transfers by distinguishing the environmental impacts of individual transfers." One only needs to remember that the rape of Owens Valley and the reincarnation of Roman Polanski's classic movie Chinatown," blah, blah, blah.

No comments

- n/a -

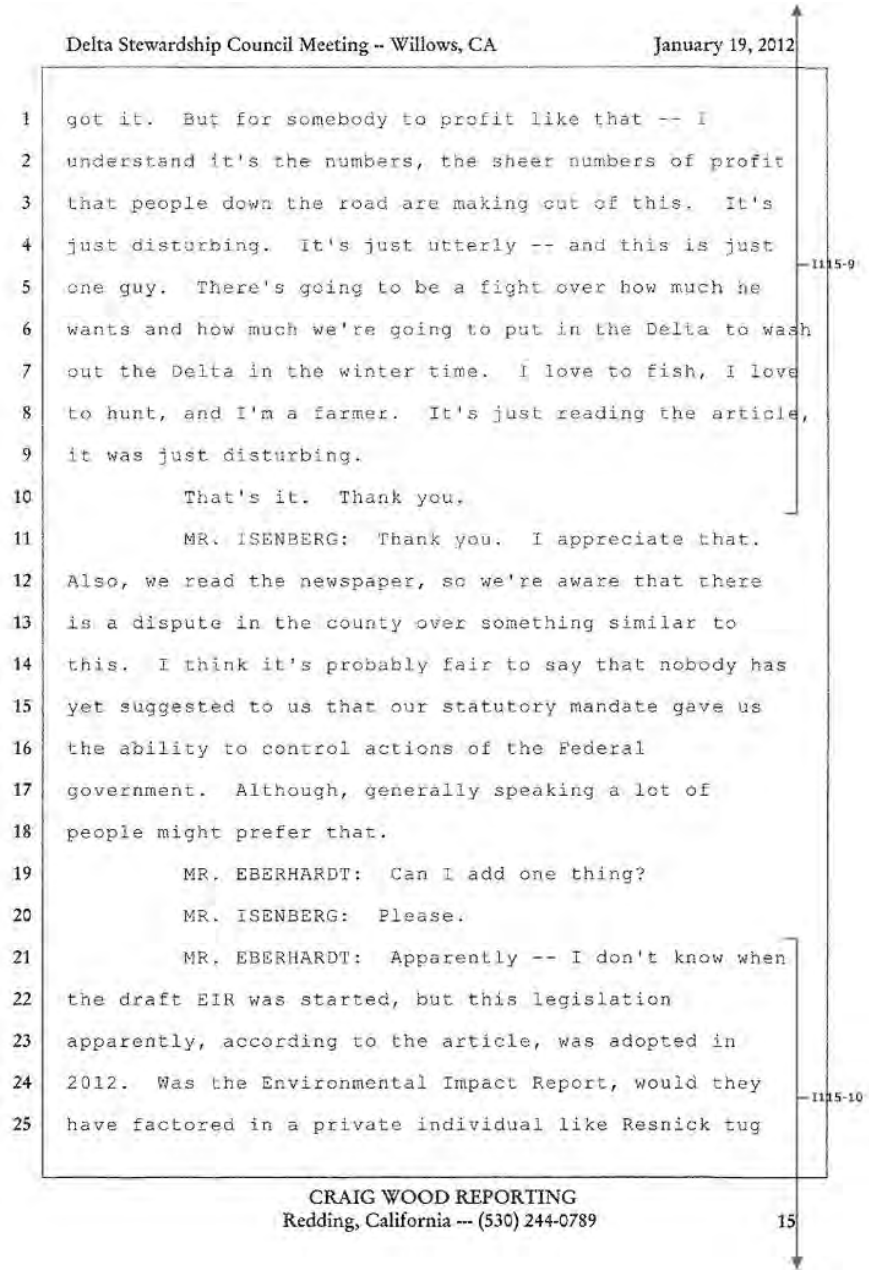
"In anticipation of this Christmas gift to Westlands, the bond rating agency," blah, blah, blah, "deregulating of water to allow Westlands to engage in more private water sales."

My thing is, when is it going to -- during wet years we have water to flush out the bay. People in the south need water. But people, they have changed the laws to where public owned water, federally owned water, State owned water is going to go into private hands and then they can sell it on the open market for whatever the market bears. Like I said at the other two meetings, water is liquid gold. Water is invaluable if you don't have it. People don't realize how valuable water is until I115-9
the well runs dry. Not that the well is going to run dry, but it seems to me there should be something in the books that regulates who can buy federal water and at what cost. It's not -- I believe we can share our water. But I don't believe somebody down the road can take the water that was federal, state, our water, and put it into somebody's private hands to make billions. We're talking -- I ran the numbers. If Butte County is going to get $25 million over ten years for 240,000 acre feet of water, this guy, if Resnick gets his allotment and takes the 240,000 acres times 150, that's $1,800,000,000.

Now, I don't mind sharing what we've got if we've

No comments

- n/a -



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got it. But for somebody to profit like that -- I understand it's the numbers, the sheer numbers of profit that people down the road are making out of this. It's just disturbing. It's just utterly -- and this is just one guy. There's going to be a fight over how much he wants and how much we're going to put in the Delta to wash out the Delta in the winter time. I love to fish, I love to hunt, and I'm a farmer. It's just reading the article, it was just disturbing.

I115-9

That's it. Thank you.

MR. ISENBERG: Thank you. I appreciate that. Also, we read the newspaper, so we're aware that there is a dispute in the county over something similar to this. I think it's probably fair to say that nobody has yet suggested to us that our statutory mandate gave us the ability to control actions of the Federal government. Although, generally speaking a lot of people might prefer that.

MR. EBERHARDT: Can I add one thing?

MR. ISENBERG: Please.

MR. EBERHARDT: Apparently -- I don't know when the draft EIR was started, but this legislation apparently, according to the article, was adopted in 2012. Was the Environmental Impact Report, would they have factored in a private individual like Resnick tug

I115-10

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Response to comment I115-10

Please refer to Master Response 2. The existing conditions at the time of the publication of the Notice of Preparation of this EIR in December 2010, which is the normal CEQA environmental baseline pursuant to CEQA Guidelines section 15125(a), are described in each resource section of the DEIR. Impacts on water resources are described in Section 3 of the EIR at a program level.

I115-10

of war over the water? If we're going to give Resnick so much if he -- like was that factored in?

MR. ISENBERG: There have been state and federal laws authorizing, or some people would say regulating, water transfers for decades. California -- I'm trying to remember precisely on California's first authorization -- but something like the late '70s or early 1980s sticks in my mind. I could be wrong on that. If the Federal government and the Central Valley project, which is not entirely but substantially what you were talking about, is regulated by federal law. Our Environmental Impact Report was issued prior to the action of the Federal government with the language that's described in the article. But you'll probably note from reading the Delta plan that in general the staff is recommending to us the notion of supporting under the right terms and conditions water marketing as one way to address the problems of the State of California.

Just a note, you'll want to take a look at -- this is a small part -- one of our recommendations on water reliability which appears on page 3 of the recommendations which talks about the transparency of water contracts. The Department of Water Resources has a policy on transparency, and we simply said that for a

No comments

- n/a -

covered action that comes before us under the terms of the law, that it would be inconsistent with the Delta plan unless it met those transparency requirements of the Department of Water Resources.

Now, our guys tell us that they are similar to but not identical to some language that are subject to federal contractors. Of course, statutes trump regulations of agencies. And when Congress passes a law that's signed by the President, it becomes a controlling entity.

Anyway, the point is, there's some things in here you might want to take a look at before you -- and your thoughts would be helpful on that. I appreciate that.

MR. EBERHARDT: Okay.

MR. ISENBERG: Thank you very much, Mr. Ederhardt.

I know there's a bunch of people sitting in the audience. I cannot believe you have not submitted forms to talk.

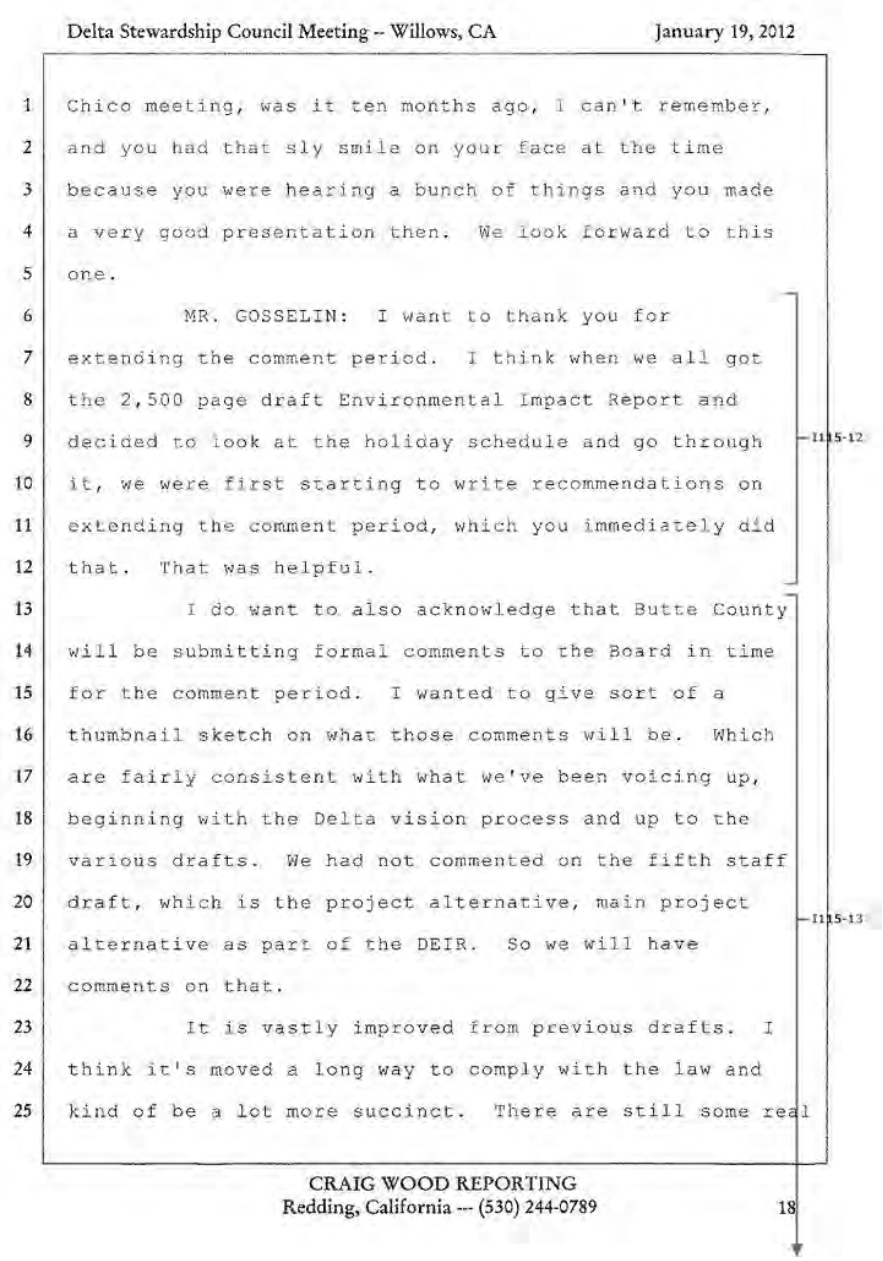
Mr. Gosselin, Butte County Department of Water Resources.

MR. GOSSELIN: Thank you. I want to thank you all again for coming to the region. Nice to have you up here. I115-11

MR. ISENBERG: Mr. Gosselin was sitting in our

Response to comment I115-11

Comment noted.

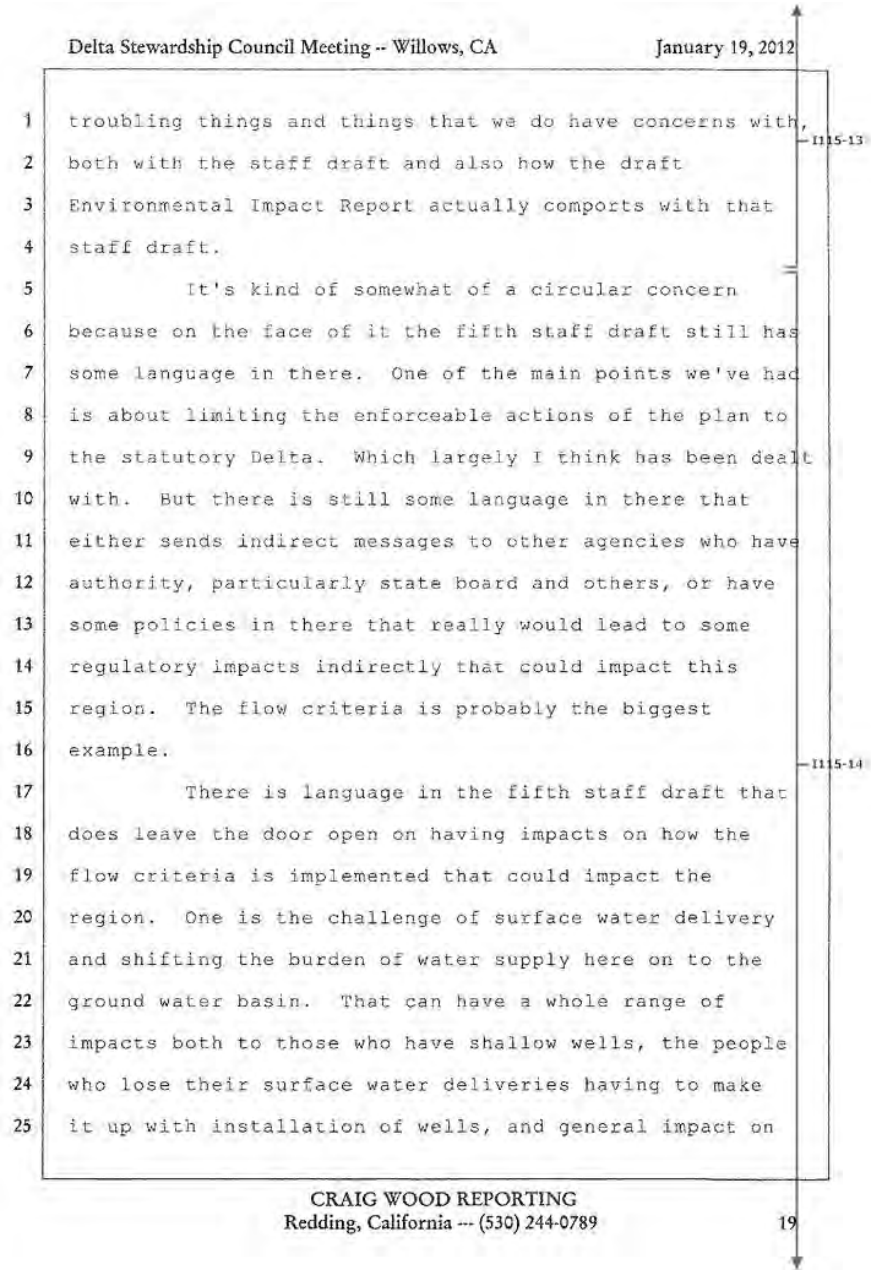


Response to comment I115-12

Comment noted.

Response to comment I115-13

Comment noted.



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troubling things and things that we do have concerns with, both with the staff draft and also how the draft Environmental Impact Report actually comports with that staff draft. I115-13

It's kind of somewhat of a circular concern because on the face of it the fifth staff draft still has some language in there. One of the main points we've had is about limiting the enforceable actions of the plan to the statutory Delta. Which largely I think has been dealt with. But there is still some language in there that either sends indirect messages to other agencies who have authority, particularly state board and others, or have some policies in there that really would lead to some regulatory impacts indirectly that could impact this region. The flow criteria is probably the biggest example. I115-14

There is language in the fifth staff draft that does leave the door open on having impacts on how the flow criteria is implemented that could impact the region. One is the challenge of surface water delivery and shifting the burden of water supply here on to the ground water basin. That can have a whole range of impacts both to those who have shallow wells, the people who lose their surface water deliveries having to make it up with installation of wells, and general impact on

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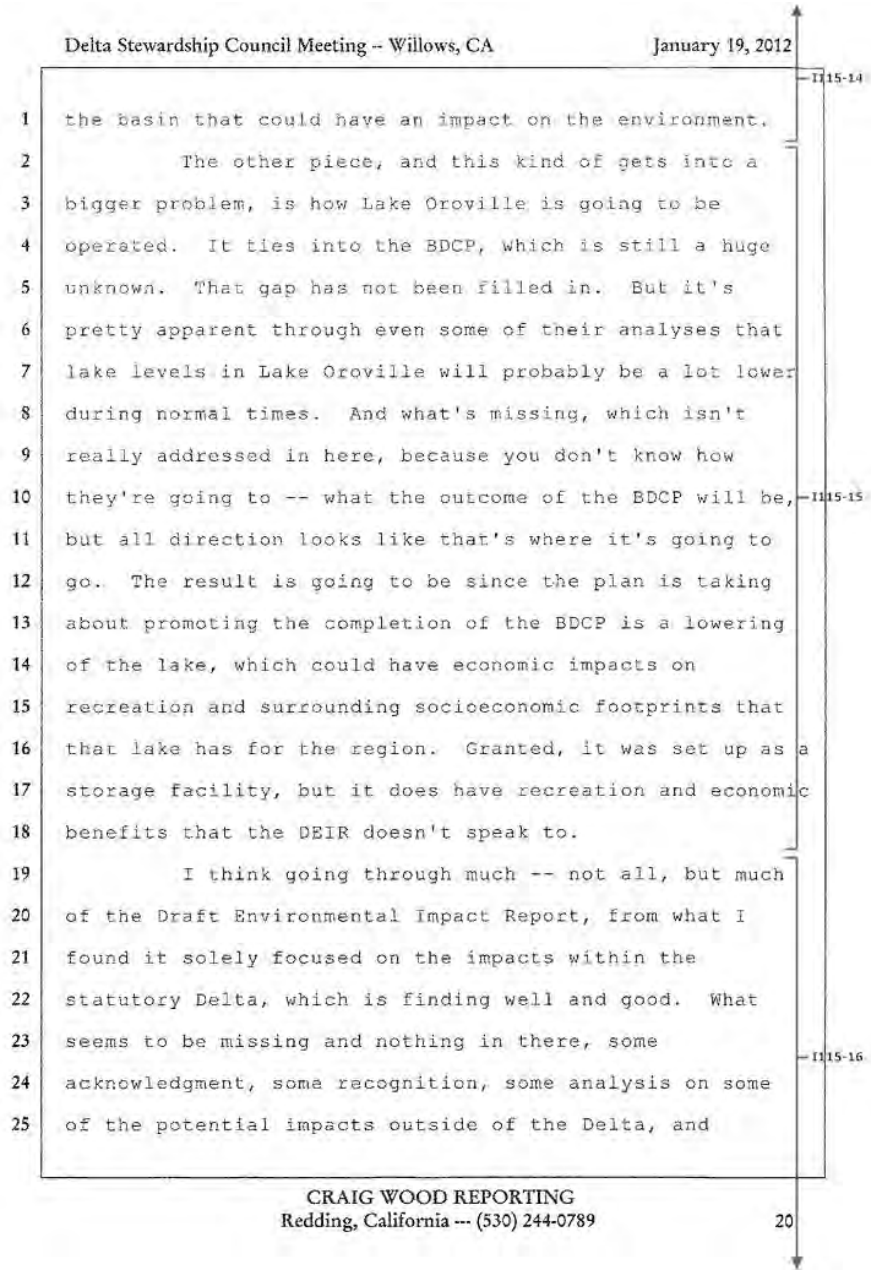
Response to comment I115-14

Impacts due to water supply projects that would be encouraged by the Delta Plan, including groundwater projects, are analyzed in Sections 3 through 21 of the EIR. The analysis in this EIR assumes that groundwater water supplies would not become overdrafted because the proposed Delta Plan encourages establishment of balanced groundwater management programs. Therefore, it is assumed that other water supplies, including recycled water, local water storage facilities, ocean desalination, water use efficiency and conservation, and water transfers, would be used to meet the water demands projected in adopted general plans. The EIR also recognizes that portions of the agricultural areas in the San Joaquin Valley could be fallowed or retired due to the lack of water supplies to replace reduced water supplied from the Delta, if any. The impact assessments in Sections 3 through 21 evaluate the construction and operation of local and regional water supplies, and conclude, in most cases, that there may be significant and adverse impacts.



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the basin that could have an impact on the environment.

The other piece, and this kind of gets into a bigger problem, is how Lake Oroville is going to be operated. It ties into the BDCP, which is still a huge unknown. That gap has not been filled in. But it's pretty apparent through even some of their analyses that lake levels in Lake Oroville will probably be a lot lower during normal times. And what's missing, which isn't really addressed in here, because you don't know how they're going to -- what the outcome of the BDCP will be, but all direction looks like that's where it's going to go. The result is going to be since the plan is taking about promoting the completion of the BDCP is a lowering of the lake, which could have economic impacts on recreation and surrounding socioeconomic footprints that that lake has for the region. Granted, it was set up as a storage facility, but it does have recreation and economic benefits that the DEIR doesn't speak to.

I think going through much -- not all, but much of the Draft Environmental Impact Report, from what I found it solely focused on the impacts within the statutory Delta, which is finding well and good. What seems to be missing and nothing in there, some acknowledgment, some recognition, some analysis on some of the potential impacts outside of the Delta, and

I115-14

I115-15

I115-16

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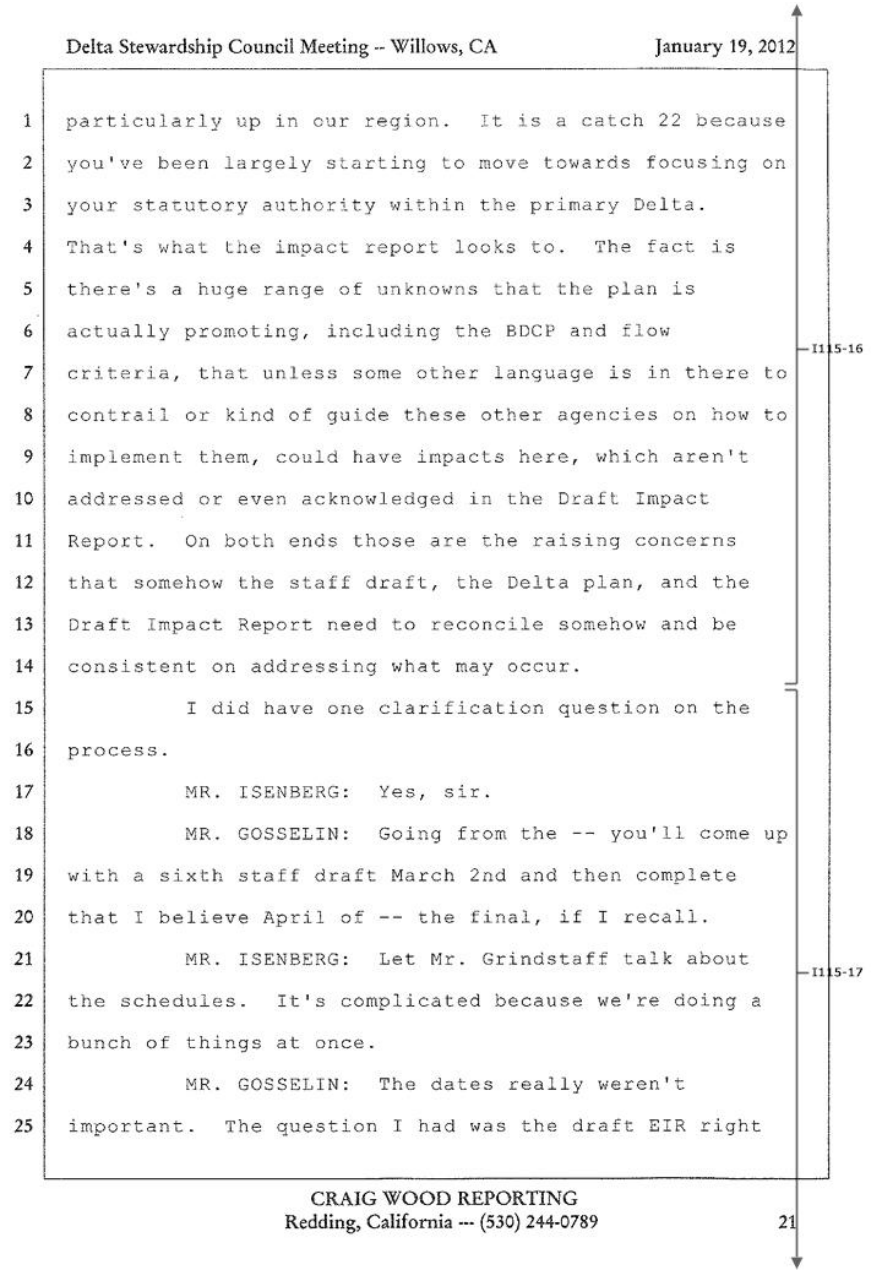
Response to comment I115-15

Please refer to Master Response 1 regarding BDCP. The proposed BDCP is a reasonably foreseeable future project that is not part of the Delta Plan. It is being evaluated by the Department of Water Resources as the CEQA lead agency. The cumulative impacts of the proposed Delta Plan, in combination with the impact of the proposed BDCP, are described in EIR Sections 22 and 23.

As described in Section 2 of the Recirculated Draft Program EIR, the Revised Project will encourage increased development of reliable local and regional water supplies to reduce reliance on Delta exports. If the Delta exports are reduced through increased water use efficiency, recycled water projects, ocean desalination projects, or local surface water and groundwater projects, it is not anticipated that the new water supplies would be conveyed to the reservoirs that currently store water from the Central Valley Project or State Water Project which are generally located upstream of the local and regional water supplies. It is also anticipated that there will be less water diverted from the upstream CVP and SWP reservoirs, including Trinity Lake, Shasta Lake, and Oroville Reservoir, especially in the summer months to provide cold water releases in the fall and Delta outflow releases in the fall to comply with current biological opinions and because there could be changes in water supply management for areas outside of the Delta that use Delta water. These actions could result in higher summer reservoir elevations that could benefit recreation in Trinity Lake, Shasta Lake, and Oroville Reservoir.

Response to comment I115-16

Please refer to Master Response 2 regarding the study area for this EIR. The EIR did evaluate impacts in the Delta watershed upstream of the Delta if conditions would change from existing conditions due to implementation of the alternatives. In the Draft PEIR, there were no anticipated changes in water resource-related conditions, and therefore, the Draft PEIR did not discuss this geographic area. In the Recirculated Draft PEIR, there were anticipated changes and those were discussed in the EIR.



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particularly up in our region. It is a catch 22 because you've been largely starting to move towards focusing on your statutory authority within the primary Delta. That's what the impact report looks to. The fact is there's a huge range of unknowns that the plan is actually promoting, including the BDCP and flow criteria, that unless some other language is in there to contrail or kind of guide these other agencies on how to implement them, could have impacts here, which aren't addressed or even acknowledged in the Draft Impact Report. On both ends those are the raising concerns that somehow the staff draft, the Delta plan, and the Draft Impact Report need to reconcile somehow and be consistent on addressing what may occur.

I115-16

I did have one clarification question on the process.

MR. ISENBERG: Yes, sir.

MR. GOSSELIN: Going from the -- you'll come up with a sixth staff draft March 2nd and then complete that I believe April of -- the final, if I recall.

MR. ISENBERG: Let Mr. Grindstaff talk about the schedules. It's complicated because we're doing a bunch of things at once.

I115-17

MR. GOSSELIN: The dates really weren't important. The question I had was the draft EIR right

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Response to comment I115-17

The Final Draft Delta Plan (the Revised Project) was issued in November 2012 and analyzed in the Recirculated Draft Program EIR (Volume 3 of the Draft Program EIR), which was circulated for public review and comment from November 30, 2012, through January 14, 2013.

now is based upon review of the fifth staff draft. The sixth draft is going to go out for comment let's say in six weeks. Then the Delta Stewardship Council will finalize it. So the presumption is that this draft EIR and all the comments you get, the final draft can't be too different than what you're analyzing now in this current draft EIR. Otherwise are you anticipating you may need to put another draft EIR out for comment if the final draft is somewhat vastly different on areas that you haven't reviewed yet in this draft EIR? I115-17

MR. GRINDSTAFF: Yes.

MR. ISENBERG: Let me note, I know three-quarters of you already know this, and I apologize for repeating it. A couple people I don't recognize who may not.

The Delta plan itself has 500 pages. Half of it is the narrative and the plan, and the other appendix. Four pages in that are for regulatory nature. The rest is background, context, a series of recommendations, discussions, charts, graphics, the various nuts and bolts of any kind of report to give it meaning.

I think it's probably fair to say that the California law requires a recirculation of an Environmental Impact Report. If there are substantive changes, particularly to the regulatory language of

No comments

- n/a -

action -- that's the four pages that we're talking about. I'm sure there will be grammatical changes and order changes and he's got to do all that kind of stuff. But my instinct is the sixth draft Delta plan on those four pages is not going to be greatly different. But we still, as Joe indicates, we have to -- we will have to make a determination at the end of the process -- April, May, whenever it is -- whether the changes from the sixth draft, seventh draft, or any new facts that have been discovered, compels a recirculation. We just don't know. State law requires it passes a threshold.

The other thing -- this is just a personal observation on the Delta plan -- after we've gotten through our endless months of arguments on the four pages about the so-called regulatory stuff, I notice that we began receiving an overwhelming proportion of comments about people who wanted us to say things one way and not another, to use charts that are based on different representative years rather than the years we chose, to weigh in to their battles and say you're right and you should win those battles. Which we have by and large declined to do. Because until the Delta plan is into effect and until we have a covered action by a state or local agency to review under the limited authority we have, it didn't seem all that wise to us to start picking

No comments

- n/a -

sides, apart from the dubious legality of it.

You raised one other question, for a few of you who do not know I'd like to mention. The Bay Delta Conservation Plan, the facility's discussion about ditch or tunnel or whatever it is to substitute or be an addition to the existing water conveyance system in the Delta. Our statute says that if it meets the requirements of law established in this statute and if it's certified by a whole bunch of people, it shall be incorporated in the Delta plan. It's not discretionary. We do, however, have a limited appellate role. The last step in the process from the state agency side is the Department of Fish and Game reviewing the law and saying, yeah, they held to conservation plan, met the test of the Environmental Quality Act, the Natural Communities Conservation Planning Act, this, that, and the other thing, received a clearance on the Endangered Species Act from the federal government, studied the 17 million things in the study and all that. That decision of the Department of Fish and Game may be appealing to us. That is not, however, a green light for us to write or rewrite the Delta plan. The lawyers have told us consistently you can say yes, you can say no, you can ask questions. And we're pretty comfortable about that. But that potential appellate role, again a quasi judicial role we'd be

No comments

- n/a -

playing, constrains somewhat our activities. We have another stat tire duty to comment on BDCP. So we've been trying to balance those things out.

The other point is, there are a large number of other plans, both regional, local, different subjects, Central Valley flood boards, and so on, going on. None of them will be finished before the Delta plan is going to be adopted. Of course we're already going to be four months late in adoption of the Delta plan. Because the legislature told us to do it by January 1st of this year. We just couldn't get it done.

There's a lot going on and it's complicated and I apologize for the complication. California has been a state for 161 years now. And like big old wooden ships, we tend to pick up barnacles as we sail through the sea, and all of the commotion of an organization and structure and studies are probably barnacles necessary but necessary barnacles nonetheless.

Thank you very much. That was a very helpful comment. And again I appreciate very much the fact that you're going to submit written comments. And the law requires us to respond to written comments related to the Environmental Impact Report, which we will do.

The close of the comment period on the Environmental Impact Report is February 2nd?

No comments

- n/a -

MR. GRINDSTAFF: Yes.

MR. ISENBERG: Okay. So all the comments come in and then this big process starts with the staff reviewing and critiquing and preparing answers and drafting and redrafting and all that. The sixth draft Delta plan is to be released what time frame?

MR. GRINDSTAFF: Mid-March is our target right now. What we're thinking is the council will start meeting four days a month next month. So starting the night 9th of February. We have several things to walk through. We have the economic sustainability plan. It's another element we are required to consider, and so the council will be addressing that, will be addressing the draft flood control plan released December 30th. They will then be going through all the comments on the fifth draft plan and all of the comments on the EIR. Our hope is that with six full days of meetings, we can actually get through all of that and they can give direction to staff so we can create a new sixth draft which then everybody can look at and say this is what the council has directed be done, how close is this to where we need to be. And then they still have several more days of meetings to determine what else needs to be done. Then the plan is at the end of April that we actually bring the final version, the seventh draft, to

No comments

- n/a -

the council along with a response to all the comments and a proposal to certify the EIR, providing that we actually believe that legally the EIR is sufficient for the council to adopt the Delta plan. So it's going to be a very busy time.

MR. ISENBERG: Mr. Grindstaff has threatened us with these four-days-a-month meetings for February, March, April, and he was squishy on whether May might not require a calendar day.

MR. GRINDSTAFF: We have calendared it. Just in case.

MR. ISENBERG: So we will have 12 additional days of meetings in February, March, April, and May -- 16. 16 additional days of meetings. By the way, at the end of the meeting tonight we will have 67 days of meetings since we've been in existence.

There will be a lot of opportunities to be heard. Most of our regular meetings are scheduled in West Sacramento, which is easily within the statutory Delta, which seem to make sense and it's a nice location at City Hall. You'll have a lot of opportunity for comments apart from the formal written comments you want to make on the Environmental Impact Report.

Next is Ms. DesJardins.

MS. DESJARDINS: Yes.

No comments

- n/a -

MR. ISENBERG: California Water Research Associates.

MS. DESJARDINS: Yeah. You didn't have a question period, but I wanted to ask you on page 223 it references a request if you find a suitable financial partner requesting revenue.

MR. ISENBERG: When you say 223, of the Delta Plan?

MS. DESJARDINS: Yeah.

MR. ISENBERG: 223 of the fifth draft Delta plan. I have a copy here.

MS. DESJARDINS: The finance, it says you're requesting revenue bonding authority. And I was wondering what was envisioned.

MR. ISENBERG: That's an appendix to the draft.

MS. DESJARDINS: Yeah.

MR. ISENBERG: Ladies and gentlemen, I would like to say this is the first person who has raised a question to us on an appendix to the document, and you get like 17 gold stars for being diligent on this one. That is in fact very important. I don't know the answer to your question right now. Let us note that and see if we can get an answer out to you by e-mail on that question. The other thing is, all the answers will be posted on our website. We traditionally do that so you

I115-18

Response to comment I115-18

This is a comment on the project, not on the EIR.

can see what the answers actually are.

MS. DESJARDINS: Okay. And I also have --

MR. ISENBERG: Wait, Joe may know.

MR. GRINDSTAFF: Yes. In the plan, in the finance chapter it actually recommends that there be authority given to assess fees, a very controversial recommendation which the legislature would have to take up. And the recommendation about revenue bonds was if you actually are going to have the ability to do things and take in money, that you ought to be able to have the ability to do revenue bonds so that you can, for example, stabilize your funding stream, started to long-term projects. I'm not sure of where that ends up, but that's why that's in there. Based on the fee authority. And both things would require a legislative action.

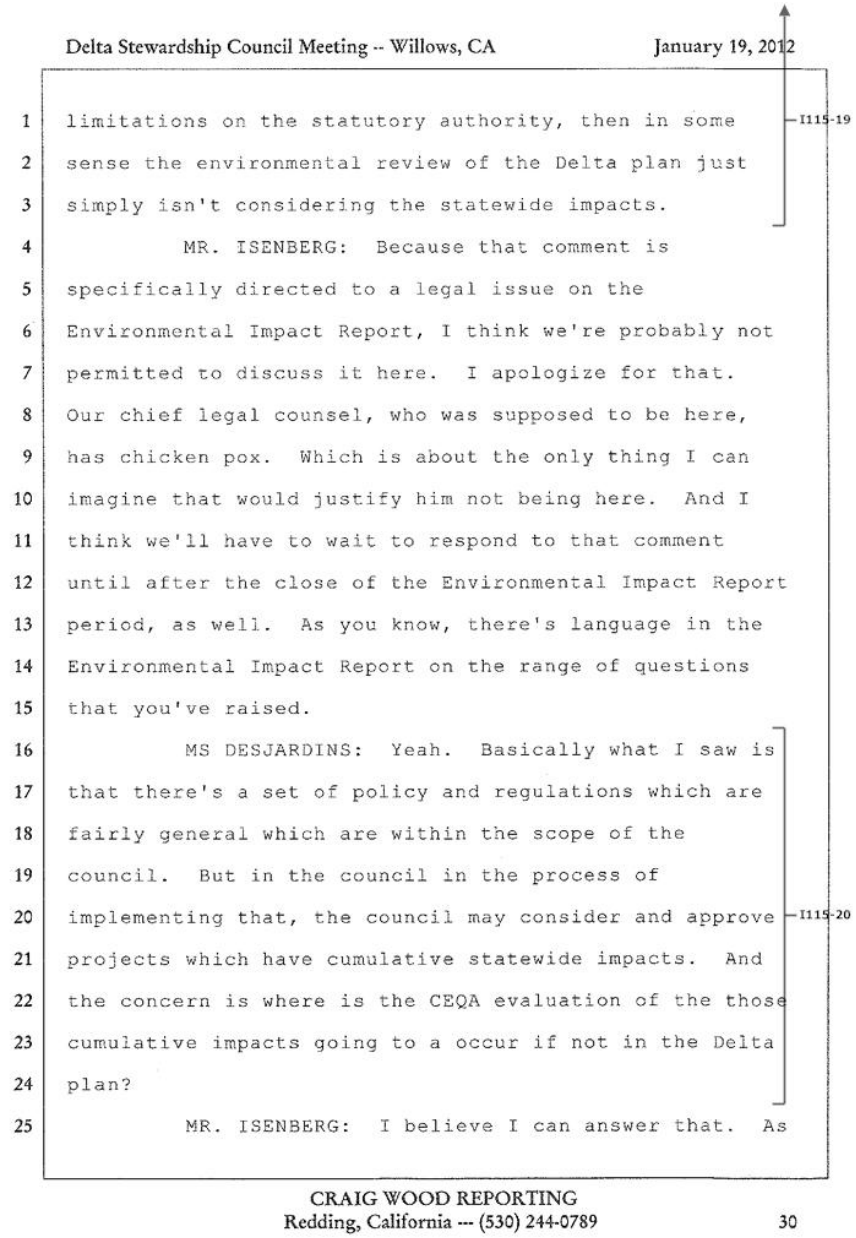
MS. DESJARDINS: Yeah.

I also had sort of a more fundamental question about the Delta Stewardship Council as the lead agency for CEQA evaluation of the Delta plan. Because the Delta plan has a lot of potential environmental impacts outside of the boundary of the legal Delta. Some of which were referenced here tonight. But if in preparation of the EIR the Delta steward ship council cannot consider any of those impacts because of its

I115-19

Response to comment I115-19

Please refer to Master Response 2 regarding the study area for this EIR.



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limitations on the statutory authority, then in some sense the environmental review of the Delta plan just simply isn't considering the statewide impacts. I115-19

MR. ISENBERG: Because that comment is specifically directed to a legal issue on the Environmental Impact Report, I think we're probably not permitted to discuss it here. I apologize for that. Our chief legal counsel, who was supposed to be here, has chicken pox. Which is about the only thing I can imagine that would justify him not being here. And I think we'll have to wait to respond to that comment until after the close of the Environmental Impact Report period, as well. As you know, there's language in the Environmental Impact Report on the range of questions that you've raised.

MS DESJARDINS: Yeah. Basically what I saw is that there's a set of policy and regulations which are fairly general which are within the scope of the council. But in the council in the process of implementing that, the council may consider and approve projects which have cumulative statewide impacts. And the concern is where is the CEQA evaluation of the those cumulative impacts going to a occur if not in the Delta plan? I115-20

MR. ISENBERG: I believe I can answer that. As

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Response to comment I115-20

Please refer to Master Response 2. This EIR analyzes cumulative impacts in Section 22. The lead agencies for future projects encouraged by the Delta Plan will be required to comply with CEQA at a project level. If those future projects may have a significant effect on the environment, the lead agency must analyze the cumulative impacts of the proposed project in combination with past, present and reasonably probable future projects (CEQA Guidelines § 15130).

you know, and we've said extensively in our documents, apart from the environmental impact reporting in the hearings, this is a programmatic Environmental Impact Report. It's not a project impact report in the same occasion that the water district in Butte County is going to build a pipe 17 miles long from one location to one location and it's this size and has these configurations. This is closer to a general plan. And in those circumstances, projects that follow will have lead agencies. And they must themselves do an environmental determination.

So for example -- Mr. Gosselin, I'll use you as an as example because you're sitting there. If his first proposal is going to cost $4 million and only be a foot wide and it turns out that three years later when the project comes online it's going to cost $90 million and it's 20-feet wide -- God knows what that would be -- he will face the legal question of whether they must do an Environmental Impact Report on that project, could they conceivably do a negative impact on it. But we must make assumptions for programmatic EIR. And the assumptions are identified in it, but they are not an environmental impact on project that's not been defined. The Bay Delta Conservation Plan is a classic example for us because we've been ordered to incorporate it if it

No comments

- n/a -

meets the requirements of law, but it hasn't been determined what it is.

MS. DESJARDINS: I'm just making comments on the fundamental nature of what the programmatic EIR is. If the programmatic EIR was limited in scope simply to consideration of actions that are within the Delta Stewardship Council legal authority, so it was simply considered to these particular policies, but it seemed that at some point it's going to be -- the policies are going to -- when the policies are applied and in a coordinating role to these individual projects, you have something that's kind of the statewide equivalent of a county general plan. And analyzing each project piecemeal is not going to provide a chance for the analysis of cumulative impacts, particularly when you're talking about a major reoperation of the state water project. And I know it's a complex issue, but that's why I'm trying to bring it up where there's a chance for some dialogue as opposed to written comments. I115-21

MR. ISENBERG: Thank you. And may I assume you are submitting written comments to us?

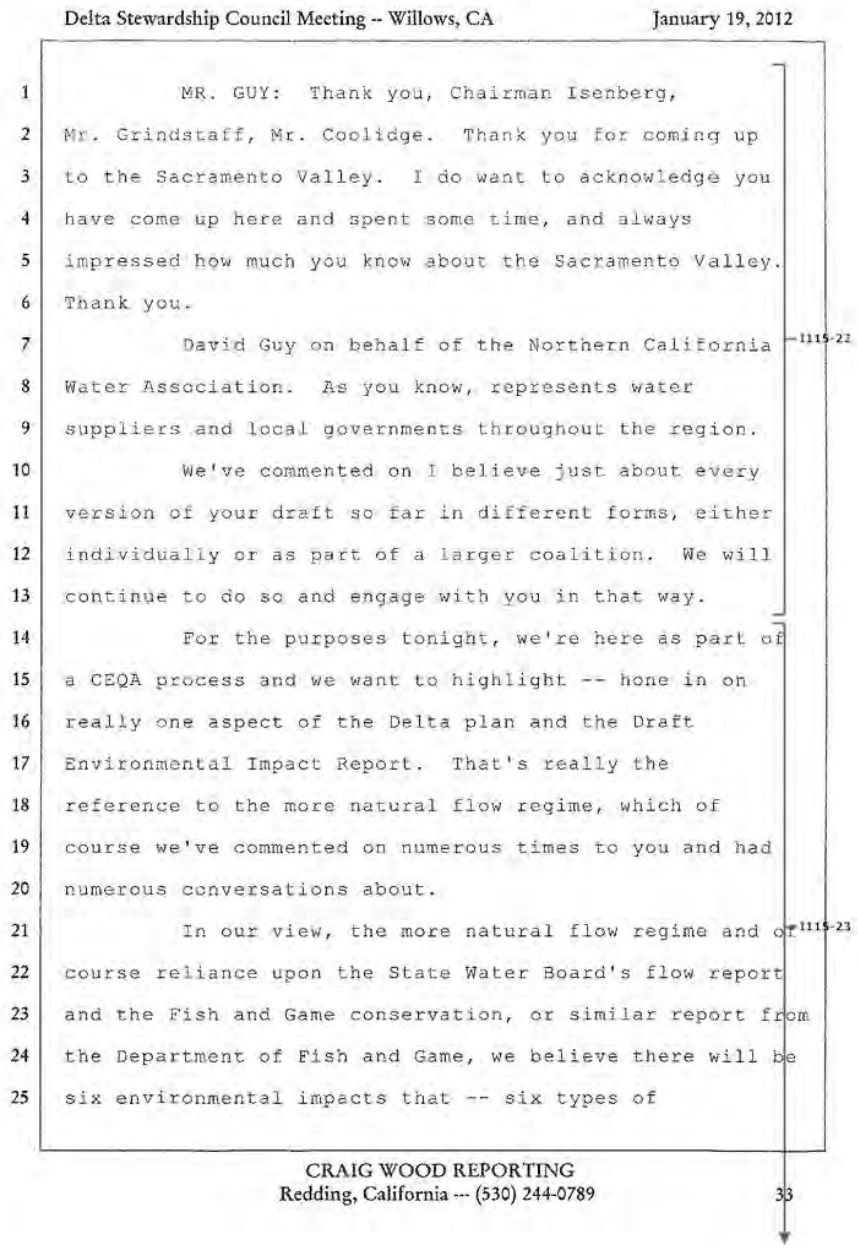
MS. DESJARDINS: Yes.

MR. ISENBERG: Thank you very much.

Mr. Guy, David Guy. Northern California Water Association.

Response to comment I115-21

Please refer to response to comment I115-20.



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MR. GUY: Thank you, Chairman Isenberg, Mr. Grindstaff, Mr. Coolidge. Thank you for coming up to the Sacramento Valley. I do want to acknowledge you have come up here and spent some time, and always impressed how much you know about the Sacramento Valley. Thank you.

David Guy on behalf of the Northern California Water Association. As you know, represents water suppliers and local governments throughout the region. I115-22

We've commented on I believe just about every version of your draft so far in different forms, either individually or as part of a larger coalition. We will continue to do so and engage with you in that way.

For the purposes tonight, we're here as part of a CEQA process and we want to highlight -- hone in on really one aspect of the Delta plan and the Draft Environmental Impact Report. That's really the reference to the more natural flow regime, which of course we've commented on numerous times to you and had numerous conversations about.

In our view, the more natural flow regime and of I115-23 course reliance upon the State Water Board's flow report and the Fish and Game conservation, or similar report from the Department of Fish and Game, we believe there will be six environmental impacts that -- six types of

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Response to comment I115-22

Comment noted.

Response to comment I115-23

The Delta Plan encourages the SWRCB to complete the updated Bay-Delta Water Quality Control Plan flow objectives. However, only the SWRCB has authority to set those objectives. The Delta Plan and the EIR therefore cannot project what those objectives will be. The Delta Plan and the sources it cites (including especially the SWRCB's 2010 Flow Criteria Report) explains that the flow objectives that best advance the coequal goals will be those that bring about more natural functional flows within and out of the Delta. *See* Delta Plan, pp. 136 to 142, 155, and sources cited therein. The EIR thus assumes, consistent with CEQA, that the SWRCB will adopt updated objectives that will advance such a flow regime. The general assumption of a more natural flow regime is sufficient for the EIR's programmatic approach. The impacts of the flow objectives are analyzed in greater, quantitative detail, in the SWRCB's *Public Draft Substitute Environmental Document in Support of Potential Changes to the Water Quality Control Plan for the San Francisco Bay-Sacramento/San Joaquin Delta Estuary: San Joaquin River Flows and Southern Delta Water Quality* (December 2012). See Master Response 5 for further discussion.

environmental impacts that I want to touch on briefly tonight.

The first of those of course is on the salmon, it's an anadromous fish. More natural flow regime would affect the cold water pool, affect the migratory patterns of the salmon. And we've previously provided you some technical work done by Dave Bogle, a very esteemed fishery biologist in this region who has done a lot of good work in this regard. We believe the more natural flow regime would actually be deadly in some cases to the salmon in this region and be a significant environmental impact.

We've also provided to you a summary of all the existing flows that are in the region, whether they're some of the federal biological opinions, various agreements, various State Water Board issues, navigational servitude, all those things that are in the region. And those existing flows do not appear in the environmental document, and that's to me you do not look at the existing conditions in an appropriate manner. And of course that affects the fisheries aspect, as well. I115-23

Second piece, Pacific Flyway. Passion of Mr. Isenberg's, I know. The Pacific Flyway, resource of international significance and more natural flow regime could significantly impact the water that is necessary to support the Pacific Flyway. As you know, there's a lot of

No comments

- n/a -

serious efforts have been made, a lot of folks in this room have invested in trying to improve the Pacific Flyway and have done a very successful job in that. I think the 2006 Central Valley Joint Habitat Venture Implementation Plan is a good example in that it's in the record. And I think it shows how important water is to the Pacific Flyway, and of course redirecting water away from this region would significantly affect that.

Third, of course farmland. And the species, of course, dependent upon the farmland. Including things, of course, like giant garter snake and other both endangered as well as threatened and other species. Obviously we provided an analysis from NBK Engineers about what we think some of the water supply impacts on the farmland would be in this region based on, again, the storage more natural hydrograph to the Delta. I115-23

Fourth, clean energy. Obviously a big high priority for the State of California. The natural flow regime would obviously affect the ability to generate hydroelectric power in the region. And recently you've been receiving a report again from NBK working with other consultants on what the hydropower impacts could be of the State Water Board's flow report, which would be something that you'd want to refer to.

MR. ISENBERG: Is there another report coming

No comments

- n/a -

from the consultants?

MR. GUY: When you say another --

MR. ISENBERG: On energy particularly.

MR. GUY: I don't know.

MR. ISENBERG: We already received some. Wasn't clear --

MR. GUY: There's a recent one within the last couple days.

MR. ISENBERG: We may not have seen that yet.

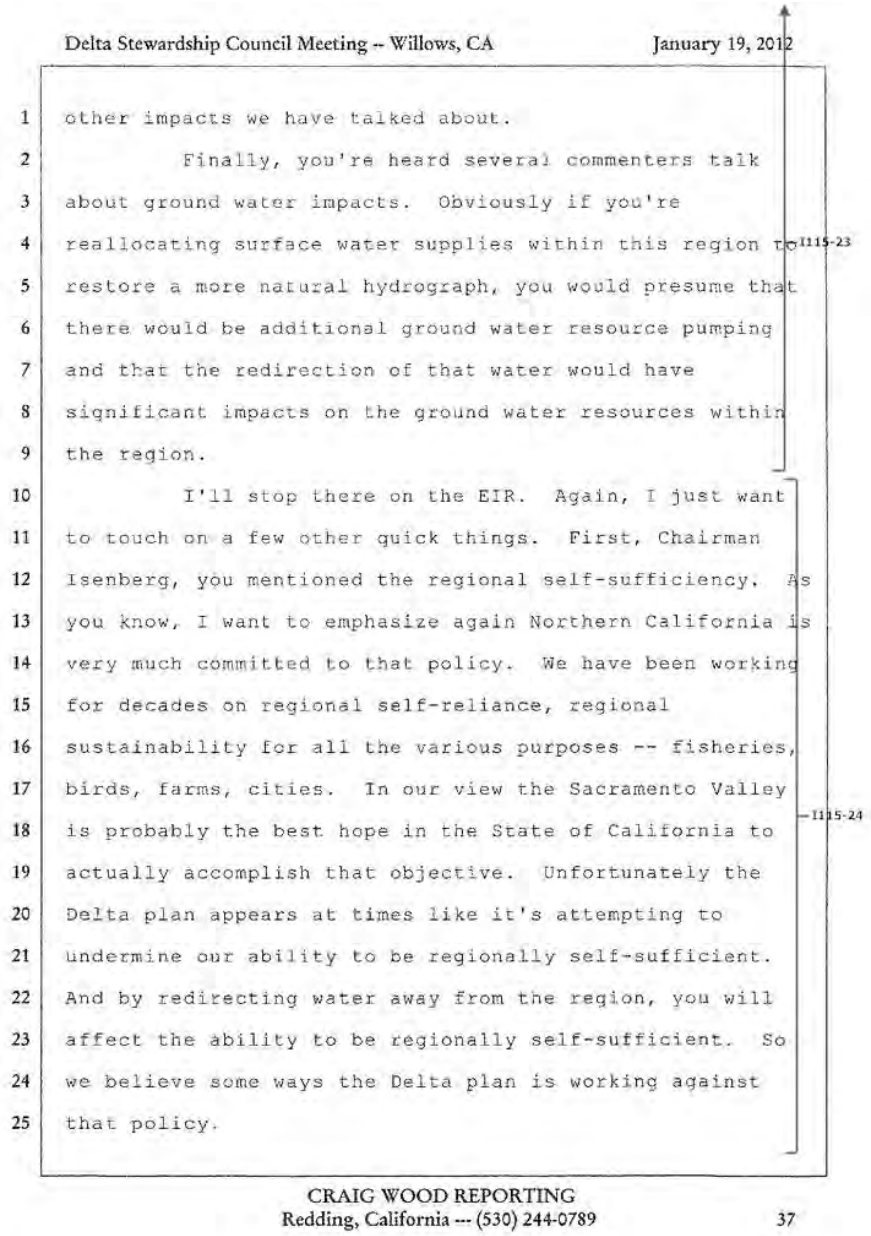
MR. GUY: I believe that was sent today. Formally conveyed over to you today.

So, again, the clean energy obviously significant environmental impacts there of course not only lack of ability of to generate clean energy, but also of course you assume you have to rely upon on fossil fuels or other means that clearly have an environmental impact. I115-23

Fifth, recreation. Mr. Gosselin touched on that. The report that NBK prepared again shows if you look at some of these more natural flow regimes, you would have dead pool in both Shasta and Oroville in 50 to 60 percent of the years. Dead pool 50 to 60 percent of the year, you can imagine what that would look like for the cities of Redding, Oroville. It would just destroy the economy, destroy the recreational opportunities in this region, as well as some of the

No comments

- n/a -



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other impacts we have talked about.

Finally, you're heard several commenters talk about ground water impacts. Obviously if you're reallocating surface water supplies within this region to restore a more natural hydrograph, you would presume that there would be additional ground water resource pumping and that the redirection of that water would have significant impacts on the ground water resources within the region. I115-23

I'll stop there on the EIR. Again, I just want to touch on a few other quick things. First, Chairman Isenberg, you mentioned the regional self-sufficiency. As you know, I want to emphasize again Northern California is very much committed to that policy. We have been working for decades on regional self-reliance, regional sustainability for all the various purposes -- fisheries, birds, farms, cities. In our view the Sacramento Valley is probably the best hope in the State of California to actually accomplish that objective. Unfortunately the Delta plan appears at times like it's attempting to undermine our ability to be regionally self-sufficient. And by redirecting water away from the region, you will affect the ability to be regionally self-sufficient. So we believe some ways the Delta plan is working against that policy. I115-24

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Response to comment I115-24

This is a comment on the project, not on the EIR.

We'll submit written comments as you've suggested. We'll do it in a variety of forms. I'm guessing we'll be doing it as part of Large Water Coalition, doing part of North State Water Alliance you're starting to hear about, we'll be submitting comments on behalf of Northern California Water Association, and then several other individual water suppliers will be submitting more specific comments on their local circumstances. So we'll get those to you by February 2nd and undoubtedly look forward to more dialogue as we go forward. I115-25

Thank you.

MR. ISENBERG: Mr. Guy. Thank you very much.

Ladies and gentlemen, anyone else who would like say something to us? We've run out of blue forms.

All right, ladies and gentlemen, if there are no other comments, just a reminder, closing day for comments on the Environmental Impact Report is February 2nd. By the way, is that 5:00 p.m.?

MR. GRINDSTAFF: Midnight.

MR. ISENBERG: Midnight.

Okay. And so the earlier you get them in, the easier it is for staff to try to digest and organize this before we even decide how to answer.

Keith, you have the information on the comments

Response to comment I115-25

Comment noted.

can be sent to the EIR, commentsdeltacouncil.ca.gov. If you have any questions of staff, call me, call Mr. Grindstaff, call Keith Coolidge on the question of process. We'll get you in touch with the right people and make sure you send comments in the right way. And don't feel that you have to bind them in a legal looking folder with a thousand pages of supplemental material. It's just we can understand your thoughts, suggestions, comments and criticisms clearly, that allows us to appropriately respond to you.

MR. GRINDSTAFF: Do we want to have a formal public hearing portion?

MR. ISENBERG: I guess so.

Ladies and gentlemen, we will incorporate all of the prior hearing that we conducted tonight into the record as if it were part of the Environmental Impact Report hearing. We understand many comments were not. But that will cover all the comments that have been made to date.

Is there anyone in addition who wishes to comment on the Environmental Impact Report itself?

Okay, thank you very much for coming out. Joe said right at the beginning it was kind of a rainy night, we're glad to have you here. The reality is, it wasn't raining very much when we came in. We kind of hoped we'd

No comments

- n/a -

get a little better result. We'll live with what we have.

Ladies and gentlemen, thank you very much for doing it. Thank you for coming out. Appreciate it.

Meeting adjourned.

(Meeting adjourned at 7:20 p.m.)

---oOo---

No comments

- n/a -

CERTIFICATE OF REPORTER

DECLARATION OF COURT REPORTER REGARDING CCP 237(a)(2)

I, CRAIG W. WOOD, a Certified Shorthand Reporter, licensed by the State of California, License No. 9789, being empowered to administer oaths and affirmations pursuant to Section 2093(b) of the Code of Civil Procedure, do hereby certify:

That the foregoing proceedings were taken in stenographic shorthand before me at the time and place herein stated, that said proceedings were taken before me in shorthand writing, and were thereafter transcribed under my direction by computer-aided transcription;

That the foregoing transcript constitutes a full, true, and accurate record of the proceedings which took place;

That I am not of counsel or attorney for any of the parties hereto, or in any way interested in the event of this cause, and that I am not related to any of the parties hereto.

IN WITNESS WHEREOF, I have hereunto subscribed my signature.

DATED: January 29, 2012

CRAIG W. WOOD, RPR, CSR 9789

No comments

- n/a -