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GRASSLAND WATER DISTRICT
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5 Attorney for Proposed Protestant
GRASSLAND WATER DISTRICT
6

7 **CALIFORNIA STATE WATER RESOURCES CONTROL BOARD**
8

9 **IN RE CALIFORNIA WATERFIX,**
10 **CALIFORNIA DEPARTMENT OF**
11 **WATER RESOURCES AND U.S.**
12 **BUREAU OF RECLAMATION'S**
13 **PETITION FOR CHANGES IN**
14 **WATER RIGHTS, POINTS OF**
15 **DIVERSION/RE-DIVERSION**

MOTION OF GRASSLAND WATER
DISTRICT TO FILE PROTEST AND
NOTICE OF INTENT TO APPEAR IN
PART II OF THE CALIFORNIA
WATER FIX HEARING

Water Code § 1703.1; 23 C.C.R. § 747

16 Grassland Water District (“Grassland”) hereby moves to file the protest attached hereto
17 as **Attachment A** (“Protest”) against the California WaterFix petition (“Petition”), and the
18 Notice of Intent to Appear attached hereto as **Attachment B** (“NOI”), for Part II of the State
19 Water Resource Control Board’s (“SWRCB”) hearing on the Petition. The Protest alleges that
20 approval of the Petition would cause unreasonable injury to wildlife within Grassland Water
21 District’s service area, located in Merced County, and that similar injuries will occur at 13 other
22 wildlife refuges located south of the Sacramento-San Joaquin Delta (“Refuges”). The Refuges
23 receive water from the Central Valley Project (“CVP”) pursuant to the Central Valley Project
24 Improvement Act (“CVPIA”), Title 34, Public Law 102-575. The Protest makes related
25 allegations that the SWRCB’s approval of the Petition would not best conserve the public
26 interest and would be contrary to law.

27 Grassland files this motion for good cause and with the intention of participating in Part
28 II of the SWRCB hearings on the Petition. Grassland requests that the SWRCB grant this

1 motion and allow the Protest and NOI to be filed for the reasons set forth herein, pursuant to its
2 authority under Water Code section 1703.1 and California Code of Regulations Title 23, section
3 747.

4 **I. Good Cause for Filing After Protest Period Closed**

5 Grassland has good cause to file the Protest and NOI now because a public presentation
6 recently made by the Bureau of Reclamation (“Reclamation”) proposes to change the WaterFix
7 project in a manner that will adversely affect wildlife uses of CVP water (**Attachment C**). These
8 changes deviate materially from the project described in the Petition and in Reclamation’s sworn
9 Part I testimony, as well as the state-approved environmental analysis for the project (“EIR/EIS”).
10 Grassland did not have cause to file a Protest and NOI before Reclamation proposed these
11 changes, and wishes to present evidence of the resulting impacts to wildlife.

12 **A. “Dual Conveyance” Was Never Exclusive to Only Certain Water Uses**

13 The Petition proposes a change in CVP water rights in order to upgrade the CVP water
14 conveyance system by constructing the WaterFix project.¹ The Petition describes the project as
15 an “alternative conveyance” that will “reduce the need for through-Delta conveyance” and
16 “reduce negative Old and Middle River flows.”² New water intakes in the north Delta will “allow
17 greater flexibility in operation of both south and north Delta diversions,” using a dual conveyance
18 model.³ The primary assumption of this model, repeated throughout the Petition, is that south
19 Delta pumping will be reduced.⁴

20 When the Petition was filed, Grassland reviewed it and saw statements such as this: “Under
21 the California WaterFix existing obligations will continue to be met and beneficial uses in the
22

23 _____
24 ¹ WaterFix Petition, Cover Letter, p. 3 (2015), *available at*:
25 http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/docs/c_a_waterfix_petition.pdf. (Links to official records of the SWRCB and other state and federal agencies
26 are presented herein. Paper copies will be provided promptly upon request.)

27 ² WaterFix Petition, Supplemental Information, p. 5 (2015), *available at*:
28 http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/docs/c_a_waterfix_petition.pdf

³ *Id.*, p. 9.

⁴ *Id.*, e.g. p. 15.

1 Delta will not be negatively impacted by operations with the new point of diversion.”⁵ The
2 Refuges were explicitly addressed when the Petition declared: “Deliveries to the CVP Settlement,
3 Refuge, and Exchange Contractors, and SWP Feather River Service Area (FRSA) Contractors
4 and Delta contracts will continue to be made under the terms of those agreements. This Petition
5 does not propose any changes to any contractual obligations.”⁶ Relying on these assurances,
6 Grassland did not immediately file an NOI or a Protest to the Petition.

7 In its Part I testimony to the SWRCB, Reclamation further described the proposed project.
8 Reclamation witness Armin Munévar testified in Part IA that the WaterFix project will involve
9 more restrictive requirements in the south Delta “that limit the amount of south Delta exports.”⁷
10 He explained, however, that water deliveries to Refuges would not be affected.⁸ Mr. Munévar
11 testified that the WaterFix project will be operated to first meet in-stream flow, water quality, and
12 fishery requirements, and then to meet the requirements of senior water-right holders and refuges,
13 before any other water deliveries are made.⁹ In his Part I rebuttal testimony, Mr. Munévar
14 confirmed that the WaterFix project modeling shows no change in water deliveries to the
15 Refuges.¹⁰

16 Reclamation witness Ron Milligan testified that water deliveries to the Refuges, similar to
17 senior water-right holders, “are linked to the inflow criteria at Shasta,” and would potentially have
18 received increased water deliveries if the WaterFix project was operational in 2015.¹¹

19 _____
20 ⁵ Petition, Supplemental Information, *supra*, p. 19.

21 ⁶ *Id.*, p. 21.

22 ⁷ Transcript of WaterFix Hearing, Part IA, Volume 13, at 56:10-13 (page 56, lines 10-13) (Aug. 23,
2016), *available at*:

23 [http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/docs/tr
24 anscripts/20160823_transcript.pdf](http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/docs/transcripts/20160823_transcript.pdf)

25 ⁸ *Id.*, at 73:4-7 (*see also* 72:8-20 [refuge contractors are given priority in terms of water delivery, and
26 therefore deliveries are not expected to change]).

27 ⁹ *Id.*, at 275:18 through 276:1.

28 ¹⁰ Transcript of WaterFix Hearing, Part I Rebuttal, Volume 39, at 73:5-12, 75:15-22, and 124:3-21 (May
4, 2017), *available at*:

[http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/docs/tr
29 anscripts/20170504_transcript.pdf](http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/docs/transcripts/20170504_transcript.pdf)

¹¹ Transcript of WaterFix Hearing, Part IA, Volume 8, at 126:21-127:23 (Aug. 10, 2017), *available at*:

[http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/docs/tr
30 anscripts/20160810_transcript.pdf](http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/docs/transcripts/20160810_transcript.pdf)

1 Reclamation’s testimony was clear that the dual conveyance WaterFix project was modeled to
2 serve the Refuges under the same priority water allocation method that currently exists, and no
3 changes to CVP contractual obligations were proposed.

4 Initial Biological Opinions for the WaterFix project were approved by the U.S. Fish and
5 Wildlife Service and National Marine Fisheries Service in June 2017. These documents describe
6 the modeled assumptions and accepted principles of operation for the project, including:
7 (1) reduced water exports from south Delta facilities as a result of dual conveyance; and (2) new
8 restrictions on south Delta diversions to replace existing ones, such as more stringent Old and
9 Middle River (“OMR”) reverse flow criteria and a new spring Delta outflow requirement.¹²

10 The EIR/EIS for the WaterFix project, certified by the Department of Water Resources
11 (“DWR”) in July 2017 (but not yet approved by Reclamation), assumes that Refuge water use will
12 be integrated into the project’s dual conveyance operations. The stated purpose of the project is
13 to “restore and protect the ability of the SWP and CVP to deliver up to full contract amounts, ...
14 consistent with the requirements of State and federal law and the terms and conditions of water
15 delivery contracts and other existing applicable agreements.”¹³ The adopted project Alternative
16 4A entails utilizing the new north Delta intakes under a dual conveyance model, “thus reducing
17
18
19

20 ¹² U.S. Fish and Wildlife Service Biological Opinion, pp. 10, 25-27 (Portions of Table 6.1-2), 31-33
(Portions of Table 6.1-3), 258, and 262, *available at*:

21 https://www.fws.gov/sfbaydelta/HabitatConservation/CalWaterFix/documents/Final_California_WaterFix_USFWS_Biological_Opinion_06-23-2017.pdf;

22 National Marine Fisheries Service Biological Opinion, pp. 12, 682, 688, *available at*:

23 http://www.westcoast.fisheries.noaa.gov/publications/Central_Valley/CAWaterFix/WaterFix%20Biological%20Opinion/cwf_final_biop.pdf; and Appendix A-2, pp. 3-79, 3-81 (Table 3-3.1), *available at*:

24 http://www.westcoast.fisheries.noaa.gov/publications/Central_Valley/CAWaterFix/WaterFix%20Biological%20Opinion/cwf_appendix_a2.pdf

25 ¹³ Draft EIR/EIS for the Bay Delta Conservation Plan (“DEIR/DEIS”), p. 2-3 (2013), *available at*:

26 http://baydeltaconservationplan.com/Libraries/Dynamic_Document_Library/Public_Draft_BDCP_EIR-EIS_Chapter_2_-_Project_Objectives_and_Purpose_and_Need.sflb.ashx; *see also* DWR CEQA

27 Findings of Fact and Statement of Overriding Considerations (“DWR CEQA Findings”), p. 31 (July 2017), *available at*:

28 http://baydeltaconservationplan.com/Libraries/Dynamic_Document_Library/CWF_CEQA_Findings_of_Fact_and_SOC_for_website_7_17_17.sflb.ashx

1 reliance on south Delta exports.”¹⁴ According to the EIR/EIS, approximately *half* of CVP exports
2 would move through the new north Delta intakes, and Refuges would receive water allocations
3 similar to what they currently receive.¹⁵

4 Grassland was justified in believing that the project as described would not change. A
5 consistent project description is required under the California Environmental Quality Act, the
6 National Environmental Policy Act, and the Endangered Species Act.¹⁶ Common sense dictates
7 that the SWRCB must also require a consistent project description for the purpose of conducting
8 its current proceedings on the Petition. Grassland did not submit a Protest and NOI by the original
9 deadline because Grassland was reassured, in both the written and oral descriptions of the Petition
10 and the WaterFix project, that water deliveries to wildlife in Grassland’s service area and other
11 south-of-Delta Refuges would not be adversely affected. This changed when Reclamation
12 presented its “California WaterFix Participation Approach” to CVP contractors at a public
13 meeting in Los Banos on July 26, 2017 (**Attachment C**).

14 B. Reclamation’s New Participation Approach Is Good Cause for Late Intervention

15 Instead of dual conveyance for the benefit of south-of-Delta CVP contractors and in
16 accordance with established allocation policies and contracts, Reclamation’s new proposal would
17 allow water contractors who fund construction of the WaterFix to receive a corollary CVP water
18 supply benefit. The new north Delta intakes will not be operated jointly with the south Delta
19 intakes as a dual conveyance to first meet senior water rights and Refuge obligations. Instead,
20 Reclamation contemplates an “additional” allocation of CVP water for paying contractors.
21 Reclamation will not “participate” under this approach, and therefore the water supply benefits of
22 the WaterFix will not be available for “other CVP purposes,” *e.g.* Refuges. (**Attachment C**,
23 PowerPoint presentation, p. 2.)

24 ¹⁴ Partially Recirculated Draft EIR/EIS (“RDEIR/RDEIS”), pp. 4.1-1 to 4.1-2 (2015); *available at*:
25 http://baydeltaconservationplan.com/RDEIRS508/4_New_Alternatives-508.pdf ; DWR CEQA Findings,
26 pp. 31-32, 114.

26 ¹⁵ RDEIR/RDEIR, Chapter 5 (Water Supply), pp. 5-22 to 5.24 (Tables 5-7, 5-8, and 5-9), *available at*:
27 http://baydeltaconservationplan.com/RDEIRS508/4p_A_Rev_DEIR-S/05_WaterSupply-508.pdf

28 ¹⁶ *County of Inyo v. County of Los Angeles* (1977) 71 Cal.App.3d 185, 193; *Pacificans for a Scenic Coast v. California Dep’t. of Transportation* (N.D. Cal. 2016) 204 F.Supp.3d 1075, 1089; *Natural Resources Defense Council v. Callaway* (2nd Cir. 1975) 524 F.2d 79, 92, 93.

1 Reclamation's Participation Approach does not adequately address the negative
2 consequences for Refuges from an additional CVP water allocation to other contractors,
3 particularly in light of the WaterFix project's reductions in south Delta pumping, increased OMR
4 restrictions, and new Delta outflow requirements, which will certainly affect Reclamation's ability
5 to deliver water for refuge use. Reclamation anticipates the future development of "accounting
6 and mitigation" protocols to address the acknowledged "negative impact" of its Participation
7 Approach. (**Attachment C**, PowerPoint presentation, p. 4.) Yet Reclamation offers no
8 explanation of what legal and contractual mechanisms or other measures it would rely on to
9 ensure that the WaterFix is not operated for the benefit of paying contractors at the expense
10 of the Refuges. The Participation Approach would have a significant impact on wildlife
11 within Grassland and other Refuges. Accordingly, Grassland requests the ability to participate
12 in Part II of these proceedings.

13 **II. The Protest Will Not Unreasonably Delay the Hearing or Prejudice Other Parties**

14 Grassland's participation in Part II will not unreasonably delay the SWRCB hearings
15 because the proposed scope of Grassland's participation is limited to the potential effect on
16 wildlife and public trust resources within the Grassland service area and similarly situated south-
17 of-Delta Refuges, as a result of Reclamation's WaterFix Participation Approach. This topic is
18 unique and limited in nature, and is germane to the Part II proceedings, which will focus on
19 (1) impacts to fish, wildlife and other public trust resources; and (2) whether the project
20 conserves the public interest.

21 Approving Grassland's request would not cause delay by setting a precedent for other
22 parties to file late Protests and NOIs. The other south-of-Delta CVPIA Refuges are owned and
23 managed by the U.S. Fish and Wildlife Service and the California Department of Fish and Wildlife
24 ("CDFW"). Both agencies are closely involved with the WaterFix project and will likely play a
25 role in the Part II proceedings in any case (CDWF submitted a Notice of Intent to Appear in Part
26 II). Any other motion similar to this one would need to be germane to Part II and show good cause
27 for failing to move sooner. Few entities would qualify under this standard. Reclamation's
28 proposed changes to the WaterFix project uniquely affect the Refuges, and Grassland will

1 adequately represent the interests of CVP refuge water users in this matter.

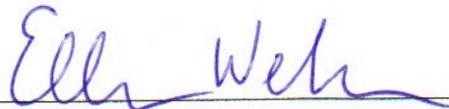
2 Grassland's participation in Part II of this proceeding will not prejudice other parties,
3 because the scope of Grassland's proposed participation is limited, and the timing will be no
4 different than the other nine parties who intervened solely for the purpose of participating in Part
5 II.¹⁷ Like Grassland, these nine parties have not yet presented testimony, examined witnesses, or
6 submitted statements and briefs. Reclamation's Participation Approach was only recently
7 presented to the public, and has not yet been the subject of this proceeding.

8 **III. CVPIA Refuges Are Not Adequately Represented**

9 No other participants have filed a Protest or NOI on the grounds of adverse impacts to
10 CVPIA wildlife refuges. Although non-CVPIA refuges such as Stone Lakes National Wildlife
11 Refuge are represented, they do not receive CVP water and have different interests in this
12 proceeding. Although CDFW filed a Notice of Intent to Participate in Part II, there is no indication
13 that it intends to make arguments similar to Grassland. Reclamation's prior testimony is
14 contradicted by the new Participation Approach, and Reclamation represents the interests of its
15 agency and has obligations to all CVP water users, therefore it does not adequately represent the
16 interests of the Refuges. For these reasons, Grassland Water District moves to file the attached
17 Protest and NOI, and to participate in Part II of the California WaterFix hearings.

18
19 DATED: July 31, 2017

By:

20
21 

22 ELLEN L. WEHR
23 Attorney for Proposed Protestant
24 GRASSLAND WATER DISTRICT

25
26 ¹⁷ See "Parties Participating in Part II Only," available at:
27 http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/noi_protests/#part2only (County of Sacramento, Environmental Council of Sacramento, Trout Unlimited,
28 CDFW, Environmental Water Caucus, Save Our Sandhill Cranes, Friends of the San Francisco Estuary, Friends of Stone Lakes National Wildlife Refuge, and American Rivers, Inc.).

ATTACHMENT A

State of California
State Water Resources Control Board
DIVISION OF WATER RIGHTS
P.O. Box 2000, Sacramento, CA 95812-2000

Info: (916) 341-5300, FAX: (916) 341-5400, Web: <http://www.waterboards.ca.gov/waterrights>

PROTEST- PETITION
This form may also be used for objections

**PETITION FOR TIME EXTENSION, CHANGE, TEMPORARY URGENT CHANGE
OR TRANSFER ON**

Water Right Permits 16478, 16479, 16481, and 16482 (Applications 5630, 14443, 14445A, and 17512, respectively) of the California Department of Water Resources for the State Water Project; and Water Right Permits 11315, 11316, 11967, 11968, 11969, 11971, 11973, 12364, 12721, 12722, and 12723 (Applications 13370, 13371, 5628, 15374, 15375, 16767, 17374, 17376, 5626, 9363, and 9364, respectively) of the U.S. Bureau of Reclamation for the Central Valley Project.

I (We) have carefully read the notice (state name): Ellen, L. Wehr, Grassland Water District

Address, email address and phone number of protestant or authorized agent: Grassland Water District, 200 W. Willmott Avenue, Los Banos, CA, 93635

Attach supplemental sheets as needed. To simplify this form, all references herein are to protests and protestants although the form may be used to file comments on temporary urgent changes and transfers.

Protest based on ENVIRONMENTAL OR PUBLIC INTEREST CONSIDERATIONS: The proposed change will:

- not best serve the public interest X
- be contrary to law X
- have an adverse environmental impact X

State facts which support the foregoing allegations: **See attachment.**

Under what conditions may this protest be disregarded and dismissed? (Conditions should be of a nature that the petitioner can address and may include mitigation measures.)

Enforceable conditions requiring the Bureau of Reclamation to operate the Central Valley Project, including the proposed water right changes that allow for use of the WaterFix project, in a manner that: (1) complies with mitigation obligations to wildlife refuges on a priority basis; and (2) reserves all rights necessary to do so in the future.

Protest based on INJURY TO PRIOR RIGHTS:

To the best of my (our) information and belief the proposed change or transfer will result in injury as follows:

Protestant claims a right to the use of water from the source from which petitioner is diverting, or proposes to divert, which right is based on (identify type of right protestant claims, such as permit, license, pre-1914 appropriative or riparian right):

List permit or license or statement of diversion and use numbers, which cover your use of water (if adjudicated right, list decree).

Where is your diversion point located? ___ ¼ of ___ ¼ of Section _____, T _____, R _____, ___ B&M

If new point of diversion is being requested, is your point of diversion downstream from petitioner's proposed point of diversion? _____

The extent of present and past use of water by protestant or his predecessors in interest is as follows:

- a. Source _____
- b. Approximate date first use made _____
- c. Amount used (list units) _____
- d. Diversion season _____
- e. Purpose(s) of use _____

Under what conditions may this protest be disregarded and dismissed? _____

All protests must be signed by the protestant or authorized representative:

Signed: Ellen Wehr Date: July 31, 2017

All protests must be served on the petitioner. Provide the date served and method of service used: Service via email to James.Mizell@water.ca.gov and Amy.Aufdemberge@sol.doi.gov on 7/31/2017

Facts Supporting Protest Based on Environmental or Public Interest Considerations

Grassland Water District is a California Water District that serves water to the Grassland Resource Conservation District (“GRCD”), in Merced County. The GRCD is one of 19 wildlife habitat areas (“Refuges”) identified in the Central Valley Project Improvement Act (“CVPIA”), Title 34, Public Law 102-575, section 3406(d). Of those 19 Refuges, 14 are located south of the Sacramento-San Joaquin Delta, including the GRCD and units of the National Wildlife Refuge System (Kern, Merced, San Luis, and Pixley National Wildlife Refuges) and the State Wildlife Area system (Los Banos, Mendota, North Grassland, and Volta Wildlife Areas).

As mitigation for the construction and operation of the Central Valley Project (“CVP”), the CVPIA requires delivery of a “firm supply” of CVP water, referred to as Level 2 water, to meet the basic habitat demands for wildlife within the CVPIA Refuges. The Refuges have executed long-term water delivery contracts with the Bureau of Reclamation (“Reclamation”), the performance of which is intended to satisfy Reclamation’s wildlife mitigation obligations under the CVPIA. The Refuges receive a priority for water deliveries from the CVP.

The Petition of the Department of Water Resources and Reclamation to change the water rights of the State Water Project and the CVP, including the underlying environmental analysis, as well as testimony in Part I of the hearings on the Petition, consistently indicated that Reclamation would continue to make water deliveries to Refuges for wildlife mitigation purposes, on a priority basis. The Petition describes that the project will “reduce the need for through-Delta conveyance” and “reduce negative Old and Middle River flows.” It states that: “Under the California WaterFix existing obligations will continue to be met and beneficial uses in the Delta will not be negatively impacted by operations with the new point of diversion.” The Petition also states that: “Deliveries to the CVP Settlement, Refuge, and Exchange Contractors, and SWP Feather River Service Area (FRSA) Contractors and Delta contracts will continue to be made under the terms of those agreements. This Petition does not propose any changes to any contractual obligations.”

The Environmental Impact Report/Environmental Impact Statement (“EIR/EIS”) for the WaterFix project assumes that Refuge water use will be integrated into the project’s dual conveyance operations. The stated purpose of the project is to “restore and protect the ability of the SWP and CVP to deliver up to full contract amounts, ... consistent with the requirements of State and federal law and the terms and conditions of water delivery contracts and other existing applicable agreements.” The adopted project Alternative 4A entails utilizing the new north Delta intakes under a dual conveyance model, “thus reducing reliance on south Delta exports.” According to the EIR/EIS, approximately half of CVP exports would move

through the new north Delta intakes, and Refuges would receive water allocations similar to what they currently receive.

In its Part I testimony to the SWRCB, Reclamation further described the proposed project. Reclamation witness Armin Munévar testified in Part IA that the WaterFix project will involve more restrictive requirements in the south Delta “that limit the amount of south Delta exports.” He explained, however, that water deliveries to Refuges would not be affected. Mr. Munévar testified that the WaterFix project will be operated to first meet in-stream flow, water quality, and fishery requirements, and then to meet the requirements of senior water-right holders and refuges, before any other water deliveries are made. In his Part I rebuttal testimony, Mr. Munévar confirmed that the WaterFix project modeling shows no change in water deliveries to the Refuges.

Reclamation witness Ron Milligan testified that water deliveries to the Refuges, similar to senior water-right holders, “are linked to the inflow criteria at Shasta,” and would potentially have received increased water deliveries if the WaterFix project was operational in 2015. Reclamation’s testimony was clear that the dual conveyance WaterFix project was modeled to serve the Refuges under the same priority water allocation method that currently exists, and no changes to CVP contractual obligations were proposed.

Each of the above-referenced documents and statements was consistent that water deliveries to the Refuges would not be adversely affected. This changed when Reclamation presented its “California WaterFix Participation Approach” to CVP contractors at a public meeting in Los Banos on July 26, 2017. Instead of dual conveyance for the benefit of south-of-Delta CVP contractors and in accordance with established allocation policies and contracts, Reclamation’s new proposal would allow water contractors who fund construction of the WaterFix to receive a corollary CVP water supply benefit. The new north Delta intakes will not be operated jointly with the south Delta intakes as a dual conveyance to first meet senior water rights and Refuge obligations. Instead, Reclamation contemplates an “additional” allocation of CVP water for paying contractors. Reclamation will not “participate” under this approach, and therefore the water supply benefits of the WaterFix will not be available for “other CVP purposes,” *e.g.* Refuges.

Reclamation’s Participation Approach does not adequately address the negative consequences for Refuges from an additional CVP water allocation to other contractors, particularly in light of the WaterFix project’s reductions in south Delta pumping, increased OMR restrictions, and new Delta outflow requirements, which will certainly affect Reclamation’s ability to deliver water for refuge use. Reclamation anticipates the future development of “accounting and mitigation” protocols to address the acknowledged “negative

impact” of its Participation Approach. Yet Reclamation offers no explanation of what legal and contractual mechanisms or other measures it would rely on to ensure that the WaterFix is not operated for the benefit of paying contractors at the expense of the Refuges.

The Participation Approach would have a significant impact on wildlife within the GRCD and other Refuges. A reduction in water supply reliability for the Refuges will reduce their biological productivity, thereby reducing the availability of food and habitat for migratory waterfowl and shorebirds as well as resident wildlife species, including sensitive and listed species. Long-term results of reduced Refuge productivity include reductions in wildlife populations, shifts in migratory behavior, and the potential extirpation of sensitive species. Reduced water supply reliability also increases the annual likelihood of wildlife disease outbreaks in the Refuges.

In addition to wildlife impacts, the Participation Approach would violate the wildlife mitigation requirements of the CVPIA, described above. Finally, the Participation Approach is not in the public interest because it does not adequately protect the significant public trust resources located within the Refuges.

ATTACHMENT B

NOTICE OF INTENT TO APPEAR

Grassland Water District plans to participate in the water right hearing regarding
(name of party or participant)

CALIFORNIA WATERFIX HEARING

California Department of Water Resources and U.S. Bureau of Reclamation

The Public Hearing scheduled to commence on **Thursday, April 7, 2016**

1) Check all that apply:

- I/we intend to participate in Part I of the hearing
- I/we intend to participate in Part II of the hearing

2) Check the applicable boxes below. Be sure to accurately describe your participation in the hearing. (Please refer to Enclosure D of the October 30, 2015 [Notice of Petition, Public Hearing, and Pre-Hearing Conference](#) (Hearing Notice) for descriptions of “parties” and “interested persons”):

- I/we intend to participate in the hearing as an interested person and present a policy statement **only**. Part I Part II
- I/we intend to participate in the hearing as a party by cross-examination and/or rebuttal **only** and may present an opening statement.
 Part I Part II
- Part I:** I/we plan to participate in Part I as a party and call the following witnesses to testify at the hearing. (Fill in the following table for Part I of the hearing **only**)

NAME	SUBJECT OF PROPOSED TESTIMONY (Please indicate Application Number if Appropriate)	ESTIMATED LENGTH OF DIRECT TESTIMONY	EXPERT WITNESS (YES/NO)

(If more space is required, please add additional pages.)

- Part II:** I/we plan to participate in Part II as a party and will call witnesses to testify at the hearing. Please note that you will be required to submit a Supplemental Notice of Intent to Appear at a date to be determined for Part II of the hearing that lists your witnesses, subject of proposed testimony, etc.

3) Check if applicable:

- I/we have also protested the Petition in accordance with Water Code section 1703.2.

*Note: If have protested the Petition, you must also fill out sections 1 and 2 of this form above and indicate your intent to appear at the hearing to present evidence in support of your protest. If you do not resolve your protest with the petitioners prior to the hearing, and then do not present a case supporting your protest at the hearing, your protest will be dismissed. It is **not** necessary to file a protest to participate in the hearing.*

Continue to next page

4) Fill in the following information of the Participant, Party, Attorney, or Other Representative:

Name (Print): Ellen Wehr, General Counsel and Authorized Representative

Mailing

Address: Grassland Water District, 200 W. Willmott Avenue, Los Banos, CA 93635

Phone Number: (209) 826-5188 Fax Number: (209) 826-4984

E-mail: ewehr@gwdwater.org

Optional:

- I/we **decline** electronic service of hearing-related materials. If you are unable to accept electronic service for any reason, please contact the hearing team by Tuesday, January 5, 2016, at 916-319-0960 or by email at CWFhearing@waterboards.ca.gov.

Signature:  Date: July 31, 2017

ATTACHMENT C

1 ELLEN L. WEHR (State Bar No. 252082)
GRASSLAND WATER DISTRICT
2 200 W. Willmott Avenue
Los Banos, CA 93635
3 Telephone: (209) 826-5188
E-mail: ewehr@gwdwater.org
4

5 Attorney for Proposed Protestant
GRASSLAND WATER DISTRICT
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7 **CALIFORNIA STATE WATER RESOURCES CONTROL BOARD**
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9 **IN RE CALIFORNIA WATERFIX,
CALIFORNIA DEPARTMENT OF
10 WATER RESOURCES AND U.S.
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WATER RIGHTS, POINTS OF
12 DIVERSION/RE-DIVERSION**

**DECLARATION OF ELLEN WEHR
IN SUPPORT OF MOTION OF
GRASSLAND WATER DISTRICT TO
FILE PROTEST AND NOTICE OF
INTENT TO APPEAR IN PART II OF
THE CALIFORNIA WATER FIX
HEARING**

Water Code § 1703.1; 23 C.C.R. § 747

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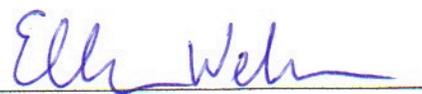
I, Ellen L. Wehr, declare as follows:

1. I am General Counsel for the Grassland Water District. I have personal knowledge of the facts set forth herein, and if called as a witness, I could and would competently testify thereto. I make this declaration in support of Grassland Water District's Motion to File Protest and Notice of Intent to Appear in Part II of the California Water Fix Hearing.

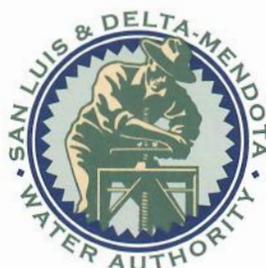
2. Attached hereto is a true and correct copy of the July 26, 2017 agenda for a workshop held by the San Luis & Delta-Mendota Water Authority in Los Banos, California, and a PowerPoint presentation provided by the U.S. Bureau of Reclamation at that workshop.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed July 29, 2017, at Sacramento, California



Ellen L. Wehr



Notice

San Luis & Delta-Mendota Water Authority Special Joint Workshop of the Board of Directors, Water Resources Committee, and Finance & Administration Committee

July 26, 2017 at 9:00 a.m.

Adjourned to the Grand Room at the
Los Banos Community Center
645 7th Street, Los Banos, CA 93635

AGENDA

Any member of the public may address the Board and Committees concerning any item on the agenda before or during their consideration of that matter. For each item, public comment is limited to no more than three minutes per person. For good cause, the presiding Chair may waive this limitation.

1. Call to Order
2. Opportunity for Public Comment – Any member of the public may address the Board and/or Committees concerning any matter not on the agenda, but within their jurisdictions. Public comment is limited to no more than three minutes per person. For good cause, the presiding Chair may waive this limitation.
3. REVIEW AND DISCUSSION OF THE CALIFORNIA WATERFIX PROJECT, **J. Peltier**

Item will include (1) a water supply analysis (**C. Chilmakuri, CH2M Hill**) and (2) a presentation on the participation approach developed by the United States Bureau of Reclamation for Central Valley Project Contractors (**K. White, USBR**)

All other aspects of the WaterFix Project may be reviewed and discussed, including, but not limited to, elements of the planning, permitting, design, construction, operations, maintenance, and funding/financing.
4. ADJOURNMENT

842 SIXTH STREET

SUITE 7

P.O. BOX 2157

LOS BANOS, CA

93635

Persons with a disability may request disability-related modification or accommodation by contacting Cheri Worthy at the San Luis & Delta-Mendota Water Authority Office, 842 6th Street, P O Box 2157, Los Banos, California, telephone: 209/826-9696 at least 1 day before the workshop date.

209 826-9696

209 826-9698 FAX

RECLAMATION

Managing Water in the West

California WaterFix (CWF) Participation Approach

July 26, 2017



U.S. Department of the Interior
Bureau of Reclamation

Overview

- CVP Contractors may choose to participate in the CWF to share associated costs and benefits
- CVP contractors that do not participate will not pay capital costs and will not receive any water supply benefit from operation of the tunnels
- Facilities will be owned by DWR (or a JPA), but not Reclamation
- Reclamation will not be a participant in the project, and therefore will not pay capital costs of the project
 - Reclamation will not receive water supply benefits from the CWF to be allocated to other CVP purposes

RECLAMATION

Overview

- **Water supply of non-participants will not be reduced due solely to CWF operations and associated requirements**
- **Participants will contract through DWR for use of the CWF, but water received will be under their existing CVP contracts**
 - All CWF water delivered to participants will be considered CVP water
- **Capacity and/or water supply benefits may be leased or reassigned to non-participants or other participants**

RECLAMATION

Expected Costs

- **Capital and Fixed Operations and Maintenance**
 - Paid annually by all participants at the rate they are participating
 - Is not dependent on use or realized benefits
- **Variable Operations and Maintenance**
 - Paid annually by all who utilize the tunnel capacity
 - Dependent on use and realized benefits of the tunnels
 - May be incurred by non-participants who use a participant's capacity
- **CVP Charges**
 - All CVP water delivered to contractors (regardless of whether it is a CWF benefit or not) will be subject to applicable CVP Restoration Fund charges

RECLAMATION

Operation of the CWF Facilities

- **Operation will be coordinated between the CVP and SWP**
 - Coordination Agreement will be developed between DWR and Reclamation
 - Agreement will be developed in an open and transparent process
- **CWF Operations**
 - Capturing excess water that could not be otherwise stored or exported through the delta
 - Is not expected to change upstream CVP operations for either exporting or new CWF-specific regulatory requirements

RECLAMATION

Coordination Agreement

- **Key components are expected to include:**
 - Framework for a detailed operations plan
 - Coordination to meet regulatory requirements
 - Accounting and mitigation of CWF-regulations that would otherwise negatively impact non-participants
 - Assumptions in the accounting and allocation process
 - Priority of handling water stored in San Luis
 - Dispute resolution process

RECLAMATION

CVP Water Allocations

- **Participants will receive two CVP water allocations:**
 - General CVP allocation
 - CWF additional CVP allocation
- **General CVP allocation**
 - Calculated assuming no use of the CWF facilities
- **CWF additional CVP allocation**
 - Calculated after CWF benefits have been realized
 - Can not displace water associated with CVP allocations

RECLAMATION

Accounting Principles

- **Water supply benefit is realized primarily in excess conditions**
- **Benefits are largely due to storm events in the winter and early spring**
- **Diversions through the CWF and through delta will be maximized in excess conditions**
- **Benefits will be minimal in the summer months**
- **Allocations will continue to follow contract provisions**

RECLAMATION

Accounting Process

- Reclamation develops the normal CVP allocation using their existing allocation process without consideration of the CWF supply or future CWF water supply benefits
- Each month, Reclamation identifies the increased water supply from the CWF through the end of the previous month and adjusts the CWF allocation accordingly
- Increased water supply from the CWF realized in a single month will contribute to the next month's CWF allocation

RECLAMATION

Accounting Considerations

- If San Luis fills with CWF water but is determined to have filled at a later date without CWF water, the CWF allocation will be adjusted downward
- CWF water may be rescheduled in San Luis, but may not displace or interfere with CVP allocations
- Priorities between rescheduling CWF and non-project water will be defined under the Coordination Agreement
- Benefits realized due to reduced carriage water costs will be defined under the Coordination Agreement

RECLAMATION

Questions & Discussion

RECLAMATION

Accounting Considerations

- If San Luis fills with CWF water but is determined to have filled at a later date without CWF water, the CWF allocation will be adjusted downward.
- CWF water may be rescheduled in San Luis, but may not displace or interfere with CVP allocations.
- Priorities between rescheduling CWF and non-project water will be defined under the Coordination Agreement.
- Benefits realized due to reduced carriage water costs will be defined under the Coordination Agreement.

ATTACHMENT D

STATEMENT OF SERVICE

**CALIFORNIA WATERFIX PETITION HEARING
Department of Water Resources and U.S. Bureau of Reclamation (Petitioners)**

I hereby certify that I have this day submitted to the State Water Resources Control Board and caused a true and correct copy of the following document(s):

MOTION OF GRASSLAND WATER DISTRICT TO FILE PROTEST AND NOTICE OF INTENT TO APPEAR IN PART II OF THE CALIFORNIA WATER FIX HEARING

to be served by **Electronic Mail** (email) upon the parties listed in Table 1 of the **Current Service List** for the California WaterFix Petition Hearing, dated July 27, 2017, posted by the State Water Resources Control Board at http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/service_list.shtml:

Note: In the event that any emails to any parties on the Current Service List are undeliverable, you must attempt to effectuate service using another method of service, if necessary, and submit another statement of service that describes any changes to the date and method of service for those parties.

<p>Petitioners Only: Please attach a true and correct hard copy of the document(s) to be served by the following method of service to Suzanne Womack & Sheldon Moore, Clifton Court, L.P., 3619 Land Park Drive, Sacramento, CA 95818:</p> <p>Method of Service: _____</p>

I certify that the foregoing is true and correct and that this document was executed on July 31, 2017
Date

Signature: Ellen Wehr

Name: Ellen Wehr
Title: General Counsel
Party/Affiliation: Grassland Water District
Address: 200 W. Willmott Avenue
Los Banos, CA 93635