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11
12 **BEFORE THE**
13 **CALIFORNIA STATE WATER RESOURCES CONTROL BOARD**

14 HEARING IN THE MATTER OF
15 CALIFORNIA DEPARTMENT OF
16 WATER RESOURCES AND UNITED
17 STATES BUREAU OF RECLAMATION
18 REQUEST FOR A CHANGE IN POINT
19 OF DIVERSION FOR CALIFORNIA
20 WATER FIX

TESTIMONY OF
JONAS MINTON

1 I, Jonas Minton, do hereby declare:
2

3 **Summary of Testimony**
4

5 I, Jonas Minton, am testifying that in evaluating whether to approve the WaterFix Change
6 Petition, the State Water Resources Control Board (SWRCB) is required to consider the co-equal
7 objectives set forth in the Delta Reform Act. In evaluating the feasibility of enacting Delta flow criteria
8 that would reduce Delta exports, the SWRCB should recognize the existing trend toward significantly
9 increased water recycling. The opportunities to convert drainage impaired lands in the San Joaquin
10 Valley to solar production and other uses will also reduce water demand from the Delta. The testimony
11 also requests that the Board prepare an EIR formally considering suggested alternatives for appropriate
12 Delta flow criteria before voting on whether to adopt those flow criteria as permit terms for the
13 WaterFix petition, and allow protestants to comment on the EIR. Lastly, the testimony identifies a
14 different process for developing projects that will achieve the co-equal objectives and urges the SWRCB
15 to consider such an alternative for meeting water supply reliability in the near term rather than approving
16 a project with large uncertainties in funding, engineering design, and operations.
17

18 **Qualifications**

19 My name is Jonas Minton. A true and correct copy of my Statement of Qualifications is
20 provided as Exhibit FOR- 5. I am the Senior Water Policy Advisor for the Planning and Conservation
21 League. From 2000 to 2004 I was Deputy Director of the California Department of Water Resources. I
22 was responsible for overseeing the Division of Safety of Dams, Division of Flood Management,
23 Division of Planning, Office of Water Conservation and Recycling, management of the California State
24 Plan Update; Chair State of California Desalination Task Force, and Vice Chair State of California
25 Water Recycling Task Force. This gave me extensive experience in statewide water supply planning.
26 From 1995 to 2000 I was Executive Director of the Sacramento Water Forum. I managed the complex
27 stakeholder process that resulted in a binding agreement for management of the American River for the
28 next thirty years.

1 **Testimony**

2
3 **Public Trust Considerations**

4
5 The SWRCB is required to balance public trust uses in making its decision on the WaterFix
6 petition, and is under a mandate from the legislature to adopt “appropriate Delta flow criteria” to protect
7 the public trust. From the SWRCB’s web site,

8 As increasing emphasis is placed on protecting instream uses – fish, wildlife, recreation and
9 scenic enjoyment – surface water allocations are administered under ever-tightening restrictions,
10 posing new challenges and giving new direction to the State Board’s water right activities.

11 Under the public trust doctrine, certain resources are held to be the property of all citizens and
12 subject to continuing supervision by the State. Originally, the public trust was limited to
13 commerce, navigation and fisheries, but over the years the courts have broadened the definition
14 to include recreational and ecological values.

15 In a landmark case, the California Supreme Court held that California water law is an integration
16 of both public trust and appropriative right systems, and that all appropriations may be subject to
17 review if “changing circumstances” warrant their reconsideration and reallocation. The courts
18 also have concurrent jurisdiction in this area. At the same time, it held that like other uses, public
19 trust values are subject to the reasonable and beneficial use provisions of the California
20 Constitution.

21 The difficulty comes in balancing the potential value of a proposed or existing water diversion
22 with the impact it may have on the public trust. After carefully weighing the issues and arriving
23 at a determination, the Board is charged with implementing the action which would protect the
24 latter. The courts also have concurrent jurisdiction in this area. As with all the other pieces of the
25 California water puzzle, allocating the limited resource fairly and impartially among many
26 competing users represents one of the Board’s greatest challenges.

27 https://www.waterboards.ca.gov/waterrights/board_info/water_rights_process.shtml at page 1.
28 (Exhibit FOR-70)

Undoubtedly the Delta is one of most complicated pieces of the California water puzzle with a
multiplicity of competing uses. Therefore the SWRCB is required to determine if there are alternative
ways to fully or partially meet competing needs in the balancing process.

24 **“8 Affordable Water Solutions”**

25
26 In March of 2010 the Planning and Conservation League published “8 Affordable Water
27 Solutions.” (<https://www.pcl.org/media/8-Affordable-Water-Solutions.pdf>) (Exhibit FOR-71) Three of
28 those solutions are directly applicable to the SWRCB’s responsibility to balance competing uses.

1
2 **I. Increase the amount of water that California can safely recycle and reuse.**
3

4 In 2010 the “8 Affordable Water Solutions recommended, “Every year, California discharges 4
5 million acre-feet of used water to the ocean. The Department of Public Health should create statewide
6 criteria for safely recycling this water to allow California to reclaim it for potable use. Creating uniform
7 standards would ensure public safety and reduce up-front recycling plant design costs.”

8 With sponsorship by the Planning and Conservation League SB 918 was enacted in 2010. (An
9 act to amend Sections 13350 and 13521 of, and to add Chapter 7.3 (commencing with Section 13560) to
10 Division 7 of, the Water Code, relating to water recycling).

11 It required the adoption of, “... uniform water recycling criteria for indirect potable water reuse
12 for groundwater recharge, as defined, by December 31, 2013.” The bill required the department
13 (Department of Public health) to develop and adopt uniform water recycling criteria for surface water
14 augmentation, as defined, by December 31, 2016, if a specified expert panel convened pursuant to the
15 bill found that the criteria would adequately protect public health. The bill required the department to
16 investigate the feasibility of developing uniform water recycling criteria for direct potable reuse, as
17 defined, and to provide a final report on that investigation to the Legislature by December 31, 2016.
18 Subsequently responsibility for this work was transferred to the SWRCB.

19 On June 18, 2004 the regulation for Groundwater Replenishment Using Recycled Water was
20 adopted. On June 7, 2016, the Water Reclamation Requirements for Recycled Water Use were adopted
21 by the SWRCB.

22 In December, 2016 the SWRCB issued its report to the legislature, “Investigation On The
23 Feasibility Of Developing Uniform Recycling Criteria For Direct Potable Reuse.” The report found
24 that, “The Expert Panel found that it is technically feasible to develop uniform water recycling criteria
25 for DPR in California, and that those criteria could incorporate a level of public health protection as
26 good as or better than what is currently provided by conventional drinking water supplies and IPR. The
27 Expert Panel found that the functionality of an environmental buffer (i.e., storage, attenuation, and
28 response time) as provided by IPR projects is an important level of protection that would be absent in

1 DPR projects. The Expert Panel indicated that for DPR projects, this level of protection can be
2 addressed by enhancing the reliability of mechanical systems and treatment plant performance.”

3 Additionally, the Expert Panel found that there is no need for additional research to be conducted
4 to establish criteria for DPR, but provided six research recommendations that would enhance the
5 understanding and acceptability of DPR, and further ensure that DPR is protective of public health. The
6 Expert Panel suggested that the research be supported directly by the State of California, and noted that
7 the recommended research Feasibility of Developing Uniform Water Recycling Criteria for DPR State
8 Water Resources Control Board could be done either before and/or concurrently with the development
9 of DPR criteria. The Expert Panel report is available at

10 [“https://www.waterboards.ca.gov/publications_forms/publications/legislative/docs/2016/dpr_rep](https://www.waterboards.ca.gov/publications_forms/publications/legislative/docs/2016/dpr_rep)
11 [ort.pdf](https://www.waterboards.ca.gov/publications_forms/publications/legislative/docs/2016/dpr_rep) at pages IV and V. (Exhibit FOR-72)

12 These are all important measures to achieve the SWRCB’s water recycling goals, “Increase the
13 use of recycled water over 2002 levels by at least one million acre-feet per year (afy) by 2020 and by at
14 least two million afy by 2030.” as articulated in your State Water Resources Control Board Policy for
15 Water Quality Control for Recycled Water (Recycled Water Policy) Revised January 22, 2013
16 Effective April 25, 2013.

17 https://www.waterboards.ca.gov/water_issues/programs/water_recycling_policy/docs/rwp_revtoc.pdf at
18 Page 1. (Exhibit FOR-73)

19 In balancing the public trust in this proceeding, the SWRCB must take into account its own
20 water recycling policy and the fact that water suppliers are acting to develop these new supplies. The
21 City of San Diego will start construction of the first phase of their Pure Water Project next year. They
22 expect recycled water to provide a third of the City’s drinking water by the year 2035 (about the best
23 case time that the WaterFix project could be on line).

24 <http://www.sandiegouniontribune.com/news/environment/sd-me-pure-water-recycling-20170510->
25 [story.html](http://www.sandiegouniontribune.com/news/environment/sd-me-pure-water-recycling-20170510-) (Exhibit FOR-74)

26 The City of Los Angeles and the Metropolitan Water District of Southern California are in talks
27 to purify and reuse as much as 168,000 acre feet of water per year. That is consistent with the direction
28 given by Mayor Eric Garcetti to Los Angeles Department of Water and Power to reduce its purchases on

1 imported potable water by 50% by the year 2024. [http://www.latimes.com/local/lanow/la-me-ln-mwd-
2 recycled-water-20150922-story.html](http://www.latimes.com/local/lanow/la-me-ln-mwd-
2 recycled-water-20150922-story.html) (Exhibit FOR-75)

3 Orange County Water District continues to expand its recycled water production. Currently at
4 100 million gallons of wastewater a day, they are expanding it to 130 million gallons per day. It is
5 designed to eventually supply about 40 percent of all water needed in Orange County.

6 [https://ww2.kqed.org/news/2016/12/14/nations-largest-water-recycling-plant-expanding-in-orange-
7 county/](https://ww2.kqed.org/news/2016/12/14/nations-largest-water-recycling-plant-expanding-in-orange-
7 county/) (Exhibit FOR-76)

8 This is directly relevant to the SWRCB's responsibility to balance competing demands for
9 limited resources. By improving water supply reliability, water recycling directly reduces the amount of
10 water needed from the Bay Delta. Instead of waiting for very speculative water from Water Fix, water
11 districts throughout the State are developing their own reliable supplies. Water Districts are also
12 expanding supplies through increased water conservation, storm water capture, ground water recharge,
13 and water desalination. For this reason, the SWRCB must explicitly consider the availability of
14 alternative water supplies in its public trust balancing.

15
16 **II. Adopt and enforce updated numeric flow and water quality standards for the Delta.**

17
18 The third of our solutions published back in 2010 was especially prophetic to this proceeding and
19 the public trust responsibilities of the SWRCB. With no adopted numeric Delta flow criteria against
20 which to evaluate the WaterFix petition there has been an endless do loop of futility.

21 The petitioners send mixed messages about how the project will be operated and against what
22 standards, e.g. D-1641, Biological Opinions, EIR/EIS statements or just ambiguous "adaptive
23 management." Protestants and the Board have no way of effectively evaluating the impacts of the new
24 diversions or responding to unknowns that could be on the order of a million acre feet of water in some
25 years.

26 Fortunately for the public trust balancing it should be possible to correct this irregularity. The
27 SWRCB could take suggestions for appropriate, quantifiable Delta flow criteria in Part 2 of the
28 WaterFix Hearing, and develop its own required CEQA documentation to support its ultimate decision

1 on “appropriate Delta flow criteria.” This would require another phase of the WaterFix hearing, but it
2 may be the only way that the Board would fully and adequately comply with CEQA, given that the
3 Department of Water Resources has failed to fully and adequately analyze alternatives for “appropriate
4 Delta flow criteria” in the WaterFix EIR/EIS. Considering the delays in the WaterFix project, it is
5 unlikely that another phase for the WaterFix hearing would substantially affect the schedule for
6 completion of the project.

7 Such a procedure would allow the petitioners and protestants to intelligently provide the
8 SWRCB with necessary information on impacts of the Board’s decision on appropriate Delta flow
9 criteria, as well as on project impacts. It would also allow the SWRCB to fully and legally comply with
10 the requirements of the Racanelli decision (*United States v. State Water Resources Control Board* [and
11 seven other cases] (1986) 182 Cal.App.3d 82). The public trust extends not only to the environmental
12 uses of water but also to the water uses of those many districts which would not receive water from the
13 WaterFix project.

14 15 **III. Consider alternative future uses of drainage-impaired lands in the San Joaquin Valley.**

16
17 In balancing public trust uses to determine “appropriate Delta flow criteria” the SWRCB needs
18 to look at the long term viability of different water uses. The sixth Affordable Water Solution addresses
19 the unsolvable drainage problems that will make hundreds of thousands of acres of agricultural land in
20 the San Joaquin Valley unfarmable.

21 Dr. Jay Lund, Director of the UC Davis Center for Watershed Science wrote on April 11, 2017,
22 “The [southern Central Valley](#) will see large reductions in net water use. This uncomfortable truth is now
23 widely accepted following the drought. About 15 percent of the southern Central Valley’s agricultural
24 land depends on groundwater overdraft. Problems in the Delta and increased outflows of the San
25 Joaquin River threaten perhaps another 15 percent of supplies. Soil salinization, urbanization of
26 agricultural land, technology and climate change will also mostly push to reduce irrigated acreage.”

27 [https://www.newsdeeply.com/water/community/2017/04/11/what-california-should-learn-from-a-](https://www.newsdeeply.com/water/community/2017/04/11/what-california-should-learn-from-a-decade-of-water-extremes)
28 [decade-of-water-extremes](https://www.newsdeeply.com/water/community/2017/04/11/what-california-should-learn-from-a-decade-of-water-extremes) (Exhibit FOR-77)

1 The March 2017 Public Policy Institute of California (PPIC) report “Water Stress and a
2 Changing San Joaquin Valley” included this finding,

3 “Although farmers can save some water through crop choice and management, idling some
4 farmland is also likely in basins that cannot close the groundwater deficit with new supplies.”
5 <http://www.ppic.org/publication/water-stress-and-a-changing-san-joaquin-valley/>
6 at Page 1. (Exhibit FOR-83)

7 According to the California Dairy Research Foundation, “Already, 250,000 acres of Central
8 Valley land have been permanently retired due to salinity impacts, and another 1.5 million acres have
9 been impaired by salt.” [http://cdrf.org/2017/06/01/badly-needed-regulatory-changes-considered-central-
10 valley-water-users/](http://cdrf.org/2017/06/01/badly-needed-regulatory-changes-considered-central-valley-water-users/) at Page 1. (Exhibit FOR-78)

11 So in doing the public trust balancing the SWRCB should weigh the benefits (if any) of the
12 project to temporarily supply water to some lands that will be going out of production at the expense of
13 all other long term uses.

14
15 As our “Affordable Water Solutions” points out, converting these lands to large-scale solar
16 projects would save hundreds of thousands of acre-feet of water annually, make California a leader in
17 carbon-free energy generation, and create solar installation, operations, and maintenance jobs.

18 19 **A Different Approach to the Co-Equal Goals**

20
21 In weighing the public interest in the Board’s decision on the WaterFix petition, and balancing
22 the public trust, the Board should consider the coequal goals of reducing reliance on the Delta and
23 increasing water supply reliability, adopted by the legislature in the Delta Reform Act.

24 The WaterFix has proven to be the most contentious proposal to achieving the co-equal goals.
25 There are already at least 30 lawsuits challenging WaterFix CEQA, CESA, Delta Reform Act and
26 related actions. Plaintiffs include 82 public agencies, nonprofit groups, water districts, utilities,
27 reclamation districts, environmentalists, landowners and others. More lawsuits are inevitable if the
28 proponents continue to pursue the project.

1 Despite petitioners spending over a quarter of a billion dollars design work has been stalled at
2 only 10%. Westlands Water District has voted not to participate in the project. (Exhibit FOR-80) Kern
3 County Water Agency voted to only pay half its share. (Exhibit FOR-81) Santa Clara Valley Water
4 District voted against funding its share of the two tunnel WaterFix project. (Exhibit FOR-82)

5 Nevertheless actions need to be taken to achieve the goals in the Delta Reform Act of improving
6 water supply reliability, protect, restore, and enhance the Delta ecosystem, and maintain and enhance
7 Delta as place.

8 In evaluating the WaterFix Change Petition the SWRCB should consider that there is no need to
9 approve a project with such huge uncertainties in financing, engineering design and operations to
10 achieve water supply reliability in the near term. Nor is the project before the SWRCB going to achieve
11 the other Delta Reform Act goals of protecting, restoring, and enhancing the Delta ecosystem, and
12 maintaining and enhancing the Delta as place. In evaluating whether the change is in the public interest,
13 and balancing the public trust, we urge the SWRCB to consider the success of a different approach. It
14 did not use the BDCP/WaterFix approach of telling stakeholders and regulators what they should
15 support (known as the “Decide, Announce and Defend” method). Instead it asked stakeholders to
16 identify projects that would work.

17 In a remarkable 6 month process an Ad Hoc effort known as the Coalition to Support Delta
18 Projects resulted in 37 key stakeholders signing a letter of support for 43 specific Delta projects to move
19 forward. See attached letter of October 17, 2012 to Governor Edmund G. Brown Jr., Subject: Near Term
20 Delta Projects We Support To Move Forward in the Process(es). (Exhibit FOR- 79) These included a
21 mix of projects to improve water supply reliability, improve the Delta ecosystem and preserve and
22 enhance Delta as place.

23 The process by which this balanced approach to public trust resources came about offers an
24 alternative to the process that led to the struggling WaterFix petition currently before the SWRCB.

25 The Coalition started with six individuals in February of 2012: Jason Peltier, then Assistant
26 General Manager of Westlands Water District; Jonas Minton, Water Policy Advisor of the Planning and
27 Conservation League; Roger Patterson, Assistant General Manager of the Metropolitan Water District of
28

1 Southern California; Greg Gartrell, then Assistant General Manager of Contra Costa Water District;
2 Tom Zuckerman, Delta farmer; and Doug Brown representing the five Delta Counties.

3 In a novel approach they decided to invite all interested parties to come together to see if there
4 might be a handful of Delta projects that could be broadly supported. The California State Association
5 of Counties donated their conference room for the meetings.

6 The Department of Water Resources agreed to fund Susan Sherry, then Director of the Center for
7 Collaborative Policy, to mediate. That was critical to the success of the effort as over 70 water district
8 representatives, county officials, Delta interests, environmental representatives, fishery agencies and
9 others showed up for the first meeting.

10 From the outset it was made clear that no one would be told what projects should be supported.
11 They were instead asked what projects that had in mind that could be broadly supported. Unlike the
12 BDCP process there was no requirement that participants agree in advance to support what came out the
13 other end.

14 The group quickly identified criteria for project ideas the participants could bring forward:

15 A. Projects that have wide support

16 B. Projects that can be on line within 5 to 10 years

17 C. Projects that are “no risk or low risk for any regrets” and do not prejudice the outcome
18 of BDCP or the Delta Plan

19 D. Projects that can be funded

20 E. Projects supported by local landowners

21 F. Projects we could learn from

22 G. Projects that are designed or refined/redesigned to avoid impacts and provide multiple
23 Benefits

24 H. Projects supported by science, and that come with specific monitoring or performance
25 criteria, but absolute certainty of outcome not possible or required

26 I. Projects that could foster cooperation

27 J. No “red flagged” projects
28

1 Participants were then given the opportunity to come back with projects they felt could meet
2 those criteria. Over the next several meetings the large group vetted each of the proposals.

3 Initially several participants asked what would be the threshold a proposal would have to meet to
4 get group support, was it a majority, a super majority or some other metric. The mediator advised
5 holding off on that discussion until later.

6 It turned out that only a few of the proposed projects were not in a state to get consensus support.
7 The proponents on their own withdrew those from consideration. In some cases important conversations
8 among stakeholders had to occur before a proposal was ready for support.

9 However within 6 months from the start of the process 37 key stakeholders signed the letter of
10 unanimous support for 43 specific Delta projects to move forward. I am unaware of any other document
11 that has the signatures of stakeholders as diverse as Jason Peltier, Barbara Barrigan - Parilla, Roger
12 Patterson, and supervisors from all five counties.

13 This broad support known as the Coalition to Support Delta Projects has already been useful in
14 moving several of the projects forward. For instance it provided the forum for Contra Costa Water
15 District and the Department of Water Resources to resolve scheduling conflicts that were impeding
16 relocation of the Contra Costa Canal Lining Project (water supply reliability) and the Dutch Slough
17 Tidal Marsh Restoration Project (enhancing the Delta ecosystem).

18 Coalition support assisted in getting funding for levee improvements along Old and Middle
19 Rivers (flood control and water supply reliability along the Old and Middle River Corridor). In that case
20 diverse signatories to the support letter went to the Department of Water Resources and successfully
21 made the case for targeting funds for these important levees. They also worked with DWR to streamline
22 the funding application process so that Reclamation Districts could effectively participate.

23 Although this was a significant accomplishment to advance worthwhile projects, by the end of
24 2012 the Bay Delta Conservation Plan was polarizing stakeholders and began consuming all of their
25 time and attention. It was decided that the Coalition could not make further progress at that time.

26 Original leaders of the Coalition have met periodically since then to see if the time was right to
27 resume the constructive effort. However it has been clear that as BDCP morphed into WaterFix the time
28 was not right.

1 The Sacramento Water Forum is another example of how a collaborative process can lead to
2 durable outcomes. In that case after years of fighting among themselves, water districts in three
3 counties, environmentalists, units of local government, business groups and the taxpayers' association
4 found a way to meet their mutually defined co-equal objectives:

5
6 To provide a reliable and safe water supply for the Sacramento region's long-term growth
and economic health; and

7 To preserve the fishery, wildlife, recreational, and aesthetic values of the lower American
8 River.

9 Stakeholders signing of the landmark Water Forum Agreement in 2000, continue to protect the
10 diverse regional interests in Sacramento, El Dorado, and Placer Counties. Now, more than 15 years later,
11 the Sacramento region and Water Forum members have an impressive record of implementing
12 farsighted water management solutions that have served to protect the river and foster regional vitality.

13 In evaluating whether approving the WaterFix Change Petition is in the public interest, and
14 balancing the public trust, it is appropriate for the SWRCB to recognize that an approach different than
15 that used to develop BDCP/WaterFix is possible. Collaborative efforts such as the Coalition to Support
16 Delta Projects and the Sacramento Water Forum work when there is a fair, inclusive and transparent
17 process.

18 Executed on this 28th day of November, 2017, in Sacramento, California.

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22 Jonas Minton
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