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

WRITTEN REBUTTAL TESTIMONY
OF RICARDO ORTEGA ON BEHALF
OF GRASSLAND WATER DISTRICT

16 **I. INTRODUCTION**

17 I am the General Manager for Grassland Water District and a trained wildlife biologist. A
18 Statement of my Qualifications was submitted concurrently with my direct written testimony as
19 Exhibit GWD-15. I am responsible for the management and supervision of Grassland Water
20 District's personnel, contractors, facilities, finances, agreements, and refuge water supply, as well
21 as coordination with local, state, and federal agencies and non-profit organizations. In the course
22 of my employment as General Manager I also serve as a director for the San Luis and Delta-
23 Mendota Water Authority, a coordinator for the Central Valley Project Improvement Act (CVPIA)
24 refuge water supply program, and a member of the steering committee for the real-time
25 management program of the San Joaquin Valley Drainage Authority.

26 Previous to my position as General Manager I was employed as the Science Program
27 Manager for Grassland Water District, and as a biologist for the California Department of Fish
28 and Wildlife. I hold Bachelor of Science degrees in ecology, systematic biology, and animal
science from California Polytechnic University, and a Master of Science degree in avian sciences

1 from the University of California at Davis.

2 This testimony rebuts direct Part 2 testimony made by witnesses for the Petitioners
3 California Department of Water Resources (DWR) and U.S. Bureau of Reclamation
4 (Reclamation) regarding the proposed operation of the WaterFix project, and specifically the
5 proposed exercise of Reclamation’s eleven Central Valley Project (CVP) water right permits that
6 are at issue in this proceeding. This rebuttal testimony also addresses Chapter 5 of DWR’s
7 Administrative Draft Supplemental Environmental Impact Report/Environmental Impact
8 Statement (EIR/EIS) for the WaterFix project, entitled “Water Supply.” The Petitioners have
9 continued to assert, despite contradictory evidence, that the proposed WaterFix project operations
10 will be the same as the operations presented in Part 1 of this hearing and in the original EIR/EIS.
11 My rebuttal testimony makes reference to relevant Part 1 issues in response to Petitioners’ Part 2
12 case-in-chief.

13 Petitioners’ testimony, along with statements in the Supplemental EIR/EIS, present a
14 substantial risk of injury to San Joaquin Valley wildlife, public trust resources, and the public
15 interest. In response to Hearing Officer Doduc’s request during my Part 2 direct testimony on May
16 13, 2018, Grassland Water District provides as Exhibit GWD-23 a set of proposed water right
17 terms and conditions that are intended to resolve the District’s protest and protect wildlife
18 resources from harm caused by the requested water-right changes.

19 **II. TESTIMONY AND SUPPLEMENTAL EIR/EIS STATEMENTS IN DISPUTE**

20 During the initial Part 2 hearing, DWR witness Erik Reyes testified that the computer
21 modelling results for the proposed WaterFix project operations (Alternative 4A CWF H3+) are
22 sufficient—on their own—to support the conclusion that CVP (“Level 2”) water deliveries to
23 wildlife refuges will generally be the same regardless of whether the State Water Resources
24 Control Board (SWRCB) approves the requested water-right changes. Mr. Reyes’s testimony
25 relied solely on computer modelling results as evidence.¹

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28 ¹ Erik Reyes Part 2 direct written testimony: Exhibit DWR-1016, pp. 3:22-24, 8:12-14, 15:4-6;
Part 2 direct PowerPoint testimony: Exhibit DWR-1028, pp. 3, 46, 50; Part 2 direct oral

1 Mr. Reyes was asked about the underlying assumptions that informed both the
2 modelling results and his professional conclusions regarding refuge water deliveries. He first
3 agreed, then later reviewed and confirmed, that the computer model assumes wildlife refuges
4 will receive a CVP water allocation (100% in most years and 75% in “Shasta critical” years)
5 before an allocation is made to CVP water service contractors. The model also assumes that
6 refuge water allocations will come generally from any CVP water exported from the existing
7 south Delta intakes or the new north Delta WaterFix intakes, under a dual-conveyance
8 approach.²

9 Mr. Reyes’s testimony is very similar to the testimony of DWR’s previous witness
10 Armin Munévar, who testified in Part 1 that CVP water deliveries to wildlife refuges will not
11 be adversely affected by the WaterFix project because even though water exports from the
12 existing intakes will decrease, refuge allocations will continue to be made on a priority basis
13 from both the existing and new intakes, and therefore the computer modelling showed no
14 changes for refuge water allocations.³

15 DWR witness Gwendolyn Buchholz testified that the WaterFix project remains a “dual
16 conveyance” project as initially described in the EIR/EIS, where both the old and new water
17 intakes will be used to meet the water needs of the multiple users that rely on Petitioners’ CVP
18 and State Water Project (SWP) water rights. In particular, she testified that water supply
19 reliability will increase, despite the fact that reliance on the existing intakes will decrease,

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21 testimony: Hearing Transcript dated February 23, 2018, Part 2, Vol. 4, pp. 181:22-182:1,
199:20-24, 200:4-201:1.

22 ² Erik Reyes Part 2 oral testimony on cross-examination: Hearing Transcript dated March 2,
23 2018, Part 2, Vol. 9, pp. 35:4-38:8, 40:1-9; Part 2 oral testimony regarding question raised on
24 cross-examination, after further review: Hearing Transcript dated March 2, 2018, Part 2, Vol. 9,
p. 128:22-25.

25 ³ Armin Munévar Part 1 direct written testimony: Exhibit DWR-71, pp. 16:11-23, 20:9-14
26 (citing Exhibit DWR-514, p. 8); Part 1 direct oral testimony: Hearing Transcript dated August
27 23, 2016, Part 1A, Vol. 13, p. 56:10-13; 72:6-73:9; Part 1 oral testimony on cross-examination:
28 Hearing Transcript dated August 23, 2016, Part 1A, Vol. 13, p. 275:15-277:3; Part 1 rebuttal
testimony: Hearing Transcript dated May 4, 2017, Part 1 Rebuttal, Vol. 39, pp. 73:5-12, 75:15-
22, 124:3-21.

1 because pumping will shift in a flexible manner to the new northern intakes, and pumping will
2 also increase in wet periods and decrease in dry periods.⁴

3 DWR witness Aaron Miller gave similar direct oral testimony, from a real-time operations
4 perspective, that the reason why the WaterFix project will increase water supply reliability is that
5 pumping will shift to the new northern intakes, adding greater flexibility in meeting water
6 demands.⁵

7 Reclamation witness Nancy Parker provided almost no direct written or oral testimony
8 in Part 2, but her written testimony stated that “I have reviewed and concur with the [Part 2]
9 testimony provided by Erik Reyes in DWR-1016.” When asked, Ms. Parker confirmed that
10 the WaterFix computer modelling assumes that refuge water allocations will be met on a
11 priority basis pursuant to the “Shasta critical” criteria (100% in most years and 75% in Shasta
12 critical years). Ms. Parker also agreed that Reclamation’s Rescheduling Guidelines for the San
13 Luis Reservoir indicate that Reclamation gives a higher priority for rescheduling stored water
14 to CVP agricultural contractors and a lower priority to refuge contractors.⁶

15 Ms. Parker’s testimony about the allocation of water to wildlife refuges using the
16 “Shasta critical” criteria is very similar to the testimony of Reclamation’s previous witness
17 Ron Milligan, who testified in Part 1 that refuge water allocations “are linked to the inflow
18 criteria at Shasta” and receive an “allocation of either a full 100 percent quantity or reduced
19 75 percent quantity in years where we hit what’s called Shasta Critical Year.”⁷

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21 ⁴ Gwendolyn Buchholz Part 2 direct written testimony: Exhibit DWR-1010, pp. 5:4-9, 11:10-26;
22 Part 2 direct PowerPoint testimony: Exhibit DWR-1008, pp. 7, 8, 12; Part 2 direct oral
23 testimony: Hearing Transcript dated February 22, 2018, Part 2, Vol. 3, pp. 44:12-45:4.

24 ⁵ Aaron Miller Part 2 direct oral testimony: Hearing Transcript dated February 26, 2018, Part 2,
25 Vol. 5, pp. 30:20-31:14.

26 ⁶ Nancy Parker Part 2 direct written testimony: Exhibit DOI-39, p. 1; Part 2 oral testimony on
27 cross-examination: Hearing Transcript dated March 2, 2018, Part 2, Vol. 9, pp. 41:7-42:7; Part 2
28 oral testimony on cross-examination: Hearing Transcript dated March 2, 2018, Part 2, Vol. 9, p.
31:10-16.

⁷ Ron Milligan Part 1 oral testimony on cross-examination: Hearing Transcript dated August 10,
2016, Part 1A, Vol. 8, pp. 156:21-157:1.

1 Reclamation witness Kristin White provided almost no direct written or oral testimony
2 in Part 2, but when asked, she confirmed that many aspects of WaterFix operations are still
3 uncertain, including how the water supply conveyed through the existing and new intakes will
4 be divided between the CVP and SWP, and among CVP contractors. Ms. White testified that
5 Reclamation intends to develop a future water accounting process, using a hindcasting
6 approach, which will result in two distinct CVP water allocations. The distribution of CVP
7 water among contractors will be based in part on their financial commitment to the WaterFix
8 project. Mitigation for adverse water supply impacts as a result of WaterFix-specific
9 regulations, including impacts to wildlife refuges, will also be developed in the future,
10 potentially in an agreement between Reclamation and DWR. Ms. White agreed that the
11 Rescheduling Guidelines for San Luis Reservoir indicate a higher priority for water service
12 contractors than refuge contractors, and that Reclamation has proposed to allow water pumped
13 through the new northern intakes to be rescheduled in accordance with those guidelines.⁸

14 Finally, Chapter 5 of the Supplemental EIR/EIS, “Water Supply,” is less than one page
15 long. It states that the WaterFix operations will be identical to the operations analyzed in the initial
16 EIR/EIS, that no new adverse water supply impacts have been identified, and thus, no further
17 mitigation is necessary:

18 “These impacts are fully disclosed in Final EIR/EIS Chapter Water Supply. The
19 water supply analysis provided in the Final EIR/EIS considered impacts
20 upstream of the Delta, within the Delta, and within the CVP/SWP service areas.
21 The analysis addressed changes in SWP and CVP water deliveries during
22 construction and operation of the water conveyance facilities. Cumulative
23 impacts on water supplies were also evaluated. As noted above, these impacts
24 are fully described in Final EIR/EIS Chapter 5 Water Supply.”

26 ⁸ Kristin White Part 2 oral testimony on cross-examination: Hearing Transcript dated February
27 27, 2018, Part 2, Vol. 6, p. 57:11-19; Hearing Transcript dated March 2, 2018, Part 2, Vol. 9, pp.
28 23:4-28:17, 29:7-13, 30:11-31:3; Hearing Transcript dated March 1, 2018, Part 2, Vol. 8, p.
158:7-16.

III. REBUTTAL

~~Petitioners' own cross-examination testimony is inconsistent with their case-in-chief. The case-in-chief conclusions about water allocations to wildlife refuges are based entirely on computer modelling that is neither supported by the evidence nor clarified through proposed project conditions. Compounding these problems, the Supplemental EIR/EIS ignores the fact that future allocations of water from the WaterFix intakes remains entirely uncertain, and additional mitigation measures and conditions will be necessary to avoid adverse water supply impacts.~~

The testimony by DWR witnesses Erik Reyes and Armin Munévar, and Reclamation witnesses Nancy Parker and Ron Milligan, ~~establishes beyond a doubt that the computer model used to support the proposed WaterFix operations assumes that south-of-Delta wildlife refuges will receive a priority CVP water allocation before CVP water service contractors receive an allocation. Their testimony~~ explains that water allocations to wildlife refuges are based on the “Shasta critical” criteria, under which the refuges receive a 100% allocation of CVP water in a “non-Shasta critical” year and a 75% allocation in a “Shasta critical” year. This is also verified by my personal experience receiving refuge water allocations from Reclamation, and the terms of the refuge water supply contracts that Reclamation administers.⁹

The testimony by DWR witnesses Erik Reyes, Armin Munévar, Gwendolyn Buchholz, and Aaron Miller adds that the computer model used for the proposed WaterFix operations assumes that allocations to south-of-Delta refuges will be made generally from the overall volume of CVP water diverted from both the existing south Delta intakes and the new north Delta intakes. The model does not distinguish between the distribution of water from any particular intake(s), but instead assumes an overall increase in water supply reliability, by flexibly shifting diversions to the north Delta intakes during wetter periods or when proposed restrictions on the south Delta intakes decrease their diversion capacity. The testimony indicates that any change to these “dual conveyance” assumptions would require new computer modelling to determine potential effects.

⁹ Exhibit GWD-17, pp. 6-7, 17-18, Articles 1(d) and 9.

1 However, the testimony by Reclamation witness Kristin White about how Reclamation
2 actually expects the WaterFix to be operated is inconsistent with the testimony of the other six
3 witnesses about the underlying operational modelling. Instead of following the modelled
4 assumption that CVP water diverted from all intakes will be allocated in accordance with the
5 “Shasta critical” criteria and the established order of allocations, Reclamation proposes to divide
6 its water supply into two CVP allocations, one of which will be available only to contractors who
7 financially invest in the WaterFix project. Reclamation, in order to meet its obligations to wildlife
8 refuges, does not intend to so invest. Thus, the allocation of CVP water to the refuges would no
9 longer be dictated solely by the “Shasta critical” criteria, but also by others’ financial
10 commitments to the WaterFix project.

11 Rather than following the modelled project operations, Reclamation proposes to negotiate
12 an agreement with DWR regarding how water conveyed through the new intakes will be divided
13 between the CVP and SWP, plus new mitigation measures to address foreseeable water supply
14 impacts from WaterFix regulations at the existing intakes. In contrast to the detailed modelling of
15 how CVP and SWP water supplies will be distributed through the WaterFix project, there is now
16 significant uncertainty. These contradictions and operational uncertainties were made public in a
17 letter that Reclamation issued to all CVP contractors in September 2017.¹⁰ To my knowledge,
18 Reclamation has not changed its position after issuing that letter, although Ms. White agreed that
19 Reclamation might do so in the future.¹¹

20 The testimony by Kristin White and Nancy Parker also reveals a second inconsistency with
21 Petitioners’ computer-modelled conclusion that wildlife refuges will not suffer adverse water
22 supply impacts. Reclamation will allow its new allocation of WaterFix water to be stored and
23 rescheduled in San Luis Reservoir, most likely in accordance with the existing Rescheduling
24 Guidelines that prioritize agricultural water over refuge water. This will further impact wildlife
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27 ¹⁰ Exhibit GWD-21, pp. 1-6.

28 ¹¹ Kristin White Part 2 oral testimony on cross-examination: Hearing Transcript dated March 2, 2018, Part 2, Vol. 9, pp. 15:21-16:9.

1 refuges by decreasing their flexibility to reschedule water from months when supplies are
2 available into months when they are deficient.

3 DWR has now submitted an administrative draft Supplemental EIR/EIS that entirely
4 ignores these discrepancies regarding how the WaterFix project will operate and the resulting
5 water supply impacts. ~~That omission is compelling evidence that the Petitioners have no intention
6 of addressing the significant operational uncertainties that have emerged in the time since Part 1
7 of this hearing took place.~~

8 **IV. PROPOSED WATER RIGHT TERMS AND CONDITIONS**


9 ~~Because the Petitioners continue to rely on operational modelling that is inconsistent with
10 newer evidence, without any proposed conditions or mitigation measures to require that the
11 WaterFix project is operated in accordance with the modelling, it is reasonable and necessary for
12 the SWRCB to impose terms and conditions that do so. Petitioners' failure to address foreseeable
13 harm to the reliability of water supplies that support well over a hundred thousand acres of wetland
14 habitat should compel the SWRCB to impose terms and conditions on the requested water right
15 changes.~~

16 Grassland Water District requests that the SWRCB include three straightforward terms and
17 conditions as part of its approval of Reclamation's change petition for the WaterFix project.
18 (Exhibit GWD-23.) The first requires Reclamation to ensure that diversions or rediversions of
19 CVP water are made in compliance with the Level 2 refuge water supply requirement in the
20 Central Valley Project Improvement Act (CVPIA). The second limits Reclamation's ability to
21 impose water shortages on wildlife refuges unless the "Shasta critical" criteria is triggered, and
22 not because Delta export capacity for CVP water is purchased by CVP water service contractors
23 (or repayment contractors, should the contracts be later converted). The third requires
24 Reclamation to allow refuge managers a fair opportunity to reschedule water in San Luis
25 Reservoir.

26 These terms and conditions are intended to assure that the operational assumptions upon
27 which Petitioners rely will be adhered to. They resolve inconsistencies in the testimony and
28 evidence, address uncertainties in project operations, and protect against adverse effects for

1 wildlife refuges that provide important ecological, recreational, and economic services to the State
2 of California.

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4 Executed on July 13, 2018 in Los Banos, California.

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8 Ricardo Ortega
9 GRASSLAND WATER DISTRICT

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