

1 **TESTIMONY OF MARTIN N. MILOBAR**

2  
3 **I. INTRODUCTION**

4 1. My name is Martin N. Milobar. Joint Exhibit (“JE”) 70 is a true and correct copy  
5 of my professional resume. As noted thereon, I graduated from the California Polytechnic State  
6 University, San Luis Obispo with a degree in Agricultural Engineering in 1968. I also graduated  
7 from the California State University, Fresno with a degree in Civil Engineering in 1978. I am a  
8 registered Agricultural Engineer in the State of California (License No. AG 347 ) and a registered  
9 Civil Engineer in the State of California (License No. CE 28113).

10 2. I have been employed by Petitioner, Buena Vista Water Storage District, since  
11 1984. My first position with the District was Assistant Engineer-Manager, which position I held  
12 from 1984 to 1987. My next position with the District was Engineer-Manager, which position I  
13 held from 1987 until my retirement in June, 2008. At the present time, I continue to serve the  
14 Buena Vista Water Storage District as an independent consultant.

15 **II. THE KERN RIVER**

16 3. During my 24 years of employment with Buena Vista Water Storage District I  
17 have become intimately familiar with the Kern River, including without limitation, the physical  
18 aspects of the watershed.

19 4. The Kern River watershed is accurately depicted on JE 27 which is a map of the  
20 Kern River Basin prepared by the Department of Water Resources, Division of Flood  
21 Management.

22 5. The Kern River system originates high in the Sierra–Nevada Mountains. (JE 7, p.  
23 3; JE 27.) The total drainage of the system is estimated to be approximately 2075 square miles.  
24 (JE 7, p. 3; JE 27.) The eastern portion of the Kern River is drained by the South Fork and the  
25 western portion by the main stem North Fork of the Kern River. (JE 7 p. 3; JE 27.) Isabella Dam  
26 and Reservoir is located approximately 1.5 miles below the confluence of the North and South  
27 Forks of the Kern River. (JE 7 p. 3; JE 27.) Below Isabella Reservoir, the Kern River continues  
28 to flow through a steep canyon to the floor of the San Joaquin Valley easterly of the City of

1 Bakersfield then beyond to the First and Second Points of Measurement. (JE 7, pp. 3-4; JE 28.)

2 **III. THE MILLER-HAGGIN AGREEMENT**

3 6. Part of my duties as Engineer-Manager for Buena Vista Water Storage District for  
4 21 years was to familiarize myself with the history of the Kern River, including without  
5 limitation, the agreements, court decrees, and other documents governing the allocation and  
6 distribution of Kern River water among the various Kern River diverters with emphasis on the  
7 division of flows among First Point, Second Point and Lower-River diverters.

8 7. The entire natural flow of the Kern River has been apportioned between certain  
9 designated Kern River diverters by court decisions, decrees and agreements beginning with the  
10 Miller-Haggin Agreement of July 28, 1888 . (JE 7, pp. 6-8; JE 8, pp. 31-32; JE 20, p. 1, Plate 2:  
11 JE 22, p. 14.)

12 8. Around 1879 the rather significant lawsuit of Lux v. Haggin began. In that case  
13 the Supreme Court recognized riparian rights under California law for the first time. (Lux v.  
14 Haggin (1886) 69 Cal. 255; JE 7, p. 7.) The Lux v. Haggin litigation was ultimately settled when  
15 the upstream interests (known as First Point diverters) and the downstream interests (known as  
16 Second Point diverters) entered into the Miller-Haggin Agreement of July 28, 1888. (JE 7, p. 7;  
17 JE 8, pp. 12-13.)

18 9. The Miller-Haggin Agreement of 1888 establishes two measuring stations on the  
19 Kern River which are identified as First Point of Measurement and Second Point of Measurement.  
20 (JE 14, pp. 8-9; JE 28.)

21 10. First Point of Measurement is today located in Section 35, T28S, R28E, MDM (at  
22 approximately the north entrance to Hart Park) as shown on JE 28. JE 30 is a picture of First  
23 Point of Measurement taken in 1998 from the upstream side looking downstream at the structure.

24 11. Second Point of Measurement is located in Section 24, T30S, R25E, MDM  
25 (approximately ½ mile north of Panama Lane and adjacent to Enos Lane and Interstate Highway  
26 5) as shown on JE 28. JE 31 is a picture of Second Point of Measurement taken in 1998 from  
27 the upstream side looking downstream at the structure.

28 12. The Miller-Haggin Agreement of 1888 divides the Kern River between the First

1 Point diverters and the Second Point diverters. (JE 14, p. 10-11; JE 20, pp. 1-2.) The Miller-  
2 Haggin Agreement of 1888 provides that all Kern River natural flow is required to be measured at  
3 First Point of Measurement. (JE 14, p. 8-9.) It further provides that, during the months of March  
4 through August (which is referred to as the “Miller-Haggin season”) all flows above 300 cubic  
5 feet per second (“cfs”) are divided each day 1/3 to the Second Point diverters (to be delivered  
6 without losses) and 2/3 to the First Point diverters. (JE 7, p. 7; JE 14, p. 10.) During the months  
7 of September through February (which is referred to as the “Non-Miller-Haggin season”) all the  
8 flow is allotted each day to the First Point diverters. (JE 7, p. 7; JE 14, p. 10-11.)

#### 9 **IV. THE SHAW DECREE**

10 13. On August 6, 1900 Judge Lucien Shaw entered an order adjudicating the Kern  
11 River water rights of certain First Point diverters. (JE 7, p. 7; JE 8, p. 13; JE 15.)

12 14. The Shaw Decree reaffirmed the Miller-Haggin Agreement and set a maximum  
13 flow available for diversion and appropriation for fifteen separate rights. (JE 15, pp. 10-11, 19-  
14 20.)

15 15. The Shaw Decree provides that when there is not sufficient water available for all  
16 of the rights of the First Point diverters, the order and priority stated in the decree shall be  
17 followed. (JE 15, p. 10.)

#### 18 **V. ISABELLA DAM & RESERVOIR**

19 16. Part of my duties as Engineer-Manager for Buena Vista Water Storage District for  
20 21 years was to familiarize myself with the history of Isabella Dam and Reservoir, including  
21 without limitation, the agreements and other documents governing the operation and use of  
22 conservation storage space by Kern River diverters.

23 17. As stated earlier, the Miller-Haggin Agreement of 1888 provides that, during the  
24 Non-Miller-Haggin season (September through February) all Kern River water measured at First  
25 Point of Measurement is allotted to the First Point diverters each day. (JE 14, p. 10-11.)  
26 However, the Miller-Haggin Agreement of 1888 also provides that any water allocated to First  
27 Point diverters which is allowed to reach Second Point of Measurement becomes the property of  
28 Second Point diverters. (JE 14, p. 11.) From time to time this would occur most commonly in

1 wet periods during Non-Miller-Haggin season and during the spring runoff months or the early  
2 part of the Miller-Haggin season. (JE 33.)

3 18. With the construction of Isabella Dam in the early 1950s, regulation of natural  
4 flow through storage in Isabella Reservoir became a reality. Such regulation affected the amount  
5 of Kern River water historically available to Second Point diverters during the Non-Miller-  
6 Haggin season because that water could now be stored in Isabella for future delivery and use. To  
7 account for this fact, the Miller-Haggin Agreement was amended in 1955. (JE 7, p. 8; JE 8, pp.  
8 15-16; JE 17.) Among other things, the Amendment authorizes the flow of Kern River water to  
9 Second Point diverters during the Non-Miller-Haggin season whenever the computed natural  
10 flow at First Point of Measurement exceeds 1500 cfs. (JE 7, p. 8; JE 17, pp. 6-7.)

11 19. Also, because Isabella Reservoir operations affect natural flow at First Point of  
12 Measurement, the 1955 Amendment to the Miller-Haggin Agreement requires the allocation of  
13 Kern River water among the First Point, Second Point and Lower-River diverters to be based  
14 upon the “calculated daily average unregulated flow at First Point of Measurement”. (JE 17, pp.  
15 3-9.) The “calculated daily average unregulated flow at First Point of Measurement” is intended  
16 to reflect the rate of flow of water which would be passing First Point of Measurement in Kern  
17 River at any time if Isabella Dam and Reservoir were not in existence. (JE 17, p. 12.)

18 20. Prior to Isabella, high-flow Kern River water occasionally made its way past the  
19 northern boundary of Buena Vista Water Storage District (Highway 46) to the Tulare Lake Basin.  
20 (JE 7, p. 8; JE 21, pp. 3-4.) As recognized in Decision D1196, landowners in that area  
21 (sometimes collectively referred to as the “Downstream Group”) diverted and used these waters  
22 for beneficial purposes. (JE 21, p. 4-5.) The water rights of the Downstream Group are  
23 commonly referred to as “Lower-River Rights”. These rights were recognized and accounted for  
24 in the 1962 “Kern River Water Rights and Storage Agreement”. (JE 8, pp. 16-17; JE 18.) The  
25 Lower-River entitlements are measured as certain percentages of calculated natural flow at First  
26 Point of Measurement, as well as all waters passing north of Highway 46. (JE 18, pp. 2-3) The  
27 Kern River Water Rights and Storage Agreement also allocates storage in Lake Isabella for the  
28 Downstream Group’s use in conjunction with the Lower-River rights. (JE 18, pp. 8-11.)

1 **VI. CURRENT KERN RIVER INTERESTS**

2 21. At the time of Decision D1196, the major entities diverting Kern River water  
3 within the First Point area were North Kern Water Storage District, the Kern County Land  
4 Company, and various individual canal companies. (JE 6, supplement, p. 1; JE 7, pp. 4-6; JE 20,  
5 p. 1.) According to Kern River records, the current First Point diverters are City of Bakersfield,  
6 North Kern Water Storage District and Kern Delta Water District. (JE 33.) Principal points of  
7 diversion and facilities of First Point diverters are shown on JE 28.

8 22. According to Kern River records, the current Second Point diverter is Buena Vista  
9 Water Storage District. (JE 33.) Principal points of diversion and facilities of Second Point  
10 diverters are shown on JE 28.

11 23. According to Kern River records, the current Lower-River diverter is the Kern  
12 County Water Agency. (JE 33.)

13 **VII. HISTORIC DAILY ALLOCATION METHODOLOGY**

14 24. Part of my duties as Engineer-Manager for Buena Vista Water Storage District for  
15 21 years was to familiarize myself with the methodology used for allocating Kern River water  
16 among Kern River interests most notably the division of flows among First Point, Second Point  
17 and Lower-River and for keeping official Second Point records of the diversion and use of Kern  
18 River water by those below Second Point of Measurement.

19 25. JE 29 is a schematic representation of the historical sharing of Kern River water  
20 among the First Point, Second Point and Lower-River diverters. As shown on JE 29, each Kern  
21 River diverter is allocated its share of the calculated daily average unregulated flow at First Point  
22 of Measurement on a daily basis and, thereafter, any water allocated to the First Point diverters  
23 that is allowed to reach Second Point of Measurement becomes the property of the Second Point  
24 diverters and any water allocated to the First and/or Second Point diverters that is allowed to  
25 reach Highway 46 becomes the property of the Lower-River diverters.

26 26. Since 1894, detailed records of the entire Kern River flow and diversions have  
27 been maintained, as required by various Kern River agreements, within the Official Watermaster  
28 Records which are currently maintained under supervision of the Kern River Watermaster by the

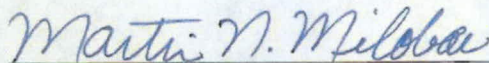
1 City of Bakersfield Water Resources Department. (JE 8, pp. 31-32; JE 14, pp. 15-16; JE 18, pp.  
2 13-14.)

3 27. JE 32 is a representation of the flow and diversion records used to schedule the  
4 allocation of Kern River water among First Point, Second Point and Lower-River diverters. The  
5 methodology is as follows: (i) determine computed natural flow at First Point of Measurement;  
6 (ii) subtract the Kern Island 1st right of 300 cfs; (iii) divide the remainder between First Point  
7 diverters and Second Point diverters; (iv) subtract allocation to Lower-River, if any; (v) deliver  
8 the water allocated to Second Point diverters and Lower-River diverters to Second Point of  
9 Measurement free of losses (i.e., all such losses are borne by First Point diverters); (vi) subtract  
10 losses from the supply available to other First Point diverters; (vi) distribute the balance among  
11 the other First Point diverters according to the schedule listed on the Kern River Flow and  
12 Diversion Record. (JE 32.)

13 28. The daily allocation methodology has not changed since Decision D1196. The  
14 daily allocation methodology did not change following the final decision in North Kern v. Kern  
15 Delta. (JE 38, 39.)

16 29. Decision D1196 noted, as evidence of water supply deficiencies within the Kern  
17 River service areas, that the various agencies supplying water to such areas were negotiating to  
18 obtain a supplemental, imported supply of water from the Friant-Kern Canal, the State Water  
19 Project, or both. (JE 7, p. 10; JE 21, p. 5.) In fact, the Kern County Water Agency, Buena Vista  
20 Water Storage District, Kern Delta Water District and others did obtain such supplemental  
21 supplies but the quantity of water actually available from these sources has been severely  
22 restricted for a variety of reasons.

23 Respectfully submitted,

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26 Martin N. Milobar

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