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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**

WRITTEN TESTIMONY OF
RICARDO ORTEGA ON BEHALF OF
GRASSLAND WATER DISTRICT

15 **I. INTRODUCTION**

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

26 Previous to my position as General Manager I was employed as the Science
27 Program Manager for Grassland Water District, and as a biologist for the California

1 Department of Fish and Wildlife. I hold Bachelor of Science degrees in ecology,
2 systematic biology, and animal science from California Polytechnic University, and a
3 Master of Science degree in avian sciences from the University of California at Davis.

4 In this testimony I will explain the importance to wildlife, recreation, and the
5 public interest of the 14 public and private wildlife habitat areas (“refuges”) located south
6 of the Delta, which receive Central Valley Project (CVP) water supply. (Exhibit GWD-
7 5.) My testimony will first review the history and current status of refuge water supplies.
8 I will then explain the ecological, recreational, and economic significance of CVP water
9 deliveries to the refuges. My testimony concludes with my opinions, using four examples
10 based on my experience, about the unreasonable injury to wildlife and related injury to
11 recreation and the public interest that would occur if the California WaterFix project is
12 operated in a way that interferes with water deliveries from the Delta to the refuges.

13 **II. HISTORY AND STATUS OF REFUGE WATER SUPPLIES**

14 The history of water supplies for wetland habitat in the Central Valley has
15 occurred in roughly three periods: significant decline (1900’s to 1970’s), intensive study
16 (1980’s to 1990’s), and focused restoration (2000 to present). During the first period, the
17 major factors for significant losses of wetlands included construction of flood control
18 levees and conversion of wetland habitat (reclamation), dredging and filling of estuarine
19 habitat, construction of reservoirs, and channelization of waterways (Exhibit GWD-6, pp.
20 49-51; Exhibit GWD-4, p. 252.) The remaining habitat areas relied for water supply on
21 agricultural irrigation return flows, low-priority water contracts with the U.S. Bureau of
22 Reclamation (Reclamation), and non-binding agreements with water districts. A drought
23 in the late 1970’s greatly reduced or eliminated refuge water deliveries altogether,
24 prompting intensive study to find lasting solutions. (Exhibit GWD-4, p. 252.)

25 Reclamation commissioned studies in the late 1970’s and 1980’s to develop a
26 baseline of remaining wetland resources and address the water supply needs of waterfowl
27 and wetland habitat. Included in these studies was a plan to mitigate for the inability to

1 continue using agricultural drainage water on refuges in the San Joaquin Valley, due to
2 selenium contamination at Kesterson National Wildlife Refuge. (*Id.*, pp. 252-253; Exhibit
3 GWD-6, pp. 29-31.) The water supply recommendations from these studies were
4 incorporated into the Central Valley Joint Venture (CVJV) 1990 Implementation Plan for
5 the North American Waterfowl Management Plan, and in 1992 were enacted into federal
6 law as part of the Central Valley Project Improvement Act (CVPIA). (*Id.*, p. 253.)

7
8 “The Refuge Water Supply issue has been longstanding and
9 is of significant importance to refuge managers and the
10 public, as the quality and quantity of water available to each
11 refuge ultimately determines the desirability of habitat for
12 migratory birds and resident wildlife. The degree to which
13 these wetland areas are successfully managed is of
14 biological, hydrological, economical, recreational, and
15 educational importance to the state of California, as well as
16 other states and countries along the Pacific Flyway.”
17 (U.S. Bureau of Reclamation, Exhibit GWD-6, p. 26.)

18 The CVPIA Refuge Water Supply Program has restored the ecological health of
19 19 wetland habitat areas in the Central Valley that support hundreds of native species and
20 provide recreational and economic benefits to California and beyond. The program is
21 carried out through a cooperative and collaborative effort among Reclamation, the U.S.
22 Fish and Wildlife Service (USFWS), California Department of Fish and Wildlife
23 (CDFW), Grassland Water District (GWD), and CVJV partners. (Exhibit GWD-17, pp.
24 4-5.) Water is supplied to the 14 CVPIA refuges located south of the Delta under three
25 long-term water supply contracts executed in 2001 between Reclamation and GWD,
26 CDFW, and USFWS. (*Id.*, pp. 3, 31, 34, 65, 67, 95.)

27 In accordance with the CVPIA and the refuge water supply contracts, Reclamation
delivers two-thirds of refuge water from the CVP (“Level 2” water), which is the average
volume of refuge water deliveries prior to enactment of the CVPIA. (CVPIA § 3406(d);
Exhibit GWD-6, p. 3.) Reclamation acquires the remaining one-third from willing sellers

1 and other sources (“Incremental Level 4”). Together, Level 2 and Incremental Level 4
 2 water make up the full “Level 4” supply, which is the amount of water required for
 3 optimal refuge habitat management. (*Id.*)

4 The full Level 4 supply for the 14 CVPIA refuges located south of the Delta is
 5 376,515 acre-feet annually (AFA). (Exhibit GWD-17, pp. 31, 65, 95.) Of this total, the
 6 Level 2 component to be delivered from CVP supplies is 251,301 AFA. (*Id.*) However,
 7 only 241,158 acre-feet can be physically delivered from the Delta, due to a lack of
 8 surface-water conveyance infrastructure to Pixley National Wildlife Refuge (NWR) and
 9 the East Bear Creek Unit of San Luis NWR, which rely on groundwater or local surface
 10 water supplies. For purposes of this testimony, I will refer to the CVP refuge water
 11 supply requirement from the Delta as approximately 240,000 AFA of Level 2 water.

12 **South-of-Delta CVPIA Refuge Water Supplies (acre-feet)**

<i>Refuge Name</i>	<i>Level 2 CVP Supply from Delta</i>	<i>Conveyance Limitations</i>	<i>Full Level 4 Supply Goal</i>
Grassland Resource Conservation District	125,000	n/a	180,000
Volta Wildlife Area	13,000	n/a	16,000
Los Banos Wildlife Area	10,470	n/a	25,000
Salt Slough Unit, North Grasslands Wildlife Area	6,680	n/a	10,020
China Island Unit, North Grasslands Wildlife Area	6,967	n/a	10,450
Mendota Wildlife Area	27,594	n/a	29,650
San Luis Unit, San Luis NWR	19,000	n/a	19,000
Kesterson Unit, San Luis NWR	10,000	n/a	10,000
West Bear Creek Unit, San Luis NWR	7,207	n/a	10,810
Freitas Unit, San Luis NWR	5,290	n/a	5,290
Kern NWR	9,950	n/a	25,000
East Bear Creek Unit, San Luis NWR	0	8,863 from local sources	13,295
Merced NWR	0	15,000 from local sources	16,000
Pixley NWR	0	1,280 from local sources	6,000
Total:	241,158	--	376,515

1 Reclamation delivers CVP water from the Delta to the refuges in accordance with
2 their monthly schedules, on a priority basis similar to that of the San Joaquin River
3 Exchange Contractors, with up to 25% shortages only in critically dry years. (*See id.*, pp.
4 6-7, 17-18.) In 2015, Deputy Secretary of Interior Michael Connor confirmed in a letter
5 to Senator Dianne Feinstein that Reclamation has a clear legal mandate to deliver CVP
6 water to refuges. (Exhibit GWD-18.) In the 17 years since execution of the refuge water
7 supply contracts, the south-of-Delta refuges received 100% Level 2 annual CVP water
8 allocations, with the exception of drought years in 2014 and 2015, and received the same
9 priority for CVP water allocations as the Exchange Contractors. (Exhibit GWD-8.)

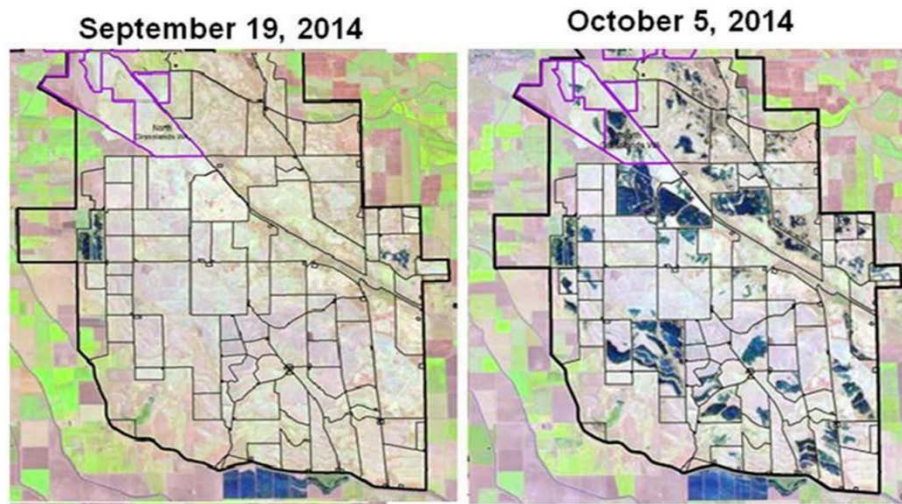
10 **III. ECOLOGICAL SIGNIFICANCE OF REFUGE WATER DELIVERIES**

11 The reliable delivery of approximately 240,000 AFA of Level 2 refuge water
12 supply from the CVP has restored once-thriving wetland habitat areas in the San Joaquin
13 Valley, stabilized declining bird populations, and maintained the viability of threatened
14 wildlife species. Continuing to provide these wildlife benefits has not been easy, despite
15 the CVPIA's clear mandate that refuge water supplies must be delivered. GWD works
16 frequently with Reclamation to address proposed policies, budget limitations, and CVP
17 operational decisions that would adversely affect the timing, volume, or reliability of
18 water for refuges. Four such topics that are relevant to this proceeding are refuge water
19 delivery schedules, balancing the water needs of fish and wildlife, funding for water
20 conveyance, and the refuge water storage priority in San Luis Reservoir.

21 First, although the refuges schedule most of their water deliveries in the fall and
22 winter, water is also needed in the spring and summer to keep the wetlands healthy,
23 support resident wildlife, and produce enough food for incoming migratory birds. Ideally,
24 GWD would use its Incremental Level 4 water allocation, acquired from various sources,
25 to meet this demand for summer habitat and wetland irrigation. Unfortunately,
26 Reclamation has not successfully acquired enough of this supply, and therefore the
27 refuges rely on Level 2 CVP water throughout the year.

1 Reclamation has difficulty meeting refuge water delivery schedules, due to
2 restrictions on pumping and competing demands from other water users. During the
3 drought in 2014 and 2015, the refuges received no water from the Delta in the spring and
4 summer, and even their fall water delivery schedules were delayed for many weeks. This
5 caused a 50% decline in wetland food production, degradation of water quality, and a
6 significant drop in the number of resident birds and other wildlife, including near
7 extirpation of the last viable giant garter snake population within GWD.

8 **Satellite Imagery of South GWD Showing Lack of**
9 **Fall Water Due to Delayed Delivery Schedule**



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19 Second, Reclamation must carefully balance its environmental water requirements,
20 including cold-water flows for upstream fish species, restricted pumping to meet in-Delta
21 standards, and delivery of reliable water supplies to refuges. The Refuge Water Supply
22 Program coordinators meet with Reclamation’s CVP operational staff every two weeks,
23 or more frequently as needed, to discuss these operational parameters and make real-time
24 adjustments to refuge water delivery schedules. Any change to existing in-Delta
25 standards or pumping restrictions must be conducted in a way that does not adversely
26 affect wildlife that depend on refuge water deliveries.

27 Third, federal funding is used to pay for the cost of refuge water conveyance. The

1 cost to deliver Level 2 refuge water from the CVP is “reimbursable” under federal law,
2 meaning that the cost is to be reimbursed to the federal treasury by CVP beneficiaries. A
3 failure by Reclamation to request appropriations, prioritize appropriated funds for refuge
4 water conveyance, or collect reimbursable payments from CVP customers is tantamount
5 to a failure to meet the refuge water delivery mandates of the CVPIA, which has
6 significant adverse impacts on wildlife.

7 Fourth, the San Luis Reservoir is used to store CVP water to be delivered by
8 Reclamation in the current and upcoming water year. When capacity is sufficient, the
9 reservoir is also used to store water that CVP contractors choose to reschedule from the
10 current year into the next water year. Reclamation established a system of water storage
11 priorities, published as annual “Rescheduling Guidelines” for San Luis Reservoir.
12 (Exhibit GWD-19.) Rescheduled Level 2 CVP refuge water has a lower storage priority
13 than rescheduled CVP irrigation water, and an equal priority with rescheduled CVP
14 municipal and industrial water. (*Id.*, p. 1, priority 3.b.)

15 The water year for CVPIA refuges runs from March through the following
16 February. (Exhibit GWD-17.) Because Reclamation’s acquired Incremental Level 4
17 supplies are insufficient to meet spring and summer wetland water demands, the south-
18 of-Delta refuges often seek to reschedule a small portion of their Level 2 CVP supplies
19 from the end of one refuge water year (February) into the following spring and summer.
20 The ability to reschedule Level 2 water is critical for supplying the deficiency in
21 Incremental Level 4 water, and ensuring that the refuges can provide sufficient habitat
22 and food sources to meet wildlife needs.

23 **IV. RECREATIONAL AND ECONOMIC SIGNIFICANCE OF REFUGES**

24 In addition to the ecological significance of the refuges that receive water from the
25 Delta, there are recreational benefits to hunters, birdwatchers, schoolchildren and other
26 visitors, as well as economic benefits to Central Valley communities. In 1989, public use
27 on south-of-Delta refuges was estimated at 200,000 visits per year, which was expected

1 to increase to 285,000 visits with full Level 4 water deliveries. (Exhibit GWD-6, pp. 59-
2 61, 259.) After decades of investment in wetland restoration, recreational use on the
3 refuges has increased beyond previous estimates.

4 For example, in 1989 it was projected that with full water deliveries the federal
5 CVPIA refuges in the Grasslands Ecological Area (San Luis, Kesterson [now part of San
6 Luis], and Merced) could achieve 48,800 visitors per year. (Exhibit GWD-6, pp. 60-61.)
7 In fiscal year 2017, these refuges received 118,000 visitors, a 40% increase above historic
8 projections, even without full water deliveries. (Personal communication with Jack
9 Sparks, USFWS, Nov. 28, 2017.)

10 Refuges provide the only option for public waterfowl hunting in the Central
11 Valley, as well as wildlife automobile tours, photography blinds, walking trails,
12 interpretive facilities, and visitor centers. These areas are located in close proximity to a
13 number of disadvantaged communities in Merced, Fresno, and Kern Counties, providing
14 local, affordable recreation opportunities. For example, the Grassland Environmental
15 Education Center is located at the Los Banos Wildlife Area and run in partnership
16 between GWD and CDFW. In 2017 the center hosted more than 10,000 school-age
17 children and chaperones from schools in the San Joaquin Valley, who experienced a
18 hands-on environmental education about wetlands.

19 Refuges provide economic benefits to local communities. An economic study of
20 the Grasslands Ecological Area (GEA) conducted in 2001 found that \$27.7 million per
21 year was spent directly on job-supporting habitat restoration, wetland maintenance, and
22 recreational expenditures. (Exhibit GWD-20, pp. 4, 20-21.) The study then used a
23 standard economic multiplier to account for indirect local spending by employees, and
24 concluded that the wetlands of the GEA contributed \$41.1 million to the local economy,
25 and accounted for 800 jobs. (*Id.*, p. 4.) Today, 16 years later, using the Bureau of Labor
26 Statistics' CPI Inflation calculator, the annual value of the CVPIA refuges in the GEA
27 alone equates to \$57.1 million.

1 There are also “avoided costs” associated with wetlands, due to their value in
2 filtering pollutants from water, providing flood protection, controlling erosion and
3 sediment, reducing crop predation on surrounding farmland, and maintaining the
4 population viability of species of special concern.

5 **V. POTENTIAL IMPACTS OF THE CALIFORNIA WATER FIX**

6 The proposed WaterFix Project would change the water right permits held by
7 Reclamation for the CVP and the permits held by the Department of Water Resources
8 (DWR) for the State Water Project (SWP). These changes would allow CVP and SWP
9 water to be diverted through new water intakes and delivered through a new conveyance
10 system to water users south of the Delta. Without appropriate conditions put in place to
11 protect refuge water deliveries, operations of the WaterFix Project could decrease the
12 supply, timing, or reliability of water to CVPIA refuges, causing significant adverse
13 effects on wildlife, recreation, and the public interest.

14 **A. Description of WaterFix Project as Proposed**

15 The Joint Change Petition submitted by Reclamation and DWR proposes a change in
16 CVP water rights in order to upgrade the CVP water conveyance system by constructing the
17 WaterFix. (Exhibit SWRCB-1, p. 3.) The Petition describes the project as an alternative
18 conveyance that will “reduce the need for through-Delta conveyance” and “reduce negative
19 Old and Middle River flows.” (*Id.*, p. 14.) New water intakes in the north Delta will “allow
20 greater flexibility in operation of both south and north Delta diversions,” using a dual
21 conveyance model. (*Id.*, p. 18.) The primary assumption of this model, repeated throughout
22 the Petition, is that existing levels of south Delta pumping will be reduced. (*Id.*, p. 24.)

23 The Petition states that “[u]nder the California WaterFix existing obligations will
24 continue to be met and beneficial uses in the Delta will not be negatively impacted by
25 operations with the new point of diversion.” (*Id.*, p. 28.) Refuge water deliveries are
26 explicitly addressed: “Deliveries to the CVP Settlement, Refuge, and Exchange Contractors,
27 and SWP Feather River Service Area (FRSA) Contractors and Delta contracts will continue

1 to be made under the terms of those agreements.” (*Id.*, p. 30.)

2 In the Part 1A testimony of this proceeding, Reclamation witness Armin Munévar
3 testified that the WaterFix project will involve more restrictive requirements in the south
4 Delta “that limit the amount of south Delta exports.” (Hearing Transcript, Part 1A, Vol. 13,
5 p. 56:10-13.) He explained, however, that CVP water deliveries to CVPIA refuges would not
6 be affected, and acknowledged that refuge water deliveries are given priority. (*Id.*, pp. 72:8-
7 20, 73:4-7.) Mr. Munévar testified that the WaterFix project will be operated to first meet in-
8 stream flow, water quality, and fishery requirements, and then to meet the requirements of
9 senior water-right holders and refuges, before any other water deliveries are made. (*Id.*, pp.
10 275:18-276:1.) In his Part 1 rebuttal testimony, Mr. Munévar confirmed that the WaterFix
11 project modeling shows no change in water deliveries to the refuges. (Hearing Transcript,
12 Part 1 Rebuttal, Vol. 39, pp. 73:5-12, 75:15-22, 124:3-21.)

13 Reclamation witness Ron Milligan testified that CVP water deliveries to the refuges,
14 similar to senior water-right holders, “are linked to the inflow criteria at Shasta,” and would
15 potentially have received increased water deliveries if the WaterFix was operational in 2015.
16 (Hearing Transcript, Part 1A, Vol. 8, pp. 126:21-127:23.) The Joint Change Petition and
17 Reclamation’s testimony are clear that the WaterFix project is intended to serve the refuges
18 under the same priority water-allocation method that currently exists, and that no changes to
19 refuge water supply obligations are proposed.

20 The Biological Opinions for the WaterFix under the Endangered Species Act,
21 approved by USFWS and the National Marine Fisheries Service (NMFS), describe the
22 modeled assumptions and principles of operation for the WaterFix, including reduced water
23 exports from south Delta facilities, and new restrictions on south Delta diversions to replace
24 existing ones, such as more stringent Old and Middle River (“OMR”) reverse flow criteria
25 and a new spring Delta outflow requirement. (Exhibit SWRCB-105, .pdf pp. 49-51, 55-57,
26 283, 287; Exhibit SWRCB-106, Main Document, .pdf pp. 16, 686, 692, and Appendix A-2,
27 .pdf pp. 80, 82.)

1 The Final Environmental Impact Report/Environmental Impact Statement (EIR/EIS)
2 for the WaterFix assumes that refuge Level 2 water deliveries will be integrated into
3 WaterFix operations. The stated purpose of the project is to “restore and protect the ability of
4 the SWP and CVP to deliver up to full contract amounts, ... consistent with the requirements
5 of State and federal law and the terms and conditions of water delivery contracts and other
6 existing applicable agreements.” (Exhibit SWRCB-102, Chapter 2, .pdf p. 3; Exhibit
7 SWRCB-110, p. 31.) The adopted project Alternative 4A entails utilizing the new north
8 Delta intakes under a dual conveyance model, thus reducing reliance on south Delta exports.
9 (Exhibit SWRCB-110, pp. 31-32, 114.) According to the Final EIR/EIS, approximately *half*
10 of CVP exports would move through the new north Delta intakes, and refuges would receive
11 water allocations similar to what they currently receive. (Exhibit SWRCB-102, Chapter 5,
12 pp. 218-220 (Tables 5-7 through 5-9).)

13 **B. Reclamation’s Participation Approach**

14 Reclamation’s willingness and ability to participate in the WaterFix and operate the
15 CVP as described in the Joint Change Petition and environmental documents for the project
16 were called into question when Reclamation issued a letter to CVP contractors on September
17 15, 2017. (Exhibit GWD-21.) The letter states that Reclamation lacks the legal authority to
18 fund construction of the WaterFix, and therefore has decided that it will not “participate” in
19 the project, meaning that it will not “pay a percentage of the construction costs or [] provide
20 funding through any other mechanism to secure future use of the capacity” of the WaterFix.
21 (*Id.*, p. 1.) Reclamation will, however, allow individual CVP water contractors to convey
22 CVP water through the WaterFix facilities at a rate of up to 45% of the project’s conveyance
23 capacity (4,050 cubic-feet per second). (*Id.*, pp. 1-2.)

24 Proposing a hindcasting approach, Reclamation’s letter states that any CVP water
25 diverted from the Delta that could only have been diverted through the WaterFix will be
26 “exclusively available to participating CVP Contractors” in the form of an additional CVP
27 water allocation. (*Id.*, pp. 2, 4.) A detailed operating plan would be developed later. (*Id.*) In

1 fact, many aspects of CVP operations would be developed later, including the “[a]ccounting
2 and mitigation of water supply impacts attributable to [WaterFix]-specific regulations that
3 have the potential to decrease the CVP Allocation for non-participating contractors,” as well
4 as “operational assumptions, sharing of regulatory requirements, storage in San Luis
5 Reservoir, [and] accounting for changes to required carriage water” in the Delta. (*Id.* p. 5.)

6 Reclamation’s letter also states that those contractors who choose to participate in the
7 WaterFix may rely on provisions in their existing water supply contracts, in order to
8 occasionally receive CVP water in excess of their contract totals, and may even pursue
9 amendments to their CVP contracts to increase those totals. (*Id.*, p. 5.) Reclamation will also
10 allow the additional WaterFix allocation to be rescheduled in San Luis Reservoir, in
11 accordance with the Rescheduling Guidelines or future agreements. (*Id.*, pp. 3, 5.)

12 The letter is a significant departure from the WaterFix project as it was originally
13 described, modeled, and analyzed. Reclamation attempts to address the uncertainties and
14 adverse effects of these changes, for example by stating that future mitigation measures
15 would be required to address water supply impacts to non-participating contractors
16 (presumably because the project is designed to decrease south Delta export levels). (*Id.* p. 5.)
17 As another example, the letter states that Reclamation would “continue to meet” its refuge
18 water delivery obligations under the CVPIA, without providing any details about how it
19 would do so. (*Id.*) Finally, Reclamation indicates that it “may contract” in the future for the
20 right to use the WaterFix to convey CVP water for “general CVP purposes,” on a short-term
21 basis and subject to review by CVP contractors prior to any commitment of federal funding
22 for water conveyance. (*Id.*, p. 6)

23 **C. Injury to Wildlife and the Public Interest**

24 Particularly in light of Reclamation’s participation approach and the reluctance of
25 CVP water contractors to participate in the WaterFix, much remains to be determined about
26 the ultimate conveyance capacity, participation, construction phases, and operational plan for
27 the project. Moreover, Reclamation’s letter is not a binding decision and is therefore subject

1 to potential future changes. At this point, however, it must be presumed based on clear
2 statements in that letter that the WaterFix will not be operated as proposed, or in accordance
3 with existing CVP operations—to meet the requirements of senior water-right holders and
4 refuges before CVP water deliveries are made to other south-of-Delta contractors. Instead,
5 Reclamation envisions developing future mitigation measures and operational strategies that
6 will enable compliance with its obligations to wildlife in the San Joaquin Valley.

7 The prospect of such future measures, and discussions about their adequacy, cannot
8 be postponed until after the water rights for the CVP and SWP are permanently changed
9 through this proceeding. Unreasonable injury to wildlife, recreation, and local economies
10 would ensue without the inclusion of wildlife-protective conditions by the SWRCB.

11 My four previous examples will illustrate this point. The first example is
12 Reclamation’s ability to meet the required monthly refuge water delivery schedules. If there
13 are reductions in south Delta pumping, which are proposed as part of the WaterFix project,
14 and yet Reclamation has not secured a sufficient right to convey refuge water from the Delta
15 on a priority basis, Reclamation’s ability to meet refuge delivery schedules will be even
16 further impaired than it is today. As seen in 2014 and 2015, if refuge water is withheld for a
17 period of weeks or months, what follows is nearly immediate degradation of wetland habitat,
18 wildlife food supplies, refuge water quality, migratory birds, and threatened terrestrial
19 species.

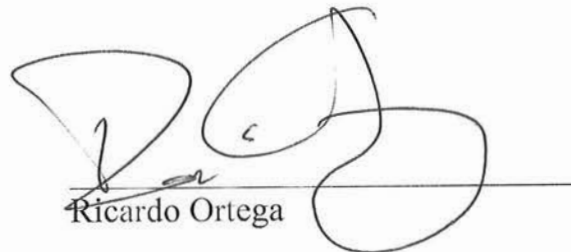
20 The second example is the need to carefully balance the water needs of fish and
21 wildlife. The WaterFix project proposes increased restrictions on OMR and increased Delta
22 outflow requirements intended to benefit fish species. Even under today’s Delta standards,
23 Reclamation must meet frequently with refuge managers to carefully craft refuge water
24 pumping and delivery schedules from the Delta. If the SWRCB approves the proposed
25 water-right changes with these increased fish protections, Reclamation will likely be required
26 to exercise its water rights in a way that prioritizes fish species over wildlife species, with no
27 flexibility to balance those priorities.

1 The third example is funding for refuge water conveyance. Reclamation has decided
2 that it will “not provide funding through any [] mechanism to secure future use of the
3 capacity” of the WaterFix, and will not seek to do so in the future without soliciting feedback
4 from CVP contractors who must reimburse the costs of refuge water conveyance. This
5 decision allows other CVP contractors to participate exclusively in the WaterFix project and
6 pay for a new, priority allocation of CVP water that is reserved by law and contract to
7 CVPIA refuges. Reclamation may not adjust its proposed operations of the WaterFix so as to
8 shirk its responsibility to adequately fund the conveyance of water required to be delivered
9 by the CVPIA as mitigation for the construction and operation of the CVP.

10 The final example is the refuge water rescheduling priority in San Luis Reservoir.
11 Reclamation proposes to allow the new WaterFix allocation of CVP water to be rescheduled
12 in the reservoir in similar fashion to the existing Rescheduling Guidelines, or as modified by
13 future agreements. Agricultural irrigation water has a higher rescheduling priority than
14 refuge water, which means that increased Delta exports of irrigation water as a result of the
15 WaterFix would likely displace capacity in San Luis Reservoir that is routinely utilized for
16 rescheduled refuge water. That refuge water supplies the deficiency in spring and summer
17 irrigation water for the refuges. Under each of these four examples, without conditions to
18 protect the volume, timing, and reliability of refuge water supplies, the WaterFix project
19 would cause unreasonable injury to wildlife that depend on CVPIA refuges.

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21
22 Executed on November 30, 2017 in

23 Anaheim, CA


Ricardo Ortega