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8 **BEFORE THE**
9 **CALIFORNIA STATE WATER RESOURCES CONTROL BOARD**

10 HEARING IN THE MATTER OF
11 CALIFORNIA DEPARTMENT OF
12 WATER RESOURCES AND UNITED
13 STATES BUREAU OF
14 RECLAMATION REQUEST FOR A
15 CHANGE IN POINT OF DIVERSION
16 FOR THE CALIFORNIA WATERFIX

17 TESTIMONY OF DANIEL VINK

18 I, Daniel Vink, do hereby declare:

19 **I. INTRODUCTION**

20 My name is Daniel Vink. I am the Executive Director of the South Valley Water
21 Association ("SVWA"), which together with its member entities is a Protestant in the
22 above-captioned matter. My specific educational and professional qualifications are
23 described in the attached State of Qualifications, submitted as Exhibit SVWA-3.

24 I have been employed at the Lower Tule River Irrigation District since 1994,
25 and have been the General Manager of that District as well as Pixley Irrigation District
26 since 1999. Since 2015, I have continued to serve both as General Manager of those
27 districts as well as the Executive Director of SVWA, an association consisting of nine
28 irrigation districts with contracts for Central Valley Project water supplies.

Through my professional duties for irrigation districts and SVWA, I have
extensive experience in managing federal Central Valley Project contracts and related
water supplies, and in reviewing and commenting upon operations of the Bureau of

1 Reclamation, in particular the Fresno Area Office operations that oversee the
2 operation of Millerton Reservoir, as they affect the contractual water supplies that I am
3 responsible for managing. I also have been responsible for reviewing and
4 commenting upon operations of the Bureau of Reclamation as they relate to
5 management of Delta water export operations.

6 Based on my education, experience and professional position, I have
7 knowledge sufficient to testify to the matters included in this statement and am
8 prepared to testify on these matters if called.

9 **II. SUMMARY OF TESTIMONY**

10 My testimony will focus on two key issues: (1) that Protestants are legal users
11 of water and (2) that Protestants will be injured unless the Petition is denied, or,
12 alternatively, approved subject to terms and conditions necessary to ensure no injury
13 will occur. In Part III I will generally describe Protestants' water rights and will then
14 describe the beneficial uses to which Protestants' use water received from the Central
15 Valley Project (CVP). In Part IV, I will explain how the California WaterFix (CWF)
16 creates the potential for significant risk of injury to Protestants as well as the impacts
17 Protestants would experience should that risk be realized. Finally, in Part V, I will
18 identify various terms and conditions which, if imposed, would eliminate the potential
19 for injury to Protestants resulting from the CWF.

20 **III. PROTESTANTS ARE LEGAL USERS OF WATER**

21 **A. Protestants' Water Rights**

22 Most of the Association Members hold permanent Repayment Contracts with
23 the United States entitling them to a supply of water from the San Joaquin River
24 through Friant-Kern Division of the CVP. The Association Members' Repayment
25 Contracts are listed in the SVWA Protestants Protest, along with the number of the
26 contract between the member and the United States and the quantities of Class 1
27 Water and Class 2 Water to which the member is entitled. These contracts were

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1 entered into under Section 9(d) of the Federal Reclamation Act of 1939 and establish
2 a permanent, contractual right to the stated water quantities.

3 **B. The Exchange Contract**

4 Prior to the construction of the Friant dam, and in order to provide a water
5 supply for the Repayment Contracts (and the Water Service Contracts that preceded
6 them), the Bureau entered into water rights settlement contracts with downstream
7 riparian water rights holders on the San Joaquin River. In 1939 the Bureau executed
8 these contracts with the owners of pre-1914 riparian and appropriative rights along
9 the San Joaquin River (the "Exchange Contractors"). These agreements, known as
10 the Purchase Contract and the Exchange Contract, allow the Bureau to divert the
11 entire flow of the San Joaquin River for delivery to Friant Division contractors.

12 Under the Purchase Contract, the Exchange Contractors sold all of their rights
13 to water from the upper San Joaquin River to the United States with the exception of
14 the "reserved water," water to which the Exchange Contractors held vested rights.
15 Under the Exchange Contract, the Exchange Contractors agreed not to exercise their
16 rights to reserved water, as long as they received "substitute" water from the Delta-
17 Mendota Canal, or other sources that delivered to the Mendota Pool. Under this
18 arrangement, if the United States is unable to deliver substitute water to the Exchange
19 Contractors, the Exchange Contractors can exercise their reserved rights to the San
20 Joaquin River, thereby reducing the water available for Friant Division contractors.

21 **C. Article 3(n) of Protestants' Water Supply Contracts**

22 All of the Association's Members' Repayment Contracts contain Article 3(n).
23 Article 3(n) not only establishes a Friant Division priority to waters of the San Joaquin
24 River as against all other CVP contractors, but also prohibits the Bureau from taking
25 action that renders the agency unable to satisfy prior rights holders with water
26 delivered from the Delta.

27 Article 3(n) was an amendment added in response to the authorization and
28 development of the CVP San Luis Unit in 1960. Concerned that the addition of the

1 San Luis Unit would reduce the availability of Sacramento River and Delta water,
2 which in turn would cause the Exchange Contractors to exercise their reserved rights
3 to the San Joaquin River, Friant Division contractors negotiated with the Bureau to
4 obtain assurances from Reclamation that the Friant Division water supply would not
5 be adversely affected by increased demand placed on the Delta.

6 In exchange for the Friant Division's non-opposition to the place-of-use
7 application for the then-proposed San Luis Unit, the Bureau agreed to amend Friant's
8 contracts by adding Article 3(n). This amendment was intended to alleviate Friant
9 Contractors' concerns regarding the increased risk that the Exchange Contractors
10 would claim their reserved San Joaquin River rights in the event of a Delta shortage.

11 Toward that end, Article 3(n) provides:

12 [T]he United States agrees that it *will not deliver to the [Exchange Contractors]*
13 *waters of the San Joaquin River unless and until required by the terms of [the*
14 *Exchange Contract] ... and the United States further agrees that it will not*
15 *voluntarily and knowingly render itself unable to deliver to the parties entitled*
16 *thereto from water that is available or that may become available to it from the*
17 *Sacramento River and its tributaries of the Sacramento–San Joaquin Delta*
18 *those quantities required to satisfy the obligations of the United States [to the*
19 *Exchange Contractors].*

20 Article 3(n) prohibits the Bureau from delivering San Joaquin River water to the
21 Exchange Contractors except when there is no other source available to provide the
22 Exchange Contractors' substitute supply. If any other source is available (i.e., *any*
23 *source other than the San Joaquin River*) then, pursuant to Article 3(n), the Bureau
24 must use that source. Together, the Exchange Contract and Article 3(n) create a
25 Friant Division priority on the San Joaquin River as against all other CVP contractors.
26 Further, because Article 3(n) prohibits the Bureau from taking any voluntary and
27 knowing action that renders the agency unable to deliver to the Exchange Contractors
28 water that is, or may become, available from the Sacramento River or the Delta, Article
3(n) also establishes a contractual right in favor of SVWA Protestants against the
Bureau's engaging in certain prohibited conduct.

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1 **B. Protestants' Beneficial Use of Water Received from the CVP**

2 All water received by Protestants from the CVP is put to beneficial use. Among
3 other things, Protestants use CVP water for agricultural irrigation and groundwater
4 replenishment.

5 **IV. PROTESTANTS WILL BE INJURED UNLESS THE PETITION IS DENIED,**
6 **OR, ALTERNATIVELY, APPROVED SUBJECT TO TERMS AND**
7 **CONDITIONS NECESSARY TO ENSURE NO INJURY WILL OCCUR**

8 It is my opinion that approving the Petition without appropriate terms and
9 conditions could seriously undermine the reliability of CVP water supplies for Friant
10 Division contractors. First, the Project is so poorly defined that it is impossible to
11 determine how operations will change with the CWF in place. The incorporation of
12 the Adaptive Management Program only exacerbates this problem. As a result, it is
13 extremely difficult to ascertain the Project's likely effects. Second, the absence of a
14 well-defined operations plan, particularly in times of drought, threatens to increase the
15 likelihood that CVP operators decide to use Delta water for purposes other than
16 satisfying Exchange Contractor demands—a practice which interferes with the
17 Bureau's obligation to provide the Exchange Contractors with substitute supply from
18 the Delta and causes releases of water from Millerton Lake that would otherwise be
19 used to satisfy the Friant Division contract rights.

20 In 2014 and 2015 the CVP decided to satisfy Exchange Contractor demands
21 by making releases from Millerton, rather than using Delta supplies. This decision
22 had a disastrous effect on Friant Division landowners. The impacts to the Friant
23 Division included a significant loss of farming particularly in the easterly region where
24 orchards, in some cases almost a century old, were abandoned and pushed out and
25 groundwater resources were depleted to the point of being below pre-CVP project
26 levels. The impacts were wide spread and will take decades to recover from.

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1 **V. TERMS AND CONDITIONS NECESSARY TO ENSURE NO INJURY WILL**
2 **OCCUR**

3 Based on my knowledge, experience, and expertise, it is my opinion that, to
4 ensure the Project will not operate to Protestants' injury, any approval must contain
5 the following terms and conditions:

6 **A. Core Rights and Priorities Not Altered**

7 To avoid causing injury to Protestants' intra-CVP priority to waters of the San
8 Joaquin River and to Protestants' contractual rights under Article 3(n), any approval
9 of the Petition must be subject to, and expressly not alter:

10 1. All existing vested rights, including pre-1914 and riparian rights and
11 permitted and licensed rights as reflected in existing records, permits and water rights
12 decisions, including D-935 and D-990.

13 2. All permit conditions other than the prior Point of Diversion conditions.

14 3. All existing priorities, including those established by existing permits,
15 vested pre-1914 appropriative rights and riparian rights, or other lawful means.

16 4. All existing contractual obligations, including specifically, obligations of
17 the United States contained in Article 3n of the Friant Division Contracts.

18 5. All interpretations of state and federal law as established by prior federal
19 and state court decisions, including the Westlands decisions.

20 **B. No Effect on "CVP Integration"**

21 To avoid causing injury to Protestants' intra-CVP priority to waters of the San
22 Joaquin River and to Protestants' contractual rights under Article 3(n), any approval
23 of the Petition must include a term or condition that the Petition's approval shall not
24 have the effect of integrating the operations of the CVP, or change any of the
25 relationships or priorities as amongst the divisions and units of the CVP, which
26 includes a priority for the Friant Division over the San Luis Unit. Additionally, any
27 approval of the Petition must *not* include any finding that the operations of the CVP
28 are, have been, or will, as a result of the approval, be integrated.

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C. No Effect on Solidifying Current COA Implementation

Article 16 of the COA requires a review pursuant to the procedures specified in Article 14 upon “the construction of a new facility (not presently existing) by either party.” It is my opinion that maintenance of current COA implementation practices under the CWF will injure Protestants by making it more difficult for the Bureau to satisfy Exchange Contractor demands from the Delta, thereby increasing the likelihood of a call for releases from Millerton. Therefore, to avoid causing injury to Protestants’ intra-CVP priority to waters of the San Joaquin River and to Protestants’ contractual rights under Article 3(n), any approval of the Petition must include a term or condition that:

1. Approval of the Change of Point of Diversion shall not constitute an agreement (whether express or implied) to maintain the status quo operation under the COA or to maintain the status quo interpretation or application of the COA as reflected in drought operations during 2014 and 2015.

2. All arguments regarding the appropriate application of the COA, or the ability of the parties to renegotiate the terms of the COA to more appropriately reflect relative priorities, that existed prior to the Petition shall continue to exist following approval of the Petition.

D. Provide an Operations Plan

Although Petitioner’s modeling indicates the Exchange Contractors will receive full contract amounts in all year types, Petitioner’s modeling is incapable of producing a run where Exchange Contractor demands are satisfied from a non-Delta source, such as the San Joaquin River, as occurred in 2014 and 2015. Consequently, to demonstrate that the Project will not operate to the injury of Protestants, Petitioners must be required to provide an operations plan that demonstrates what the modeling simply assumes: that under the CWF the Bureau will be able to meet full Exchange Contract obligations in all years from the Delta.

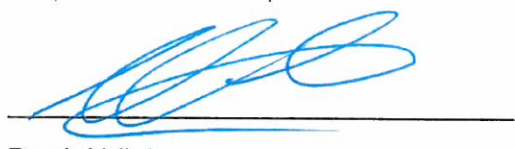
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E. No Effect on Cost Allocation Negotiations

To avoid causing injury to Protestants' intra-CVP priority to waters of the San Joaquin River and to Protestants' contractual rights under Article 3(n), any approval of the Petition must include conditions that the United States will not require the Friant Division contractors to pay for costs they do not agree to and do not have a reciprocal benefit to the Friant Division.

Executed on this 1 day of September, 2016 in Visalia, California.



Daniel Vink