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7  
8 **BEFORE THE**  
9 **CALIFORNIA STATE WATER RESOURCES CONTROL BOARD**

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

**TESTIMONY OF BARBARA BARRIGAN-PARRILLA**

1 I, Barbara Barrigan-Parrilla, Executive Director of Restore the Delta, do hereby declare as follows:

2 **INTRODUCTION**

3 1. I have over twenty years of experience developing and leading community-based  
4 organizations, convening hundreds of events for the environment, community food banks, union  
5 activities, and the arts. For each large-scale organizational project I work on, I achieve a command  
6 of the subject matter at hand and develop a thorough understanding of the community with which I  
7 engage. Each event I organize advances community education, outreach, and advocacy.

8 2. I work and reside in the secondary zone of the Sacramento-San Joaquin Delta, as  
9 designated under the Delta Protection Act. My involvement with the Delta community, in both the  
10 primary and secondary zones, cuts across all demographic groups, from wealthy landowners to  
11 community members in need.

12 3. I have led Restore the Delta (RTD) since its founding in 2006 and have shaped and  
13 reshaped its media strategy to interpret California WaterFix to the public and media professionals  
14 since it was the Bay Delta Conservation Plan without a tunnels component. During 2017, I have  
15 crisscrossed the state of California to attend meetings of state and federal water contractors  
16 considering the merits and demerits of the Change Petition's proposed project, California WaterFix.  
17 In the process I logged 63 nights away from home and 9000 miles and spoke at public events 97  
18 times before 73 different water agencies and community groups about the topic. I have spoken on  
19 dozens of radio broadcasts and have been quoted in numerous media accounts about this project.

20 **SUMMARY**

21 4. My testimony directly describes RTD's case-in-chief addressing the Hearing  
22 Notice's prompt concerning whether the Petition Facilities in the Change Petition are in the public  
23 interest. Here I present evidence asserting that Petition Facilities are not in the public interest. Our  
24 evidence goes to both the substance of the "business case" put forward by WaterFix proponents,  
25 including Petitioner California Department of Water Resources (DWR) and its major water  
26 contractor Metropolitan Water District (MWD), and to the public processes managed by these  
27 agencies as initiated by Governor Jerry Brown's demand that water contractors make their decision  
28 about financing the Petition Facilities by fall 2017. (RTD-247.) In addition to the water policy and

1 law dimension of the public interest regarding this project as presented in RTD witness Tim  
2 Stroshane’s testimony, the evidence I present relates to beneficial uses of fish, wildlife, and  
3 recreational uses that would be adversely affected by Petition Facilities’ degrading effects on flow  
4 and water quality in the Delta, resulting from a failure to reduce reliance on Delta water exports.

5 5. The Delta Reform Act of 2009 acknowledged that, had it been completed and  
6 received regulatory approvals, the Bay Delta Conservation Plan (BDCP), with its Conservation  
7 Measure 1 Tunnels Project, would be incorporated into the Delta Plan, subject to specific, legislated  
8 performance criteria. (W.C. Section 85320.) By April 2015, however, after receiving abundant  
9 critical comments from the public and key government agencies, DWR and the Brown  
10 Administration stripped out from the tunnels proposal all reference to habitat conservation plan and  
11 natural community conservation plan provisions. The project was renamed California WaterFix.  
12 (DWR-51, p. 7:13-27, p. 8:1-11.)

13 **APPROVAL OF THE CHANGE PETITION WILL NOT BE IN THE PUBLIC INTEREST**  
14 **BECAUSE PETITIONERS AND PROJECT PROPONENTS HAVE YET TO OBTAIN**  
15 **LEGISLATIVE AUTHORIZATION AND APPROPRIATION OF FUNDS FOR THE**  
16 **PROJECT AND, IN SO DOING, SEEK TO UNDERMINE THE LEGISLATED PRINCIPLE**  
17 **REQUIRING BENEFICIARIES TO PAY FOR THE PROJECT AND ITS PLANNING AND**  
18 **DEVELOPMENT.**

19 6. The California Water Action Plan update for 2016 acknowledges the absence of  
20 financing for California WaterFix, stating:

21 State and federal agencies will complete environmental review documents, secure  
22 permits for construction and operation from state and federal biological agencies,  
23 secure all necessary permits from other state and federal agencies, finalize a financing  
24 plan, and complete the design of California WaterFix facilities.

25 (RTD-133, p. 9; RTD-127, p. 4.) The 2015 Implementation report on the California Water Action  
26 Plan included only two mentions of the WaterFix, and neither reference related to its financing or  
27 funding. Despite going through a “participation” process for funding Petition Facilities between May  
28 and October 2017, evidence in this section shows that no conclusive and binding funding plan has  
been put forward by any party to the project’s planning agreements that clearly describes Petition  
Facilities’ funding for planning purposes or how the project’s construction, operation, and  
maintenance would be funded over the long-term.

1 **The Petitioners' change in the project from BDCP to California WaterFix changed the**  
2 **project's status under the Delta Plan because Petition Facilities no longer met the definition of**  
3 **BDCP that would have contributed to its incorporation into the Delta Plan as anticipated by**  
4 **the Delta Reform Act of 2009, evidencing that Petition Facilities lack legislative authorization.**

5 7. The Delta Stewardship Council had previously assumed the facilities in BDCP's  
6 Conservation Measure 1 would be included in BDCP for incorporation into the Delta Plan pursuant  
7 to Water Code section 85320. (SWRCB-46, pp. 41, 62, 90, 129, 302.) Instead, the Council  
8 determined in the summer of 2015 that it would have to amend the Delta Plan to develop  
9 conveyance and restoration policies that were not specific to BDCP or what became California  
10 WaterFix and that Petition Facilities would be evaluated as a covered action by the Council for its  
11 conformance with the Delta Plan. (RTD-123, RTD-124, RTD-125, and RTD-126.) The status of the  
12 Delta Plan is itself in litigation, currently at the appellate level. Petitioners have yet to obtain any  
13 legislative authorization or appropriations for Petition Facilities, a failure of due diligence by  
14 Petitioners.

15 8. My testimony provides evidence that both the costs and the uncertainty of financing  
16 for the Petition Facilities raise serious questions regarding the ability of Petitioners and their water  
17 contractors to avoid cold-storage of unused, appropriated water and to finance and construct their  
18 facilities for the purpose of putting water to full beneficial use. The facilities in existing State Water  
19 Project (SWP) and Central Valley Project (CVP) permits have all been legislatively authorized and  
20 financed and their construction completed. Using these existing SWP and CVP facilities, Petitioners  
21 have put water to as full beneficial use as they are capable. It is my opinion that, based on evidence  
22 provided elsewhere in RTD's case-in-chief, the same level of diligence cannot be attributed to the  
23 Change Petition Facilities. (RTD-10rev2, pp. 9-11, ¶29-34.)

24 9. The California WaterFix Project has its roots in BDCP planning begun in 2006.  
25 (RTD-122.) At that time, water contractors<sup>1</sup>, Petitioners DWR and the Bureau of Reclamation

26  
27 <sup>1</sup> As defined in Exhibit A of the original Bay Delta Conservation Plan (BDCP) Planning Agreement (RTD-122), water  
28 contractors included Metropolitan Water District of Southern California, Santa Clara Valley Water District (SCVWD),  
Kern County Water Agency, Alameda County Zone 7 Water Agency, Westlands Water District (WWD), and San Luis &  
Delta Mendota Water Authority (which as a joint powers authority under the California Government Code includes  
among its members SCVWD and WWD).

1 (Reclamation), fishery agencies<sup>2</sup>, and various non-governmental organizations signed on to plan  
2 BDCP. Signatories to the Planning Agreement sought to plan for “covered activities” that included  
3 “conveyance elements” of the SWP and CVP as well as maintenance and facility improvements for  
4 the two water systems. The Planning Agreement also stated that the parties “agree they will work  
5 together to bring available funding to the planning effort.” (RTD-122, p. 19, Section 8.1.)

6 10. The three primary entities comprising BDCP were the State of California, the United  
7 States, and state and federal water contractors. (SWRCB-5, p. 7-10.) BDCP’s implementation  
8 structure called for the State of California, through Petitioner DWR, to “construct, own, and operate  
9 any new diversion and conveyance facilities described in this plan.” (SWRCB-5, p. 7-10:4-6.)  
10 BDCP’s implementation structure stated that the United States owns, and Petitioner Reclamation  
11 operates, the existing CVP Delta facilities, including Jones Pumping Plant and the Delta Cross  
12 Channel, but it is my understanding it would not own or construct Petition Facilities. Instead,  
13 “Reclamation will likely enter into an agreement with DWR to wheel CVP water through a new  
14 conveyance facility. . . . Reclamation’s expenditures in furtherance of the Plan will conform to the  
15 requirements of federal law.” (SWRCB-5, p. 7-10:11-14.) State and federal water contractors would  
16 “participate in various aspects of the implementation of the BDCP, including the implementation of  
17 certain conservation measures. . . . The status of the water contractors . . . will not provide them with  
18 any new authority over water project operations decisions or result in the delegation of authority  
19 from any state or federal agency.” (SWRCB-5, p. 7-10:16-18, 7-10:23-25.) BDCP stated that water  
20 contractors would fund construction and operation of the new water facilities as well as mitigations  
21 necessary to address terrestrial and aquatic impacts associated with construction and operation of  
22 BDCP facilities. (*Id.*, p. 8-64.)

23 11. A detailed summary of costs and funding sources for Petition Facilities is found in  
24 BDCP. (*Id.*, Chapter 8.) That summary stated that participating state and federal water contractors  
25 would be the funding source for \$16.027 billion for Conservation Measure 1 water facilities and  
26 operations and for other conservation measures cumulating to \$16.93 billion, or 68.4 percent of

27 \_\_\_\_\_  
28 <sup>2</sup> Fishery agencies included the California Department of Fish and Game, United States Fish and Wildlife Service, and  
the National Marine Fisheries Service.

1 overall BDCP costs. (*Id.*, pp. 8-65 to 8-66, Table 8-37; compare pp. 8-74 to 8-75, Table 8-41.)  
2 Neither state nor federal government sources would be applied to Conservation Measure 1 water  
3 facilities and operations and would together account for another 30.9 percent of overall BDCP costs,  
4 largely for various restoration and stressor-related conservation measures. This estimate did not  
5 include debt service requirements. BDCP’s cost analysis mentions bonds as a probable funding  
6 source, but no estimate of debt service is provided. (*Id.*, Chapter 8, p. 8-78:11 to 8-79:16 and Table  
7 8-43.) BDCP stated that after approvals were issued for the plan, the “authorized entities” (mainly  
8 water contractors) would begin to implement it. Petitioner DWR “will rely on its authority to  
9 construct water facilities or projects [which] is derived from the Central Valley Project Act of 1933 .  
10 . . . , the Burns Porter Act . . . , the Davis-Dolwig Act . . . , and other special acts of the Legislature.”  
11 (*Id.*, p. 8-70:7-11.)

12 12. Under their state water contracts, contractors receive annual allocations of water and  
13 pay principal and interest on bonds that were initially issued by Petitioner DWR to fund SWP  
14 construction under the Burns-Porter Act and that have been issued for additional facilities. It is my  
15 understanding that annual water allocations establish the bases for delivery from the SWP (which  
16 depend on a number of factors). Contractors’ payments “cover fixed costs (such as debt service on  
17 project financing that is not directly proportional to the quantity of water delivered) and variable  
18 costs (such as the power needed to operate the SWP).” (*Id.*, p. 8-71:3-5.) For the Conservation  
19 Measure 1 water facilities, BDCP stated that “[p]articipating water contractors have committed to  
20 full funding of CM 1.” (*Id.*, p. 8-74, Table 8-41.) BDCP, however, contained a caveat that appears  
21 to lessen contractors’ and Petitioners’ commitments:

22 It is important to note that this [chapter 8] is not a financing plan for the state or  
23 federal water contractors or any other party. Separate financing plans, funding  
24 agreements, legislative authority, and other documents will be needed to enable the  
25 use of certain funding sources. This chapter provides an overview of potential  
26 funding sources to support the implementation of the BDCP as well as the level of  
27 past financial support at the state and federal level for similar Delta activities.

28 (*Id.*, p. 8-64:29-33.)

13. SWP financing is structured through water service contracts between Petitioner  
DWR and each of the state water contractors. Recent DWR bond prospectuses state that:

1 Generally, [Petitioner DWR's] costs, including interest, of providing the facilities of  
2 the State Water Project, including the Water System Projects, are payable by the  
3 Contractors whether or not water is delivered. If a Contractor defaults under its Water  
4 Supply Contract, the Department may, upon six months' notice, suspend water  
5 deliveries to that Contractor. During such period, the Contractor remains obligated to  
6 make all payments required by the Water Supply Contract. If a Contractor fails or is  
7 unable to raise sufficient funds by other means to make Water Supply Contract  
8 payments, the Contractor is required by the Water Supply Contract to levy a tax or  
9 assessment sufficient for such purpose. ...If any affected Contractor defaults on  
10 payments under certain of [various] amendments [to account for recent construction  
11 works in the State Water Project], the shortfall may be collected from non-defaulting  
12 affected Contractors, subject to certain limitations.

13 (RTD-137, p. iv; RTD-253, p. iv.)

14 14. It is my understanding that these contractual requirements create obligations for each  
15 contractor to make payments to Petitioner DWR. Most, if not all, water contractors have used bond  
16 financing for local supply systems they operate as well. Additional obligations to Petitioner DWR  
17 for Petition Facilities' financing could weaken the ability of retail and wholesale water contractors to  
18 reduce reliance on Delta imports for their future water needs and afford their local debt obligations  
19 through local investment in "improved regional supplies, conservation, and water use efficiency."  
20 (Water Code section 85021.) Meeting all bond obligations helps ensure good ratings should  
21 contractors wish to issue new bonds or refinance prior issues. Their authority to levy and adjust  
22 water rates (upward or downward) is critical to their ability to secure their water service contracts  
23 and their bonds. In turn, this authority provides necessary security to Petitioner DWR to meet its  
24 own obligations to revenue bond holders.

25 15. In April 2013, Petitioner DWR initiated a public negotiation process for extension of  
26 SWP contracts. Contract extensions achieved through this process would be for another 50 years,  
27 through the end of 2085. The initial phase of the process reached an "agreement in principle" in mid-  
28 2014, but delayed addressing BDCP financing when Plumas and Butte counties sought to include  
BDCP-related matters in the contract extension scope. Petitioner DWR expressed the view "that this  
subject would be better addressed in a separate negotiation for a BDCP/ Delta Habitat Conservation  
and Conveyance Program (DHCCP) amendment." (RTD-134, pp. 5-6.) A first public negotiation for  
a BDCP/DHCCP amendment meeting was held December 10, 2014, but a second meeting scheduled

1 for February 17, 2015, was postponed, with DWR stating on its web site that “it will be rescheduled  
2 for a later date.”<sup>3</sup> (RTD-141, PDF p. 2, “Announcements.”)

3 16. Before postponement of the BDCP contract extension process, the City of Antioch, a  
4 public agency that buys water from Contra Costa Water District (a federal CVP contractor),  
5 commented by letter that:

6 The purpose of these negotiations is to address the allocation of the costs associated  
7 with the BDCP among State Water Project Contractors. This includes allocating  
8 benefits such as water supply from implementation of the BDCP. This raises the  
9 question of when a comparable Federal process with CVP contractors will begin.  
10 How BDCP benefits will be shared between the Federal & State Projects needs to be  
11 clearly identified as part of the negotiations for these Contract Amendments. The  
12 public needs to understand the range of costs being assumed by its public water  
13 agencies who are state contractors.

14 (RTD-135.) The Santa Barbara County Flood Control and Water District also commented at that  
15 time:

16 On many occasions, the District has asked that DWR address the legality of imposing  
17 property taxes should the District’s financial backing be needed. To date DWR has  
18 not responded to these concerns, nor has DWR given any indication that it will  
19 respond, rather choose [*sic*] to ignore this issue. While through this current process,  
20 that may work, it is important for DWR to understand that any amendment would  
21 need to be approved by the District’s Board of Directors and as such this issue may  
22 well have to be dealt with then.

23 If DWR desires to maintain that the District’s taxing authority is a financial guarantor  
24 for BDCP bonds, then it seems very important that this question be answered not only  
25 for the District but also for DWR to sell bonds presuming the taxing authority is  
26 there.

27 (RTD-136.) It is my understanding that these two letters bracket important funding issues plaguing  
28 Petition Facilities. On one hand, federal CVP contractors had yet to commit, nor had Congress acted  
to authorize, funding for planning, design, construction, operation, and maintenance of Petition  
Facilities. Petitioners have jointly developed water facilities for their systems, such as San Luis  
Reservoir. Costs of this facility are shared about 55 percent by the state and 45 percent by the United  
States, even though the federal government owns title to the reservoir. (SWRCB-5, p. 8-70, footnote  
51.) Recent financial analyses of Petition Facilities rely on this assumption of cost allocation, though  
Petition Facilities would be owned by the State of California. (RTD-1008; RTD-1010, Table 1;  
RTD-1012; RTD-1015.) On the other hand, the Santa Barbara County letter (RTD-136) raises the

<sup>3</sup> The contract amendment website for BDCP was accessible as of November 27, 2017, at <http://www.water.ca.gov/swpao/swpcontractamendmentforbdcp/index.cfm>.

1 issue of whether SWP contractors would rely on increased water use and service fees or property  
2 taxes—or both—to pay for added charges imposed on SWP contractors by Petitioner DWR for  
3 Petition Facilities. This issue is important to all water users but is especially vital to residents of  
4 environmental justice communities in the Delta and southern California, as I describe later herein.  
5 To date, I am aware of no direct answer from Petitioner DWR to questions raised by the Antioch and  
6 Santa Barbara letters. Until either state or federal contractors commit to funding their share of  
7 Petition Facilities’ costs, their counterpart (federal or state contractors) cannot commit to funding,  
8 and true financial and economic impacts remain highly uncertain.

9 **The Change Petition will not be in the public interest because state law requires Petitioners  
10 and their water contractors to adhere to the “beneficiaries pay” principle, but they are taking  
11 steps to avoid that principle.**

12 17. The Delta Reform Act of 2009 contains the principle that beneficiaries pay for the  
13 benefits of a Delta water conveyance project:

14 Construction of a new Delta conveyance facility shall not be initiated until the  
15 persons or entities that contract to receive water from the State Water Project and the  
16 federal Central Valley Project or a joint powers authority representing those entities  
17 have made arrangements or entered into contracts to pay for both of the following:

18 (a) The costs of the environmental review, planning, design, construction, and  
19 mitigation, including mitigation required pursuant to Division 13 (commencing with  
20 Section 21000 of the Public Resources Code), required for the construction,  
21 operation, and maintenance of any new Delta water conveyance facility.

22 (b) Full mitigation of property tax or assessments levied by local governments or  
23 special districts for land used in the construction, location, mitigation, or operation of  
24 new Delta conveyance facilities.

25 (Water Code section 85089.)

26 18. Commencing with BDCP and continuing through California WaterFix, officials with  
27 the California Natural Resources Agency, both the Schwarzenegger and Brown Administrations, and  
28 Petitioner DWR have maintained that project beneficiaries would pay for Petition Facilities.

29 **The U.S. Department of the Interior’s investigation of Petitioner Reclamation’s funding  
30 contribution to BDCP concluded that Reclamation failed to disclose the full costs of its  
31 participation in BDCP planning.**

32 19. The United States Department of the Interior, Office of Inspector General (OIG),  
33 evaluated Petitioner Reclamation’s financial assistance agreements for BDCP to determine whether  
34 Reclamation fully disclosed to the U.S. Congress and other stakeholders the cost of its participation

1 in BDCP planning efforts, whether Reclamation had legal authority to convert funds from  
2 reimbursable to non-reimbursable purposes, and whether Reclamation expended funds according to  
3 its legal authority for its financial assistance agreements. (RTD-249, p. 1.)

4 20. OIG's first finding was that Petitioner Reclamation did not fully disclose to Congress  
5 and other stakeholders (including the Office of Management and Budget, other state, federal, and  
6 local agencies, water contractors, NGOs, and the general public) that it contributed \$84.8 million to  
7 planning the BDCP or that it subsidized 64 percent of the CVP water contractors' share of the cost.  
8 (*Id.*, p. 6.)

9 21. OIG's second finding was that Petitioner Reclamation did not disclose the full cost of  
10 its participation in BDCP planning. Specifically, Reclamation "supplemented its BDCP activities  
11 with \$50 million derived from funds appropriated for 'water and related resources' and authorized  
12 for application to reimbursable CVP [operating and maintenance, or O&M] activities and other  
13 purposes." (*Id.*, p. 8.) OIG reported in some detail that Reclamation altered its standard funding  
14 process for these activities to help fund its financial assistance agreements with DWR for BDCP  
15 activities. (*Id.*, pp. 8-9, Figure 2.) OIG reported that Reclamation altered the terms of existing water  
16 service contracts for five CVP water contractors so that more O&M costs would be charged to  
17 contractors in advance, even as Reclamation sought, and received, continuing O&M appropriations  
18 from Congress. (*Id.*) This created a surplus of funds "that [Reclamation] was able to use to make  
19 payments to [Petitioner DWR] under the financial assistance agreements for BDCP environmental  
20 studies. These payments were then credited toward the CVP water contractors' share of the BDCP  
21 costs . . . and not reimbursed to the U.S. Treasury. . . . These modified CVP O&M prices obscured  
22 the total amount [Reclamation] contributed to BDCP efforts." (*Id.*)

23 22. Reclamation Mid-Pacific Region officials determined that \$50 million in payments  
24 to Petitioner DWR under three financial assistance agreements for BDCP activities were  
25 nonreimbursable, meaning the cost would not be repaid to the federal government by CVP water  
26 contractors, and therefore the cost was absorbed by all U.S. taxpayers. Finally, Petitioner  
27 Reclamation did not expend funds under the third financial assistance agreement in accordance with  
28 the authority delegated to the Commissioner [of Reclamation] under the Fish and Wildlife

1 Coordination Act, meaning that actual protections and restoration work for fish and wildlife and  
2 their habitat were permanently deferred by Petitioner Reclamation for the sake of WaterFix  
3 planning. (*Id.*, p. 6.)

4 23. For five years, Petitioner Reclamation followed this process—a way of laundering  
5 funds to pay for BDCP planning. “Advance O&M payments from CVP water contractors...then  
6 created a surplus of...funds that [Petitioner Reclamation] was able to use to make payments to  
7 [Petitioner DWR] under the financial assistance agreements for BDCP environmental studies. These  
8 payments were then credited toward the CVP water contractors’ share of BDCP costs...and not  
9 reimbursed to the U.S. Treasury.” (*Id.*, p. 8.)

10 24. The OIG audit found too that Petitioner Reclamation officials grew “concerned about  
11 transparency” and met in September 2014 to decide what to do. At that point, Reclamation’s  
12 Regional Director requested that then-Reclamation Commissioner Michael Connor concur with the  
13 advance O&M payment scheme to pay for BDCP, which was given as BDCP Conservation Measure  
14 1 was modified to become California WaterFix. (*Id.*, p. 10.)

15 25. A third finding by OIG was that Petitioner Reclamation officials “created accounting  
16 codes that classified payments under USBR’s [Reclamation’s] financial assistance agreements with  
17 DWR for BDCP activities as nonreimbursable. This means that \$50 million in appropriations  
18 Congress provided for” CVP O&M expenses got “diverted to DWR for BDCP activities,” the costs  
19 of which were absorbed by the federal government and U.S. taxpayers. “Had the financial assistance  
20 agreement been considered reimbursable, USBR would have billed CVP water contractors for the  
21 amounts paid to DWR, similar to USBR’s process for recouping the cost of providing CVP O&M  
22 funding. . . .” (*Id.*, p. 11.)

23 26. Petitioner DWR used funds routed through a third financial assistance agreement  
24 with Petitioner Reclamation to complete the EIR/S for WaterFix, not BDCP. The change in the  
25 project to exclude all the ecosystem and habitat restoration work to just a water project is crucial.  
26 Petitioner Reclamation assumed that, because the previous two agreements, which had been for  
27 BDCP, were nonreimbursable (with which the OIG audit agrees), completing the overall EIR/S  
28 would be viewed the same way for accounting purposes. OIG disagreed, since the preferred

1 alternative had by then become California WaterFix, the Petition Facilities shorn of fish and wildlife  
2 restoration purposes proposed in BDCP. Therefore, OIG determined that funds expended for  
3 WaterFix environmental review at this point were reimbursable by CVP contractors.

4 [Reclamation]'s assertion does not appear to be consistent with the [United States  
5 Department of the Interior]'s delegation order, which in pertinent part, only  
6 authorizes the Commissioner [of Reclamation] to provide financial assistance,  
7 regarding the construction and/or continued operation and maintenance of any  
8 Federal reclamation project, to plan, design, and construct projects to create or  
improve instream habitat. Given that the preferred alternative identified in the final  
BDCP EIS/EIR eliminated the key ecosystem measures to restore and protect habitat,  
we conclude that USBR did not expend funds under the third financial assistance  
agreement in accordance with this authority.

9 (*Id.*, p. 14.)

10 27. The OIG audit concludes on this point that Petitioner Reclamation officials made  
11 funding decisions well above their pay-grade and recommends that such decisions be reviewed in the  
12 future by Petitioner Reclamation's Director of Program and Budget.

13 28. The OIG audit indicates no congressional authorization to fund planning, design, or  
14 construction of either BDCP or Petition Facilities. This lack of funding authorization is confirmed by  
15 a letter from David Murillo, Reclamation's Mid-Pacific regional director, to Norma Camacho, chief  
16 executive officer of Santa Clara Valley Water District (SCVWD):

17 While the Bureau of Reclamation supports the goals of the [Petition Facilities],  
18 Reclamation currently lacks the legal authority to fund CWF construction.  
19 Accordingly at this time, Reclamation will not be participating[footnote 1] in the  
construction of [Petition Facilities], will not own any of the [Petition Facilities], and  
the [Petition Facilities] will not be a CVP facility.

20 [Footnote 1] For purposes of this letter, "participating" in the [Petition Facilities]  
21 means to agree to contract with the California Department of Water Resources, or  
22 other appropriate entity, to pay a percentage of the construction costs or to provide  
funding through any other mechanism to secure future use of the capacity of the  
[Petition Facilities].

23 (RTD-251, p. 1.)

24 29. Petition Facilities' planning costs reached \$261 million during 2017, according to the  
25 California State Auditor. (RTD-250, pp. 17-20.) OIG reported total BDCP funding sources as \$257.3  
26 million as of June 2016. (RTD-249, p. 7, Figure 1.) The OIG audit revealed that Petitioner  
27 Reclamation contributed \$84.8 million, or 33 percent, of total BDCP funding sources. This means  
28 that nearly one-third of Petition Facilities' planning costs were paid by U.S. taxpayers, not project

1 beneficiaries. Petitioners arranged this funding via a memorandum agreement that acknowledged the  
2 “beneficiaries pay” principle, stipulating that SWP and CVP contractors would share planning costs  
3 on “an equal 50-50 basis” for the project. (*Id.*, p. 8.) However, the same agreement states that any  
4 funds Petitioner Reclamation provided to Petitioner DWR would be credited toward participating  
5 CVP contractors’ 50 percent contribution. The OIG audit stated:

6 It was this language in the [memorandum agreement] that allowed [Reclamation] to  
7 subsidize CVP water contractors’ BDCP payment obligation and in the process,  
8 contradict the long-standing “beneficiaries pay” principle. [Reclamation] could not  
provide us with a rationale for its decision to subsidize CVP contractors other than the  
water contractors asked [Reclamation] to pay.

9 (*Id.*)

10 **A state audit of BDCP and California WaterFix funding concluded that Petitioner DWR has**  
11 **violated the “beneficiaries pay” principle.**

12 30. RTD requested in May 2016 that State Senator Lois Wolk and Assemblymember  
13 Susan Eggman seek Joint Legislative Audit Committee (JLAC) direction to State Auditor Elaine M.  
14 Howle to perform an audit of BDCP/California WaterFix financing to date. The JLAC assigned this  
15 audit to the State Auditor on August 10, 2016. (RTD-250.)

16 31. The State Auditor found that Petitioner DWR accrued a nearly \$300 million surplus  
17 fund derived from surplus SWP contractor payments. As of December 2013, DWR had an available  
18 surplus of \$10.7 million, which grew to \$286 million by the end of April 2017, and is projected to  
19 increase to \$293 million by the end of December 2017. (*Id.*, pp. 20-21.) The State Auditor found that  
20 Petitioner DWR “told SWP contractors in June 2017 that these funds are available to pay for new  
21 SWP facilities, including WaterFix. However, DWR has not developed any concrete plans for how it  
22 will use this growing surplus revenue balance.” (*Id.*, p. 21.)

23 32. The State Auditor’s report described BDCP costs increasing and timeline  
24 lengthening because of the scale and unexpected complexity of the project. BDCP’s budget in 2006  
25 began at \$13 million, nine years before it was rebranded as California WaterFix. The need for  
26 greater stakeholder involvement, more scientific study, the ecological complexity of the Delta as an  
27 estuary, and the Delta’s importance as a clean water resource for environmental justice communities  
28

1 resulted in an increase of the DWR-controlled budget to \$261 million, of which it has now spent 99  
2 percent, according to the Auditor. (*Id.*, pp. 17-20.)

3 33. Petitioner DWR responded to the State Auditor that all BDCP planning activities  
4 were paid for by the public water agencies (i.e., claiming the “beneficiaries pay” principle had been  
5 observed). The State Auditor replied that this was incorrect because the largest source of funds to  
6 these activities was supplied by Petitioner Reclamation, which, according to her findings,  
7 contributed \$81.2 million, or 31 percent, of total planning funds for BDCP/WaterFix. (*Id.*, p. 87 and  
8 p. 15, Figure 5.)

9 **ALL CALIFORNIANS ARE ENTITLED TO LEARN FULL, REAL BENEFITS AND  
10 COSTS OF PETITION FACILITIES’ CONSTRUCTION AND OPERATION THROUGH A  
11 STUDY THAT INTERNALIZES A VARIETY OF EXTERNALITIES, INCLUDING THOSE  
12 THAT WOULD ADVERSELY AFFECT BAY-DELTA ESTUARY ECOSYSTEMS, THE  
13 DELTA’S ECONOMY, AND THE CHARACTER OF THE DELTA AS A UNIQUE  
14 HISTORICAL AND CULTURAL PLACE. IN THE ABSENCE OF SUCH A STUDY THAT  
15 DEMONSTRATES PETITION FACILITIES WOULD YIELD A NET BENEFIT TO  
16 CALIFORNIANS OVERALL, THEY CANNOT BE SHOWN TO BE IN THE PUBLIC  
17 INTEREST.**

14 34. As of the writing of this testimony, public marketing of the project maintains that  
15 public water agencies benefiting from the project will pay for project costs, stating “[t]he cost to fix  
16 California’s primary water delivery system is estimated at \$14.9 billion – or about \$5 a month for  
17 urban water users – and will be paid for by public water agencies that rely on the supplies.”<sup>4</sup>

18 However, the State Auditor found that Petitioner DWR had “not completed either an economic or a  
19 financial analysis to demonstrate the financial viability of WaterFix,” (RTD-250, p. 33.) It is my  
20 testimony that without a sound economic or financial analysis, Petitioner DWR’s \$5 per month cost  
21 estimate – along with other project proponents’ estimates – is little more than a questionable guess.

22 35. Petitioner DWR issued an “Economic Analysis Guidebook” in January 2008. (RTD-  
23 254.) It states there are three common economic analysis methods, two of which take account of the  
24 economic concept of “externality”: These are cost effectiveness and benefit-cost analysis. (*Id.*,  
25 p. 12.) Cost effectiveness seeks to identify a least-cost approach to achieving a specific objective.

26  
27 <sup>4</sup> <https://www.californiawaterfix.com/> : “The cost to fix California’s primary water delivery system is estimated at \$14.9  
28 billion – or about \$5 a month for urban water users – and will be paid for by public water agencies that rely on the  
supplies.” Accessible at “click here for more details” button.

1 Benefit-cost analysis “determines whether the social benefits of a proposed project or plan outweigh  
2 its social costs” over a specified time period. (*Id.*) The results of benefit-cost analysis may be  
3 presented as a ratio or as a difference between benefits and costs (or “net benefits”). (*Id.*) An  
4 “externality is a “cost imposed on others from the activities of producers or consumers for which no  
5 compensation is received.” (*Id.*, p. D-4.) The Economic Analysis Guidebook gives an water-related  
6 example of an externality:

7 [A] new levee in community A may increase river stages downstream in community  
8 B, which subsequently results in more flood damage in community B. The benefit-  
9 cost analysis, which is performed to justify the new levee in community A, should  
also take into account the cost increases for community B. Unfortunately, many  
externalities are difficult to identify, quantify, and ultimately assign monetary values.

10 (*Id.*, p. 22.)

11 36. It is the policy of the State of California to achieve the objective of protecting and  
12 enhancing the unique cultural, recreational, and agricultural values of the Delta as an evolving place.  
13 (Water Code section 85020(b).) The Delta Reform Act of 2009 identified numerous legacy  
14 communities, including Locke (the only town in the United States built primarily by Chinese  
15 immigrants), Bethel Island, Clarksburg, Courtland, Freeport, Hood, Isleton, Knightsen, Rio Vista,  
16 Ryde, and Walnut Grove. (Public Resources Code section 32300(f).)

17 37. The California Natural Resources Agency retained the Brattle Group to prepare a  
18 “California WaterFix Economic Analysis.” (RTD-256.) The scope of the study included water  
19 supply (characterized as “environmental compliance”), water quality, and seismic reduction benefits  
20 of the project totaling about \$16.1 billion as against a “cost allocation” total of about \$10 billion. Net  
21 benefits in the study were about \$6 billion. (*Id.*, p. 28, Table 8.) The study, however, had earlier  
22 stated that the project’s initial capital costs were \$13.25 billion in 2015 dollars, and O&M costs were  
23 estimated at \$622 million annualized to 2015; thus, total project costs were about \$13.9 billion (as  
24 opposed to the \$10 billion used in the study’s benefit-cost calculation). The study stated that “[t]his  
25 cost measure is the appropriate one to use in a benefit-cost comparison.” (*Id.*, p. 4.) Had this cost  
26 measure been used, it would also have reduced the net benefit result by \$3.9 billion to about \$2.1  
27 billion.

1           38.       The same study found that net benefits for SWP and CVP agricultural contractors  
2 would be negative, on the order of (minus) \$1.6 billion. “Under the currently negotiated operating  
3 criteria the level of direct benefits for state and federal agricultural contractors is not sufficient to  
4 justify investing in the project.” (*Id.*, p. 28.) In addition, the study explains that the \$3.9 billion cost  
5 gap:

6           assumes that there are third party contributions to cover costs allocated to the [San  
7 Joaquin River exchange contractors] and [wildlife] refuges. The present value of this  
8 contribution is roughly \$3.9 billion. Should these funds not materialize and the  
9 contractors be forced to absorb these costs, the project would not be as attractive in  
10 aggregate, or to the urban contractors.

11 (*Id.*, p. 29.)

12           39.       Potential for cost overruns are also not included in this study, nor are the  
13 environmental regulation implications of Petitioners’ shift of the project from federal Endangered  
14 Species Act (ESA) compliance under Section 10 to Section 7. This change reduced the “level of  
15 regulatory assurances” available to the project and consequently the project’s water supply yield.  
16 (RTD-255.) The study found these and other “relevant factors and risks difficult to quantify.” It is  
17 my understanding that reduced regulatory assurances translate into an increase in the number and  
18 types of externalities that a comprehensive benefit-cost analysis would need to incorporate to model  
19 accurately whether Petition Facilities’ social benefits outweigh their social costs. I am not aware that  
20 the Brattle Group study was ever finalized.

21           40.       BDCP Chapter 8 gives project cost contingency at 20 percent of total Conservation  
22 Measure 1 costs. (SWRCB-5, p. 8-4:16-19, p. 8-14, Table 8-5.) This estimate apparently increased  
23 since 2013. MWD’s finance and cost allocation paper employs a 36 percent contingency. (RTD-  
24 1008, p. 6, Table 1.) When answering questions by Director Gary Kremen about why the  
25 contingency percentage of 36 percent was so large, SCVWD staff member Garth Hall explained:

26           So the contingency wasn't driven by our district, although we certainly participated in  
27 the discussions. It was driven by the energies that understood that this project has  
28 many uncertainties and a long construction schedule -- so the tendency there, because  
of those uncertainties, even though once they had been identified, was to increase it to  
the point that they could actually meet the cost. It frequently occurs that project  
proponents underestimate project costs and overestimate demand for what the  
infrastructure (in this case, a water tunnel) produces.

(RTD-291, time window 0:40:30 to 0:41:30.)

1           41.       The difference between 20 and 35 percent contingency for a \$16.8 billion (2017  
2 dollar figure used by MWD) project is a budget difference of \$3.36 billion to \$5.88 billion. For the  
3 project to come in on budget as promised to water ratepayers and Californians in general, other items  
4 in the budget would have to be reduced, yet such budget reductions were never discussed. It is  
5 impossible for ratepayers and the public at large to evaluate the financial plan for this project,  
6 specifically these contingency claims, because such a plan does not exist. Furthermore, the  
7 unwillingness of water district officials to discuss publicly the evolution of financial planning for  
8 WaterFix and to directly answer questions by ratepayer and good government groups would be  
9 compounded should project decisions be made by a Joint Powers Authority (JPA) that is one step  
10 removed from direct citizen oversight and accountability. Presently, water district board members,  
11 who are subject, in many but not all instances, to public elections, seem unwilling to insist on a  
12 detailed financial plan to see if WaterFix pencils out for ratepayers. If such decision-making were  
13 declared to be the decision of a Construction JPA or a Finance JPA for WaterFix, it would be nearly  
14 impossible for the public to advocate with water district board officials for proper project oversight,  
15 whether they be Delta residents impacted by construction or southern California ratepayers affected  
16 by project cost overruns leading to consumer water rate increases.

17           42.       Economist Dr. Jeff Michael prepared a benefit-cost analysis of California WaterFix  
18 in August 2016. (RTD-257.) The scope of his study covered benefits similar to those studied by  
19 project proponents (i.e., water supply, export water quality, and reduced seismic risks) and project  
20 capital and O&M costs. Dr. Michael stated that he employed “base and optimistic scenarios that  
21 closely follow the project description and environmental analysis produced by project proponents”  
22 and used other assumptions favorable to Petition Facilities. (RTD-257, p. 2.) Like the 2015 Brattle  
23 Group draft study, Dr. Michael’s did not consider cost overruns, risk of harm to listed species, or  
24 financing costs of bonded debt for Petition Facilities. (*Id.*) However, he included costs of impacts to  
25 in-Delta municipal water supply, agriculture, and transportation disruption. His analysis also  
26 identifies other unquantified impacts on tourism and recreation and to other upstream water users in  
27 the Sacramento and San Joaquin river basins. (*Id.*, pp. 17-20.) Dr. Michael calculated the base  
28 scenario as having a benefit cost ratio of 0.23—meaning that Petition Facilities would generate 23

1 cents of benefits for each dollar of project cost to society. The optimistic scenario yielded a ratio of  
2 0.39, meaning that Petition Facilities would generate 39 cents in benefits for each dollar of project  
3 cost to society. (*Id.*, p. 3, Table 1.) It is my understanding that taking account of what economists  
4 would consider “externalities” of the Petition Facilities resulted in negative net benefits to society.  
5 Dr. Michael’s study included only some of the potential externalities that would need to be  
6 considered if the analysis was to take account of the Petition Facilities’ costs of protecting and  
7 enhancing the unique cultural, recreational, and agricultural values of the Delta as an evolving place.

8 43. Findings in the State Audit of California WaterFix elucidate that even though  
9 Petitioner DWR’s financial consultant Public Finance Management had been paid \$276,000 through  
10 July 2017, the financial analysis of WaterFix was incomplete. The audit report stated:

11 “...no final decisions on cost allocations or interim financing have been made  
12 because discussions with state and federal water contractors are still ongoing....[T]he  
13 final financial analysis report cannot be prepared until the contractors desiring to  
participate in WaterFix are identified....[O]nce individual agencies decide to  
participate the financing will be tailored to meet each agency’s needs.”

14 (RTD-250, pp. 34.)

15 **The recent “participation” process has not yielded a finance plan and has raised the possibility**  
16 **of a changed project, further increasing the likelihood that approving this Change Petition will**  
**result in Petitioners’ cold-storage of Delta water rights.**

17 44. It is my testimony that project financing remains unresolved as of this writing.

18 45. In late May 2017, Governor Jerry Brown insisted that state and federal water  
19 contractors determine whether they would participate financially to support Petition Facilities.  
20 (RTD-247.) MWD, Kern County Water Agency, and Westlands Water District (WWD) are reported  
21 to have met with the Governor around that time. (RTD-247.) In early June 2017, a DWR  
22 spokesperson acknowledged discussions occurring between Petitioner DWR and water contractors,  
23 including WWD. (RTD-260, PDF page 2.) The discussions were apparently motivated by concerns  
24 that “the water contractors don’t believe [Petitioner DWR] is capable of delivering a \$15 billion  
25 project” and that water agencies “have concerns about how well [Petitioner DWR] can take on the  
26 complex tunnels project given other pressing jobs, including repairing two dam spillways that  
27 ruptured this winter at one of the state’s vital reservoirs.” (*Id.*, PDF page 3, page 5.) Participating  
28

1 water districts held votes during the summer and fall of 2017 at Governor Brown’s urging to indicate  
2 whether they were ready to make a financial commitment to Petition Facilities.

3 46. WWD declined to participate in financing California WaterFix in September 2017,  
4 as mentioned herein and in RTD-12. No other CVP water contractor has agreed to make a financial  
5 contribution to the project. Yet, despite public scrutiny, WWD continues to look to government  
6 sources to help fund its potential contribution to California WaterFix. Although WWD voted to not  
7 continue with WaterFix planning, it has not withdrawn from these proceedings. Furthermore, WWD  
8 requested in a cross complaint concerning Petitioner DWR’s validation suit to seek court  
9 authorization for DWR to reimburse project planning and development costs:

10 [t]hat the Court declare that: (a) the Department [DWR] may issue revenue bonds in  
11 an aggregate amount sufficient to finance the entire capital costs of the California  
12 WaterFix, including any such costs it will be the responsibility of Westlands or other  
13 Central Valley Contractors to repay if they elect to participate in the California  
14 WaterFix; and (b) that the Department may use proceeds from the sale of revenue  
15 bonds to reimburse development or planning phase costs and preconstruction costs  
16 advanced by Westlands or other Central Valley Project contractors.

17 (RTD-271, p. 4:21-28.) The ongoing effort by WWD to pass expenses incurred for project planning  
18 to either federal or state taxpayers is contrary to Water Code section 85089 as well as to the public  
19 interest.

20 47. CVP participants—who would still have to opt in, since Petitioner Reclamation has  
21 no congressional funding authorization—would allocate among themselves \$7.5 billion of Petition  
22 Facilities’ costs. (RTD-1008, p. 8.) MWD’s third white paper states that Petitioner DWR and “the  
23 participating CVP contractors” are negotiating a master agreement for use of Petition Facilities.  
24 MWD’s white paper financing plan, however, does not name specific participating CVP contractors  
25 who would be parties to such an agreement, presumably to cover \$7.5 billion in costs. Despite the  
26 lack of declared CVP contractor participants, MWD affirmed that its share of project costs is 25.92  
27 percent. (*Id.*, p. 10, Table 2.) Nowhere in MWD’s white paper is there consideration of Petition  
28 Facilities’ costs if CVP contractors’ financial participation is reduced from 45 percent or to zero.  
(RTD-1006; RTD-1007; RTD-1008.) On one hand, Petition Facilities participation decisions assume  
CVP contractors will shoulder 45 percent of project costs. On the other hand, after over four years of  
considering numerous alternatives in BDCP and Petition Facilities, I am aware of no CVP

1 contractors having stepped forward to help shoulder their \$7.5 billion cost. According to MWD’s  
2 third white paper, “[Petitioner DWR] will not move forward with project implementation without the  
3 commitment of a sufficient number of SWP and CVP contractors.” (RTD-1008, PDF page 3.)

4 48. Alameda County Zone 7 Water Agency voted 5-2 on September 20, 2017 to endorse  
5 Petitioner DWR’s approval of Petition Facilities, adopt California Environmental Quality Act  
6 (CEQA) findings specific to Petition Facilities’ environmental documents, authorize their general  
7 manager to negotiate and execute a contract for Zone 7’s share of Petition Facilities’ planning funds  
8 “up to \$250,000 to cover costs for California WaterFix starting January 1, 2018 and continuing until  
9 the first bonds are issued,” authorize the general manager to negotiate Zone 7’s participation in  
10 Petition Facilities’ design and construction JPA and finance JPA, and execute other agreements  
11 including adaptive management. (RTD-267.) While Zone 7 endorsed Petition Facilities, its financial  
12 commitment at this time appears to be minute.

13 49. Kern County Water Agency (KCWA), a major SWP agricultural water district, voted  
14 on October 5, 2017, to support a 6.5 percent share of WaterFix at roughly \$1 billion, about half of  
15 what project proponents anticipated as KCWA’s contribution share. (RTD-263.)

16 44. MWD stated in its finance and cost allocation white paper issued in September 2017 that:  
17 50. Consistent with the “beneficiary pays” principle, SWP Contractors and participating  
18 CVP Contractors would fund California WaterFix. California WaterFix supply [footnote] benefits  
19 have been allocated 55 percent to the SWP Contractors and 45 percent to the CVP Contractors  
20 (55/45 split). Under this allocation, funding for capital costs and operations and maintenance (O&M)  
21 would also follow this same 55/45 split.

22 As discussed in the first policy white paper [RTD-1006] capital costs for [Petition  
23 Facilities] are estimated at \$14.9 billion in 2014 dollars. As described in this paper,  
24 with mitigation project capital costs and escalation to 2017 dollars, the total capital  
25 costs are \$16.8 billion. Total annual O&M costs when the project is fully operational  
26 are \$64 million in 2017 dollars. Based on the 55/45 split, SWP Contractor project  
27 costs would be \$9.2 billion in capital and \$35 million in annual O&M.  
28 (RTD-1008, pp. 3-4; see also RTD-1006, p. 16.)

51. MWD approved \$4.3 billion in funding for a 26% funding share of the project,  
despite internal opposition from MWD board members representing the City of Los Angeles and the  
San Diego Water Authority, in addition to wide public opposition from ratepayer and environmental

1 advocates from throughout southern California. (RTD-266.) Nonetheless, funding from MWD and  
2 KCWA totals just \$5.3 billion, a 32 percent share of projected costs of \$16.8 billion.

3 52. On October 17, 2017, the SCVWD board voted their preference for a smaller project.  
4 SCVWD is the only water agency in California that is both a CVP and SWP contractor. SCVWD  
5 board members prior to their vote stated two preferences: one for a smaller project and the other for  
6 SCVWD staff to continue representing and negotiating on the District's behalf with other contractors  
7 and Petitioner DWR for a project they could support. They did not specifically endorse participating  
8 in financing the Petition Facilities proposal before the State Water Resources Control Board  
9 (SWRCB). (RTD-259.) DWR director Grant Davis, in attendance for SCVWD's decision that day,  
10 voiced DWR's willingness to consider a smaller project in public conversation with District board  
11 member Gary Kremen:

12 Kremen: Is there any deal killer[ ] for DWR in what we've talked about here today?

13 Davis: I have to say that I am awfully impressed with how this board has deliberated.  
14 I can attest to the hours that have gone into this by your staff. And I'm fascinated by  
15 the way that you were able to reach this type of a sense of the will of the board. I—at  
16 this point, based off of what I'm reading, and what my project manager here is  
17 suggesting, that when you come down with this sense of the Board, that is in fact  
18 what [I] was hoping to hear, and will be willing to work with that.

19 (RTD-259, time period 3:20:40 to 3:21:37.)

20 53. On October 26, 2017, MWD distributed an email describing MWD's financial and  
21 organizing commitment to Petition Facilities as a "26 percent share of financing the [Petition  
22 Facilities] as well as moving forward on a governance structure to build and finance the \$17 billion  
23 project. [MWD's] share is about \$4.3 billion." (RTD-262, PDF page 2.) The email included a slide  
24 indicating "State Water Project Contractor Agency Board Consideration/Action," with the date of  
25 twelve agencies' actions, whether they voted to support Petition Facilities, their design and  
26 construction JPA, and their finance JPA. MWD's email showed that the twelve listed SWP  
27 contractors supported Petition Facilities, but only two—Zone 7 Water Agency and MWD—had  
28 expressed support as of October 26th for the two proposed JPAs. A footnote to the slide in the email  
states:

Many other State Water Project Contractors are not taking explicit action to their  
boards, but would anticipate cost responsibility under their existing SWP contract

1 with the state, along with existing opportunities under the contract to manage their  
2 supply and cost through water transfers, banking, and exchanges.

3 (*Id.*) The slide contains no accounting of actual funding commitments from SWP contractors whose  
4 boards voted support for Petition Facilities.

5 54. Contrary to statements made by Governor Brown and Natural Resources Secretary  
6 Laird, SCVWD's resolution adopted on October 17, 2017 did not authorize any funding for  
7 California WaterFix, and instead set terms and conditions for moving forward with support including  
8 consideration and analysis of a downsized project or possible single tunnel. (RTD-265; RTD-258.)

9 55. Petition Facilities, as of this writing, do not have sufficient funding commitments to  
10 comply with Water Code section 85089. The various recent actions taken by state and federal water  
11 contractors concerning Petition Facilities are neither "arrangements or . . . contracts" that cover all  
12 Petition Facilities, as required in this Water Code section. The Governor's desire that water  
13 contractors commit to funding Petition Facilities has resulted in specific commitments for just 32  
14 percent of their estimated total cost. This means that both financing and cost allocations among state  
15 and federal contractors are at best unresolved. If project proponents are seeking federal or state  
16 taxpayer funding for the project (such as alluded to by WWD's validation response), then the  
17 project's financing would violate the principle of "beneficiary pays" described in this Water Code  
18 section.

19 56. MWD estimated that the average monthly cost of Petition Facilities and its water  
20 deliveries to its 7 to 8 million service area customers would be \$2 to \$3. (RTD-1008, p. 18, Table 7.)  
21 The \$3 per month figure was used by MWD staff during their presentations to MWD board  
22 members, member agencies, city councils, and other public water agencies to support MWD's \$4.3  
23 billion commitment vote on October 10, 2017. Shortly after release of MWD's per-household cost  
24 estimate for Petition Facilities, Dr. Jeff Michael observed that the estimate assumed no cost overruns  
25 for the project, and that Petition Facilities' annual debt service would range from about \$1 billion to  
26 \$1.5 billion. The 7 to 8 million service area customers paying \$3 per month (\$36 per year) would  
27 generate only about \$250 to \$300 million per year, about 20 to 25 percent of annual debt service.  
28 (RTD-268.) As did the Brattle Group study, Dr. Michael observed a large gap between Petition

1 Facilities' funding and customer service area ability to pay, possibly as large as two-thirds of total  
2 estimated project costs. (*Id.*)

3 57. With inadequate cash on hand to meet construction objectives, or as a project that  
4 would need federal or state funding to commence, the Petition Facilities' business plan does not  
5 contain enough detail to demonstrate that it is viable without undue financial burden on Californians.  
6 This confirms the State Auditor's finding that Petition Facilities lack financial and cost benefit  
7 analyses, as well as assurances that only beneficiaries pay for them without involving subsidies from  
8 either state or national taxpayers. Lacking full funding commitments, full endorsement of Petition  
9 Facilities (e.g., the SCVWD action on October 17, 2017), and a clear, unequivocal plan for project  
10 cost allocations among participating state and federal contractors, Petitioners fail to demonstrate they  
11 would, even with some type of water rights approval, undertake with all due diligence the  
12 construction and completion of Petition Facilities so as to avoid cold-storage of such rights while  
13 putting water conveyed via Petition Facilities to full beneficial use. The due diligence requirement is  
14 a "long-standing principle of California water law intended to protect the public interest." (SWRCB  
15 Water Rights Order 2008-0045, pp. 1-2.) Cold-storage of water rights is contrary to the public  
16 interest because it means that water subject to appropriation is not available to other parties who  
17 could potentially put it to beneficial use (due to an appropriator failing to diligently develop their  
18 supply). (*Id.*, p. 1.)

19 58. From a Delta perspective, as a complete and thorough benefit-cost analysis that  
20 includes the economic value of freshwater to the San Francisco Bay-Delta estuary has not been  
21 completed, the economic impacts from the project on commercial fishing, Delta recreational fishing,  
22 Delta water recreation, Delta agricultural economies, and the impacts on Bay Area and coastal  
23 economies tied to the commercial fishing industry have been woefully ignored. SWRCB recognized  
24 in 2008 that the public interest in avoiding cold-storage of water rights extends to addressing  
25 environmental problems in the Delta:

26 Sound public policy strongly supports allowing current and potential future applicants  
27 to appropriate any surplus water that is made available . . . , provided that the  
28 applicants' projects are in the public interest and will be developed with due  
diligence. In addition, allowing the water rights for a large project . . . to remain in  
limbo creates uncertainty that complicates water supply planning efforts, including

1 ongoing efforts to address water supply and environmental problems in the San  
2 Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay/Delta).

3 (*Id.*, p. 20.)

4 **The organizational and legal risks—and the likely lack of transparency—of Petition Facilities’  
5 administration through complex JPAs and numerous agreements among varying combinations  
6 of parties will undermine the public interest, and the Change Petition should be denied.**

7 59. Despite their inability at this time to shoulder collective responsibility for financing,  
8 cost allocations, and CVP contractors’ participation in Petition Facilities, state water contractors  
9 seek—through organization and implementation of JPA mechanisms and potentially public-private  
10 partnerships (or “P3s”)—to gain greater control over construction and operation of Petition  
11 Facilities. In this section, I will describe how shifting control from Petitioner DWR to state water  
12 contractors led by MWD for overall project development has reshaped the public’s understanding of  
13 the project, how it would be paid for, and how it would be organized. (RTD-260.) These changes  
14 take Petition Facilities even further from being in the public interest.

15 60. Petitioner DWR filed a validation complaint in Sacramento County Superior Court  
16 on July 21, 2017, stating its authority “to construct and operate the Project and to issue revenue  
17 bonds to pay for it” and that it has “broad discretion and authority to determine the need for the  
18 Project and the nature of Project facilities.” (RTD-270, p. 4, ¶ 16.) Petitioner DWR argues that  
19 Water Code section 11260 provides, in pertinent part, that, beyond the Feather River Project  
20 facilities identified in a number of 1950s reports, the SWP can be:

21 subject to such further modifications thereof as [DWR] may adopt, and such units or  
22 portions thereof may be constructed by [DWR] and maintained and operated by it to  
23 such extent and for such period as the department may determine, as units of the  
24 Central Valley Project separate and apart from any or all other units thereof.

25 (Water Code section 11260.)

26 61. Petitioner DWR reads “Central Valley Project” to include SWP for purposes of its  
27 otherwise unspecified authorization in state law to undertake California WaterFix. (Water Code  
28 section 12391.) And DWR invokes Water Code section 11454 to justify its ability and authorization  
to do anything it deems “necessary, convenient, or expedient” to expand the SWP. (¶ 20.) DWR also  
points to Water Code section 11126, which states that construction, operation, and maintenance of  
its projects “is in all respects for the welfare and benefit of the people of the State, for the

1 improvement of their prosperity and their living conditions, and the provisions of this part shall be  
2 liberally construed to effectuate the purposes and objects thereof.” (*Id.*, p. 5, ¶ 21.) The validation  
3 complaint argues that the CVP Act authorizes DWR to issue revenue bonds to pay capital costs of a  
4 project like Petition Facilities at Section 11700. (*Id.*, ¶ 23, 24.)

5 62. Petitioner DWR's validation case may not result in judicial authorization to issue  
6 revenue bonds for Petition Facilities. According to MWD, the validation case’s importance is to  
7 “provide the requisite assurance to the financial community for the sale of revenue bonds. . . . If  
8 DWR does not have the authority, a process would be established leading to the potential  
9 conveyance of interest in the project to the Finance JPA or designee to proceed.” (RTD-1008, p. 2,  
10 3.) According to MWD’s Questions and Answers paper, if Petitioner DWR’s validation suit  
11 experiences delays, Petitioner DWR could issue bonds instead to a Finance JPA yet to be created,  
12 which could provide construction funds to a Design and Construction Authority:

13 Is it appropriate that a JPA will buy DWR’s bonds and issue bonds of its own?

14 DWR has filed a validation action seeking a judicial confirmation of DWR’s  
15 authority to issue revenue bonds for State Water Project facilities, including  
16 California WaterFix. Validation actions are common in agency financing matters.  
17 During the pendency of the validation action, the marketability of California  
18 WaterFix Revenue Bonds to private investors may be affected. Therefore, DWR  
19 proposes the direct placement sales of bonds to a Finance JPA until resolution of the  
20 validation action. This approach is appropriate to allow financing to move forward  
21 and as a means of controlling financing costs.

22 (RTD-1009, p. 14.)

23 63. Petitioner DWR, represented by Hallmark Group project manager Charles Gardner in  
24 public presentations, continues to state it will own Petition Facilities. Their implementation will  
25 involve at least seven agreements among various parties addressing gap funding, coordination,  
26 biological opinions implementation, CVP participation, construction, a DWR-JPA agreement, and a  
27 “master agreement” between DWR and CVP participants. (RTD-269, PDF pages 18 and 19.)

28 64. JPAs can be complex to administer, lacking in public transparency, and riven by  
litigation among authority members. Water agencies supporting Petition Facilities are already  
organized as JPAs. JPAs are a legal way for public entities to share and spread financial risk and  
pool their financial power (RTD-272, p. 11). They are allowed by law to issue revenue bonds

1 without local approval (*Id.*, p. 13, 19). This bonding authority makes JPAs ideal public partners for  
2 P3s organized to undertake infrastructure projects like water tunnels, since the public side of funding  
3 an infrastructure project need not face voter scrutiny—and private funding almost never does. A  
4 private construction firm could bring not only their construction engineering and management  
5 expertise to the Tunnels project, they could help finance the Tunnels. P3s are legal in California  
6 (Government Code section 5956.4).

7         65.       There is potential for conflict among the member agencies that make up a JPA. For  
8 instance, are all members responsible if the JPA, acting in their names, gets sued for damages?  
9 (RTD-273, p. 10.) How will a member agency balance its fiscal, financial, and water or land use  
10 responsibilities if it has fiduciary obligations to the JPA? (*Id.*, p. 12.) For example, if a water district  
11 as part of a JPA also faces revenue shortfalls in its individual budget from its customers conserving  
12 water, yet its JPA requires a minimum payment for debt service or other financial contribution, what  
13 should that district do? To whom does it owe primary loyalty? The pitfalls can extend to whether the  
14 JPA conducts its business in public (*Id.*, p. 15), as well as to conflicts of interest of its member  
15 officials under state law (*Id.*, pp. 18-22).

16         66.       MWD indicated in its September 26, 2017 Board Workshop that, in addition to the  
17 Construction JPA and the Finance JPA, an Adaptive Management Group would be formed in which  
18 one SWP Contractor Representative and one CVP Contractor Representative would participate in  
19 adaptive management decision-making by consensus with state and federal regulators. This  
20 governance arrangement would eliminate firewall protections for the public or arm's-length  
21 relationships between regulators and water contractors. Such arrangements would give contractors  
22 veto power over potential regulatory enforcement actions, since they would depend on water  
23 deliveries from Petition Facilities for water sales, the revenues from which would repay Petition  
24 Facilities' bonds.

25         67.       Conflation of project beneficiaries and regulators would not serve the public interest  
26 because it would exclude Delta communities, particularly environmental justice communities, from  
27 project management oversight and subject them to myriad adverse impacts of Delta flow conditions  
28 set to serve the interests of water exporters. The JPA contractor members of the adaptive

1 management group would be self-interested to interpret implementation of flow and water quality  
2 criteria intended for Delta beneficial uses and communities to instead favor meeting water export  
3 goals for participating water contractors. Thus, adaptive management decisions would be  
4 unaccountable to the public and opaque for public redress of grievances suffered by Delta  
5 community representatives. This would not serve the public interest of Delta area residents,  
6 especially those dependent on the Delta as a source of their drinking water supplies and whose water  
7 rates could increase as a result of WaterFix operations.

8         68.       In addition, construction and finance JPAs would potentially not serve the public  
9 interest for water ratepayers served by the project. As with the JPA for adaptive management, both  
10 JPAs would be composed of voting representatives of participating water contractors and nearly  
11 impossible to track by the public to ensure that project decisions are being made in accordance with  
12 permitting conditions, best design practices, and cost effectiveness so as to deliver a completed  
13 project on time and on budget. Consequently, southern California ratepayers – who already have to  
14 track water management decisions via their local retail agency, their basin water district (MWD  
15 member agencies), and MWD in order to respond to rate increases and to register water quality  
16 concerns – would not have adequate access to decisions made regarding implementation of  
17 WaterFix. Even more disturbing, should construction mitigation complaints or emergencies arise  
18 that are not addressed adequately on the ground, Delta residents would be far removed from any  
19 public interaction with these JPAs for redress.

20 **Land acquisition as a strategy for MWD pushing through WaterFix construction is counter to**  
21 **the public interest.**

22         69.       MWD’s acquisition of Delta island real property in 2016 is part of MWD’s strategy  
23 to gain greater control over the outcome of decisions remaining for Petition Facilities and also serves  
24 as an indicator that future project management will first and foremost be driven by the needs of  
25 water exporters. After six years of attempts by Petitioner DWR to gain entry rights to property  
26 owners’ lands for test drilling, Delta farmers won in the California Court of Appeal in 2014 and  
27 defeated DWR’s efforts to condemn temporary and permanent easements for the purpose of  
28 geotechnical studies (drilling). (*Property Reserve, Inc. v. Superior Court* (2014) 224 Cal.App.4th

1 828, 899.) (The California Supreme Court later reversed the decision.) Undeterred, the Design  
2 Construction Enterprise (DCE) unit (staffed with MWD employees either on loan or through  
3 personal recommendation) within DWR drafted a condemnation plan for over 300 properties in the  
4 Delta to move forward with construction of the tunnels in 2016. (RTD-274.) This plan was drafted  
5 while Delta residents, environmentalists, local government agencies, northern California water  
6 districts, and good-government advocates were all working on response comments on the BDCP and  
7 its EIR. Indeed, Delta residents only learned of the confidential condemnation plan as a result of a  
8 Public Records Act request to MWD, as well as the existence of DCE planning documents,  
9 including the condemnation property list, which were not addressed in the EIR/S.

10 70. A few weeks later, RTD was informed by a confidential source that MWD and  
11 WWD were moving to purchase five Delta islands from the owners of the Delta Wetlands Project.  
12 The islands owned in partnership by Semitropic Water Storage District and Zurich American  
13 Corporation contained several of the Delta properties on the condemnation list and several of the  
14 islands were in the direct path of the Delta tunnels alignment. (RTD-275; RTD-276; RTD-277;  
15 RTD-278.) Two days after RTD announced its findings to the press, WWD announced its  
16 withdrawal from the Delta islands purchase. The purchase discussion for the islands had taken place  
17 in closed sessions of MWD's Real Asset and Property Management Committee, and these meetings  
18 included discussions on pricing, negotiation, and terms of payments. While real estate negotiation  
19 details do qualify under the Brown Act as an item for closed session meetings, the lack of  
20 transparency and open public discussion regarding a major asset purchase to be funded by MWD  
21 ratepayers, and the collaboration between the DCE staff drafting the eminent domain plan and MWD  
22 management, serves as an indicator of how MWD has transformed Petitioner DWR into a captive  
23 agency. DWR's mission is "to manage the water resources of California in cooperation with other  
24 agencies, to benefit the State's people and to protect, restore and enhance the natural and human  
25 environments." (RTD-293.) DWR's mission is not to be a party to a hidden land acquisition strategy  
26 so as to bypass customary public interactions and regular legal processes when dealing with  
27 landowners in the path of the proposed project. DWR's mission is not to push forward a project  
28 through secret dealings to do the bidding of specific water agencies, enabling those same public

1 agencies to hide the financial decisions they make from their ratepayers and from Delta residents  
2 who will have to live with the impacts.

3 71. But MWD went a step further and was not fully transparent with its own voting  
4 member agencies. The five Delta islands were purchased for \$175 million after a slim vote to move  
5 forward with the purchase by MWD board members, public exposure of the purchase, and hand  
6 delivery of thousands of signatures on petitions of Delta residents opposing the sale. In October of  
7 2016, San Diego Water Authority, one of MWD’s member agencies, was still trying after the vote to  
8 understand exactly what the purchase entailed and sent a Public Records Act request to MWD for all  
9 appraisals for any of the properties. (RTD-279.) In August 2017, almost a year after the initial PRA  
10 request, San Diego Water Authority sent a follow up letter because MWD manager Bryan Otake had  
11 informed San Diego Water Authority that no appraisal documents existed for the escrow and  
12 purchase of the Delta islands, even though, on August 8, 2017, MWD General Manager Jeff  
13 Kightlinger had told the Rincon del Diablo Municipal Board District Board of Directors regarding  
14 the island purchase, “[t]here was an appraisal that was four years on it.” Mr. Kightlinger then stated  
15 during his pitch to the Rincon del Diablo Board that the MWD Board of Directors, not staff, decided  
16 another appraisal was not necessary for the islands’ purchase. This was a surprise to San Diego  
17 Water Authority. (RTD-279, p. 2.)

18 72. If the appraisal of the Delta islands purchase is four years old, it suggests MWD had  
19 been involved in a long effort to purchase Delta land where the tunnels could be built. MWD’s lack  
20 of transparency with San Diego Water Authority—one of their largest member agencies—regarding  
21 their purchase of the Delta islands raises the question of whether any MWD member agencies can  
22 trust MWD’s proposed analysis of costs and water deliveries, as well as their analysis of  
23 construction risk impacts. Obfuscation of project details for member agencies, like the existence of  
24 appraisals, is not conducive to a transparent government process or sound financial planning that  
25 serves the public interest for MWD ratepayers, Delta residents, and all Californians. Moreover, the  
26 parallels are striking between MWD’s efforts to exert control over Delta land ownership in order to  
27 facilitate WaterFix construction and the historical record of City of Los Angeles Department of  
28 Water and Power’s land ownership and water transfers in Owens Valley based on historical research

1 by author William Kahrl. (RTD-281.) After acquiring most water rights to the Owens River, the  
2 impact on the Valley's economy led the city to compensate injured land owners by purchasing ranch  
3 lands and town lots. The Valley's economy collapsed, however. Kahrl summarizes the relationship  
4 that emerged in the 1920s:

5 In deciding what should be done with the Owens Valley properties, however, the  
6 city's officials faced a problem almost entirely without precedent under the United  
7 States federal system of government. The wholesale land and water acquisitions that  
8 followed the collapse of the Watterson banks had created an anomalous situation  
9 whereby one public entity, the city of Los Angeles, had become the virtual owner of  
10 another public entity, the county of Inyo. The modern history of relations between the  
11 city and the valley has consequently been shaped by Los Angeles' sometimes  
12 faltering attempts to come to terms with its responsibilities under this essentially  
13 colonial relationship.

14 (RTD-281, p. 350.)

15 73. The Delta islands purchase by MWD in 2015-16 was an orchestrated event to make  
16 MWD the largest landowner, and, thus, water rights holder, in the Delta estuary. As of this writing,  
17 MWD is looking at leasing the islands back to Semitropic Water Storage District for potential water  
18 storage. Furthermore, this acquisition, which never underwent a normal appraisal process, was  
19 conducted in a manner that subverted required transparency for a public agency as a way to avoid  
20 internal board opposition to the purchase and external opposition from the greater Delta community.  
21 The public only learned of these activities through the power of the Public Records Act request and  
22 from whistleblowers. Should the project move forward with Construction and Finance JPAs, it will  
23 become nearly impossible for project management to be tracked by the public. This is a business  
24 plan that fails to serve the public interest.

25 74. Perhaps even more troublesome is that MWD, as the largest project proponent, has  
26 not put forward funding through the SWP Contractors for payment for this SWRCB permit hearing  
27 process as required under law, yet has spent hundreds of millions on securing its access to Delta  
28 water supplies and land in order to move forward with the project before having permits in hand.  
29 This serves as further evidence of MWD's strong-arm tactics to receive project benefits that are  
30 contrary to the legal mandate of reducing reliance on the Delta, while seeking public subsidies for  
31 the project.

1 **THE CHANGE PETITION IS NOT IN THE PUBLIC INTEREST BECAUSE IT WILL**  
2 **DISPROPORTIONATELY HARM SOUTHERN CALIFORNIA AND DELTA**  
3 **ENVIRONMENTAL JUSTICE COMMUNITIES.**

4 **MWD's outsized influence on California WaterFix would harm Delta residents and southern**  
5 **California water ratepayers.**

6 75. In this section, I discuss who would be directly harmed by the water contractors'  
7 outsized influence on WaterFix and in what manner the impacted parties would be harmed. The  
8 transfer of freshwater through the tunnels from the Sacramento River to the export facilities is  
9 contrary to the public interest of the residents of the Bay-Delta region, as well as ratepayers and  
10 domestic water users within California's SWP and CVP service areas.

11 76. Petitioner DWR in its validation suit in Sacramento County Superior Court has stated  
12 that:

13 Pursuant to and in accordance with Section 11701 of the CVP Act . . . , . . . (1) the  
14 preliminary cost estimate for California WaterFix, not including bond-related costs  
15 such as capitalized interest, costs of issuance and bond reserves, is \$16 billion; (2) the  
16 estimated amount of such costs to be raised by the issuance of California WaterFix  
17 Revenue Bonds is \$8.8 billion; (3) the probable amount of money, property, materials  
18 or labor, if any, to be contributed from other sources in aid of the California WaterFix  
19 is \$7.2 billion; and (4) the principal amount of bonds estimated to be required to be  
20 issued by the Department for the California WaterFix is \$11 billion.

21 (RTD-270.) As stated earlier in this testimony, however, less than half that amount, \$5.3 billion, has  
22 been committed for project funding by participating water contractors.

23 77. In addition, within participating water districts there exists an understanding that  
24 member agencies would only be expected to pay for the project through water that they agree to  
25 purchase, even though bond repayment amounts would be for fixed amounts, after bonds are sold.  
26 As I noted earlier, I attended many governmental meetings at which WaterFix was discussed. In  
27 addition, RTD staff members and trained volunteers also attended meetings under my authorization  
28 and provided me with feedback following the meetings that they attended.

78. Central Basin Municipal Water District (CBMWD) is a member agency with MWD.  
With two dozen other RTD supporters, I attended to give a presentation at the August 21, 2017  
CBMWD workshop on California WaterFix. MWD staff member Brandon Goshi also gave a  
presentation that day and told CBMWD board members that if retail agencies within CBMWD's  
service area did not purchase water from WaterFix, they would not have to pay into the project. At

1 the August 28, 2017 CBMWD meeting, General Manager Kevin Hunt explained WaterFix costs for  
2 ratepayers as follows:

3 General Manager Hunt stated that the purveyors were aware of it because they knew  
4 the percentage of groundwater that they take, the percentage of MET water. He stated  
5 that the purveyors he had talked to understood what they were doing. General  
6 Manager Hunt stated that the percentage actually ranged from zero if they did not  
7 take any MET water and stated that if WRD did what they were saying and not buy  
8 any replenishment water, then the cost would radically be zero. On the other hand, he  
9 stated, the City of Vernon, which takes a high percentage of Metropolitan water, their  
10 cost could be \$5 on the low end to \$10 on the high-end for industrial connections. He  
11 stated that those were the ranges from \$0 to \$5 a month on the low-end and \$0 to \$10  
12 on the high-end.

13 (RTD-292, p. 8.) Later during a meeting break, after Downey water ratepayer Martha Camacho-  
14 Rodriguez made a comment indicating that Downey ratepayers should not have to pay for WaterFix,  
15 Mr. Hunt approached her and Paramount ratepayer Sara Huevo and told them that “he would put it in  
16 writing” that Downey residents “would never have to pay for water they did not receive through  
17 California WaterFix.”

18 79. San Diego County Water Authority (SDCWA) is also a member agency with MWD.  
19 Between June and September, voting MWD board members representing SDCWA asked MWD  
20 General Manager Jeff Kightlinger and staff during WaterFix presentations how could or would  
21 financing work based on water sales given that bond repayments would be at a fixed amount.  
22 SDCWA did not receive a direct answer to this question, as evidenced by “no” votes on California  
23 WaterFix participation by MWD cast by SDCWA representatives to the MWD Board. (RTD-285;  
24 RTD-266.)

25 80. The City of Glendale is another MWD member agency. On September 19, 2017, Mr.  
26 Kightlinger assured officials with the City of Glendale that they would pay for water from WaterFix  
27 through volumetric purchases and that they would spread that cost among their ratepayers depending  
28 on the amount of water purchased. Mr. Kightlinger also indicated that if the project had a big enough  
shortfall, then there probably would not be a project, but if the shortfall were small “then you see  
some people willing to sell off some of their water, and some people may be interested in buying it.  
Silicon Valley has said they’re interested in buying up some extra water; so is Coachella  
Valley....But they’re only going to chip in more if they get that water, if they get that benefit. The

1 project has always moved forward on that there will not be a subsidy for agriculture. If there has to  
2 be a subsidy, there won't be a project.” (RTD-282, time window 2:07:03 to 2:09:03.) Mr.  
3 Kightlinger's answers to the Glendale City Council do not address how guaranteed bond payments  
4 would be repaid on volumetric sales and suggest that, as of the date of this testimony, due to big  
5 enough shortfalls in funding, there is no project that can go forward.

6 81. The City of San Fernando is an MWD member agency. In a question and answer  
7 period, following her presentation to the San Fernando City Council on October 2, 2017, MWD  
8 Government Affairs Representative Jacquelyn McMillan told San Fernando Mayor Sylvia Ballin,  
9 “[t]he project could be a State Water Project or CVP contractors could return to the table, and the  
10 project could be one tunnel or two tunnels.” RTD's Environmental Justice Director, Esperanza  
11 Vielma, reported to me after attending and making a presentation at that same meeting that Mayor  
12 Ballin and other council members asked how much the project would cost the City of San Fernando.  
13 Ms. McMillan indicated that it would depend on how much water they purchased. Likewise, MWD  
14 Assistant General Manager Deven Upadhay told the City of Compton MWD Representative and  
15 City Councilmember, Janna Zurita, “[y]ou won't have to pay for any water you don't use.”  
16 According to notes taken by RTD's Ms. Vielma, who also presented alongside Mr. Upadhay at this  
17 October 3, 2017 Compton City Council meeting, Ms. Zurita had asked Mr. Upadhay: “Seeing that  
18 most of Compton's seven water providers do not purchase MWD water, does Compton still have to  
19 pay for the project?” Like his MWD colleagues, Mr. Upadhay indicated that project repayment costs  
20 would be based on water purchases only and did not address repayment of fixed bond costs.

21 82. Questions still remain unanswered as to whether MWD's estimate of 6.2 million  
22 customer connections used for calculating ratepayer monthly rate increases for WaterFix includes  
23 addresses within member agency service areas that do not receive imported water. There is currently  
24 no documentation as to how water from WaterFix will be sold and purchased between water  
25 contractors or between MWD member agencies. There is no place or clearinghouse for southern  
26 California water ratepayers to track how much imported water is blended into local water sold by  
27 MWD to its member agencies, or which water sources (and in what mixtures) are sold by MWD to  
28 retail municipal water districts by MWD member agencies. Urban management water plans do not

1 differentiate the source of water imports being sold to member agency wholesalers or retail agencies.  
2 Thus, consumers in MWD's service area cannot track how much, or if, they would be charged for  
3 WaterFix water deliveries.

4 83. While attending the September 26, 2017 MWD Special Board Workshop on  
5 WaterFix, I heard Mr. Kightlinger explain in response to Director Murray's questions about a single  
6 tunnel project that the project had been looked at as a 4,500 cubic feet per second (cfs), and 6,000 cfs  
7 tunnel for about \$10 billion. He said, "[t]here is something that looks at a two-thirds sized project for  
8 about two-thirds of the cost." He explained that it could serve all of SWP interests, "and there could  
9 be some extra water if there is interest for the CVP." (RTD-283, time window 4:43:00 to 4:45:40.)  
10 This description of a 6,000 cfs single tunnel was reiterated at the October 10, 2017 MWD Board  
11 Meeting before the final vote to move forward with WaterFix. While white papers had been  
12 circulated indicating size, construction plans, operations, and water deliveries for two tunnels with  
13 9,000 cfs capacity, discussions at the MWD meeting between staff and board members indicated that  
14 the project description and costs were quite open-ended (with \$4.3 billion serving as a maximum),  
15 leaving the project open to considerable interpretation. Presentations made by MWD staff to  
16 southern California municipalities indicated that retail utilities would only have to pay for water that  
17 they purchased from WaterFix without explanation of how WaterFix water would be accounted for  
18 separately from current SWP deliveries or tracked separately from Colorado River water imports.

19 84. What MWD member agencies understood as the "financing plan" for the project, as  
20 they voted to support California WaterFix, differs greatly from what Petitioner DWR put forth in its  
21 validation suit and strongly supports the State Auditor's conclusion that no true finance plan exists  
22 for the project. Moreover, as water allotments sold by MWD to member agencies are comprised of  
23 blended sources (local supplies, Colorado River supplies, and SWP supplies), it would be very  
24 difficult, and perhaps at times impossible, for MWD to differentiate which SWP allotments would  
25 contain or not contain water from the project. MWD member agencies are dependent on MWD  
26 representations of water quality and quantity that is delivered to them and would potentially have to  
27 accept water allotments that contain water from the project, making long-term financial budgeting  
28 challenging. At best, the business plan for WaterFix was represented to southern California water

1 decision-makers in an inaccurate manner with scant details by MWD management and staff.  
2 Consequently, project costs were not accurately represented to participating agencies or concerned  
3 southern California ratepayers.

4 85. This is not to say, however, that ratepayer participation in project decision-making  
5 was robust in Southern California. While hundreds of ratepayers turned out at MWD, Los Angeles  
6 City Council, and various water agency and city council meetings between May and October, and at  
7 dozens of community meetings to learn about WaterFix, engagement from the public was the result  
8 of organizing work led by Food and Water Watch of California, RTD, and Southern California  
9 Watershed Alliance. Open houses conducted by California WaterFix during the EIR/S comment  
10 period were poorly publicized and poorly attended. During the months leading up to the MWD  
11 October 10, 2017 vote, neither MWD member agencies nor MWD engaged in any broad public  
12 outreach to ascertain ratepayer support for the project. Like Petitioner DWR's failure to do adequate  
13 outreach to members of the environmental justice community throughout California as described in  
14 my Part 1B testimony regarding the public comment period for the EIR/S, MWD and its member  
15 agencies failed to do ground-level outreach to southern California's environmental justice  
16 communities, including any type of ratepayer survey to see if environmental justice households  
17 could handle a water rate increase, prior to the October 10, 2017 vote. In fact, the Southern  
18 California Water Committee's touted poll from 2017 indicates that only five percent of Southern  
19 Californians understood WaterFix in great detail and that two-thirds of those surveyed knew nothing  
20 of the project. The two-thirds support they claimed for the project among ratepayers was measured  
21 when the respondent was provided with positive information regarding the project and, incidentally,  
22 is the inverse of RTD's polling conducted in 2014 (two-thirds of the public knew nothing about the  
23 project; two-thirds disapproved when told about the cost and no increase in water supplies). (RTD-  
24 286.)

25 **WaterFix is not equitable for Central Basin Municipal Water District customers.**

26 86. During the meetings of 2017 at MWD, the City of Los Angeles, MWD's various  
27 member agencies, retail water districts, business interests, and construction union representatives  
28 turned up time and time again to insist that area water districts move forward with WaterFix because

1 businesses needed reliability in terms of water deliveries and water quality. A number of these  
2 business and union representatives served industries in the CBMWD service area. While it is agreed  
3 that water for businesses, job creation, and food processing, to give several examples, is water used  
4 for beneficial uses that serve the public interest, there still exists a problem with CBMWD’s vote as  
5 an MWD member agency to support WaterFix. As the SWRCB is aware, a number of cities in  
6 southeastern Los Angeles County, such as Maywood, Downey, Paramount, and Compton, suffer  
7 from polluted groundwater basins, including problems with chromium six, that are the result of  
8 industrial pollution. (RTD-287; RTD-288; RTD-289; RTD-290.) Regional plans for municipal and  
9 retail water districts to clean up groundwater contamination problems with federal and state  
10 assistance have not been fully implemented, and years of work to improve groundwater resources  
11 remain. The MWD member agency for a significant portion of this region, CBMWD, “purchases  
12 imported water from Metropolitan and sells directly to retail agencies comprised of cities, mutual  
13 water companies, publicly regulated utilities and water districts. Additionally, Central Basin  
14 provides replenishment water for the Water Replenishment District to augment groundwater supplies  
15 within its boundaries. The average retail agency in Central Basin's service area relies on groundwater  
16 production for 70 percent of its water supply, while some agencies rely exclusively on groundwater  
17 to meet water demands.” (RTD-280, p. 3-1, 3-2.) Projections by CBMWD show that purchases of  
18 imported water from MWD (a blend of Delta water and Colorado River water) will remain flat at  
19 71,700 acre feet per year through 2040, despite anticipated watershed contraction resulting from  
20 climate change in both the Sacramento and Colorado River watersheds. Moreover, because  
21 CBMWD is a “wholesale agency, CBMWD is not required to establish and meet baseline and targets  
22 for daily per capita water use,” but as a wholesale agency “is required to provide an assessment of its  
23 present and proposed future measures, programs, and policies that will help its retail water suppliers  
24 achieve their SBx7-7 water use reduction targets.” (RTD-280, p. 2-5.)

25 87. CBMWD’s Urban Water Management Plan is a black box for its domestic ratepayers  
26 and water users, in which the relationship to other agencies is understood, but water management  
27 planning decisions are not transparent, yet influence how retail water districts serve their customers  
28 and create a condition in regional water planning that is not equitable for consumers. Industry has

1 the means to purchase imported water from CBMWD; the percentage of total imported water  
2 delivered to a municipal retail agency and used by industrial and municipal water customers is not  
3 clearly indicated in CBMWD Urban Management Water Plan. (RTD-280, p. 3-17, Figure 3-2.) If  
4 municipal and industrial water users use more imported water, but costs for the project are spread  
5 among all water connections which may or may not be supplied by WaterFix deliveries within a  
6 municipal retail agency, domestic water users would very likely end up subsidizing a number of the  
7 very same businesses that contaminate their groundwater supplies. Which water connections get  
8 what amount of water, from which water source, and for what rate is impossible for ratepayers to  
9 track.

10 88. CBMWD's 1.7 million customers constitute a significant portion of MWD's 6.2  
11 million customers who will be paying for WaterFix. Critical questions remain unanswered as to: 1)  
12 whether CBMWD water purchases from MWD will be used for groundwater replenishment; 2) how  
13 municipal water utilities, like the City of Paramount, which will pay into WaterFix for the City's 20-  
14 30% reliance on exported water, will be able to afford simultaneously paying for WaterFix, while  
15 paying for research, testing, and programs to reverse chromium six contamination of its groundwater  
16 wells; and 3) how Paramount residents will afford to pay for WaterFix project deliveries, which will  
17 be higher than \$3 per household, because neighboring municipalities like the City of Downey will  
18 supposedly remain exempt from paying for WaterFix, as it relies on groundwater and recycled water  
19 sources. In other words, if municipal water districts do not use WaterFix deliveries and are, thus,  
20 exempt from paying into the project, neighboring agencies will pay higher costs for water deliveries.  
21 Retail agency funding for groundwater restoration projects, maintenance, and development would  
22 potentially be reduced, even though 70% of the water used within the CBMWD water service area is  
23 from local groundwater supplies.

24 89. As a sizable portion of southeast Los Angeles County's population qualifies as part  
25 of California's environmental justice community, and household incomes in a number of CBMWD's  
26 cities average between \$40,000 and \$50,000 per year, with 16 percent of the population in cities like  
27 Paramount living at or below the poverty level, CBMWD's participation in WaterFix fails to deal  
28

1 with issues of water equity in terms of pricing and water quality deliveries and, in fact, will  
2 exacerbate environmental justice concerns around water within its service areas.

3 **Petition Facilities are unreasonable as a method of diversion because Petitioners have failed to**  
4 **prove through actions to date and through a detailed finance plan that water beneficiaries will**  
5 **pay for the project, and, thus, ignore SWRCB's duty to uphold state laws regarding water**  
6 **project beneficiaries paying for project costs and the Delta Reform Act requirement that**  
7 **project participants pay for the project.**

8 90. Approval of the Change Petition is unreasonable as a method of diversion because  
9 the project's petitioners have failed to produce: 1) proof that beneficiaries will pay 100 percent of all  
10 design, permitting, construction, mitigation, operations, and debts service costs; 2) a comprehensive,  
11 peer-reviewed cost-benefit analysis; and 3) a comprehensive peer-reviewed finance plan that  
12 illustrates not only financial arrangements between the water contractors, but financial arrangements  
13 between water contractors and their member agencies. This lack of detailed financial planning and  
14 detailed documentation of cost-benefit ratios does not reveal whether the project would serve the  
15 public interest of Californians as required under the SWP, ratepayers who would pay for the project,  
16 and Delta residents who would be subject to the externalized negative costs of WaterFix through  
17 degraded water quality for domestic, municipal, industrial, and irrigation use. Moreover, the  
18 externalized negative impacts to fish and wildlife as described in Tim Stroshane's testimony have  
19 not been analyzed.

20 91. This is why RTD requests that the SWRCB reject the Petitioners' request for a  
21 permit for the change in the point of diversion. Should the SWRCB decide to grant the permit,  
22 however, RTD respectfully requests that petitioners' provide the Board with: 1) detailed  
23 documentation showing that all past planning costs and future construction, interest, mitigation, and  
24 operations costs comply with Water Code section 85089; 2) a detailed, peer-reviewed cost-benefit  
25 analysis that includes an analysis of the value of fresh water to the San Francisco Bay-Delta estuary  
26 and coastal fisheries; 3) a detailed peer-reviewed finance plan that documents bond repayment  
27 schedules between water contractors and between water contractors and their member agencies; 4) a  
28 detailed plan for project JPAs to provide transparent quarterly updates regarding project financials,  
work completed, and work scheduled; and 5) a customer service center through which Delta parties

1 impacted by construction and project operations, as well as project ratepayers, can interface with the  
2 JPA for accessible, transparent, current information updates, and dispute resolution.

3 Thank you for the opportunity to submit this testimony for the Hearing Officers' consideration.

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7 DATED: November 30, 2017

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BARBARA BARRIGAN-PARRILLA

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