

1 ELLEN L. WEHR (State Bar No. 252082)
GRASSLAND WATER DISTRICT
2 200 W. Willmott Avenue
Los Banos, CA 93635
3 Telephone: (209) 826-5188
E-mail: ewehr@gwdwater.org
4

5 Attorney for Protestant
GRASSLAND WATER DISTRICT
6

7 **CALIFORNIA STATE WATER RESOURCES CONTROL BOARD**
8

9 **IN RE CALIFORNIA WATERFIX,**
10 **CALIFORNIA DEPARTMENT OF**
11 **WATER RESOURCES AND U.S.**
12 **BUREAU OF RECLAMATION'S**
13 **PETITION FOR CHANGES IN**
14 **WATER RIGHTS, POINTS OF**
15 **DIVERSION/RE-DIVERSION**

16 **GRASSLAND WATER DISTRICT'S**
17 **BRIEF IN RESPONSE TO**
18 **PETITIONER CALIFORNIA**
19 **DEPARTMENT OF WATER**
20 **RESOURCES' RESPONSES TO**
21 **QUESTIONS FROM HEARING**
22 **OFFICERS**

23 Protestant Grassland Water District (GWD) submits this brief in response to Petitioner
24 California Department of Water Resources' (DWR) February 9, 2018 Responses to Questions
25 from the Hearing Officers. Petitioner U.S. Bureau of Reclamation (Reclamation) has not filed
26 responses to the questions posed by the hearing officers on February 8, 2018. This brief
27 addresses questions 1, 2, 4, and 6. GWD generally agrees with the policy statement filed by
28 Westlands Water District on February 7, 2018, which encourages DWR's effort to pursue a staged
project, "but not at the expense of Central Valley Project water supplies."

29 **Question 1:** *Does the certified final Environmental Impact Report (EIR) address all*
30 *potential impacts if the WaterFix Project is constructed and operated in stages? In the supplement*
31 *to the EIR, what additional analyses will be performed and what specific environmental issues*
32 *will be evaluated?*

33 No, the final EIR/EIS does not address all potential impacts if the WaterFix Project is
34 constructed and operated in stages. The water supply analysis in Chapter 5 of the EIR/EIS, and
35 the supporting hydrologic modeling, must be revised to analyze new information regarding the

1 parameters of Reclamation’s participation in the project, and to mitigate for potential adverse
2 impacts to Central Valley Project (CVP) water deliveries. For example, the WaterFix Project
3 includes material modifications to pumping restrictions for the existing south Delta intakes, yet
4 DWR’s proposal to construct and operate the project in stages will result in greater reliance on
5 those existing intakes for CVP water deliveries.

6 Petitioners must propose operational parameters or mitigation measures to ensure that both
7 stages of the project are implemented in a way that avoids negative impacts to all CVP contractors’
8 water supply reliability. As it relates to Reclamation’s delivery of CVP water from the Delta to
9 wildlife refuges, the effects on CVP refuge water supplies as a result of the staged project should
10 also be analyzed and mitigated in Chapter 12 (terrestrial biological resources) and Chapter 15
11 (recreation).

12 **Question 2:** *If DWR constructs and operates the WaterFix Project in stages, to what*
13 *extent would Reclamation participate during the first stage? Would the WaterFix Project be*
14 *operated differently if Reclamation does not participate?*

15 Petitioners have consistently relied on a dual-conveyance operational model which
16 assumes that approximately half of all water delivered to south-of-Delta contractors from the CVP
17 and the State Water Project (SWP) will be conveyed through the WaterFix Project facilities.
18 (Exhibit SWRCB-102, Chapter 5, p. 218, Table 5-7, *compare* “Exports at North Delta Diversion
19 Intakes” *with* “Exports at South Delta Intakes”.) In contrast, although Petitioners have not
20 provided detailed responses to Question 2, the preliminary modeling made available by DWR on
21 February 7, 2018 assumes that less than 17% of the WaterFix Project capacity would be dedicated
22 to CVP water deliveries during the first stage. This new modeling, which assigns to the CVP 1,000
23 out of a total of 6,000 cubic feet per second (cfs) of WaterFix capacity, presumably represents the
24 proposed extent of Reclamation’s participation during the first stage.

25 Moreover, it is not only the volume of Reclamation’s participation in the WaterFix Project,
26 but the character of that participation, that implicates Delta operations and south-of-Delta water
27 deliveries. Reclamation proposes to provide only “participating” contractors with a right to convey
28 their CVP contract allocations (and perhaps more) through the WaterFix Project facilities. (Exhibit

1 GWD-21, pp. 1-2.) “Accounting and mitigation of water supply impacts attributable to
2 [WaterFix]-specific regulations that have the potential to decrease the CVP Allocation for non-
3 participating contractors,” as well as “operational assumptions, sharing of regulatory
4 requirements, storage in San Luis Reservoir, [and] accounting for changes to required carriage
5 water” in the Delta, would all be addressed in the future. (Id., p. 5.) The need for such measures
6 regarding Reclamation’s participation in the WaterFix Project cannot be postponed until after the
7 water rights for the CVP and SWP are changed through this proceeding.

8 **Question 4:** *If the WaterFix Project is constructed and operated in stages, are there*
9 *potential impacts to legal users of water, fish and wildlife, the public interest, or consideration of*
10 *appropriate Delta flow criteria that would warrant revisiting any Part 1 or Part 2 key hearing*
11 *issues? Which issues?*

12 From the perspective of legal users of water, the staged construction and operation of the
13 WaterFix Project could change the project’s effects on Petitioners’ contractors who receive CVP
14 and SWP water from the Delta. Accordingly, the hearing officers may wish to revisit the following
15 key hearing issue for Part 1, as described on page 5 of the Ruling Letter dated September 29,
16 2017: “To what extent are parties who have entered into contracts with petitioners protected under
17 the terms of their contracts from any changes to stream flows or reservoir storage levels that may
18 occur as a result of the proposed changes? What conditions, if any, should be included in any
19 approval of the change petition to protect legal users from injury due to changes in stream flows
20 or reservoir storage levels?”

21 From the perspective of fish and wildlife, recreational users of water, or other public trust
22 resources, the key hearing issues identified on pages 12-13 of the hearing officers’ August 31,
23 2018 Ruling Letter remain adequate, but those issues will need to be reviewed in light of new
24 information about project construction and operations.

25 **Question 6:** *Would any conditions necessary to adequately protect the rights of legal*
26 *users, fish and wildlife, or the public interest be different if the WaterFix Project were constructed*
27 *in stages? Would appropriate Delta flow criteria be different? Why or why not?*

28 Yes, the conditions necessary to adequately protect the rights of legal users of water, fish

1 and wildlife, and the public interest will be different if the WaterFix Project is constructed in
2 stages. For example, the water supply reductions attributable to the project's proposed restrictions
3 on south Delta pumping and increased Delta outflow should be assigned to the project
4 beneficiaries in proportion to their benefit, rather than assigned broadly to both Petitioners. As
5 another example, wildlife-protective conditions for refuge water supply deliveries would need to
6 take into account the fact that Reclamation will not necessarily participate in the WaterFix
7 Project as originally proposed, to meet the requirements of senior water-right holders and wildlife
8 refuges before CVP water deliveries are made to others.

9
10 Respectfully submitted on February 13, 2018, by:

11 

12 _____
13 ELLEN L. WEHR
14 Attorney for Protestant
15 GRASSLAND WATER DISTRICT
16
17
18
19
20
21
22
23
24
25
26
27
28