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

HEARING IN THE MATTER OF CALIFORNIA)	OPENING STATEMENT
DEPARTMENT OF WATER RESOURCES AND)	OF FRIANT WATER
UNITED STATES BUREAU OF RECLAMATION)	AUTHORITY AND ITS
REQUEST FOR A CHANGE IN POINT OF)	PARTICIPATING
DIVERSION FOR CALIFORNIA WATERFIX)	MEMBERS

Summary

The Petitioners cannot demonstrate a reasonable likelihood that the change they seek will not injure Friant Water Authority’s members, who are legal users of water. Despite a modeling assumption showing that the Exchange Contractors would receive the full amount of substitute water from the Delta to which they are entitled under the Exchange Contract in all water years, Reclamation’s witness confirmed that this assumption depends on the drawdown of reservoirs in the Sacramento River system to unacceptable levels, a result unlikely to be allowed to happen in reality. The Petition also would impose new restrictions on the Old and Middle River area, which a Department of Water Resources witness testified would mean less pumping from that area. Pumping by the C.W. “Bill” Jones Pumping Plant, which diverts water from the Old River into the Delta-Mendota Canal, would be impacted adversely by these new restrictions. The restrictions would impede Reclamation’s ability to supply substitute water to the Exchange Contractors from the Delta. These factors, substantiated by the Petitioners’ own witnesses, demonstrate injury to Friant Water Authority’s members.

A. The Interest of Friant Water Authority and Its Participating Members

1. Friant Water Authority

Friant Water Authority (“Authority”) is a joint powers authority duly organized, existing and acting pursuant to the laws of the State of California. It is a public entity separate from the parties to the Joint Powers Agreement (FWA-1). (CAL. GOV. CODE § 6507 (West, WestlawNext current with urgency legislation through Chapter 219 of

2015-2016 2nd Ex. Sess., and all propositions on the 6/7/2016 ballot)).¹ The Authority's members entered into the Joint Powers Agreement in part "to provide for the joint exercise, through the Authority, of powers common to each of the parties to acquire, protect, preserve and enhance water supplies and water rights, . . . preserve and protect the rights and benefits of the parties in the Central Valley Project, and such other purposes as are incidental, necessary and convenient to the mutual benefit and interest of such purposes and of the members, including, but not limited to, acceptance of an assignment of the Contract^[2] as set forth herein." (FWA-1 at Art. II, § 2.03 at 3-4). The Joint Powers Agreement gave the Authority "the power to take any action to carry out the purposes of this Agreement." (*Id.*, §2.04 at 4). "The Authority is authorized, in its own name, to do all acts necessary for the exercise of said powers, including, but not limited to, any and all of the following: . . . to sue and be sued in its own name" (*Id.*; see also CAL. GOV. CODE § 6508 (West)).

The Authority succeeded to the rights and responsibilities of the Friant Water Users Authority related to operation and maintenance of the Friant-Kern Canal and associated works. (FWA-2, FWA-3, FWA-4). The Secretary of the Interior ("Secretary") acknowledged in the amendment to that agreement³ "that material changes in Project operations affecting the quantity of water to be delivered or in Project finances may affect the ability of the Authority to carry out its obligations under this Agreement. Under such circumstances, the parties will meet and confer as to emergency measures available to reduce the economic hardship to the Authority, the Water Delivery Contractors, and/or Parties Entitled to Utilize or Receive Other Water." (Amended Art. 11(i) found in § 1 of FWA-3 at 9).

The Authority also succeeded to the rights and responsibilities of the Friant Water Users Authority related to facilities operated and maintained by the San Luis & Delta-Mendota Water Authority. (FWA-5, FWA-6, FWA-7). Article IV.A, FWA-5 at 5, requires the Friant Water Authority to allocate to Friant Division contractors, and collect, the operation, maintenance and replacement costs allocated to the "Settlement Contractors" identified on Exhibit A to FWA-5, and pay those funds to the San Luis & Delta-Mendota Water Authority. (See also FWA-5, Recitals 4 (at 3) and 5 (at 3), and FWA-5, Exhibit B, §§ I (at 14), VIII.B (at 30) and VIII.H (at 31); amended Article 11(f) found in FWA-3, § 1 at 7-8). Among the Settlement Contractors are the "Exchange Contractors" discussed *infra* at 8, 13-14. Additional contractors listed on Exhibit A to FWA-5 are shown to have a combined entitlement to 43,277 acre feet per year ("South

¹ The parenthetical information for all California statutes cited in this document by reference to "West" is the same and will not be repeated.

² The Joint Powers Agreement defines the term "Contract" as "the contract between the United States Bureau of Reclamation and the Friant Water Users Authority, which provides for operation and maintenance of the Friant-Kern Canal system." (FWA-1, Art. I(f) at 2. See also FWA-2, FWA-3 and FWA-4).

³ Agreement to Transfer the Operation, Maintenance and Replacement and Certain Financial and Administrative Activities Related to the Friant-Kern Canal and Associated Works, Contract No. 8-07-20-X0356 (effective March 1, 1998) (FWA-2).

of Delta Settlement Contractors”).⁴ Thus, the total amount of water needed for the United States to meet its obligations to the Exchange Contractors and the South of Delta Settlement Contractors is approximately 883,000 acre feet per year, except in Shasta critical years, plus the losses associated with deliveries to meet these obligations. (See *infra* at 13-14).

2. Members of Friant Water Authority Are Legal Users of Water.

The Friant Water Authority members participating in this proceeding have contracts with the United States Department of the Interior, Bureau of Reclamation. (FWA-8 through FWA-33) Collectively they are entitled to 394,350 acre feet of Class 1 Water⁵ and 594,875 acre feet of Class 2 Water,⁶ subject to the terms of those contracts. This San Joaquin River water is released from Friant Dam into the Friant-Kern Canal.

⁴ See Loundy Contract (FWA-35), partially assigned to Department of Fish and Game, Wildlife Conservation Board by Partial Assignment of Contract and Consent Thereto (FWA-37) (1,321 acre feet of schedule 2 water for use on land acquired from the Traction Trust), and partially assigned to the Coelho Trust by Assignment of Contract, Consent Thereto and Assumption Thereof (FWA-36) (1,332 acre feet of schedule 2 water); Fresno Slough Water District Contract (FWA-38) (866 acre feet of schedule 2 water); James Irrigation District Contract (FWA-39) (9,700 acre feet of schedule 2 water); Dudley et al. Contract (FWA-40) (2,280 acre feet of schedule 2 water); Hughes Contract (FWA-41) (93 acre feet of schedule 2 water), assigned to the Tranquility Public Utility District by Assumption of Contract and Consent Thereto (FWA-42); Patterson Water District Contract (FWA-43) (6,000 acre feet of “replacement water”); Reclamation District No. 1606 Contract (FWA-44) (342 acre feet of schedule 2 water); Tranquility Irrigation District Contract (FWA-45) (20,200 acre feet of schedule 2 water); Mendota Waterfowl Management Area Contract (FWA-46) (1,143 acre feet of schedule 2 water). Schedule 2 water means all water delivered without charge under Section 14 of the Reclamation Project Act of 1939 (53 Stat. 1187, 1197) as a settlement of the contractor’s claims of rights to water in Fresno Slough, a tributary to the San Joaquin River. See Loundy Contract Art. 1(c) at 4; Fresno Slough Water District Contract Art. 1(c) at 4; James Irrigation District Contract Art. 1(c) at 4; Dudley et al. Contract Art. 1(c) at 3; Hughes Contract Art. 1(c) at 3; Reclamation District No. 1606 Contract Art. 1(c) at 4; Tranquility Irrigation District Contract Art. 1(c) at 4; Mendota Waterfowl Management Area Contract Art. 1(c) at 3-4.

⁵ Article 1(d) of the participating Friant members’ contracts defines “Class 1 Water” to “mean that supply of water stored in or flowing through Millerton Lake which, subject to the contingencies hereinafter described in Articles 3, 12, and 13 of this Contract will be available for delivery from Millerton Lake and the Friant-Kern and Madera Canals as a dependable water supply during each Year” See, e.g., Arvin-Edison Contract (FWA-8) at 7; City of Fresno Contract (FWA-10) at 7.

⁶ Article 1(e) of the participating Friant members’ contracts defines “Class 2 Water” to “mean that supply of water which can be made available subject to the contingencies hereinafter described in Articles 3, 12, and 13 of this Contract for delivery from Millerton Lake and the Friant-Kern and Madera Canals in addition to the supply of Class 1 Water. Because of its uncertainty as to availability and time of occurrence, such water will be

The water rights for the Friant Division hold priorities of March 27, 1915⁷; January 19, 1916⁸; September 26, 1919⁹; and July 30, 1927.¹⁰ The Bureau, as the Secretary's duly authorized representative, pledged to "make reasonable efforts to protect the water rights and other rights described in the fifth (5th) Explanatory Recital of this [Friant member's] Contract and to provide the water available under this Contract." (Art. 3(j) of the Friant members' contracts).¹¹ The Bureau also committed to "make all reasonable efforts to maintain sufficient flows and levels of water in the Friant-Kern Canal to deliver Project Water to the Contractor at specific turnouts established pursuant to subdivision (a) of this Article" (*Id.* Art. 5(b)).¹² The Bureau must "make all reasonable efforts to optimize delivery of the Contract Total subject to: (i) the authorized purposes and priorities of the Project; (ii) the requirements of Federal law and the Settlement¹³; and (iii) the obligations of the United States under existing contracts, or renewals thereof, providing for water deliveries from the Project." (*Id.* Art. 12(a)).¹⁴ The Bureau must "use all reasonable means to guard against a Condition of Shortage in the quantity of water to be made available to the Contractor pursuant to this [Friant member's] Contract." (*Id.* Art. 13(a)).¹⁵

The water rights Reclamation holds for the beneficial use of the Friant Water Authority's members are senior in priority to those of some other contractors. (See, e.g., *Westlands Water Dist. v. Patterson* (E.D. Cal. 1994) 864 F. Supp. 1536, 1547-48 (*Westlands III*)). Furthermore, most appropriative water rights of the Central Valley Project are senior to the rights of the State Water Project. (*Westlands Water Dist. v. United States* (E.D. Cal. 2001) 153 F. Supp. 2d 1133, 1144 (*Westlands VI*), *aff'd*, (9th

undependable in character and will be furnished only if, as, and when it can be made available as determined by the Contracting Officer" See, e.g., Arvin-Edison Contract (FWA-8) at 7; City of Fresno Contract (FWA-10) at 7.

⁷ State Water Resources Control Board License 1986 (FWA-66) ("License 1986").

⁸ State Water Resources Control Board Permit 11885 (FWA-67).("Permit 11885").

⁹ State Water Resources Control Board Permit 11886 (FWA-68).("Permit 11886").

¹⁰ State Water Resources Control Board Permit 11887 (FWA-69).("Permit 11887").

¹¹ See, e.g., Arvin-Edison Contract (FWA-8) at 18; City of Fresno Contract (FWA-10) at 17-18; Kaweah Contract (FWA-16) at 18 (in this contract the reference is to the "fourth (4th) Explanatory Recital").

¹² See, e.g., Arvin-Edison Contract (FWA-8) at 25; City of Fresno Contract (FWA-10) at 23-24.

¹³ Article 1(gg) of the Friant members' contracts defines "Settlement" as "the Stipulation of Settlement dated September 13, 2006, the Order Approving Stipulation of Settlement, and the Judgment and further orders issued by the Court pursuant to the terms and conditions of the Settlement in Natural Resources Defense Council, et al. v. Rodgers, et al., No. CIV-S-88-1658 LLJ/GGH." See, e.g., Arvin-Edison Contract (FWA-8) at 12; City of Fresno Contract (FWA-10) at 11.

¹⁴ See, e.g., Arvin-Edison Contract (FWA-8) at 45; City of Fresno Contract (FWA-10) at 42.

¹⁵ See, e.g., Arvin-Edison Contract (FWA-8) at 46; City of Fresno Contract (FWA-10) at 43.

Cir. 2003) 337 F.3d 1092 (*Westlands VII*)); *United States v. State Water Resources Control Bd.* (1986) 182 Cal. App. 3d 82, 131 n.25 [227 Cal. Rptr. 161, 188 n.25]). Reclamation must respect California's appropriative water rights hierarchy. (See *Westlands VI*, 153 F. Supp. 2d at 1171).¹⁶

3. Friant Division Infrastructure

Friant Dam diverts the water of the San Joaquin River upstream of the location where the Exchange Contractors historically diverted and used water under their reserved water rights. The United States stores that water in Millerton Lake. With few exceptions, the San Joaquin River water is then distributed for use either to the north via the Madera Canal or to the south via the Friant-Kern Canal. (*Westlands VI*, 153 F. Supp. 2d at 1147; see FWA-60). The San Joaquin River water impounded by Friant Dam is fully dedicated to beneficial use by the Friant Division contractors. (*Westlands VI*, 153 F. Supp. 2d at 1167).

B. Reclamation's Performance Under the Exchange Contract Directly Impacts Water Deliveries to Friant's Participating Members.

1. The Exchange Contract

The United States acquired certain water rights to the San Joaquin River outright in 1939.¹⁷ The "Vendors" in that transaction reserved rights for up to specific rates of the natural flow of the San Joaquin River, varying by month.¹⁸ The Vendors and the United States also entered into a Contract for Exchange of Waters, which later was superseded by the Second Amended Contract for Exchange of Waters.¹⁹ As a result of

¹⁶ Federal courts, like state courts, have concurrent jurisdiction to adjudicate issues related to California water rights. (Cf. *Casitas Municipal Water Dist. v. United States* (Fed. Cl. 2011) 102 Fed. Cl. 443, 456, *aff'd on other grounds*, (Fed. Cir. 2013) 708 F.3d 1340 ("*Lucas* makes clear that the consideration of such background principles of state law is an antecedent inquiry in a takings analysis, one this court is charged with conducting. . . . The California Supreme Court has in fact explicitly recognized that federal courts have the authority and responsibility to apply the public trust doctrine. . . . It is therefore no answer for plaintiff to say that neither the SWRCB nor the California courts have found its water use unreasonable or in violation of the public trust; that is precisely the inquiry now confronting this court." (citations omitted))). The federal court determinations of the priority of these rights cited in the text are entitled to precedential effect.

¹⁷ Contract for Purchase of Miller & Lux Water Rights (July 27, 1939) (FWA-34).

¹⁸ *Id.* Art. IX at 4; see also *Wolfsen v. United States* (Ct. Cl.) 162 F. Supp. 403, 433-34, *cert. denied*, (1958) 358 U.S. 907 [79 S.Ct. 233].

¹⁹ Second Amended Contract for Exchange of Waters, Contract Ilr-1144, Second Amendatory (Sept. 15, 1967; rev. Dec. 6, 1967; executed Feb. 14, 1968) (DOI-10) ("Exchange Contract") Art. I at 4. The "Exchange Contractors" are parties to the Exchange Contract, or their successors in interest.

these agreements, the Exchange Contractors hold certain riparian and pre-1914 appropriative rights to the San Joaquin River. (*Id.* at 1146). The Exchange Contractors' cooperation enabled construction of Friant Dam, which impounds Millerton Lake and enables diversion of the San Joaquin River's runoff into the Friant-Kern Canal. (*Id.* at 1146-47 & n.17, 1168). The Exchange Contractors agreed, in Article 4.a of the Exchange Contract,²⁰ that the United States could store, divert or dispose of water of the San Joaquin River upstream of their diversions, "so long as, and only so long as, the United States does deliver to the Contracting Entities by means of the [Central Valley] Project or otherwise substitute water in conformity with this contract." This expressly reserved some of the Exchange Contractors' riparian and pre-1914 appropriative rights to the San Joaquin River. (*Westlands VI*, 153 F. Supp. 2d at 1152).

Article 8 of the Exchange Contract states that the United States is to deliver to the Exchange Contractors an amount not to exceed 840,000 acre feet of substitute water in all calendar years other than those defined as critical, and an amount not to exceed 650,000 acre feet in critical calendar years. Reclamation in the past assumed a 10% loss in deliveries to the Exchange Contractors. See Bureau of Reclamation, San Luis Unit, West San Joaquin Division, Central Valley Project (Ultimate Plan), Appendix, Import Water Supply (May 1954) (FWA-56) at 00308, 00311-12.

The Exchange Contract states that "most if not all of the substitute water" provided to the Exchange Contractors would be delivered via the Delta-Mendota Canal. (Article 5.a at 6).²¹ This term "provides notice that the Bureau contractually selected the Sacramento River, Delta, and Delta-Mendota Canal as the primary source of substitute water." (*Westlands VI*, 153 F. Supp. 2d at 1154; see also *id.* at 1166). Substitution of water from those sources in place of San Joaquin River water "was a part of the whole plan proposed by the Secretary of Interior and approved by the President and authorized by Congress." (*Wolfsen v. United States*, 162 F. Supp. at 406). "[T]he President has approved and the Congress has confirmed the commitment by the United States to the obligation to replace the waters of the San Joaquin River with waters from the Sacramento River The United States cannot withdraw from that commitment with impunity" (*Id.*, 162 F. Supp. at 408). The obligation to provide the Exchange Contractors substitute water was an express congressional mandate. (*Westlands VI*, 153 F. Supp. 2d at 1167; see also *id.* at 1177).

The Exchange Contractors hold certain "vested, senior, contractual water rights" to substitute water, which have been satisfied with water delivered from the Sacramento River (and its tributaries) and Delta. (See *Westlands VI*, 153 F. Supp. 2d at 1158; see also *id.* at 1163, 1165-66). "[I]t is a vested first-in-time contractual *priority* right that

²⁰ See *supra* at n.19.

²¹ The C.W. "Bill" Jones Pumping Plant (formerly known as the Tracy Pumping Plant, see Testimony of William Luce (FWA-79) at 3) supplies water to the Delta-Mendota Canal. That plant is located on an intake canal connected to the Old River. (See *In re Applications 5625, 5626, 9363, 9364, 9365, 9366, 9367, 9368 & 10588* (Cal. St. Water Rights Bd. Feb. 9, 1961) Decision D 990 ("Decision D 990") (FWA-76) at 16).

reserves, for the purpose of establishing relative rights under California water law, the Exchange Contractor's superior status . . . as of the date of the original Exchange Contract, July 27, 1939" (*Id.* at 1175 (footnote omitted)). Later-in-time contracts for Central Valley Project service are subordinate. (*Id.* at 1176). Whatever impact the anticipated expanding water rights and contractual use might have on Central Valley Project contractors generally, they are not senior to the Exchange Contractors' right to substitute water from the Sacramento River (and its tributaries) and the Delta.

If the United States were unable to deliver substitute water to the Exchange Contractors temporarily, Article 4.b of the Exchange Contract provides the Exchange Contractors with a right to San Joaquin River water as defined by their reserved rights. (*Id.* at 1152). Article 4.c declares that if the United States is unable to deliver substitute water to the Exchange Contractors permanently, the United States will release water from Friant Dam as limited by the Exchange Contractors' reserved water rights.

The United States is bound by agreement with the Friant Division contractors not to determine itself voluntarily and knowingly incapable of delivering substitute water from the Sacramento River and its tributaries or from the Delta, to which the Exchange Contractors are entitled under the Exchange Contract. (See *infra* at 7-8).

The water rights for the Friant Division, last modified in October 2013, do not alter the rights and obligations under the Exchange Contract.²²

2. Amendment of Friant Division Contracts to Preserve Reclamation's Delivery of Substitute Water to the Exchange Contractors Via the Delta-Mendota Canal

By 1959, Reclamation had constructed the Friant Division and the Delta-Mendota Canal, and those facilities were fully operational. As such, the exchange was being performed regularly. At that point Reclamation proposed to add the San Luis Unit to the Central Valley Project, and filed a petition to consolidate and enlarge the place of use of the CVP. These actions by the United States raised concern among Friant Division contractors about the United States' ability to continue to supply the required amount of substitute water to the Exchange Contractors from the Sacramento River (and its tributaries) and Sacramento-San Joaquin Delta. In response to those concerns, the Friant Division contracts with the United States were amended by incorporating Article 3(n) of the Friant contracts.²³ (*Westlands VI*, 153 F. Supp. 2d at 1156-57; *Westlands III*, 864 F. Supp. at 1546-47). Article 3(n) states:

²² License 1986 ¶ 41 [sic] at 12 (FWA-66); Permit 11885 ¶ 41 at 13 (FWA-67); Permit 11886 ¶ 41 at 13 (FWA-68); Permit 11887 ¶ 41 at 13 (FWA-69).

²³ See Arvin-Edison Contract (FWA-8) at 21; City of Fresno Contract (FWA-10) at 20; Lewis Creek Contract (FWA-13) at 21; Kaweah Contract (FWA-16) at 21; Lindmore Contract (FWA-19) at 21; Lindsay-Strathmore Contract (FWA-21) at 21; Orange Cove Irrigation Contract (DOI-18) at 21; Porterville Contract (FWA-24) at 21; Saucelito Contract (FWA-26) at 21; Southern San Joaquin Municipal Utility District Contract

The rights of the Contractor under this Contract are subject to the terms of the contract for exchange waters, dated July 27, 1939, between the United States and the San Joaquin and Kings River Canal and Irrigation Company, Incorporated, et al., (hereinafter referred to as the Exchange Contractors), Contract No. I1r-1144, as amended. *The United States agrees that it will not deliver to the Exchange Contractors thereunder waters of the San Joaquin River unless and until required by the terms of said contract, and the United States further agrees that it will not voluntarily and knowingly determine itself unable to deliver to the Exchange Contractors entitled thereto from water that is available or that may become available to it from the Sacramento River and its tributaries or the Sacramento-San Joaquin Delta those quantities required to satisfy the obligations of the United States under said Exchange Contract and under Schedule 2 of the Contract for Purchase of Miller and Lux Water Rights (Contract I1r-1145, dated July 27, 1939).*

(emphasis added).

Subsequently, during the hearing leading to this Board's adoption of D-990, the United States submitted evidence describing the "[w]ater requirements" of the Central Valley Project and the "availability of water" for the CVP based upon the CVP meeting seven principal requirements including, inter alia, the following:

(5) [R]equirements to be served through the Delta-Mendota Canal including the Amended Exchange Contract, estimate of requirements for rights described in Schedule 2 of the Purchase Contract, canal and operating losses, present contractual obligations and contemplated future deliveries limited to 4600 cfs, the capacity of the canal

(Decision D 990, FWA-76 at 35).

The Board admitted the entire record of the D 990 hearing into evidence in the hearing leading to D 1020. (*In re Application 15764* (Cal. St. Water Rights Bd. June 30, 1961) Decision D 1020 (FWA-77) at 7). In issuing D 1020, the Board also adopted those portions of the D 990 decision addressing issues common to the applications resolved by D 990 and Application 15764. (*Id.* at 11). Thus, in prior proceedings before the Board relative to the very permits the Petition now seeks to change, the United States expressly acknowledged that its obligations to deliver substitute water to the Exchange Contractors and other south of Delta contractors are senior to any obligation it has to the "certain [CVP contractor] members of the San Luis Delta Mendota Water Authority" that are the intended beneficiaries of the Cal WaterFix project, as those parties are identified in the Bay Delta Conservation Plan/California WaterFix Partially

(FWA-28) at 21; Terra Bella Contract (FWA-30) at 21; Tulare Irrigation Contract (FWA-32) at 20-21.

Recirculated Draft Environmental Impact Report/Supplemental Draft Environmental Impact Statement (“RDEIR/SDEIS”) (SWRCB-3) at 1-9.

If and to the extent that the Exchange Contractors receive San Joaquin River water under their reserved rights, as permitted by the Exchange Contract, that water is unavailable for contractors served by the Friant-Kern and Madera Canals, including Friant Water Authority’s participating members. The Exchange Contractors’ receipt of San Joaquin River water significantly interferes with operation of the Central Valley Project and causes hardship to contractors and to the public who rely on municipal and power generation uses from the Friant Division. (*Westlands VI*, 153 F. Supp. 2d at 1178; *Westlands III*, 864 F. Supp. at 1549, 1550-51).

The Bureau released water from Friant Dam in 2014 and 2015 for use by the Exchange Contractors.²⁴ These releases depleted the San Joaquin River supply on which the Friant Water Authority’s members rely, yielding the very hardship the *Westlands III* and *Westlands VI* decisions foresaw.

C. Burden on the Petitioners to Prove No Injury to Other Legal Users of Water

The Petitioners must 1) provide all information reasonably available to them, or that can be obtained from the California Department of Fish and Wildlife, concerning the extent, if any, to which fish and wildlife would be affected by the change, and a statement of any measures proposed to be taken to protect fish and wildlife in connection with the change, and 2) include sufficient information to demonstrate a reasonable likelihood that the proposed change will not injure any other legal user of water. (CAL. WATER CODE §§ 1701.2(c) & (d) (West)). The Petitioners must establish to the Board’s satisfaction, and the Board must find, that the change will not operate to the injury of any legal user of the water involved. (CAL. WATER CODE § 1702 (West)).

The effect of the proposed change on the rights of others is the controlling consideration in the “no injury” inquiry. (*State Water Resources Control Bd. Cases*, 136 Cal. App. 4th 674, 740 [39 Cal. Rptr. 3d 189, 242], *cert. denied*, (2006) 549 U.S. 889 [127 S.Ct. 318]). Determining that effect requires resolution of two questions: 1) Does the objecting party have a right to the water involved? 2) Will the proposed change have an injurious effect on that right, whatever the source of that right may be? (See *id.*, 136 Cal. App. 4th at 740, 805 [39 Cal. Rptr. at 242, 293]; see also *In re Petition for Reconsideration by Truckee-Carson Irrigation District, City of Fallon, & Churchill County Regarding Water Right Decision 1651* (Cal. St. Wat. Res. Control Bd. Feb. 5, 2013), Order WR 2013-0009 (FWA-84) at 7-8). The term “legal user of water” employed in Cal. Water Code § 1702 is not limited to the holder of an appropriative water right, but encompasses any person who legally uses the water involved, including one who uses the water pursuant to a contract with the appropriative right holder. (*State Water Resources Control Bd. Cases*, 136 Cal. App. 4th at 804 [39 Cal. Rptr. 3d at 293]; *In re Applications 31487 & 31488 Filed by U.S. Bureau of Reclamation, & Petitions to*

²⁴ Testimony of William Luce (FWA-79) at 6.

Change License 3723 (Application 5169) of Washoe County Water Conservation District, License 4196 (Application 9247) of Truckee Meadows Water Authority, & Permit 11605 (Application 15673) & License 10180 (Application 18006) of U.S. Bureau of Reclamation Truckee River Watershed, (Cal. St. Wat. Res. Control Bd. Oct. 16, 2012) Decision 1651 (FWA-78) at 22).

The RDEIR/SDEIS declared that the “Friant Kern Division” [sic] of the Central Valley Project is unaffected by the BDCP alternatives. (RDEIR/SDEIS (SWRCB-3) at 5-41; see also *id.* at 1-9 (“The purposes of the proposed actions are to achieve the following. . . . 4. Restore and protect the ability of the SWP and CVP to deliver up to full contract amounts . . . [under] water delivery contracts held by SWP contractors and certain members of the San Luis Delta Mendota Water Authority, and other existing applicable agreements.”)). While it is true that Friant members do not receive water directly from the Sacramento River or the Delta, the Exchange Contractors are entitled to substitute water from those sources under the Exchange Contract. (See *supra* at 5-8). Anything that diminishes the delivery of substitute water to the Exchange Contractors from the Sacramento River (and its tributaries) or the Delta injures the Friant members as legal users of water, because if the United States fails to deliver the substitute water to which the Exchange Contractors are entitled, then under the Exchange Contract they may receive delivery of San Joaquin River water to the extent of their reserved water rights. (See *Westlands Water Dist. v. Patterson* (E.D. Cal. 1995) 900 F. Supp. 1304, 1317 n.13 (*Westlands IV*), *rev’d on other grounds*, (9th Cir. 1996) 100 F.3d 94 (*Westlands V*)).

The Petition does not demonstrate a reasonable likelihood that the proposed change will not injure any other legal user of water, as explained below, and therefore must be denied.

D. Injury to Friant Members’ Right to Water

1. The Petitioners Erroneously Insist on Analyzing Potential Injury to Other Legal Users of Water in the Absence of Operating Criteria.

The Petitioners are unable to demonstrate a reasonable likelihood that the proposed change will not injure any other legal user of water, because as noted *infra* at 11, they disclosed no operations plan to be evaluated. Indeed, there is no operations plan to disclose. Rather, “Alternative 4A starting operations will be determined through the continued coordination process as outlined in the Section 7 consultation process and 2081(b) permit prior to the start of construction. An adaptive management and monitoring program, as described below, will be implemented to develop additional science during the course of project construction and operation to inform and improve conveyance facility operational limits and criteria.” (RDEIR/SDEIS (SWRCB-3) at 4.1-5). According to Jennifer Pierre, the initial operating criteria will be set forth in the

CWF BiOp, which has not been issued. Therefore the Petitioners still do not know what initial operational criteria they will ask the Board to approve.²⁵

For purposes of Part 1 of this hearing, the Petitioners proposed their “boundary analysis” in an effort to overcome the lack of operating criteria susceptible to meaningful evaluation. Jennifer Pierre was unaware of the boundary analysis having been used before.²⁶ She stated that the Petitioners are proposing only the initial operating criteria, which will fall in the range between scenarios 4A-H3 and 4A-H4.²⁷ Boundary 1 and Boundary 2 are not being proposed as initial operating criteria.²⁸

Pierre testified that the boundary analysis “will provide a broad range of operational criteria and the initial operating criteria will fall within this range. These boundaries are sufficiently broad so as to assure the State Water Board that any operations considered within this change petition proceeding have been evaluated with regard to effects on legal users of water.”²⁹ “The boundaries . . . analyze possible adjustments that may be made to initial CWF operational criteria through the adaptive management framework.”³⁰ Adaptive management, however, “has the potential to produce something outside Boundaries 1 and 2”³¹ The Petitioners’ witnesses disagreed over whether the Petitioners would ask the Board to condition approval of the Petition on operating criteria falling within the range from Boundary 1 to Boundary 2.³² The fallacy in the amorphous boundaries approach lies in the fact that without operating criteria it is impossible to evaluate the project’s effects on legal users of water. The Petitioners therefore cannot demonstrate a reasonable likelihood that the proposed change will not injure those legal users of water. Pierre’s assurance that the boundaries approach is appropriate in evaluating injury to legal users of water carries no weight, as she conceded that she lacks expertise in evaluating water rights.³³

“Boundary 1” “represents an operational scenario with most of the existing regulatory constraints, Alternative 4A criteria presented in the RDEIR/SDEIS . . . , but does not include additional spring Delta outflow, additional OMR flows, existing I/E ratio, and the existing Fall X2 flow requirement imposed in the existing BiOp for Delta

²⁵ Testimony of Jennifer Pierre (DWR-51) (“Pierre Testimony”) at 10.

²⁶ Testimony of Jennifer Pierre, California WaterFix Water Right Change Petition Hearing (July 29, 2016), Vol. 4 at 84 (“Pierre Oral Testimony”).

²⁷ Pierre Oral Testimony at 130, 132-33; see also Testimony of John Leahigh, California WaterFix Water Right Change Petition Hearing (Aug. 11, 2016), Vol. 9 at 144, 159-60 (“Leahigh Oral Testimony”).

²⁸ Pierre Oral Testimony at 133, 171-72.

²⁹ Pierre Testimony at 10.

³⁰ Pierre Testimony at 12.

³¹ Pierre Oral Testimony at 135.

³² Compare Pierre Oral Testimony at 134-35 with Testimony of Ronald Milligan, California WaterFix Water Right Change Petition Hearing (Aug. 11, 2016), Vol. 9 at 172 (“Milligan Oral Testimony”).

³³ Pierre Oral Testimony at 167.

Smelt The purpose of Boundary 1 is to demonstrate a scenario similar to existing conditions with the CWF in place.”³⁴ The parameters of Boundary 1 are inconsistent with current operation of the Central Valley Project and State Water Project, however, which satisfy all statutory and regulatory requirements before fulfilling delivery obligations.³⁵ Boundary 1 provides no meaningful comparison to “existing conditions,” and the Petitioners do not explain why a substantial reduction in Delta outflow is a plausible adjustment resulting from adaptive management. It is unsurprising, in light of this hypothetical reduced Delta outflow, that Armin Munevar predicted operations at Boundary 1 may yield as much as 1,200,000 acre feet per year higher exports when compared to the No Action Alternative.³⁶

“Boundary 2” “represents an operational scenario with significant increase in outflows and is similar to the scenario presented in Appendix C of the RDEIR/SDEIS This scenario is based on the Alternative 4A H3 scenario but includes additional OMR flow requirements, additional Delta outflow, and water quality compliance at Emmaton and excludes BDCP Conservation Measure 4 The purpose of this boundary is to demonstrate a scenario that has more restrictive Delta biological regulatory requirements.”³⁷ Munevar estimated that operations at Boundary 2 could decrease exports by as much as 1,100,000 acre feet per year when compared to the No Action Alternative.³⁸ As Pierre concedes, “the High Outflow operational scenario would not meet the project objectives or purpose and need statement.”³⁹ While Boundary 2 may have been developed in response to the State Water Resources Control Board staff’s request for an evaluation of “an operational scenario that provides higher Delta outflows than Alternative 4A,”⁴⁰ that does not justify its use in evaluating a project when its implementation could not accomplish the project’s objectives.

³⁴ Pierre Testimony at 13.

³⁵ Testimony of Ray Sahlberg (DOI-4) (“Sahlberg Testimony”) at 2; Testimony of Ronald Milligan (DOI-7) (“Milligan Testimony”) at 3; Testimony of Maureen Sergent (DWR-53) (“Sergent Testimony”) at 4.

³⁶ Testimony of Armin Munevar (DWR-71) (“Munevar Testimony”) at 18. The No Action Alternative assumes the implementation of existing applicable regulations. Pierre Oral Testimony at 187.

³⁷ Pierre Testimony at 14.

³⁸ Munevar Testimony at 18.

³⁹ Pierre Testimony at 11.

⁴⁰ RDEIR/SDEIS Appendix C at C-1 (SWRCB-3).

2. **Alternative 4A Would Diminish the Friant Members' Access to Water by Reducing the Delivery of Substitute Water to the Exchange Contractors from Sources Other Than the San Joaquin River.**
 - a. **The Petition and RDEIR/SDEIS Do Not Assure That the Exchange Contractors Will Receive the Quantity of Substitution Water to Which They Are Entitled from a Source Other Than the San Joaquin River.**

The Petition, if granted, would reduce the delivery of substitute water to the Exchange Contractors and hinder the United States' ability to perform the exchange, thereby causing the Exchange Contractors to receive delivery of San Joaquin River water more often, and to a greater extent. This would injure the Friant Division contractors, who are legal users of San Joaquin River water.

The Petition represents that “[d]eliveries to the CVP Settlement, Refuge, and Exchange Contractors . . . will continue to be made under the terms of those agreements. This Petition does not propose any changes to any contractual obligations.” (*Supplemental Information for Petition for Change in Point of Diversion* (Aug. 25, 2015) (SWRCB-1) at 21). The RDEIR/SDEIS, however, predicts that under Alternative 4A, deliveries to the Central Valley Project Exchange Contractors would “remain” at 814,000 acre feet for “Dry and Critical Annual (Mar-Feb)” under Existing Conditions, No Action Alternative (ELT), Alternative 4 H3 (ELT) and Alternative 4 H4 (ELT). (RDEIR/SDEIS (SWRCB-3) at B-40). The United States is obligated to deliver up to 840,000 acre feet of substitute water under the Exchange Contract, not 814,000 acre feet. Moreover, delivery of 814,000 acre feet does not satisfy the 883,000 acre feet the United States must provide to meet its substitute water supply obligations to the Exchange Contractors and South of Delta Settlement Contractors (except in Shasta critical years). It was therefore improper for the United States to submit this Petition, which contemplates delivery of less than 840,000 acre feet per year to the Exchange Contractors in other than Shasta critical years. (See *infra* at 5-7).

Since the supporting documents demonstrate that Alternative 4A would deliver 814,000 acre feet rather than the 883,000 acre feet needed to satisfy the Exchange Contractors and South of Delta Settlement Contractors, the available water supply is reduced by 69,000 acre feet, at a minimum, to the detriment of Friant Division contractors.

The Petition does not reveal the source of deliveries to the Exchange Contractors, *e.g.*, Sacramento River (and its tributaries) and Delta water, San Joaquin River water, a combination of those or other sources.⁴¹ It also fails to explain why deliveries to the Exchange Contractors in dry years would not be up to 840,000 acre

⁴¹ According to Ronald Milligan, the modeling assumes that Reclamation's obligation to the Exchange Contractors would be satisfied with water from the Delta. Milligan Oral Testimony at 188-89. Milligan is the chief operator of the Central Valley Project. Testimony of Ronald Milligan (DOI-7) at 1.

feet, or disclose whether deliveries to the additional South of Delta Settlement Contractors identified on Exhibit A to the Friant/SLDMWA MOU (FWA-5) would occur, and if so, in what amount. Finally, it appears to ignore the assumed losses Reclamation used in the past when determining diversions required to meet its Exchange Contract delivery obligation. (See supra at 6).

Ronald Milligan testified that he thinks “it’s more difficult to assess the effects to the Friant Division.”⁴² He said he had not seen in the model output that there would be a shortage in deliveries to the Exchange Contractors from the Delta,⁴³ but acknowledged that the

model is making every attempt to meet the Exchange contract from the Delta and out of CVP storage in Folsom and Shasta. And in the simulation, it shows that driving those reservoirs to a fairly low storage place.

We’ve experienced – the last two years have been circumstances where that is not a desirable outcome upstream. And the hydrology has been a bit more extreme, as we’ve kind of showed in terms of the record that went into the simulation. So there are circumstances that we’ve seen here recently that lie outside the simulation of the model and should be thought through at some degree.

. . . .

Our experience has been no, that it is possible that a set of circumstances will arise that water would need to be released from Millerton to meet the Exchange contract.

MR. CARDELLA: My question is whether that assumption – excuse me – whether that simulation of the model in that fashion is realistic given the last few years.

WITNESS MILLIGAN: I think it’s a – it is a set of data that’s useful and, depending on how it’s used, may or may not be necessarily be [sic] the full range of what’s realistic.

If the intent is to show a realistic question of what could happen in some extreme hydrology, like the last few years, then that would probably require some additional modeling.⁴⁴

⁴² Milligan Oral Testimony at 192.

⁴³ Milligan Oral Testimony at 189.

⁴⁴ Milligan Oral Testimony at 190-92.

Milligan noted that “there’s certainly a difference or distinction to be made between a modeling assumption and something that the projects would operate to.”⁴⁵ When asked if the modeling submitted for this proceeding accounts for all of the challenges in balancing operations among Shasta, Oroville and Folsom, he replied: “Based on my review, it does attempt to do that, although where these are more complicated is in extremely dry years. And I think as we’ve talked a little bit about, years like 2014-2015 really aren’t quite captured in that data set.”⁴⁶

Milligan confirmed that no modeling presented in this proceeding simulates the result if the source of substitute water for the Exchange Contractors is other than the Delta.⁴⁷

Milligan’s testimony disproves the representation made in the Petition and RDEIR/SDEIS that Reclamation’s obligation to deliver substitute water to the Exchange Contractors would be met in all water years from the Delta or Sacramento River. On the contrary, it establishes that the modeling fails to account for years of acute drought, and that in those years Reclamation would release San Joaquin River water to the Exchange Contractors rather than deliver substitute water via the Delta-Mendota Canal.

Remarkably, DWR witness John Leahigh asserted that drought years like 2014 and 2015 are “statistical outliers” that should not be within the expected range of conditions for future operations of Cal. WaterFix, a view he based on a conversation with State Climatologist Michael Anderson.⁴⁸ Anderson initially endorsed Leahigh’s conclusion, but then conceded: “Extremes are always possible. ’77 occurred, 2015 occurred. Each individual extreme is possible and may not be expected. . . . You can analyze extremes in and of themselves through a variety of means. Any specific extreme must be treated in the nature that it is experienced, particularly in a water management framework. . . . [Question:] So they should be within the expected range of conditions as extremes? WITNESS ANDERSON: In and of themselves as they are analyzed as extremes, yes.”⁴⁹

Leahigh’s “statistical outlier” unfortunately can be an irrigator’s calamity, as Friant Water Authority’s member districts know only too well. Regardless of whether the Petitioners know when or how often severe droughts will recur, experience reveals that they are a fact of life in the Sacramento-San Joaquin Valley. The Petitioners must demonstrate that in all foreseeable operating conditions, the proposed project will not

⁴⁵ Milligan Oral Testimony at 49.

⁴⁶ Milligan Oral Testimony at 21.

⁴⁷ Milligan Oral Testimony at 189-90.

⁴⁸ Leahigh Oral Testimony at 203-04. Leahigh is Chief of the State Water Project Water Operations Office within the Department of Water Resources’ Division of Operations and Maintenance. Testimony of John Leahigh (DWR-61) at 1.

⁴⁹ Testimony of Michael Anderson, California WaterFix Water Right Change Petition Hearing (Aug. 11, 2016), Vol. 9 at 204-05 (“Anderson Oral Testimony”). The record does not establish that Anderson has expertise in “water management framework[s].”

injure other legal users of water. The conditions of 2014 and 2015 are excruciatingly foreseeable now, if they were not previously.

b. The More Restrictive Pumping Regime for the Old and Middle River Area Would Impede Reclamation's Ability To Deliver Substitute Water Through the Delta-Mendota Canal.

The Petitioners propose new flow criteria for the Old and Middle River ("OMR") area that are more restrictive than those imposed by the 2008 and 2009 BiOps RPA Actions:

The proposed OMR flow criteria are used to constrain the south Delta exports, if the OMR flow requirements under the current BiOps are not as constraining as the proposed criteria. These newly proposed OMR criteria (and associated Head of Old River Barrier operations) are in response to expected facility changes under the proposed project, and only applicable after the proposed north Delta diversion becomes operational.

(RDEIR/SDEIS (SWRCB-3) at 4.1-12). Table 4.1-2 of the RDEIR/SDEIS (at 4.1-8) describes the proposed criteria in some detail. Leahigh testified that these more restrictive criteria could preclude or limit pumping from the OMR area under certain hydrologic conditions.⁵⁰ As pointed out in n. 21 supra, the Jones Pumping Plant, from which substitute water for the Exchange Contractors is withdrawn, is located on an intake canal connected to the Old River. The proposed new criteria will diminish Reclamation's ability to deliver substitute water to the Exchange Contractors through the Delta-Mendota Canal.

More generally, the RDEIR/SDEIS recognized that the "addition of the north Delta intakes and changes to Delta regulatory requirements under Alternative 4A change SWP and CVP Delta exports as compared to Delta exports under Existing Conditions and the No Action Alternative. *Delta exports would either remain similar or increase in wetter years and decrease in drier years under Alternative 4A as compared to exports under No Action Alternative* depending on the capability to divert water at the north Delta intakes during winter and spring months. *Total long-term average annual Delta exports under Alternative 4A would decrease as compared to exports under Existing Conditions* reflecting changes in operations due to less negative OMR flows, implementation of Fall X2 and/or spring outflow under Alternative 4A, and sea level rise and climate change. The incremental change in Delta exports under Alternative 4A as compared to No Action Alternative would be caused by the facility and operations assumptions of Alternative 4A. Delta exports would either remain similar or increase in wetter years and remain similar or decrease in the drier years under Alternative 4A as compared to the conditions without the project." (RDEIR/SDEIS (SWRCB-3) at 4.3.1-4 (emphasis added)).

⁵⁰ Leahigh Oral Testimony at 134-38.

Alternative 4A would not alter M&I deliveries “for the Sacramento River, South Coast, South Lahontan and Colorado River regions because there are no affected CVP contractors located in these regions. Compared to Existing Conditions, Scenarios H3 and H4 would decrease deliveries to the other hydrologic regions” (*Id.* at 4.3.26-4).

3. Friant Water Authority’s Participating Members Cannot Rely on Groundwater To Replace Lost San Joaquin River Water.

The Petitioners concede that, in the absence of a state law prohibition and where groundwater is physically available, water users increase their reliance on groundwater to offset reductions in the delivery of surface water. (Bay Delta Conservation Plan, Draft Environmental Impact Report/Environmental Impact Statement (SWRCB-4) at 5B-34-35). Increased groundwater pumping has direct and indirect effects. Direct effects include increases in pumping costs, reductions in well production rates, and a reduction in groundwater supply and water supply reliability. (*Id.* at 5B-34). Indirect effects of declines in groundwater levels include subsidence, reduced groundwater quality, reduced spring and stream flows, and reduced drainage. (*Id.* at 5B-34-35).

The Department of Water Resources designated many groundwater basins and sub-basins in the Central Valley as critically overdrafted.⁵¹ Friant Water Authority member Orange Cove Irrigation District partially overlies one of those sub-basins – the Kings Sub-basin 5-22.08.⁵² Very little farmland in that district overlies a supply of groundwater adequate to satisfy fully the total crop requirements of associated farming operations in the absence of surface water deliveries from the Friant Division.⁵³ Orange Cove sustained a dramatic decline in groundwater elevation in 2014 and 2015.⁵⁴ Similarly, Friant Water Authority members Porterville Irrigation District, Saucelito Irrigation District and Terra Bella Irrigation District overlie portions of the Tule Sub-Basin 5-22.13, which is designated as critically overdrafted.⁵⁵ The reliable groundwater supply in Terra Bella Irrigation District is less than that required to satisfy the municipal and industrial demands within its boundaries.⁵⁶ Groundwater elevations in Porterville Irrigation District and Saucelito Irrigation District fell an average of 15 feet per year in 2014 and 2015.⁵⁷

The groundwater overdraft is not a new development in the Friant Division. In 1999 the State Water Resources Control Board noted that the groundwater basins

⁵¹ Critically Overdrafted Groundwater Basins – January 2016 – North Central and South Central Regions (FWA-63).

⁵² Testimony of Fergus Morrissey (FWA-58) at 5 (“Morrissey Testimony”).

⁵³ *Id.*

⁵⁴ Groundwater Surface Elevation Trend in Orange Cove Irrigation District, Water Year Basis – 1952-2015 (FWA-64).

⁵⁵ Testimony of Sean P. Geivet (FWA-70) at 6 (“Geivet Testimony”).

⁵⁶ *Id.* at 7.

⁵⁷ *Id.*

served in whole or in part by the Friant Division are subject to critical overdraft.⁵⁸ In fact, overdraft conditions existed in 1999 throughout much of the aquifer system in the San Joaquin Valley.⁵⁹ The Board observed that reductions in surface water deliveries would intensify the groundwater overdraft problem:

Reductions in Friant Unit water deliveries, such as those possible under Alternative 5, would have serious effects in the service area. Reduced water deliveries would initially cause shifts in cropping patterns, increased costs associated with the adoption of more efficient irrigation systems, and idling of croplands. Groundwater would be used to replace a significant portion of the reduced water supplies, and over time the increased pumping would draw down an already over-drafted groundwater basin and cause subsidence. The increased costs associated with pumping from increasingly greater depths would cause more land to be removed from production. Ultimately, water quality problems associated with lower water tables and generally depleted aquifers would result in the idling of even more acreage.

. . . .

Groundwater traditionally has been used to buffer the effects of reduced surface water supplies during droughts. In a similar manner, groundwater pumping would temporarily buffer irrigators from the effects of the reductions caused by implementation of Alternative 5. Because of the continual pressure that would be put on groundwater supplies, in addition to that experienced during natural droughts, the groundwater basin would likely not be sufficiently recharged during wet years. Consequently, in the long-run, acreage would be removed from production not only because of reduced CVP supplies and increased pumping costs but also because of the reduced ability of the groundwater aquifer to provide a buffer against natural droughts.

(*Id.* at VI-161-62).

⁵⁸ See *Final Environmental Impact Report for Implementation of the 1995 Bay/Delta Water Quality Control Plan* (Nov. 1999) (SWRCB-31), Table VI-68 at VI-145 (delineating the average annual groundwater overdraft in the Central Valley by groundwater basin, at the 1990 level of development), Figure VI-79 at VI-147 (depicting the groundwater basins of the San Joaquin Valley, including those then subject to critical conditions of overdraft), and Figure VI-81 at VI-160 (portraying the principal features of the Friant Unit); Bureau of Reclamation, *Coordinated Long-Term Operation of the Central Valley Project and State Water Project*, Final Environmental Impact Statement (FWA-75) at Figure 7.2.

⁵⁹ *Final Environmental Impact Report for Implementation of the 1995 Bay/Delta Water Quality Control Plan* (SWRCB-31) at III-5).

Reclamation recently acknowledged the 2014 passage of the Sustainable Groundwater Management Act (CAL. WATER CODE § 10720 et seq.), which requires the formation of groundwater sustainability plans (“GSPs”) in groundwater basins or sub-basins the Department of Water Resources designates as medium or high priority based on groundwater conditions.⁶⁰ The sustainability goal must be achieved within 20 years following the completion of the GSP. (CAL. WATER CODE § 10727.2(b)(1)). The Bureau concluded, however, that it is not “reasonable or foreseeable that sustainable groundwater management would be achieved by 2030,” and therefore assumed that “groundwater pumping will continue to be used to meet water demands not fulfilled with surface water supplies or other alternative water supplies in 2030.”⁶¹ The Early Long-Term is modeled to 2025 for purposes of the RDEIR/SDEIS (SWRCB-3) at 4.2-1 n.1), so presumably the Bureau makes the same assumption in connection with the Petition. Even if Friant contractors could pump enough groundwater to replace San Joaquin River water lost to releases for the Exchange Contractors, the associated negative impacts noted by the Board in 1999 constitute injury to their water rights.

4. Friant Water Authority Members Suffered Substantial Losses in 2014 and 2015 Due to Reclamation’s Failure to Deliver San Joaquin River Water.

Reclamation allocated no San Joaquin River water to Friant Division contractors in 2014 and 2015. (DOI-8 at 1-2). The consequences were dire for Friant Water Authority’s members. Some, such as Terra Bella Irrigation District and Orange Cove Irrigation District, could not rely on groundwater to replace the lost surface water.⁶² They scrambled to patch together numerous transactions, some at extraordinary cost, to secure what little water they could for their growers.⁶³ Despite these efforts, they were unable to supply enough water to forestall heavy losses to their growers.⁶⁴ Terra Bella was able to provide roughly half the average demand in 2014 and less than 40% of average demand in 2015.⁶⁵ Even Porterville Irrigation District and Saucelito Irrigation District, which have access to some groundwater, sustained loss in the form of falling groundwater elevations that in the former case left wells supplying numerous homes and crops dry.⁶⁶

⁶⁰ *Coordinated Long-Term Operation of the Central Valley Project and State Water Project*, Final Environmental Impact Statement (FWA-75) at 5-74, 7-116, 12-24, 19-36-37.

⁶¹ *Coordinated Long-Term Operation of the Central Valley Project and State Water Project*, Final Environmental Impact Statement (FWA-75) at 5-74; see also *id.* at 12-24, 19-36-37.

⁶² Geivet Testimony (FWA-70) at 7; Morrissey Testimony (FWA-58) at 6.

⁶³ Geivet Testimony (FWA-70) at 9-10; Morrissey Testimony (FWA-58) at 8-9.

⁶⁴ Geivet Testimony (FWA-70) at 9-10; Morrissey Testimony (FWA-58) at 8-9.

⁶⁵ Geivet Testimony (FWA-70) at 8.

⁶⁶ *Id.* at 7.

All four districts mentioned above saw the destruction of many acres of permanent crops and the fallowing of land intended for crop production in 2014 and 2015.⁶⁷

The onset of restrictions under the Sustainable Groundwater Management Act, Cal. Water Code § 10720 et seq., will limit the availability of groundwater as a backup supply in the event of future surface water shortages even for districts fortunate to have access to groundwater but that overlie critically overdrafted basins or sub-basins. Reduced surface water allocations resulting from Cal. WaterFix will be increasingly harmful to Friant Water Authority's members in future years.

CONCLUSION

The Petitioners failed to demonstrate a reasonable likelihood that the change they seek will not injure Friant Water Authority's members, who are legal users of water. The Petition must be denied.

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⁶⁷ Geivet Testimony (FWA-70) at 5, 8-9; Morrissey Testimony (FWA-58) at 9.