

1 Save the California Delta Alliance, et al. Opening Statement

2 (20 Minutes with selected slides from evidence previously introduced into the record to
3 illustrate the presentation)

4 Delta Alliances case in chief will show that CWF causes injury to legal users of water and
5 human uses (“users”) in the Delta.

6 Our case in chief will discuss systemic and structural defects in the conception and design of
7 CWF that make it clear that CWF not only does injure users, but that it *cannot* avoid injury despite
8 claims of a yet to be disclosed near-magical adaptive management plan and the skill integrity, and
9 devotion of DWR’s operations staff. Neither promises of future improvements nor exhortations to
10 “trust us” are evidence. But this is all CWF has. CWF has failed to carry its burden of
11 demonstrating non-injury to users.

12 DWR has all but admitted that its extensive modeling establishes nothing and *cannot* be
13 sufficient to establish non-injury to users. Cross-examination has further established this point and
14 rebuttal will do so even more.

15 Our case in chief will discuss some history of the evolution of CWF in order to help
16 understand the structural defects that make it incapable of avoiding injury. This is important to
17 crafting conditions that may be imposed on CWF that will allow and require it to avoid injury to
18 users.

19 Our case in chief will also discuss California’s climate and climate change and how our
20 patterns of precipitation, changes in those patterns, and skewed geographic distribution of water
21 availability and water demand dictate the structural changes that are required of CWF if it is to
22 avoid injury to users.

23 Our case in chief will discuss the Delta Reform Act, recent litigation interpreting the Delta
24 Reform Act in pertinent part relevant to the Board’s responsibilities, and how the Delta Reform Act
25 requires modifications to CWF if it is to comply with the Delta Reform Act. We will show that not
26 only must CWF avoid degrading water quality for in-Delta users but that it must enhance the quality
27 of water supply from the Delta for in-Delta users if it is to comply with the Delta Reform Act. It

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1 must also reduce reliance on the Delta as a source of water supply for export Contractors. This too
2 is factually required if CWF is to avoid injury to in-Delta users.

3 We will show that in order to avoid injury to users and comply with the Delta Reform Act,
4 CWF must incorporate portfolio elements into the project description. Portfolio elements include
5 surface storage, groundwater storage, integrated water management, and conservation. These area
6 all sources of “new water.” CWF, as a stand alone conveyance project, is incapable of creating new
7 water and by all lights, including DWR’s own reports and the California Water Plan, injury to in-
8 Delta users cannot be avoided if CWF remains a single focus conveyance project.

9 The Board need not prescribe portfolio elements but may impose performance standards that
10 will serve as “infrastructure forcing” standards, allowing DWR and Contractors to figure out what
11 portfolio elements are most cost effective and will most readily allow them to meet the Board’s
12 performance standards.

13 CWF is designed to satisfy federal fish agencies while maximizing exports. Later in these
14 proceedings CWF may present a Biological Opinion from the federal agencies and thereby claim
15 that all fish and wildlife concerns have been wiped clean. CWF has stated repeatedly that the BiOps
16 will determine operating criteria and that future flow criteria should coincide with the BiOps.
17 However, the federal fish agencies have no concern about the effect on in-Delta users. CWF was
18 designed, and is being implemented, in a deliberate effort to benefit water export Contractors, while
19 satisfying fish agencies, at the expense of in-Delta users. It is no surprise that injury to in-Delta
20 users is the result.

21 The water rights panel has yet to testify and their written testimony is sparse so much of our
22 case regarding water rights will come on rebuttal. Our case in chief will show, however, that
23 DWR’s interpretation of what constitutes non-injury to legal users of water is incorrect and that on
24 the correct definition of injury, evidence in the record demonstrates injury to legal users of water in
25 the Delta.

26 Today, satisfying D-1641 does not equate to non-injury to in-Delta users. Water quality may
27 be degraded at various points in the Delta to the point of injury-in-fact to in-Delta users while at the
28 same time D-1641 standards are met at D-1641 compliance points. This injury-in-fact is legal injury

1 as well. Water quality may be degraded in some way not captured by D-1641 standards injuring
2 users in fact. Such injury is legal injury.

3 These principles are magnified in an after CWF scenario. CWF radically alters the
4 hydrodynamics of the entire Delta. Flows and circulations patterns are radically altered. Sediment
5 composition is changed. D-1641 standards were designed to capture water quality in the current
6 Delta. The Delta after CWF will be a different Delta that D-1641 standards and compliance points
7 do not correlate with.

8 And, as the Board is well aware, D-1641 is inadequate to protect beneficial uses and the
9 water quality control plan update is long overdue. Approving CWF on the basis that it promises to
10 comply with D-1641 cannot be evidence that CWF avoids injury to users.

11 In all, it is clear that CWF has failed to carry its burden of establishing non-injury and there
12 is ample evidence in the record that injury to in-Delta users will in fact result from CWF.

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