

Statement of Jerry Brown

General Manager

Contra Costa Water District

**Before the House Natural Resources Subcommittee on Water, Power and Oceans
Legislative Hearing on Water Settlements including H.R. 4366 (Rep. David Valadao), the
“San Luis Unit Drainage Resolution Act” and H.R. 5217 (Rep. Jim Costa), the “San Luis
Unit Drainage Resolution Act.”**

May 24, 2016

My name is Jerry Brown, and I am the General Manager of Contra Costa Water District. Contra Costa Water District is an urban water agency located in the eastern end of the Bay Area in Northern California, on the western edge of the Sacramento-San Joaquin Delta. CCWD is the oldest and largest M&I contractor within the Central Valley Project, we are in the Delta, and we rely on the Delta to deliver high quality drinking water to our 500,000 residents and many large industrial customers. We own facilities and divert water from the Delta under our own permits and approvals. We also operate and maintain CVP facilities for the Bureau of Reclamation. Unlike other urban areas which also rely on the Delta and have other sources of supply, almost all of our water comes out of the Delta. Anything discharged upstream in the San Joaquin Valley ends up downstream in the Delta, and any mistakes in these San Luis Drainage agreements will compromise the Delta water quality we drink and use every day.

CCWD has a unique standing in the Delta. We are known for having a strong technical acumen on Delta issues and for being constructive participants in the Delta conversation. CCWD has spent over \$1B over the past 20 years to build infrastructure to protect and improve our drinking water quality. Unfortunately the pressure on our assets to perform this critical function grows greater every day as Delta water quality continues to decline. CCWD frequently engages with a wide range of stakeholders in collaborative efforts to protect the Delta by participating in projects that protect Delta levees, enhance Delta ecosystem protection, improve Delta water supply operations, advance Delta science, and maintain Delta water quality.

For the past 30 years Contra Costa Water District has worked with Delta counties and environmental groups, to prevent the export of toxic drainage from the San Luis Unit to the Delta. This includes opposition to building the San Luis Drain to the Delta as well as opposition to drainage discharges to the San Joaquin River and thus ultimately to the Delta. CCWD understands the need for drainage services for the San Luis Unit and fully supports sound in-valley drainage solutions, but we also seek to ensure that the actions of others will not harm us or our Delta neighbors. For instance, CCWD participated in the productive Grassland Bypass Use Agreements process in order to promote effective drainage management in the Northerly Area.

CCWD acknowledges the stated commitment of Westlands and the Northerly Area contractors to manage their toxic agricultural drainage within their own boundaries. An in-valley drainage

solution would be in keeping with the 2007 Bureau of Reclamation Record of Decision on the San Luis Drainage Feature Re-Evaluation, and it is essential that drainage is not exported to the Delta. However, as they say, “the devil is in the details”, and the details of the Westlands Settlement Agreement and the Northerly Area Agreement are lacking. To ensure that the many beneficial uses of the Delta are not impacted, most important to CCWD being drinking water as a beneficial use, CCWD’s Board of Directors have taken an Oppose Unless Amended position on the proposed legislation enacting these agreements with amendments required in three key areas.

First, the agreements both lack drainage management plans. This is despite the Obama Administration letter to Senator Dianne Feinstein dated September 1, 2010, that identified as “key elements” to any drainage settlement “measurable environmental objectives, including water quality” and “specific enforceable performance measures”. The Westlands Settlement states that Westlands must manage its drainage as a condition for receiving CVP water, but the Settlement does not identify how proper management will be determined. The enacting legislation, and the implementing agreements, need detailed drainage management plans specifying monitoring, reporting, and enforcement measures. The monitoring and reporting that already occurs under the Grassland Bypass Use Agreements can serve as a model for these requirements. And at a minimum the terms of the current Use Agreement, including the requirement to achieve zero discharge to the San Luis Drain by the end of 2019, need to be incorporated into the Northerly Area Agreement. The Department of Interior, Bureau of Reclamation has a responsibility in perpetuity under anti-degradation policies of the state to ensure that these agreements do not create significant impacts on the beneficial uses of the Delta. Drainage management plans need to be finalized and approved by the appropriate state and federal agencies before the San Luis Unit contractors receive the benefits of these agreements. These plans should be overseen by the Environmental Protection Agency if Reclamation is unable to ensure that these agreements do not adversely impact other water users such as CCWD or the Delta ecosystem.

Second, the agreements call for inadequate amounts of land retirement. Land retirement has been acknowledged to be the best way to prevent drainage impacts but the settlement fails to secure a sufficient amount of acres to ensure Westland’s fulfills its drainage control responsibilities. The 2007 ROD selected a final alternative with 194,000 acres of land retirement, which in itself was already less than the 308,000 acres of land retirement identified in the lowest net cost alternative recommended by the U.S. Geological Survey and the U.S. Fish and Wildlife Service. However, the Westlands Settlement only requires 100,000 acres of land retirement, and the Northerly Area Agreement has no land retirement requirement. Furthermore, the total contract amount of water given to San Luis Unit contractors through Central Valley Project contracts should be reduced proportional to the amount of land retired. Retiring drainage-impaired land not only reduces the amount of toxic drainage generated from the region but also reduces the irrigation demand of the region. Decreasing the demand for Delta exports reduces the burden on the overstressed Delta system, leading to a healthier ecosystem and a more reliable water supply for all beneficial uses of the Delta. The Westlands Settlement currently awards Westlands a permanent contract for their existing 1,193,000 acre-feet of water per contract year, which does not take into account land already retired or land that will be retired; this inflated total contract amount gives Westlands an unfair, disproportionately large base

amount from which shortage allocations are calculated. Instead of reaffirming the San Luis Unit contractors' full contract supply and converting their existing contracts to permanent contracts, the agreements should promote water conservation and irrigation efficiency by retiring the water rights linked to the irrigation of retired lands.

Third, the agreements have potential to harm other CVP contractors. For 80 years, CCWD has relied on Central Valley Project water to meet most of our customer needs. CCWD signed a long-term 40-year municipal and industrial contract with the Central Valley Project in 2005. CCWD and other CVP contractors are already concerned over the decreasing reliability of CVP water supply in general. Replacing the San Luis Unit contractors' renewable contracts with permanent contracts as contemplated in the settlement without legally binding and enforceable provisions added to the contracts could harm the rest of the CVP's contractors by giving Westlands higher priority to limited water available to the entire CVP. The new rights awarded in the settlement to Westlands also violate the past practice of the Bureau of Reclamation recognizing "first in time, first in rights" priority, which means older CVP contractors like CCWD are potentially impacted in the form of lesser deliveries and/or contract quantities. Also concerning is the fact that legislative history contains references to San Luis Unit water as "surplus" water. Congress never intended San Luis users to be given priority over other CVP contractors, but priority is implied by granting the San Luis Unit users guaranteed permanent contracts. The basis for moving forward with San Luis Unit in the first place was that their needs would only be met after existing needs were met, which include the needs of CCWD and other Delta beneficial uses. The March 18, 2016 memorandum from the Congressional Research Service to Congressman Jared Huffman regarding the Westlands Drainage Settlement describes several ways that CVP contractors would be harmed by the Settlement. Specifically, in order to avoid adverse impacts to the water supply of other CVP contractors, the San Luis Unit contract totals need to be subject to review at regular intervals, particularly in the face of changes in hydrological conditions in California due to climate change and sea level rise or completion of the California WaterFix or other actions. Similarly, the settlement agreements' forgiveness of the San Luis Unit contractors' capital repayment debt must not hurt other CVP contractors by shifting recovery of CVP costs to us. The legislation must specifically address how the \$420M cost will be recovered in the federal budget without shifting costs to other CVP contractors.

Thank you for this opportunity to testify on this topic of vital importance to CCWD.