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Testimony
Before the Subcommittee on Water and Power
Committee on Natural Resources
United States House of Representatives

*Creating Jobs by Overcoming Man-Made Drought:
Time for Congress to Listen and Act*
April 11, 2011

Mr. Chairman and Members of the Subcommittee, my name is Thomas W. Birmingham, and I am the General Manager of Westlands Water District ("Westlands" or "District"). Thank you for the opportunity to appear before you today to testify today on the opportunity to create jobs by overcoming man-made drought.

Westlands is a California water district that serves irrigation water to an area of approximately 600,000 acres on the west side of the San Joaquin Valley in Fresno and Kings counties. The District averages 15 miles in width and is 70 miles long. Historically, the demand for irrigation water in Westlands was 1.4 million acre-feet per year, and that demand has been satisfied through the use of groundwater, water made available to the District from the Central Valley Project under contracts with the United States for the delivery of 1.19 million acre-feet, and annual transfers of water from other water agencies.

Westlands is one of the most fertile, productive and diversified farming regions in the nation. Rich soil, a good climate, and innovative farm management have helped make the area served by Westlands one of the most productive farming areas in the San Joaquin Valley and the nation. Westlands farmers produce over 50 commercial fiber and food crops sold for the fresh, dry, and canned or frozen food markets; domestic and export. These crops have a value in excess of \$1 billion.

It is ironic that you are here to hear about drought and the impact of drought on jobs at a time when California's reservoirs are full and rivers, streams, and flood control by-passes are running high. However, the current hydrologic conditions are not an anomaly. Floods and drought, the continual alteration between these two extremes is part of the natural cycle of life in California. In terms of water supply for the people who live and work on the westside of the San Joaquin Valley, it used to be you could tell the difference between the two quite easily. Today that is not the case.

If any proposition should be made inarguable by the current situation, it would be that the water supply for the numerous south-of-Delta Central Valley Project ("CVP") agricultural water service contractors is not dependent on hydrology. Exhibit 1 to my testimony, a graph of the current California Northern Sierra Precipitation, 8-Station Index, dated April 8, 2011, illustrates that the precipitation, the snowpack, and the run-off in the current, 2010-11 water year will be exceptionable; however, the allocation for south-of-Delta Central Valley Project agricultural water service contractors is 75%. This anomaly is a product of the fact that today we are living under a federal regulatory regime that has made droughts more frequent and their impacts more severe. And those same regulations are reducing many of the natural benefits we used to derive from periods of high precipitation.

This is not a recent problem. Limitations on CVP operations that created this circumstance date back to 1992, when restrictions began to be imposed on operations of the W.C. “Bill” Jones Pumping Plant under the Endangered Species Act to protect listed species and to implement the fish, wildlife, and habitat restoration measures of the Central Valley Project Improvement Act, (Pub. Law 102-575). In fact, the CVPIA has been implemented by the Department of the Interior in a manner that has reallocated more than 1,000,000 acre-feet of CVP water away from farms, ranches and business that relied upon this water for decades to the environment – for the restoration and enhancement of fish and wildlife. Virtually all of the water supply reductions that have resulted from implementation of the CVPIA have been imposed on south-of-Delta Central Valley Project agricultural water service contractors.¹ As depicted in the graph attached to my testimony as Exhibit 2, these restrictions have resulted in reduced contract allocations to south-of-Delta irrigation contractors in many years when Reclamation spilled water from Project storage to meet flood criteria.

The most severe impact of the restrictions imposed under the CVPIA and the ESA occurred in 2009, the first year in which the CVP was operated under the Delta smelt biological opinion for the operations of the Central Valley Project and State Water Project issued by the United States Fish and Wildlife Service and dated December 15, 2008. As a result of the combined effects of dry hydrologic conditions and regulatory restrictions, the final allocation for south-of-Delta agricultural water service contractors was 10%. Hundreds of thousands of acres of productive farmlands had to be fallowed and millions of dollars worth of permanent crops were destroyed, simply because there was not sufficient water to sustain them. The most tragic consequence of the 2009 crisis was that thousands of people who live and work on the westside of the Valley lost their jobs; unemployment rates in the City of Mendota and the City of San Joaquin soared to more than 40%. Small, local businesses were plunged into an economic crisis. And tragically, many people went hungry.

At the time, there was much debate about whether the human disaster experienced in 2009 was the result of natural drought, rather than regulatory

¹ The disproportionate impacts of these regulatory requirements on the water supplies of west side farmers were recognized by former Governor Gray Davis and former Secretary of the Interior Bruce Babbitt as early as June 2000, when they signed the CALFED document entitled “California’s Water Future, A Framework for Action.” In that document then Governor Davis and then Secretary Babbitt correctly noted that Westlands and other San Joaquin Valley agricultural water contractors had been “disproportionately affected by recent regulatory actions,” and they described a number of actions that would restore, over the short-term and the long-term, these contractors’ water supplies. Unfortunately, those actions have not been successful in restoring our water supplies.

restrictions on operations of the CVP. (In fact, that debate continues today.) It was also observed that the communities on the westside of the San Joaquin Valley that were experiencing unprecedented levels of unemployment historically had high levels of unemployment, and it was asserted that the 2009 levels were a consequence of the nation-wide economic recession. The reality is that there was some truth on both sides of these debates.

In 2009, dry conditions did contribute to reduced water supplies; however, restrictions imposed on CVP operations under the 2008, Delta smelt biological opinion exacerbated the impact of those dry conditions. The 2008 Delta smelt biological opinion reduced south-of-Delta CVP water supplies by nearly 250,000 acre-feet. (The impact of this biological opinion on the combined water supplies of the CVP and the California State Water Project was 620,000 acre-feet.) Moreover, the restrictions on CVP operations imposed under the 2008 Delta smelt biological opinion were in addition to other restrictions imposed by earlier biological opinions and the CVPIA. There cannot any doubt that had none of these regulatory restrictions been in place, the allocation for south-of-Delta CVP contractors would have been significantly higher than 10%. Indeed, when compared to allocations in similar water years that occurred prior to 1992, the 2009 allocation for south-of-Delta CVP contractors could have been as high as 90%. This is made evident by Exhibit 3 to my testimony, a chart depicting allocations for south-of-Delta agricultural water service contractors since 1952.

In addition, the communities on the westside of the San Joaquin Valley that had unemployment rates in excess of 40% in 2009 have historically had high unemployment rates, and the nation-wide economic malaise that occurred in 2009 undoubtedly contributed to unemployment on the westside of the San Joaquin Valley. But equally true is that hundreds-of-thousands of fallowed acres and the destruction of permanent crops contributed to higher than average unemployment. The graph attached to my testimony as Exhibit 4 helps to illustrate each of these points.

Admittedly, Exhibit 4 is not based on a robust economic analysis. However, in 2009, more than 200,000 acres in Westlands that otherwise would have been cultivated were fallowed. No one can dispute that had these lands been irrigated, some farm workers in the immediately adjacent communities who were without work would have been employed. A very conservative assumption is that every 800 acres under irrigated cultivation will produce three farm worker jobs. This means that had these 200,000 fallowed acres in Westlands been irrigated, an additional 750 farm workers would have been employed.

In 2011, the harm that these restrictions are doing to the human environment is not as dramatic as the crisis in 2009. However, in 2011 these same regulations reduced the initial allocation for south-of-Delta CVP agricultural water service contractors to 50%. And although that allocation has incrementally increased, so that today our farmers can expect to receive 75% of the water we have

contracted for, so long as farmers cannot predicatively rely on receiving an adequate supply of water, they are unable efficiently plan their annual operations and are unable to secure crop loans until very late in the growing season.

The harm these regulations have done to our communities, our economy, and the environment would be bad enough, but what is worse, they have produced no demonstrable benefits for at risk species. And as the United States District Court has consistently found, many of these regulation lack any basis in science.

Over the last three years, Westlands has joined with the California Department of Water Resources and other public water agencies that serve more than two-thirds of California's people in litigation that challenges the most recent biological opinions for operations of the CVP and California State Water Project. We have been trying to ensure that the biological opinions meet the standards for scientific integrity that the Endangered Species Act requires. And time after time, the District Court has found that the federal fish agencies used what the court called "sloppy science" or, in many instances, no science at all in preparing these biologic opinions.

They failed to prepare even the most basic quantitative analysis to support their regulations. They ignored scientific reports that did not fit their preconceived notions and cherry-picked from others only the findings that they agreed with. In addition to failing the Endangered Species Act's standard of "best available science," the court found Reclamation violated the National Environmental Policy Act as well.

California's water system was designed to enable us to live within the extremes of flood and drought. In the past it gave us the flexibility to adjust to these changing conditions and move our water supplies around to the places where and when they are needed most. That flexibility is what the current federal regulatory regime has taken away. To restore it, we need to begin now building the new facilities that are needed for the twenty first century.

According to Merriam-Webster, the word "drought" has two principal meanings: (1) a period of dryness, especially when prolonged, that causes extensive damage to crops or prevents their successful growth; and (2) a prolonged or chronic shortage or lack of something expected or desired. We certainly are not in a period of dryness this year, but people who live and work on the westside continue to suffer from a prolonged and chronic shortage of the water they expected under their contracts with the United States.

I hope my testimony has made it clear that this prolonged and chronic shortage is the result of policy choices made by the federal government, not by dry hydrologic conditions. Plain and simple, this is a man-made drought. It is Westlands' view that these policy choices must be changed to better reflect the natural system, human needs and good science. I hope your Subcommittee will

help to make that happen. I would welcome any questions from members of the Subcommittee.

Exhibit 1

California Northern Sierra Precipitation

8-Station Index, April 08, 2011

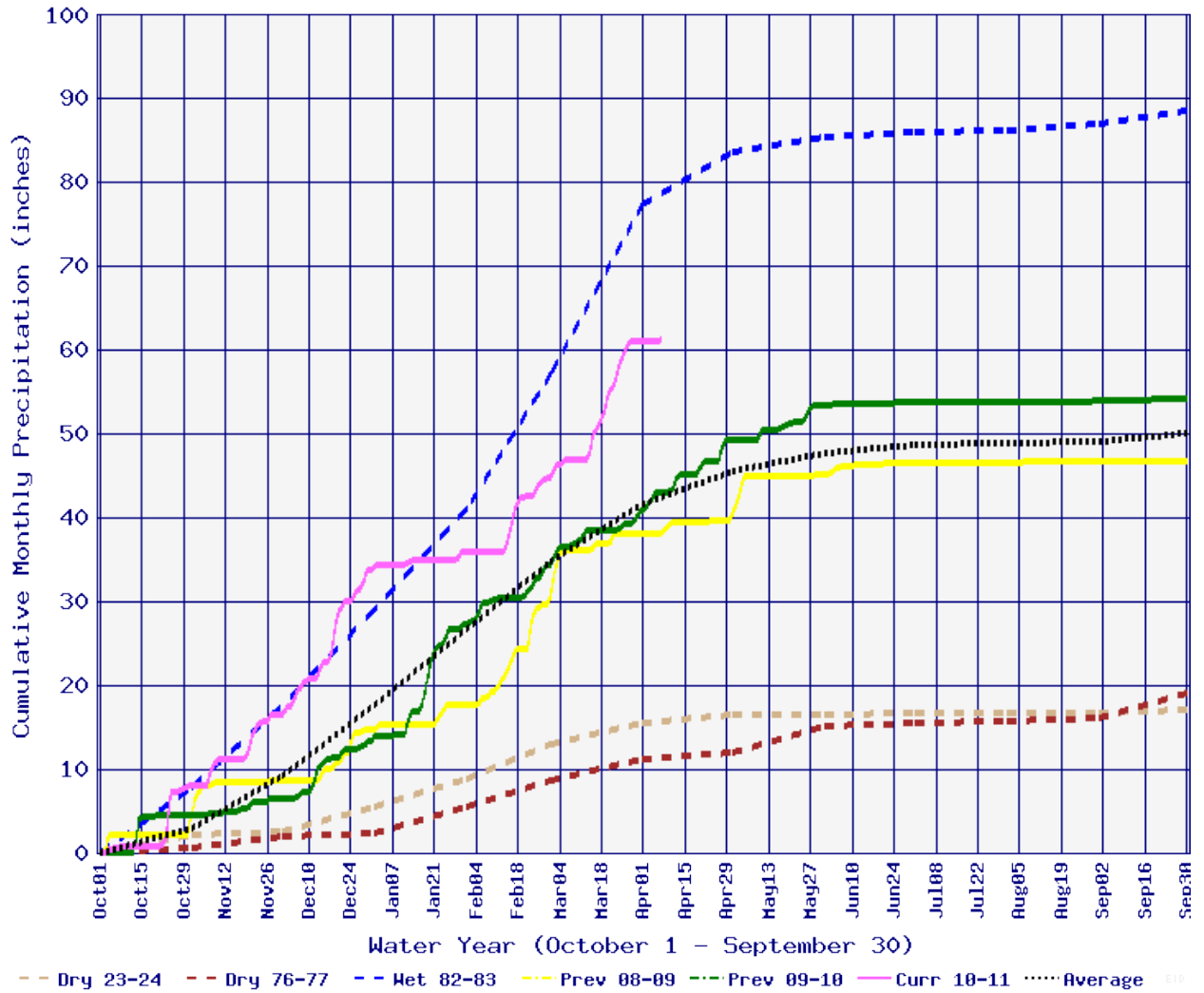


Exhibit 2

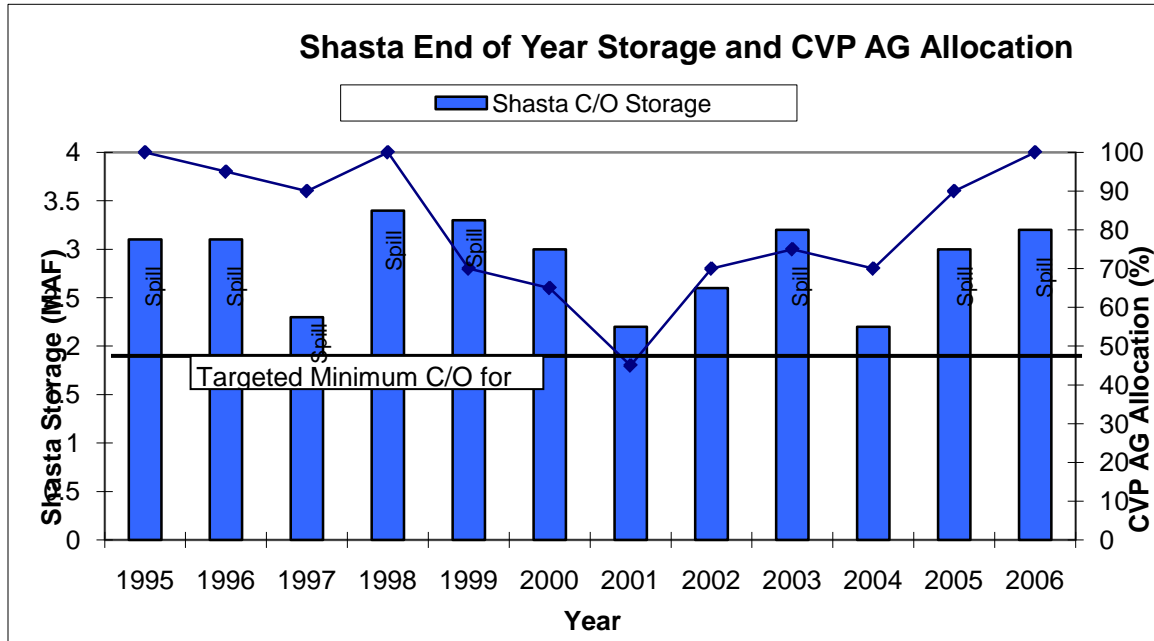


Exhibit 3

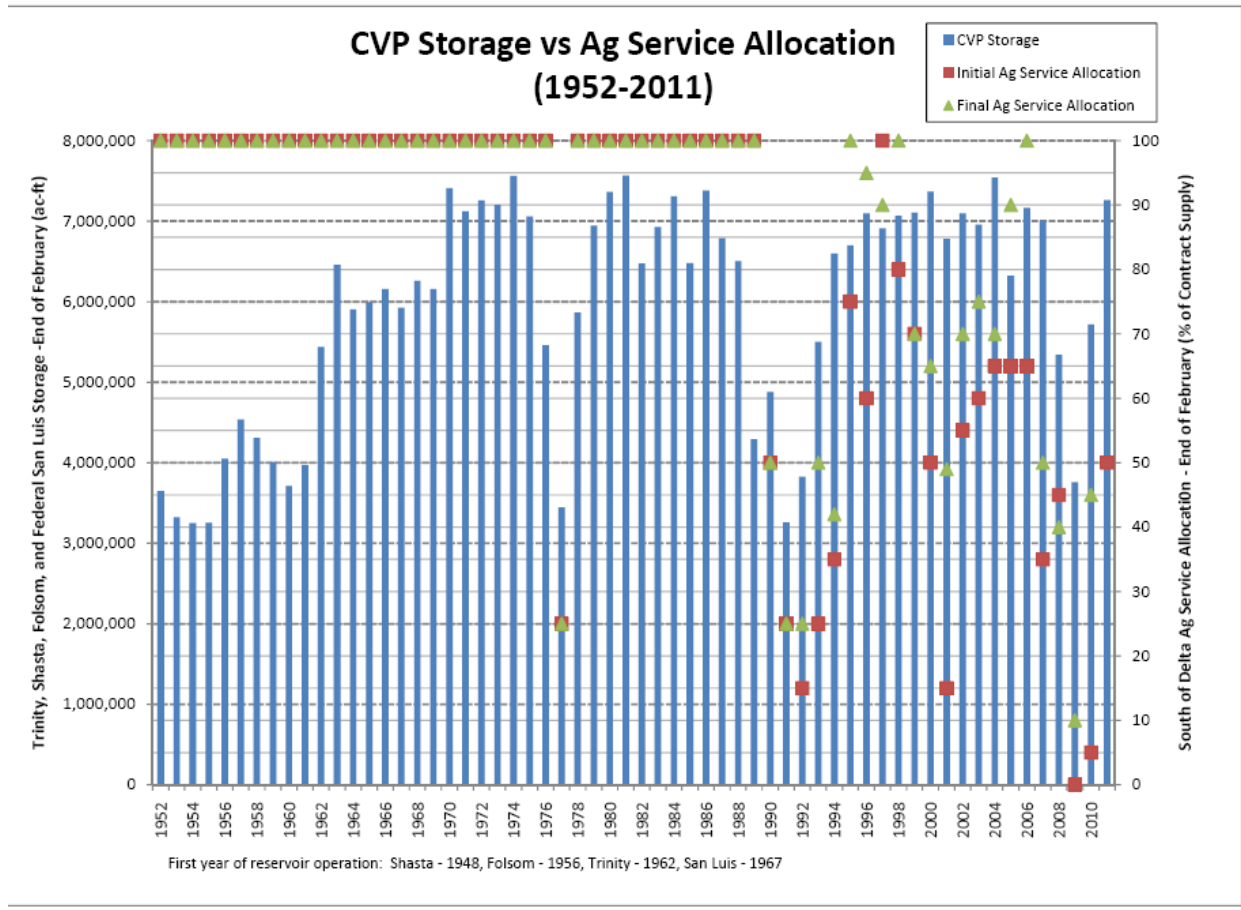


Exhibit 4

