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VIA electronic mail to CWFhearing@waterboards.ca.gov and service list of hearing participants.

VIA US mail to Clifton Court, L.P.

Felicia Marcus, Chair and Co-Hearing Officer

Tam Doduc, Member and Co-Hearing Officer

State Water Resources Control Board

1001 I Street

Sacramento, California 95814

Dear SWRCB hearing officers,

This letter is in response to DWR's and Reclamation's February 2, 2016 letter. Many of the Protestants have indicated the difficulty in responding to a Change Petition where the proposed operations of the new Point of Diversion are not in final form, and requested a postponement of the start of the hearing until the operations are finalized and the final CEQA documents are released.

The chaotic state of the Change Petition is also reflected in the computer models used for the CEQA analysis. The main hydrologic model, CALSIM II, is not a single model, but a number of versions based on a common source code. The Petitioners have separate CALSIM II and DSM2 models for each of the alternatives, including the Existing Biological Conditions (EBC) and No Action Alternatives. The No

Action Alternative has multiple versions for no sea level rise, Early Long Term, and Late Long Term. There are also separate models for the new Alternative 4A. Each of these models has had multiple internal revisions, and the ALT 4A model is still being modified as part of the Biological Assessment consultation. There are also 5 sets of inflow data, named Q1-Q5, reflecting different assumptions about climate change effects on temperature and runoff. Q5 has been used for model runs, and Q1-Q4 for sensitivity analyses.

The Department of Water Resources has not used standard industry practices for disseminating these models, which include public announcements of new versions, and download links for subscribers. Instead, interested parties that are not water agencies have been required to personally bring hard drives to DWR to get the modelling data.

I reviewed a model set provided to Friends of the River in response to a Public Records Act request in 2013. The set of models was incomplete, there was no information about how they related to the current versions being used for the DEIR/DEIS, and there was no input data. They also came with the following disclaimer:

BDCP MODELING DATA DISCLAIMER

The Requester is provided preliminary modeling data developed by the California Department of Water Resources (DWR) regarding the Bay Delta Conservation Plan (BDCP) under the following disclaimer acknowledgement.

DWR makes no warranties, representations or guarantees either expressed or implied, as to the completeness, accuracy or correctness of the data, nor accepts or assumes any liability arising from any incorrect, incomplete or misleading data as interpreted by Requestor and/or its agents. Requester acknowledges that this data has not been completely reviewed and approved by Lead agencies in the BDCP and is considered preliminary and tentative for future analysis and final decision-making support.

“Preliminary and tentative” models and modelling data are clearly not in final form, and do not support any formal petition or proceeding, including the Change Petition. Despite repeated requests, no list of modelling software versions was provided, nor was any indication made of the availability of the missing models for some alternatives, or the input data. Requests for further modelling data was to be accommodated by the requesters personally bringing a hard drive for DWR.

This is of significant concern in a water rights proceeding because there has not been a comprehensive external review of the new CALSIM II software versions, and the Petitioners assert that the No Action Alternative does not necessarily validate with historic operations.

In the absence of comprehensive external review or validation, the Petitioners need to include a complete list of the versions of all computer models used in producing the CEQA document submitted in support of the petition, and make the models and input and output data available to all interested Protestants in order to have a complete Petition. Supporting data for all sensitivity analyses also needs to be supplied. (See, e.g., Water Code, § 1701.2; 23 Cal. Code Regs. § 791, § 794, subs. (a)(2), (8) & (9).) Distribution would be transparent and efficient using the industry standard of download links to a

web server. The Department of Water Resources operates such a server, and has been using it to distribute computer models and modelling data to some of the water agencies, behind a passcode wall. Reclamation and DWR have publicly distributed models and data for the 2008 OCAP BA and the State Water Project Delivery Reliability Report in this manner, but not for BDCP/WaterFix.

Without this modelling evidence, the Petition is incomplete. As a result of the Petitioners' failure to include the substantiating information in its Petition, or to adequately notice its availability and disseminate it to interested parties, the Petition should not proceed to hearing until it is provided. (23 Cal. Code Regs., § 794 subd. (g); see also Wat. Code, § 1703.6, subd. (a) (requiring cancellation of petition in this circumstance).)

Finally, I would like to note that the assertion made at the pre-hearing conference that the Board cannot introduce its own previous decisions, or the evidence provided in support of the Petition, into the hearing record, appears to be in direct contradiction of previous Board hearing procedures. The Petitioners need to work with the Board on both introducing evidence submitted in support of the Petition into the record, and on disseminating it in an appropriate, transparent and efficient way to all hearing participants. It is entirely inappropriate for the Petitioners to point protestants to evidence provided outside of the hearing process as meeting their obligation to adequately describe their project and its impacts in the Petition.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Des Jardins', with a stylized flourish at the end.

Deirdre Des Jardins