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Via E-Mail to CWFhearing@waterboards.ca.gov

The Honorable Felicia Marcus, Chair
Co-Hearing officer
State Water Resources Control Board
Post Office Box 100
Sacramento CA 95812

The Honorable Tam Doduc
Co-Hearing Officer
State Water Resources Control Board
Post Office Box 100
Sacramento, CA 95812

Re: Agenda Topics for October 19, 2017 Pre-Hearing Conference
to discuss Part 2 Procedural Issues

Dear Hearing Officers Marcus and Doduc:

According to the October 30, 2015 Ruling, Part 2 will examine if the changes proposed in the Petition will unreasonably affect fish and wildlife, or recreational uses of water, or other public trust resources. Part 2 will also explore if the proposed changes requested in the Petition is in the public interest, or not. If so, what specific conditions, if any, should be included in any approval of the Petition to ensure that the changes are in the public interest? I intend to bring witnesses and testify regarding impacts to recreation and other public trust resources predominantly.

Pursuant to your August 31, 2017 ruling on scheduling Part 2 of the ongoing WaterFix hearing, SHR believes the following topics should be included in the agenda for the pre-hearing conference:

1. The Hearing Officers have indicated that “consideration of appropriate Delta flow criteria is a key issue to be addressed in Part 2”, and that Delta flow criteria developed in this hearing “would not be a rule of general application” as it would apply “only to the exercise of the water rights at issue in this proceeding”. August 31, 2017 Ruling, page 15. It is logical that the most important issue is fresh water flow remaining in the Delta, so this issue should be addressed first. Will such “appropriate flow” be determined for each waterway of the Delta and if so, would it be possible to be provided a draft of the proposed year round monthly

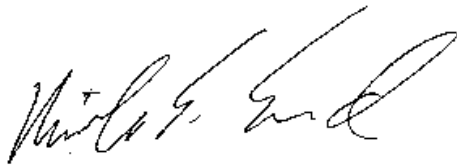
flows for Steamboat Slough, Sutter Slough, Miner's Slough and the Sacramento River to Rio Vista? As you know, SWRCB directed DWR to provide computer modeled minimum flows for Steamboat Slough for dry and critical years, for summer months only. (SHR-350 and SHR-352). I believe it would be beneficial for all parties to understand DWR/USBR proposed operational flows for all months of the year, for all year types, and for each of the waterways of the Delta. Impacts change based on flows, both high flows and low flows, so knowing the proposed flow by waterway is important. If we could all base our impact assessment on the same proposed flow data, it would make more sense of the process. I therefore suggest that the first topic of Part 2 is for Petitioners to present suggested "appropriate flow", for Protestants and others to have sufficient time to analyze that "adequate" flow data, and then be given time to present rebuttal and suggest alternate flow requirements. If SWRCB or Petitioners are not prepared at this time to propose year round minimum adequate Delta surface flows, then it should be assumed impacts will be based upon an analysis of the excessively low flows we've seen since 2004, as an example of what to expect. To make that assessment, I request that SWRCB direct DWR to provide updated data showing the "Delta Water Balance" including through water year 2016. Since the last report was produced for the 2013 California Water Plan changed several times, it would be appropriate to provide the most current accurate Delta inflow, outflow, exports and DICU starting with 2004.

2. If SWRCB decides to move forward with Part 2 hearing despite a clear understanding of adequate proposed flows, there are many topics that will need to be addressed related to construction and operation. I would like to suggest that Part 2 be split into two phases because construction time frame is projected to be such a long time and impacts are different from operations, more likely than not. Therefore, I suggest the following topics as a minimum:
 - A. (Part 2a) Impacts from Construction: Recreation, including boating, swimming, fishing, sight seeing, transportation, visual, sound and air quality. Impact to farming operations. Impacts to local community economies, housing and real estate values. Impacts to public infrastructure including utilities of drinking water, power, sewer, garbage disposal, emergency response and phone/internet services. Impacts to flood control & levee roads. Impacts to aquatic fish and plants.
 - B. (Part 2b) Impacts from Operations: Long term aquatic impacts with and without mitigation; impacts from proposed mitigation. Permanent impacts to existing recreation, terrestrial environment, drinking water supply. Impacts to flood control. Impacts to future development and access to drinking water supply. Impacts to transportation and access in the long term. Impacts to future economy in the Delta, Bay Area and Sacramento.
3. If WaterFix proposal is approved, SWRCB should define what special and specific conditions will be required to mitigate the impacts to local recreation,

businesses, families, farming, economy, utilities, flows and infrastructure? Who will pay for the damages and costs of mitigation of impacts and what will be the process to apply for funding or reimbursement for damages? Will DWR and USBR and its contractors be required to provide insurance and bonds to cover all possible damages and costs to the Delta area in case of catastrophes such as levee failure due to trucks on levees? Will a special Delta office be set up to receive and process claims? These types of issues should be answered as part of any approval of WaterFix proposal, even if approval is for a reduced amount of tunnel flow.

4. As to grouping of Protestants, please keep in mind that different areas and waterways of the Delta would expect different impacts, so grouping all recreational facilities or protestants into one group would not be appropriate.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Nicole S. Suard". The signature is fluid and cursive, with a large initial "N" and "S".

Nicole S. Suard, Esq.
Managing Member, Snug Harbor Resorts, LLC