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SAN JOAQUIN RIVER EXCHANGE CONTRACTORS WATER AUTHORITY

7
8 **BEFORE THE CALIFORNIA STATE WATER RESOURCES CONTROL BOARD**

9
10 HEARING IN THE MATTER OF)
CALIFORNIA DEPARTMENT OF)
11 WATER RESOURCES AND UNITED)
STATES BUREAU OF)
12 RECLAMATION'S REQUEST FOR A)
CHANGE IN POINT OF DIVERSION)
13 FOR CALIFORNIA WATER FIX)
14)
15)

REPLY OF SAN JOAQUIN RIVER
EXCHANGE CONTRACTORS WATER
AUTHORITY TO DEPARTMENT OF
WATER RESOURCES'S OPPOSITION
TO AMENDMENT OF NOTICE OF
INTENT TO APPEAR TO SUBSTITUTE
WITNESSES

16
17 **INTRODUCTION**

18 The San Joaquin River Exchange Contractors Water Authority (SJREC) is
19 somewhat surprised by the opposition and objections of the Department of Water
20 Resources (DWR) to the method of presenting evidence regarding the assumed
21 maintenance of channels and levees to conduct at least 3,000 cfs of cross-Delta flows for
22 CVP and SWP pumping. The DWR/Bureau application and all modeling of the effects of
23 the tunnels is based upon a dual conveyance system existing and being operable, and the
24 DWR's own DRMS Phase 2 Study describes the conditions and costs of the cross-Delta
25 flow works. If the SWRCB is to approve the new point of diversion for the tunnels,
26 information and evidence that describes the "dual" portion the DWR and Bureau are
27 apparently representing will be implemented and maintained must be presented. Our
28 concern with those objections and some solutions to DWR's concerns are presented in this

1 Reply so that the State Water Resources Control Board and its staff can carefully consider
2 this matter:

3
4 **I. The contention that the SJREC should have cross-examined DWR witnesses
5 to elicit testimony as to DWR's and the Bureau's financial and physical plan
6 to maintain at least 3,000 cfs "through-Delta flow capacity to the pumps"
ignores the fact that this part of DWR's plan was not testified to or explained
by the DWR witnesses.**

7 The DWR did not present in direct testimony or through documentary evidence its
8 financial or organizational plan to maintain levee integrity in the portions of the Delta
9 essential to maintaining cross-Delta flow and salinity control of those flows to the pumps.
10 The DRMS Phase 2 Study published in 2011 by DWR outlines what is needed and costs
11 in excess of \$6 Billion Dollars are estimated for one alternative "building block" set of
12 measures. The DWR operations personnel, such as John Lehigh and its modelers, in their
13 direct testimony, did not address why the modeler's assumption was valid that a system
14 for protecting Delta channels and levees could and would be maintained in the future to
15 provide 3,000 cfs flow or more to the CVP and SWP pumps. If SJREC had attempted to
16 cross-examine the DWR's presented witnesses, the objection could properly be made that
17 the inquiries would have exceeded the scope of the DWR witnesses direct testimony since
18 none of the DWR witnesses discussed or presented evidence regarding organizing the
19 funding for maintenance of Delta levees and channel capacity or the conclusions of the
20 DRMS Phase 2 Report.

21 Additionally, none of the DWR witnesses explained why the Delta Risk
22 Management Study (DRMS) Phase 2 Report published in 2011 by DWR itself was not
23 ever referred to. That Study carefully and exhaustively points out the risks to Delta levees
24 and channels caused by sea level rise, land subsidence, poor original construction
25 techniques, identifies the levees which should be rebuilt, and estimates the cost of
26 "building blocks" to reduce the risk of capacity loss to convey surface water through the
27 Delta to the SWP and CVP pumps.

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1 The DWR could easily have presented model runs in which the failures of Delta
2 levees and an inability to use through-Delta flow capacity existed, and because of salinity,
3 surface water could not be passed through the Delta to the State and Federal pumps.
4 DWR did not do so, obviously implying that DWR's financial and physical plan to
5 maintain 3,000 cfs or more of through-Delta capacity would exist at all times, or if an
6 occasional levee or two failed, the financial resources would exist to accomplish the
7 rebuilding. . .with the added benefit that the tunnels would be usable during the repair
8 period. If there is no financing and no SWP/Bureau/local interest plan, the repair period
9 could be extended on. . .forever.

10 The SJREC is happy to conduct depositions and provide testimony in a written
11 form from the most knowledgeable persons within DWR as to what DWR's financial and
12 physical plan (and its plan for Bureau of Reclamation and local interest participation) is to
13 maintain these cross-Delta flow characteristics, but the point is: DWR has not yet
14 explained that financial and physical plan to avoid levee collapses and interruption of
15 those flows assumed to exist to allow cross-Delta deliveries.

16
17 **II. DWR presumes that the effect of allowing cross-examination of Mr. Mraz,**
18 **head of the DWR Department who issued the DRMS Phase 2 study, will be**
19 **disruptive and time-consuming. That assumption is mistaken.**

20 SJREC simply wants a project that will work and to understand all measures
21 planned and promised. If the levees and channels are not to be made subject to an
22 organized, well financed, and established method of protection of through-Delta capacity
23 then the tunnels may need to be larger and detrimental effects on legal users of water
24 recognized and accepted or other project features considered. We would like to assume
25 that the failure of DWR to include the financing and measures described regarding the
26 levees and channels to provide a reliable system to maintain a dual conveyance system is
27 an oversight of the Project proponents. If not, the model runs should clearly set out the
28 magnitude of the injury to legal users of water from failed levees with no adequate
financial plan to fix the levees and channels. The DRMS Phase 2 Study concludes the

1 present system and conditions are not sustainable. If the tunnels will be utilized to
2 mitigate for those failure conditions, it can be argued that injury is not caused by the
3 tunnels or their operation because of levee failures and saline conditions, but instead
4 caused by the levee conditions. One of the questions for SWRCB to resolve in this
5 proceeding is whether the plan presented is the best plan with the least injury to water
6 users with the best use of public resources. Sophisticated countries like Holland use
7 devices other than tunnels to prevent salt water intrusion from paralyzing their society. If
8 DWR's vociferous opposition indicates that the "building blocks" included in the DRMS
9 Phase 2 plan are all infeasible, we as a society have to admit that.

10 If instead there is a plan for DWR, the Department of Interior and local interests to
11 fund the rebuilding of some of the critical levees, and when there are failures, spring
12 forward to fix them, rather than surrender to salinization of the interior Delta and
13 exclusive use of the tunnel capacity, let's spell the plan out and make it a condition of and
14 part of the Tunnel Project. Otherwise, the models should be run as if outages of the
15 "through-Delta flow capacity of 3000 cfs or more" will occur routinely and then
16 permanently as sea levels rise and subsidence and possible floods and earthquakes take
17 their tolls. The tunnels will be required to be operated full-time or most of the time.
18 Jumping to a conclusion as DWR opposition seems to infer that this testimony is good
19 news or bad news for the Tunnel proposal is premature. California may be better off to
20 simply understand what the Tunnel plan is.

21 SJREC is entitled to delivery of exchange or substitute water from the CVP in
22 order to free up San Joaquin River water for use by others. We presume the Bureau is
23 making arrangements for participation in the tunnel, both financial and contractual, to
24 meet its responsibilities to the SJREC. The fact that DWR proceeded to make this
25 application without making those arrangements public and affirming the financing
26 arrangements, and not fully elaborating upon its plans for "through-Delta flow capacity"
27 maintenance, now places upon the parties such as the SJREC and SWRCB the
28 responsibility of assuring that the information is included on the record affirming that

1 DWR's plan is in fact workable. DWR's own DRMS Phase 2 Study concludes that cross-
2 Delta flow in a dual system and protection from saline intrusion can be achieved but the
3 costs are high.

4 On page 2 of DWR's objections (2:11-18 ; 3: 14-16), DWR seems to be claiming that
5 on January 4, 2016 when Christopher Neudeck was designated by SJREC as a witness and
6 his general testimony outlined, that the SJREC should have known to include a description
7 in the Notice of Intent that part of the testimony of Mr. Neudeck or any successor would
8 be the possible inconsistency (or at least incompleteness) of presenting modeling and a
9 plan dependent on maintaining 3,000 cfs or more of through-Delta capacity for at least
10 ninety (90) days or at least 540,000 ac/ft each year without a plan to finance and organize
11 maintaining levees and channels. How exactly an interested party such as SJREC
12 (converted into a Protestant by the uncertainty of what the Project is or is not) was
13 supposed to anticipate modeling assumptions to be used in the Application for change of
14 point of diversion which assumptions were not released until June 1, 2016 (six months
15 later) in the form of DWR Exhibit 515 and not set forth in the draft BOCPEIR-EIS (2015)
16 p. 5-5 though 5-15 is not explained in the DWR objections.

17 No doubt DWR's energy in its opposition is generated by a fear that DWR's
18 employees might contradict the presentations made in support of the Applications. That
19 is easy to resolve and not SJREC's goal. DWR and the Bureau can assure the Board that a
20 condition of approval of the Application will be funding and implementation of the
21 "building blocks" described in the Legislature ordered DRMS Phase 2 Study necessary to
22 provide for maintenance of cross-Delta flow capacity described in their modeling and
23 projections of pumping capacity at the SWP and CVP pumps with the salinity protections
24 described in that plan. As described hereafter, SJREC is glad to take depositions or
25 provide for other reasonable methods to streamline the presentations and no hostile and
26 disruptive trial procedures are planned or intended. Getting the whole story and the
27 conditions to make the story have a good finish are all that is intended by SJREC.

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1 The argument that there is some analogy to Metropolitan Water District’s or Save
2 the California Delta Alliances’ motions to change the level of participation is misguided.
3 SJREC has been a protester in Phase I from the beginning, unlike those parties, and clearly
4 indicated its interest in the question of how Delta salinity and operations of the SWP and
5 CVP pumps would be preserved. We are happy to provide a declaration from Mr.
6 Neudeck and South Delta Water Agency as to how Mr. Neudeck became unavailable for
7 this testimony if that is helpful or doubted as some sort of subterfuge.

8 Probably more important, the SWRCB should protect DWR from itself on this
9 issue. Imagine an administrative hearing which comes before a reviewing Court in which
10 a party is prohibited with the complicated phasing and “lines” drawn in these proceedings,
11 from examining employees of DWR under oath? The SWRCB should protect the record
12 in this proceeding from DWR’s too quick assumptions that no good can arise from being
13 clear about how the 3,000 cfs or more capacity will be preserved. As to “surprise
14 testimony” (5:3-5), how can a study and report on measures required and costs to be
15 incurred in the Delta levee and channel systems by DWR ordered by the Legislature,
16 itself, in AB1200 Water Code 139.2 be a surprise?

17
18 **III. It was unfortunate that Chris Neudeck became unavailable to provide the**
19 **testimony and references to the DRMS Phase 2 Study.**

20 The SJREC would be happy to take the deposition of Mr. Mraz and perhaps one (1)
21 or two (2) other DWR employees, and to submit the written testimony to the Board in that
22 form. Those persons can then be examined by all parties. If DWR together with the
23 Bureau have a plan for financing and protecting the levees to maintain through-Delta flow
24 capacity to the extent of 3,000 cfs or more, they should be able to present it very quickly
25 to the SWRCB and be happy to do so because Water Code 139.2 and DRMS require 50,
26 100 and 200 year projections. If instead there is a high probability that the levees will fail,
27 salinity cannot be controlled, and cross-Delta surface water flows cannot be diverted at the
28 CVP and SWP pumps for substantial periods, then the DWR and SWRCB may wish to

1 consider conditioning the tunnel and fish screen capacities be increased to more closely
2 approximate the pumping capacity at the CVP and SWP pumping stations to protect
3 against that eventuality.

4 The suggestion that the testimony originally planned for Mr. Neudeck is being
5 changed or altered in scope ignores the fact that at the time Mr. Neudeck was designated,
6 SJREC could not have known that all of the modeling would be based upon a reliable
7 3,000 cfs or greater non-saline water supply being available for pumping at the SWP and
8 CVP pumping plants for the life of the Tunnel Project, or that the DWR would not present
9 its own DRMS Phase 2 study as an exhibit in this proceeding, since the Delta salinity and
10 flow characteristics are at the heart of the concern of many of the parties appearing in this
11 proceeding.

12
13 **CONCLUSION**

14 The SJREC does not relish the thought of extensive levee failures in the Delta, but
15 if the object of this Project is to provide for the ability and continuity to deliver water, the
16 decisions regarding sizing and impacts that must be accepted and recognized requires that
17 the testimony offered by the SJREC be provided to the SWRCB.

18 As an alternative, the SJREC would not object at all to the DWR re-opening its
19 direct testimony and providing its description of the DWR and CVP plan with local
20 interests for financing and maintenance of through-Delta capacity, how it plans to respond
21 if levees identified in the DRMS Phase 2 Study fail, and how it intends to finance, repair
22 and buttress those levees with local interests as called for in the DRMS Phase 2 Study.
23 Otherwise, a new model run which does not have the 3,000 cfs available in July-August-
24 September, (and we presume a portion of October), could be presented by DWR as their
25 Project proposal, and we should all deal with those hard facts: The sea is encroaching,

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28 ///

1 subsidence is progressing, and we should have a plan – although perhaps a plan we do not
2 like – but it should be the best plan under the circumstances.

3
4 Dated: September 8, 2016

MINASIAN, MEITH, SOARES,
SEXTON & COOPER, LLP

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6 By:



PAUL R. MINASIAN, ESQ.
Attorneys for SAN JOAQUIN RIVER EXCHANGE
CONTRACTORS WATER AUTHORITY

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STATEMENT OF SERVICE

CALIFORNIA WATERFIX PETITION HEARING

Department of Water Resources and U.S. Bureau of Reclamation (Petitioners)

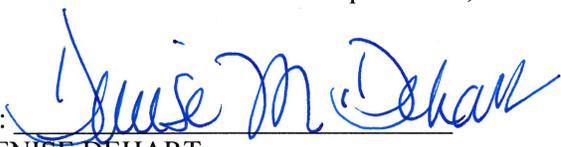
I hereby certify that I have this day submitted the following to the State Water Resource Control Board and caused a true and correct copy of the following document(s):

**REPLY OF SAN JOAQUIN RIVER EXCHANGE CONTRACTORS WATER AUTHORITY TO
DEPARTMENT OF WATER RESOURCES'S OPPOSITION TO AMENDMENT OF
NOTICE OF INTENT TO APPEAR TO SUBSTITUTE WITNESSES**

to be served by Electronic Mail (email) upon the parties listed in Table 1 of the Current Service List for the California WaterFix Petition Hearing, dated August 31, 2016, and posted by the State Water Resources Control Board at:

http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/service_list.shtml :

I certify that the foregoing is true and correct and that this document was executed on September 8, 2016.

Signature: 

Name: DENISE DEHART

Title: Secretary to PAUL R. MINASIAN

Party/Affiliation: SAN JOAQUIN RIVER
EXCHANGE CONTRACTORS WATER
AUTHORITY

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http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/service_list.shtml :

Service also perfected by placing for collection and deposit in the United States mail a copy/copies of the documents(s) at: MINASIAN, MEITH, SOARES, SEXTON & COOPER, LLP, in Oroville, Butte County, California in a sealed envelope, with postage fully prepaid, addressed to:

Robin McGinnis
James E. Mizell
Spencer Kenner
DEPARTMENT OF WATER RESOURCES
Office of the Chief Counsel
1416 Ninth Street, Room 1104
Sacramento, CA 95814

I am familiar with the practice of MINASIAN, MEITH, SOARES, SEXTON & COOPER, LLP for the collection and processing of correspondence for mailing with the United States Postal Service. In accordance with the ordinary course of business, the above-mentioned document(s) would have been deposited with the United States Postal Service on July 15, 2016, the same day on which it/they were placed at MINASIAN, MEITH, SOARES, SEXTON & COOPER, LLP for deposit.

I certify that the foregoing is true and correct and that this document was executed on September 8, 2016.

Signature: 

Name: DENISE DEHART

Title: Secretary to PAUL R. MINASIAN

Party/Affiliation: SAN JOAQUIN RIVER
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