

August 3, 2017

Felicia Marcus
State Water Board Chair
BDCP Alternative 4A (California WaterFix) Project Co-Hearing Officer

Tam M. Doduc
State Water Board Member
BDCP Alternative 4A (California WaterFix) Project Co-Hearing Officer

Re: California WaterFix July 27, 2017, Ruling

Dear Hearing Officers:

This letter is submitted on behalf of Save the California Delta Alliance. Delta Alliance expresses no opinion at this time about the main subject of the July 27, 2017, Ruling Denying Sacramento Valley Water Users' Request to Hold Open Part 1 of the Hearings—whether or not Part 1 should be held open for further submissions of evidence.

However, Delta Alliance is alarmed by statements made in the ruling that appear to indicate that the Board is considering beginning Part 2 of the hearings before Petitioners submit a complete project description in conformance with 23 CCR § 794, before Petitioners complete ESA consultation, and before Petitioner USBR issues a ROD or completes the EIS. All of these environmental process were required by the Board's February 11, 2016, Pre-Hearing Conference Ruling to be complete before Part 2 could commence.

As shown below, the recently certified FEIR does not contain a project description. The USBR ROD has not been issued, the FEIS has not been completed, and the ESA process, which largely determines the project description is far from complete.

- I. Petitioners Must Complete The ESA Standard Level Consultation On All Project Elements Before Part 2 Can Be Scheduled As Required By the February 11, 2016, Pre-Hearing Conference Ruling.**
 - A. The Submitted Petition and Project Description Were Incomplete Upon Commencement of Part 1 And The Board Assured Protestants The Petition And Project Description Would Be Complete Before Commencement of Part 2.**

In its February 11, 2016, Pre-Hearing Conference Ruling, the Board acknowledged that the Petition was incomplete. (*See* Pre-Hearing Conference Ruling, p. 6.) After concluding that the project description was inadequate, the Board stated that, “[s]uspending the due date for other parties to submit written testimony and exhibits until

after petitioners present their case in chief will address the need for an adequate project description.” (February 11, 2016, Pre-Hearing Conference Ruling, p. 7.) The Board noted that starting the hearing contrary to its regulations in this particular situation was “an appropriate middle ground to pursue at this time,” (*id.* at p. 2,) and “also is fair.” (*Id* at p. 7.)

The Board acknowledged that during “the pre-hearing conference, many parties made persuasive arguments that they cannot participate meaningfully in Part 1 because the draft CEQA document does not contain enough information concerning how the WaterFix will be operated and the potential impacts of the project on other legal users of water.” (Pre-Hearing Conference Ruling, p. 5.)

In order to move forward with Part 1, despite an incomplete Petition and inadequate project description, the Board promised all Protestants, as stated in the October 30, 2015, Hearing Notice, that:

To ensure compliance with the above requirements, and to better inform the hearing process, State Water Board staff does not propose to begin the second part of the hearing or act on the Petition until the ESA, CESA and CEQA processes are complete.

(October 30, 2015, Hearing Notice, p. 11.) This promise was reaffirmed in the Pre-Hearing Conference Ruling: “As previously planned, Part 2 of the hearing will *commence* following completion of the CEQA/NEPA and ESA/CESA processes.” (“Environmental Processes”) (Pre-Hearing Conference Ruling, p. 3. [emphasis added].)

Protestant Save the California Delta Alliance relied on the Board’s repeated assurances that these processes would be complete before Part 2 of the hearing would commence.

B. The Currently Incomplete ESA Process Must Be Completed Before Part 2 Can Be Scheduled.

It is necessary that the Environmental Processes be completed before Part 2 of the hearing can commence because it is these processes that will provide Petitioner the ability to furnish an intelligible and adequate project description. Petitioner has not, and cannot, furnish an intelligible project description because it does not know how the project will be operated or constructed. It cannot know until these processes, particularly the ESA processes, are complete.

The USFWS Programmatic Biological Opinion issued on June 29, 2017, is not what Petitioner wanted nor what the Board expected. It is only a work plan for the completion of the ESA process. It sets forth the sequence of steps needed to complete the ESA process rather than providing information indispensable to a complete project description. As revealed by the Biological Opinion, the project description and operating criteria will not be known until incidental take statements, or a finding that the action is not likely to adversely affect any listed species, are issued for the project components consisting of (1) construction of the North Delta Diversions (“NDD”); (2) construction of the Head of Old River Gate (“HORG”); (3) construction of the Contra Costa Water District (“CCWD”) settlement facilities; (4) operation of new and existing Central Valley Project (“CVP”) and State Water Project (“SWP”) water facilities under dual conveyance; (5) future maintenance; (6) compensatory mitigation associated with construction of the NDD, HORG, and CCWD settlement agreement facilities; and (7) the CWF Adaptive Management Program. (*See* USFWS Biological Opinion, p.2.)

It is the process of engaging with USFWS to obtain findings on items 1–7 above that provides Petitioner direction on how to develop its operating criteria and project description. That is why the Board recognized in its October 30, 2015, Hearing Notice, and reaffirmed in its February 11, 2016, Pre-Hearing Conference Ruling, that these ESA process would be complete before the beginning of Part 2 is scheduled. As the USFWS Programmatic Biological Opinion states, “subsequent consultations will address incidental take associated with those [items 1–7 above] activities,” and “[c]hanges to the operational scenario will be analyzed in subsequent consultation.” (June 23, 2017, USFWS Programmatic Biological Opinion, p. 2.)

Although Delta Alliance is not in a position to make representations to the Board about Petitioners’ time frames, it is Delta Alliances’ understanding that USFWS, USBR, and DWR are engaging in a concerted effort to complete consultation and development of operational criteria for Alternative 4A over the next 4 to 6 months. The Board may wish to inquire of Petitioners if Delta Alliance’s understanding is correct.

II. Petitioners Must Submit A Succinct And Complete Project Description Compliant With 23 CCR § 794 Before Part 2 Can Be Scheduled.

In its February 11, 2016, Pre-Hearing Conference Ruling, the Board stated that Petitioners must provide “the information required by section 794 of our regulations in a succinct and easily identifiable format.” (Pre-Hearing Conference Ruling, p. 7.) That information includes the operating criteria for the project. As the Board recognized, the Petition and Draft EIR did not provide operating criteria in a succinct and easily identifiable format. The Final EIR, certified on July 21, 2017, is no better.

After over a year of hearings, Petitioners still expect Protestants and the Board to rummage through multiple cross-referenced and re-cross-referenced sections of a half dozen documents to cobble together a description of the operating criteria. It is incumbent on Petitioner, however, to provide the operating criteria in a concise format in one document. If Petitioners knew how the project would be operated, they could provide this information in tabular format of no more than 10 pages. Delta Alliance suggests that one reasonable step the Board could take to inform its deliberations about the course forward (and course corrections) would be to require Petitioners to submit such a table forthwith.

The July 21, 2017, CEQA Findings of Fact and Statement of Overriding Considerations contains the most recent Project Description. Project operations are described at page 39:

Operational components of the water conveyance facilities under Alternative 4A will be similar, but not identical, to those described under Scenario H, as applied to Alternative 4 in Chapter 3, Section 3.6.4.2 of the Final EIR/EIS. Prior to operation of Alternative 4A, specific initial operating criteria will be determined through the continued adaptive management process as outlined in the ESA Section 7 consultation process and CESA 2081(b) permit prior to the start of construction. Appendix 5E, *Supplemental Modeling Requested by the State Water Resources Control Board Related to Increased Delta Outflows*, and Appendix 5F, *Comparison of FEIRS Alternative 2D, 4A, and 5A Modeling Results to RDEIR/SDEIS Modeling Results*, present a range of operational scenarios to depict potential operations that are expected to be approved during subsequent environmental permitting.

Chapter 3, Section 3.6.4.2 of the FEIR/S, is referenced as “similar” to the project, however it is cited as part of the project description by the CEQA findings. Note that the

CEQA Notice of Determination, filed by DWR on July 21, 2017, selects BDCP Alternative 4A as the project. However, the CEQA findings rely on the entire section 3.6.4.2 (pages 3-231–3-273 of the FEIR for the description of project operating criteria. The description of Alternative 4A operating criteria in the FEIR (pages 3-261–3-273) is incomplete.

Other portions of section 3.6.4.2 are obsolete. For example:

- Table 3-25 (describing scenario A) shows diversions of 10,000–15,000 cfs under a range hydrologic conditions at several different times of year. (FEIR, p. 3-235.) Scenario H (Alternative 4) refers the reader back to Scenario A: “The north Delta diversion bypass flow criteria under Scenario H would be the same as under Scenario A.” (FEIR/S, p. 3-254.)

Much of the description of Alternative 4A operating criteria is contradicted by the Biological Assessment as revised in June of 2017, the USFWS Biological Opinion dated June 23, 2017, and released to the public on June 26, and Petitioners’ witnesses. For example:

- Page 3-238 (scenario A) provides for January through August minimum flow of 3,000 cfs at Rio Vista. Scenario H, again refers the reader back to scenario A: “The Rio Vista minimum instream flow criteria under Scenario H would be the same as under Scenario A.” (p. 3-258.) Scenario H (Alternative 4A) reiterates “Rio Vista minimum instream flows” as “Jan-Aug: Minimum of 3,000 cfs.” (Page 3-269.) The Revised BA deletes the minimum 3,000 cfs Rio Vista flow. (See Revised BA, Updated June 2017, Chapter 3, p. 97 [Rio Vista flow shown in strikeout type].) Petitioners response to comments in the FEIR/S states that during the section 7 consultation process the minimum Rio Vista flow “was no longer continued.” (FEIR/S Response to Comments, Table 3-3, Response to Comments of Brodsky, Michael). Table 3-3 is not consecutively paginated so comments are difficult to locate. A copy of the comment and response just cited is attached for the Board’s convenience. The 3,000 cfs Rio Vista Minimum was included as a modeling criteria before the Board. (FEIR/S, p. 3-269.) However, it appears to be deleted from the operating criteria. Is the 3,000 cfs flow requirement included in the project description proffered to the Board or not?

- Page 3-238 (Scenario A) states that from July-September, Petitioner will “preferentially operate SWP and CVP south Delta export facilities up to 3,000 cfs of diversions before diverting from north Delta intakes.” Page 3-269 (Scenario H, Alternative 4A) reiterates the 3,000 cfs south Delta pumping preference as a modeling assumption to control water quality and residence time: “Jul-Sep: Prefer south Delta intake up to total puping of 3,000 cfs; No specific intake preference beyond 3,000 cfs.” The July 21, 2017, CEQA findings directly cite a different passage of the FEIR: “The Project operations include a preference for south Delta pumping in July through September to provide limited flushing” (July 21, 2017, CEQA Findings, p. 40 [citing p.3-261–3-263]). The passage cited in the CEQA Findings does not include the 3,000 cfs minimum, but only discusses south Delta preference. The USFWS BiOP does not include a 3,000 cfs south Delta summer pumping requirement and Petitioners’ Operations Chief testified that summer south Delta pumping was not part of the mandatory operating criteria but would be indirectly required in order to meet D-1641. (Record Transcript, Vol. II, p.139: 10–22.)

Whether there is any requirement for south Delta summer pumping and if it is to be a minimum of 3,000 cfs or just some pumping is vital to Delta Alliance. The bays of Discovery Bay are directly and drastically affected by the combination of north Delta diversions with little or no south Delta pumping preference requirement. It appears that

the 3,000 cfs preference was used as a modeling assumption but either is not a part of the project description or is at an unspecified or reduced rate.

• The CEQA Findings state that all criteria of SWRCB Decision 1641 “will continue to apply” subject to adaptive management. (July 21, 2017, CEQA Findings, p. 40.) However the June 2017 revised BA and the testimony of Petitioner’s witness, Jennifer Pierre, confirm that Petitioners are proposing to change how the D-1641 Export to Inflow ratio is calculated by excluding all exports diverted by the proposed North Delta Diversions (NDD) from the export term. This means that the NDD could be diverting 9,000 cfs at the same time as the existing south Delta diversion point was diverting 1,000 cfs and the total amount “counted” as being diverted would be only 1,000 cfs, rather than the 10,000 cfs actually being diverted. This is a significant change from the way the export to inflow ratio is currently calculated. (See June 2017 Revised BA, p. 3-97 [“Reclamation and DWR propose that the NDD be excluded from the E/I ratio calculation.”]; Record Transcript, Vol.4, p. 229–235. Ms. Pierre’s cross-examination on the change to the Export to Inflow ratio concluded with the remark from Hearing Officer Doduc that “Mr. Brodsky, you flagged this point. We will make sure that it is covered in later panels.” (*Id.* at 235: 14–16.) However, Petitioners have never stated in any project description or testimony that they seek to amend D-1641 in this manner. Petitioners may propose to change the E/I ratio, or for that matter to eliminate D-1641 entirely. However, they owe the Board and Protestants a clear explanation of what they are proposing. The combination of the change in the E/I ratio with the elimination of summer south Delta pumping preference would have a drastic impact on Discovery Bay.

The above are just examples of the confused and murky description of the project operating criteria. We believe that our request to have Petitioner submit all operating criteria in one document in concise tabular format, deleting all obsolete provisions and including all recently added provisions, is a reasonable first step in course correction.

III. Appendix 5E And 5F, And Boundry 1–Boundary 2 Are Not A Project Description Or Project Operating Criteria.

The July 21, 2017, CEQA Findings refer the reader to Appendix 5E and 5F of the FEIR for a project description. (CEQA Findings, p.39.) Appendix 5E refers to Table 5E-1 “Key CALSIM II ... Inputs and Assumptions” and clearly labels Table 5E-1 as “Modeling Assumptions.” (FEIR Appendix 5E, p. 5E-2.) Modeling assumptions are not operating criteria and do not constitute a project description. At best, they are weak evidence in an impact analysis.

The modeling assumptions include “minimum flow requirements of 3,000 cfs from January to August” at Rio Vista for Boundary 1 and Boundary 2(Appendix 5E, p. 5E-3.) However, as described above, DWR has abolished this requirement through its response to comments in the FEIR. The modeling assumption does not match the partial project description.

Table 5E-1 also includes the modeling assumption, for both Boundary 1 and Boundary 2, that pumping up to the first 3,000 cfs will utilize the south Delta diversion points during summer months before shifting any diversions to the NDD. (*Id.*) However, DWR has stated that this is not an operating criteria. If it is not an operating criteria it should not have been included as a modeling assumption. If it is necessary, then it should not have been excluded from operating criteria requirements. The modeling assumption does not match the partial project description.

Table 5E-2, North Delta Diversion Bypass Flow Criteria, is again clearly labeled as consisting only of modeling assumptions. “These parameters are for modeling purposes. Actual operations will be based on real-time monitoring of hydrologic conditions and fish presence / movement.” (Appendix 5E, p. 5E-5.)

Table 5E-2 provides for a bypass flow of only 5,000 cfs during the months of July through September. (FEIR, p. 5E-7.) Operations Chief Leahigh testified that he did not know if a diversion of 9,000 cfs during flows of 19,747 cfs during the month of August, leaving 10,747 flowing downstream of the NDD, would be possible meeting all applicable criteria. (Record Transcript Vol. II., p. 142–145.) Petitioners’ modeling panel testified that they did not believe it would be possible to divert as described above but could point to nothing specific to sustain that belief. Referring to DWR 5, p.25, Chief Leahigh was under the mistaken impression that more restrictive bypass criteria for the months of April through December also applied during August. (Record Transcript, p. 143: 18–p.145: 20.) The 5,000 cfs bypass criteria with a promise to meet D-1641 and an opinion that 45% of the river could probably not be diverted during the summer does not make a description of project operating criteria. Petitioner could correct their oversight in omitting summer operating criteria by amending DWR 5, p.25 to include the summer months, as Chief Leahigh thought it did.

The elimination/mismatch of modeling assumptions to operating requirements for summer south Delta pumping preference, the elimination of Rio Vista minimum flow requirements, and the gap in summer operating requirements are only examples of incomplete project description.

More generally, Petitioners proffering of modeling results that purport to show that twin 40 foot tunnels can be operated with comparatively little impact as opposed to existing conditions does not constitute a project description. The point of an evidentiary hearing is for Petitioner to bear the burden of proving that its proposed project, as described in the Petition, will not injure legal users of water. The evidentiary hearing does not serve the purpose of developing a project description. The conflation of impact analysis with a project description has resulted in no enforceable description of project operating criteria that could be included in any order approving a change in the point of diversion.

Petitioners deferral of almost all critical decisions to a future, as yet undefined, adaptive management process does not substitute for an adequate description of the adaptive management plan. Petitioners wish to develop their operating plan during the eleven or more years that the project is under construction. Petitioners wish for a broad and vague approval from the Board that would allow “adaptive management” to replace regulatory and adjudicatory proceedings in changing requirements of D-1641 and the Water Quality Control Plan for years to come. The law does not allow this approach. It would be more productive for Petitioners to focus on developing an accurate and enforceable description of operating criteria, and a real adaptive management plan, while accepting the fact that future changes, if any, will require future regulatory processes.

In order to have a complete project description, Petitioners must complete an adaptive management plan. Currently, Petitioners have developed a work plan to arrive at an adaptive management plan. Courts have regularly struck down adaptive management plans that lack specific monitoring plans, qualitative metrics for monitoring, quantitative triggers for action, and articulated responses to specific triggers. The level of specificity in the adaptive management plan submitted to the Board should include specific metrics for objectives and failure, description of monitoring protocols, quantified decision thresholds in monitoring, and specific actions that will be triggered when thresholds are crossed. A promise to define these metrics during construction of the tunnels is not an

adaptive management plan.

IV. Substantial Changes Being Wrought Through The Section 7 Consultation Process Are Critical To Delta Alliance's Appraisal Of The Project On Delta-Wide Recreation And Its Presentation In Part 2.

The June 2017 revisions to the BA and contents of the Biological Opinions thus far issued have especially altered the project with respect to its impacts on recreation in general and recreational boating in particular. These subjects are of primary concern to Delta Alliance. The BA has changed the number of barge trips and partially defined barge routes (which have substantial implications for recreational boating). It has apparently also significantly increased the number of truck trips on Delta island roads.

Section 7 consultation regarding the construction of the intakes has yet to occur. (*See* USFWS Biological Opinion, p. 2.) Section 7 consultation on construction of the tunnels (minus intakes) brought about substantial changes. It is likely that consultation on the construction of the intakes will result in even more substantial changes. The intakes are situated in a six mile long construction zone that will engulf the legacy community of Hood and generate an enormous amount of noise. The BA has revealed that construction in this zone will include driving thousands of piles and that pile drivers will make 8,100,000 discrete pile strikes at 102 dBA to 106 dBA each strike, over a period of eight years. It is very likely that this scenario will change substantially during further section 7 consultation and/or through completion of the EIS.

Through an acoustical engineering report commissioned by Delta Alliance and submitted to USBR, we have demonstrated that DWR has not developed any realistic plan to mitigate the impacts of this enormous amount of pile driving and has provided a substandard acoustical analysis. As it stands, the communities of Clarksburg and Hood will be largely abandoned, the Clarksburg Marina will be subjected to deafening noise and driven out of business, and the Clarksburg boat launch / fishing area will be subjected to unmitigated effects of pile driving directly across the river. It is unlikely that any court will allow such a flawed environmental analysis to unnecessarily doom two legacy communities, destroy a family business, and make a public recreational facility unusable. It is likely that USBR will, if they decide to go ahead at all, exercise prudent judgment and make some common sense, readily available, changes to the project to avoid these impacts.

There are substantial other areas where we believe USBR will take the reasonable and required "hard look" at the environmental consequences of the project and will make common sense, readily feasible, changes to avoid impacts and obviate the need for Delta Alliance to put on expert witnesses and evidence before the Board with regard to many of the currently configured project's impacts on recreation.

V. Petitioner's Request To Schedule Part 2 Even Before USBR Promulgates A Record Of Decision and Certifies The EIS Should Be Summarily Rejected.

On August 3 2017, Petitioner DWR submitted a request to the Board to schedule Part 2 before its Co-Petitioner, USBR, decides what, if any, project it will participate in and before USBR finishes its Environmental Impact Statement.

As described above in section I.A., this is contrary to the Board's prior orders and promises to Protestants that the NEPA process would be complete before Part 2 could commence. Further it ignores the purpose of the National Environmental Policy Act. DWR presumes that federal consideration of project impacts and selection of a project

alternative is mere paper-pushing and that DWR already knows the outcome. Such presumptions are contrary to law and contrary to the federal government's pact with its citizens to take a hard look at the environmental consequences of its decisions before making a commitment of resources.

There must, as a matter of law, be a real possibility that USBR will select the no project alternative. There must, as a matter of law, be a real possibility that USBR will adopt mitigation and avoidance measures substantially different than those considered by DWR in its EIR.

DWR's use of the word "delay" to describe requiring the completion of mandatory legal processes offends the rule of law and any sense of veracity. The completion of the USBR ROD and EIS *are entirely within the control of the parties seeking the change in water rights*. DWR infers that Protestants would delay the process when in reality it is DWR's Co-Petitioner that has not made up its mind whether or not to go forward.

No party has committed to any funding of this project. USBR apparently intends to await a signal from the Metropolitan Water District about its monetary participation at Met's September board meeting. If Met does not make a definitive commitment, it is entirely possible that these proceedings will become moot as early as October of this year.

References to "delay" or "postponing" the beginning of Part 2 are inapposite. In its February 11 Ruling, referring to beginning Part 1 early, the Board acknowledged that "DWR has requested an expedited hearing schedule because of the likelihood of a lengthy hearing, but has not clearly explained why the hearing process should begin now, notwithstanding the arguments of other parties." (February 11, 2016, Ruling, p.1.) And again, the Board recognized "DWR's lack of clarity on the need to begin the hearing process" (*Id.*)

A year and half later, DWR still is unable to provide any reason why all lawful requirements should be suspended in favor of jumping the gun on Part 2. DWR posits only that waiting for its partner to make up its mind whether there will be any project at all "may negatively affect the continuity of the evidentiary record." (August 3, 2017, Letter from Tripp Mizell to Tam Doduc and Felicia Marcus.) Bifurcated proceedings are very common and there is no danger that evidence will be lost, destroyed, or forgotten. There is every danger that proceeding on an incomplete project description and unfinished environmental documents will be a waste of party and administrative resources and will lead to a bad outcome.

DWR's reference to "Public Availability of Sufficient Information to Notice Part 2" serves to underscore the lack of a project description. It is not up to Protestants or the Board to scour the internet to find out what Petitioners are proposing or what impacts the project will have. Rather, if Petitioners believe they have a project description they should submit it as described above in one document, including all up to date information and excluding all outdated material.

VI. Conclusion.

Delta Alliance thanks the Hearing Officers and Hearing Team for considering the information presented herein. Delta Alliance respectfully urges the Board to clarify that the start of Part 2 will not be scheduled until at least 90 days after: (1) completion of all steps of the ESA process for components 1–7 as described above in section I.B.; (2) issuance of the USBR ROD and certification of the EIS; and (3) Petitioner submits a complete stand-alone project description in compliance with 23 CCR § 794 in a succinct

and easily understandable format, omitting all outdated elements of the description of project operating criteria and including all currently known elements of the description of project operating criteria.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael A. Brodsky", with a long, sweeping horizontal stroke extending to the right.

Michael A. Brodsky
Counsel for Petitioner
Save the California Delta Alliance

Attachment: FEIR Rio Vista Flow Comment

Letter	Comment #	Comment	Relation to Final EIR/EIS
Brodsky, Michael	1	<p>CEQA and its implementing guidelines require recirculation of an EIR where "significant new information" is added to the EIR after a draft is circulated and before the final EIR is certified. (Public Resources Code § 21092.1; Cal. Code Regs., tit. 14, § 15088.5, subd. (a).) The sort of information that requires recirculation includes, for example, the information that shows that new significant impacts would occur, the severity of an environmental impact would substantially increase unless mitigation measures are adopted or the draft EIR "was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded." (Cal. Code Regs., tit. 14, § 15088.5, subd. (a).) NEPA's requirements are similar. (40 C.F.R., § 1502.9, subd. (c); Reclamation's NEPA Handbook (Feb. 2012) pp. 7-23 to 7-24.)</p> <p>The revised BA deletes the Rio Vista 3,000 cfs flow requirement. (Ch. 3, p. 97.) This change is not reflected in the FWS BO, where it describes the Rio Vista flow as January-August: Minimum of 3,000cfs. (See p. 33.) The NOAA BO, however, does not mention this requirement at all. The removal of the Rio Vista 3,000 cfs flow requirement constitutes "significant new information" added to the EIR because it will have a significant impact on water quality, including but not limited to salinity. Recirculation is required in order to reconcile the inconsistent assertions described above.</p>	<p>Based on the modeling conducted for the Biological Assessment, it was found that resulting flows under the California WaterFix Proposed Project at Rio Vista were always greater than the proposed Rio Vista flow requirement of 3000 cfs during Jan-Aug, as a result of other operational requirements such as the proposed north Delta diversion bypass flow requirements and the D-1641 requirements. The modeling results included in the Final EIR/EIS Appendix 5A Section C Table C-63-6 also confirm this finding. Therefore, during the formal consultation process this additional redundant flow requirement for the California WaterFix was no longer continued. California WaterFix continues to adhere to the existing D-1641 Rio Vista minimum flow requirement during September through December months.</p> <p>This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/EIS.</p>
Chacon, Paul	1	No intake screens! Save the delta!	This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/EIS.
Daly, Barbara (submitted by Michael Brodsky)	1	<p>I have lived in Clarksburg for 26 years. My husband and I put our five children through the Clarksburg public schools and we have been owners of the Cliff House Marina in Rio Vista for 25 years. Because my children were active in sports and other school activities, I was, and am, very engaged with the Clarksburg Grade School, Clarksburg Middle School, and Clarksburg High School. I am very familiar with these schools and their outdoor recreational facilities.</p> <p>I own and operate Delta Heartbeat Tours, which provides recreational tours throughout the Hood, Clarksburg, Locke, Walnut Grove, Rio Vista, and Isleton areas and beyond. Our tour map is attached. I am familiar with the history of the Delta and have acquired much knowledge of the Delta communities through living here for 26 years and operating my tours. I engage the tourists who I take around the Delta. I know that they come to the Delta for peace and quiet and a look at undisturbed rural and agricultural life. Clarksburg was established in 1850, the same year California became a state.</p> <p>Clarksburg, Hood, Walnut Grove, and Locke are all set in the historic landscape that is pretty much as it was when Clarksburg was established in 1850. Of course the levees have been built since Clarksburg was established, but our town has escaped suburban sprawl and gentrification. We do not have a Starbucks and we are proud of it. Locke was built in the early twentieth century, and retains its historic wooden buildings and sidewalks. Locke is a national historic district and is the largest, most complete example of a rural, Chinese-American agricultural community in the United States. Locke is preserved at a museum-quality state of historic integrity—throughout an</p>	This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/EIS.

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 to the State Water Resources Control Board and caused a true and correct copy of the following document(s):

August 3, 2017, letter from Michael A. Brodsky to Hearing Officers re July 27, 2017, Ruling and schedule for Part 2

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 July 27, 2017, 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 August 3, 2017, at Discovery Bay, California.

Signature: 
Name: Michael A. Brodsky
Title: Attorney

Party/Affiliation:
Save the California Delta Alliance, et al.

Address:
Law Offices of Michael A. Brodsky
201 Esplanade, Upper Suite
Capitola, CA 95010