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Sent: Tuesday, February 02, 2016 11:59 AM
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Subject: DWR/USBR Petition for Change in Point of Diversion (California WaterFix)

Attachments: SDWA Comments to Pet. for Change POD 2-2-16 with list.pdf

Dear Ms. Doduc:

Attached is a letter from South Delta Water Agency regarding DWR/USBR Petition for Change in Point of Diversion (California WaterFix) which is being sent to you and everyone on the latest Service List (1/26/2016).

Dayle Daniels, Secretary to
JOHN HERRICK, Esq.
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Stockton, CA 95207
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Jack Alvarez
Mary Hildebrand

Counsel & Manager:
John Herrick

February 2, 2016

Via e-mail

Ms. Tam Doduc, Chair and
Waterfix Service List

Re: DWR/USBR Petition for Change in Point of Diversion

Dear Hearing Officer Doduc:

Many relevant issues were raised at the recent pre-Hearing conference for the above referenced matter. Two must be raised again as they appear to be pre-conditional to the process moving forward. The first and perhaps most important of these was raised by both Contra Costa County and South Delta Water Agency et. al. That issue dealt with whether or not the draft environmental documents supporting the California WaterFix included modeling runs for 4A, the preferred alternative fo the WaterFix. As you will note, the Petitioners made no attempt to clarify this issue.

Various comments to the BDCP DEIR/S noted that there were serious problems with modeling assumptions in CALSIM II and DSM2. The comments resulted in significant changes to those models in an effort to correct the problems in order to make the outputs more accurately reflect actual conditions and effects. However, those changes were not used for any new model runs for the WaterFix DEIR/S, and specifically were not used to produce new results for Alternative 4A.

This issue was discovered/confirmed when Contra Costa County requested the specific modeling data for model runs 4A, 2D, and 5A. In response, DWR noted that the WaterFix process had done "sensitivity analyses" but "not full model runs" for the WaterFix analysis. However, the DEIR/S supporting the WaterFix provides tables and columns of data clearly labeled as Alternative 4A and purporting to be model run data. When similar data was presented in the BDCP documents, it was indeed modeling results for each of the many alternatives. When set forth in the WaterFix documents it purports to be modeling data though DWR has confirmed it is not.

Although there are a myriad of deficiencies in the Petition, the failure of DWR and USBR to provide the public with modeling results of their preferred alternative means that neither the SWRCB or the public has any real data on which to judge the impacts to third parties or the environment. It appears that the necessary modeling runs were completed and submitted to the biological assessment process for which there is a January 15, 2016 draft document. However, these runs have not been released to the public and were certainly not made available when the Petition was filed with the SWRCB.

It is clear that absent the modeling runs examining the WaterFix preferred Alternative 4A the Petition is simply incomplete and should be dismissed. If and when the projects release the necessary information required by statute and regulations a petition can then be processed. Prior to that time it is unproductive to contemplate any further action on the proposed change of point of diversion much less have parties produce written testimony. There is literally nothing for the parties to evaluate or about which to testify.

The second issue was raised by the representative of NRDC, et. al. It deals with a statement in the draft biological assessment referenced above, and is apparently in response to recent drought year problems. As the SWRCB is well aware, DWR and USBR planning and operations make little if any allowance for multi-year droughts. Thus over the past four years, the projects have requested approximately 20 changes to their permits wherein they sought (and received) temporary changes allowing them to not meet existing water quality objectives. In addition, the SWRCB has agreed in writing to not enforce other permit conditions and has ignored (but not temporarily changed) other permit conditions dealing with water quality objective violations. These objectives have been violated over those four years; some for months on end. During this same time, millions of acre feet of water has been exported.

With this short background, the draft biological assessment notes that after one dry or critical year and a forecast of a second a second dry or critical year, the projects will seek relief from ESA/CESA and will petition the SWRCB as needed using a TUCP (see pages 3-214-215, Section 3.7.2, January 2016 Biological Assessment for the California WaterFix; prepared by ICF International). Thus, the planning and analysis of the WaterFix proposes to change project operations after one year of drought. The modeling and other analyses of the proposed project (twin tunnels) looks at multi-year hydrological conditions and estimates impacts and effects from operations of the preferred alternative over those years. We now find in the biological assessment that DWR and USBR will seek to change their operations to some set of unknowns if one dry year occurs. Thus all the modeling and analysis is for naught; the projects have modeled something they do not intend on doing. They present the public with modeling analyses of operations over various year types and combination of year types, but will not operate as they modeled they would. One year of drought will result in new, undisclosed operations which for some reason cannot be predicted and apparently not modeled.

Ms. Tam Doduc, Chair
February 2, 2016
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This circumstance defies explanation but indicates the complete inability of the projects to plan ahead. It appears they believe they will only meet water quality objectives assigned to them during the first year of dry conditions, but that if it *looks* like there may be a second dry year, all bets are off; operations cannot be pre-determined and the public just can't know what will be done. The projects are in fact refusing to plan ahead and telling the world they will export each year without any real consideration for future water quality needs. It is not as if two consecutive dry years are something rare and unforeseeable. Obviously, if a Petitioner submits an analysis of the impacts resulting from a change petition but at the same time states publically that it will not operate as analyzed, the Petition is useless and discussions and evaluations thereon are meaningless.

In light of the above, the Petition cannot move forward and must be dismissed. Unless and until DWR and USBR submit a petition which contains complete modeling of their projected operations, including multi-year dry periods the SWRCB and the public have nothing to evaluate. The current process is a waste of valuable time, money and effort.

Very truly yours,


JOHN HERRICK

cc: Service List (attached)

LIST OF PARTICIPANTS
California WaterFix Petition Hearing
(Scheduled to Commence on April 7, 2016)

REVISED SERVICE LIST (corrected)
(Dated January 26, 2016)

Be sure to copy all documents and correspondence addressed to the State Water Resources Control Board Members or staff regarding this hearing to CWFhearing@waterboards.ca.gov.

Table 1- Service List of Parties to Exchange Information
(Parties Participating in Direct Testimony, Cross-Examination or Rebuttal)

Parties Participating in Part I (May also be Parties in Part II)

THE FOLLOWING PARTIES MUST BE SERVED WITH WRITTEN TESTIMONY, EXHIBITS AND OTHER DOCUMENTS. (Note: The parties listed below agreed to accept electronic service, pursuant to the rules specified in the hearing notice.)

Party	Authorized Representative/ Attorney	Authorized Representative's Affiliation	Email Address of Authorized Representative/ Attorney
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U.S. Department of the Interior, The	Amy L. Aufdemberge, Esq.		amy.aufdemberge@sol.doi.gov
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Carmichael Water District, The	Aaron Ferguson	Somach Simmons & Dunn	aferguson@somachlaw.com
City of Roseville, The	Alan Lilly & Ryan Bezerra	Bartkiewicz, Kronick & Shanahan	abl@bkslawfirm.com; rsb@bkslawfirm.com
Sacramento Suburban Water District	Alan Lilly & Ryan Bezerra	Bartkiewicz, Kronick & Shanahan	abl@bkslawfirm.com; rsb@bkslawfirm.com
San Juan Water District	Alan Lilly & Ryan Bezerra	Bartkiewicz, Kronick & Shanahan	abl@bkslawfirm.com; rsb@bkslawfirm.com
City of Folsom, The	Alan Lilly & Ryan Bezerra	Bartkiewicz, Kronick & Shanahan	abl@bkslawfirm.com; rsb@bkslawfirm.com
Yuba County Water Agency	Alan Lilly & Ryan Bezerra	Bartkiewicz, Kronick & Shanahan, P.C.	abl@bkslawfirm.com; rsb@bkslawfirm.com
South Valley Water Association, et al.	Alex M Peltzer	Peltzer & Richardson, LC	apeltzer@prlawcorp.com
Biggs-West Gridley Water District (BWGWD)	Andrew M. Hitchings	Somach Simmons & Dunn, PC	ahitchings@somachlaw.com
Glenn-Colusa Irrigation District (GCID)	Andrew M. Hitchings	Somach Simmons & Dunn	ahitchings@somachlaw.com

Restore the Delta	Barbara Barrigan-Parilla & Tim Stroshane	Restore the Delta	barbara@restorethedelta.org; tim@restorethedelta.org
Barbara Daly	Barbara Daly		bdalymn@citlink.net
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California Delta Chambers & Visitor's Bureau	Bill Wells		info@californiadelta.org
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City of Brentwood, The	David Aladjem	Downey Brand LLP	daladjem@downeybrand.com
Reclamation District No. 800 (Byron Tract)	David Aladjem	Downey Brand LLP	daladjem@downeybrand.com
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Nevada Irrigation District (NID)	Dustin C. Cooper	Minasian, Meith, Soares, Sexton & Cooper LLP	dcooper@minasianlaw.com
Butte Water District (BWD)	Dustin C. Cooper	Minasian, Meith, Soares, Sexton & Cooper, LLP	dcooper@minasianlaw.com
Richvale Irrigation District (RID)	Dustin C. Cooper	Minasian, Meith, Soares, Sexton & Cooper, LLP	dcooper@minasianlaw.com
Anderson - Cottonwood Irrigation District	Dustin C. Cooper	Minasian, Meith, Soares, Sexton & Cooper, LLP	dcooper@minasianlaw.com
Plumas Mutual Water Company (PMWC)	Dustin C. Cooper	Minasian, Meith, Soares, Sexton & Cooper, LLP	dcooper@minasianlaw.com
Reclamation District 1004	Dustin C. Cooper	Minasian, Meith, Soares, Sexton & Cooper, LLP	dcooper@minasianlaw.com
South Feather Water and Power Agency	Dustin C. Cooper	Minasian, Meith, Soares, Sexton & Cooper, LLP	dcooper@minasianlaw.com
Western Canal Water District (WCWD)	Dustin C. Cooper	Minasian, Meith, Soares, Sexton & Cooper, LLP	dcooper@minasianlaw.com
Paradise Irrigation District	Dustin C. Cooper	Minasian, Meith, Soares, Sexton & Cooper, LLP	dcooper@minasianlaw.com

Friant Water Authority & Friant Water Authority Members	Fennemore Craig, Lauren Caster, Gregory Adams, Jennifer Buckman, and 13 others		lcaster@fclaw.com; gadams@fclaw.com; jbuckman@friantwater.org; thomas.esqueda@fresno.gov; kelweg1@aol.com; mlarsen@kdwcd.com; sdalke@kern-tulare.com; mhagman@lindmoreid.com; sae16@lsid.org; fmorrissey@orangecoveid.org; sgeivet@ocsnet.net; roland@ssjmud.org; jph@tulareid.org
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City of Sacramento, The	Joe Robinson / Martha Lennihan	Office of the City Attorney / Lennihan Law	jrobinson@cityofsacramento.org; mlennihan@lennihan.net
Central Delta Water Agency, South Delta Water Agency (Delta Agencies), Lafayette Ranch, Heritage Lands Inc., Mark Bachetti Farms and Rudy Mussi Investments L.P.	John Herrick, Esq. and Dean Ruiz, Esq.		jherrlaw@aol.com; dean@hprlaw.net
City of Stockton, The	John Luebberke & Tara Mazzanti		john.luebberke@stocktonca.gov; tara.mazzanti@stocktonca.gov
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Stockton East Water District	Karna E. Harrigfeld		kharrigfeld@herumcrabtree.com
North Delta Water Agency & Member Districts	Kevin O'Brien	Downey Brand LLP	kobrien@downeybrand.com

Brannan-Andrus Levee Maintenance District; Reclamation District 407; Reclamation District 2067; Reclamation District 317; Reclamation District 551; Reclamation District 563; Reclamation District 150; Reclamation District 2098	Kevin O'Brien & David Aladjem	Downey Brand LLP	kobrien@downeybrand.com; daladjem@downeybrand.com
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Sacramento Municipal Utility District (SMUD)	Kevin O'Brien & David Aladjem	Downey Brand LLP	kobrien@downeybrand.com; daladjem@downeybrand.com
County of San Joaquin, San Joaquin County Flood Control and Water Conservation District, and Mokelumne River Water and Power Authority	Kurtis C. Keller	Neumiller & Beardslee	kkeller@neumiller.com
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Save the California Delta Alliance; Janet & Michael McCleary; Frank Morgan; and Captain Morgan's Delta Adventures, LLC	Michael Brodsky	Law Offices of Michael A. Brodsky	michael@brodskylaw.net
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California Sportfishing Protection Alliance (CSPA), California Water Impact Network (C-WIN), and AquAlliance	Michael Jackson, Bill Jennings, Chris Shutes, Barbara Vlamis, and Carolee Krieger	Law Offices of Michael Jackson	mjatty@sbcglobal.net; blancapaloma@msn.com; deltakeep@me.com; barbarav@aqualliance.net; caroleekrieger7@gmail.com;
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Stillwater Orchards/Delta Watershed Landowner Coalition	Osha Meserve		osha@semlawyers.com
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Coalition for a Sustainable Delta, The	Paul S. Weiland		pweiland@nossaman.com
Sacramento Regional County Sanitation District	Paul S. Simmons	Somach Simmons & Dunn, PC	psimmons@somachlaw.com
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Contra Costa County and Contra Costa County Water Agency	Ryan Hernandez		ryan.hernandez@dcd.cccounty.us; stephen.siptroth@cc.cccounty.us
Contra Costa Water District	Scott Shapiro and Kevin O'Brien	Downey Brand LLP	sshapiro@downeybrand.com; kobrien@downeybrand.com
Daniel Wilson	Daniel Wilson		daniel@kaydix.com
State Water Contractors	Stefanie Morris		smorris@swc.org
Pacific Coast Federation of Fishermen's Associations and Institute for Fisheries Resources	Stephan C. Volker	Volker Law	svolker@volkerlaw.com
Tehama-Colusa Canal Authority & water service contractors in its service area	Steven Saxton, Meredith Nikkel & J. Mark Atlas	Downey Brand	ssaxton@downeybrand.com mnikkel@downeybrand.com matlas@jmatlaslaw.com
San Joaquin Tributaries Authority, The (SJTA), Merced Irrigation District, Modesto Irrigation District, Oakdale Irrigation District, South San Joaquin Irrigation District, Turlock Irrigation District, and City and County of San Francisco	Tim O' Laughlin & Valerie C. Kincaid	O'Laughlin & Paris, LLP	towater@olaughlinparis.com; vkincaid@olaughlinparis.com
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THE FOLLOWING PARTY MUST BE SERVED WITH WRITTEN TESTIMONY, EXHIBITS AND OTHER DOCUMENTS. (Note: The party listed below must be served a hard copy, pursuant to the rules specified in the hearing notice.)

Party	Authorized Representative/ Attorney	Mailing Address of Authorized Representative/ Attorney
Clifton Court, L.P.	Suzanne Womack & Sheldon Moore	3619 Land Park Drive Sacramento, CA 95818

Parties Participating in Part II Only (Must also be Served in Part I)

THE FOLLOWING PARTIES MUST BE SERVED WITH WRITTEN TESTIMONY, EXHIBITS AND OTHER DOCUMENTS. (Note: The parties listed below agreed to accept electronic service, pursuant to the rules specified in the hearing notice.)

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Friends of the River	E. Robert Wright		bwright@friendsoftheriver.org
Environmental Council of Sacramento (ECOS)	Brenda Rose		office@ecosacramento.net
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American Rivers, Inc.	Steve Rothert		srothert@americanrivers.org

**Table 2 - Interested Persons
(Persons Intending to Make Policy Statements Only)**

PARTIES IN TABLE 1 ARE NOT REQUIRED TO SERVE THE FOLLOWING INTERESTED PERSONS WITH WRITTEN TESTIMONY, EXHIBITS, AND OTHER DOCUMENTS

Interested Persons Participating in Part I (May also be Interested Persons in Part II)

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Coachella Valley Water District	Robert C Cheng		rcheng@cvwd.org
Desert Water Agency	Mark Krause		mkrause@dwa.org
Kern County Water Agency	Curtis Creel		ccreel@kcwa.com, ameliam@kcwa.com
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Mojave Water Agency	Kirby Brill		kbrill@mojavewater.org
North Delta C.A.R.E.S.	Anna Swenson		deltaactioncommittee@gmail.com
North State Water Alliance	David J. Guy	Northern California Water Association	dguy@norcalwater.org
Partnership for Sound Science in Environmental Policy	Craig S.J. Johns		cjohns@calrestrats.com
San Bernardino Valley Municipal Water District	Douglas Headrick		douglash@sbrvmwd.com
Butte County Department of Water and Resource Conservation	Paul Gosselin		pgosselin@buttecounty.net
San Geronio Pass Water Agency	Jeff Davis		jdavis@sgpwa.com
Santa Clara Valley Water District	Erick Soderlund		esoderlund@valleywater.org
Terri Crain	Terri Crain		tcrain@scvchamber.com

Tulare Lake Basin Water Storage District	Mark Gilkey		mgilkey@tlbwsd.com
U.S. EPA Region 9	Tomas Torres		torres.tomas@epa.gov
Zone 7 Water Agency	J. Duerig		jduerig@zone7water.com
City of Chico, The	Erik Gustafson		Erik.gustafson@chicoca.gov
Rural County Representatives of California	Kathy Mannion		kmannion@rcrcnet.org
SEMILLAS (Stockton Educational Movement in Language Literacy and Scholarship)	Moteczuma Sanchez		motecps@gmail.com

Interested Persons Participating in Part II Only

Interested Person	Authorized Representative/ Attorney	Authorized Representative's Affiliation	Email Address of Authorized Representative/ Attorney
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Asian Pacific Self-Development and Residential Association (APSARA)	Hengsothea Ung		usothea@apsaraonline.org
Assemblymember Susan Eggman (and staff)	Gustavo Medina		gustavo.medina@asm.ca.gov
Braceros del Delta	Luis Magaña		Lmagana@afsc.org
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California Striped Bass Association	Jim Cox		jimcoxsportfishing@yahoo.com
California Student Sustainability Coalition	Ryan Camero		rcarcamero@gmail.com
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Central Valley Asian Chamber	Cynthia Lau		cynthiajlau@gmail.com
Earth Law Center	Linda Sheehan		lsheehan@earthlaw.org
Frank L Ruhstaller	Frank L Ruhstaller		larryruhstaller@gmail.com
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Greater Stockton Chamber of Commerce	Douglas W. Wilhoit, Jr.		doug@stocktonchamber.org
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