

February 17, 2016

Via e-mail ([James.Mizell@water.ca.gov](mailto:James.Mizell@water.ca.gov); [Amy.Aufdemberge@sol.doi.gov](mailto:Amy.Aufdemberge@sol.doi.gov))

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**Re: State Water Resources Control Board Hearing on Petition Requesting Changes in Water Rights of the Department of Water Resources and U.S. Bureau of Reclamation for the California WaterFix Project ("Hearing")**

Dear Mr. Mizell and Ms. Aufdemberge:

The undersigned counsel represent parties (collectively "Protestants") in the Sacramento Valley Water Users ("SVWU") group, which have filed protests and notices of intent to appear in the above-referenced Hearing. The purpose of this letter is to request that you, as counsel to the California Department of Water Resources ("DWR") and the U.S. Bureau of Reclamation ("Petitioners"), provide crucial clarifications about the hydrologic modeling on which Petitioners will rely in this Hearing.

Recent statements by the Petitioners have created significant confusion about what modeling is available, what model version was used for the California WaterFix Draft EIR/EIS, what model version will be used for the Final EIR/EIS, and what model version will be used for the above-referenced Hearing. In your February 2, 2016, letter to Hearing Chair Tam Dudoc and Hearing Officer Felicia Marcus, you stated that "CALSIM and DSM2 data associated with the public working draft Biological Assessment" is available from the Bureau of Reclamation and "CALSIM and DSM2 data associated with development of the BDCP/CA WaterFix EIR/S" is

available from DWR. On February 3, 2016, the Bay Delta Conservation Plan ("BDCP") website (baydeltaconservationplan.com) was updated to state "[t]he CALSIM and DSM2 modeling data to support the Final EIR/EIS, which is currently in preparation, is now available." Based on these statements, it appears that the modeling used for the recirculated draft EIR/EIS may not be the same as modeling that will be used for the final EIR/EIS that apparently is being developed, and that neither of these modeling sets may be the same as the modeling for the Petitioners' case-in-chief in the above-referenced Hearing.

Because it appears that the fundamental hydrologic modeling for California WaterFix has changed since the circulation of even the recirculated draft EIR/EIS, confirmation and production of the information identified below is necessary to afford Protestants with a full and fair opportunity to prepare for and participate in the Hearing. That confirmation and information are necessary to provide Protestants with an adequate opportunity to (i) evaluate the technical underpinnings of Petitioners' case-in-chief; (ii) prepare for cross-examination of Petitioners' witnesses; and (iii) prepare Protestants' own cases-in-chief in advance of the May 16, 2016, submittal deadline for Part 1B of the hearing.

Accordingly, we request clarification of what modeling the Petitioners now are using for (1) the CEQA/NEPA process; (2) the Endangered Species Act process; and (3) the Hearing. Given how crucial the review of the correct hydrologic modeling is to all issues concerning California WaterFix, please confirm as soon as possible whether the modeling supporting the "public working draft Biological Assessment," the "Final EIR/EIS" and the Petitioners' case-in-chief for the Hearing are exactly the same modeling. Please also indicate where this modeling is available, from whom, and whether this modeling previously has been provided to the SVWU's technical experts, MBK Engineers.

If it is not possible for you to provide the information identified above, then, consistent with your February 2 letter and the February 3 posting on the BDCP website, we respectfully request that the Petitioners produce to undersigned counsel, on or before March 1, 2016, the following analytical tools and information:

- 1) All versions of the CALSIM II model that Petitioners will utilize in their case-in-chief for Part 1A of the Hearing, including all input and output files; and
- 2) All versions of the DSM2 model that Petitioners will utilize in their case-in-chief for Part 1A of the Hearing, including all input and output files.

It is also critical that by March 1<sup>st</sup> Petitioners provide a detailed written description of all changes made in the CALSIM II and DSM2 models being used for California WaterFix since the release of the recirculated draft EIR/supplemental draft EIS ("RDEIR/SDEIS") in July 2015. Without such a description, Protestants will be severely prejudiced in their ability to prepare for the Part 1A hearing because they will not know whether problems with the models identified by

Protestants in our comments on the RDEIR/SDEIS have been addressed by the Petitioners and what problems remain. Since the Petition for Change filed by Petitioners specifically references, and relies on, the modeling prepared in connection with the RDEIR/SDEIS (Petition, at p. 8), fairness and due process considerations dictate that Petitioners describe how those modeling tools have been modified (1) for the Final EIR/EIS; (2) for the ESA process, and (3) for the petitioners' case-in-chief for the Hearing. Accordingly, for all parties to understand the relationship between the Petitioners' CEQA/NEPA documents and Petitioners' Part 1A case-in-chief evidence, please ensure that your case-in-chief includes the following information:

- A) A detailed written description of all changes made in the CALSIM II model comparing the model version used for the RDEIR/SDEIS released in July 2015 and the model version Petitioners will utilize in their case-in-chief for Part 1A of the Hearing; and
- B) A detailed written description of all changes made in the DSM2 model comparing the model version used for the RDEIR/SDEIS released in July 2015 and the model version Petitioners will utilize in their case-in-chief for Part 1A of the Hearing.

If DWR and Reclamation do not respond completely and accurately to the requests set forth in this letter on or before March 1, 2016, then Protestants may seek appropriate relief from the SWRCB or the courts including, without limitation, the exclusion of evidence.

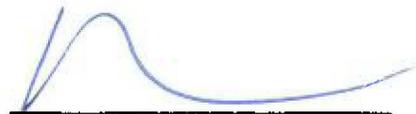
Thank you for your prompt attention to this request.

Very truly yours,

DOWNEY BRAND LLP



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David R. E. Aladjem

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David J. Guy, President

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cc: Service List of Hearing Parties  
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