



Bartkiewicz, Kronick & Shanahan
A Professional Corporation

**State Water Resources Control Board
California WaterFix Hearing, Part IB
August 31, 2016**

Opening Statement for the Cities of Folsom and Roseville,
Sacramento Suburban Water District and San Juan Water District

We represent the City of Folsom, the City of Roseville, Sacramento Suburban Water District and San Juan Water District as protestants in this hearing. Each of their water supplies depends on how the Bureau of Reclamation operates Folsom Reservoir. Each of them is concerned because, in 2014 and 2015, the reservoir's storage was drawn down to unprecedented lows. Each of them is a protestant in this hearing because the California WaterFix is intended to make it easier to export water that flows through, and is stored in, the reservoirs of the Central Valley Project and the State Water Project. This fundamental purpose of the California WaterFix indicates that it would allow Reclamation to draw down Folsom Reservoir more efficiently and potentially make the reservoir less reliable as a water source for the communities along the American River.

The managers of Folsom, Roseville, Sacramento Suburban and San Juan each will testify about their individual agencies' water supplies and those supplies' legal bases.

Marcus Yasutake of the City of Folsom will testify that the City's water supplies are based primarily on water rights in the American River dating from the 1850's that are recognized and covered by settlement contracts with Reclamation.

Shauna Lorance of San Juan will similarly testify that San Juan's water supplies also primarily are based on water rights in the American River dating from the 1850's that are recognized and covered by settlement contracts with Reclamation.

Rich Plecker of the City of Roseville will testify about his City's water supplies. He will testify that those supplies are based, in large part, on a water-service contract with Reclamation, that he understands that the City once had its application for an independent American River water right and that, instead of approving that application, the State Water Rights Board inserted a term in Reclamation's water-right permits for Folsom Dam and Reservoir that was intended to protect the water supplies of the City, among others.

Mr. Yasutake, Ms. Lorance and Mr. Plecker all will testify that, notwithstanding the firm legal bases for their agencies' water supplies, those supplies are vulnerable to Reclamation's operations because the primary facility to divert those supplies is an intake in Folsom Dam. They will testify that this intake came dangerously close to going dry in 2014 and 2015 and, even before water levels in Folsom Reservoir would reach the point at which the intake would go dry, their agencies' ability to obtain enough water to meet even significantly reduced needs in their communities would be limited due to problems with operating the intake. The reality of this vulnerability is demonstrated by the attached picture of Folsom Reservoir's nearly empty state during the drought, which is an exhibit we will introduce as part of our evidence.

Rob Roscoe of Sacramento Suburban will testify that, for decades, his agency and its predecessors relied entirely on groundwater pumped in northern Sacramento County. Mr. Roscoe will testify that this pumping, along with that of other nearby pumpers, caused a significant long-term drawdown of the area's groundwater. This drawdown is demonstrated in the attached graphic of Sacramento Suburban's service area and groundwater levels at nearby

monitoring wells. That graphic also depicts the stabilization of the groundwater basin over the last 20 years. Mr. Roscoe will testify that this stabilization has occurred in part because Sacramento Suburban implemented a conjunctive use program under which it buys surface water from Placer County Water Agency and the City of Sacramento, which divert that water from Folsom Reservoir and the lower American River, respectively. He also will testify that increased exports of water stored in Folsom Reservoir could not only impair Sacramento Suburban's conjunctive use program, but also could return the groundwater basin to a drawdown if neighboring agencies would be forced to pump more groundwater because their surface-water supplies from Folsom Reservoir had become less reliable. Particularly given the Sustainable Groundwater Management Act, the State Water Resources Control Board should protect conjunctive management of surface water and groundwater that supports sustainable groundwater conditions.

In their cases in chief, the Department of Water Resources and Reclamation have asserted that the State Water Resources Control Board's approval of the California WaterFix would not injure any legal user of water. They have asserted that is true because approval of California WaterFix will not change the operation of CVP and SWP reservoirs upstream of the Delta. This was a key point in DWR's opening summary presentation, the current version of which is Exhibit DWR-1 errata (corrected). Attached is page 11 of that exhibit, which includes "Upstream operations of SWP/CVP" in the category of "What Isn't Changing." The petitioners' modeling witnesses asserted the same point, in more technical terms, stating that other legal users of water would not be injured by the California WaterFix because their modeling indicates that end-of-September storage in upstream CVP and SWP reservoirs would remain essentially the same with the project.

Through cross-examination of DWR's and Reclamation's witnesses, however, it became clear that these points are not so clear and that "What Isn't Changing" just applies to the regulatory requirements for upstream reservoirs and not to their actual operations. In fact, John Leahigh, DWR's operator of the SWP, presented testimony in which he stated that the California WaterFix's proposed "CWF North Delta Diversions" would "[i]ncrease the opportunity to use existing water rights" and that this opportunity includes "[r]e-diversion of stored water during Balanced Conditions." These statements are made on page 35 of Mr. Leahigh's Exhibit DWR-4 errata, a copy of which is attached.

The experts for the Sacramento Valley Water Users group and the American River Water Agencies group – in both of which Folsom, Roseville, Sacramento Suburban and San Juan are members – will testify that both the California WaterFix modeling itself, and independent MBK modeling that corrects the significant problems in that modeling, demonstrate that the project would allow substantially increased releases from upstream storage that could injure other legal users of water.

As described in more detail in the Sacramento Valley Water Users group's joint opening statement, Walter Bourez of MBK Engineers will testify about the serious flaws in the California WaterFix modeling. He also will testify that MBK's corrected, independent modeling not only shows that the project would allow the CVP and the SWP to export significantly more water than their modeling shows, but also that the project would allow the CVP and the SWP to draw more water from upstream storage for that purpose.

As an expert witness for the American River Water Agencies group, Jeff Weaver of HDR will testify concerning his review of the California WaterFix modeling itself. He will testify that those results show that, in the cycle of a below normal year followed by a critically dry year as

depicted in the modeling's results for 1932 and 1933, California WaterFix would enable the CVP and the SWP to draw down Folsom Reservoir storage significantly more in the below normal year preceding the critically dry year. He also will testify that the modeled recovery of Folsom Reservoir storage in the with-California WaterFix scenarios in 1933 reflects an unrealistic characterization of how the reservoir would operate in such dry conditions. Attached are figures developed by Mr. Weaver to reflect the operation of Folsom Reservoir and the lower American River in 1932 and 1933, as depicted in the California WaterFix modeling. We will introduce this figure with Mr. Weaver's testimony. The modeling results assembled in this figure show not only the significant drawdown of Folsom Reservoir for the with-project scenarios, but also the wide and unrealistic swings in lower American River flows about which Mr. Weaver will testify.

Finally, also as an expert for the American River Water Agencies group, Craig Addley of Cardno will testify that the California WaterFix modeling significantly underestimates impacts on Folsom Reservoir storage. He will testify that the modeling does not contain an appropriate characterization of the potential effect, in the assumed climate conditions, on Folsom Reservoir of the reasonable and prudent alternative for Shasta Reservoir carryover storage that the National Marine Fisheries Service has adopted for the protection of listed winter-run Chinook salmon.

Ultimately, the legal standard that the State Water Resources Control Board must apply in this hearing is simple. Under Water Code section 1702, the question is whether or not approval of DWR's and Reclamation's change petition for California WaterFix will "operate to the injury of any legal user of the water involved." The evidence to be presented by Folsom, Roseville, Sacramento Suburban and San Juan – together with the other members of the Sacramento Valley Water Users and American River Water Agencies groups – will show that it is not possible for the State Water Resources Control Board to make the finding required by

Water Code section 1702, unless the board conditions any such approval to ensure that the CVP and the SWP would operate to avoid injuring other legal users of water.

In 1958, this board's predecessor issued Decision 893, in which it approved Reclamation's water-right permits for Folsom Dam and Reservoir. In that decision, at page 54, that prior board stated:

Permits are being issued to the United States to appropriate enough American River water to adequately supply the applicants naturally dependent on that source and availability of water to such applicants is reasonably assured by the terms to be contained in the permits to be issued to the United States restricting exportation of water under those permits insofar as exportation interferes with fulfillment of needs within Placer, Sacramento and San Joaquin Counties. Other applicants in more remote areas must if necessary seek water from other sources.

The Cities of Folsom and Roseville, Sacramento Suburban Water District and San Juan Water District respectfully request that the State Water Resources Control Board follow the precedent of Decision 893 in its decision on the California WaterFix change petitions.

Respectfully submitted,

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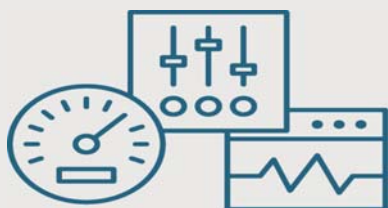
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WHAT ISN'T CHANGING



**Upstream operations
of SWP/CVP**



**Water contractor
service areas**



**No change to quantity,
rate, timing, place or
purpose of use under
the existing permits**

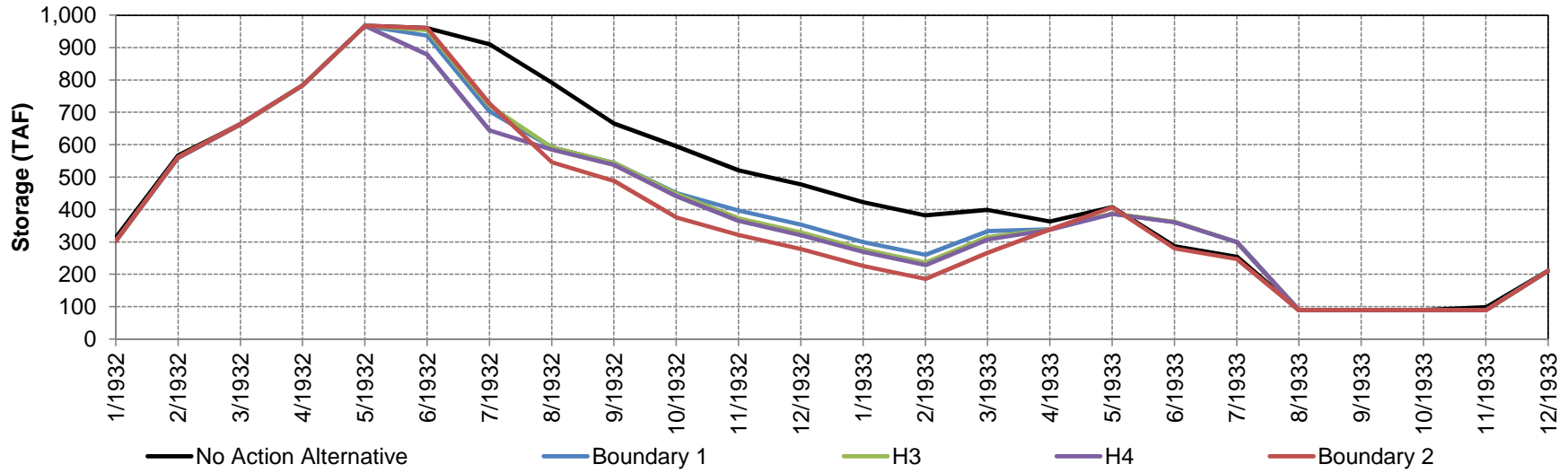


SOUTH DELTA OPERATIONAL CONSTRAINTS

- **Existing south Delta SWP/CVP facilities**
 - Restricted by regulations to protect listed species
 - Restricts diversion of unregulated flow during Excess Conditions
 - Restricts re-diversion of stored water during Balanced Conditions
- **Proposed CWF North Delta Diversions**
 - Shift some of south Delta diversion to North Delta Diversion
 - Increase opportunity to use existing water rights
 - Diversion of unregulated flow during Excess Conditions
 - Re-diversion of stored water during Balanced Conditions



Simulated End-of-Month Folsom Reservoir Storage for 1932-1933 from CA Water Fix CalSim II Modeling



Simulated Monthly Average American River Flow below Nimbus Dam for 1932-1933 from CA Water Fix CalSim II Modeling

