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7 Principal, California Water Research

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

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

17 OPENING STATEMENT FOR PART 2

18 The proposed new diversion structure for the WaterFix Water Right Change
19 Petition is extremely large and costly. The Petitioners have not provided sufficient
20 information to show that the proposed engineering design and proposed construction
21 procedures will minimize impacts on fish and wildlife, or risks to people and structures
22 on the surface. In addition, the Draft Design and Construction Enterprise agreement
23 requires the concurrence of the water contractors for any action which could cause
24 more than \$10 million in increased costs for the project (Exhibit DDJ-156, p. 4.) Thus
25 the Board should not assume any changes to the project that could result in increased
26 costs will be made, unless those changes are required by the permits. For this reason,
27 the Board should not issue any final order approving the Change Petition until complete

1 and adequate preliminary engineering documents are available, and have been noticed
2 to the parties and considered by the board in a hearing.

3 In Part 1 of the WaterFix hearing, Dr. Clyde Thomas Williams, a PhD geologist
4 who has consulted on the design and construction of tunneling projects in Los Angeles
5 and around the world, testified that there has been inadequate geotechnical exploration
6 to assure that the WaterFix tunnel design will work in the proposed location (Exhibit
7 DDJ-163, p. 5.) Dr. Williams also testified that the seismic and structural engineering
8 for the proposed tunnel lining design was inadequate, even for a preliminary design,
9 and that the proposed tunnel lining may not have adequate structural strength to
10 withstand stresses in the deep, soft alluvial deposits in the Delta. (Exhibit DDJ-163, p.
11 7-10.) Dr. Williams testified that there were potentially major impacts if the tunnel
12 segments began to separate under a Delta channel or a Delta levee, affecting
13 structures and human safety on the surface. Dr. Williams also testified that the
14 petitioners had not yet adopted any standards for allowable ground loss while tunneling,
15 even under the Delta levees (Exhibit DDJ-163, p. 11-16.) Failure of a Delta levee
16 would have major impacts on fish and wildlife as well as on public safety.

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18 In Part 2 of the WaterFix hearing, impacts of tunnel construction on wildlife are
19 being considered. California Water Research is presenting testimony by Dr. David S.
20 Fries, chair of the San Joaquin County Audubon Society (Exhibit DDJ-215.) Dr. Fries
21 testifies that the construction of the WaterFix tunnels could have severe and avoidable
22 impacts on avian species in the project area. Dr. Fries testifies on how “the
23 Department of Fish and Game’s “Quantifiable Biological Objectives and Flow Criteria for
24 Aquatic and Terrestrial Species of Concern Dependent on the Delta” (Exhibit SWRCB-
25 66) identified 37 species of birds in Delta as threatened or of special concern, and that
26 “[t]he WaterFix EIR is deficient in its analysis of threatened and endangered bird
27 species that would be affected by building of the tunnels.”

1 Construction of the Waterfix tunnels is projected to generate millions of cubic feet
2 of spoil material, which the Final EIR/EIS estimated could occupy 1,600 acres.
3 Although the Final EIR/EIS indicates that disposal of the tunnel spoil material is a
4 permanent impact, the Final EIR/EIS indicates that most of disposal sites appear to be
5 “proposed,” and are reportedly not yet finally determined. The Incidental Take Permit
6 of the Department of Fish and Wildlife also indicates that the disposal sites have yet to
7 be finally approved.

8 The submitted Change Petition does not identify the properties that will be
9 acquired for disposal of the tunnel material. Title 23 Cal Code Regs, section(a),
10 subsection (7) requires that the Petitioners submit the following”

11 Any changes in property ownership(s) involved, and the point(s) of
12 diversion and place(s) of use of other known users of water who may be
13 affected by the proposed change(s);

14 No information has been submitted about sites to be acquired for disposal of
15 tunnel spoil material. More troubling, there is insufficient assessment of the potential
16 to avoid wetland loss when disposing of the tunnel spoil, nor are there are commitments
17 to construct mitigation wetlands before filling the existing wetlands. Dr. Fries quotes the
18 comments of the Delta Independent Science Board on the Final EIR/EIS, which stated:

19 Although wetland restoration is a key element of mitigation, “We noticed little
20 attention to the sequencing that is required for assessing potential impacts to
21 wetlands: first, avoid wetland loss; second, ...minimize; and third,
22 ...compensate.”

23 (Exhibit DDJ-215, p. 6.)

24 Under the Clean Water Act, Petitioners are required to minimize discharge of fill
25 material to wetlands. Section 230.10 of the Federal Dredge and Fill Guidelines states:

26 Where the activity associated with a discharge which is proposed for a special
27 aquatic site (as defined in subpart E) does not require access or proximity to or
28 sighting within the special aquatic site in question to fulfill its basic purpose (i.e.,

1 is not "water dependent"), practicable alternatives that do not involve special
2 aquatic sites are presumed to be available, unless clearly demonstrated
otherwise.

3 The Board should require an analysis of alternative sites for disposal of fill, which are
4 not wetlands, vernal pools, or other special habitat.

5 The submitted petition also does not describe the final method of treatment of the
6 tunnel spoil materials, nor the final method of treatment of liquids from the tunneling
7 prior to final disposal or discharge. This information is not only insufficient for
8 assessment of whether impacts on fish and wildlife will be unreasonable, it also appears
9 to be insufficient for a Section 401 Clean Water Act Certification. The California Code
10 of Regulations, Title 23, section 3856, "Contents of a Complete Application" requires
11 that the application include "[a] full, technically accurate description, including the
12 purpose and final goal, of the entire activity." Clearly, due to lack of adequate
13 preliminary engineering, a "full, technically accurate description" of the entire activity is
14 not currently available.

15 Under Section 401 of the Clean Water Act (CWA), the Board will also need to
16 certify that the proposed project will meet water quality standards under CWA Section
17 303 (33 U.S. C. 33 U.S.C. § 1341(d.) U.S. EPA regulations mandate that Section 401
18 Certification shall include a statement providing a "reasonable assurance that the
19 activity will be conducted in a manner which will not violate applicable water quality
20 standards" (40 CFR § 121.2(a)(3.)) Water quality standards include both the
21 designated uses of a water body and the water quality criteria established to protect
22 those uses, as well as antidegradation requirements. Because the 2006 Water Quality
23 Control Plan did not consider North Delta diversions, the Board will need to prepare a
24 supplemental EIR to the 2006 Water Quality Control Plan to fully and adequately
25 evaluate whether the WaterFix project will comply with the designated beneficial uses of
26

1 the Delta. This review document is also not available, and would also have important
2 information about impacts of the project on fish and wildlife and beneficial uses in the
3 Delta.

4 No permit can be issued by the Board for the project until the project receives a
5 Water Quality certification, so there is no reason for the Board to rush approval without
6 the information required for Water Quality certification. Doing so is of significant
7 prejudice to protestants who are challenging the permit on grounds of impacts to fish
8 and wildlife, as well as legal water users in the Delta.

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11 Respectfully submitted,

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14 Deirdre Des Jardins
15 Principal, California Water Research
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2 **STATEMENT OF SERVICE**

3 **CALIFORNIA WATERFIX PETITION HEARING**
4 **Department of Water Resources and U.S. Bureau of Reclamation (Petitioners)**

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

7 **Opening Statement for Part 2**

8 to be served by Electronic Mail (email) upon the parties listed in the Current Service List
9 for the California Water Fix Petition Hearing, dated December 6, 2017, posted by the
10 State Water Resources Control Board at
http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/service_list.shtml

11 *Note: In the event that any emails to any parties on the Current Service List are*
12 *undeliverable, you must attempt to effectuate service using another method of service, if*
13 *necessary, and submit another statement of service that describes any changes to the*
14 *date and method of service for those parties.*

15 I certify that the foregoing is true and correct and that this document was executed on
16 December 18, 2017.

17
18
19 Signature:



20 Name: Deirdre Des Jardins
21 Title: Principal, California Water Research

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