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# Assembly California Legislature



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November 1, 2016

Felicia Marcus, California WaterFix Project Co-Hearing Officer  
Tam Doduc, California WaterFix Project Co-Hearing Officer  
State Water Resources Control Board  
1001 I Street, Sacramento, CA 95814



Dear Ms. Marcus and Ms. Doduc,

I am writing today to register my strong opposition to the Petition for Change in Water Rights as requested by the Department of Water Resources and the U.S. Bureau of Reclamation. The petition seeks to add three points of diversion to existing water rights permits for the State Water Project and the Central Valley Project, as part of the California WaterFix Project proposal. Allowing these diversions to go forward will devastate Delta communities that rely on a healthy Delta environment to ensure a thriving local economy.

I proudly represent the 11<sup>th</sup> Assembly District and the nearly half a million residents who call this place home. This district is urban, rural, agricultural and industrial. It includes people from all walks of life, from farmers to college students, to recent immigrants, research scientists and tech entrepreneurs. The key feature that unites people around the 11<sup>th</sup> Assembly District is our shared cultural, social and economic attachment to the Heart of the San Francisco Bay-Delta, a unique environment and geography in California that demands protection.

The State Legislature and Governor Schwarzenegger explicitly recognized the need to protect the Delta in 2009 when they passed the Delta Reform Act, which established coequal goals that shall be achieved "in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place." This language was not just provided as an idle consideration for the administration but represents a high-level declaration of policy that must be satisfied for state action in the Delta to comply with the law. Instead of furthering the stated policy objectives of the Delta Reform Act, the California WaterFix violates each of its stated goals.

### **The California WaterFix Does Not Respect the Coequality of the Act's Policy Objectives**

The Delta Reform Act clearly establishes two coequal goals: to provide a reliable water supply and to protect, restore and enhance the Delta ecosystem. Unfortunately, it appears that the California WaterFix is nothing but a veiled effort to provide water supply reliability to cities



hundreds of miles away at the expense of the Delta ecosystem and the social and economic benefits it provides to hundreds of thousands of people who rely on it for their livelihood. Rather than an earnest attempt to fully comply with the act and meet the coequal goals, the unfortunate reality is that the California WaterFix is a sophisticated public relations effort funded at taxpayer expense to mask a deliberate and determined effort to ship water away from the Delta to other parts of the state.

For decades the political conversation about the State Water Project has shown a consistent determination to move a significant portion of the Delta's water to other parts of the state, whether through the Delta, through a Peripheral Canal or, now, through large tunnels under the Delta. Instead of a candid and public discussion about the important issues affecting the decision to move forward with the plan, each and every serious concern has been met with a cold and calculated attempt to dismiss the concerns of the local communities impacted by this program.

Our collective objections to the provisions of the act have been dismissed with another proposal that only enhances the water security of cities and urban centers with no meaningful environmental, social or economic connection to the Delta. I urge the administration to take seriously the coequality of the Delta Reform Act's policy objectives and propose a plan that does not export our water in such a vast volume that it devastates the Delta communities that live here.

### **The California WaterFix Does Not Provide Water Supply Reliability**

Increasing water supply reliability is a laudable goal for all state policymakers. Unfortunately, the California WaterFix does not actually create additional water resources for the state but only moves water to other parts of the state at very high cost with uncertain reliability benefits. As the state continues to slide further into a historic drought, our financial priorities ought to be focused on improving water storage, conserving water and using innovative approaches to increase supply, including desalination.

According to the administration's figures, construction of the tunnels will cost about \$11.7 billion dollars and will take about 15 years to complete. This will deliver the state 100 years of operation. A recent Benefit-Cost Analysis from the University of the Pacific's Eberhardt School of Business concluded that the net benefit-cost to the state is far below 1.0, indicating a bad investment. The analysis considers a base scenario and an optimistic scenario. In the base scenario, the benefit-cost ratio to the state is 0.23. In the more optimistic scenario, the benefit-cost ratio is 0.39. These are based on the administration's own facts and figures and assume the value of the water "produced" from these projects to their destination water users is indeed comparable in market terms to the cost of water now and in the future. This study proves that both scenarios would result in a very bad business decision for the State of California.

It should be further noted that projects like this tend to cost more than we would like. I am probably the state's biggest champion for infrastructure projects, but the reality is that the history of large infrastructure projects is fraught with difficulties and cost-overruns. It is highly probable that this project would actually cost two or three times the best current estimates.

As a general contractor for more than thirty years before coming to the State Legislature, I tend to believe an even higher number for the proposed twin tunnels project is accurate. Serving as Chair of the Assembly Accountability and Administrative Committee in 2014, I held a Fiscal and Economic Oversight Hearing on the Bay-Delta Conservation Plan, during which we thoroughly examined all sides of the proposed funding structure. I believe now, as I did then, that there is a significant amount of uncertainty about how this project will be paid for. Notwithstanding the environmental and economic risks alone, the risk to ratepayers and taxpayers, should proposed funding not materialize, is too considerable to proceed without the full cooperation of all those who will be intimately impacted, especially the people of the 11<sup>th</sup> Assembly District.

Indeed, the City of Seattle recently experienced catastrophic delays in its own underground highway project when its drilling machine, Bertha, broke down deep underground, incurring tens of millions of dollars in expenses and delaying the project by two years. This machinery is mechanically similar to the devices we would use to drill tunnels under the Delta and is probably subject to exactly the same risks of mechanical failure.

Furthermore, we now know that agencies within the administration are collaborating to find other sources of water to offset the Delta water lost to the twin tunnels. The State Water Resources Control Board and other water agencies recently unveiled a new Substitute Environmental Document that suggests state water officials should seek reductions in water diversions from various water rights holders on the Merced, Tuolumne and Stanislaus Rivers in order to double flows down the San Joaquin River to the Delta.

As the *Modesto Bee* Editorial Board called it, “the 800-pound gorilla” in the room is that the volume of water called for in this Substitute Environmental Document is roughly the volume of water called for by the California WaterFix proposal. In other words, the administration is now responding to the concerns of Delta residents by reducing water diversions for farmers and users in other parts of the state so that it can give their water to Delta users to offset the Delta water being shipped South to Los Angeles. Right now, this diversion reduction program is called “voluntary,” but coercive reductions do not seem far off. Taking water from communities around the state to convey it to other parts of the state is not the same as enhancing statewide water supply reliability.

Finally, WaterFix fails to recognize that millions of Californians get their drinking water directly from the Delta, not just from sources that pass through it. About a million residents in Contra Costa County and surrounding Delta communities get their drinking water directly from freshwater taken from the Delta and its surrounding tributaries. As freshwater flows are artificially reduced it will allow greater and greater seawater intrusion deeper into the Bay-Delta estuary, jeopardizing these water supplies and requiring desalination of water prior to use. Thus, the WaterFix is likely to directly threaten water supplies that depend on the current levels of freshwater flows through the Delta, a fact that is often overlooked by state water policymakers.

### **The California WaterFix Does Not Protect, Restore and Enhance the Delta**

Protecting, restoring and enhancing the Delta is essential for long-term environmental health in Delta communities and beyond that rely on this critical natural resource for their own

environmental health and well-being. The current proposal to divert vast volumes of water from the Sacramento River and the Delta does not meet this goal. Instead, this project is the result of poorly designed science, reliant on a dated Water Quality Plan and is likely to result in degraded conditions throughout the Bay-Delta and surrounding estuarine ecosystems that are likely to create large-scale ecosystem failures throughout Northern California.

A new study from the Bay Institute highlights how large-scale diversion of freshwater from the Delta is severely limiting the volume that reaches the San Francisco Bay. These diversions are having the effect of dislocating the seawater-freshwater interface that naturally exists in the San Francisco Bay-Delta ecosystem, wreaking catastrophic damage on ecosystems that rely on this delicate balance. Among this report's dire conclusions are that unsustainable diversions dramatically reduce fish and shrimp populations, damaging other animal populations up the food chain, increase pollutant accumulation and toxic algae blooms, reduce sediment transport to Bay Area wetlands and increase non-native species invasion.

Underpinning current estimates that the proposed California WaterFix will produce environmental benefits is the assumption that badly out-of-date water quality standards for the Bay estuary still accurately reflect the current conditions and needs of the Delta to prevent serious degradation. In response, the Bay Institute's report urges the 21-year-old water quality standards for the Bay-Delta be updated. As sea level rise is likely to push salt water deeper into the Delta, even more freshwater from the Sacramento and San Joaquin Rivers will be needed to push it back to levels that will enable healthy ecosystems.

The study's report makes clear that a quick return to natural flows of freshwater from the rivers to the ocean through the Delta and out to the Bay is essential to restore "fish, wildlife, water quality, food web, marshes, beaches, coastal fisheries" and the other public benefits that are derived from each. The fact is that the California WaterFix takes California in the wrong direction in this respect and demonstrates that the proposal violates the Delta Reform Act. On that basis alone, the change petition should be denied.

**The California WaterFix Does Not Fulfill the Directive that the Act be Implemented to Protect and Enhances the Unique Cultural, Recreational, Natural Resource and Agricultural Values of the Delta as an Evolving Place**

The California WaterFix does not fulfill the final directive of the Delta Reform Act, that the act be implemented in a way that protects and enhances the Delta as an evolving place. As discussed above, the proposal will do catastrophic damage to the environment in and around the Delta and the many ecosystems it supports. This, in turn, will have far-reaching negative economic impacts, in addition to the negative financial implications the project already represents.

California has already experienced declines in the salmon run, which caused significant harm to the salmon industry. Commercial and recreational fishing is a \$1.5 billion industry around the West Coast that is largely dependent on the health of Bay-Delta ecosystems. This industry supports thousands of jobs throughout Northern California and in the Delta. Destroying ecosystems and degrading water that supports these industries poses an existential threat to people who call the Delta home.

Current water-quality standards and diversions of freshwater entering the San Francisco Bay are already failing to protect fish, birds and other wildlife in the fragile Delta ecosystem. The California WaterFix would only exacerbate the problem in the Delta by diverting two-thirds of the Sacramento River. The twin tunnel project would not only irrevocably harm the Delta itself, but decimate the region's \$750 M recreation and tourism economy that is so important to my constituents. Construction of the tunnels would make the Delta waters unnavigable, which would severely impact the economy of my District and those who rely on boating, marina operations and fishing, among other recreational and business interests, to make their livings.

Agriculture is another significant industry that faces catastrophic harm from the proposal. The Delta has traditionally been an agricultural hub supporting local economies throughout Northern California and contributing to food security for the entire state. The Delta alone has a \$5.2 billion agricultural economy that supports tens of thousands of good jobs throughout the region. The combination of sea level rise, saltwater intrusion and reduced natural freshwater flows pose an existential threat to the farmers who live in the Delta and reside in my District, as well.

The language of the Delta Reform Act expressly requires state water regulators to take all of these features of the Delta into consideration. Cultural, recreational, natural resource and agricultural values must all be weighed against the putative benefits of the WaterFix proposal. From the looks of it, the proposal fails in every way to protect and enhance these features that are essential to preserving the character of what makes the Delta unique and special to California.

**State Policy Should Not Involve Taking Water from Third-Party Water Users to Give to the Delta to then Give to the State Water Project and California Water Project for Conveyance to Southern California**

In recent weeks, state water officials have unveiled a new proposal to limit water diversions from water rights holders on a "voluntary" basis. The reasoning goes that the environment is severely degraded due to water diversions and therefore water use must be limited or managed based on seasonal timing to maximize benefits to the environment. While I believe some cooperation with respect to timing management can produce good outcomes, coercively limiting water use by vested water rights holders in good standing with the state is wholly inappropriate and illegal. Further, it appears that this move has been timed to offset the volume of water that will be diverted by the California WaterFix proposal.

In short, I urge the administration not to take water from farmers and communities around the state to give it to the Delta just so that the administration can turn around and justify shipping approximately the same volume of water to Southern California. If the administration's own water regulators recognize the urgent need for increased freshwater flows into and through the Delta from tributary rivers, then the administration should not continue to push for conveyance of huge volumes of water coupled with a tunnel project that doesn't pencil out fiscally or environmentally.

**Do Not Approve the Change Petition. If Approved, the State Water Resources Control Board should Place Conditions on the Outcomes of the WaterFix Proposal to Mitigate Harm to the Environment and the Economy**

For each of the reasons stated above, the change petition should be denied. The use of water as proposed in the WaterFix proposal is not reasonable and beneficial under the circumstances. The proposed change of use petition would serve a use of water that is manifestly unreasonable because of the enormous expenses to the state. Further, in the context of the other state agency collaboration to limit and reduce diversions, the proposed change petition would cause an imminent or actual injury to many thousands of legal users of water around the state, particularly users in the Delta and diverters on tributary rivers to the North, South and East.

If the State Water Resources Control Board approves the change petition, the board must place strict conditions on the terms of the new license consistent with the provisions of AB 2583 (Frazier, 2016). These terms must include strict environmental standards and must mitigate for any environmental or economic harm that should result, including negative secondary economic impacts that any reasonable foreseeable water user may suffer. The terms of the conditions of the license should require the beneficiaries of the proposal to bear the costs of the project and the license should be automatically voided if the conditions are not satisfied.

My constituents expect to be protected by the State of California. The communities I serve in and around the Delta sent me here to serve them and act as a good steward over the 11<sup>th</sup> Assembly District. It is a great honor to serve in this role and I have a sacred duty to protect the place that all of us call home. I urge the administration to retract this proposal and work toward a solution that respects the principles and the letter of the law in the Delta Reform Act.

Thank you for your consideration.

Sincerely,



JIM FRAZIER

Assemblymember, 11<sup>th</sup> District