

Stephan C. Volker
Alexis E. Krieg
Stephanie L. Clarke
Daniel P. Garrett-Steinman
Jamey M.B. Volker (Of Counsel)
M. Benjamin Eichenberg

Law Offices of
Stephan C. Volker
436 14th Street, Suite 1300
Oakland, California 94612
Tel: (510) 496-0600 ❖ Fax: (510) 496-1366
svolker@volkerlaw.com

11.203.02

June 2, 2016

CWFhearing@waterboards.ca.gov (all Via Email)

Hearing Chair Tam Doduc
Hearing Officer Felicia Marcus
State Water Resources Control Board
Sacramento, CA

Re: Request for a 61-day extension of time for protestants to file and serve objections to petitioners' evidence re California WaterFix Water Rights Change Petition

Dear Hearing Chair Doduc and Hearing Officer Marcus,

Protestants Pacific Coast Federation of Fishermen's Associations ("PCFFA") and Institute for Fisheries Resources ("IFR") respectfully request a 61-day extension of time to file and serve their written procedural and evidentiary objections concerning petitioners' case in chief in the State Water Resources Control Board's ("Water Board's") hearing on the California WaterFix Change Petition. This extension is necessitated by the sheer volume (5,159 pages of documents, 186 MB of video and audio files, and 19.3 GB of modeling files) and arcane and confusing nature of petitioners' evidentiary submissions. If this request is granted, the time and date for receipt of any written procedural or evidentiary objections would be changed from 12:00 noon, June 15, 2016, to 12:00 noon, August 15, 2016. Currently, Part 1A of the hearing is set to commence at 9 a.m. on July 26, 2016, and it should therefore be moved 61 days to September 26, 2016.

Petitioners should not object because they have delayed submission of their proposed testimony, witness qualifications, exhibits, and exhibit lists a much longer period – a total of 91 days, from March 1 to May 31, 2016. They have used this extended delay to assemble a huge compilation of exhibits. The United States Bureau of Reclamation's ("Reclamation's") 33-file submission totals 956 pages, while the California Department of Water Resources' ("DWR's") 125-file submission totals 4,203 pages, as well as 186 MB of video and audio files. In addition, DWR and Reclamation reference the 103 staff exhibits prepared by Water Board staff. And finally, DWR recently released¹ for the first time modeling information totaling 19.3 GB of files

¹ While petitioners' status letter is dated May 16, 2016, their modeling files were not made available online through the Water Board's website until May 27, 2016, and PCFFA and IFR's

Hearing Chair Tam Doduc
Hearing Officer Felicia Marcus
State Water Resources Control Board
June 2, 2016
Page 2

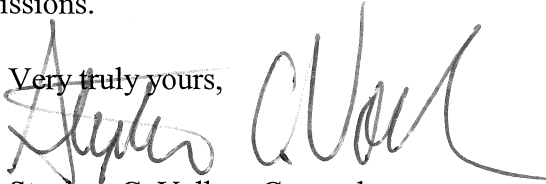
in multiple, conflicting and confusing formats that are not readily understandable even to the expert, let alone the lay reader.

This massive amount of data has been dumped on protestants on the last possible day. It will be impossible for many public interest protestants, including PCFFA and IFR, to analyze this massive “data dump,” let alone identify, consider, and prepare appropriate objections, in the short two-week time frame allotted. DWR itself foresees problems with its testimony, reserving at least 404 exhibit numbers, resulting in exhibits that number up to 515. DWR also “requests prompt notification of any and all defects, errors, inaccuracies or any other discrepancies discovered in the data,” thus expressing its own lack of confidence in the intelligibility – let alone accuracy – of its testimony.

In addition, petitioners have failed to respond meaningfully to requests by our expert witness, Dierdre de Jardins of California Water Research, for (1) raw modeling data – especially base model outputs and sensitivity analyses – and (2) complete model version histories. It appears from a cursory look at the modeling data actually released that they were produced by *different* historical simulations and these outputs utilized *different* versions of the code, necessitating a time-consuming comparison of numerous different versions and potentially rendering historical validations included in the testimony meaningless. All of this must be evaluated by protestants.

In sum, petitioners have sought and received numerous extensions totaling 91 days. In the extra time granted petitioners have substantially and materially altered the documents and the modeling they purportedly relied on in their application. Fairness demands reciprocity. The 61-day extension of time protestants request to evaluate and respond to the massive amount of new testimony compiled by petitioners during the extensions previously granted is absolutely the minimum time that protestants require to review and formulate objections to petitioners’ voluminous and confusing evidentiary submissions.

Very truly yours,



Stephan C. Volker, Counsel
Pacific Coast Federation of Fishermen’s
Associations and Institute for Fisheries Resources

flash drive – promptly transmitted to DWR on May 19, 2016 in accordance with the instructions given the undersigned by DWR’s official contact – has still not been returned with the requested files to PCFFA and IFR.

Hearing Chair Tam Doduc
Hearing Officer Felicia Marcus
State Water Resources Control Board
June 2, 2016
Page 3

Attachment: Service Certificate

cc: All by electronic service
All party representatives on May 27, 2016, State Water Resources Control Board
("SWRCB") service list
Tom Howard, Executive Director, SWRCB
Michael Lauffer, Chief Counsel, SWRCB
Dana Heinrich, Staff Attorney IV, SWRCB
Diane Riddle, Environmental Program Manager, SWRCB