

August 11, 2017

VIA EMAIL

State Water Resources Control Board
Division of Water Rights
Attn: California WaterFix Hearing Team
P.O. Box 2000
Sacramento, California 95812-2000
CWFhearing@waterboards.ca.gov

Re: Sacramento Valley Water Users' Objection to DWR Request to Issue Notice for Part 2

Dear Hearing Chair Doduc, Hearing Officer Marcus, and California WaterFix Hearing Staff:

The Sacramento Valley Water Users¹ ("SVWU") object to the Department of Water Resources' (DWR) August 3, 2017 request for the Hearing Officers to issue the notice for Part 2 of the California WaterFix water rights change petition hearing. The United States Department of the Interior (DOI)—a co-petitioner that jointly initiated this hearing—has not approved any form of the proposed project and has not completed the environmental review necessary for it to proceed with California WaterFix. Contrary to DWR's assertion, DOI's final action in this regard constitutes critical substantive information necessary for the parties to address the key issues for consideration during Part 2, and for this reason Part 2 must not commence until DOI issues a record of decision. In addition, DOI's approval of the proposed project will likely have a material bearing on Part 1 issues, which may need to be addressed further based on the biological opinions and DOI's approval, including through evidence presented by Petitioners jointly regarding revised operations and modeling.

In the Notice of Petition and Public Hearing on the water right change petition for the California WaterFix project, the State Water Resources Control Board explained that it would conduct the hearing in two parts to allow the California Environmental Quality Act (CEQA), National Environmental Policy Act (NEPA), federal Endangered Species Act (ESA) and California Endangered Species Act (CESA) processes to be completed. (Notice, October 30, 2015, at 2.) The second part of the hearing is intended to consider, among other things, effects of the change petition on fish and wildlife resources. The issue of environmental effects of the proposed

¹ The SVWU is comprised of the protestants identified in Attachment 1.

project will necessarily be informed by DOI's final action under NEPA, which requires DOI to use an environmental impact statement to inform its decision-making and provide a full and fair discussion of significant environmental impacts. (42 U.S.C. § 4332; 40 C.F.R. § 1502.1.) Indeed, DOI may not take any action that would limit the choice of reasonable alternatives until it issues a record of decision. (40 C.F.R. § 1506.1(a)(2).) As articulated in Save the California Delta Alliance's August 3, 2017 letter, DWR's request to proceed with Part 2 of the hearing before DOI takes action under NEPA would constrain DOI's decision-making to the four corners of DWR's approval of the California WaterFix project identified as Alternative 4A within the Final Environmental Impact Report. If DOI were to accept those constraints, that acceptance would constitute a pre-decisional commitment by DOI in violation of NEPA.

This Board's October 30, 2015 notice of this hearing and previous statements of the Hearing Officers reflect the importance of DOI certifying an EIS under NEPA before this Board opens an evidentiary hearing on the very environmental issues that will be identified by that EIS. (*See e.g.* July 27, 2017 Ruling [recognizing that the project description may be refined and additional mitigation measures may be imposed as a result of the environmental review process under NEPA].) DOI's testimony under Part 1 of this hearing only emphasized the need for the clarification to be provided by DOI's certification under NEPA. On cross-examination, the operator of the Central Valley Project (CVP) testified that, while Petitioners' current hydrologic modeling shows that the CVP's south-of-Delta agricultural contractors would actually receive *less* water from the CVP *with* California WaterFix than *without* it, DOI and DWR were still negotiating about how California WaterFix would operate and actual operations might vary. (Transcript, April 27, 2017 49:12-53:7 [testimony of Ron Milligan].) This sort of uncertainty about how DOI actually would operate the CVP with California WaterFix can be clarified – at the earliest – by DOI's certification of the EIS under NEPA and its record of decision approving California WaterFix.

We urge the Hearing Officers to reject DWR's request to proceed contrary to these principles and to refrain from commencing Part 2 until DOI issues a record of decision.

Very truly yours,

DOWNEY BRAND LLP



David R.E. Aladjem
Kevin M. O'Brien

SOMACH, SIMMONS & DUNN, PC

/s/Andrew M. Hitchings
Andrew M. Hitchings

/s/ Kelley M. Taber
Kelley M. Taber

/s/Aaron A. Ferguson
Aaron A. Ferguson

BARTKIEWICZ, KRONICK & SHANAHAN

/s/ Alan Lilly
Alan Lilly

/s/ Ryan Bezerra
Ryan Bezerra

MINASIAN, MEITH, SOARES, SEXTON & COOPER, LLP

/s/ Dustin C. Cooper
Dustin C. Cooper

STOEL RIVES LLP

/s/ Wesley A. Miliband
Wesley A. Miliband

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cc: CA WaterFix Service List

Attachment A—Sacramento Valley Water Users

Protestants represented by Downey Brand LLP

Carter Mutual Water Company
El Dorado Irrigation District
El Dorado Water & Power Authority
Howald Farms, Inc.
Maxwell Irrigation District
Natomas Central Mutual Water Company
Meridian Farms Water Company
Oji Brothers Farm, Inc.
Oji Family Partnership
Pelger Mutual Water Company
Pleasant-Grove Verona Mutual Water Co.
Princeton Codora-Glenn Irrigation District
Provident Irrigation District
Reclamation District 108
Sacramento Municipal Utility District
Henry D. Richter, et al.
River Garden Farms Company
South Sutter Water District
Sutter Extension Water District
Sutter Mutual Water Company
Tisdale Irrigation and Drainage Company
Windswept Land and Livestock Company

Protestants represented by Somach Simmons & Dunn

Glenn-Colusa Irrigation District
Biggs-West Gridley Water District
Sacramento County Water Agency
Placer County Water Agency
Carmichael Water District

Protestants represented by Bartkiewicz, Kronick & Shanahan, P.C.

City of Folsom
City of Roseville
San Juan Water District
Sacramento Suburban Water District
Yuba County Water Agency

Protestants represented by Minasian, Meith, Soares, Sexton & Cooper, LLP

Anderson-Cottonwood Irrigation District

Butte Water District
Nevada Irrigation District
Paradise Irrigation District
Plumas Mutual Water Company
Reclamation District No. 1004
Richvale Irrigation District
South Feather Water & Power Agency
Western Canal Water District

Protestants represented by Steel Rives
City of Sacramento

STATEMENT OF SERVICE

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

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

Letter dated August 11, 2017 re Sacramento Valley Water Users' Objection to DWR Request to Issue Notice for Part 2

to be served by **Electronic Mail** (email) upon the parties listed in Table 1 of the **Current Service List** for the California WaterFix Petition Hearing, dated July 27, 2017, posted by the State of Water Resources Control Board at http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/service_list.shtml:

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

For Petitioners Only:

	I caused a true and correct hard copy of the document(s) to be served by the following method of service to Suzanne Womack & Sheldon Moore, Clifton Court, L.P., 3619 Land Park Drive, Sacramento, CA 95818: Method of Service: _____
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I certify that the foregoing is true and correct and that this document was executed on August 11, 2017.

Signature: Catharine Irvine

Name: Catharine Irvine

Title: Legal Secretary

Party/Affiliation: Downey Brand, LLP

Address: 621 Capitol Mall, Sacramento, CA 95814