

1 DEIRDRE DES JARDINS
Principal, California Water Research
2 145 Beel Dr
Santa Cruz, California 95060
3 Telephone: (831) 423-6857
Cell phone: (831) 566-6320
4 Email: ddj@cah2oresearch.com

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

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

OBJECTION TO PETITIONER'S
PROPOSAL TO REVISE D-1641 EXPORT
TO INFLOW PERMIT TERMS IN THE
WATERFIX CHANGE PETITION
HEARING

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16 Deirdre Des Jardins, principal at California Water Research, (California Water Research)
17 objects to the request in the Petitioners' September 8, 2017 filing¹ that the Board consider
18 revisions to the term in the Petitions permits, associated with implementation of the export to
19 inflow objective in the 2006 Bay-Delta Water Quality Control Plan (WQCP), in the Hearing on
20 the Petitioners' Change in Point of Diversion. Petitioners' September 8, 2017 filing states

21 For Alternative 4A, Reclamation and DWR propose that the north Delta diversion be
22 excluded from the export/inflow ratio calculation. (p. 6.)

23 The permit terms were adopted by the Board as part of Decision 1641, implementing the
24 1995 Bay-Delta Water Quality Control Plan, which was updated in 2006. As described below,
25 any revisions to the 2006 Bay-Delta Water Quality Control Plan, and to the water rights

26 _____
27 ¹ Department of Water Resources and U.S. Bureau of Reclamation, *Re: August 31, 2017 Ruling
Regarding Scheduling of Part 2 and Other Procedural Matters*, September 8, 2017.

1 implementing the plan are properly being considered in the Phase 2 update to the Bay-Delta
2 WQCP. Consideration of interim revisions to the implementation of the 2006 Bay-Delta WQCP
3 in this hearing would require a Substitute Environmental Document. Such a document has not
4 been prepared by the Board or noticed for the hearing.

5 The Board's regulations for revisions to Water Quality Control Plan require the
6 following:

7 1.) The Board must be lead agency, (Tit 23 Cal Code Regs 3776(a).)

8 The state board shall be the lead agency with respect to its adoption or
9 revision of any state policy for water quality control or other plans, policies,
or regulations that it adopts or revises.

10 2.) The Board must circulate a draft SED prior to consideration for approval or
11 adoption (Tit 23 Cal Code Regs 3777(a).)

12 Any water quality control plan, state policy for water quality control, and
13 any other components of California's water quality management plan as defined
14 in Code of Federal Regulations, title 40 sections 130.2(k) and 130.6, proposed
15 for board approval or adoption must include or be accompanied by Substitute
16 Environmental Documentation (SED) and supported by substantial evidence in
the administrative record. The Draft SED may be comprised of a single
document or a compilation of documents. The Draft SED must be circulated
prior to board action approving or adopting a project, as specified in sections
3778 and 3779.

17 The 2009 Notice of Preparation for the SED for the Phase 2 of the Bay-Delta Water
18 Quality Control Plan update² (2009 Notice of Preparation) states that changes to the 2006 Bay-
19 Delta Water Quality Control Plan, needed for implementation of the BDCP/WaterFix project,
20 will be considered in the Phase 2 update:

21 Implementation of the BDCP will likely require changes to the 2006 Bay-Delta Plan and
22 water rights implementing that plan. (p. 5.)

23
24 ² State Water Resources Control Board, *Notice of Preparation and of Scoping Meeting for Environmental*
25 *Documentation for the Update and Implementation of the Water Quality Control Plan for the San*
26 *Francisco Bay/Sacramento-San Joaquin Delta Estuary: Southern Delta Salinity and San Joaquin River*
27 *Flows*, Feb 13, 2009. Available at
28 http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/bay_delta_plan/environmental_review/docs/nop2009feb13.pdf.

1 The 2009 Staff Report on the Periodic Review of the Bay-Delta Water Quality Control
2 Plan³ also stated,

3 Conservation measures currently under consideration in the BDCP process will likely
4 require additional modifications to operating criteria for a number of existing and planned
5 facilities. These changes may require re-evaluation of the export limit objectives as well
6 as other Delta flow objectives in the Bay-Delta Plan (BDCP 2008). (p. 21.)

7 The 2009 Notice of Preparation also indicated the process for the Board to consider
8 changes to the Bay-Delta Water Quality Control Plan, needed as a result of the BDCP /
9 WaterFix:

10 The State Water Board proposes to refer to information developed during preparation of
11 both the BDCP EIS/EIR and the Central Valley Water Board's environmental document,
12 to the extent that those documents provide sufficient analysis and adequately disclose
13 impacts associated with alternative objectives and implementation methodologies of
14 carrying out the State Water Board's Project. If the documents are not adequate for this
15 purpose, the State Water Board will determine whether additional analyses are
16 appropriate, and if so, will prepare such analyses. Any final environmental document
17 will reflect the independent judgment of the State Water Board. (p. 6.)

18 Relying entirely on the analyses by the Department of Water Resources in the WaterFix
19 Final EIR for a decision revising permit terms implementing the Bay-Delta Water Quality
20 Control Plan would violate the separation of powers under the California Constitution (Wat.
21 Code § 174, Cal. Const, art. III, § 3.) Revising the 2006 Bay-Delta WQCP without notice of
22 the Board's own draft SED and opportunity to comment would violate due process under the
23 California Constitution (Cal. Const., art. I, § 7.)

24
25 ³ State Water Resources Control Board, *Staff Report, Periodic Review of the 2006 Water Quality Control Plan for*
26 *the San Francisco Bay/Sacramento San Joaquin Delta Estuary*, August 4 2009. Available at
27 http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/periodic_review/docs/periodicreview2009.pdf

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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(s):

**Objection to Petitioner's Proposal to Revise D-1641 Export to Inflow Permit Terms
in the Waterfix Change Petition Hearing**

to be served by Electronic Mail (email) upon the parties listed in the Current Service List for the California Water Fix Petition Hearing, dated September 12, 2017, posted by the State 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.

I certify that the foregoing is true and correct and that this document was executed on September 22, 2017.

Signature:



Name: Deirdre Des Jardins

Title: Principal, California Water Research

Party/Affiliation:

Deirdre Des Jardins

Address:

145 Beel Dr

Santa Cruz, California 95060