SOUTH DELTA WATER AGENCY

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Via E-Mail
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The Honorable Felicia Marcus, Chair
Co-Hearing Officer
State Water Resources Control Board
Post Office Box 100
Sacramento, CA 95812

The Honorable Tam Doduc
Co-Hearing Officer
State Water Resources Control Board
Post Office Box 100
Sacramento, CA 95812

Re: Agenda Topics for October 19, 2017, Pre-Hearing Conference to Discuss Part 2 Procedural Issues

Dear Hearing Officers Marcus and Doduc:

Pursuant to your August 31, 2017 Ruling on scheduling Part 2 of the ongoing WaterFix hearing, SDWA et. al. believe the following topics should be included in the agenda for the pre-hearing conference.

1. The recent vote by Westlands Water District to not participate in the WaterFix project suggests WaterFix may no longer be viable. The Department of the Interior's recent Inspector General report finding that the USBR inappropriately funded the preliminary WaterFix expenses and failed to properly charge CVP contractors for those expense raises the issue of the USBR seeking reimbursement of the funds from its contractors. Before the Petition can proceed, it is incumbent on the USBR to inform the Hearing Officers if it will proceed with the project, if it plans on certifying the ROD, or if it plans on withdrawing its Petition.

2. The failure of DWR or USBR to comply with the August 8 Ruling means that neither the public nor the parties to the proceeding have an updated and complete operations plan for the project. Absent such specifics on operations, the parties cannot complete Part 1 and should not be forced to expend time and money on Part 2.

3. DWR and USBR's response to the August 8 Ruling indicated that the only additional conditions to which they would agree (to grating the Petition) were D-1641 mandates. The State Water Resources Control Board has indicated it will set appropriate Delta flow criteria (different and in addition to current D-1641 flows) prior to updating/adopting new Bay-Delta standards. The Hearing Officers must inform the parties how and when such appropriate flow criteria will be determined. Until such criteria are known, Part 1 cannot be concluded and Part 2 should not begin. Not knowing what additional flows will be required or what other CVP and SWP limitations will be imposed prevents any sort of reasonable analysis of the effects of the WaterFix project.

4. Various issues have been raised by parties regarding the appropriateness or legality of proceeding on the Petition absent compliance with specific provision of the Delta Reform Act (e.g. Water Code Sections 85021, 85302, & 85320) and other controlling statutes (e.g. Water Code Section 12205). The Hearing Officers should clarify when the process will determine compliance with the above and other legal mandates.

SDWA et. al. joins in the other and similar topics set forth by other Protestants to the extent they do not conflict with the above.

Very truly yours,

JOHN HERRICK

cc: WaterFix Service list