

SOUTH DELTA WATER AGENCY

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December 17, 2018

Via Electronic Mail

Tam Doduc, WaterFix Project Co-Hearing Officer

Felicia Marcus, WaterFix Project Co-Hearing Officer

State Water Resources Control Board

1001 I Street

Sacramento, CA 95814

Re: WaterFix Petition for Change in Point of Diversion

Dear Hearing Officers:

As you know from both recent news reports and from communications from other parties to the WaterFix Hearings significant changes to the circumstances surrounding the WaterFix Hearings have occurred which must be addressed. These changes raise fundamental questions about the project being contemplated and might well require the SWRCB to terminate the Petition.

The changes include: (i) DWR's withdrawal of its request for a determination of consistency (ii) the renegotiated/amendments to the DWR and USBR Coordinated Operations Agreement; (iii) the reported "no-harm" agreement between federal officials and CVP contractors; (iv) the "watershed-wide" tentative agreements set forth by DWR and CDFW regarding changes in fishery flows and exports; and (v) the most recent economic analysis of WaterFix done on behalf of DWR.

Each of these items inherently, if not specifically, propose changes to the operations of project reservoirs, Delta flows and project exports from the Delta which changes are not reflected in the operations underlying the modeling which has been done by DWR and USBR in support of their Petition to date.

WaterFix Hearing Officers
December 17, 2018
Page two

As many parties to the Hearings cautioned all along, all the effort to date in preparation for and participation in the Hearings may have been for naught if the operations for WaterFix continue to change. The above changes in circumstances certainly require if not mandate CVP and SWP changes in operations which were not examined in the Hearings.

Given the time, effort and costs incurred by the participants to the Hearings, the SWRCB must now abandon any thoughts of finalizing the Hearings and re-examine how or if those Hearings can go forward.

We also note that the adoption of the SED/Amendments to the Bay-Delta Water Quality Control Plan would also likely require changes to the operations on the San Joaquin River and its tributaries which would be different than those underlying the DWR and USBR modeling in the WaterFix Hearings.

SDWA suggests the Hearing Officers schedule a workshop to receive comments from the parties and allow significant discussions before determining how, if at all the Hearings can proceed. It is clear that the above listed changes in circumstances mean that the extensive efforts by the parties to the WaterFix Hearings were all focused on a set of operational criteria no longer relevant. Any continuation of the Hearings without additional time to examine the significant changes would certainly constitute a lack of due process.

Very truly yours,



S. Dean Ruiz, Esq.
for JOHN HERRICK, ESQ.

cc: Service List

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):

- *WaterFix Petition for Change in Point of Diversion*

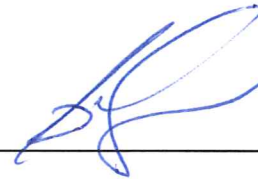
to be served **by Electronic Mail** (email) upon the parties listed in Table 1 of the **Current Service List** for the California WaterFix Petition Hearing, dated 10/30/2018, posted by the State Water Resources Control Board at

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 12/17/18.

Signature: _____



Name: Bee Speer

Title: Legal Assistant

Party/Affiliation: Mohan, Harris, Ruiz,
Wortmann, Perisho & Rubino

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