



July 26, 2011

Ms. Frances Spivy-Weber  
Vice-Chair and Hearing Officer, Long-Term Transfer Hearing  
State Water Resources Control Board  
1001 "I" Street  
Sacramento, CA 94102

Re: Long-Term Transfer Hearing, Permit 16482 / Application 17512  
Notice of Intent Not To Present Case-In-Chief

Dear Vice-Chair Spivy-Weber:

The Center for Biological Diversity previously submitted a Notice of Intent to Appear at the water rights hearing scheduled for August 22, 2011 in this matter, and indicated that it would present a case-in-chief in conjunction with Protestants California Water Impact Network (C-WIN), California Sportfishing Protection Alliance (CSPA), and AquAlliance.

Since submitting the Notice, both the Center and the Protestants have determined that they possess neither financial nor human resources sufficient to present a case-in-chief in this matter. With this letter, we respectfully notify the Board that the above Protestants and the Center, a potential Party, do not intend to present a case-in-chief at the August, 2011 hearing. We reserve the right to appear and perform cross-examinations and/or present rebuttal testimony.

It is important to note that an evidentiary hearing in this matter should not be necessary based on the Protests, which allege inadequate environmental review of the proposed transfers. The Board itself possesses the necessary expertise and responsibility to consider environmental impacts for these transfers without relying on evidence submitted by third parties. Relying exclusively on evidence submitted by third parties turns the burden of proof on its head, incorrectly assuming a no-harm standard unless Protestants can demonstrate otherwise.

As the present situation clearly demonstrates, the burden is also skewed because environmental non-profit organizations may lack the resources to put on evidence, hire expert witnesses, and prepare a case-in-chief, thus favoring those parties who have such resources available and the financial incentives to invest them. In but one recent example, the Center and CSPA spent four days of hearings, thousands of dollars for an expert witness, and hundreds of man-hours in preparation for the recent

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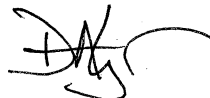
water rights hearing on the Big Sur river. As the Board is aware, no attorney fees or any other compensation for public participation is available.

We hope the Board will use the hearing to properly consider impacts associated with the long-term transfers of State Water Project water to the drainage-impaired, selenium-laced lands located within Westlands Water District. We strongly believe an inadequate environmental review was performed as a basis for the transfer.

For example, maps prepared by the Center (and submitted as Exhibits CBD- 1, 2 and 3) suggest environmental harm will result from the transfers through increased selenium discharges into shallow groundwater. At minimum, these maps provide evidence of likely harm from irrigating selenium-laced soils. This harm has not yet been adequately addressed, leaving to the Board the responsibility of ensuring that this transfer will not have a significant negative environmental impact

Given the Board's responsibilities to protect public trust resources above and beyond any requirements prescribed by CEQA, we hope the Board will abstain from issuing an Order until a full environmental review is completed and all of the transfer's likely significant environmental impacts are not only disclosed and analyzed but mitigated and avoided.

Sincerely,

A handwritten signature in black ink, appearing to read 'Adam Lazar', with a stylized flourish extending to the right.

Adam Lazar