



June 7, 2016

CWF hearing@waterboards.ca.gov all Via Email

Hearing Chair Tam Doduc
Hearing Officer Felicia Marcus
State Water Resources Control Board
P.O. Box 2000
Sacramento, CA 95812-2000

Re: Reply to Petitioners' Opposition to Requests for Extensions of Time to file and serve Objections in Hearing on California Waterfix Water Rights Change Petition

Dear Hearing Chair Doduc and Hearing Officer Marcus:

Protestants AquAlliance, California Sportfishing Protection Alliance, California Water Impact Network, Environmental Justice Coalition for Water, Environmental Water Caucus, Friends of the River, Planning and Conservation League, Restore the Delta and Sierra Club California submit this Reply to petitioners' opposition letter of June 3,

2016, opposing any request for extension of time for written/procedural evidentiary objections to the voluminous case in chief that they submitted on May 31, 2016. Protestants filed their request for extension on June 1, 2016. Since then, at least six other groups of protestants have also filed requests for extension of time. Four requests including ours are for an extension of 27 days, extending time for objections from 12:00 noon on June 15, 2016 to 12:00 noon on July 12, 2016, which date is two weeks before the commencement of the Hearing. Three other requests seek an extension of approximately 60 days for objections to August 15, 2016, and change of the commencement date of the hearing from July 26 to September 26, 2016.

There is no boundary on the prejudice and denial of due process that petitioners seek to inflict on protestants. Petitioners get to proceed in the absence of the updating of the Bay-Delta Plan even though the Hearing Officers recognized in their February 11, 2016 Ruling (pp. 4–5) that: “We acknowledge that the Water Fix, if approved, would be a significant component of Delta operations, and it would be preferable to have Phase 2 completed prior to acting on the change petition.” Petitioners are attempting to rush this massive project through the State Water Board even though it has no force of law whatsoever behind it given the switch from the Bay Delta Conservation Plan (BDCP) to the Water Fix. And now, the Superior Court of Sacramento County has held that the Delta Plan adopted by the Delta Stewardship Council under the Delta Reform Act “fails to ‘include quantified or otherwise measurable targets associated with’ restoring more natural flows as required by the Delta Reform Act.” (Ruling, Sacramento County Superior Court, Delta Stewardship Council Cases, Judicial Council Coordination Proceeding No. 4758, p. 15, filed May 18, 2016). Consequently, the court has ordered that a writ of mandate shall issue ordering the Council to revise the Delta Plan to “Include quantified or otherwise measurable targets associated with achieving reduced Delta reliance, . . . restoring more natural flows, and increased water supply reliability, in accordance with the Delta Reform Act.” (Ruling, p. 26).

It was not the task of protestants to attempt to guess ahead of time what petitioners would file for their case in chief. A critical standard for determining whether the project is permissible would be an updated Bay-Delta Plan. The Plan has not been updated. Whether some of the case-in-chief filed by petitioners was public information previously available to all protestants is not relevant. What is relevant is the voluminous filings on May 31 of about 5200 pages of exhibits and some 19.3 GB of modeling now relied on. It would be a denial of due process to refuse to allow reasonable extensions of time for all protestants to attempt to review, evaluate, and where appropriate, prepare written objections to the massive materials filed on May 31. Petitioners, having obtained extensions of time for a total of 91 days to assemble their exhibits and modeling data, oppose extensions of 27 days for protestants to attempt to evaluate the materials for possible objections. That is unfair.

Petitioners claim they would be prejudiced by having only two weeks to read and understand a comparatively few pages of possible objections to their evidence, but that it is fine to require protestants to read, understand, and prepare objections to over 5000 pages of exhibits and testimony, and 19.3 GB of modeling data in two weeks.

Petitioners have extensive resources including experts, consultants, and attorneys. Part of their task in preparing their case-in-chief was to develop evidence that would not be objectionable. It is not possible to read exhibits offered in evidence and attempt to identify possible objections *until* those precise exhibits are identified and presented. Petitioners' opposition to the requests for extension of time lacks merit.

Denial of a reasonable time to review the voluminous case-in-chief for possible objections would in effect deny the right to object to petitioners' evidence and would be a denial of due process. The three requests for 60 day extensions of time to object by other protestants are reasonable and well-supported. We support those requests as the best alternative before the Hearing Officers. If those extensions are not granted for all protestants, our request for a 27 day extension of time for all protestants to July 12, 2016 to file written objections should be granted. That is the minimum time necessary to attempt to afford due process for all protestants including public interest protestants and underrepresented communities.

Sincerely,



E. Robert Wright, Senior Counsel
Friends of the River



Bill Jennings, Executive Director
California Sportfishing Protection Alliance



Barbara Barrigan-Parrilla, Executive
Director
Restore the Delta



Conner Everts, Facilitator
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Kyle Jones
Sierra Club California



Colin Bailey, Executive Director
Environmental Justice Coalition for Water



Jonas Minton
Planning and Conservation League

Attachment: Service Certificate

cc: All by electronic service
All party representatives on June 2, 2016, State Water Resources Control Board
(SWRCB) service list
Tom Howard, Executive Director, SWRCB
Michael Lauffer, Chief Counsel, SWRCB
Dana Heinrich, Staff Attorney IV, SWRCB
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