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SAN JOAQUIN RIVER EXCHANGE CONTRACTORS WATER AUTHORITY

7
8 **BEFORE THE CALIFORNIA STATE WATER RESOURCES CONTROL BOARD**

9)
10 HEARING IN THE MATTER OF)
CALIFORNIA DEPARTMENT OF)
11 WATER RESOURCES AND UNITED)
STATES BUREAU OF)
12 RECLAMATION'S REQUEST FOR A)
CHANGE IN POINT OF DIVERSION)
13 FOR CALIFORNIA WATER FIX)
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NOTICE OF UNAVAILABILITY OF
EXPERT WITNESS REGARDING
ISSUES OF LEVEE AND CHANNEL
MAINTENANCE TO MAINTAIN DUAL
CONVEYANCE FACILITY
FUNCTIONING, AND NOTICE OF
APPLICATION TO SWRCB PURSUANT
TO 23 CODE OF REGULATIONS
SECTION 648.4 FOR RELAXATION
REGARDING SUBMISSION OF
WRITTEN TESTIMONY

17 NOTICE IS HEREBY GIVEN that the SAN JOAQUIN RIVER EXCHANGE
18 CONTRACTORS WATER AUTHORITY (SJREC) originally designated Chris Neudeck,
19 a professional engineer, as an expert witness in regard to issues relating to levee and
20 channel maintenance within the Central and South Delta areas. Chris Neudeck has
21 become unavailable for that testimony and, therefore, SJREC proposes to submit the
22 testimony on those issues pursuant to a Notice to Appear to the Department of Water
23 Resources to present its employees and consultants as the most knowledgeable persons in
24 regard to those issues. As a result, there will be no written testimony submitted, in
25 advance, nor a statement of qualifications of the persons made available by the
26 Department of Water Resources. A copy of the Notice to Appear as a substitute for a
27 subpoena pursuant to Government Code Section 11450.50 is filed herewith.

28 Pursuant to Section 648.5, the Board is provided sufficient authority to vary the

1 requirements for written testimony to be submitted in advance in extraordinary cases.
2 Section 648.4(e) provides in regard to the written presentation of testimony, “This rule
3 may be modified where a party demonstrates the compliance would create severe
4 hardship.”

5 Further, Subsection (f) states, “Rebuttal testimony generally will not be required to
6 be submitted in writing nor will rebuttal testimony and exhibits be required to be
7 submitted prior of this state of the hearing.”

8 These extraordinary circumstances and the nature of the testimony to be presented
9 arise from the following facts:

10 1. The Department of Water Resources in presenting its project has provided
11 no evidence in regard to its proposal for establishment of financial means to provide for
12 the maintenance of channels and critical levees necessary to maintain through Delta flows
13 not utilizing the Tunnel capacity, despite an exhaustive report in June 2011 identifying
14 those needs and “Blocks” of measures. DWR’s failure to submit indirect evidence, a
15 substantial portion of the project being proposed by the Department, was not anticipated at
16 the time that expert witnesses were designated. DWR Exhibit 515, Page 2 (Also
17 submitted as SJRECWA-1) in defining the Boundary 1 and Boundary 2 operations of the
18 Tunnels is explicit that a dual method of conveying water through the Delta and through
19 the Tunnel is to be maintained at all times. Table 4 to DWR Exhibit 515, in describing the
20 assumptions which are incorporated in Boundary 1 and Boundary 2, includes a note on
21 Page 2 which states,

22 “SWRCB D-1641. Pumping at the South Delta Intakes are preferred during
23 the July through September months up to a total pumping of 3,000 cfs to
24 minimize potential water quality degradation in the south Delta Channels.

25 No specific intake preference is assumed beyond 3,000 cfs.”

26 Thus, the model runs for operations of the Tunnel and the register of deliveries and water
27 quality each presume that the ability to convey surface water through the Delta to the CVP
28 and State Water Project pumps in an amount of at least 3,000 cfs and pumping in those

1 amounts of water with water quality suitable for use will be preserved and available.

2 The DWR financed, paid for and published a report pursuant to legislation of the
3 State Legislature Assembly Bill 1200, California Water Code Section 139.2, called the
4 “Delta Resource Management Strategy, Draft No. 2” (“DRMS 2”) in June 2011. Among
5 the statements and analysis within that DWR Report are the measures and projects to
6 provide for the maintenance, improvement, and armor-plating and protection of channel
7 and levee capacity to maintain such a dual conveyance system. Nevertheless, DWR’s
8 proposal to the SWRCB for the WaterFix does not specify as part or condition of this
9 project how or whether DWR, the Bureau of Reclamation and the local Reclamation
10 Districts will provide for this levee stabilization and maintenance to allow the Delta
11 Tunnel Project to operate as projected in the model studies. DRMS 2 study specifies the
12 budget and measures to be included in the “building block” to maintain channels and
13 levees which permit a surface conveyance capacity to the CVP and SWP pumps of 3,000
14 cfs or more, but DWR’s testimony and exhibits as to those models and operation studies
15 include no measures to assure how the inter-dependence of the operation of the Tunnels
16 upon maintaining through-Delta surface water conveyance capacity would be assured. If
17 the “through-Delta conveyance” will be interrupted due to failure of levees, flooding of
18 islands, the “pumping” of saline tidal water into those channels during low tide periods
19 from flooded islands, and similar impacts which in the past have prevented the use of the
20 State and Federal pumps due to water quality because levee maintenance is not to be
21 provided for by DWR, the Bureau and local Reclamation Districts, the SWRCB and all
22 parties should all be aware of that fact. DWR’s DRMS 2 study explains exactly what
23 measures are required, and the costs. In this way, the model runs submitted by DWR will
24 not be simply expressions of hope, but with the measures called for in DWR’s own DRMS
25 2 study made a reality, will complement the Tunnel operations as planned.

26 To understand the DWR project, the DWR should have the opportunity to explain
27 how Delta island and channel maintenance and the financing of the armor-plating and
28 levee improvements described in the 2011 DRMS 2 plan are to be joined to and made a

1 part of the DWR WaterFix plan.

2 This can only be done by permitting the enforcement of this Notice to Appear and
3 should be done at this stage in the proceeding to avoid misunderstanding as to what DWR
4 is, in fact, proposing and whether or not harm to legal users of water will occur if the
5 levee maintenance and existence, and the usability of Delta channels is in fact not secured
6 by adequate financing and organization.

7 Respectfully submitted,

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9 MINASIAN, MEITH, SOARES,
10 SEXTON & COOPER, LLP

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By: 
PAUL R. MINASIAN, ESQ.

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	No Action Alternative (NAA)	H3	H4	Boundary 1	Boundary 2
South Delta Export Restrictions					
South Delta exports (Jones PP and Banks PP)	SWRCB D-1641. Vernalis flow-based export limits Apr 1 – May 31 as required by NMFS BiOp (Jun, 2009) Action IV.2.1 (additional 500 cfs allowed for Jul – Sep for reducing impact on SWP)	SWRCB D-1641. Pumping at the south Delta intakes are preferred during the July through September months up to a total pumping of 3,000 cfs to minimize potential water quality degradation in the south Delta channels. No specific intake preference is assumed beyond 3,000 cfs.	Same as H3	Same as H3	Same as H3
Combined Flow in Old and Middle River (OMR)	FWS BiOp (Dec 2008) Actions 1 through 3 and NMFS BiOp (Jun 2009) Action IV.2.3	New OMR criteria in Table 3 below or same as the NAA, whichever results in less negative OMR flows	Same as H3	Same as NAA	New OMR criteria in Table 5 below or same as the NAA, whichever results in less negative OMR flows
Head of Old River Barrier/Gate	Head of Old River Barrier (HORB) is only installed in the fall months per FWS Delta Smelt BiOp Action 5; it is assumed to be not installed in April or May.	HOR gate operations assumptions (% OPEN) Oct 50%, Nov 100%, Dec 100%, Jan 50%, Feb - Jun 15th 50%, Jun 16-30 100%, Jul - Sep 100%; HOR gate will be open 100% whenever flows are greater than 10,000 cfs at Vernalis.; Oct-Nov: Before the D-1641 pulse = HOR gate open, During the D-1641 pulse = for 2 weeks HOR gate closed; After D-1641 pulse: HORB open 50% for 2 weeks	Same as H3	Same as NAA	HOR gate operations assumptions (% OPEN) Oct - Dec 100%, Jan - Feb 50%, Mar - Jun 0%, Jul - Sep 100%; HOR gate will be open 100% whenever flows are greater than 10,000 cfs at Vernalis.; Oct-Nov: Before the D-1641 pulse = HOR gate open, During the D-1641 pulse = for 2 weeks HOR gate closed; After D-1641 pulse: HORB open 50% for 2 weeks
Delta Outflow Requirements					
Delta Outflow Index (Flow and Salinity)	SWRCB D-1641 and USFWS BiOp (Dec 2008) Action 4 (Fall X2 Requirement)	Same as NAA	Same as NAA; In addition, enhanced spring Delta outflow required during the Mar-May period. Mar-May average outflow requirement is determined based on 90% forecast of Mar-May Eight River Index (8RI). For modeling purposes the Mar-May 8RI was forecasted based on a correlation between the Jan-Feb 8RI and Mar-May 8RI at ELT. Each year in March,	SWRCB D-1641	Same as NAA; In addition, year-round Delta outflow goals (see Table 8 below); outflow above existing requirements, attempted to achieve through Delta export curtailments by an amount needed to meet the outflow goal, such that minimum exports are greater of 1500 cfs or to meet CVP San