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March 9, 2017

Robin McGinnis, Attorney
Office of the Chief Counsel
Department of Water Resources

Robin.McGinnis@water.ca.gov

Re: WaterFix – Depositions of Department of Water Resources' Persons Most Knowledgeable

Dear Ms. McGinnis:

The Department of Water Resources's proposal in your email transmission of March 8, 2017 to submit (1) the Final Environmental Impact Report, Environmental Impact Statement for the Bay-Delta Conservation Plan and California WaterFix, and (2) the Draft Central Valley Flood Protection Plan in the Record of the State Water Resources Control Board for determination of the issue whether harm will arise to legal users of water from the WaterFix plan, and whether or not conditions are necessary to be placed in that plan to reduce the risk or the duration of any such injury, we believe, is insufficient.

First, the issues presented by our proposed deposition testimony of Department of Water Resources witnesses continues to be:

1. DWR and Reclamation have submitted modeling of water quality changes based upon the continued existence of "Dual Path" delivery through cross-Delta flow during the months of July through September across the Delta to the CVP and SWP pumps. The Delta Risk Management Strategy I and II reports and the most knowledgeable persons at DWR can demonstrate the substantial investment that would be required to make this "Dual Path" reasonably reliable. Of course, perfect reliability is not often achieved regarding water facilities, but a reasonable plan for repair and correction of levee failures funding of those repairs is inferentially part of the WaterFix plan since there has been no testimony that DWR and Reclamation intend to abandon this second path under certain conditions of failure or extraordinary costs in the future.

None of these subjects are addressed or dealt with in the EIR/EIS or Central Valley Flood Protection Plan. The materials do not address the issue.

2. If it is the plan of Reclamation and DWR to provide for termination of the "Dual Path" delivery system and use because it is economically or physically infeasible to maintain that "Dual Path" delivery under certain circumstances because the CVP and SWP do not wish to fund the repair or preventative maintenance in part, the SWRCB and all participants in this proceeding should know that. What are the likely circumstances are from a water quality point of view in which it would be impossible because DWR and the CVP wish not to fund continued delivery of water through the "second path" proposed in the WaterFix Plan? The most knowledgeable persons of DWR can explain the likely measures required to prevent "Dual Path" interruption, and when it occurs, to reinstate its function. They can also explain how the WaterFix Tunnel operation would continue to function and who would receive water and who would not receive water that had formerly been provided through the "second path" during interruption.

3. The Tunnel project has been billed as a means of providing reliability for urban consumers. At the same time, the DRMS reports and supplemental reports make clear that in the case of extensive levee failures and long periods of time to mobilize repairs, the presence of organic carbon discharges from the failed levees and flooded islands may substantially disrupt the availability of water for urban use in those areas where treatment to remove carcinogenic precursors of organic carbon in the water is not economically feasible or physically available. The SWRCB and all parties are entitled to have knowledge of DWR's plan in regard to the operations of San Luis Reservoir and the Tunnels during periods in which organic carbon discharges make the water arriving at the pumps through the "second path" problematic in this regard. None of these procedures or outlines are contained within DWR's modeling, DWR's testing to date, or any of DWR's publications you have offered to incorporate within the Record.

You mention in your meet and confer letter the possibility of the DWR seeking a protective order. We strongly recommend the DWR not take that step, as it may become equated by the general public with "hiding the true plan." We would not presume to "think" for the DWR. However, there are many meritorious elements to the Tunnel project, and the better course of action is to collectively test those elements in an open forum. That is what the deposition of DWR's identified and most knowledgeable persons would 'propose to do. It would be a shame if a project that is meritorious in

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most respects cannot be improved with reasonable conditions and modifications to reflect how it will actually avoid harm to other legal users of water and instead becomes embroiled in accusations that the true plan is being hidden.

Very truly yours,

MINASIAN, MEITH, SOARES,
SEXTON & COOPER, LLP

By: 

PAUL R. MINASIAN, ESQ.

PRM:dd

cc: James Mizell, Senior Attorney, Office of the Chief Counsel, California Department of Water Resources
San Joaquin River Exchange Contractors Water Authority
WaterFix Parties

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