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15
16 BEFORE THE
CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

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18 HEARING IN THE MATTER OF
CALIFORNIA DEPARTMENT OF WATER
19 RESOURCES AND UNITED STATES
BUREAU OF RECLAMATION'S
20 REQUEST FOR A CHANGE IN POINT OF
21 DIVERSION FOR CALIFORNIA WATER FIX

**San Joaquin County's and North San
Joaquin Water Conservation District's
Opposition to DWR's Request for Protective
Order**

22
23 The San Joaquin Parties oppose Department of Water Resource's (DWR) request for protective
24 order, filed June 6, 2017, for the following reasons:

25 **1.** DWR argues on page 3, lines 10-11 that the San Joaquin Parties waived their right to
26 further cross examine Mr. Leahigh in this phase of the proceeding. This argument is specious.
27 Re-cross was for the purpose of addressing information elicited on re-direct, and, as the Hearing
28 Officers have repeatedly reminded the parties, re-cross was limited to the scope of re-direct. Mr.

1 Leahigh did not present the electronic document referred to as a “master spreadsheet” during his
2 re-direct. (*See Exhibit A hereto, pgs. 168-170.*) Rather, he tried to explain some of the oddities
3 with Exhibits DWR 850 and 905 that were elicited during his prior cross-exam. As Mr.
4 Wasiewski aptly uncovered during his redirect (provided as Exhibit E to DWR’s motion) the
5 explanation raised even more questions about the data in Exhibits DWR 903, 904, and 905, which
6 can only be answered by seeing all of the actual data in the master spreadsheet, rather than the
7 select data that DWR has chosen to illuminate.

8 **2.** The San Joaquin Parties request for the spreadsheet is reasonable because:

9 a. We do not understand the Hearing Officers to have already ruled on this request.

10 While the issue was discussed during the hearing, no final ruling appears in the
11 transcript.

12 b. We agree that the tables that DWR produced as Exhibits DWR 903, 904, and 905

13 appear to represent the data that was represented graphically in DWR-10. However,
14 the purpose of the request for the spreadsheet is to understand whether the data
15 represented in these Exhibits is accurate, complete and presented in a manner that is
16 not misleading. To make that determination, the parties need to see the original data
17 compilation – not just the portions of that original data compilation that DWR has
18 chosen to reveal. As DWR has admitted, some of the numbers in the tables are
19 measured and some are computed. One of the issues to be decided in this proceeding
20 is whether the requested changes initiate a new water right. It is crucial that the
21 parties and the Hearing Officers understand the actual historic diversions of water
22 from different sources to resolve this issue.

23 **3.** The request for information is timely. Unfortunately, this proceeding did not include a
24 discovery phase and DWR does not make all of its operational data publicly available on its
25 website or in its annual reports to the SWRCB. Thus, as DWR presents its summarized picture of
26 how it has operated, the other parties have only limited options for delving into the quality and
27 accuracy of the presented evidence. One way to do that is to ensure that when DWR presents
28 summarized information, we request the original data from which the summary was produced.
That is all that is being done here. Refusing to allow a party sufficient discovery to verify the

1 accuracy of a summary or selective table of data presented by the opposing party for evidentiary
2 purposes would raises serious fairness issues. Moreover, DWR's refusal to produce the very data
3 it claims is the basis of its summary presentations -- and a basis for the conclusions it is urging the
4 Hearing Officers to reach with respect to Petitioners' permits -- casts serious doubt on the
5 veracity of Petitioner's representations about the permits and on the credibility of Petitioners'
6 case generally.

7 **4.** DWR's vehement insistence that it be allowed to hide actual operational data from the
8 SWRCB and the stakeholders in this proceeding is disturbing. If DWR has already produced
9 exhibits containing a complete record of actual operational data, then it could simply explain that
10 the requested information has already been introduced in other exhibits (and identify them). In
11 contrast, DWR has adamantly opposed requests to analyze and critique the actual data and
12 computations underlying exhibits DWR 850 and 851. This lack of transparency is most
13 concerning to anyone interested in maintaining the integrity of this proceeding.

14 **5.** It is not a waste of time to understand how DWR has actually operated under the Permits
15 that are the subject of this change petition or to verify the accuracy of the information DWR has
16 presented to support the petition. The San Joaquin Parties have been extremely efficient to-date in
17 their cross-examination of Petitioner's witnesses, and we will continue to proceed efficiently. It
18 is even possible that if the requested information is submitted in advance of the hearing, and
19 DWR agrees to its authenticity and admission, there will be no further need for questioning.
20 However, because we have yet to see the complete spreadsheet of actual operational data, we
21 cannot make that determination now.

22 Respectfully submitted,

23 Dated: June 7, 2017

SPALETTA LAW P.C.

24 By: _____


Jennifer L. Spaletta

Exhibit A

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BEFORE THE
CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

CALIFORNIA WATERFIX WATER)
RIGHT CHANGE PETITION)
HEARING)

JOE SERNA, JR. BUILDING
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
BYRON SHER AUDITORIUM
1001 I STREET
SECOND FLOOR
SACRAMENTO CALIFORNIA
PART 1 REBUTTAL

Thursday, May 11, 2017

9:00 A.M.

VOLUME 43

Pages 1 - 223

Reported By: Deborah Fuqua, CSR No. 1248

Computerized Transcription by ProCAT

1 proposed project as compared without the proposed
2 project. If anything, they represent an improved
3 efficiency in the movement of the project stored water
4 to the export locations by requiring less carriage
5 water.

6 MR. BERLINER: So is it accurate or fair to
7 say that the graphic was not intended to show, on a
8 more micro level, all aspects of the operation of the
9 WaterFix including flows that would be diverted by
10 tunnels and flows that would then remain in the
11 Sacramento River?

12 WITNESS LEAHIGH: That's correct. It was not
13 intended for that purpose.

14 MR. BERLINER: If we could please have the San
15 Joaquin Tributaries Authority Exhibit 905, please.

16 This will be my last question, two questions
17 but last subject -- I'm sorry, DWR-905, the one used by
18 the SJTA. And if you could scroll down to July of
19 2015.

20 Mr. Leahigh, are you familiar with this chart?

21 WITNESS LEAHIGH: Yes, I am.

22 MR. BERLINER: There are some negative values
23 for July of 2015 in the third column over. And when
24 you were testifying, you were uncertain about what

25

1 these negative values were associated with. Have you
2 had an opportunity to consider why those negative
3 values occurred?

4 WITNESS LEAHIGH: Yes. So Mr. O'Laughlin was
5 right in pointing out what appeared to be inconsistency
6 in this table in terms of this column, which is labeled
7 as "SWP Exports." I was able to confirm with the staff
8 member that put this together that -- this was data for
9 DWR Exhibit 850. And the staff member did -- was able
10 to confirm that these numbers were in error for this
11 particular time period in the summer of 2015.

12 Now, the magnitude of that error essentially
13 was about 24,000 acre-feet of SWP export that was
14 removed that was essentially part of water transport
15 water that was removed from the "SWP Export" column
16 inadvertently. So that did affect -- did result this
17 these negative numbers in the "SWP Export" column.

18 It also affected the third column from the
19 left, which was minimum Feather River flows that
20 eventually went to export, so also show negative
21 numbers there as well.

22 But the 24,000 acre-feet of error, given that
23 the total volume of exports for that year was well over
24 800,000 acre-feet, does not have any material -- does

25

1 not result in any material change to the bottom line
2 point of that particular stacked bar graph, which was
3 DWR-850.

4 MR. BERLINER: Thank you very much. I have no
5 further questions.

6 CO-HEARING OFFICER DODUC: You had indicated
7 in your summary at the beginning that you had questions
8 with respect to CalSim modeling for Mr. Munevar.

9 MR. BERLINER: Yes, I did. But in reviewing
10 them, I think we covered the material that I was going
11 to ask him.

12 CO-HEARING OFFICER DODUC: All right.

13 MR. BERLINER: I'm sure that won't make
14 Mr. Munevar unhappy.

15 CO-HEARING OFFICER DODUC: Let's -- do you
16 have an objection or --

17 MR. HITCHINGS: I was just going to -- Andrew
18 Hitchings for Glenn-Colusa, Biggs-West Gridley.

19 I was going to request that the Hearing
20 Officer consider maybe a 10 to 15-minute break. I know
21 it would help our Group 7 to coordinate our questions.
22 I think it would make it possibly more efficient and
23 less time consuming, if that's okay with the --

24 CO-HEARING OFFICER DODUC: Thank you. That
25

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):

1. San Joaquin County's and North San Joaquin Water Conservation District's Opposition to DWR's Request for Protective Order

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 6/7/2017, 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.

For Petitioners Only:

	<p>I caused a true and correct hard copy of the document(s) to be served by the following method of service to Suzanne Womack & Sheldon Moore, Clifton Court, L.P., 3619 Land Park Drive, Sacramento, CA 95818:</p> <p>Method of Service: _____</p>
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I certify that the foregoing is true and correct and that this document was executed on 6/7/2017
Date

Signature: 

Name: Russell Frink

Title: Attorney

Party/Affiliation: NSJWCD/SJC, et al.

Address: PO Box 2660, Lodi, CA 95241