BEFORE THE
CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

HEARING IN THE MATTER OF
CALIFORNIA DEPARTMENT OF WATER RESOURCES AND UNITED STATES
BUREAU OF RECLAMATION
REQUEST FOR A CHANGE IN POINT OF DIVERSION FOR CALIFORNIA WATER FIX

OBJECTION TO PETITIONER’S PROPOSAL TO REVISE D-1641 EXPORT TO INFLOW PERMIT TERMS IN THE WATERFIX CHANGE PETITION HEARING

Deirdre Des Jardins, principal at California Water Research, (California Water Research) objects to the request in the Petitioners’ September 8, 2017 filing\(^1\) that the Board consider revisions to the term in the Petitions permits, associated with implementation of the export to inflow objective in the 2006 Bay-Delta Water Quality Control Plan (WQCP), in the Hearing on the Petitioners’ Change in Point of Diversion. Petitioners’ September 8, 2017 filing states

For Alternative 4A, Reclamation and DWR propose that the north Delta diversion be excluded from the export/inflow ratio calculation. (p. 6.)

The permit terms were adopted by the Board as part of Decision 1641, implementing the 1995 Bay-Delta Water Quality Control Plan, which was updated in 2006. As described below, any revisions to the 2006 Bay-Delta Water Quality Control Plan, and to the water rights

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implementing the plan are properly being considered in the Phase 2 update to the Bay-Delta WQCP. Consideration of interim revisions to the implementation of the 2006 Bay-Delta WQCP in this hearing would require a Substitute Environmental Document. Such a document has not been prepared by the Board or noticed for the hearing.

The Board’s regulations for revisions to Water Quality Control Plan require the following:

1.) The Board must be lead agency, (Tit 23 Cal Code Regs 3776(a).)

The state board shall be the lead agency with respect to its adoption or revision of any state policy for water quality control or other plans, policies, or regulations that it adopts or revises.

2.) The Board must circulate a draft SED prior to consideration for approval or adoption (Tit 23 Cal Code Regs 3777(a).)

Any water quality control plan, state policy for water quality control, and any other components of California’s water quality management plan as defined in Code of Federal Regulations, title 40 sections 130.2(k) and 130.6, proposed for board approval or adoption must include or be accompanied by Substitute Environmental Documentation (SED) and supported by substantial evidence in the administrative record. The Draft SED may be comprised of a single document or a compilation of documents. The Draft SED must be circulated prior to board action approving or adopting a project, as specified in sections 3778 and 3779.

The 2009 Notice of Preparation for the SED for the Phase 2 of the Bay-Delta Water Quality Control Plan update² (2009 Notice of Preparation) states that changes to the 2006 Bay-Delta Water Quality Control Plan, needed for implementation of the BDCP/WaterFix project, will be considered in the Phase 2 update:

Implementation of the BDCP will likely require changes to the 2006 Bay-Delta Plan and water rights implementing that plan. (p. 5.)

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Objection to Proposal to Revise D-1641 Export to Inflow Permit Terms
The 2009 Staff Report on the Periodic Review of the Bay-Delta Water Quality Control Plan also stated,

Conservation measures currently under consideration in the BDCP process will likely require additional modifications to operating criteria for a number of existing and planned facilities. These changes may require re-evaluation of the export limit objectives as well as other Delta flow objectives in the Bay-Delta Plan (BDCP 2008). (p. 21.)

The 2009 Notice of Preparation also indicated the process for the Board to consider changes to the Bay-Delta Water Quality Control Plan, needed as a result of the BDCP / WaterFix:

The State Water Board proposes to refer to information developed during preparation of both the BDCP EIS/EIR and the Central Valley Water Board’s environmental document, to the extent that those documents provide sufficient analysis and adequately disclose impacts associated with alternative objectives and implementation methodologies of carrying out the State Water Board’s Project. If the documents are not adequate for this purpose, the State Water Board will determine whether additional analyses are appropriate, and if so, will prepare such analyses. Any final environmental document will reflect the independent judgment of the State Water Board. (p. 6.)

Relying entirely on the analyses by the Department of Water Resources in the WaterFix Final EIR for a decision revising permit terms implementing the Bay-Delta Water Quality Control Plan would violate the separation of powers under the California Constitution (Wat. Code § 174, Cal. Const, art. III, § 3.) Revising the 2006 Bay-Delta WQCP without notice of the Board’s own draft SED and opportunity to comment would violate due process under the California Constitution (Cal. Const., art. I, § 7.)

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Objection to Proposal to Revise D-1641 Export to Inflow Permit Terms
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):

Objection to Petitioner’s Proposal to Revise D-1641 Export to Inflow Permit Terms
in the Waterfix Change Petition Hearing

to be served by Electronic Mail (email) upon the parties listed in the Current Service List
for the California Water Fix Petition Hearing, dated September 12, 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.

I certify that the foregoing is true and correct and that this document was executed on
September 22, 2017.

Signature:

Name: Deirdre Des Jardins
Title: Principal, California Water Research

Party/Affiliation:
Deirdre Des Jardins

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