
From: Michael A. Brodsky <michael@brodskylaw.net>
Sent: Friday, October 27, 2017 6:12 PM
To: CWFhearing
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Subject: Re: Reminder of Public Availability of NMFS BiOp; USFWS BiOp; CDFW 2081; CWF certified FEIR/EIS
Attachments: cwf Statement of Service10.27.pdf

Publicly available documents not submitted into evidence or made a part of DWR's application are not evidence in these proceedings. These are evidentiary hearings. The purpose of an evidentiary hearing is to determine facts based on evidence admitted into the record. Publicly available documents, available on the internet, or elsewhere, play no role here.

At this point, since DWR withdrew any operating criteria contained in modeling that has been submitted into evidence from their definition of the project—as stated in their letter of September 8, 2017-- all we know about the project for purposes of acting on DWR's change petition is what is contained in the 5% engineering description (twin 40 foot diameter tunnels with 3 intakes) and that DWR promises to meet D-1641 in operating the project. Outside of these proceedings, all parties know that a twin-tunnel three-intake project is dead and that the governor may or may not try to move a scaled back one-tunnel one-intake project forward.

If DWR wants the parties to respond to, or the Board to consider, the project as described in the documents listed in DWR's email of today (which describe the dead three-intake twin-tunnel project), then DWR needs to amend their project application to make those documents a part of the project description as contained in the application.

It is not up to the parties to describe DWR's dead project for DWR by submitting publicly available documents into evidence.

It appears that there is nothing DWR can do with regard to its failure to submit a complete project application (or, at this point, a non-phantom application) that will cause the Board to enforce its regulations and provisions of the Water Code that require a complete application and project description before any change in water rights may be considered. There is no such thing as a "place holder" water rights proceeding that allows the governor and the federal government to make up their minds what, if any, project they are proposing whilst scores of parties and hundreds of attorneys are held hostage awaiting some project to emerge—at an expense of millions of dollars to parties who can ill afford it. However, as Hearing Officer Doduc confirmed at the Part 2 Pre-Hearing conference, that is exactly what the present proceedings have turned out to be. Today's email is the latest manifestation of the absence of the rule of law in administrative proceedings.

This is two of two emails.

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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):

Delta Alliance's email of 10/27/17 responding to DWR's 10/27/17 email pointing out publicly available information.

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 October 25, 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

I certify that the foregoing is true and correct and that this document was executed on October 27, 2017, at Capitola, California.

Signature: 
Name: Michael A. Brodsky
Title: Attorney

Party/Affiliation:
Save the California Delta Alliance, et al.

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