

DEPARTMENT OF WATER RESOURCES

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February 8, 2018

SENT VIA E-MAIL TO: CWFhearing@waterboards.ca.gov

Tam Doduc, Hearing Officer
Felicia Marcus, Hearing Officer
State Water Resources Control Board
1001 I Street
Sacramento, California 94596

RE: *Department of Water Resources – Director Nemeth Policy Statement:*
February 8, 2018

Dear Hearing Officers Doduc and Marcus:

Good morning Board members Dudoc, Marcus and D’Adamo. It’s a pleasure to be here. First I want to open by thanking you for the opportunity to talk with you and help frame the important task in front of the State Water Board. For those of us in state government that work on Delta issues, the physical, regulatory and human complexities in generating solutions are always daunting. I want to thank the board for the manner in which it has carried out these proceedings to date.

You have before you a water right change petition to allow operation of up to three new intakes for the State Water Project along the Sacramento River. As stated by Secretary Laird at the outset of Part 1 of this hearing, the Brown administration pursues California WaterFix because the situation in the Delta remains harmful for fish, and puts millions of people and millions of acres of farmland at risk of water supply disruptions. While we have debated and litigated, our ecosystem and water supply reliability problems have only worsened throughout the last three decades. The California WaterFix is an important part of the solution to these challenges.

We have achieved a great deal since this hearing was initiated in early 2016. A final Environmental Impact Report and Environmental Impact Statement was prepared by the DWR and Reclamation; in 2017, the California Department of Fish and Wildlife issued an Incidental Take Permit, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service both issued non-jeopardy Biological Opinions; and, in July of 2017 DWR approved the project.

Finally, and importantly, last fall public water agencies throughout California that contract for State Water Project deliveries voted to support WaterFix. Yesterday, I sent a memo to them outlining the actions that would provide an additional option for a staged approach to implementation of WaterFix.

This memo reflects our decision. Press accounts that we have decided on a one tunnel configuration are incorrect. We have and continue to be engaged in high level conversations with water agencies about who will participate and how in WaterFix. Those negotiations are in flux and, even if we could share them with this Board and others, that would not be useful until decisions have been made. DWR continues to seek a permit for the full WaterFix. But it is important that the Department explore a potential option for staged implementation so that the participating water agencies can present to their boards and publicly consider a decision on that proposal. That was the sole purpose of yesterday's memo.

To be clear, we are not modifying the project or the change requested in our petition. In fact, it is crucial that the Board complete these proceedings and issue that decision on the project as currently proposed. As with any water project of this size, participants and potential participants need to understand the proposed construction and operation of the project before making final commitments.

In addition to pursuing the project as proposed, DWR will also focus on an option that would allow implementation in the near term of a first stage that would include those elements of WaterFix fundable by south-of Delta State Water Project contractors. Under this scenario, we would pursue the remaining elements when additional funding materializes. Preparing for that eventuality now will provide the flexibility to immediately implement a first stage and not delay the significant benefits of that effort, if full funding is not available for the entire project.

Again, we continue to believe that the full project as defined is the correct and necessary path for California, but implementing construction in stages would also be prudent, fiscally responsible and meet the needs of the funders identified to date. And let me repeat that DWR continues to seek the addition of all three intake locations for WaterFix. DWR believes that the ultimate construction of the whole project is better for California. Moreover, since our various permits address the full project, the state will have the flexibility needed to meet everyone's needs when the time and funding comes for any deferred second stage.

In considering the California WaterFix, I hope you will again reflect on DWR's commitment to meet our obligations under our water right permits to protect beneficial uses of water. To do this, the State needs additional points of diversion on the Sacramento River that are operated in real-time and use information developed through an adaptive management process in order to improve ecosystem health and improve water supply reliability for the future. In short, the California WaterFix must be implemented to best serve Californians by both protecting the Delta estuary and improving water supply reliability.

Adaptive management is a fundamental cornerstone described in the Department of Fish and Wildlife Incidental Take Permit and federal Biological Opinions issued for California WaterFix. DWR will put in place the monitoring, research, investments, and communication we need to implement California WaterFix. DWR is committed to adaptive management that is transparent and built on collaborative science.

Modeling is an effective tool for assessing the differences between two conditions. DWR has used industry standard models to analyze the differences between a future with and without California WaterFix. A critical component of State Water Project operations is real-time decision making. California WaterFix proposes that real-time operations will be an important component of managing the State Water Project in order to meet regulatory obligations. Only through real-time operations can the SWP account for actual conditions that inform operational decisions, including fish presence, weather patterns, and unreported changes in diversions. DWR operators have an excellent record of accounting for and adapting to these unpredictable factors.

We pursue this project in large part because our work with federal and state fishery agencies convinces us that a new configuration for Delta conveyance, along with state-of-the-art fish screens and adaptive management, provides the flexibility to move water in a more benign way, and will be protective of listed species.

In closing, I hope you will bear in mind the fundamental respect that my department holds and has demonstrated for your authority and your critical role in regulating the State's water resources. Thank you for your time and consideration.

cc: Electronic Service
Service list as of January 24, 2018

Personal Service via U.S. Postal Service
Suzanne Womack and Sheldon Moore Clifton Court, L.P.