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7

8
9 BEFORE THE STATE WATER RESOURCES CONTROL BOARD

10 HEARING IN THE MATTER OF
CALIFORNIA DEPARTMENT OF
11 WATER RESOURCES AND UNITED
STATES BUREAU OF
12 RECLAMATION REQUEST FOR A
CHANGE IN POINT OF DIVERSION
13 FOR CALIFORNIA WATERFIX
14

**REPLY IN SUPPORT OF MOTION TO
STAY PART II OF THE HEARING DUE
TO CHANGES IN THE PROPOSED
PROJECT, RESPONSES TO QUESTIONS
FROM THE HEARING OFFICERS, AND
OBJECTIONS TO DWR'S POLICY
STATEMENT AND CONSOLIDATED
OPPOSITION**

1 The Natural Resources Defense Council, Defenders of Wildlife, and The Bay Institute
2 (collectively, “NRDC et al”) submit this reply brief in support of our Renewed Motion to Stay Part II
3 of the Hearing Due to Changes in the Proposed Project, as well as NRDC et al’s answers to the
4 Hearing Officers’ questions and NRDC et al’s objections to DWR’s Policy Statement and
5 Consolidated Opposition. DWR’s Policy Statement and its Consolidated Opposition demonstrate
6 that Part II of this hearing should be stayed until, at minimum, DWR submits written testimony on
7 the impacts of a phased approach and submits updated federal and California Endangered Species
8 Act permits and a final supplemental CEQA document for a phased approach. In its filings, DWR
9 repeatedly relies on modeling data that the agency has prepared on the phased approach, which is a
10 quintessential example of unlawful surprise testimony and demonstrates that the newly-proposed
11 Project phasing is a significant change in the project.

12 Information regarding the effects of a phased approach on legal users of water, fish and
13 wildlife, and the public interest (including amended environmental permits, testimony, and
14 modeling) is essential to the Hearing Officers’ consideration of this petition. After all, the first phase
15 could be in operation for many years before construction of a second tunnel and third intake, and that
16 second phase may never be constructed. However, amended environmental permits are not yet
17 available, and the modeling that DWR has shared is inadmissible because consideration of this
18 surprise testimony would prejudice NRDC et al and other Protestants. The Hearing Officers should
19 grant NRDC et al’s motion for stay or continuance of Part II of the Hearing to allow DWR to submit
20 updated testimony on the scope and impacts of a phased project, submit updated environmental
21 permits, and render this critical information admissible.

22 **I. DWR Unlawfully Relies on Inadmissible Modeling Data, which is Relevant Evidence**
23 **to the Impacts of a Phased Approach on Fish and Wildlife, Other Legal Users of**
24 **Water, and the Public Interest.**

25 DWR’s Consolidated Opposition and its Policy Statement repeatedly reference modeling
26 information that the agency has prepared to identify the impacts of a phased project and that it first
27 publicly released on February 8, 2018. *See, e.g.*, DWR Consolidated Opposition at 3:12-14, 4:8-13,
28 5:17-18, 8:6-10. However, that modeling information goes far beyond the scope of DWR’s written
Reply in support of Motion for Stay of Part II of Hearing due to Changes in Proposed Project

1 testimony, and it is the quintessential example of surprise testimony that must therefore be excluded
2 from this proceeding. DWR cannot have it both ways, relying on modeling information that is
3 outside the scope of its evidentiary submissions while arguing that such information is irrelevant.

4 As discussed in our Motion for Stay, all of Petitioners' testimony for Part 2 of this hearing
5 concerns the final, 9,000 cfs WaterFix project approved in the notice of determination, and none of
6 the written testimony discusses potential impacts of a phased approach. Therefore, any and all
7 information regarding the impacts of a phased project must be barred as surprise testimony that is
8 outside the scope of DWR's written submittals. As all parties are aware, "[i]t is the policy of the
9 State and Regional Boards to discourage the introduction of surprise testimony and exhibits." Cal.
10 Code Regs., tit., 23, § 648.4(a). The SWRCB's notice for this hearing states that,

11 "Each party proposing to present testimony on factual or other evidentiary matters at
12 the hearing shall submit such testimony in writing. Written testimony shall be
13 designated as an exhibit, and must be submitted with the other exhibits. Oral
testimony that goes beyond the scope of the written testimony may be excluded."

14 October 30, 2015 Notice of Petition and Notice of Public Hearing and Pre-Hearing Conference to
15 Consider the Above Petition, at 33.

16 The SWRCB's regulations require that the hearing officers reject admission of surprise
17 testimony that goes beyond the scope of written testimony, where it would prejudice any party or the
18 SWRCB. Cal. Code Regs., tit., 23, § 648.4(e). Consideration of this modeling information would
19 prejudice NRDC et al and other Protestants because DWR has had months to review and develop
20 this new modeling information, which was shared with NRDC et al and other Protestants the day
21 before Part 2 of this hearing was to begin. DWR has admitted that it has been working on this phased
22 approach since last fall. *See* DWR Consolidated Opposition at 2. On February 12, 2018, Jeff
23 Kightlinger publicly stated at a meeting of the Water Planning and Stewardship Committee of the
24 Board of Directors of the Metropolitan Water District of Southern California that "this has been in
25 the works for some time," and that MWD and other contractors have had time to review modeling
26 and make initial assessments of the modeling. DWR apparently committed to preparing a
27 supplemental environmental impact report months ago, executing a contract amendment for

1 “additional planning and permitting activities such as the development of a supplemental EIR/EIS”
2 on December 18, 2018. *See* Agreement Summary, Agreement No. 4600009986, Amendment 5,
3 attached hereto as Exhibit A.¹ Indeed, even as DWR repeatedly cites this modeling information to
4 support its claims, DWR also states that, “DWR has not submitted any evidence based upon this
5 modeling. Therefore, DWR does not believe that this information is a basis for delay or
6 prejudice. All parties will have opportunity to assess the information as the hearing moves forward.”
7 *See* email from Valentina German to the Service List dated February 8, 2018.

8 Contrary to DWR’s assertions, all parties will *not* have the opportunity to assess information
9 regarding the impacts of a phased project unless and until DWR submits new testimony defining
10 those impacts. Any other approach will cause gross prejudice to NRDC et al and other Protestants.
11 NRDC et al hereby objects to all references to this modeling information and all references to a
12 phased approach to construction as inadmissible evidence, except for consideration of those
13 statements for purposes of the present motion, pursuant to section 648.4(e) of title 23.²

14 While DWR’s approach renders information regarding the impacts of a phased project
15 inadmissible, such information is clearly necessary to determine the impacts of a phased approach on
16 fish and wildlife, legal users of water, and the public interest. Key questions regarding how a first
17 phase would be operated are essential for the Hearing Officers and the parties to identify those
18 impacts: for example, would the first phase result in greater Delta outflow during the winter and
19 spring months than the full project? Would the first phase increase pumping in the South Delta
20 compared to the full project?³ Would the first phase result in reduced water supply to CVP
21 contractors, including wildlife refuges? Would the first phase result in smaller reductions to salmon
22

23 ¹ This document was obtained from DWR pursuant to a California Public Records Act request filed
24 by Patricia Schifferle on December 27, 2017.

25 ² In addition, we note that a policy statement cannot constitute evidence in this proceeding or legal
26 argument. Notice of Petition, October 30, 2015, at 32. However, DWR repeatedly cites the DWR
27 Policy Statement as evidence. *See, e.g.*, DWR Consolidated Opposition at 5:4-9. This provides a
28 further reason for NRDC et al’s objection to DWR’s Policy Statement, and further reason why it
should not be considered in this proceeding.

³ For instance, DWR has indicated in other venues that pumping from the South Delta during the
first phase would be greater than it would be for the full project.

1 survival in the Sacramento River than the full project? These and numerous other questions are
2 unanswerable without this modeling information and testimony based thereupon. This information is
3 critical given that the first phase of the project could be in operation for many years before a second
4 phase was constructed, if a second phase was ever constructed. Information regarding the effects of
5 the first phase of the project on fish and wildlife is necessary to comply with section 1701.2(c) of the
6 California Water Code.

7 Even DWR admits that the question of conditions necessary to protect fish and wildlife under
8 a phased construction approach is “the fundamental question of Part 2 of the hearing.” DWR
9 Consolidated Opposition at 14:22-27. DWR also admits that the appropriate flow criteria may be
10 different under a phased approach. *Id.* at 15:1-3. And DWR admits that written testimony and cross-
11 examination regarding potential impacts of a phased approach would be required for the Board to
12 approve such an approach. *Id.* at 14:6-9. The policy statement filed by the Westlands Water District
13 likewise demonstrates that this information is relevant and necessary to determine whether the
14 phased approach would cause an injury to legal users of water:

15 However, it is not known how, if at all, a “staged” project would affect Central Valley
16 Project water supplies. If DWR and the agencies served by the State Water Project
17 want to implement a phased WaterFix, Westlands encourages their efforts, but not at
the expense of Central Valley Project water supplies.

18 Westlands Water District, California WaterFix Change Petition – Policy Statement of Westlands
19 Water District General Manager Thomas Birmingham, February 7, 2018. And at the February 12,
20 2018 meeting of the Water Planning and Stewardship Committee of the Board of Directors of the
21 Metropolitan Water District of Southern California, MWD staff appeared to indicate that the first
22 phase of the project would result in water supply impacts to CVP contractors who did not participate
23 in WaterFix. Information regarding the effects of a phased approach on other legal users of water is
24 necessary to comply with section 1701.2(d) of the California Water Code.

25 The information regarding the impacts of the first phase of WaterFix on fish and wildlife,
26 other legal users of water, and the public interest is clearly relevant and necessary to this proceeding,
27 and also clearly inadmissible at this time. The Hearing Officers have the authority to require this
28

1 information, and to delay this proceeding until such time that this evidence can be considered. Cal.
2 Water Code § 1701.3.

3
4 **II. DWR’s Phased Approach is a Significant, “Official” Change to the Project**

5 DWR’s phased approach is also a substantial change to the project. DWR’s original petition
6 was for a project with three intakes, each with 3,000 cfs capacity for a total capacity of 9,000 cfs,
7 which would be fully constructed and operational “approximately 14 years after proposed action
8 approval.” *See* August 25, 2015 Joint Petition, Supplemental Information For Petition for Change in
9 point of Diversion, at 8, 13, 18. DWR’s policy statement, however, claims that the existing water
10 rights petition is “to allow operation of up to three new intakes for the State Water Project along the
11 Sacramento River.” DWR Policy Statement at 1. DWR’s policy statement is inconsistent with the
12 text of the petition and text of their environmental permits, and as discussed above, improperly seeks
13 to make legal arguments and provide evidence.

14 Indeed, DWR has explained that it is currently working to amend the biological opinions and
15 CESA incidental take permit, and to issue a supplemental Environmental Impact Report under
16 CEQA, in order to analyze the effects of phased construction and to obtain the regulatory permits
17 necessary to implement a phased approach. DWR Consolidated Opposition at 2:16-3:12, 3:25-26,
18 4:3-6; *see* Memo from Karla Nemeth to Public Water Agencies Participating in California WaterFix,
19 dated February 7, 2018, at 2.⁴ DWR also admits that the option of staged construction is “official.”
20 DWR Consolidated Opposition at 2:21-3:3. Director Nemeth’s memo explains that they are working
21 to allow construction of the first phase of the project to begin immediately. *See* Memo from Karla
22 Nemeth to Public Water Agencies Participating in California WaterFix, dated February 7, 2018, at 2.
23 Phased implementation cannot be considered by the SWRCB, absent evidence regarding the effects
24 of a phased project on fish and wildlife, other legal users of water, and the public interest.

25
26
27

⁴ DWR’s Memorandum is attached as Exhibit B to this Reply brief, and it is included solely for the
28 Hearing Officer’s consideration of the present motion.

1 Yet even as DWR changes the project and amends the permitting to allow for this changed
2 project, DWR apparently wants this information to be ignored in this hearing – at least until DWR
3 decides to introduce new evidence regarding a phased approach. *See* DWR Consolidated Opposition
4 at 14:7-9 (“At that time DWR would submit testimony that there are not additional impacts within
5 the issues of the State Water Board’s jurisdiction and that evidence can be tested through cross
6 examination.”). This is highly prejudicial and inappropriate. Proceeding now through the Part 2
7 hearing on the full WaterFix project, and then holding a subsequent water rights hearing on the
8 effects of a smaller, modified first phase of the WaterFix project on fish and wildlife and the public
9 interest, would be grossly inefficient, prejudices Protestants who have limited ability to participate in
10 this hearing, consumes even more of the scarce time of SWRCB staff and the Hearing Officers, and
11 is contrary to the public interest. Instead, the Hearing Officers should stay this proceeding until the
12 written evidence and modeling on the effects of the first phase could be considered. In addition, the
13 Hearing Officers should re-notice this petition, given the changes to the project, for the reasons
14 expressed in our Motion for Stay.

15 This approach is fully consistent with the prior rulings in this hearing. For instance, as noted
16 in our Motion for Stay, prior rulings have held that Part II of this hearing would not begin until at
17 least 30 days after completion of the CEQA process and issuance of biological opinions and an
18 incidental take permit under CESA. *See* NRDC et al Motion for Stay at 7-8. Amended or revised
19 federal and California Endangered Species Act permits are essential evidence in this hearing,
20 because these permits provide the views of state and federal trustee agencies on the effects of a first
21 phase of the project on fish and wildlife. To date, the ESA section 7 consultation process for
22 WaterFix has resulted in significant changes in the project. For instance, the required Sacramento
23 River bypass flows past the North Delta diversions were significantly modified as a result of the
24 section 7 consultation with NMFS and its biological opinion, which demonstrates that diversions
25 from the North Delta result in far greater impacts to migrating salmon than were originally disclosed
26 by DWR or identified in the CEQA/NEPA document. Moreover, these agencies have refused to

1 participate in Part 2 of the hearing,⁵ and the final federal and California Endangered Species Act
2 permits likely will provide the only information from these agencies on the potential impacts of the
3 project on fish and wildlife. DWR has admitted they will be amending these CESA permits and
4 biological opinions, and preparing a Supplemental Environmental Impact Statement, demonstrating
5 that the conditions for the start of Part II are not met.

6 DWR appears to recognize that these permits are important evidence in this hearing,
7 admitting that these permits may impose additional or modified requirements that would affect this
8 Hearing. DWR Consolidated Opposition at 14:24-27. DWR also indicates that these amended or
9 revised permits would somehow become part of the hearing record, stating that, “should it come to
10 light through the hearing that the biological permits require meaningful changes or the supplemental
11 EIR demonstrates the need for additional conditions....” *Id.* at 14:24-26. However, any
12 amendments to the permits are beyond the scope of written testimony and would be inadmissible.

13 Contrary to DWR’s arguments, the provisions of law for new applications for water rights
14 generally are applicable to a petition to change a point of diversion. Fundamentally, it makes no
15 sense that a water rights holder could accomplish through a change petition something that is
16 unlawful for a water right in the first instance. Indeed, the SWRCB has explicitly held that “each
17 change in an appropriative water right changes the right which originally was approved, and the
18 change requires consideration of the factors to be considered in approving an application.” SWRCB,
19 Water Rights Order 95-9, at 29.

20 Sections 1701.1, 1701.2, and 1701.3 were added to the Water Code in 2001. *See* Chapter
21 315, Stats. 2001 (AB 946). Nothing in the legislative history suggests that section 1701.1 was solely
22 applicable for a water right application for which a petition or license has not been granted. Indeed,
23 on at least two separate occasions the SWRCB has cited section 1701.1 in the context of a petition to
24 change water rights for a party that has a water rights license or petition, not just an application. *See*

25
26 ⁵ Both NMFS and the U.S. Fish and Wildlife Service have rejected demands from NRDC et al that
27 witnesses from these agencies testify in this hearing, citing the agencies’ Touhy regulations. For
28 instance, NMFS indicated that it would not allow its employees to testify in this hearing. *See, e.g.*,
letter from Kristen Gustafson, Acting General Counsel to Doug Obegi dated December 22, 2017.

1 SWRCB, In the Matter of Petitions of the United States Bureau of Reclamation, Fallbrook Public
2 Utility District and the California Department of Water Resources for Reconsideration of Order WR
3 2009-0028-DWR, Order No. WR2009-0063-EXEC, 2009 WL 6648190 (noting that a change
4 petition for these water rights was denied for failure to comply with section 1701.1(d)); SWRCB, *In*
5 *the Matter of License 7979 (Applicant 20301) of Irv Levin*, Decision 2013-0001, 2013 WL 596457
6 (Feb. 6, 2013) (citing section 1701.1 as authority for requiring a change petition “from that which is
7 specified in the permit or license”).

8 DWR also appears to object to consideration of financing information in this proceeding,
9 claiming that the Hearing Officers should ignore information regarding the ability of DWR to fully
10 construct the project. *See* DWR Consolidated Opposition at 2:3-14, 6:16-7:2. However, DWR has
11 admitted that they seek to proceed with implementation of the first phase without having funding for
12 the entire project, and would not construct the second phase until such future time when funding is
13 available. *See, e.g.*, DWR Memo at 2 (“If funding for all elements of the currently-proposed
14 WaterFix is not available when construction begins, stage two would begin once additional funding
15 commitments are made from supporting water agencies.”); *id.* at 1 (“Being prepared to implement
16 this option is directly responsive to the stated needs of the participating agencies, and would align
17 project implementation with current funding commitments.”); DWR Policy Statement at 2
18 (“...Under this scenario, we would pursue the remaining elements when additional funding
19 materializes.”). As discussed in NRDC et al’s Motion for stay, the lack of adequate funding is not a
20 valid basis for failing to diligently pursue construction of facilities, and the Delta Reform Act
21 requires that the contractors enter into contracts or make arrangements to pay all of the costs of the
22 project before construction can begin. *See* NRDC et al Motion for Stay at 6-7. These claims are
23 substantiated by DWR’s own admissions.

24 Finally, this approach would not “punish” DWR. *See* DWR Consolidated Opposition at 3:3-
25 5. It simply reflects the requirements of due process and fundamental fairness, considering the
26 changes to the project that DWR itself is proposing and undertaking, and ensuring a fair and efficient
27 hearing process to consider the effects of Phase 1 on fish and wildlife and the public interest.

1 **III. Responses to the Hearing Officers' Questions**

- 2 1. DWR's response demonstrates that additional analysis under CEQA is required.
- 3 2. DWR's response fails to answer the Hearing Officer's specific questions. DWR's Policy
- 4 Statement explains that the first phase would be "fundable by south-of Delta State Water
- 5 Project contractors," indicating that CVP contractors likely would not participate in Phase
- 6 1. It is entirely unclear how WaterFix would be operated after the first phase is
- 7 constructed, and any evidence regarding operations of WaterFix after the first phase of
- 8 construction is inadmissible for the reasons explained above.
- 9 3. As discussed above, section 1701.1 appears to apply to all change petitions, and section
- 10 1701.2 requires additional information regarding the potential impacts of Phase 1 on fish
- 11 and wildlife, legal users of water, and the public interest. Section 1701.3 authorizes the
- 12 Hearing Officers to require the Petitioners to submit this additional information and to
- 13 provide all parties with adequate time to consider it before proceeding to Part 2 of the
- 14 Hearing.
- 15 4. As discussed above, the effects of the first phase of the California WaterFix project on
- 16 fish and wildlife and the public interest is clearly relevant and necessary information, but
- 17 any testimony regarding these issues is inadmissible at this time. Modeling, testimony,
- 18 and cross examination regarding how Phase 1 would be operated (Delta outflow, North
- 19 Delta Diversion bypass flows, South Delta Old and Middle River flows, etc.) is essential
- 20 to determining whether the Project would cause unreasonable effects to fish and wildlife
- 21 and what would constitute appropriate flow criteria.
- 22 5. The Hearing Officers should require Petitioners to submit written testimony that
- 23 addresses the potential environmental impacts of phased implementation, including
- 24 effects during this first Phase, to accompany Petitioners submitting supplemental CEQA
- 25 documents and amended biological opinions and an amended incidental take permit
- 26 under CESA.

1 6. Until such time that Petitioners provide testimony and evidence regarding how the first
2 phase would be operated, it is impossible to know what the potential impacts to fish and
3 wildlife would be from implementing this first phase, and how they may differ from the
4 full project. DWR admits that appropriate flow criteria may be different under a phased
5 approach.

6
7 **IV. Conclusion**

8 NRDC et al hereby request that the Hearing Officers grant the renewed motion for stay or
9 continuance, and issue a stay of Part 2 of the hearing until at least 30 days after Petitioners have
10 submitted a final supplemental CEQA document, amended biological opinions, amended incidental
11 take permit under CESA, and have submitted written testimony regarding the potential impacts of
12 the first phase of WaterFix on fish and wildlife and the public interest.
13

14
15 Dated: February 13, 2018

Natural Resources Defense Council

16 
17 _____
18 Doug Obegi

19 On behalf of the Natural Resources Defense Council,
20 Defenders of Wildlife, and the Bay Institute
21
22
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Exhibit A

AGREEMENT SUMMARY

STD 215 (REV. 1-2014)

CHECK HERE IF ADDITIONAL PAGES ARE ATTACHED

AGREEMENT NUMBER

4600009986

AMENDMENT NUMBER

5

1. CONTRACTOR'S NAME

Hallmark Group

2. FEDERAL I.D. NUMBER

68-0481455

3. AGENCY TRANSMITTING AGREEMENT

Department of Water Resources

4. DIVISION, BUREAU, OR OTHER UNIT

State Water Project Analysis Office

5. AGENCY BILLING CODE

81000

6. NAME AND TELEPHONE NUMBER OF CONTRACT ANALYST FOR QUESTIONS REGARDING THIS AGREEMENT

Nancy Shaltes; nancy.shaltes@water.ca.gov; (916) 654-7359 / SME: Roger Lee; roger.lee@water.ca.gov; (916)651-9707

7. HAS YOUR AGENCY CONTRACTED FOR THESE SERVICES BEFORE?

NO

YES (If YES, enter prior contractor name and Agreement Number)

8. BRIEF DESCRIPTION OF SERVICES - LIMIT 72 CHARACTERS INCLUDING PUNCTUATION AND SPACES

Amend to add time and money

9. AGREEMENT OUTLINE (Include reason for Agreement: Identify specific problem, administrative requirement, program need or other circumstances making the Agreement necessary; include special or unusual terms and conditions.)

The purpose of this Amendment is to extend the expiration date by three (3) months from December 31, 2017 to March 31, 2018. The Amendment also adds \$696,000.00 to the contract. Additional time and money are needed for continued planning, coordination and oversight of the program. Recent meetings with fish and wildlife agencies have triggered additional planning and permitting activities such as the development of a supplemental EIR/EIS. The Hallmark Group also needs to manage and coordinate the closeout of planning task orders and deliverables. Additionally, this Amendment updates Exhibit C – General Terms and Conditions, and Exhibit E, Attachment 1 – Travel and Per Diem Expenses.

10. PAYMENT TERMS (More than one may apply.)

MONTHLY FLAT RATE

QUARTERLY

ONE -TIME PAYMENT

PROGRESS PAYMENT

ITEMIZED INVOICE

WITHHOLD 10 %

ADVANCED PAYMENT NOT TO EXCEED

REIMBURSEMENT/REVENUE

\$ _____ or _____ %

OTHER (Explain) No more often than monthly, in arrears / 10% retention withheld at Contract Manager's discretion.

11. PROJECTED EXPENDITURES
FUND TITLE

ITEM

F.Y.

CHAPTER

STATUTE

PROJECTED EXPENDITURES

WRRF

3860-902-0691

17/18

186/86

Sec 135 WC

\$696,000.00

\$

OBJECT CODE X.9911.PIF1.111 – G/L 9032640200

AGREEMENT TOTAL \$ 696,000.00

OPTIONAL USE Contract Manager: Ted Alvarez (916) 653-6271

AMOUNT ENCUMBERED BY THIS DOCUMENT
\$ 696,000.00

I CERTIFY upon my own personal knowledge that the budgeted funds for the current budget year are available for the period and purpose of the expenditure stated above.

PRIOR AMOUNT ENCUMBERED FOR THIS AGREEMENT
\$ 13,808,620.28

ACCOUNTING OFFICER'S SIGNATURE

DATE SIGNED

TOTAL AMOUNT ENCUMBERED TO DATE
\$ 14,504,620.28

12. AGREEMENT

TERM
From Through

TOTAL COST OF THIS TRANSACTION

BID, SOLE SOURCE, EXEMPT

Original

12/01/12

12/31/15

\$ 4,155,620.28

RFQ

Amendment No. 1

12/01/12

12/31/15

\$ 7,300,000.00

Exempt: 23CCR387

Amendment No. 2

12/01/12

12/31/15

\$ 0.00

Exempt: 23CCR387

Amendment No. 3

12/01/12

12/31/16

\$ 807,000.00

Exempt: 23CCR387

Amendment No. 4

12/01/12

12/31/17

\$ 1,546,000.00

Exempt: 23CCR387

Amendment No. 5

12/01/12

3/31/18

\$ 696,000.00

Exempt: 23CCR387

TOTAL \$ 14,504,620.28

(Continue)

AGREEMENT SUMMARY

STD. 215 (REV. 1-2014)

13. BIDDING METHOD USED:

- REQUEST FOR PROPOSAL (RFP) INVITATION FOR BID (IFB) USE OF MASTER SERVICE AGREEMENT
(Attach justification if secondary method is used)
- SOLE SOURCE CONTRACT EXEMPT FROM BIDDING OTHER *(Explain)* Request for Qualifications
(Attach STD. 821) *(Give authority for exempt status)* 23CCR387 and GC 4525 et seq.

NOTE: *Proof of advertisement in the State Contracts Register or an approved form STD. 821, Contract Advertising Exemption Request, must be attached*

14. SUMMARY OF BIDS (List of bidders, bid amount and small business status) (If an amendment, sole source, or exempt, leave blank)

N/A - Amendment

15. IF AWARD OF AGREEMENT IS TO OTHER THAN THE LOWER BIDDER, PLEASE EXPLAIN REASON(S) (If an amendment, sole source, or exempt, leave blank)

N/A - Amendment

16. WHAT IS THE BASIS FOR DETERMINING THAT THE PRICE OR RATE IS REASONABLE?

The original negotiated rates were compared to other contracts' rates providing similar services, and based on comparison were considered fair and reasonable. This Amendment does not change the rates originally negotiated.

17 (a) JUSTIFICATION FOR CONTRACTING OUT (Check one)

- Contracting out is based on cost savings per Government Code 19130(a). The State Personnel Board has been so notified. Contracting out is justified based on Government Code 19130(b). Justification for the Agreement is described below.

Justification:

N/A - RFQ pursuant to Government Code Section 4525 et. Seq.

17 (b) EMPLOYEE BARGAINING UNIT NOTIFICATION

- By checking this box, I hereby certify compliance with Government Code section 19132(b)(1).

N/A - RFQ pursuant to Government Code Section 4525 et. Seq.

AUTHORIZED SIGNER:

DATE:

18. FOR AGREEMENTS IN EXCESS OF \$5,000, HAS THE LETTING OF THE AGREEMENT BEEN REPORTED TO THE DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING? <input type="checkbox"/> NO <input checked="" type="checkbox"/> YES <input type="checkbox"/> N/A	19. HAVE CONFLICT OF INTEREST ISSUES BEEN IDENTIFIED AND RESOLVED AS REQUIRED BY THE STATE CONTRACT MANUAL SECTION 7.10? <input type="checkbox"/> NO <input checked="" type="checkbox"/> YES <input type="checkbox"/> N/A	20. FOR CONSULTING AGREEMENTS, DID YOU REVIEW ANY CONTRACTOR EVALUATIONS ON FILE WITH THE DGS LEGAL OFFICE? <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NONE ON FILE <input checked="" type="checkbox"/> N/A
21. IS A SIGNED COPY OF THE FOLLOWING ON FILE AT YOUR AGENCY FOR THIS CONTRACTOR? A. CONTRACTOR CERTIFICATION CLAUSES <input type="checkbox"/> NO <input checked="" type="checkbox"/> YES <input type="checkbox"/> N/A B. STD. 204, VENDOR DATA RECORD <input type="checkbox"/> NO <input checked="" type="checkbox"/> YES <input type="checkbox"/> N/A	22. REQUIRED RESOLUTIONS ARE ATTACHED <input type="checkbox"/> NO <input type="checkbox"/> YES <input checked="" type="checkbox"/> N/A	

23. ARE DISABLED VETERANS BUSINESS ENTERPRISE GOALS REQUIRED? (If an amendment, explain changes, if any)

- NO *(Explain below)* YES *(If YES complete the following)*

DISABLED VETERAN BUSINESS ENTERPRISES: 3 % OF AGREEMENT*Explain:*

DVBE program requirements are applied on a Task order basis for this contract.

24. IS THIS A SMALL BUSINESS CERTIFIED BY OFFICE OF SMALL BUSINESS AND DISABLED VETERAN BUSINESS ENTERPRISE SERVICES? <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES <i>(Indicate Industry Group)</i>	SMALL BUSINESS REFERENCE NUMBER
--	---------------------------------

25. IS THIS AGREEMENT (WITH AMENDMENTS) FOR A PERIOD OF TIME LONGER THAN TWO YEARS? (If YES, provide justification)

- NO YES

The DHCCP, when finalized, will provide essential environmental restoration and water supply to California. This multi-year contract provides Program Management services. In order for the DHCCP to be successful, continual Program Management services need to be in place; therefore a multi-year contract is in the best interest of the State.

I certify that all copies of the referenced Agreement will conform to the original Agreement sent to the Department of General Services.

SIGNATURE/TITLE

DATE SIGNED

Pedro Villalobos, Chief, SWPAO

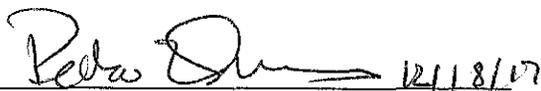

 12/18/07

Exhibit B

DEPARTMENT OF WATER RESOURCES

1416 NINTH STREET, P.O. BOX 942836
SACRAMENTO, CA 94236-0001
(916) 653-5791



February 7, 2018

To: Public Water Agencies Participating in WaterFix

As you know, California WaterFix marked several key milestones in 2017 and the state continues to work to advance the project through the remaining steps needed to begin construction.

Public water agencies that receive water supplies through contracts with the state have expressed their support for WaterFix. In a series of public meetings last fall, twelve of these agencies voted to advance WaterFix because they understand that California's primary supply of clean water for 25 million people and 3 million acres of farmland is increasingly unreliable. They include Santa Clara Valley Water District, Kern County Water Agency, Zone 7 Water Agency, Metropolitan Water District of Southern California, Alameda County Water District, Castaic Lake Water Agency, Coachella Valley Water District, Crestline-Lake Arrowhead Water Agency, San Bernardino Valley Municipal Water District, Desert Water Agency, San Geronio Pass Water Agency and Mojave Water Agency. The state needs a real solution that provides reliable, clean and safe water to California businesses, farms and residents. WaterFix is a critical element of the state's overall strategy to address climate change and ensure a reliable water supply for the future, as outlined in Governor Brown's California Water Action Plan.

As the Department of Water Resources (DWR) has previously stated, the scope of WaterFix ultimately hinges on our partnership with local water agencies and their support for the project. With the support of the public water agencies that contract with the state for their supplies, DWR is proposing to pursue WaterFix as planned, but also take actions that would allow construction to be implemented in stages. Being prepared to implement this option is directly responsive to the stated needs of the participating agencies, and would align project implementation with current funding commitments. It would also allow us to take significant steps toward improving environmental conditions.

Under this approach, DWR proposes to first focus on elements of WaterFix that are consistent with the support expressed by public water agencies. The option for a first stage includes two intakes with a total capacity of 6,000 cubic-feet per second (cfs), one tunnel, one intermediate forebay, and one pumping station.

The second stage would consist of a third intake with 3,000 cfs capacity, a second tunnel, and a second pumping station, which will bring the total project capacity from 6,000 cfs in the first phase to 9,000 cfs capacity in total. If funding for all elements of the currently-proposed WaterFix is not available when construction begins, stage two would begin once additional funding commitments are made from supporting water agencies.

Being prepared and having the option of a staged implementation of WaterFix is prudent, fiscally responsible and meets the needs of the public water agencies funding the project. It would allow work to begin on WaterFix, as soon as all necessary environmental review and permits are complete, which is anticipated near the end of 2018.

The overall cost of WaterFix has not changed, at \$16.3 billion in 2017 dollars (equivalent to \$14.9 billion in 2014 dollars). However, the cost of the option of proceeding with the first stage is \$10.7 billion.

The state is preparing a cost-benefit analysis that will be available soon to provide further information about the economic benefit of protecting a critical source of reliable water supplies for the state and safeguarding decades of public investment in the State Water Project.

Participating public water agencies are expected to bring actions to their respective boards this spring to finalize the necessary agreements and stand up the finance and construction Joint Powers Authorities.

In addition, DWR will fully evaluate the potential environmental impacts of the staged implementation option and expects to issue a draft supplemental Environmental Impact Report in June of 2018, with a final in October 2018. The additional information developed for CEQA will also be used to supplement the Endangered Species Act, Section 7 and California Endangered Species Act, Section 2081 record. DWR does not expect substantial change to the Biological Opinions or Section 2081 Incidental Take Permit issued in 2017. Preliminary modeling indicates that there are no new water quality or aquatic issues related to staging the implementation. DWR expects no changes in impact determinations and no changes to mitigation. Thus, DWR will be able to immediately implement this option, in addition to the project already analyzed under CEQA.

Having worked hard to fix a significant infrastructure and environmental problem, DWR is eager to move forward with you to protect the Delta and our water supplies.



Karla A. Nemeth
Director