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13 **BEFORE THE**

14 **CALIFORNIA STATE WATER RESOURCES CONTROL BOARD**

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

**LAND ET AL.'S AND
SAN JOAQUIN COUNTY ET AL.'S
MOTION TO STAY OR CONTINUE
HEARING**

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1 Protestants Local Agencies of the North Delta and Friends of Stone Lakes National
2 Wildlife Refuge, Protestants County of San Joaquin, San Joaquin County Flood Control and
3 Water Conservation District, and Mokelumne River Water and Power Authority, and
4 Protestants Central Delta Water Agency and South Delta Water Agency (collectively,
5 “Protestants”) hereby move to continue this Hearing due to DWR’s announcement of further
6 changes to the petitioned project on March 27 and 28, 2018, in combination with other recent
7 changes.

8 **Background**

9 The Joint Petition for Change filed by DWR and the Reclamation Bureau has been
10 plagued by incompleteness since its filing in August, 2015. The Water Right Change Petition
11 (pdf p. 6),¹ describes the project is as follows:

12 **DESCRIPTION OF PROPOSED CHANGES OR WORK REMAINING TO BE COMPLETED**

13 For a petition for change, provide a description of the proposed changes to your project including, but not limited
14 to, type of construction activity, structures existing or to be built, area to be graded or excavated, increase in
15 water diversion and use (up to the amount authorized by the permit), changes in land use, and project
16 operational changes, including changes in how the water will be used. For a petition for extension of time,
17 provide a description of what work has been completed and what remains to be done. Include in your
18 description any of the above elements that will occur during the requested extension period.



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28 ¹ https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/docs/ca_waterfix_petition.pdf

1 This description clearly states there will be three intakes and refers to the description of
2 Alternative 4A in the 2015 Recirculated Draft EIR/S.

3 Since that time, Protestants have consistently and repeatedly requested that this
4 Hearing not proceed in the absence of a stable and complete project description. In response,
5 DWR has attempted to mask the incompleteness and ever-shifting nature of the proposed
6 project by characterizing changes as insignificant or within its “boundary” approach, by
7 invoking its talismanic but as-yet-incomplete “Adaptive Management” plan, by referring vaguely
8 to “real time operations,” by continually changing modelling scenarios, and, most recently, by
9 denying that DWR had formally decided to switch to a single-tunnel alternative.

10 Due to DWR’s January 2018 disclosure that DWR was preparing a supplemental
11 environmental impact report (“SEIR”), various protestants requested that the Hearing be
12 stayed until adequate information is available.² In their February 6, 2018 Ruling, the Hearing
13 Officers denied motions filed by the City of Antioch and NRDC, in which many other
14 protestants joined, stating:

15 At this time, it is uncertain whether Petitioners will be modifying the proposed
16 WaterFix project, and if so, how. Petitioners have not communicated any such
17 commitment or intent to the State Water Board. Furthermore, it is speculative to
18 conclude that any potential modifications being discussed necessarily would
19 render moot the continued consideration of Petitioners’ change petition.

20 (February 6, 2018 Ruling, p. 3.)³

21 On February 7, 2018, DWR notified the parties that DWR was indeed considering
22 moving to a single-tunnel alternative, which it euphemistically referred to as “staged” project
23 implementation. DWR explained that it proposed to:

24 ² See, e.g., Local Agencies of the North Delta, et al. and County of San Joaquin et al.’s
25 Joinder, January 26, 2018, available at:
26 https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_water_fix/docs/2018/20180126_land_cosj_joiner.pdf; South Delta Water Agency's Joinder, January
27 29, 2018, available at:
28 https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_water_fix/docs/2018/20180129_sdwa_joiner.pdf; City of Antioch's Motion to Continue, January 26,
2018.

³ See
https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_water_fix/ruling_notices/docs/20180206_cwf_ruling.pdf

1 first focus on elements of WaterFix that are consistent with the support
2 expressed by public water agencies. The option for a first stage includes two
3 intakes with a total capacity of 6,000 cubic-feet per second (cfs), one tunnel, one
intermediate forebay, and one pumping station.⁴

4 DWR explained that it would “fully evaluate the potential environmental impacts of the staged
5 implementation option and expects to issue a draft supplemental Environmental Impact Report
6 in June of 2018, with a final in October 2018.”⁵ The following day, DWR released modeling
7 associated with a phased construction.⁶

8 In response, NRDC renewed its motion for stay or continuance; many other parties,
9 including Protestants represented by the undersigned, joined in NRDC’s renewed motion.

10 On February 8, 2018, the Hearing Officers directed DWR to expand upon its February 7
11 memo and set a deadline for protestants to respond to DWR’s February 7 memo and several
12 specific questions regarding the proposed “staged” implementation.

13 In their February 21, 2018 Ruling, the Hearing Officers denied the renewed motion to
14 stay or continue the Hearing.⁷ The stated rationale for that Ruling was: (1) DWR had not yet
15 indicated a decision to “implement the project in stages”; (2) even if Petitioners had already
16 made that decision, Part 2 of this Hearing would still be necessary and relevant; and (3) the
17 parties had already submitted their testimony and exhibits for Part 2. (February 21 Ruling, pp.
18 3-4.) The Hearing Officers also ruled that “if and when Petitioners decide to exercise the
19 option to implement the WaterFix Project in stages” a “Part 3” would be convened “to consider
20 Part 1 and Part 2 key hearing issues only to the extent of any alleged differences from the
21 analysis applicable to Petitioners’ current proposal. (The scope of Part 3 could also

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24 https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/docs/2018/20180207_dwr_notice.pdf

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26 https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/docs/2018/20180207_dwr_notice.pdf

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28 https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/docs/2018/20180208_dwr_notice.pdf

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https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/ruling_notices/docs/20180221_cwf_ruling.pdf

1 encompass the introduction of evidence relevant to any Part 1 issues that warrant revisiting in
2 light of evidence presented in Part 2.)” (February 21 Ruling, p. 5.) On February 22, 2018, the
3 Hearing recommenced and DWR began presentation of its Part 2 case in chief.

4 On March 28, 2018, DWR issued a letter to the Hearing Officers, served on all parties
5 hereto, in which it announced major new changes to the project description, including tunnel
6 realignment and significant relocations of major project components and impacts. The affected
7 project locations include: (1) **the Intermediate Forebay (“IF”)** (including addition of a
8 Reusable Tunnel Material parcel and relocation of a Fuel Station); (2) **Intake 3 to IF** (including
9 a tunnel realignment and relocation of a temporary tunnel work area); (3) **Staten Island**
10 (including relocations of vent shaft and retrieval shaft and “Safe Haven” area, tunnel
11 realignment, and addition of a “Safe Haven”)⁸; (4) **Bouldin Island** (including tunnel
12 realignment, relocation of shafts, realignment of access road, relocation of Barge Landing
13 Facility and Concrete Batch Plant and Fuel Station); (5) **Venice Island** (tunnel realignment);
14 (6) **Mandeville Island** (relocation of shaft and modification of access road); (7) **Victoria Island**
15 (tunnel realignment); (8) **Clifton Court Forebay** (identified impacts supposedly “removed”; and
16 (9) **Byron Tract** (including addition of a new tunnel forebay, modification of Reusable Tunnel
17 Material areas, addition of a Concrete Batch Plan and Fuel Station, and reconfiguration of New
18 Canal sections). Missing from the “Fact Sheet” is any information about the changes in power
19 supply plans for the northern Delta, which was the subject of an Addendum to the Final EIR/S
20 adopted by DWR in January 2018.⁹

21 Downplaying the obvious significance of these changes and their implications for this
22 Hearing, DWR attempts to brand the changes as a mere refinement:

25 ⁸ In order to mask the substantial nature of these particular project changes, DWR
26 presented distances in feet rather than miles – apparently thinking that “22,600 feet” would
27 sound less significant than “4.28 miles” – and by characterizing tunnel realignments as “tunnel
28 curve extended” and “tunnel alignment straightened.” (DWR’s March 28, 2018 Letter to the
Hearing Officers, second page (“Project Footprint Change Description”).)

⁹ See <https://www.californiawaterfix.com/wp-content/uploads/2018/01/CWF-Addendum-to-the-Final-EIR.pdf>. As shown in Exhibit FSL-48, the newly proposed powerlines would increase birdstrike risk over existing conditions due to their size and scale.

1 The proposed optimization of the project is a *refinement of engineering detail*,
2 which is the progression of the project from a level of detail contained in the
3 Conceptual Engineering Report.

4 (March 28, 2018, DWR Letter, p. 1, italics added.)¹⁰ Yet these changes in footprint and design
5 would impact different water users and have different impacts on fish and wildlife, the public
6 interest and the public trust than the petitioned project. DWR's characterization of these
7 changes as an "optimization of the project" and a mere "refinement of engineering detail" is a
8 masterstroke of Orwellian obfuscation.

9 For instance, with respect to changes at the Clifton Court Forebay ("CCF"), DWR states
10 that the CCF will not be altered (except to dredge), but is providing a new exit location for the
11 tunnels at a new forebay. The operations of CCF with the newly announced project
12 modifications may have different outcomes than have been previously presented; slight
13 changes in CCF operations cause both water quality and level effects in the South Delta.
14 These changes are key hearing issues that affect parties in both Part 1 and Part 2 and must be
15 described with specificity in order for Protestants to effectively respond to the Petition.

16 In addition to DWR's newly release list of project "refinements", it is now more certain
17 that a phased alternative will be pursued than it was when the Hearing Officers issued rulings
18 regarding the effect of changes to the project on the Hearing on February 6 and 21, 2018.

19 According to an April 2, 2018, email from the Office of the General Manager of the
20 Metropolitan Water District ("MWD") to its Board of Directors and Member Agency Managers,
21 at a March 30, 2018 meeting between MWD, State Water Project and Central Valley Project
22 staff:

23 [I]t was decided that the SWP contractors would proceed as proposed by the
24 Brown Administration with a staged approach to build two intake facilities and a
25 single tunnel with the capacity of 6,000 cfs. A third intake and second tunnel
26 would follow in a later stage to eventually bring the project to its full capacity

27 (See Exhibit A, April 2, 2018 Email.) This is consistent with the April 2, 2018, LA Times story
28 describing how MWD, has now opted to present the one tunnel alternative to its board for

¹⁰

https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/docs/petitions/2018/20180329_dwr_notice.pdf

1 consideration. (See Exhibit B, April 2, 2018 LA Times story.) A vote of the MWD Board of
2 Directors is scheduled for April 10, 2018.

3 Yet, the DWR “Fact Sheet” provided on March 28, 2018, does not include any
4 information about a larger capacity tunnel, which appears to be essential to a phased
5 alternative that includes two intakes and one tunnel that can deliver 6,000 cfs of water.¹¹ With
6 the increasingly definite prospect of a phased alternative, the basic size and design of the
7 tunnels that are the subject of the Petition is now entirely unclear.

8 During cross examination for Part 2 on February, 7, 2018, Mr. Bednarski (the sole
9 engineer witness presented by DWR), stated that the tunnels could not under their current
10 configuration convey more than 4,500 cubic feet per second.¹² Yet, modeling released on
11 February 8, 2018 also shows maximum tunnel deliveries of 6,000 cfs in Stage 1, which
12 includes two 3,000 cfs intakes and one tunnel. Thus, the basic dimensions and design of the
13 tunnel for the phased tunnel alternative *must be* different than for the project that was the
14 subject of the Petition, as well as all of the parties’ Part 1 and Part 2 cases in chief, including
15 DWR. The size and design of the tunnels reaches broadly to both Part 1 and Part 2 hearing
16 issues, including: groundwater recharge obstruction, ultimate capacity for diversion, impacts to
17 groundwater users, as well as broader public interest considerations.

18 Despite all of this very public description of contemplated and “agreed upon” changes to
19 the project approved by DWR in July 2017, DWR still has not released a notice of preparation
20 (“NOP”) of a SEIR. (CEQA Guidelines, §§ 15163, subd. (c); 15087, subd. (c) (must include a
21 description of the proposed project).) Ostensibly, both the phased construction alternative as
22 well as the more recently release project changes would be analyzed in the SEIR. But only
23 DWR has access to this information, and the cryptic “Fact Sheet” prepared by DWR serves as
24 a poor substitute for the type of detailed project information and analysis necessary to prepare
25 responsive testimony that is relevant to the identified Hearing issues.

26 _____
27 ¹¹ https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/docs/petitions/2018/20180329_dwr_notice.pdf
28 ¹² https://www.waterboards.ca.gov/board_info/media/mar2018/calwaterfix_030518.shtml
(See questions and answers from hour 5:19-5:23 regarding tunnel capacity.)

1 **Argument**

2 The changes announced on March 28, 2018, in combination with the previously
3 disclosed and now further confirmed plan to pursue a phased alternative make a stay or
4 continuance necessary at this time. The Hearing Officers’ February 21, 2018 Ruling
5 acknowledged that “Some parties make a compelling case that the evidence and analysis for
6 certain Part 2 issues would be materially different for staged implementation as compared to
7 Petitioners’ current proposal.” (Feb. 21 Ruling, p. 4.) For instance, San Joaquin County et al.
8 compiled a table with examples of testimony that would be different if the project was a phased
9 alternative, rather than the project described in the Petition submitted in 2015. (See San
10 Joaquin et al., Brief, Exhibit B, pdf pp. 31-38;)¹³ Similar to the change from a full project to a
11 phased project, the numerous changes announced last week in DWR’s March 28, 2018, “Fact
12 Sheet” would change both Part 1 and Part 2 testimony in ways that cannot be remedied *post*
13 *hoc*. (See Exhibit C, Pachi letter.)

14 DWR’s suggestion that “parties to the hearing may utilize this information in preparing
15 rebuttal testimony” is patently unhelpful. All parties to the Hearing require a stable project to
16 analyze and prepare testimony around. Already, thousands of hours of time and untold
17 expense has wasted analyzing aspects of the petitioned project that subsequently changed.
18 (See Exhibit D, Summary of Hearing Resources.) We understand that refinements may occur
19 during the processing of a petition. But these changes are not mere “refinements”; they are
20 fundamental differences in design and operation. Especially with a project of this size, with the
21 capacity to affect thousands of other water users and fish and wildlife throughout the Delta, a
22 clear project description is essential to an efficient and effective Hearing that meets Due
23 Process requirements.

24 **Conclusion**

25 The Water Code requires that the Petition be complete at the time of its submission.
26 (See Wat. Code, §§ 1701.1, 1701.2; Cal. Code Regs., tit. 23, § 794.) For the reasons

27 _____
28 ¹³

https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/docs/2018/20180213_cosj_brief.pdf

1 described above, Protestants request that Part 2 be stayed until: (1) a supplemental EIR is
2 prepared and certified; (2) a proposed project that DWR actually intends to pursue is adopted
3 by DWR and funded by participating agencies; and (3) a revised Petition is submitted that
4 requests those changes in water rights necessary to implement the petitioned project. At that
5 time, the parties should be given the opportunity to review all of the testimony and determine
6 whether modifications are necessary to respond to the newly petitioned project. To the extent
7 the Protestants wish to present their remaining cases in chief in the coming weeks, they should
8 be allowed to do so. But to continue with Part 2 rebuttal without a detailed, accurate and
9 correct project description would not be an efficient use of the State Water Board's and the
10 other party's time and resources taking into consideration all relevant factors.

11 Respectfully submitted,

12 Dated: April 3, 2018

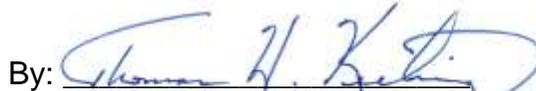
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20 Landowner Coalition and Stillwater Orchards / Delta
21 Watershed Landowner Coalition

22 Dated: April 3, 2018

FREEMAN FIRM,

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24 By: 

25 Thomas H. Keeling
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28 Conservation District, and
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1 Dated: April 3, 2018

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EXHIBIT A

From: Office of the General Manager [mailto:OfficeoftheGeneralManager@mwdh2o.com]

Sent: Monday, April 2, 2018 12:32 PM

To: Alex Nazarchuk (alex.nazarchuk@smgov.net) <alex.nazarchuk@smgov.net>; Christopher J. Garner (chris.garner@lbwater.org) <chris.garner@lbwater.org>; City of Los Angeles (David.Wright@ladwp.com) <David.Wright@ladwp.com>; Craig Miller (cmiller@wmwd.com) <cmiller@wmwd.com>; David Pedersen (dpedersen@lvmwd.com) <dpedersen@lvmwd.com>; Garry Hofer (garry.hofer@amwater.com) <garry.hofer@amwater.com>; Gil Borboa - Beverly Hills <gborboa@beverlyhills.org>; Gurcharan Bawa (gbawa@cityofpasadena.net) <gbawa@cityofpasadena.net>; Halla Razak (hrazak@ieua.org) <hrazak@ieua.org>; Hye Jin Lee (HyeJinL@ci.fullerton.ca.us) <HyeJinL@ci.fullerton.ca.us>; Kenneth Holcomb (kholcomb@comptoncity.org) <kholcomb@comptoncity.org>; Kevin Hunt (kevinh@centralbasin.org) <kevinh@centralbasin.org>; Marcella Marlowe (mmarlowe@cityofsanmarino.org) <mmarlowe@cityofsanmarino.org>; Ryan, Sandra <SRyan@sdca.gov>; Michael De Ghetto (MDeGhetto@GlendaleCA.GOV) <MDeGhetto@GlendaleCA.GOV>; Michael Moore - Anaheim, City of (mrmooore@anaheim.net) <mrmooore@anaheim.net>; Mike Jouhari (mjouhari@anaheim.net) <mjouhari@anaheim.net>; Nabil Saba (nsaba@santa-ana.org) <nsaba@santa-ana.org>; Nina Jazmadarian (nina.jaz@fmwd.com) <nina.jaz@fmwd.com>; P. E. Paul D. Jones II (jonesp@emwd.org) <jonesp@emwd.org>; Pat Sheilds (patricks@westbasin.org) <patricks@westbasin.org>; rbeste@TorranceCA.Gov (Robert Beste - Torrance) <rbeste@TorranceCA.Gov>; rdavis@ci.burbank.ca.us (Ronald Davis - Burbank) <rdavis@ci.burbank.ca.us>; Richard Hansen, 3VMWD <rhansen@tvmwd.com>; Robert Hunter (rhunter@mwdoc.com) <rhunter@mwdoc.com>; Shana E. Epstein (sepstein@beverlyhills.org) <sepstein@beverlyhills.org>; Shivaji Deshmukh @ West Basin, Co-Mgr <shivajid@westbasin.org>; Susan Mulligan (smulligan@calleguas.com) <smulligan@calleguas.com>; Thomas A. Love (tom@usqvmwd.org) <tom@usqvmwd.org>; Yasdan Emrani (yemrani@sfcity.org) <yemrani@sfcity.org>

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Ross - Pasadena, City of (gtakara@cityofpasadena.net) <gtakara@cityofpasadena.net>
Subject: California WaterFix

Date: April 2, 2018

To: Board of Directors
Member Agency Managers

From: Randy A. Record, Chairman of the Board
Jeffrey Kightlinger, General Manager

Subject: California WaterFix

On March 30, Chairman Record, General Manager Kightlinger and Assistant General Manager Patterson met with directors and staff from other State Water Project (SWP) and Central Valley Project (CVP) contractors along with officials from the State of California and the United States Bureau of Reclamation (USBR) to discuss California WaterFix (CWF).

The CVP representatives and USBR officials expressed great appreciation for the concepts that Metropolitan advanced to explore alternative financing mechanisms to construct the full 9,000 cfs WaterFix preferred alternative. Everyone concurred that the best approach for all of California's water interests and the environment would be to build the full project in one stage as originally proposed.

However, the majority of CVP contractors and USBR officials informed everyone that there still remained a number of internal institutional issues that first needed to be resolved among the CVP contractors before they could make a commitment to participate in the full 9,000 cfs project.

Based on that information, it was decided that the SWP contractors would proceed as proposed by the Brown Administration with a staged approach to build two intake facilities and a single tunnel with the capacity of 6,000 cfs. A third intake and second tunnel would follow in a later stage to eventually bring the project to its full capacity. The SWP contractors and the California Department of Water Resources would continue to work with the CVP contractors and the USBR to resolve issues and explore alternative financing mechanisms to expedite construction of the second stage. There was interest from two smaller CVP contractors to participate in the first stage, and they will be included. The SWP contractors and participating CVP contractors will finance the entire first stage, however the door will remain open for other CVP contractors to participate on a larger scale in the first stage if there is interest.

Accordingly, the action that staff will be bringing to the Metropolitan Board on April 10 will be for Metropolitan to fund its share of the first stage of CWF: the two intakes, single tunnel, 6,000 cfs stage of the project. Metropolitan staff will continue to engage in discussions with CVP contractors and USBR on their

issues and alternative financing options for the second stage that honor the “beneficiaries pay” principle which the first stage is using, and we will keep the Board apprised of progress.

EXHIBIT B

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L.A. NOW LOCAL LA TIMES

Metropolitan Water District backs away from plan to finance both delta tunnels



By BETTINA BOXALL
APR 02, 2018 | 6:00 PM





A waterway along Route 4 in the Sacramento-San Joaquin Delta. (Katie Falkenberg / Los Angeles Times)



The Metropolitan Water District of Southern California is dropping plans to push ahead with a two-tunnel proposal to revamp the state's water delivery system, opting to pursue a scaled-back version instead.

In a memo to the agency's board on Monday, MWD officials said the decision followed discussions with major agricultural districts that remain unwilling to make any financing commitments for the project, known as California WaterFix.



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Rather than fund much of the full project on its own, the staff will ask the board to vote next week to approve \$5.3 billion in funding for a smaller capacity, one-tunnel version.



MWD General Manager Jeffrey Kightlinger said his preference had been to build the full project, but it was time to make a decision.



"More important is that we just get going.... We're talking one tunnel for now," he said.



Money has been a major sticking point for the much-debated project, which is intended to sustain water deliveries to San Joaquin Valley agribusiness and urban Southern California.

As originally proposed, the urban and farm districts that rely on deliveries from the southern portion of the Sacramento-San Joaquin Delta were supposed to pick up the \$17-billion bill to construct two massive water tunnels under the delta.

MWD and most of the urban districts voted last year to contribute their share. But agricultural districts that had long supported the project said the tunnel water would be too expensive and voted against joining WaterFix.



That prompted Gov. Jerry Brown's administration to downsize the initial construction to a less expensive, one-tunnel project that would be used and financed by the largely urban districts supplied by the State Water Project.



Not long after the state announcement, some MWD board members suggested that the agency consider paying for agriculture's unfunded share so that both tunnels could be built.

The staff analysis of how MWD could do that assumed that agricultural districts would buy in to WaterFix when it was completed. That way, the staff said, MWD would eventually be reimbursed for taking on agriculture's upfront costs.

But by the end of last week, it became apparent that the Westlands Water District and other irrigation agencies weren't willing to sign options or purchase agreements assuring that they would in fact join the project in the future.

Representatives of Los Angeles and the San Diego County Water Authority had also expressed concerns that if MWD boosted its tunnels investment to roughly \$11 billion, that would jack up local water rates and divert funds from regional supply programs, such as building recycled water and stormwater capture facilities.

L.A. Mayor Eric Garcetti, who appoints the city's MWD delegates, has also said he opposed two tunnels.

Still, Los Angeles and San Diego together don't have enough votes to stop MWD from taking on much of the twin-tunnel costs.

In remarks to the press Monday, Kightlinger said the staff recommendation to move ahead with one tunnel was based on agriculture's inability to commit to future funding rather than a vote count or L.A.'s doubts.



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He said the staff will ask the board at its April 10 meeting to progress with one tunnel by adding an additional \$1 billion to the \$4.3-billion financing package the board approved last fall.



By partially diverting some supplies from the Sacramento River in the northern delta, the tunnel project is intended to lessen the environmental harm of the massive pumping operations that fill southbound aqueducts.

The powerful pumps now draw entirely from the southern delta, causing water channels to flow backward, confusing migrating salmon and drawing the imperiled delta smelt into bad habitat.

Those effects have triggered endangered species protections that at times limit delta exports.

Although MWD has argued that two tunnels would provide more environmental benefits and more flexibility in export operations than one, some water experts have questioned whether a second tunnel is worth the added expense.

"There are significant improvements even with the one-tunnel approach over the status quo," Kightlinger said Monday. "The bottom line is that we're really looking forward to moving forward with this project."

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>


Bettina Boxall



Bettina Boxall covers water issues and the environment for the Los Angeles Times. She shared the 2009 Pulitzer Prize for explanatory reporting with colleague Julie Cart for a five-part series that explored the causes and effects of escalating wildfire in the West. She began her journalism career as a photographer at a small Texas daily and reported for newspapers in Vermont and New Jersey before joining The Times in 1987.

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COMMENTS (7)





L.A. NOW APR 03, 2018



Active shooting at YouTube headquarters

Police scanner audio during reports of an active shooter at YouTube's headquarters in San Bruno, Calif.

Active shooting at YouTube headquarters Apr 03, 2018



Police chief comments on shooting at YouTube headquarters Apr 03, 2018



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EXHIBIT C

April 2, 2018

Reply to:
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jpachl@sbcglobal.net

Tam Doduc, Hearing Officer
Felicia Marcus, Hearing Officer
State Water Resources Control Board
1001 "I" Street
Sacramento, CA 95814

WaterFix Hearings: Discrepancy of Information Provided by DWR

Dear Mss. Marcus and Doduc,

I am the author of the written "Testimony of James Pachl" submitted on behalf of Environmental Council of Sacramento, Exhibit ECOS-27 Errata. I am scheduled to appear as a witness at Part 2 of the Waterfix Petition Hearing, on behalf of Environmental Council of Sacramento, Group 24.

In preparing my testimony, I relied upon information contained in the Incidental Take Permit issued by California Department of Fish and Wildlife ("CDFW"), pg. 93, SWRCB Exhibit 107, that the Project is expected to cause the permanent loss of 3,770 acres of Swainson's Hawk ("SWHA") foraging habitat, 22 acres of SWHA nesting habitat, including 7 nest sites with suitable nest trees, and temporary loss of 1,114 acres of SWHA foraging habitat.

On March 29, 2018, I was given a copy of the letter of Mr. Mizell, addressed to Mr. Doduc and Ms. Marcus, titled "Public Availability of Project Optimization Fact Sheet", dated March 28, 2018 ("Factsheet"). Attached to that letter is "Figure 3. Acres of Permanent and Temporary impact on Federal and State Listed Species", which shows permanent and temporary project impacts upon Swainson's Hawk of 11,914 acres due to the "approved project," and 11,009 acres due to the "proposed project."

There is a huge discrepancy from the area of impact on SWHA foraging habitat stated in the CDFW Incidental Take Permit, *infra*, (3,377 acres of permanent loss and 1,114 acres of temporary loss of SWHA foraging habitat), and the area of impact stated in the Final EIR/EIS, pg. 12-3585, Exhibit SWRCB-102, (6,748 acres of permanent and temporary

loss of SWHA foraging habitat for Alternative 4A). The Factsheet offers no explanation for these gross discrepancies.

The public interest and common sense require that before these hearings and decision-process proceed further, that these discrepancies must be resolved by further analysis and complete and accurate disclosure of the actual amount of SWHA foraging and nesting habitat that would be temporarily or permanently lost as a result of the Project.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "James P. Pachl". The signature is written in a cursive, flowing style with a large initial "J".

James P. Pachl

Cc: Osha Meserve, Esq.

EXHIBIT D

Summary of CWF Hearing Resources

Number of Parties Participating in Part 1: 75

Number of Parties Participating in Part 2: 78

Active Protests: 62

Number of Attorneys and Authorized Representatives for Protestants in Part 1: 100

Number of Attorneys and Authorized Representatives for Protestants in Part 2: 87

Total Number of Attorneys and Authorized Representatives for Protestants: 103

Total number of Attorneys and Authorized Representatives for Petitioners: 6

Number of Witnesses Used by Protestants for Part 1: 278¹

Number of Witnesses Used by Protestants for Part 2: 199

¹ Some experts were used by multiple Protestants.

1 **STATEMENT OF SERVICE**

2 I hereby certify that I have this day, April 3, 2018, submitted to the State Water
3 Resources Control Board and caused a true and correct copy of the following document:

4 **LAND ET AL.'S AND SAN JOAQUIN COUNTY ET AL.'S**
5 **MOTION TO STAY OR CONTINUE HEARING**

6 to be served **by Electronic Mail** (email) upon the parties listed in Table 1 of the **Current**
7 **Service List** for the California WaterFix Petition Hearing, dated March 26, 2018, posted by the
8 State Water Resources Control Board at
9 [https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_water](https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_water_fix/service_list.shtml)
10 [fix/service_list.shtml](https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_water_fix/service_list.shtml)

11 I certify that the foregoing is true and correct and that this document was executed on
12 April 3, 2018.

13 Signature:  _____

14 Name: Mae Ryan Empleo

15 Title: Legal Assistant for Osha R. Meserve
16 Soluri Meserve, A Law Corporation

17 Party/Affiliation:

18 Local Agencies of the North Delta and
19 Friends of Stone Lakes National Wildlife Refuge

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