



May 3, 2018

State Water Resources Control Board Hearing Officers  
WaterFix Hearing Team

**Re: JOINDER IN AND ADDITION TO COUNTY OF SAN JOAQUIN, ET AL.,  
OPPOSITION TO DWR'S OBJECTIONS TO, AND MOTION TO STRIKE THE PART 2  
TESTIMONY OF MARC DEL PIERO, CSPA-208-CORRECTED AND RELATED  
ORAL TESTIMONY**

Dear WaterFix Hearing Officers and Hearing Team:

Protestants Friends of the River (Friends) and Sierra Club California (Sierra Club) join in the Opposition of protestants San Joaquin County, et al., to the California Department of Water Resources (DWR) Objections to, and Motion to Strike, the part 2 Testimony of Marc Del Piero, CSPA-208-Corrected and Related Oral Testimony. The San Joaquin County Opposition was filed April 30, 2018.

It is clear that a water availability analysis is necessary. It is necessary in order for the State Water Board to be able to determine whether there is sufficient available water to approve the diversion change without further injury to the Public Trust. Could anything be clearer than that?

The unpalatable facts are that for decades the plans for a new diversion from the north Delta were based on the resulting need for augmentation of Sacramento River flows from North Coast rivers of 2 million or more acre-feet per year. No matter how hard DWR tries to ignore reality the unpalatable facts are not going away. Now, the North Coast rivers are protected.

The State Water Board is continuing to ignore the California Environmental Quality Act (CEQA.) Pursuant to CEQA an EIR, according to the California Supreme Court,

must assume that all phases of the project will eventually be built and will need water, and must analyze, to the extent reasonably possible, the impacts of providing water to the entire proposed project. *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4<sup>th</sup> 412, 431.

Moreover,

The future water supplies identified and analyzed must bear a likelihood of actually proving available; speculative sources and unrealistic allocations (“paper water”) are insufficient bases for decision-making under CEQA. *Vineyard Area Citizens*, 40 Cal.4<sup>th</sup> 412, 432.

Here we have flagrant violations of CEQA with the EIR/S completely failing to identify the available water for the project and failing to identify and analyze the impacts of providing that water for the project. The Board violates CEQA by failing to correct these deficiencies by preparing a legally sufficient EIR that could be the basis for a meaningful evidentiary hearing including a water availability analysis.

In conclusion, a water availability analysis is obviously necessary to allow the State Water Board to be able to determine whether there is sufficient water available to approve the diversion change without further injury to the Public Trust. And then there is CEQA. A water availability analysis is also required by CEQA as determined by the California Supreme Court.

Respectfully submitted,



E. Robert Wright, Senior Counsel  
Friends of the River



Kyle Jones, Policy Advocate  
Sierra Club California