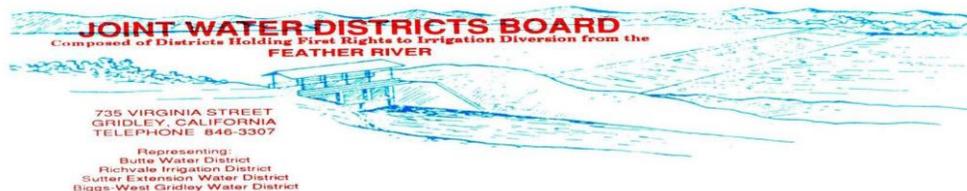


FEATHER RIVER CONTRACTORS



735 Virginia Street
Gridley, CA 95948



WESTERN CANAL WATER DISTRICT
P.O. Box 190
Richvale, CA 95974

Garden Highway Mutual Water Company
12755 Garden Highway.
Yuba City, CA 95991

Oswald Water District
1880 Lorraine Way
Yuba City, CA 95993

Plumas Mutual Water Company
P.O.Box 729
Yuba City, CA 95992

Tudor Mutual Water Company
c/o Tenney & Co.
1528 Starr Drive, Suite A
Yuba City, CA 95993

July 15, 2016

Mark W. Cowin, Director
California Department of Water Resources
P.O. Box 942836, Room 1115-1
Sacramento, CA 94236-0001

Carl A. Torgersen, Chief Deputy Director
California Department of Water Resources
P.O. Box 942836, Room 1115-9
Sacramento, CA 94236-0001

Gentlemen:

The signatories to this letter (Feather River Contractors) hold diversion agreements with the State of California acting by and through its Department of Water Resources (DWR). The diversion agreements are for the mutual benefit of DWR, Feather River Contractors and Pacific Gas & Electric Company (PG&E). These parties have a long history of cooperation and communication in the interpretation and implementation of the diversion agreements and in the operation of the State Water Project (SWP) for our mutual benefit. We were, therefore, quite disturbed to review the misleading and incorrect testimony concerning the diversion agreements that DWR submitted on May 31, 2016 in the State Water Resources Control Board's pending proceeding for the California WaterFix project. In an attempt to demonstrate that the WaterFix will not injure other legal users of water, including the Feather River Contractors, the testimony offers opinions concerning the terms

Mark Cowin and Carl Torgersen

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Re: Feather River Contractors' Objections to Testimony of DWR in support of Waterfix

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and legal effect of the diversion agreements¹. However, these unfounded opinions do not accurately describe the terms of the diversion agreements. We write to request a meeting with you at your earliest opportunity so that the incorrect portions of testimony are promptly withdrawn or corrected.

Specifically, Ms. Maureen Sergent, on behalf of DWR, offers the following testimony concerning the diversion agreements (which she refers to as settlement agreements):

The settlement agreements contain no entitlement to SWP water stored in Oroville, storage of local water, or end of season storage in Lake Oroville. Water stored in Lake Oroville is stored exclusively under DWR's water rights. The contractual entitlements contained in the settlement agreements are independent of Lake Oroville storage and DWR has sole discretion over operational decisions related to reservoir operations including water levels and storage releases.

(Exhibit DWR-53, pp. 17:25-18:4.) Similarly, the testimony states:

Although there may be changes in SWP/CVP storage levels or releases (see Exhibit DWR-71, section V.C.), this would not injure other legal users because it is my understanding that such water users do not have a right to stored water releases from the SWP/CVP. Therefore, the quantity of water available for diversion by In-Basin water users will not be affected by any changes in stored water releases that may occur as a result of the CWF.

(*Id.*, p. 11:10-15.)

DWR's testimony misstates the terms of the diversion agreements in numerous respects. First, all the diversion agreements contain assurances that the State shall operate Oroville Dam, Lake Oroville and related facilities to deliver the water at the rates of delivery and in the amounts specified in the diversion agreements.² DWR does not, therefore, have "sole discretion" to do whatever it wants with Lake Oroville operations. It must ensure that those operations, including carryover storage levels, are adequate to provide for delivery on a reliable basis the quantities of water set forth in the diversion agreements.

¹ Some of the Feather River Contractors are also protestants in the WaterFix proceeding and have separately made evidentiary objections to the testimony on various grounds, including that DWR impermissibly offers testimony on the content of written agreements which are available to the parties.

² See May 27, 1969 diversion agreement between the entities making up the Joint Water Districts Board and the State of California, § 2(h); January 17, 1986 diversion agreement between Western Canal Water District and the State of California, § 4(a); May 28, 1971 diversion agreement between Plumas Mutual Water Company and the State of California, § 2; May 17, 1977 diversion agreement between Garden Highway Mutual Water Company and the State of California, § 2; March 25, 1976 diversion agreement between Tudor Mutual Water Company, Inc. and the State of California, § 2; and January 12, 1970 diversion agreement between Oswald Water District and the State of California, § 2.

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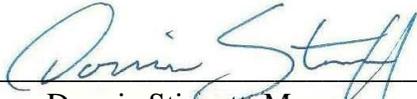
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Second, the diversion agreements provide unconditional assurances on the quantities of water available to the Feather River Contractors in full supply and "Drought" years, as defined in the diversion agreements. With one exception³, the diversion agreements do not specify the source of water to meet the quantities specified. DWR must draft storage to the extent necessary to deliver the quantities required in the diversion agreements. DWR has operated Lake Oroville and related facilities in this manner during the recent drought and historically in periods of low inflows in compliance with the diversion agreements – a performance condition that the Feather River Contractors bargained for and rely upon.

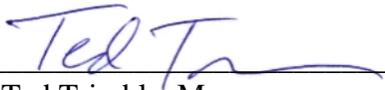
Third, some of the diversion agreements provide for storage of local water and acquisition of SWP water. Western Canal Water District (WCWD) maintains contractual rights to 145,000 acre-feet of stored water from PG&E's reservoirs above Lake Oroville. DWR stores these releases in Lake Oroville and is required to convey this stored water without reduction to WCWD in all irrigation seasons. (See WCWD January 17, 1986 diversion agreement, §§ 1(a), 3(c).) The four agencies that make up the Joint Water Districts Board (JWDB) are entitled to up to an additional 35,000 acre-feet of water in drought years from any source, including storage, in recognition of their relinquishment of their proposed Middle Fork Project. (JWDB May 27, 1969 diversion agreement, §§ 2(a), 2(f)(1).) Finally, in furtherance of county and area of origin laws, the Feather River Contractors may acquire SWP water based on the State's prototype water supply contract. (See, e.g., *Id.* § 2(f)(2).)

DWR is obligated to operate its facilities to fulfill the terms of the diversion agreements, including operating storage if necessary to deliver the quantities specified in the diversion agreements. DWR's testimony misstates the terms and legal effect of the diversion agreements and can easily be misinterpreted as limiting DWR's obligations to inflow only. The incorrect portions of testimony must be retracted, or corrected, to ensure that it accurately recites DWR's obligation to serve the Feather River Contractors from all sources of supply, including storage. The Feather River Contractors request a meeting at your first opportunity to clarify DWR's intent in drafting this testimony, and to confirm how DWR intends to respond to our concerns.

JOINT WATER DISTRICTS BOARD

By 
Donnie Stinnett, Manager

WESTERN CANAL WATER DISTRICT

By 
Ted Trimble, Manager

³ Western Canal Water District is entitled to 145,000 acre-feet of water released from PG&E's upper Feather River storage reservoirs.

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GARDEN HIGHWAY MUTUAL WATER
COMPANY

By  _____
Alfred G. Montna, President

PLUMAS MUTUAL WATER COMPANY

By _____
Steve Danna, President

OSWALD WATER DISTRICT

By _____
Surjit Bains, President

TUDOR MUTUAL WATER COMPANY

By _____
John Taylor, President

cc: Spencer Kenner, James Mizell , DWR legal
Terry Erlewine, Stefanie Morris, SWP Contractors, Inc.
Andrea Clark, Downey Brand
Andrew Hitchings, Somach Simmons & Dunn
Dustin C. Cooper, Minasian Law Office
Jesse Barton, Gallery & Barton APLC
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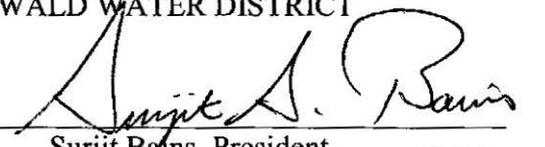
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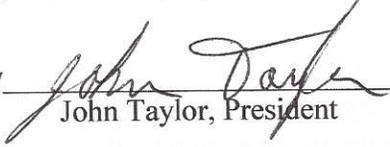
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