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BEFORE THE  
CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

HEARING IN THE MATTER OF CALIFORNIA DEPARTMENT OF WATER RESOURCES AND UNITED STATES BUREAU OF RECLAMATION REQUEST FOR A CHANGE IN POINT OF DIVERSION FOR CALIFORNIA WATER FIX

SUMMARY OF PETITION: The Department of Water Resources (DWR) and the U.S. Bureau of Reclamation (USBR) have filed with the State Water Resources Control Board (Water Board) a petition to change their water rights (change petition) for the California WaterFix Project (WaterFix Project), part of the Bay Delta Conservation Plan (BDCP). The WaterFix Project proposes to construct and operate new water diversion facilities between the North Delta towns of Clarksburg and Walnut Grove (document listed preferred alternative) to convey water from the Sacramento River through two tunnels to the existing State and Federal pumping facilities in the South Delta from the Clifton Court Forebay near the city of Tracy. In addition to other federal, State and local approvals, the WaterFix Project requires changes to the water right permits for the State Water Project and Federal Central Valley Project to authorize the proposed new points of water diversion and or re-diversion.

As outlined by the Water Board, the State Water Board’s order following the WaterFix proceeding must be based upon evidence in the record developed at the hearing. Water Board directed that Parties to the hearing should submit exhibits and testimony responsive to the issues that are to be considered during the hearing. As outlined below.

Part I – Effects of the Petition on Municipal, Industrial and Agricultural Uses of Water, Including Associated Legal Users of Water

1. Will the changes proposed in the Petition in effect initiate a new water right?
2. Will the proposed changes cause injury to any municipal, industrial or agricultural uses of water, including associated legal users of water?
   a. Will the proposed changes in points of diversion alter water flows in a manner that causes injury to municipal, industrial, or agricultural uses of water?
   b. Will the proposed changes in points of diversion alter water quality in a manner that causes injury to municipal, industrial, or agricultural uses of water?
   c. If so, what specific conditions, if any, should the State Water Board include in any approval of the Petition to avoid injury to these uses?

For over a year, there have been hearings, submissions of testimony, rebuttals, and huge volumes of evidence uploaded by both Petitioners and all Protestors. Petitioners have the burden of proof, supposedly, and at this point in time most independently thinking persons would answer “YES” to questions 1 and 2 above, with history showing that no matter what is
written, conditions of approval would not be met by operators without the need to litigate in court. Per state code, Water Board should adhere to the policy of maintaining high quality of waters of California, the Delta included.¹

Petitioners have also failed to disclose basic flow data based upon California codes². Despite the huge volume of data, to date it still is not clearly disclosed by Petitioners DWR and USBR exactly how much flow is actually diverted from the Sacramento River watershed into the San Joaquin River watershed for eventual export delivery to users south of the Delta region. The required “Delta Water Balance” table also referred to as the ae report online, is an attachment to the California Water Plan Update 2013³, and the data was first published in 2012. We are told there will be a 2018⁴ water plan update, but the actual “Delta Water Balance” has not been published as of this date, so DWR and USBR still have not disclosed to the public actual Delta export and outflow verified numbers since 2005. The Water Board hearing members, all appointed by the governor who is one of the primary proponents or supporters of the WaterFix project, are expected to filter through the data to come to a determination of whether or not to grant the petition. Since the decision is supposed to be based upon all data provided at the hearing, one would assume Water Board would accept all verifiable data related to water diversions from the Delta which were or are currently published by Petitioner DWR. However, Water Board has chosen to reject into the record evidence of incorrect published flow data withheld by DWR⁵, evidence of creative water accounting by DWR⁶, and has ignored the submitted evidence that DWR and USBR have operated the water diversion projects in Northern California in such a way as to fail to comply with water quality standards for humans and native fish species as well. Since DWR/USBR have failed to protect drinking water quality in the Delta region even without the proposed WaterFix project, it does not seem to make sense to even consider additional diversions from the Sacramento River and in fact diversions and transfers from the Sacramento River watershed should be substantially reduced until such time as the drinking water aquifer quality returns to current Water Board standards.

As a rebuttal to the claim by DWR/USBR that the proposed project will not harm legal users of water in the Delta region or Sacramento River watershed region (other than the few drinking water wells and irrigation intakes noted in the WaterFix documents and maps) I wish to again point out that neither DWR/USBR provided any testimony showing that the hundreds of drinking water wells in the Delta region⁷ had been analyzed for impacts to water quality. Therefore, if the Petitioners and their computer modeling staff did not recognize the location of, nor analyze the impacts to drinking water wells during construction phase or long term

¹ http://www.snugharbor.net/images-2016/labeled/SHR-29.pdf
² Water Code section 10004.6 http://www.waterboards.ca.gov/laws_regulations/docs/wrlaws.pdf
³ http://www.water.ca.gov/waterplan/cwp2013/final/ and http://www.water.ca.gov/waterplan/technical/cwp2013/index.cfm#WaterBalance (note original data was moved by DWR so data is preserved at http://www.snugharbor.net/waterfixexhibits2016.html
⁴ http://www.water.ca.gov/waterplan/cwp/update2018/index.cfm
⁵ http://www.snugharbor.net/images-2016/labeled/shr_7large.pdf
⁶ http://www.snugharbor.net/images-2016/labeled/SHR_7largeposter.pdf
operation, there is nothing in the record to validate DWR/USBR claim of no injury. I also wish
to point out that Water Board itself has been monitoring and reporting online drinking water
quality issues statewide, and the maps and locations of the drinking water wells and irrigation
intakes have been well documented by Water Board staff. DWR/USBR had the opportunity to
access that data and do analysis of the short term and long term impacts to surface and
drinking water quality in the Delta and Sacramento River Watershed and San Francisco Bay
area, yet choose to ignore this very important issue. While there was some testimony by DWR
witnesses that there would be a process or system set up to “mitigate” for impacts to drinking
water wells, the testimony of a long time Delta farmer who provided over fifty (50) years of
damages incurred by DWR/USBR operations at Clifton Court Forebay area showed that
DWR/USBR have had no intention to mitigate in the past, so why would any rational person
assume DWR/USBR representatives would compensate for damages in the future? (See
Womack testimony).

I applaud the fact Water Board has developed a program to protect the right to fresh
drinking water for all Californians\(^8\), and I find it to be quite a conflict that the same Water Board
hearing persons that are being asked to approve a project that would destroy the Delta’s
drinking water aquifer over time are also being asked to protect drinking water for all
Californians. It is my hope that persons from the new project are monitoring and commenting
on the ongoing WaterFix hearing new data as it is being received.

As part of the testimony on behalf of SHR, I pointed out that water flow management on
Steamboat Slough over the last several years has degraded the drinking water quality in the
North Delta, based on water well records. I have gathered additional records and it is clear
there is a pattern that has emerged since early 2000, when DWR/USBR started revising flows
into and through the Delta under the CALFED ROD, and under restoration projects associated
with BDCP. The pattern shows that as DWR/USBR increased exports to other areas of the
state, surface water quality in the Delta degraded and then the drinking water aquifer also
began to degrade. Concentrations of mercury and arsenic increased as diversions increased,
and this affected the quality of most of the drinking water wells in the Delta, causing increase
filtration costs.

As another example of impacts due to flow management, I want to point out new evidence
which occurred February 2017. DWR main website page says that the job of DWR is
“Managing and Protecting California’s waters”. As reported in the news, Oroville Dam spillway
that had not been maintained and was severely damaged when the spillway was used. To
protect the Dam and the persons living below the dam in the immediate vicinity, water was
quickly released into the river systems below, regardless of the impacts to the properties down
river already experiencing high flows. DWR’s method of alleviating the crisis at Oroville was to
push the excess water onto other land owners, causing flooding, levee breaks and
infrastructure damage. Specifically, DWR’s management of flows on Steamboat Slough
caused flooding and damage to the SHR drinking water system, which required a full shut
down and weeks of waiting to be able to repair once the high water receded. I will be

\(^8\) http://waterboards.ca.gov/water_issues/programs/hr2w/index.shtml
submitting the bills for repair to DWR as a test of DWR intent to “mitigate” for failure of appropriate management of flows in our area of the Delta.

Finally, I wish to point out that a recent draft biological opinion from the NOAA-West Coast Fisheries review of proposed WaterFix indicates that surface water quality in the Delta from proposed tunnel operations would be so severely degraded that salmon and other fish species that utilize the Delta would become extinct⁹. That is an indication of the impacts to surface water quality for humans, as the standard for humans is higher than for fish usually. Instead of allowing any additional diversions to be built by DWR/USBR, it seems it would be a greater service to all Californians to require that DWR/USBR first assure the appropriate long-term maintenance of existing facilities, as well as reduce diversions and exports to a level that allows restoration of the Delta drinking water aquifer and native fisheries. In addition, diversions or transfers from Northern California watersheds to Southern California uses should only be allowed as emergency last resort method, and require all beach cities to develop desalination plants and require households to utilize atmospheric water generators, or develop other self-sustaining methods for drinking water. In addition, transfers of water for irrigation to desert lands, including the lower Central Valley, would necessarily be limited to what is actually “surplus” waters, if at all, in any given water year.

Note that screen prints of the resources provided in the footnotes are added to this rebuttal to preserve the reference data as it shows online as of the date of this letter.

Respectfully submitted

/sg/ Nicole S. Suard, Esq.

Managing Member, Snug Harbor Resorts LLC

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HUMAN RIGHT TO WATER (HR2W)

On September 12, 2012, Governor Edmund G. Brown Jr. signed Assembly Bill (AB) 685, making California the first state in the nation to legislatively recognize the human right to water.

Now in the Water Code as Section 106.3, the state statutorily recognizes that "every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes." The human right to water extends to all Californians, including disadvantaged individuals and groups and communities in rural and urban areas.

GENERAL INFORMATION

- Press Release
- Frequently Asked Questions

DOWNLOAD HUMAN RIGHT TO WATER DATA

- Data Disclosure
- Exceedance/Compliance Status of Public Water Systems (PWSs)
CA WaterFix Aquatic Science Peer Review Phase 2B


Meeting Notice – January 23-24, 2017 (NOTE: Updated Webcast URL)

January 23-24, 2017 Review Meeting Video Recording

Review Materials, Supplemental Documents, Background Information, and Presentations

Click here to return to overview page
Where did the unaccounted for fresh water flow from the Delta go from 2006 to 2010?

DWR provided the chart below at the following link accessed January 2014.
HTTP://www.waterplan.water.ca.gov/docs/epa291.3a/bac0.water_portfolio_inflow_outflow_delta.pdf

Chart is supposed to provide the total numbers of water inflow, exports and outflow from the Delta in thousand acre feet (TAF). However, when one reviews the numbers, it appears starting in 2006 there is unaccounted for flow. Where did that water go? How and who received the unaccounted for flow which would have a value of $3.5 billion or more? Newly-built Diamond Lake in Southern California was filling up during the same time as there is unaccounted for flow, so that might be one place to look. How does the reported flow numbers affect computer modeling of the BDCP?

1. Do the below unaccounted for flows get reflected in the modeling of the public draft of the BDCP, or not?

2. Is this unaccounted for flow the cause of the decline of native salmon species that migrate through the Delta, or not?

3. Why is CCWD exports included as both Delta Consumptive Use and also CCWD exports at Rock Slough and Old River? That is double-counting the same export numbers.

4. Why don’t the drafters of the BDCP acknowledge or address the unaccounted for flows in the public draft of the BDCP, as the below numbers must surely be part of the baseline historical flow data used to determine the leftover flows for the Delta once the conveyance system is fully operational? Or is the revised central conveyance system fully operable and the chart below reflects the diverted North Delta flow by failing to disclose that flow?

So that anyone viewing this comment regarding missing or unaccounted for flows, I created pie charts and compared my numbers to the ones used by the Delta Vision group to portray Delta inflow and outflow. Note the Delta Vision chart numbers are similar to the same years on the chart from DWR above for 1999 to 2005. Then starting in 2006 there seems to be substantial amounts of unaccounted for flow, as the model spread sheet shows. The pie charts were made of the exact numbers from the DWR chart, and where the numbers did not total out, the category “unaccounted for flows” was used.