



North Delta CARES Action Committee

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September 29, 2016

State Water Resources Control Board
1101 I Street
Sacramento, CA 95814

To: Chairwoman Tam Doduc, Chairwoman Felicia Marcus, Vice Chairwoman Frances Spivey-Weber, and Honorable Members Dorene D'Adamo and Steve Moore

Re: 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

Re: California Department of Water Resources' **Objections to North Delta CARES/Barbara Daly** Written Testimony and Exhibits Submitted by Protestants in Support of Part 1B Case In Chief and any Related Joinders

North Delta CARES/Barbara Daly requests that DWR's objections to its case-in-chief and to witnesses whose testimony has been described by DWR as out-of-scope of this hearing, be overruled by the Officers of the State Water Board.

In response to DWR's objections to North Delta CARES/Barbara Daly, sent by Email on September 21, 2016, at 12:06 p.m., we respectfully assert the following information for the State Water Board's consideration in their determination of finding our time to testify to be within the Scope of this Hearing, specifically Part 1B.

North Delta CARES/Barbara Daly asserts: The lateness of DWR's objections which were due to the State Water Board and to Protestants by Noon on September 21, 2016. The objections to North Delta CARES/Barbara Daly were received at 12:06 p.m., after the time allowed. This alone stands as grounds to request dismissal of their objections to all Parties listed in its entirety.

North Delta CARES/Barbara Daly had 12 more Exhibits to upload for the Part 1B process, but did not do so because we ran out of time. A request for additional time made in advance was not granted.

In addition, DWR has described 3 main objections or arguments to all Protestants in their Master Objections to Protestants' Cases-in-Chief Collectively - Introduction, Page 3, as the definition of "outside the scope of this hearing" described as follows: "funding,

other projects/permit processes, and potential property damages, claims related to the proposed project.”

The State Water Resources Control Board Hearing Officers have made it quite clear in your March 4, 2016 Revised Hearing Schedule, etc. as, **“Key hearing issue number 2, which is to be considered during Part 1 of the hearing, is whether the changes proposed in the petition would cause injury to any legal users of water.”** As discussed during the pre-hearing conference, this key issue stems from Water Code section 1702, **which requires petitioners to establish and the State Water Board to find that the proposed changes will not cause injury to any legal users of the water involved before permission to make the changes may be granted.”**

“In our February 11 ruling, we stated that testimony concerning human uses of water, including flood control issues and environmental justice concerns, could be presented during Part 1, even though impacts to some human uses of water would not constitute injury to legal users of water within the meaning of Water Code section 1702.” In their February 23 letter, petitioners stated that they were preparing to address the more narrow issue of potential injury to legal users during Part 1, and requested clarification concerning the expanded scope of Part 1 so that they can prepare accordingly.”

Furthermore, “To the extent that petitioners can anticipate issues concerning potential impacts to human uses that do not constitute injury to legal users of water, petitioners may address those issues in the case in chief during Part 1A of the hearing. In the alternative, petitioners may wait until the other parties have presented their cases in chief during Part 1B of the hearing. **At that point, petitioners will have an opportunity to present rebuttal testimony and exhibits that are responsive to any issues concerning potential impacts to human uses that have not already been addressed during petitioners’ case in chief.”**

“The Coalition also commented on the scope of Part 1. The Coalition objected to the expansion of the legal definition of “legal users of water”, and argued that flood control issues and environmental justice concerns more appropriately relate to environmental issues, which will be the focus of Part 2. **Contrary to the Coalition’s objection, our decision to expand the scope of Part 1 did not serve to expand the definition of “legal users of water.” In addition, it may be debatable whether flood control issues and environmental justice concerns more appropriately relate to environmental issues or human use issues, but there is not a clear alignment with one or the other so the February 11 ruling on this matter stands and these issues will be included in Part 1.**

Petitioners’ Major Objection to North Delta CARES/Barbara Daly – Introduction, Pg. 1: “DWR concurrently with this Response submits Master Objections related to issues raised by multiple parties which will be referenced in these Objections. Those issues include testimony making legal arguments, submitting policy statements that are not evidence to support a claim of injury, requests this proceeding determine real property or

economic damages and **rearguing processes *outside the scope of this hearing like the Delta Plan, EIR/EIS adequacy, Biological Assessment, and/or re-consultation.***”

**North Delta CARES/Barbara Daly - Asserts in Response to the
Petitioners’ Objections to our Testimonies and Case-in-Chief as it relates to the
Scope of Part 1B:**

1. Petitioners state Page 2: “She claims her family is *likely to be damaged by the disintegration in the water quality caused by seepage or a potential breach in our water well due to the construction of the California Water Fix and the property I live on may also be jeopardized through the construction of the coffer dam because the flow in the river will increase in velocity and scour the levee in front of our house causing serious erosion and potential flooding.*”

2. Petitioners state Page 2: ”Nothing in the testimony provides specific details about the likely damages to personal or real property. Please refer to DWR’s Master Objections related to filing a state claim and property acquisition related to the California Water Commission’s role and the courts. Additionally, she does not qualify as an expert to testify regarding water quality, modeling, or potential flood impacts. She appears to challenge the conclusion of these impacts in the BDCP/California Water Fix RDEIR/SDEIS without providing conflicting evidence. **Nevertheless, the validity of the CEQA/NEPA analysis is not part of this hearing.**”

North Delta CARES/Barbara Daly asserts: The CA WaterFix takes its foundational modeling; i.e., Alternatives 1-8 as per Jennifer Pierre’s testimony, as well as operations, engineering and water rights locations/information from the RDEIR/SDEIS. As a location in the Delta that experiences the footprint of the project and has the direct potential to be injured by the project in compounded fashion, including as a legal user of water with regard to flood control, environmental justice issues and other human uses of water, we have done due diligence to review and comment on the Delta Plan as well as the EIR/EIS and the RDEIR/SDEIS with great concern and extensive thought.

We also reflect that the State Water Board refers the Petitioners to the Delta Plan as well as the Partially Recirculated Draft Environmental Impact Report/Supplemental Draft Environmental Impact Statement on Page 5 of their March 4, 2016, Revised Hearing Schedule, Revised Notices of Intent to Appear, and other Procedural Issues Concerning the California WaterFix Water Right Change Petition Hearing.

North Delta CARES/Barbara Daly is not participating at this time to make a specific financial claim of property damage; we are here to make a claim that should the Petitioners receive permits to move forward with three new intakes on the Sacramento River that affects our roads, property, adjacent to our property and across from our homes, communities and rural lifestyle, with private water wells and community water sources and emergency services, that we, as legal users of water, will be injured and we, as

human users/uses of water, whether it be by flooding or environmental justice concerns, will be harmed.

North Delta CARES/Barbara Daly has cooperated with the State Water Board's request and has taken its NOI Witness List from approximately 400 to approximately 50, and now to 5, in an effort to facilitate the hearing process. North Delta CARES/Barbara Daly will also add to this revision the change from "Expert Witness" to "Perceptive Witness" for all five witnesses that remain on Part 1B - NOI.

3. Petitioners state Page 2-3: "Daly's testimony then introduces NDC's panel members, addressed individually below. Mark Pruner's qualifications consist of five general bullets regarding his status as an attorney and activities with Delta groups including the Clarksburg Fire Protection Board. His testimony appears to be focused on operations of the local Fire District. Pruner states: "The District is of the opinion that CA WaterFix will lower the water table of its well during the term of the construction phase . . . " He provides no evidence to support this assertion, nor does he acknowledge the analysis provided by the Petitioners and commitments to mitigate any impacts. Both Daly and Pruner are focusing on economic damages **outside the scope of this hearing**. Please refer to DWR's Master Objections detailing what issues are before the Board related to a change petition and requirements of Protestants to prove any alleged injuries."

North Delta CARES/Barbara Daly asserts: **It is, in fact, the Petitioner's obligation to establish and to prove that there is no injury to any legal users of water and that the evidence for proof lies on them and not on the Parties involved.** As a Community, we rely on the Volunteer Fire Department in our District to be able to use the roads, use the water and not be in fear that either of these will not be sufficient for our families in time of emergency. We believe our additional three witnesses, Nicky Suard, Richard Marshall and Steven Haze, whose qualifications and testimonies are challenged by the Petitioners but not for the reasons of "outside the scope", will assist North Delta CARES/Barbara Daly, along with Mark Pruner to make a strong case that there are legal users of water in California who will be harmed by allowing these Petitions to be approved.

Mr. Pruner's testimony states, "The construction, maintenance and operation of the northern-most outtake proposed by the CA WaterFix, referred to as Pump Station No. 2, will be located across from the town of Clarksburg. Among other things, CA WaterFix, at proposed Pump Station No. 2, and surrounds, proposes to de-water the site in a manner which will negatively affect surrounding groundwater wells, including the District's well by lowering ground water levels, altering ground water flows and altering ground water quality in both temporary and permanent ways."

Mr. Pruner continues: "The proposed slurry wall (a deep in-ground permanent fixture) proposed to be built as part of the CA WaterFix, as the primary means to accomplish the de-watering of the construction zone, will cause the damage described in the paragraph immediately above. It is general knowledge that water travels underground, that underground water moves around impermeable objects (including artificial objects (e.g., concrete slurry) installed into the ground, and that once objects are built into the

ground, new waterways come into being. Inasmuch as water is the primary resource expended to fight fires, the well located at the District fire station serves as an alternate source for fire suppression and is used on a regular basis for District maintenance procedures. . . . In total, it is estimated that the direct financial impact of the project as proposed to the District will be \$1,675,000 on an annualized basis.”

North Delta CARES/Barbara Daly asserts: Based on a 10% design level and inadequate modeling exhibits along with vague and insufficient information by the Petitioner’s panels of experts, it is almost impossible to determine which water users will be directly negatively impacted. Exhibits that explain this have been submitted as evidence. For example, as this is a “Water Project”, the RDEIR/SDEIS, Page 16-31 states, “For instance, negative visual or noise-related effects on residential property could lead to localized abandonment of buildings. While water conveyance construction could result in beneficial effects relating to the economic welfare of a community, adverse social effects could also arise as a result of declining economic stability.” North Delta CARES/Barbara Daly asserts that the reason for this is cumulative, and includes injury to legal users of water. Do not blame the victims or flip the burden of proof on to them. This issue was raised in cross-examination of Mr. Bednarski, Engineering Panel, and is submitted as an Exhibit for North Delta CARES/Barbara Daly case-in-chief.

North Delta CARES/Barbara Daly has made extensive comments to this project in the CEQA/NEPA process, and also the Delta Plan Output and Outcome Performance Measures, and we request your permission at this time to submit these comments as evidence as to our involvement with the NDC Community Party’s objections to the process which proceeded the CA WaterFix, namely, the BDCP EIR/EIS and RDEIR/SDEIS.

Objections to the Qualifications and Testimony of Richard Marshall, Steven Haze and Nicky Suard do not state that they are “outside the scope” of Part 1 of this Hearing, and therefore a follow-up statement regarding North Delta CARES/Barbara Daly assertions to their qualifications and relevant testimony to Part 1B will be submitted prior to appearance in Part 1B.

In conclusion, North Delta CARES/Barbara Daly requests that DWR’s objections to its case-in-chief and to witnesses whose testimony has been described by DWR as out-of-scope of this hearing, instead be found as important and relevant within the scope of this hearing, and that their objections be overruled by the Officers of the State Water Board.

Thank you for your consideration,

/sg/ Barbara Daly

North Delta CARES/Barbara Daly