



March 20, 2018

SENT VIA U.S. MAIL and E-MAIL TO: CWFhearing@waterboards.ca.gov

Hearing Officer Felicia Marcus
Hearing Officer Tam M. Doduc
State Water Resources Control Board
P.O. Box 100
Sacramento, California 95812-0100

Re: California Waterfix Change Petition – Policy Statement of San Joaquin County
Supervisor Katherine Miller

Dear Hearing Officers Marcus and Doduc:

Thank you for allowing me the opportunity to present a policy statement addressing the proposed Twin Tunnel project. I submit this statement in my capacity as a member of the San Joaquin County Board of Supervisors.

For over a decade, I have closely followed the Twin Tunnel proposal, originally referred to as the Bay Delta Conservation Plan (“BDCP”) and later, after the habitat conservation plan component was dropped, as the California WaterFix. This Hearing is not taking place in a vacuum, of course. The Twin Tunnel proposal has also been the focus of State and Federal audits, some twenty currently pending environmental lawsuits, extensive litigation arising out of DWR’s 11.2 billion-dollar Validation Action, and countless hearings before water agencies and counties throughout California. Assembly Member Susan Eggman recently announced that this embattled project will also be the subject of a joint hearing with the State Senate, currently scheduled for early May. As I understand it, that hearing will address, among other things, the issue of Metropolitan Water District’s influence within DWR and on the WaterFix project more generally.

Against this background, I am acutely aware of the staggeringly complex challenge you face in this Hearing, now entering its third year.

The Delta is not a mere conduit in a statewide plumbing system, though some Twin Tunnel proponents talk as if it were just that. The Delta is much more – and no county has a greater stake in the future of the Delta than San Joaquin County. The Delta supports a \$5.2 billion annual agricultural

industry, and some 40 percent of those farms are in San Joaquin County. The gross value of San Joaquin County's agricultural production for 2014 was over \$3.23 billion. A large portion of the Delta's \$750 million recreational economy is centered in San Joaquin County. Transportation infrastructure within the Delta and the Delta levee system, much of which lies in San Joaquin County, are vital to the local and regional economies, as well as to the safety and welfare of many thousands of people living in and near the Delta. The Delta is critical to San Joaquin County's growing tourism industry as well, including agri-tourism. Beyond mere statistics and economics – the unique aesthetic, cultural, and environmental characteristics of the Delta are critical to San Joaquin County today, and to future generations in San Joaquin County.

As our attorney observed in Part 1 of this Hearing, San Joaquin County is ground zero for the adverse impacts of the proposed Twin Tunnels project. Focusing on the impacts of increased salinity and changes that will further exacerbate conditions that encourage formation of harmful algal blooms in San Joaquin County, the protestants' witnesses in Part 1 explained how the project would remove more fresh water from the already choked Delta channels. Part 1 witnesses explained how the massive and prolonged construction impacts, slurry walls, and forty-foot wide, 30-mile long tunnels would leave a lasting scar on the Delta and interfere with groundwater flows and irrigation systems. In Part 2, the San Joaquin County witnesses explain how the proposed tunnels would disrupt the lives of Delta communities and inflict irreparable injury on the environment and public trust resources. As can be easily inferred from the evidence you are hearing in Part 2, the project would also undermine California's efforts to develop a sustainable, balanced, and affordable water supply and delivery system.

I am not an attorney or witness participating in this Hearing, and I am not going to try to summarize evidence. Nor am I a scientist specializing in Delta ecology, Delta hydro-dynamics, or Delta groundwater resources. But any layperson possessed of common sense who has taken the time to review the Change Petition and listen generally to the arguments tunnel proponents have advanced to support the Change Petition ought to be able to recognize that this amounts to an elaborate and dangerous bait-and-switch. I am not referring just to the fact that the project – which was supposed to have been adequately described in the Petition itself – has changed significantly during the course of this Hearing. I am not referring just to recent revelations about a single-tunnel alternative project, now being pitched to water agencies as a "phased" WaterFix construction.

More than those serious and very public revelations, I am referring to the fact that many or most of the key decisions governing the project's impacts in the Delta have been deferred to future

decision-making. We in the Delta – and you as decision-makers – are being told that even the conceptual design for this project is only about 10 percent complete. Tunnel proponents have admitted that as of today preliminary engineering has not even begun. Rather than present this Board with complete designs and operational criteria, or any operational criteria at all, the Petitioners are pitching a “boundary” analysis that, if approved, would allow extraordinary leeway in future operations. “Trust us,” they say, to operate the project in compliance with whatever the regulations might require in the future. As for funding, the Petitioners have not provided any assurance that it exists today or that, if the tunnels are built, there will be sufficient funding to assure future compliance with applicable law or even with any conditions that this Board might impose in approving the Petition. Nor have the Petitioners offered a thorough assessment of the negative, even catastrophic consequences that will follow if adequate funding does not somehow materialize.

Of course, you are not being asked to render a decision in the future. You are being asked to approve the Change Petition now. “Trust us,” say the Petitioners. To address future decision-making, they assure you that all this Board needs to do now is approve a mechanism for future decision-making, called Adaptive Management. Never mind that there is as yet no agreed-upon adaptive management cooperative agreement. Never mind that the broad outlines of the proposed Adaptive Management Program provide a central role for the water export interests in future decision-making but barely a chair in the corner of the room for the Delta Counties, Delta farmers, and Delta communities – those most adversely affected by water exports from the Delta. Never mind that there is as yet no assurance of adequate funding for the Adaptive Management Program or that the proposed Adaptive Management Program includes no meaningful safeguards against the very types of political pressures that have resulted in the failure of other adaptive management programs. Never mind that by the influence of this very Adaptive Management Program the same standards, criteria and rules that Petitioners now assure you they will comply with can be changed to satisfy the priorities of the water export interests.

And that is what I am talking about when I use the phrase “bait and switch”; the project you are being asked to approve now, however vaguely described, is not the project California is likely to get, either during its construction or during its operation.

Equally dismaying, the Petition for Change was submitted without a cost-benefit analysis, without a water availability analysis, without proposed operational criteria that could be examined and tested in this hearing, and without proposed new Delta flow criteria. The project description is more noteworthy for what it lacks than for what it includes.

The Legislature has repeatedly recognized that the Delta ecosystem is in trouble. Over a period of many years, excessive exports, coupled with a failure to update water quality standards and flow criteria vital to the health of the Delta, have contributed to a steady decline in Delta species. These same problems threaten the future of the Delta's productive farms and related businesses, Delta's growing tourism and recreation industries, and the health of Delta communities generally.

This favoring of water export interests over in-Delta needs is not new. It comes after decades of what we in the Delta see as broken promises. Area of origin protections – which were extended to the Delta as part of the larger set of agreements and trade-offs that created the state and federal water projects in the first place – have been too often ignored or dismissed out of hand. And, all too often in recent years, even when the interests of water exporters clash directly with existing standards and criteria, the water export interests have been allowed to leverage their political and economic influence to secure TUCPs by which to avoid enforcement of the rules.

Little wonder, then, that so many in the Delta have come to believe that Delta water decisions have been driven more by politics, money and junk science than by objective analysis, the best available science, and sound public policy.

In closing, I leave you with this. As recognized in the 2009 Delta Reform Act, the Delta is the largest estuary on the west coast of the Americas, a unique national treasure rich in history and an extraordinary diversified culture, and home to many species, including protected species. The damage that construction and operation of the proposed project is very likely to inflict upon the Delta – its economic productivity, its unique culture, its aesthetic appeal, and its natural communities – will be permanent. There will be no turning back, no do-overs. Apologies and recriminations after the fact will be meaningless.

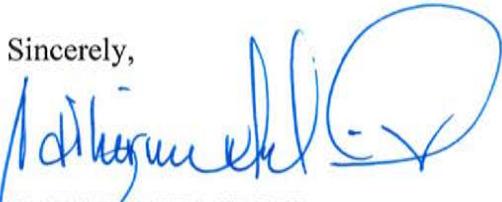
You – the decision-makers in this proceeding – may be all that stands between ongoing efforts to responsibly address Delta challenges and a future in which the collapse of the Delta is spoken of much as we now speak of the scandalous decimation of the Owens Valley a century ago.

In this Hearing, the Board needs to be the adult in the room. You sit as guardians of this treasure – this public trust asset of incalculable importance to people and natural communities in the Delta Counties and to future generations. You are the stewards of the public trust and the Delta's future. Please exercise that responsibility wisely, without undue influence from those who want to see your decision turn on politics rather than on sound science, respect for the public trust, and due care for the future of this great estuary and the people who live in it.

Only if you do that – can we get to a point where vast public and private resources are no longer being squandered on the Twin Tunnels project. Only then will we all be in a position to direct those resources into genuine solutions addressing the needs of the Delta ecosystem. And, contrary to the loudly proclaimed mantra of those promoting the Twin Tunnels, Delta folk do recognize the need for real solutions to the Delta’s problems. And we in the Delta know that other solutions designed to address the actual needs of those who benefit from water exports and, at the same time, restore and enhance the Delta ecosystem, do exist.

Only if you decide this Change Petition wisely, based, as I said, on sound science and respect for the public trust, will you restore public confidence in this critically important State agency that has of late been accused by some of having been captured by the very interests that are subject to the rules, regulations, and standards this agency is charged with enforcing.

Sincerely,



KATHERINE MILLER
San Joaquin County Supervisor, District 2