

December 17, 2018

Via Electronic Mail

Tam Doduc, WaterFix Project Co-Hearing Officer
Felicia Marcus, WaterFix Project Co-Hearing Officer
State Water Resources Control Board
1001 I St.
Sacramento, CA 95814

Re: Substantial Changes to California WaterFix Project and Circumstances Surrounding Project from Addendum to Coordinated Operations Agreement (COA) and other New Agreements

Dear Hearing Officers Doduc and Marcus:

Over the past several days, the Department of Water Resources (DWR) and the Bureau of Reclamation (Reclamation) (collectively, "Petitioners") have announced significant changes to existing agreements and new agreements¹ that affect the 2015 petition for changes in water rights for the California WaterFix project (Project). These developments may significantly change key assumptions regarding the Project relevant to the ongoing change petition (Petition) hearing (Hearing). These changes include:²

- (1) 1986 COA Addendum, December 13, 2018 (Addendum)³

Through the Addendum, Petitioners agreed to change four elements of the 1986 COA, including assigning greater responsibility to the State Water Project (SWP) to meet in-basin demands in dry and critical years.⁴ Under the new COA Addendum, the SWP may reassign

¹ Full documentation of these agreements/changes, has not yet been made available to the public.

² On December 13, 2018, the SWRCB also adopted amendments to its 2006 Water Quality Control Plan, and various parties presented the outline of a Voluntary Settlement Agreement within the San Francisco Bay Delta to the SWRCB. This letter does not address the possible effects of those actions on the Project or key Hearing issues.

³ The 1986 COA is Exhibit GCID-1, available at:

https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/exhibits/docs/petitioners_exhibit/glenn/gcid_1.pdf. The environmental review for the COA is Exhibit FOTR-103, available at: https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/exhibits/docs/FOTR_for_103.pdf.

⁴ Available at: <https://water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/State-Water-Project/Files/Addendum-to-Coordinated-Agreement.pdf>.

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100,000-200,000 acre-feet of water per year to the Central Valley Project (CVP), according to news sources.⁵ These changes in operations affect key Hearing issues, including modeling assumptions in CWF H3+ and other scenarios for reservoir storage, critical year operations, water temperatures, and water quality. For example, there is no evidence in the Hearing record addressing whether, and to what extent the SWP's vastly more limited access to stored water above the Delta in dry and critically dry years would lead to different (likely more severe) water storage, water quality, flow, and temperature effects than presented in the Hearing. The changes in the Project from that described in the Petition and the public review Final Environmental Impact Report (EIR)/Environmental Impact Statement (EIS), and in particular the change to CWF H3+, resulted in substantially more severe significant impacts to the City of Stockton's (Stockton) water quality and water supply. New modeling of the Project effects in light of these significantly changed circumstances, and compliance with the California Environmental Quality Act (CEQA), is required for Stockton and Sacramento County Water Agency to understand what impact these most recent changes will have on their water supplies and Delta water quality, and for the State Water Resources Control Board to make an informed decision on the pending Petition.

(2) No Harm and Cost Agreement (Agreement) Regarding Delta Tunnels on December 15, 2018

According to newspaper reports, the current administration also “gave federal officials a ‘no-harm agreement’ that says the Central Valley Project’s customers won’t lose any water if the tunnels are built. If they do, they’ll get compensated in cash or some other water supply.”⁶ Though this Agreement has not been made public, these changes, and particularly the amount and source of the unidentified “other water supply,” may also affect assumed operations in Project modeling, Project impacts, and other relevant evidence in the Hearing. The effect of Petitioners’ Agreement regarding implementation of the SWP/CVP Biological Opinions also has not been considered in the Hearing.⁷

⁵ *California cedes water to feds in Delta deal with Trump*, Sacramento Bee, December 16, 2018, available at: <https://www.sacbee.com/latest-news/article223114775.html>.

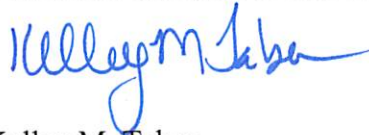
⁶ *California cedes water to feds in Delta deal with Trump*, Sacramento Bee, December 16, 2018, available at: <https://www.sacbee.com/latest-news/article223114775.html>.

⁷ Available at: <https://water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/State-Water-Project/Files/MOU-Signed-Cost-Share.pdf> [note Exhibits A-C missing].

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The Project, and its impact on Delta water users and the environment, has only become less certain as the Hearing has progressed. The recent Delta Stewardship Council staff findings that the California WaterFix is not consistent with the Delta Plan due to DWR's failure to use best available science and failure to adequately mitigate impacts to local land uses, and DWR's subsequent withdrawal of its certification of consistency, presage additional changes to the Project and/or information relevant to the key Hearing issues. Only when the actual Project proposed⁸ for operation under the Petition, and the significant new information about the circumstances surrounding the Project, have been properly described and addressed in the Hearing according to applicable water rights change procedures, and as required by CEQA, should the Hearing proceed. After the Petitioners provide adequate information regarding the effect of these agreements on the petitioned diversions, the Hearing Officers should provide the opportunity for input from all parties on the scope of a Part 3 of the Hearing.

Sincerely,
SOMACH SIMMONS & DUNN



Kelley M. Taber
Aaron E. Ferguson
Attorneys for City of Stockton, Sacramento County, and
Sacramento County Water Agency

KMT:mb

cc: See Service List

⁸ DWR has not certified the 2018 Supplemental EIR under CEQA, which included further changes to the petitioned Project; Reclamation has not yet taken any action at all pursuant to the National Environmental Protection Act on the Project.

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STATEMENT OF SERVICE

CALIFORNIA WATERFIX PETITION HEARING
Department of Water Resources and U.S. Bureau of Reclamation (Petitioners)

I hereby certify that I have this day submitted to the State Water Resources Control Board and caused a true and correct copy of the following document(s):

LETTER DATED DECEMBER 17, 2018

to be served **by Electronic Mail** (email) upon the parties listed in Table 1 of the Current Service List for the California WaterFix Petition hearing, dated October 30, 2018, posted by the State Water Resources Control Board at http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/service_list.shtml:

I certify that the foregoing is true and correct and that this document was executed on December 17, 2018.

Signature: *Michelle Bracha*
Name: Michelle Bracha
Title: Legal Secretary
Party/Affiliation: Somach Simmons & Dunn
Address: 500 Capitol Mall, Suite 1000
Sacramento, CA 95814