

SOUTH DELTA WATER AGENCY

4255 PACIFIC AVENUE, SUITE 2
STOCKTON, CALIFORNIA 95207
TELEPHONE (209) 956-0150
FAX (209) 956-0154
E-MAIL Jherrlaw@aol.com

Directors:

Jerry Robinson, Chairman
Robert K. Ferguson, Vice-Chairman
Natalino Bacchetti
Jack Alvarez
Mary Hildebrand

Counsel & Manager:
John Herrick

February 2, 2016

Via e-mail

Ms. Tam Doduc, Chair and
Waterfix Service List

Re: DWR/USBR Petition for Change in Point of Diversion

Dear Hearing Officer Doduc:

Many relevant issues were raised at the recent pre-Hearing conference for the above referenced matter. Two must be raised again as they appear to be pre-conditional to the process moving forward. The first and perhaps most important of these was raised by both Contra Costa County and South Delta Water Agency et. al. That issue dealt with whether or not the draft environmental documents supporting the California WaterFix included modeling runs for 4A, the preferred alternative fo the WaterFix. As you will note, the Petitioners made no attempt to clarify this issue.

Various comments to the BDCP DEIR/S noted that there were serious problems with modeling assumptions in CALSIM II and DSM2. The comments resulted in significant changes to those models in an effort to correct the problems in order to make the outputs more accurately reflect actual conditions and effects. However, those changes were not used for any new model runs for the WaterFix DEIR/S, and specifically were not used to produce new results for Alternative 4A.

This issue was discovered/confirmed when Contra Costa County requested the specific modeling data for model runs 4A, 2D, and 5A. In response, DWR noted that the WaterFix process had done "sensitivity analyses" but "not full model runs" for the WaterFix analysis. However, the DEIR/S supporting the WaterFix provides tables and columns of data clearly labeled as Alternative 4A and purporting to be model run data. When similar data was presented in the BDCP documents, it was indeed modeling results for each of the many alternatives. When set forth in the WaterFix documents it purports to be modeling data though DWR has confirmed it is not.

Although there are a myriad of deficiencies in the Petition, the failure of DWR and USBR to provide the public with modeling results of their preferred alternative means that neither the SWRCB or the public has any real data on which to judge the impacts to third parties or the environment. It appears that the necessary modeling runs were completed and submitted to the biological assessment process for which there is a January 15, 2016 draft document. However, these runs have not been released to the public and were certainly not made available when the Petition was filed with the SWRCB.

It is clear that absent the modeling runs examining the WaterFix preferred Alternative 4A the Petition is simply incomplete and should be dismissed. If and when the projects release the necessary information required by statute and regulations a petition can then be processed. Prior to that time it is unproductive to contemplate any further action on the proposed change of point of diversion much less have parties produce written testimony. There is literally nothing for the parties to evaluate or about which to testify.

The second issue was raised by the representative of NRDC, et. al. It deals with a statement in the draft biological assessment referenced above, and is apparently in response to recent drought year problems. As the SWRCB is well aware, DWR and USBR planning and operations make little if any allowance for multi-year droughts. Thus over the past four years, the projects have requested approximately 20 changes to their permits wherein they sought (and received) temporary changes allowing them to not meet existing water quality objectives. In addition, the SWRCB has agreed in writing to not enforce other permit conditions and has ignored (but not temporarily changed) other permit conditions dealing with water quality objective violations. These objectives have been violated over those four years; some for months on end. During this same time, millions of acre feet of water has been exported.

With this short background, the draft biological assessment notes that after one dry or critical year and a forecast of a second a second dry or critical year, the projects will seek relief from ESA/CESA and will petition the SWRCB as needed using a TUCP (see pages 3-214-215, Section 3.7.2, January 2016 Biological Assessment for the California WaterFix; prepared by ICF International). Thus, the planning and analysis of the WaterFix proposes to change project operations after one year of drought. The modeling and other analyses of the proposed project (twin tunnels) looks at multi-year hydrological conditions and estimates impacts and effects from operations of the preferred alternative over those years. We now find in the biological assessment that DWR and USBR will seek to change their operations to some set of unknowns if one dry year occurs. Thus all the modeling and analysis is for naught; the projects have modeled something they do not intend on doing. They present the public with modeling analyses of operations over various year types and combination of year types, but will not operate as they modeled they would. One year of drought will result in new, undisclosed operations which for some reason cannot be predicted and apparently not modeled.

Ms. Tam Doduc, Chair
February 2, 2016
Page - 3 -

This circumstance defies explanation but indicates the complete inability of the projects to plan ahead. It appears they believe they will only meet water quality objectives assigned to them during the first year of dry conditions, but that if it *looks* like there may be a second dry year, all bets are off; operations cannot be pre-determined and the public just can't know what will be done. The projects are in fact refusing to plan ahead and telling the world they will export each year without any real consideration for future water quality needs. It is not as if two consecutive dry years are something rare and unforeseeable. Obviously, if a Petitioner submits an analysis of the impacts resulting from a change petition but at the same time states publically that it will not operate as analyzed, the Petition is useless and discussions and evaluations thereon are meaningless.

In light of the above, the Petition cannot move forward and must be dismissed. Unless and until DWR and USBR submit a petition which contains complete modeling of their projected operations, including multi-year dry periods the SWRCB and the public have nothing to evaluate. The current process is a waste of valuable time, money and effort.

Very truly yours,


JOHN HERRICK

cc: Service List (attached)