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6 *Attorneys for Protestant Restore the Delta*

7
8 **BEFORE THE**
9 **CALIFORNIA STATE WATER RESOURCES CONTROL BOARD**

10
11 HEARING IN THE MATTER OF
12 CALIFORNIA DEPARTMENT OF WATER
RESOURCES AND UNITED STATES
13 BUREAU OF RECLAMATION REQUEST
FOR A CHANGE IN POINT OF DIVERSION
14 FOR CALIFORNIA WATERFIX

**REVISED OPENING STATEMENT OF
RESTORE THE DELTA — PART 1B**

1 Good day. I am Barbara Barrigan-Parrilla, Executive Director for Restore the Delta. We are
2 a grassroots organization of over 40,000 supporters, dedicated to saving the San Francisco Bay-Delta
3 estuary for our children and future generations by working to protect and restore Delta water quality
4 and quantity.

5 Restore the Delta's case-in-chief will offer evidence into the record to support the following
6 arguments:

7 ~~First, the Petitioners' proposed diversion and tunnel facilities are contrary to state water~~
8 ~~policy.~~

9 ~~Second~~ First, the Petition Facilities represent a new water right, not a mere change to existing
10 water rights permits of the State Water Project and Central Valley Project.

11 ~~Third~~ Second, the Petition Facilities and their operation would alter flow and water quality to
12 such a degree that Petitioners have failed to meet their burden to demonstrate that such alterations
13 would not injure Delta water right holders and other legal beneficial users of water in the Delta
14 region, starting with economic effects of salinity degradation on Delta agricultural output and
15 employment.

16 ~~Fourth~~ Third, the Petitioners have failed to demonstrate that alterations to water quality
17 resulting from operation of Petition Facilities would not degrade flows and water quality, and thus
18 would not harm the environmental justice communities of the Delta region. Petitioners fail to show
19 that degradation of drinking water quality and resulting increased treatment costs, degradation of
20 agricultural irrigation water quality, ruptured linkages for local businesses sourcing local foods and
21 wines, and increased contamination of fish consumed by residents would not occur.

22 Finally, the Petitioners have utterly failed to adequately provide public outreach to the
23 Delta's environmental justice communities and to survey their interests as legal users of water in a
24 comprehensive and culturally sensitive way. In failing to do so, Petitioners have failed to
25 demonstrate that the environmental justice communities would not bear a disproportionate burden
26 from effects of the Petition, especially in light of linkages among Delta water quality issues—both
27 surface and sub-surface—with the economic, social, and health distress that Delta environmental
28 justice community members already face.

1 **~~Failure to Reduce Reliance on the Delta~~**

2 ~~California Water Code Section 85021 states that the policy of the State of California is to~~
3 ~~reduce reliance on the Delta for California’s future water needs. My colleague Tim Stroshane will~~
4 ~~offer evidence showing that the project’s stated purpose and modeling results indicate that it is~~
5 ~~intended to maintain, or even increase, reliance of water users beyond the Delta region on Delta~~
6 ~~exports, not reduce reliance, contrary to the State’s policy.~~

7 **A New Water Right**

8 Restore the Delta will offer a variety of evidence showing that the facilities and operational
9 criteria of the Change Petition represent a new water right, not a mere change in existing state and
10 federal water project water right permits. Petitioners assert that Petition Facilities merely alter where
11 water is diverted and that the overall effect to existing water right parameters would be unchanged.
12 Petitioners ignore the loss of flow in and through the Delta that the Petition facilities would cause.
13 Flow in multiple channels, sloughs, and rivers, through which Projects’ water is delivered to the
14 south Delta pumps, would be significantly reduced by Petition facilities. This removal of fresh
15 water flow from Delta channels represents a change in the method of diversion from the Delta and
16 must be evaluated for its reasonableness under Water Code Section 100 and the California
17 Constitution, Article X, Section 2.

18 Mr. Stroshane’s testimony will also offer evidence that existing water rights permits of the
19 State Water Project and Central Valley Project, rather than susceptible of extension under the
20 California Water Code, are actually complete and should be licensed.

21 First, do Petitioners own and operate completed projects that put water to full beneficial use
22 by the deadlines assigned them by the State Water Resources Control Board? The evidence put
23 forward in Mr. Stroshane’s testimony supports a “yes” answer.

24 Second, were Petitioners sufficiently diligent in constructing and operating a diversion at
25 Hood for a peripheral canal? The evidence put forward in Mr. Stroshane’s testimony supports a
26 “no” answer.

1 Third, do their existing water rights merit award of time extensions so as to develop three
2 new diversions along the lower Sacramento River? The evidence put forward in Mr. Stroshane’s
3 testimony supports a “no” answer.

4 Thus, in this part of our case in chief, we recommend that the State Water Board dismiss the
5 change petition without prejudice and license existing water rights permits for the Central Valley
6 Project and State Water Project, excluding the facilities described in the Change Petition. If the
7 project were to continue—which Restore the Delta opposes as injurious to environmental justice
8 communities’ beneficial uses of water, as well as to other Delta water rights holders—it should be
9 the subject of a new water right application, with an attendant current filing date indicating its junior
10 priority.

11 **Flow and Water Quality Alterations from the Petition Facilities**

12 As has been shown in cross-examination of the Petitioners’ case in chief, Petition Facilities
13 will reduce flows in the lower Sacramento River downstream of the proposed north Delta diversions.
14 Modeling results will be submitted into evidence to support our argument that this flow reduction is
15 regional, extending from the diversion points between Clarksburg and Courtland, and perhaps from
16 even farther upstream, to twenty-one miles downstream at Rio Vista.

17 Our evidence will be organized to follow four other flow effects of this reduction shown in
18 Petitioners’ modeling results: 1) increased residence time of water; 2) increased salinity incursion
19 into the Delta; 3) greater flow into the Central and Western Delta from the San Joaquin River, which
20 has impaired water quality; 4) and potential reverse flows as far upstream as Freeport (above the
21 North Delta diversions on the Sacramento River). These hydrodynamic effects will cause water
22 quality degradation in the Delta, evidenced by increased salinity at key locations that will also
23 intrude into groundwater from Delta recharge.

24 Mr. Stroshane’s testimony touches on modeling issues raised by others about the calibration,
25 verification, peer review, and accessibility of modeling made available by Petitioners, but not
26 included as exhibits with their case-in-chief for this hearing process. Our case-in-chief rests on
27 Petitioners’ representations to that effect. We understand that the initial operating criteria for the
28 Petition Facilities could change—yet again, and soon—and express the hope that in Part 2, Part 1

1 participants will be able to revisit the effects of any changes on the issues we raise in Part 1 of our
2 case-in-chief.

3 **Salinity Impacts on Delta Agriculture**

4 Delta agriculture is the Delta region’s economic engine and is a major employer of portions
5 of the Delta’s environmental justice communities. Harm to this sector of the regional economy
6 would compound direct economic and social losses to the region’s environmental justice
7 communities. Michael Machado, former State Senator and Executive Director for the Delta
8 Protection Commission, will submit into evidence the Delta Economic Sustainability Plan’s
9 modeling of salinity impacts in the south Delta. Water quality protection is crucial to maintain Delta
10 agriculture’s contribution to the Delta regional economy and the state’s economy.

11 **Delta Environmental Justice Communities**

12 My testimony will focus on the variety and size of Delta environmental justice communities
13 that have been inadequately taken account of in the Petitioners’ case for the project and that would
14 be harmed significantly as legal users of water if the petition were granted. We believe that the
15 Petitioners’ own documentation supports this conclusion. Our evidence centers on Stockton and San
16 Joaquin County, the poorest portions of the Delta region where beneficial users of water would be
17 injured by water quality degradation (i.e., reduced flow and increased residence time), as well as by
18 subsurface intrusion of saline water into groundwater under Stockton. Such environmental harms to
19 Stockton’s natural endowment of fresh water would add injury to the economic and social distress,
20 food deserts, low rates of education attainment, and high rates of populations isolated by language
21 barriers endured by Delta environmental justice communities. These injuries would result from the
22 increased expense of water treatment, food security issues, and unemployment associated with
23 degraded water quality. Degraded water quality would adversely impact: 1) urban drinking water
24 for Stockton’s suppliers (both the City and Cal Water); 2) subsistence fishing, including declines in
25 fish populations and increased risks of toxic contamination of fish caught; 3) and urban agriculture
26 intended to improve healthy food access and affordability and create new job opportunities of
27 environmental justice communities. Stockton has been left behind economically. After losing its
28 manufacturing base, it did not develop an information-based economy, unlike more prosperous areas

1 of California. However, the area’s main economic engine, agriculture, which is directly dependent
2 on Delta water quality for both irrigation and groundwater recharge, is the driver behind the new
3 emerging sustainable agricultural economy and related redevelopment of the historic downtown
4 corridor. Our region has other locational advantages that contribute to Stockton’s recently improved
5 prospects. Testimony provided by Esperanza Vielma describes how Delta water quality is linked to
6 what are among the region’s best hopes for a level and kind of economic recovery that would help to
7 lift environmental justice communities out of poverty and improve their health outcomes.

8 **Harmed Beneficial Uses**

9 Finally, testimony provided by ~~Roger Mammen, Ixtzel Reynoso, Gary Mulcahy, and Xuily~~
10 ~~Le~~ will describe beneficial uses of water by environmental justice communities in the Delta ~~and~~
11 ~~elsewhere~~ that would be harmed by alterations to water quality from the Petition Facilities’
12 operations. ~~Their~~ Ms. Reynoso’s presentation will provide human stories to accompany the
13 sobering statistics in the testimony we put on about Delta water quality, Delta agriculture, Delta
14 economic opportunity, and Delta environmental justice.

15 The journalist Bill Moyer once stated, “The mark of an educated person is someone who can
16 read statistics and be moved to tears.” The quantitative analysis I will present tells a tragic story of
17 the breadth of injury that would be experienced by the Delta’s environmental justice communities as
18 a result of the proposed project. Portraits by ~~Gary, Roger, Ixtzel, and Xuily~~ by Ms. Reynoso will
19 show what it would mean to their environmental justice communities.

20 As a concluding observation, we learned via cross examination conducted by the City of
21 Stockton’s attorney Kelley Taber of Petitioners’ witnesses, Petitioners failed to prioritize use of
22 directly available data on water quality to analyze impacts from Petition Facilities on the drinking
23 water intake for the City of Stockton Delta Water Supply Project.

24 Restore the Delta was shocked and outraged by this admission.

25 In our opinion, this is akin to decisions made to switch Flint, Michigan—a large minority
26 majority city—to a degraded water supply from the Flint River as a cost savings
27 measure. Improvements in water quality from Petition Facilities would benefit Silicon Valley, large
28 industrial growers in the San Joaquin Valley, and Southern California, while Stockton, a majority

1 minority city, with over half its population living on minimum wage or less, would be left with
2 degraded water quality. Such an outcome would impose on some of central California's poorest
3 residents an obligation to pay higher costs than they now face to treat their drinking water for human
4 carcinogens and other toxic substances. We call on the State Water Resources Control Board to
5 prevent Stockton from becoming the Flint, Michigan of the West by denying the permit for the
6 change in the point of diversion until such time as the Petitioners can prove that the project will not
7 harm drinking water supplies for the largest Delta city, Stockton.

8 It is our sincere and respectful hope that the hearing officers will reflect on how the specific
9 details provided by RTD witnesses whose environmental justice communities would be harmed by
10 the Petition Facilities' operations exemplify widespread impacts that would be experienced by all
11 residents of the Delta region. We hope that you insist on a complete and accurate analysis from
12 Petitioners of these potential water quality impacts. That way, when you consider whether the
13 Petitioners have met their burden of showing that the project would cause no injury to legal users of
14 water, you'll have as full a record as possible, and a well-informed and justified decision as well.

15 Thank you.

1 **STATEMENT OF SERVICE**

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

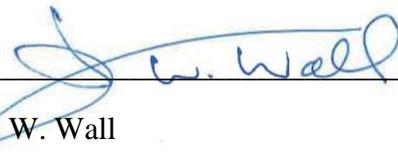
4 I hereby certify that I have this day submitted to the State Water Resources Control Board
5 and caused a true and correct copy of the following document(s):

6 **REVISED OPENING STATEMENT OF RESTORE THE DELTA — PART 1B**

7 to be served **by Electronic Mail** (email) upon the parties listed in Table 1 of the **Current Service**
8 **List** for the California WaterFix Petition Hearing, dated November 15, 2016, posted by the State
9 Water Resources Control Board at [http://www.waterboards.ca.gov/waterrights/water_issues/](http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/service_list.shtml)
10 [programs/bay_delta/california_waterfix/service_list.shtml](http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/service_list.shtml)

11 I certify that the foregoing is true and correct and that this document was executed on
12 December 2, 2016.

13 Signature: _____



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