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**DEPARTMENT OF RESOURCE MANAGEMENT**



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January 22, 2016

State Water Resources Control Board  
Division of Water Rights  
Attn: California WaterFix Hearing Staff  
P.O. Box 2000, Sacramento, CA 95812-2000  
Service via email: [CWFhearing@waterboards.ca.gov](mailto:CWFhearing@waterboards.ca.gov)

**Solano County comments on procedural issues to be discussed at January 28, 2016 Pre-Hearing Conference (Department of Water Resources' and Bureau of Reclamation's Petition for Change in Points of Diversion and Rediversion for the California WaterFix Project)**

The County of Solano submits the following written comments regarding the procedural issues discussed in the State Water Resources Control Board's January 15, 2016 letter. The County appreciates the opportunity to summarize these comments orally at the Pre-hearing Conference beginning on January 28, 2016.

**I. Timing of Hearing**

As we discuss in our protest of the Petition, the State Water Board's consideration of the petition is premature. It is inappropriate for the State Water Board to begin the water rights hearing process before DWR and Reclamation have completed the NEPA and CEQA environmental review processes and the compliance processes for the federal Endangered Species Act and the California Endangered Species Act.

The documents and analyses provided to date simply do not provide sufficient information to allow the public or the State Water Board a meaningful opportunity to understand and comment on this project's substantial adverse impacts, including the potential effects of the water right change petition on legal users of water, including municipal, industrial and agricultural users.

The lack of current SWRCB water quality standards also presents a problem regarding timing of these hearings. It is not clear how the SRWCB can hear and potentially issue permits on a project of this size and complexity without current water quality standards in place. The SWRCB will be unable to determine effects on the Delta with the overarching issue of adequate flow for the Delta remaining unresolved.

The petition lacks accurate information in key areas and relies on a deeply flawed, draft environmental analysis - the Bay Delta Conservation Plan/California Water Fix Recirculated Draft Environmental Impact Report and Supplemental Draft Environmental Impact Statement - that fails to accurately describe the impacts of the WaterFix project. The project proponents are only compounding these flaws by relying on the RDEIR/SDEIS as they push to obtain authorizations for the project from the State Water Board. The environmental documentation prepared by the petitioners also does not adequately demonstrate how the proposed project could impact the people and environment of Solano County, including the quantity and quality of water available from the Delta for beneficial use within Solano County.

The State Water Board must insist on reviewing a full and final environmental analysis for the WaterFix project before beginning the water rights hearing process.

## **II. Clean Water Act Section 401 Application**

The State Water Board Executive Director should not make a decision on the application for water quality certification before completion of the hearing for the water right change petition and before the State Water Board makes a decision on the petition. The information in the hearing record for the water right change petition will be relevant to the certification decision, and the State Water Board's proposed procedure does not guarantee that this information will be available to the Executive Director before the Executive Director could take action on the application for water quality certification.

## **III. Efficiency of the Hearing, Time Limits, and Testimony**

Efforts to streamline the hearing procedures, including the time-saving measures discussed in the January 15, 2016 letter, should not prejudice the ability of all parties to present the full extent of their information and argument to the State Water Board regarding the petition. Given the complexity of the hearing issues, the State Water Board should consider increasing the one-hour total time limit for direct testimony.

## **IV. Consolidation of Cases**

The County is considering the coordination or consolidation of testimony with other parties. The State Water Board should also allow additional time for direct and cross examination to parties presenting consolidated cases.

## **V. Information Requests**

The County's Protest of the Petition contains a discussion of terms and conditions that could resolve the Protest. This section includes a request that, at the very least, the State Water Board reject the Petition until the proponents have provided environmental documentation for WaterFix that appropriately addresses the deficiencies identified in Protest and in the comments attached thereto. The County is likely to present a similar response to any further requirement to submit proposed terms and conditions or other information.

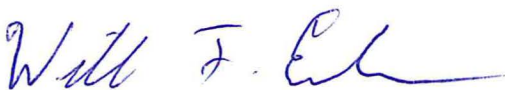
## **VI. Opening Statements**

The County is not opposed to including an overview of legal arguments in its opening statement, but therefore suggests that written opening statements should be subject to a page limit of no less than thirty (30) pages.

## **VII. Service List**

The County is not opposed to an option to opt out of service of certain hearing materials, provided that the State Water Board agrees that this option will not later become a mandatory requirement for all, or certain classes, of parties. If the State Water Board proposes this option, it should provide an estimate and a maximum amount of time that the State Water Board staff will need after receipt to post document on its website.

Thank you for your consideration of these comments.



William F. Emlen  
Director of Resource Management  
County of Solano

CC via email: Participants listed in enclosure to January 15, 2016 State Water Board letter