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6 Attorney for Protestants Save the California Delta Alliance, et al.

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

9 **IN RE CALIFORNIA WATERFIX**
10 **CALIFORNIA DEPARTMENT OF**
11 **BUREAU OF RECLAMATION**
12 **PETITION FOR CHANGES IN**
13 **WATER RIGHTS, POINTS OF**
14 **DIVERSION/RE-DIVERSION**

PROTESTANT SAVE THE CALIFORNIA
DELTA ALLIANCES ET AL'S RESPONSE TO
HEARING OFFICER'S QUESTIONS
REGARDING CHANGES TO WATERFIX
PROJECT AND EFFECTS OF STAGED
APPROACH ON HEARINGS

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1 Save the California Delta Alliance hereby responds, as directed by the Hearing Officers’
2 email of February 8, 2013, to the questions posed by the Hearing Officers in that email. These
3 comments are necessarily not comprehensive because of the limited time allowed. We believe that
4 fairness requires, after considering the initial responses submitted by Protestants today, that more
5 time be allowed for Protestants to formulate fuller responses and suggestions in light of the
6 substantial changes to the project being proposed by Peititioners.

7
8 **Question 3** : If the WaterFix Project is intended to be constructed and operated in stages, is an
9 amendment to the change petition or any additional supporting information under Water Code
10 sections 1701.1, 1701.2, and 1701.3 necessary? Why or why not?

11 **Answer: Yes.** At a minimum Petitioner should submit an updated staged-approach Construction
12 Schedule and updated staged-approach Pile Driving Assumptions that are at least as detailed as the
13 Construction Schedule and Pile Driving Assumptions found at Appendix 3.D and Appendix 3.E of
14 the Biological Assessment. (*See* SCDA-82, 83.) Petitioner should also submit an updated staged-
15 approach Barge Traffic description/assessment that is at least as detailed as the current barge
16 assessment. (*See* SCDA-103 [USFWS Biological Opinion § 2.5.1.1.1.2 Barge Traffic].) Petitioner
17 should also issue a new EIR addressing the more prolonged impacts of staged construction
18 activities.

19 Impacts of construction will be devastating to recreation in the Delta in large measure
20 because of the prolonged nature and distribution of construction activities in the Delta. *See* Save the
21 California Delta Alliance Part 2 exhibits SCDA-65 (testimony of acoustical engineer Charles Salter
22 on impacts of prolonged pile-driving noise on recreation) , SCDA-86 (testimony of tour boat
23 operator Frank Morgan on impacts of prolonged barge traffic and other construction activity on
24 Delta recreation), SCDA-100 (testimony of traffic engineer Chris Kinzel on impacts of prolonged
25 road traffic disruption on Delta recreation), SCDA-150 (Testimony of Delta Chamber of Commerce
26 Director Bill Wells on impacts of prolonged construction activity on Delta marinas and other
27 aspects of Delta recreation).

28 Delta Alliance’s testimony about the effects of prolonged construction activity on recreation

1 is based on the detailed construction schedule proffered by Petitioners and included as Exhibit
2 SCDA-83 (Biological Assessment Appendix 3.D, Construction Schedule for Proposed Action).
3 Testimony about impacts to recreation from prolonged pile-driving noise is additionally based on
4 Petitioners' proffered schedule for pile-driving activities (*See* SCDA-82 [Biological Assessment,
5 Appendix 3.E Pile Driving Assumptions for the Proposed Action.]) Testimony and exhibits about
6 barge traffic are based on the Biological Opinion Barge Traffic assessment. (*See* SCDA-103.)

7 The Construction Schedule, Pile Driving Assumptions, and Barge Traffic Assessment
8 contain many detailed descriptions of activities, timing, and magnitude crucial to understanding
9 impacts. For example, the Construction Schedule and Pile-Driving Assumptions reveal that as many
10 as sixteen pile drivers will be operating at once, with many overlapping pile strikes, just a few
11 hundred feet from the legacy communities of Clarksburg and Hood. (*See* Testimony of Acoustical
12 Engineer Charles Salter, SCDA-65.) The unbearable noise level generated by this pile driving has
13 prompted Delta Alliance to propose a permit condition requiring that alternative, non-impact,
14 methods of foundation construction be used. We have submitted testimony of a qualified structural
15 engineer to show such methods are feasible. (*See* SCDA-125 [testimony of Rune Storesund].) By
16 way of further example, the location of Petitioners major staging area and tunnel muck dump off of
17 Highway 12 near Rio vista in conjunction with Petitioners barge traffic forcing many additional
18 openings of the Highway 12 draw bridge at Rio Vista, will severely impact access to the Delta vial
19 Highway 12 and thereby injure recreation. The Barge Traffic Assessment reveals the number of
20 seasons barges will be in use, their routes, and other barge impact-related information.

21 Petitioner's current proposal (according to Petitioner's schedules submitted during Part 1) is
22 to undertake six years of construction activity at the three currently proposed intakes between
23 Clarksburg and Walnut Grove, and to undertake nine years of construction activity along the forty
24 mile tunnel route from Hood to Clifton Court Forebay. The use of thousands of barge trips on Delta
25 waterways, thousands of truck trips on Delta roadways, construction and use of staging areas, and
26 tunnel muck dumps throughout the Delta will have recreational impacts throughout the Delta, not in
27 limited areas, throughout the construction period. (*See* SCDA-72 [map of Delta-wide construction
28 impacts].)

1 Petitioner’s letter of February 7, 2018, to Public Water Agencies from Karla Nemeth,
2 anticipates beginning construction on two intakes and one tunnel immediately and then “stage two
3 would begin once additional funding commitments are made from supporting water agencies.” This
4 leaves open the possibility that the Delta would have to endure nine years of construction on tunnel
5 #1 and the first two intakes and then another nine years of construction on tunnel #2 and the third
6 intake. This would mean the Delta being “closed for construction” for *eighteen consecutive years*.
7 Alternatively, “stage two” might begin after stage one was under for construction for six years,
8 meaning a total of fifteen consecutive years of construction activity. A change from nine years of
9 continuous construction to eighteen years of continuous construction is an existential change in the
10 nature of the project and its impacts.

11 At a minimum, in order to participate meaningfully in Part 2, Delta Alliance would need to
12 have an updated “staged approach” Appendix 3.D Construction Schedule for Proposed Action and
13 updated Appendix 3.E Pile Driving Assumptions of the Biological Assessment. Additionally a new
14 Environmental Impact Report reflecting the duration, distribution, and magnitude of impacts of the
15 prolonged staged approach on recreation would be required. Petitioner has acknowledged that
16 Endangered Species Act compliance will require updating of the Biological Assessment and EIR to
17 reflect the staged approach. These documents should be completed and submitted into the record
18 before Part 2 begins.

19
20 **Question 4:** If the WaterFix Project is constructed and operated in stages, are there potential
21 impacts to legal users of water, fish and wildlife, the public interest, or consideration of appropriate
22 Delta flow criteria that would warrant revisiting any Part 1 or Part 2 key hearing issues? Which
23 issues? **Yes:** A prolonged construction schedule increases and changes the impacts to legal users,
24 fish and wildlife, and the public interest. These issues should be considered only after Petitioner has
25 submitted an updated Construction Schedule, updated Pile Driving Assumptions, and updated Barge
26 Operations Assumptions. A prolonged construction schedule entails more seasons in which the
27 Delta will be subject to heavy barge traffic due to Petitioner’s use of barges to haul tunnel segments
28 from the Port of Stockton and other ports to eight new offloading barge docks scattered throughout

1 the Delta, and from there across Delta Islands and down access shafts to be placed in the tunnel(s).
2 A prolonged construction schedule will also entail more seasons in which the Delta will be subject
3 to heavy barge traffic due to Petitioner's use of barges to haul tunnel muck up through access shafts,
4 across Delta islands, and onto barges to be hauled to tunnel muck dumps located in several areas
5 around the Delta. The large tug boats proposed by Petitioner to be used to push the barges will
6 cause "propeller wash" and "bottom scour." Both of these phenomenon increase turbidity, which
7 has negative effects on recreation, fish and wildlife, and legal users of water. These negative
8 impacts are conceded by Petitioner in the EIR.

9 As discussed in Question 3 above, prolonging the duration of heavy barge traffic on the
10 Delta will negatively impact navigation, including recreational navigation, and recreation in
11 general. Petitioner has scheduled most of its barge traffic in the summer boating season in order to
12 lessen impacts to fish during other seasons. However, concentrating barge traffic during the summer
13 season is devastating to Delta recreation, as the summer is the boating and water-related recreation
14 season. The loss of nine boating seasons is a severe impact. The loss of 14, 16, 18, or more boating
15 seasons due to the staged approach would be that much worse.

16 Operation of one tunnel fed by two impacts may have more severe impacts on legal users
17 and the environment than operation of three tunnels fed by two intakes. We cannot present an expert
18 analysis in the short time allowed. However, there is no evidence in the record to indicate that
19 Petitioner's "lesser included offense" approach is valid. Petitioner essentially claims that if it has
20 undergone examination of a larger project, then any smaller project is automatically included within
21 the scope and outcome of that analysis. This claim cannot be lawfully accepted by the Board absent
22 evidentiary proceedings based on a detailed description of Petitioner's new approach. This includes
23 any consideration of Delta flow criteria.

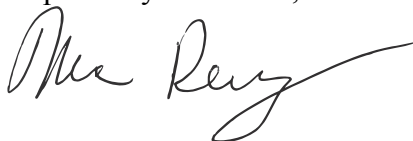
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25 **Question 5:** If a supplement to the EIR is entered into the administrative record, what is the most
26 efficient way to address any new information included in the supplement? Because the purpose of
27 an EIR is to disclose impacts to decision makers, the supplement to the EIR (or new EIR) should be
28 completed, certified, and entered into the administrative record along with the amendment to the

1 Change Petition described in number 3 above. No hearings should be scheduled until those steps are
2 completed. Once the amended Petition and new EIR are submitted, a pre-hearing conference should
3 be scheduled to determine how the new information should be considered.

4
5 **Question 6 Part One:** Would any conditions necessary to adequately protect the rights of legal
6 users, fish and wildlife, or the public interest be different if the WaterFix Project were constructed
7 in stages? **Yes.** The new and prolonged construction schedule, as discussed above, changes the
8 nature and duration of impacts. It may also change the location of the most severe impacts.
9 Different conditions would include limits on timing and duration of construction activities in the
10 Delta. The purpose of an EIR is to disclose impacts to decision makers. Absent a new EIR
11 disclosing the new impacts, neither Protestants nor the Board can guess what impacts will accrue
12 and what conditions will be needed to address those impacts. The Supplemental (or new) EIR must
13 therefore be completed before hearings resume.

14 **Question 6 Part Two:** Would appropriate Delta flow criteria be different? Why or why not? **Yes**
15 **appropriate flow criteria would be different.** One tunnel fed by two intakes may present different
16 and more severe impacts on downstream flows and may push Petitioner to draw more water during
17 the summer months. The original impetus of the tunnels was “Big Gulp” “Little Sip” meaning draw
18 more water during large storm events and less water during dry summer months. Two intakes have
19 less capacity to draw water during large storm events than three, pushing exports even more toward
20 the dry summer months. The short period of time allowed for this response does not provide the
21 opportunity for a complete analysis. However, the push toward more summer exports is
22 unavoidable with smaller diversion capacity.

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24 Respectfully submitted,

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27 Michael A. Brodsky
28 Counsel for Protestant
Save the California Delta Alliance

Dated: February 13, 2018

STATEMENT OF SERVICE

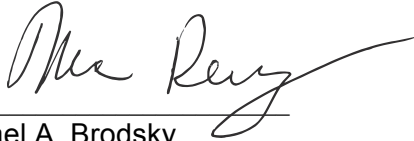
**CALIFORNIA WATERFIX PETITION HEARING
Department of Water Resources and U.S. Bureau of Reclamation (Petitioners)**

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):

PROTESTANT SAVE THE CALIFORNIA DELTA ALLIANCES ET AL'S RESPONSE TO HEARING OFFICER'S QUESTIONS REGARDING CHANGES TO WATERFIX PROJECT AND EFFECTS OF STAGED APPROACH ON HEARINGS

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 January 24, 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 February 13, 2018, at Santa Cruz, California.

Signature: 
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Party/Affiliation:
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