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Cc: "Mizell, James@DWR" <James.Mizell@water.ca.gov>

Subject: **Schedule Information Related to California WaterFix**

Dana and Diane,

As you know, on August 26, 2015, the California Department of Water Resources (DWR) and U.S. Bureau of Reclamation (Reclamation) submitted to the State Water Resources Control Board (State Water Board) a petition for a change to the water rights necessary to allow for the implementation, if approved, of key components of the State's proposed "California WaterFix" project. On September 16, 2015, DWR and Reclamation submitted an addendum and errata for the petition. Within the next few days, DWR expects to submit to the State Water Board an application for water quality certification pursuant to Section 401 of the Clean Water Act. This e-mail is to inform you of our preference regarding the processing of the Section 401 water quality certification application, as well as to inform you of our current understanding of the schedule for completing compliance with the federal and California Endangered Species Acts and the National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA).

Section 401 Certification

If approved, construction of the proposed California WaterFix would involve the discharge of dredged or fill material into waters of the United States and, prior to construction, the project requires a permit from the US Army Corps of Engineers (USACE), pursuant to Section 404 of the Clean Water Act. The permit under Section 404 may not be issued without obtaining certification from the state that the discharge is consistent with the applicable water quality standards. Because water right authorizations from the State Board are requested for the project, we have been directed to submit the application for Section 401 water quality certification to the State Water Board, Division of Water Rights.

DWR appreciates the potential complexities associated with the State Water Board's hearing process for the change petition and we therefore request that the State Water Board consider the California WaterFix application for Section 401 water quality certification in a process separate from the change petition.

Schedule for Compliance with Federal and California Endangered Species Acts

The California WaterFix project involves the request for federal approvals related to construction (USACE) and coordinated operations with the federal Central Valley Project (Reclamation). As a requirement of Section 7 of the federal Endangered Species Acts (ESA), prior to making a final decision on the action, the federal agencies must, in consultation with the U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS), ensure that the proposed action does not jeopardize the continued existence of a listed species or adversely modify or destroy critical habitat. The Section 7 process for the California WaterFix project involves the preparation of a biological assessment, expected to be submitted to USFWS and NMFS in November 2015, and issuance of a biological opinion, expected from USFWS and NMFS within the April-June 2016 timeframe, prior to Reclamation and USACE final decision on approval of the California WaterFix project. DWR will ensure that the final documents

associated with Section 7 are available to the State Water Board and, as the Section 7 consultation process continues, DWR will update the State Water Board on the schedule for document releases.

The California WaterFix project, if approved, would involve activities that may cause the take of species listed under the California Endangered Species Acts (CESA). DWR intends to obtain incidental take authorization for the California WaterFix project through Section 2081(b) of the California Fish & Game Code. DWR expects to submit an application for an incidental take permit to the California Department of Fish & Wildlife (CDFW) in November 2015, and expects DFW to make a decision on whether to issue the permit within the same approximate timeframe as the biological opinion issued under Section 7 of the ESA (with the caveat that it would come after DWR completes the process for CEQA compliance and decision on project approval).

Schedule for Compliance with NEPA and CEQA

In July 2015, DWR and Reclamation issued the BDCP/California Water Fix Partially Recirculated Draft Environmental Impact Report/Supplemental Draft Environmental Impact Statement (RDEIR/SDEIS). The BDCP Draft EIR/EIS was issued December 2013. DWR and Reclamation expect to complete preparation of a Final EIR/EIS in May- June 2016 timeframe and Reclamation would issue the record of decision (ROD) to complete the NEPA process after receipt of the biological opinion. DWR expects to certify the EIR and make a decision on the project and file a notice of determination (NOD) completing the CEQA process at approximately the same time as Reclamation issues the ROD.

The change petition was submitted to the State Water Board to begin the water rights hearing process which may necessarily take many months to complete. It was submitted within the comment period for the RDEIR/SDEIS in order to allow the State Water Board and the public the time and information needed to fully consider the proposed changes, in coordination with the environmental analysis required by CEQA and NEPA. A final decision on this Petition is not requested until DWR and Reclamation completes preparation of the Final EIR/EIS, makes a decision on the project, and issues the NOD and ROD (which includes completion of the Section 7 of the ESA). It should be noted that besides the need to begin the change petition process in order to efficiently complete the process within a reasonable amount of time (projected to be well after the completion of the CEQA/NEPA process), starting the process now gives DWR and Reclamation, prior to completing the Final EIR/EIS and determining whether to approve the proposed project, the benefit of being able to consider the additional comments/environmental issues submitted in reaction to the change petition.

Please let me know if you have any questions,

Ken

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