CVCWA
Central Valley Clean Water Association
Representing Over Fifty Wastewater Agencies

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December 16, 2016

Ms. Felicia Marcus, California WaterFix Co-Hearing Officer
Ms. Tam Doduc, California WaterFix Co-Hearing Officer
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

SUBJECT: Policy Statement on California WaterFix Water Right Change Petition

The Central Valley Clean Water Association (CVCWA) appreciates the opportunity to provide comments on the California WaterFix Water Right Change Petition. CVCWA is a nonprofit association of Publicly Owned Treatment Works (POTWs) throughout the Central Valley whose primary mission is to represent wastewater agencies in regulatory matters while balancing environmental and economic interests. CVCWA members have a deep commitment to the protection of beneficial uses in the waters of the Central Valley, and have a special interest in the recovery of the Delta ecosystem. Many of CVCWA's members will be directly impacted by the proposed California WaterFix project and have a significant interest in the Water Right Change Petition.

Context for CVCWA Comments

CVCWA members are impacted by an impaired Delta ecosystem. Regulatory pressures are intense because of the Pelagic Organism Decline (POD) and other ecosystem problems, many of which are the result of historic water project operations. CVCWA therefore has an interest in ensuring that all actions pertaining to the proposed California WaterFix will remedy past impacts associated with the operations of the Central Valley Water Project (CVP) and State Water Project (SWP0 that have contributed to a degraded Delta ecosystem. Further, CVCWA has an interest in ensuring that the proposed WaterFix project will not, under any circumstances, make conditions in the Delta worse. CVCWA's comments are intended to address this interest.

It was acknowledged in the Bay-Delta Conservation Plan (BDCP) Environmental Impact Report and Environmental Impact Statement (EIR/EIS) in Section 31, page 31-5 that current water project operations have caused "long standing adverse environmental consequences associated with...diversions from the South Delta, such as...fish losses from entrainment."

Facts that are commonly recognized include:

- Reduced exports from the South Delta result in reduced entrainment and losses of fish during low flow conditions.
- Reduced use of the South Delta facilities during certain critical periods will improve fish survival.
- Migrating salmon have less chance of survival if diverted into the Central Delta, where predation pressure and entrainment are greatest.

It is also understood within the Delta scientific community that current water project operations have increased hydraulic residence times in the Delta, altered salinity regimes, changed the annual hydrograph, exacerbated the effects of nutrients and caused indirect loss of productivity. These changes have led to significant water quality and beneficial use impacts, such as the proliferation of invasive species, changes in the Delta food web, and increased predation of covered fish species.

CVCWA is concerned that the proponents of the proposed California WaterFix will not be required to develop information in a publicly accessible manner that would allow stakeholders to directly address these impacts of past and future water project operations on covered fish species and the Delta ecosystem. Information on past and current water project operations represents the foundation for assessment of future impacts of changed water project operations under the proposed WaterFix project. CVCWA is concerned that the failure to establish this foundation limits the ability to estimate or understand the future impacts of the proposed project. Additionally, it is essential to clearly identify and distinguish the differences in export volumes that are currently occurring versus the export volumes that will be accommodated by the proposed project. This difference must be provided as a "bright line, bold print" statement so that all parties can understand the ultimate impact of the proposed project.

The purpose of the WaterFix project is to improve the Delta ecosystem, consistent with the co-equal goals of the Delta Plan and Delta Reform Act. The proposed WaterFix project intends to improve the Delta ecosystem through reduced entrainment in the South Delta. It no longer includes elements to improve ecosystem health through wetlands creation. A high degree of uncertainty continues to exist regarding the ability of the proposed project to deliver on this intent.

The burden of proof is on the WaterFix proponents to clearly identify the positive and negative future impacts it will have on the Delta ecosystem and to ensure that the advertised benefits are realized.

Major Comments

The proposed California WaterFix project, with a proposed diversion of 9000 cubic feet per second, will have significant adverse impacts on water quality, water residence times, and beneficial uses of the Delta.

The magnitude of water quality and water residence time changes has been well quantified in the EIR/EIS for the proposed WaterFix project.

One of the major water quality impacts will be significant increases in salt concentrations in the Delta. The Delta is already listed as impaired for salt on California's Clean Water Act section 303(d) list. This impairment adversely impacts agriculture in the Delta and creates National Pollutant Discharge Elimination System (NPDES) permitting challenges for Delta communities. The City of Tracy, one of our CVCWA members, is a "poster child" for local communities impacted by the current elevated salt levels in the Delta. The proposed WaterFix project will exacerbate the serious problem of inconsistency with the federal antidegradation policy with regard to electrical conductivity (EC)[1] and other 303(d)-listed parameters in the Delta. The Partially Recirculated Environmental Impact Report and Supplemental Environmental Impact Statement (RDEIR/SDEIS) for the WaterFix project confirms that significant ***measurable*** degradation of EC in the Delta associated with the proposed project will occur. The WaterFix EIR/EIS and RDEIR/SDEIS fail to identify adequate alternatives or mitigation measures to offset this significant impact. This fatal flaw results in a proposed project that violates provisions of the Clean Water Act (33 U.S.C. § 1251 et seq.).

A second significant impact—the increases in residence time for water in the Delta—will have a direct effect on the frequency and magnitude of *Microcystis* blooms in the Delta. Longer residence times during the warm summer months are acknowledged to be a major driver for cyanobacteria (such as *Microcystis*) blooms in the Delta.[2] The recent history of increased cyanobacteria blooms in the Delta during the drought further demonstrates this point. The proposed WaterFix project has failed to address the effects of modified in-Delta flow regimes and increased residence time changes associated with the proposed project. Additionally, it is commonly accepted that reduced flow is a prime driver of the undesirable proliferation of invasive macrophytes (e.g. Brazilian waterweed and water hyacinths) in the Delta.[3] The occurrence and magnitude of these undesirable species are associated with low velocities and increased residence times in the system. The WaterFix project also fails to link changed flow regimes associated with the proposed project to the increased proliferation of undesirable and invasive macrophytes in the Delta.

A third significant impact of the proposed WaterFix project and the ongoing operation of the water projects is the impact on the productivity of the Delta ecosystem and the exacerbation of the impacts of nutrients. Historic water operations have impacted the Delta food web, a low-productivity estuarine system. Mass transport of phytoplankton and nutrients in the exports is not accounted for in the analysis of the Delta ecosystem. Additionally, the impacts of invasive species (clams, macrophytes) on the food

[1] EC is a commonly used means of measuring salt in surface waters.
[2] Boyer, K., SFSU and Sutula, M., SCCWRP (2015). Factors Affecting the Growth of Cyanobacteria with Special Emphasis on the Sacramento-San Joaquin Delta. Prepared for: The Central Valley Regional Water Quality Control Board and The California Environmental Protection Agency State Water Resources Control Board (Agreement Number 12-135-250), August 2015.
[3] Berg, M., AMS and Sutula, M., SCCWRP (2015). Factors Controlling Submersed and Floating Macrophytes in the Sacramento-San Joaquin Delta. Prepared for: The Central Valley Regional Water Quality Control Board and The California Environmental Protection Agency State Water Resources Control Board (Agreement Number 12-135-250), October 2015.

web and the effects of the proposed project on the proliferation of those invasive species are not addressed. The project proponents should be required to participate in Delta Regional Monitoring Program (Delta RMP) modeling to provide a mass balance of nutrients in the Delta, which will allow for the credible assessment of project operations.

These significant impacts, which are only three examples of the impacts of the proposed project, must be avoided, ideally, or totally mitigated.

Requested Mitigation as a Condition of Water Rights Permit

As an initial element of mitigation for these significant impacts on the Delta ecosystem and beneficial uses, CVCWA asks that the project proponents be required to immediately put forward significant funding for modeling and monitoring to better understand project impacts and to support the modification of water project operations to achieve overall protection of the beneficial uses of the Delta.

To be specific, CVCWA requests that the WaterFix project dedicate $2 million for modeling and $1 million for monitoring – payable to the Delta RMP. The basis for these numbers comes from Delta RMP budget estimates and modeling estimates developed for the Delta Nutrient Science and Research Program. The Central Valley Regional Water Quality Control Board-led Modeling Science Workgroup prepared an assessment on monitoring and modeling needs for the Delta region. As an example expected level of effort, modeling needs for the Delta Nutrient Research Plan are estimated at $1.7 million for 10 years, which includes $500,000/year for supporting monitoring and peer review.

CVCWA also requests that mitigation be provided to address the long-term management of salts in the Central Valley. WaterFix proponents should be required to provide funding of $2 million to assist in the funding for the proposed Prioritization and Optimization Study that is a proposed element of the Central Valley Salt and Nitrate Management Plan's (SNMP) Salinity Management Strategy, which is being developed by the Central Valley Salinity Alternatives for Long-Term Sustainability (CV-SALTS). Phase I of the Salinity Management Strategy includes the Prioritization and Optimization Study to facilitate identification of regional and sub-regional salinity management projects. During Phase II and III, the projects will be implemented as identified within the Study. The Study is currently anticipated to cost up to $10 million and to take about 10 years to complete. Due to the magnitude and importance of the Study for Central Valley-wide salinity management, CV-SALTS has recommended that a wide group of stakeholders who will benefit directly and indirectly from the SNMP assist with funding for both the Study and implementation of Phases II and III, as applicable. Due to the impacts that the WaterFix project will have on salinity in the Delta, it makes sense for the project proponents to contribute funds toward salt management efforts in the region.

CVCWA requests that the project proponents be required to provide initial mitigation as requested above as a condition of any future water right determinations regarding operation of WaterFix or associated water project operations.

Thank you for this opportunity to provide these policy comments. If you have any questions, or if CVCWA can be of any further assistance, please contact me at (530) 268 1338 or eofficer@cvcwa.org.

Sincerely,

Debbie Webster

Debbie Webster,
Executive Officer

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):

POLICY STATEMENT ON CALIFORNIA WATERFIX WATER RIGHT CHANGE PETITION

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 November 15, 2016, 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:

Note: In the event that any emails to any parties on the Current Service List are undeliverable, you must attempt to effectuate service using another method of service, if necessary, and submit another statement of service that describes any changes to the date and method of service for those parties.

FOR PETITIONERS ONLY:

I caused a true and correct **hard copy** of the document(s) to be served by the following method of service to Suzanne Womack & Sheldon Moore, Clifton Court, L.P., 3619 Land Park Drive, Sacramento, CA 95818:

Method of Service: Mail

I certify that the foregoing is true and correct and that this document was executed on December 16, 2016.

Signature: Jennifer Estabrook
Name: Jennifer Estabrook
Title: Legal Secretary
Party/Affiliation: Central Valley Clean Water Association
Address: 500 Capitol Mall, Suite 1000
Sacramento, CA 95814