



Hearing Officer Felicia Marcus
Hearing Officer Tam M. Doduc
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

February 8, 2018

RE: State Water Resources Control Board Hearing on the CA WaterFix Change in Water Rights Petition, Part 2: Impacts to fish, wildlife and other public trust resources

Dear Hearing Officers Doduc and Marcus:

This hearing, and the updates to the Bay-Delta Water Quality Control Plan, represent a pivotal moment in California water and ecosystem management: an opportunity to either maintain the failing status quo or to restore the balance between reliable state water supplies and a healthy, resilient Delta. We are at this point because the Delta is in ecological crisis that has only become more perilous in recent years. The Delta Reform Act in 2009 called for co-equal goals of supply and Delta ecosystem health; however, water management decisions have consistently favored water supply, as demonstrated during the recent drought.

The project will improve some hydrologic functions and increase water supply reliability but will lower water quality in the project area, and is anticipated to have negative impacts to listed species and to the Estuary's food web. These impacts—and perhaps more importantly, the absence of positive benefits—are not justifiable under the public trust doctrine when the Delta is already in ecological crisis. The State Water Board must consider the public trust doctrine in making determinations that balance beneficial uses. In this case, protection of the public trust should take into account the ecological crisis in the Delta, and the imbalance in beneficial uses up to this point that has created this crisis. It is not enough for this project to meet outdated regulatory standards and contractual obligations that reflect a wetter past.

Lowered water quality also violates federal and state antidegradation policies. According to the State Water Board's antidegradation policy (Resolution 68-16), impacts to water quality can only be permitted when the social and economic benefits of the project outweigh the impacts. Both the public trust doctrine and federal and state antidegradation policy mandate that protection of our common heritage of streams, lakes, marshlands and tidelands—particularly those areas of national or international significance like the Bay-Delta Estuary—should be protected in all but “rare cases” in which the sacrifice of water quality and our natural heritage is justified by the greater good of the project to society.¹

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The State Water Board's antidegradation policy highlights the importance of weighing the socioeconomic benefits of the project against its impacts, and the Final EIR/EIS reinforces the necessity of including a socioeconomic evaluation in the State Water Board's decision regarding this water rights petition.² Economic analyses have been conducted on impacts to jobs and income derived from implementation of the project and to a limited extent on impacts to other types of use values; however, an analysis that estimates the non-use value of the Delta as a unique cultural and biological resource is absent.

Our recent review of existing economic literature on the Delta, the San Francisco Bay-Delta Estuary, and the watershed's instream flows concluded that non-use values have not been estimated for the Estuary and its major tributaries and recommended a contingent valuation study to determine the unique value of the Delta to the state and nation.³ Furthermore, while the use value of water can be calculated with market prices, the economic value of water left in our rivers and estuary is not so easily determined. Urban and agricultural valuations of water use fail to account for the opportunity costs of beneficial uses lost when water is withdrawn from the ecosystem. Pegging water's value at its historical cost and ignoring the dynamics of replacement and opportunity costs causes the resource to be underpriced; as a result, demand for its extraction increases. A complete economic analysis would also need to establish existence values for threatened and listed fish and other aquatic species that could decline further under the proposed project, along with the existence value of impacted wildlife refuges and migratory corridors.

Finally, any analysis must consider the link between possible unintended socioeconomic impacts and concomitant ecological consequences of the proposed project.⁴ For example, "temporary" impacts to Delta agriculture could very well degrade the long-term stability of the Delta's agricultural community. As the Delta Protection Commission says, "Implementation of the project as currently conceived would irreparably harm the Delta as we now know it." As agriculture moves out, rural residential and exurban or suburban sprawl frequently move in, particularly in areas with high development pressure in proximity to major metropolitan centers, as is the case with the Delta. As part of the anti-degradation analysis, the State Water Board must consider whether the specific impacts to recreation- and agriculture-based businesses in the Delta will result in a cumulative degradation of the long-term economic stability and cultural character of the region, and the potential for subsequent environmental consequences.

The State Water Board must commission an adequate socioeconomic analysis before proceeding with a decision on this water rights petition.

Thank you,



Mitch Avalon
Board President

¹ The lead agencies assert that the project fulfills the public trust doctrine by preventing environmental impacts due to groundwater pumping and reduced air quality caused by fallowed land; however, this is speculative since there is no guarantee that agricultural producers will cease to pump groundwater or fallow land with implementation of the project (p. 1-111 in *CWF FEIR-EIS Volume II: Master Responses*).

² Pp. 1-134-135 in *CWF FEIR-EIS Volume II: Master Responses*

³ This review is attached to this statement and available on our website at

http://www.friendsofsfestuary.org/uploads/2/1/6/8/21682956/fsfe_lit_review_final_smyth.pdf

⁴ Chapter 30 of the Final EIR/EIS is intended to assess indirect growth inducement as the result of implementation of the project, but does not evaluate the possibility of zoning changes and suburban or exurban growth in the Delta as the result of the decline or collapse of Delta agriculture.

