



RURAL COUNTY REPRESENTATIVES
OF CALIFORNIA

February 26, 2016

Ms. Felicia Marcus, California WaterFix Project Co-Hearing Officer
Ms. Tam Doduc, California WaterFix Project Co-Hearing Officer
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Transmit Via Email: CWFhearing@waterboards.ca.gov

RE: RCRC California WaterFix Policy Statement

Dear Co-Hearing Officer Marcus and Co-Hearing Officer Doduc:

On behalf of the thirty-five member counties of the Rural County Representatives of California (RCRC), I appreciate the opportunity to submit this statement relating to the petition jointly submitted (Joint Petition) to the State Water Resources Control Board (State Water Board) by the Department of Water Resources (Department) and the U.S. Bureau of Reclamation (Bureau) for a change in water rights as part of the California WaterFix Project. RCRC submitted a Notice of Intent to Appear (NOI) in a timely manner, and appears on the List of Other Interested Persons intending to present a non-evidentiary statement on the Joint Petition.

RCRC is governed by a Board of Directors composed of one county supervisor from each of the thirty-five member counties. Since RCRC was founded in 1972, water rights and the California water right priority system has been the foundation of RCRC's water policy. RCRC member counties that could be affected by the California WaterFix Project are: Butte, Colusa, El Dorado, Glenn, Imperial, Madera, Merced, Napa, Placer, San Benito, San Luis Obispo, Shasta, Sutter, Tehama, Trinity, Tulare, Yolo and Yuba.

RCRC has previously submitted comments during the public comment period on both the Draft Bay Delta Conservation Plan (BDCP), Draft Environmental Impact Report/Environmental Impact Statement (DEIR/EIS) and Implementing Agreement (IA) (July 29, 2014); and; the BDCP/California WaterFix Partially Recirculated Draft EIR/Supplemental Draft EIS (RDEIR/SDEIS)(October 27, 2015). Additionally, RCRC

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ALPINE AMADOR BUTTE CALAVERAS COLUSA DEL NORTE EL DORADO GLENN HUMBOLDT IMPERIAL INYO LAKE LASSEN MADERA MARIPOSA MENDOCINO MERCED
MODOC MONO NAPA NEVADA PLACER PLUMAS SAN BENITO SAN LUIS OBISPO SHASTA SIERRA SISKIYOU SUTTER TEHAMA TRINITY TULARE TUOLUMNE YOLO YUBA

staff monitored the State Water Board Pre-Hearing Conference held on Thursday, January 28, 2016.

At the January 28, 2016 Pre-Hearing Conference, a number of the parties who will be participating in the evidentiary portion of the hearing brought to the attention of the members of the State Water Board a variety of concerns similar to those raised in RCRC's previous comments on the BDCP and the California WaterFix Project.

RCRC's primary concern with the California WaterFix Project is the lack of assurances for areas upstream of the Delta and in-Delta as it relates to regional water sustainability, water right protections, and no negative unmitigated direct or indirect impacts to the water supply, economy, and environment of these areas.

During the Pre-Hearing Conference, numerous commenters touched upon the inadequacy/incompleteness of the RDEIR/SDEIS and the difficulty as a result to present their case in the proceedings before the State Water Board. RCRC is appreciative that the State Water Board in its Pre-Hearing Conference Ruling issued on February 11, 2016, recognized the difficulty parties face sorting through voluminous documents to decipher relevant details necessary to assess whether the Joint Petition will cause injury. The ruling also sought to identify where the available information lacks clarity (including whether the operational criteria are intended to constrain project operations or are identified for modeling purposes only), areas where a specific operational component or mitigation measure is not yet chosen or identified, operational parameters that are not defined and deferred to an adaptive management process, and lack of clarity concerning mitigation measures.

RCRC supports the State Water Board's Pre-Hearing Conference Ruling relating to the revised hearing schedule which will allow the petitioners to present their cases without delay and allow other parties to submit their written testimony and exhibits for their cases at a subsequent date. Moving forward with the hearing in a manner which staggers the deadline for the submittal of testimony, an alternative proposed by the Sacramento Valley Water Users (SVWU) at the Pre-Hearing Conference, will allow those protesting the Joint Petition the time needed to obtain and review the relevant data and determine how their interests may be impacted as they prepare their case. This revised hearing schedule sequence will enable the State Water Board to render a final decision based on the best available information.

The manner in which the Central Valley Project (CVP) and State Water Project (SWP) upstream reservoirs are operated can clearly impact non-SWP and non-CVP water right holders. The 2014 drought year showed that the approach to the operations of the CVP and SWP needs to be modified to ensure a stable supply of water is maintained in key reservoirs such as Folsom Lake that feed into the CVP and SWP in order to meet the needs of Northern California while also serving export interests and

meeting requirements in the Delta. RCRC has previously urged that the Corps of Engineers manuals governing reservoir operations be updated.

This year in February, federal dam operators increased flows out of Folsom Lake even though the reservoir was forty percent empty at that time. RCRC is concerned that water users dependent on Folsom Lake may once again face the potential of dead pool conditions, where water levels fall below the intake pipes near the base of the dam, if the drought continues.

As RCRC noted in our comments on the California WaterFix Project RDEIR/SDEIS, the U.S. Environmental Protection Agency (U.S. EPA) in their letter to the National Marine Fisheries Service (NMFS) dated August 26, 2014, stated on page 3:

“The federal and State water management systems in the Delta are highly interconnected, both functionally and physically. The Draft EIS does not address how changes in the Delta can affect resources in downstream waters, such as San Francisco Bay, and requires changes in upstream operations, which may result in indirect environmental impacts that must also be evaluated. We recommend that the Supplemental Draft EIS include an analysis of upstream and downstream impacts.”

Additionally, on page 15 of the August 26, 2014 letter the U.S. EPA stated:

“Upstream operation changes caused by BDCP implementation could have significant environmental and water supply impacts in the upstream areas, and these impacts must be disclosed in the DEIS.”

The August 26, 2014 U.S. EPA letter can be accessed at:

<http://www.ewccalifornia.org/reports/epa-bdcp-deis-comments-8-26-2014.pdf>.

Despite the direction provided by the U.S. EPA, the RDEIR/SDEIS Water Supply, Revisions to Cumulative Impact Analyses, on pages 5 through 9 states the following:

“None of the alternatives would modify water deliveries to non-SWP and non-CVP water rights holders, including in-Delta water rights holders. Therefore the water supply analysis addresses impacts to DWR, Reclamation, and SWP water users and CVP water service contractors, as opposed to other water rights holders, as the BDCP does not include any actions that would affect water availability to any such water right holders.”

RCRC views the lack of adequate analysis of the impact of the California WaterFix Project on non-SWP and non-CVP water right holders as a very serious deficiency. The final RDEIR/SDEIS should include an appropriately detailed analysis to demonstrate that the California WaterFix Project will not operate to the injury of any legal user of water,

and fish and wildlife will not be affected, or if this cannot be shown, identify the extent to which legal users of water, and fish and wildlife will be affected, so that adequate mitigation measures can be identified and required. To this end, RCRC supports the State Water Board's suggestion in the Pre-Hearing Conference ruling that the petitioners develop proposed permit conditions as part of their exhibits in order to focus the discussion on the decision to be made and more clearly define the proposed project.

The Pre-Hearing Conference Ruling also touched upon another issue that had been raised in testimony at the Pre-Hearing Conference – setting aside a portion of the hearing to address settlement agreements. The State Water Board indicated general support for settlement agreements and encouraged parties to attempt to resolve outstanding issues. While the Pre-Hearing Conference Ruling stated that the State Water Board will not set aside any separate procedure for hearing settlement agreements at this time, the door was left open for hearing settlement agreements at a later date. RCRC encourages the State Water Board to consider designating a time period, perhaps the time period between the Part I and Part II hearings, for the submission of proposed settlements. Doing so would encourage the parties to commit the time and resources needed to work through the complex issues involved in this proceeding.

The Public Notice for the California WaterFix Project Clean Water Act 401 Water Quality Certification, dated October 30, 2015, stated that the State Water Board's Executive Director has been delegated the authority to issue decisions on water quality certification applications, and that the Executive Director may take action on the water quality certification before completion of the hearing on the Joint Petition. While the Public Notice also noted that the Executive Director's decision on the application would be subject to reconsideration by the State Water Board – approval of the 401 water quality certification application by the Executive Director prior to a decision by the State Water Board on the Joint Petition was of concern to RCRC. RCRC was therefore pleased to note that the Pre-Hearing Conference Ruling address this issue head-on as it states in part "...the Executive Director will not issue a decision on the 401 Application until after the hearing record for the water right petition closes."

Although California WaterFix may improve water supply reliability for water contractors downstream of the Delta, it does not improve reliability for in-Delta or upstream users for the reasons previously noted, and may well worsen existing conditions. It is therefore imperative that the potential impacts on in-Delta and upstream water uses and water right holders be both analyzed and mitigated to the satisfaction of the impacted parties.

In conclusion, RCRC appreciates the opportunity to submit for your consideration this policy statement outlining issues of concern and interest to RCRC member counties.

Co-Hearing Officer Marcus and Co-Hearing Officer Doduc
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Sincerely,

A handwritten signature in black ink that reads "Kathy Mannion". The signature is written in a cursive, flowing style.

KATHY MANNION
Legislative Advocate

cc: Electronic Service:
Tom Howard, Executive Officer, State Water Resources Control Board
Michael Lauffer, Chief Counsel, State Water Resources Control Board
Current Service List (February 25, 2016)