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August 27, 2018

Randy Fiorini
Chair of the Delta Stewardship Council
980 Ninth Street
Suite 1500
Sacramento, CA 95814

Re: Sacramento Regional County Sanitation District Appeal of Department of
Water Resources' Certification of Consistency for California WaterFix

Dear Chair Fiorini:

Sacramento Regional County Sanitation District (Regional San) hereby appeals the Department of Water Resources' (DWR) Certification of Consistency for the California WaterFix project (Project) with the Delta Plan.¹ Regional San's appeal is based on expert evidence demonstrating that the Project is inconsistent with Delta Plan policies, recommendations, and performance measures and as such the Project will significantly impact achievement of the statutorily prescribed coequal goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. For the reasons set forth herein, the Delta Stewardship Council (DSC) should reject DWR's consistency determination.

I. Requirements for Appeal

a. Appellant's name and address:

Terrie Mitchell
Manager, Legislative & Regulatory Affairs
Sacramento Regional County Sanitation District (Regional San)
Sacramento Area Sewer District (SASD)
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Sacramento, CA 95827
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¹ Delta Stewardship Council, The Delta Plan (2013, as amended 2018 [Delta Plan]) Delta Plan Policies and Recommendations.

Delta Stewardship Council

Re: Regional San Appeal of DWR Certification of Consistency

August 27, 2018

Page 2

Appellants' contact and representative:

Kelley M. Taber
500 Capitol Mall, Suite 1000
Sacramento, CA 95814
Telephone: (916) 469-3841
Email: ktaber@somachlaw.com

b. Name and address of the party whose proposal is the subject of the appeal:

California Department of Water Resources
Katherine Marquez
3500 Industrial Blvd., Room 117
West Sacramento, CA 95691
Telephone: (916) 651-9569
Email: cwf_dp_consistency@water.ca.gov

c. Description of the covered action that is the subject of the state or local public agency certification:

California WaterFix (see section II below).

d. Specific grounds for the appeal:

See section III below.

e. Detailed statement of facts on which the appeal is based:

See section III below.

II. Description of the Covered Action

As summarized by DWR in its Certification of Consistency, the Project makes physical and operational changes to the State Water Project (SWP) system in the Delta to restore water supplies of the SWP and Central Valley Project (CVP) south of the Delta, which involves the construction of new north Delta intake structures. With the addition of the north Delta facilities, the Project will operate in dual conveyance in conjunction with existing State and federal south Delta pumping facilities. According to DWR, the Project establishes a preference for north Delta diversions most of the year, removing a substantial portion of Sacramento River flow through intakes on the east bank of the Sacramento River, between Clarksburg and Courtland, depending on largely undefined operations that are subject to

Delta Stewardship Council

Re: Regional San Appeal of DWR Certification of Consistency

August 27, 2018

Page 3

adaptive management. Pertinent to Regional San's appeal, the three intakes are located downstream of the Sacramento Regional Wastewater Treatment Plant's (SRWTP) discharge of treated wastewater, and about one mile downstream of the edge of the existing harmonic mean flow-based human health mixing zone provided in the SRWTP National Pollutant Discharge Elimination System (NPDES) permit. (Water Right Change Proceeding,² Map of WaterFix Diversion Structure Location Alternatives in the Vicinity of SRWTP (Mar. 23, 2018); Water Right Change Proceeding, Part Two Testimony of Thomas Grovhoug, P.E. on behalf of Regional San (Nov. 30, 2017 p. 6.)

Sacramento River water would be conveyed through two massive tunnels to pumping plants in the south Delta where the SWP and CVP pump water for export. Although DWR has characterized the Project as diverting up to 9,000 cubic feet per second (cfs) of water, in the Water Right Change Proceeding before the State Water Resources Control Board, it has requested approval for the Project to operate within a range of "boundary" conditions up to 15,000 cfs, which represents the maximum capacity of the proposed "twin tunnels." Notwithstanding the fact that the Sacramento-San Joaquin Delta Reform Act of 2009 (Delta Reform Act) and Delta Plan policy is to *reduce* reliance on the Delta, and it is well recognized that SWP contract allocations far exceed available water supplies,³ DWR also based its approval of the Project on an objective of delivering full SWP contract deliveries. (California WaterFix, California Environmental Quality Act [CEQA] Findings of Fact and Statement of Overriding Considerations, July 2017, p. 31.)⁴ Notably, the Project contains no limitations on south Delta pumping by either the SWP or CVP. The Project as approved by DWR contains no limitations that would prevent it from maximizing deliveries from both the north and south Delta if endangered fish protections change to reduce current constraints, or the species become extinct. The lack of pumping limitations combined with Reclamation's pending plans to increase pumping at existing or new CVP facilities (as announced last winter and recently directed by the Secretary of the Interior) are clear proof that DWR and Reclamation are focused on increasing their reliance on Delta water supplies.

² Hearing currently pending before the State Water Resources Control Board on the Matter of California Department of Water Resources and United States Bureau of Reclamation (Reclamation) for a Change in Point of Diversion for California WaterFix (Water Right Change Proceeding).

³ Historical annual SWP deliveries for agriculture and municipal & industrial (M&I) uses have not exceeded 2.9 million acre feet (AF) (and in recent drought years have been well under 1 million AF), whereas existing SWP contracts provide for delivery of nearly 4.1 million AF in Table A water alone. Whether contract deliveries are "restored" to historic high levels or made to full contract amounts, meeting the Project objective would represent a significant increase in reliance on the Delta. (See <https://water.ca.gov/LegacyFiles/swpao/docs/bulletins/bulletin132/Bulletin132-16.pdf> [as of Aug. 27, 2018], showing history of SWP deliveries.)

⁴ Available at

https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/exhibits/docs/swrcb_staff/findings_of_fact_and_soc.pdf [as of Aug. 27, 2018].

Delta Stewardship Council

Re: Regional San Appeal of DWR Certification of Consistency

August 27, 2018

Page 4

III. Grounds for Appeal

Under the Delta Reform Act, a public entity that proposes a project within the boundaries of the Delta that will significantly impact the achievement of the statutorily-established coequal goals must attest to the project's consistency with the coequal goals and each of the regulatory policies contained in the Delta Plan before proceeding to implement the proposed project. (Wat. Code, §§ 85054, 85057.5, 85225; Cal. Code Regs., tit. 23, § 5002, subd. (b)(1).) Relevant to this certification are the priority recommendations contained in the Delta Plan, which, although non-regulatory, identify actions "essential to achieving the coequal goals." (Delta Plan, p. ES-17.) Also relevant are Delta Plan performance measures. (Delta Plan, Appendix E: Performance Measures for the Delta Plan, as amended Apr. 26, 2018.)

State or local agencies are required to submit to DSC detailed findings and the record upon which their consistency determination is based. (Wat. Code, § 85225; Delta Plan, Ch. 2: The Delta Plan, p. 32.) Any person who claims the proposed project is inconsistent with the Delta Plan, and, therefore, will have a significant adverse impact on one or both of the coequal goals, may file an appeal with DSC. (Wat. Code, § 85225.10, subd. (a).) DSC must remand the matter to the agency for reconsideration if the Certification of Consistency is not supported by substantial evidence in the record. (Wat. Code, § 85225.25.) As detailed below, the location of the proposed diversion structures threatens significant impacts to Regional San's operation of the SRWTP, including increases in the frequency and duration of reverse flow events in the Sacramento River, increased regulatory requirements, and adverse Delta water quality impacts that could complicate Regional San's ability to comply with its NPDES permit and require millions of dollars of additional investment in supplemental treatment facilities and associated increased operating costs. DWR's certification of consistency is not supported by substantial evidence; the Project is inconsistent with the policies, recommendations, and performance standards contained in the Delta Plan and thus will have a significant adverse impact on the achievement of the Delta Reform Act coequal goals.

A. The Certification of Consistency Is Improper and Must Be Rejected Because DWR Has Not Completed the CEQA Process for the Project

The Delta Plan provides that "[t]he certification of consistency should not be submitted to the Council until the covered action has been fully described and the impacts associated with the covered action have been identified; this *coincides with the completion of the CEQA process.*" (Delta Plan, Ch. 2: The Delta Plan, p. 51, emphasis added.) DWR recently proposed major changes to the Project that are the subject of a Draft Supplemental Environmental Impact Report (DSEIR). The DSEIR was released for public review on July 17, 2018, and the public review period for the DSEIR does not end until September 17, 2018.

Delta Stewardship Council

Re: Regional San Appeal of DWR Certification of Consistency

August 27, 2018

Page 5

Further, changes to the Project that was approved in July 2017 will result in new and substantially more significant environmental impacts that the DSEIR entirely fails to acknowledge or mitigate, as required by CEQA and the Delta Plan.

For example, DWR was unable to obtain a Clean Water Act section 404 permit for the Project's tunnel spoils disposal sites, and has proposed to move one of the sites to the north of Bouldin Island, immediately across Potato Slough from the Tower Park Marina Resort (Marina). The Marina is the largest recreational facility within the Delta and its owners have made significant investments to provide visitor serving uses consistent with the Delta Plan's vision for the Delta recreation and tourism. DWR nonetheless chose to relocate its massive tunnel spoils disposal site in close proximity and plain view of the Marina, in violation of Delta Plan Policy DP P2, Respect Local Land Use When Siting Water or Flood Facilities or Restoring Habitats (Cal. Code Regs., tit. 23, § 5011). The DSEIR falsely claims this major change to the approved Project will not have a significant impact on the Marina, claiming that views of the tunnel spoil dump will be blocked by existing levees. Evidence submitted to the SWRCB as part of the ongoing Water Right Change Proceeding for the Project, demonstrates that the DSEIR's statement that the levees will block views from the Marina from the tunnel spoil dump is incorrect: the dump site is plainly visible from the Marina.⁵ This change will result in significant impacts to recreation, including impacts to boating, aesthetics, odors, and other impacts.

In addition to violating Delta Plan Policy DP P2, DWR's decision to relocate the massive tunnel spoil dump site immediately across from the Marina also violates DWR's own so-called "environmental commitment," regarding tunnel spoil disposal sites. This "commitment" is a promise purportedly incorporated into the Project design and upon which DWR relied in certifying the Final EIR and approving the Project, which requires that DWR consult with local land owners in siting Project facilities to avoid significant impacts to Delta residents and land uses. (Final EIR Appendix 3B, Environmental Commitment 3.23: Disposal and Reuse of Spoils, Reusable Tunnel Material (RTM), and Dredged Material, July 2017, p. 3B-51.⁶) With numerous discretionary approvals and the requirement for a Delta Plan consistency determination pending, DWR's failure, so soon after Project approval, to comply with its adopted mitigation, raises substantial concerns about DWR's willingness and ability to comply with the numerous mitigation measures and other commitments it holds out in support of its consistency determination.

⁵ See Protestant Save the California Delta Alliance et al. Written Testimony of Bill Wells, July 13, 2018 https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/exhibits/docs/STCDA%20et%20al/part2rebuttal/scda_308.pdf [as of Aug. 27, 2018]. See also Save the California Delta Alliance et al Exhibits 306, 309-328.)

⁶ Available at http://files.californiawaterfix.com/2018_07-16_Public_Draft_WEB/3_Appendices/App_03B_Env_Commitments_Draft_SEIR-EIS.pdf [as of Aug. 27, 2018].

Delta Stewardship Council

Re: Regional San Appeal of DWR Certification of Consistency

August 27, 2018

Page 6

The significant errors in the DSEIR will require recirculation of the DSEIR, and revision of the Project to avoid or substantially lessen these significant impacts. Whether and how DWR decides to address these impacts will not be known until the CEQA process is complete. Because the DSEIR is only a draft, it is foreseeable that concerns raised in the public comment period might result in additional changes, such as relocating the Bouldin Island dump to avoid impacts to the Marina, that could directly impact other land uses in the Delta, including Regional San's facilities or operations. Only when there is an adequate certified SEIR will DSC and the public have sufficient information to determine whether the Project, as revised, is consistent with the Delta Plan. In accordance with the Delta Plan, DSC should reject the Certification of Consistency and refuse to accept any consistency determination for the Project until after the SEIR is certified.

B. Substantial Questions and Uncertainty Regarding the CVP Operations and Federal Participation in the Project Prevent a Finding that the Project Is Consistent with the Delta Plan at this Time

The Project as approved by DWR requires the participation of Reclamation as operator and water right holder of the federal CVP. DWR and Reclamation repeatedly have emphasized that the Project serves both the CVP and SWP, and operational decisions by both DWR and Reclamation will determine the ultimate impact of the Project on the Delta, its natural resources, and residents. However, Reclamation has not committed to participate in the Project, and most CVP contractors have not agreed to fund it. Failure to deliver CVP supplies through the Project will significantly change the environmental impacts and asserted benefits of the Project as the source and fate of CVP water affect upstream impacts (including the nature and extent of effects to upstream reservoir storage), Delta hydrodynamics and water quality, as well as agricultural and M&I supplies south of the Delta. Moreover, on August 17, 2018, Reclamation served notice to the State of its intent to renegotiate the Coordinated Operations Agreement (COA) for the projects, which governs how water is exported from the Delta. (See August 17, 2018 letter from David Murillo, Reclamation, to Karla Nemeth, Director of DWR.) These negotiations are expected to take at least 12 months and could take up to 24 months, with no guarantee as to the outcome. (*Ibid.*) On the same day, the Secretary of the Interior directed federal officials, including Reclamation, to develop no later than September 1, 2018, a "plan of action" as well as "legislative and litigation measures" to "maximize water supply deliveries" and "infrastructure improvements" necessary to independently operate the CVP. (See August 17, 2018 Memorandum from the Secretary of the Interior to Solicitor et al., citing "unacceptable restrictions" by the State of California on CVP operations.)

There is no mechanism in the Delta Plan or implementing regulations for DSC to revisit DWR's consistency determination if the Project operation and impacts, and cumulative impacts, change substantially due to actions by Reclamation or other federal agencies. The

Delta Stewardship Council

Re: Regional San Appeal of DWR Certification of Consistency

August 27, 2018

Page 7

substantial uncertainty regarding Project implementation, and substantial questions regarding impacts that would result if the Project serves only the SWP, or if federal agencies significantly increase CVP pumping and loosen or waive protections for listed species, fatally undermine the evidence and argument cited by DWR in support of its assertions about Project consistency with the Delta Plan and coequal goals. Lacking a compliance mechanism to ensure that the CVP portion of the Project is consistent with the Delta Plan, DSC must at this time reject DWR's determination that the Project is consistent with the Delta Plan and coequal goals. Reclamation's failure to commit to participating in the Project, its stated intent to operate CVP facilities in a manner not evaluated as part of the Project's EIR (and likely inconsistent with EIR assumptions), and renegotiate the COA, as well as the Secretary of Interior's expressed intent to assert federal preemption to avoid or operate outside of State regulatory requirements, each provide an independent basis upon which DSC should reject DWR's Certification of Consistency as premature and unsupported by substantial evidence.

C. The Project Will Have a Significant Impact on the SRWTP and Thus Is Inconsistent with Delta Plan Protections for Local Land Uses

Regional San provides wastewater conveyance, treatment, and disposal for approximately 1.4 million people in the urbanized area of Sacramento County and the City of West Sacramento in Yolo County. (Water Right Change Proceeding, Part Two Testimony of Prabhakar Somavarapu, P.E. (Nov. 30, 2017) p. 3.) The SRWTP, owned and operated by Regional San, is one of the largest wastewater treatment plants in the State of California, employing 425 people, operating 24 hours a day, seven days per week since the 1970s and discharging an average of 133 million gallons per day over the past decade. (Water Right Change Proceeding, Part Two Testimony of Ruben R. Robles, P.E. on behalf of Regional San (Nov. 30, 2017) p. 3; Water Right Change Proceeding, Testimony of Prabhakar Somavarapu on behalf of Regional San (Aug. 29, 2016) p. 2.) Regional San is also in the process of constructing its EchoWater Project, a nearly \$2 billion investment that will produce disinfected tertiary treated water suitable for recycling and reuse for a broad range of beneficial uses.

Regional San has worked with DSC since 2009, in the development of the Delta Plan, Delta Science Plan, and Delta Independent Science Board work products. Regional San is very committed to the health of the Delta ecosystem and has invested substantial resources to help produce a Delta Plan that serves the coequal goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. Regional San's South Sacramento County Agricultural & Habitat Lands Recycled Water Program (South County Ag Program) is included in the Delta Plan as an example project that demonstrates innovative in-lieu groundwater recharge that will help restore and enhance the Delta ecosystem, and also will be capable of providing recycled water supplies for multiple uses, consistent with the coequal goals. Project impacts to Regional San's treatment facilities

Delta Stewardship Council

Re: Regional San Appeal of DWR Certification of Consistency

August 27, 2018

Page 8

and operations, described below and in the evidence submitted with this appeal, would present a substantial obstacle to Regional San's ongoing efforts to further the coequal goals and are inconsistent with specific Delta Plan policies and the coequal goals themselves

1. The Project Is Not Consistent with Delta Plan Policy DP P2

The Project is not consistent with Delta Plan Policy DP P2 (Cal. Code Regs., tit. 23, § 5011), which requires water management facilities, ecosystem restoration, and flood management infrastructure to be sited to avoid or reduce conflicts with existing uses or those uses described or depicted in city and county general plans when feasible. DWR certified that the Project is consistent with this policy on the grounds that it has avoided or reduced conflicts to the extent feasible. However, DWR ignored concerns Regional San has identified since the infancy of the Project, and these problems have not been addressed in any evidence presented to date by DWR. (Water Right Change Proceeding, Part Two Testimony of Ruben R. Robles, P.E. on behalf of Regional San (Nov. 30, 2017) p. 8.) The significant impacts described below have not been adequately identified or addressed in the Project's certified EIR or any other analysis prepared for the Project, creating huge economic and water supply costs to be borne by the ratepaying population in Sacramento and Yolo Counties. (Water Right Change Proceeding, Part Two Testimony of Thomas Grovhoug, P.E. (Nov. 30, 2017) p. 2.)

Discharge from SRWTP is authorized and regulated under NPDES permits issued by the California Regional Water Quality Control Board (RWQCB), Central Valley Region, which require SRWTP treated effluent to be diverted to emergency storage basins, rather than being discharged, when the river-to-effluent ratio is below 14:1. (Water Right Change Proceeding, Part Two Testimony of Ruben R. Robles, P.E. on behalf of Regional San (Nov. 30, 2017) p. 4; Water Right Change Proceeding, Part Two Testimony of Prabhakar Somavarapu, P.E. (Nov. 30, 2017) pp. 4-5.) These types of diversions typically occur when the Sacramento River flows are low and the tide is high; under this combination of factors, the Sacramento River flow at Freeport can reverse direction, temporarily flowing upstream. (*Ibid.*)

Although it is difficult to identify all potential impacts of the Project on Regional San's operations – because of a lack of sufficient detail about the operation of the Project and related facilities – Regional San has presented specific concerns and evidence regarding the potential impacts of the Project and its predecessor the Bay Delta Conservation Plan on the operation of SRWTP. These concerns include changes in water quality and the number and duration low-flow and reverse flow periods in the Sacramento River. (Water Right Change Proceeding, Part Two Testimony of Ruben R. Robles, P.E. on behalf of Regional San (Nov. 30, 2017) pp. 4-5; Water Right Change Proceeding, Part Two Testimony of Susan Paulsen, Ph.D., P.E. on behalf of Regional San (Nov. 29, 2017) pp. 3-4; Water Right Change

Proceeding Exponent Report on Impacts of the California WaterFix Project Affecting
Sacramento Regional County Sanitation District, Nov. 30, 2017, Appx. B.)

Because DWR refused to conduct the required analysis of reverse flow impacts identified in Regional San's numerous comment letters on the various draft Project EIRs, Regional San was forced to conduct its own analysis, which it presented in the Water Right Change Proceeding. This analysis shows that Project operations will alter the conditions of the Sacramento River at Freeport, such that Regional San will need to divert effluent to emergency storage basins for longer durations and in larger quantities than under existing conditions or the future No Action scenario presented by DWR in the Project's EIR. (Water Right Change Proceeding, Part Two Testimony of Ruben R. Robles, P.E. on behalf of Regional San (Nov. 30, 2017) p. 8; Water Right Change Proceeding, Part Two Testimony of Susan Paulsen, Ph.D., P.E., on behalf of Regional San (Nov. 29, 2017) p. 4; Water Right Change Proceeding, Exponent Report on Impacts of the California WaterFix Project Affecting Regional San, Nov. 30, 2017, p. 2; Water Right Change Proceeding, Part Two Rebuttal Testimony of Susan Paulsen, Ph.D., P.E. (July 9, 2018) p. 2.) Increased diversions of effluent to storage have significant economic impacts and reduce operational flexibility. (Water Right Change Proceeding, Part Two Testimony of Ruben R. Robles, P.E. on behalf of Regional San (Nov. 30, 2017) pp. 10-11; Water Right Change Proceeding, Part Two Testimony of Prabhakar Somavarapu, P.E. (Nov. 30, 2017) p. 6.) Essentially, every time the Project causes river conditions that necessitate a diversion in greater than would occur in the baseline condition, Regional San is forced to commit its facilities to correcting conditions created by the Project in order to meet its NPDES permit obligations, thereby reducing Regional San's operational flexibility and creating unknown risks to Regional San's operations. (Water Right Change Proceeding, Part Two Testimony of Ruben R. Robles, P.E. on behalf of Regional San (Nov. 30, 2017) pp. 10-11; Water Right Change Proceeding, Part Two Testimony of Prabhakar Somavarapu, P.E. (Nov. 30, 2017) p. 6.)

Moreover, the proposed diversion structures for the Project have been characterized by DWR as "drinking water intakes."⁷ If such a characterization were accepted by the RWQCB, it could result in substantial additional capital costs and NPDES permit compliance challenges.⁸ Notably, it could lead to the loss of the SRWTP human health mixing zone for

⁷ Water Right Change Proceeding, Part Two (Aug. 9, 2018), cross examination of Dr. Chandra Chilmakuri, beginning at 2:13:00, available at: https://www.waterboards.ca.gov/board_info/media/aug2018/calwaterfix_080918.shtml [as of Aug. 27, 2018].

⁸ Project proponents and users of water exported from the Delta have a history of commenting on the NPDES permit and wastewater facility EIR documents prepared by Regional San and other Central Valley publicly owned treatment works (POTWs). They have consistently asked for increasing levels of treatment by Regional San and by other municipalities in the Central Valley (e.g. Stockton, Modesto, Turlock, etc). State Water Contractors and numerous other export water users submitted comments on the EchoWater project EIR. In those comments, they advocated for additional removal of nutrients and salinity, above and beyond the capability of the EchoWater project. Thus, it is entirely foreseeable that placing the Project diversion structures within the

the calculation of trihalomethane (THM) effluent limitations. Human health criteria are generally based on long term exposure, and the RWQCB evaluates if the mixing zone meets the requirements of the State Implementation Plan and the Basin Plan requirements to ensure protection of beneficial uses.⁹ Due to the possible location of diversion structures within or near the edge of the current mixing zone, RWQCB may disallow the mixing zone, requiring Regional San to meet end of pipe THM effluent limitations. This is a very important issue to the successful operation of the SRWTP. Regional San is engaged in a nearly \$2 billion effort to design and construct capital facilities required to comply with its existing permit conditions.¹⁰ If the current dilution credit for THMs were eliminated due to concerns regarding the short distance between the edge of the mixing zone and the diversion structures, Regional San could not reliably meet the resulting effluent limitations and would be compelled to cease operation of its new EchoWater project chlorine disinfection facilities. In lieu of use of chlorine disinfection, Regional San would be forced to construct an alternative disinfection system to meet the THM effluent limitations and Title 22 equivalent requirements in its NPDES permit, at significant cost. (Water Right Change Proceeding, Part Two Testimony of Thomas Grovhoug, P.E. (Nov. 30, 2017) pp. 4-5.). Implementing additional treatment processes at SRWTP would burden Regional San ratepayers with additional capital and operational costs of approximately \$400 million. (Water Right Change Proceeding, Part Two Testimony of Thomas Grovhoug, P.E. (Nov. 30, 2017) p. 7.)

Evidence, in the form of expert testimony and analysis submitted in support of this appeal, demonstrates that the Project would result in significant unmitigated impacts to the SRWTP operations and facilities that will result in millions of dollars in additional costs to Regional San's ratepayers. These impacts occur due to DWR's decision to locate the Project intakes directly downstream of the SRWTP, in conflict with Delta Plan Policy DP P2's mandate that water management facilities be sited so as to avoid impacts to existing uses. There is no evidence in DWR's record that it was infeasible to have sited the Project intakes in locations that would avoid impacts to Regional San's operations, and no evidence that the impacts to Regional San from the approved Project locations could be mitigated.¹¹ Not only

vicinity of the SRWTP discharge to the Sacramento River will result in intensification of such requests by WaterFix proponents and others. (Water Right Change Proceeding, Part Two Testimony of Thomas Grovhoug, P.E. (Nov. 30, 2017) pp. 6-8, 10.

⁹ Order R5-2016-0020-01 NPDES No. CA0077682 Waste Discharge Requirements for the Sacramento Regional County Sanitation District Sacramento Regional Wastewater Treatment Plant Sacramento County, accessible at https://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/sacramento/r5-2016-0020-01.pdf.

¹⁰ Water Right Change Proceeding, Part Two Testimony of Ruben R. Robles, P.E. on behalf of Regional San (Nov. 30, 2017) p. 13; Water Right Change Proceeding, Part Two Testimony of Prabhakar Somavarapu, P.E. (Nov. 30, 2017) p. 5; Water Right Change Proceeding, Part Two Testimony of Thomas Grovhoug, P.E. (Nov. 30, 2017) pp. 6-8, 10.

¹¹ Because some of the most significant impacts of the Project on Regional San relate to impacts from reverse flows, even if feasible mitigation could be identified, the mitigation itself could result in additional impacts to the

did DWR fail to evaluate these impacts after Regional San brought them to DWR's attention in comments on the Project's various draft EIRs, but it also failed to adopt feasible mitigation to avoid or substantially lessen these impacts. As such, DWR's approval of the Project violates CEQA and also is inconsistent with Delta Plan Policy G P1, which requires that covered actions include feasible mitigation measures and document the use of best available science. (See Delta Plan Policy G P1, subd. (b)(2),(3).)

2. The Project Is Not Consistent With the Delta Plan, On Whole

DWR argues that, on whole, the Project is consistent with the Delta Reform Act coequal goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. However, as discussed herein, and in the City of Stockton's concurrent appeal of DWR's Delta Plan consistency determination, which is incorporated by reference herein, DWR has ignored relevant comments and evidence presented in the Project's environmental review and Water Right Change Proceeding that demonstrate that the Project will have significant unmitigated impacts to Delta water supplies and the Delta ecosystem. The Project's impacts on the Delta water quality and flow patterns will not only degrade the existing ecosystem but also will have significant impacts on the Regional San's state-of-the-art EchoWater Project. As noted above, Regional San has invested heavily in supporting the Delta Plan and efforts that further the coequal goals. Regional San's ratepayers have seen significant increases in their rates to fund the improvements associated with the EchoWater Project. There is limited capacity for additional rate increases. Any additional costs required to mitigate the burden of Project impacts will necessarily reduce Regional San's ability to fund additional projects that may further the coequal goals, such as additional water recycling projects. By making Delta water quality worse, and substantially burdening in-Delta uses, the Project is inconsistent with, and will have a significant adverse impact on the achievement of, the coequal goals.

IV. Conclusion

The increased frequency and magnitude of diversion events at the SRWTP caused by the Project will result in higher operation and maintenance costs and the potential for additional financial and operational impacts related to Regional San's ability to comply with its NPDES permit. These significant impacts are not addressed by DWR in the Project's certified EIR nor the record submitted with its Certification of Consistency. Regional San has demonstrated with expert evidence that the Project is inconsistent with Delta Plan Policy DP P2 because it will have significant impacts on the SRWTP. DWR has not adopted feasible mitigation to avoid or reduce those impacts and the Project remains, on whole, inconsistent

environment and upstream water supplies if, for example, it required additional releases from upstream reservoirs. None of these potential impacts have ever been addressed by DWR.

Delta Stewardship Council

Re: Regional San Appeal of DWR Certification of Consistency

August 27, 2018

Page 12

with the coequal goals of the Delta Plan. DWR has failed to support its Certification of Consistency with substantial evidence that the Project is consistent with Delta Plan Policy DP P2, or that it otherwise will not have an adverse impact on the achievement of the coequal goals, and thus DSC should reject the Project Certification of Consistency.

Very truly yours,



Kelley M. Taber

cc: Delta Stewardship Council
Jessica R. Pearson, Executive Director

Attachments:

Regional San 1 – August 17, 2018 letter from David Murillo, Reclamation, to Karla Nemeth, Director of DWR

Regional San 2 – August 17, 2018 Memorandum from the Secretary of the Interior to Solicitor et al

Regional San 3 – Water Right Change Proceeding, Part Two Testimony of Prabhakar Somavarapu, P.E. (Nov. 30, 2017)

Regional San 4 – Water Right Change Proceeding, Part Two Testimony of Ruben R. Robles, P.E. on behalf of Regional San (Nov. 30, 2017)

Regional San 5 – Water Right Change Proceeding, Testimony of Prabhakar Somavarapu on behalf of Regional San (Aug. 29, 2016)

Regional San 6 – Water Right Change Proceeding, Part Two Testimony of Thomas Grovhoug, P.E. (Nov. 30, 2017)

Regional San 7 – Water Right Change Proceeding, Part Two Testimony of Susan Paulsen, Ph.D., P.E. on behalf of Regional San (Nov. 29, 2017)

Regional San 8 – Water Right Change Proceeding, Exponent Report on the Impacts of the California WaterFix Project Affecting Regional San (Nov. 30, 2017)

Delta Stewardship Council

Re: Regional San Appeal of DWR Certification of Consistency

August 27, 2018

Page 13

Regional San 9 – Water Right Change Proceeding, Part Two Rebuttal Testimony of
Susan Paulsen, Ph.D., P.E. (July 9, 2018)

Regional San 10 – Water Right Change Proceeding, Map of WaterFix Diversion
Structure Location Alternatives in the Vicinity of SRWTP (Mar. 23, 2018)

KMT:MEC:mb