



June 3, 2016

CWFhearing@waterboards.ca.gov via email

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

Re: Petitioners' Opposition to Requests of Protestants for Extension of Time to File and Serve Objections

Dear Hearing Chair Doduc and Hearing Officer Marcus:

By this letter, California Department of Water Resources (DWR) and U.S. Department of the Interior, Bureau of Reclamation (Reclamation) (jointly Petitioners) oppose any request for an extension of the time to the currently scheduled June 15, 2016 deadline for receipt of written procedural/evidentiary objections concerning Petitioners' case in chief sought by certain protestants to the Water Rights Petition.¹ Not only are protestants' requests for an extension to the currently adopted hearing schedule untimely, they are also unwarranted.

The Hearing Officers have broad discretion in determining the schedule and order of this Water Rights Petition proceeding. The current hearing schedule, adopted on April 25, 2016, provides the same amount of time for written procedural/evidentiary objections to the Petitioners' case in chief as the previous schedule adopted on February 11, 2016, following the pre-hearing conference. As such, protestants' request

¹ Protestants AquaAlliance, California Sportfishing Protection Alliance, Environmental Justice Coalition for Water, Environmental and Water Caucus, Friends of the River, Planning Conservation requested an extension by letter dated June 1, 2016. Protestants County of San Joaquin, San Joaquin County Flood Control and Water Conservation District, and Mokelumne Water and Power Authority requested an extension by letter dated June 2, 2016. Protestants Pacific Coast Federation of Fishermen's Associations' and Institute for Fisheries Resources' requested a 61-day extension of both the deadline for filing written procedural/evidentiary objections by letter dated June 2, 2016. Protestants South Delta Water Agency, Central Delta Water Agency et al. joined the requests of others in a letter dated June 3, 2016. (Collectively "protestants".)

for a modification to the hearing schedule could have been presented to the Hearing Officers many months ago.

Protestants justify their last-minute request for a modification to the current hearing schedule primarily on the grounds that the testimony and exhibits submitted by Petitioners on May 31, 2016 and the recently submitted modeling updates provided to the Water Board on May 16, 2016, are too voluminous to allow for sufficient review prior to the deadline for filing procedural/evidentiary objections under the current hearing schedule, June 15, 2016. Protestants complaints are unfounded.

Very little of what has been submitted by Petitioners as part of their case-in-chief, whether in their concise testimony (133 pages total for 8 lead witnesses) or in their submitted exhibits, represents “new” information. Rather, much of the information contained in Petitioners’ case-in-chief, including submitted exhibits, is public information previously available to all protestants. Moreover, most of the modeling related to the proposed project has been available to protestants prior to the submission of Petitioners’ case-in-chief, as noted in the Prehearing Conference Ruling dated February 11, 2016 (p. 6). The modeling in the recirculated draft EIR/EIS has been available since 2015, and the additional modeling in support of the Final EIR/EIS was made available to protestants in early February. Cal Water Research, and other protestants, requested and received this additional modeling information.² Finally, the more narrow boundary modeling was provided to the Water Board on May 16, 2016 and subsequently made available to protestants prior to Petitioners’ submission of its case-in-chief, which includes testimony on the modeling conducted for the project.

Protestants also argue that there is no disadvantage to Petitioners in extending the deadline for the submission of written evidence or procedural objections until two weeks before the hearing. As support, protestants point out that, in court proceedings, parties do not learn of opposing parties’ objections until a witness is actually testifying. This proceeding, however, is not a court proceeding, in which witnesses testimony is not known until the witness takes the stand. Here, protestants have the benefit of receiving Petitioners’ entire case-in-chief well in advance of the hearing, which affords both the parties and Hearing staff the opportunity to dispense with evidentiary and procedural matters prior to hearing.³ Delaying the submission of written evidentiary or procedural objections to two weeks prior to hearings gives Petitioners limited time to fully respond to any filed objections (the nature and volume of which is yet unknown), to their prejudice, and the Water Board even less time to consider and rule on such

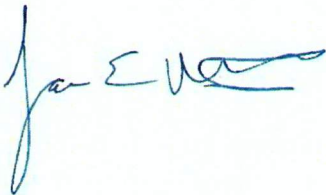
² The May 31, 2016 letter incorrectly claims that Petitioners failed to respond fully to Cal Water Research’s requests for additional modeling information. DWR fully responded to the requests for information providing all data reasonably in its possession responsive to the requests. DWR, however, was under no obligation to conduct further comparisons, manipulations or analyses, or explain or recharacterize information at Cal Water Research’s, or any other protestant’s, request.

³ It should also be noted that the State Water Board has already granted a request by other parties to this hearing for a delay of 75 days from the date of Petitioners’ written testimony before protestants must submit their own written testimony.

objections prior to the commencement of the hearing. Further, Petitioners would be forced to readjust the presentation of their case-in-chief in response to any adverse rulings at the last minute.

For the above-stated reasons, Petitioners respectfully request that the Hearing Officers deny Protestants' request for any extension of the deadline for filing written procedural/evidentiary objections concerning Petitioners' case-in-chief. Because the majority of information provided with Petitioners' case-in-chief has been available to protestants long before the submission of testimony and exhibits on May 31, 2016, the current hearing schedule provides ample opportunity for protestants to file written procedural/evidentiary objections by the current deadline of June 15, 2016.

Sincerely,



Office of the Chief Counsel
CA Department of Water Resources



Office of the Regional Solicitor
U.S. Department of the Interior

cc: *Electronic Service*

Tom Howard, Executive Officer, State Water Resources Control Board
Michael Lauffer, Chief Counsel, State Water Resources Control Board
Electronic service list, May 27, 2016.

Personal Service via U.S. Postal Service

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