



February 24, 2016

Via Email and U.S. Mail

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

The Honorable Tam Doduc
Co-Hearing Officer
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Hearing Team
CalWaterFix
CWFhearing@waterboards.ca.gov

**RE: CALIFORNIA WATERFIX PROJECT
SJTA's Objections to Pre-Hearing Conference Ruling of February 11, 2016**

Dear Chair Marcus and Board Member Doduc:

The San Joaquin Tributaries Authority (SJTA) submits the following objections to the State Water Resources Control Board's (SWRCB or Board) Pre-Hearing Conference Ruling, dated February 11, 2016 (Ruling). The SJTA agrees with some of the sentiments expressed by the State Water Contractors (SWC) in their letter of February 22, 2016 objecting to the Ruling (SWC Letter), but writes separately to elaborate on certain concerns, and to express disagreement as to how other issues should be resolved.

Specifically, the STJA agrees that the Board improperly reached factual and legal conclusions, without an evidentiary hearing, on the issue of "appropriate Delta flow criteria" required by Water Code section 85086. The SJTA contends that the appropriate flow criteria are a fundamental substantive issue that cannot be pre-decided at a procedural hearing, but must instead receive a full and independent evidentiary hearing before any other part of the hearing on the Petition may proceed.

1. The Board has abused its discretion by deciding critical components of a substantive issue (appropriate flow criteria) after a procedural hearing and with no evidence.

In its Ruling, the Board rejected the argument of certain protestors that new water quality objectives should be established through an update of the Bay-Delta Plan before the WaterFix petition is heard. In doing so, the Board made at least two statements regarding the “appropriate Delta flow criteria” required by Water Code section 85086 which demonstrated that the Board has improperly pre-decided certain critical components of this substantive issue after little more than a pre-hearing conference to address procedural matters. First, the Board stated, “[t]he flow criteria imposed as a condition of any approval [of the WaterFix petition] would be **an interim requirement** until Phases 2 and 3 of the Bay-Delta Plan update and subsequent implementation processes are complete, at which point the flow criteria would be revisited.” (Ruling, p. 4 [emphasis supplied].) Second, the Board stated, “[t]he appropriate Delta flow criteria will be more stringent than petitioners’ current obligations and may well be more stringent than the petitioners’ preferred project.” (Ruling, p. 4.) Both statements are problematic and demonstrate that the Board has pre-decided certain aspects of the substantive issue regarding the “appropriate Delta flow criteria” that will be included in any approval of the Petition.

When the legislature mandated that “appropriate Delta flow criteria” be included in any order approving a project such as the WaterFix, it demonstrated a clear intent to impose the obligation of meeting this flow criteria squarely, and solely, upon the Petitioners who were proposing the Project. The Board has now determined, without an evidentiary hearing, that the flow criteria included in the order will be only of an “interim” nature until the Bay-Delta Plan is updated. Apart from the fact that this constitutes an improper predetermination regarding the temporal limitations of the flow criteria, it also demonstrates that the Board views the Bay-Delta update process as a means of satisfying, cleaning up, and otherwise elaborating upon, the “appropriate Delta flow criteria” that are separately required by Water Code section 85086. This is problematic, and a violation of Water Code section 85086, because the water quality objectives imposed as part of the Bay-Delta Plan can apply to all water users, not just the Petitioners. As such, the Board has effectively determined that the burden of satisfying the “appropriate Delta flow criteria” will only be borne by the Petitioners on an interim basis, until the Board can shift some – or all – of that responsibility onto other water users through an update of the Bay-Delta Plan. The Board later confirmed its inclination to shift responsibility in this manner when it stated that “the issue of appropriate flow criteria for the WaterFix” will not be resolved “until completion of Phase 3 of the State Water Board’s Bay-Delta planning processes.” This statement contradicts Water Code section 85086, as well as the Board’s own statement in its Ruling that water quality objectives are not the same as flow criteria.

Additionally, the SJTA agrees with the SWCs that the Board improperly pre-decided another substantive issue regarding the “appropriate Delta flow criteria” when it determined, before hearing any evidence, that the appropriate flow criteria would be more stringent than Petitioner’s current obligations, and possibly more stringent than the Petitioners’ preferred project.

There is an apparent widespread misunderstanding regarding the statutory requirement that Petitioners be the only parties responsible for meeting “appropriate Delta flow criteria” under Water Code section 85086. This is demonstrated by the letter from the South Delta Water Agency, dated February 23, 2016, Re: SDWA’s response to SWC’s request for reconsideration of the SWB’s Ruling (SDWA Letter). In its letter, SDWA agrees with the Board’s predetermination that “appropriate Delta flow criteria” will be more stringent than current requirements, and calls this predetermination “obvious” in light of Resolution 2010-0039. (SDWA Letter, p. 1-2.) Contrary to SDWA’s contention, such a predetermination is not “obvious,” and was explicitly prohibited by the legislature. Specifically, Water Code section 85086 states that the informational flow criteria, i.e., the flow criteria adopted in Resolution 2010-0039, “shall not be considered predecisional with regard to any subsequent board consideration of a permit, including any permit in connection with a final BDCP.” (Water Code § 85086[c][1].) In other words, the informational flow criteria adopted in Resolution 2010-0039 were not intended to pre-decide whether the “appropriate Delta flow criteria” should be more stringent, less stringent, or something else entirely.

More importantly, SDWA has asserted that the Petitioners will not necessarily be burdened by the more stringent flow criteria because the Board has not yet determined who will be responsible for meeting those flows. This assertion is entirely misinformed and misguided. The only parties who can ever be held responsible for meeting “appropriate Delta flow criteria” under Water Code section 85086 are the Petitioners who are now proposing the WaterFix project. Section 85086(c)(2) states “[a]ny order approving a change in the point of diversion of the State Water Project or the federal Central Valley Project from the southern Delta to a point on the Sacramento River shall include appropriate Delta flow criteria . . .” The law does not call for “appropriate Delta flow criteria” to be included in any other document, order, or water right, nor to be satisfied by any parties other than the Petitioners who have proposed the change in point of diversion.

The SJTA vehemently objects to the Board’s predetermination regarding the stringency and temporal limitations of the appropriate flow criteria, as well as to the Board’s avowed intent to shift responsibility for meeting flow criteria onto other water users through an update of the Bay-Delta Plan. The SJTA joins the SWC’s call for the Board to issue a revised ruling to correct this error, and the SJTA specifically asserts that these predeterminations should be retracted.

2. Appropriate Delta Flow Criteria Must be Determined at a Separate Hearing

In addition to issuing a revised ruling, the Board must hold a separate and independent hearing to determine what constitutes “appropriate Delta flow criteria” under Water Code section 85086 before proceeding with any other aspect of the Petition. An independent hearing is necessary to avoid further conflating the Petitioners’ obligations of meeting flow criteria with the separate and independent obligations of all water users to satisfy water quality objectives under an updated Bay-Delta Plan.

In its Ruling, the Board paid lip service to the notion that flow criteria are separate and distinct from water quality objectives. However, as shown above, the Board then proceeded to conflate the two matters in a way that demonstrated an intent to shift responsibility for meeting flow criteria onto all water users through an update to the Bay-Delta Plan. Such a decision violates Water Code section 85086, which provides that flow criteria should be the sole obligation of the Petitioners.

Although the Water Code does not specify the type of proceeding through which “appropriate Delta flow criteria” are to be determined, it would defy logic to suggest that the development of “appropriate Delta flow criteria” should receive a less comprehensive hearing process than that required to develop the informational flow criteria in 2010 under Water Code section 85086(c)(1). The 2010 flow criteria were intended to be informational only, whereas the “appropriate” Delta flow criteria are intended to be legally enforceable as conditions of any approval of the WaterFix petition. A review of the Bill Analysis for Water Code section 85086 confirms that a separate proceeding should be held to determine “appropriate” flow criteria: “While the analysis used in developing [the 2010 flow criteria] will be considered in setting [appropriate Delta flow criteria], neither the analysis nor the criteria themselves predetermine the outcome **of the later proceeding** to determine what criteria are ‘appropriate’ for inclusion in the water right change order,” i.e., in the order granting the change petition, not the Bay-Delta Plan (SBX7 1 Senate Bill, Bill Analysis, p. 17 [emphasis supplied].)

At this point, the Board’s Ruling seems to envision a hearing wherein “appropriate Delta flow criteria” under Water Code section 85086 are developed, debated and possibly determined somewhere within Part 1A and Part 1B of the hearing process. However, the Board has not outlined when, where or how this issue will be addressed by the Petitioners, the protestors, or the Board itself. It is clear that many of the parties still have drastically different views as to how “appropriate Delta flow criteria” will, or should be, addressed. For instance, the State Water Contractors believe that the Board improperly predetermined the issue without any evidence, and the SJTA shares that view. (SWC Letter, p. 1-2.) The SDWA believes that this predetermination was not only proper, but obvious, and that there is an outstanding issue as to which parties will be responsible for meeting the “appropriate Delta flow criteria.” (SDWA Letter, p. 1-2). In contrast, the Petitioners believe that “determinations regarding flow criteria will be made during Part 2” of the WaterFix hearing, although it is not apparent why Petitioners hold this belief since “appropriate” flow criteria are not strictly limited to environmental concerns. (Joint Letter from DWR and USBR of February 23, 2016; Re: Request for Clarification on Ruling.) Moreover, as indicated in the Board’s Ruling, many environmental groups believe that the Bay-Delta Plan must be updated before “appropriate Delta flow criteria” can be established as part of the WaterFix process. (Ruling, p. 3-4.) Thus, it is evident that the Board’s Ruling (which stated that flow criteria were not the same as revised water quality objectives under the Bay-Delta Plan, which referred to flow criteria as being “interim,” and which stated that the issue of appropriate flow criteria will not be resolved until completion of Phase 3 of the Bay-Delta planning process) only confused the issue even further.

The SJTA would like to see, and participate in, a full and independent hearing where “appropriate Delta flow criteria” are specifically addressed, as contemplated by the legislature when it enacted Water Code section 85086. The SJTA does not oppose a process for addressing “appropriate Delta flow criteria” within the hearing on the WaterFix petition itself, but the current lack of structure through which this critical substantive issue will be addressed is prejudicial to all parties involved. Some measure of guidance must be provided to the parties as to when, where and how the Board wishes to handle this issue. The SJTA believes that an independent hearing – whether at the beginning of the WaterFix hearing or entirely separate from it - will ensure that the obligations of meeting “appropriate Delta flow criteria” are never shifted to any water users other than the Petitioners who are proposing this monumental change to water management within the Delta.

Suggested Resolution

The SJTA requests that the SWRCB retract the findings and rulings in its order of February 11, 2016 addressing this issue. The SJTA has attached its preferred retractions.

The Board should set a hearing date to have all parties submit briefing on the issue of “appropriate Delta flow criteria” as required by Water Code section 85086. After the hearing, the Board can then issue an order as to “appropriate Delta flow criteria.” This ruling will then inform the Petitioners as to whether their proposal of D-1641, plus the OCAP-BO RPA flows, constitute “appropriate Delta flow criteria,” or whether the change Petition will be stayed pending a revised water quality control plan, or whether “appropriate Delta flow criteria” are developed in the change petition process as a condition for approval of the Petition.

If the SWRCB is inclined to keep its ruling in effect on this issue, then a simple rejection of this letter will suffice.

Thank you for your consideration.

Very truly yours,


Tim O'Laughlin

TO/llw

Attachments

cc: San Joaquin Tributaries Authority
Service List of Hearing Parties (Table 1 – Attached)

Table 1
Service List of Parties to Exchange Information
Parties Participating in Direct Testimony, Cross-Examination or Rebuttal
(Note: All Parties Listed Below are Included in Table 1)

California WaterFix Petition Hearing
(Scheduled to Commence on April 7, 2016)

Dated February 10, 2016

Be sure to copy all documents and correspondence addressed to the State Water Resources Control Board Members or staff regarding this hearing to CWFhearing@waterboards.ca.gov.

Parties Participating in Part I (May also be Parties in Part II)

THE FOLLOWING PARTIES MUST BE SERVED WITH WRITTEN TESTIMONY, EXHIBITS AND OTHER DOCUMENTS. (Note: The parties listed below agreed to accept electronic service, pursuant to the rules specified in the hearing notice.)

Party	Authorized Representative/ Attorney	Authorized Representative's Affiliation	Email Address of Authorized Representative/ Attorney
California Department of Water Resources	James (Tripp) Mizell		james.mizell@water.ca.gov
U.S. Department of the Interior, The	Amy L. Aufdemberge, Esq.		amy.aufdemberge@sol.doi.gov
Sacramento County Water Agency	Aaron Ferguson	Somach Simmons & Dunn	aferguson@somachlaw.com
Carmichael Water District, The	Aaron Ferguson	Somach Simmons & Dunn	aferguson@somachlaw.com
City of Roseville, The	Alan Lilly & Ryan Bezerra	Bartkiewicz, Kronick & Shanahan	abl@bkslawfirm.com; rsb@bkslawfirm.com
Sacramento Suburban Water District	Alan Lilly & Ryan Bezerra	Bartkiewicz, Kronick & Shanahan	abl@bkslawfirm.com; rsb@bkslawfirm.com
San Juan Water District	Alan Lilly & Ryan Bezerra	Bartkiewicz, Kronick & Shanahan	abl@bkslawfirm.com; rsb@bkslawfirm.com
City of Folsom, The	Alan Lilly & Ryan Bezerra	Bartkiewicz, Kronick & Shanahan	abl@bkslawfirm.com; rsb@bkslawfirm.com
Yuba County Water Agency	Alan Lilly & Ryan Bezerra	Bartkiewicz, Kronick & Shanahan, P.C.	abl@bkslawfirm.com; rsb@bkslawfirm.com
South Valley Water Association, et al.	Alex M Peltzer	Peltzer & Richardson, LC	apeltzer@prlawcorp.com
Biggs-West Gridley Water District (BWGWD)	Andrew M. Hitchings	Somach Simmons & Dunn, PC	ahitchings@somachlaw.com

Party	Authorized Representative/ Attorney	Authorized Representative's Affiliation	Email Address of Authorized Representative/ Attorney
Glenn-Colusa Irrigation District (GCID)	Andrew M. Hitchings	Somach Simmons & Dunn	ahitchings@somachlaw.com
Restore the Delta	Barbara Barrigan-Parilla & Tim Strohane	Restore the Delta	barbara@restorethedelta.org; tim@restorethedelta.org
Barbara Daly / North Delta C.A.R.E.S.	Barbara Daly & Anna Swenson		bdalymn@citlink.net; deltaactioncommittee@gmail.com
SolAgra Corporation/ IDE Technologies	Barry Sgarrella	SolAgra Corporation	barry@solagra.com
California Delta Chambers & Visitor's Bureau	Bill Wells		info@californiadelta.org
Steamboat Resort	Brad & Emily Pappalardo		empappa@gmail.com; bradpappa@gmail.com
Brett G. Baker	Osha Meserve and Brett G. Baker		osha@semlawyers.com; brettgbaker@gmail.com
The Environmental Justice Coalition for Water	Osha Meserve and Esperanza Vielma and Colin Bailey, J.D.		osha@semlawyers.com; evielma@cafecoop.org; colin@ejcw.org
Placer County Water Agency, The	Daniel Kelly	Somach Simmons & Dunn	dkelly@somachlaw.com
City of Brentwood, The	David Aladjem	Downey Brand LLP	daladjem@downeybrand.com
Reclamation District No. 800 (Byron Tract)	David Aladjem	Downey Brand LLP	daladjem@downeybrand.com
Friant North Authority	David Orth		dorth@davidorthconsulting.com
Deirdre Des Jardins	Deirdre Des Jardins		ddj@cah2oresearch.com
Nevada Irrigation District (NID)	Dustin C. Cooper	Minasian, Meith, Soares, Sexton & Cooper LLP	dcooper@minasianlaw.com
Butte Water District (BWD)	Dustin C. Cooper	Minasian, Meith, Soares, Sexton & Cooper, LLP	dcooper@minasianlaw.com
Richvale Irrigation District (RID)	Dustin C. Cooper	Minasian, Meith, Soares, Sexton & Cooper, LLP	dcooper@minasianlaw.com
Anderson - Cottonwood Irrigation District	Dustin C. Cooper	Minasian, Meith, Soares, Sexton & Cooper, LLP	dcooper@minasianlaw.com
Plumas Mutual Water Company (PMWC)	Dustin C. Cooper	Minasian, Meith, Soares, Sexton & Cooper, LLP	dcooper@minasianlaw.com
Reclamation District 1004	Dustin C. Cooper	Minasian, Meith, Soares, Sexton & Cooper, LLP	dcooper@minasianlaw.com

Party	Authorized Representative/ Attorney	Authorized Representative's Affiliation	Email Address of Authorized Representative/ Attorney
South Feather Water and Power Agency	Dustin C. Cooper	Minasian, Meith, Soares, Sexton & Cooper, LLP	dcooper@minasianlaw.com
Western Canal Water District (WCWD)	Dustin C. Cooper	Minasian, Meith, Soares, Sexton & Cooper, LLP	dcooper@minasianlaw.com
Paradise Irrigation District	Dustin C. Cooper	Minasian, Meith, Soares, Sexton & Cooper, LLP	dcooper@minasianlaw.com
Friant Water Authority & Friant Water Authority Members	Fennemore Craig, Lauren Caster, Gregory Adams, Jennifer Buckman, and 13 others		lcaster@fclaw.com; gadams@fclaw.com; jbuckman@friantwater.org; thomas.esqueda@fresno.gov; kelweg1@aol.com; mlarsen@kdwcd.com; sdalke@kern-tulare.com; mhagman@lindmoreid.com; sae16@lsid.org; fmorrissey@orangecoveid.org; sgeivet@ocsnet.net; roland@ssjmud.org; jph@tulareid.org
East Bay Municipal Utility District	Fred Etheridge & Jonathan Salmon		fetherid@ebmud.com; jsalmon@ebmud.com
North San Joaquin Water Conservation District	Jennifer Spaletta	Spaletta Law	jennifer@spalettalaw.com
City of Sacramento, The	Joe Robinson / Martha Lennihan	Office of the City Attorney / Lennihan Law	jrobinson@cityofsacramento.org; mlennihan@lennihan.net
Central Delta Water Agency, South Delta Water Agency (Delta Agencies), Lafayette Ranch, Heritage Lands Inc., Mark Bachetti Farms and Rudy Mussi Investments L.P.	John Herrick, Esq. and Dean Ruiz, Esq.		jherrlaw@aol.com; dean@hprlaw.net
City of Stockton, The	John Luebberke & Tara Mazzanti		john.luebberke@stocktonca.gov; tara.mazzanti@stocktonca.gov
San Luis & Delta-Mendota Water Authority	Jon Rubin		Jon.Rubin@SLDMWA.org
Stockton East Water District	Karna E. Harrigfeld		kharrigfeld@herumcrabtree.com

Party	Authorized Representative/ Attorney	Authorized Representative's Affiliation	Email Address of Authorized Representative/ Attorney
North Delta Water Agency & Member Districts	Kevin O'Brien	Downey Brand LLP	kobrien@downeybrand.com
Brannan-Andrus Levee Maintenance District; Reclamation District 407; Reclamation District 2067; Reclamation District 317; Reclamation District 551; Reclamation District 563; Reclamation District 150; Reclamation District 2098	Kevin O'Brien & David Aladjem	Downey Brand LLP	kobrien@downeybrand.com; daladjem@downeybrand.com
Sacramento Valley Group, The	Kevin O'Brien & David Aladjem	Downey Brand LLP	kobrien@downeybrand.com; daladjem@downeybrand.com
Sacramento Municipal Utility District (SMUD)	Kevin O'Brien & David Aladjem	Downey Brand LLP	kobrien@downeybrand.com; daladjem@downeybrand.com
County of San Joaquin, San Joaquin County Flood Control and Water Conservation District, and Mokelumne River Water and Power Authority	Kurtis C. Keller	Neumiller & Beardslee	kkeller@neumiller.com
County of Colusa, The	Marcos Kropf & Matthew C. Bently		mkropf@countyofcolusa.com; mbently@countyofcolusa.org
Save the California Delta Alliance; Janet & Michael McCleary; Frank Morgan; and Captain Morgan's Delta Adventures, LLC	Michael Brodsky	Law Offices of Michael A. Brodsky	michael@brodskylaw.net
Islands, Inc	Osha Meserve and Michael J. Van Zandt	Hanson Bridgett, LLP	osha@semlawyers.com; mvanzandt@hansonbridgett.com
California Sportfishing Protection Alliance (CSPA), California Water Impact Network (C-WIN), and AquAlliance	Michael Jackson, Bill Jennings, Chris Shutes, Barbara Vlamis, and Carolee Krieger	Law Offices of Michael Jackson	mjatty@sbcglobal.net; blancapaloma@msn.com; deltakeep@me.com; barbarav@aqualliance.net; caroleekrieger7@gmail.com;
Snug Harbor Resorts, LLC	Nicole S. Suard, Esq.		sunshine@snugharbor.net

Party	Authorized Representative/ Attorney	Authorized Representative's Affiliation	Email Address of Authorized Representative/ Attorney
Local Agencies of the North Delta	Osha Meserve		osha@semlawyers.com
Bogle Vineyards/Delta Watershed Landowner Coalition	Osha Meserve		osha@semlawyers.com
Diablo Vineyards and Brad Lange/Delta Watershed Landowner Coalition	Osha Meserve		osha@semlawyers.com
Stillwater Orchards/Delta Watershed Landowner Coalition	Osha Meserve		osha@semlawyers.com
Patrick Porgans	Patrick Porgans	Patrick Porgans & Associates	porgansinc@sbcglobal.net
San Joaquin River Exchange Contractors Water Authority	Paul R. Minasian	Minasian, Meith, Soares, Sexton & Cooper, LLP	pminasian@minasianlaw.com
Coalition for a Sustainable Delta, The	Paul S. Weiland		pweiland@nossaman.com
Sacramento Regional County Sanitation District	Paul S. Simmons	Somach Simmons & Dunn, PC	psimmons@somachlaw.com
Westlands Water District	Philip A Williams		pwilliams@westlandswater.org
County of Yolo, The	Philip J. Pogledich		philip.pogledich@yolocounty.org
City of Antioch	Ron Bernal		rbernal@ci.antioch.ca.us
Contra Costa County and Contra Costa County Water Agency	Ryan Hernandez		ryan.hernandez@dcd.cccounty.us; stephen.siptroth@cc.cccounty.us
Contra Costa Water District	Robert Maddow and Douglas E. Coty and Scott Shapiro and Kevin O'Brien	Downey Brand LLP and Bold, Polisner, Maddow, Nelson & Judson	rmaddow@bpmnj.com; dcoty@bpmnj.com; sshapiro@downeybrand.com; kobrien@downeybrand.com
Daniel Wilson	Osha Meserve and Daniel Wilson		osha@semlawyers.com; daniel@kaydix.com
State Water Contractors	Stefanie Morris		smorris@swc.org
Pacific Coast Federation of Fishermen's Associations and Institute for Fisheries Resources	Stephan C. Volker	Volker Law	svolker@volkerlaw.com

Party	Authorized Representative/ Attorney	Authorized Representative's Affiliation	Email Address of Authorized Representative/ Attorney
Tehama-Colusa Canal Authority & water service contractors in its service area	Steven Saxton, Meredith Nikkel & J. Mark Atlas	Downey Brand	ssaxton@downeybrand.com mnikkel@downeybrand.com matlas@jmatlaslaw.com
San Joaquin Tributaries Authority, The (SJTA), Merced Irrigation District, Modesto Irrigation District, Oakdale Irrigation District, South San Joaquin Irrigation District, Turlock Irrigation District, and City and County of San Francisco	Tim O' Laughlin & Valerie C. Kincaid	O'Laughlin & Paris, LLP	towater@olaughlinparis.com; vkincaid@olaughlinparis.com
Water Forum, The	Tom Gohring		tgohring@waterforum.org
Earthjustice	Trent W. Orr		torr@earthjustice.org
County of Solano	William Emlen		wfemlen@solanocounty.com

THE FOLLOWING PARTY MUST BE SERVED WITH WRITTEN TESTIMONY, EXHIBITS AND OTHER DOCUMENTS. (Note: The party listed below has not agreed to electronic service BY THE PETITIONERS and must be served a hard copy. The party listed below agreed to electronic service by all other parties (excluding the Petitioners) pursuant to the rules specified in the hearing notice.)

Party	Authorized Representative/ Attorney	Mailing Address of Authorized Representative/ Attorney	Email Address of Authorized Representative/ Attorney
Clifton Court, L.P.	Suzanne Womack & Sheldon Moore	3619 Land Park Drive Sacramento, CA 95818	jsagwomack@gmail.com

Table 1 continues on next page

Parties Participating in Part II Only (Must also be Served in Part I)

THE FOLLOWING PARTIES MUST BE SERVED WITH WRITTEN TESTIMONY, EXHIBITS AND OTHER DOCUMENTS. (Note: The parties listed below agreed to accept electronic service, pursuant to the rules specified in the hearing notice.)

Party	Authorized Representative/ Attorney	Authorized Representative's Affiliation	Email Address of Authorized Representative/ Attorney
County of Sacramento, The	Aaron Ferguson	Somach Simmons & Dunn	aferguson@somachlaw.com
Friends of the River	E. Robert Wright		bwright@friendsoftheriver.org
Environmental Council of Sacramento (ECOS)	Brenda Rose		office@ecosacramento.net
Trout Unlimited	Brian Johnson		bjohnson@tu.org
California Department of Fish and Wildlife	Carl Wilcox		carl.wilcox@wildlife.ca.gov
Environmental Water Caucus	Barbara Barrigan-Parilla and Tim Stroshane and Conner Everts		barbara@restorethedelta.org; tim@restorethedelta.org; connere@gmail.com
Sierra Club California	E. Robert Wright & Kyle Jones		bwright@friendsoftheriver.org; kyle.jones@sierraclub.org
Planning & Conservation League	Jonas Minton		jminton@pcl.org
Natural Resources Defense Council, The Bay Institute, and Defenders of Wildlife	Kate Poole	Natural Resources Defense Council	kpoole@nrdc.org; awearn@nrdc.org; bobker@bay.org; rzwillinger@defenders.org; dobegi@nrdc.org
SAVE OUR SANDHILL CRANES	Osha Meserve & Mike Savino		osha@semlawyers.com; wirthsoscranes@yahoo.com
Friends of the San Francisco Estuary	Mitch Avalon		friendsofsfestuary@gmail.com
Friends of Stone Lakes National Wildlife Refuge	Osha Meserve		osha@semlawyers.com; rmburness@comcast.net
American Rivers, Inc.	Steve Rothert		srothert@americanrivers.org



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

REDACTED COPY

February 11, 2016

Enclosed Service List of Hearing Parties:

CALIFORNIA WATERFIX PROJECT PRE-HEARING CONFERENCE RULING

On October 30, 2015, the State Water Resources Control Board (State Water Board) issued a [Notice of Petition and Notice of Public Hearing and Pre-Hearing Conference](#) (Hearing Notice), regarding the petition submitted by the Department of Water Resources (DWR) and the U.S. Bureau of Reclamation (Reclamation) (collectively referred to as "petitioners") to change their water rights as part of the California WaterFix Project (WaterFix). To organize the conduct of the hearing, the State Water Board held a pre-hearing conference on Thursday, January 28, 2016.

By [letter dated January 15, 2016](#), we circulated a draft agenda to the parties and requested written comments in advance of the pre-hearing conference. We appreciate the written comments submitted by many of the parties and the parties' participation during the pre-hearing conference, which was generally succinct and thoughtful and allowed for a very informative and efficient day. The discussion at the pre-hearing conference was organized into two general topic areas: 1) timing of the hearing; and 2) hearing logistics. This letter constitutes the hearing officers' response and rulings on various procedural issues.

Timing

The first procedural topic relates to the timing of the hearing on the water right change petition in relationship to other regulatory processes, including environmental review under the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA), compliance with the federal Endangered Species Act (ESA) and the California Endangered Species Act (CESA), and update to the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta Plan). Many parties argued that it is inappropriate to begin the hearing before these other processes have been completed. DWR has requested an expedited hearing schedule because of the likelihood of a lengthy hearing, but has not clearly explained why the hearing process should begin now, notwithstanding the arguments of the other parties.

Despite the parties' arguments regarding the timing of the hearing and DWR's lack of clarity on the need to begin the hearing process, we believe that it is appropriate to move forward with the hearing now in a modified manner as described in more detail below. Specifically, we plan to

FELICIA MARCUS, CHAIR | THOMAS HOWARD, EXECUTIVE DIRECTOR

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begin the hearing on schedule with policy statements, followed by petitioners' cases in chief (now Part 1A of the hearing). For petitioners, the noon March 1, 2016 deadline for submitting written testimony and exhibits will remain the same. For the other parties participating in Part 1 of the hearing, the deadline for submitting written testimony and exhibits will be extended until noon on May 16, 2016. The other parties participating in Part 1 of the hearing will present their cases in chief beginning on June 23, 2016 (now Part 1B of the hearing). This approach will give petitioners the opportunity to fully explain their proposed project and should give the other hearing parties the ability to better evaluate how their interests may be affected before they begin their cases. If petitioners fail to adequately describe their project, it also gives the State Water Board the opportunity to make course corrections.

We believe that staging the hearing in this manner is an appropriate middle ground to pursue at this time. The WaterFix is a key component of petitioners' plans to address critical water supply and ecosystem concerns in the Bay-Delta. As such, it is in the public interest to resolve without further delay whether and how the WaterFix will be part of the solution to longstanding problems in the Bay-Delta. Project planning has been ongoing for many years now, which has helped to refine the proposal and highlight key issues requiring resolution. The water right hearing process is an appropriate venue to address some of the issues that need to be resolved in order to inform water supply planning and ecosystem protection efforts of statewide importance, although it is not the only venue.

The revised hearing schedule is identified below. In addition, the specific timing concerns raised by the parties are addressed in detail below.

Revised Hearing Schedule

The hearing schedule is revised as follows:

- | | |
|-------------------------------------|--|
| 12:00 noon, Tuesday, March 1, 2016 | Deadline for receipt and service of petitioners' cases in chief, including witnesses' proposed testimony, witness qualifications, exhibits, list of exhibits, and a statement of service for Part 1A of the hearing and Reclamation's time estimates for oral summaries of direct testimony. |
| 12:00 noon, Tuesday, March 15, 2016 | Due date for receipt of any written procedural/ evidentiary objections concerning petitioners' cases in chief. Rulings to follow as appropriate and necessary. (See also discussion on motion practice generally below.) |
| 12:00 noon, Tuesday, March 15, 2016 | Due date for receipt of proposed groupings and order of parties for cross examination in Part 1A of the hearing. |

- 9:00 am, Thursday, April 7, 2016 Begin policy statements followed immediately by Part 1A with petitioners' cases in chief and cross examination of petitioners' witnesses. (Additional information regarding policy statements will be provided shortly in a separate correspondence.)
- 12:00 noon, Monday, May 16, 2016 Due date for receipt and service of all other parties' cases in chief for Part 1B of the hearing, including witnesses' proposed testimony, witness qualifications, exhibits, list of exhibits, a statement of service, and any requests for additional time for direct testimony.
- 12:00 noon, Tuesday, May 31, 2016 Due date for receipt of any written procedural/ evidentiary objections concerning Part 1B parties' cases in chief. Rulings to follow as appropriate and necessary. (See also discussion on motion practice generally below.)
- 12:00 noon, Tuesday, May 31, 2016 Due date for receipt of proposed groupings and order of parties for direct testimony in Part 1B and proposed order of parties for cross examination.
- 9:00 am, Thursday, June 23, 2016 Part 1B of the hearing commences, beginning with other parties' cases in chief for Part 1 of the hearing, including direct testimony, cross-examination, any redirect, and any recross-examination. Following the cases in chief, petitioners and other parties may present rebuttal testimony and exhibits.

As previously planned, Part 2 of the hearing will commence following completion of the CEQA/NEPA and ESA/CESA processes. In order to inform planning for Part 2 of the hearing, State Water Board staff requested an update on the schedule for ESA and CESA compliance at the pre-hearing conference. **The Petitioners are directed to consult with the fisheries agencies and provide this update within two weeks from the date of this letter, along with a written update for the CEQA/NEPA schedule provided during the pre-hearing conference.**

Bay-Delta Plan

Several parties objected to holding a hearing on the WaterFix petition before the State Water Board updates the Bay-Delta Plan. Parties argued that the State Water Board cannot use the current Bay-Delta Plan, as implemented in accordance with State Water Board Decision

1641(2000) (D-1641), as the measure for determining the level of protection that should be afforded to fish and wildlife and other public trust resources.

As the Hearing Notice stated, the State Water Board is currently developing updates to the Bay-Delta Plan and its implementation through a phased process. Phase 1 involves updating the San Joaquin River flow and southern Delta salinity objectives and their associated program of implementation. Phase 2 involves other changes to the Bay-Delta Plan to protect beneficial uses not addressed in Phase 1, including Delta outflows, Sacramento River flows, export restrictions, Delta Cross Channel gate closure requirements and potential new reverse flow limits for Old and Middle Rivers. Phase 1 is expected to be complete in the fall of 2016 and Phase 2 is expected to be complete in mid-2018. Following the updates to the Bay-Delta Plan, the State Water Board will undertake proceedings to implement the Bay-Delta Plan through water rights or other measures, referred to as Phase 3 of the planning process.

We do not agree with some parties' assertion that the State Water Board cannot proceed with a water right decision prior to updating the Bay-Delta Plan. The Sacramento-San Joaquin Delta Reform Act of 2009 (Delta Reform Act) establishes additional requirements related to the WaterFix that are distinct and separate from the Bay-Delta Plan. The Delta Reform Act requires that any order approving the water right change petition must include "appropriate Delta flow criteria." Those flow criteria must be informed by flow criteria to protect the Delta ecosystem, which the State Water Board developed in 2010.

We do not interpret "appropriate Delta flow criteria" to mean the same thing as either existing or revised water quality objectives. Determination of appropriate flow criteria for purposes of this proceeding will entail a balancing of the need for flows to protect water quality in the Bay-Delta and the need for water to meet the demands of the State Water Project (SWP) and Central Valley Project (CVP). ~~The flow criteria imposed as a condition of any approval would be an interim requirement until Phases 2 and 3 of the Bay-Delta Plan update and subsequent implementation processes are complete, at which point the flow criteria would be revisited. The appropriate Delta flow criteria will be more stringent than petitioners' current obligations and may well be more stringent than the petitioners' preferred project.~~

Just as appropriate Delta flow criteria are not limited to existing requirements, development of appropriate flow criteria for the WaterFix does not require promulgation of new water quality objectives. Unlike the more narrow focus of this proceeding, developing any necessary revisions to the water quality objectives contained in the Bay-Delta Plan along with implementation measures for those water quality objectives will entail a much more comprehensive evaluation of the effects of all diversions and other factors on the beneficial uses of water in the Bay-Delta. The Bay-Delta planning processes are not limited to consideration of the impacts of the SWP and CVP on water quality in the Bay-Delta. (See generally, *United States v. State Water Resources Control Board* (1983) 182 Cal.App.3d 82, 119-122 [promulgation of water quality objectives should not be constrained by or limited to requirements that can be imposed on the SWP and CVP].)

We acknowledge that the WaterFix, if approved, would be a significant component of Delta operations, and it would be preferable to have Phase 2 completed prior to acting on the change

petition. Unfortunately, emergency actions in response to the ongoing drought have delayed the Bay-Delta planning process. At this point, waiting until completion of Phase 2 would significantly delay processing of the change petition. ~~Moreover, completion of Phase 2 will not resolve the issue of appropriate flow criteria for the WaterFix because the various obligations of responsible parties to meet the revised objectives, including the obligations of the CVP and SWP, will not be established until completion of Phase 3 of the State Water Board's Bay-Delta planning processes.~~

~~In determining appropriate Delta flow criteria, the State Water Board intends to rely on the best available science, including the 2010 Delta flow criteria and the Scientific Basis Report for revisions to the Bay-Delta Plan that is being developed to support Phase 2 of the Bay-Delta Plan update.~~ A complete Bay-Delta Plan update is not required, however, prior to processing the change petition.

We acknowledge the concerns raised by some of the parties regarding how application of the prohibition against ex parte communications in this proceeding could restrict otherwise permissible communications in the Bay-Delta planning process. At this time, it is not clear to what extent, if any, issues concerning the WaterFix will be relevant in the larger planning process. If this becomes a problem as Phase 2 progresses, the State Water Board will reach out to stakeholders and parties and determine the best way to allow any necessary open dialogue in the planning arena consistent with the ex parte rule applicable to the WaterFix hearing.

CEQA/NEPA and ESA/CESA

Parties have also objected to moving forward with the hearing prior to completion of the CEQA/NEPA and ESA/CESA consultation processes. We previously explained that it was standard practice for the State Water Board to begin a water right hearing before a final CEQA document has been prepared, and that Part 2 of the hearing (focused on environmental issues) would not commence before these processes were final. We also agree that an adequate project description is necessary for parties to prepare a case in chief in Part 1.

The Hearing Notice required all Part 1 parties and petitioners to submit their testimony and exhibits by March 1, 2016. During the pre-hearing conference, many parties made persuasive arguments that they cannot participate meaningfully in Part 1 because the draft CEQA document does not contain enough information concerning how the WaterFix will be operated and the potential impacts of the project on other legal users of water. California Code of Regulations, title 23, section 794 contains a detailed list of information that must be provided in a change petition, including effects on other known users of water, and any quantified changes in water quality, quantity, timing of diversion and use, reduction in return flows and other pertinent information. The petitioners' change petition specifies that this information is contained in the CEQA/NEPA documents. (See Environmental Information form attached to Petition at 1 [Specific discussions of the components of Alternative 4A most relevant to petition found within the Partially Recirculated Draft Environmental Impact Report /Supplemental Draft Environmental Impact Statement at sections 1.1, 1.1.4, 4.1, 4.1.2.2-4, 4.3.7-8, 11.1.2, Appendix A and 3B.]

The CEQA/NEPA documents do contain a significant amount of detailed information about proposed operations associated with the petition. (See, e.g., section 4.1.2.2 (Water Conveyance Facility Operations) [Table 4.1-2 cross-referencing Tables 3-16 in the Draft EIR/EIS and 3.4.1-2 in the BDCP Public draft for North Delta bypass flows].) Further, petitioners submitted a post-pre-hearing conference letter stating that additional CALSIM and DSM2 hydrologic and water quality modeling data prepared for the biological assessment for the WaterFix ESA processes are available upon request. We encourage petitioners to post this information on their WaterFix website. Petitioners pointed out that the biological assessment is also publicly available. We appreciate petitioners' supplemental information and direction to where parties can locate relevant information, but also understand the difficulty parties face sorting through voluminous documents to decipher relevant details necessary to assess whether the petition will cause injury. The available information lacks clarity in several ways, including whether 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 some mitigation measures.

We recognize that not all of these uncertainties need to be resolved for a satisfactory project description. ~~Indeed, precisely what mitigation measures should be required and what flow criteria are appropriate, should the State Water Board approve the petition, are issues that will comprise a significant portion of the issues to be decided on the hearing record.~~ At a minimum, however, petitioners should provide the information required by section 794, subdivision (a) of our regulations. We also strongly suggest that petitioners develop proposed permit conditions for the change as part of their exhibits in order to focus the discussion on the decision to be made and more clearly define the proposed project. (Protestants and others are also encouraged to propose specific permit conditions as part of their cases.) We also agree with some of the parties that, absent a more complete and succinct submittal of information by petitioners, project opponents will not be able to fully-develop their cases in chief, and much substantive content will be deferred to the rebuttal stage of the hearing.

The lack of information concerning project operations and potential effects is due in part to the fact that, at the petitioners' request, the State Water Board skipped the protest resolution process that would normally precede a hearing on a water right change petition. The petition process under Water Code sections 1701 et seq. includes various procedures designed to supply supporting information and narrow issues prior to any Board hearing or decision. A petition for change must include detailed information and the State Water Board may request additional information reasonably necessary to clarify, amplify, correct, or otherwise supplement the information submitted by a petitioner. Similarly, any protests to the petition must include specific information and the State Water Board may request additional information reasonably necessary to supplement the information submitted by protestants. The State Board may request additional information from petitioners or protestants to attempt to resolve a protest. The State Board may cancel a petition or a protest if requested information is not provided. (Wat. Code, §§ 1701.4; 1703.6.) This type of information exchange would have served to fill information gaps, narrow the focus of hearing issues, and increase the efficiency of the hearing.

During the pre-hearing conference, the Sacramento Valley Water Users (SVWU) proposed a staggered schedule for the submission of exhibits and the presentation of testimony in Part 1. Many other parties supported such a process. As stated above, we find it appropriate to allow petitioners to present their cases in chief without delay (Part 1A of the hearing) and allow other parties to submit the written testimony and exhibits for their cases in chief at a subsequent date (Part 1B of the hearing), with rebuttal occurring after both the petitioners and other parties have completed their cases in chief, including cross-examination. Suspending the due date for other parties to submit written testimony and exhibits until after petitioners present their cases in chief will address the need for an adequate project description. The petitioners' cases in chief must, to the extent possible, contain the information required by section 794 of our regulations in a succinct and easily identifiable format. The other parties will then be able to more accurately assess whether the proposed changes would cause injury. This staggered approach allows the hearing to move forward while focusing the hearing issues and capturing efficiencies from the protest resolution process that normally precede a Board hearing. This approach also is fair, in light of the fact that petitioners bear the burden of establishing that the proposed changes will not injure legal users of water, and petitioners will be afforded ample opportunity for rebuttal.

Protest Resolution/Settlement Agreements

Some parties raised the issue of canceling protests or the petition. Given that the protest resolution process was truncated, we do not intend to cancel the petition or any protests while the hearing is pending, and will not entertain any motions to do so at this time. We expect petitioners to meet their burden of proof and protestants to support the allegations in their protests during the hearing. We will resolve the issues raised by protestants and other project opponents in any order adopted by the State Water Board after the hearing concludes.

Parties also requested that a portion of the hearing be dedicated to address settlement agreements. The State Water Board is generally supportive of settlement agreements and encourages parties to attempt to resolve outstanding issues. As stated earlier, we also encourage petitioners to submit proposed permit terms that may resolve certain issues. If petitioners are committed to certain mitigation measures, it would be useful to specifically identify such mitigation. If parties believe that any such mitigation would alleviate a portion or all of their issues, it would be useful to make that information available as well. Nevertheless, it may not be possible for the State Water Board to consider approving any proposed settlements, especially related to flow, until all portions of the hearing are concluded. Given the uncertainty concerning whether and when settlement agreements will be reached, and the content of any agreements, we will not set aside any separate procedure for hearing settlement agreements at this time, but may consider hearing settlement agreements at a later date.

Water Quality Certification

In our letter of January 15, 2016, and at the pre-hearing conference, we requested input on the proposal to process DWR's Clean Water Act section 401 application for water quality certification for the WaterFix (401 Application) in a proceeding separate from the hearing on the water right change petition, and under the delegated authority of the State Water Board's Executive Director. Any decision by the Executive Director would then be subject to

reconsideration by the State Water Board. The public notices for the 401 Application and the water right petition proposed that the Executive Director would rely on some or all of the information in the hearing record to inform the decision on the 401 Application, but also that the Executive Director may act on the 401 Application before the close of the hearing record.

There was broad consensus by many parties in their responses to our January 15, 2016 letter and at the pre-hearing conference that the decision on the 401 Application should be informed by the complete hearing record for the water right petition because the proceedings involve very similar issues. Accordingly, the parties argued that a decision on the 401 Application should not be made until after the hearing record on the water right petition closes. In order to ensure that parties do not have to duplicate their participation in two proceedings with overlapping issues, and to allow the decision on the 401 Application to be informed by the significant information that will be produced in the hearing process, the Executive Director will not issue a decision on the 401 Application until after the hearing record for the water right petition closes. As before, the State Water Board plans to process and act on the 401 Application separately.

Some parties argued that the State Water Board should make the original decision on the 401 Application rather than the Executive Director. It is standard practice for the Executive Director to initially act under delegated authority on 401 Applications within the State Water Board's jurisdiction and for the State Water Board to act on any petitions for reconsideration of the Executive Director's decision. This standard practice is also appropriate for consideration of the 401 Application for the WaterFix for several reasons. The Executive Director will have the advantage of being able to rely on both the hearing record for the water right petition and any other information that may be appropriate for consideration in the 401 Application decision. All of the information that the Executive Director relies upon and any comments received in the 401 Application process will be posted on the State Water Board's website, ensuring that all of the interested parties have access to the information. There is no close to the comment period on the 401 Application, which will allow the Executive Director to consider information that may be developed after parts of the hearing are complete, ensuring the most up to date information may be relied upon. The standard 401 Application process also allows for informal collaboration with agencies and interested persons, including those that may not participate in the water right petition evidentiary hearing process. Further, any concerns with consistency between the Executive Director's decision on the 401 Application and the State Water Board's decision on the water right petition can be addressed through the petition for reconsideration process for the 401 Application decision.

CEQA Compliance

In our January 15, 2016 letter regarding the issues to be discussed at the pre-hearing conference, we explained that the State Water Board's role as a responsible agency under CEQA is limited, and for that reason the adequacy of the CEQA documentation for the WaterFix for purposes of CEQA is not a key hearing issue. Despite this admonition, several parties argued that the draft Environmental Impact Report (EIR) that DWR has prepared for the project is inadequate, and that an adequate document must be prepared before the State Water Board may hold a hearing on the change petition. Among other alleged inadequacies, the parties

argued that the draft EIR does not include a reasonable range of alternatives that is adequate for purposes of the State Water Board's decision-making process.

We are not persuaded by the parties' arguments that the State Water Board must assume the role of the CEQA lead agency, or that any additional CEQA documentation must be prepared before conducting Part 1 of the hearing. (See Cal. Code Regs., tit. 14, §§ 15051 [criteria for identifying lead agency], 15052 [shift in lead agency designation], 15096 [process for responsible agency].) We recognize that ultimately the final EIR must be adequate to support the State Water Board's decision in this proceeding. DWR has evaluated a range of alternatives that DWR has determined will meet its project objectives. If during the course of this proceeding, the State Water Board determines that the range of alternatives evaluated by DWR is not adequate to support the Board's decision, then either DWR or the Board will need to prepare subsequent or supplemental documentation. (See *id.*, §§ 15096, subd. (e), 15162, 15163.) At this point, however, it is uncertain whether any subsequent or supplemental documentation will be required.

Hearing Logistics

The second discussion topic in the pre-hearing conference concerned a variety of logistical issues associated with the hearing. Any procedural requirements not addressed below remain as stated in the Hearing Notice. Several minor issues raised and not yet addressed will be addressed as needed as the hearing progresses.

Opening Statements/Closing Briefs

Written opening statements are due at the same time as the written testimony and exhibits for each party's case in chief and shall include an overview of the party's legal arguments. Written opening statements shall be limited to 20 pages in 12 point Arial font, except for good cause shown in a written request that is approved by the hearing officers. Parties will have 20 minutes each to summarize their opening statement. There will be an opportunity to provide more detailed legal arguments in written closing briefs submitted after completion of Part 1. As specified in our January 15, 2016 letter, a summary of written, direct testimony is also required to be submitted with the testimony.

Time Limits/Group Consolidation

DWR has requested 13 hours to summarize its witnesses' direct testimony. Reclamation has not yet provided time estimates for its witnesses' direct testimony. The additional time requested by DWR is granted. As most parties agreed, petitioners should be afforded more time to present their cases. Reclamation shall provide time estimates for oral summaries of its witnesses' direct testimony together with its written testimony and exhibits, which are due at noon on March 1, 2016. Commensurate time will be afforded for cross-examination, and we expect that parties will be efficient in that process. Additional details on time limits may need to be provided as the process moves forward.

We will not alter the time limits for other parties at this time. The time limits specified in the Hearing Notice remain in force and effect. Parties must show good cause for any proposed

time limits that differ from what is provided in the Hearing Notice. As specified above, parties must include any requests for additional time with their written testimony and exhibits. Due dates for identification of any proposed groupings with other parties for direct testimony or cross examination and any proposals regarding orders of parties are specified above.

Procedural Motions

Due dates for written procedural motions/evidentiary objections are specified in the modified schedule above. The hearing officers will rule as appropriate and necessary. The hearing officers or hearing staff may request a party to promptly respond to a motion. We are committed to providing a fair and open process in this hearing and will provide parties ample opportunities to be heard and to participate. Excessive motion practice is not encouraged. Parties should limit motions to those that are absolutely necessary and those that help focus the hearing in an efficient manner. Due to the number of parties, we strongly discourage flurries of unsolicited correspondence, follow-up comments on rulings, and duplicative motions on items already addressed.

Scope of Part 1 and Part 2 and Cross Examination

As discussed at the pre-hearing conference, some issues could crossover Part 1 and 2, but generally Part 1 focusses on human uses of water (water right and water use impacts) and Part 2 focusses on environmental issues. Part 1 can address human uses that extend beyond the strict definition of legal users of water, including flood control issues and environmental justice concerns. If a human use is associated with the health of a fishery or recreation, testimony on this matter should be presented in Part 2.

Some parties questioned whether parties to Part 2 of the hearing would be permitted to cross examine witnesses during Part 1 of the hearing. If parties to Part 2 wish to cross examine witnesses in Part 1, and have not indicated their intent to do so in their Notice of Intent to Appear (NOI), they should submit a **revised NOI by February 26, 2016**, clearly indicating how they wish to participate in the hearing.

Exhibits

Several parties requested clarification concerning how the State Water Board plans to treat the staff exhibits included in Enclosure B of the Hearing Notice (pages 19-24) and posted on the State Water Board's website at:

http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/exhibits/index.shtml. As stated at the pre-hearing conference, hearing team staff compiled the staff exhibits simply as a convenience to the parties in the interest of efficiency. The intent was to avoid having multiple parties submit the same document for the record and refer to that document in each party's testimony with different exhibit names and numbers. The staff exhibits are all public documents that contain information that is relevant to the hearing issues. The hearing team staff will not be serving as project advocates, and do not plan to present testimony to authenticate or otherwise support any of the staff exhibits.

In response to concerns raised by parties, hearing team staff do not currently propose to offer the staff exhibits into evidence at the hearing (although staff may introduce exhibits if strictly necessary). The staff exhibits are marked for reference and will remain on the State Water Board's web page for the convenience of the parties. Parties should carefully review the list of staff exhibits before compiling their own lists of exhibits to avoid submitting duplicative exhibits, which will not be accepted. It is incumbent on the parties to provide their own testimony to authenticate or otherwise support any of the staff exhibits they wish to rely on and offer into evidence at the hearing. Staff exhibits may be offered into evidence as exhibits by reference. As set forth in the Hearing Notice, other public records also may be offered into evidence as exhibits by reference in accordance with California Code of Regulations, title 23, section 648.3. Any objections to the staff exhibits offered into evidence by parties will be addressed on a case-by-case basis.

There was also a discussion about whether parties could submit the cover page of a document and only pages relevant to their testimony as an exhibit. As a general rule, parties should submit the entire document as an exhibit and identify specific pages they are relying on. This is particularly important for technical documents.

Service List

At the pre-hearing conference, parties expressed concern over the size of the service list and whether it may pose a problem when exhibits are due and required to be served on the other parties. Hearing staff are working on a better way for parties to exchange exhibits and submit them to the State Water Board. Hearing Staff will provide additional information on this issue in a separate letter in the near future.

Notice

One party suggested that adequate notice of this hearing was not provided to people in the Delta. As explained below, the State Water Board exceeded legal noticing requirements in an effort to provide broad public notice. Also, additional interested parties are not precluded from presenting policy statements.

Water Code section 1703 and California Code of Regulations, title 23, section 795 specify the noticing requirements for change petitions. The petitioner must give or publish notice in the manner required by the State Water Board, and also must notify the Department of Fish and Wildlife in writing. If a hearing is held, notice shall be given by mail not less than 20 days before the date of the hearing to the petitioner and to any protestant. (Wat. Code, § 1704.) In addition, persons who have requested notice of change petitions in writing must receive notice of any proposed change. (Cal. Code Regs., tit. 23, § 795, subd. (b).) "The board's notice requirements shall be based on the potential effects of the proposed change(s) on legal users of water and on fish, wildlife, and other instream beneficial uses." (Cal. Code Regs., tit. 23, § 795, sub. (a).)

The State Water Board and petitioners have satisfied notice requirements. The Hearing Notice was (1) emailed to 3,563 unique email addresses on five Board Lyris distribution lists (WaterFix, Bay-Delta, Petitions, Hearings, and 401 Certification), (2) mailed to 1,083 Delta surface water

February 11, 2016

diverters who collectively hold 2,725 water rights (permits or licenses) or claims of water rights (Statements of Water Diversion and Use), (3) mailed to 214 interested persons on the "standard" petition mailing list, (4) mailed to 24 land owners at the proposed points of diversion and/or redirection, and (5) published in 24 newspapers in counties within which the SWP and CVP operate.

Thank you again for your participation in the pre-hearing conference and for your efforts to assist the State Water Board in conducting a fair and efficient hearing. If you have non-controversial procedural questions regarding this ruling, please contact the hearing team at CWFhearing@waterboards.ca.gov or (916) 319-0960.

Sincerely,



Felicia Marcus, State Water Board Chair
WaterFix Project Co-Hearing Officer



Tam Doduc, State Water Board Member
WaterFix Project Co-Hearing Officer

Enclosure:

Service List of Hearing Parties (Parties to Exchange Information Identified in Table 1)

Table 1
Service List of Parties to Exchange Information
Parties Participating in Direct Testimony, Cross-Examination or Rebuttal
(Note: All Parties Listed Below are Included in Table 1)

California WaterFix Petition Hearing
(Scheduled to Commence on April 7, 2016)

Dated February 10, 2016

Be sure to copy all documents and correspondence addressed to the State Water Resources Control Board Members or staff regarding this hearing to CWFhearing@waterboards.ca.gov.

Parties Participating in Part I (May also be Parties in Part II)

THE FOLLOWING PARTIES MUST BE SERVED WITH WRITTEN TESTIMONY, EXHIBITS AND OTHER DOCUMENTS. (Note: The parties listed below agreed to accept electronic service, pursuant to the rules specified in the hearing notice.)

Party	Authorized Representative/ Attorney	Authorized Representative's Affiliation	Email Address of Authorized Representative/ Attorney
California Department of Water Resources	James (Tripp) Mizell		james.mizell@water.ca.gov
U.S. Department of the Interior, The	Amy L. Aufdemberge, Esq.		amy.aufdemberge@sol.doi.gov
Sacramento County Water Agency	Aaron Ferguson	Somach Simmons & Dunn	aferguson@somachlaw.com
Carmichael Water District, The	Aaron Ferguson	Somach Simmons & Dunn	aferguson@somachlaw.com
City of Roseville, The	Alan Lilly & Ryan Bezerra	Bartkiewicz, Kronick & Shanahan	abl@bkslawfirm.com; rsb@bkslawfirm.com
Sacramento Suburban Water District	Alan Lilly & Ryan Bezerra	Bartkiewicz, Kronick & Shanahan	abl@bkslawfirm.com; rsb@bkslawfirm.com
San Juan Water District	Alan Lilly & Ryan Bezerra	Bartkiewicz, Kronick & Shanahan	abl@bkslawfirm.com; rsb@bkslawfirm.com
City of Folsom, The	Alan Lilly & Ryan Bezerra	Bartkiewicz, Kronick & Shanahan	abl@bkslawfirm.com; rsb@bkslawfirm.com
Yuba County Water Agency	Alan Lilly & Ryan Bezerra	Bartkiewicz, Kronick & Shanahan, P.C.	abl@bkslawfirm.com; rsb@bkslawfirm.com
South Valley Water Association, et al.	Alex M Peltzer	Peltzer & Richardson, LC	apeltzer@prlawcorp.com
Biggs-West Gridley Water District (BWGWD)	Andrew M. Hitchings	Somach Simmons & Dunn, PC	ahitchings@somachlaw.com

Party	Authorized Representative/ Attorney	Authorized Representative's Affiliation	Email Address of Authorized Representative/ Attorney
Glenn-Colusa Irrigation District (GCID)	Andrew M. Hitchings	Somach Simmons & Dunn	ahitchings@somachlaw.com
Restore the Delta	Barbara Barrigan-Parilla & Tim Strohane	Restore the Delta	barbara@restorethedelta.org; tim@restorethedelta.org
Barbara Daly / North Delta C.A.R.E.S.	Barbara Daly & Anna Swenson		bdalymn@citlink.net; deltaactioncommittee@gmail.com
SolAgra Corporation/ IDE Technologies	Barry Sgarrella	SolAgra Corporation	barry@solagra.com
California Delta Chambers & Visitor's Bureau	Bill Wells		info@californiadelta.org
Steamboat Resort	Brad & Emily Pappalardo		empappa@gmail.com; bradpappa@gmail.com
Brett G. Baker	Osha Meserve and Brett G. Baker		osha@semlawyers.com; brettgbaker@gmail.com
The Environmental Justice Coalition for Water	Osha Meserve and Esperanza Vielma and Colin Bailey, J.D.		osha@semlawyers.com; evielma@cafecoop.org; colin@ejcw.org
Placer County Water Agency, The	Daniel Kelly	Somach Simmons & Dunn	dkelly@somachlaw.com
City of Brentwood, The	David Aladjem	Downey Brand LLP	daladjem@downeybrand.com
Reclamation District No. 800 (Byron Tract)	David Aladjem	Downey Brand LLP	daladjem@downeybrand.com
Friant North Authority	David Orth		dorth@davidorthconsulting.com
Deirdre Des Jardins	Deirdre Des Jardins		ddj@cah2oresearch.com
Nevada Irrigation District (NID)	Dustin C. Cooper	Minasian, Meith, Soares, Sexton & Cooper LLP	dcooper@minasianlaw.com
Butte Water District (BWD)	Dustin C. Cooper	Minasian, Meith, Soares, Sexton & Cooper, LLP	dcooper@minasianlaw.com
Richvale Irrigation District (RID)	Dustin C. Cooper	Minasian, Meith, Soares, Sexton & Cooper, LLP	dcooper@minasianlaw.com
Anderson - Cottonwood Irrigation District	Dustin C. Cooper	Minasian, Meith, Soares, Sexton & Cooper, LLP	dcooper@minasianlaw.com
Plumas Mutual Water Company (PMWC)	Dustin C. Cooper	Minasian, Meith, Soares, Sexton & Cooper, LLP	dcooper@minasianlaw.com
Reclamation District 1004	Dustin C. Cooper	Minasian, Meith, Soares, Sexton & Cooper, LLP	dcooper@minasianlaw.com

Party	Authorized Representative/ Attorney	Authorized Representative's Affiliation	Email Address of Authorized Representative/ Attorney
South Feather Water and Power Agency	Dustin C. Cooper	Minasian, Meith, Soares, Sexton & Cooper, LLP	dcooper@minasianlaw.com
Western Canal Water District (WCWD)	Dustin C. Cooper	Minasian, Meith, Soares, Sexton & Cooper, LLP	dcooper@minasianlaw.com
Paradise Irrigation District	Dustin C. Cooper	Minasian, Meith, Soares, Sexton & Cooper, LLP	dcooper@minasianlaw.com
Friant Water Authority & Friant Water Authority Members	Fennemore Craig, Lauren Caster, Gregory Adams, Jennifer Buckman, and 13 others		lcaster@fclaw.com; gadams@fclaw.com; jbuckman@friantwater.org; thomas.esqueda@fresno.gov; kelweg1@aol.com; mlarsen@kdwcd.com; sdalke@kern-tulare.com; mhagman@lindmoreid.com; sae16@lsid.org; fmorrissey@orangecoveid.org; sgeivet@ocsnet.net; roland@ssjmud.org; jph@tulareid.org
East Bay Municipal Utility District	Fred Etheridge & Jonathan Salmon		fetherid@ebmud.com; jsalmon@ebmud.com
North San Joaquin Water Conservation District	Jennifer Spaletta	Spaletta Law	jennifer@spalettalaw.com
City of Sacramento, The	Joe Robinson / Martha Lennihan	Office of the City Attorney / Lennihan Law	jrobinson@cityofsacramento.org; mlennihan@lennihan.net
Central Delta Water Agency, South Delta Water Agency (Delta Agencies), Lafayette Ranch, Heritage Lands Inc., Mark Bachetti Farms and Rudy Mussi Investments L.P.	John Herrick, Esq. and Dean Ruiz, Esq.		jherrlaw@aol.com; dean@hprlaw.net
City of Stockton, The	John Luebberke & Tara Mazzanti		john.luebberke@stocktonca.gov; tara.mazzanti@stocktonca.gov
San Luis & Delta-Mendota Water Authority	Jon Rubin		Jon.Rubin@SLDMWA.org
Stockton East Water District	Karna E. Harrigfeld		kharrigfeld@herumcrabtree.com

Party	Authorized Representative/ Attorney	Authorized Representative's Affiliation	Email Address of Authorized Representative/ Attorney
North Delta Water Agency & Member Districts	Kevin O'Brien	Downey Brand LLP	kobrien@downeybrand.com
Brannan-Andrus Levee Maintenance District; Reclamation District 407; Reclamation District 2067; Reclamation District 317; Reclamation District 551; Reclamation District 563; Reclamation District 150; Reclamation District 2098	Kevin O'Brien & David Aladjem	Downey Brand LLP	kobrien@downeybrand.com; daladjem@downeybrand.com
Sacramento Valley Group, The	Kevin O'Brien & David Aladjem	Downey Brand LLP	kobrien@downeybrand.com; daladjem@downeybrand.com
Sacramento Municipal Utility District (SMUD)	Kevin O'Brien & David Aladjem	Downey Brand LLP	kobrien@downeybrand.com; daladjem@downeybrand.com
County of San Joaquin, San Joaquin County Flood Control and Water Conservation District, and Mokelumne River Water and Power Authority	Kurtis C. Keller	Neumiller & Beardslee	kkeller@neumiller.com
County of Colusa, The	Marcos Kropf & Matthew C. Bently		mkropf@countyofcolusa.com; mbently@countyofcolusa.org
Save the California Delta Alliance; Janet & Michael McCleary; Frank Morgan; and Captain Morgan's Delta Adventures, LLC	Michael Brodsky	Law Offices of Michael A. Brodsky	michael@brodskylaw.net
Islands, Inc	Osha Meserve and Michael J. Van Zandt	Hanson Bridgett, LLP	osha@semlawyers.com; mvanzandt@hansonbridgett.com
California Sportfishing Protection Alliance (CSPA), California Water Impact Network (C-WIN), and AquAlliance	Michael Jackson, Bill Jennings, Chris Shutes, Barbara Vlamis, and Carolee Krieger	Law Offices of Michael Jackson	mjatty@sbcglobal.net; blancapaloma@msn.com; deltakeep@me.com; barbarav@aqualliance.net; caroleekrieger7@gmail.com;
Snug Harbor Resorts, LLC	Nicole S. Suard, Esq.		sunshine@snugharbor.net

Party	Authorized Representative/ Attorney	Authorized Representative's Affiliation	Email Address of Authorized Representative/ Attorney
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Bogle Vineyards/Delta Watershed Landowner Coalition	Osha Meserve		osha@semlawyers.com
Diablo Vineyards and Brad Lange/Delta Watershed Landowner Coalition	Osha Meserve		osha@semlawyers.com
Stillwater Orchards/Delta Watershed Landowner Coalition	Osha Meserve		osha@semlawyers.com
Patrick Porgans	Patrick Porgans	Patrick Porgans & Associates	porgansinc@sbcglobal.net
San Joaquin River Exchange Contractors Water Authority	Paul R. Minasian	Minasian, Meith, Soares, Sexton & Cooper, LLP	pminasian@minasianlaw.com
Coalition for a Sustainable Delta, The	Paul S. Weiland		pweiland@nossaman.com
Sacramento Regional County Sanitation District	Paul S. Simmons	Somach Simmons & Dunn, PC	psimmons@somachlaw.com
Westlands Water District	Philip A Williams		pwilliams@westlandswater.org
County of Yolo, The	Philip J. Pogledich		philip.pogledich@yolocounty.org
City of Antioch	Ron Bernal		rbernal@ci.antioch.ca.us
Contra Costa County and Contra Costa County Water Agency	Ryan Hernandez		ryan.hernandez@dcd.cccounty.us; stephen.siptroth@cc.cccounty.us
Contra Costa Water District	Robert Maddow and Douglas E. Coty and Scott Shapiro and Kevin O'Brien	Downey Brand LLP and Bold, Polisner, Maddow, Nelson & Judson	rmaddow@bpmnj.com; dcoty@bpmnj.com; sshapiro@downeybrand.com; kobrien@downeybrand.com
Daniel Wilson	Osha Meserve and Daniel Wilson		osha@semlawyers.com; daniel@kaydix.com
State Water Contractors	Stefanie Morris		smorris@swc.org
Pacific Coast Federation of Fishermen's Associations and Institute for Fisheries Resources	Stephan C. Volker	Volker Law	svolker@volkerlaw.com

Party	Authorized Representative/ Attorney	Authorized Representative's Affiliation	Email Address of Authorized Representative/ Attorney
Tehama-Colusa Canal Authority & water service contractors in its service area	Steven Saxton, Meredith Nikkel & J. Mark Atlas	Downey Brand	ssaxton@downeybrand.com mnikkel@downeybrand.com matlas@jmatlaslaw.com
San Joaquin Tributaries Authority, The (SJTA), Merced Irrigation District, Modesto Irrigation District, Oakdale Irrigation District, South San Joaquin Irrigation District, Turlock Irrigation District, and City and County of San Francisco	Tim O' Laughlin & Valerie C. Kincaid	O'Laughlin & Paris, LLP	towater@olaughlinparis.com; vkincaid@olaughlinparis.com
Water Forum, The	Tom Gohring		tgohring@waterforum.org
Earthjustice	Trent W. Orr		torr@earthjustice.org
County of Solano	William Emlen		wfemlen@solanocounty.com

THE FOLLOWING PARTY MUST BE SERVED WITH WRITTEN TESTIMONY, EXHIBITS AND OTHER DOCUMENTS. (Note: The party listed below has not agreed to electronic service BY THE PETITIONERS and must be served a hard copy. The party listed below agreed to electronic service by all other parties (excluding the Petitioners) pursuant to the rules specified in the hearing notice.)

Party	Authorized Representative/ Attorney	Mailing Address of Authorized Representative/ Attorney	Email Address of Authorized Representative/ Attorney
Clifton Court, L.P.	Suzanne Womack & Sheldon Moore	3619 Land Park Drive Sacramento, CA 95818	jsagwomack@gmail.com

Table 1 continues on next page

Parties Participating in Part II Only (Must also be Served in Part I)

THE FOLLOWING PARTIES MUST BE SERVED WITH WRITTEN TESTIMONY, EXHIBITS AND OTHER DOCUMENTS. (Note: The parties listed below agreed to accept electronic service, pursuant to the rules specified in the hearing notice.)

Party	Authorized Representative/ Attorney	Authorized Representative's Affiliation	Email Address of Authorized Representative/ Attorney
County of Sacramento, The	Aaron Ferguson	Somach Simmons & Dunn	aferguson@somachlaw.com
Friends of the River	E. Robert Wright		bwright@friendsoftheriver.org
Environmental Council of Sacramento (ECOS)	Brenda Rose		office@ecosacramento.net
Trout Unlimited	Brian Johnson		bjohnson@tu.org
California Department of Fish and Wildlife	Carl Wilcox		carl.wilcox@wildlife.ca.gov
Environmental Water Caucus	Barbara Barrigan-Parilla and Tim Stroshane and Conner Everts		barbara@restorethedelta.org; tim@restorethedelta.org; connere@gmail.com
Sierra Club California	E. Robert Wright & Kyle Jones		bwright@friendsoftheriver.org; kyle.jones@sierraclub.org
Planning & Conservation League	Jonas Minton		jminton@pcl.org
Natural Resources Defense Council, The Bay Institute, and Defenders of Wildlife	Kate Poole	Natural Resources Defense Council	kpoole@nrdc.org; awarn@nrdc.org; bobker@bay.org; rzwillinger@defenders.org; dobegi@nrdc.org
SAVE OUR SANDHILL CRANES	Osha Meserve & Mike Savino		osha@semlawyers.com; wirthsoscranes@yahoo.com
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Friends of Stone Lakes National Wildlife Refuge	Osha Meserve		osha@semlawyers.com; rmburness@comcast.net
American Rivers, Inc.	Steve Rothert		srothert@americanrivers.org