

CWFhearing

From: Ochenduszko, Kyle@Waterboards on behalf of CWFhearing
Sent: Monday, November 21, 2016 12:58 PM
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Subject: RE: CWF Hearing Delta Alliance Request for Reconsideration/Clarification Regarding Presentation Time

Mr. Brodsky and Service List,

The hearing officers directed staff to respond to the email below. To clarify, Save the California Delta Alliance (SCDA) will be allowed to provide a 20 minute opening statement before it's witnesses provide 1.5 hours of direct testimony. The hearing officers are upholding their November 16, 2016 ruling to limit SCDA to 1.5 hours of direct testimony subject to an extension for good cause shown at the hearing.

Respectfully,

CA WaterFix Hearing Team

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Phone: 916-319-0960

http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/water_right_petition.shtml

From: Michael A. Brodsky [mailto:michael@brodskylaw.net]

Sent: Friday, November 18, 2016 4:41 PM

To: CWFhearing

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Subject: CWF Hearing Delta Alliance Request for Reconsideration/Clarification Regarding Presentation Time

On November 16, 2016, the Hearing Officers issued an e-mail ruling captioned "Hearing Officers Ruling Concerning Save the California Delta Alliance." ("November 16 Ruling")

This email requests reconsideration / clarification as to the November 16 Ruling's allotment of time for Save the California Delta Alliance to present its case in chief. Several other matters in the Ruling will be addressed under separate cover.

First, the ruling allocates "a total of 1.5 hours, subject to extension for good cause." This does not include the 20 minutes allocated to all parties for an opening statement. (See October 30, 2015, Notice of Petition, p.35) Delta Alliance intends to present a 20 minute opening statement and requests clarification that the 1.5 hours was

intended by the Hearing Officers to apply to witness testimony and did not include the opening statement, which will be in addition to the witness testimony.

Next, the ruling allocates 10 minutes each for “SCDA’s non-expert witnesses” and 20 minutes each for “SCDA’s expert witnesses” for a total of 1.5 hours.

On September 2, 2015, Delta Alliance timely submitted a revised witness list in response to the Board’s emailed instructions of August 26, 2016.

The revised witness list provided 4 expert witnesses: Michael Guzardo with 15 minutes estimated; Michael Brodsky with 80 minutes estimated (a request to allocate an extra 20 minutes); Tom Burke with 40 minutes estimated; and Erik Ringelberg with 40 minutes estimated. This revised list eliminated a previously scheduled witness slot of 40 minutes.

The revised witness list provided 2 non-expert witness: Frank Morgan and Janet McCleery with 15 minutes estimated for each.

The November 16 Ruling notes that “taking into consideration the content and brevity of the written testimony” the time requested was excessive.

The written testimony of experts Michael Guzzardo is 1 page; Erik Ringelberg 2 pages; Tom Burke 6 pages; and Michael Brodsky 13 pages (after deletions directed by the Board). Brodsky's testimony is substantially longer and more complex than the other experts and should be allotted more time.

Delta Alliance also presents through Brodsky’s testimony a proposed condition on approval of CWF that it believes would protect in-Delta users while allowing CWF to meet its goals. Delta Alliance believes that this suggestion is worthy of adequate oral presentation. Although Delta Alliance had requested 80 minutes for Brodsky, Delta Alliance believes Brodsky’s testimony can effectively be presented in 40 minutes.

Delta Alliance believes Guzzardo’s testimony can effectively be presented in 15 minutes; Ringelberg’s testimony in 15 minutes; Burke’s testimony in 30 minutes.

Delta Alliance believes that Morgan and McCleery’s testimony can be effectively presented in 15 minutes each.

Delta Alliance therefore requests that the Hearing Officer reconsider/clarify that Delta Alliance be allowed a total of 2 hours and 10 minutes for direct testimony. This is a one-hour and twenty minute reduction from Delta Alliance’s originally requested time for witness testimony. Delta Alliance, et al’s group (Group 30) includes 5 parties. The October 30, 2015, Notice of Petition contemplates 1 hour per party, which would be 5 hours or more than double what Delta Alliance is requesting (Notice of Petition, p.35)

At the close of the hearing on Friday November 18, 2016, Hearing Officer Doduc summarized that hearing days November 30, December 1, and December 2 would be devoted to Save the California Delta Alliance (Group 30), California Sportfishing Protection Alliance, et al.(Group 31), and an orphaned witness left over from Central Delta, et al.’s presentation. Hearing officer Doduc noted that Group 32, Restore the Delta, would not begin until December 8 in order to honor RTD’s request. The three hearing days allotted will allow more than ample time to finish Groups 30 and 31 and a leftover witness from Central Delta.

Of course, the Hearing Officers retain authority to curtail testimony if it becomes repetitive or unproductive. However, under the circumstances, Delta Alliance believes it would be fundamentally unfair to arbitrarily limit Delta Alliance’s presentation to 1.5 hours.

Thank you for considering this request.

This email is sent to the service list in 2 groups. This is group 2.

Michael Brodsky
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