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November 22, 2016

**VIA ELECTRONIC MAIL ONLY**

Chair Felicia Marcus  
Board Member Tam Doduc  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812-01000

E-Mail: [CWFhearing@waterboards.ca.gov](mailto:CWFhearing@waterboards.ca.gov)

Re: California WaterFix Hearing - Response to Sacramento Valley Water Users' Proposal regarding Part 1 Rebuttal Evidence and Submission of Closing Briefs

Dear Chair Marcus and Board Member Doduc:

This letter provides the response of the San Luis & Delta-Mendota Water Authority ("Water Authority") to the November 15, 2016 letter by the Sacramento Valley Water Users ("SVWU Parties") proposing specific procedures for the presentation of rebuttal evidence and submission of closing briefs.

The Water Authority recognizes that it is within the discretion of the State Water Resources Control Board ("State Water Board") as to whether to accept the SVWU Parties' proposal. However, the Water Authority takes this opportunity to raise several points in response to the SVWU Parties' request.

**Part 1 Rebuttal Evidence**

First, the Water Authority requests the Hearing Officers to issue a ruling regarding the order in which rebuttal evidence will be presented. The Water Authority supports an order of presentation that begins with the presentation of rebuttal evidence by the parties that have presented cases in chief in Part 1B of the hearing followed by the presentation of rebuttal evidence by the Petitioners to this proceeding, the California Department of Water Resources and the United States Bureau of Reclamation. Although the SVWU Parties did not propose an order for the presentation of rebuttal evidence, the Water Authority believes clarification of this issue would help all parties' preparation for the remainder of Part 1 of the hearing. Moreover, the Water Authority's proposed order for rebuttal is appropriate because the burden of proof in this hearing lies with Petitioners.

Second, if the Hearing Officers choose to require the submission of written rebuttal testimony and exhibits prior to the oral presentation of rebuttal evidence, the Water Authority proposes the submittal of any written rebuttal evidence be required as follows: (1) submission of written rebuttal evidence by the Part 1B parties no later than 20 days after the completion of Part 1B;

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and (2) submission of written rebuttal evidence by the Petitioners no later than 30 days after the completion of Part 1B. This staggered submittal is logical in light of the order of presentation presented above.

### Closing Briefs

As the SVWU Parties have acknowledged, the Hearing Officers may set a schedule for the submission of legal briefs or written closing statements. The SVWU Parties have requested that closing statements and legal briefs not be filed until the end of Part 2 of the hearing. (SVWU Parties' 11-15-16 Letter at p. 2.) The Water Authority requests the Hearing Officers to adopt the opposite approach, which would allow closing briefs at the end of Part 1, in addition to allowing closing briefs at the end of Part 2. Specifically, the Water Authority requests the Hearing Officers to adopt a deadline for the submission of closing briefs no earlier than 90 days from the end of Part 1, or at such alternative date as the Hearing Officers see fit.

The Hearing Notice and subsequent procedural rulings have described the scope of Part 1 as focused on "the potential effects of the Petition on agricultural, municipal and industrial uses of water and associated legal users of water and conditions that should be placed on any approval of the petition to protect those uses." (10-30-15 Notice of Petition and Public Hearing at p. 2.) The Hearing Officers have indicated that the question of "whether the changes proposed in the petition would cause injury to any legal users of water" should be addressed during Part 1. (3-4-16 Procedural Ruling at pp. 5-6.) The Water Authority believes that several of the parties that have presented cases in chief in Part 1B have failed to present evidence demonstrating injury to legal users of water. Requiring closing briefs at the end of Part 1 would allow the Water Authority—and others—to argue this point. Allowing briefing on this point could result in the dismissal of several protests and could obviate the need for a number of requested conditions to any order approving the change petition. Allowing briefs after completion of Part 1 therefore has the potential to streamline the remainder of the hearing.

Thank you for your consideration of this response.

Regards,

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD  
A Professional Corporation



REBECCA R. AKROYD

cc: [Service List]



**STATEMENT OF SERVICE**

**CALIFORNIA WATERFIX PETITION HEARING  
Department of Water Resources and U.S. Bureau of Reclamation (Petitioners)**

I hereby certify that I have this day submitted to the State Water Resources Control Board and caused a true and correct copy of the following document(s):

SLDMWA Response to Sacramento Valley Water Users' Proposal regarding Part 1B Rebuttal Evidence and Submission of Closing Briefs

to be served **by Electronic Mail** (email) upon the parties listed in Table 1 of the **Current Service List** for the California WaterFix Petition Hearing, dated 11/15/2016, posted by the State Water Resources Control Board at

[http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/california\\_waterfix/service\\_list.shtml](http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/service_list.shtml):

*Note: In the event that any emails to any parties on the Current Service List are undeliverable, you must attempt to effectuate service using another method of service, if necessary, and submit another statement of service that describes any changes to the date and method of service for those parties.*

**For Petitioners Only:**

	I caused a true and correct <b>hard copy</b> of the document(s) to be served by the following method of service to Suzanne Womack & Sheldon Moore, Clifton Court, L.P., 3619 Land Park Drive, Sacramento, CA 95818:
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	<b>Method of Service:</b> _____
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I certify that the foregoing is true and correct and that this document was executed on November 22, 2016  
Date

Signature: 

Name: Sherry Ramirez

Title: Legal Secretary

Party/Affiliation: SLDMWA

Address: 400 Capitol Mall

Sacramento, CA 95814