

December 5, 2016

VIA EMAIL

State Water Resources Control Board
Division of Water Rights
Attn: California WaterFix Hearing Team
P.O. Box 2000
Sacramento, California 95812-2000
CWFhearing@waterboards.ca.gov

Re: California WaterFix Hearing on Petition for Change: Request to Establish Separate Hearing Part for Presentation of Terms and Conditions and Supporting Evidence

Dear Hearing Chair Doduc, Hearing Officer Marcus, and California WaterFix Hearing Staff:

The Sacramento Valley Group,ⁱ Tehama-Colusa Canal Authority and water service contractors in its service area,ⁱⁱ North Delta Water Agency and certain reclamation districts,ⁱⁱⁱ and the Delta Flood Control Group^{iv} (“Downey Brand Protestants”) submit this request regarding the presentation of proposed terms and conditions in connection with the California WaterFix Petition for Change and Hearing.

The Downey Brand Protestants acknowledge that the Hearing Officers have encouraged the parties to include proposed permit conditions as part of their cases in chief or rebuttal cases. However, based on how the hearing process has unfolded to date the Downey Brand Protestants believe that a more efficient and effective approach to the submission of terms and conditions would be to schedule a separate phase of the hearing, to occur at the conclusion of Part 2, for the submission of terms and conditions for approval of the Petition and limited supporting evidence. This “Part 3” of the proceeding would be the exclusive venue for submission and consideration of proposed permit conditions and evidence supporting those proposed conditions. We believe that the hearing process has provided additional information about the project proposed by the Petitioners as well as the potential for injury as presented by the cases in chief of numerous protestants. It has been noted by the Sacramento Valley Water Users and other parties that the issues of Part 1 and Part 2 have intersected at times during this proceeding and will continue to

do so through presentation of evidence during Part 2.¹ For example, the alternative modeling assumptions presented by the Sacramento Valley Water Users reveal important effects of the proposed project that must be incorporated into the State Water Resources Control Board's consideration of any terms and conditions for approval of the subject Petition.

Accordingly, we request that the submittal of proposed permit conditions and any necessary supporting evidence occur exclusively after the conclusion of Part 2. In order for proposed permit conditions to address all aspects of potential injury and other key hearing issues, those proposed conditions are best developed and presented after all evidence has been submitted in the course of the hearing process. We suggest that the State Water Resources Control Board require proposed permit conditions be submitted 60 days after the completion of Part 2.

In addition to presenting proposed permit conditions after the conclusion of Part 2, parties should be permitted to present limited supporting evidence as needed to show how the proposed conditions would alleviate injury to a water user. The introduction of this evidence would be similar to the introduction of rebuttal evidence in that cross examination would be limited to the scope of the supporting evidence.

Nothing in this letter shall be construed as an admission, express or implied, that Petitioners have met their burden of proof in this proceeding or that the Petition should be approved. The Downey Brand Protestants reserve all rights to contest any approval of the Petition by the State Water Resources Control Board.

The Downey Brand Protestants appreciate your consideration of these requests.

Very truly yours,

DOWNEY BRAND LLP



David R.E. Aladjem
Kevin M. O'Brien

1465405.1

cc: CA WaterFix Service List

¹ In addition, the Board has acknowledged that "it may be necessary to revisit Part 1 issues at the close of the hearing based on the information presented during Part 2 concerning appropriate delta flow criteria." (WaterFix Ruling, April 25, 2016, p. 3.)

ⁱ The Sacramento Valley Group consists of Carter Mutual Water Company, El Dorado Irrigation District, El Dorado Water & Power Authority, Howald Farms, Inc., Maxwell Irrigation District, Natomas Central Mutual Water Company, Meridian Farms Water Company, Oji Brothers Farm, Inc., Oji Family Partnership, Pelger Mutual Water Company, Pleasant-Grove Verona Mutual Water Co., Princeton Codora-Glenn Irrigation District, Provident Irrigation District, Reclamation District 108, Sacramento Municipal Utility District, Henry D. Richter, et al., River Garden Farms Company, South Sutter Water District, Sutter Extension Water District, Sutter Mutual Water Company, Tisdale Irrigation and Drainage Company, Windswept Land and Livestock Company. The Sacramento Valley Group protestants comprise a portion and not all of the protestants in the larger Sacramento Valley Water Users (SVWU).

ⁱⁱ The Tehama-Colusa Canal Authority member districts consist of Colusa County Water District, Corning Water District, Cortina Water District, Davis Water District, Dunnigan Water District, 4M Water District, Glenn Valley Water District, Glide Water District, Holthouse Water District, Kanawha Water District, Kirkwood Water District, La Grande Water District, Myers-Marsh Mutual Water Company, Orland-Artois Water District, Proberta Water District, Thomes Creek Water District, Westside Water District.

ⁱⁱⁱ Reclamation District 999, Reclamation District 2060 and Reclamation District 2068 are located within the boundary of the North Delta Water Agency.

^{iv} The Delta Flood Control Group consists of 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, and Reclamation District 800 (Byron Tract).

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);

Letter dated 12/5/16 re Request to Establish Separate Hearing Part for Presentation of Terms and Conditions and Supporting Evidence

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 November 15, 2016, posted by the State of Water Resources Control Board at
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 hard copy 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: Method of Service: _____
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I certify that the foregoing is true and correct and that this document was executed on December 5, 2016.

Signature: 

Name: Catharine Irvine

Title: Legal Secretary

Party/Affiliation: Downey Brand, LLP

Address: 621 Capitol Mall, Sacramento, CA 95814