

September 22, 2017

## 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: Sacramento Valley Water Users' Proposed Prehearing Conference Topics

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

The Sacramento Valley Water Users<sup>1</sup> ("SVWU") suggest the following agenda topics for the pre-hearing conference to take place on October 19, 2017.

1. Scope of Cases in Chief. The October 30, 2015 Notice of Public Hearing explains that rebuttal evidence is "limited to evidence that is responsive to evidence presented in connection with another party's case-in-chief, and *it does not include evidence that should have been presented during the case-in-chief of the party submitting rebuttal evidence.*" (Notice, at 36 (emphasis added).) As highlighted by recent submittals regarding the request to stagger the submittal of cases-in-chief and to strike the September 8 letter submitted by Petitioners, it will not be clear what operational criteria or modeling assumptions Petitioners will rely on during Part 2 at least until they submit their cases-in-chief. Because Petitioners have been so vague about how California WaterFix actually would operate, it will be necessary for the Hearing Officers to clearly indicate – as soon as possible, even before October 19 – what Part 2 evidence must be presented in cases-in-chief and what may be presented as rebuttal. Accordingly, the pre-hearing conference should address how the Hearing Officers plan to handle rebuttal based on whatever operating criteria Petitioners apply in their cases-in-chief, so that the rule that rebuttal may not include "evidence that should have been presented during the case-in-chief of the party submitting rebuttal evidence" does not generate confusion and excessive evidentiary disputes in Part 2.

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<sup>1</sup> The SVWU is comprised of the protestants identified in Attachment 1.

2. Revisiting Part 1 Issues. The October 30, 2015 Notice of Public Hearing also explained that Part 1 issues may be revisited during Part 2 if significant issues arise out of the California Environmental Quality Act (CEQA), Endangered Species Act (ESA) and California Endangered Species Act (CESA) processes that have a material bearing on Part 1 issues. (Notice, at 11.) The July 27, 2017 order denying the SVWU's request to hold Part 1 open made several general statements about how water-supply issues arising from the CEQA, ESA and CESA documents might be handled in this hearing. That ruling states that "it would be more efficient to address this issue based on all of the information that is presented in Part 2," that "we have considered whether to revisit Part 1 issues based on evidence presented in Part 2, "that "[f]or the time being, the scope of Part 2 remains unchanged" and that "[a]fter evidence is presented that is relevant to Part 2 issues, we will determine whether to allow additional evidence to be presented that is relevant to Part 1 issues." (July 27, 2017 Ruling, at 2.) These statements make it unclear whether protestants must submit water-supply evidence based on California WaterFix as modified by the CEQA, ESA and CESA documents as Part 2 case-in-chief testimony or can do so later in Part 2 or in a proceeding following Part 2. In order to satisfy due process, protestants must have an adequate opportunity to present water-supply testimony based on what California WaterFix actually is following the issuance of the CEQA, ESA and CESA documents. The pre-hearing conference should address the process by which any additional Part 1 evidence should be submitted during this hearing. At this time, the SVWU propose that the SWRCB confirm that it will consider such evidence following presentation of Part 2 evidence in cases-in-chief and rebuttal so that the SWRCB can efficiently consider Part 2 evidence before revisiting Part 1 issues.

We appreciate the opportunity to suggest these topics and to participate in a pre-hearing conference in advance of Part 2.

Very truly yours,

DOWNEY BRAND LLP



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

SOMACH, SIMMONS & DUNN, PC

/s/ Andrew M. Hitchings  
Andrew M. Hitchings

/s/ Kelley M. Taber  
Kelley M. Taber

/s/ Aaron A. Ferguson  
Aaron A. Ferguson

BARTKIEWICZ, KRONICK & SHANAHAN

/s/ Alan Lilly  
Alan Lilly

/s/ Ryan Bezerra  
Ryan Bezerra

MINASIAN, MEITH, SOARES, SEXTON & COOPER, LLP

/s/ Dustin C. Cooper  
Dustin C. Cooper

STOEL RIVES LLP

/s/ Wesley A. Miliband  
Wesley A. Miliband

cc: CA WaterFix Service List  
1495384.1

Attachment 1

Sacramento Valley Group

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

Tehama-Colusa Canal Authority

Tehama-Colusa Canal Authority  
Colusa County Water District  
Corning Water District  
Cortina Water District  
Davis Water District  
Dunnigan Water District  
4M Water District  
Glide Water District  
Holthouse Water District  
Kanawha Water District  
Kirkwood Water District  
La Grande Water District  
Orland-Artois Water District  
Proberta Water District  
Thomas Creek Water District  
Westside Water District  
Glenn Valley Water District  
Myers-Marsh Mutual Water Company

North Delta Water Agency

North Delta Water Agency

RD 999

RD 2060

RD 2068

Delta Flood Control Group

Brannan-Andrus Levee Maintenance District

RD 407

RD 317

RD 551

RD 105

RD 563

RD 2067

RD 2098

RD 800 (Byron Tract)

City of Brentwood

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:

Letter dated 9/22/2017 **Re: Sacramento Valley Water Users' Proposed Prehearing Conference Topics**

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 September 12, 2017, posted by the State of Water Resources Control Board at

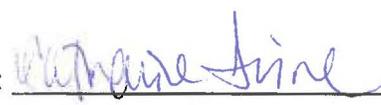
[http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/california\\_waterfix/service\\_list.shtml](http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/service_list.shtml):

*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:  <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 September 22, 2017.

Signature: 

Name: Catharine Irvine

Title: Legal Secretary

Party/Affiliation: Downey Brand, LLP

Address: 621 Capitol Mall, Sacramento, CA 95814