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Sent: Wednesday, April 18, 2018 6:50 PM
To: CWFhearing
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Subject: Request for Clarification/Modification of April 18 Ruling regarding SCDA
Attachments: cwf Statement of Service copy 5.pdf

Dear Hearing Officers:

Save the California Delta Alliance has just received the Hearing Officer's April 18 ruling a few minutes ago. Delta Alliance understands that it will be going ahead with its case in chief, currently expected to begin on Friday April 20, and that the Hearing Officers have denied SCDA's request to consolidate its case-in-chief with its rebuttal case. Delta Alliance accepts that part of the ruling and does not request reconsideration of this basic determination. Delta Alliance intends to proceed on April 20 with its first panel continuing on April 23 with its second panel.

However, the ruling goes on to say that Delta Alliance "should present those elements of its case-in-chief that are not affected by the new information as scheduled and postpone presentation [of] any affected testimony until the subsequent phase of the hearing when all parties will get to address the revised project information."

This portion of the ruling presents an insurmountable obstacle for Delta Alliance because our exhibits have all been produced and submitted and our expert analysis and testimony is all based on those exhibits and on the project description that is currently before the Board. Delta Alliance does not have the detailed information (which the Hearing Officers have required DWR to submit before the rebuttal phase) that it would need to accurately determine which parts of its testimony are and are not affected by the prospective changes.

Delta Alliance proposes instead to present its case-in-chief testimony and exhibits as submitted and that are based on the project description that is currently before the Board, as detailed in the EIR, Biological Opinion, Biological Assessment, and other evidence that has been entered into the record by DWR.

Delta Alliance then proposes, after it receives the detailed information ordered by the Board, to present during its rebuttal case any changes to its case-in-chief testimony and exhibits that are brought about by the detailed information that DWR has been ordered to submit prior to the rebuttal phase.

Delta Alliance cannot on this short notice alter its presentation planned for Friday. Delta Alliance respectfully requests that the Hearing Officers take note of the particular predicament presented to Delta Alliance and allow it to proceed/ clarify that it will proceed as outlined above. Anything Delta Alliance presents on Friday that turns out to be altered or affected once detailed information is submitted by DWR can be addressed by Delta Alliance with modified/new exhibits and testimony during the rebuttal phase.

Delta Alliance also notes that DWR to date has not been able to point to any project condition imposed by the ACOE that would make the prospective changes mandatory. Delta Alliance believes it is wise in any event to proceed as outlined above and then provide any revised testimony once DWR submits materials to the Board that indicate that the prospective changes have in fact been incorporated into the project description. In particular, if DWR submits, as part of a supplement to the EIR, revised EIR Map Book M15-4, sheets 1–8 showing the changes, that would confirm that the changes have in fact been adopted by DWR as mandatory and would provide Delta Alliance the information it needs to produce revised exhibits and testimony for the rebuttal phase. This is also consistent with how the Board resolved the two tunnel to one tunnel prospective change—by ordering parties to present their cases based on the current project description and then to schedule a Part 3 if the two to one change is actually made and detailed information on it submitted.

Thank you for considering this request for clarification of the April 18 ruling with regard to SCDA.

This email is sent in two batches. This is batch two.

Sincerely,
Michael Brodsky

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