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7 Party to the WaterFix Hearing
8 Principal, California Water Research

9
10 **BEFORE THE**
11 **CALIFORNIA STATE WATER RESOURCES CONTROL BOARD**

12 HEARING IN THE MATTER OF
13 CALIFORNIA DEPARTMENT OF WATER
14 RESOURCES AND UNITED STATES
15 BUREAU OF RECLAMATION
16 REQUEST FOR A CHANGE IN POINT OF
17 DIVERSION FOR CALIFORNIA WATER
18 FIX

19 MOTION TO RESOLVE HEARING
20 ISSUES WITH SERVICE OF LARGE
21 DOCUMENTS, AND TO RECONCILE
22 CONFLICTING EXHIBIT INDICES

23 Deirdre Des Jardins, Principal at California Water Research (“California Water
24 Research”) commends the Hearing Team for their support in providing exhibits to parties in the
25 hearing. The efforts included posting the thousands of exhibits submitted for the hearing, and
26 setting up an ftp site for handling multiple large documents and large files.

27 However, there was an issue that the March 4, 2016 Hearing Ruling on electronic service
28 of exhibits did not anticipate the need for parties to introduce large documents for cross-
examination in Part 1A, or before the hearing for reference in objections. The March 4, 2016
Hearing ruling stated, “[t]he following two procedures for submitting and serving hearing
materials should be used, with the existing method for general correspondence and other
pleadings and a separate method for exhibits (presumably larger documents).” (p. 7) The ruling

1 specified that Petitioners should submit exhibits for their case in chief in Part 1A by uploading
2 electronic files to the ftp site, and the rest of the parties should use the ftp site to submit exhibits
3 for their cases in chief for Part 1B. (p. 8-9) The March 4, 2016 ruling also specified that parties
4 could serve the exhibits by noticing parties of the files available on the Hearing website, rather
5 than serving the documents directly via email.¹

6 However, the scientific and technical issues in the hearing were complex, and several
7 parties, including California Water Research, did need to serve and submit multiple large
8 technical reference documents in pre-hearing motions, and also to introduce large documents in
9 cross-examination in Part 1A. As detailed in the history in Appendix A, the lack of clarity
10 about methods of service and submission, resulted in documents submitted for the pre-hearing
11 not being marked as submissions, delays in the Hearing Team posting documents introduced in
12 cross-examination on the Hearing website, and, in the case of California Water Research, even
13 changing the exhibit indices that were used in cross-examination when posting the exhibits. The
14 situation became even more confused by the Hearing Team’s consolidation of Part 1A and 1B
15 exhibit lists on the website.

16 California Water Research has attempted to resolve these issues since June 2016, with
17 calls to the Hearing Team, and then with two formal motions to submit documents and a letter
18 requesting clarification of service procedures. The August 5, 2016 Hearing ruling that parties
19 could introduce documents at the hearing for cross-examination, did not specify appropriate
20 methods of service for large documents. Parties were directed by the Hearing Team to directly
21 serve documents introduced in cross-examination, but this method was impractical for multiple
22

23 ¹ This method of service was similar to that specified in section 6(c) of Attachment D to the October 30, 2015
24 Hearing Notice for a “voluminous document or database”:

25 6. (...) c. A party seeking to enter in evidence as an exhibit a voluminous document or database may so
26 advise the other parties prior to the filing date for exhibits, and may ask them to respond if they wish to
27 have a copy of the exhibit. If a party waives the opportunity to obtain a copy of the exhibit, the party
28 sponsoring the exhibit will not be required to provide a copy to the waiving party. Additionally, with the
permission of the hearing officers, such exhibits may be submitted to the State Water Board solely in
electronic form, using a file format readable by Microsoft Office 2003 software. (p. 33)

1 large documents. California Water Research did submit a September 12, 2016 motion to serve
2 and submit about 20 MB of documents used in the engineering cross-examination in Part 1A,
3 together with a declaration, but it was not posted on the Hearing website. California Water
4 Research’s September 14, 2016 letter to the Hearing Officers requesting clarification on the
5 procedures for parties to serve multiple large documents was also not posted. The September
6 27, 2016 Hearing ruling that parties did not need to serve documents introduced in cross-
7 examination in Part 1A, while helpful, did not fully resolve the issues.

8 While it is clear that this confusion is unintentional, California Water Research
9 respectfully notes that there is significant potential prejudice to parties by the failure to specify
10 methods of service for large documents introduced or submitted outside of cases in chief.²
11 While the Hearing is not required to be conducted according to standard rules of evidence (Govt.
12 Code §11513), and the Hearing Officer can waive “any requirements ... including but not
13 limited to the introduction of evidence... so long as those requirements are not mandated by the
14 state or federal constitution” (Title 23 Cal. Code Regs. § 648), service to parties is part of due
15 process.³ California Water Research respectfully proposes the following resolution.

16
17 (1) California Water Research moves that California Water Research’s September 14,
18 2016, letter, “Request to clarify Board procedures for serving multiple large
19 documents in Part 1A,” be posted on the Hearing website. The letter was properly
20 submitted and served on the Hearing parties.

21 (2) California Water Research moves that, for the remainder of the Hearing, the Hearing
22 Officers allow parties to serve large documents by the method used for the cases in
23 chief, i.e., by submitting the document directly to the Board, and serving the parties

24
25 ² The Department of Water Resources objected to all pre-hearing submissions of technical reference documents
26 submitted in support of objections, including those submitted by California Water Research. DWR’s August 1,
27 2016 objection to all of California Water Research’s pre-hearing evidentiary submissions were based in part on the
method of service not being in conformance with the Hearing rulings.

28 ³ “Arbitrary adjudicative procedures” are also prohibited. *People v. Ramirez* (1979) 25 Cal.3d 260, 268-69; accord
Saleeby v. State Bar of California, (1985) 39 Cal.3d 547, 563-64.

1 with a list of submitted documents, as specified in Section 6(c) of Attachment D of
2 the October 30, 2016 Hearing Notice.

- 3 (3) California Water Research requests that the Hearing Officers ensure that no prejudice
4 accrues to any party by the lack of clarity of methods for serving and submitting large
5 technical reference documents for reference in motions, or for serving large
6 documents introduced in cross-examination in Part 1A, or from the consolidation of
7 exhibit lists for Part 1A and Part 1B.⁴

8
9 With respect to confusion about documents submitted by California Water Research,

- 10 (4) California Water Research moves to reconcile the conflicting directions on exhibit
11 indices for Part 1A and Part 1B, by removing the “X” introduced by the Hearing
12 Team when posting the exhibits on the website on September 1, 2016, and changing
13 the identification back to DDJ-1, DDJ-2, which was suggested by the Hearing Officer
14 on August 18, 2016. The Part 1A and Part 1B exhibit identifications and reconciled
15 exhibit identifications are shown on the attached spreadsheet.

- 16 (5) California Water Research moves to amend the testimony submitted by California
17 Water Research for Part 1B to use the reconciled exhibit indices.

- 18 (6) California Water Research moves to identify the exhibits that were also submitted
19 before the hearing for reference in motions as follows:⁵

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25 _____
26 ⁴⁴ California Water Research notes that the Department of Water Resources has objected to almost all submissions
of evidence by parties for Part 1B.

27 ⁵ California Water Research notes that the Board accepted pre-hearing submissions of documents in the 2006 Cal
Am Cease and Desist Order Hearing.

Exhibit	Document name	Submitted for use in objections (1)	Submitted by Reference (2)	Resubmitted for evidence and for use in cross-examination (3)	Introduced in cross-examination
DDJ-101	A Strategic Review of CALSIM II and its Use for Water Planning, Management, and Operations in Central California	Jun 10		Jul 19	Aug 26
DDJ-102	PEER REVIEW RESPONSE: A Report by DWR/Reclamation in Reply to the Peer Review of the CalSim-II Model Sponsored by the CALFED Science Program in December 2003	Jun 10		Jul 19	Aug 26
DDJ-103	Review Panel Report San Joaquin River Valley CalSim II Model Review	Jun 10		Jul 19	
DDJ-104	Analytical Tools for Evaluating Water Supply, Hydrodynamic and Hydropower Effects			Jul 19	
DDJ-106	35th Annual Progress Report to the State Water Resources Control Board		Jul 12	Jul 19	
DDJ-105	Department of Defense Instruction 5000.61 on Modeling and Simulation (M&S) Verification, Validation, and Accreditation (VV&A)			Jul 19	

(7) California Water Research moves that the exhibits introduced in Part 1A and submitted before the Hearing by California Water Research be served on the parties by the method used for the cases in chief, i.e., service of a list of exhibits. As specified in Section 6(c) of Attachment D of the October 30, 2016 Hearing Notice, California Water Research requests parties that require direct service of the documents so notify California Water Research.

1 Appendix A

2 History of Cross-Examination Exhibits

- 3
- 4 (1) August 5, 2016. Hearing Officers rule that documents can be marked and introduced
in the hearing for cross-examination without prior service to parties.
- 5 (2) August 9, 2016. Deirdre Des Jardins, principal at California Water Research,
introduces multiple documents in cross-examination of the engineering panel.
- 6 (3) August 12, 2016. John Herrick, representing South Delta Water Agency introduces a
7 large number of printed documents in cross examination of the Operations panel.
8 Kyle Ochendusko requests that the exhibits be submitted in electronic format, and
states that they will be posted on the Hearing website within one week of receipt.
- 9 (4) August 18, 2016. Deirdre Des Jardins, principal at California Water Research,
brings both printed and electronic copies for use in Operations Cross-examination on
10 August 18, 2016. The Hearing Officer suggests that Deirdre Des Jardins use
identification DDJ-1, DDJ-2, etc. for documents. (Tr. August 18, 2016, 249:14.)
11 Deirdre Des Jardins given exhibit identification spreadsheet by Hearing Team on
12 August 18, 2016 to fill out.
- 13 (5) August 19, 2016. Deirdre Des Jardins submits spreadsheets with exhibit
identification for both Operations Cross-examination and prior Engineering Cross-
14 examination with exhibit IDs suggested by the Hearing Officers (DDJ-1 to DDJ-38.)
15 Mr. Ochendusko announced that protestant was the first party doing cross-
examination to use the spreadsheet. (Tr. August 19, 2016, 6:10.)
- 16 (6) August 26, 2016. Hearing Officer requests that Deirdre Des Jardins not read from
documents introduced in cross-examination, but allow the hearing participants to
17 silently read the marked passages.
- 18 (7) August 26, 2016. California Water Research submits documents used in Modeling
Cross-examination with spreadsheet.
- 19 (8) September 1, 2016. California Water Research receives email from the Hearing
Team on September 1, 2016 that exhibits are posted on the Hearing website. Exhibit
20 indices have been renamed DDJ-X1, DDJ-X2, etc. The Hearing Team requests that
California Water Research not re-submit any documents. The confusion requires
21 many hours to attempt to straighten out. California Water Research finally submits a
Part 1B exhibit list on September 2, 2016 with the exhibit indices posted on the
22 Hearing website.
- 23 (9) September 12, 2016. Notified Hearing Team of conflict between Part 1A and Part 1B
exhibit indices.
- 24 (10) September 12, 2016. California Water Research files a motion to directly serve
25 and submit documents with Part 1A exhibit indices for Engineering Cross-
examination, which total almost 20 MB. Motion is not posted on the Hearing
26 website, although it is properly served and submitted.
- 27
- 28

- 1 (11) September 14, 2016. California Water Research submits a letter requesting a
2 ruling from the Hearing Officers on how to serve and submit remaining large
3 documents used in cross-examination. Letter is not posted on the Hearing website,
4 although it is properly served and submitted.
- 5 (12) September 14, 2016. Hearing Team counsel responds with an email requesting
6 that California Water Research not serve any more documents for Part 1A, stating
7 that there will be a ruling soon.
- 8 (13) September 20, 2016 Hearing Team combines Part 1A and Part 1B exhibits into
9 single exhibit list. Hearing Team requests authorization to change Part 1B exhibit
10 indices back to identification given in Part 1A.
- 11 (14) Hearing ends on September 27, 2016 with ruling that cross-examination
12 documents did not need to be served on parties.
- 13 (15) Hearing Officers rule on October 7, 2016 that revisions to Part 1B exhibit lists
14 must be submitted by October 17, 2016.
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1 **STATEMENT OF SERVICE**

2
3 **CALIFORNIA WATERFIX PETITION HEARING**
4 **Department of Water Resources and U.S. Bureau of Reclamation**
5 **(Petitioners)**

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

8 **MOTION TO RESOLVE ISSUES WITH SERVICE OF LARGE DOCUMENTS**

9 **SEPTEMBER 20, 2016 EMAIL TO KEVIN LONG**

10 **EXHIBIT LIST -- SPREADSHEET**

11 **DDJ TESTIMONY CHANGES**

12 **DDJ TESTIMONY ERRATA**

13 to be served by **Electronic Mail** (email) upon the parties listed in Table 1 of the
14 **Current Service List** for the California WaterFix Petition Hearing, dated October 6,
15 2016, posted by the State Water Resources Control Board at
16 http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/service_list.shtml

17 I certify that the foregoing is true and correct and that this document was
18 executed on October 17, 2016.

19
20
21 Signature:



22 Name: Deirdre Des Jardins
23 Title: Principal, California Water Research

24 Party/Affiliation:
25 Deirdre Des Jardins

26 Address:
27 145 Beel Dr

Santa Cruz, California 95060

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Deirdre Des Jardins

From: Deirdre Des Jardins <ddj@cah2oresearch.com>
Sent: Tuesday, September 20, 2016 11:34 AM
To: 'Long, Kevin@Waterboards'
Subject: Reconciling renaming of cross-examination exhibit indices from DDJ-1, DDJ-2 to DDJ-X1, DDJ-X2, etc.

Kevin,

Per our prior conversation,

I have introduced a large number of documents in cross-examination in Part 1A, which I gave to the Hearing Team with an exhibit index when I did cross-examination of the Operations panel on August 17 and 18, 2016 and the modeling panel on August 25 and August 26, 2016. I also submitted an exhibit index for the documents I introduced in cross-examination of the Engineering Panel on August 9, 2016 to the Hearing Team August 20, 2016.

I wanted to thank you for working with me on getting the documents posted on the exhibit web page. I understand that when you went to post the exhibits under Part 1A on September 1, 2016, you were concerned about my having unique identification for exhibits in Part 1B, and so you changed the identifications from DDJ-1, DDJ-2, etc. to DDJ-X1, DDJ-X2. It seemed like a small change at the time. Per your request, I used the same exhibit identification on the exhibit index I submitted for Part 1B on September 2, 2016. You also changed the names of the pdf files to conform to the revised exhibit index names. I did have an issue that the Part 1A exhibit list was not up on September 2, 2016 when I went to submit the exhibits, so I did not have access to the new file names. The exhibits were then posted under Part 1B with the revised DDJ-X1, DDJ-X2 exhibit indexes and the revised pdf names.

I did not have time to confer with my attorney about the change to the exhibit identification until after September 2. I then realized that the new DDJ-X1, DDJ-X2 numbering meant that the identification no longer conformed to the hearing transcripts. Since I can't amend the hearing transcripts, I will need to amend the exhibit index in Part 1B to conform to the identification I used in Part 1A, as well as to include the revised names for pdf files. I have begun serving the exhibits I used in cross examination in Part 1A, using the identification I submitted in the exhibit lists and used in cross-examination, but with the revised pdf names. I have completed this for the Engineer cross-examination.

To reconcile the exhibit indices, I will be filing a motion to amend the exhibit list for Part 1B to remove the x's and add the new pdf file names, and also to amend my testimony submitted for Part 1B to use the exhibit identification without the X's.

In the meantime, the Hearing Team has consolidated all of the exhibits submitted for Part 1A and Part 1B into a single exhibit list, which is somewhat confusing, because there have been different processes and different deadlines for submitting exhibits used in cross-examination in Part 1A and exhibits for Part 1B.

You have indicated that you need to submit a web request to remove the x's today, because of the merged exhibit lists for Part 1A and Part 1B, and will be submitting a batch of requests to modify the hearing website. I authorize that pending my submittal of a motion to amend my exhibit list and testimony for Part 1B.

Thank you again for working with me to resolve this issue.

Deirdre Des Jardins
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831 423-6857 v



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