



May 31, 2016

CWFhearing@waterboards.ca.gov via Email

Hearing Chair Tam Doduc  
Hearing Officer Felicia Marcus  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812-0100

Re: Submittal of Testimony and Additional Information Regarding the Hearing on California Waterfix  
Water Rights Change Petition

Dear Hearing Chair Doduc and Hearing Officer Marcus:

The California Department of Water Resources (DWR) and U.S. Department of the Interior's Bureau of Reclamation (Reclamation) (jointly Petitioners) respectfully submit the written testimony for the water rights hearing on our request for a change in point of diversion for the California WaterFix. This submittal includes: Petitioners opening statements; testimony exhibit indexes; written, direct testimony; power point slides summarizing the direct testimony; exhibits referenced in the testimony (unless already listed in the State Water Resources Control Board's Staff Exhibits list); and statements of qualifications of Petitioners' experts. Service will be achieved pursuant to the rules established by the State Water Resources Control Board (Board) for purposes of this hearing, using the Board's established FTP site (for those parties accepting electronic service) and by U.S. Postal Mail delivery to Clifton Court, L.P. DWR and Reclamation will each separately serve all parties with their agency's testimony and exhibits.

In conjunction with Petitioners' submittal today, we request confirmation of our proposed approach described below on the presentation of policy statements, direct testimony, and cross examination of our expert witnesses at the hearing. Also, attached are Petitioners' updated Witness Lists which substitutes certain witnesses, eliminates others, but does not change the scope of testimony or subject matter.

Policy Statements: The Board regulations allow adjudicative proceedings to be conducted as the Board deems most suitable to a particular case.<sup>1</sup> Due to the importance of the CWF and this hearing process

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<sup>1</sup> See California Code of Regulations Title 23, section 648.5.

to California water management and the Delta ecosystem, Petitioners believe a suitable approach regarding policy statements is to begin with the Brown Administration and U.S. Department of the Interior (Interior) representatives. Petitioners specifically request that the Board allow California Natural Resources Secretary John Laird and the Interior representative to present their policy statements regarding project need at the beginning of the Hearing, prior to other policy statements. Secretary Laird's and Interior's statements will convey important policies regarding the need for the project and controversial issues that the Board and others should hear to frame the context of later statements.

As a second matter regarding scheduling of policy statements, and given that several hundred interested persons have asked to present policy statements, Petitioners request confirmation that Petitioners' policy statements by DWR Director Mark Cowin, DWR Assistant Deputy Director Russ Stein, and Reclamation representatives are scheduled immediately before the commencement of Petitioners' case-in-chief to provide background on the policies and program development which set the stage for our testimony.

Direct Testimony: Given the number of parties in this hearing, Petitioners' believe that one panel of witnesses summarizing our direct testimony in a comprehensive and concise presentation before cross examination will be the most efficient and effective process that will avoid unnecessary delay and expense to the Board and parties. Thus, Petitioners' request Board confirmation of our approach to have a panel consisting of 8 expert witnesses covering 5 subject areas identified on the attached Witness Lists. The direct testimony by the panel will not exceed 13 hours. Cross examination would be conducted after conclusion of the panel presentation. A panel format is suitable for this hearing on a complex project that involves complicated hydrology and modelling where the experts can explain information in a logical, succinct, and cohesive order. The panel presentation will facilitate a better understanding of the evidence without unnecessary delays. All of the witnesses will remain available for cross examination.

Cross Examination: Following the panel presentation, appropriate parties would begin cross examination. There are approximately 70 parties in this water rights hearing. To facilitate an efficient process to obtain relevant information, Petitioners propose that our lead expert witnesses giving direct testimony and others on the attached Witness List be scheduled for cross examination based on the subject of their testimony. For example, our identified experts related to project engineering would be cross examined as a group, and once this cross examination is completed, a separate group of witnesses, expert on project operations would be available for cross examination. Given the anticipated number of days involved in cross examination of Petitioners' expert witnesses (estimated as possibly 18-20 days, or longer), a process where witnesses are scheduled with some lead time to be present at the time of cross examination will help to avoid conflicts with other duties required of expert witnesses and allow them to schedule personal matters. Also, this approach will help others schedule their attendance if they are interested in only certain topics.

In closing, Petitioners were requested by Board staff to provide an update on the schedule for compliance with the California Environmental Quality Act (CEQA) and National Environmental Policy Act

(NEPA). As previously presented, the Petitioners issued the Bay Delta Conservation Plan (BDCP)/California WaterFix Partially Recirculated Draft Environmental Impact Report/Supplemental Draft Environmental Impact Statement (RDEIR/SDEIS) in July 2015. The BDCP Draft EIR/EIS was issued December 2013. The Petitioners expect to complete preparation of a Final EIR/EIS by August 2016 and Reclamation would issue the Record of Decision (ROD) to complete the NEPA process, after receipt of the Biological Opinion, pursuant to the requirements of Section 7 of the Endangered Species Act. DWR expects to certify the EIR and make a decision on the project and file a notice of determination completing the CEQA process within the same timeframe as Reclamation's ROD.

Petitioners do not have an update on the expected time frame for receipt of the Biological Opinion for California WaterFix. Although submittal of the application for an Incidental Take Permit pursuant to Section 2081(b) of the California Endangered Species Act (2081(b) permit) is somewhat contingent on resolution of issues within the federal agencies' Section 7 consultation process, DWR expects to submit the application for the 2081(b) permit by August 2016.

Sincerely,



Tripp Mizell  
Senior Attorney  
Office of the Chief Counsel  
CA Department of Water Resources



Amy L. Aufdemberge  
Assistant Regional Solicitor  
Office of the Regional Solicitor  
U.S. Department of the Interior

cc: *Electronic Service*

Tom Howard, Executive Officer, State Water Resources Control Board  
Michael Lauffer, Chief Counsel, State Water Resources Control Board  
Electronic service list, March 22, 2016. [CHECK LIST DATE]

*Personal Service via U.S. Postal Service*

Suzanne Womack and Sheldon Moore  
Clifton Court, L.P.  
3619 Land Park Drive  
Sacramento, CA 95818

## Notice of Intent to Appear – Attachment A

### SWRCB Change Petition – Part I Hearing DWR Witness List Updated\*

Name	Subject of Proposed Testimony	Estimated Length of Direct Testimony	Expert Witness? (Yes/No)
<b><u>POLICY STATEMENTS</u></b>			
<b>John Laird</b> California Secretary for Natural Resources, CA Natural Resources Agency	California Natural Resources Agency Policy	Policy - 20 minutes	No - Policy
<b>Mark Cowin</b> Director, California Department of Water Resources	California Department of Water Resources Policy	Policy - 20 minutes	No - Policy
<b>Russ Stein</b> Assistant Deputy Director, California Department of Water Resources	Project History and Background	Policy - 20 minutes	No - Policy

## Notice of Intent to Appear – Attachment A

### SWRCB Change Petition – Part I Hearing DWR Witness List Updated\*

<u>TESTIMONY</u>			
Name	Subject of Proposed Testimony	Estimated Length of Direct Testimony	Expert Witness? (Yes/No)
Jennifer Pierre*	Project Overview - Lead	Panel - 60 minutes	Yes (Direct)
Steve Centerwall*	Project Overview – Panel		Yes
John Bednarski**	Engineering Project Description new Facility – Lead	Panel - 60 minutes	Yes (Direct)
Shanmugam Pirabarooban	Engineering – Panel		Yes
Sergio Valles**	Engineering - Panel		Yes
Gwen Buchholz*	Engineering – Panel		Yes
John Leahigh	Operations – Lead	Panel - 60 minutes	Yes (Direct)
Mark Holderman	Operations – Panel		Yes
Michael Anderson	Operations – Panel		Yes

## Notice of Intent to Appear – Attachment A

### SWRCB Change Petition – Part I Hearing DWR Witness List Updated\*

<b>Parviz Nader-Tehrani</b>	<b>Project Hydrodynamic Modeling – Co-Lead</b>	<b>Panel – 150 minutes</b>	<b>Yes (Direct)</b>
<b>Armin Munevar*</b>	<b>Project Hydrodynamic Modeling – Co-Lead</b>		<b>Yes (Direct)</b>
Erik Reyes	Modeling – Panel		Yes
Tara Smith	Modeling – Panel		Yes
Jamie Anderson	Modeling – Panel		Yes
Gwen Buchholz*	Modeling – Panel		Yes
Michael Bryan*	Modeling – Panel		Yes
<b>Maureen Sergent</b>	<b>Water Rights – Lead</b>	<b>Panel - 60 minutes</b>	<b>Yes (Direct)</b>
Robert Cooke	Water Rights – Panel		Yes

\* DWR and/or Reclamation Consultants

\*\* Metropolitan Water District of Southern California engineers

DWR reserves the right to call substitute witnesses for any of the above-named witnesses, or to call additional witnesses, if needed.

\*May 31, 2016

U.S. Department of the Interior

NOTICE OF INTENT TO APPEAR – Attachment A

CALIFORNIA WATERFIX HEARING, Part 1

WITNESS LIST\*

The U.S. Department of the Interior (Interior) intends to participate in Part I of the hearing. It is anticipated that Interior and the California Department of Water Resources (DWR) will be preparing a joint presentation for Part 1. As such, the below witnesses will participate as a panel with DWR witnesses. The "Subject of Proposed Testimony" listed below corresponds with the subjects on DWR's Part 1 Hearing Witness List.

NAME	SUBJECT OF PROPOSED TESTIMONY (Please indicate Application Number if Appropriate)	ESTIMATED LENGTH OF DIRECT TESTIMONY	EXPERT WITNESS (YES/NO)
Letty Belin, Senior Counselor to the Deputy Secretary, or Jennifer Gimbel, Principal Deputy Assistant Secretary for Water and Science, U.S. Department of the Interior	Policy Statement	20 min.	No
David Murrillo, Regional Director, or Pablo Arroyave, Deputy Regional Director, Bureau of Reclamation	Policy Statement	20 min.	No
Ron Milligan	Operations	Direct – 10 min.	Yes
Kristin White	Modeling	Panel - cross	Yes
Ray Sahlberg	Water Rights	Direct – 20 min.	Yes

The U.S. Department of the Interior reserves the right to call substitute witnesses for any of the above-named witnesses, or to call additional witnesses, if needed.

\*May 31, 2016