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## State Water Resources Control Board

July 13, 2016

### VIA ELECTRONIC MAIL

TO: [CURRENT SERVICE LIST AND INTERESTED PERSONS LIST](#)

### **POLICY STATEMENTS, FORMAT OF PETITIONERS' CASE-IN-CHIEF, AND CLARIFICATION REGARDING MOTIONS FOR CALIFORNIA WATERFIX HEARING**

This ruling addresses the June 29, 2016 request from the California Department of Water Resources (DWR) and the U.S. Department of the Interior (collectively petitioners) for reconsideration of our ruling on time limits for parties to make policy statements and the order in which the petitioners will summarize their testimony and be subject to cross-examination. This letter also responds to petitioners' request for more clarity and certainty concerning motions during the hearing.

#### **Request for Reconsideration of Our Ruling on Parties Making Policy Statements**

As stated in our prior rulings, the State Water Resources Control Board's (State Water Board) practice is to allow policy statements during evidentiary hearings as a courtesy so that members of the public have the opportunity to participate and provide input on the policy implications of a proceeding. Normally, the State Water Board does not allow the parties who are participating in the evidentiary portion of a hearing to present policy statements because the primary purpose of a hearing is to develop an evidentiary record that will serve as the basis for the State Water Board's decision, and policy statements are not evidence. In addition, the parties can make policy-oriented comments during their opening statements. For this hearing, we are allowing parties to make policy statements, subject to the same time limit per speaker that applies to members of the public, as part of the time allotted for their opening statements. The petitioners have not provided any new information or argument in support of their request for more time to present policy statements, making this request duplicative in content. For these reasons, the request for reconsideration of our ruling on time limits for policy statements is denied. Petitioners and other parties may, however, present their policy statements immediately before their case in chief.

#### **Request to Reconsider Petitioners' Proposal to Present All of Petitioners' Direct Testimony Before Witnesses Are Subject to Cross-Examination**

The request to delay cross-examination of petitioners' witnesses by other parties is again denied. Because petitioners' written, direct testimony for Part 1A of the hearing has been submitted in

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advance, the focus of the live portion of this part of the hearing should be on cross-examination of petitioners' witnesses, any re-direct testimony, any re-cross examination, and rebuttal. The oral summary of the written, direct testimony of petitioners' witnesses will serve to remind the other hearing participants of the content of the direct testimony and place cross-examination of the witnesses in context. A significant delay between the oral summary of a given witness's written, direct testimony and cross-examination of the witness could make cross-examination more difficult to understand. In addition, petitioners' proposed format is not necessary to provide a comprehensive presentation of their project or to minimize unnecessary questions because all of the other parties will have the opportunity to read the written, direct testimony of all of petitioners' witnesses before the hearing begins.<sup>1</sup>

### **Request by Petitioners to Clarify Hearing Procedures**

The petitioners' June 29, 2016 letter also requested us to provide "clarity and certainty as to the procedure intended for this hearing," specifically referring to deadlines for motions during the hearing, as well as timing of filing, responding to, and resolution of motions. We have established deadlines for some procedural or evidentiary objections, and decline to establish additional deadlines or other requirements at this time. With limited exceptions, the laws governing evidentiary hearings before the State Water Board do not establish formal rules for the filing and disposition of motions, and it is not the State Water Board's practice to establish comprehensive rules governing motion practice in individual hearings. We will consider, however, any specific proposals that petitioners or other parties may make concerning any particular type of motion that is likely to be filed during the course of the hearing.

### **Duplicative Motions and Requests**

In closing, we would like to remind the parties, once again, that follow-up comments on rulings and duplicative motions or requests on issues already addressed are strongly discouraged. In the future, we may not respond to duplicative comments, motions or requests unless adequate justification for further consideration is provided.

### **Ex Parte Communications**

Please remember that ex-parte communications concerning substantive or controversial procedural issues relevant to this hearing are prohibited. Parties must provide a copy of any correspondence to the hearing team concerning substantive or controversial procedural issues to all of the parties listed in Table 1 of the service list located here: [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). Any such correspondence must also be accompanied by a Statement of Service form.

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<sup>1</sup> Petitioners cite as an example of their proposed format the presentation of the prosecution team's case in chief in the recent enforcement proceeding against Byron-Bethany Irrigation District. Petitioners' case is distinguishable, however, because it consists of five panels with nine lead witnesses and multiple secondary witnesses, as opposed to one panel with five witnesses.

If you have questions regarding this letter, please contact the hearing team at  
CWFhearing@waterboards.ca.gov or (916) 319-0960.

Sincerely,

*ORIGINAL SIGNED BY*

Felicia Marcus, State Water Board Chair  
WaterFix Project Co-Hearing Officer

*ORIGINAL SIGNED BY*

Tam M. Doduc, State Water Board Member  
WaterFix Project Co-Hearing Officer