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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 OPPOSITION TO PETITIONER'S
20 REQUEST FOR EXTENSION OF TIME TO
21 SUBMIT OBJECTIONS

22 I, Deirdre Des Jardins, oppose the Department of Water Resources' request to extend the
23 deadline for written procedural/evidentiary objections from parties to the hearing concerning Part
24 1B parties' cases in chief, currently set for September 15, 2016, to September 21, 2016 for all
25 parties, for the following reasons, which are further discussed below.

- 26 1. The Petitioners did not object when the deadline was set.
- 27 2. The extension leaves less than 24 hours before the hearing starts again.
- 28 3. The protestants need to pay full attention to cross-examination.
- 1 4. Many protestants have long commutes for the hearing.

2 If the extension is granted, I ask that the Hearing Officers ensure that parties who
3 submitted exhibits for Part 1B have until October 7, 2016 – 7 calendar days after the completion
4 of the next scheduled block of hearings --- to respond to any objections to their testimony.

1 Finally, as explained below, DWR deleted the reference to “petitioners’ witnesses” in citing the
2 Hearing Officers June 10, 2016 ruling relaxing the deadline for objections by protestants That
3 opinion clearly states that “only objections that, if valid, would preclude petitioners’ witnesses
4 from testifying” needed to be made by July 12, 2016.

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6 DISCUSSION OF REASONS

7 1. The Petitioners did not object when the deadline was set.

8 The current hearing schedule, adopted on April 25, 2016, provides the same amount of
9 time for written procedural/evidentiary objections to the protestants’ cases in chief as the
10 schedule adopted on February 11, 2016, following the pre-hearing conference. As such, requests
11 for a modification to the hearing schedule should have been presented to the Hearing Officers
12 many months ago.

13 2. The extension will leave less than 24 hours before the hearing starts again.

14 The Department of Water Resources’ request for extension states that

15 The Department, based upon these reasons, believes that the requested extension
16 of the deadline to file objections until September 21 is both reasonably justified
and non-prejudicial to the Hearing Officers, other parties, and public.

17 However, the hearing is scheduled to start again on September 22, 2016. Extending the
18 deadline will give both the Hearing Officers and the parties who submitted testimony and
19 exhibits for Part 1B (including myself) less than 24 hours to review the objections before the
20 Hearing starts again.

21 3. The protestants need to pay full attention to cross-examination.

22 As documented in my August 29, 2016 Motion for Reconsideration, the hearing started
23 without an assessment of whether the Petitioners submitted sufficient information in their case in
24 chief and exhibits to meet Water Code section 1701.2 and Title 23 CCR section 794, over
25 continuing objections by protestants. The July 22, 2016 Ruling stated that the Petitioners would
26 clarify those impacts during the hearing process:
27

1 While the other parties still have specific and various criticisms of petitioners'
2 evidence and testimony, we disagree with those parties who contend that
3 petitioners' case-in-chief is insufficient to allow parties to meaningfully
4 participate in Part 1 of the hearing.

5 We recognize that petitioners bear the burden of establishing that the proposed
6 changes will not injure other legal users of water. As we stated in our February
7 ruling, however, not all uncertainties can or need to be resolved before beginning
8 the hearing. In fact, the purpose of this hearing is to resolve some of the issues
9 concerning how the proposed project would be operated. At this point, any
10 remaining uncertainty concerning the proposed project and its effects should be
11 raised in the hearing process, *including but not limited to cross-examination*, and
12 the protestants' cases in chief. (p. 2, emphasis added)

13 There was still a great deal of uncertainty about the proposed project and its effects when
14 the hearing started. As a result, protestants have needed to spend a great deal of time and effort
15 attempting to clarify the effects of DWR's proposed project on their water rights on cross-
16 examination, and, as evidenced by the Hearing Officers' need to call the Petitioners witnesses
17 back to provide additional information, this effort has not always been successful.

18 The upcoming testimony by the Water Rights panel is central to Part 1A of the
19 hearing. Protestants need to pay full attention to the cross-examination by other parties to avoid
20 duplicative questions, as well as prepare for their own cross-examination regarding their
21 interests.

22 4. Many protestants have long commutes for the hearing.

23 Many protestants commute to the Hearing from the Bay Area, from the Delta, and from
24 North of Sacramento, leaving little time in the evenings after the hearing.

25 In sum, Petitioners have arguably failed to meet the statutory requirements of Water Code
26 § 1701.2 and Title 23 Cal. Code. Regs. § 794 prior to the hearing. This has resulted in a heavy
27 burden on protestants to elucidate the information on cross-examination. The Petitioners' last
28 minute request for an extension will only increase this burden. For these reasons, I am opposed
to the extension, especially without a grant of sufficient time to protestants to fully participate in
cross-examination and also reply to any objections.

Finally, the Department of Water Resources request contains a misleading citation of the
following language in the Hearing Officer's July 10, 2016 ruling:

1 In addition, this ruling hereby relaxes the requirement so that only objections that,
2 if valid, would preclude petitioners' witnesses from testifying must be submitted by the
3 extended deadline. **At a minimum, any motions to disqualify any of petitioners'
4 witnesses, or to exclude a witness's testimony, in whole or in part, must be filed and
5 served on petitioners and the other parties by 12:00 noon on July 12, 2016.** (p. 2,
6 underlining added, boldface in original)

7 DWR's quote of this section of the June 10, 2016 ruling deletes all references in the ruling to
8 petitioners' witnesses:

9 It is the understanding of the Department that this deadline applies only to, "any
10 motions to disqualify any... witnesses, or to exclude a witness' testimony, in whole or in
11 part," which is a revision in the June 10, 2016 ruling.

12 It should be noted that the Hearing Officer's July 10, 2016 ruling relaxing the deadline
13 for objections was made partly in response to concerns expressed by Pacific Coast Federation of
14 Fishermen's Associations on June 9, 2016 that the Petitioners' project had changed since the pre-
15 hearing conference in February:

16 By letter dated March 11, 2016, petitioners pulled the evidentiary rug out from
17 underneath this Board, the public and protestants by disavowing petitioners' reliance on
18 their RDEIR/SDEIS and revealing, in a table on page 3, that only the Biological
19 Assessment ("BA") model, "the most recent version of CalSim II (2015) and a longer
20 patterning period for DSM2 (82-year record)" would be used, prompting several
21 protestants to request vital information about the model versions, histories and output
22 differences needed to evaluate the petition-*information that petitioners have still not
23 provided.* (p. 2, emphasis added.)

24 I, Deirdre Des Jardins, principal at California Water Research, had similar objections,
25 which were submitted on June 9, 2016. South Delta Water Agency and Central Delta Water
26 Agency also requested time on June 3, 2016 to evaluate the new modeling sent by the Petitioners
27 to the State Water Resources Control Board on May 25, 2016.

28 The Hearing Officers' relaxation of the deadline to submit objections was in response to
concerns expressed about the repeated changes to foundational evidence for their case in chief,
and failure to provide information needed to fully evaluate and rebut the model results presented.
Petitioners' misleading citation of the ruling is not a valid argument that the same extension
should be applied to the September 15, 2016 deadline.

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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(s):

**OPPOSITION TO PETITIONER'S REQUEST
FOR EXTENSION OF TIME TO SUBMIT OBJECTIONS**

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 2, 2016, posted by the State Water Resources Control Board at http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/service_list.shtml

I certify that the foregoing is true and correct and that this document was executed on September 8, 2016.

Signature:



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

Party/Affiliation:
Deirdre Des Jardins

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