

CWFhearing

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Sent: Monday, September 26, 2016 4:32 PM
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Subject: CalWaterFix - Response to Request for additional Cross-X

Hearing Chair Tam Doduc and Hearing Officer and Board Chair Felicia Marcus:

The Department of the Interior is in receipt of Mr. Bezerra's request for additional cross-examination of Mr. Ray Sahlberg, Reclamation's Mid-Pacific Water Rights Officer. At the outset, we have no issue with the Term 14 and related issues being further explored in these proceedings. Mr. Sahlberg has been dealing with Mr. Bezerra and his clients on this matter for over four years.

However, we believe that adjudicatory hearings before the Board should follow the basic tenets of "fundamental fairness." [Morongo Band of Mission Indians v. State Water Resources Control Bd., 153 Cal. App. 4th 202, 213 \(Cal. App. 3d Dist. 2007\)](#). Therefore, while we may have no objection to additional cross-examination on these issues, any such cross-examination should only occur under fair terms.

We disagree that anything inappropriate occurred between Mr. Sahlberg and Westlands and SL&DMWA attorneys in coordinating cross-examination related to these matters. Westlands and SL&DMWA are not "friendly" to Reclamation in a general sense, and, because this issue has been long explored outside this hearing, they have understood that they share a common interest, if not simply a common understanding of this issue over the years. As such, they coordinated some cross examination questions, in response to the matter being raised by Alan Lily on earlier cross-examination of other panels. At no time was Mr. Sahlberg coached.

We also disagree that the testimony at issue could be characterized as "direct." Mr. Bezerra and Mr. Lily raised the issue on previous cross examination, prior to filing their cases in chief. It is appropriate cross-examination by Westlands and SL&DMWA to explore the issue from their perspective with Mr. Sahlberg.

We do not believe that allowing the testimony developed under cross-examination between Westlands and SL&DMWA, and Mr. Sahlberg, to be characterized as "direct," is fair to the Department. This is because Mr. Sahlberg has additional testimony and exhibits to offer on this subject, which would bring to light his long history with the claims of preference to CVP water by Mr. Bezerra's clients. Therefore, any testimony on the record, so far, can only be characterized as partial testimony, and allowing additional cross-examination by Mr. Bezerra will not render Mr. Sahlberg's testimony complete. Therefore, any additional cross-examination by Mr. Bezerra based on the characterization of this testimony as "direct" should only follow an opportunity of Mr. Sahlberg to amend his direct testimony so that he can fully tell his story. It also may be that all parties would then have the opportunity to re-cross only on the amended direct testimony.

Simply denying Mr. Bezerra's request, on the other hand, is not unfair. Mr. Bezerra and/or Alan Lily have openly raised the issue in the hearing, prior to submitting their formal cases in chief. In addition, they still have their cases in chief to present on the matter.

It may be that Mr. Sahlberg will be submitting additional testimony on this issue for rebuttal. The matter could be more fully fleshed out at that time, if necessary.

At this point, however, we ask that the Board recognize that Mr. Sahlberg's cross-examination by Westlands and SL&DMWA attorneys was appropriate and does not represent Mr. Sahlberg's full testimony on the issue. Allowing additional cross-examination, without an opportunity for more full direct testimony by Mr. Sahlberg, would suppress Mr. Sahlberg's full testimony on the issue, resulting in prejudice to Reclamation.

Thank you for your time and consideration of this matter.

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