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Subject: CWF Hearing comments on rebuttal schedule and closing briefs
Date: Tuesday, November 22, 2016 5:06:24 PM
Attachments: Nov.22 cwf stmt serv.pdf

Dear Hearing Officers:

Delta Alliance has the following comments on suggestions by SVWU and other parties regrading presentation of rebuttal evidence:

1) **Rebuttal cases.** Adequate time must be allowed for parties presenting cases in chief in Part 1B to prepare their rebuttal cases. The Board denied requests from multiple parties to extend the deadline for submission of Part 1B cases in chief. Parties argued that while they were in the midst of participating in Part 1A, it was difficult to adequately prepare their cases in chief for Part 1B—particularly since Petitioners had not (and still have not) defined the project. Parties also argued that Petitioners had been granted 2 extensions of time to submit their cases in chief. The Board denied the request for an extension, partly on the rationale that Part 1B parties would have the opportunity to present further evidence (not submitted as part of their cases in chief) on rebuttal.

It would now be unreasonable to impose a short deadline on short notice for submission of rebuttal evidence.

Delta Alliance therefore requests that any deadline to submit evidence or testimony for rebuttal be set for January 5, 2017, or twenty days after the conclusion of Part 1B cases in chief and cross-examination thereof, whichever is later.

Delta Alliance notes that the Board had previously indicated that no advance submission of rebuttal evidence or witnesses would be required. Reasonable notice and time to prepare must therefore be allowed if this is to be changed.

Delta Alliance agrees with the suggestion of Westlands Water District that parties need to be given better advance notice of the date on which they will be expected to appear, taking due account of input from the parties, regardless of what order of presentation might be established.

2) **Closing briefs.** Delta Alliance suggests that closing briefs at the end of Part 1 will be helpful to the Board and will better allow the Board to focus Part 2 proceedings. The conclusion of Part 2 may be some time away and receiving briefs addressing Part 1 issues shortly after the close of Part 1, while testimony is still fresh, makes sense. Breaking the closing briefs into 2 parts (at the end of Part 1 and the end of Part 2) will also produce more focused and succinct briefs. On that score, establishing a reasonable page limit on briefing

would also be helpful. Delta Alliance suggests that Part 1 closing briefs be due 60 days after the close of Part 1 hearings.

It is not unusual for trial judges to request briefing on specific issues that are of concern to them. If the Hearing Officers feel that their decision process would be helped by briefing on any particular question, they could call the parties attention to questions of concern.

As noted in the October 30, 2015, Notice of Petition it may be necessary to revisit issues of injury to legal users of water in Part 2. (*See* Notice, p. 11.)

Delta Alliance agrees with the comments of other parties that briefing on the question of what constitutes injury and who qualifies as a legal user of water within the meaning of Water Code section 1702 would be appropriate for briefing at the close of Part 1.

Thank you for the opportunity to submit these comments.

This email is sent to the service list in 2 groups. This is group 1.

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