
State Water Resources Control Board

JUNE 1, 2018

VIA ELECTRONIC MAIL

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CALIFORNIA WATERFIX HEARING – RULING ON OBJECTIONS TO CROSS-EXAMINATION EXHIBITS IN CASE-IN-CHIEF PHASE OF PART 2

This ruling addresses outstanding objections to exhibits that parties introduced during cross-examination and offered into evidence in the case-in-chief phase of Part 2.

DWR Objections to NRDC-100 and NRDC-102

On February 22, 2018, during the Natural Resources Defense Council, et al.'s (NRDC) cross-examination of Gwen Buchholz, Doug Obegi introduced NRDC-100 and NRDC-102. NRDC 100 is an agreement summary between the Hallmark Group and the Department of Water Resources (DWR) dated December 18, 2017, for additional planning work including development of a supplemental environmental impact statement/environmental impact report (EIS/EIR). NRDC-102 consists of December 7, 2017 meeting minutes of the Board of Directors of the San Luis and Delta Mendota Water Authority. Those meeting minutes purport to forecast an announcement by Governor Brown that the WaterFix Project will proceed in stages rather than as currently proposed. When asked why those exhibits were relevant to Part 2 key hearing issues, Mr. Obegi asserted that they go to the veracity of Ms. Buchholz's testimony regarding what "the project" was, and whether DWR already had decided on staged implementation at the time she prepared her Part 2 written testimony.

On February 23, 2018, DWR filed a written objection to these two cross-examination exhibits. DWR asserts that they are not relevant to Part 2 key hearing issues because, even assuming the truth of their contents, they do not call into question Ms. Buchholz's testimony.¹ She testified on cross-examination that she was not aware of the documents or what they referenced, and that the project adopted by DWR had not deviated at the time she prepared her Part 2 testimony. NRDC filed a written opposition re-asserting its position that the two exhibits in question are relevant because they demonstrate that DWR knew it would pursue staged implementation of the WaterFix Project at the time Ms. Buchholz prepared her Part 2 testimony, and that her testimony regarding what "the project" is therefore should be given less weight.

We sustain DWR's objection to NRDC-100 and NRDC-102 and will not admit those two exhibits into the record. An exhibit is not relevant to impeaching a witness's testimony if both the exhibit and the witness's testimony can be true. In this case, Ms. Buchholz's testimony pertained only to the project that had been approved and adopted by DWR: CWF H3+. She did not purport to

¹ DWR also raised a hearsay objection to NRDC-102. With this ruling, that objection is now moot.

testify as to what other versions of the WaterFix Project were or were not under consideration. Other documents demonstrating that DWR may also have been in the process of considering adoption of a different version of the WaterFix Project therefore do not contradict Ms. Buchholz's testimony describing the then-adopted WaterFix Project. Also, DWR subsequently represented to us during this hearing that it is no longer considering staged implementation of the WaterFix Project. Thus, even if we were to accept NRDC's proffered basis for admitting NRDC-100 and NRDC-102, they would no longer be relevant to Part 2.

Objections to Other Cross-Examination Exhibits

After careful review of the other outstanding objections to exhibits introduced during cross-examination and offered into evidence during Part 2, we have determined that all but the objections addressed in the section above go to the weight of the evidence, not admissibility. Our February 21, 2017 ruling directed parties to reserve objections to exhibits that go to the weight of the evidence until closing briefs. It would be premature to rule definitively on the merits of those objections before parties' last opportunity to raise arguments supporting or opposing them. Therefore, we have noted the parties' objections for the record and will take them and any further argument received in closing briefs under consideration prior to reaching a final decision based on the entire record in this proceeding.

For the sake of clarifying the record, we hereby accept or confirm prior acceptance of the following exhibits into the evidentiary record:

- DDJ-286, DDJ-287
- LAND-216, LAND-222, LAND-236, LAND-238
- RTD-248, RTD-252, RTD-261
- NRDC-104
- SDWA-315
- SWRCB-25

Other Cross-Examination Exhibits Offered Into Evidence

The following exhibits were offered into evidence without objection by the other parties. We hereby accept the following exhibits into the evidentiary record:

- BKS-250 through BKS-255; BKS-257 through BKS 263; BKS-265 through BKS-268
- DDJ-288 through DDJ-290
- DWR-1151 through DWR-1155; DWR 1157; DWR-1158; DWR-1160 through DWR-1165; SWRCB-22; SWRCB-54
- GCID-23
- LAND-217 through LAND-219; LAND-221; LAND-224 through LAND-226; LAND-228; LAND-230; LAND-232 through LAND-234; and LAND-237
- SHR-2-261 through SHR-2-264
- SWC-3 through SWC-5

If you have any non-controversial, procedural questions about this ruling or other matters related to the California WaterFix Hearing, 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