The California Department of Water Resources ("DWR") opposes the requests by Local Agencies of the North Delta et al. and joinders thereto ("LAND et al."), which were filed in the California WaterFix water rights hearing on June 21 and 22, 2018.¹

DWR Opposes the Premature Scheduling of a Part 3

LAND et al. asserts that the administrative draft supplemental Environmental Impact Report/Environmental Impact Statement ("ADSEIR") requires the Hearing Officers to schedule a Part 3 of this hearing because limiting them to producing rebuttal testimony on

¹ The parties making or joining the request include Local Agencies of the North Delta, Friends of Stone Lakes National Wildlife Refuge, San Joaquin County, San Joaquin County Flood Control and Water Conservation District, Mokelumne River Water and Power Authority, County of Sacramento, Sacramento County Water Agency, Restore the Delta, and City of Antioch.
the document “is not an adequate substitute for Part 3 of the hearing because it does not provide for submittal of the actual proposed changes to the project for the record by the petitioners, or testimony, and cross-examination on the changes.” DWR disagrees with this contention. The contemplation of a Part 3 for the water rights hearing was premised upon concerns over the Petitioners approaching the construction of the California WaterFix in stages. Petitioners have not proposed to construct the California WaterFix in stages. A part 3 of the hearing was never contemplated as necessary for the minor changes now described in the ADSEIR.

DWR Opposes Staggered Submissions of Rebuttal Evidence

LAND et al. go on to complain that the ADSEIR does not relate the minor changes in the ADSEIR to specific issues in the water rights hearing, leading them to “base their analysis on information outside of the ADSEIR, including their own efforts to map groundwater wells, diversions and other resources in the vicinity of the proposed Tunnels and associated infrastructure.” This complaint is the basis of a continued misuse of the hearing’s burden of proof and an argument for staggered submission of evidence. Nothing in the burden of proof suggests that Petitioners must present evidence before the other parties in this hearing. The burden of proof is the measure by which the Hearing Officers must make their determination. It is unrelated to the administrative process by which the Hearing Officers conduct the presentation of that evidence. While it is true that the Hearing Officers structured Part 1 of this hearing such that Petitioners presented evidence prior to other parties, it was based upon very different circumstances than what we have today. Thus, DWR opposes the request to stagger submissions of evidence for rebuttal in Part 2 of this hearing.

///

///

///
Executed on this 25 day of June, 2017 in Sacramento, California.

(James "Tripp" Mizell)