

1 Spencer Kenner (SBN 148930)  
James E. Mizell (SBN 232698)  
Emily M. Thor (SBN 303169)  
2 **DEPARTMENT OF WATER RESOURCES**  
Office of the Chief Counsel  
3 1416 9<sup>th</sup> St., Room 1104  
Sacramento, CA 95814  
4 Telephone: 916-653-5966  
E-mail: jmizell@water.ca.gov

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6 Attorneys for California Department of Water  
Resources

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8 **BEFORE THE**  
9 **CALIFORNIA STATE WATER RESOURCES CONTROL BOARD**

10 **HEARING IN THE MATTER OF CALIFORNIA**  
11 **DEPARTMENT OF WATER RESOURCES**  
12 **AND UNITED STATES BUREAU OF**  
13 **RECLAMATION REQUEST FOR A CHANGE**  
14 **IN POINT OF DIVERSION FOR CALIFORNIA**  
15 **WATER FIX**

**CALIFORNIA DEPARTMENT OF**  
**WATER RESOURCES' OPPOSITION**  
**TO LAND ET AL.'S REQUESTS FOR**  
**PART 3 AND/OR STAGGERED**  
**SUBMISSION OF PART 2 REBUTTAL**

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17 The California Department of Water Resources ("DWR") opposes the requests by  
18 Local Agencies of the North Delta et al. and joinders thereto ("LAND et al."), which were  
19 filed in the California WaterFix water rights hearing on June 21 and 22, 2018.<sup>1</sup>  
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21 **DWR Opposes the Premature Scheduling of a Part 3**

22 LAND et al. asserts that the administrative draft supplemental Environmental Impact  
23 Report/Environmental Impact Statement ("ADSEIR") requires the Hearing Officers to  
24 schedule a Part 3 of this hearing because limiting them to producing rebuttal testimony on  
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26 <sup>1</sup> The parties making or joining the request include Local Agencies of the North Delta, Friends of  
27 Stone Lakes National Wildlife Refuge, San Joaquin County, San Joaquin County Flood Control and  
28 Water Conservation District, Mokelumne River Water and Power Authority, County of Sacramento,  
Sacramento County Water Agency, Restore the Delta, and City of Antioch.

1 the document “is not an adequate substitute for Part 3 of the hearing because it does not  
2 provide for submittal of the actual proposed changes to the project for the record by the  
3 petitioners, or testimony, and cross-examination on the changes.” DWR disagrees with this  
4 contention. The contemplation of a Part 3 for the water rights hearing was premised upon  
5 concerns over the Petitioners approaching the construction of the California WaterFix in  
6 stages. Petitioners have not proposed to construct the California WaterFix in stages. A  
7 part 3 of the hearing was never contemplated as necessary for the minor changes now  
8 described in the ADSEIR.

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10 **DWR Opposes Staggered Submissions of Rebuttal Evidence**

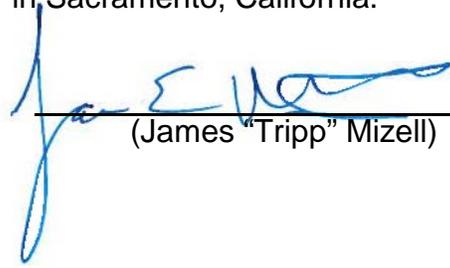
11 LAND et al. go on to complain that the ADSEIR does not relate the minor changes in  
12 the ADSEIR to specific issues in the water rights hearing, leading them to “base their  
13 analysis on information outside of the ADSEIR, including their own efforts to map  
14 groundwater wells, diversions and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

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



(James "Tripp" Mizell)

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