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Subject: Re: Reply to DWR - Order of Presentation - Part 2 Sur-Rebuttal
Date: Tuesday, September 25, 2018 11:00:02 PM

Service List - 1

Reply to DWR's Objection on change to presentation in order.

I do not wish to "paper" the hearing team regarding the order of presentation issue just before the start of the proceeding.

However, because DWR has stated it intends to have witnesses at the hearing tomorrow morning, I thought it was important to provide DWR and the Board with the argument against DWR proceeding in such a manner.

First, DWR is in this "present situation" due to its own actions:

- 1) DWR changed its project this summer (which DWR indicates will again change in Mr. Bednarski's testimony);
- 2) DWR decided against condemning CCLP's property as part of its project - thus impacting CCLP's water rights that would have been taken by eminent domain;
- 3) DWR was unaware of CCLP's diversion locations in relation to project modifications and apparently unaware of CCLP's contractual agreement with the Bureau of Reclamation re: in-canal diversion location;
- 4) DWR's witnesses were not able to adequately respond to questions from CCLP during rebuttal (panel 3) (although Mr. Valles and Dr. Chilmakuri

did make good faith attempts to do so, much of their testimony unfortunately demonstrated a lack of adequate knowledge at that time); 5) DWR's Supp EIR and associated documents failed to adequately describe project modifications and impacts to CCLP; 6) DWR provided inadequate responses to written questions from CCLP; and 7) DWR never disclosed the Byron Tract Forebay, or its change in strategy re: condemnation of CCLP property and water rights, or its changed south Delta operations - and never analyzed potential impacts to CCLP's in-canal diversion - until this summer during the rebuttal phase of part 2 - and therefore DWR's arguments that CCLP had "years" to prepare for cross-examination is simply not correct.

Second, the original order from the Board did not set a date certain for DWR CCLP water impacts testimony. Rather, the ruling stated that the testimony would occur during the sur-rebuttal phase. DWR was given 3 additional days (Sept 24 at 5 pm) to submit its CCLP impact testimony beyond that granted to those parties who actually requested sur-rebuttal (sur-rebuttal testimony due at Sept 21 at noon).

Ms. Womack has indicated she is available over the next couple of weeks to cross DWR's witnesses. The present sur-rebuttal is not likely to extend past Oct. 1 - and the Board will likely have a pretty good idea of timing of the entire proceeding tomorrow morning. Therefore there is plenty of opportunity within the dates set aside for sur-rebuttal for DWR's CCLP witnesses to testify following protestant's sur-rebuttal without prejudice to DWR and without delaying these proceedings in any way. CCLP should not have to bear the burden of DWR's prior inability to answer questions and provide adequate information

relating to impacts on CCLP's water rights and diversions from the proposed CWF.

Very respectfully submitted,

-MATTHEW EMRICK

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Sent: Tuesday, September 25, 2018 5:19 PM
Subject: Order of Presentation - Part 2 Sur-Rebuttal

Service List - 1

On behalf of the City of Antioch - and as special advisor to

CCLP - I join in Land's Request regarding order of presentation for sur-rebuttal. It appears fundamentally unfair to allow DWR to put its witnesses on first when in fact DWR opted out of sur-rebuttal in the first place. DWR's witnesses are testifying solely with respect to impacts on CCLP's water rights. Dr.

Chilmakuri's testimony contains fairly significant modeling testimony. It would be nearly impossible for CCLP to prepare proper cross-examination on such testimony in less than 2 days.

Therefore, on behalf of Antioch and as special advisor to CCLP, I respectfully request that the Board move DWR's non sur-rebuttal witnesses to last in order.

Thank you for your consideration.

-MATTHEW EMRICK

Special Counsel to City of Antioch and CCLP