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14 On behalf of Central Delta Water Agency,
15 South Delta Water Agency, Lafayette Ranch,
16 Heritage Lands, Mark Bachetti Farms
17 and Rudy Mussi Investments L.P.

18 **STATE OF CALIFORNIA**

19 **STATE WATER RESOURCES CONTROL BOARD**

20 Hearing in the Matter of California
21 Department of Water Resources and
22 United States Department of the Interior,
23 Bureau of Reclamation Request for a
24 Change in Point of Diversion for
25 California Water Fix

26 **THE SDWA PARTIES' PROPOSAL
27 REGARDING THE NATURE OF THE
28 BRIEFINGS AT THE CONCLUSION OF
PART 1 AND ISSUES TO BE ADDRESSED**

29 Protestants Central Delta Water Agency, South Delta Water Agency, Lafayette
30 Ranch, Heritage Lands, Mark Bachetti Farms and Rudy Mussi Investments L.P., (“SDWA
31 Parties”) hereby submit this proposal Re: Nature of briefings at the conclusion of Part 1 and
32 issues to be addressed, in response to the Hearing Officer’s Ruling of December 19, 2016.

1 **I. Scheduling of Motions**

2 The SDWA Parties' have previously indicated their desire and intent to submit
3 briefings at the conclusion of Part 1. The SDWA Parties, along with other Protestants feel very
4 strongly that the Petition seeks a new water right, and that Petitioner's Case in Chief
5 unquestionably demonstrates evidence that many other legal users of water will suffer injury.
6 Therefore, the SDWA Parties intend to file motion to dismiss, and or motion on the petition at
7 the conclusion of Part 1. The SDWA Parties expect that other Protestants will do the same.
8 Obviously, if the motions are appropriately granted Part 2 of the proceedings will not be
9 necessary. As such, filings of closing briefs, separate and distinct from motions to dismiss will
10 be unnecessarily repetitive and a further unjustified use of limited resources. To eliminate all
11 ambiguity regarding these processes, the SDWA Parties respectfully request a briefing
12 schedule be established now with respect to the submissions, oppositions and replies to
13 motions to dismiss. Specific issues which will be the subject of said motions are up to the
14 individual Protestants and same should not be required to be disclosed at this time. As occurred
15 in the BBID/ WSID Enforcement Proceedings, because of Petitioner (in this Proceeding it was
16 the Prosecution Team) blatant failure to meet their burden of proof, motions to dismiss should
17 be heard and ruled upon prior to commencement of rebuttal testimony. At a minimum, said
18 motions should occur at the conclusion of rebuttal and sur- rebuttal cases.

19 If for some reason the Hearing Team declines SDWA's request that briefing schedules
20 be established now for the purposes of submitting motions to dismiss/motions on the petition,
21 and instead decides to proceed with general closing briefs at the conclusion of Part 1, the
22 SDWA Parties suggest that following issues be addressed:

23 **Issue 1: Is the Petition for Change in the Point of Diversion Incompatible with the**
24 **Petitioners' Identified Water Rights and /or Otherwise Defective?**

25
26 **Issue 2: Have Petitioners Met Their Burden of Proof in Establishing That the**
27 **Petition, If Granted, Would Not "Operate to the Injury of Any Legal User**
28 **of the Water Involved"?**

1 **Issue 3: Should the Petition for Change be Denied or Dismissed Because of the Lack**
2 **of a Corollary Petition for Extension of Time?**

3
4 **Issue 4: Should the Petition be dismissed because the Petitioners have aggregated**
5 **and averaged impacts rather than analyzing specific real time effects of the**
6 **project?**

7
8 **III. CONCLUSION**

9 The SDWA Parties respectfully requests the Hearing Officers proceed to set briefing
10 schedules at this time.

11
12 Respectfully submitted,

13
14 Date: January 31, 2017

HARRIS, PERISHO & RUIZ

15
16
17 By:  _____
18 S. DEAN RUIZ, Esq.

STATEMENT OF SERVICE

**CALIFORNIA WATERFIX PETITION HEARING
Department of Water Resources and U.S. Bureau of Reclamation (Petitioners)**

I hereby certify that I have this day submitted to the State Water Resources Control Board and caused a true and correct copy of the following document(s):

THE SDWA PARTIES' PROPOSAL REGARDING THE NATURE OF THE BRIEFINGS AT THE CONCLUSION OF PART 1 AND ISSUES TO BE ADDRESSED

to be served **by Electronic Mail** (email) upon the parties listed in Table 1 of the **Current Service List** for the California WaterFix Petition Hearing, dated 01/13/2017, posted by the State Water Resources Control Board at

http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/service_list.shtml:

Note: In the event that any emails to any parties on the Current Service List are undeliverable, you must attempt to effectuate service using another method of service, if necessary, and submit another statement of service that describes any changes to the date and method of service for those parties.

I certify that the foregoing is true and correct and that this document was executed on 1/31/2017.

Date

Signature: _____



Name: Bee Speer

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