

DEPARTMENT OF WATER RESOURCES

1416 NINTH STREET, P.O. BOX 942836
SACRAMENTO, CA 94236-0001
(916) 653-5791



July 19, 2018

SENT VIA E-MAIL TO: CWFhearing@waterboards.ca.gov

Tam Doduc, Hearing Officer
Felicia Marcus, Hearing Officer
State Water Resources Control Board
1001 I Street
Sacramento, California 94596

RE: Submission of Revised DWR-1143 Pursuant to July 16 Order

Dear Hearing Officers Doduc and Marcus:

The California Department of Water Resources submits the attached Exhibit-1143 Second Revision (DWR-1143rev2.pdf) pursuant to the Hearing Officers' July 16, 2018 Order.

On March 27, 2018 you ordered:

DWR to prepare and include an exhibit within their Part 2 rebuttal with the same purpose that motivated DWR-1143: identifying each proposed operating condition for the WaterFix Project and the regulatory requirement or other basis for each one. ... In particular, we encourage DWR to consider whether, based on some of the questions raised by protestants, there are opportunities to provide greater specificity when tying a particular operating condition to a regulatory requirement or other source. Finally, the exhibit's preparation should anticipate and address the alleged inconsistency raised in the Downey Brand protestants' written objection.

This request to trace DWR's adopted project criteria through the modeling and into any regulatory requirements was previously addressed in DWR-1143 and the Downey Brand protestants' objections were addressed in testimony during the Part 2 case-in-chief.

On June 28 the Hearing Team sent an email enlarging the March 27 Order by asking DWR to "specifically differentiate between regulatory requirements and operational or modeling assumptions and identify how the regulatory requirements are reflected in the operational and modeling assumptions to the extent applicable." Staff added the requirement for DWR to demonstrate that the regulatory requirements fell within the

adopted project, a reversal in direction of the previous request. (see March 27 Order to tie “operating conditions to a regulatory requirement or other source.”) This additional request required DWR expert witnesses to research the work of the regulatory agencies and tie, to the extent possible, the permit conditions back to DWR’s adopted project criteria. Given the time remaining before the due date for rebuttal testimony and the additional information requested by the Hearing Team, DWR produced exhibit DWR-1143 Revised pursuant to these directions.

On July 16, you issued an order concluding, prior to the completion of the testimony for this hearing, that “inconsistencies also remain both within the revised DWR-1143 and between that exhibit, the various source documents cited within that exhibit, and DWR’s July 12, 2018 cover letter.” This conclusion did not acknowledge that the letter referenced back to evidence already in the record that explain the largely unsupported assertions by the Downey Brand protestants. This previously submitted testimony was detailed in the letter from Ms. Thor that accompanied DWR-1143 Revised.¹ In doing so, you again ordered DWR to revise DWR-1143 and comply with the following:

We hereby direct DWR to submit an exhibit complying with our March 27, 2018 ruling, the June 28, 2018 notice, and this ruling, no later than **noon on July 19, 2018**. The exhibit must clearly identify each proposed operating criterion for the WaterFix Project, the document where the regulatory requirement or other basis for the criterion can be found, and must either quote the specific language being referenced or cite the section/page number of that document. The column that describes operating criteria should include the most recent and accurate description of each operating criterion, and should not include operating criteria that are no longer proposed to be included as part of the project. ...

Where proposed operating criteria are described differently in different environmental, planning or regulatory documents for the WaterFix Project, the exhibit must identify those discrepancies, identify which description is the proper basis for the operating criteria in question, and explain why. In particular, the exhibit must reconcile the apparent conflict in how spring outflow criteria have been described in CEQA documents, the ITP application, and the ITP itself, and must clarify the criteria for October/November Old and Middle River flows and corresponding export constraints.

In addition, it has become evident during the hearing that discrepancies exist between certain proposed operating criteria and the manner in which those criteria were modeled, and that some modeling assumptions are not in fact

¹ Ms. Thor’s letter was not submitted as evidence. Rather it was summarizing the materials that are currently before you regarding the Downey Brand protestants’ objections. As a response to a legal objection from opposing counsel, this is an entirely appropriate communication from counsel to the Hearing Officers.

proposed operating criteria. For example, the text from SWRCB-108 quoted in DWR's July 11, 2018 submittal describes a discrepancy between the spring Delta outflow criteria required by the ITP and the manner in which those operating criteria were modeled. The revised exhibit must clearly describe any significant discrepancies between operating criteria and modeling assumptions, and identify operating assumptions that were included in Petitioners' modeling runs for the WaterFix Project but are not being proposed as operating criteria. To accomplish this objective, it may be advisable to add a fourth column to the table for a description of modeling assumptions.

The attached exhibit, DWR-1143 Second Revision, contains within it all the information necessary to satisfy not only the initial March 27, 2018 Order, but also the expanded request from staff on June 28, 2018, and the more explicit direction in the July 16, 2018 Order. DWR is producing two witnesses, Mr. Erik Reyes and Dr. Chandra Chilmakuri who can speak to the content of DWR-1143 Second Revision. This letter and the attached exhibit will be served on all parties to the Hearing.

It bears noting that not all modeling assumptions are appropriate to be operational criteria. To the extent that the Downey Brand protestants continue to seek an "operational plan" DWR continues to disagree with the appropriateness, utility or need for such a plan. This has been made plain in testimony by DWR throughout Parts 1 and 2 of this hearing.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tripp Mizell".

Tripp Mizell
Senior Attorney
Office of the Chief Counsel
CA Department of Water Resources

cc: Electronic Service
Service list as of 7-3-2018

Personal Service via U.S. Postal Service
Suzanne Womack and Sheldon Moore Clifton Court, L.P.