

State Water Resources Control Board

June 7, 2017

VIA ELECTRONIC MAIL

TO: [CURRENT SERVICE LIST](#)

CALIFORNIA WATERFIX HEARING – DISPOSITION OF OUTSTANDING PART 1 REBUTTAL TESTIMONY AND EXHIBITS

During the course of the rebuttal phase of the hearing and in subsequent ruling letters, we have addressed the majority of evidentiary objections to rebuttal testimony and exhibits and determined whether to admit into the evidentiary record most of the rebuttal testimony and exhibits offered into evidence by the parties. This ruling addresses the remaining rebuttal testimony and exhibits that have been offered into evidence, including exhibits that were introduced during cross-examination of rebuttal witnesses and offered into evidence by the 12:00 p.m., May 26, 2017 deadline. Please note that this ruling addresses only outstanding issues. It does not summarize all of our previous oral and written rulings on objections to and admission of rebuttal testimony and exhibits.

Group 1 - California Department of Water Resources (DWR)

On May 25, 2017, DWR submitted its rebuttal cross-examination exhibits by letter with an accompanying exhibit identification index. There are no outstanding objections to these exhibits, and with the exception of exhibit DWR-919, the exhibits were introduced and utilized during cross-examination. The status of DWR-75 and DWR-84 also remain outstanding. Our May 18, 2017 ruling admitted DWR-75 and DWR-84 pending execution of strikeouts resulting from sustained objections.

Disposition: DWR's rebuttal cross-examination exhibits (DWR-912, DWR-915, DWR-916, DWR-917, DWR-918, DWR-920, DWR-921, DWR-923, DWR-924, DWR-925, DWR-926, DWR-927, and DWR-928) are accepted into the evidentiary record. DWR-75 and DWR-84 have been revised per the May 18, 2017 ruling and are also admitted into the evidentiary record. DWR-919 is not accepted into the evidentiary record because it was not used during cross-examination of any witness.

Group 7 – Sacramento Valley Water Users (SVWU), Glenn-Colusa Irrigation District (GCID), American River Water Agencies (ARWA), Sacramento County Water Agency (SCWA), City of Folsom (Folsom), San Juan Water District (SJWD), City of Sacramento (CITYSAC), Anderson-Cottonwood Irrigation District (ACID or MLF)

On May 18, 2017, Group 7 concluded presentation of their rebuttal testimony and requested 24 hours to compile and submit a list of exhibits to move into the evidentiary record. At that time, there was an outstanding objection to the admissibility of SVWU-202 (errata) and a motion to strike certain testimony by Mr. Gohring and Mr. Weaver. During the hearing on May 23, 2017, we orally overruled the objection and the motion to strike. There are currently no outstanding objections to Group 7's rebuttal exhibits and testimony.

FELICIA MARCUS, CHAIR | THOMAS HOWARD, EXECUTIVE DIRECTOR

Group 7 submitted three letters requesting to move exhibits into evidence. The Sacramento Valley Water Users (SVWU) submitted a letter on May 19, 2017, (May 19, 2017 Downey Brand Letter) which requested to move exhibits listed in Attachment B into the evidentiary record. Attachment B includes rebuttal evidence submitted by SVWU, and exhibits used on cross-examination by SVWU, Bartkiewicz, Kronick & Shanahan (BKS), Downey Brand (DB), GCID, and SCWA.

ARWA submitted a letter on May 19, 2017 (May 19, 2017 BKS Letter) which requested to move exhibits listed in Attachments A, B, C, and D into the evidentiary record. The attachments include evidence submitted by ARWA, Folsom, SJWD, and CITYSAC.

Anderson-Cottonwood Irrigation District (ACID/MLF) submitted a letter on June 1, 2017 requesting to move exhibits MLF-6 and MLF-7 into the evidentiary record. Although exhibits MLF-6 and MLF-7 are listed in the ACID Rebuttal Exhibit Index dated May 19, 2017, they were not offered into evidence at that time.

Disposition: The SVWU, BKS, DB, GCID, and SCWA testimony and exhibits listed in the May 19, 2017 DB Letter Attachment B are admitted into the evidentiary record.

The ARWA, Folsom, SJWD, and CITYSAC testimony and exhibits listed in the May 19, 2017 BKS Letter Attachments A, B, C, and D are admitted into the evidentiary record.

Exhibits MLF-6 and MLF-7 are not moved into the evidentiary record because this request came after our May 26, 2017 deadline to request to move remaining Part 1 rebuttal cross-examination exhibits into the evidentiary record.

Group 10 – City of Brentwood (Brentwood) and the Delta Flood Control Group (DFCG)

Brentwood submitted a letter on May 12, 2017 offering rebuttal cross-examination exhibit Brentwood-118 into the evidentiary record.

In a letter dated June 1, 2017, DFCG indicated that rebuttal cross-examination exhibits DFCG-rebuttal-1 and DFCG-rebuttal-2 were introduced on April 25, 2017, and provided in an email dated April 28, 2017, with an updated exhibit identification index. The exhibits were introduced on April 25, 2017, however, DFCG did not request to move them into the evidentiary record.

Disposition: Brentwood-118 is admitted into the evidentiary record. DFCG-rebuttal-1 and DFCG-rebuttal-2 are not admitted into the evidentiary record because this request came after the May 26, 2017 deadline to request to move remaining Part 1 rebuttal cross-examination exhibits into the record.

Group 15 - East Bay Municipal Utilities District (EBMUD)

EBMUD submitted a letter on June 1, 2017, requesting to move rebuttal cross-examination exhibits EBMUD X-4, EBMUD X-5, and EBMUD X-6 listed in the EBMUD rebuttal exhibit identification index dated May 1, 2017, into the evidentiary record.

Disposition: EBMUD X-4, EBMUD X-5, and EBMUD X-6 are not admitted into the evidentiary record because this request came after our May 26, 2017 deadline to request to move remaining Part 1 rebuttal cross-examination exhibits into the evidentiary record.

Group 18 - San Joaquin Tributaries Authority (SJTA)

SJTA submitted rebuttal cross-examination exhibits SJTA-201 through SJTA-205 on May 26, 2017. The referenced exhibits are all self-authenticating and were used during cross-examination. There were no objections to SJTA's rebuttal cross-examination exhibits.

Disposition: Exhibits SJTA-201 through SJTA-205, as identified in the May 26, 2017 letter, are admitted into the evidentiary record.

Group 19 - Local Agencies of the North Delta, et al. (LAND)

LAND moved to enter their rebuttal cross-examination exhibits by letter dated May 26, 2017. Attachment A to the May 26, 2017 letter identifies rebuttal exhibits LAND-75 through LAND-80 and cross-examination exhibits LAND-81 through LAND-86, LAND-91, LAND-96 through LAND-98, LAND-103 through LAND-105, LAND-108, LAND-111, and LAND-112. Listed rebuttal exhibits LAND-75 through LAND-80 were accepted by our May 30, 2017 ruling letter. There are no outstanding objections to these exhibits.

Disposition: Cross-examination exhibits listed in Attachment A of LAND's May 26, 2017 letter are hereby accepted into evidence.

Groups 19, 24, and 31 - San Joaquin County Protestants (SJC), LAND, California Sportfishing Protection Alliance (CSPA), California Water Impact Network (CWIN), and AquAlliance

SJC, LAND, CSPA, CWIN, and AquAlliance (collectively SJC et al.) moved to enter their rebuttal exhibits into evidence orally on May 23, 2017. The exhibits were accepted into evidence at that time (RT Vol 47 p. 202.). By letter dated May 24, 2017, SJC et al. moved to enter exhibits SJC-70 through SJC-83 as identified on Attachment A to the letter, into the evidentiary record. Exhibits SJC-70 through SJC-81 are rebuttal exhibits and SJC-82 and SJC-83 were exhibits used during rebuttal cross-examination of DWR witness Michael Bryan. The May 24, 2017 letter clarified that exhibit SJC-72, an Excel spreadsheet, was replaced with exhibit SJC-72R, which contains the same groundwater well data in Portable Document Format (PDF). The letter also clarified that exhibit SJC-76R was replaced with exhibit SJC-76R2. In SJC-76R2, portions of written testimony objected to by the petitioners have been stricken in accordance with our oral ruling on May 23, 2017 (RT Vol 47, p. 172 line 7).

Disposition: Exhibits SJC-70, SJC-71, SJC-73, SJC-74, SJC-75, and SJC-77 through SJC-81 were admitted into the evidentiary record on May 23, 2017. SJC-72R, SJC-76R2, SJC-82, and SJC-83 are hereby admitted into the evidentiary record.

Group 37 - Deirdre Des Jardins (DDJ)

At the conclusion of direct rebuttal testimony by DDJ during the hearing on May 24, 2017, DWR moved to exclude exhibits DDJ-186, DDJ-188, DDJ-189, DDJ-191, DDJ-193, DDJ-196, DDJ-198, DDJ-200, DDJ-201, DDJ-202, DDJ-205, and DDJ-208 from the evidentiary record (RT Vol 48 56:20 & 57:24). After discussing the basis of the objection and the admissibility of

proffered exhibits, we instructed Ms. Des Jardins to produce a list of exhibits that she sought to move into the record (RT Vol 48 61:9), taking into consideration DWR's objections (RT Vol 48 62:21). Ms. Des Jardins submitted a Final Rebuttal Exhibit Identification Index dated May 24, 2017, that identified certain cross-examination exhibits as "not used." Hearing staff confirmed with Ms. Des Jardins that she did not intend to submit the "not used" exhibits into evidence. The withdrawn exhibits include all of the exhibits to which DWR objected, with the exception of DDJ-196.

DDJ-196 contains data values displayed in the graph that is DDJ-197, which graph was introduced and used in cross-examination of rebuttal witnesses. DDJ-197 also depicts data values contained in DDJ-194. Because DDJ-196 contains nothing more than the numbers plotted in DDJ-197, and because DWR has not objected to the admission of DDJ-197 or DDJ-194, DWR's motion with respect to DDJ-196 is overruled. The remaining exhibits to which DWR objected have been withdrawn by Ms. Des Jardins.

Disposition: With the exception of exhibits DDJ-186, DDJ-188, DDJ-189, DDJ-191, DDJ-193, DDJ-198, DDJ-200, DDJ-201, DDJ-202, DDJ-205, and DDJ-208 which were withdrawn by Ms. Des Jardins, the exhibits listed in the Final Rebuttal Exhibit Identification Index dated May 24, 2017, are accepted into the evidentiary record.

If you have any non-controversial, procedural questions about this ruling or other matters related to the California WaterFix Hearing, please contact the hearing team at CWFhearing@waterboards.ca.gov or (916) 319-0960.

Sincerely,

ORIGINAL SIGNED BY

Felicia Marcus, State Water Board Chair
WaterFix Project Co-Hearing Officer

ORIGINAL SIGNED BY

Tam M. Doduc, State Water Board Member
WaterFix Project Co-Hearing Officer