



State Water Resources Control Board

October 16, 2017

VIA ELECTRONIC MAIL

TO: [CURRENT SERVICE LIST](#)

CALIFORNIA WATERFIX HEARING – PART 2 PRE-HEARING CONFERENCE AGENDA

To organize the conduct of Part 2 of the water right change petition hearing for the California WaterFix Project (WaterFix), the State Water Resources Control Board (State Water Board) will hold a **Pre-hearing Conference on October 19, 2017 at 9:30 a.m. at the Joe Serna Jr.-CalEPA Building, Byron Sher Auditorium, 1001 I Street, Second Floor, Sacramento, CA**. If needed, the Pre-hearing Conference will continue on October 20, 2017, at 9:30 a.m. at the same location. This letter addresses WaterFix hearing procedural issues that will be discussed at the Pre-hearing Conference.

As described in our [August 31, 2017 ruling](#), we encouraged the parties to submit suggestions for pre-hearing conference agenda topics by 12:00 noon on September 22, 2017. Following receipt and consideration of these suggestions, this agenda reflects the topics selected by the hearing officers.

Since the purpose of the Pre-hearing Conference is to organize the conduct of Part 2 of the hearing, only parties participating in Part 2 of the evidentiary portion of the hearing will be afforded the opportunity to speak on the specific issues to be discussed at the Pre-hearing Conference. Hearing parties are encouraged, but are not required, to attend the Pre-hearing Conference. Parties who do not attend the Pre-hearing Conference, however, waive their right to comment on any decisions that are made without their input at the conference or in a subsequent Pre-hearing Conference ruling.

There will not be an opportunity for public comments by other interested persons or for comments on issues that are not the subject of the Pre-hearing Conference. It is, therefore, not necessary for interested persons who are planning to present policy statements and will not be participating in the evidentiary portion of the hearing to attend the conference. Public comments related to this matter in the form of policy statements will be allowed at the beginning of Part 2 of the WaterFix hearing currently planned for January 18, 2018.¹

The Pre-hearing Conference will not be used to hear arguments on, or determine the merits of, any hearing issues, other than procedural matters, unless the parties agree prior to the Pre-hearing Conference to resolve a hearing issue by stipulation. Following

¹ If you have questions regarding the difference between a party and an interested person, please review the descriptions of parties and interested persons set forth in Enclosure D on pages 31 and 32 of the [October 30, 2015 Hearing Notice](#) and, if necessary, contact the hearing team at the phone number or email identified at the end of this letter.

the Pre-hearing Conference, the hearing officers may, at their discretion, modify the hearing procedures or issues set forth in the [October 30, 2015 Hearing Notice](#) and subsequent rulings in whole or in part.

Attached to this agenda is a guidance document that summarizes hearing procedures and issues addressed in prior rulings. Issues covered by this guidance document will not be discussed at the Pre-hearing Conference. Part 2 hearing participants are expected to read the guidance and adhere to these procedures and rulings.

PART 2 PRE-HEARING CONFERENCE AGENDA

Procedural Guidance for Part 2

At the Pre-hearing Conference we will reiterate guidance on the following aspects of the hearing: order of presentation, party consolidations and grouping, time limits, when to offer exhibits into evidence, and objections. We are not seeking feedback on these topic areas; however, if parties have questions about these topic areas, we encourage them to bring these questions to the Pre-hearing Conference.

Settlement Agreements

We request the Department of Water Resources and the U.S. Bureau of Reclamation (collectively petitioners) to come to the Pre-hearing Conference ready to discuss the status of any and all settlement agreements. Parties involved in any settlement agreement discussions should also be prepared to provide an update on negotiations.

Scope of Part 2, Petitioners' Environmental Documents, and Delta Flow Criteria

We will provide guidance to parties on the scope of Part 2 cases-in-chief and the extent to which issues that are relevant to Part 1 hearing issues may be raised during cross-examination and rebuttal. We will also provide guidance on the scope of permissible testimony concerning the petitioners' final Environmental Impact Report and proposals for appropriate Delta flow criteria. We are not seeking feedback on these issues, but parties should bring questions they may have to the Pre-hearing Conference.

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

(Enclosure)

ORIGINAL SIGNED BY:

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

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(This document may be amended with additional guidance after the Pre-Hearing Conference)

This guidance document summarizes hearing procedures and issues addressed in rulings prior to the Part 2 Pre-hearing Conference on October 19, 2017. This is not a complete summary of the hearing procedures or the rulings to date. The parties are expected to have read the October 30, 2015 Notice of Public Hearing and Pre-Hearing Conference ([October 30, 2015 Hearing Notice](#)), including Enclosure D, entitled, "Information Concerning Appearance at the California WaterFix Hearing" and the hearing officers' prior rulings in this hearing. The procedural requirements in Enclosure D remain in force except where modified by the hearing officers. The October 30, 2015 Hearing Notice and hearing officers' rulings are posted on the State Water Resources Control Board's (State Water Board) website at https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/ruling_notices/.

Rules for Policy Statements

Policy statements will be heard at the beginning of Part 2 of the hearing, on January 18, 2017 and Policy statements will be limited to **three minutes** per person. Interested persons who are not participating in the evidentiary portion of the hearing may submit a written policy statement or present an oral policy statement. While not mandatory, the State Water Board requests that policy statements be provided in writing before they are presented and that they be submitted electronically. Written policy statements should also be copied to the current [Service List](#). As in Part 1, we will allow some flexibility for hearing party representatives to make policy comments. However, in order to maintain an efficient hearing, we will still limit policy statements by party representatives to three minutes per speaker, and the time a party spends on policy statements will be deducted from the 20 minutes afforded to each party to present an opening statement. See guidance on pages 11 to 12 of the hearing officers' [August 31, 2017 ruling](#) and in Enclosure D of the [October 30, 2015 Hearing Notice](#). Policy statements will not be heard at the October 19, 2017 Pre-hearing Conference.

Submission and Service of Exhibits and Other Hearing Materials

Statement of Service Certification

With each new submittal to the State Water Board, parties must include a statement of service that certifies that all hearing parties have been served and describes the manner of service. The parties are encouraged to use the statement of service form posted on our website at: http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/docs/20160311_stateservform.pdf. In the event that there are any undeliverable emails to the service list, it is the serving party's responsibility to follow-up to ensure that every party is served in a timely manner and, if necessary, to submit another statement of service describing any changes to the date or manner of service. Additional guidance can be found on pages 8 to 11 of the hearing officers' [August 31, 2017 ruling](#).

Requirements for Electronic Submission of Written Testimony and Other Exhibits

Each exhibit page should be marked with the page number and exhibit identification number.

Sections 6 and 7 of Enclosure D on pages 33 and 34 of the [October 30, 2015 Hearing Notice](#) provides instructions on electronic submission of written testimony and other exhibits. The hearing officers have provided additional direction regarding use of the State Water Board's

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secure File Transfer Protocol (FTP) website, subsequent to the Hearing Notice, on pages 9 to 11 of the [March 4, 2016 ruling](#). The FTP website allows parties to both upload their exhibits and download the exhibits submitted by other parties.

In order to expedite processing and posting of exhibits on the State Water Board's website, parties must follow the instructions below when submitting exhibits to the State Water Board through the FTP site.

Each electronically submitted exhibit must be in Adobe Portable Document Format (PDF) and saved as a separate PDF file. Exhibit Identification Indexes, on the other hand, should be in a format supported by Microsoft Excel or Word. All parties who have the capability to perform optical character recognition (OCR) should do so for all documents that are not word searchable (e.g., scanned documents) before uploading them to the FTP site. Electronic submittals to the State Water Board of documents greater than 50 megabytes in total size should be submitted to the State Water Board by uploading the files to the FTP site.

The parties should apply the following standard file naming convention for electronic exhibits: Each file name should begin with an acronym for the party's name followed by an underscore “_” and then the exhibit number. The file name should be short and should not include any spaces. The file name should not exceed 10 to 15 characters. The Exhibit Identification Index should list the exhibit number, the associated exhibit description, and the file name for that exhibit. For example, California Department of Water Resources exhibits would appear as follows in their Exhibit Identification Index:

Exhibit No.	Exhibit Description	File Name
DWR-1	Exhibit description	dwr_1.pdf
DWR-2	Exhibit description	dwr_2.pdf
DWR-3	Exhibit description	dwr_3.pdf
etc.	etc.	etc.

Each exhibit number should be unique. Parties should be diligent not to duplicate any previously used exhibit number throughout the hearing.

Staff Exhibits By Reference (The Hearing Team Will Not Offer Staff Exhibits Into Evidence)

Where applicable, parties should cite to the staff exhibits posted on the California WaterFix Petition hearing website at http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/exhibits/index.shtml, using the exhibit identification number listed on the website. The staff exhibits will remain marked with the exhibit identification number beginning with “SWRCB” followed by the number of the exhibit. As stated in previous rulings, hearing team staff do not currently propose to offer the staff exhibits into evidence at the hearing (although staff may introduce exhibits if strictly necessary). Staff exhibits were compiled by hearing team staff as a convenience to the parties. In the interest of efficiency, these exhibits have been marked for

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identification so parties can offer them into evidence as exhibits by reference, rather than having multiple parties uploading and serving large duplicative files on the other parties. If the parties wish to enter a staff exhibit into evidence, they need to clearly identify that exhibit on their Exhibit Identification Index and offer it into evidence at the hearing. (See [June 10, 2016 ruling](#), p. 5 and "Staff Exhibits" on pages 8 and 9 of the [April 25, 2016 ruling](#).)

Please note that hearing team staff will not be providing or posting updates to staff exhibits SWRCB-1 through SWRCB-104. It is incumbent on the parties to determine if a particular document has been superseded or revised.

Do not Label Opening Statements or Exhibit Identification Indexes as Exhibits

Opening statements are not evidence in their own right, but rather a summary of what the party's evidence is intended to establish. Similarly, an Exhibit Identification Index is a list of exhibit numbers and associated exhibit descriptions, and is not evidence. Accordingly, parties should not label their opening statement or Exhibit Identification Index as exhibits or include them in their Exhibit Identification Index. (See [June 10, 2016 ruling](#), p. 5.)

Evidentiary Objections in Part 2

During Part 2, the hearing officers' expect the parties to continue to be judicious with respect to the evidentiary objections that they raise, and adhere to the guidance in prior rulings. Guidance on evidentiary objections to admission of testimony and exhibits can be found on pages 13 to 15 of the hearing officers' [August 31, 2017 ruling](#), on pages 2 to 4 of the [March 15, 2017 ruling](#), and the [February 21, 2017 ruling](#) regarding evidentiary objections to admission of testimony and exhibits.

Oral Rulings

Consistent with past practice in hearings before the State Water Board, some objections may be addressed orally in the course of the hearing or in the final order taking action on the petition. ([June 10, 2016 ruling](#), p. 2.)

Parties are not required to attend every day of the hearing. When absent from the hearing, however, it is the party's responsibility to either review the transcripts or video recordings or make arrangements with another representative to provide them with any oral rulings, pertinent deadlines, and other important information that they may have missed. ([September 29, 2017 ruling](#), p. 7.)

Motions to Dismiss

As a general rule, motions to dismiss, akin to a motion for judgment in a civil trial, are not permitted in adjudicative proceedings before the State Water Board. ([March 15, 2017 ruling](#), pp. 1-2.)