

## State Water Resources Control Board

April 03, 2018

VIA ELECTRONIC MAIL

TO: [CURRENT SERVICE LIST](#)

### **CALIFORNIA WATERFIX HEARING – RULING REGARDING SCHEDULING OF CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE WITNESS**

On October 13, 2017, Deirdre Des Jardins submitted a supplemental Notice of Intent (NOI) for Part 2 indicating that she intended to call Randall Baxter as a witness on behalf of the California Department of Fish and Wildlife (CDFW) to testify regarding “[f]ish population trends, pelagic organism decline, monitoring and adaptive management, flow criteria pursuant to Water Code 85084.5 and 85086.” After receiving clarification from CDFW’s counsel and from us that CDFW is not appearing as a party in Part 2, Ms. Des Jardins served Mr. Baxter with a subpoena to appear and provide testimony in this hearing. On March 1, 2018, we indicated that we would work with Ms. Des Jardins and her witness to schedule a date or dates for Mr. Baxter to appear. This letter provides direction to Ms. Des Jardins and other parties to facilitate that scheduling.

Scheduling a date for Mr. Baxter to provide his testimony requires that we accommodate both Ms. Des Jardins’ estimated time for direct examination and the time required for other parties to cross-examine Mr. Baxter. Unlike a witness appearing for a party voluntarily, a subpoenaed witness does not provide advance written testimony that other parties can review to understand the scope of direct testimony and prepare cross-examination accordingly. In that context, we find that leaving the scope of direct testimony uncertain until it unfolds during the hearing would work an undue prejudice on other parties and would hinder our ability to schedule the hearing in a manner that provides all participants (including Mr. Baxter) with some measure of certainty.

Therefore, we direct Ms. Des Jardins to provide Mr. Baxter and the Service List with her questions for Mr. Baxter in writing by 5 p.m. on Thursday, April 5, 2018. The scope of those questions shall be limited to the topics listed on Ms. Des Jardins’ supplemental NOI: fish population trends, pelagic organism decline, monitoring and adaptive management, and flow criteria pursuant to Water Code 85084.5 and 85086. During direct examination, we will limit Ms. Des Jardins to her written questions as a general rule, but we may allow her some flexibility to reframe her questions or to ask follow-up questions based on Mr. Baxter’s responses to her written questions. Ms. Des Jardins will be allowed up to 60 minutes for her direct examination of Mr. Baxter, subject to extension upon a showing of good cause. On Monday, April 9, 2018, during the hearing, we will ask the parties how long they estimate they will need for cross-examination. Based on their answers, we will schedule one or more days for Mr. Baxter to appear at this hearing for direct testimony and cross-examination.

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](mailto:CWFhearing@waterboards.ca.gov) or (916) 319-0960.

Sincerely,

ORIGINAL SIGNED BY:

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

ORIGINAL SIGNED BY:

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