

## CWFhearing

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**From:** Philip Williams <pwilliams@westlandswater.org>  
**Sent:** Friday, January 22, 2016 12:01 PM  
**To:** Herrick, John @aol.com; CWFhearing; abl@bkslawfirm.com; activistjen86@gmail.com; afurguson@somachlaw.com; ahitchings@somachlaw.com; ameliham@kcwa.com; Amy.Aufdemberge@sol.doi.gov; apeltzer@prlawcorp.com; awarn@nrdc.org; barbara@restoredelta.org; barbarav@aqualliance.net; barry@solagra.com; bdalymn@citolink.net; bjohnson@tu.org; blancapaloma@msn.com; bluse03@yahoo.com; bobker@bay.org; bradpappa@gmail.com; brettgbaker@gmail.com; bu4567@aol.com; BWright@friendsoftheriver.org; Wilcox, Carl@Wildlife; caroleekrieger7@gmail.com; Cathleen.Galgiani@sen.ca.gov; ccreel@kcwa.com; cjohns@calrestrats.com; colin@ejcw.org; connere@gmail.com; cynthiajlau@gmail.com; daladjem@downeybrand.com; daniel@kaydix.com; dcooper@minasianlaw.com; ddj@cah2oresearch.com; dean@hprlaw.net; deltaactioncommittee@gmail.com; deltakeep@me.com; Guy, David@norcalwater.org; dkelly@somachlaw.com; dobegi@nrdc.org; dorth@davidorthconsulting.com; doug@stocktonchamber.org; douglash@sbsvmwd.com; empappa@gmail.com; eofficer@cvcwa.org; Erik.gustafson@chicoca.gov; esoderlund@valleywater.org; evielma@cafecoop.org; eyv209@gmail.com; fetherid@ebmud.com; fmorrissey@orangecoveid.org; friendsofsfestuary@gmail.com; gadams@fclaw.com; george@baykeeper.org; gustavo.medina@asm.ca.gov; gvang@lfcempowerment.org; info@californiadelta.org; Mizell, James@DWR; jbuckman@friantwater.org; jdavis@sgpwa.com; jduerig@zone7water.com; jennifer@spaletlaw.com; jimcoxsportfishing@yahoo.com; Minton, Jonas; john.luebberke@stocktonca.gov; McManus, John @goldengatesalmon.org; Rubin, Jon@sldmwa.org; jph@tulareid.org; jrobinson@cityofsacramento.org; jsalmon@ebmud.com; kbrill@mojavewater.org; kelweg1@aol.com; kharrigfeld@herumcrabtree.com; kkeller@neumiller.com; kmannion@rccrcnet.org; kobrien@DowneyBrand.com; kpoole@nrdc.org; kroedner@ccstockton.org; kyle.jones@sierraclub.org; larryruhstaller@gmail.com; lcaster@fclaw.com; Lmagana@afsc.org; lsheehan@earthlaw.org; Marian.Norris@sen.ca.gov; matlas@jmatlaslaw.com; mgilkey@tlbwsd.com; mhagman@lindmoreid.com; michael@brodskylaw.net; mjatty@sbcglobal.net; mkrause@dwa.org; mkropf@countyofcolusa.com; mlarsen@kdwcd.com; mlennihan@lennihan.net; mnikkel@DowneyBrand.com; motecps@gmail.com; mr.michaelfrost@gmail.com; mstone@clwa.org; Van Zandt, Michael@hansonbridgett.com; nknodt@sanjoaquinrtd.com; office@ecosacramento.net; Meserve, Osha@semlawyers.com; pgosselin@buttecounty.net; Pogledich, Philip@yolocounty; pminasian@minasianlaw.com; porgansinc@sbcglobal.net; psimmons@somachlaw.com; pweiland@nossaman.com; r.mammon@att.net; rbernal@ci.antioch.ca.us; rcarcamero@gmail.com; rcheng@cvwd.org; reynolds6568@gmail.com; rmburness@comcast.net; roland@ssjmud.org; rsb@bkslawfirm.com; rsheehan@mwdh2o.com; ryan.hernandez@dcd.cccounty.us; Ryan.Wulff@noaa.gov; rzwilling@defenders.org; sae16@lsid.org; sdalke@kern-tulare.com; sgeivet@ocsnet.net; smorris@swc.org; srothert@americanrivers.org; ssaxton@downeybrand.com; Shapiro, Scott @downeybrand.com; stephen.siptroth@cc.cccounty.us; sunshine@snugharbor.net; svolker@volkerlaw.com; tara.mazzanti@stocktonca.gov; tcrain@scvchamber.com; tgohring@waterforum.org; thomas.esqueda@fresno.gov; tim@restoredelta.org; torr@earthjustice.org; torres.tomas@epa.gov; towater@olaughlinparis.com; Trent.Hager@sen.ca.gov; usothea@apsaraonline.org; vielmam07@yahoo.com; vkincaid@olaughlinparis.com; wes@visitstockton.org; Femlen, William@solanocounty.com; wirthsoscranes@yahoo.com  
**Cc:** ngmplcs@pacbell.net  
**Subject:** SLDMWA and WWD Cal WaterFix Pre-Hearing Conference Letter on Procedure  
**Attachments:** SLDMWA and WWD Pre-Hearing Conference Letter on Procedure.pdf

On behalf of the San Luis & Delta-Mendota Water Authority and Westlands Water District, please see attached.

v/r,

Phil Williams

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## San Luis & Delta-Mendota Water Authority



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January 22, 2016

### *Via Email and U.S. Mail*

Felicia Marcus, Chair  
Tam Doduc, Member  
State Water Resources Control Board  
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Sacramento, CA 95814

Email: [CWFhearing@waterboards.ca.gov](mailto:CWFhearing@waterboards.ca.gov)

### ***Re: California WaterFix Hearing Process***

Dear Ms. Marcus and Ms. Doduc:

Thank you for the opportunity to submit written comments in advance of the Pre-hearing Conference set to begin on January 28. This letter provides the comments of the San Luis & Delta-Mendota Water Authority and Westlands Water District regarding procedural matters for the upcoming hearing on the petition to change water rights for the California WaterFix Project.

Given the number of protests, notices of intent, and the varied interests of the parties, absent reasonable controls, the process could necessitate undue consumption of time. On the other hand, each party must be accorded reasonable opportunity to call and examine witnesses, to introduce exhibits; to cross-examine opposing witnesses; to impeach any witness; and to rebut the evidence against him or her. Gov't. Code §11513(b). But if every party were accorded unlimited time for those purposes, then the hearing would drag on interminably. The challenge is finding the appropriate balance between an orderly proceeding and ensuring the parties are provided the process they are due. The pursuit of that balance must bear in mind the inevitable judicial and public scrutiny to follow. To that end, we offer the following suggestions for ordering the proceedings.

### **Organize The Parties Into Groups By Interest**

If each party takes the allotted time proposed in the notice, the hearing will be far longer than the allotted 34 hearing days. Instead of time allocations for each individual party, the parties should be grouped by interest, and each group allotted a block of time it must allocate between its respective parties for presentation of direct, cross, re-direct and re-cross examination. That will encourage parties in a grouping to coordinate and will not inappropriately prejudice parties who rely on a single presenter with relatively limited time for having done so. By contrast, parties who decline to coordinate with others in their group will suffer a more disjointed presentation of



similar interests, have a limited pro rata share of the overall time for their group and will not be rewarded with extra time necessary to accommodate their failure to coordinate.

To further this objective, the Authority and Westlands suggest that the parties be allowed an opportunity to organize, if they have not already. We suggest that you require the parties to make proposals of such groupings, with supporting information and arguments, as part of the March 1 submittal of proposed testimony and exhibits. Your staff should then review those submittals and offer a draft order that addresses organization and time allotments for direct, cross, re-direct and re-cross examination. The interested parties should be accorded an opportunity to comment on that draft order before you consider it for adoption.

### **Different Time Limits Should Be Set For Different Parties**

The October 30, 2015 Hearing Notice sets a limit of 1 hour total for each party for presentation of direct testimony. That would mean 2 hours combined for the petitioners Department of Water Resources (“DWR”) and Bureau of Reclamation (“Reclamation”). As the January 15 Notice suggests, that time will likely be inadequate. There may be other parties that should be accorded additional time. Some other parties will not need even an hour. Each group’s relative need for time should be explained and justified pursuant to the process outlined above.

### **Time Limits Should Be Subject To An Offer Of Proof**

Time limits are necessary. But as the evidence develops, generally applicable time limits set in advance, particularly those set for cross, re-direct, and re-cross examinations may not allow for a full and necessary presentation in specific instances. You should therefore allow for additional time based on an offer of proof regarding what additional evidence would be presented or inquiry pursued.

### **The Board Should Cancel Phase 1 Protests That Are Not Properly Substantiated**

The Authority and Westlands recommend that you impose a process that will cancel protests that are not properly substantiated by March 1. We suggest that you require all protestants to submit to the State Water Board the information identified under Water Code sections 1703.3 and 1703.6(c). And, you should direct your staff on or prior to February 15, 2016, to notify (1) any protestant that filed a protest without the supporting information identified under Water Code sections 1703.3 and 1703.6(c) and the additional information required under Water Code section 1703.1 *et seq.* that their protests are inadequately supported, and (2) the protestant(s) has until March 1 to provide the required information. If that information is not submitted on or before March 1, the State Water Board should cancel the protest, pursuant to Water Code section 1703.6(c), and prior to commencing evidentiary proceedings.

Felicia Marcus, Chair  
Tam Doduc, Member  
January 22, 2016  
Page 3

**The Board Should Cancel Phase 1 Protests That Claim Injury Protected by Any Conditions of Approval Offered by Petitioners DWR and Reclamation**

The Authority and Westlands recommend that you impose a process that will cancel protests, pursuant to Water Code section 1703.6, that raise claims of injury that are protected by conditions of approval offered by petitioners DWR and Reclamation. The Water Rights Division relied on this approach, for example, to dismiss protests to a change petition related to implementation of the San Joaquin River Restoration Program. (*See* Order Approving Change and Instream Flow Dedication, dated October 21, 2013.)

**Order of Proceedings**

In general, the Authority and Westlands agree with the proposed order of proceedings at pages 34 through 36 of the Hearing Notice, with two additions and one clarification.

The first addition to the schedule concerns settlements. As a group of parties, which included the Authority and Westlands, requested in a separate letter, you should establish procedures and timelines for this proceeding, (i) encourage the resolution of protests through settlement, and (ii) include procedural mechanisms that will accommodate settlements as they occur during the course of the hearing process.

The second addition to the schedule is time for procedural motions such as motions to dismiss and motions in limine. The motions should be briefed before the evidentiary proceedings begin, with argument after presentation of policy statements but before presentation of cases-in-chief.


Finally, the clarification is the order of rebuttal. We propose that rebuttal testimony proceed in reverse order from presentation of the cases-in-chief. In fairness the petitioners should have the last opportunity to present rebuttal evidence, after all other evidence is in.

Thank you for your consideration of these comments.

Sincerely,



Jon D. Rubin  
General Counsel  
San Luis & Delta-Mendota Water Authority



Philip A. Williams  
Deputy General Counsel  
Westlands Water District

cc: Electronic service list as provided by SWRCB on January 22, 2016 (Revised Service List (2))

Clifton Court, L.P. (US Mail)