

November 15, 2016

VIA EMAIL

State Water Resources Control Board
Division of Water Rights
Attn: California WaterFix Hearing Team
P.O. Box 2000
Sacramento, California 95812-2000
CWFhearing@waterboards.ca.gov

Re: Sacramento Valley Water Users' Proposal Regarding Part 1 Rebuttal Evidence and Submission of Closing Briefs

Dear Hearing Chair Doduc, Hearing Officer Marcus, and California WaterFix Hearing Staff:

The Sacramento Valley Water Users¹ ("SVWU") have submitted the testimony and exhibits in support of their cases in chief for Part 1 of the California WaterFix Hearing. Looking ahead to the next phases of this proceeding, the SVWU submits the following proposal regarding procedures for the presentation of rebuttal evidence and submission of closing briefs. We appreciate the Hearing Team's consideration of this proposal.

Part 1 Rebuttal Evidence

The Hearing Notice explains that the presentation of rebuttal evidence will be allowed after all parties have presented their cases-in chief and witnesses have been cross-examined. (Notice of Petition and Notice of Public Hearing for California WaterFix Project ("Notice"), October 30, 2015, at 35.) In the interest of an efficient and orderly proceeding, the SVWU request that the Hearing Team adopt the following procedures to govern the rebuttal phase of Part 1:

1. In light of the ongoing presentation of evidence by parties to the proceeding that will last through the end of this year and possibly into January 2017, presentation of rebuttal evidence should occur no earlier than 30 days after submission of all cases in chief. This will allow the parties time to coordinate preparation of rebuttal evidence and ensure that it is not repetitive.

¹ The SVWU is comprised of the protestants identified in Attachment 1.

2. Parties should simultaneously submit rebuttal evidence in writing prior to presentation of such evidence at the hearing. This will allow the parties time to review all rebuttal evidence and prepare cross-examination that is tailored to that evidence. Unlike the staggered approach used for presentation of cases in chief, the SVWU suggests that all parties simultaneously submit rebuttal evidence in the interest of timely and efficient proceedings.
3. At times during cross-examination, various parties marked documents for identification purposes only. If a party intends to offer such a document into the record and it was not included in that party's case in chief, then the party should be required to include that document in its submittal of rebuttal evidence. This will clarify the record as to what documents are being offered into the record and it will allow all parties to conduct cross examination regarding such new evidence or prepare and offer appropriate sur-rebuttal.
4. The admission of sur-rebuttal evidence that is directly responsive to evidence presented by any party during rebuttal should be considered on a case-by-case basis upon a showing of good cause.

Closing Briefs

The Notice explains that the hearing officers may allow for closing statements or legal briefs at the close of the hearing or at other times, if appropriate. (Notice, at 36.) It has been suggested that closing briefs be submitted at the end of Part 1. However, the SVWU request that closing statements and legal briefs not be filed until the end of Part 2, because the issues of Part 1 and Part 2 have intersected at times during the proceeding and will continue to do so through presentation of evidence during Part 2. For example, as the Notice acknowledges, issues arising out of the California Environmental Quality Act and Endangered Species Act processes that will not be completed prior to the completion of Part 1 may have a material bearing on Part 1 issues and those issues may be revisited in Part 2. (Notice, at 11.) In addition, the Hearing Team has clarified that the administrative record for the Board's decision will include all evidence admitted to evidence in Part 1 and Part 2 of the Hearing. Because the Board will be considering all evidence as it prepares its decision in this matter, the SVWU believe that closing briefs should be based on the entire record and submitted at an appropriate time after completion of Part 2. If discrete issues arise prior to the conclusion of Part 2, the Hearing Officers can direct parties to submit briefs as necessary.

SVWU appreciates your consideration of these requests.

Very truly yours,

DOWNEY BRAND LLP

A handwritten signature in blue ink, appearing to read "David R.E. Aladjem" or similar, followed by the word "for" in a smaller font.

David R.E. Aladjem
Kevin M. O'Brien

SOMACH, SIMMONS & DUNN, PC

/s/Andrew M. Hitchings
Andrew M. Hitchings

/s/ Kelley M. Taber
Kelley M. Taber

/s/Aaron A. Ferguson
Aaron A. Ferguson

BARTKIEWICZ, KRONICK & SHANAHAN

/s/ Alan Lilly
Alan Lilly

/s/ Ryan Bezerra
Ryan Bezerra

MINASIAN, MEITH, SOARES, SEXTON & COOPER, LLP

/s/ Dustin C. Cooper
Dustin C. Cooper

STOEL RIVES LLP

/s/ Wesley A. Miliband
Wesley A. Miliband

1463427.1

cc: CA WaterFix Service List

Attachment 1—Sacramento Valley Water Users

Northern California Water Association

Clients represented by Downey Brand LLP

Carter Mutual Water Company
El Dorado Irrigation District
El Dorado Water & Power Authority
Howald Farms, Inc.
Maxwell Irrigation District
Natomas Central Mutual Water Company
Meridian Farms Water Company
Oji Brothers Farm, Inc.
Oji Family Partnership
Pelger Mutual Water Company
Pleasant-Grove Verona Mutual Water Co.
Princeton Codora-Glenn Irrigation District
Provident Irrigation District
Reclamation District 108
Sacramento Municipal Utility District
Henry D. Richter, et al.
River Garden Farms Company
South Sutter Water District
Sutter Extension Water District
Sutter Mutual Water Company
Tisdale Irrigation and Drainage Company
Windswept Land and Livestock Company

Clients represented by Somach Simmons & Dunn

Glenn-Colusa Irrigation District
Biggs-West Gridley Water District
Sacramento County Water Agency
Placer County Water Agency
Carmichael Water District

Clients represented by Bartkiewicz, Kronick & Shanahan

City of Folsom
City of Roseville
San Juan Water District
Sacramento Suburban Water District
Yuba County Water Agency

Clients represented by Minasian, Meith, Soares, Sexton & Cooper, LLP

Anderson-Cottonwood Irrigation District

Butte Water District

Nevada Irrigation District

Paradise Irrigation District

Plumas Mutual Water Company

Reclamation District No. 1004

Richvale Irrigation District

South Feather Water & Power Agency

Western Canal Water District

Clients represented by Stoel Rives

City of Sacramento

STATEMENT OF SERVICE

**CALIFORNIA WATERFIX PETITION HEARING
Department of Water Resources and U.S. Bureau of Reclamation (Petitioners)**

I hereby certify that I have this day submitted to the State Water Resources Control Board and caused a true and correct copy of the following document(s);

Letter dated 11/15/16 Re SVWU's Proposal Regarding Part 1 Rebuttal Evidence and Submission of Closing Briefs

to be served by **Electronic Mail** (email) upon the parties listed in Table 1 of the **Current Service List** for the California WaterFix Petition Hearing, dated November 15, 2016, posted by the State of Water Resources Control Board at http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/service_list.shtml:

Note: In the event that any emails to any parties on the Current Service List are undeliverable, you must attempt to effectuate service using another method of service, if necessary, and submit another statement of service that describes any changes to the date and method of service for those parties.

For Petitioners Only:

	I caused a true and correct hard copy of the document(s) to be served by the following method of service to Suzanne Womack & Sheldon Moore, Clifton Court, L.P., 3619 Land Park Drive, Sacramento, CA 95818: Method of Service: _____
--	---

I certify that the foregoing is true and correct and that this document was executed on November 15, 2016.

Signature: Catharine Irvine

Name: Catharine Irvine

Title: Legal Secretary

Party/Affiliation: Downey Brand, LLP

Address: 621 Capitol Mall, Sacramento, CA 95814