

Westlands Water District



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November 22, 2016

Via Email

Hearing Chair Tam Doduc
Chair Felicia Marucs
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-100

Email: CWFhearing@waterboards.ca.gov

Re: California WaterFix Hearing – Response to Sacramento Valley Water Users’ Proposal Regarding Part 1 Rebuttal Evidence and Submission of Closing Briefs

Dear Hearing Chair Doduc and Chair Marcus:

Thank you for the opportunity to respond to the Sacramento Valley Water Users’ (“SVWU”) November 15, 2016, proposal for procedures for the presentation of rebuttal evidence and submission of closing briefs. Westlands Water District (“Westlands”) recognizes that you retain significant discretion regarding these types of proposals, but nevertheless offers the following points in response to the SVWU’s proposal.

Part 1 Rebuttal Evidence

In the interest of an efficient and orderly proceeding, Westlands respectfully requests that you adopt the following procedures to govern the rebuttal phase of Part 1:

1. Order of Presentation. Issue a ruling outlining the order in which rebuttal evidence will be presented. Westlands suggests an order of presentation that follows the order in which parties presented their cases-in-chief for Part 1B, followed by the Petitioners California Department of Water Resources and the United States Bureau of Reclamation. Given the significant difficulties experienced during Part 1B with scheduling of cases-in-chief and cross examination of witnesses, the ruling should contemplate a procedure where parties and their witnesses are given adequate notice of when they will be expected to appear in front of the Hearing Officers. However, experience demonstrates that a strict adherence to schedules dictated weeks and months in advance simply cannot be implemented; therefore any notice provided should be given within a reasonable timeframe and with input from the parties.

2. Written Rebuttal Evidence Deadlines: In light of the requested order above, issue a ruling requiring the submittal of any written rebuttal evidence as follows: (1) submission of written rebuttal evidence by the Part 1B parties no later than 20 days after the completion of Part 1B; and (2) submission of written rebuttal evidence by the Petitioners no later than 30 days after the completion of Part 1B.

Closing Briefs

The question of closing briefs and when to present them presents a significant issue. The Notice of Petition and Notice of Public Hearing for California WaterFix Project, October 30, 2015, (“Notice”) provides that you may allow for closing statements or legal briefs at the close of the hearing *or at other times, if appropriate*. (Notice, at 36 [emphasis added].) Westlands respectfully suggests that requiring closing briefs at the close of Part 1 is entirely appropriate for the efficient and orderly progression of a proceeding based on a foundation of integrity.

The Notice and subsequent procedural rulings have described the scope of Part 1 as focused on “the potential effects of the Petition on agricultural, municipal and industrial uses of water and associated legal users of water and conditions that should be placed on any approval of the petition to protect those uses.” (Notice, at 2.) Subsequently, you indicated that the question of “whether the changes proposed in the petition would cause injury to any legal users of water” should be addressed solely in Part 1. (Procedural Ruling, March 4, 2016, at 5-6.)

Despite this, and as the SVWU point out in their proposal, the issues of Part 1 – namely, legal injury – have indeed intersected and been conflated with issues which are supposed to be addressed in Part 2. The Water Code makes clear that the burden of proving the absence of legal injury rests with the Petitioners. However, the burden of proving the threshold question – whether there exists a right which the petition may legally injure – rests with those parties who have alleged in their various Notices of Intent to Appear that they are protesting the Petition based on legal injury.

Westlands believes that a number of parties have simply failed to carry the minimum burden of demonstrating the existence of a right to water which the Petition may legally injure. Thus the question of legal injury as presented in Part 1 is a simple one, and the answer does not require the type of modeling or effects analysis that the environmental documents at issue in Part 2 will likely provide.

Unless the parties purport to advance a novel theory of legal injury under the Water Code, there can be no benefit to allowing the parties to further conflate the issues between Part 1 and Part 2 by not requiring closing briefs at the conclusion of Part 1. By so requiring, you will force the Protestants participating in Part 1 to articulate what legal right they believe the Petition may legally injure. Doing so will therefore provide you with the full context of the rights implicated in the Petition, so that you may focus your energies and those of your staff on those issues you have assigned to Part 2, further ensuring an orderly and efficient proceeding.

Felicia Marcus, Chair
Tam Doduc, Member
November 22, 2016
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Thank you for your consideration and for your service.

Sincerely,

A handwritten signature in black ink, appearing to read "Philip A. Williams". The signature is fluid and cursive, with a long horizontal stroke at the end.

Philip A. Williams
Deputy General Counsel
Westlands Water District

cc: California WaterFix Service List

Clifton Court, L.P. (US Mail)

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):

Westlands Water District's Response to Sacramento Valley Water Users' Proposal re 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 11/15/2016, posted by the State 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:
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	Method of Service: _____
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I certify that the foregoing is true and correct and that this document was executed on November 22, 2016
Date

Signature: 

Name: Sherry Ramirez

Title: Legal Secretary

Party/Affiliation: WWD

Address: 400 Capitol Mall

Sacramento, CA 95814