

July 19, 2018

**VIA EMAIL AND FTP SITE**

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

Re: Sacramento Valley Water Users' Submittal of Proposed Part 2 Rebuttal Witness Grouping and Order of Parties

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

The Sacramento Valley Water Users ("SVWU") respectfully submit these comments on the proposed grouping and order for Part 2 rebuttal witnesses.

As previously indicated by letter dated July 17, 2018, the SVWU protestants comprising Group 7 propose to present a single expert witness panel for its Part 2 rebuttal testimony, consisting of Walter Bourez and Shankar Parvathinathan of MBK Engineers.

The SVWU appreciate that Petitioners Department of Water Resources (DWR) and United States Bureau of Reclamation have proposed that their modeling witnesses present testimony on a single panel. However, DWR has not offered a witness during Part 2 rebuttal to testify as an expert on project operations. We reasonably expect that a project operations witness will be required to testify regarding the information that DWR has submitted in response to the Hearing Officers' July 16, 2018 Ruling requiring a revised exhibit that clearly identifies proposed operating criteria for the WaterFix Project. For example, page 6 of the recently submitted DWR-1143 Second Revision explains that "export curtailments would be the primary mechanism to achieve the outflow targets." It is essential that an operator be available for cross-examination about this explanation. The SVWU respectfully request that the Hearing Officers direct DWR to offer a project operations witness to testify on the same panel as the modeling witnesses. As explained in the SVWU's comments on Petitioners' proposed witness panels for Part 2 case-in-chief, separating the testimony of Petitioners' modelers and operators is inefficient and prejudices cross-examining parties by allowing witnesses to defer testimony across panels. (Jan. 11, 2018, SVWU Comments on Draft Order of Witness Presentation and Motion to Revise

Petitioners' Proposed Witness Panels.) The Hearing Officers acknowledged these risks in the January 23, 2018 Ruling on Revised Order of Part 2 Witnesses and Other Procedural Matters.

Furthermore, in light of the need for an operations witness to testify in addition to the Petitioners' modelers, the SVWU propose that the Hearing Officers divide the Petitioners' proposed Panel 2 into two panels as follows:

Panel 2A: Erik Reyes, Chandra Chilmakuri, Nancy Parker, Kristin White and operations witness to be identified.

Panel 2B: Marin Greenwood, Rick Wilder, Chris Earle, Michael Bradbury, Sergio Valles and Cory Philis.

This arrangement also would improve the efficiency of the hearing by not requiring at least 10 witnesses to attend the entire cross-examination of Petitioners' proposed Panel 2. While, in the Part 2 case-in-chief, the Hearing Officers ruled that a similar panel of Petitioners' witnesses needed to testify together in light of the biologists' reliance on modeling results, the Part 2 rebuttal testimony of those classes of witnesses does not appear to be as integrated as their case-in-chief testimony.

Thank you for your consideration of these comments and requests.

Very truly yours,

DOWNEY BRAND LLP



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

SOMACH, SIMMONS & DUNN, PC

/s/Andrew M. Hitchings  
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/s/Kelley M. Taber  
Kelley M. Taber

/s/Aaron A. Ferguson  
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BARTKIEWICZ, KRONICK & SHANAHAN

/s/Ryan Bezerra  
Ryan Bezerra

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/s/Dustin C. Cooper  
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ATKINSON, ANDELSON, LOYA, RUUD & ROMO

/s/Wesley A. Miliband  
Wesley A. Miliband

cc: CA WaterFix Service List

**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:

**7/19/2018 Letter re Sacramento Valley Water Users' Submittal of Proposed Part 2  
Rebuttal Witness Grouping and Order of Parties**

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 July 3, 2018, 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](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 <b>hard copy</b> 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:  <b>Method of Service:</b> _____
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I certify that the foregoing is true and correct and that this document was executed on July 19, 2018.

Signature: 

Name: Catharine Irvine

Title: Legal Secretary

Party/Affiliation: Downey Brand, LLP

Address: 621 Capitol Mall, Sacramento, CA 95814