



February 23, 2016

CWFhearing@waterboards.ca.gov via Email

Hearing Chair Tam Doduc
Hearing Officer Felicia Marcus
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Re: Request for Clarification on CALIFORNIA WATERFIX PROJECT PRE-HEARING CONFERENCE RULING

Dear Hearing Chair Doduc and Hearing Officer Marcus:

The California Department of Water Resources (DWR) and U.S. Bureau of Reclamation (Reclamation) (jointly Petitioners) seek clarification and modifications of certain substantive issues necessary to inform Petitioners' preparation for Part 1 of the water rights hearing on the California WaterFix Change Petition (Petition). Petitioners have prepared their testimony based upon the October 30, 2015, Notice of Petition (Notice), which has been modified by the Pre-Hearing Conference Ruling (Ruling). Since Petitioners' submittal of their cases-in-chief would otherwise be due on March 1, we respectfully request the State Water Resources Control Board (Board) provide a response by February 29.

In its Ruling, the Board included language that seems to expand the scope of Part 1's consideration of human uses of water (water right and water use impacts). The Ruling states that Part 1 "can address human uses that extend beyond the strict definition of legal users of water, including flood control issues and environmental justice concerns." (Ruling p. 10.) If in fact expanded, this change in scope would extend Part 1 beyond our understanding of the impacts that would be considered in determining injury to legal users of water. As described in the Notice, Petitioners were preparing to address in Phase 1 impacts that could lead to injury to municipal, industrial or agricultural uses of water and associated legal users of water. (Notice p. 11, describing issues for Part 1.) Petitioners request the Board clarify whether the Ruling is intended to expand the noticed issues for Part 1, and, if so, to further explain this expanded scope, so that Petitioners can prepare accordingly.

In addition, Petitioners respectfully request that the Board extend by 30 days the deadline for Petitioners' submittal of written testimony, to March 31, and that the Board postpone the start of the

hearing to May 5, 2016. The additional time will help Petitioners prepare to present on issues associated with an expanded scope of Part 1 and to coordinate with other parties on those issues. Separate and apart from any expanded scope of Part 1, however, an additional 30 days will enable Petitioners to be better coordinated with other parties, and will enable Petitioners to present a thorough and orderly case-in-chief and to be responsive to the Ruling. Also, as the Board notes in its Ruling, a protest resolution period would help “fill information gaps, narrow the focus of the hearing issues, and increase the efficiency of the hearing.” The requested extension of time would facilitate an additional protest resolution period, which Petitioners believe could result in the resolution of several existing protests.

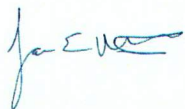
While Petitioners are seeking a brief extension and a delayed start to the hearing, we believe it is unnecessary to change any other dates of the Revised Hearing Schedule and that Part 1B can still begin with written testimony due on May 16 and the hearing on June 23. (See Ruling p. 2-3.) Although the time between Part 1A submittals and Part 1B submittals would be shortened to 46 days, the overall extension of 75 days for the other parties to prepare their cases-in-chief beyond the original due date of March 1 would remain. Petitioners believe the request for a 30-day extension is reasonable, would not disrupt the overall hearing schedule, would result in an overall improved hearing process, and would continue to provide a fair opportunity to all parties to prepare their cases-in-chief.

Also, Petitioners appreciate the Board’s decision to maintain separate proceedings for the Change Petition and the 401 Application, a proceeding under the Executive Director’s delegated authority. (Ruling p. 7-8.) However, we are concerned that requiring the Executive Director to wait until the close of the Petition hearing record to make a decision on the 401 Application could result in unnecessary delay in that decision. We request the ability to seek a modification of the Ruling to allow flexibility to the Executive Director in determining when to act on the 401 application should it become necessary at a future date.

Finally, Petitioners note the following language in the Ruling regarding appropriate Delta flow criteria: “The appropriate Delta flow criteria will be more stringent than petitioners’ current obligations and may well be more stringent than the petitioners’ preferred project.” (Ruling p. 4.) Petitioners understand that determinations regarding flow criteria will be made during Part 2, and respectfully request that this language be removed from the Ruling at this time.

Thank you for your consideration of this request. We look forward to your response.

Sincerely,



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CA Department of Water Resources



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Tom Howard, Executive Officer, State Water Resources Control Board
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Electronic service list, January 15, 2016, Table 1, rev. 3.

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