

# **BARTKIEWICZ, KRONICK & SHANAHAN**

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JAMES M. BOYD, JR., Of Counsel

January 14, 2010

## **VIA E-MAIL**

Mr. Phillip Crader  
Division of Water Rights  
State Water Resources Control Board  
Post Office Box 2000  
Sacramento, California 95812-2000

Re: Delta Flow Informational Proceeding – Procedural Proposal of  
Sacramento Valley Water Users

Dear Mr. Crader:

Thank you for providing the opportunity for the parties to the above-referenced proceeding to provide the State Water Resources Control Board (SWRCB) with procedural proposals. The undersigned Sacramento Valley Water Users have the following proposals:

1. Composition of Panels. The SWRCB should divide the parties' presentation into panels that include the following subjects:
  - Delta hydrology, including hydrology of the watershed;
  - Biology of anadromous fish species dependent on the Delta; and
  - Biology of pelagic fish species in the Delta.

Following the parties' submission of their materials on February 16, 2010, the SWRCB should determine whether any further refinement of these three panels is necessary. For example, it may be necessary to divide the time allotted for the discussion of pelagic fish species' biology to reflect the biology of distinct species, different hydrological dynamics in the Delta or other factors identified by the parties.

2. Follow-up questions and third day of proceeding: In order to maximize the value of the informational proceeding to the SWRCB, the SWRCB should allow the parties a reasonable and meaningful opportunity to submit follow-up questions

that concern the witnesses' oral discussions. The scheduling should allow the parties enough time to prepare effective questions and the SWRCB enough time to identify the questions that its members would find most useful. Requiring the parties to submit, and the SWRCB to process, follow-up questions during a proceeding encompassing three consecutive days would not maximize the proceeding's value for the SWRCB.

3. Posting of SWRCB staff information. The SWRCB's notice of this proceeding states, at page six: "At a minimum, the references cited in the Delta Outflow section of the Periodic Review Staff Report will be presented as State Water Board staff exhibits during this proceeding." (Emphasis added.) In order to allow the parties to focus their submissions on the issues of greatest concern to the SWRCB, the SWRCB should direct its staff to post to the SWRCB's Web site, as soon as possible, all information on which the staff is considering relying in this proceeding. In order to allow the parties to effectively address that information, the SWRCB should direct its staff to: (a) identify, to the extent possible, the relevant portions of any posted reports or articles; and (b) post the relevant documents to the SWRCB's Web site by 5 p.m. on January 21, 2010.
4. Responsive evidence: The SWRCB should allow parties to file, ahead of the scheduled March proceeding, information that responds to the information submitted on February 16, 2010. Such responsive information will sharpen the presentations to the SWRCB on key issues and make the in-person proceedings before the SWRCB as efficient as possible by eliminating any need for parties to respond to one another's initial submissions of information during those in-person proceedings. The SWRCB should require parties to submit responsive information by 5 p.m. on March 11, 2010. In order to make this possible, by February 22, 2010, the SWRCB should post on its Web site all initial information submitted to it on February 16, 2010.
5. No summaries of submitted information. The SWRCB should explicitly direct witnesses who testify during the in-person proceedings that they shall not summarize the written materials that they have submitted. Those in-person proceedings should focus on the SWRCB's questioning of witnesses and any discussion among witnesses that the SWRCB decides to allow.
6. Clarifying questions. The SWRCB should not post the parties' clarifying questions on its website until after its in-person proceeding is completed.
7. Expedited transcripts. In order to allow the parties' closing comments to reference specific information presented by witnesses and still be submitted within the two-week window specified by the notice of this proceeding, the SWRCB should arrange for its in-person proceedings to be transcribed and for the resulting transcripts to be made available to the parties on an expedited basis. For

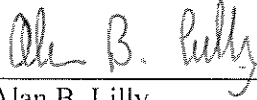
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example, "rough" deposition transcripts often can be made available the day after a deposition.

Thank you again for the opportunity to provide comments on the SWRCB's procedures in this proceeding.

Very truly yours,

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Family Partnership, Pelger Mutual Water  
Company, Pleasant Grove-Verona Mutual  
Water Company, Reclamation District 2068,  
Richter Brothers, River Garden Farms  
Company, South Sutter Water District, Sutter  
Extension Water District, Sutter Mutual Water  
Company, Tisdale Irrigation and Drainage  
Company, and Windswept Land and Livestock  
Company

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cc (via e-mail):

Charles R. Hoppin  
Frances Spivy-Weber

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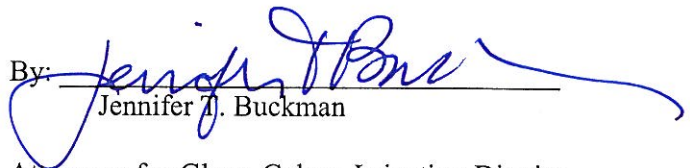
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