

## State Water Resources Control Board

March 4, 2016

### VIA ELECTRONIC MAIL

TO: [CURRENT SERVICE LIST AND INTERESTED PERSONS LIST](#)

### REVISED HEARING SCHEDULE, REVISED NOTICES OF INTENT TO APPEAR, ELECTRONIC SERVICE AND SUBMISSIONS, AND OTHER PROCEDURAL ISSUES CONCERNING THE CALIFORNIA WATERFIX WATER RIGHT CHANGE PETITION HEARING

This letter follows up on issues identified in our [February 11, 2016 pre-hearing conference ruling](#) regarding the State Water Resources Control Board (State Water Board) hearing on the water right change petition for the California WaterFix Project (WaterFix), responds to some of the comments received on that ruling, and addresses several other procedural issues.

#### Revised Schedule for Parts 1A and 1B of the Hearing

As indicated in an email from hearing team staff dated February 25, 2016, we have granted petitioners' request to delay Part 1A of the hearing for approximately 30 days. **Petitioners' written testimony and exhibits are now due on March 30, 2016, and Part 1A of the hearing is scheduled to begin on May 5, 2016.** Petitioners requested that the schedule for Part 1B remain unchanged. In response, the Sacramento Valley Water Users (SVWU) requested an extension of Part 1B of the hearing commensurate with the extension of Part 1A. The State Water Contractors (SWC) and the Coalition for a Sustainable Delta (Coalition) objected to our decision to conduct Part 1 of the hearing in stages on the grounds that this approach is prejudicial to petitioners.<sup>1</sup>

Having considered the parties' arguments, we have decided to extend Part 1B of the hearing by approximately 30 days. The revised schedule is set forth below. **The new deadline for written testimony and exhibits for Part 1B of the hearing is June 15, 2016. Part 1B of the hearing is scheduled to commence on July 26, 2016.** Enclosure A to the October 30, 2015 hearing notice for this proceeding established hearing dates for Part 1 of the hearing for the months of April through June. The hearing dates in April are canceled because they are no longer needed. A Revised Enclosure A is enclosed, which establishes hearing dates for the months of May through October 2016. A formal notice of the revised hearing schedule will be issued in the near future.

<sup>1</sup> The SWC styled their comments as objections to and a request for reconsideration of our February 11, 2016 ruling. As a general rule, interim rulings on procedural issues in adjudicative proceedings before the State Water Board do not constitute final orders or decisions subject to reconsideration by the State Water Board pursuant to Water Code section 1122. Accordingly, we will not treat the SWC's request as a formal petition for reconsideration.

The revised schedule for Part 1 of the hearing is not expected to delay Part 2 of the hearing. Pursuant to our request, petitioners have submitted an updated schedule for compliance with the Endangered Species Act (ESA), the California Endangered Species Act (CESA), the California Environmental Quality Act (CEQA), and the National Environmental Policy Act in connection with the WaterFix. According to petitioners, the targeted date for completion of the ESA consultation process with the issuance of a Biological Opinion is now early September 2016, and the targeted date for completion of the CEQA process is late September. Assuming these targets are met the targeted date for obtaining an incidental take permit (ITP) under CESA is early October. These regulatory processes must be complete before we begin Part 2 of the hearing. Specifically, exhibits for Part 2 of the hearing will likely be due approximately 30 days after completion of the ITP with the hearing for Part 2 beginning approximately 30 days later. Accordingly, Part 2 of the hearing is unlikely to begin before early December 2016. The schedule for Part 2 of the hearing will be determined at a future date.

As stated above, the SWC and the Coalition argued that the staggered approach to the hearing would be prejudicial to the petitioners because other parties will have additional time to review the petitioners' evidence before preparing their own cases in chief. As the SWC and Coalition have acknowledged, however, we have discretion to decide how best to structure the hearing. (Cal. Code Regs., tit. 23, § 648.5, subd. (a).) For the reasons stated in our February 11 ruling, we have determined that the staggered approach is fair and is likely to result in a more efficient hearing. The argument that the staggered approach is prejudicial overlooks the fact that the petitioners bear the burden of establishing that the changes proposed in their petition will not injure other legal users of water. Accordingly, requiring petitioners to present their cases in chief first is not unfair. In addition, the staggered approach should allow the other parties to present more focused cases in chief, and to rely less heavily on the rebuttal phase of the hearing to respond to new information presented during the petitioners' case in chief.

The SWC and the Coalition also suggested that more information concerning project operations is unnecessary because injury to other legal users can be avoided through permit terms and conditions that set performance standards and do not specify how the project will be operated. It is difficult to evaluate this argument in the abstract. Assuming for the sake of argument that the SWC and the Coalition are correct, this argument does not counsel in favor of a different approach to conducting the hearing. We have strongly suggested that petitioners include proposed permit terms as part of their exhibits. To the extent that petitioners propose permit terms designed to protect other legal users from injury, it would be more efficient if other parties have the opportunity to address the adequacy those terms in their cases in chief, as opposed to waiting until rebuttal. The petitioners should also show that there are feasible operations available to meet any performance standards.

#### Revised Hearing Schedule

The hearing schedule is revised as follows:

12:00 noon, Wednesday, March 16, 2016	Deadline for receipt and service of Revised Notices of Intent to Appear (NOI) from parties who previously stated that they would participate in Part 2 only, but now propose to participate in Part 1 in addition to or instead of Part 2.
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12:00 noon, Tuesday, March 30, 2016	Deadline for receipt and service of petitioners' case in chief, including witnesses' proposed testimony, witness qualifications, exhibits, list of exhibits, and a statement of service for Part 1A of the hearing.
12:00 noon, Tuesday, April 15, 2016	Due date for receipt of any written procedural/evidentiary objections concerning petitioners' case in chief. Rulings to follow as appropriate and necessary. As explained in our February 11, 2016 ruling, follow-up comments on rulings and duplicative motions are strongly discouraged.
12:00 noon, Tuesday, April 15, 2016	Due date for receipt of proposed groupings and order of parties for cross examination in Part 1A of the hearing.
9:00 am, Thursday, May 5, 2016	Begin policy statements followed immediately by Part 1A with petitioners' case in chief and cross examination of petitioners' witnesses.
12:00 noon, Monday, June 15, 2016	Due date for receipt and service of all other parties' cases in chief for Part 1B of the hearing, including witnesses' proposed testimony, witness qualifications, exhibits, list of exhibits, a statement of service, and any requests for additional time for direct testimony.
12:00 noon, Tuesday, June 30, 2016	Due date for receipt of any written procedural/evidentiary objections concerning Part 1B parties' cases in chief. Rulings to follow as appropriate and necessary. As explained in our February 11, 2016 ruling, follow-up comments on rulings and duplicative motions are strongly discouraged.
12:00 noon, Tuesday, June 30, 2016	Due date for receipt of proposed groupings and order of parties for direct testimony in Part 1B and proposed order of parties for cross examination.
9:00 am, Thursday, July 26, 2016	Part 1B of the hearing commences, beginning with other parties' cases in chief for Part 1 of the hearing, including direct testimony, cross-examination, any redirect, and any recross-examination. Following the cases in chief, petitioners and other parties may present rebuttal testimony and exhibits.

#### Schedule for Policy Statements

Policy statements will be heard at the beginning of Part 1A of the hearing, on May 5, 6 and 10, and at the beginning of Part 2, on dates to be determined. Depending on the number of speakers making policy statements, the hearing may begin before 9 a.m. on the second and

third day of the hearing (May 6 and 10) and may extend late into the evening. Policy statements at the beginning of Part 1A may address Part 1 or Part 2 issues. Policy statement presenters will be heard in the following order:

Thursday, May 5 - On Day 1, the hearing officers will hear policy statements by:

- ❖ Federal, state and local elected officials or their representatives;
- ❖ Approximately 160 persons **not** affiliated with North Delta CARES who submitted a NOI by the January 5, 2016 deadline to present a policy statement.

Friday, May 6 – On Day 2, the hearing officers will hear policy statements by:

- ❖ Persons affiliated with North Delta CARES, including those identified in the NOI submitted by Anna Swenson.

Tuesday, May 10 - On Day 3, the hearing officers will hear policy statements from:

- ❖ Interested persons from the Table 2 Interested Participants list who were not able to present on Thursday, May 5 or Friday, May 6.
- ❖ Interested persons who wish to make a policy statement who did not file an NOI by the January 5, 2016 deadline.

**Presentation of the petitioners' opening statement and testimony will start immediately following policy statements, but no earlier than 9:00 a.m. on Wednesday, May 11, 2016.**

#### Rules for Policy Statements

A person or entity that appears and presents a policy statement only is not a party and will not be allowed to make objections, offer evidence, conduct cross-examination, make legal argument or otherwise participate in the evidentiary phases of the hearing. Parties to the hearing should not make policy statements, but should instead incorporate their policy related comments into their opening statements. Policy statements will be limited to three (3) minutes per person or as adjusted by the hearing officers in light of the number of presenters. While not mandatory, the hearing officers request that policy statements be provided in writing before they are presented and, if possible, that they be submitted by electronic mail to [CWFhearing@waterboards.ca.gov](mailto:CWFhearing@waterboards.ca.gov). In addition, while there is no maximum page limit for policy statements, the hearing officers request that written policy statements be ten pages or less. Written policy statements should also be copied to the service list as described below under "Service of Materials Other Than Hearing Exhibits."

#### **Appropriate Delta Flow Criteria**

Several parties, including petitioners, objected to the statement in our February 11 ruling that the "appropriate Delta flow criteria" that must be included as a condition of any approval of the WaterFix petition will be more stringent than petitioners' existing obligations. The preliminary view that we expressed on this issue was based on the fact that the Delta Reform Act of 2009 requires the "appropriate Delta flow criteria" to be informed by the State Water Board's 2010 Delta flow criteria report, which found that current flow requirements are insufficient to protect public trust resources in the Sacramento-San Joaquin Delta Estuary (Delta). In addition, the

State Water Board's periodic review of the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta Plan), which was conducted in 2009, indicated that changes to existing water quality objectives, including Delta outflow objectives, are needed to prevent the continued decline of numerous fish species. Moreover, petitioners themselves appear to have recognized that existing flow requirements may be inadequate, and have included as part of their proposed project additional criteria for spring Delta outflow, to protect longfin smelt, and new minimum flow criteria at Rio Vista on the Sacramento River. (Bay-Delta Conservation Plan/California WaterFix Partially Recirculated Draft Environmental Impact Report/Supplemental Draft Environmental Impact Statement, pp. 4.1-5-4.1-12.) The point of the statement was to make clear that there would be consideration of flows in addition to existing Decision 1641 requirements per the Delta Reform Act that would not require the completion of the Bay-Delta Plan prior to that decision.

Nonetheless, we agree with the parties who objected to our statement regarding "appropriate Delta flow criteria" that this issue should be decided after having considered all of the relevant arguments and evidence in the administrative record. Accordingly, the statement in our February 11 letter should not be considered a final determination with respect to the stringency of "appropriate Delta flow criteria." We have not prejudged this issue, and will consider with objectivity the arguments and evidence presented by the parties concerning what constitutes "appropriate Delta flow criteria" for purposes of this proceeding.

The San Joaquin Tributaries Authority (SJTA) also objected to our characterization of the "appropriate Delta flow criteria" as an interim requirement until Phases 2 and 3 of the Bay-Delta Plan update are complete. SJTA interpreted this to mean that the State Water Board has determined that the flow criteria would only be imposed on petitioners on a temporary basis, and that the Board intends to shift the responsibility for meeting the flow criteria onto other water right holders through an update to the Bay-Delta Plan. Contrary to SJTA's interpretation, the discussion in our February 11 ruling was intended only to explain that during Phase 3 of the Bay-Delta Plan update, the Board will consider the responsibility of petitioners and other water right holders to meet water quality objectives, as they may be revised during Phases 1 and 2 of the Bay-Delta Plan update. The petitioners' responsibility to meet water quality objectives, including Delta flow requirements, may change as a result of Phase 3, but the State Water Board has in no way determined whether or to what extent the responsibility of any party will change.

Finally, we disagree with the argument advanced by SJTA and other parties that the State Water Board should hold a separate proceeding to develop "appropriate Delta flow criteria" for inclusion in any order approving the change petition. The Delta Reform Act does not require the State Water Board to hold a separate proceeding to develop "appropriate Delta flow criteria," and holding a separate proceeding on this issue would be inefficient. SJTA also asserted that it is unclear when this issue will be addressed during this proceeding, and requested an opportunity to submit a briefing on the issue. As set forth in the hearing notice, what constitutes "appropriate Delta flow criteria" is key hearing issue number 3.d., which will be considered during Part 2 of the hearing. We anticipate holding a second pre-hearing conference before beginning Part 2 of the hearing, and will consider whether to permit opening or closing briefs on Part 2 hearing issues at that time.

### **Clarification Concerning Scope of Part 1**

Petitioners requested clarification concerning the expanded scope of Part 1 of the hearing. Key hearing issue number 2, which is to be considered during Part 1 of the hearing, is whether the

changes proposed in the petition would cause injury to any legal users of water. As discussed during the pre-hearing conference, this key issue stems from Water Code section 1702, which requires petitioners to establish and the State Water Board to find that the proposed changes will not cause injury to any legal users of the water involved before permission to make the changes may be granted. In our February 11 ruling, we stated that testimony concerning human uses of water, including flood control issues and environmental justice concerns, could be presented during Part 1, even though impacts to some human uses of water would not constitute injury to legal users of water within the meaning of Water Code section 1702. In their February 23 letter, petitioners stated that they were preparing to address the more narrow issue of potential injury to legal users during Part 1, and requested clarification concerning the expanded scope of Part 1 so that they can prepare accordingly.

To the extent that petitioners can anticipate issues concerning potential impacts to human uses that do not constitute injury to legal users of water, petitioners may address those issues in their case in chief during Part 1A of the hearing. In the alternative, petitioners may wait until the other parties have presented their cases in chief during Part 1B of the hearing. At that point, petitioners will have an opportunity to present rebuttal testimony and exhibits that are responsive to any issues concerning potential impacts to human uses that have not already been addressed during petitioners' case in chief.

The Coalition also commented on the scope of Part 1. The Coalition objected to the expansion of the legal definition of "legal users of water," and argued that flood control issues and environmental justice concerns more appropriately relate to environmental issues, which will be the focus of Part 2. Contrary to the Coalition's objection, our decision to expand the scope of Part 1 did not serve to expand the definition of "legal users of water." In addition, it may be debatable whether flood control issues and environmental justice concerns more appropriately relate to environmental issues or human use issues, but there is not a clear alignment with one or the other so the February 11 ruling on this matter stands and these issues will be included in Part 1.

### **Section 401 Water Quality Certification**

In our February 11 ruling, we stated that the Executive Director would not issue a decision on the Department of Water Resources' application for water quality certification under section 401 of the Clean Water Act for the WaterFix until after the hearing record for the water right change petition closes. In their February 23, 2016 letter, petitioners requested the ability to seek a modification of the ruling to allow flexibility to the Executive Director in determining when to issue a decision on the application should it become necessary at a future date. This request appears to be premature, and no revision to our February 11 ruling is warranted at this time.

### **Comments of Friends of the River et al.**

Friends of the River and a number of other environmental organizations submitted a letter dated February 17, 2016, responding to the discussion of CEQA compliance contained in our February 11 ruling. This letter essentially repeats the arguments that Friends of the River and two other organizations made in a letter dated January 21, 2016, except that the more recent letter is addressed to all of the State Water Board Members, not just the hearing officers in this proceeding. The arguments raised by Friends of the River et al. have been reviewed and considered and addressed in our February 11 ruling. In addition, the hearing officers have consulted with the other Board Members and kept them apprised of procedural matters pertaining to this proceeding during closed sessions permitted under the Bagley-Keene Open

Meeting Act. (See Gov. Code, § 11126, subd. (c)(3).) In our February 11 ruling, we strongly discouraged follow-up comments on rulings and duplicative motions such as the most recent letter submitted by Friends of the River et al. We will continue to provide parties ample opportunities to be heard and to participate in this hearing; however, all parties should be aware that in the future, we may not acknowledge or respond to repetitive arguments.

### **Revised Notices of Intent to Appear**

In the February 11 ruling, we stated that if parties to Part 2 of the hearing wish to cross-examine witnesses in Part 1, and have not indicated their intent to do so in their Notice of Intent to Appear (NOI), they should submit a revised [NOI](#) clearly indicating how they wish to participate in the hearing. By email dated February 25, 2016, this deadline was extended. The hearing team also has received requests from several parties who have submitted an NOI for Part 2 asking whether they can change their participation and call witnesses in Part 1 of the hearing because the February 11 ruling clarified that testimony concerning potential impacts to human uses that extend beyond the strict definition of legal users of water, including flood control and environmental justice concerns, should be presented in Part 1.

Revised NOIs from Part 2 parties who wish to call witnesses in Part 1 will be accepted, provided that the subject of the testimony in question is unchanged and falls within the scope of Part 1 as described in our February 11 letter. Revised NOIs from parties who previously stated that they would participate in Part 2 only, but now propose to participate in Part 1 in addition to or instead of Part 2, are due by 12:00 noon on **Wednesday, March 16, 2016**.

### **Electronic Service Procedures**

At the pre-hearing conference, parties expressed concern about the size of the service list of parties to exchange information and the amount of information that must be exchanged between the hearing parties, and requested that the hearing team consider alternative means of service to address these issues. Our February 11 ruling indicated that hearing team staff were working on a more efficient way for parties to exchange exhibits and other information and submit documents to the State Water Board and would provide additional information in a separate letter.

The following two procedures for submitting and serving hearing materials should be used, with the existing method for general correspondence and other pleadings and a separate method for exhibits (presumably larger documents). The one exception to the electronic service procedures identified below is service of exhibits and other documents by the petitioners on Clifton Court, L.P. who has not agreed to electronic service by the petitioners. The petitioners must provide a hard copy of exhibits and other documents to Clifton Court, L.P. and must submit a statement of service (see enclosed form) stating the manner of service to the State Water Board. Clifton Court, L.P. has recently agreed to electronic service by all other parties and may be served by them as outlined below from this point forward.

### Service of Materials Other Than Hearing Exhibits

In response to requests from parties at the pre-hearing conference, the hearing team investigated the feasibility of a system to automatically forward emails to all of the parties in Table 1 of the service list. Because of security issues, however, the State Water Board is unable to provide this option to the parties. Accordingly, the parties will have to continue to serve one another electronically by sending an email to all the parties' email addresses.

For all parties' convenience and to avoid typographical errors when entering the service list email addresses, a text file with all of the email addresses in Table 1 of the service list has been posted on the State Water Board's website along with the current service list 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).

In order to ensure that all parties are served copies of communications containing substantive or controversial procedural matters sent to the State Water Board regarding this hearing, parties should visit the above listed hyperlink and cut and paste the most recent list of email addresses contained in the text file into the email's addressee list to effectuate service of any future email correspondence. The Hearing Team is aware that different email service providers may use different methods to delineate between email address recipients; therefore, staff are providing two additional service list text files that use either a comma or semicolon to delineate between email addresses. All three of the text files are identical and contain the full list of email addresses on the service list with the exception of how they are delineated. The hearing team will update these text files with every new iteration of the service list and will advise the parties that there is an updated list that should be used.

As a reminder, electronic submittals to [CWFhearing@waterboards.ca.gov](mailto:CWFhearing@waterboards.ca.gov) are limited to a maximum of 50 megabytes in total size. Some parties, however, may have much smaller email limitations. **Parties with smaller email file size email limitations are requested to notify all of the parties on the service list of this limitation within 7 days.** It is expected that most communications will be smaller than this file size, with the exception of exhibits for which there is a separate procedure described below. In the event that a party is submitting a correspondence larger than 50 megabytes via email, the submittal should be divided into parts to comply with the 50 megabyte file size limitation. In the event that other parties have smaller file size limitations for their email accounts, the serving parties will need to make other arrangements (e.g., splitting into smaller files, providing a Compact Disc (CD), etc.).

With each new submittal to the State Water Board, the parties must include a statement of service that certifies that all hearing parties have been served and describes the manner of service. The parties are encouraged to use the enclosed statement of service form. In the event that there are any undeliverable emails to the service list, it is the serving party's responsibility to follow-up to ensure that every party is served in a timely manner and, if necessary, to submit another statement of service describing any changes to the date or manner of service.

[File Transfer Protocol Site for Submitting Exhibits to the State Water Board and Serving Exhibits on the Hearing Parties](#)

To avoid issues with file size limitations for emails and other issues that may interfere with exchange of larger exhibit files, the State Water Board has developed a secure File Transfer Protocol (FTP) website where parties to the hearing should upload their exhibits and parties can download the exhibits submitted by other parties. Each party on the service list will be provided a party-specific account with a username and password before their exhibit submittal deadline. For Part 1A of the hearing, only the petitioners will be given a username and password to upload their exhibits to the FTP site. All parties to the hearing will also have access to a shared account on the FTP site, which will allow parties to view and download the petitioners' exhibits, but only after the petitioners' exhibit submittal deadline. The shared account is accessible at [https://ftp.waterboards.ca.gov/?u=water fix download&p=waterfix123](https://ftp.waterboards.ca.gov/?u=water%20fix%20download&p=waterfix123). This address will also be



provided on the State Water Board's WaterFix website at:

[http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/california\\_waterfix/](http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/).

The FTP site will allow parties to upload exhibits ahead of time and no other parties will be able to view those exhibits until after the submittal deadline. Parties will have full control over their own exhibits before the exhibit deadline, including the ability to delete and replace exhibits. After the deadline, parties will still be able to upload documents but will not be able to delete documents. All documents will be electronically date- and time-stamped (viewable by the State Water Board). Although it will be possible to upload documents after the deadline to submit exhibits, the hearing officers will disapprove the submittal of revised or additional exhibits after the deadline unless there is good cause shown for the late submittal.

To serve exhibits on the other parties, parties should send an email to the service list stating that the party's exhibits are available on the FTP site with the name of the FTP account folder where the exhibits are stored (e.g., DWR). Parties will be able to view and download other parties' exhibits directly from the FTP site and will not have to sort through numerous emails. Parties who prefer to view the exhibits on the internet will not have to wait for the exhibits to be posted on the State Water Board's website.

### **Requirements for Electronic Submission of Written Testimony and Other Exhibits**

Parties should carefully read Enclosure D of the [Hearing Notice](#), entitled, "Information Concerning Appearance at the California WaterFix Hearing." The procedural requirements in Enclosure D remain in force except where modified by the hearing officers.

**In order to expedite processing and posting of exhibits on the State Water Board's website, parties should follow the instructions below when submitting exhibits to the State Water Board through the FTP site.**

According to sections 6 and 7 of Enclosure D entitled, "Information Concerning Appearance at the California WaterFix Hearing" on pages 33-34 of the [Hearing Notice](#), each electronically submitted exhibit must be in Adobe Portable Document Format (PDF). Exhibit Identification Indexes, on the other hand, should be in a format supported by Microsoft Excel or Word. We request that all parties who have the capability to perform optical character recognition (OCR) do so for all documents that are not word searchable (e.g., scanned documents) before uploading them to the FTP site. Section 7 of the enclosure also states that electronic submittals to the State Water Board of documents greater than 50 megabytes in total size should be submitted on a CD. **There is no size limit for files uploaded to the FTP site, and therefore submitting them to the State Water Board on a CD is not required.**

Each electronically submitted exhibit must be saved as a separate PDF file. The parties should apply the following standard file naming convention for electronic exhibits: Each file name should begin with an acronym for the party's name followed by an underscore "\_" and then the exhibit number. The file name should be short and should not include any spaces. The file name should not exceed 10 to 15 characters. The Exhibit Identification Index should list the exhibit number, the associated exhibit description, and the file name for that exhibit. For example, California Department of Water Resources exhibits would appear as follows in their Exhibit Identification Index:

Exhibit No.	Exhibit Description	File Name
DWR-1	Exhibit description	dwr_1.pdf
DWR-2	Exhibit description	dwr_2.pdf
DWR-3	Exhibit description	dwr_3.pdf
etc.	etc.	etc.

Where applicable, parties should cite to the staff exhibits posted on the California WaterFix Petition hearing website at [http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/california\\_waterfix/exhibits/index.shtml](http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/exhibits/index.shtml), using the exhibit identification number listed on the website. The staff exhibits will remain marked with the exhibit identification number beginning with “SWRCB” followed by the number of the exhibit. As stated in the February 11 ruling, hearing team staff do not currently propose to offer the staff exhibits into evidence at the hearing (although staff may introduce exhibits if strictly necessary).

### **Application to Appear as Counsel *Pro Hac Vice***

We received an application for an order authorizing Lauren J. Caster to appear *pro hac vice* as counsel for Friant Water Authority in this proceeding. Mr. Caster is an attorney with the law firm of Fennemore Craig, P.C., which does not have any offices in California. He is not a member of the State Bar of California.

Pursuant to Rule 9.40 of the California Rules of Court, a state court may authorize an attorney who is not a member of the California State Bar to appear in a particular case that is pending before the court. The State Water Board is an administrative agency, not a court, and therefore Rule 9.40 does not apply to proceedings before the State Water Board. Accordingly, a formal order authorizing an out-of-state attorney to appear *pro hac vice* is not required in order to represent a party in a proceeding before the State Water Board.

Rule 9.47 of the California Rules of Court authorizes an out-of-state attorney to temporarily practice law in California if the attorney’s services are part of a formal legal proceeding in which the attorney is authorized to appear, provided that certain other requirements are met. To the extent that Rule 9.47 requires the State Water Board’s authorization in order for Mr. Caster to represent Friant Water Authority in this proceeding, this will serve to confirm that Mr. Caster is permitted to appear in this proceeding by the rules governing adjudicative proceedings before the State Water Board. Adjudicative proceedings before the State Water Board are governed by California Code of Regulations, title 23, sections 648-648.8, 649.6, and 760, chapter 4.5 of the Administrative Procedure Act (commencing with Government Code section 11400), sections 801-805 of the Evidence Code, and section 11513 of the Government Code. The procedures governing adjudicative proceedings before State Water Board do not require parties to be represented by attorneys, or establish any requirements for out-of-state attorneys who wish to appear in a proceeding. It is incumbent on Mr. Caster to ensure that the other requirements of Rule 9.47 are satisfied.

### **WaterFix Modeling Comments**

The State Water Board received comments from parties regarding the modeling that has been conducted for the WaterFix CEQA/NEPA documents, ESA analyses and this hearing. In a letter dated February 4, 2016, Deirdre Des Jardins with California Water Research raised concerns

with the modeling analyses conducted to support the environmental documents and requested that at a minimum the petitioners provide a complete list of the versions of all computer models used in producing analyses for the WaterFix and that the petitioners make the models and input and output data available to interested parties. Ms. Des Jardins also requested that the petitioners make all supporting data for all sensitivity analyses available. Ms. Des Jardins specifically requested that the modeling materials be distributed using DWR's web server which it has used in the past to distribute similar modeling materials. In letters dated February 17, 2016 (letter to DWR) and February 25, 2016 (letter to the State Water Board), the SWWU raised similar concerns and requested that the petitioners identify what hydrologic modeling the petitioners will rely on during the hearing. **Within 7 days from the date of this letter, the petitioners should respond in writing to the above letters, copying both the hearing team at [CFWHearing@waterboards.ca.gov](mailto:CFWHearing@waterboards.ca.gov) and the parties on the current service list, identifying how the concerns identified in the letters will be addressed.**

### Ex Parte Communications

Please remember that ex-parte communications concerning substantive or controversial procedural issues relevant to this hearing are prohibited. Parties must provide a copy of any correspondence to the State Water Board concerning substantive or controversial procedural issues to all of the parties listed in Table 1 of the service list as described above. Any such emails must also be accompanied by the above-mentioned statement of service.

If you have any non-controversial procedural questions regarding this letter, please contact the hearing team at [CWFhearing@waterboards.ca.gov](mailto:CWFhearing@waterboards.ca.gov) or (916) 319-0960.

Sincerely,



Felicia Marcus  
State Water Board Member  
California WaterFix Co-Hearing Officer



Tam M. Doduc  
State Water Board Member  
California WaterFix Co-Hearing Officer

Enclosures

**Revised Enclosure A:**  
Hearing Dates and Room Schedule  
California WaterFix Petition

**PART IA** of the hearing will commence at 9 a.m. on May 5, 2016 and continue, as necessary, on the following dates at the Joe Serna Jr. Cal EPA Building, 1001 I Street, Second Floor, Sacramento, CA:

<b>DATE<sup>1</sup></b>	<b>HEARING ROOM</b>
Thursday, May 05, 2016	Byron Sher Auditorium
Friday, May 06, 2016	Byron Sher Auditorium
Tuesday, May 10, 2016	Byron Sher Auditorium
Wednesday, May 11, 2016	Byron Sher Auditorium
Thursday, May 12, 2016	Byron Sher Auditorium
Friday, May 13, 2016	Coastal Hearing Room
Thursday, May 19, 2016	Sierra Hearing Room
Friday, May 20, 2016	Coastal Hearing Room
Tuesday, May 24, 2016	Byron Sher Auditorium
Wednesday, May 25, 2016	Byron Sher Auditorium
Thursday, May 26, 2016	Byron Sher Auditorium
Wednesday, June 01, 2016	Byron Sher Auditorium
Thursday, June 02, 2016	Byron Sher Auditorium
Friday, June 03, 2016	Byron Sher Auditorium
Thursday, June 09, 2016	Byron Sher Auditorium
Friday, June 10, 2016	Byron Sher Auditorium
Tuesday, June 14, 2016	Sierra Hearing Room
Wednesday, June 15, 2016	Sierra Hearing Room
Thursday, June 16, 2016	Coastal Hearing Room
Friday, June 17, 2016	Byron Sher Auditorium
Thursday, June 23, 2016	Sierra Hearing Room
Friday, June 24, 2016	Coastal Hearing Room

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<sup>1</sup> Please note that Friday, May 27 and Tuesday, May 31, 2016 were originally noticed as hearing dates in Enclosure A of the [October 30, 2015 Hearing Notice](#). Those two dates are no longer scheduled as hearing days.

**PART IB** of the hearing will commence at 9 a.m. on July 26, 2016 and continue, as necessary, on the following dates at the Joe Serna Jr. Cal EPA Building, 1001 I Street, Second Floor, Sacramento, CA:

<b>DATE</b>	<b>HEARING ROOM</b>
Tuesday, July 26, 2016	Byron Sher Auditorium
Wednesday, July 27, 2016	Byron Sher Auditorium
Thursday, July 28, 2016	Byron Sher Auditorium
Friday, July 29, 2016	Byron Sher Auditorium
Thursday, August 04, 2016	Byron Sher Auditorium
Friday, August 05, 2016	Byron Sher Auditorium
Tuesday, August 09, 2016	Byron Sher Auditorium
Wednesday, August 10, 2016	Byron Sher Auditorium
Thursday, August 11, 2016	Byron Sher Auditorium
Friday, August 12, 2016	Byron Sher Auditorium
Thursday, August 18, 2016	Coastal Hearing Room
Friday, August 19, 2016	Coastal Hearing Room
Tuesday, August 23, 2016	Coastal Hearing Room
Wednesday, August 24, 2016	Byron Sher Auditorium
Thursday, August 25, 2016	Byron Sher Auditorium
Friday, August 26, 2016	Byron Sher Auditorium
Tuesday, August 30, 2016	Byron Sher Auditorium
Wednesday, August 31, 2016	Byron Sher Auditorium
Thursday, September 22, 2016	Sierra Hearing Room
Friday, September 23, 2016	Sierra Hearing Room
Tuesday, September 27, 2016	Byron Sher Auditorium
Wednesday, September 28, 2016	Byron Sher Auditorium
Thursday, September 29, 2016	Byron Sher Auditorium
Friday, September 30, 2016	Byron Sher Auditorium
Thursday, October 13, 2016	Byron Sher Auditorium
Friday, October 14, 2016	Byron Sher Auditorium
Thursday, October 20, 2016	Coastal Hearing Room
Friday, October 21, 2016	Coastal Hearing Room
Tuesday, October 25, 2016	Byron Sher Auditorium
Wednesday, October 26, 2016	Byron Sher Auditorium
Thursday, October 27, 2016	Byron Sher Auditorium
Friday, October 28, 2016	Byron Sher Auditorium

**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):

[SUBJECT LINE OF DOCUMENT(S)]

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 \_\_\_\_\_, 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](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:
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	<b>Method of Service:</b> _____
--	---------------------------------

I certify that the foregoing is true and correct and that this document was executed on \_\_\_\_\_  
Date

Signature: \_\_\_\_\_

Name:

Title:

Party/Affiliation:

Address: