

DEPARTMENT OF WATER RESOURCES

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August 11, 2017

Tam Doduc, Hearing Officer
Felicia Marcus, Hearing Officer
State Water Resources Control Board
1001 I Street
Sacramento, California 94596

Re: Response to Save the California Delta Alliance Opposition to Noticing Part 2

Dear Hearing Officers Doduc and Marcus,

DWR submits Petitioners' response to the Hearing Officers August 8, 2017 email, which was in response to an opposition filed by Save the California Delta Alliance ("Alliance"), and joinders, to DWR's August 1, 2017 letter regarding the publicly available information and noticing Part 2 of the California WaterFix water rights hearing.

The Alliance's letter is a belated and improper attempt to reargue an issue already rejected by the Hearings Officers; it asserts that Part 2 of these proceedings should not proceed without the information urged by the Alliance.

The Alliance's August 3, 2017 letter reiterated arguments that have previously been made by it and other parties. The five points in the August 3, 2017 letter all relate to the argument that "Petitioners submit a complete project description in conformance with 23 CCR § 794" prior to the commencement of Part 2 of the change petition hearing.

DWR reasserts its previous arguments with regard to satisfaction of 23 C.C.R. section 794 and incorporates the previous rulings of the State Water Board related to this matter. The Hearing Officers have disposed of this question in a July 22, 2016 ruling, again in a February 21, 2017 ruling, and yet again in a July 27, 2017 ruling.

As we stated in our February ruling, however, not all uncertainties can or need to be resolved before beginning the hearing. In fact, the purpose of this hearing is to resolve some of the issues concerning how the proposed project would be operated. At this point, any remaining uncertainty concerning the proposed project and its effects should be raised in the hearing process, including but not limited to cross-examination, and the protestants' cases-in-chief. (July 22, 2016 ruling, p.2.)

Most recently, the Hearing Officers have specifically rejected a request to keep Part 1 open and defer Part 2 due to an asserted lack of information:

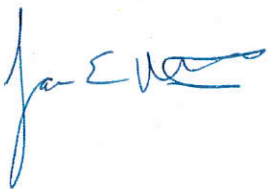
[W]e recognize that not all uncertainties need to be resolved for an adequate project description, and one of the purposes of this proceeding is to hear evidence and argument concerning proposed operating conditions. ...We disagree with protestants'

characterization of the operations plan as necessary to inform the key hearing issues...
(July 27, 2017 ruling, p.2.)

The Alliance has not asserted any new arguments or information that compels the Hearing Officers to reconsider or overturn these rulings. And to protect the efficiency of the hearing, the Alliance should not be permitted to continually re-litigate issues already argued and rejected by the Hearing Officers in their previous rulings. In addition, the Alliance does not mention that the California Department of Fish and Wildlife has issued an Incidental Take Permit pursuant to Section 2081(b) of the California Endangered Species Act, further adding to the informational foundation necessary for proceeding with Part 2 of the change petition hearing.

With the Final Environmental Impact Report/Environmental Impact Statement (EIR/EIS) certified by DWR and the various other recently-issued regulatory assessments of the project, and the Hearing Officers have a CEQA document that analyzes both state and federal actions for the California WaterFix. The Alliance has cited to no state law requirement that requires submission of federal agency decision containing the degree of specificity it desires in order to proceed with Part 2. Pursuant to the requirements of NEPA, Reclamation completed the Final EIS (prepared jointly with the EIR) and published the notice in the Federal Register in December 2016. There is no evidence presented that potential changes to the project description are being contemplated if and when Reclamation eventually issues a record of decision, and the Hearing Officers have discretion to move forward. Additionally, DWR has not predetermined, and does not have the authority to control, the timing or outcome of the federal NEPA decision making process.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tripp Mizell". The signature is stylized and cursive.

Tripp Mizell
Attorney