

**From:** Stefanie Morris <[SMorris@swc.org](mailto:SMorris@swc.org)>

**Date:** January 22, 2016 at 8:40:02 AM PST

**To:** "Marcus, Felicia@Waterboards" <[Felicia.Marcus@waterboards.ca.gov](mailto:Felicia.Marcus@waterboards.ca.gov)>, "[tam.doduc@waterboards.ca.gov](mailto:tam.doduc@waterboards.ca.gov)" <[tam.doduc@waterboards.ca.gov](mailto:tam.doduc@waterboards.ca.gov)>, "A. Wearn" <[awearn@nrdc.org](mailto:awearn@nrdc.org)>, Aaron Ferguson <[aferguson@somachlaw.com](mailto:aferguson@somachlaw.com)>, Alan Lilly <[ABL@bkslawfirm.com](mailto:ABL@bkslawfirm.com)>, Alex Peltzer <[apeltzer@prlawcorp.com](mailto:apeltzer@prlawcorp.com)>, Amy Aufdemberg <[Amy.Aufdemberge@sol.doi.gov](mailto:Amy.Aufdemberge@sol.doi.gov)>, Andrew Hitchings <[ahitchings@somachlaw.com](mailto:ahitchings@somachlaw.com)>, Anna Swenson <[deltaactioncommittee@gmail.com](mailto:deltaactioncommittee@gmail.com)>, Barbara Barrigan-Parilla <[barbara@restorethedelta.org](mailto:barbara@restorethedelta.org)>, Barbara Daly <[bdalymns@citilink.net](mailto:bdalymns@citilink.net)>, Barbara Vlamis <[barbarav@aqualliance.net](mailto:barbarav@aqualliance.net)>, Barry Sgarrella <[barry@solagra.com](mailto:barry@solagra.com)>, Bill Wells <[info@californiadelta.org](mailto:info@californiadelta.org)>, Blanca Paloma <[blancapaloma@msn.com](mailto:blancapaloma@msn.com)>, Brad & Emily Pappalardo <[empappa@gmail.com](mailto:empappa@gmail.com)>, "Brandie Owusu-Spencer" <[eyv209@gmail.com](mailto:eyv209@gmail.com)>, Brenda Rose <[office@ecosacramento.net](mailto:office@ecosacramento.net)>, Brett Baker <[brettgbaker@gmail.com](mailto:brettgbaker@gmail.com)>, Brian Johnson <[bjohnson@tu.org](mailto:bjohnson@tu.org)>, "Carl Wilcox" <[Carl.Wilcox@wildlife.ca.gov](mailto:Carl.Wilcox@wildlife.ca.gov)>, Carolee Krieger <[caroleekreiger7@gmail.com](mailto:caroleekreiger7@gmail.com)>, Cathleen Galgiani <[Cathleen.Galgiani@sen.ca.gov](mailto:Cathleen.Galgiani@sen.ca.gov)>, Chris Shutes <[deltakeep@me.com](mailto:deltakeep@me.com)>, Colin Bailey <[colin@ejcw.org](mailto:colin@ejcw.org)>, Connor Everts <[connere@gmail.com](mailto:connere@gmail.com)>, "Craig S.J. Johns" <[cjohns@calrestrats.com](mailto:cjohns@calrestrats.com)>, Curtis Creel <[ccreel@kcwa.com](mailto:ccreel@kcwa.com)>, Cynthia Jlau <[cynthiajlau@gmail.com](mailto:cynthiajlau@gmail.com)>, Dan Kelly <[dkelly@somachlaw.com](mailto:dkelly@somachlaw.com)>, Daniel Wilson <[daniel@kaydix.com](mailto:daniel@kaydix.com)>, David Aladjem <[daladjem@downeybrand.com](mailto:daladjem@downeybrand.com)>, "David Guy ([dguy@norcalwater.org](mailto:dguy@norcalwater.org))" <[dguy@norcalwater.org](mailto:dguy@norcalwater.org)>, David Orth <[dorth@davidorthconsulting.com](mailto:dorth@davidorthconsulting.com)>, Dean Ruiz <[dean@hprlaw.net](mailto:dean@hprlaw.net)>, Debbie Webster <[eoofficer@cvcwa.org](mailto:eoofficer@cvcwa.org)>, Deirdre Des Jardins <[ddj@cah2oresearch.com](mailto:ddj@cah2oresearch.com)>, Doug Obegi <[dobegi@nrdc.org](mailto:dobegi@nrdc.org)>, Doug Hedrick <[douglash@sbvmwd.com](mailto:douglash@sbvmwd.com)>, "Douglas W. Wilhoit" <[doug@stocktonchamber.org](mailto:doug@stocktonchamber.org)>, Dustin Cooper <[dcooper@minasianlaw.com](mailto:dcooper@minasianlaw.com)>, "Erik Gustafson" <[Erik.gustafson@chicoca.gov](mailto:Erik.gustafson@chicoca.gov)>, "[esoderlund@valleywater.org](mailto:esoderlund@valleywater.org)" <[esoderlund@valleywater.org](mailto:esoderlund@valleywater.org)>, Esperanza Vielma <[evielma@cafecoop.org](mailto:evielma@cafecoop.org)>, "f. Morrissey" <[fmorrissey@orangecoveid.org](mailto:fmorrissey@orangecoveid.org)>, Fred Etheridge <[fetherid@ebmud.com](mailto:fetherid@ebmud.com)>, Gary Bobker <[bobker@bay.org](mailto:bobker@bay.org)>, George Torgun <[george@baykeeper.org](mailto:george@baykeeper.org)>, Ger Vang <[gvang@lfcempowerment.org](mailto:gvang@lfcempowerment.org)>, Gregory Adams <[gadams@fclaw.com](mailto:gadams@fclaw.com)>, gustavo medina <[gustavo.medina@asm.ca.gov](mailto:gustavo.medina@asm.ca.gov)>, "Hengsothea Ung" <[usothea@apsaraonline.org](mailto:usothea@apsaraonline.org)>, James Mizell <[jmizell@water.ca.gov](mailto:jmizell@water.ca.gov)>, "[jduerig@zone7water.com](mailto:jduerig@zone7water.com)" <[jduerig@zone7water.com](mailto:jduerig@zone7water.com)>, Jeff Davis <[jdavis@sgpwa.com](mailto:jdavis@sgpwa.com)>, Jennifer Buckman <[jbuckman@friantwater.org](mailto:jbuckman@friantwater.org)>, "Jennifer Patterson" <[activistjen86@gmail.com](mailto:activistjen86@gmail.com)>, Jennifer Spaletta <[jennifer@spalettalaw.com](mailto:jennifer@spalettalaw.com)>, Jim Cox <[jimcoxsportfishing@yahoo.com](mailto:jimcoxsportfishing@yahoo.com)>, "Joan Buchanan" <[bu4567@aol.com](mailto:bu4567@aol.com)>, Joe Robinson <[jrobinson@cityofsacramento.org](mailto:jrobinson@cityofsacramento.org)>, John Herrick <[jherrlaw@aol.com](mailto:jherrlaw@aol.com)>, John Luebberke <[john.luebberke@stocktonca.gov](mailto:john.luebberke@stocktonca.gov)>, John McManus <[john@goldengatesalmon.org](mailto:john@goldengatesalmon.org)>, Jon Rubin <[Jon.Rubin@sldmwa.org](mailto:Jon.Rubin@sldmwa.org)>, Jonas Minton <[jminton@pcl.org](mailto:jminton@pcl.org)>, "Jonathan Salmon" <[jsalmon@ebmud.com](mailto:jsalmon@ebmud.com)>, "[jph@tulareid.org](mailto:jph@tulareid.org)" <[jph@tulareid.org](mailto:jph@tulareid.org)>, "Karl E Nate Knodt" <[nknodt@sanjoaquinrtd.com](mailto:nknodt@sanjoaquinrtd.com)>, Karna Herrigfeld <[kharrigfeld@herumcrabtree.com](mailto:kharrigfeld@herumcrabtree.com)>, Kate Poole <[kpoole@nrdc.org](mailto:kpoole@nrdc.org)>, "Katelyn Roedner Sutter" <[kroedner@ccstockton.org](mailto:kroedner@ccstockton.org)>, Kathy Mannion <[kmannion@rcrcnet.org](mailto:kmannion@rcrcnet.org)>, kelweg1 <[kelweg1@aol.com](mailto:kelweg1@aol.com)>, Kevin O'Brien <[kobrien@DowneyBrand.com](mailto:kobrien@DowneyBrand.com)>, "Kirby Brill ([kbrill@mojavewater.org](mailto:kbrill@mojavewater.org))" <[kbrill@mojavewater.org](mailto:kbrill@mojavewater.org)>, Kurtis Keller <[kkeller@neumiller.com](mailto:kkeller@neumiller.com)>, Kyle Jones <[kyle.jones@sierraclub.org](mailto:kyle.jones@sierraclub.org)>, larry ruhstaller <[larryruhstaller@gmail.com](mailto:larryruhstaller@gmail.com)>, Lauren Caster <[lcaster@fclaw.com](mailto:lcaster@fclaw.com)>, Isheehan <[isheehan@earthlaw.org](mailto:isheehan@earthlaw.org)>, Luis Magaña <[Lmagana@afsc.org](mailto:Lmagana@afsc.org)>, "M. Hagman" <[mhagman@lindmoreid.com](mailto:mhagman@lindmoreid.com)>, "M. Larsen" <[mlarsen@kdwcd.com](mailto:mlarsen@kdwcd.com)>, Marcos Kropf <[mkropf@countyofcolusa.com](mailto:mkropf@countyofcolusa.com)>, Marian Norris <[marian.norris@sen.ca.gov](mailto:marian.norris@sen.ca.gov)>, "Mark Atlas" <[matlas@jmatlaslaw.com](mailto:matlas@jmatlaslaw.com)>, Mark Gilkey <[mgilkey@tlbwsd.com](mailto:mgilkey@tlbwsd.com)>, Mark Krause <[mark@dwa.org](mailto:mark@dwa.org)>, Martha Lennihan <[mlennihan@lennihan.net](mailto:mlennihan@lennihan.net)>, Martha Vielmam <[vielmam07@yahoo.com](mailto:vielmam07@yahoo.com)>, Matt Stone <[mstone@clwa.org](mailto:mstone@clwa.org)>, Meredith Nikkel <[mnikkel@DowneyBrand.com](mailto:mnikkel@DowneyBrand.com)>, michae Ifrost <[mr.michaelfrost@gmail.com](mailto:mr.michaelfrost@gmail.com)>, "michael brodskylaw" <[michael@brodskylaw.net](mailto:michael@brodskylaw.net)>, Michael Jackson <[mjatty@sbcglobal.net](mailto:mjatty@sbcglobal.net)>, Michael Van Zandt <[mvanzandt@hansonbridgett.com](mailto:mvanzandt@hansonbridgett.com)>, Mike Savino <[wirthsoscranes@yahoo.com](mailto:wirthsoscranes@yahoo.com)>, Mitch Avalon <[friendsofsfestuary@gmail.com](mailto:friendsofsfestuary@gmail.com)>, Motecuzoma Sanchez

<[motecps@gmail.com](mailto:motecps@gmail.com)>, Nicole S Suard <[sunshine@snugharbor.net](mailto:sunshine@snugharbor.net)>, Osha Meserve <[osha@semlawyers.com](mailto:osha@semlawyers.com)>, "Patrick Porgans" <[porgansinc@sbcglobal.net](mailto:porgansinc@sbcglobal.net)>, Paul Minasian <[pminasian@minasianlaw.com](mailto:pminasian@minasianlaw.com)>, Paul Simmons <[psimmons@somachlaw.com](mailto:psimmons@somachlaw.com)>, "Paul Weiland" <[pweiland@nossaman.com](mailto:pweiland@nossaman.com)>, Paul Williams <[pwilliams@westlandswater.org](mailto:pwilliams@westlandswater.org)>, Philip Pogledich <[philip.pogledich@yolocounty.org](mailto:philip.pogledich@yolocounty.org)>, R Zwillinger <[rzwillinger@defenders.org](mailto:rzwillinger@defenders.org)>, "[rmburness@comcast.net](mailto:rmburness@comcast.net)" <[rmburness@comcast.net](mailto:rmburness@comcast.net)>, Robert Cheng <[rcheng@cvwd.org](mailto:rcheng@cvwd.org)>, Robert Wright <[bwright@friendsoftheriver.org](mailto:bwright@friendsoftheriver.org)>, "Rogene Reynolds" <[reynolds6568@gmail.com](mailto:reynolds6568@gmail.com)>, Roger Mammon <[r.mammon@att.net](mailto:r.mammon@att.net)>, "[roland@ssjmud.org](mailto:roland@ssjmud.org)" <[roland@ssjmud.org](mailto:roland@ssjmud.org)>, Ron Bernal <[rbernal@ci.antioch.ca.us](mailto:rbernal@ci.antioch.ca.us)>, Ronald Forbes <[bluse03@yahoo.com](mailto:bluse03@yahoo.com)>, "[rsheehan@mwdh2o.com](mailto:rsheehan@mwdh2o.com)" <[rsheehan@mwdh2o.com](mailto:rsheehan@mwdh2o.com)>, "Ryan Bezerra " <[RSB@bkslawfirm.com](mailto:RSB@bkslawfirm.com)>, Ryan Camero <[rcarcamero@gmail.com](mailto:rcarcamero@gmail.com)>, ryan hernandez <[ryan.hernandez@dcd.cccounty.us](mailto:ryan.hernandez@dcd.cccounty.us)>, Ryan Wulff <[Ryan.Wulff@noaa.gov](mailto:Ryan.Wulff@noaa.gov)>, S Dalke <[sdalke@kern-tulare.com](mailto:sdalke@kern-tulare.com)>, "[sae16@lsid.org](mailto:sae16@lsid.org)" <[sae16@lsid.org](mailto:sae16@lsid.org)>, Scott Shapiro <[sshapiro@downeybrand.com](mailto:sshapiro@downeybrand.com)>, "[sgeivet@ocsnet.net](mailto:sgeivet@ocsnet.net)" <[sgeivet@ocsnet.net](mailto:sgeivet@ocsnet.net)>, Stefanie Morris <[SMorris@swc.org](mailto:SMorris@swc.org)>, "Stephan C. Volker" <[svolker@volkerlaw.com](mailto:svolker@volkerlaw.com)>, stephen sipthroth <[stephen.siptroth@cc.cccounty.us](mailto:stephen.siptroth@cc.cccounty.us)>, Steve Rothert <[srothert@americanrivers.org](mailto:srothert@americanrivers.org)>, Steve Saxton <[ssaxton@downeybrand.com](mailto:ssaxton@downeybrand.com)>, Tara Mazzanti <[tara.mazzanti@stocktonca.gov](mailto:tara.mazzanti@stocktonca.gov)>, Terri Crain <[tcrain@scvchamber.com](mailto:tcrain@scvchamber.com)>, thomas esqueda <[thomas.esqueda@fresno.gov](mailto:thomas.esqueda@fresno.gov)>, "Tim O'Laughlin " <[towater@olaughlinparis.com](mailto:towater@olaughlinparis.com)>, Tom Gohring <[tgohring@waterforum.org](mailto:tgohring@waterforum.org)>, "tomas torres " <[torres.tomas@epa.gov](mailto:torres.tomas@epa.gov)>, Trent Hager <[Trent.Hager@sen.ca.gov](mailto:Trent.Hager@sen.ca.gov)>, Trent Orr <[torr@earthjustice.org](mailto:torr@earthjustice.org)>, Valerie Kincaid <[vkincaid@olaughlinparis.com](mailto:vkincaid@olaughlinparis.com)>, "Wes Rhea" <[wes@visitstockton.org](mailto:wes@visitstockton.org)>, William Femlen <[wfemlen@solanocounty.com](mailto:wfemlen@solanocounty.com)>

**Cc:** Stefanie Morris <[SMorris@swc.org](mailto:SMorris@swc.org)>, Terry Erlewine <[TErlewine@swc.org](mailto:TErlewine@swc.org)>, Elaine Benjamin <[EBenjamin@swc.org](mailto:EBenjamin@swc.org)>

**Subject:** CWF Hearing Pre- Conference Submittal

Please see attached letter.

January 22, 2016

**Via Email and U.S. Mail**

Felicia Marcus  
Tam Doduc  
State Water Resources Control Board  
1001 I Street  
Sacramento, CA 95814

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

**Re: Comments on California Water Fix Pre-Hearing Conference**

Dear Ms. Marcus and Ms. Doduc:

Please find the State Water Contractors<sup>1</sup> comments regarding the California WaterFix pre-hearing conference and issues raised in the January 15, 2016 letter.

Given the number of interested parties in this process, it is critical that the co-chairs provide specific direction to the parties in order for the proceeding to move forward in an efficient manner. This direction should include grouping parties with similar interests in order to make a coherent and logical record, as well as to reduce redundant testimony and expedite cross-examination. We also suggest reasonable and appropriate time limitations be set on the combined testimony and that appropriate opportunity for legal briefing and motions in limine be accorded the parties. It is important to note that this proceeding is similar to complex litigation given the breadth of issues and number of interested parties. Thus, as with complex litigation, it is appropriate to set forth time limits, groups and general efficiency measures. Such measures are commonly used in complex litigation and do not violate due process.

<sup>1</sup> The SWC members are: Alameda County Flood Control & Water Conservation District, Zone 7; Alameda County Water District; Antelope Valley-East Kern Water Agency; Casitas Municipal Water District on behalf of the Ventura County Flood Control District; Castaic Lake Water Agency; Central Coast Water Authority on behalf of the Santa Barbara County Flood Control & Water Conservation District; City of Yuba City; Coachella Valley Water District; County of Kings; Crestline-Lake Arrowhead Water Agency; Desert Water Agency; Dudley Ridge Water District; Empire-West Side Irrigation District; Kern County Water Agency; Littlerock Creek Irrigation District; The Metropolitan Water District of Southern California; Mojave Water Agency; Napa County Flood Control & Water Conservation District; Oak Flat Water District; Palmdale Water District; San Bernardino Valley Municipal Water District; San Gabriel Valley Municipal Water District; San Geronio Pass Water Agency; San Luis Obispo Co. Flood Control & Water Conservation District; Santa Clara Valley Water District; Solano County Water Agency; and Tulare Lake Basin Water Storage District.



**DIRECTORS**

**Ray Stokes**  
**President**  
Central Coast Water  
Authority

**Douglas Headrick**  
**Vice President**  
San Bernardino Valley MWD

**Mark Gilkey**  
**Secretary-Treasurer**  
Tulare Lake Basin Water  
Storage District

**Stephen Arakawa**  
Metropolitan Water District  
of Southern California

**Curtis Creel**  
Kern County Water Agency

**Dan Flory**  
Antelope Valley-East Kern  
Water Agency

**Cindy Kao**  
Santa Clara Valley Water  
District

**Dan Masnada**  
Castaic Lake Water Agency

**Phillip Miller**  
Napa County FC&WCD

**General Manager**  
**Terry L. Erlewine**

Below are the SWC recommendations for the pre-hearing conference.

Case in Chief:

Petitioners should be allowed an appropriate amount time to put on their case in chief. As currently drafted the Notice would limit them to one hour. This is not enough time for the petitioners to present their case, a point recognized in the January 15 letter from the State Water Board to the parties. Given that the petitioners' proposals will be examined over 30 days of hearings and that the petitioners hold the initial burden of proof, it is not enough time.

Recommended Hearing Structure:

The SWC recommend the following structure for the hearing:

1. Introduction and opening remarks
2. Opening comments from hearing team
3. Preliminary procedural motions and legal briefs

(SWC recommends requiring procedural motions be filed by March 21, 2016 and responsive motions to procedural motions and legal briefs filed by April 4, 2016. These motions could include motions in limine, and/or other preliminary procedure motions. To the extent relevant, rulings on motions should proceed before Policy Statements.)

4. Policy Statements

(Policy Statements for all others besides the petitioners should be limited to submitting written policy statements and oral statements not to exceed 3 minutes.)

5. Presentation of Petition: Department of Water Resources and United States Bureau of Reclamation to present petition and experts in support. Followed by cross examination, re-direct, and re-cross of experts.
6. Interested Parties Presentation: SWC recommends that the remaining parties be grouped by similar interests and present their testimony by group. Followed by cross examination, re-direct, and re-cross of experts.
7. Rebuttal: Opposition to the project, followed by supporters of the project, and closing with the petitioners.
8. Close of Part 1: Closing briefs on Part 1 submitted within 2-3 weeks of the conclusion of Part 1.

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Hearing Efficiency and Limitations:

As described in the January 15<sup>th</sup> correspondence, the SWC support and recommend that the Co-Chairs require grouping of parties on direct, cross-examination, and rebuttal. (January 15, 2016 Letter at p. 4; Notice at p. 31.) SWC recommend that the Co-Chairs allow the parties to attempt to self-organize and present grouping and time limit proposals to the Co-Chairs in a second pre-hearing conference approximately one week after submittal of testimony and exhibits. Providing parties an opportunity to review the submitted testimony will assist in determining if positions taken are compatible and if they are willing to consolidate and coordinate with others.

Clarification on Opening Statements: SWC seek clarification that only those parties who are presenting a case in chief in Part 1 may make an opening statement. SWC believes this is appropriate and is the intent of the language in the Notice at p. 35.

We appreciate the opportunity to provide written comments.

Sincerely,



Stefanie Morris  
General Counsel  
State Water Contractors

cc: Electronic service list as provided by the State Water Resources Control Board on January 15, 2016 in Exhibit 1 (electronic service)

Clifton Court L.P. (US Mail)