

DEPARTMENT OF WATER RESOURCES

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December 1, 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 Process of Rebuttal and Closing Briefs Associated with the
California Waterfix Water Rights Hearing

Dear Hearing Chair Doduc and Hearing Officer Marcus:

The Department of Water Resources (DWR) appreciates your willingness to accept requests for the process of rebuttal and closing briefs associated with the California WaterFix water rights hearing. After reviewing the numerous proposals submitted by parties to the hearing, it is the position of DWR that written rebuttal be required, but that closing legal briefs for Part 1 are not required at this time given the overlapping nature of the legal theories for issues presented in Part 1 and Part 2.

DWR requests that written rebuttal be required in order to provide the best opportunity to develop concise and efficient cross-examination of the rebuttal material. Absent a written rebuttal, cross-examination will require more foundational questions and context questions. Furthermore, it is DWR's request that written rebuttal be required of parties other than Petitioners no sooner than 30 days after close of the last case-in-chief. DWR also requests that Petitioners' written rebuttal be due an additional 30 days after close of the last case-in-chief. The reasoning behind this request is that, as has been pointed out repeatedly by other parties, Petitioners bear the initial burden of proof for supporting the findings necessary to approve the Petition, should that ultimately be the State Water Resources Control Board's decision. It is necessary that Petitioners be presented with the full specifics of the protesting parties and have opportunity to meet their burden. A secondary consideration for this request is that DWR will be responding to a considerable volume of opposing rebuttal material, while it can be anticipated that other parties will focus on the Petitioners or at most a handful of parties.

Similarly, it is the request of DWR that it present its rebuttal, in conjunction with co-petitioner U.S. Bureau of Reclamation, after oral rebuttal presentations by other parties. The reasoning for this request is the same: bearing the initial burden of proof requires a full understanding of the protest materials and an opportunity to respond. Thus Petitioners should have the last word.

DWR requests that legal closing briefs only be required after close of testimony for Part 2. There are issues outlined by the notices and rulings that present overlapping legal theories and statutes. It would be repetitive and inefficient to argue these matters twice. Rather, because the Hearing Officers will not make a decision on the Petition until after close of Part 2 the legal argument will only come into play once all the evidence has been heard. However, should the Hearing Officers decide that closing legal briefs for Part 1 are prudent, DWR requests that the timeframe for these briefs be set for no fewer than 90 days after the close of the Part 1 hearing rebuttal testimony.

Thank you for considering these requests.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tripp Mizell". The signature is fluid and cursive, with a long horizontal stroke at the end.

Tripp Mizell

Senior Attorney

Office of Chief Counsel

CA Department of Water Resources

