

CRAIG S. SPENCER  
GENERAL COUNSELXANTHE M. BERRY  
ASSISTANT GENERAL COUNSELFRED S. ETHERIDGE  
ASSISTANT GENERAL COUNSELBROOKE BARNUM  
RACHEL JONES  
LOURDES MATTHEW  
DEREK MCDONALD  
SAJI THOMAS PIERCE  
JONATHAN SALMON

January 11, 2018

Via Electronic Mail ([CWFHearing@waterboards.ca.gov](mailto:CWFHearing@waterboards.ca.gov))Tam M. Doduc, Co-Hearing Officer  
Felicia Marcus, Co-Hearing Officer  
State Water Resources Control Board  
1001 I Street, 2nd Floor  
Sacramento, CA 95814

Re: Comments on January 4, 2018 Ruling: Draft Order of Presentation for Part 2

Dear Hearing Officers Doduc and Marcus:

East Bay Municipal Utility District (EBMUD) submits the following comments concerning the Part 2 draft order of presentation set forth in Attachment 1 to the Hearing Officers' January 4, 2018 ruling. EBMUD joins in the motion and written comments submitted today by the Sacramento Valley Water Users. We also make a further request described below.

EBMUD is concerned by the size and scope of Petitioners' proposed second panel. That panel would contain 13 witnesses, according to the draft order of presentation. The panel is so large, and encompasses so many subjects, that cross-examination is likely to be unwieldy and inadequate. The 13 witnesses on that proposed panel have submitted Part 2 testimony on several dissimilar topics: Delta fisheries, upstream fisheries, facilities construction, terrestrial species, flow modeling, selenium modeling, and temperature modeling. It is unclear to us why it is necessary or desirable to agglomerate so many distinct topics within a single large panel.

We believe this proposed outsized panel would also unfairly limit the depth of cross-examination. As it currently stands, parties are allotted no more than one hour per panel for cross-examination. (See Enclosure to November 8, 2017 Ruling, page 5.) It may not be possible to adequately cross-examine so many witnesses on so many different topics within the allotted hour.

The Sacramento Valley Water Users' proposed reconfiguration of Petitioners' panels would partly address these issues. But even if Petitioners' panels are reconfigured as proposed, one of Petitioners' panels would still contain seven operations and modeling witnesses. We respectfully request a ruling extending the time allowed for cross-examination of larger panels in proportion to panel size. Specifically, we propose modifying the existing one-hour rule for panels that contain more than three witnesses to allow an additional 20 minutes of cross-examination per witness in excess of three witnesses. For example, a party could plan to cross-examine any or all members of a seven-witness panel for up to two hours and twenty minutes, with discretionary

Tam M. Doduc, Co-Hearing Officer  
Felicia Marcus, Co-Hearing Officer  
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extensions available for good cause. This modification would apply equally to all parties, ensuring fairness and due process. It would also improve the quality of cross-examination by avoiding the need for *ad hoc*, case-by-case extensions – which are not assured – thereby encouraging parties to invest the effort to prepare all relevant lines of inquiry in advance.

Thank you for considering EBMUD's comments.

Very truly yours,



Jon Salmon  
Attorney

JDS:vjv

cc: Service List – January 2, 2018 (*via email*)

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**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):

**COMMENTS ON JANUARY 4, 2018 RULING:  
DRAFT ORDER FOR PRESENTATION FOR PART 2**


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 **January 2, 2018**, 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:  <b>Method of Service:</b> _____
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I certify that the foregoing is true and correct and that this document was executed on **January 11, 2018**.  
Date

Signature:   
Name: Vienna Valenzuela  
Title: Legal Secretary  
Party/Affiliation: **East Bay Municipal Utility District**  
Address: 375 11th St., Oakland, CA 94607