
From: Buckman, Michael@Waterboards on behalf of CWFhearing
Sent: Wednesday, November 16, 2016 11:24 AM
To: abl@bkslawfirm.com; aferguson@somachlaw.com; ahitchings@somachlaw.com; ajr@bkslawfirm.com; amy.aufdemberge@sol.doi.gov; apeltzer@prlawcorp.com; awaren@nrdc.org; barbara@restorethedelta.org; barbarav@aqualliance.net; barry@solagra.com; bdalymn@citlink.net; bjohnson@tu.org; blancapaloma@msn.com; bobker@bay.org; bradpappa@gmail.com; brettgbaker@gmail.com; bwright@friendsoftheriver.org; Wilcox, Carl@Wildlife; caroleekrieger7@gmail.com; colin@ejcw.org; connere@gmail.com; CWFhearing; daladjem@downeybrand.com; daniel@kaydix.com; dcooper@minasianlaw.com; dcoty@bpmnj.com; ddj@cah2oresearch.com; dean@hprlaw.net; deltakeep@me.com; dkelly@pcwa.net; dgarrett@volkerlaw.com; dobegi@nrdc.org; dohanlon@kmtg.com; dorth@davidorthconsulting.com; empappa@gmail.com; evielma@cafecoop.org; elamoe@minasianlaw.com; fetherid@ebmud.com; fmorrissey@orangecoveid.org; friendsofsfestuary@gmail.com; gadams@fclaw.com; info@californiadelta.org; Mizell, James@DWR; jailin@awattorneys.com; jtb@bkslawfirm.com; jconway@rd800.org; jfox@awattorneys.com; jennifer@spalettalaw.com; Herrick, John @aol.com; Minton, Jonas; john.luebberke@stocktonca.gov; Rubin, Jon@sldmwa.org; jph@tulareid.org; jrobinson@cityofsacramento.org; jsagwomack@gmail.com; jsalmon@ebmud.com; jvolker@volkerlaw.com; kcorby@somachlaw.com; kelweg1@aol.com; kharrigfeld@herumcrabtree.com; kobrien@downeybrand.com; kpoole@nrdc.org; ktaber@somachlaw.com; kyle.jones@sierraclub.org; lcaster@fclaw.com; matlas@jmatlaslaw.com; matthew@mlelaw.com; mbently@countyofcolusa.org; melissa.poole@wonderful.com; mhagman@lindmoreid.com; michael@brodskylaw.net; mjatty@sbcglobal.net; mkropf@countyofcolusa.com; mlarsen@kdwcd.com; mnikkel@downeybrand.com; Van Zandt, Michael@hansonbridgett.com; myoung@awattorneys.com; ncardella@prlawcorp.com; office@ecosacramento.net; Meserve, Osha@semlawyers.com; Pogledich, Philip@yolocounty; pminasian@minasianlaw.com; pp@planetarysolutionaries.org; Miljanich, Peter@solanocounty; psimmons@somachlaw.com; pwilliams@westlandswater.org; Akroyd, Rebecca@KMTG; randy@ejcw.org; rbernal@ci.antioch.ca.us; rmaddow@bpmnj.com; rdenton06@comcast.net; rmburness@comcast.net; roland@ssjmud.org; rsb@bkslawfirm.com; Russell Frink (Russell@spalettalaw.com); Hernandez, Ryan@dcd; rzwillinger@defenders.org; sae16@lsid.org; schaffin@awattorneys.com; sdalke@kern-tulare.com; sgeivet@ocsnet.net; smorris@swc.org; Sophie.Froelich@Roll.com; sonstot@awattorneys.com; srothert@americanrivers.org; ssaxton@downeybrand.com; ssdwaterfix@somachlaw.com; stephen.siptroth@cc.cccounty.us; sunshine@snugharbor.net; svolker@volkerlaw.com; sgrady@eslawfirm.com; red@eslawfirm.com; tara.mazzanti@stocktonca.gov; tgohring@waterforum.org; thomas.esqueda@fresno.gov; tim@restorethedelta.org; tkeeling@freemanfirm.com; trobancho@freemanfirm.com; torr@earthjustice.org; towater@olaughlinparis.com; vkincaid@olaughlinparis.com; wes.miliband@stoel.com; Femlen, William@solanocounty.com; wirthsoscranes@yahoo.com; Yana Garcia (ygarcia@earthjustice.org)
Cc: CWFhearing
Subject: California WaterFix Hearing – Ruling Concerning Save the California Delta Alliance

Service List,

Issues Concerning Testimony Outside the Scope of Part 1

The Hearing Officers have reviewed the revised testimony submitted by Save the California Delta Alliance (SCDA) in response to their October 7, 2016 ruling, which directed some of the parties to remove certain written testimony determined to be outside the scope of Part 1 of the hearing. The Hearing Officers have also reviewed the response to the revised testimony submitted by the Department of Water Resources (DWR). The Hearing Officers have directed staff to inform the parties that, with the limited exceptions described below, any outstanding objections to the written testimony of SCDA's witnesses on the grounds that the testimony exceeds the scope of Part 1 are overruled.

The revised, written testimony of Janet McCleery and the written testimony of Michael Guzzardo is within the scope of Part 1. Consistent with the Hearing Officers' October 7 ruling, the written testimony of Ms. McCleery has been revised to exclude explicit references to the potential impacts of the WaterFix Project on recreation. The revised testimony concerns potential impacts to human uses of water, which is an issue that may be addressed in Part 1. Mr. Guzzardo's testimony concerns the potential, indirect economic impacts attributable to potential water quality impacts, which is also an issue that may be addressed in Part 1.

In large part, the written testimony of Frank Morgan has been revised to exclude testimony concerning potential environmental impacts and impacts to recreation, consistent with the Hearing Officers' October 7 ruling. Mr. Morgan's testimony still contains, however, a paragraph concerning subsistence fishing and several sentences concerning impacts to his charter boat tour business. The Hearing Officers have specifically directed parties to withdraw and resubmit in Part 2 any testimony concerning impacts to human uses associated with the health of a fishery or economic impacts to recreation-oriented businesses. Accordingly, the testimony on those subjects at the following locations is stricken:

Page 4, lines 1-6,
Page 5, lines 1-3, 15, 27
Page 6, lines 1, 17-19

Mr. Morgan also made a few additions to his testimony concerning impacts to Delta farmers and health and safety. The October 7 ruling did not permit the parties to add any substantive testimony. Accordingly, the new text at the following locations is stricken:

Page 4, line 27
Page 6, lines 13-15, 23

In large part, the written testimony of Michael Brodsky also has been revised consistent with the October 7 ruling. As directed, Mr. Brodsky has deleted most of his testimony concerning compliance with the Delta Reform Act, but some testimony on this subject remains. The remaining testimony concerning compliance with the Delta Reform Act at the following locations is stricken:

Page 3, lines 12-19
Page 4, line 13

In addition, Mr. Brodsky has added numerous footnotes to his testimony describing or authenticating various exhibits. These additions to his testimony are untimely, and therefore the new footnotes are stricken. Authentication of all of these exhibits may not be necessary. To the extent that authentication of these exhibits is warranted, SCDA may authenticate these exhibits during rebuttal, provided that the exhibits are responsive to the petitioners' case in chief.

Time Requested for Oral Summary of Direct Testimony

The Hearing Officers have also considered SCDA's request for extra time to present its case in chief. SCDA has requested a total of three hours and 25 minutes to present the testimony of six witnesses, three of whom are not designated as

experts. Taking into consideration the content and brevity of the written testimony, the Hearing Officers have determined that the amount of time requested is excessive. They have directed staff to inform Mr. Brodsky that SCDA's expert witnesses will be allowed 20 minutes each to summarize their written, direct testimony, and SCDA's non-expert witnesses will be allowed 10 minutes each, for a total of 1.5 hours, subject to extension for good cause shown.

If you have any non-controversial procedural questions about this ruling or other matters related to the California WaterFix Hearing, please contact the hearing team at CWFhearing@waterboards.ca.gov or (916) 319-0960.