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Subject: California WaterFix Hearing – Ruling Concerning Testimony of California Sportfishing Protection Alliance and other Part 1B Parties
Date: Wednesday, November 23, 2016 8:30:00 AM

Service List,

The Hearing Officers' October 7, 2016 ruling 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 reviewed the revised testimony submitted by the California Sportfishing Protection Alliance (CSPA), the California Water Impact Network (C-WIN), AquAlliance, Restore the Delta (RTD), and North Delta Cares, as well as 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 those parties' witnesses on the grounds that the testimony exceeds the scope of Part 1 are overruled.

Also, necessary corrections have been identified in exhibits of written testimony and PowerPoint presentations during the hearing or via rulings by the Hearing Officers. In an effort to keep the record as clean as possible, parties are directed to submit updated exhibits that reflect the corrections in strikeout/underline format when submitting requests to enter their exhibits into the evidentiary record.

CSPA's Testimony

CSPA revised the written testimony of Chris Shutes and G. Fred Lee in accordance with the October 7 ruling, and DWR's response did not assert that this testimony is outside the scope of Part 1.

DWR objected to the testimony of Thomas Cannon on the grounds that it addresses potential environmental impacts. Mr. Cannon's testimony discusses various environmental constraints on the operations of the Central Valley Project and the State Water Project in the context of a larger discussion regarding competing demands on these Projects and the potential effects of the WaterFix

Petition on water supplies and water quality. Because the focus of Mr. Cannon’s testimony is on water supplies, not environmental impacts, his testimony may be presented in Part 1.

The written testimony of Bill Jennings has been revised to exclude some of his proposed testimony concerning environmental impacts, but some testimony on this subject remains, including testimony concerning the adequacy of adaptive management to protect fisheries and application of the public trust doctrine. The testimony on those subjects at the following locations is stricken:

Page 3, first paragraph, last sentence

All of section VII, beginning on page 19, except the first three paragraphs and the last two paragraphs

All of section VIII, beginning on page 25, except the first two sentences of the first paragraph and the last two sentences of the second paragraph

C-WIN’s Testimony

C-WIN revised the testimony of Arve Sjøvold in accordance with the October 7 ruling, and DWR’s response did not assert that this testimony is outside the scope of Part 1.

AquAlliance’s Testimony

In large part, the written testimony of Barbara Vlamis has been revised to exclude testimony concerning compliance with the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA). The testimony on pages 8-12 of her written testimony, to which DWR has objected, concerns the potential cumulative impacts of the California WaterFix Petition, water transfers, and other projects on ground and surface water resources in the Sacramento Valley. Although Ms. Vlamis includes CEQA and NEPA documents in her description of projects that she alleges contribute to cumulative impacts, the general thrust of her testimony concerns the need to evaluate cumulative impacts on water resources, not the adequacy of the environmental documentation prepared for the WaterFix Petition for purposes of CEQA compliance. Accordingly, Ms. Vlamis’s testimony is permissible, with one, minor exception.

On page 12, first paragraph, the following phrase from the last sentence is stricken: “that leaves the SWRCB without a CEQA document on which to rely.”

The written testimony of James R. Brobeck has been revised, but it still contains testimony concerning potential environmental impacts, including potential impacts to Valley Oak trees, urban shade trees, and salmon habitat in tributaries to the Sacramento River. Although Mr. Brobeck has revised his testimony to describe how these impacts could affect people, 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. Similarly, testimony concerning potential impacts to trees and the associated impacts to people should be presented in Part 2. Accordingly, the following portions of Mr. Brobeck’s testimony is stricken:

Beginning on page 3, new text through page 4, first full paragraph

Page 5, first paragraph

RTD’s Testimony

RTD revised the testimony of Esperanza Vielma in accordance with the October 7 ruling, and DWR’s response did not assert that this testimony is outside the scope of Part 1. In addition, RTD has withdrawn the testimony of Gary Mulcahy, Roger Mammon and Xuily Lo.

The written testimony of Tim Stroshane has been revised, but it still contains testimony concerning consistency with the Delta Reform Act; the cost of constructing the California WaterFix Project, and how the project will be funded; CEQA compliance; and potential impacts to recreation and fishing. The October 7 ruling directed parties to present any testimony concerning project costs and financing in Part 2 of the hearing, subject to additional direction from the Hearing Officers. The Hearing Officers also directed the parties to withdraw and resubmit in Part 2 any testimony concerning consistency of the project with Delta Reform Act, potential impacts to recreation, or potential impacts to fishing. Accordingly, the following portions of Mr. Stroshane’s written testimony are stricken:

Page 2, paragraph 65

Beginning on page 21, paragraphs 66-73

Page 30, lines 8-10

Page 49, paragraph 145

In addition, the references to impacts to recreation and fishing at the following location is stricken:

Page 38, lines 9-11

Mr. Stroshane is also directed to delete slide 3 of his presentation (RTD-11) and revise slides 2 and 8 consistent with these revisions to his testimony.

The remaining portions of Mr. Stroshane's revised testimony are within the scope of Part 1. Mr. Stroshane's remaining testimony at page 30 concerns the adequacy of the project description for purposes of evaluating potential injury to legal users, not the adequacy of the project description for purposes of CEQA compliance. Similarly, his testimony at pages 44-45 concerns the adequacy of DWR and the U.S. Bureau of Reclamation's analysis of potential water quality impacts to municipal users, not the adequacy of the analysis for purposes of CEQA compliance. RTD's recommendations at pages 50-52, paragraphs 149-159, touch on some of the policies contained in the Delta Reform Act, such as the need to reduce reliance on the Delta, but do not allege that the project is inconsistent with the Act.

North Delta Cares' Testimony

In large part, the testimony of Steve Haze has been revised in accordance with the October 7 ruling. Although his remaining testimony contains a reference to the public trust doctrine, his testimony is less than one page, and mostly concerns project alternatives and construction-related impacts. Accordingly, Mr. Haze will be permitted to present his remaining testimony in Part 1.

The testimony of Mark Pruner and Richard E. Marshall is within the scope of Part 1. Mr. Pruner's testimony concerns potential construction-related impacts to groundwater and emergency services, and the associated costs. Mr. Marshall's testimony concerns potential impacts to water quality and water levels in the Delta, and the indirect, economic impacts that may stem from a decrease in water availability. Those issues may be addressed in Part 1.

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@watersboards.ca.gov or (916) 319-0960.