
State Water Resources Control Board

March 21, 2017

VIA ELECTRONIC MAIL

TO: [CURRENT SERVICE LIST](#)

CALIFORNIA WATERFIX HEARING – RULING ON JOINT MOTION FOR RECONSIDERATION

This letter responds to a Joint Motion for Reconsideration (Motion) received from Local Agencies of the North Delta, et al., Islands, Inc., and the San Joaquin County Protestants (collectively LAND) in response to certain portions of our February 21, 2017 Ruling on Evidentiary Objections (Ruling). The Ruling sustained objections to the following exhibits: LAND-3 through LAND-7, LAND-51 through LAND-55, and LAND-57 through LAND-60. LAND requests reconsideration of the Ruling as to all of these exhibits except LAND-51 through LAND-55. For the reasons stated below, we GRANT LAND's Motion as to LAND-6 and LAND-7 and DENY the Motion as to the remaining exhibits.

February 21, 2017 Ruling

LAND-3 through LAND-7 and LAND-57 through LAND-60 are maps with superimposed graphics that purport to depict the location of the infrastructure associated with the California WaterFix Project relative to various other features, including reclamation district boundaries, the locations of various points of diversion, parcel boundaries, and groundwater wells. The Ruling stated that these exhibits would not be admitted because the exhibits did not identify the source of information depicted and neither the exhibits themselves nor any of LAND's witnesses identified how the exhibits were prepared, or by whom.

Note Regarding Motions for Reconsideration Generally

At the outset, it bears emphasis that we generally disfavor motions for reconsideration of our procedural rulings. In this case, we considered LAND's request in the interests of efficiency. If we were to deny the Motion in its entirety, LAND could still submit the excluded exhibits as rebuttal evidence on March 23, 2017. For the reasons explained below, however, LAND-6 and LAND-7 already have adequate foundation in the record, so denying the Motion as to those exhibits would serve no purpose. Parties who may wish to submit motions for reconsideration in the future should not count on having the benefit of the same procedural posture that informed this ruling.

Ruling on LAND's Motion for Reconsideration

The State Water Resources Control Board may admit any relevant evidence "if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs." (Gov. Code, § 11513; Cal. Code of Regs., title 23, § 648.5.1.) "Responsible persons" generally

would not rely on maps with the locations of infrastructure and other features graphically superimposed unless there were reliable information in the record indicating that the graphics were accurately placed—i.e., adequate foundation. Sworn testimony by the person who prepared the altered maps or by a person who can attest to the maps' accuracy can provide this foundation.

LAND-3 through LAND-5 and LAND-57 through LAND-60 on their face do not provide enough explanation regarding both the source of the data depicted and the methodology for superimposing it on the maps for the exhibits to be reliable. LAND is incorrect that “[a]ll of the maps include text explaining that they were prepared ... using Arcmap 10.4 software ...,” nor does Exhibit B to LAND’s protest provide a “map of water diversion points within the LAND geographic area.” (Motion, p. 3.) Further, no expert witnesses spoke to these exhibits’ methodology during LAND’s case-in-chief. None provided other indicia of reliability except to state in conclusory fashion that they ordinarily would rely on the maps. For “responsible persons” to rely on such exhibits, the State Water Board would need more specific indicia of reliability.

Such indicia of reliability exist for LAND-6 and LAND-7 because there is sworn testimony in the record by witnesses with personal knowledge of the information portrayed in the maps. As Exhibit 2 to the Motion indicates, Mr. Daniel Lange testified that LAND-6 accurately depicted the locations of his points of diversion. (R.T. (Nov. 3, 2016) 126:17-128:4.) Similarly, Mr. Richard Elliot testified that LAND-7 accurately portrayed the extent of the property he manages and the location of its points of diversion. (R.T. (Nov. 10, 2016) 55:4-16, 195:16-21.) Absent some showing to the contrary, this testimony satisfies us that the information in LAND-6 and LAND-7 is reliable. (This is not the case with respect to LAND-58. Although Mr. Russell Van Loben Sels attested to the location of the groundwater wells depicted in the northern part of LAND-58, he did not attest to the location of all of the wells. (R.T. (Nov. 10, 2016) 113:8-115:10.))

LAND still has an opportunity to submit previously excluded exhibits with its rebuttal testimony by noon on March 23, 2017. Note that such rebuttal submissions are subject to ordinary evidentiary objections.

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.

Sincerely,

ORIGINAL SIGNED BY

Felicia Marcus, State Water Board Chair
WaterFix Project Co-Hearing Officer

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Tam M. Doduc, State Water Board Member
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