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## State Water Resources Control Board

June 18, 2018

VIA ELECTRONIC MAIL

TO: [CURRENT SERVICE LIST](#)

### **CALIFORNIA WATERFIX HEARING - DEADLINE FOR PART 2 REBUTTAL TESTIMONY AND EXHIBITS AND NOTICE OF REBUTTAL HEARING DATES**

This ruling provides deadlines, hearing dates, and direction to the parties regarding submission and service of exhibits for the rebuttal phase of Part 2 of the California WaterFix hearing.

As explained in our ruling dated [April 18, 2018](#), recent changes to the WaterFix Project announced by the Department of Water Resources (DWR) required us to defer scheduling the rebuttal phase of Part 2 pending DWR's preparation of an Environmental Impact Report/Environmental Impact Statement Supplement (EIR Supplement) describing and evaluating the project changes. On June 12, 2018, DWR shared an administrative draft of the EIR Supplement with the Service List. We have reviewed the EIR Supplement and have determined that the type and level of detail is adequate for proceeding with Part 2 rebuttal. In the April 18, 2018 ruling, we also informed parties that they should prepare for rebuttal on all other topics, as we did not plan on significant delay between our notice of rebuttal schedule and the due date for rebuttal exhibits.

#### **Deadline for Rebuttal Testimony and Exhibits**

The deadline for receipt and service of parties' rebuttal exhibits for Part 2 is **12:00 PM on July 10, 2018**. Parties' Part 2 rebuttal submittals should include rebuttal witnesses' written testimony, their statements of qualifications, other rebuttal exhibits, an updated exhibit identification index, and a statement of service.

#### **Scope of Part 2 Rebuttal**

Parties permitted to present rebuttal evidence include those who presented a case-in-chief in Part 2 of the hearing and those who indicated on their Supplemental Notice of Intent to Appear that they would participate through cross-examination and/or rebuttal.<sup>1</sup> We remind parties that rebuttal evidence is limited to evidence that is responsive to evidence presented in connection with another party's Part 2 case-in-chief, and it does not include evidence that should have been presented during the case-in-chief of the party submitting rebuttal evidence. It also does not include repetitive evidence.

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<sup>1</sup> Although certain parties represented by Osha Meserve did not file Supplemental Notice of Intent to Appear in Part 2, we stated in a ruling dated [November 8, 2017](#), that those parties would be allowed to present rebuttal evidence pertaining to Part 1 key hearing issues if it is in direct response to another party's Part 2 case-in-chief.

In accordance with previous rulings, parties may submit evidence during the rebuttal phase of Part 2 that is relevant to Part 1 issues, provided that the evidence is responsive to another party's Part 2 case-in-chief. In addition, the parties may submit evidence that is responsive to DWR's EIR Supplement, even if that evidence touches on matters not directly raised during the case-in-chief phase of Part 2. Throughout the rebuttal phase of Part 2, the scope of cross-examination will be limited to matters raised by the witness during rebuttal.

### Submitting Rebuttal Exhibits

The State Water Resources Control Board's (State Water Board) secure file transfer protocol (FTP) website is available for parties to upload and provide service of written rebuttal testimony and other evidentiary exhibits. The public FTP account is accessible at: <https://ftp.waterboards.ca.gov>

Reminders to all parties submitting rebuttal exhibits:

1. Correctly fill out an exhibit identification index (EII)
  - a. Your EII should include the exhibit number (e.g., SWRCB-30), a short description of the exhibit (e.g., *SWRCB. Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary, May 1995*), and file name (e.g., *swrcb30.pdf*).
  - b. Exhibit numbers should not include extra dashes, parentheses, or periods.
  - c. File names should be lowercase and should only include your party's acronym and the corresponding exhibit number (e.g., *dwr100.pdf*).
    - **Please note:** if the file name listed on your EII **does not match** the actual name of the file you upload to the FTP site, the exhibit will not be posted correctly and the link to that exhibit will take you to an error page instead of your exhibit.
  - d. We strongly discourage parties from straying from the above recommendations to avoid confusion and errors on their exhibit page.
2. Exhibits should be submitted through the FTP site at <https://ftp.waterboards.ca.gov>
  - a. Parties have been assigned individual usernames and passwords for file upload and download to their respective FTP folders. Please contact the hearing team if you have forgotten your username or password.
  - b. Exhibits uploaded with a timestamp after the deadline are considered late.
  - c. Late exhibits will not be accepted unless the Hearing Officers decide a valid reason exists for an exception.
3. Posting of exhibits
  - a. A notification will be sent to the Service List once all on-time exhibits have been posted to their respective exhibit pages.
  - b. It is the parties' responsibility to check that their exhibits have been properly uploaded BEFORE the day they present and to notify the hearing team promptly of any errors.
  - c. Please allow one to two business days for corrections to appear on your exhibit page once you notify the hearing team of an error.

As of the date of this ruling, the parties' individual FTP folders are private and no longer publicly viewable. Up until the rebuttal exhibit deadline, parties may upload and delete files from their FTP folder as needed in preparation for rebuttal.

During the case-in-chief phase of Part 2, we accommodated several parties who encountered technical difficulties while attempting to upload their exhibits and were unsuccessful in completing their uploads by the deadline. Because the parties now have the benefit of that learning experience, we will not make similar accommodations during the rebuttal phase. Therefore, a party's rebuttal exhibits all must be uploaded to the FTP folder by **12:00 PM sharp on July 10, 2018**. Staff will make the documents in the parties' FTP file folders publicly viewable shortly afterwards. We therefore strongly advise parties to begin uploading their exhibits *well before noon* to ensure that they do not have any technical issues uploading documents that would result in missing the service deadline.

### **Evidentiary Objections to Rebuttal Testimony and Exhibits**

The hearing team will review the written testimony before the hearing resumes to ensure that the testimony is relevant, within the scope of rebuttal, and sufficiently reliable to be admissible. To the extent necessary, we will exclude any witnesses' rebuttal testimony on our own motion before the hearing resumes. To assist in our review, **parties' rebuttal witness testimony must clearly indicate the case-in-chief evidence to which the rebuttal evidence is responsive**. If an exhibit does not clearly cite to another party's Part 2 case-in-chief evidence as the basis of rebuttal, that portion of the testimony or exhibit may be stricken.

Any objections to the admissibility of rebuttal exhibits that we do not address on our own motion must be made orally during the hearing at or before the time when the testimony and exhibits are offered into evidence. At our discretion and for the convenience of all parties, we may grant requests to submit such objections in writing, particularly for lengthy, complex or detailed objections. Any objections that go to the weight of rebuttal exhibits, including but not limited to hearsay objections, should be reserved for the parties' closing briefs. Please refer to our [March 15, 2017](#) ruling (pp. 2-4) for guidance in determining what types of objections are appropriate in State Water Board proceedings.

We will continue to respond to evidentiary motions and objections as necessary. However, we remind the parties that the bar for the admission of evidence is low in administrative proceedings, and evidence may be admissible even though its probative value is limited. The parties are nonetheless responsible for providing adequate foundation to demonstrate that their exhibits are reliable and relevant to another party's case-in-chief. We will not consider any objections to the admissibility of a party's rebuttal exhibits that are made after the party's rebuttal testimony and exhibits are offered into evidence.

### **Proposed Groupings and Order of Parties**

The order of presentation for rebuttal will proceed in group number order (see the [WaterFix exhibits web page](#) for parties' group numbers) except for instances in which we grant a request to change the order. Proposals for grouping parties' rebuttal witnesses and/or changing the

order of parties for rebuttal testimony and cross examination are due at **12:00 PM on July 17, 2018**. We will notify the Service List of any changes to the order of presentation.

### **Hearing Dates for Part 2 Rebuttal**

Presentation of rebuttal testimony will commence on **August 2, 2018, at 9:30 a.m.** and will continue on the dates and the locations shown on the attached Part 2 Hearing Schedule. Petitioners will present their rebuttal testimony first, followed by cross-examination, any redirect and recross-examination that we may allow, followed by the next party's presentation of rebuttal, and so on. Rebutting parties should be ready to present their rebuttal testimony and exhibits when they are called. If a party cannot present on a particular day, it is that party's responsibility to coordinate with another party to take their place in the order or presentation and give us and the Service List at least three days' notice. Proposals to present out of order are subject to our approval.

### **Part 2 Sur-Rebuttal**

Sur-rebuttal testimony is responsive to evidence submitted during rebuttal. At this point, it is unclear whether sur-rebuttal will be warranted. If, during the course of rebuttal phase, we determine that sur-rebuttal is warranted, it may follow immediately after Part 2 rebuttal has concluded.

### **Offsite Hearing Locations**

Due to limited availability of hearing rooms in the Joe Serna Jr., CalEPA Building, the State Water Board may use the hearing room at the Central Valley Regional Water Quality Control Board office in Rancho Cordova. We will provide a supplemental notice of hearing dates if the hearing room locations change.

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](mailto:CWFhearing@waterboards.ca.gov) or (916) 319-0960.

Sincerely,

*ORIGINAL SIGNED BY:*

*ORIGINAL SIGNED BY:*

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

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Tam M. Doduc, State Water Board Member  
WaterFix Project Co-Hearing Office

Attachment: Part 2 Rebuttal Schedule

**Part 2 Rebuttal Schedule (June 18, 2018):**

Hearing Dates and Room Schedule for Part 2 Rebuttal  
of the California WaterFix Water Right Change Petition Hearing

**PART 2** of the hearing will resume on **August 2, 2018 at 9:30 a.m.** Unless the hearing officers notify the parties of any additional changes to the hearing schedule, the hearing is scheduled to begin at 9:30 a.m. on each of the following dates at the Joe Serna Jr. CalEPA Building, 1001 I Street, Second Floor, Sacramento, CA in the hearing room specified below, unless an alternative location is specified. Start times may be earlier than 9:30 a.m. on subsequent hearing days if the hearing officers determine it is necessary. Any change in start times will be announced at the conclusion of the previous hearing day.

<b>DATE</b>	<b>HEARING ROOM*</b>
August 02, 2018	Coastal Hearing Room
August 03, 2018	Coastal Hearing Room
August 06, 2018	Coastal Hearing Room
August 09, 2018	Coastal Hearing Room
August 10, 2018	Coastal Hearing Room
August 13, 2018	RWQCB-5**
August 14, 2018	Coastal Hearing Room
August 15, 2018	Coastal Hearing Room
August 16, 2018	Coastal Hearing Room
August 17, 2018	Coastal Hearing Room
August 20, 2018	Coastal Hearing Room
August 23, 2018	Coastal Hearing Room
August 24, 2018	Coastal Hearing Room
August 27, 2018	Coastal Hearing Room
August 28, 2018	Coastal Hearing Room
August 29, 2018	Coastal Hearing Room
August 30, 2018	Coastal Hearing Room
August 31, 2018	Coastal Hearing Room

\* Hearing room is subject to availability.

\*\* Offsite locations include the California Regional Water Quality Control Board Central Valley Region (5), Sacramento Office Hearing Room.

If the hearing must be moved from one hearing room to another location on a particular date, then the parties on the [Current Service List](#) will be notified and a revised schedule will be posted on the State Water Resources Control Board's California WaterFix hearing webpage at [www.waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/california\\_waterfix/ruling\\_notices/](http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/ruling_notices/) prior to the hearing date. If the change is within the same building, the parties on the Current Service List will be notified and a sign will be posted on the door of the hearing room listed above directing attendees to the new hearing room.

Part 2 Rebuttal Schedule (June 18, 2018): – Continued

The addresses of the hearing rooms in the table above are as follows:

HEARING ROOM	LOCATION/ADDRESS
Sierra Hearing Room, Coastal Hearing Room, and Byron Sher Auditorium	Joe Serna Jr.-CalEPA Building 1001 I Street, Second Floor Sacramento, CA 95814 <a href="#">MAP</a>
RWQCB-5	California Regional Water Quality Control Board Central Valley Region (5), Sacramento Main Office 11020 Sun Center Drive, Suite 200 Rancho Cordova, CA 95670 <a href="#">MAP</a>

Live Broadcasts of the hearing will be available via the internet and can be accessed at:  
<https://video.calepa.ca.gov/>.

For a map to the Joe Serna Jr. CalEPA Building, visit: [www.calepa.ca.gov/headquarters-sacramento/location/](http://www.calepa.ca.gov/headquarters-sacramento/location/). For security purposes, all visitors are required to sign in and receive a badge prior to entering the building. Valid picture identification may be required depending on the security level in effect on the day of the hearing. Individuals who require special accommodations are requested to contact the hearing team at [CWFhearing@waterboards.ca.gov](mailto:CWFhearing@waterboards.ca.gov) or (916) 319-0960.