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14 On behalf of Central Delta Water Agency,
15 South Delta Water Agency, Lafayette Ranch,
16 Heritage Lands, Mark Bachetti Farms
17 and Rudy Mussi Investments L.P.

18 **STATE OF CALIFORNIA**

19 **STATE WATER RESOURCES CONTROL BOARD**

20 Hearing in the Matter of California
21 Department of Water Resources and
22 United States Department of the Interior,
23 Bureau of Reclamation Request for a
24 Change in Point of Diversion for
25 California Water Fix

**PROTESTANTS CENTRAL DELTA
WATER AGENCY, SOUTH DELTA
WATER AGENCY, LAFAYETTE RANCH,
HERITAGE LANDS, MARK BACHETTI
FARMS AND RUDY MUSSI
INVESTMENTS L.P. REQUEST FOR AN
EXTENSION OF TIME TO SUBMIT
PROTESTANTS EXHIBITS AND
WRITTEN SUMMARIES OF TESTIMONY
FOR PART 1B OF THE CALIFORNIA
WATER FIX CHANGE PETITION**

26 Protestants Central Delta Water Agency, South Delta Water Agency, Lafayette Ranch,
27 Heritage Lands, Mark Bachetti Farms and Rudy Mussi Investments L.P., the (“Central Delta
28 Parties”) herein move the State Water Resources Control Board, (“State Board”) for an
extension of time to submit exhibits and written summaries of testimony for Part 1B of the
California Water Fix (“CWF”) Change Petition hearing (“Change Petition”) until thirty (30)

Protestants Central Delta Water Agency, South Delta Water Agency, Lafayette Ranch, Heritage Lands, Mark Bachetti Farms and Rudy Mussi Investments L.P. Request for an Extension of Time to Submit Protestants Exhibits and Written Summaries of Testimony for Part 1b of the California Water Fix Change Petition

1 days after completion of Part1A of the hearing. The Central Delta Parties are informed that
2 this motion will be joined by several other Protestants including but likely not limited to:
3 California Sportfishing Protection Alliance, California Water Impact Network, AquAlliance,
4 Restore the Delta, County of San Joaquin, San Joaquin County Flood Control and Water
5 Conservation District, Mokelumne River Water and Power Authority, Save the California
6 Delta Alliance, Janet & Michael McCleary, Frank Morgan, Captain Morgan's Delta
7 Adventures, LLC, Pacific Coast Federation of Fishermen's Associations and Institute for
8 Fisheries Resources and Local Agencies of the North Delta, Stillwater Orchards, Bogle
9 Vineyards, Diablo Vineyards, Delta Watershed Landowner Coalition, et. al.

11 PROCEDURAL SUMMARY

12 On August 25, 2015 the California Department of Water Resources and the United
13 States Bureau of Reclamation jointly submitted a Petition for a change to the water rights
14 necessary to allow for implementation of key components of the WaterFix program.
15 Specifically, the Petitioners sought the authorization to add three points of diversion in the
16 North Delta as part of the State Water Project and Central Valley Project, the ("Change
17 Petition.") On or about October 30, 2015, the State Board issued a Notice of Petition and
18 Notice of Public Hearing and Pre-Hearing Conference regarding the Change Petition.

19 On February 11, 2016, the State Board's hearing team issued a hearing schedule
20 whereby Part 1A of the hearing (Petitioners' Cases-in-Chief) would commence Thursday,
21 April 7, 2016, with service of Petitioner's Cases-in-Chief, Witnesses' Proposed Testimony,
22 Witness Qualifications, list of Exhibits and a Statement of Service ("Hearing Documents") due
23 by March 1, 2016. Part 1B of the hearing (Protestants' Cases-in-Chief) was to begin on June
24 23, 2016.

25 On February 23, 2016, Petitioners submitted their first request for an extension of time
26 within which to submit their Hearing Documents. At that time Petitioners sought an additional
27 30 days, moving the due date for submittal of their cases-in-chief from March 1st to March 31st.

1 The basis of Petitioners request was that they needed more time to prepare. On February 25,
2 2016, SWRCB granted the requested extension.

3 On March 28, 2016, just three days before the documents comprising their case in chief
4 was due, Petitioners again sought an extension. This time Petitioners requested a 60-day
5 continuance of all dates and deadlines associated with the subject hearing. On April 25th, the
6 SWRCB granted the Petitioners' request and set the current hearing schedule. Consequently,
7 Petitioners were given until May 30, 2016 to submit their cases-in-chief.

8 The hearings associated with Part 1A in this matter commenced on July 26, 2016 and
9 are scheduled to run beyond September 1. The current schedule requires Protestants' Hearing
10 Documents to be submitted no later than September 1st, with Part 1B commencing October 20,
11 2016.

12 ARGUMENT

13 **I. AS A MATTER OF FUNDAMENTAL FAIRNESS AND EFFICIENCY THE** 14 **HEARING TEAM SHOULD EXTEND THE DEADLINE FOR SUBMITTAL** 15 **OF PROTESTANTS' CASES-IN-CHIEF FOR PART 1B OF THE** 16 **PROCEEDING UNTIL THIRTY DAYS AFTER COMPLETION OF** 17 **PETITIONERS CASES-IN-CHIEF IN PART 1A.**

18 The touchstone of due process is fundamental fairness. (*Whitehouse v. Six Corp.*
19 (1995) 40 Cal.App.4th 527) Generally, due process is the opportunity to be heard at a
20 meaningful time and in a meaningful manner. (*Community Youth Athletic Center v. City of*
21 *National City* (2013) 220 Cal.App.4th 138.) Due process, unlike other legal concepts, is not a
22 technical conception with a fixed content unrelated to time, place and circumstances; due
23 process is flexible and calls for such procedural protections as the particular situation demands.
24 (*Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264.) In essence, due process principles
25 are intended to guarantee a fundamentally fair decision-making process; at a minimum, due
26 process requires notice and an opportunity for a hearing, and other safeguards that may be
27 required vary with the circumstances. (*Beck Development Co. v. Southern Pacific*
28 *Transportation Co.* (1996) 44 Cal.App.4th 116.) "Due process of law" does not necessarily

1 mean that a person is entitled to a trial in a court before he may be deprived of what may be
2 equivalent to property rights, but does mean that an orderly proceeding, adapted to the nature
3 of the case, shall be accorded to the owner of property, in which he may be heard, and where
4 he may defend, enforce, and protect his personal rights. (*Gregory v. Hecke* (1925) 73
5 Cal.App. 268.)

6
7 **A. It Is Infeasible For Protestants To Complete The Preparation Of Their
8 Cases In Chief While Part 1A Of The Hearing Is Ongoing.**

9 Petitioners are currently in the process of putting on their cases-in-chief. The testimony
10 submitted has been involved, technical and has required the full attention and participation of
11 Protestants and counsel. The cross examination of Petitioners' witnesses has raised many
12 additional questions and issues beyond those reflected in the written summaries and exhibits.
13 Protestants must simultaneously react to the testimony elicited by others during cross
14 examination both for the purposes of preparing their own cross examination and completing
15 their cases-in-chief. Protestants, most of who are public entities, individual farm-related
16 businesses, small non-profit organizations and/or ordinary citizens, have limited staff and
17 resources. Protestants must also review the elicited testimony with their experts, which is a
18 time consuming process. The requested extension of time will allow Protestants to more
19 efficiently prepare and subsequently present their cases-in-chief. It will also ensure that the
20 cases in chief are responsive to the evidence and testimony submitted by the Petitioners.
21 Ultimately, this will preserve limited resources for all parties and Board staff, and ultimately
22 assist the hearing team in ruling on the Change Petition.

23
24 **B. The Hearing Team Granted Petitioners' Similar Requests for Extensions of
25 Time to Submit Their Cases-in-Chief.**

26 As set forth in the above procedural summary, on two occasions the Hearing Team
27 granted Petitioners' requests for extensions of time to submit their cases-in-chief. Petitioners'
28 requests were based on the need for more time to submit the written materials comprising their

1 cases-in-chief. Petitioners' second request was made on March 28, 2016 just three days before
2 the then existing deadline. Nevertheless, Petitioners' requests were granted even though it was
3 Petitioners who themselves initiated the Change Petition and, thus conceivably should have
4 been ready to proceed. Moreover, Petitioners were not forced to complete preparation of the
5 cases-in-chief while the hearing was underway.

6
7 **C. Protestants Have Not Had Adequate Time To Review The CWF Draft**
8 **Biological Assessment And Incorporate The Information Into Their Cases-**
9 **In-Chief.**

10 While Part 1a has proceeded, the conditions under which the proposed changes in water
11 rights would occur has continued to evolve. For instance, the CWF Draft Biological
12 Assessment ("BA") was issued the last week in July after while the CWF hearing was
13 underway. The BA is over 1,300 pages and contains critical information that pertains to Part 1
14 issues. Protestants have not had an adequate opportunity to review the BA with the necessary
15 technical experts, and will not have time for this to occur prior to September 1st. The
16 requested extension will more adequately allow Protestants to determine what information in
17 the BA needs to be included in Part 1 of the proceedings.

18
19 **CONCLUSION**

20 Any inconvenience claimed by Petitioners from allowing Protestants thirty days from
21 completion of Part 1A of the hearing is far outweighed by the harm that Protestants will suffer
22 if they are required to comply with the current September 1st, deadline to submit the written
23 materials comprising their cases-in-chief. Thus, for the reasons set forth above, Protestants
24 respectfully request that the schedule be modified to allow protestants to submit their cases in

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26 ///

27 ///

28 ///

1 chief no later than thirty days after completion of Part 1A of the hearing. All other dates in the
2 schedule may remain the same.

3
4 DATED: August 11, 2016

HARRIS, PERISHO & RUIZ

5
6 By Dean Ruiz
7 S. DEAN RUIZ