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## State Water Resources Control Board

November 8, 2017

VIA ELECTRONIC MAIL

TO: [CURRENT SERVICE LIST](#)

### **CALIFORNIA WATERFIX HEARING – RULING ON MATTERS RAISED DURING THE OCTOBER 19, 2017 PRE-HEARING CONFERENCE**

This ruling addresses questions raised by parties during the pre-hearing conference held on October 19, 2017. We appreciate the parties' cooperation in ensuring that Part 2 of this hearing is carried out in a manner that is fair, probative, and efficient. We are also taking this opportunity to update our previously distributed "California WaterFix Change Petition Hearing Part 2 Guidance Document," which was an attachment to the Part 2 pre-hearing conference agenda, to reflect clarifications made during the pre-hearing conference.

#### **1. Changes in the Project**

During the pre-hearing conference, Ms. Osha Meserve and Mr. Michael Brodsky sought clarification that revisions to the proposed California WaterFix Project as described in the water right change petition filed with the State Water Resources Control Board (State Water Board, or Board) would require a new or revised petition for change. Whether a revision to the proposed project would trigger the need for a revision to the petition or additional administrative procedures before the Board depends on the nature of the proposed change. To-date, petitioners have not proposed to alter the physical parameters of the project or proposed any changes to operating criteria that cannot be addressed in Part 2 of the hearing.

Parties also asked whether the State Water Board would order the petitioners to reimburse parties' costs for participating in this proceeding if petitioners decide to revise or abandon the proposed project. This issue is also premature, but we are not aware of any authority for the State Water Board to order the reimbursement of costs. The right to cost recovery arises solely in statute. (*Baker-Hoey v. Lockheed Martin Corp.* (2003) 111 Cal.App.4th 592, 597 ["[I]n the absence of an authorizing statute, no costs can be recovered by either party".]) In the case of an administrative proceeding before the State Water Board, no statutory basis exists for the recovery of costs incurred during the course of the proceeding.

#### **2. Delta Flow Criteria**

Several protestants raised concerns about the due process implications of requiring protestants to present evidence in the first instance as to appropriate Delta flow criteria, rather than responding to a proposal put forward either by petitioners or staff of the State Water Board. As we have previously made clear, Board staff will not be presenting any proposals for Delta flow criteria or offering any evidence in support. This is an adjudicatory proceeding, and it is incumbent upon the parties to present evidence in support of their positions on the hearing

issues. The Final Environmental Impact Report (EIR) for the project evaluates a range of alternatives with different flow criteria and operating scenarios. Although Alternative 4A is petitioners' preferred alternative, petitioners also evaluated a range of operational scenarios from Boundary 1 to Boundary 2 as part of their case-in-chief in Part 1 of the hearing. In Part 1, protestants had the opportunity to cross-examine petitioners' witnesses and present rebuttal evidence concerning the range of operational scenarios evaluated by petitioners. In Part 2, parties may propose flow criteria outside the range of operational scenarios evaluated by petitioners, and the other parties will have an opportunity to conduct cross-examination and present rebuttal evidence concerning those proposals as well.

After the presentation of evidence, the Board will determine what flow criteria are appropriate conditions of any approval of the petition based on the evidentiary record before it. No due process right exists to submit evidence to "rebut" the Board's determination. The parties will have the opportunity to comment upon the Board's draft order, and if appropriate, point to any evidence in the record that the parties believe support a different conclusion as to appropriate Delta flow criteria. Insofar as protestants' argument on this point is a repeat of the argument for bifurcating the presentation of cases-in-chief, we have denied the request and will not be reconsidering that denial (see pages 1 and 2 of our [September 29, 2017 ruling](#)).

The flow criteria imposed as a condition of any approval would apply only to the California WaterFix Project. The State Water Board's decision in the change petition proceeding will not address the responsibilities of third parties whose water rights are not at issue in this proceeding. Unlike the more narrow focus of this proceeding, the ongoing development of any necessary revisions to the water quality objectives contained in the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta Plan), along with implementation measures for those water quality objectives, will entail a much more comprehensive evaluation of the effects of all diversions and other factors on the beneficial uses of water in the Bay-Delta. The Bay-Delta planning process is not limited to consideration of the impacts of the State Water Project (SWP) and Central Valley Project (CVP) on water quality in the Bay-Delta. (See generally, *United States v. State Water Resources Control Board* (1983) 182 Cal.App.3d 82, 119-122 [promulgation of water quality objectives should not be constrained by or limited to requirements that can be imposed on the SWP and CVP].) Whether any other water right holders should be required to make additional outflow contributions will be addressed as part of the update and implementation of the Bay-Delta Plan, along with any appropriate revisions to SWP and CVP responsibilities.

Some parties also raised concerns about compliance with the California Environmental Quality Act (CEQA) in connection with the State Water Board's decision on appropriate Delta flow criteria. We disagree with the blanket assertion that any decision to impose flow criteria that deviate from the specific operational scenarios evaluated by petitioners would trigger the need to prepare additional CEQA documentation. If the Board imposes flow criteria that are within the range of alternatives evaluated in the Final EIR, additional CEQA documentation likely would not be required. The Board has the authority, however, to impose flow criteria that are outside of the range of alternatives evaluated in the Final EIR if the Board finds those criteria to be appropriate based on the hearing record. As protestants point out, in that case, the Board may need to conduct additional environmental analyses to satisfy CEQA requirements.

### **3. Reports Authored by the State Water Resources Control Board**

Parties have requested clarification as to how the report titled "Development of Flow Criteria for the Sacramento-San Joaquin Delta Ecosystem" prepared by the State Water Board pursuant to

the Sacramento-San Joaquin Delta Reform Act of 2009 (2010 Flow Criteria Report) and other technical reports authored by the State Water Board would be introduced into the administrative record, and whether State Water Board staff would offer supporting testimony. The 2010 Flow Criteria Report provides an analysis of the instream flow needs of the Delta and flow criteria for the Delta ecosystem necessary to protect public trust resources. The Water Code requires that any order approving a change in the point of diversion of the State Water Project or the federal Central Valley Project from the southern Delta to a point on the Sacramento River include appropriate Delta flow criteria and be informed by the analysis conducted in the 2010 Flow Criteria Report. (Wat. Code, § 85086.) The 2010 Flow Criteria Report was offered into evidence by the Pacific Coast Federation of Fishermen's Associations (PCFFA) during Part 1 of this proceeding, and has been admitted into the evidentiary record as Exhibit SWRCB-25. We do not anticipate that we will offer any other reports into the administrative record on our own motion. Other reports authored by the Board could, however, be offered by parties and admitted without sponsoring testimony because there is no requirement under State Water Board regulations or Chapter 4.5 of the Administrative Procedure Act that every exhibit be supported by testimony. We addressed this issue previously in our [February 21, 2017 ruling](#). In assessing the reliability of the reports and their relevance to the hearing issues, we will consider the extent of any supporting testimony and whether there was an opportunity for cross-examination on the information and conclusions in the reports.

#### **4. Scope of Part 2**

There are a few parties represented by Ms. Meserve who participated in Part 1 of the hearing and did not file a notice of intent to participate in Part 2 of the hearing (Bogle Vineyards/Delta Watershed Landowner Coalition (DWLC); Diablo Vineyards and Brad Lange/DWLC; and Stillwater Orchards/DWLC). These parties now seek to participate in Part 2 with respect to Part 1 issues that may arise. We will allow these parties to participate in Part 2 consistent with the guidance provided at the pre-hearing conference. Specifically, these parties may cross-examine witnesses on Part 1 issues so long as the line of questioning directly relates to the witnesses' direct testimony in Part 2. In addition, these parties may present rebuttal evidence within the scope of Part 1 if it is in direct response to another party's Part 2 case-in-chief.

The Sacramento Valley Water Users (SVWU) inquired as to the appropriate time to present evidence related to the water supply implications of the modeling associated with the Biological Opinions for the project; that was not offered into evidence during Part 1. We will consider this issue further after the submission of cases-in-chief on November 30, but we want to emphasize that parties should generally not count on revisiting Part 1 issues after the close of Part 2 of this proceeding. To the extent possible, Part 1 issues that arise during Part 2 should be addressed within the scope of cross-examination or rebuttal. A party must demonstrate that there was no opportunity to present evidence on a Part 1 issue to justify our revisiting Part 1 after the close of Part 2.

#### **5. Evidentiary Objections**

We have directed the parties not to file evidentiary objections to the admissibility of testimony before the hearing resumes for presentation of Part 2 cases-in-chief. We further direct that all objections to the admissibility of evidence be made orally during the hearing before or at the time the evidence is offered into the record. We may allow the submission of written motions at the request of the moving party if we determine that a written motion would assist us in ruling on the issue. If a written motion is permitted, written responses will also be allowed. Evidentiary

objections that go to the weight of the evidence, including hearsay objections, should be reserved for closing briefs.

**6. Exhibit Number for Final EIR/EIS**

Petitioners have indicated that they intend to offer the Final EIR/EIS into evidence. The certified Final EIR/EIS for the project has been marked for identification as Exhibit No. SWRCB-102. To avoid duplicate exhibit numbers, please use this exhibit number when referring to the Final EIR/EIS.

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:*

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

*ORIGINAL SIGNED BY:*

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

Enclosure: Updated Part 2 Guidance Document

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This guidance document summarizes hearing procedures and issues addressed in rulings as of November 8, 2017. It also incorporates hearing participation instructions given to the parties at the Part 2 Pre-hearing Conference on October 19, 2017. This is not a complete summary of the hearing procedures or the rulings to date. The parties are expected to have read the October 30, 2015 Notice of Public Hearing and Pre-Hearing Conference ([October 30, 2015 Hearing Notice](#)), including Enclosure D, entitled, “Information Concerning Appearance at the California WaterFix Hearing” and the hearing officers’ prior rulings in this hearing. The procedural requirements in Enclosure D remain in force except where modified by the hearing officers. The October 30, 2015 Hearing Notice, subsequent notices, and hearing officers’ rulings are posted on the State Water Resources Control Board’s (State Water Board) website at [https://www.waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/california\\_waterfix/ruling\\_notices/](https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/ruling_notices/).

### **Rules for Policy Statements**

Policy statements will be heard at the beginning of Part 2 of the hearing, on January 18, 2017 and will be limited to **three minutes** per person. Interested persons who are not participating in the evidentiary portion of the hearing may submit a written policy statement or present an oral policy statement. While not mandatory, the State Water Board requests that policy statements be provided in writing before they are presented and that they be submitted electronically. Written policy statements should also be copied to the current [Service List](#). As in Part 1, the hearing officers will allow some flexibility for hearing party representatives to make policy comments. However, in order to maintain an efficient hearing, the hearing officers will still limit policy statements by party representatives to three minutes per speaker, and the time a party spends on policy statements will be deducted from the 20 minutes afforded to each party to present an opening statement. See guidance on pages 11 to 12 of the hearing officers’ [August 31, 2017 ruling](#) and in Enclosure D of the [October 30, 2015 Hearing Notice](#).

### **Scope of Part 2 and Related Issues**

Parties should review guidance on pages 12 to 13 of the hearing officers’ [August 31, 2017 ruling](#) and also pages 1 to 3 of the [September 29, 2017 ruling](#). The parties should also review the hearing officers’ earlier rulings concerning the scope of Parts 1 and 2 of the hearing, including rulings dated [February 11, 2016](#) and [October 7, 2016](#).

At the pre-hearing conference on October 19, 2017, the hearing officers addressed the scope of Part 2 and the extent to which Part 1 issues may be addressed in Part 2 as follows:

#### Part 2 Case-in-Chief

The hearing issues to be addressed in Part 2 are listed in the [October 30, 2015 Hearing Notice](#) and on pages 12 and 13 of the hearing officers’ [August 31, 2017 ruling](#). Evidence presented during a party’s case-in-chief must be relevant to the Part 2 key hearing issues. Parties are encouraged to submit proposed permit terms and conditions that would resolve issues raised in the protests as part of their case-in-chief.

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Cross-Examination, Rebuttal, and Revisiting Part 1 Issues

Cross-examination of witnesses is not limited to the scope of the witnesses' direct testimony if the questions are relevant to Part 2 issues. The hearing officers will also allow cross-examination of witnesses on Part 1 issues as long as the line of questioning directly relates to the witnesses' direct testimony in Part 2.

During rebuttal, parties may present evidence that directly responds to another party's case-in-chief. Parties may present rebuttal evidence that is within the scope of either Part 1 or Part 2 if it is in direct response to another party's Part 2 case-in-chief. For example, rebuttal is the appropriate time to present evidence of potential injury to legal users from a term or condition presented in another party's case-in-chief in Part 2.

Parties should generally not count on revisiting Part 1 issues after the close of Part 2 of this proceeding. Since parties will be allowed to address Part 1 issues through cross-examination or rebuttal in Part 2, parties will have to make a strong showing that there was no opportunity to present evidence on a Part 1 issue in cross-examination or rebuttal in Part 2 in order to revisit a Part 1 issue after Part 2 of the hearing has concluded.

Relationship Between the Key Hearing Issues and Project Environmental Documents

The purpose of this proceeding is for the State Water Board to gather evidence and act upon the petition for changes to petitioners' water right permits associated with the WaterFix Project. The adequacy of the Final EIR and other environmental documents for purposes of CEQA is not a key hearing issue. The Board is not the lead agency responsible for preparation of the Final EIR or other environmental documents for the WaterFix Project. The Board is not required to certify that the documents comply with environmental laws. Although the Board must comply with CEQA in connection with its decision on the change petition, and the Board must ensure that the Final EIR is adequate for this purpose, the Board is not required to hold an evidentiary hearing on issues concerning CEQA compliance, and the parties may not present testimony or other evidence on those issues.

However, it is appropriate for parties to test the validity of specific data and conclusions in the Final EIR and other documents for purposes of the Board's consideration of the potential impacts of the project and the findings that the Board must make under the California Water Code before the Board may approve the water right change petition. Provided that any testimony or other evidence concerning the validity of specific information contained in the environmental documents is relevant to the key hearing issues, these are substantive issues that may be raised during the hearing.

Development of Delta Flow Criteria for Purposes of this Proceeding

State Water Board staff will not be presenting evidence in this proceeding. It is up to the parties to present proposals and supporting evidence for appropriate Delta flow criteria. In offering proposed flow criteria, protestants are not limited to the range of alternatives included in the CEQA documents or other environmental documents for the project. The Board will determine what Delta flow criteria are appropriate to include as conditions of any approval of the WaterFix change petition based the entire administrative record, including the parties' proposals and evidence, the 2010 flow criteria report, and the Scientific Basis Report for Phase 2 of the Bay-Delta Plan update, provided the report is included in the record.

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**Submission and Service of Exhibits and Other Hearing Materials**

Statement of Service Certification

With each new submittal to the State Water Board, parties must include a statement of service that certifies that all hearing parties have been served and describes the manner of service. The parties are encouraged to use the statement of service form posted on our website at: [http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/california\\_waterfix/docs/20160311\\_stateservform.pdf](http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/docs/20160311_stateservform.pdf). In the event that there are any undeliverable emails to the service list, it is the serving party's responsibility to follow-up to ensure that every party is served in a timely manner and, if necessary, to submit another statement of service describing any changes to the date or manner of service. Additional guidance can be found on pages 8 to 11 of the hearing officers' [August 31, 2017 ruling](#).

Requirements for Electronic Submission of Written Testimony and Other Exhibits

Each exhibit page should be marked with the page number and exhibit identification number.

Sections 6 and 7 of Enclosure D on pages 33 and 34 of the [October 30, 2015 Hearing Notice](#) provides instructions on electronic submission of written testimony and other exhibits. The hearing officers have provided additional direction regarding use of the State Water Board's secure File Transfer Protocol (FTP) website, subsequent to the Hearing Notice, on pages 9 to 11 of the [March 4, 2016 ruling](#). The FTP website allows parties to both upload their exhibits and download the exhibits submitted by other parties.

In order to expedite processing and posting of exhibits on the State Water Board's website, parties must follow the instructions below when submitting exhibits to the State Water Board through the FTP site.

Each electronically submitted exhibit must be in Adobe Portable Document Format (PDF) and saved as a separate PDF file. Exhibit Identification Indexes, on the other hand, should be in a format supported by Microsoft Excel or Word. All parties who have the capability to perform optical character recognition (OCR) should do so for all documents that are not word searchable (e.g., scanned documents) before uploading them to the FTP site. Electronic submittals to the State Water Board of documents greater than 50 megabytes in total size should be submitted to the State Water Board by uploading the files to the FTP site.

The parties should apply the following standard file naming convention for electronic exhibits: Each file name should begin with an acronym for the party's name followed by an underscore "\_" and then the exhibit number. The file name should be short and should not include any spaces. The file name should not exceed 10 to 15 characters. The Exhibit Identification Index should list the exhibit number, the associated exhibit description, and the file name for that exhibit. For example, California Department of Water Resources exhibits would appear as follows in their Exhibit Identification Index:

<b>Exhibit No.</b>	<b>Exhibit Description</b>	<b>File Name</b>
DWR-1	Exhibit description	dwr_1.pdf
DWR-2	Exhibit description	dwr_2.pdf
DWR-3	Exhibit description	dwr_3.pdf
etc.	etc.	etc.

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Each exhibit number should be unique. Parties should be diligent not to duplicate any previously used exhibit number throughout the hearing.

**Staff Exhibits By Reference (The Hearing Team Will Not Offer Staff Exhibits Into Evidence)**

Where applicable, parties should cite to the staff exhibits posted on the California WaterFix Petition hearing website at [http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/california\\_waterfix/exhibits/index.shtml](http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/exhibits/index.shtml), using the exhibit identification number listed on the website. The staff exhibits will remain marked with the exhibit identification number beginning with “SWRCB” followed by the number of the exhibit. As stated in previous rulings, hearing team staff do not currently propose to offer the staff exhibits into evidence at the hearing (although staff may introduce exhibits if strictly necessary). Staff exhibits were compiled by hearing team staff as a convenience to the parties. In the interest of efficiency, these exhibits have been marked for identification so parties can offer them into evidence as exhibits by reference, rather than having multiple parties uploading and serving large duplicative files on the other parties. If the parties wish to enter a staff exhibit into evidence, they need to clearly identify that exhibit on their Exhibit Identification Index and offer it into evidence at the hearing. (See [June 10, 2016 ruling](#), p. 5 and “Staff Exhibits” on pages 8 and 9 of the [April 25, 2016 ruling](#).)

Please note that hearing team staff will generally not be providing or posting updates to staff exhibits SWRCB-1 through SWRCB-104. It is incumbent on the parties to determine if a particular document has been superseded or revised.

Petitioners have indicated that they intend to offer the Final EIR/EIS into evidence. The certified Final EIR/EIS for the project has been marked for identification as Exhibit No. SWRCB-102. To avoid duplicate exhibit numbers, please use this exhibit number when referring to the Final EIR/EIS.

**Do not Label Opening Statements or Exhibit Identification Indexes as Exhibits**

Opening statements are not evidence in their own right, but rather a summary of what the party’s evidence is intended to establish. Similarly, an Exhibit Identification Index is a list of exhibit numbers and associated exhibit descriptions, and is not evidence. Accordingly, parties should not label their opening statement or Exhibit Identification Index as exhibits or include them in their Exhibit Identification Index. (See [June 10, 2016 ruling](#), p. 5.)

At the pre-hearing conference on October 19, 2017, the hearing officers addressed the order of presentation of parties and group consolidations, time limits, and when to offer or object to exhibits as follows:

**Order of Presentation and Group Consolidations**

As in Part 1 of the hearing, the hearing officers will provide a list of parties in Part 2 in a specific order for presentation of direct testimony and cross-examination purposes, beginning with the petitioners. During the hearing, parties will be required to present their testimony when their party is called, or coordinate with another party to take their place. The hearing officers will do their best to provide estimates for when parties should be ready, but these estimates are tentative and subject to change. Parties should not rely on these



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tentative estimates as a commitment by the hearing officers of a date certain to present their cases-in-chief.

If a party cannot present on a particular day, it is that party's responsibility to coordinate with another party to take their place and give at least three days' notice to the hearing officers and the Service List. Notices of unavailability from parties with scheduling conflicts that could have been avoided, or parties who provide late notice of scheduling conflicts and do not arrange a change in the order of presentation so the hearing can proceed without interruption will not be accepted. Proposals to present out of order are subject to approval by the hearing officers and should be presented at least three days in advance.

With so many participating parties, grouping among parties is highly encouraged. Parties with common interests are encouraged to work together to make the hearing process more efficient. In Part 1, some parties presented a consolidated case-in-chief or coordinated with other parties to present direct testimony from the same witness or group of witnesses as part of their case-in-chief. To promote efficiency, additional time for parties that consolidate all or portions of their cases may be allowed by the hearing officer.

Parties must submit any proposed groupings with their Part 2 written testimony and exhibits, no later than **noon, November 30, 2017**. The hearing officers will review proposed groupings and issue a posted order of presentation after November 30, 2017, but before January 18, 2018.

#### **Time Limits**

The hearing officers plan to enforce time limits. Parties are encouraged to be efficient in presenting their testimony and in conducting cross-examination. Since written testimony will be submitted in advance of the hearing, it is unnecessary for witnesses to provide lengthy and detailed oral summary presentations. Time limits are subject to some flexibility if there is good cause demonstrated in an offer of proof. Parties must include any requests for additional time with their Part 2 written testimony and exhibits, no later than **noon, November 30, 2017**.

Generally, parties will have up to 20 minutes per witness and up to one hour per party to summarize their case-in-chief testimony. Parties will have up to one hour to cross-examine each witness or witness panel. As in Part 1, time limits are subject to some flexibility if there is good cause demonstrated in an offer of proof.

#### **When to Offer Exhibits Into Evidence and Objections**

Parties should be prepared to offer their testimony and exhibits into evidence immediately at the conclusion of their direct testimony, cross-examination, and any re-cross and re-direct. Any objections to the admissibility of testimony and exhibits must be made orally during the hearing when the testimony and exhibits are offered into evidence, or earlier. The hearing officers may allow written objections and responses if warranted under the circumstances.

Consistent with the practice established in Part 1 of this hearing, parties must update their exhibit identification indices to include any exhibits introduced during cross-examination. The parties are not required to offer cross-examination exhibits into evidence, but if they elect to do so, they must formally offer their cross-examination exhibits into evidence by the deadline that the hearing officers will establish later in the hearing process.

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**Procedural Motions/Evidentiary Objections in Part 2**

At the pre-hearing conference on October 19, 2017, the hearing officers reiterated that they will rule on procedural motions as appropriate and necessary and will not reconsider procedural issues that they have already ruled upon. The hearing officers may request a party to promptly respond to a motion. The hearing officers are committed to providing a fair and open process in this hearing and will provide parties ample opportunities to be heard and to participate. Excessive motion practice, however, is discouraged. Due to the number of parties, flurries of unsolicited correspondence, follow-up comments on rulings, and duplicative motions or requests on issues already addressed are strongly discouraged. The hearing officers generally disfavor motions for reconsideration of their procedural rulings. In addition, the hearing officers may not respond to duplicative comments, motions, or requests moving forward in this hearing. (See also page 10 of the hearing officers' [February 11, 2016 ruling](#).)

The hearing officers will continue to place limits on the timing of any objections to testimony and exhibits in Part 2 of the hearing. During Part 2, the hearing officers' expect the parties to continue to be judicious with respect to the evidentiary objections that they raise, and adhere to the guidance in prior rulings. The parties should also read and follow the guidance on evidentiary objections to admission of testimony and exhibits on pages 13 to 15 of the hearing officers' [August 31, 2017 ruling](#), on pages 2 to 4 of the [March 15, 2017 ruling](#), and the [February 21, 2017 ruling](#) regarding evidentiary objections to admission of testimony and exhibits.

At the pre-hearing conference on October 19, 2017, the hearing officers also addressed evidentiary objections as follows:

Parties should not make any objections to the admissibility of testimony (which must be submitted in writing by **12:00 noon on November 30, 2017**) before the hearing resumes for presentation of Part 2 cases-in-chief. The hearing officers will review the written testimony carefully to ensure that the testimony is relevant, within the scope of Part 2, and sufficiently reliable to be admissible. To the extent necessary, the hearing officers will exclude any witnesses' proposed testimony on their own motion before the witnesses present his or her testimony.

Any objections to the admissibility of testimony that the hearing officer do not address on their own motion, and any objections to the admissibility of exhibits, must be made orally during the hearing no later than when the testimony and exhibits are offered into evidence. At that time, the hearing officers will ask if any party has any objections to the testimony or exhibits being offered. The hearing officers will not consider any other objections to the admissibility of a party's testimony or exhibits that are made after the party's testimony and exhibits are offered into evidence. The hearing officers may allow written objections and responses if warranted under the circumstances.

Any objections that go to the weight of testimony or exhibits, including hearsay objections, should be reserved for the parties' closing briefs.

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**Oral Rulings and Responsibility of Parties**

Consistent with past practice in hearings before the State Water Board, some objections may be addressed orally in the course of the hearing or in the final order taking action on the petition. ([June 10, 2016 ruling](#), p. 2.)

Parties are not required to attend every day of the hearing. When absent from the hearing, however, it is the party's responsibility to either review the transcripts or video recordings or make arrangements with another representative to provide them with any oral rulings, pertinent deadlines, and other important information that they may have missed. ([September 29, 2017 ruling](#), p. 7.)

**Motions to Dismiss**

As a general rule, motions to dismiss, akin to a motion for judgment in a civil trial, are not permitted in adjudicative proceedings before the State Water Board. ([March 15, 2017 ruling](#), pp. 1-2.)