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RECLAMATION DISTRICT 563,  
RECLAMATION DISTRICT 150,  
RECLAMATION DISTRICT 2098,  
RECLAMATION DISTRICT 800 (BYRON  
TRACT)

BEFORE THE CALIFORNIA STATE WATER RESOURCE CONTROL BOARD

In the matter of Hearing re California  
WaterFix Petition for Change

**OBJECTION TO TESTIMONY OF JOHN  
BEDNARSKI AND JOINDER IN  
OBJECTIONS FILED BY SACRAMENTO  
VALLEY WATER USERS**

Brannan-Andrus Levee Maintenance District; Reclamation District 407, Reclamation  
District 2067, Reclamation District 317, Reclamation District 551, Reclamation District 563,  
Reclamation District 150, Reclamation District 2098, and Reclamation District 800 (Byron Tract)  
(collectively the "Delta Flood Control Group"), hereby join and incorporate in full by reference  
the objections raised by the Sacramento Valley Water Users.

In addition, the Delta Flood Control Group specifically objects to testimony submitted by  
petitioner Department of Water Resources ("DWR") regarding potential impacts to flood control

1 facilities. Specifically, the written testimony of John Bednarski (DWR-57)<sup>1</sup> offers opinions on  
 2 potential construction impacts that could affect other legal users of water and purported measures  
 3 to mitigate those impacts, but it fails to offer a proper basis for those opinions. Mr. Bednarski  
 4 has worked as an engineer at the Metropolitan Water District (“MWD”) for 25 years and has  
 5 participated with DWR in the conceptual design and engineering program management of the  
 6 WaterFix project (“CWF”). (DWR-57 at 1.) Notwithstanding Mr. Bednarski’s years of experience  
 7 at MWD, his testimony is admittedly based on a limited “conceptual-level of design.” (*Id.* at 3.)  
 8 The Conceptual Engineering Report (DWR-212) that Mr. Bednarski’s testimony relies upon is  
 9 explicit that the information presented in the Report “is considered conceptual or preliminary and  
 10 will need to be verified as part of additional investigations and detailed design.” (DWR-212, at  
 11 5.)

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 14 In particular regarding the CWF’s potential effects on flood control operations and levee  
 15 stability, Mr. Bednarski’s conclusory belief that “the CWF construction will not result in any  
 16 impairment of water quality or significantly affect other legal users of water,” (*Id.* at 28) lacks  
 17 foundational support from the sources cited within his testimony. As courts have held, “even  
 18 when [a] witness qualifies as an expert, he or she does not possess a carte blanche to express any  
 19 opinion within the area of expertise.” (*Jennings v. Palomar Pomerado Health Systems, Inc.*  
 20 (2003) 114 Cal.App.4th 1108, 1117.) There are limits to expert testimony, especially where it is  
 21 based on assumptions of fact without evidentiary support. (*Id.*; *see Burton v. Sanner* (2012) 207  
 22 Cal.App.4th 12, 20-21 (expert opinion not admissible when it “amounts to nothing more than an  
 23 expression of his or her belief on how a case should be decided”).) This legal principle exists so  
 24 that parties cannot sneak legal conclusions into evidence under the guise of expert opinion.  
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 27 <sup>1</sup> The Delta Flood Control Group also objects to DWR-2 to the extent that anything contained within it is inconsistent  
 28 with the written testimony of Mr. Bednarski. (Evid. Code, § 803; *see, e.g.*, BBID Ruling at 5-6 (striking from the  
 record portions of expert testimony that contradicted earlier deposition statements because the risk of prejudice  
 outweighed the probative value).)

1 (*People v. Stevens* (2015) 62 Cal.4th 325, 336.)

2 Beginning with the revealing assertion that “[e]xisting levees in the Delta have been in  
3 place and stable for decades,” Mr. Bednarski lists multiple mitigation methods that DWR will  
4 employ to improve levee stability during CWF construction. (*Id.* at 26.) Such methods include  
5 keeping trucks off non-highway-rated levees when possible, refining haul routes, conducting field  
6 surveys, geotechnical exploration, and possibly implementing a Settlement Monitoring Program.  
7 (*Id.* (citing SWRCB-3, Environmental Commitment 3B.2.1, Appendix A).) While the referenced  
8 section of Appendix A to the 2015 Public Draft Bay Delta Conservation Plan/California WaterFix  
9 Partially Recirculated Draft Environmental Impact Report/Supplemental Draft Environmental  
10 Impact Statement (“RDEIR/SDEIS”) discusses the Settlement Monitoring Program, it does not  
11 contain any mention of the other potential mitigation commitments provided in Mr. Bednarski’s  
12 testimony. (*See* SWRCB-3, Environmental Commitment 3B.2.1, Appendix A, 3B-15.) As such,  
13 Mr. Bednarski has not shown that DWR is committed to making the mitigation commitments  
14 necessary to protect levee stability. Furthermore, Section 3B.2.1.2 describes it as “unlikely” that  
15 the implementation of settlement monitoring “alone would ensure less-than-significant geology-  
16 and seismicity-related impacts.” (*Id.*)

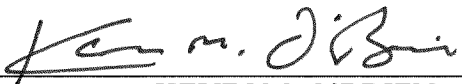
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19 Mr. Bednarski’s testimony also states that DWR has committed itself to ensuring that  
20 “construction activities will not worsen pavement and levee conditions, relative to existing  
21 conditions,” but if they do, DWR will return all affected roadways to “preconstruction condition  
22 or better following construction.” (DWR-57 at 27.) The testimony cites Mitigation Measure  
23 Trans-2c in the RDEIR/SDEIS, Appendix A, Chapter 19, which contemplates improvements to  
24 affected roadway segments as stipulated in mitigation agreements or encroachment permits.  
25 (SWRCB-3, Chapter 19-Transportation, Appendix A, 19-134.) However, contrary to Mr.  
26 Bednarski’s claim, the conclusions made under the California Environmental Quality Act provide  
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that DWR “cannot ensure” that the necessary agreements or encroachment permits will be obtained from the relevant transportation agencies to trigger the provisions of Mitigation Measure Trans-2c. (*Id.* at 19-133.) Moreover, the document’s description of the potential increased transportation impacts states that “Mitigation Measures Trans-2a through Trans-2c are available to reduce [such an] effect, but not necessarily to a level that would not be adverse....” (*Id.* at 19-84.) Thus, Mr. Bednarski’s opinion that the provided mitigation measures “will ensure that construction activities will not worsen pavement and levee conditions” (DWR-57 at 27) lacks foundation and should be excluded.

1 DATED: July 8, 2016

DOWNEY BRAND LLP

2  
3 By: 

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5 Attorney for Protestants

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15 TRACT)

DOWNEY BRAND LLP

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**STATEMENT OF SERVICE**

**CALIFORNIA WATERFIX PETITION HEARING  
Department of Water Resources and U.S. Bureau of Reclamation (Petitioners)**

I hereby certify that I have this day submitted to the State Water Resources Control Board and caused a true and correct copy of the following document(s);

**OBJECTION TO TESTIMONY OF JOHN BEDNARSKI AND JOINDER  
IN OBJECTIONS FILED BY SACRAMENTO VALLEY WATER USERS**

to be served by **Electronic Mail** (email) upon the parties listed in Table 1 of the **Current Service List** for the California WaterFix Petition Hearing, dated July 6, 2016, posted by the State of Water Resources Control Board at  
[http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/california\\_waterfix/service\\_list.shtml](http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/service_list.shtml):

*Note: In the event that any emails to any parties on the Current Service List are undeliverable, you must attempt to effectuate service using another method of service, if necessary, and submit another statement of service that describes any changes to the date and method of service for those parties.*

**For Petitioners Only:**

	I caused a true and correct <b>hard copy</b> of the document(s) to be served by the following method of service to Suzanne Womack & Sheldon Moore, Clifton Court, L.P., 3619 Land Park Drive, Sacramento, CA 95818:  <b>Method of Service:</b> _____
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I certify that the foregoing is true and correct and that this document was executed on July 8, 2016.

Signature: Catharine Irvine

Name: Catharine Irvine

Title: Legal Secretary

Party/Affiliation: Downey Brand, LLP

Address: 621 Capitol Mall, Sacramento, CA 95814