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9 Attorneys for PLACER COUNTY WATER
10 AGENCY

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13 BEFORE THE
14 CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

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16 HEARING ON THE MATTER OF
17 CALIFORNIA DEPARTMENT OF WATER
RESOURCES AND UNITED STATES
18 BUREAU OF RECLAMATION REQUEST
FOR A CHANGE IN POINT OF DIVERSION
19 FOR CALIFORNIA WATER FIX.

**PLACER COUNTY WATER AGENCY'S
OBJECTION TO SAN LUIS DELTA-
MENDOTA WATER AUTHORITY'S
EXHIBIT SLDMWA-4**

20 **I. INTRODUCTION**

21 Placer County Water Agency (PCWA) objects to San Luis Delta-Mendota Water
22 Authority's (Authority) exhibit SLDMWA-4 for lack of foundation. For this reason, PCWA
23 requests that the Hearing Officers exclude exhibit SLDMWA-4 from evidence.

24 **II. LEGAL STANDARD**

25 This hearing is governed by Chapter 4.5 of the Administrative Procedure Act,
26 (Gov. Code, § 11400 et seq.); regulations adopted by the State Water Board, (Cal. Code
27 of Regs., tit. 23, §§ 648-648.8); sections 801 to 805 of the Evidence Code; and
28 section 11513 of the Government Code. (Cal. Code of Regs., tit. 23, § 648(b).) Under

1 Evidence Code section 1401, an exhibit must be authenticated before it can be moved
2 into evidence. (Evid. Code, § 1401.) Authentication is defined as “the introduction of
3 evidence sufficient to sustain a finding that it is the writing that the proponent of the
4 evidence claims it is.” (Evid. Code, § 1400.) The Authority did not introduce any
5 evidence to support the authentication of SLDMWA-4. Therefore, the exhibit lacks
6 foundation and the Hearing Officers should exclude it from evidence.

7 **III. ARGUMENT**

8 On October 27, 2016, and again on November 15, 2016, the Authority submitted
9 a list of cross examination exhibits for entry into evidence. The list included SLDMWA-4,
10 which the Authority identified as “Certification of Self-Certified onservation Standard
11 submitted by Placer County Water Agency on June 22, 2015 [sic].” On October 26,
12 2016, during cross examination, the Authority questioned PCWA’s witness Andrew
13 Fecko regarding SLDMWA-4. (California WaterFix Water Right Petition Hearing Video¹
14 (Oct. 26,2016), 1:20:15-1:21:40.) However, Mr. Fecko was not familiar with the exhibit,
15 and could not testify to its contents or its authenticity. (*Id.*) The attorney for the Authority
16 moved on, and did not provide any additional evidence with respect to SLDMWA-4. (*Id.*)
17 Therefore, no evidence was introduced to authenticate SLDMWA-4.

18 At the end of the Authority’s cross-examination, Chief Hearing Officer Tam Doduc
19 asked the attorney for the Authority whether the Authority would like to have PCWA’s
20 General Manager, Einar Maisch, appear to testify regarding SLDMWA-4. (California
21 WaterFix Water Right Petition Hearing Video (Oct. 26,2016), 1:22:43-1:22:58.) The
22 attorney for the Authority stated, “No, I think we’ll be fine.” (*Id.*) Therefore, the Authority
23 did not introduce any evidence to authenticate SLDMWA-4, and declined Hearing
24 Chair Doduc’s invitation to do so. Because SLDMWA-4 was not authenticated, it lacks
25 foundation and cannot be moved into evidence.

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28 ¹ The video of the October 26th hearing can be found here:
http://www.waterboards.ca.gov/board_info/media/oct2016/cal_waterfix_hearing102616.shtml

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IV. CONCLUSION

PCWA respectfully requests that the Hearing Officers sustain this objection and exclude exhibit SLDMWA-4 from evidence.

SOMACH SIMMONS & DUNN
A Professional Corporation

Dated: November 21, 2016

By: Kelley M. Taber
Kelley M. Taber
Attorney for Placer County Water Agency

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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):

PLACER COUNTY WATER AGENCY'S OBJECTION TO SAN LUIS DELTA-MENDOTA WATER AUTHORITY'S EXHIBIT SLDMWA-4

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 November 15, 2016, posted by the State Water Resources Control Board at http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/service_list.shtml:

I certify that the foregoing is true and correct and that this document was executed on November 21, 2016.

Signature: 
Name: Michelle Bracha
Title: Legal Secretary
Party/Affiliation: Placer County Water Agency
Address: 500 Capitol Mall, Suite 1000
Sacramento, CA 95814