

1 DANIEL J. O'HANLON, State Bar No. 122380
REBECCA R. AKROYD, State Bar No. 267305
2 KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
A Professional Corporation
3 400 Capitol Mall, 27th Floor
Sacramento, California 95814
4 Telephone: (916) 321-4500
Facsimile: (916) 321-4555

5
6 JON D. RUBIN, State Bar No. 196944
General Counsel
SAN LUIS & DELTA-MENDOTA WATER AUTHORITY
7 400 Capitol Mall, 28th Floor
Sacramento, CA 95814
8 Telephone: (916) 321-4519
Facsimile: (209) 826-9698

9
10 Attorneys for San Luis & Delta-Mendota Water
Authority

11 PHILIP A. WILLIAMS, State Bar No. 296683
Deputy General Counsel
12 WESTLANDS WATER DISTRICT
400 Capitol Mall, 28th Floor
13 Sacramento, CA 95814
Telephone: (916) 321-4500
14 Facsimile: (916) 321-4555

15 Attorney for WESTLANDS WATER DISTRICT

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18 BEFORE THE
19 CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

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21 In re State Water Resources Control Board
Petition Requesting Changes in Water Rights
of the Department of Water Resources and
22 U.S. Bureau of Reclamation for the California
WaterFix Project.

**SAN LUIS & DELTA-MENDOTA WATER
AUTHORITY AND WESTLANDS
WATER DISTRICT'S OBJECTIONS TO
EXHIBITS SUBMITTED FOR
ADMISSION INTO EVIDENCE BY
GROUPS 15 AND 22 AT THE CLOSE OF
THEIR PART 1B CASES IN CHIEF**

1 **I. INTRODUCTION**

2 The San Luis & Delta-Mendota Water Authority (“Water Authority”) and Westlands Water
3 District (“Westlands”) object to the admission into evidence of certain exhibits submitted by Group 15
4 and Group 22 at the close of their cases in chief for Part 1B of the California WaterFix change petition
5 hearing. The Water Authority and Westlands object to exhibits listed below to the extent they are
6 offered for the truth of the matters asserted therein, on the grounds of hearsay.

7 It is the Water Authority and Westlands’ understanding that pursuant to the Hearing Team’s
8 September 9, 2016 email to the hearing parties, the parties have an opportunity to submit evidentiary
9 objections to non-testimony exhibits after such exhibits are submitted for admission into evidence.
10 The Water Authority and Westlands submit these written objections in reliance on that understanding,
11 while also re-asserting the Water Authority and Westlands’ previously submitted written objections to
12 testimony exhibits.

13 **II. BACKGROUND**

14 On September 1, 2016, the parties who had indicated their intent to present cases in chief in
15 Part 1B of the California WaterFix hearing submitted written testimony and exhibits to support their
16 cases in chief.

17 On November 9, 2016, East Bay Municipal Utility District (Group 15), submitted via email a
18 letter and final exhibit list, which submitted exhibits for admission into evidence.¹

19 On November 15, 2016, the City of Stockton (Group 22), submitted via email a letter and final
20 exhibit list, which submitted exhibits for admission into evidence.

21 **III. LEGAL STANDARD**

22 The California WaterFix hearing is governed by chapter 4.5 of the Administrative Procedure
23 Act (commencing with section 11400 of the Government Code), sections 801-805 of the Evidence
24 Code, and section 11513 of the Government Code. (Cal. Code Regs., tit. 23, § 648(b); see also Oct.

25
26 _____
27 ¹ The various letters submitted exhibits for admission into evidence are available on the State Water
28 Resources Control Board’s California WaterFix – Water Right Petition webpage, at
http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/water_right_petition.shtml.

1 30, 2015 Hearing Notice, Enclosure D.)

2 Government Code section 11513(d) sets requirements for admissible hearsay evidence.
3 Section 11513(d) provides that “[h]earsay evidence may be used for the purpose of supplementing or
4 explaining other evidence but over timely objection shall not be sufficient in itself to support a finding
5 unless it would be admissible over objection in civil actions.” The State Water Resources Control
6 Board (“Water Board”) has explained that “[h]earsay evidence is evidence of a statement that was
7 made other than by a witness while testifying at the hearing, and that is offered to prove the truth of
8 the matter stated.” (Order WQ 2014-0015, 2014 WL 784908, at *4 (Feb. 4, 2014), citing Evid. Code,
9 § 1200(a).) The Water Board cannot base a finding upon hearsay “unless it corroborates non-hearsay
10 evidence.” (See, e.g., Order WR 2004-0004, 2004 WL 367585, at *16 (Feb. 19, 2004); Order WR
11 2016-001, 2016 WL 492285, at *20 (Jan. 19, 2016).

12 **IV. ARGUMENT**

13 To the extent each of the exhibits below are offered to prove the truth of the matter stated, the
14 Water Authority and Westlands object to the admission of these exhibits. The table below identifies
15 the exhibits objected to:

16 Party	Exhibit	Description
17 East Bay Municipal Utility District	EBMUD-100	Summary – Eileen M. White
18 East Bay Municipal Utility District	EBMUD-101	Summary – Dr. Benjamin Bray
19 East Bay Municipal Utility District	EBMUD-102	Summary – Xavier J. Irias
20 East Bay Municipal Utility District	EBMUD-176	EBMUD Comments on BDCP EIR/EIS (2014 and 2015)
21 City of Stockton	STKN-002	Comments on the Notice of Preparation for BDCP EIR, May 30, 2008
22 City of Stockton	STKN-003	City of Stockton Comments on BDCP Draft EIR/EIS, July 2014
23 City of Stockton	STKN-004	City of Stockton Comments on CalWaterFix RDEIR/DSEIS, October 29, 2015

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25 The exhibits listed include statements that were made other than by witnesses while testifying during
26 the California WaterFix change petition hearing, and to the extent they are being offered to prove the
27 truth of the matters asserted therein, they are hearsay. Pursuant to Government Code section
28 11513(d), they should not therefore be used to support findings by the Hearing Officers, other than to

1 corroborate non-hearsay evidence.

2 V. CONCLUSION

3 For the reasons explained above, the Water Authority and Westlands object to the Hearing
4 Officers' admission of the exhibits submitted by Group 15 and Group 22 to Part 1B of the California
5 WaterFix change petition hearing discussed herein.

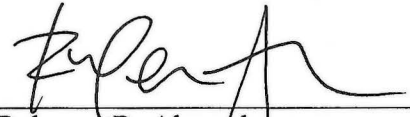
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7 Dated: November 22, 2016

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
A Professional Corporation

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By: 
Rebecca R. Akroyd
Attorneys for San Luis & Delta-Mendota Water
Authority

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Dated: November 22, 2016

WESTLANDS WATER DISTRICT

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By: 
Philip A. Williams
Attorney for Westlands Water District

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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):

San Luis & Delta-Mendota Water Authority and Westlands Water District's Objections to Exhibits Submitted for Admission into Evidence by Groups 15 and 22 at the Close of their Part 1B Case in Chief

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 11/15/2016, posted by the State Water Resources Control Board at

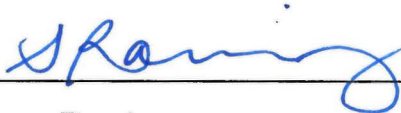
http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/service_list.shtml:

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:

	<p>I caused a true and correct hard copy 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:</p> <p>Method of Service: _____</p>
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I certify that the foregoing is true and correct and that this document was executed on November 22, 2016
Date

Signature: 

Name: Sherry Ramirez

Title: Legal Secretary

Party/Affiliation: SLDMWA & WWD

Address: 400 Capitol Mall

Sacramento, CA 95814