

1 SOMACH SIMMONS & DUNN
A Professional Corporation
2 Andrew M. Hitchings (SBN 154554)
Aaron A. Ferguson (SBN 271427)
3 Kristian C. Corby (SBN 296146)
500 Capitol Mall, Suite 1000
4 Sacramento, California 95814-2403
Telephone: (916) 446-7979
5 Facsimile: (916) 446-8199
ahitchings@somachlaw.com
6 aferguson@somachlaw.com
kcorby@somachlaw.com

7 Attorneys for Sacramento County Water Agency
8
9

10 BEFORE THE
11 CALIFORNIA STATE WATER RESOURCES CONTROL BOARD
12

13 HEARING ON THE MATTER OF
CALIFORNIA DEPARTMENT OF WATER
14 RESOURCES AND UNITED STATES
BUREAU OF RECLAMATION REQUEST
15 FOR A CHANGE IN POINT OF DIVERSION
FOR CALIFORNIA WATER FIX.

**THE SACRAMENTO COUNTY
WATER AGENCY'S RESPONSE TO
SAN LUIS & DELTA-MENDOTA
WATER AUTHORITY AND
WESTLANDS WATER DISTRICT'S
OBJECTIONS TO EXHIBITS
SUBMITTED FOR ADMISSION INTO
EVIDENCE BY GROUPS 7 AND 9 AT
THE CLOSE OF THEIR PART 1B
CASE IN CHIEF**

16
17
18
19 I. INTRODUCTION

20 The Sacramento County Water Agency (SCWA) respectfully requests that the
21 State Water Resources Control Board (State Water Board) overrule San Luis & Delta-
22 Mendota Water Authority (SLDMWA) and Westlands Water District's (Westlands)
23 objections to the admission of Exhibits SCWA-34, SCWA-48, SCWA-48 errata, and
24 SCWA-49 (Objections to Exhibits). These four exhibits constitute summaries of written
25 testimony submitted by SCWA witnesses. SLDMWA and Westlands fail to identify the
26 statements in these summaries upon which their Objections to Exhibits are based.
27 Further, these documents are relevant and/or otherwise subject to an exception to the
28 hearsay rule.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

II. DISCUSSION

A. Standard of Review

This hearing is governed by chapter 4.5 of the Administrative Procedure Act, (Gov. Code, § 11400 et seq.); regulations adopted by the State Water Board (Cal. Code of Regs., tit. 23, § 648-648.8); sections 801 to 805 of the Evidence Code; and section 11513 of the Government Code. (Cal. Code of Regs., tit. 23, § 648(b).) The State Water Board is not required to conduct adjudicative hearings according to the technical rules of evidence applicable to a court. (Gov. Code, § 11513(c).) Instead, “[a]ny relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of evidence over objection in civil actions.” (*Ibid.*)

Specifically, “[h]earsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objections in civil actions.” (Gov. Code, § 11513(d); see also Cal. Code Regs., tit. 23, § 648.5.1 [“Hearsay evidence is admissible subject to the provisions of Government Code section 11513.”]) Also, expert witnesses may rely on hearsay evidence or evidence that is not admissible in establishing their expert opinions. (Cal. Code Regs., tit. 23, §§ 648, 648.5.1; Evid. Code, § 801(b); Gov. Code, § 11513(d).) The State Water Board follows these relaxed standards because the Hearing Officers’ expertise in the subject matter justifies the State Water Board’s ability to make both legal and factual determinations.

B. SCWA's Summaries of Witness Testimony Should Be Admitted

SLDMWA and Westlands’ objections to the admission of SCWA’s summaries of witness testimony are vague, without merit, and should be overruled.

First, SLDMWA and Westlands fail to identify any statements in the documents to which they object. (See Objections to Exhibits at p. 3:4-7.) SLDMWA and Westlands object to these exhibits on the grounds that they “include statements that were made

1 other than by witnesses while testifying during the California WaterFix change petition
2 hearing” (Objections to Exhibits at p. 4:4-5.) An objection, however, must identify
3 the nature of the evidence and the basis for requesting exclusion. (*People v. Hayes*
4 (1999) 21 Cal.4th 1211, 1261.) A general evidentiary objection like the one offered by
5 SLDMWA and Westlands is not sufficient to exclude evidence “without specific
6 identification of the evidence to which the party objects and the reason for that
7 objection.” (State Water Board Order WR 2012-0012 at p. 11, fn. 28.) SLDMWA and
8 Westlands have simply objected to these exhibits because they “include statements”
9 without identifying the statements to which they object. In this respect, the Objections to
10 Exhibits are vague, and for this reason alone, should be overruled.

11 Second, the objections should be overruled because the exhibits are relevant.
12 Again, any relevant evidence should be admitted if it is the sort of evidence relied upon
13 in the conduct of serious affairs, despite any rule which might otherwise make the
14 evidence inadmissible in civil actions. (Gov. Code, § 11513(c).) SCWA’s witnesses –
15 Michael Peterson, Steffen Mehl, and Forrest Williams – each prepared a PowerPoint
16 presentation summarizing their written direct testimony, as required by the State Water
17 Board in its January 15, 2016 letter and February 11, 2016 Pre-Hearing Conference
18 Ruling. These summaries are relevant to the proceeding because they were prepared in
19 response to the Hearing Officers’ request in order to provide for the efficient presentation
20 of evidence. Further, the PowerPoint presentations are commonly used at State Water
21 Board hearings to summarize lengthy written testimony. Thus, these exhibits are
22 relevant and the Objections to Exhibits should be overruled on this ground alone.

23 SLDMWA and Westlands’ Objections to Exhibits ignore exceptions to the hearsay
24 rule applicable to expert witnesses. Exhibits SCWA-34, SCWA-48, SCWA-48 errata,
25 and SCWA-49 were prepared by experts.¹ An expert witness may rely on hearsay

26 ¹ While SCWA did not designate Mr. Peterson as an expert in its Notice of Intent to Appear, Mr. Peterson
27 is an expert on the topic of SCWA’s water supplies and operations. Any person who has special
28 knowledge, skill, or experience in any occupation or trade may be qualified as an expert in his or her field.
(*Miller v. Los Angeles County Flood Control Dist.* (1973) 8 Cal.3d 689, 701; see also Evid. Code, § 720(a)
[a witness is qualified to testify as an expert if he or she has special knowledge, skill, experience, training

1 evidence or evidence that is not admissible in establishing their expert opinions. (Cal.
2 Code Regs., tit. 23, §§ 648, 648.5.1; Evid. Code, § 801(b); Gov. Code, § 11513(d).) Any
3 hearsay statements that might exist in the PowerPoint presentations of Mr. Peterson,
4 Dr. Mehl, or Mr. Williams that they relied on in forming their opinions are not barred by
5 the hearsay rule. Because any statements included in the PowerPoint presentations
6 that might constitute hearsay are not barred by the hearsay rule, any objections to these
7 statements should be overruled and the exhibits admitted.

8 **III. CONCLUSION**

9 For the foregoing reasons, SCWA respectfully requests that the State Water
10 Board overrule SLDMWA and Westlands' objections to Exhibits SCWA-34, SCWA-48,
11 SCWA-48 errata, and SCWA-49, and admit these documents into evidence.

12 SOMACH SIMMONS & DUNN
13 A Professional Corporation

14 DATED: December 23, 2016

15 By 
16 Aaron A. Ferguson
17 Attorneys for Sacramento County Water
18 Agency

19
20
21
22
23
24
25
26
27 or education sufficient to qualify him or her as an expert on the subject to which the testimony relates.)
28 Mr. Peterson has specialized knowledge and experience with SCWA's water supplies and operations, and
the conditions that affect those supplies.

