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11 **BEFORE THE CALIFORNIA STATE WATER RESOURCES CONTROL BOARD**

12 **HEARING IN THE MATTER OF**
13 **CALIFORNIA DEPARTMENT OF**
14 **WATER RESOURCES AND UNITED**
15 **STATES BUREAU OF**
16 **RECLAMATION REQUEST FOR A**
17 **CHANGE IN POINT OF DIVERSION**
18 **FOR CALIFORNIA WATERFIX**

19 **EJCW’S STATEMENT OF ISSUES**
20 **PROPOSED TO BE ADDRESSED IN**
21 **CLOSING BRIEFS FOR PART 1**

22 Protestant, Environmental Justice Coalition for Water (“EJCW”), submits this Statement
23 of Issues Proposed to Be Addressed in Closing Briefs for Part 1, as provided by the Hearing
24 Officers’ Ruling of December 19, 2016. EJCW believes there are issues best addressed at the
25 close of Part 1, but reserves the right (at the Hearing Officer’s discretion) to revisit any relevant
26 issues in its closing brief for Part 2.

27 **THE HUMAN RIGHT TO WATER**

28 If Part 1 closing briefing is provided, EJCW will address the legal ambiguities posed by
the application of injury analysis to a legal user of water and the recently recognized Human
Right to Water.

Even though The State Water Resource Control Board (“Board”) Board modified the
scope of Part 1 to include, “human uses of water that extend beyond the strict definition of legal

1 users of water”, the precise delineations of “injury” and “legal users” are open legal questions.
2 (Hearing Officers' Ruling on Pre-Hearing Conference Procedural Issues, Feb. 11, 2016, at p. 10.)
3 Guidance on these definitions has been provided by the Third District Court of Appeal, which
4 laid out a framework of analysis in *State Water Resources Control Board Cases* (2006) 136
5 Cal.App.4th 674. The application of this framework to the case at hand, and the testimony
6 provided thus far and to be provided in Part 2 (if necessary), is a critical issue that is most
7 appropriately briefed at the close of Part 1.

8 **CONCLUSION**

9 EJCW intends to show how environmental justice concerns fit within the rubric of injury
10 to legal users of water. EJCW would appreciate the opportunity to address this topic in a closing
11 brief after the close of Part 1. EJCW thanks the Hearing Officers for their consideration in this
12 matter.

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18 Dated: January 31, 2017

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23 _____
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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):

**EJCW'S STATEMENT OF ISSUES PROPOSED TO BE ADDRESSED IN CLOSING BRIEFS FOR
PART 1**

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 January 31, 2017, 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 January 31, 2017.

Date

Signature:



Name: Randy Reck

Title: Legal Fellow

Party/Affiliation: Protestant, The Environmental
Justice Coalition for Water

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