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5 Party to the WaterFix Hearing
Principal, California Water Research
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7 **BEFORE THE**
8 **CALIFORNIA STATE WATER RESOURCES CONTROL BOARD**

9
10 HEARING IN THE MATTER OF
CALIFORNIA DEPARTMENT OF WATER
11 RESOURCES AND UNITED STATES
BUREAU OF RECLAMATION
12 REQUEST FOR A CHANGE IN POINT OF
DIVERSION FOR CALIFORNIA WATER
13 FIX
14

**RESPONSE TO SAN LUIS AND DELTA
MENDOTA WATER AUTHORITY'S
OBJECTIONS TO EXHIBITS
SUBMITTED FOR ADMISSION BY
GROUPS 18, 19, 21, 24, 27, 31, 32, 37, 38,
39 INTO EVIDENCE AT THE CLOSE
OF PART 1B CASES IN
CHIEF**

15
16 Deirdre Des Jardins, Principal at California Water Research (“California Water
17 Research”) hereby submits this response to the objections by the San Luis and Delta Mendota
18 Water Authority (“SLDWMA”) to exhibits submitted for admission into evidence by Groups 18,
19 19, 21, 24, 27, 31, 32, 37, 38, and 39. The San Luis and Delta Mendota Water Authority
20 (“SLDWMA”) has taken a shotgun approach, seeking to have large numbers of exhibits
21 submitted by protestants marked as hearsay. This is essentially an attempt to make premature
22 arguments about the weight of the evidence, before Part 1B has even concluded.
23

24 SLDWMA states:

25 Generally, a party offering evidence bears the initial burden of establishing the evidence
26 is admissible. Admissibility depends on various factors including the authenticity of the
evidence and the purpose for which it is being offered. (p. 3, 18-20.)
27

1 California Water Research did argue that the exhibits submitted by protestants, including
2 California Water Research, were admissible. California Water Research hereby incorporates in
3 full California Water Research’s December 13, 2016 filing, “Response to the California
4 Department of Water Resources ‘Master Objections to Protestants Collectively,’” hereafter
5 referred to as (“CWR’s ‘Response to DWR’s Master Objections.’”) CWR’s “Response to
6 DWR’s Master Objections” references Hearing Officer Tam Doduc’s prior ruling in the Rialto
7 Perchlorate Contamination matter:

8 There is no requirement under State Water Board regulations or Chapter 4.5 of the APA that
9 a proper triallike foundation be made for exhibits and evidence.

10 (Tam M. Doduc, Final Ruling on Outstanding Motions in the Board’s A-1824 – Rialto
11 Perchlorate Contamination matter, Aug. 11, 2007 10:1.) (p. 2, 4-8.)

12 CWR’s “Response to DWR’s Master Objections” also discusses seven categories of
13 documents submitted as exhibits by California Water Research and other parties, as well as the
14 related hearsay exceptions. The categories of documents include the following:

- 15 1. Official records of public agencies
- 16 2. Scientific journal articles and technical reports
- 17 3. Newspapers and other periodicals
- 18 4. Prior statements of witnesses
- 19 5. Published maps
- 20 6. Official data
- 21 7. Board decisions, orders, and other records

22 Almost all of the exhibits to which SLDWMA objects fall under one of these categories.
23 For California Water Research’s case in chief, the attached Exhibit Notes reference categories
24 #1-7 of documents discussed on p. 4-8 of CWR’s “Response to DWR’s Master Objections” and
25 the associated hearsay exceptions.

26 SLDWMA also states:

27 The Water Authority is concerned that the protestants are offering myriad hearsay
28 documents and statements to prove the truth of the matter on all manner of incorrect or
contested factual matters that did not receive attention or verification through direct
testimony and cross examination during the Part 1B proceedings. (p. 3, 22-25.)

1 SLDWMA does not assert that the exhibits are not relevant to the WaterFix Change
2 Petition hearing, but only that many exhibits have been submitted, but have not yet been
3 referenced in testimony, cross-examination, or argument. Given the scope and complexity of
4 the Department of Water Resources' case in chief, it should not be surprising that protestants
5 have submitted a large number of exhibits in response.

6 Given that Part 1B has not yet concluded, relevance should be the key consideration in
7 admissibility. In trial court proceedings, "relevance" means the evidence has a tendency in
8 reason to prove or disprove any disputed fact of consequence to the determination of the action,
9 including the credibility of a witness or hearsay declarant. (Evid. Code, § 210; People v. Nelson
10 (2008) 43 Cal.4th 1242, 1266.)

11 The exhibits California Water Research has offered into evidence were carefully selected
12 to prove or disprove disputed facts in the hearing, including the credibility of witnesses.
13 Contrary to SLDWMA's assertion, the majority of the submitted exhibits were introduced in
14 cross-examination of DWR's witnesses in Part 1A, or in cross-examination of other parties'
15 witnesses in Part 1B. Some exhibits introduced in cross-examination in Part 1B also clarified
16 issues raised in cross-examination of parties in Part 1B by DWR or SLDWMA. The exhibits
17 introduced in cross-examination are identified in the attached exhibit notes, together with the
18 name of the first witness cross-examined with the exhibit.

19 Another six exhibits (DDJ-101 through DDJ-106) were referenced in testimony in
20 California Water Research's case in chief. Those exhibits are also identified in the attached
21 exhibit notes.

22 The remainder either constitute evidence relevant to disputed facts in the hearing, or
23 relating to some matter raised by the pleadings and have probative worth (i.e., some logical
24 tendency to prove the matter at issue). (Winfred D. v. Michelin North America, Inc. (2008) 165
25 CA4th 1011, 1029.) As such they are relevant to the proceeding and should be admitted.

1 California Water Research respectfully requests that the Hearing Officers admit all
2 exhibits submitted by California Water Research into evidence because they are relevant to the
3 proceeding, and not mark as hearsay any documents that are subject to hearsay exceptions.

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5 Respectfully submitted,

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8 Deirdre Des Jardins
9 Principal, California Water Research

10 Dated: January 6, 2017.

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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):

**Response to SLDWMA's Objections to Exhibits
Jan 6, 2016 Exhibit Notes**

to be served **by Electronic Mail** (email), in parts due to server limitations, 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 January 6, 2016.

Signature:



Name: Deirdre Des Jardins

Title: Principal, California Water Research

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Deirdre Des Jardins

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