

1 PLACER COUNTY WATER AGENCY
Daniel Kelly (SBN 215051)
2 144 Ferguson Road
P.O. Box 6570
3 Auburn, CA 95604
Telephone: (530) 823-4850
4 dkelly@pcwa.net

5 SOMACH SIMMONS & DUNN
A Professional Corporation
6 Kelley M. Taber (SBN 184348)
500 Capitol Mall, Suite 1000
7 Sacramento, CA 95814
Telephone: (916) 446-7979
8 Facsimile: (916) 446-8199
ktaber@somachlaw.com

9
10 Attorneys for PLACER COUNTY WATER
AGENCY

11
12 BEFORE THE

13 CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

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

19
20
21
22
23
24
25
26
27
28
**THE PLACER 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**

20
21
22
23
24
25
26
27
28
I. INTRODUCTION

29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
900
901
902
903
904
905
906
907
908
909
910
911
912
913
914
915
916
917
918
919
920
921
922
923
924
925
926
927
928
929
930
931
932
933
934
935
936
937
938
939
940
941
942
943
944
945
946
947
948
949
950
951
952
953
954
955
956
957
958
959
960
961
962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
980
981
982
983
984
985
986
987
988
989
990
991
992
993
994
995
996
997
998
999
1000

The Placer County Water Agency (PCWA) respectfully requests that the State Water Resources Control Board (State Water Board) overrule San Luis & Delta-Mendota Water Authority (SLDMWA) and Westlands Water District's (Westlands) objections to the admission of Exhibit PCWA-071. (Objections to Exhibit). This exhibit constitutes a summary of written testimony submitted by PCWA witness, Einar Maisch. SLDMWA and Westlands fail to identify the statements in this summary upon which their Objections to Exhibit are based.

1
2 **II. DISCUSSION**

3 **A. Standard of Review**

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

14 Specifically, “[h]earsay evidence may be used for the purpose of supplementing
15 or explaining other evidence but over timely objection shall not be sufficient in itself to
16 support a finding unless it would be admissible over objections in civil actions.” (Gov.
17 Code, § 11513(d); see also Cal. Code Regs., tit. 23, § 648.5.1 [“Hearsay evidence is
18 admissible subject to the provisions of Government Code section 11513.”].) The State
19 Water Board follows these relaxed standards because the Hearing Officers’ expertise in
20 the subject matter justifies the State Water Board’s ability to make both legal and factual
21 determinations.

22 **B. PCWA’s Summary of Witness Testimony Should Be Admitted**

23 SLDMWA and Westlands’ objections to the admission of PCWA’s summary of
24 witness testimony are vague, without merit, and should be overruled.

25 First, SLDMWA and Westlands fail to identify any statements in the document to
26 which they object. (See Objections to Exhibits at p. 3:4-7.) SLDMWA and Westlands
27 object to this exhibit on the grounds that it includes “statements that were made other
28 than by witnesses while testifying during the California WaterFix change petition
hearing” (Objections to Exhibits at p. 4:4-5.) An objection, however, must identify

1 the nature of the evidence and the basis for requesting exclusion. (*People v. Hayes*
2 (1999) 21 Cal.4th 1211, 1261.) A general evidentiary objection like the one offered by
3 SLDMWA and Westlands is not sufficient to exclude evidence “without specific
4 identification of the evidence to which the party objects and the reason for that
5 objection.” (State Water Board Order WR 2012-0012 at p. 11, fn. 28.) SLDMWA and
6 Westlands have simply objected to the exhibit because it includes “statements” without
7 identifying the statements to which they object. In this respect, the Objections to Exhibit
8 are vague, and for this reason alone, should be overruled.

9 Second, the objections should be overruled because the exhibit is relevant.
10 Again, any relevant evidence should be admitted if it is the sort of evidence relied upon
11 in the conduct of serious affairs, despite any rule which might otherwise make the
12 evidence inadmissible in civil actions. (Gov. Code, § 11513(c).) PCWA’s witness --
13 Einar Maisch - prepared a PowerPoint presentation summarizing his written direct
14 testimony, as required by the State Water Board in its January 15, 2016 letter and
15 February 11, 2016 Pre-Hearing Conference Ruling. This summary is relevant to the
16 proceeding because it was prepared in response to the Hearing Officers’ request in
17 order to provide for the efficient presentation of evidence. Further, PowerPoint
18 presentations are commonly used at State Water Board hearings to summarize lengthy
19 written testimony. Thus, this exhibit is relevant and the Objections to Exhibit should be
20 overruled on this ground alone.

21 Even if this summary of testimony could be considered hearsay, it is otherwise
22 admissible because it explains other evidence – i.e., Mr. Maisch’s written testimony.

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

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

III. CONCLUSION

For the foregoing reasons, PCWA respectfully requests that the State Water Board overrule SLDMWA and Westlands' objections to Exhibits PCWA-071, and admit this document into evidence.

SOMACH SIMMONS & DUNN
A Professional Corporation

DATED: January 6, 2017

By 
Kelley M. Taber
Attorneys for Placer County Water Agency

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

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):

THE PLACER 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

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 January 6, 2017.

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