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Agency

10 BEFORE THE  
11 CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

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

**THE SACRAMENTO COUNTY WATER  
AGENCY'S RESPONSE TO  
CALIFORNIA DEPARTMENT OF  
WATER RESOURCES' OBJECTIONS  
TO EXHIBITS SUBMITTED IN  
SUPPORT OF PROTESTANTS'  
CASES-IN-CHIEF**

17 **I. INTRODUCTION**

18 On December 19, 2016, the Hearing Officers issued a ruling setting a deadline of  
19 December 30, 2016, to submit objections to testimony or exhibits that were introduced  
20 into evidence, including exhibits that were introduced during cross-examination. On  
21 December 30, 2016, the California Department of Water Resources (DWR) objected to  
22 the Sacramento County Water Agency's inclusion of exhibit SCWA-1 in the list of  
23 exhibits SCWA moved into evidence on November 2, 2016. Specifically, DWR argues  
24 that because SCWA neither referred to nor relied on SCWA-1 during presentation of  
25 direct testimony or during cross examination, SCWA-1 should be excluded from the  
26 evidentiary record. SCWA, however, did rely on SCWA-1 during cross-examination of  
27 Petitioners' construction panel. SCWA therefore respectfully requests that the State  
28 Water Resources Control Board (State Water Board) overrule the California Department

1 of Water Resources' objection to the inclusion of exhibit SCWA-1 in the evidentiary  
2 record for the California WaterFix petition for change proceeding.

## 3 II. ARGUMENT

### 4 A. Standard of Review

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

### 15 B. SCWA-1 is relevant to the proceeding because SCWA used it during cross- 16 examination of Petitioners' witnesses.

17 On August 5, 2016, during cross-examination of Petitioners' construction panel,  
18 SCWA counsel marked exhibit SCWA-1 for identification purposes. (Aug 5, 2016  
19 Hearing Transcript, at 89.) SCWA counsel then proceeded to rely on SCWA-1 for the  
20 purpose of cross-examining Mr. John Bednarski and Ms. Gwendolyn Buchholz on issues  
21 concerning the potential impacts of the WaterFix facilities on SCWA's municipal  
22 groundwater production wells located in the Town of Hood. (Aug 5, 2016 Hearing  
23 Transcript, at 89-95.) Because SCWA relied on SCWA-1 during cross examination, the  
24 exhibit is relevant and should be included in the evidentiary record.


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**III. CONCLUSION**

For the foregoing reasons, SCWA respectfully requests that the State Water Board overrule DWR's objection to SCWA-1, and admit this exhibit into evidence.

SOMACH SIMMONS & DUNN  
A Professional Corporation

Dated: January 6, 2017

By:   
Aaron A. Ferguson  
Attorney for Sacramento County Water Agency

1 STATEMENT OF SERVICE

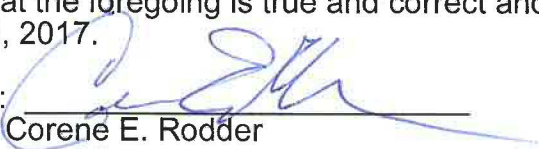
2 **CALIFORNIA WATERFIX PETITION HEARING**  
3 **Department of Water Resources and U.S. Bureau of Reclamation (Petitioners)**

4 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):

5 **THE SACRAMENTO COUNTY WATER AGENCY'S RESPONSE TO CALIFORNIA**  
6 **DEPARTMENT OF WATER RESOURCES' OBJECTIONS TO EXHIBITS SUBMITTED**  
7 **IN SUPPORT OF PROTESTANTS' CASES-IN-CHIEF**

8 to be served **by Electronic Mail** (email) upon the parties listed in Table 1 of the Current  
9 Service List for the California WaterFix Petition hearing, dated November 15, 2016,  
10 posted by the State Water Resources Control Board at  
11 [http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/california](http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/service_list.shtml)  
12 [waterfix/service\\_list.shtml](http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/service_list.shtml):

13 I certify that the foregoing is true and correct and that this document was executed on  
14 January 6, 2017.

15 Signature:   
16 Name: Corene E. Rodder  
17 Title: Legal Secretary  
18 Party/Affiliation: Sacramento County Water Agency  
19 Address: 500 Capitol Mall, Suite 1000  
20 Sacramento, CA 95814

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