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7 BEFORE THE CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

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HEARING IN THE MATTER OF CALIFORNIA DEPARTMENT OF WATER RESOURCES AND UNITED STATES BUREAU OF RECLAMATION REQUEST FOR A CHANGE IN POINT OF DIVERSION FOR CALIFORNIA WATER FIX	SNUG HARBOR RESORTS, LLC RESPONSE TO CALIFORNIA DEPARTMENT OF WATER RESOURCES' OBJECTIONS TO EXHIBITS SUBMITTED IN SUPPORT OF PROTESTANT SNUG HARBOR RESORTS, LLC CASE-IN-CHIEF
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**INTRODUCTION**

11 Snug Harbor Resorts, LLC (SHR) requests that the Hearing Officers issue an order accepting the  
12 documents submitted into evidence by Snug Harbor Resorts, at the close of Protestant Snug Harbor  
13 Resorts, LLC presentation of case-in-chief, related to impacts to legal users of water from proposed  
14 WaterFix construction and operation. SHR owner, Nicole Suard, has conducted extensive research into  
15 the history of the water conveyance planning process for California, not just in the Delta, and a wider  
16 perspective is necessary to assess impacts to legal users of water, statewide. The documents and maps  
17 submitted reflect the research of background information that helps to provide causal evidence of  
18 what a reasonable person might expect to be impact from such a fundamental alteration of flows into  
19 and through the Sacramento San Joaquin Delta as is proposed by DWR/USBR.

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**STATEMENT OF FACTS**

22 On February 11, 2016 Hearing Officers issued a ruling that Part 1 focuses on human uses of water,  
23 water rights, water use impacts. However, if a human use is associated with the health of a fishery or  
24 recreation, the testimony should be submitted in Part 2. All evidence submitted by SHR does relate to  
25 Part 1, human use of water by a business of the humans who use the business, and who have riparian  
26 and pre-1914 legal right to use of surface flows on Steamboat Slough. Per DWR's own recognition,  
27 Govt. Code Section 11513 subd. ( c ) says the Board shall admit any relevant evidence if it is the sort of  
28 evidence on which responsible persons are accustomed to rely on in the conduct of serious affairs,  
29 regardless of the existence of any common law or statutory rule which might make improper the  
30 admission of the evidence over objection in civil actions. In other words, the hearing officers have the  
31 discretion to accept evidence of issues and documents simply ignored by WaterFix supporters; WaterFix  
32 drafters failed to adequately assess impacts to the legal users of water in the Delta and around the

1 whole San Francisco Bay area, as well as impacts north of the Delta, all of which should be of interest  
2 and concern to hearing members charged with the protection of all water quality in California. As stated  
3 in Suard oral testimony, and referenced in numerous locations in SHR documents (see detail response to  
4 objections later in this response) the last seven or more years of suspending the Delta flows in a  
5 “drought” flow status has shown what impacts can be expected in the short term, with much worse  
6 impacts over the long term. This is important, because it is very evident that too much freshwater flow  
7 is being diverted to other areas of the state south of the Delta, and in fact there should be a reduction of  
8 allowed exports until such time as native fish species and Northern California groundwater quality  
9 recuperates from the myriad of negative impacts from DWR/USBR water conveyance management since  
10 the 1960’s. In addition, evidence provided by SHR demonstrates that DWR, in particular, has not been  
11 forthright or transparent in reporting actual flow and diversion data. When confronted with what  
12 appears to be incorrect flow data, DWR policy is to simply change the report, without errata and without  
13 notice to the persons who may have utilized the flow data for development of flow computer models. If  
14 the baseline flow data is fabricated using incorrect flow data provided by DWR staff, then the computer  
15 models will also have incorrect outcome. To quote one of the exhibit slides (SHR ...) “Garbage In,  
16 Garbage out”. I believe hearing officers should verify if even the Waterboard itself has been provided  
17 with accurate flow and export data between 2004 to 2016, and no decisions should be made until  
18 verified accurate flow data upon which to base determination of surplus water availability has been  
19 received and published to the public.

20 SHR was prepared to cover many topics related impacts to drinking water impacts from low drought  
21 level flows through the Delta. Whether the low flows are due to barriers or drought or excess  
22 diversions, the negative impacts to legal users of water downstream are the same. However, since the  
23 hearing chair decided only twenty minutes would be granted, the topic of impacts to groundwater that  
24 are not recognized either by BDCP or Waterfix was addressed in written and oral testimony because it is  
25 an issue that is already impacting public and private wells in the Delta region. The water quality of Delta  
26 drinking water wells began to decline starting around 2004, during the CALFED/BDCP restoration  
27 experiments, which have included reduction of fresh water flows on Steamboat Slough and other areas  
28 of the North Delta, suspending us in the “drought flow” proposed by WaterFix. WaterFix proposes to  
29 suspend the Delta into a *permanent* drought-flow status, in effect. The testimony should not have been  
30 considered a surprise, given the number of documents and references to arsenic and other constituents  
31 in drinking water contained in the evidence of SHR (see detail responses below). SHR is just one facility  
32 dealing with the direct impacts to operations, and the increases in costs associated with DWR actions  
33 under CALFED/BDCP since 2004. Almost every other recreation facility, all of the legacy delta towns,  
34 and most of the private drinking water wells at least in the North Delta, have experienced marked  
35 degradation in the last ten years, as DWR/USBR have used waterways as petri dishes, experimenting  
36 with low flows, failed restoration actions, and failed fish migration pathway alterations. SWRCB  
37 oversees an online resource where the public can track the impacts to public drinking water systems,  
38 which shows the impacts over time. It is really obnoxious that DWR/USBR would choose to ignore the  
39 current and future impacts to all the drinking water wells in and around the Delta from operation of  
40 proposed Waterfix tunnels. Of course DWR/USBR doesn’t want SWRCB to consider the impacts to the  
41 rest of us, the legal users of water in the area.

1 As a reminder, the burden of proof is on DWR/USBR to show no impacts to other legal users of water.  
2 DWR/USBR WaterFix drafters, engineers and managers are asking you, the hearing board, to put on  
3 blinders like what a racehorse wears, so that the horse sees only a bit of what is in front of her.  
4 DWR/USBR is asking hearing officers to put on blinders, ignore the existence of all the legal water users  
5 in and around the Delta, and therefore ignore real, commonsense impacts to us. Hearing officers can  
6 choose to not put on those blinders, and review evidence gathered from online resources easily  
7 accessible to the public, but provided for evidence as well for the WaterFix hearings. Has DWR/USBR  
8 met its burden of proof? Look at their evidence, and right there the logical answer is “no. Has SHR  
9 shown there could be severe negative impacts to legal users of drinking water in the Delta downriver  
10 from the proposed WaterFix intakes? The evidence indicates yes.

11 SHR therefore asks that all documents and maps submitted by SHR be admitted into evidence for full  
12 consideration by the hearing board.

### 13 **DETAILED RESPONSE TO SPECIFIC CLAIMS AGAINST SHR EVIDENCE AND TESTIMONY**

#### 14 **A. DWR claim of SHR Improper Surprise Testimony that Lacks Foundation and Relevance to the** 15 **Proceeding:**

16 Contrary to DWR statement, reference to impacts to drinking water quality was brought up  
17 repeatedly by Ms. Suard during cross examination of DWR and USBR witnesses regarding  
18 impacts to drinking water during construction, during operation, and also regarding modeling  
19 issues. In addition, SHR submitted records of USGS studies, SWRCB water quality monitoring  
20 website graphics, and also evidence of test results showing water quality decline during the time  
21 frame when DWR/USBR was already experimenting with low drought-flow operation on  
22 Steamboat Slough. All evidence was submitted on time, by 9/1/16 and DWR/USBR had several  
23 months which should be ample time to go over the evidence provided by SHR. As SWRCB  
24 knows, the increase in arsenic in the Central Valley is a known issue. The fact that DWR/USBR  
25 choose to ignore the known issue, and ignore to assess impacts from WaterFix operations on  
26 this known issue is an example of DWR’s ongoing use of what I call “Salad Bar Science” : pick  
27 and choose the data you want and ignore what you don’t want. All this to say, impacts from  
28 drought flows is a very good indicator of impacts from WaterFix, which would suspend the Delta  
29 and whole Bay Area into a permanent drought-flow status. SHR evidence is relevant, current,  
30 and necessary to the understanding of potential impacts to the legal users of water in the Delta  
31 and San Francisco Bay at a minimum.

32  
33 **B Exhibits Submitted but not Utilized:** SHR written testimony followed the format of DWR  
34 witness statements, such as that of Tara Smith, a long time computer modeler for DWR, whose  
35 written testimony was sparse and referenced no documents. As Suard expressed during cross-  
36 examination by DWR, there was no instruction book for SWRCB hearing and testimony process  
37 that specified the written testimony format for this particular hearing. Suard said “you can’t go  
38 by the book if there is no book to go by” and the fact that testimony did not refer to the exact  
39 references when the written document was first submitted should not be an excuse to  
40 invalidate that testimony. DWR provides a short list of the exhibits they do recognize as being

1 referenced, but fails to note that many of the other exhibits are the full copies of the reports or  
2 documents referenced in the slide sets used by Suard during cross-examination of DWR/USBR  
3 witnesses, other parties witnesses, and when presenting testimony for 20 minutes. See below  
4 for specific response to DWR objections. In any case, even if an exhibit was not specifically  
5 brought up on cross-examination or during testimony, the documents reflect research and  
6 reports related to the Delta water quality and Delta history which are important factors to  
7 consider in the whole picture of impacts to legal users of water. SHR therefore requests that all  
8 exhibits, utilized or not during testimony or cross-examination, be accepted into evidence as  
9 appropriate reference material.

10  
11 **C Exhibits that Lack Foundation and Relevance to the Proceeding:** DWR takes particular  
12 offense to specific exhibits listed by DWR, claiming a lack of foundation and relevance. Please  
13 note that all documents were research and copied by Suard on behalf of SHR. SHR-500 is a  
14 statement of preparation, signed by Ms. Suard, which establishes the preparation of the  
15 documents and should suffice as a foundation for purposes of this hearing, which is not  
16 constrained by standard civil court procedure or requirements. Ms. Suard researched the  
17 issues, prepared the documents, labeled the documents and maps as evidence and submitted  
18 them. This foundational argument applies to all documents and evidence submitted by SHR.

19 Regarding the issue of relevance, SHR represents that all submitted evidence is relevant to  
20 the issue of impacts to legal users of water in the Delta, and particularly to SHR and the North  
21 Delta area owners, and provides the relevancy regarding specific documents objected to by  
22 DWR as follows:

23 **SHR-9** is a great historical report on the fresh water flows of the Delta prior to any water  
24 projects and is absolutely relevant to the issue of long term changes to water quality in the Delta  
25 and is an important source of information. It is relevant today, tomorrow and in 100 years from  
26 now.

27 **SHR-21, SHR-77** related to impacts to SHR from DWR/USBR management of flows in the Delta in  
28 a “drought-flow” status, and is thereby directly relevant to impacts to SHR from impacts not  
29 disclosed by DWR/USBR if the WaterFix project is allowed to suspend Delta flows into a  
30 permanent drought status. SHR utilizes screen prints from various websites that do reference  
31 data that changes over time, but SHR has no control over the changes to those websites and can  
32 only provide evidence from when the screen print was saved. If DWR is challenging the  
33 accuracy of the data provided by the screen prints, it would be helpful for DWR to be more  
34 specific about what part of the data is being challenged. These exhibits show impacts to  
35 drinking water quality that arose during low drought-flows in the North Delta. It is clearly  
36 relevant to the hearing if one uses common sense.

37 **SHR-102, 103, 104** are Power Point presentations of many screen prints of the documents that  
38 then were submitted as exhibits. Since SHR had no idea what the testimony of people like Tera  
39 Smith for DWR might be, the powerpoints were created to cover many of the subjects that  
40 might come up. Note that the issue of drinking water quality in the Delta, including arsenic  
41 slide, was included in the powerpoints, which should have given DWR a heads up (along with  
42 SHR-21 and 77) that impacts to water quality for the public and private drinking water wells is a

1 primary issue for SHR and the North Delta. Ms. Suard did use the powerpoints during the time  
2 when DWR cross-examined Suard after her oral testimony, and also repeatedly used the slides  
3 from the powerpoints when cross-examing other parties witnesses. These slides are all  
4 important evidence that should be preserved and reviewed by persons interested in impacts to  
5 water quality in the Delta if the Delta is allowed to be reduced into a permanent drought-flow  
6 status. SHR requests that all exhibits, including the Power Points be admitted as evidence.  
7 **SHR-video** (the DWR- reference exhibit is not correct) related to Snug Harbor resort operations  
8 does not need to be submitted into evidence, and was intended to provide the board with an  
9 understanding of the location of SHR and the uses and number of persons who rely on  
10 preservation of drinking water quality in just one location downriver from proposed WaterFix  
11 intakes. SHR does not object to elimination of the video as evidence at this time. However, the  
12 written document with photos of SHR can be submitted into evidence but is not necessary.

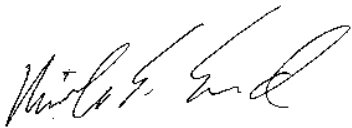
13 **D. Documents Improperly Marked as Exhibits:**

14 My apologies to DWR for submission of **SHR-110** as duplicative and I do not object to that  
15 document being eliminated from evidence as it is of record in the proceeding anyway. **SHR-500**  
16 is Suard statement of validation of preparation of documents submitted and is relevant and  
17 necessary for foundational purposes. It should remain as an exhibit. **SHR-501** is an outdated list  
18 of exhibits and I agree it can be removed from the exhibit list.

19  
20 Page **32 to 39** of the DWR protest of SHR exhibits lists the SHR exhibits and DWR claims a lack  
21 of relevance for all those exhibits. SHR objects to DWR objections as not specific enough to  
22 provide response by SHR. In general, all SHR documents submitted into evidence were used by  
23 Ms. Suard to research possible impacts, all SHR evidence documents submitted are related to  
24 the Delta, Delta fresh water flows, Delta river and flow history, Delta lands and uses, inaccurate  
25 Delta data generated by DWR and its consultants, maps of Delta area wells, water intakes,  
26 homes and businesses that operate on drinking water wells, surveys by USGS, DWR, USACE all  
27 related to the Delta, gaps in Delta flow data, statewide water policy, SWRCB documents and  
28 data provided online, and more. Since the SHR exhibits all relate directly to the Delta, and were  
29 prepared by SHR, they should be used as resources for decisions regarding actions that could  
30 affect drinking water quality, at least with reference to impacts to SHR as an example of impacts  
31 that could be assumed for locations downriver from proposed water intakes.

32  
33 For all of the above reasons, SHR requests that the evidence submitted, except for SHR 110,  
34 501 and the video be accepted into evidence.

35  
36 Submitted by

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38 Nicole S. Suard, Esq. Managing Member, Snug Harbor Resorts, LLC  
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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:

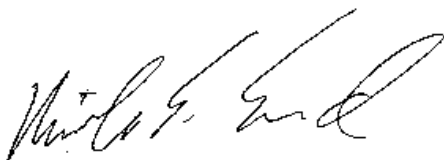
SNUG HARBOR RESORTS, LLC RESPONSE TO CALIFORNIA DEPARTMENT OF WATER RESOURCES' OBJECTIONS TO EXHIBITS SUBMITTED IN SUPPORT OF PROTESTANT SNUG HARBOR RESORTS, LLC CASE-IN-CHIEF

To be served by Electronic mail (email) upon the parties listed in Table 1 of the current service list for California WaterFix Petition Hearing, dated November 15, 2016, posted by the SWRCB at

[http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/california\\_waterfix/service\\_list.shtml](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, at Napa, California. This statement of service shall be sent separately from the primary document.

Signature:



Nicole S. Suard, Esq.

Managing Member, Snug Harbor Resorts, LLC

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