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DISTRICT, SACRAMENTO COUNTY WATER
AGENCY, PLACER COUNTY WATER AGENCY,
CARMICHAEL WATER DISTRICT

BEFORE THE
CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

HEARING ON 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.

**SACRAMENTO VALLEY WATER
USERS' RESPONSE TO CALIFORNIA
DEPARTMENT OF WATER
RESOURCES' OBJECTIONS TO
EXHIBITS SUBMITTED IN SUPPORT
OF PROTESTANTS' CASES-IN-CHIEF**

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1 I. INTRODUCTION AND BACKGROUND

2 On May 11, 2016, the WaterFix Project Hearing Officers issued their Second
3 Revised Notice of Rescheduled Public Hearing in which they established September 1,
4 2016, as the due date for Protestants to submit their Part 1B cases in chief. On
5 September 1, 2016, the Sacramento Valley Water Users (SVWU) jointly submitted
6 written testimony, including the written direct testimony of Walter Bourez (MBK
7 Engineers) and Dan Easton (MBK Engineers), a PowerPoint presentation, and exhibits
8 containing technical comments and memoranda. These exhibits were labeled
9 SVWU-100, SVWU-101, SVWU-102, SVWU-103, SVWU-104, SVWU-105, SVWU-106,
10 SVWU-107, SVWU-108, SVWU-109, and SVWU-110. At the same time, numerous
11 members of the SVWU incorporated these SVWU exhibits into their cases in chief. (See
12 e.g., August 31, 2016 Cover Letter of Glenn-Colusa Irrigation District's Submittal of
13 Testimony and Exhibits for California WaterFix Petition for Change Hearing.)

14 At the hearing on October 27, 2016, Hearing Chair Doduc approved the request
15 on behalf of the SVWU (Group 7) to move their Part 1B hearing evidence into the record
16 by the end of the day on November 2, 2016. On November 2, 2016, the SVWU moved
17 exhibits SVWU-1, SVWU-2, SVWU-100, SVWU-101, SVWU-102, SVWU-103, SVWU-
18 104, SVWU-105, SVWU-106, SVWU-107, SVWU-108, SVWU-109, and SVWU-110 into
19 evidence for the WaterFix proceeding. (See Evidence Submission by Group 7
20 Protestants, attached hereto as Exhibit A.) On that same date, individual SVWU
21 members, Biggs-West Gridley Water District, Carmichael Water District, Glenn-Colusa
22 Irrigation District, Placer County Water Agency, and Sacramento County Water Agency
23 moved exhibits SVWU-100, SVWU-101, SVWU-102, SVWU-103, SVWU-104,
24 SVWU-105, SVWU-106, SVWU-107, SVWU-108, SVWU-109, and SVWU-110 into
25 evidence, and Carmichael Water District, Placer County Water Agency, and Sacramento
26 County Water Agency also moved exhibits SVWU-1 and SVWU-2 into evidence. As
27 such, the same SVWU exhibits have been offered into the record by multiple parties.
28

1 On December 19, 2016, the Hearing Officers issued a ruling setting a deadline of
2 December 30, 2016, to submit objections to testimony or exhibits that were introduced
3 into evidence, including exhibits that were introduced during cross-examination. On
4 December 30, 2016, the California Department of Water Resources (DWR) submitted
5 objections to the SVWUs' exhibits included in the exhibit lists of Group 7 parties.
6 Specifically, DWR argues that Biggs-West Gridley Water District, Carmichael Water
7 District, Glenn-Colusa Irrigation District, Placer County Water Agency, and Sacramento
8 County Water Agency's inclusion of the SVWUs' exhibits in their final exhibits lists is
9 duplicative of those submitted by the SVWU as part of Group 7's collective case in chief.

10 Coordinating the submittal of the SVWUs' exhibits by individual Group 7
11 Protestants is consistent with direction from the Hearing Officers encouraging parties
12 with common interests to work together. As such, it is relevant evidence. Admission of
13 the exhibits will not waste the time of the Hearing Officers or interested parties as it
14 contains the same evidence offered by the SVWU.

15 II. ARGUMENT

16 This hearing is governed by Chapter 4.5 of the Administrative Procedure Act,
17 (Gov. Code, § 11400 et. seq.); regulations adopted by the State Water Board, (Cal.
18 Code of Regs., tit. 23, § 648-648.8); sections 801 to 805 of the Evidence Code; and
19 section 11513 of the Government Code. (Cal. Code of Regs., tit. 23, § 648(b).) The
20 State Water Board is not required to conduct adjudicative hearings according to the
21 technical rules of evidence applicable to a court. (Gov. Code, § 11513(c).) The State
22 Water Board shall admit any relevant evidence if it is the sort of evidence on which
23 responsible persons are accustomed to rely on in the conduct of serious affairs,
24 regardless of any common law or statutory rule which might make improper the
25 admission of evidence over objection in civil actions. (Ibid.) The Hearing Officers have
26 discretion to exclude evidence if its probative value is substantially outweighed by the
27 probability that its admission will necessitate undue consumption of time. (*Id.* at
28 subd. (f).)

1 **A. The SVWUs' exhibits moved into evidence by individual SVWU protestants**
2 **are relevant to the proceeding and should be admitted**

3 Individual SVWU members moved the SVWUs' exhibits into evidence. In their
4 October 30, 2015 Hearing Notice, the Hearing Officers encouraged "parties with
5 common interests to work together to make the hearing process more efficient."
6 (October 30, 2015 Hearing Notice, Enclosure D, at 31.) The SVWU have coordinated
7 and collaborated consistent with this direction by developing and offering technical
8 analyses concerning the WaterFix Project (and its predecessor Bay Delta Conservation
9 Plan), with a particular emphasis on deficiencies in the modeling used to support these
10 efforts. By doing so, the SVWU have been able to offer testimony and exhibits in the
11 WaterFix proceeding on common issues and concerns associated with the modeling
12 offered by Petitioners.

13 As part of this coordinated effort, on September 1, 2016, the SVWUs' submitted
14 exhibits SVWU-100 through SVWU-110 in support of the SVWU protestants' joint case
15 in chief. Also, individual SVWU protestants expressly incorporated exhibits SVWU-100
16 through SVWU-110 into their cases in chief.

17 Each of the SVWU exhibits were then moved into evidence on November 2, 2016.
18 Consistent with their case in chief submittals that incorporated the SVWU's exhibits,
19 Biggs-West Gridley Water District, Carmichael Water District, Glenn-Colusa Irrigation
20 District, Placer County Water Agency, and Sacramento County Water Agency moved the
21 SVWUs' exhibits into evidence on the same date. Because the SVWU exhibits offered
22 in these individual submittals were prepared and offered in a coordinated fashion,
23 consistent with direction from the Hearing Officers, they are relevant to the proceeding
24 and should be admitted into evidence.

25 **B. There is value in admitting into evidence the exhibits offered by individual**
26 **SVWU protestants**

27 Including the submittal of joint SVWU exhibits by individual SVWU members in
28 the record will not unduly consume the time of the Hearing Officers or interested parties


1 because the relevant exhibits are the same exhibits offered by the SVWU group jointly.
2 They are not offering different exhibits on the same subject that would otherwise require
3 separate review and consideration. In this respect, the value of including individual
4 SVWU protestants' submittals is not substantially outweighed by the probability that its
5 admission will necessitate an undue consumption of time.

6 **III. CONCLUSION**

7 For the foregoing reasons, DWR's objection should be overruled.

8
9 SOMACH SIMMONS & DUNN
A Professional Corporation

10
11 DATED: January 6, 2017

12 By  _____
13 For Andrew M. Hitchings
14 Attorneys for GLENN-COLUSA
15 IRRIGATION DISTRICT, BIGGS-WEST
16 GRIDLEY WATER DISTRICT,
17 SACRAMENTO COUNTY WATER
18 AGENCY, PLACER COUNTY WATER
19 AGENCY, CARMICHAEL WATER
20 DISTRICT

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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):

**SACRAMENTO VALLEY WATER USERS' RESPONSE TO CALIFORNIA
DEPARTMENT OF WATER RESOURCES' OBJECTIONS TO EXHIBITS SUBMITTED
IN SUPPORT OF PROTESTANTS' CASES-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.

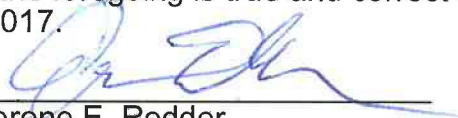
Signature: 
Name: Corene E. Rodder
Title: Legal Secretary
Party/Affiliation: Sacramento Valley Water Users
Address: 500 Capitol Mall, Suite 1000
Sacramento, CA 95814

EXHIBIT A

BARTKIEWICZ, KRONICK & SHANAHAN

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STEPHEN A. KRONICK
JENNIFER T. BUCKMAN

November 2, 2016

Felicia Marcus, Chair and Co-Hearing Officer
Tam Doduc, Member and Co-Hearing Officer
State Water Resources Control Board
1001 I Street
Sacramento, California 95814

VIA ELECTRONIC MAIL:
CWFhearing@waterboards.ca.gov

Re: California WaterFix Hearing – Evidence Submission by Group 7
Protestants Sacramento Valley Water Users

Dear Chair Marcus and Member Doduc:

At the hearing on October 27, 2016, Hearing Chair Doduc approved the request on behalf of the Group 7 protestants to move their Part 1B hearing evidence into the record by the end of the day on November 2, 2016. The Sacramento Valley Water User protestants on the attached list move the evidence on the attached exhibit list into evidence for this proceeding.

Kind regards,

NORTHERN CALIFORNIA WATER
ASSOCIATION


PLACER COUNTY WATER AGENCY

By: /s/ David Guy
David Guy
Executive Director

By: /s/ Daniel Kelly
Daniel Kelly
Staff Counsel

BARTKIEWICZ, KRONICK &
SHANAHAN, P.C.

SOMACH, SIMMONS & DUNN, P.C.

By: 
Alan B. Lilly
Ryan S. Bezerra
Jennifer T. Buckman
Andrew J. Ramos

By: /s/ Andrew M. Hitchings
Andrew M. Hitchings
Aaron A. Ferguson
Kelley M. Taber

Ms. Felicia Marcus and Ms. Tam Doduc

November 2, 2016

Page 2

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STOEL RIVES LLP

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Kevin O'Brien
David Aladjem
Meredith Nikkel

By: /s/Wesley A. Miliband

Wesley A. Miliband

MINASIAN, MEITH, SOARES, SEXTON &
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By: /s/ Dustin C. Cooper

Dustin C. Cooper

AJR:tmo

8618/CWF/WR Change/L110216ajr Moving SVWU Evidence.docx

cc: Service List

Ms. Felicia Marcus and Ms. Tam Doduc
November 2, 2016
Page 3

Sacramento Valley Water Users Parties

Northern California Water Association

Clients represented by Downey Brand LLP

Carter Mutual Water Company
El Dorado Irrigation District
El Dorado Water & Power Authority
Howald Farms, Inc.
Maxwell Irrigation District
Natomas Central Mutual Water Company
Meridian Farms Water Company
Oji Brothers Farm, Inc.
Oji Family Partnership
Pelger Mutual Water Company
Pleasant-Grove Verona Mutual Water Co.
Princeton Codora-Glenn Irrigation District
Provident Irrigation District
Reclamation District 108
Henry D. Richter, et al.
River Garden Farms Company
Sacramento Municipal Utility District
South Sutter Water District
Sutter Extension Water District
Sutter Mutual Water Company
Tisdale Irrigation and Drainage Company
Windswept Land and Livestock Company

Clients represented by Somach Simmons & Dunn

Glenn-Colusa Irrigation District
Biggs-West Gridley Water District
Sacramento County Water Agency
Placer County Water Agency
Carmichael Water District

Clients represented by Bartkiewicz, Kronick & Shanahan

City of Folsom
City of Roseville
San Juan Water District
Sacramento Suburban Water District
Yuba County Water Agency

Ms. Felicia Marcus and Ms. Tam Doduc

November 2, 2016

Page 4

Clients represented by Minasian, Meith, Soares, Sexton & Cooper, LLP

Anderson-Cottonwood Irrigation District

Butte Water District

Nevada Irrigation District

Paradise Irrigation District

Plumas Mutual Water Company

Reclamation District No. 1004

Richvale Irrigation District

South Feather Water & Power Agency

Western Canal Water District

Clients represented by Stoel Rives

City of Sacramento

Exhibit Identification Index

California WaterFix hearing
California Department of Water Resources and U.S. Bureau of Reclamation

Wednesday, November 02, 2016

PARTICIPANT: SACRAMENTO VALLEY WATER USERS ("SVWU")

Exhibit Identification Number (e.g. DWR-1)	Exhibit Description	File Name (e.g. dwr_1.pdf)	Status of Evidence (for Hearing Team use Only)		
			Introduced	Accepted	By Official Notice
SVWU-1	Draft January 2016 Biological Assessment for the California WaterFix	svwu_1.pdf			
SVWU-2	Monthly Probability of Exceedance - Storage at Shasta Reservoir	svwu_2.pdf			
SVWU-100	Testimony of Walter Bourez	svwu_100.pdf			
SVWU-101	Statement of Qualifications for Walter Bourez	svwu_101.pdf			
SVWU-102	MBK Report on Review of Bay Delta Conservation Program Modeling, June 20, 2014	svwu_102.pdf			
SVWU-103	MBK Technical Comments on the Bay Delta Conservation Plan/California Water Fix Partially Recirculated Draft EIR/Supplemental Draft EIS, October 28, 2015	svwu_103.pdf			
SVWU-104	MBK Technical Comments on Coordinated Long-Term Operation of the Central Valley Project and State Water Project Draft Environmental Impact Statement, September 29, 2015	svwu_104.pdf			
SVWU-105	Testimony of Dan Easton	svwu_105.pdf			
SVWU-106	Statement of Qualifications for Dan Easton	svwu_106.pdf			
SVWU-107	MBK California WaterFix Modeling Review, August 30, 2016	svwu_107.pdf			
SVWU-108	MBK Technical Memorandum with example 2-year injury	svwu_108.pdf			
SVWU-109	MBK Technical Memorandum regarding B1, H3, and H4 scenarios	svwu_109.pdf			
SVWU-110	Walter Bourez Powerpoint Presentation	svwu_110.pdf			

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 I served the following letter regarding California WaterFix Hearing – Evidence Submission by Group 7 Protestants Sacramento Valley Water Users.

I hereby certify I have served these documents upon the parties listed in Table 1 of the Current Service List for the California WaterFix Petition hearing, dated October 6, 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 November 2, 2016.

Signature: /s/ Terry Olson
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Title: Legal Assistant
Party/Affiliation: Cities of Folsom, Roseville, Sacramento Suburban Water District, San Juan Water District and Yuba County Water Agency
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