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**Sent:** Monday, February 26, 2018 12:33 PM  
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**Cc:** CWFhearing; Marcus, Felicia@Waterboards; Doduc, Tam@Waterboards  
**Subject:** WaterFix Hearing – NRDC et al. opposition to DWR’s objections to NRDC’s request to admit as evidence NRDC-100 & 102  
**Attachments:** WaterFix Statement of Service - NRDC et al. Opposition to DWR’s Objections to NRDC’s Request to Admit NRDC-100 and NRDC-102 as Evidence.pdf; NRDC et al. Opposition to DWR’s Objections to NRDC’s Request to Admit as Evidence NRDC-100 and NRDC-102.pdf

Dear California WaterFix Hearing Officers and Service List,

On behalf of the Natural Resources Defense Council, The Bay Institute, and Defenders of Wildlife, attached is an opposition to DWR’s objections to NRDC’s request to admit as evidence NRDC-100 and NRDC-102, and a statement of service.

Sincerely,

**ANNA WEARN**  
*Nature Program, Water & Wildlife*

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8  
9 BEFORE THE STATE WATER RESOURCES CONTROL BOARD

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

**OPPOSITION TO DWR'S OBJECTIONS  
TO NRDC'S REQUEST TO ADMIT AS  
EVIDENCE NRDC-100 AND NRDC-102**

1 NRDC et al oppose DWR's objection to admission of NRDC-100 and NRDC-102 into  
2 evidence. Notwithstanding the inflammatory language used in DWR's objection, these documents  
3 are relevant and admissible evidence in Part 2 of this proceeding, and the Hearing Officers should  
4 overrule DWR's objection and grant NRDC's motion to admit these documents into evidence.  
5

6 DWR does not dispute that the written testimony of DWR's witness Gwendolyn Buchholz  
7 states that, "CWF H3+ is the Project adopted by DWR that is the subject of the Petition for Change  
8 in Point of Diversion requested by DWR and Reclamation." DWR-1010. Ms. Buchholz's testimony  
9 states that she is the management lead for the consulting firm overseeing many elements of WaterFix  
10 permitting, including preparing the biological assessment and portions of the EIS/EIR, and that her  
11 testimony is intended to summarize the project, including how the project description was refined  
12 over time. DWR-1010 at 2-3. She also defines "the Project" in her written testimony and associated  
13 Powerpoint presentation. *Id.*; DWR-1008 at 3.

14 NRDC-100 and NRDC-102 are relevant evidence that pertain to the witness' knowledge of  
15 "the Project" at the time her testimony was submitted and to the veracity of that testimony, and they  
16 are relevant to the question of what "the Project" was as of that date. To the extent that DWR's  
17 testimony about the description of the project is admissible, so too is evidence that rebuts that  
18 description of "the Project" at the time DWR's testimony was submitted.  
19

20 NRDC-100 is an official record of DWR, which was provided in response to a request filed  
21 under the California Public Records Act. It shows that DWR executed a contract amendment on  
22 December 18, 2017 with the Hallmark Group to extend their existing contract. DWR's agreement  
23 outline states in relevant part that,  
24

25 Additional time and money are needed for continued planning, coordination and  
26 oversight of the program. Recent meetings with fish and wildlife agencies have  
27 triggered additional planning and permitting activities such as the development of a  
28 supplemental EIR/EIS.

1 NRDC-100 at 1. This contract amendment was executed less than 3 weeks after DWR  
2 submitted its testimony for Part 2 of the hearing, including Ms. Buchholz's testimony. *Id.* at  
3 2. NRDC-100 demonstrates that prior to December 18, 2017, DWR had held meetings with  
4 fish and wildlife agencies that lead DWR to conclude that a supplemental EIS/EIR and other  
5 additional permitting activities would be required. NRDC-100 constitutes an admission of a  
6 party opponent and is exempt from hearsay.  
7

8 NRDC-102 is the meeting minutes of the December 9, 2017 meeting of the Board of  
9 Directors of the San Luis and Delta Mendota Water Authority, which was downloaded from  
10 their website. These official records state that,

11 Executive Director Jason Peltier reported that the Governor may make an  
12 announcement by the end of the year informing the public that the California  
13 WaterFix will proceed in stages with the initial stage begin State-only and a future  
14 phase for the benefit of the CVP. Peltier also reported that efforts to find a viable  
option for CVP involvement have not been successful.

15 NRDC-102 at 2. These official records demonstrate that less than 2 weeks after DWR  
16 submitted its written testimony, the Executive Director expected an announcement by the  
17 State of a phased approach to the project. NRDC-102 constitutes an official record of a local  
18 government agency and is therefore exempt from hearsay.<sup>1</sup>

19 The testimony of Ms. Bucholz and DWR's other witnesses summarize and describe the  
20 California WaterFix project, including refinements to that project. To the extent that testimony  
21 regarding the project description can be offered into evidence by DWR, other evidence regarding the  
22 Project description is also relevant and should be admitted. NRDC-100 demonstrates that DWR had  
23 held meetings with fish and wildlife agencies regarding a supplemental EIS/EIR and revised  
24

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25  
26 <sup>1</sup> Contrary to DWR's representations, these official records are not hearsay as to the truth of the  
27 statements regarding Mr. Peltier's statement and knowledge regarding the announcement that DWR  
made nearly two months later.

1 permitting around the time that DWR submitted its testimony for Part 2, and NRDC-102 suggests  
2 that DWR had held meetings with state and federal contractors around the time it submitted  
3 testimony for Part 2. DWR opened the door to this line of questioning through its written testimony  
4 and its announcement that the agency had committed to prepare a supplemental EIS/EIR and  
5 amendments to the biological opinions and other permits. The testimony is therefore not simply  
6 offered for impeachment purposes, but it is probative and relevant as to what “the Project” was as of  
7 November 29, 2017 when the testimony was submitted.<sup>2</sup> Counsel for NRDC will attest that he  
8 personally believes that Ms. Buchholz is a fair, reasonable and honest person. However, as a witness  
9 for DWR, NRDC-100 and NRDC-102 are relevant evidence regarding the description of “the  
10 Project” that respond to and raise questions regarding DWR’s testimony, representations, and  
11 omissions in this hearing.  
12

13           The Hearing Officers’ February 21, 2018 Ruling excludes testimony and cross-examination  
14 regarding the effects of a phased approach to the project. Ruling Letter at 3, 5. While NRDC  
15 strongly disagrees with that ruling, NRDC-100 and NRDC-102 are relevant to the question of what  
16 “the Project” was at the time when DWR’s witnesses submitted their testimony, including Ms.  
17 Buchholz.<sup>3</sup> Therefore, the Hearing Officers should overrule the objection and admit NRDC-100 and  
18 NRDC-102 into evidence.  
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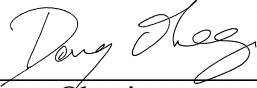
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24 <sup>2</sup> DWR’s response to the subpoena filed by Restore the Delta on February 14, 2018 is anticipated to  
25 provide additional relevant evidence regarding the description of “the Project” as of November 28,  
26 2017.

27 <sup>3</sup> NRDC acknowledges that the February 21, 2018 Ruling precludes testimony and questions  
28 regarding what “the Project” is today or in the future. However, based on the sworn testimony in  
DWR-1010, DWR would be estopped from arguing that any other Project “is the subject of the  
Petition for Change in Point of Diversion requested by DWR and Reclamation.”

1 Dated: February 26, 2018

Natural Resources Defense Council

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Doug Obegi

4 On behalf of the Natural Resources Defense Council,  
5 Defenders of Wildlife, and the Bay Institute

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