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16 On behalf of South Delta Water Agency,
17 Central Delta Water Agency, Lafayette Ranch,
18 Heritage Lands, Mark Bachetti Farms
19 and Rudy Mussi Investments L.P.

20 **STATE OF CALIFORNIA**

21 **STATE WATER RESOURCES CONTROL BOARD**

22 Hearing in the Matter of California
23 Department of Water Resources and
24 United States Department of the Interior,
25 Bureau of Reclamation Request for a
26 Change in Point of Diversion for
27 California Water Fix

**SOUTH DELTA WATER AGENCY
PROTESTANTS' JOINDER IN
OPPOSITION BY SAN JOAQUIN
COUNTY, ET AL., TO DWR'S
OBJECTIONS TO, AND MOTION TO
STRIKE THE PART 2 TESTIMONY OF
MARC DEL PIERO, CSPA-208-
CORRECTED AND RELATED ORAL
TESTIMONY**

28 The South Delta Water Agency Protestants, (“SDWA Protestants”) herein join the
Opposition of Protestants County of San Joaquin, San Joaquin County Flood Control and
Water Conservation District, Mokelumne River Water and Power Authority, (“San Joaquin

1 County Protestants”), Local Agencies of the North Delta, (“LAND”) California Sportfishing
2 Protection Alliance, California Water Impact Network and Aqua Alliance, (collectively herein
3 “San Joaquin County et al.”) to the California Department of Resources, (“DWR”) objection to
4 and motion to strike Marc Del Piero’s corrected testimony CSPA-208-Corrected and his
5 related oral testimony provided in the CWF proceedings on April 25, 2018.

6 DWR’s reliance on the State Water Resource Control Board’s (“State Board”) April 13,
7 2017 Ruling concerning the issue of a Water Availability Analysis (“WAA”) is misplaced. As
8 much as the SDWA Protestants disagree that Petitioners’ change petition does not constitute a
9 request for a new water right, the SDWA Protestants understand said Ruling to be limited to
10 the Part 1 rebuttal phase of the CWF proceedings. This understanding is consistent with the
11 fact the Hearing Team did not previously strike Mr. Del Piero’s testimony as it relates to the
12 WAA issue. It is further consistent with DWR’s willingness, as of April 24, 2018 (the day
13 before his Part 2 testimony was presented) to allow it to be offered as corrected and without
14 being subject to cross examination. Apparently, the clarity and intensity of Mr. Del Piero’s
15 verbal summary of his written testimony, and of his responses to cross examination with
16 respect to the WAA topic now, somehow, makes Mr. Del Piero’s testimony objectionable from
17 DWR’s perspective. DWR’s distaste for hearing someone with Mr. Del Piero’s background
18 testify about the common-sense truths does, not in fact, make his testimony improper.

19 Mr. Del Piero’s WAA testimony does not pertain to issue of whether Petitioners’
20 request equates to a request for a new water right. Rather, Mr. Del Piero’s WAA testimony
21 squarely pertains to the public trust, and, specifically, the unequivocal correlation between the
22 need to understand how much water is actually available in the system before approving the
23 additional allocation, of same, to **any** party or person for **any** purpose, including for public
24 trust uses. Other witnesses have provided similar testimony in these proceedings. The
25 SDWA Protestants relied on the obvious propriety of Mr. Del Piero’s written testimony, as
26 corrected, in preparing for cross examination. Presumably other protestants did so as well in
27 deciding it was not necessary to conduct cross examination. During cross examination by the
28

1 SDWA Protestants Mr. Del Piero answered several questions pertaining a WAA. DWR's sole
2 objection did not specifically pertain to the WAA issue. DWR waited until after Mr. Del Piero
3 presented his testimony, and his cross examination was complete, to lodge the subject WAA
4 related objections. Had DWR lodged its WAA objections during Mr. Del Piero's direct
5 testimony, or during cross examination, appropriate follow up questions could have followed
6 further clarifying that Mr. Del Piero's WAA testimony is unrelated to the new water right
7 issue. The tactics being employed by DWR with respect to Mr. Del Piero's testimony should
8 not be rewarded and its motion should be denied.

9
10 Respectfully Submitted,

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12 Date: April 30, 2018

13 **MOHAN, HARRIS, RUIZ,**
14 **WORTMANN, PERISHO & RUBINO, LLP**

15
16 By:  _____
17 S. DEAN RUIZ, ESQ.