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18 BEFORE THE  
19 CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

20  
21 In re State Water Resources Control Board  
Petition Requesting Changes in Water Rights  
of the Department of Water Resources and  
22 U.S. Bureau of Reclamation for the California  
WaterFix Project.  
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24  
25  
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**SAN LUIS & DELTA-MENDOTA WATER  
AUTHORITY AND WESTLANDS  
WATER DISTRICT'S OBJECTIONS TO  
EXHIBITS SUBMITTED FOR  
ADMISSION INTO EVIDENCE BY  
GROUPS 7 AND 9 AT THE CLOSE OF  
THEIR PART 1B CASES IN CHIEF**

1 **I. INTRODUCTION**

2 The San Luis & Delta-Mendota Water Authority (“Water Authority”) and Westlands Water  
3 District (“Westlands”) object to the admission into evidence of certain exhibits submitted by Group 7  
4 and Group 9 at the close of their cases in chief for Part 1B of the California WaterFix change petition  
5 hearing. The Water Authority and Westlands object to exhibits listed below to the extent they are  
6 offered for the truth of the matters asserted therein, on the grounds of hearsay.

7 It is the Water Authority and Westlands’ understanding that pursuant to the Hearing Team’s  
8 September 9, 2016 email to the hearing parties, the parties have an opportunity to submit evidentiary  
9 objections to non-testimony exhibits after such exhibits are submitted for admission into evidence.  
10 The Water Authority and Westlands submit these written objections in reliance on that understanding,  
11 while also re-asserting the Water Authority and Westlands’ previously submitted written objections to  
12 testimony exhibits.

13 **II. BACKGROUND**

14 On September 1, 2016, the parties who had indicated their intent to present cases in chief in  
15 Part 1B of the California WaterFix hearing submitted written testimony and exhibits to support their  
16 cases in chief.

17 On November 2, 2016, the various parties to Group 7, including the Sacramento Valley Water  
18 Users and American River Water Agencies groups of parties, moved and submitted for admission into  
19 evidence exhibits previously identified and uploaded on September 1, 2016.<sup>1</sup>

20 On November 9, 2016, the various parties to Group 9, including North Delta Water Agency  
21 and its member districts, submitted via email a letter and final exhibit list, which confirmed Group 9’s  
22 oral offer of the exhibits for admission into evidence on October 28, 2016.

23 **III. LEGAL STANDARD**

24 The California WaterFix hearing is governed by chapter 4.5 of the Administrative Procedure  
25

26 <sup>1</sup> The various letters submitted exhibits for admission into evidence are available on the State Water  
27 Resources Control Board’s California WaterFix – Water Right Petition webpage, at  
28 [http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/california\\_waterfix/water\\_right\\_petition.shtml](http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/water_right_petition.shtml).

1 Act (commencing with section 11400 of the Government Code), sections 801-805 of the Evidence  
 2 Code, and section 11513 of the Government Code. (Cal. Code Regs., tit. 23, § 648(b); see also Oct.  
 3 30, 2015 Hearing Notice, Enclosure D.)

4 Government Code section 11513(d) sets requirements for admissible hearsay evidence.  
 5 Section 11513(d) provides that “[h]earsay evidence may be used for the purpose of supplementing or  
 6 explaining other evidence but over timely objection shall not be sufficient in itself to support a finding  
 7 unless it would be admissible over objection in civil actions.” The State Water Resources Control  
 8 Board (“Water Board”) has explained that “[h]earsay evidence is evidence of a statement that was  
 9 made other than by a witness while testifying at the hearing, and that is offered to prove the truth of  
 10 the matter stated.” (Order WQ 2014-0015, 2014 WL 784908, at \*4 (Feb. 4, 2014), citing Evid. Code,  
 11 § 1200(a).) The Water Board cannot base a finding upon hearsay “unless it corroborates non-hearsay  
 12 evidence.” (See, e.g., Order WR 2004-0004, 2004 WL 367585, at \*16 (Feb. 19, 2004); Order WR  
 13 2016-001, 2016 WL 492285, at \*20 (Jan. 19, 2016).

14 **IV. ARGUMENT**

15 To the extent each of the exhibits below are offered to prove the truth of the matter stated, the  
 16 Water Authority and Westlands object to the admission of these exhibits. The table below identifies  
 17 the exhibits objected to:

Party	Exhibit	Description
Sacramento Valley Water Users et al.	SVWU-102	MBK Report on Review of Bay Delta Conservation Program Modeling, June 20, 2014
Sacramento Valley Water Users et al.	SVWU-103	MBK Technical Comments on the Bay Delta Conservation Plan/California Water Fix Partially Recirculated Draft EIR/Supplemental Draft EIS, October 28, 2015
Sacramento Valley Water Users et al.	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
Sacramento Valley Water Users et al.	SVWU-107	MBK California WaterFix Modeling Review, August 30, 2016
Sacramento Valley Water Users et al.	SVWU-108	MBK Technical Memorandum with example 2-year injury
Sacramento Valley Water Users et al.	SVWU-109	MBK Technical Memorandum regarding B1, H3, and H4 scenarios
Sacramento Valley Water Users et al.	SVWU-110	Walter Bourez Powerpoint Presentation
Placer County Water	PCWA-071	Power Point presentation by Einar Maisch.

Party	Exhibit	Description
Agency		September 2, 2016
Placer County Water Agency et al.	ARWA-102	Powerpoint Slides of Jeffrey Weaver
Sacramento County Water Agency	SCWA-34	Power point presentation prepared by Michael Peterson
Sacramento County Water Agency	SCWA-48	Power point presentation prepared by Steffen Mehl
Sacramento County Water Agency	SCWA-48-errata	Errata Power point presentation prepared by Steffen Mehl
Sacramento County Water Agency	SCWA-49	Power point presentation prepared by Forrest Williams
City of Folsom	Folsom-3	Powerpoint Slides for Protestants City of Folsom, City of Roseville, and San Juan Water District
City of Folsom	Folsom-3-errata	Powerpoint Slides for Protestants City of Folsom, City of Roseville, and San Juan Water District (errata)
City of Folsom	Folsom-19	Increasing Water Supply Pumping Capacity at Folsom Dam, January 1996, ESA Consultants, Inc.
Sacramento Suburban Water District	SSWD-3	Powerpoint Slides for Sacramento Suburban Water District
City of Sacramento	CitySac-3	PowerPoint Overview of James Peifer Testimony
City of Sacramento	CitySac-10	PowerPoint Overview of Bonny L. Starr Testimony
City of Sacramento	CitySac-22	Carollo Report entitled <i>Evaluation of Pump Intakes for Drought Conditions</i> , dated January 2016
City of Sacramento	CitySac-23	CBEC Memorandum entitled <i>Sacramento River Low Flow Modeling at SRWTP Intake</i> , dated February 12, 2016
City of Sacramento	CitySac-24	CBEC Memorandum entitled <i>American River Low Flow Modeling at EAFWTP Intake</i> , dated February 15, 2016
City of Sacramento	CitySac-29	Cyanotoxins in the Sacramento River Watershed, October 2015
City of Sacramento	CitySac-30	Summary of City of Sacramento 2015-2016 Cyanotoxin Monitoring
City of Sacramento	CitySac-33	City of Sacramento Comments on BDCP and Draft EIR/EIS, July 22, 2014
City of Sacramento	CitySac-34	City of Sacramento Comments on California WaterFix and RDEIR/SDEIS, October 29, 2015
Sacramento Valley Group – Sutter Extension Water District	SVG-20-073	Joint Water Districts Board Hydrology Report, 2015
North Delta Water Agency et al.	NDWA-32	MBK Technical Comments on CWF BA Modeling, Aug. 29, 2016
North Delta Water Agency et al.	NDWA-32-errata	Corrected MBK Technical Comments on CWF BA Modeling, Aug. 29, 2016
North Delta Water Agency et al.	NDWA-35	NDWA Comment Letter for 2014 BDCP DEIR/DEIS
North Delta Water Agency et al.	NDWA-36	NDWA Comment Letter for 2015 BDCP RDEIR/SDEIS
North Delta Water Agency et al.	NDWA-37	CVFCA Comment Letter for 2014 BDCP

Party	Exhibit	Description
Agency et al.		DEIR/DEIS
North Delta Water Agency et al.	NDWA-38	CVFCA Comment Letter for 2015 BDCP RDEIR/SDEIS

The exhibits listed include statements that were made other than by witnesses while testifying during the California WaterFix change petition hearing, and to the extent they are being offered to prove the truth of the matters asserted therein, they are hearsay. Pursuant to Government Code section 11513(d), they should not therefore be used to support findings by the Hearing Officers, other than to corroborate non-hearsay evidence.

**V. CONCLUSION**

For the reasons explained above, the Water Authority and Westlands object to the Hearing Officers' admission of the exhibits submitted by Group 7 and Group 9 to Part 1B of the California WaterFix change petition hearing discussed herein.

Dated: November 16, 2016

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD  
A Professional Corporation

By:



Daniel J. O'Hanlon  
Attorneys for San Luis & Delta-Mendota Water Authority

Dated: November 16, 2016

WESTLANDS WATER DISTRICT

By:



Philip A. Williams  
Attorney for Westlands Water District

**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):

San Luis & Delta-Mendota Water Authority and Westlands Water District's Objections to Exhibits Submitted for Admission into Evidence by Groups 7 and 9 at the Close of Their Part 1B Case 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 11/15/2016, 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](http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/service_list.shtml):

*Note: In the event that any emails to any parties on the Current Service List are undeliverable, you must attempt to effectuate service using another method of service, if necessary, and submit another statement of service that describes any changes to the date and method of service for those parties.*

**For Petitioners Only:**

	I caused a true and correct <b>hard copy</b> of the document(s) to be served by the following method of service to Suzanne Womack & Sheldon Moore, Clifton Court, L.P., 3619 Land Park Drive, Sacramento, CA 95818:
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	<b>Method of Service:</b> _____
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I certify that the foregoing is true and correct and that this document was executed on November 16, 2016  
Date

Signature: 

Name: Sherry Ramirez

Title: Legal Secretary

Party/Affiliation: SLDMWA and WWD

Address: 400 Capitol Mall, 27th Floor

Sacramento, CA 95814