

1 SOMACH SIMMONS & DUNN
A Professional Corporation
2 Andrew M. Hitchings (SBN 154554)
Aaron A. Ferguson (SBN 271427)
3 Kristian C. Corby (SBN 296146)
500 Capitol Mall, Suite 1000
4 Sacramento, California 95814-2403
Telephone: (916) 446-7979
5 Facsimile: (916) 446-8199
ahitchings@somachlaw.com
6 aferguson@somachlaw.com
kcorby@somachlaw.com

7 Attorneys for Glenn-Colusa Irrigation District, et al.
8

9 BEFORE THE
10 CALIFORNIA STATE WATER RESOURCES CONTROL BOARD
11

12 HEARING ON THE MATTER OF
CALIFORNIA DEPARTMENT OF WATER
13 RESOURCES AND UNITED STATES
BUREAU OF RECLAMATION REQUEST
14 FOR A CHANGE IN POINT OF DIVERSION
FOR CALIFORNIA WATER FIX.

**SACRAMENTO VALLEY WATER
USERS' OBJECTION TO WRITTEN
TESTIMONY AND EXHIBITS
SUBMITTED BY WESTLANDS
WATER DISTRICT**

15
16 **I. INTRODUCTION**

17 The Sacramento Valley Water Users ("SVWU") object to the written testimony of
18 Jose Gutierrez (Exhibit WWD-1) and related exhibits (Exhibits WWD-2 through WWD-6)
19 submitted by Westlands Water District ("Westlands"). Rather than addressing the key
20 Part 1 issue of whether approval of the California WaterFix petition would injure other
21 legal users of water, Westlands' evidence concerns the asserted *benefits* of California
22 WaterFix to Westlands. The State Water Resources Control Board ("SWRCB") should
23 exclude Westlands' evidence. ¹

24 ///

25 ///

26 _____
27 ¹ The SVWU reserve all rights to object to any additional evidence Westlands or other parties may later submit in
28 connection with Part 1, as well to any evidence submitted in Part 2 of this hearing. In addition, if the SWRCB
overrules this Objection, the SVWU may object to specific statements in Mr. Gutierrez's testimony at the time of his
oral testimony.

1 **II. PROCEDURAL BACKGROUND**

2 Water Code section 1702 governs the SWRCB's consideration of the California
3 WaterFix change petition and states:

4 Before permission to make such a change is granted the petitioner shall
5 establish, to the satisfaction of the board, and it shall find, that the change
6 will not operate to the injury of any legal user of the water involved.

7 Consistent with Water Code section 1702, in its October 30, 2015 Notice of
8 Petition, the SWRCB stated the following key issues for Part 1 of this hearing:

- 9 1. Will the changes proposed in the Petition in effect initiate a new water right?
- 10 2. Will the proposed changes cause injury to any municipal, industrial or
11 agricultural uses of water, including associated legal users of water?
- 12 a. Will the proposed changes in points of diversion alter water flows in a
13 manner that causes injury to municipal, industrial, or agricultural uses of
14 water?
- 15 b. Will the proposed changes in points of diversion alter water quality in a
16 manner that causes injury to municipal, industrial, or agricultural uses of
17 water?
- 18 c. If so, what specific conditions, if any, should the State Water Board
19 include in any approval of the Petition to avoid injury to these uses?

20 (October 30, 2015 Notice of Hearing, p. 11.)

21 **III. ARGUMENT**

22 **The SWRCB Should Exclude Westlands' Evidence Because It Is Not**
23 **Relevant To The Issues The SWRCB Identified For Part 1 Of This Hearing.**

24 In administrative hearings, the evidence "must be relevant and reliable" to be
25 admissible. (*Aengst v. Bd. of Medical Quality Assurance* (1980) 110 Cal.App.3d 275,
26 283.) Westlands submitted testimony and supporting exhibits prepared by its deputy
27 general manager, Jose Gutierrez, as its case in chief for Part 1 of this hearing. (Exhibits
28 WWD-1 through WWD-6.) Mr. Gutierrez's testimony and exhibits purport to support his
 conclusion that Westlands would benefit from the Petition's approval and alternatively be

1 harmed by its denial, listing a number of possible consequences that could result from
2 Westlands having an insufficient water supply. (Exhibit WWD-1, at pp. 21:15-24:25.)

3 Mr. Gutierrez's testimony and exhibits are Westlands' sole evidence and do not
4 concern whether approval of California WaterFix would initiate a new water right or
5 cause injury to any municipal, industrial or agricultural uses of water, including
6 associated legal users of water. Section II of Mr. Gutierrez's testimony describes
7 Westlands' various sources of water, which include deliveries under CVP contracts,
8 contract assignments, supplemental transferred water, and groundwater. (Exhibit WWD-
9 1, at pp. 3:17-9:13.) The section recounts how recent reductions in CVP deliveries
10 under Westlands' interim renewal contracts with Reclamation have placed additional
11 reliance and stress on Westlands' supplemental surface water and groundwater
12 supplies, but does not describe how other legal users of water (including Westlands)
13 might be harmed if the Petition were to be approved. Section IV of Mr. Gutierrez's
14 testimony goes into great detail about Westlands' use of the water it receives, including
15 crop irrigation, conservation measures, loan assistance programs, and drainage
16 management. (Exhibit WWD-1, at pp. 10:5-14:19.) Section V of his testimony
17 discusses potential adverse impacts and consequences to Westlands that may result
18 from the Petition's denial or conditioned approval. (Exhibit WWD-1, pp. 14:20-24:25.)

19 Westlands' evidence does not address the issues identified by the SWRCB for
20 Part 1. It instead concerns the potential benefits of the California WaterFix to a
21 contractor of one of the petitioners. Because that evidence is not relevant to the
22 SWRCB's consideration under Water Code section 1702 and the Part 1B issues
23 identified by the SWRCB, the SWRCB should exclude that evidence from Part 1 of this
24 hearing.

25 **IV. CONCLUSION**

26 Westlands' proffered testimony and exhibits are not relevant to the issues the
27 SWRCB has identified for Part 1 of this hearing. For this reason, the SVWU object to
28 Exhibits WWD-1 through WWD-6 and respectfully request that those exhibits be

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

excluded from this hearing

NORTHERN CALIFORNIA WATER
ASSOCIATION

By: /s/ David Guy
David Guy
Executive Director

BARTKIEWICZ, KRONICK &
SHANAHAN, P.C.

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

DOWNEY BRAND, LLP

By: /s/ Kevin O'Brien
Kevin O'Brien
David Aladjem
Meredith Nikkel

MINASIAN, MEITH, SOARES, SEXTON &
COOPER, LLP

By: /s/ Dustin C. Cooper
Dustin C. Cooper

SOMACH SIMMONS & DUNN, P.C.

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

STOEL RIVES LLP

By: /s/ Wesley A. Miliband
Wesley A. Miliband

Attachment 1 – 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

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

STATEMENT OF SERVICE

**CALIFORNIA WATERFIX PETITION HEARING
Department of Water Resources and U.S. Bureau of Reclamation
(Petitioners)**

I hereby certify that on September 21, 2016, I submitted to the State Water Resources Control Board and caused a true and correct copy of the following document(s):

**SACRAMENTO VALLEY WATER USERS' OBJECTION TO WRITTEN
TESTIMONY AND EXHIBITS SUBMITTED BY WESTLANDS WATER DISTRICT**

This Notice of Availability and Statement of Service was served by **Electronic Mail** (email) upon the parties listed in Table 1 of the Current Service List for the California WaterFix Petition hearing, dated September 20, 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 September 21, 2016

Signature: 

Name: Yolanda De La Cruz

Title: Legal Secretary

Party/Affiliation: GLENN-COLUSA IRRIGATION DISTRICT

Address: 500 Capitol Mall, Suite 1000

Sacramento, CA 95814