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BEFORE THE CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

20 In the matter of Hearing re California  
 21 WaterFix Petition for Change

**JOINDER AND OBJECTION TO  
 WRITTEN TESTIMONY AND EXHIBITS  
 SUBMITTED BY WESTLANDS WATER  
 DISTRICT**

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 24 Tehama-Colusa Canal Authority and water service contractors in its service area<sup>1</sup>

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 26 <sup>1</sup> The water service contractors within the service area of the Tehama-Colusa Canal Authority are Colusa County  
 27 Water District, Corning Water District, Cortina Water District, Davis Water District, Dunnigan Water District, 4M  
 28 Water District, Glenn Valley Water District, Glide Water District, Holthouse Water District, Kanawha Water  
 District, Kirkwood Water District, La Grande Water District, Myers-Marsh Mutual Water Company, Orland-Artois  
 Water District, Proberta Water District, Thomes Creek Water District and Westside Water District.

1 (collectively, “TCCA”) and the North Delta Water Agency (“NDWA”) join the Sacramento  
 2 Valley Water Users, which includes the Sacramento Valley Group<sup>2</sup> (“SVG”), in the objection to  
 3 the written testimony of Jose Gutierrez (Exhibit WWD-1) and related exhibits (Exhibits WWD-2  
 4 through WWD-6) submitted by Westlands Water District (“Westlands”). In addition, TCCA,  
 5 NDWA and the SVG object to certain portions of the Testimony of Jose Gutierrez because they  
 6 lack foundation and should be excluded.

7 An adjudicative body “may, and upon objection shall, exclude testimony in the form of an  
 8 opinion that is based in whole or in significant part on matter that is not a proper basis for such an  
 9 opinion.” (Evid. Code, § 803.) In particular, opinion testimony must be based on proper  
 10 foundation and “provide a reasonable basis for the particular opinion offered.” (*Lockheed*  
 11 *Litigation Cases* (2004) 115 Cal.App.4th 558, 564.) Mr. Gutierrez’ testimony is without proper  
 12 basis because it contains legal conclusions, exceeds the scope of his expertise, and is based on  
 13 speculation and conjecture.

14 In a recent enforcement proceeding, the State Water Resources Control Board  
 15 (“SWRCB”) explained that it will “disregard testimony that has no bearing on the facts to be  
 16 determined, including conclusory testimony as to ultimate issues raised in these proceedings  
 17 where the testimony does not make clear the underlying factual foundations for the opinion  
 18 offered.” (Ruling on Motions Filed in the Matters of Administrative Civil Liability Complaint  
 19 Against Byron-Bethany Irrigation District and Draft Cease and Desist Order Against the West  
 20 Side Irrigation District (“BBID Ruling”) (Mar. 18, 2016, at 4); *see also id.* at 7 (“We will  
 21 disregard any testimony that we find to be entirely conclusory or lacking foundation.”).) Indeed,  
 22 “[t]here are limits to expert testimony, not the least of which is the prohibition against admission  
 23 of an expert’s opinion on a question of law.” (*Summers v. A.L. Gilbert Co.* (1999) 69

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 25 <sup>2</sup> The Sacramento Valley Group consists of protestants Carter Mutual Water Company, El Dorado Irrigation District,  
 26 El Dorado Water & Power Authority, Howald Farms, Inc., Maxwell Irrigation District, Natomas Central Mutual  
 27 Water Company, Meridian Farms Water Company, Oji Brothers Farm, Inc., Oji Family Partnership, Pelger Mutual  
 28 Water Company, Pleasant-Grove Verona Mutual Water Co., Princeton-Codora-Glenn Irrigation District, Provident  
 Irrigation District, Reclamation District 108, Sacramento Municipal Utility District, Henry D. Richter, et al., River  
 Garden Farms Company, South Sutter Water District, Sutter Extension Water District, Sutter Mutual Water  
 Company, Tisdale Irrigation and Drainage Company, Windswept Land and Livestock Company.

1 Cal.App.4th 1155, 1178.) Although there is no risk of prejudicing a jury in this instance, legal  
 2 conclusions should be disregarded because they do not aid the Hearing Officers in their fact-  
 3 finding. (See BBID Ruling at 5 (“To the extent that we find [an expert] has offered conclusory  
 4 legal opinions that do not assist us in our factual determinations, we will disregard them.”).)

5 Throughout his testimony, Mr. Gutierrez summarizes large volumes of information and  
 6 expresses a wide variety of opinions, without explaining his expertise for reaching those opinions  
 7 or his analysis that supports those opinions. In particular, in Part I of his testimony, Mr. Gutierrez  
 8 states a variety of opinions about how the Bureau of Reclamation operates the Central Valley  
 9 Project (CVP) and about the legal effect of laws that apply to the CVP. (WWD-1, pp. 2:19-3:6.)  
 10 Mr. Gutierrez does not state that he has operated any portion of the CVP, does not describe any  
 11 extensive experience in working with Reclamation to coordinate CVP operations, and he is  
 12 certainly not an attorney. (Exhibit WWD-1, pp. 1:18-2:5.) Thus, this testimony is conclusory  
 13 and lacking in foundation, and so must be excluded.

14 In addition, Mr. Gutierrez offers a large number of speculative and conclusory testimony,  
 15 including but not limited to the following:

- 16 ● The reliability of Westlands’ water supplies following future “fisheries  
 17 reconsultation and [adoption of] Delta water quality objectives” (Exhibit WWD-1,  
 18 p. 21:6-9.)
- 19 ● The risks of “adverse impacts to Westlands’ water supply” if the SWRCB were to  
 20 approve the California WaterFix change petition, but impose undefined  
 21 “significant operational limitations” on it (Exhibit WWD-1, p. 21:15-19);
- 22 ● The sustainable yield of the groundwater aquifer “beneath Westlands’ service  
 23 area” and the effects on that aquifer of future possible changes in Westlands’ water  
 24 supplies (Exhibit WWD-1, pp. 22:14-23:3);
- 25 ● Possible future land subsidence within Westlands (Exhibit WWD-1, p. 23:5-22);
- 26 ● Possible irreparable harm to permanent crops within Westlands if they can be  
 27 irrigated only with groundwater (Exhibit WWD-1, p. 24:2-5);
- 28 ● Air quality impacts within the San Joaquin Valley and to traffic on Interstate 5

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caused by land fallowing, apparently within Westlands (Exhibit WWD-1, p. 13-18); and

- An estimate that removing 250,000 acres from production, apparently within Westlands, “will result in approximately 4,200 permanent worker positions being lost” (Exhibit WWD-1, pp. 20-22).

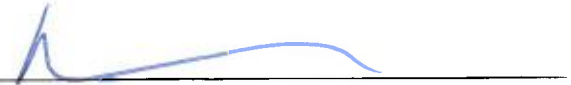
Mr. Gutierrez’ testimony does not include the necessary foundation for the Board to accept either his expertise to have developed the wide variety of opinions stated in his testimony or to describe or explain the basis for whatever analysis he may have conducted in developing those opinions. Most of Mr. Gutierrez’ testimony is presented without foundation or other evidentiary basis, including numerous unattributed graphs and tables, an assessment of Reclamation’s “core demands,” and estimates of future allocations based on Biological Opinions regarding Delta Smelt and Salmon. At no point in his testimony does Mr. Gutierrez describe the foundation for how he may testify as an expert, how he has arrived at the information that he provides in his testimony or why the State Water Board should consider his unsupported and conclusory statements as probative.

By offering no basis other than his “understanding,” Mr. Guterrez fails to present the SWRCB with evidence that may reasonably be relied upon by responsible persons. Thus, these speculative and conclusory opinions should be excluded from the administrative record.

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DATED: September 21, 2016

DOWNEY BRAND LLP

By: 

DAVID R.E. ALADJEM  
Attorney for 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 COMPANY, PRINCETON-CODORA-GLENN IRRIGATION DISTRICT, PROVIDENT IRRIGATION DISTRICT, RECLAMATION DISTRICT 108, SACRAMENTO MUNICIPAL UTILITY DISTRICT, HENRY D. RICHTER, ET AL., RIVER GARDEN FARMS COMPANY, SOUTH SUTTER WATER DISTRICT, SUTTER EXTENSION WATER DISTRICT, SUTTER MUTUAL WATER COMPANY, TISDALE IRRIGATION AND DRAINAGE COMPANY, WINDSWEPT LAND AND LIVESTOCK COMPANY

DATED: September 21, 2016

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By: 

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1 DATED: September 21, 2016

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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);

**JOINDER AND OBJECTION TO WRITTEN TESTIMONY AND EXHIBITS  
SUBMITTED BY WESTLANDS WATER DISTRICT**

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 September 20, 2016, posted by the State of 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:  <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 September 21, 2016.

Signature: 

Name: Catharine Irvine

Title: Legal Secretary

Party/Affiliation: Downey Brand, LLP

Address: 621 Capitol Mall, Sacramento, CA 95814