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11 BEFORE THE CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

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

**CALIFORNIA DEPARTMENT OF
WATER RESOURCES' RESPONSE
TO CITY OF STOCKTON'S
OBJECTIONS TO WRITTEN
TESTIMONY AND EXHIBITS
SUBMITTED BY PETITIONERS U.S.
BUREAU OF RECLAMATION AND
CALIFORNIA DEPARTMENT OF
WATER RESOURCES IN SUPPORT
OF PART 1A CASE IN CHIEF AND
JOINDER**

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20 California Department of Water Resources ("DWR") submits this response to the
21 objections to written testimony and exhibits submitted by the City of Stockton
22 ("Stockton") in the matter of DWR and U.S. Bureau of Reclamation's (collectively
23 "Petitioners") Request for a Change in Point of Diversion for California Water Fix. In
24 addition to submitting general and specific objections, Stockton joined in the objections
25 submitted by the Sacramento Valley Water Users ("SVWU") in their entirety and
26 incorporated them by reference. DWR responded separately to the objections raised by
27 SVWU and incorporates those responses as though fully set forth herein. DWR also
28 incorporates the Master Response to Similar Objections Made by Protestants

1 Collectively (“DWR’s Master Response”) filed on July 20, 2016, which also provides a
 2 common Statement of Facts and Evidentiary Standards for DWR’s separate responses
 3 to individual objections. For the following reasons, Stockton’s objections should be
 4 overruled.

5 In addition to raising specific evidentiary objections, to which DWR responds
 6 below, Stockton offers to do the Board’s job for it by concluding that “[t]he testimony and
 7 exhibits do not provide evidence that is competent to support the conclusion reached by
 8 Petitioners’ witnesses that California WaterFix (Project) will not injure other legal users of
 9 water, and in particular that it will not injure Stockton.” (Stockton’s Objection, at page 1.)
 10 This conclusion, barely masked as a blanket objection, should be disregarded for the
 11 reasons described in Sections C and D of DWR’s Master Response at pages 10-13.
 12 DWR provides responses to Stockton’s specific objections in the following table.

EXHIBIT	OBJECTION	RESPONSE
14 Testimony of Jennifer 15 Pierre (DWR-51), 16 associated exhibits (DWR- 17 114 and DWR-116), and 18 other DWR or Reclamation 19 testimony or exhibits that 20 rely on the boundary 21 analysis or conclusions 22 regarding the import of that 23 analysis as set forth in the 24 testimony of Ms. Pierre 25 26 27 28	Offers improper expert opinion (legal issue), does not meet the evidentiary requirements of title 23 of the California Code of Regulations, section 794, and lacks foundation. Boundary analysis does not provide the kind of specificity with respect to Project operations that is necessary for Petitioners’ experts to draw conclusions about effects on legal users of water, including Stockton. (See Cal. Code. Regs., tit. 23, § 794(a).) Any conclusions about the effects on legal users of water based on this analysis lack foundation.	Regarding legal conclusions in the guise of expert testimony, see Section H of DWR’s Master Response at page 22. There is no “evidentiary requirement” in Title 23, California Code of Regulations, Section 794. See the section entitled “Evidentiary Standards” in DWR’s Master Response at pages 5-6 for the evidentiary standards for this hearing. If, instead, Stockton means that DWR has failed to carry its burden of proof, this objection goes to the weight of the evidence, not its admissibility. Regarding the boundary analysis, see Section F of DWR’s Master Response at pages 18-20.

EXHIBIT	OBJECTION	RESPONSE
		Regarding foundation, see Section D of DWR's Master Response at pages 11-13.
<p data-bbox="272 310 594 380">Testimony of Maureen Sergent (DWR-53)</p>	<p data-bbox="695 310 1084 537">Lacks foundation, does not make clear the underlying factual foundations for the opinion offered, and constitutes improper expert testimony regarding a legal conclusion.</p> <p data-bbox="695 569 1084 758">Legal opinion testimony concluding that legal users of water will not be injured by the change is improper for an expert and should be excluded.</p> <p data-bbox="695 789 1084 978">Ms. Sergent is not qualified to testify as to the legal conclusion of whether the Project will result in injury to Stockton as a legal user of water.</p> <p data-bbox="695 1010 1084 1619">Lacks foundation, because it is based on Project modeling and the testimony of Armin Munevar (DWR-71) and Parviz Nader-Tehrani (DWR-66). That modeling and associated witness testimony lack foundation because, among other reasons, they rely on assumptions about future operating conditions that are not supported by proposed permit conditions and do not include evidence relating to actual water quality changes at the location of Stockton's drinking water intake.</p>	<p data-bbox="1117 310 1511 411">Regarding foundation, see Section D of DWR's Master Response at pages 11-13.</p> <p data-bbox="1117 443 1511 600">Regarding legal conclusions in the guise of expert testimony, see Section H of DWR's Master Response at page 22.</p> <p data-bbox="1117 632 1511 894">Ms. Sergent's is qualified as an expert according to Evidence Code sections 801 and 805, and her opinion is admissible under the standard set forth in Government Code section 11513, subdivision (c).</p> <p data-bbox="1117 926 1511 1178">Regarding modeling, the testimony of Messrs. Munevar and Nader-Tehrani, and assumptions about future operating conditions, see Section F of DWR's Master Response at pages 18-20.</p>
DWR-324	Does not provide the information required by Section 794(a), so-called "adaptive management" that is lacking in any substantive basis.	There is no "evidentiary requirement" in Title 23, California Code of Regulations, Section 794. See the section entitled "Evidentiary Standards" in DWR's Master Response at pages 5-6 for the

EXHIBIT	OBJECTION	RESPONSE
	Relies on the improper modeling testimony of Mr. Nader-Tehrani and Mr. Munevar to describe potential effects to users and real time operations.	evidentiary standards for this hearing. This objection goes to the weight of the evidence, not its admissibility. Regarding modeling and the testimony of Messrs. Munevar and Nader-Tehrani, see Section F of DWR's Master Response at pages 18-20.
Testimony of John Leahigh (DWR-61)	Lacks foundation, does not make clear the underlying factual foundations for the opinion offered, and constitutes improper expert testimony regarding a legal conclusion. No information is provided in the testimony regarding the Project's effect on water quality at Stockton's drinking water intake. Petitioners provide no information about what might be contained in any approval of a temporary urgency change petition, and thus the conclusion that the Project will not injure any legal user of water is speculative and lacking foundation.	Regarding foundation, see Section D of DWR's Master Response at pages 11-13. Regarding legal conclusions in the guise of expert testimony, see Section H of DWR's Master Response at page 22. Regarding the Project's effect on water quality at Stockton's drinking water intake, see Section F of DWR's Master Response at pages 18-20. Regarding the alleged defect about the contents of a future approval of a temporary urgency change petition, see Section J [sic] of DWR's Master Response at page 25.
Testimony of Armin Munevar (DWR-71) and associated exhibits (DWR-513 to DWR-315)	Lacks foundation, does not make clear the underlying factual foundations for the opinion offered, and constitutes improper expert testimony regarding a legal conclusion. Fails to meet the evidentiary standards of this proceeding, lacks	Regarding foundation, see Section D of DWR's Master Response at pages 11-13. Regarding legal conclusions in the guise of expert testimony, see Section H of DWR's Master Response at page 22. See the section entitled "Evidentiary Standards" in DWR's Master Response at

EXHIBIT	OBJECTION	RESPONSE
	<p>foundation, and does not provide sufficient information to support Petitioners' conclusions that the Project will not injure legal users of water, and Stockton in particular, contrary to the purpose of Section 794(a) of the governing regulations.</p>	<p>pages 5-6 for the evidentiary standards for this hearing.</p> <p>DWR's burden of proof is described in Section J [sic] of DWR's Master Response at page 25.</p>
<p>Testimony of Parviz Nader-Tehrani (DWR-66) and associated exhibits (DWR-513 to DWR-315)</p>	<p>Lacks foundation, does not make clear the underlying factual foundations for the opinion offered, and constitutes improper expert testimony regarding a legal conclusion.</p> <p>Mr. Tehrani's opinions concerning the Project's impacts on water quality and water levels in the Delta lack foundation.</p>	<p>Regarding foundation, see Section D of DWR's Master Response at pages 11-13.</p> <p>Regarding legal conclusions in the guise of expert testimony, see Section H of DWR's Master Response at page 22.</p>

CONCLUSION

For the reasons stated above and in the incorporated Master Response, Stockton's objections are unfounded and should be overruled.

Dated: July 22, 2016

CALIFORNIA DEPARTMENT OF WATER RESOURCES

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**CALIFORNIA DEPARTMENT OF
WATER RESOURCES' RESPONSE
TO PROTESTANT SAVE THE
CALIFORNIA DELTA ALLIANCE, ET
AL.'S REQUEST FOR OFFICIAL
NOTICE IN SUPPORT OF
OBJECTIONS TO EVIDENCE**

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15 California Department of Water Resources ("DWR") submits this response to
16 Protestant Save the California Delta Alliance, et al.'s ("SCDA's") request for official
17 notice in the matter of DWR and U.S. Bureau of Reclamation's (collectively "Petitioners")
18 Request for a Change in Point of Diversion for California Water Fix. SCDA did not cite
19 the provision that authorizes the Board to take official notice, which is Title 23, California
20 Code of Regulations, Section 648.2, and provides:

21 The Board or presiding officer may take official notice of *such facts as may*
22 *be judicially noticed by the courts of this state.* Upon notice to the parties,
23 official notice may also be taken of any generally accepted technical or
24 scientific matter within the Board's field of expertise, provided parties
25 appearing at the hearing shall be informed of the matters to be noticed.
26 The Board or presiding officer shall specify the matters of which official
notice is to be taken. Parties shall be given a reasonable opportunity on
27 request to refute officially noticed technical or scientific matters in a
28 manner to be determined by the Board or presiding officer.

1 (Cal. Code Regs., tit. 23, § 648.2; emphasis added.) Evidence Code section 451
2 provides a list of items courts *shall* take notice of, and Evidence Code section 452
3 provides a list of items courts *may* take notice of. SCDA's Exhibits A and B are letters
4 written by the Regional Director of the U.S. Environmental Protection Agency in 2015
5 and 2014, respectively, and appear to fit within the scope of Evidence Code section 452.
6 SCDA's Exhibit C, the September 30, 2015 Delta Independent Science Board Review of
7 the Partially Recirculated Draft Environmental Impact Report/Supplemental Draft
8 Environmental Impact Statement is included as Staff Exhibit SWRCB-49 and it is
9 therefore unnecessary for the Board to take official notice of it.

10 DWR opposes SCDA's request for official notice of Exhibit D, the September 2013
11 report by Saracino & Mount, et al. It does not fall into any of the categories listed in
12 Evidence Code section 451 or 452. DWR also opposes SCDA's request for official
13 notice of Exhibit E, Petitioners' March 11, 2016 letter for two reasons. First, it is already
14 in the record for these proceedings. Second, it is not a true and correct copy of the
15 letter.

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17
18 Dated: July 22, 2016

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