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6
7 **BEFORE THE**
8 **CALIFORNIA STATE WATER RESOURCES CONTROL BOARD**

9 HEARING REGARDING PETITION
10 FILED BY THE DEPARTMENT OF
WATER RESOURCES AND U.S. BUREAU
11 OF RECLAMATION REQUESTING
CHANGES IN WATER RIGHTS FOR THE
12 CALIFORNIA WATERFIX PROJECT

PARTIAL JOINDER IN MOTION OF
SAVE THE CALIFORNIA DELTA
ALLIANCE AND MOTION FOR PARTIAL
CONVERSION OF PROCEEDING

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1 I. INTRODUCTION

2 In 1970, the Los Angeles Department of Water and Power (“LADWP”) completed a
3 second aqueduct barrel diverting water from Mono Lake (*State Water Resources Control Board,*
4 *Water Right Decision 1631, p. 6.*) The additional diversions began draining the lake,
5 endangering nesting habitat for birds on islands in the lake. In the landmark public trust cases of
6 *National Audubon Society v. Superior Court, (1983) 33 Cal.3d 419* and *California Trout Inc. v.*
7 *Superior Court (1990) 218 Cal. App 187,* the courts mandated that the State Water Resources
8 Control Board (“Board”) determine flow criteria for the four streams feeding Mono lake needed
9 to protect public trust resources, and amend the diversion permits of LADWP to include those
10 flow criteria.

11 The Board enacted the mandate in *National Audubon* and *California Trout, supra,* in
12 Water Right Decision 1631. The Board’s findings in the Hearing for Decision 1631 were based
13 on an Environmental Impact Report (“EIR”), which was prepared with the Board as lead agency
14 (Decision 1631, *supra,* p. 13-14.) The Board’s EIR was paid for by the Los Angeles Department
15 of Water and Power.

16 Imagine if, instead of the Board requiring LADWP to pay for the Board’s independent
17 EIR, LADWP asked to prepare the EIR, and the Board agreed. Suppose that this led further to
18 the contention that LADWP was the lead agency for the Board’s decision, and the Board was
19 only a responsible agency. In addition, suppose that LADWP proposed in the hearing for
20 Decision 1631 that the Board not enact any new flow criteria for Mono Lake, and had not even
21 completed the analysis for the Board of more protective flow criteria. Imagine that the parties
22 were not allowed to comment on the adequacy of the EIR for the Board’s decision during the
23 hearing, and the Board’s hearing team secretly approved the final EIR, after review in secret Ex
24 Parte meetings, with no notice to the parties.

25 It seems inconceivable that such a sequence of events could have occurred. The courts
26 would likely have found bias and unconstitutional delegation of the Board’s adjudicatory

1 authority. Yet this is exactly what happened when this Board carried out the legislative mandate
2 in the 2009 Delta Reform Act that the Board determine public trust flow criteria for the Delta.

3 When the California Department of Water Resources (“DWR”) wanted to build new
4 North diversions in the Delta, the legislature mandated that the Board implement public trust
5 flow criteria for the Delta *before* the Board issued the permit. Water Code section 85086
6 subdivision (b) stated:

7 It is the intent of the Legislature to establish an accelerated process to determine
8 instream flow needs of the Delta for the purposes of facilitating the planning
9 decisions that are required to achieve the objectives of the Delta Plan.

9 The legislature mandated that the Board, *first* determine the Delta flow criteria necessary
10 to protect public trust resources (Wat. Code § 85086(b)(1)), and *second*, required that
11 “appropriate Delta flow criteria,” be included in any order approving a change in point of
12 diversion (Water Code § 85086(c)(2).) The legislature further mandated that the Board enter into
13 a contract with the “State Water Project contractors and the federal Central Valley Project
14 contractors, who rely on water exported from the Sacramento River watershed” to pay for the
15 analysis required by the Board under Water Code section 85086 (Water Code § 85086(d).) This
16 is where things went wrong.

17 The Board did *not* require the State Water Project (“SWP”) and Central Valley Project
18 (“CVP”) export contractors to pay for the Board’s analysis, as mandated under Water Code
19 85086(d.) Instead they relied on the Department of Water Resources, the U.S. Bureau of
20 Reclamation (“Reclamation”), and the SWP and CVP export contractors, to do the analysis for
21 the Board’s determination of public trust flow criteria, as part of the EIR for the WaterFix
22 project. This eventually lead to the absurd implication in the WaterFix Final EIR/EIS that the
23 Department of Water Resources and the U.S. Bureau of Reclamation were the lead agencies for
24 the Board’s determination of “appropriate Delta flow criteria.” (WaterFix Final EIR/EIS,
25 Exhibit SWRCB-102, Appendix 5E, p. 5E-1 at 6.) The Department of Water Resources and
26 Reclamation have also proposed that the Board not adopt any new Delta flow criteria (September
27

1 8, 2017 filing, p. 2.)¹ Finally, the Department of Water Resources arranged to meet secretly
2 with the WaterFix hearing team before and during the hearing to approve the final analysis for
3 the Board’s determination of “appropriate Delta flow criteria,” with no notice to the parties.²

4 This situation is contrary to many statutes and regulations, but the overriding issue is that
5 it is contrary to the separation of powers under Article III, section 3 of the California
6 constitution, and to due process under Article I, section 7 of the California constitution.

7
8 **II. SEPARATION OF POWERS**

9 The legislature has given the State Water Resources Control Board sole statutory
10 authority in exercising “the adjudicatory and regulatory functions of the state in the field of water
11 resources.” (Wat. Code § 174.) Findings of the Board cannot be delegated to the California
12 Department of Water Resources.³ The separation of powers in Article III, section 3, of the
13 California Constitution provides: “[t]he powers of state government are legislative, executive,
14 and judicial. Persons charged with the exercise of one power may not exercise either of the
15 others except as permitted by this Constitution.” (*Estate of Cirone* (1987) 189 Cal.App.3d 1280,
16 1286, 234 Cal.Rptr. 749.) The California Department of Water Resources is a division of the
17 executive branch of the state government, and the Water Board exercises both quasi-judicial and
18 quasi-legislative powers. These powers cannot be delegated to DWR without violating the
19 separation of powers.

20 ¹ California Department of Water Resources and U.S. Bureau of Reclamation, September 8, 2017 filing Re: August
21 31, 2017 Ruling Regarding Scheduling of Part 2 and Other Procedural Matters. Available at
22 https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/docs/2017/20170908_dwr_letter.pdf.pdf

23 ² Save the California Delta Alliance, January 12, 2018 filing, Motion To Continue Hearings For 90 Days To Allow
24 Reformation Of Waterfix Hearings To Conform To The Rule Of Law. Available at
25 https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/docs/2018/20180112_scda_motion.pdf

26 ³ California Water Research has previously argued on August 4, 2017 that the Board’s determination of “appropriate
27 Delta flow criteria” will be a regulation. That filing is hereby incorporated as if fully set forth herein. Available at
28 https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/docs/petitions/2017aug/20170804_ddj_flowcriteria.pdf

1 The legislature was clear that the Delta Reform Act did not affect the Board’s existing
2 authorities. Water Code section 85032, subdivision (d) and (h) state that “[t]his division does not
3 affect any of the following:”

4 (d) The Porter-Cologne Water Quality Control Act (Division 7
5 (commencing with Section 13000)

6 (h) The application of the public trust doctrine.

7 Thus, the legislature clearly did not intend that the Sacramento San-Joaquin Delta Reform
8 Act, Division 35 (commencing with Section 85000) of the Water Code, change the adjudicatory
9 or regulatory processes of the State Water Resources Control Board.

10
11 III. MOTION FOR PARTIAL CONVERSION OF PROCEEDING

12 In addition to being fundamentally unconstitutional, this proceeding is contrary to statute,
13 regulation, and case law regarding regulatory and adjudicatory determinations by the Board and
14 by state agencies. As argued on points and authorities herein:

15 (1) The WaterFix Hearing procedure for consideration of changes to Delta flow objectives in
16 the 2006 Bay-Delta Water Quality Control Plan is contrary to the Porter-Cologne Act and
17 the Board’s regulations for adoption of “state policy for water quality;”

18 (2) The WaterFix Hearing procedure for consideration and adoption of “appropriate Delta
19 flow criteria” pursuant to Water Code 85086(c)(2) is contrary to the provisions of the
20 California Environmental Quality Act applicable to discretionary actions by the Board;

21 (3) The WaterFix Hearing procedure for consideration and adoption of the *final* CEQA
22 environmental documentation and analysis for the Board’s determination of “appropriate
23 Delta flow criteria” prior to consideration in Part 2 of the hearing, was predecisional and
24 fundamentally violated protestants’ rights to notice and due process under the California
25 constitution;

1 (4) A regulatory Substitute Environmental Document (“SED”) or Environmental Impact
2 Report (“EIR”) requires peer review of the underlying technical and scientific
3 information under Health and Safety Code section 57004. No such review has been
4 done.

5
6 The Administrative Procedure Act provides for conversion of proceedings that are contrary
7 to statute and regulation. Government Code Section 11470.10, subdivision (a)(2) provides:

8 (a) Subject to any applicable regulation adopted under Section 11470.50, at any point in
9 an agency proceeding the presiding officer or other agency official responsible for the
10 proceeding:

11 (2) Shall convert the proceeding to another type of agency proceeding provided
12 for by statute, if required by regulation or statute.
(underlining added.)

13 California Water Research therefore moves, on points and authorities argued herein, that

14 (1) The Hearing Officers convert the part of the WaterFix hearing to consider changes to
15 the 2006 Bay-Delta Water Quality Control Plan, and to determine “appropriate Delta
16 flow criteria” pursuant to Water Code section 85086, to the proceedings mandated by
17 statute, regulation, and the state constitution, as required by Government Code section
18 11470.10, subdivision (a) (2);

19 (2) That the new hearing comply with the requirements in Government Code section
20 11470.40;

21 (3) The Board comply with the constitutional, statutory, and regulatory requirements to
22 produce and circulate the Board’s own independent environmental documentation
23 prior to the new hearing;

24 (4) That the Board comply with Health and Safety Code section 57004 and have a peer
25 review of the scientific and technical basis for the SED and/or EIR, prior to the new
26 hearing;

27 (5) That the Board staff who have specified, reviewed, and approved environmental
28 documentation or underlying computer modeling for the Board’s determination of

1 “appropriate Delta flow criteria” not serve on the new Hearing Team or advise the
2 new Hearing Officers on rulings in the new hearing.

3 California Water Research further joins in the January 12, 2018 motion by Save the
4 California Delta Alliance et. al. to hold a hearing on reformation of the WaterFix hearing. To
5 avoid potential bias in ruling on this motion, California Water Research requests that the Hearing
6 Officers not act on this motion until the Board completes the disclosure of Ex Parte contacts
7 requested by Save the California Delta Alliance, and acts on any motions by Hearing Parties
8 regarding those contacts.

9
10 IV. WATERFIX HEARING PROCEDURAL RULINGS

11 The Board is proposing to consider changes to the following objectives in the 2006 Bay-
12 Delta Water Quality Control Plan in this proceeding:

- 13 (1) Delta outflow objectives
- 14 (2) Rio Vista flow objectives
- 15 (3) Delta Cross Channel gate closure objectives
- 16 (4) Export limit objectives

17 (2006 Bay-Delta Water Quality Control Plan, Exhibit SWRCB-27, Table 3, p. 15.)

18 Changes to (1) and(2) are proposed to be considered during Part 2 of the Hearing as
19 “appropriate Delta flow criteria.” The Department of Water Resources and the U.S. Bureau of
20 Reclamation also requested that the State Water Resources Control Board exempt the proposed
21 North Delta Diversions from the export limits in the 2006 Water Quality Control Plan in this
22 proceeding (September 8, 2017 filing of DWR and Reclamation, p. 6.)

23 The Hearing Officers have previously ruled that they “do not interpret ‘appropriate Delta
24 flow criteria’ to mean the same thing as either existing or revised water quality objectives,”
25 (February 11, 2016 Hearing ruling, p. 4) but in the above cases, the flow criteria *are* water
26 quality objectives. The interpretation was also contrary to the October 30, 2015 Hearing
27 Notice, which stated that the Board would be adopting “interim” flow criteria, and that, “should
28 the Petition be approved, the order would include interim Delta flow criteria and other conditions

1 that will be revisited in the more comprehensive Phase 2 and 3 [Bay-Delta Water Quality
2 Control Plan update] processes.” The Hearing Officers later ruled that the “appropriate Delta
3 flow criteria” are not regulatory, because, “the criteria would be applicable only to the exercise
4 of the water rights at issue in this proceeding.” (August 31, 2017 Hearing ruling, p. 15.) This
5 interpretation is contrary to the Porter-Cologne Act.

6
7 V. HEARING RULINGS CONTRARY TO PORTER-COLOGNE ACT

8 Permit terms for the CVP and SWP implementing water quality objectives in the Bay-
9 Delta Water Quality Control Plan *are* part of the Board’s adopted state policy on water quality
10 control. Water Code section 13142 (b) states that “State policy for water quality control shall
11 consist of all or any of the following: [...] Water quality objectives at key locations for planning
12 and operation of water resource development projects and for water quality control activities.”
13 (underlining added.)

14 There are statutory and regulatory requirements for changes to objectives in the Bay-
15 Delta Water Quality Control Plan, which the WaterFix Water Right Change Petition Hearing
16 does not meet. The Porter-Cologne Act provides in Water Code section 13147:

17 [Policy adoption process] The state board shall not adopt state policy for water
18 quality control unless a public hearing is first held respecting the adoption of such
19 policy [...] The regional boards shall submit written recommendations to the state
20 board at least 20 days in advance of the hearing.

21 As argued by California Water Research on August 4, 2017, the WaterFix hearing does
22 not meet the notice requirements for a hearing to adopt regulatory flow criteria.⁴ Nor does the
23 WaterFix hearing meet the requirements in the California Code of Regulations, Title 23, sections
24 3776(a) and 3777:

25 § 3776. Roles of State Board and Regional Boards.

26 (a) The state board shall be the lead agency with respect to its adoption or
revision of any state policy for water quality control or other plans, policies, or

27 ⁴ California Water Research’s August 4, 2017 filing is incorporated fully as if set forth herein.

1 regulations that it adopts or revises. (underlining added.)

2 § 3777. Substitute Environmental Documentation: Requirements for
3 Adoption or Approval of Plans or Policies.

4 (a) Any water quality control plan, state policy for water quality control, and
5 any other components of California’s water quality management plan as defined
6 in Code of Federal Regulations, title 40 sections 130.2(k) and 130.6, proposed
7 for board approval or adoption must include or be accompanied by Substitute
8 Environmental Documentation (SED) and supported by substantial evidence in
9 the administrative record [...] The Draft SED must be circulated prior to board action
10 approving or adopting a project, as specified in sections 3778 and 3779. [...]

11 (underlining added.)

12 Furthermore, the Board’s regulations mandates that Title 23 sections 3776(a) and 3777 are the
13 exclusive procedural requirements for adoption of “state policy for water quality control,” and
14 “all components of California’s water quality management plan,” as well as “exempt regulatory
15 programs.” (Tit. 23 Cal Code Regs. § 3775.)

16 The programs that are certified as exempt also include the Board’s program of
17 implementation of instream flow criteria (Govt Code §15251(k.)) The Board has not prepared
18 or noticed the SED required by statute and regulation for consideration of revisions to the Delta
19 flow objectives or the export limits in this proceeding, and has proposed to instead rely on the
20 WaterFix Final EIR/EIS for the Board’s decision.⁵

21 VI. DWR CANNOT BE THE LEAD AGENCY FOR THE BOARD’S
22 DETERMINATION OF “APPROPRIATE DELTA FLOW CRITERIA”

23 As previously argued by California Water Research, the Board’s determination of
24 “appropriate Delta flow criteria” is a project under CEQA (Pub. Res. Code 21000 et. seq.), since
25 it is a discretionary activity by a public agency that "may cause either a direct physical change in
26 the environment, or a reasonably foreseeable indirect physical change in the environment"

27 _____
28 ⁵ California Water Research previously filed an objection on September 22, 2017 to considering a change to the
export limits in the 2006 Bay-Delta Water Quality Control Plan in the Waterfix hearing, but the Hearing Officers
declined to rule on the objection. The September 22, 2017 objection of California Water Research (“Deirdre Des
Jardin”) is incorporated fully as if set forth herein. Available at
https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/docs/2017/20170922_ddj_objection.pdf

1 (CEQA guidelines § 21065, subd. (a).) The Board is properly the lead agency for the
2 determination of Delta flow criteria under CEQA guidelines section 21067, because the Board
3 has the sole responsibility for determining and approving the flow criteria. Under the separation
4 of powers in Article III, section 3, of the California Constitution, the Board must make any
5 determinations of “appropriate Delta flow criteria.”

6 As a responsible agency for the WaterFix EIR, the Board did designate staff to consult
7 with DWR about “the range of actions, potential alternatives, mitigation measures, and any
8 potential and significant effects on the environment” of the WaterFix project (CEQA guidelines
9 § 21080.1.) However, this consultation is not the same as delegation of the Board’s findings
10 pursuant to the Bay-Delta Water Quality Control Plan and the Board’s public trust
11 responsibilities to DWR. The Board cannot, by law, delegate such findings.

12 Both Deirdre Des Jardins of California Water Research and Tim O’Laughlin for the San
13 Joaquin Tributaries Authority raised the issue in the Part 2 pre-hearing conference that the Board
14 was required to produce its own CEQA documentation of its consideration of alternatives for
15 “appropriate Delta Flow criteria.” The Hearing Officers ruled:

16 Some parties also raised concerns about compliance with the California Environmental
17 Quality Act (CEQA) in connection with the State Water Board’s decision on appropriate
18 Delta flow criteria. We disagree with the blanket assertion that any decision to impose
19 flow criteria that deviate from the specific operational scenarios evaluated by petitioners
20 would trigger the need to prepare additional CEQA documentation. If the Board imposes
21 flow criteria that are within the range of alternatives evaluated in the Final EIR,
22 additional CEQA documentation likely would not be required. The Board has the
23 authority, however, to impose flow criteria that are outside of the range of alternatives
24 evaluated in the Final EIR if the Board finds those criteria to be appropriate based on the
25 hearing record. As protestants point out, in that case, the Board may need to conduct
26 additional environmental analyses to satisfy CEQA requirements.
27 (November 8, 2017 Hearing Ruling, p. 2.)

28 This interpretation of regulatory CEQA requirements is contrary to court interpretations
of the California Environmental Quality Act. As the courts ruled in a case involving the
California Air Resources Board, “[t]he policy of environmental review of feasible alternatives

1 and mitigation measures makes practical sense only if that review occurs before an agency
2 approves a project. [citation omitted.]” (*Poet, LLC v. Cal. Air Res. Bd.* (2013), 218 Cal.App.4th
3 681, 717.)

5 VII. DUE PROCESS AND THE BOARD’S CEQA ANALYSIS

6 The WaterFix Draft EIR/EIS, Partially Recirculated Draft EIR/EIS, and Final EIR/EIS,
7 together with the WaterFix Hearing record, document that the environmental documentation for
8 the Board’s determination of “appropriate Delta flow criteria” was initiated and completed in an
9 Ex Parte process between Board staff, the Department of Water Resources, the Bureau of
10 Reclamation, and the consultants paid by the SWP and CVP export contractors. If the WaterFix
11 Final EIR/EIS “preferred project” is selected by the Board, post hoc, as the Board’s “preferred
12 project” for appropriate Delta flow criteria, that Ex Parte process will have been entirely
13 predecisional.

14 First, there was no notice of the Board’s potential adoption of the “preferred project.”
15 While the October 30, 2015 notice for the WaterFix hearing referenced the WaterFix Partially
16 Recirculated Draft EIR/ Supplemental Draft EIS (“WaterFix RDEIR/SDEIS”), it did not identify
17 the Department of Water Resources’ “preferred project” as the Board’s “preferred project” for
18 determination of “appropriate Delta flow criteria.” Second, CEQA guidelines section 15202(b)
19 and (d) provide:

20 (b) If an agency provides a public hearing on its decision to carry out or approve a
21 project, the agency should include environmental review as one of the subjects for the
hearing.

22 (d) A draft EIR or Negative Declaration should be used as a basis for discussion at a
23 public hearing.

24 Although the WaterFix RDEIR/SDEIS was introduced by the Department of Water
25 Resources in Part 1 of the hearing, the consideration of the information in the CEQA document
26 was limited by the Hearing Officers. First, the Board’s determination of “appropriate Delta flow
27 criteria” pursuant to Water Code 85086, was a topic for Part 2 of the hearing, so no testimony or

1 evidentiary submissions were allowed regarding any of the associated analysis or findings in the
2 WaterFix RDEIR/SDEIS. Second, no testimony or evidentiary submissions were allowed
3 regarding the adequacy of the alternatives analyzed in the WaterFix RDEIR/SDEIS. Third,
4 although the modeling for the “Boundary 2” operations scenario was introduced by the
5 Department of Water Resources, it was not identified as reviewed and approved by the Board for
6 the Board’s analysis, nor was the “Boundary-1 to Boundary-2” operational range. Thus the *only*
7 meaningful consideration of the analysis for the determination of “appropriate Delta flow
8 criteria” was whether or not the modeling met standards for reliability and probativeness. Here
9 Chapter 5E in the Final EIR/EIS, discussing the modeling reliability and probativeness, simply
10 included by reference DWR’s case in chief for Part 1 of the WaterFix hearing.

11 The Board’s reliance on the WaterFix EIR/EIS for environmental documentation for the
12 Board’s decision on “appropriate Delta flow criteria,” is contrary to the requirements for a fair
13 hearing under Code of Civil Procedure section 1904.5. “When ... an administrative agency
14 conducts adjudicative proceedings, the constitutional guarantee of due process of law requires a
15 fair tribunal.” *Morongo Band of Mission Indians v. California State Water Resources Control*
16 *Bd.*, (2009) 45 Cal.4th 731, 737 citing *Withrow v. Larkin* (1975) 421 US 35, 46. “A fair tribunal
17 is one in which the judge or other decision maker is free of bias for or against a party.” (*Id.*)

18

19 VIII. PEER REVIEW REQUIRED BY STATUTE

20 California Health and Safety Code section 57004 (a)(1)(B) requires a peer review for:

21 “a policy adopted by the State Water Resources Control Board pursuant to the Porter
22 Cologne Water Quality Control Act (Division 7 (commencing with section 13000) of the
23 Water Code) that has the effect of a regulation and that is adopted to implement or make
effective a statute”

24 Health and Safety Code § 57004 requires a peer review of the “scientific basis” or “scientific
25 portions of any rules issued by the Board. HSC § 57004(a)(1)(A) defines a rule as “[a] regulation,
26

1 as defined in Section 11342.600 of the Government Code.” HSC § 57004(a)(2) defines the
2 “scientific basis” or “scientific portions” as:

3 "Scientific basis" and "scientific portions" mean those foundations of a rule that
4 are premised upon, or derived from, empirical data or other scientific findings,
5 conclusions, or assumptions establishing a regulatory level, standard, or other
6 requirement for the protection of public health or the environment.

7 As documented in the 2013 Draft BDCP Environmental Impact Report / Environmental
8 Impact Statement, in 2011 the Water Board’s executive director proposed “iterative sequence of
9 models” which would be used to determine the feasibility of Delta outflow criteria, for use by the
10 Board in the Board’s public trust balancing. The Draft EIR states,

11 Model runs for these revised alternatives should be made in an iterative fashion to
12 ascertain the maximum additional fixed quantity of additional Delta outflow that would
13 provide useful information to evaluate balancing of the beneficial uses of water and
14 achieving the coequal goals.
15 (Exhibit SWRCB-4, Appendix 3A, p. 3A-63.)

16 The “model runs” referred to simulations of potential SWP and CVP operations by
17 DWR’s CALSIM model.

18 DWR’s attorney filed a misleading statement on July 20, 2016 that DWR’s CALSIM
19 simulation of SWP and CVP operations had been peer reviewed,⁶ when in fact the 2003 “peer
20 review” stated that DWR had not provided the information required for a full technical peer
21 review, and recommended that one be done. The 2003 CALSIM peer review panel explained:

22 The information we received and the shortness of our meetings with modeling staff
23 precluded a thorough technical analysis of CALSIM II. We believe such a technical
24 review should be carried out. Only then will users of CALSIM II have some assurance as
25 to the appropriateness of its assumptions and to the quality (accuracy) of its results. By
26 necessity our review is more strategic.

27 ⁶ California Department of Water Resources, July 20, 2016 filing, “Master Response To Similar Objections Made
28 By Protestants Collectively,” Section E, p. 14. Available at
https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/docs/20160720_cadwr_response.pdf

1 (California Bay Delta Science Program, A Strategic Review of CalSim II and its Use for
2 Water Planning, Management, and Operations in Central California (Dec. 4, 2003,
3 Exhibit DDJ-102, p. 3)

4 Thus DWR had never provided the required technical information to the 2003 peer
5 review panel, a fact brought to the Hearing Officers' attention by the brief submitted by
6 California Water Research on July 12, 2016, "Evaluation of Testimony on the Reliability of the
7 Modeling," which quoted the above statement, and also in testimony by Deirdre Des Jardins in
8 Part 1B (Exhibit DDJ-108 Errata 12-9-2016, Testimony of Deirdre Des Jardins, p. 11.) The
9 2003 review panel also recommended:

10 To increase the public's confidence in the many components and features of CALSIM II,
11 we suggest that these components of CALSIM be subjected to careful technical peer
12 review by appropriate experts and stakeholders. (p. 2)

13 However, except for the San Joaquin River component of the model, a "careful technical
14 peer review" was never done. (Exhibit DDJ-108 Errata 12-9-2016, Testimony off Deirdre Des
15 Jardins, p. 11.)

16 Dated Jan 19, 2018

17 Respectfully submitted,

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19 Deirdre Des Jardins
20 Principal, California Water Research
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1 **STATEMENT OF SERVICE**

2
3 **CALIFORNIA WATERFIX PETITION HEARING**
4 **Department of Water Resources and U.S. Bureau of Reclamation**
5 **(Petitioners)**

6 I hereby certify that I have this day submitted to the State Water Resources
7 Control Board and caused a true and correct copy of the following document(s):

8 **Motion for Partial Conversion of Proceeding**

9 to be served by Electronic Mail (email) upon the parties listed in the Current Service List
10 for the California Water Fix Petition Hearing, dated January 18, 2018, posted by the
11 State Water Resources Control Board at

http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/service_list.shtml

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

16 I certify that the foregoing is true and correct and that this document was executed on
17 January 19, 2018.

18
19 Signature:



20 Name: Deirdre Des Jardins

21 Title: Principal, California Water Research

22 Party/Affiliation:

23 Deirdre Des Jardins

24 Address:

25 145 Beel Dr

26 Santa Cruz, California 95060