

THOMAS H. KEELING (SBN 114979)
FREEMAN FIRM
1818 Grand Canal Boulevard, Suite 4
Stockton, CA 95207
Telephone: (209) 474-1818
Facsimile: (209) 474-1245
Email: tkeeling@freemanfirm.com

J. MARK MYLES (SBN 200823)
Office of the County Counsel
County of San Joaquin
44 N. San Joaquin Street, Suite 679
Stockton, CA 95202-2931
Telephone: (209) 468-2980
Facsimile: (209) 468-0315
Email: jmyles@sigov.org

JENNIFER SPALETTA (SBN 200032)
SPALETTA LAW PC
P.O. BOX 2660
LODI, CA 95241
Telephone: (209) 224-5568
Facsimile: (209) 224-5589
Email: jennifer@spalettalaw.com

Attorneys for Protestants County of San Joaquin,
San Joaquin County Flood Control and
Water Conservation District, and
Mokelumne River Water and Power Authority

BEFORE THE
CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

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

**SAN JOAQUIN COUNTY PROTESTANTS'
RESPONSE TO CERTAIN OBJECTIONS
SUBMITTED BY THE SAN LUIS & DELTA-
MENDOTA WATER AUTHORITY, THE
SACRAMENTO VALLEY GROUP, AND
TEHAMA-COLUSA CANAL AUTHORITY**

1 **I. INTRODUCTION**

2 Protestants County of San Joaquin, San Joaquin County Flood Control and Water
3 Conservation District, Mokelumne River Water and Power Authority ("San Joaquin County
4 Protestants") respond herein to the following objections filed herein by the Sacramento Valley
5 Group and Tehama-Colusa Canal Authority, including water service contractors in its service
6 area (collectively, "SVG-TCCA") and the San Luis & Delta-Mendota Water Authority
7 ("SLDMWA").

8 Consistent with the Board's directive, this Response is limited to objections to the effect
9 that the evidence at issue is outside the scope of Part 1 of this proceeding.

10 The objections addressed by this Response concern either the testimony of percipient
11 witness Linda Turkatte or that of expert witness Dr. Jeffrey Michael. Ms. Turkatte's testimony
12 focuses on communications between the State of California and San Joaquin County
13 concerning blue-green algae, cyanobacteria and *microcystis*, and San Joaquin County's
14 response to Harmful Algal Blooms ("HABs"), the incidence of which has increased alarmingly
15 in 2016. As reflected in statements from the State itself, HABs in the Delta present a
16 significant hazard to humans in the Delta, as well as to pets and fisheries. Her testimony
17 about HABs in San Joaquin County in 2016 has been submitted by the San Joaquin County
18 Protestants, along with related expert testimony from Erik Ringelberg, to address injury to
19 humans and human uses of water in the Delta which will result if the proposed WaterFix
20 project is approved.

21 Dr. Michael's testimony concerns the economic feasibility of the proposed WaterFix
22 project. The economic viability of the project is a topic encompassed by Part 1. First, the
23 economic infeasibility of the project, as proposed by the Petitioners, is important to any
24 consideration of whether the promised safeguards (to human users and M&I uses) are at all
25 viable. Second, this Board has a duty to make findings on the public interest; whether the
26 project makes any economic sense is certainly critical to the public interest at the heart of this
27 proceeding.

1 As explained below, the objections should be overruled in their entirety, and the
2 Testimony of Ms. Turkatte and Dr. Michael should be allowed to proceed in Part 1 rather than
3 be delayed until Part 2.

4 **II. RESPONSE TO OBJECTIONS TO THE TESTIMONY OF PERCIPIENT WITNESS**
5 **LINDA TURKATTE (EXHIBIT SJC-002 [ALSO SUBMITTED AS SDWA-42]).**

6 SLDMWA objected to the Testimony of Linda Turkatte (Exhibit SJC-002)¹ on the
7 ground that it is “irrelevant to the issues of the potential effects of the project on legal users of
8 water.” (SLDMWA Objections, p. 22.) A fair inference from this objection is that SLDMWA’s
9 position is that Ms. Turkatte’s testimony about the occurrence of harmful algal blooms
10 (“HABs”) in San Joaquin County is not within the scope of Part 1, but, rather, is a Part 2 issue.

11 The testimony of Ms. Turkatte, San Joaquin County’s Director of Environmental Health,
12 was submitted as a key part of the San Joaquin County Protestants’ case concerning HABs in
13 the Delta. Her testimony is referenced in the submitted testimony of Erik Ringelberg, an expert
14 in watershed ecology and microbiology who will explain why the proposed project is likely to
15 exacerbate the conditions that promote development of HABs and the resulting neurotoxin,
16 *mycrocystis*.

17 Lest there be any doubt about the threat to humans and human users of water posed by
18 HABs, communications from the State itself, attached as exhibits to Ms. Turkatte’s testimony,
19 underscore that threat. (See, e.g., SJC-018, p. 1 [noting the risk HABs pose to humans], SJC-
20 025, pp. 7, 8-25 [concerning measures by CDC to address HABs concerns]; SJC-027, p. 1
21 [CDC launches reporting system for harmful algal blooms]; SJC-028, pp. 7-8 [re: CDC website
22 on HABs]; SJC-033, p. 11 [regarding toxins produced by algae blooms; SJC-035, pp. 2 and 4
23 [threat to human health posed by cyanobacteria and harmful algae and symptoms of exposure,
24 including rashes and allergic reactions, liver damage and even death; and noting that HABs
25
26

27 ¹ At pages 16-17 of the SLDMWA Objections, SLDMWA objects to Ms. Turkatte’s Testimony
28 in the form of Exhibit SDWA-42. SDWA-42 and SJC-002 are the same.

1 present serious challenges to recreational water uses, drinking water providers and water body
2 managers].)

3 Residents and visitors in San Joaquin County use the Delta for fishing, swimming and a
4 variety of recreational activities, in addition to diversion of water for agricultural and M&I uses.
5 HABs directly impact the continued use of the waters of the Delta channels for these purposes.
6 These are clearly proper issues to address in Part 1, as they go directly to the question of injury
7 to humans and human uses of water. In addition, they also go to the overriding question of
8 whether approval of the proposed project is in the public interest.

9 **III. RESPONSE TO OBJECTIONS TO THE TESTIMONY OF EXPERT WITNESS DR.**
10 **JEFFREY MICHAEL (EXHIBIT SDWA-134).**

11 SLDMWA and SVG-TCCA objected to Exhibit SDWA-134 (Testimony of Dr. Jeffrey
12 Michael) on the ground that Dr. Michael's testimony is irrelevant, by which we understand that
13 they are saying it is outside the scope of Part 1. (See SVG-TCCA Objections, p. 5; SLDMWA
14 Objections, pp. 18-19.)

15 Professor Michael's testimony details the economic injury to agriculture in the Delta as
16 a result of reduced water quality caused by the WaterFix diversions, even if the CVP and
17 SWP are able to operate to meet the D-1641 standards. Most importantly for present
18 purposes, he explains why the WaterFix is not economically feasible and how this lack of
19 feasibility creates a corresponding lack of credibility for the project's assurances of no-injury to
20 protestants. Petitioners have asked this Board to approve the WaterFix project, **as**
21 ***proposed, with its supposed safeguards and promised water quality compliance***
22 ***measures***. Yet, given the economic infeasibility of the project, the project that would actually
23 be delivered is likely to be very different from the *proposed* project. Economic feasibility goes
24 directly to the question of whether the proposed project is likely to result in injury to legal
25 users of water and whether it would be in the public interest to approve the project. Economic
26 and financial analysis of the proposed project is critically linked to the project's operational,
27 engineering, and environmental feasibility.

1 **IV. CONCLUSION.**

2 For the foregoing reasons, the objections to Ms. Turkatte's and Dr. Michael's
3 Testimony submitted by SVG-TCCA and SLDMWA are without merit and should be overruled
4 in their entirety. The testimony of both witnesses, and the other evidence submitted in
5 connection with their testimony, go directly to matters encompassed in Part 1 of this
6 proceeding: the injury to humans and human uses of water in the Delta if the proposed
7 project is approved and, more generally, the question of whether approval of the proposed
8 project is in the public interest.

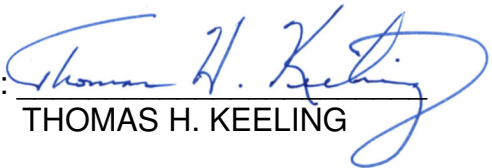
9 That said, it should not be assumed that merely because the testimony of Ms. Turkatte
10 and Dr. Michael address Part 1 issues their testimony does not also address Part 2 issues.
11 As will be made clear in Part 2, HABs also pose a threat to fisheries and wildlife, and the
12 economic infeasibility of the proposed project casts an unacceptable pall of uncertainty over
13 implementation of the promised environmental safeguards and mitigation measures that its
14 proponents say will make the project compliant with state and federal environmental
15 protection requirements.

16 For present purposes, though, it is enough to observe that the HABs testimony and
17 economic feasibility testimony also address Part 1 issues and should be presented in Part 1.

18 Respectfully submitted,

19
20 Dated: September 30, 2016

FREEMAN FIRM,

21
22 By: 
THOMAS H. KEELING

23
24 Dated: September 30, 2016

SPALETTA LAW PC,

25
26 By: 
JENNIFER L. SPALETTA

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 JOAQUIN COUNTY PROTESTANTS' RESPONSE TO CERTAIN OBJECTIONS SUBMITTED BY THE SAN LUIS & DELTA-MENDOTA WATER AUTHORITY, THE SACRAMENTO VALLEY GROUP, AND TEHAMA-COLUSA CANAL AUTHORITY

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 29, 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 30, 2016.

Signature: 

Name: Tonia Robancho

Title: Legal Assistant for Thomas H. Keeling
Freeman Firm

Party/Affiliation:

County of San Joaquin, San Joaquin County Flood Control
and Water Conservation District, and Mokelumne River
Water and Power Authority

Address:

Freeman Firm, A Professional Law Corporation
1818 Grand Canal Blvd., Suite 4, Stockton, CA 95207