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10 BEFORE THE CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

11
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 13 In the matter of Hearing re California
 14 WaterFix Petition for Change

**SACRAMENTO VALLEY WATER
 15 USERS' RESPONSE TO DEPARTMENT
 16 OF WATER RESOURCES' MASTER
 17 OBJECTIONS**

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19 WATER COMPANY, PLEASANT-GROVE VERONA
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22 PROVIDENT IRRIGATION DISTRICT, RECLAMATION
23 DISTRICT 108, SACRAMENTO MUNICIPAL UTILITY
24 DISTRICT, HENRY D. RICHTER, ET AL., RIVER
25 GARDEN FARMS COMPANY, SOUTH SUTTER
26 WATER DISTRICT, SUTTER EXTENSION WATER
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1 On September 28, 2016, the State Water Resources Control Board (“SWRCB”) instructed
2 parties to submit “any responses to objections to Part 1B cases in chief that concern whether
3 testimony or exhibits are within the scope of Part 1B.” The protestants who comprise the
4 Sacramento Valley Water Users (“SVWU”) submit this limited response¹ to the “Master
5 Objections to Protestants’ Cases-in-Chief Collectively” (“Master Objection”) filed by the
6 California Department of Water Resources (“DWR”). Initially, DWR’s reliance on its Master
7 Objection to exclude evidence without identification of specific testimony or exhibits or specific
8 evidentiary basis is improper and should be disregarded. In the event that the SWRCB is inclined
9 to allow DWR’s improper Master Objection, it should be denied to the extent that the Master
10 Objection aims to exclude any testimony or exhibits offered by a protestant within the SVWU on
11 the ground that it is outside the scope of Part 1. All of the evidence submitted by the protestants
12 of the SVWU is relevant to the SWRCB’s determination of injury to other legal users of water
13 and therefore within the scope of Part 1B.

14 As part of a coordinated effort to improve the expediency of the California WaterFix
15 Hearing, the protestants of the SVWU submitted testimony and exhibits prepared by MBK
16 Engineers to support multiple parties’ cases in chief for Part 1B of the proceedings on September
17 2, 2016. In addition, each of the protestants of the SVWU submitted individual and other
18 coordinated evidence in support of their separate protests and cases in chief. On September 21,
19 DWR submitted² its Master Objection, as well as specific objections to individual parties’ cases
20 in chief. The Master Objection makes no specific reference to SVWU coordinated evidence nor
21 evidence of the individual SVWU protestants, but argues more generally that “Protestants have

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23 ¹ The SVWU protestants will address the specific objections to their exhibits and testimony prior to presenting their
24 Part 1B case in chief, as directed by the SWRCB’s September 28, 2016 email. The SVWU further reserve the right
25 to respond to any additional objections lodged by DWR and any other party at the appropriate time.

26 ² It should be noted that all of DWR’s objections were submitted after the noon deadline on September 21, 2016, and
27 are thus untimely. (See Webpage Containing the Written Objections to Part 1B Cases in Chief, available at
28 http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/opening_statements/part1b_objection.shtml (State Water Resources Control Board webpage describing DWR’s submitted objections as “late”).) It is clear from the State Water Board’s original hearing notice in these proceedings that the requirement for submission of filings includes the service of those filings on all parties. (Notice of Petition, p. 36.) Thus, despite Mr. Mizell’s representations to the Hearing Officer on September 27 that DWR’s objections were timely *prepared*, the failure to *serve* those objections on the Board and parties to these proceedings by the noon deadline makes those objections untimely.

1 raised various issues that are outside the scope of the hearing.” (*Id.* at p. 11.)

2 “While no particular form of objection is required [citation], the objection must be made
3 in such a way as to alert the trial court to the nature of the anticipated evidence and the basis on
4 which exclusion is sought, and to afford the People an opportunity to establish its admissibility.”
5 (*People v. Rivera* (2011) 201 Cal.App.4th 353, 361.) As the SWRCB has previously ruled, “[w]e
6 do not consider such a general evidentiary objection sufficient to exclude proffered evidence
7 without specific identification of the evidence to which the party objects and the reason for that
8 objection.” (SWRCB Order WO 2012-0012, p. 11, fn. 28.) DWR’s Master Objection is
9 improper because it requests to exclude evidence without identification or a reason to do so. The
10 coordinated SVWU evidence is not referenced in the Master Objection nor is any specific
11 evidence of any individual SVWU protestant³, and for this reason alone the Master Objection
12 should be denied for DWR’s failure to specifically identify the evidence to which DWR objects.
13 DWR’s Master Objection seeks to exclude testimony and exhibits relating to issues outside the
14 scope of Part 1, but fails to identify a single exhibit that should be stricken on that basis. Rather,
15 it asks the SWRCB to step in and “issue an order excluding testimony and exhibits relating to
16 issues outside the scope of this hearing, issues related [sic] to Part 2, and those that are
17 procedurally deficient.” (Master Objection, p. 20.) Although DWR characterizes its Master
18 Objection as an attempt to “efficiently object” to the 42 cases in chief submitted for Part 1B by
19 addressing common issues (Master Objection, p. 3.), it does little more than reiterate the
20 SWRCB’s evidentiary standards and make unhelpful blanket assertions.

21 To the extent that the Master Objection is asserting that any of the coordinated evidence
22 submitted by the SVWU or individual evidence submitted by any SVWU protestant is outside the
23 scope of Part 1, DWR has mischaracterized such evidence. All of the evidence submitted by the
24 SVWU and the individual protestants within the SVWU is relevant to the issue of whether the

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26 ³ The only exception is one exemplar reference to SVWU protestant, Carmichael Water District, contained in a
27 citation in the section on “Procedural and Evidentiary Issues.” (Master Objection, pp. 17-18.) This indirect reference
28 does not specifically indicate that this is evidence to which DWR objects, but rather purportedly serves as example
evidence of the type discussed in the legal standard. DWR’s reference does not satisfy the requirement to
specifically identify the evidence objected to and grounds for the objection.

1 proposed changes will cause injury to legal users of water as outlined in the SWRCB's October
2 30, 2015 Hearing Notice. Even if any of the SVWU evidence discusses project funding or
3 property damage due to project construction (issues that DWR asserts are outside the scope of
4 Part 1), all such evidence discusses those issues in a manner that is relevant to one of the Part 1
5 issues and therefore not subject to exclusion.

6 For the foregoing reasons, the SVWU respectfully request that DWR's Master Objection
7 to Protestants' Cases in Chief be overruled in its entirety. In the alternative, if the SWRCB is
8 inclined to grant DWR's request to exclude any SVWU coordinated or individual evidence on the
9 basis that it is outside of the scope of Part 1, then the SVWU protestants request that the specific
10 evidence be identified so that a further response can be made.

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DATED: September 30, 2016

DOWNEY BRAND LLP

By: 

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DATED: September 30, 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);

SACRAMENTO VALLEY WATER USERS' RESPONSE TO DEPARTMENT OF WATER RESOURCES' MASTER OBJECTIONS

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 of Water Resources Control Board at
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:

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| | I caused a true and correct hard copy 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: Method of Service: _____ |
|--|--|

I certify that the foregoing is true and correct and that this document was executed on September 30, 2016.

Signature: Catharine Irvine

Name: Catharine Irvine

Title: Legal Secretary

Party/Affiliation: Downey Brand, LLP

Address: 621 Capitol Mall, Sacramento, CA 95814