

1 Spencer Kenner (SBN 148930)
James E. Mizell (SBN 232698)
2 Robin McGinnis (SBN 276400)
**CALIFORNIA DEPARTMENT OF WATER
RESOURCES**

3 Office of the Chief Counsel
4 1416 Ninth Street, Room 1104
Sacramento, CA 95814
5 Telephone: (916) 653-5966
E-mail: james.mizell@water.ca.gov

6
7 Attorneys for California Department of Water
Resources

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

9
10 **HEARING IN THE MATTER OF**
11 **CALIFORNIA DEPARTMENT OF WATER**
12 **RESOURCES AND UNITED STATES**
13 **BUREAU OF RECLAMATION REQUEST**
14 **FOR A CHANGE IN POINT OF**
DIVERSION FOR CALIFORNIA WATER
FIX

CALIFORNIA DEPARTMENT OF
WATER RESOURCES' OBJECTIONS
TO NORTH DELTA CARES WRITTEN
TESTIMONY AND EXHIBITS
SUBMITTED BY PROTESTANTS IN
SUPPORT OF PART 1B CASE IN
CHIEF AND ANY RELATED
JOINDERS

15 **I. INTRODUCTION**

16
17 California Department of Water Resources ("DWR") submits the following
18 objections, motion to strike testimony and/or exclude testimony to North Delta Cares'
19 ("NDC's") filings, which include written testimony and qualifications of Barbara Daly,
20 Mark Pruner, Richard Marshall, Steve Haze, and Nicky Suard; and nine exhibits which
21 include pages from the 2015 RDEIR/SDEIR, simulation pictures, and recreational and
22 well maps.

23 Because much of the testimony presented by the additional witnesses and
24 Declarants are irrelevant and cumulative, DWR requests testimony be excluded or
25 portions therein stricken. DWR concurrently with this Response submits Master
26 Objections related to issues raised by multiple parties which will be referenced in these
27 Objections. Those issues include testimony making legal arguments, submitting policy
28

1 statements that are not evidence to support a claim of injury, requests this proceeding
2 determine real property or economic damages and rearguing processes outside the
3 scope of this hearing like the Delta Plan, EIR/EIS adequacy, Biological Assessment,
4 and/or re-consultation.

5 **II. OBJECTIONS**

6 **A. Testimonies of Barbara Daly and Mark Pruner**

7
8 Barbara Daly's qualifications appear to be based on her work with a Delta tour
9 service, as a marina owner, and co-chair of the North Delta Cares organization. Her
10 testimony summarizes her family life in Clarksburg. She claims her family is *"likely to be*
11 *damaged by the disintegration in the water quality caused by seepage or a potential*
12 *breach in our water well due to the construction of the California Water Fix"* and *"[t]he*
13 *property I live on may also be jeopardized through the construction of the coffer dam*
14 *because the flow in the river will increase in velocity and scour the levee in front of our*
15 *house causing serious erosion and potential flooding."* Nothing in the testimony provides
16 specific details about the likely damages to personal or real property. These claims are
17 outside the scope of this hearing. Please refer to DWR's Master Objections related to
18 filing a state claim and property acquisition related to the California Water Commission's
19 role and the courts. Additionally, she does not qualify as an expert to testify regarding
20 water quality, modeling, or potential flood impacts. She appears to challenge the
21 conclusion of these impacts in the BDCP/California Water Fix RDEIR/SDEIS without
22 providing conflicting evidence. Nevertheless, the validity of the CEQA/NEPA analysis is
23 not part of this hearing.

24
25 Daly's testimony then introduces NDC's panel members, addressed individually
26 below. Mark Pruner's qualifications consist of five general bullets regarding his status as
27 an attorney and activities with Delta groups including the Clarksburg Fire Protection
28 Board. His testimony appears to be focused on operations of the local Fire District.

1 “The District is of the opinion that CA WaterFix will lower the water table of its well during
2 the term of the construction phase” He provides no evidence to support this
3 assertion, nor does he acknowledge the analysis provided by the Petitioners and
4 commitments to mitigate any impacts. Both Daly and Pruner are focusing on economic
5 damages outside the scope of this hearing. Please refer to DWR’s Master Objections
6 detailing what issues are before the Board related to a change petition and requirements
7 of Protestants to prove any alleged injuries.

8 **B. Testimonies of Richard Marshall and Steven Haze**

9
10 Next, NDC provides testimony of Richard Marshall who is the manager of the
11 North Delta Water Agency and a farmer in Clarksburg. His testimony amounts to a
12 policy statement. (See DWR’s Master Objections, Section III.B.) The last witness
13 proposed by NDC is Steven Haze. Mr. Haze has a BA in Applied Economics and
14 submits testimony related to the alternatives analyzed in the BDCP EIR/EIS, cost issues,
15 the California Water Action Plan, the concept of highest and best use, statements about
16 the need for more modeling, and options regarding the existing infrastructure. He
17 concludes with odd statements that Calsim II should be a smart grid and the Petition
18 should address the supply versus demand water budget imbalances. Mr. Haze’s vague
19 statements are irrelevant and incomprehensible.

20 **C. Testimony of Nicky Suard**

21
22 Submitted as part of NDC’s case-in-chief is a witness, Nicky Suard, who
23 represents herself in another case-in-chief, Snug Harbor. Her testimony is duplicative,
24 and she is unqualified to render opinions about changes in water flows, water quality,
25 water levels, and terrestrial habitat. She states in part, “*I believe it can be shown that a
26 major cause of the groundwater degradation is the many soil borings, channel bench
27 installations, restoration sites and other actions under the CALFED/BDCP process.*”
28

1 Similar to the other testimony submitted on behalf of NDC, her testimony amounts to a
2 policy statement and not direct evidence.

3 **III. CONCLUSION**
4

5 For the reasons stated above and in DWR's Master Objections filed concurrently,
6 the Protestant NDC's case-in-chief includes pages of irrelevant testimony and supporting
7 documents that should be excluded from this hearing in most part, as detailed above.

8
9 Dated: September 21, 2016

CALIFORNIA DEPARTMENT OF WATER
RESOURCES

10
11 

12
13 James (Tripp) Mizell
14 Office of the Chief Counsel

15
16
17
18
19
20
21
22
23
24
25
26
27
28