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BEFORE THE
CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

HEARING ON 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.

**BIGGS-WEST GRIDLEY WATER
DISTRICT'S RESPONSES TO THE
DEPARTMENT OF WATER
RESOURCES AND SAN LUIS
DELTA-MENDOTA WATER
AUTHORITY'S OBJECTIONS TO
BIGGS-WEST GRIDLEY WATER
DISTRICT'S PART 1B CASE IN
CHIEF**

I. INTRODUCTION

Biggs-West Gridley Water District (BWGWD) filed its case in chief on August 31, 2016. It included the testimony of Eugene Massa, BWGWD's General Manager. The Department of Water Resources (DWR) objected to Mr. Massa's testimony as part of the Joint Water District Board, which is a group of water districts that all divert from the Feather River, on the grounds that his testimony "does not provide any details or facts that support a showing of injury to BWGWD." (California Department of Water Resources' Objections to Joint Water District Board Written Testimony and Exhibits Submitted by Protestants in Support of Part 1B Case in Chief and Related Joinders (Sept. 21, 2016) (DWR's Objections), p. 2.)

1 San Luis Delta-Mendota Water Authority (SLDMWA) objected to Mr. Massa's
2 testimony on grounds that it is inadmissible lay opinion and incorporates hearsay. (San
3 Luis & Delta-Mendota Water Authority's Objections to Part 1B Parties' Cases in Chief
4 (Sept. 21, 2016) (SLDMWA's Objections), p. 16.) None of these objections have merit
5 because Mr. Massa's testimony is relevant and admissible under the administrative rules
6 for State Water Resources Control Board (State Water Board) hearings.

7 II. LEGAL STANDARD

8 This hearing is governed by Chapter 4.5 of the Administrative Procedure Act
9 (Gov. Code, § 11400 et seq.); regulations adopted by the State Water Board (Cal. Code
10 Regs., tit. 23, §§ 648-648.8); sections 801 to 805 of the Evidence Code; and
11 section 11513 of the Government Code. (Cal. Code Regs., tit. 23, § 648(b).) The State
12 Water Board is not required to conduct adjudicative hearings according to the technical
13 rules of evidence applicable to a court. (Gov. Code, § 11513(c).) Instead, "[a]ny
14 relevant evidence shall be admitted if it is the sort of evidence on which responsible
15 persons are accustomed to rely in the conduct of serious affairs, regardless of the
16 existence of any common law or statutory rule which might make improper the admission
17 of evidence over objection in civil actions." (*Ibid.*) The State Water Board follows these
18 relaxed standards because the Hearing Officers' expertise in the subject matter justifies
19 the State Water Board's ability to make both legal and factual determinations.

20 The State Water Board's Notice of Hearing includes further direction on the types
21 of evidence that must be included by protestants. Protests based on an injury to a legal
22 user of water "must describe specifically what injury would result if the proposed
23 changes requested in the Petition were approved." (State Water Resources Control
24 Board's Notice of Petition and Notice of Public Hearing and Pre-Hearing Conference to
25 Consider the Above Petition (Oct. 30, 2015), p. 13.) Additionally, "the party claiming
26 injury must provide specific information describing the basis of the claim of right, the date
27 the use began, the quantity of water used, the purpose of use and the place of use."
28 (*Ibid.*) BWGWD is a legal user of water that claims potential injury due to the WaterFix

1 Project, and Mr. Massa's testimony is relevant foundational evidence for its protest in
2 Part 1B of the hearing.

3 III. ARGUMENT

4 A. DWR's Objections to Mr. Massa's Testimony Are Unfounded

5 DWR argues that Mr. Massa's testimony "does not provide any details or facts
6 that support a showing of injury to BWGWD," so it is unsupported and irrelevant. (DWR
7 Objections, pp. 2-3.) Mr. Massa's testimony, however, is based on his years of
8 experience managing BWGWD, and his knowledge of BWGWD's water rights and
9 operations. Furthermore, Mr. Massa reviewed the expert work of and testimony by
10 MBK Engineers submitted on behalf of the Sacramento Valley Water Users, and based
11 upon this review, understands that there would be injury to BWGWD if the WaterFix
12 Project is constructed and operated. Therefore, Mr. Massa's personal knowledge of
13 BWGWD's operations and water rights, combined with his review of MBK Engineers'
14 expert work, support his understanding that the WaterFix Project would cause injury to
15 BWGWD. Mr. Massa's testimony is rationally based on his personal knowledge, and is
16 "helpful to a clear understanding of his testimony." (Evid. Code, § 800.) Therefore,
17 Mr. Massa's testimony is relevant, and DWR's objections should be overruled.

18 B. SLDMWA's Objections to Mr. Massa's Testimony Are Without Merit

19 SLDMWA objects to Mr. Massa's testimony as including an inadmissible lay
20 opinion. SLDMWA argues that Mr. Massa needs "expertise regarding modeling of
21 project operations" in order to have a relevant opinion about injury to BWGWD.
22 (SLDMWA's Objections, p. 16.) This is incorrect. A non-expert witness may offer an
23 opinion that is "[r]ationally based on the perception of the witness" and "[h]elpful to a
24 clear understanding of his testimony." (Evid. Code, § 800.) Mr. Massa has years of
25 experience managing BWGWD, and knowledge of its water rights. After reviewing
26 MBK Engineers' expert work, Mr. Massa developed the understanding that the proposed
27 WaterFix Project would injure BWGWD. Therefore, Mr. Massa's opinion about the injury
28 to BWGWD is "[r]ationally based on [his] perception" of the conditions that affect

1 BWGWD's operations, and "[h]elpful to a clear understanding of [his] testimony"
2 regarding the detrimental effects of the WaterFix Project on BWGWD's water supply.
3 (*Ibid.*) Therefore, Mr. Massa's testimony is relevant and admissible lay witness
4 testimony.

5 SLDMWA also objects to Mr. Massa's testimony that "[b]ased upon the expert
6 work of and testimony by MBK Engineers that has been submitted on behalf of the
7 Sacramento Valley Water Users (which includes BWGWD), it is my understanding that
8 with the WaterFix Project constructed and operating, there would be injury to BWGWD
9 and other legal users of water." (SLDMWA's Objections, p. 16.) SLDMWA objects to
10 this statement as "hearsay because it relies on a statement by someone other than the
11 witness to establish the truth regarding modeling runs analyzing impacts of the project."
12 (*Ibid.*)

13 Mr. Massa, however, is simply referring to the relevant testimony of an expert that
14 has submitted evidence on BWGWD's behalf in this proceeding. Relevant hearsay is
15 admissible in adjudicative proceedings before the State Water Board. The State Water
16 Board has previously stated it will "decline to exclude or strike any evidence on the
17 grounds that it is hearsay," but will consider relevant hearsay evidence "subject to the
18 limitations imposed by Government Code section 11513, subdivision (d)." (Ruling on
19 Motions filed in the Matters of the Administrative Civil Liability Complaint against Byron-
20 Bethany Irrigation District and Draft Cease and Desist Order Against West Side Irrigation
21 District (March 18, 2016), p. 4.) MBK Engineers' expert work is relevant because it
22 concerns the potential impacts of the WaterFix Project operations on legal users of
23 water. (See Exhs. SVWU-107, SVWU-108, SVWU-109.) Further, MBK Engineers'
24 expert work is reliable because it was prepared by Walter Bourez, an expert in
25 hydrologic modeling. (See Exh. SVWU-101.) Thus, this is relevant evidence upon
26 which Mr. Massa can reasonably rely to form his opinion regarding the potential impacts
27 of the WaterFix Project operations on BWGWD's water rights and supplies. (See Evid.
28 Code, § 11513(d).)

1 IV. CONCLUSION

2 Mr. Massa's testimony is relevant and admissible because it is based on his
3 experience at BWGWD and his knowledge of its water rights. Mr. Massa appropriately
4 relied on MBK Engineers' expert reports in forming his opinion regarding injury to
5 BWGWD. Therefore, BWGWD respectfully requests that the State Water Board overrule
6 DWR's and SLDMWA's Objections.

7 SOMACH SIMMONS & DUNN, P.C.
8 A Professional Corporation

9 Date: October 24, 2016

10 By:



11 Andrew M. Hitchings
12 Attorneys for Biggs-West Gridley Water
13 District
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1 STATEMENT OF SERVICE

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

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

6 **BIGGS-WEST GRIDLEY WATER DISTRICT'S RESPONSES TO THE DEPARTMENT**
7 **OF WATER RESOURCES AND SAN LUIS DELTA-MENDOTA WATER**
8 **AUTHORITY'S OBJECTIONS TO BIGGS-WEST GRIDLEY WATER DISTRICT'S**
9 **PART 1B CASE IN CHIEF**

10 to be served **by Electronic Mail** (email) upon the parties listed in Table 1 of the Current
11 Service List for the California WaterFix Petition hearing, dated October 6, 2016, posted
12 by the State Water Resources Control Board at
13 [http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/](http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/service_list.shtml)
14 [service_list.shtml](http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/service_list.shtml);

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

19 **FOR PETITIONERS ONLY:**

20 I caused a true and correct **hard copy** of the document(s) to be served by the following
21 method of service to Suzanne Womack & Sheldon Moore, Clifton Court, L.P., 3619 Land
22 Park Drive, Sacramento, CA 95818:

23 **Method of Service:** _____

24 I certify that the foregoing is true and correct and that this document was executed on
25 October 24, 2016.

26 Signature: 
27 Name: Crystal Rivera
28 Title: Legal Secretary
Party/Affiliation: Biggs-West Gridley Water District
Address: 500 Capitol Mall, Suite 1000
Sacramento, CA 95814