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

9 **IN RE CALIFORNIA WATERFIX**
10 **CALIFORNIA DEPARTMENT OF**
11 **BUREAU OF RECLAMATION**
12 **PETITION FOR CHANGES IN**
13 **WATER RIGHTS, POINTS OF**
14 **DIVERSION/RE-DIVERSION**

PROTESTANT SAVE THE CALIFORNIA
DELTA ALLIANCE'S SUPPLEMENTAL
OPPOSITION TO DWR'S OBJECTIONS TO
TESTIMONY AND EXHIBITS SUBMITTED
BY SAVE THE CALIFORNIA DELTA
ALLIANCE, ET AL.

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17 On September 28, 2016, the Board advised the parties by email that responses to DWR's
18 objections to parties' Part 1B evidence that go to the question of whether testimony and exhibits are
19 within the scope of Part 1B were due on September 30, 2016. The email further advised that
20 responses that concern issues other than whether the evidence is within the scope of Part 1B were
21 due before the party's presentation of its case in chief.

22
23 Delta Alliance submitted opposition to DWR's objections on September 28, 2016, as
24 directed. Delta Alliance's opposition dealt with all issues of scope and covered most of the other
25 issues raised by DWR as well, including the qualifications of witnesses to offer opinion testimony.

26 Several issues raised by DWR were not addressed in Delta Alliance's September 28
27 opposition and are addressed herein.
28

1 **DWR Objections To Delta Alliance Documentary Evidence**

2 DWR attached a table to its objections titled “Objections to SCDA et al. Exhibits and
3 Testimony.” The table contains summary objections to Delta Alliance’s documentary evidence
4 exhibits SCDA-2–20; 26–31; 34; 40–47; 50–55. No argument is provide by DWR explaining or
5 supporting its objections to Delta Alliance’s documentary evidence.
6

7 DWR did not object to SCDA-1, 56, and 57–59. DWR further did not object to Delta
8 Alliance’s introduction and reliance on SWRCB-46 and SWRCB-104. DWR has waived any
9 objection to these exhibits that would exclude them in whole.

10 DWR objects to SCDA-2–17 identically with only the label “Lacks Foundation and
11 Relevance due to lack of testimony.” These exhibits were introduced on cross-examination and
12 were used extensively on cross-examination. Their relevance is established by cross-examination
13 testimony and adequate foundation for each one was laid during cross-examination. DWR did not
14 cite to any objections to these documents made during cross-examination.
15

16 DWR objects to SCDA-19 and 20 with the label “Legal Conclusion and Argument.” SCDA-
17 19 and 20 are official records of the courts of California. Such documents are expressly subject to
18 official notice and are not considered legal conclusion or argument.

19 DWR objects to SCDA-26 and SCDA-34 on grounds of “Lacks Foundation and Relevance.”
20 SCDA-26 and 34 are the August 26, 2014, USEPA letter commenting on the BDCP (of which CWF
21 is still very much a part) and the October 30, 2015, USEPA letter commenting on CWF. The
22 documents are explained and quoted in the testimony of Michael Brodsky. (SCDA-60, p.5: 1; 18–
23 21.) These two letters were also the subject of Delta Alliance’s Request for Official Notice, filed on
24 July 12, 2016. In DWR’s July 22, 2016, response to Delta Alliance’s Request for Official Notice,
25 DWR conceded that the two letters were proper for official notice and did not object to their
26 introduction. (DWR Response, p.2: 2–5.) It has therefore waived any objections. The letters are
27 relevant because the provide expert analysis of CWF’s effects on Delta flows.
28

1 DWR objects to SCDA-27 for “Lacks Foundation and Relevance.” It is quoted and
2 explained and foundation laid in the testimony of Michael Brodsky. (SCDA-60, p.7: 10–13.) It is an
3 official DWR publication that explains the BDCP’s (CWF) lack of storage, which is at issue in
4 these proceedings and directly relevant.

5 DWR objects to SCDA-29 for “Lacks Foundation and Relevance.” It is a letter authored by
6 the SWRCB and as such is part of the official records of the Board, dated prior to the start of these
7 proceedings, subject to official notice. It is quoted and explained and foundation laid in the
8 testimony of Michael Brodsky. (SCDA-60, p.10: 21–24.) It is directly relevant to the issue of
9 whether meeting D-1641 establishes non-injury as DWR argues.

10 DWR objects to SCDA-30 for “Lacks Foundation and Relevance.” It is a statute of the State
11 of California and part of the Water Code. Governing law can always be cited. It is quoted,
12 explained, and foundation laid in the testimony of Michael Brodsky. (SCDA-60, p.9: 12–19.) It
13 establishes the state’s longstanding policy to reduce exports from the Delta, which is directly
14 relevant to these proceedings.

15 DWR objects to SCDA-31 for “Lacks Foundation and Relevance.” It is an official
16 publication of the California Natural Resources Agency. It is quoted, explained, and foundation laid
17 in the testimony of Michael Brodsky. (SCDA-60, p.13: 20–25.) It explains the Resources Agency’s
18 position on droughts and climate change and is directly relevant to questions of climate change in
19 these proceedings (it contradicts testimony of Petitioner’s witnesses).

20 DWR objects to SCDA-40 as “Legal Conclusion and Argument. Not Relevant.” It is Delta
21 Alliance’s comments on the 2015 BDCP EIR. Petitioner has introduced the EIR into evidence and
22 the comments are a part of Petitioner’s submission already. (SWRCB-3.) Further Petitioner cannot
23 introduce part of a document and then argue to exclude other parts of the same document. SCDA-41
24 is Delta Alliance’s comments on the 2013 BDCP EIR. Petitioner has introduced the EIR into
25 evidence. (SWRCB-4.) The comments do not appear to be part of Petitioner’s submission, however
26
27
28

1 Petitioner cannot introduce a part of a document and then argue that integral parts of the same
2 document should be excluded. SCDA-40 and 41 are cited and foundation laid in the testimony of
3 Michael Brodsky. (SCDA-60, p.3: 20–25; p.4:1–2.) The documents comment extensively on the
4 technical aspects of Delta flows and water quality.

5
6 DWR objects to SCDA-42 and 43 for “Lacks Foundation and Relevance.” They are official
7 DWR publications dealing with the feasibility of groundwater storage as a strategy to manage water
8 resources. They are part of the California Water Plan, and if not already part of the record
9 elsewhere, subject to official notice. The importance and relevance of groundwater storage to these
10 proceedings is argued throughout the testimony of Michael Brodsky. These specific documents are
11 cited and foundation laid at SCDA-60, p.3: 20–25; p.4:1–2. DWR objects to SCDA 44–46 for
12 “Lacks Foundation and Relevance.” They are respected technical publications within the expertise
13 of the Board that the Board may take judicial notice of. 23 CCR § 648.2. They also deal with
14 groundwater storage. They are cited and foundation laid in the testimony of Michael Brodsky.
15 (SCDA-60, p.3: 20–25; p.4:1–2.) DWR objects to SCDA-47 is an official document of Petitioner
16 USBR. It is an EIS for a groundwater storage project that draws water from the CVP. It
17 demonstrates that CWF could be improved if it is conditioned in a way that takes pressure off of the
18 Delta in dry times by groundwater banking Delta water drawn at times of abundance. It is cited and
19 foundation laid in the testimony of Michael Brodsky. (SCDA-60, p.3: 20–25; p.4:1–2.)
20
21

22 DWR objects to SCDA-51 for “Legal Conclusion and Argument, Not Relevant.” It is Delta
23 Alliance’s early comments on the BDCP. It is cited in the testimony of Michael Brodsky and
24 foundation laid thereby. (SCDA-60, p.4:2.) It is relevant to CWF’s competence and ability to
25 manage its project to avoid injury to legal users of water.

26 DWR objects to SCDA-52 for “Lacks Foundation and Relevance.” It is a respected technical
27 publications within the expertise of the Board that the Board may take judicial notice of. 23 CCR §
28

1 648.2. It also deal with groundwater storage. It is cited and foundation laid in the testimony of
2 Michael Brodsky. (SCDA-60, p.3: 20–25; p.4:1–2.).

3 DWR objects to SCDA-53 for “Lacks Foundation and Relevance.” It is a Record of
4 Decision for a groundwater storage project connected to the CVP and authored by Petitioner USBR.
5 It is an official record of the United States government and subject to official notice. It is cited and
6 foundation laid in the testimony of Michael Brodsky. (SCDA-60, p.3: 20–25; p.4:1–2.)

7
8 DWR objects to SCDA-54 for “Lacks Foundation and Relevance.” It is an official
9 publication of DWR and subject to judicial notice. It is a historical record of Sacramento River
10 flows and establishes facts with respect to the amount of water available for diversion in times of
11 abundance. It is cited and foundation laid in the testimony of Michael Brodsky. (SCDA-60, p.3: 20–
12 25; p.4:1–2.)

13
14 DWR objects to SCDA-55 for “Lacks Foundation and Relevance.” It is a respected technical
15 publications within the expertise of the Board that the Board may take judicial notice of. 23 CCR §
16 648.2. It also deal with groundwater storage. It is cited and foundation laid in the testimony of
17 Michael Brodsky. (SCDA-60, p.3: 20–25; p.4:1–2.).

18 **DWR’s Objections to the Competence and Relevance of Delta Alliance Witness**
19 **Testimony.**

20 These objections are answered in Delta Alliance’s September 30, 2016, Opposition to
21 DWR’s Objections.
22

23 **DWR’s Objection that Delta Alliance did not submit a statement of qualifications for**
24 **expert witness Michael Guzzardo.**

25 DWR pointed out that Delta Alliance did not submit a separate statement of qualifications
26 for Michael Guzzardo. Mr. Guzzardo’s timely submitted written testimony contains a recitation of
27 his qualifications as an expert in Discovery Bay real estate values. In its September 30,
28 2016,Opposition, Delta Alliance acknowledged that its council failed to upload the statement of

1 qualifications. Delta Alliance also submitted a declaration and copy of Guzzardo's statement of
2 qualifications explaining that Delta Alliance's council had requested a separate statement of
3 qualifications from Guzzardo and that Guzzardo had provided the statement of qualifications to
4 council well ahead of the filing deadline. Delta Alliance respectfully requests that the Board
5 recognize this oversight as a good faith mistake.
6

7 The Board accepted DWR's late-filed Objections to Evidence in a similar situation and
8 Delta Alliance requests that it be accorded the same treatment. The oversight was corrected in a
9 timely fashion after it was pointed out by DWR.

10 Authentication

11 Delta Alliance submitted revised testimony of Michael Brodsky (SCDA-60) at the Board's
12 direction. Delta Alliance took the opportunity to add a number of footnotes authenticating and
13 identifying exhibits. The Board subsequently struck the footnotes as untimely added. However,
14 these footnotes were added as a matter of convenience.
15

16 Delta Alliance previously submitted a notice of errata on September 21, 2016, explaining
17 that a footnote was accidentally deleted from the testimony of Michael Brodsky in final editing of his
18 testimony. The errata was submitted as a declaration under penalty of perjury and included the
19 original footnote that authenticated all of the exhibits cited in the testimony of Michael Brodsky.
20 The notice of errata is posted on the CWF website and dated September 21.
21

22 The notice of errata with authenticating footnote was submitted as soon as Delta Alliance
23 became aware that the footnote had been accidentally deleted, at 1:15 p.m. on September 21.

24 Further, as noted above, most, if not all, of Delta Alliance's documentary evidence is of the
25 sort that does not require authentication as it is the proper subject of official notice.

26 Finally, Enclosure D to the October 30, 2015, hearing notice contemplates that exhibits will
27 be introduced during testimony. (Hearing Notice, p. 35, ¶b.) Government Code § 11513(b) also
28 contemplates the introduction of exhibits at the hearing. Delta Alliance is aware of no requirement

1 that exhibits be authenticated through footnotes in written testimony as opposed to oral declaration
2 under oath during testimony.

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Submitted November 29, 2016

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By: s/Michael A. Brodsky

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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):

Delta Alliance's Supplemental Opposition to DWR's Objections To Delta Alliance Evidence

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 October 6, 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 November 29, 2016.

Signature: 

Name: Michael A. Brodsky

Title: Attorney

Party/Affiliation:

Save the California Delta Alliance, et al.

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