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6
7 **BEFORE THE**
8 **CALIFORNIA STATE WATER RESOURCES CONTROL BOARD**

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

SUPPORT FOR NRDC'S USE OF
TREATISES IN CROSS-EXAMINATION

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15 Deirdre Des Jardins, principal at California Water Research ("California Water
16 Research") provides this argument supporting Doug Obegi's use of authoritative
17 reference papers and reports in cross-examination of DWR's witnesses. Since 1967,
18 the California Evidence Code (CEC) has allowed texts to be used on cross-examination
19 to highlight an expert's weaknesses when the expert testifies contrary to established
20 authority in the field. Evidence Code 721, subdivision (b)(1) provides that the cross-
21 examiner could read excerpts from "learned treatises" as long as the expert had
22 referred to, considered, or relied on the publication when forming his or her opinion, or if
23 the publication had been admitted in evidence.

24 In 1997, subdivision (b)(3) was added to Evidence Code section 721. It allows an
25 expert to be cross-examined with several types of publications, not just learned
26 treatises. The use of a publication is permitted on cross-examination, even when the
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1 expert on the stand does not recognize the publication, so long as either the expert
2 being cross-examined or another expert recognizes the document as authoritative.

3 Doug Obegi's use of references during cross-examination was consistent with
4 Evidence Code 721 (b)(3.)

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6 Respectfully submitted,

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9 Deirdre Des Jardins
10 Principal, California Water Research

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2 **STATEMENT OF SERVICE**

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

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

7 **SUPPORT FOR NRDC'S USE OF TREATISES IN CROSS-EXAMINATION**

8 to be served by Electronic Mail (email) upon the parties listed in the Current Service List
9 for the California Water Fix Petition Hearing, dated March 21, 2018, posted by the State
10 Water Resources Control Board at
http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/service_list.shtml

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

15 I certify that the foregoing is true and correct and that this document was executed on
16 March 23, 2017.

17
18
19 Signature:



20 Name: Deirdre Des Jardins
21 Title: Principal, California Water Research

22 Party/Affiliation:
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