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10 Attorneys for Protestants Local Agencies of the North Delta

11 **BEFORE THE**  
12 **CALIFORNIA STATE WATER RESOURCES CONTROL BOARD**

13 HEARING IN THE MATTER OF  
14 CALIFORNIA DEPARTMENT OF WATER  
15 RESOURCES AND UNITED STATES  
16 BUREAU OF RECLAMATION  
17 REQUEST FOR A CHANGE IN POINT OF  
18 DIVERSION FOR CALIFORNIA WATER FIX

**LAND'S BRIEF IN OPPOSITION TO  
DEPARTMENT OF WATER RESOURCES'  
OBJECTIONS TO ADMISSION OF PART 2  
CROSS EXAMINATION EXHIBITS INTO  
EVIDENCE**

1 **I. INTRODUCTION**

2 Protestant Local Agencies of the North Delta (“LAND”) opposes Department of Water  
3 Resources’ (“DWR”) objections to the admission of LAND-216, LAND-222, LAND-236, and  
4 LAND-238.

5 **II. LAND-216 AND LAND-222 ARE ADMISSIBLE**

6 DWR claims that both LAND-216 and LAND-222 lack appropriate foundation and  
7 demonstrated relevance and should therefore be excluded from evidence. DWR misinterprets  
8 the Board’s February 21, 2017 ruling (“Ruling”) in doing so. Documents that are not self-  
9 authenticating do not necessarily need a sponsoring witness to be admissible. (Ruling, p. 16.)  
10 Moreover, this particular rule cannot apply to exhibits brought on cross-examination. A  
11 sponsoring or expert witness is not available during cross examination. Here, these exhibits  
12 should be admitted to provide context to the associated witness testimony because they  
13 provide adequate foundation on their face for their limited purposes.

14 LAND-216 contains a table of water and are temperature data taken from *DWR’s own*  
15 California Data Exchange Center, the National Oceanic and Atmospheric Administration’s  
16 Climate Data Online database, and DWR’s Water Year 2017 Report. The data provided in the  
17 table is easily replicable using the links provided on the last page of LAND-216. The table was  
18 offered as an efficient means of conveying water and air temperature data across a 12-year  
19 timespan from various sources to the witnesses. Moreover, the cross-examination that LAND-  
20 216 accompanied did not rely on the accuracy of the data and was framed in terms of  
21 assuming the data was correct. (See February 27, 2018 Archived Footage at 5:22.)

22 Given that the source of the information was clearly provided in the document itself,  
23 LAND-216 was supported on its face by an adequate foundation for its intended purpose and  
24 should be admitted.

25 LAND-222 is a single-day survey of boating activity at Clarksburg, conducted August  
26 11, 2011, documenting vessel type, direction on the river travelled, number of people per craft,  
27 the activity engaged in, and at what time. LAND-222 was offered on cross-examination as a  
28 point of comparison for the witnesses to determine what constitutes the “low” amounts of boat

1 traffic discussed in their testimony. (See March 5, 2018 Archived Footage at 5:30; see also  
2 DWR-1022, p. 4:6-7.) Like LAND-216, LAND-222 was not offered for the accuracy of the data  
3 contained within it, but to elicit witness opinions on qualitative assessments of boat use in the  
4 north Delta. LAND-222 on its face provided adequate foundation for its intended purpose and  
5 should be admitted as well.

6 **III. LAND-236 AND LAND-238 ARE ADMISSIBLE**

7 DWR objects to LAND-236 and LAND-238 on the basis of hearsay. Both exhibits are  
8 newspaper articles offered not for the truth of the matter asserted within, but to elicit an opinion  
9 from the cross-examined witnesses. Furthermore, according to the Board's February 21, 2016  
10 ruling, hearsay is admissible so long as it supplements or explains other evidence. (Ruling, p.  
11 16; see also Gov. Code, § 11513, subd. (d).) Here, the exhibits were not offered to support  
12 specific findings in of themselves, but to supplement the cross-examined witness's testimony.  
13 Therefore, both LAND-236 and LAND-238 should be admitted under Government Code  
14 section 11513, subdivision (d).

15 **IV. CONCLUSION**

16 For the foregoing reasons, LAND requests the Board deny DWR's objections and admit  
17 the above-referenced Part 2 cross-examination exhibits into evidence.

18 Respectfully submitted,

19 Dated: May 4, 2018

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Osha R. Meserve  
23 Attorney for Protestant  
Local Agencies of the North Delta  
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1 **STATEMENT OF SERVICE**

2 I hereby certify that I have this day, May 4, 2018, submitted to the State Water  
3 Resources Control Board and caused a true and correct copy of the following document:

4 **LAND'S BRIEF IN OPPOSITION TO DEPARTMENT OF WATER RESOURCES'**  
5 **OBJECTIONS TO ADMISSION OF PART 2 CROSS EXAMINATION EXHIBITS INTO**  
6 **EVIDENCE**

7 to be served **by Electronic Mail** (email) upon the parties listed in Table 1 of the **Current**  
8 **Service List** for the California WaterFix Petition Hearing, dated March 26, 2018, posted by the  
9 State Water Resources Control Board at  
10 [https://www.waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/california\\_water](https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_water_fix/service_list.shtml)  
11 [fix/service\\_list.shtml](https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_water_fix/service_list.shtml)

12 I certify that the foregoing is true and correct and that this document was executed on  
13 May 4, 2018.

14 Signature:  \_\_\_\_\_

15 Name: Mae Ryan Empleo

16 Title: Legal Assistant for Osha R. Meserve  
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18 Party/Affiliation:

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