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16 BEFORE

17 CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

18 CALIFORNIA WATER FIX HEARING

19 Hearing in the Matter of California
20 Department of Water Resources' and United
21 States Bureau of Reclamation's Petition for
22 Change in Points of Diversion for the Central
23 Valley Project and the State Water Project

24 REPLY IN SUPPORT OF MOTION BY
25 SACRAMENTO VALLEY WATER USERS
26 TO ADMIT MODELING RESULTS BY
27 CALIFORNIA DEPARTMENT OF WATER
28 RESOURCES INTO EVIDENCE (EXHIBIT
SVWU-406)

1 **INTRODUCTION**

2 The Department of Water Resources ("DWR") has opposed the motion of the
3 Sacramento Valley Water Users group ("SVWU") to admit into evidence the CalSim II
4 modeling results produced by DWR in response to the hearing officers' May 21, 2018 ruling.
5 Those modeling results, along with the June 4, 2018 cover pleading with which DWR produced
6 those results, are now marked as Exhibit SVWU-406. That cover pleading necessarily admits
7 that Exhibit SVWU-406 contains model results extracted from DWR's own modeling evidence,
8 including Exhibit DWR-1077. The model results in Exhibit SVWU-406 have been
9 authenticated and are proper evidence in this hearing. At best, DWR's substantive arguments
10 against the admission of those results go to their evidentiary weight and not their admissibility.
11 DWR's procedural arguments against the admission of those results ignore DWR's own role in
12 preventing testimony about its own modeling results and ignore DWR's prior opportunity to
13 present redirect testimony concerning those results. Just as the May 21, 2018 ruling stated that
14 producing the results "likely would assist all parties in their participation in the hearing," so too
15 would be admitting them as evidence. Accordingly, the hearing officers should admit Exhibit
16 SVWU-406 as evidence in this hearing.

17 **ARGUMENT**

18 DWR has opposed the admission of the CWF H3+ modeling results it produced from its
19 own modeling files – results that are now included in Exhibit SVWU-406 – on a variety of
20 grounds that have no merit.

21 DWR's primary argument has been that the modeling results in Exhibit SVWU-406
22 effectively do not reflect DWR's work because those results are assembled in a manner –
23 namely, as month-by-month comparisons of results from baseline and with-California
24 WaterFix scenarios for a variety of parameters – that DWR does not believe is informative, that
25 was dictated by the SVWU's subpoena and that was produced using additional software.
26 Nothing in this argument, however, disputes that the modeling results in Exhibit SVWU-406
27 are authentic results of a comparison of the baseline and with-California WaterFix scenarios
28 based on information in the modeling files that DWR itself has submitted into evidence. It

1 would be impossible for DWR to dispute this fact. Its own June 4, 2018 "Response to May 21,
2 2018 State Water Board Order Requiring Production Of Modeling Information As Described In
3 Subpoena From City Of Folsom, Et Al." states, on page one, lines 18 through 23, the following:

4 The City of Folsom's subpoena sought numerical results from Exhibit DWR-
5 1077 for the NAA and CWF H3+ scenarios, as well as comparisons of these two
6 scenarios. The subpoena identified the specific parameters within the results
7 that City of Folsom is interested. [¶] DWR is providing with this filing a pdf
8 containing the information sought by the City of Folsom. The following list
replicates that provided by City of Folsom and includes the page numbers of the
attached pdf that correspond with the NAA, CWF H3+ and comparison.

9 In compliance with the hearing officers' May 21, 2018 ruling, DWR affirmed that it was
10 producing the required information. DWR cannot now deny that it already has affirmed that the
11 modeling results it produced and that are now contained in Exhibit SVWU-406 are authentic
12 results derived from DWR's own modeling files. The hearing officers therefore should admit
13 Exhibit SVWU-406 into evidence.

14 DWR's substantive arguments about the utility of the modeling results in Exhibit
15 SVWU-406, and the apparent fact that DWR needed additional software in order to produce
16 month-by-month results from its own modeling files, at most go to the evidentiary weight of
17 the results in Exhibit SVWU-406. Whether month-by-month modeling results, or more general
18 results based on exceedance curves and water year types, are more informative is a matter for
19 the parties to argue in their briefs based on the copious amounts of related evidence produced in
20 this hearing and ultimately is for the hearing officers, and the SWRCB generally, to decide.

21 DWR's procedural arguments against the admission of Exhibit SVWU-406 ignore
22 DWR's own role in confusing the production of modeling results in this hearing. As discussed
23 in the SVWU's initial subpoena and our motion to admit what is now Exhibit SVWU-406, the
24 objections of DWR and Reclamation to cross-examination questions based on results derived
25 from their own modeling, and their own witnesses' apparent lack of knowledge of those results,
26 has complicated that cross-examination and created a need to include in this hearing's record a
27 clear, comprehensive set of modeling results. Similarly, when the SVWU presented in Exhibit
28 SVWU-201 such a comprehensive set of results for the then-current modeling DWR presented

1 in Part 1 of this hearing, DWR unsuccessfully moved to strike that testimony. (May 10, 2017,
2 transcript, pp. 83-97.) During cross-examination by SVWU counsel Andrew Ramos of DWR's
3 modeling witnesses during the August 9, 2018 hearing session, DWR's counsel objected to Mr.
4 Ramos's attempt to confirm that DWR in fact had prepared Exhibit SVWU-406. DWR then did
5 not conduct any redirect of those witnesses to attempt to establish any lack of reliability in the
6 modeling results contained in Exhibit SVWU-406.¹

7 DWR's argument that Exhibit SVWU-406 should not be admitted because it was
8 produced using outside software ignores the fact that the hearing officers ordered DWR to
9 produce the relevant modeling results under the SWRCB's authority to require petitioners to
10 produce information to supplement their basic water-right change petition. The hearing
11 officers' May 21, 2018 order cited Water Code sections 1701.3 and 1703.5 as authority to
12 require DWR to produce those modeling results. Those statutes authorize the SWRCB to
13 require petitioners to produce information "reasonably necessary" for considering a change
14 petition and resolving protests. If it had been technologically impossible for DWR to produce
15 month-by-month results from its own modeling files, DWR presumably could have informed
16 the hearing officers that it was impossible for DWR to comply with their May 21 order. DWR
17 did not do that, but instead affirmed to the hearing officers that DWR was producing the
18 requisite information.

19 Finally, DWR's frequently repeated argument that it already produced a "complete set
20 of CALSIM modeling results" ignores the substantial technological burden associated with
21 extracting any useful information from those files. (See, e.g., DWR's July 25, 2018 Objection
22 To Motion By SVWU To Admit Modeling Results Into Evidence, p. 2:17-18.) SVWU
23 counsel's recent days-long effort to work with the SWRCB's staff to locate and access the DSS
24 results files contained in Exhibits DWR-500 and DWR-1077 in order to support counsel's
25 August 6 cross-examination of Reclamation's witness Nancy Parker on just one parameter in a
26 very limited set of months – CVP Jones exports in four months in which Ms. Parker's testimony
27

28 ¹Any such redirect would have been, at best, inconsistent with DWR's affirmation in its June 4 response
to the hearing officers' May 21 ruling that DWR in fact was producing the modeling results required by that ruling.
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1 indicated Folsom releases had increased – demonstrates that it is not a simple matter to access
2 the "complete set of CALSIM modeling results" that DWR produced in its own exhibits. The
3 hearing officers, the parties and the SWRCB will benefit by having a clear, month-by-month
4 comparison of fundamental modeling results like that in Exhibit SVWU-406 in the record of
5 this hearing.

6 **CONCLUSION**

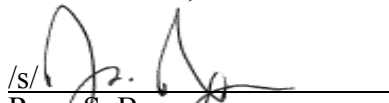
7 The hearing officers ordered DWR to produce the modeling results now in Exhibit
8 SVWU-406 to enable the SWRCB and the parties to have a direct statement of the modeling
9 results that DWR has put at issue in this hearing. To the extent that DWR argues that those
10 results do not appropriately depict the effects of California WaterFix, that argument at best
11 goes to those results' evidentiary weight. The SVWU respectfully request that the hearing
12 officers grant the motion and admit what is now Exhibit SVWU-406 into evidence.

13 Dated: August 16, 2018

Respectfully submitted,

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