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**Sent:** Wednesday, September 5, 2018 4:51 PM  
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**Subject:** CWF- SDWA Parties' Opposition to Certain DWR Part 2 Rebuttal Cross Examination Exhibits  
**Attachments:** 180905 SDWA Parties' Opposition to Certain DWR Part 2 Rebuttal Cross Examination Exhibits.pdf; 180905 Statement of Service.pdf

Good Afternoon All,

Please see attached. Should you have trouble opening or viewing the attachment please do not hesitate to contact our office.

Thank you,

***Bee Speer, Paralegal***

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14 On behalf of South Delta Water Agency,  
15 Central Delta Water Agency, Lafayette Ranch,  
16 Heritage Lands, Mark Bachetti Farms  
17 and Rudy Mussi Investments L.P.

18 **STATE OF CALIFORNIA**

19 **STATE WATER RESOURCES CONTROL BOARD**

20 Hearing in the Matter of California  
21 Department of Water Resources and  
22 United States Department of the Interior,  
23 Bureau of Reclamation Request for a  
24 Change in Point of Diversion for  
25 California Water Fix

26 **SOUTH DELTA WATER AGENCY  
27 PARTIES' OPPOSITION TO CERTAIN  
28 DWR PART 2 REBUTTAL CROSS  
EXAMINATION EXHIBITS**

For the reasons set forth below the South Delta Water Agency Parties herein oppose  
DWR's request to have certain Part 2 Rebuttal exhibits accepted into the evidentiary record.

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1 **DWR 1293**

2 DWR-1293 is the PowerPoint presentation of Erik Reyes. On July 27, 2018, the  
3 Hearing Officers ruled that the Testimony of Erik Reyes (DWR-1212) was not admissible  
4 because it did not “respond [] to evidence raised in connection with another party’s case-in-  
5 chief.” (July 27, 2018 Ruling, p. 2.) DWR-1293 summarizes the opinions described in Mr.  
6 Reyes’ Testimony, which was stricken, and was not presented during Part 2  
7 rebuttal. Therefore, there is no basis for inclusion of DWR-1293 in evidence for the Hearing.  
8

9 **DWR 1400**

10 This exhibit is outside the scope of Mr. Burke’s Part 2 Rebuttal testimony (SDWA – 323  
11 Second Revised) and lacks foundation. During the proceedings of August 31, 2018, it was  
12 clearly established that Mr. Burke did not utilize this document in preparing his testimony and  
13 that he was not familiar with same. Consequently, the exhibit also lacks any probative value.  
14 There is no basis for inclusion of this exhibit into the evidentiary record.  
15

16 **DWR 1401**

17 This purports to be a Draft report from 2001. This exhibit is outside the scope of Mr.  
18 Burke’s Part 2 Rebuttal testimony (SDWA – 323 Second Revised) and lacks foundation. During  
19 the proceedings of August 31, 2018, it was clearly established that Mr. Burke did not utilize this  
20 document in preparing his testimony and that he was not familiar with same. Consequently, the  
21 exhibit also lacks any probative value. There is no basis for inclusion of this exhibit into the  
22 evidentiary record.  
23

24 **DWR 1402**

25 DWR improperly attempts to move three DSM2 cross section graphs into the record.  
26 This exhibit is outside the scope of Mr. Burke’s Part 2 Rebuttal testimony (SDWA – 323 Second  
27 Revised) and lacks foundation. During the proceedings of August 31, 2018, it was clearly  
28

1 established that Mr. Burke did not utilize these graphs in preparing his testimony and that he  
2 was not familiar with same. Moreover, it should be noted that when counsel unsuccessfully  
3 attempted to question Mr. Burke on these graphs, she brought up different graphs from the DWR  
4 2009 Calibration Report. Specifically, counsel brought up Figure 4-2 from said report which  
5 appeared on p. 47 from the report. Mr. Burke testified that he was not familiar with Figure 4-2  
6 and that he could not properly respond to the questions concerning same because he had no basis  
7 to understand the data upon which the charts are supposedly based. Thus, even if DWR were  
8 attempting to move the actual exhibits it attempted to question Mr. Burke on during cross  
9 examination, said request would still be improper. There is no basis for inclusion of this exhibit  
10 into the evidentiary record.

11  
12 **DWR 1403**

13 This appears to be a DWR PowerPoint document from 2012 pertaining to DSM2 Version  
14 8.1. the DSM2 version used for the CWF modeling is Volume 8.0.6. This exhibit is outside the  
15 scope of Mr. Burke's Part 2 Rebuttal testimony (SDWA – 323 Second Revised) and lacks  
16 foundation. During the proceedings of August 31, 2018, it was clearly established that Mr. Burke  
17 did not utilize this document in preparing his testimony and that he was not familiar with same.  
18 Consequently, the exhibit also lacks any probative value. There is no basis for inclusion of this  
19 exhibit into the evidentiary record.

20  
21 **DWR 1404**

22 This appears to be some type of comparison of NAVD 88 and NVGD 29 Datums. The  
23 SDWA Parties do not recall any attempt by DWR to utilize this exhibit during Mr. Burke' cross  
24 examination. This exhibit is outside the scope of Mr. Burke's Part 2 Rebuttal testimony (SDWA  
25 – 323 Second Revised) and lacks foundation. Mr. Burke did not utilize this document in  
26 preparing his testimony and that he is not familiar with same. Consequently, the exhibit also  
27 lacks any probative value. There is no basis for inclusion of this exhibit into the evidentiary  
28 record.

1 **DWR 1406**

2 The first page of this exhibit is a map prepared by Mr. Burke as a professional courtesy  
3 to try and assist SWC's counsel understanding of the location of the cross sections which are  
4 partially the subject of Mr. Burke's testimony. However, the second and third pages of this  
5 exhibit are maps prepared by DWR's engineers, as confirmed by DWR/SWC's counsel on the  
6 record, to try and rebut Mr. Burke's analysis. This exhibit is outside the scope of Mr. Burke's  
7 Part 2 Rebuttal testimony (SDWA – 323 Second Revised) and lacks foundation. During the  
8 proceedings of August 31, 2018, it was clearly established that Mr. Burke did not utilize this  
9 document in preparing his testimony and that he was not familiar with same. Counsel was  
10 allowed to ask a couple question of Mr. Burke concerning the second page of DWR 1406 but it  
11 was established that he had no basis for understanding how the map was developed and thus  
12 could not appropriately answer questions pertaining to same. The third page of this exhibit is an  
13 even more blatant attempt by DWR to move improper expert testimony into the record through  
14 a cross examination exhibit for which objections by SDWA's counsel were sustained. There is  
15 no basis for inclusion of this exhibit into the evidentiary record.

16  
17 **DWR 1408**

18 This purports to be DSM2 Bathymetry input data from DSM2. However, Mr. Burke  
19 testified that he did not believe this to be the same input data he used because all of the inputs  
20 for channel section 126 was not presented together in one area in the input data he used in  
21 preparing his testimony. Moreover, the data presented in this exhibit purport to come from  
22 DWR 1400 which, for the reasons stated above, cannot be allowed into the evidentiary record.  
23 Both exhibits are outside the scope of Mr. Burke's Part 2 Rebuttal testimony (SDWA – 323  
24 Second Revised) and lack foundation. During the proceedings of August 31, 2018, it was clearly  
25 established that Mr. Burke did not utilize this document in preparing his testimony and that he  
26 was not familiar with same. Consequently, the exhibit also lacks any probative value. There is  
27 no basis for inclusion of this exhibit into the evidentiary record.

1 Respectfully Submitted,

2  
3 Date: September 5, 2018

4 **MOHAN, HARRIS, RUIZ,**  
5 **WORTMANN, PERISHO & RUBINO, LLP**

6 By: Dean Ruiz  
7 S. DEAN RUIZ, ESQ.

## 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):

#### **CWF- SOUTH DELTA WATER AGENCY PARTIES**

- **SOUTH DELTA WATER AGENCY PARTIES' OPPOSITION TO CERTAIN DWR PART 2 REBUTTAL CROSS EXAMINATION EXHIBITS**

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 8/14/2018, 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](http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/service_list.shtml):

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

I certify that the foregoing is true and correct and that this document was executed on 9/05/2018.

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



Name: Bee Speer

Title: Legal Assistant

Party/Affiliation: Mohan, Harris, Ruiz,  
Wortmann, Perisho & Rubino

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