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| 5 | Attorney for Protestants California Sportfishing Protection Alliance | | |
| 6 | AquAlliance | | |
| 7 | California Water Impact Network | | |
| 8 | BEFORE THE | | |
| 9 | CALIFORNIA STATE WATER RESOURCES CONTROL BOARD | | |
| 10 | HEARING IN THE MATTER OF | PROTESTANTS CSPA ET AL. | |
| 11 | CALIFORNIA DEPARTMENT OF WATER RESOURCES AND UNITED STATES | (AQUALLIANCE, CALIFORNIA SPORTFISHING PROTECTION | |
| 12 | BUREAU OF RECLAMATION | ALLIANCE, AND CALIFORNIA WATER | |
| 13 | REQUEST FOR A CHANGE IN POINT OF DIVERSION FOR CALIFORNIA WATER | IMPACT NETWORK) STATEMENT OF ISSUES RECOMMENDED FOR | |
| 14 | FIX | BRIEFING AT THE CLOSE OF PART 1 | |
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| 18 | Protestants CSPA et al. (AquAlliance, California Sportfishing Protection Alliance, and | | |
| 19 | California Water Impact Network) respectfully submit this statement of issues that CSPA et al. | | |
| 20 | recommend for briefing at the close of Part 1 of the hearings for the change in point of diversion | | |
| 21 | for California WaterFix. | | |
| 22 | Introduction: General statement regarding briefing procedure | | |
| 23 | CSPA et al. believe that best procedure for briefing on both Part 1 and Part 2 of the | | |
| 24 | WaterFix hearings would be to conduct all briefing at the close of Part 2, presuming Part 2 goes | | |
| 25 | forward. A single briefing would reduce the level of effort and redundancy, particularly in | | |
| 26 | arguing issues where there is overlap or an unclear dividing line between Part 1 and Part 2. | | |
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| 28 | PROTESTANTS CSPA ET AL. STATEMENT OF ISSUES RECOMMENDED FOR BRIEFING AT THE CLOSE OF PART 1 | | |

Nevertheless, should the Hearing Officers proceed with briefing after Part 1, CSPA et al. recommend briefing on the following issues that CSPA et al. have addressed in Part 1 testimony. CSPA et al. recommend that the Hearing Officers not rule on the issues for briefing, the length of briefs, or on the deadline for submittal of briefs until after Part 1 rebuttal and any sur-rebuttal are complete. CSPA et al. also recommend that Hearing Officers offer parties the opportunity to recommend additional issues for briefing based on rebuttal and sur-rebuttal. Finally, CSPA et al. recommend that Hearing Officers afford parties the opportunity to supplement briefing on Part 1 based on testimony and cross-examination in Part 2.

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Issue #1: Do procedural improprieties with the subject petitions require that Hearing Officers deny and dismiss these petitions?

CSPA presented testimony and exhibits that show that the permits that petitioners seek to change have expired. CSPA also presented evidence in support of the position that the petition would effectively create a new water right. The Hearing Officers should allow Parties to brief these issues.

II. Issue #2: Are the standards of review and analysis that Petitioners have advanced in their testimony and cross-examination legally sufficient?

Petitioners have based their case-in-chief on the premise that compliance with D-1641 and Biological Opinions will assure that construction and operation of WaterFix facilities will not injure of other legal users of water. Hearing Officers should allow Parties to brief this issue.

During cross-examination, attorneys for Petitioners have asked witnesses for Protestants, including CSPA, to demonstrate specific instances of injury or potential injury. Hearing Officers should allow Parties to brief the degrees of specificity and certainty required to prove injury, and including whether injury or potential injury to broad classes of users meets the definition of injury. Hearing Officers should also allow Parties to brief the specificity and certainty required of Petitioners to meet their burden to prove that granting their petition will *not* injure legal users of water. Finally, Hearing Officers should allow the Parties to brief how the

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State Water Board should employ the broader legal concept of injury, such as economic injury, to evaluate injury to legal users of water.

III. Issue #3: Would export of groundwater through WaterFix facilities cause injury to legal users of water?

CSPA et al. presented testimony that transfers or other sale of groundwater would cause injury to diverse classes of water users. In objections to testimony of CSPA et al., attorneys for Petitioners argued that transfers are not part of the WaterFix project. Attorney for Petitioners also sought to exclude as irrelevant testimony that the WaterFix project would enable and incentivize the transfer or sale of groundwater. The Hearing Officers should allow Parties to brief these issues.

IV. Issue #4: Have the Petitioners sufficiently described project operations to demonstrate that the WaterFix project if constructed and operated would not cause injury to legal users of water?

CSPA et al. and numerous other parties have presented testimony that Petitioners' project description is insufficient to determine whether the WaterFix project if constructed and operated would injure legal users of water. More specifically, CSPA et al. and other parties have presented testimony that the evidence that Petitioners have presented concerning water quality, reservoir operations, and adaptive management are insufficient to meet Petitioners burden of demonstrating that that the WaterFix project if constructed would not injure legal users of water. The Hearing Officers should allow Parties to brief these issues.

Issue #5: Have the Petitioners met their burden of demonstrating that the

WaterFix project if constructed and operated would not cause injury to legal

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users of water? CSPA et al. and numerous other parties have presented testimony that the WaterFix

project if constructed and operated would injure legal users of water. The Hearing Officers should allow parties to brief this issue based on the evidence presented in Part 1 of this hearing.

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VI. Issue #6: Is the modeling conducted and presented by petitioners sufficient to determine injury?

CSPA et al. and other parties have presented testimony that the modeling used to support Petitioners' testimony does not meet the test of best available science. CSPA et al. and other parties have also presented testimony that the models employed by Petitioners are not designed to determine injury and cannot be used for that purpose. The Hearing Officers should allow parties to brief the adequacy of the models used by Petitioners in their case-in-chief.

Conclusion

CSPA et al. thank the Hearing Officers for the opportunity to present procedural and substantive recommendations for briefing issues in Part 1 of the hearings on the California WaterFix.

Dated: 31 January 2017

Jonninge For Michael B. Jackson Attorney for Protestants CSPA et al. (California Sportfishing Protection Alliance, AquAlliance and California Water Impact Network) PROTESTANTS CSPA ET AL. STATEMENT OF ISSUES RECOMMENDED FOR **BRIEFING AT THE CLOSE OF PART 1**

| 1 | STATEMENT OF SERVICE | | |
|--|--|--|--|
| 2 | CALIFORNIA WATERFIX PETITION HEARING Department of Water Resources and U.S. Bureau of Reclamation (Petitioners) | | |
| 3 | | | |
| 4 | | | |
| 5 | I hereby certify that on 31 January 2017, I submitted to the State Water Resources Control Board and caused a true and correct copy of the following document: | | |
| 6 | PROTESTANTS CSPA ET AL. (AQUALLIANCE, CALIFORNIA SPORTFISHING | | |
| 7 8 | PROTECTION ALLIANCE, AND CALIFORNIA WATER IMPACT NETWORK) STATEMENT OF ISSUES RECOMMENDED FOR BRIEFING AT THE CLOSE OF PART 1 | | |
| 9 | | | |
| 10 | to be served by Electronic Mail (email) upon parties listed in Table 1 of the Current service List for the California WaterFix Petition hearing, dated 13 January 2017, posted by the State Water Resources Control Board at: http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/docs/0 11317revsrvlist.pdfI certify that the foregoing is true and correct and that this document was executed on 31 January 2017. | | |
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| 16 | Signature: | | |
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| 18 | Name: Bill Jennings | | |
| 19 20 | Title: Executive Director, California Sportfishing Protection Alliance | | |
| 20Party/Affiliation:CSPA et alAddress:3635 Rainer Avenue | Address: 3635 Rainer Avenue | | |
| 21 | Stockton, CA 95204 | | |
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| | 1 STATEMENT OF SERVICE | | |