

1 KRISTEN T. CASTAÑOS (SB #198672)

[kristen.castanos@stoel.com](mailto:kristen.castanos@stoel.com)

2 WESLEY A. MILIBAND (SB #241283)

[wes.miliband@stoel.com](mailto:wes.miliband@stoel.com)

3 ERIC R. SKANCHY (SB #303759)

[eric.skanchy@stoel.com](mailto:eric.skanchy@stoel.com)

4 STOEL RIVES LLP

500 Capitol Mall, Suite 1600

Sacramento, CA 95814

Telephone: 916.447.0700

6 Facsimile: 916.447.4781

7 Attorneys for Protestant

8 City of Sacramento

9 BEFORE THE CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

10 IN THE MATTER OF

11 CALIFORNIA DEPARTMENT OF WATER  
12 RESOURCES AND UNITED STATES  
13 BUREAU OF RECLAMATION FOR A  
14 PETITION FOR CHANGE FOR  
CALIFORNIA WATERFIX

CITY OF SACRAMENTO'S RESPONSE  
TO OBJECTIONS TO WRITTEN  
TESTIMONY AND EXHIBITS

15 **I. INTRODUCTION**

16 Pursuant to the Hearing Team's email dated September 28, 2016 to the parties, the City of  
17 Sacramento ("Sacramento") hereby responds to objections submitted on September 21, 2016 by  
18 Department of Water Resources ("DWR") and San Luis & Delta Mendota Water Authority  
19 ("SLDMWA") to portions of written testimony offered by Sacramento witnesses, namely James  
20 Peifer (Exhibit City Sac-1), Pravani Vandeyar (Exhibit City Sac-6) and Bonny L. Starr (Exhibit  
21 City Sac-8).

22 The objections by DWR and SLDMWA are without merit as well as DWR's motion to  
23 strike such testimony, as summarily stated and "concurrently" made in DWR's objections.<sup>1</sup>  
24 Accordingly, Sacramento respectfully requests that DWR's and SLDMWA's objections be  
25 overruled and DWR's motion to strike overruled.  
26

27  
28 <sup>1</sup> DWR's Objections, p. 1:18-19.

1 **II. BACKGROUND**

2 Sacramento incorporates by reference the legal authority and related analysis set forth in  
3 the joint submittal by the Sacramento Valley Users Group dated October 19, 2016, including  
4 without limitation that Water Code section 1702 requires the petitioner to establish that the  
5 petition for change will not operate to the injury of any legal user of the water involved *and* the  
6 burden of proof is on the petitioner.<sup>2</sup>

7 On September 1, 2016, Sacramento submitted its evidence for its case-in-chief during Part  
8 1B of this proceeding through four witnesses and thirty-four exhibits. DWR and SLDMWA  
9 subsequently objected to portions of written testimony described more particularly below.

10 **III. ARGUMENT**

11 Evidence offered during a proceeding for a petition for change as sought in this  
12 proceeding is admitted in accordance with Government Code § 11513, which directs pursuant to  
13 subsection (c) that relevant evidence be admitted if “it is the sort of evidence on which  
14 responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the  
15 existence of any common law or statutory rule which might make improper the admission of the  
16 evidence over objection in civil actions.”<sup>3</sup> Collectively, DWR and SLDMWA object to portions  
17 of Sacramento’s testimony as being legal conclusions, lacking foundation, constituting surprise  
18 testimony, expert testimony, misstating Petitioners’s testimony and hearsay. The testimony of  
19 Mr. Peifer, Ms. Vandeyar and Ms. Starr is highly relevant and reliable, and should be admissible  
20 in this proceeding as it would in a civil action pending in a court of law.

21 **A. Legal Conclusions.**

22 As to Sacramento being “a legal user of both surface and groundwater,” Sacramento’s  
23 long-standing water rights are common knowledge and evident from Sacramento’s exhibits  
24 timely submitted, namely Exhibits City-Sac 11 through 17. Moreover, as the Hearing Officer  
25 team indicated in open session during Part 1A, the State Water Resources Control Board has  
26 experience determining legal use of water.

27 \_\_\_\_\_  
28 <sup>2</sup> Water Code section 1702 and SWRCB Order No. 95-6, at p. 7.

<sup>3</sup> Government Code section 11513(c). -2-

1           **B. Foundation and Expert or Lay Testimony.**

2           DWR and SLDMWA fail to recognize that Mr. Peifer, Ms. Vandeyar and Ms. Starr are  
3 highly sophisticated witnesses, evident from Exhibits City Sac-2, -7 and -9, respectively. Neither  
4 DWR nor SLDMWA object to either witnesses’s relevant experience, but instead summarily  
5 claim testimony lacks foundation or calls for expert testimony<sup>4</sup> notwithstanding the long-standing  
6 experience these witnesses draw upon to form testimony about potential impacts from the  
7 underlying project.

8           All of Sacramento’s witnesses rely upon their training and experience to formulated  
9 observations, conclusions and opinions regarding California WaterFix, which Petitioners clearly  
10 through evidence presented during Part 1A of this proceeding recognize lacks an operations plan  
11 or proposed permit terms or conditions, but would increase capacity for exporting water from the  
12 Sacramento area. Moreover, Ms. Starr is designated as an expert witness, clearly has ample  
13 qualifications as an expert, yet is challenged with factual grounds. As such, the witnesses possess  
14 sufficient training and experience such that their testimony is appropriate, and to the extent such  
15 testimony projects future implications, is not unduly speculative given Petitioners’ failure to  
16 present an operations plan or otherwise provide more certainty of how the underlying project  
17 would be operated.

18           **C. Surprise and Misstating Testimony.**

19           How Sacramento’s written testimony timely submitted nearly two months in advance of  
20 Sacramento’s case-in-chief arises to “surprise” testimony<sup>5</sup> lacks reasonable grounds. Nor does  
21 Sacramento’s evidence “misstate” Petitioners’s testimony by stating what Part 1A confirms and is  
22 obvious - a CVP (or DWR) objective of California WaterFix is to increase capacity for export  
23 south of Delta.

24           **D. Hearsay.**

25           To the extent Sacramento’s testimony is objected to as being hearsay, such  
26

27 \_\_\_\_\_  
28 <sup>4</sup> DWR’s Objections, p. 3, and SLDMWA’s Objections, pp. 71-72.

<sup>5</sup> See, e.g., DWR’s Objections, p. 4:8-13.


1 objections lack merit because either the evidence is not subject to hearsay or is an exception to the  
2 hearsay rule. Evidence Code section 1250 (among other authorities) states explicitly that “state of  
3 mind” is not made inadmissible by the hearsay rule when the evidence is offered to prove state of  
4 mind, or to prove or explain acts or conduct of the declarant. Here, the witnesses offer testimony  
5 reflecting their observations and projections based upon knowledge, experience and training. To  
6 the extent more specificity underlying hearsay objections is provided, exceptions to the hearsay  
7 rule might exist as well. As such, the evidence is admissible.

8 **IV. CONCLUSION**

9 For the reasons set forth above, the objections submitted by DWR (including its  
10 concurrent motion to strike) and SLDMWA should be overruled in their entirety. Sacramento  
11 hereby reserves its rights for oral argument, supplemental written responses and otherwise to  
12 further establish the meritless basis for DWR’s and SLDMWA’s objections, including without  
13 limitation making offers of proof as needed to elicit testimony from Sacramento’s witnesses that  
14 is inappropriately sought to be excluded (or stricken).

15  
16 DATED: October 19, 2016

STOEL RIVES LLP

17  
18 By:   
19 KRISTEN T. CASTAÑOS  
20 WESLEY A. MILIBAND  
21 ERIC R. SKANCHY  
22 Attorneys for Protestant  
23 CITY OF SACRAMENTO

**NOTICE OF AVAILABILITY**  
**and**  
**STATEMENT OF SERVICE**

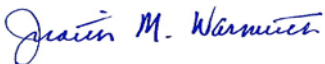
**CALIFORNIA WATERFIX PETITION HEARING**  
**Department of Water Resources and U.S. Bureau of Reclamation**  
**(Petitioners)**

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):

City of Sacramento's Response to Objections to Written Testimony and Exhibits dated 10-19-2016

This Notice of Availability and Statement of Service was served **by Electronic Mail** (email) upon the parties listed in Table 1 of the **Current Service List** for the California WaterFix Petition Hearing, dated October 6, 2016, 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):

I certify that the foregoing is true and correct and that this document was executed on October 19, 2016.

Signature:   
Name: Judith M. Warmuth  
Title: Legal Assistant  
Party/Affiliation: CITY OF SACRAMENTO  
Address: 500 Capitol Mall, Suite 1600  
Sacramento, CA 95814