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14 BEFORE THE CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

15 In the matter of Hearing re California  
16 WaterFix Petition for Change

17 **SACRAMENTO VALLEY GROUP'S  
18 RESPONSE TO OBJECTIONS TO  
19 WRITTEN TESTIMONY AND EXHIBITS**

20 The testimony and exhibits of Mr. Marc Van Camp are relevant, reliable, and admissible  
21 in this proceeding. Accordingly, the Sacramento Valley Group<sup>1</sup> (SVG) requests that the Board  
22 overrule the California Department of Water Resources' Objections to Sacramento Valley Group  
23 Written Testimony and Exhibits Submitted by Protestants in Support of Part 1B case in Chief and  
24 Related Joinders ("Objection"), and deny the accompanying motion to strike.

25 **I. LEGAL & PROCEDURAL BACKGROUND**

26 Before a change petition will be granted, the petitioner must establish that the change will  
27 not "operate to the injury of any legal user of the water involved." (Water Code, § 1702, see  
28 SWRCB Order No. 95-6, at p. 7 (observing that section 1702 "places a burden on the DWR and  
the USBR to prove that the proposed changes will not operate to the injury of other legal users of  
the water.")) To evaluate whether Petitioners have met that burden here, the Board set a two part  
hearing. In Part 1, testimony will address: (1) whether the proposed changes would in effect

<sup>1</sup> The Sacramento Valley Group consists of certain protestants represented by Downey Brand that are identified in the signature block on the last page of these objections. The Sacramento Valley Group protestants comprise a portion and not all of the protestants in the larger Sacramento Valley Water Users (SVWU).

1 initiate a new water right, and (2) whether the proposed changes would cause injury to any  
2 municipal, industrial or agricultural uses of water, including associated legal users of water.  
3 (October 30, 2015 Notice of Hearing (“Notice”), p. 11.) On the question of injury to legal users  
4 of water, the Board directed protestants to include “information describing the basis of the claim  
5 of right, the date the use began, the quantity of water used, the purpose of use and the place of  
6 use.” (Notice, p. 13.)

7 On May 31, 2016, Petitioners submitted testimony and evidence in support of their case in  
8 chief. On September 1, 2016, the SVG submitted the written testimony of Mr. Marc Van Camp,  
9 of MBK Engineers, together with exhibits to that testimony. Consistent with the Board’s  
10 direction, Mr. Van Camp’s testimony identifies and provides a brief description of the water  
11 rights held, claimed, and reflected in documents on file with the SWRCB, by each of the SVG  
12 protestants. (Exhibit SVG-01, 3:23-26.) DWR objected to Mr. Van Camp’s testimony, and the  
13 associated exhibits, as “lacking evidence to support harm or injury” from the proposed change,  
14 and containing insufficient details about how the water rights of particular users within the SVG  
15 are impacted or injured by the proposed project. (Obj., 2:7-9, 15-17.) On those grounds, DWR  
16 requests that the Board exclude the Van Camp testimony and exhibits in their entirety.

17 DWR misunderstands the standard for admissibility, and mischaracterizes the burden of  
18 evidence imposed upon it in this proceeding. For the reasons outlined below, the objections are  
19 without merit, and should be overruled.

## 20 **II. ARGUMENT**

21 Evidence in a hearing on a petition for change is admitted in accordance with Government  
22 Code § 11513. (Cal. Code Regs. tit. 23, § 648.5.1.) Under Government Code section 11513(c),  
23 relevant and reliable evidence must be admitted, “regardless of the existence of any common law  
24 or statutory rule which might make improper the admission of the evidence over objection in civil  
25 actions.” (Gov. Code § 11513(c).) Mr. Van Camp’s testimony is both relevant and reliable,  
26 would be admissible in any civil action, and is therefore admissible in this hearing.

### 27 **A. Mr. Van Camp’s Testimony is Relevant, Reliable, and Admissible.**

28 “Relevant and reliable” evidence is admissible in administrative hearings. (*Aengst v. Bd.*

1 *of Medical Quality Assurance* (1980) 110 Cal.App.3d 275, 283.) Specifically, Government Code  
2 section 11513 requires the admission of relevant evidence if “it is the sort of evidence on which  
3 responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the  
4 existence of any common law or statutory rule which might make improper the admission of the  
5 evidence over objection in civil actions.” (Gov. Code, § 11513(c).) Evidence is relevant if it has  
6 “any tendency in reason to prove or disprove any disputed fact that is of consequence to the  
7 determination of the action.” (Evid. Code, § 210.)

8 DWR objects to Mr. Van Camp’s testimony on relevance grounds because his written  
9 testimony does not include an opinion on the extent of injury to legal users of water. (Obj., 2:4-  
10 7.) The fact that Mr. Van Camp’s testimony does not reach the ultimate question of law before  
11 the Board does not render it irrelevant or inadmissible. (See, e.g., *People v. McDonald* (1984) 37  
12 Cal.3d 351, 366-367 (expert testimony is still admissible when it speaks only to facts, and not  
13 final opinions).) The question presented in Part 1 of this hearing is whether Petitioners have  
14 demonstrated that the proposed change will not cause injury to a legal user of water. Here, DWR  
15 and SVG agree that Mr. Van Camp’s testimony is offered to provide a brief description of the  
16 water rights held by the SVG protestants. DWR does not dispute that Mr. Van Camp is a  
17 qualified expert on this topic. (Obj., 2:1-4.) Testimony regarding those legal rights, even if it  
18 does not reach to the question of injury, is clearly relevant to the ultimate question before the  
19 Board. As DWR does not dispute the reliability of this evidence, it should be admitted.

20 **B. The Sacramento Valley Group testimony is complete and together proves that**  
21 **Petitioners have not met their burden of proof.**

22 DWR does not dispute the relevancy or reliability of any particular testimony presented by  
23 Mr. Van Camp, but instead suggests that if SVG relies on the Van Camp testimony alone, the  
24 testimony presented by SVG is incomplete, and lacks any evidence of injury. (Obj., 2:4-7.)  
25 DWR has mischaracterized the evidence offered by the SVG and ignores the full submittal of the  
26 parties within the SVG. In particular, the parties of the SVG submitted a Notice of Intent to  
27 Appear that identifies expert witnesses Walter Bourez and Dan Easton to testify on behalf of the  
28 SVG, and the parties of the SVG expressly joined in the coordinated submittal of the Sacramento

1 Valley Water Users. (See Letter from David R.E. Aladjem to State Water Resources Control  
2 Board, dated August 31, 2016.) Together, the testimony of Mr. Van Camp, Walter Bourez and  
3 Dan Easton constitute the case in chief offered by the SVG parties to prove that the Petitioners  
4 cannot meet their burden “establish, to the satisfaction of the board...that the change will not  
5 operate to the injury of any legal user of the water involved.” (Water Code, § 1702; SWRCB  
6 Order WR 95-5.)

7 DWR also objects without any further specificity to “the exhibits submitted by SVG and  
8 MBK,” including testimony by Dan Easton and Walter Bourez, on the grounds that they do not  
9 provide “details and information on how the water rights of particular water users within the SVG  
10 are impacted or injured by the Petitioned Project.” (Obj., 2:15-17.) DWR mischaracterizes both  
11 the testimony and the law. First, the burden of demonstrating the absence of injury falls to the  
12 Petitioners, not to the Protestants, and the Board need not rely only on the information provided  
13 by Protestants to come to the conclusion that a legal user of water will be injured. (SWRCB  
14 Order WR 95-5.) Second, the testimony of Walter Bourez and Dan Easton offers detailed  
15 information about impacts to legal water users. To the extent that further explanation is  
16 necessary, that explanation will be provided as part of the closing argument and briefing offered  
17 in a coordinated fashion by the SVG and SVWU.

18 Finally, DWR references its Master Objections and appears to rely on it as part of the  
19 objection to Mr. Van Camp’s testimony. (Obj., 2:19-3:5.) As the SWRCB has previously ruled,  
20 “[w]e do not consider such a general evidentiary objection sufficient to exclude proffered  
21 evidence without specific identification of the evidence to which the party objects and the reason  
22 for that objection.” (SWRCB Order WO 2012-0012, p. 11, fn. 28.) For the reasons stated in the  
23 Sacramento Valley Water Users’ Response to Department of Water Resources’ Master  
24 Objections filed on September 29, 2016, the Master Objection should be overruled in its entirety,  
25 including as referenced in the Objection.

### 26 **III. CONCLUSION**

27 Mr. Van Camp’s testimony and exhibits are relevant to the question of whether the  
28 proposed change will result in injury to other legal users of water. Accordingly, this relevant and

1 reliable testimony and the accompanying exhibits should be admitted, and the Objection  
2 overruled in its entirety.

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DATED: October 19, 2016

DOWNEY BRAND LLP

By: 

Meredith E. Nikkel  
Attorney for CARTER MUTUAL WATER COMPANY, EL DORADO IRRIGATION DISTRICT, EL DORADO WATER & POWER AUTHORITY, HOWALD FARMS, INC., MAXWELL IRRIGATION DISTRICT, NATOMAS CENTRAL MUTUAL WATER COMPANY, MERIDIAN FARMS WATER COMPANY, OJI BROTHERS FARM, INC., OJI FAMILY PARTNERSHIP, PELGER MUTUAL WATER COMPANY, PLEASANT-GROVE VERONA MUTUAL WATER COMPANY, PRINCETON-CODORA-GLENN IRRIGATION DISTRICT, PROVIDENT IRRIGATION DISTRICT, RECLAMATION DISTRICT 108, SACRAMENTO MUNICIPAL UTILITY DISTRICT, HENRY D. RICHTER, ET AL., RIVER GARDEN FARMS COMPANY, SOUTH SUTTER WATER DISTRICT, SUTTER EXTENSION WATER DISTRICT, SUTTER MUTUAL WATER COMPANY, TISDALE IRRIGATION AND DRAINAGE COMPANY, WINDSWEPT LAND AND LIVESTOCK COMPANY

**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);

**SACRAMENTO VALLEY GROUP'S RESPONSE TO OBJECTIONS TO  
WRITTEN TESTIMONY AND 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 October 6, 2016, posted by the State of 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.*

**For Petitioners Only:**

	I caused a true and correct <b>hard copy</b> of the document(s) to be served by the following method of service to Suzanne Womack & Sheldon Moore, Clifton Court, L.P., 3619 Land Park Drive, Sacramento, CA 95818:  <b>Method of Service:</b> _____
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I certify that the foregoing is true and correct and that this document was executed on October 19, 2016.

Signature: Catharine Irvine

Name: Catharine Irvine

Title: Legal Secretary

Party/Affiliation: Downey Brand, LLP

Address: 621 Capitol Mall, Sacramento, CA 95814