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7 Party to the WaterFix Hearing
8 Principal, California Water Research

9
10 **BEFORE THE**
11 **CALIFORNIA STATE WATER RESOURCES CONTROL BOARD**

12 HEARING IN THE MATTER OF
13 CALIFORNIA DEPARTMENT OF WATER
14 RESOURCES AND UNITED STATES
15 BUREAU OF RECLAMATION
16 REQUEST FOR A CHANGE IN POINT OF
17 DIVERSION FOR CALIFORNIA WATER
18 FIX

19 **RESPONSE TO THE DEPARTMENT OF**
20 **WATER RESOURCES' OBJECTIONS**
21 **TO EXHIBITS SUBMITTED IN**
22 **SUPPORT OF PROTESTANTS'**
23 **CASES-IN-CHIEF**

24 Deirdre Des Jardins, Principal at California Water Research ("California Water
25 Research") hereby submits this supplemental response to the December 30, 2016 objections by
26 the California Department of Water Resources ("DWR") to exhibits submitted for admission into
27 evidence. California Water Research hereby incorporates in full California Water Research's
28 December 13, 2016 filing, "Response to the California Department of Water Resources 'Master
29 Objections to Protestants Collectively,'" hereafter referred to as ("CWR's 'Response to DWR's
30 Master Objections.'")

31 The California Department of Water Resources seeks to exclude a large number of
32 exhibits that were used in cross-examination by California Water Research. In fact, DWR is
33 seeking to exclude all of the exhibits that were used in cross-examination of DWR's Engineering

1 panel and many that were used in cross-examination of DWR’s Modeling panel. Excluding
2 these exhibits would be highly prejudicial.

3 Exhibits introduced in cross-examination of DWR’s Engineering panel include DDJ-30
4 through DDJ-36.¹ Those exhibits are identified in the previously submitted January 6, 2016
5 Exhibit Notes. Exhibits introduced in cross-examination of the modeling panel are also
6 identified in the Exhibit Notes. Two of the exhibits used in cross-examination of DWR’s
7 modeling panel, DDJ-121 and DDJ-122, were introduced only by number, but are clearly
8 identified by that number in the hearing transcripts. (Tr August 26, 2016, 278, 12:15), (Tr
9 August 26, 2016, 252, 6:10.) In introducing the exhibits informally, California Water Research
10 was mindful of the Hearing Officer’s repeated request that parties not spend time “laying the
11 foundation” for questions. Informal introduction of the exhibits does not affect their relevance
12 to this proceeding, which is an administrative proceeding and not a civil trial. California Water
13 Research also notes that many of the exhibits will be used in rebuttal.

14 DWR’s motion should also be denied because the exhibits DWR seeks to exclude
15 are relevant to the WaterFix Change Petition hearing. In trial court proceedings, “relevance”
16 means the evidence has a tendency in reason to prove or disprove any disputed fact of
17 consequence to the determination of the action, including the credibility of a witness or hearsay
18 declarant. (Evid. Code, § 210; People v. Nelson (2008) 43 Cal.4th 1242, 1266.) To be relevant,
19 the evidence must relate to some matter raised by the pleadings, pretrial orders or applicable
20 substantive law and have probative worth (i.e., some logical tendency to prove the matter at
21 issue). (Winfred D. v. Michelin North America, Inc. (2008) 165 CA4th 1011, 1029.) All of the
22 exhibits DWR seeks to exclude meet this standard.

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25 ¹ Exhibits 30 through were introduced as 1 through 7, but were not entered into an exhibit index spreadsheet until
26 after instruction by Kyle Ochendusko, prior to the cross-examination of the Operations panel. Following the
27 Hearing Officer’s and Hearing Team’s instructions for identification of exhibits introduced in the cross-examination
of the Operations panel inadvertently resulted in duplicate exhibit indexes. The exhibits used in cross-examination
of the Engineering Panel were assigned indexes 30 through 36 to partly resolve the issue.

1 DWR objects to exhibit DDJ-58, which is a BDCP steering committee document
2 reflecting early choices about CALSIM modeling of the BDCP/WaterFix project. California
3 Water Research notes that DWR has refused to provide any information on these sensitivity
4 analyses, even though the Board requested that DWR respond to CWR's request for information.
5 To the extent that the Board was an Ex Officio member of the BDCP Steering Committee, and
6 was informed of early sensitivity analyses which informed choices in the modeling of the
7 BDCP/WaterFix effects, it creates an issue under *English v. City of Long Beach (1950) 35 Cal.2d*
8 *155* that the sensitivity analyses have not been introduced at a hearing of which the parties had
9 notice and were present. This issue is only partly resolved by the Hearing Officers accepting
10 introduction of powerpoints presented to the BDCP Steering Committee and to the Board as an
11 Ex Officio member of the committee.

12 California Water Research respectfully requests that the Hearing Officers admit all
13 exhibits submitted by California Water Research into evidence because they are relevant to the
14 proceeding, and not mark as hearsay any documents that are subject to hearsay exceptions.

15 Respectfully submitted,

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19 Deirdre Des Jardins
20 Principal, California Water Research

21 Dated: January 6, 2017.
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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):

Response to DWR's Objections to Exhibits

to be served **by Electronic Mail** (email), in parts due to server limitations, upon the parties listed in Table 1 of the **Current Service List** for the California WaterFix Petition Hearing, dated November 15, 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

I certify that the foregoing is true and correct and that this document was executed on January 6, 2016.

Signature:



Name: Deirdre Des Jardins

Title: Principal, California Water Research

Party/Affiliation:

Deirdre Des Jardins

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