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9 Nevada Irrigation District, South Feather Water &
Power Agency, and Western Canal Water District

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

11
12 Hearing in the Matter of California)
Department of Water Resources and United) **RESPONSE TO CALIFORNIA**
13 States Department of the Interior, Bureau of) **DEPARTMENT OF WATER**
Reclamation Request for a Change in Point of) **RESOURCES OBJECTIONS TO**
14 Diversion for California WaterFix,) **EXHIBITS SUBMITTED IN SUPPORT**
15) **OF PROTESTANTS' CASES-IN-CHIEF**
16)
17)

18 **INTRODUCTION**

19 On December 30, 2016, the California Department of Water Resources (DWR) filed
20 objections to exhibits MLF 1 through MLF 5 as introduced during the cross-examination of
21 Anderson-Cottonwood Irrigation District, Butte Water District, Plumas Mutual Water Company,
22 Reclamation District 1004, Richvale Irrigation District, Nevada Irrigation District, Paradise
23 Irrigation District, South Feather Water & Power Agency and Western Canal Water District
24 (hereinafter "Protestants"). The objections are improper and without merit.

25 **LEGAL STANDARD**

26 This is an administrative hearing governed by Title 23 of California Code of
27 Regulations, Chapter 4.5 of the Administrative Procedures Act, Sections 801-805 of the
28 Evidence Code and section 11513 of the Government Code. (October 30, 2015 Hearing

1 Notice). The State Water Board is not required to conduct adjudicative hearings according to
2 the technical rules of evidence applicable to a court. (Gov. Code, § 11513, subd. (c).) The
3 State Water Board shall admit any relevant evidence if it is the sort of evidence on which
4 responsible persons are accustomed to rely on in the conduct of serious affairs, regardless of
5 any common law or statutory rule which might make improper the admission of evidence over
6 objection in civil actions. (*Ibid.*) Relevance simply requires that the evidence has “any
7 tendency in reason to prove or disprove any disputed fact that is of consequence.” (Evid. Code.
8 § 210.)

9 **DWR’s OBJECTIONS**

10 Department of Water Resources (“DWR”) objects to exhibits MLF 1 through MLF5 as
11 lacking relevance and foundation. (DWR Objections at Page 4 line 11). DWR fails to state the
12 reason supporting this assertion. Furthermore, DWR failed to raise either of these objections at
13 the time the exhibits were introduced at the hearing.

14 **EXHIBITS MLF-1 THROUGH MLF- 5 ARE RELEVANT**

15 Exhibits MLF-1 through MLF- 5 were referenced in the cross examination of DWR
16 witnesses, John Leahigh and Maureen Sergent.

17 MLF-1 contains excerpts from State Water Board Order WR 2015-0043. MLF- 2 is
18 excerpts of the written testimony of Maureen Sergent, DWR Senior Engineer, as submitted by
19 DWR. DWR now asserts, through its objections, that its own witness’ testimony is irrelevant.
20 This testimony contains Sergent’s experience and knowledge of the proposed change in the
21 points of diversion. It was the focal point of much of the Protestants cross examination of Ms.
22 Sergent. MLF-3 is the 1969 Agreement on Diversion of Water from the Feather River. It, too, is
23 DWR’s own exhibit. MLF-4 is Water Transfer White Paper issued in December 2015 as
24 prepared by DWR and the Bureau of Reclamation, Mid-Pacific Region. Appendix A refers to
25 potential water transfer effects on Projects and includes an description of DWR’s interpretation
26 of the no-injury rule in the context of water transfers. MLF-5 is a letter sent to DWR from
27 Feather River Contractors holding diversion agreements with the State of California acting
28 through DWR. The letter sets forth the Contractors’ objections to the written testimony of

1 Maureen Sergent submitted in this proceeding; these subjects were also discussed at length
2 during cross examination of Ms. Sergent.

3 MLF-1 through MLF-5 were all referenced in the cross examination of DWR witnesses
4 Leahigh and/or Sergent and the contents of these exhibits are relevant to the proceeding as they
5 tend to prove or disprove disputed facts that are of consequence, including that the proposed
6 project would injure the water rights of the Protestants. At the time of introduction and
7 discussion of these exhibits, no party, including DWR and Reclamation, objected to the
8 discussion or use of these documents on relevance or any other ground.

9 **FOUNDATION WAS LAID FOR EXHIBITS MLF-1 THROUGH**
10 **MLF-5 DURING THE CROSS EXAMINATION OF JOHN LEAHIGH OR MAUREEN**
11 **SERGENT.**

12 Foundation for Exhibits MLF-1 through MLF-5 was established through the cross
13 examination of DWR witnesses, John Leahigh and/or Maureen Sergent. Formal authentication
14 of documents is not required under the Board's adopted regulations. (Cal. Code Regs., tit. 23,
15 § 648.5.1; Govt. Code, § 11513, subd. (c).) If DWR had questions about any of these exhibits,
16 they could have raised these objections at the time of cross-examination. Even if the formal
17 rules of evidence applied, authentication is not required where no objection is raised when the
18 writing is offered into evidence. (Evid. Code § 353, subd. (a); *Interinsurance Exchange of Auto.*
19 *Club of So. Calif. v. Velji* (1975) 44 Cal.App.3d 310, 317-318, 118 CR 596, 600-601; *Condee v.*
20 *Longwood Mgmt. Corp.* (2001) 88 Cal.App.4th 215, 218-219, 105 CR2d 597, 599.)

21 **ONCLUSION**

22 For the reasons outlined above, Protestants, Anderson-Cottonwood Irrigation District,
23 Butte Water District, Plumas Mutual Water Company, Reclamation District 1004, Richvale
24 Irrigation District, Nevada Irrigation District, South Feather Water & Power Agency, Paradise

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Irrigation District and Western Canal Water District respectfully request that the SWRCB overrule DWR's objections to the admission of MLF-1 through MLF-5 and admit these documents into evidence.

DATED: January 6, 2017

Respectfully submitted,

MINASIAN, MEITH, SOARES,
SEXTON & COOPER, LLP

By: 

EMILY E. LaMOE

Attorneys for Anderson-Cottonwood Irrigation District, Butte Water District, Plumas Mutual Water Company, Reclamation District 1004, Richvale Irrigation District, Nevada Irrigation District, South Feather Water & Power Agency, Paradise Irrigation District and Western Canal Water District

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 CALIFORNIA DEPARTMENT OF WATER RESOURCES OBJECTIONS TO
EXHIBITS SUBMITTED IN SUPPORT OF PROTESTANTS' CASE IN CHIEF**

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 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:

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 hard copy 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:

Method of Service: _____

I certify that the foregoing is true and correct and that this document was executed on January 6, 2017.



TRACY WILD

Title: Secretary to Emily E. LaMoe

Party/Affiliation: Counsel for Anderson-Cottonwood
Irrigation District

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