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14 Attorneys for CITY OF STOCKTON

15  
16 BEFORE THE  
17 CALIFORNIA STATE WATER RESOURCES CONTROL BOARD  
18

19 HEARING ON THE MATTER OF  
20 CALIFORNIA DEPARTMENT OF WATER  
RESOURCES AND UNITED STATES  
21 BUREAU OF RECLAMATION REQUEST  
FOR A CHANGE IN POINT OF DIVERSION  
22 FOR CALIFORNIA WATER FIX.

**THE CITY OF STOCKTON'S  
RESPONSE TO THE CALIFORNIA  
DEPARTMENT OF WATER  
RESOURCES' OBJECTIONS TO  
EXHIBITS SUBMITTED IN SUPPORT  
OF PROTESTANTS' CASES-IN-CHIEF**

23  
24  
25 I. INTRODUCTION

26 The City of Stockton (Stockton) respectfully requests that the State Water  
27 Resources Control Board (State Water Board) overrule that portion of the California  
28 Department of Water Resources' Objections to Exhibits Submitted in Support of

1 Protestants' Cases in Chief that concerns the exhibits Stockton moved into evidence on  
2 November 15, 2016. Because Stockton clearly relied on exhibits STKN-5, STKN-6,  
3 STKN-7, STKN-8, STKN-9 and STKN-21, they are relevant to Part 1 of the WaterFix  
4 proceeding. Also, STKN-2, STKN-3, and STKN-4 are relevant because Stockton  
5 witness, Robert Granberg, relied on them to support the opinions he offered in his  
6 testimony.

## 7 II. LEGAL STANDARD

8 This hearing is governed by Chapter 4.5 of the Administrative Procedure Act,  
9 (Gov. Code, § 11400 et. seq.); regulations adopted by the State Water Board, (Cal.  
10 Code of Regs., tit. 23, § 648-648.8); sections 801 to 805 of the Evidence Code; and  
11 section 11513 of the Government Code. (Cal. Code of Regs., tit. 23, § 648(b).) The  
12 State Water Board is not required to conduct adjudicative hearings according to the  
13 technical rules of evidence applicable to a court. (Gov. Code, § 11513(c).) Instead,  
14 "[a]ny relevant evidence shall be admitted if it is the sort of evidence on which  
15 responsible persons are accustomed to rely in the conduct of serious affairs, regardless  
16 of the existence of any common law or statutory rule which might make improper the  
17 admission of evidence over objection in civil actions." (Ibid.) The State Water Board  
18 follows these relaxed standards because the Hearing Officers' expertise in the subject  
19 matter justifies the State Water Board's ability to make both legal and factual  
20 determinations.

## 21 III. ARGUMENT

### 22 A. Stockton clearly relied on exhibits STKN-5, STKN-6, STKN-7, STKN-8, 23 STKN-9 and STKN-21

24 Stockton relied upon STKN-5, STKN-6, STKN-7, STKN-8, and STKN-9 in its  
25 cross-examination of Petitioners' modeling panel. On August 25, 2016, counsel for  
26 Stockton separately marked these exhibits for identification, then proceeded to use each  
27 of the exhibits to ask questions of Petitioners' witnesses. (Aug. 25, 2016 Hearing  
28 Transcript, at 86, 99, 100, 102, 104.)

1 Mr. Granberg relied upon STKN-21 in his written testimony. (Exh. STKN-10, at  
2 13.) Mr. Granberg authenticated STKN-21 in his written testimony. (Ibid.) He also  
3 authenticated STKN-10 on the day he summarized his written testimony during  
4 presentation of Stockton's case in chief, and by doing so, again authenticated STKN-21.  
5 (Nov. 10, 2016 Hearing Transcript, at 6-7.)

6 Because Stockton relied upon STKN-5, STKN-6, STKN-7, STKN-8, and STKN-9  
7 in conducting cross-examination of Petitioners' witnesses, and Mr. Granberg relied upon  
8 STKN-21 in his direct testimony, these exhibits are relevant to the WaterFix proceeding  
9 and should be admitted into evidence.

10 **B. Stockton's Comment Letters Are Admissible**


11 The California Department of Water Resources' objections to the admission of  
12 Stockton's comment letters on the BDCP/WaterFix environmental review documents are  
13 without merit and should be overruled. The objections should be overruled because the  
14 documents are relevant and properly identified as documents relied on by Stockton's  
15 witness in forming his opinions. Mr. Granberg references STKN-002, STKN-003, and  
16 STKN-004 in support of his opinion that Stockton has made its concerns regarding the  
17 effects of the proposed WaterFix Project known to Petitioners, and that those concerns  
18 were not addressed in subsequent drafts of the environmental documents. (Exh. STKN-  
19 10, at 10.)

20 **IV. CONCLUSION**

21 For the foregoing reasons, Stockton respectfully requests that the State Water  
22 Board overrule DWR's objections to STKN-002, STKN-003, STKN-004, SKTN-5, SKTN-  
23 6, SKTN-7, STKN-8, STKN-9 and STKN-21, and admit these documents into evidence.

24  
25 SOMACH SIMMONS & DUNN

26 DATED: January 6, 2017

27 By   
Kelley M. Taber, Attorneys for City of  
28 Stockton

1 STATEMENT OF SERVICE

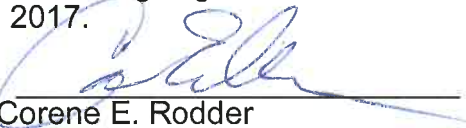
2 **CALIFORNIA WATERFIX PETITION HEARING**  
3 **Department of Water Resources and U.S. Bureau of Reclamation (Petitioners)**

4 I hereby certify that I have this day submitted to the State Water Resources Control  
5 Board and caused a true and correct copy of the following document(s):

6 **THE CITY OF STOCKTON'S RESPONSE TO THE CALIFORNIA DEPARTMENT OF  
7 WATER RESOURCES' OBJECTIONS TO EXHIBITS SUBMITTED IN SUPPORT OF  
8 PROTESTANTS' CASES-IN-CHIEF**

9 to be served **by Electronic Mail** (email) upon the parties listed in Table 1 of the Current  
10 Service List for the California WaterFix Petition hearing, dated November 15, 2016,  
11 posted by the State Water Resources Control Board at  
12 [http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/california  
13 waterfix/service\\_list.shtml](http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/service_list.shtml):

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

16 Signature:   
17 Name: Corene E. Rodder  
18 Title: Legal Secretary  
19 Party/Affiliation: City of Stockton  
20 Address: 500 Capitol Mall, Suite 1000  
21 Sacramento, CA 95814  
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SOMACH SIMMONS & DUNN  
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