

1 Spencer Kenner (SBN 148930)  
James E. Mizell (SBN 232698)  
2 **DEPARTMENT OF WATER RESOURCES**  
Office of the Chief Counsel  
3 1416 9<sup>th</sup> St., Room 1104  
Sacramento, CA 95814  
4 Telephone: 916-653-5966  
E-mail: jmizell@water.ca.gov

5 Attorneys for California Department of Water  
6 Resources

7  
8 **BEFORE THE CALIFORNIA STATE WATER RESOURCES CONTROL BOARD**

9 **HEARING IN THE MATTER OF CALIFORNIA**  
10 **DEPARTMENT OF WATER RESOURCES**  
11 **AND UNITED STATES BUREAU OF**  
12 **RECLAMATION REQUEST FOR A CHANGE**  
13 **IN POINT OF DIVERSION FOR CALIFORNIA**  
**WATERFIX**

**DEPARTMENT OF WATER**  
**RESOURCES' OBJECTIONS TO**  
**NRDC'S REQUEST TO ADMIT AS**  
**EVIDENCE NRDC-100 and NRDC-102**

14 Department of Water Resources ("DWR") submits its objections to the Natural  
15 Resources Defense Council's ("NRDC") request to admit Exhibits NRDC-100 and NRDC-  
16 102 on the grounds that the documents are not admissible or relevant for the purpose for  
17 which they were submitted and are irrelevant to the issues before the Board in Part 2,  
18 pursuant to the Board's prior ruling.

19 Despite the Hearing Officers' clear ruling on February 21, 2018 that issues  
20 concerning a potential staged construction are not relevant at this point of the proceeding,  
21 Part 2, NRDC sought to introduce Exhibits NRDC-100 and NRDC-102 during cross  
22 examination of DWR witness Gwen Buchholz. (See February 22, 2018 Rough Transcript,  
23 pp. 234-240.) As explanation for why the documents should be admitted in Part 2 of the  
24 proceeding, NRDC's attorney Mr. Obegi recognized the limitations of the February 21, 2018  
25 ruling and, in order to avoid its restrictions, asserted that the purpose was to question the  
26 veracity of DWR witness Ms. Buchholz's testimony on page 2, lines 15 and 16 in which she  
27 stated: "CWF H3+ is the Project adopted by DWR that is the subject of the Petition for  
28 Change in Point of Diversion requested by DWR and Reclamation," and which Ms.

1 Buchholz affirmed on cross examination. (Id., pp. 230:9-20, 231:3-9, 233:6-12 and 240:7-  
2 13.) Mr. Obegi specifically questioned whether that statement was true at the time the  
3 testimony was submitted.<sup>1</sup> (Id., p. 234:16-19.) When specifically asked whether her  
4 challenged statement was true at the time she submitted her testimony, Ms. Buchholz  
5 affirmed that her statement was true at the time she submitted her testimony. (February  
6 22, 2018 Rough Transcript, p. 234:16-19.) She also stated that it is true today (Id., p.  
7 230:9-14.)

8 Ms. Buchholz is a well-known registered civil engineer with 41 years of experience,  
9 which includes extensive testimony before the Board. Mr. Obegi's attempt to characterize  
10 Ms. Buchholz as a liar is offensive and clearly designed to be inflammatory. This is  
11 evidenced by the fact that neither of the two exhibits submitted by NRDC, an agreement  
12 summary executed in December 2017 (Exhibit NRDC-100) and the meeting minutes from  
13 the December 7, 2017 San Luis & Delta-Mendota Water Authority Board Meeting (Exhibit  
14 NRDC-102), called into question the veracity of Ms. Buchholz's testimony, including the  
15 challenged statement.

16 NRDC-100 states nothing about a change in the CWF H3+ project. In fact, it is an  
17 agreement summary for a potential subsequent or supplemental EIR. It is not a document  
18 that supports, with any certainty whatsoever, a departure from CWF H3+.

19 NRDC-102 records a statement by a party (San Luis & Delta-Mendota Water  
20 Authority) other than the Petitioners that DWR "may" be contemplating a staged  
21 construction approach. As has been thoroughly explored at this point, this potential  
22 approach has not been selected as the project. DWR incorporates by reference here its  
23 previous statements and writings to the Hearing Officers on this point. This hearsay  
24 statement by a party other than the Petitioners does not support NRDC's position that the  
25 project has changed.

26 \_\_\_\_\_  
27 <sup>1</sup> NRDC's attorney, Mr. Obegi, conceded that discussion about whether it continues to be true today that CWF  
28 H3+ remains the adopted project should be reserved for Part 3. (February 22, 2018 Rough Transcript, p.  
233:6-12.)

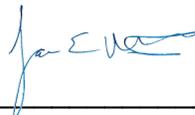
1 Ms. Buchholz is not mentioned in these documents and she testified that she was  
2 entirely unfamiliar with the documents. (February 22, 2018 Rough Transcript, pp. 234:21–  
3 235:7 and 239:4-12.) Mr. Obegi’s attempt to use the documents to prove that Ms.  
4 Buchholz lied when she submitted her testimony was completely unsuccessful. The  
5 documents had no other purpose or relevance, by Mr. Obegi’s own admission. (See id, p.  
6 233:6-12.)

7 NRDC should not be rewarded for its unsuccessful attempt to call into question Ms.  
8 Buchholz’s veracity by admitting documents into the record that are wholly irrelevant to Part  
9 2 of the proceeding. While Evidence Code Section 780(i) allows a witness’s credibility to  
10 be challenged by evidence relevant to the nonexistence of any fact testified to by the  
11 witness, it does not allow irrelevant evidence to be introduced under the guise of  
12 impeachment. (*Bowman v. Wyatt* (2010) 186 Cal.App.4th 286, 327.) For the reasons  
13 stated above, DWR requests that the Hearing Officer reject NRDC’s request to admit  
14 NRDC-100 and NRDC-102 into evidence.

15 Finally, DWR also takes the opportunity to lodge a timely hearsay objection,  
16 pursuant to Government Code Section 11513(d), to NRDC-102, the meeting minutes for  
17 the San Luis & Delta Mendota Water Authority, which Mr. Obegi offered for the truth of the  
18 statements contained within regarding the California WaterFix.

19  
20 Dated: February 23, 2018

CALIFORNIA DEPARTMENT OF WATER  
RESOURCES



James “Tripp” Mizell  
Office of the Chief Counsel