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23 **BEFORE THE**

24 **CALIFORNIA STATE WATER RESOURCES CONTROL BOARD**

25 HEARING IN THE MATTER OF
26 CALIFORNIA DEPARTMENT OF WATER
27 RESOURCES AND UNITED STATES
28 BUREAU OF RECLAMATION'S
REQUEST FOR A CHANGE IN POINT OF
DIVERSION FOR CALIFORNIA WATER FIX

**LOCAL AGENCIES OF THE NORTH DELTA
ET AL.'S REVISIONS TO EXHIBIT LAND-35
TESTIMONY OF JOSEF TOOTLE**

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1 Local Agencies of the North Delta, et al. is submitting revisions to LAND-35 Testimony
2 of Josef Tootle in response to the October 7, 2016, Ruling on Written Testimony Outside the
3 Scope of Part 1 and Other Procedural Matters (“Scope Ruling”). Mr. Tootle’s testimony
4 describes injuries to water users from: (1) the Tunnels and slurry cutoff walls; (2) muck
5 placement; and (3) loss of ground during tunneling activities. Mr. Tootle’s testimony explains
6 how these project components would interfere with both surface water and groundwater uses
7 in the vicinity of the project, both during and after construction.

8 According to the Scope Ruling “potential impact to groundwater wells or water
9 distributions systems . . . is at least arguably relevant to the issue of injury legal users of
10 water.” (Scope Ruling, p. 2.) Additionally, the “parties are strongly encouraged to . . . present
11 testimony concerning all construction related impacts during Part 2.” (Scope Ruling, p. 2.)

12 In response to the Scope Ruling, a revised version of LAND-35 is being submitted that
13 removes discussion of (2) muck placement; and (3) loss of ground during tunneling activities,
14 as these activities may be characterized as construction impacts. Though these activities
15 could also result in injury to legal users of water, discerning the location of these injuries is
16 difficult at this time given available information. As discussed in the Scope Ruling, Final CEQA
17 review, which must be made available to protestants prior to the development of evidence for
18 Part 2, “may afford more information concerning construction-related impacts and mitigation.”
19 (Scope Ruling, p. 2.) Thus, discussing these impacts in the context of public interest
20 considerations of Part 2 is appropriate.

21 In contrast, the tunnels themselves, and associated works such as intakes and cutoff
22 walls, would interfere with legal water users reliant on groundwater wells and water distribution
23 systems both during and after construction. These are Part 1 issues and are being retained in
24 the LAND-35 and associated testimony. To the extent there are construction period-only
25 impacts associated with tunnels themselves, and associated works such as cutoff walls, those
26 issues will be included in Part 2.

27 Thus, LAND, et al. submits herewith a revised version of LAND-35 reflecting the above
28 described revisions in conformance with the Scope Ruling. It is not necessary to remove any

1 LAND exhibits at this time. Two technical papers were inadvertently omitted from the LAND, et
2 al. submittals on September 2, 2016, and are now being added as Errata. This includes the
3 report referenced as "Atwater 1982" in LAND-35 on page 2:17 and in LAND-37, slide 1, as well
4 as the report referenced as "Frazier and Osanik 1969" in LAND-35 on pages 2-3 and LAND-
5 37, slide 2. These reports are now included as Exhibits LAND-40 and LAND-41.

6 No changes to the testimony of Daniel Wilson (LAND-20), Richard Elliot (LAND-25) or
7 Russell Van Loben Sels (LAND-30) are proposed at this time as the testimony pertains to
8 injury to legal users of water that includes periods after construction. To the extent any of this
9 testimony—or the testimony of Josef Tootle (LAND-35)—is ultimately disallowed in Part 1,
10 LAND et al. reserves the right to resubmit the testimony for consideration in Part 2.

11 LAND et al. respectfully request that the Hearing Officers accept the above-described
12 revisions to LAND-35, which is provided in redline and strikeout format consistent with the
13 Scope Order.

14 Dated: October 17, 2016

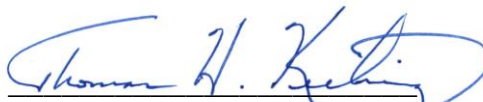
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21 Dated: October 17, 2016

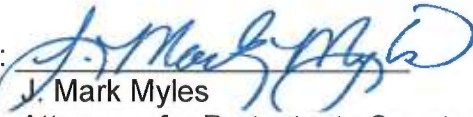
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1 Dated: October 17, 2016

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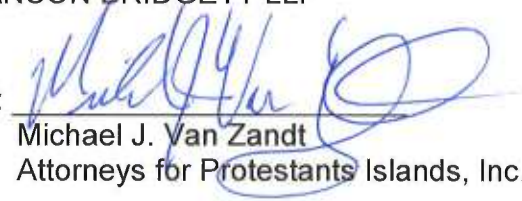
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