BEFORE THE
CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

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

OPENING STATEMENT OF
CITY OF STOCKTON

Petitioners seeking a change to state-issued water rights must demonstrate by a
preponderance of the evidence that the requested change will not injure any legal user
of water. The evidence in this case does not establish lack of any such injury to the City
of Stockton.

With a population of approximately 300,000, the City of Stockton (“City” or
“Stockton”) is the largest municipality within the Sacramento-San Joaquin River Delta.
The City's primary water supply comes from the San Joaquin River, where the City
diverts water for municipal and industrial purposes pursuant to a state-issued water right. The well-being of the City, its residents, and economy is thus inextricably linked to the Delta, the quantity and quality of Delta water supplies, and the Delta ecosystem.

Stockton’s evidence will show the importance of its Delta water source, including how the development of that supply has helped overdrafted groundwater basins recover. It will also underscore the adverse effects to the City and residents that can occur due to water quality changes such as those that may be caused by the proposed water rights changes.

For more than eight (8) years, the City has diligently participated in the various public processes associated with Petitioners’ proposed north Delta diversions and twin tunnel project. The City repeatedly has raised substantial questions to Petitioners regarding the effects the so-called “Water Fix” project (Project) would have on the City as a legal user of water, including questions about the specific water quality changes that would occur at the location of the City’s drinking water intake on the San Joaquin River. As Stockton and many others have asserted, the proposed action would, or threatens to, degrade water quality by various means. For nearly a decade, Stockton has made the more-than-reasonable request that Petitioners analyze and disclose impacts to Stockton’s water supply. Petitioners have declined to analyze, disclose, or acknowledge these impacts.

Water quality at Stockton’s drinking water intake will be affected by changes in San Joaquin River flows and Sacramento River flows resulting from the added points or diversion, associated operational changes or both, and the adverse changes in water quality threaten to result in substantial injury and burdens to Stockton and its residents. The Petitioners’ draft environmental documents, which they withheld from their cases in chief, demonstrate negative changes in Delta water quality for certain parameters, including electrical conductivity, chloride, and bromide, all of which are of concern for municipal and industrial (M&I) water supplies. Petitioners’ draft environmental documents also identify the proposed water right changes will result in increased
residence time for water in the Delta, which in turn will increase the undesirable production of highly toxic cyanobacteria (e.g., Microcystis), which has both direct and indirect adverse effect on municipal water treatment and supply.

Despite the City’s efforts to identify these issues in the environmental process and in its protest, Petitioners’ case in chief in support does not contain any evidence or analysis that would address the City’s concerns about impacts to its water supply. In fact, as cross-examination of Petitioners’ modeling panel confirmed, the expert responsible for evaluating Project water quality impacts was not familiar with Stockton’s protest, or the numerous comments the City submitted on the WaterFix (or Bay Delta Conservation Plan) environmental documents, nor did he conduct any analysis of the water quality changes at any location on the entire San Joaquin River for any water quality constituent of concern to M&I water purveyors, let alone at the City’s drinking water intake, prior to proffering his opinion that the requested water rights changes will not result in injury to legal users of water from water quality changes.

In cross-examination, Petitioners’ response to Stockton’s concerns was to point vaguely to the ever-changing water quality modeling performed for the Project. However, the modeling on which Petitioners’ experts purport to rely has not been introduced in evidence, let alone in a form reasonably calculated to inform the City or the Hearing Board, and Petitioners have provided no analysis or summary of the model results that address the effects of the requested water rights changes on M&I constituents on the San Joaquin River. To our knowledge, there is not even any modeling in existence that addresses the actual location of Stockton’s diversion. Because the only information that might arguably relate to impacts to Stockton is not in the evidence, Petitioners have completely failed to meet their burden of proof that the Petition will not result in injury to Stockton.

The proposed water right changes, intended to enable the WaterFix Project, would injure the City as a legal user of water, adversely affect environmental resources, and are contrary to the public interest. The Petition and Petitioners’ cases in chief do not
acknowledge or cure any of the deficiencies identified by the City and many other parties, or address issues that are necessary for lawfully adequate consideration of the Petition. Rather they demonstrate an astonishing disregard both for their burden of proof as well as for the health and well-being of the residents of Stockton. The Petition must be denied.

DATED: August 31, 2016