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14 On behalf of Central Delta Water Agency,  
15 South Delta Water Agency, Lafayette Ranch,  
16 Heritage Lands, Mark Bachetti Farms  
17 and Rudy Mussi Investments L.P.

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

19 **IN THE MATTER OF**

20 Hearing in the Matter of California  
21 Department of Water Resources and  
22 United States Department of the Interior,  
23 Bureau of Reclamation Request for a  
24 Change in Point of Diversion for California  
25 Water Fix

26 **SOUTH DELTA WATER AGENCY,  
27 CENTRAL DELTA WATER AGENCY,  
28 LAFAYETTE RANCH, HERITAGE  
LANDS, MARK BACHETTI FARMS  
AND RUDY MUSSI INVESTMENTS L.P.  
RESPONSE TO OBJECTIONS TO  
WRITTEN TESTIMONY AND  
EXHIBITS**

29 The South Delta Water Agency, Central Delta Water Agency, Lafayette Ranch,  
30 Heritage Lands, Mark Bachetti Farms and Rudy Mussi Investments L.P. (“SDWA  
31 Parties”) herein respond to the objections of San Luis & Delta-Mendota Water  
32 Authority's Objections to Part 1B Parties' Cases in Chief ("SLDMWA Objection"),  
33 Department of Water Resources' Objections to Testimony and Exhibits Submitted by  
34 Protestants SDWA Parties In Support of Part 1B Case In Chief and Related Joinders

1 ("DWR Objection") and Tehama-Colusa Canal Authority, et. al. Objections to Written  
2 Testimony and Exhibits Submitted by Protestants ("Tehama-Colusa Objection"). The  
3 SDWA Parties are not aware of any other objections. These objections are without  
4 merit. The testimony and related exhibits submitted by the SDWA Parties are relevant,  
5 reliable, and plainly admissible. The SDWA Parties respectfully requests that the State  
6 Water Resources Control Board ("SWRCB") overrule the objections in their entirety and  
7 deny SLDMWA, DWR and Tehama Colusa Canal Authority, *et. al.*'s accompanying  
8 requests to exclude this evidence.

9 Additionally, DWR also filed "Master Objections to Protestants' Cases-In-Chief  
10 Collectively" ("DWR Master Objection"). DWR Master Objection is silent as to the  
11 SDWA Parties, specifically. Without specific knowledge of which objections pertain to  
12 the SDWA Parties, it is impossible to file a response to same.

## 13 14 **II. BACKGROUND**

15 Water Code §1702 requires that, when a Petition for change is filed, the petitioner must  
16 establish that the change will not operate to the injury of any legal user of the water involved.  
17 (Water Code, § 1702.) The burden of proof is on the petitioner (SWRCB Order No. 95-6, at  
18 p. 7.) Part 1 of this hearing therefore addresses whether the Department of Water Resources'  
19 ("DWR") and the Bureau of Reclamation's proposed petition would injure any municipal,  
20 industrial or agricultural uses of water, including associated legal users of water. (October 30,  
21 2015 Notice of Hearing ("Notice"), p. 11.)

22 Prior to and on September 1, 2016, SDWA Parties jointly submitted the testimony and  
23 exhibits relating to the testimony of Linda Turkatte, Terry Pritchard, William "Chip"  
24 Salmon, Mark Bacchetti, Dr. Jeffery Michael and Dante Nomellini, Sr. on issues common to  
25 the SDWA Parties. For the reasons stated below, the SWRCB should overrule all objections  
26 to SDWA Parties' testimony and exhibits.

1  
2 **II. ARGUMENT**

3 Evidence in a hearing on a petition for change is admitted in accordance with  
4 Government Code § 11513. (Cal. Code Regs. Tit. 23, § 648.5.1.) Under Government Code  
5 §11513(c), relevant evidence must be admitted if "it is the sort of evidence on which  
6 responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the  
7 existence of any common law or statutory rule which might make improper the admission of  
8 the evidence over objection in civil actions." (Gov. Code § 11513(c).) The testimony of the  
9 SDWA Parties' witnesses is both relevant and reliable and is admissible in this hearing.

10  
11 **A. Linda Turkatte – SDWA 42**

12 SLDMWA objects to Linda Turkatte's testimony in its entirety as irrelevant and that  
13 such testimony, if allowed would create an undue consumption of the time in the proceeding.

14 Ms. Turkatte is the director of the San Joaquin County Environmental Health  
15 Department. She has extensive experience with San Joaquin County water quality and  
16 actions taken related to the environmental impacts of the deteriorating water quality  
17 experienced within the county. Ms. Turkatte's testimony provides a much needed  
18 foundational component to the already existing issues facing San Joaquin County, and legal  
19 users of water therein, with respect to bacteria growth in the Delta channels. She will testify  
20 as to her personal knowledge of the impacts the bacteria has on the health of County  
21 residents and animals as it relates to the increase in bacteria resulting from the reduction in  
22 flow in the Delta caused by the additional points of diversion.

23 Her testimony will also serve as a precursor to testimony offered by other experts  
24 within the SDWA Parties panel, who will opine as to how these already existing problems  
25 will be exacerbated by the decreased flow and increased residence time of water in the Delta.  
26 Not only is the testimony directly relevant to the proceedings currently before the Board, it  
27 also provides a much needed foundation to the testimony of other SDWA Parties' experts.

1 Given the above, Ms. Turkatte’s testimony is both relevant and necessary in this  
2 proceeding.

3  
4 **B. Terry Pritchard – SDWA 92**

5 SLDMWA objects to SDWA Parties’ expert Terry Pritchard on the grounds that Mr.  
6 Pritchard’s testimony is inadmissible expert and lay opinion, and lacks foundation.

7 Specifically, SLDMWA objects to SDWA 92, at 12:15-26, which discusses the  
8 ongoing problem with salinity in the Delta, and the probable increase in problems from  
9 increased salinity should the WaterFix project move forward. Within this section of  
10 testimony, Mr. Pritchard also discusses specific instances of salinity damage to crops in the  
11 Delta, mainly to illustrate the already present delicate balance of salinity in the Delta.

12 Mr. Pritchard is an agronomist and holds a Master’s of Science degree from U.C. Davis  
13 in Soil and Water Science. For almost forty years he has worked in the field of soil and water  
14 science, spending his time specifically researching soil-water-plant relationships and how  
15 those relationships develop under environmental stress. Additionally, Mr. Pritchard works  
16 with public and private entities in developing management strategies to maximize crop  
17 quality, resource use and minimize environmental impact. Aside from his position as  
18 consultant, Mr. Pritchard is a working farmer with hands-on experience in the matters in  
19 which he testifies. Given his extensive education and experience, Mr. Pritchard is qualified to  
20 opine as an expert in the matters set forth within his written testimony.

21 SLDMWA is specifically objecting to Mr. Pritchard’s testimony as “inadmissible  
22 expert opinion because it is based on speculation” relating to salt damage witnessed by  
23 farmers in the Delta and which was then relayed to Mr. Pritchard. SLDMWA asserts that  
24 since Mr. Pritchard is not familiar with the causes of the salt damage, his opinion is  
25 inadmissible and lacks foundation. As will be clear from his testimony, Mr. Pritchard has  
26 extensive experience with the specific salinity issues affecting the south delta.

27 California Evidence Code § 801(b) provides that an expert's opinion may be based on  
28 his or her own observations and examinations, or on matters “made known to him at or

1 before the hearing, whether or not admissible, that is of a type that reasonably may be relied  
2 upon” by experts in forming opinions on the particular subject ... “unless an expert is  
3 precluded by law from using such matter as a basis for his opinion.”

4 Mr. Pritchard is allowed to use otherwise inadmissible evidence in forming his expert  
5 opinion. SLDMWA has objected to specific testimony from Mr. Prichard as lacking in  
6 foundation due to Mr. Pritchard’s reliance on statements made by farmers in the Delta  
7 regarding the cause of damage to their crops. It is reasonable for Mr. Prichard to rely on these  
8 statements to form the basis of his opinions regarding salinity in both water and soil in the  
9 Delta. Further, as both an expert in the field and a farmer, Mr. Pritchard is able to correlate  
10 his knowledge and experience with the statements made by farmers within the Delta and  
11 make reasonable conclusions as it pertains to changes in the salinity of water within the  
12 Delta.

13 For the reasons stated hereinabove, all objections to Mr. Pritchard’s testimony should  
14 be overruled.

15  
16 **C. William “Chip” Salmon – SDWA 111**

17 SLDMWA objects to a portion of William “Chip” Salmon’s testimony as inadmissible  
18 lay person opinion which lacks foundation and is inadmissible hearsay.

19 Mr. Salmon has been farming in the South Delta for over 25 years. His testimony is  
20 based on his own, personal experience with salinity in the Delta and the damage it has caused  
21 to his crops. SLDMWA objects to Mr. Salmon’s testimony, arguing that his statements  
22 regarding the crop damage lack foundation and that Mr. Salmon possesses no personal  
23 knowledge as to the cause of the damage to his crops.

24 Mr. Salmon’s extensive experience in this field allows him to testify as to the cause of  
25 damage to his crops. As a manager of multiple, large scale farming operations, Mr. Salmon  
26 possesses a certain level of knowledge in order to successfully run his farming businesses.  
27 His experience in this field provides him the knowledge needed to diagnose the cause of the  
28 damage to his crop, which he later verified with representatives of the Ag Extension service,

1 and thereafter an analysis done by the Wilbur Ellis Fertilizer. A laboratory analysis report  
2 evaluation (SDWA 114) was also submitted to the Board in connection with these  
3 proceeding providing the tissue analysis of Mr. Salmon's walnuts, indicating acute chloride  
4 toxicity.

5 Mr. Salmon has vast experience farming in the South Delta, which has conferred upon  
6 him a great deal of knowledge regarding crop health and farming management. Given this  
7 experience, Mr. Salmon is highly qualified to opine as to the health of his crops, and the  
8 cause for damage thereto. The testing only sought to confirm what Mr. Salmon already  
9 knew, that salinity was damaging his crops. While the testing, and testimony related thereto,  
10 was objected to as hearsay, that objection must be overruled.

11 California Government Code §11513(d) provides, "[h]earsay evidence may be used for  
12 the purpose of supplementing or explaining other evidence but over timely objection shall  
13 not be sufficient in itself to support a finding unless it would be admissible over objection in  
14 civil actions." In this respect, Mr. Salmon's expertise allowed him to accurately diagnose the  
15 cause of the damage to his crop. The testing referenced in Mr. Salmon's testimony, and  
16 provided as a standalone exhibit, only sought to support Mr. Salmon's original conclusion  
17 regarding the salinity damage to his crop.

18 There is no basis therefor to objection to Mr. Salmon's testimony.

19  
20 **D. Mark Bacchetti – SDWA 121**

21 SLDMWA objects to a portion of Mark Bacchetti's testimony as inadmissible lay  
22 person opinion. The portion of Mr. Bacchetti's testimony objected to reads, "[t]his  
23 ecosystem is a very delicately balanced system and even minor changes will drastically affect  
24 water quality, especially in the south delta." (Exhibit 121, page 4, lines 6-8)

25 Mr. Bacchetti is a third generation, Delta farmer and has been farming in the south delta  
26 for over 40 years. Currently, he farms 3,400 acres in the south delta, comprised of various  
27 crops. His experience and knowledge farming in the south delta provides him the ability to  
28 opine as to the unique nature of the south delta, and its increasing sensitivity to changes.

1 Ca. Gov. Code §11513 provides “[a]ny relevant evidence shall be admitted if it is the  
2 sort of evidence on which responsible persons are accustomed to rely in the conduct of  
3 serious affairs, regardless of the existence of any common law or statutory rule which might  
4 make improper the admission of the evidence over objection in civil actions.”

5 Mr. Bacchetti’s statement regarding the ecosystem of the south delta is being proffered  
6 by SDWA Parties to explain how the effects of even minor changes to the delta affect  
7 individuals, which is the very purpose of Part 1 of the instant proceeding. This information is  
8 not inadmissible lay person opinion, but rather information which is pertinent to the  
9 understanding of the current status of the potential effect to the Delta. As such, it is  
10 admissible pursuant to Ca. Gov. Code §11513.

11 There is no basis therefor to preclude admission of Mr. Bacchetti’s testimony.

12  
13 **E. Jeffrey Michael, Ph.D. – SDWA 134**

14 DWR, SLDMWA and Tehama-Colusa Canal Authority, et. al. object to Dr. Jeffrey  
15 Michael’s testimony on multiple grounds. To the extent these objections have been dealt with  
16 in the October 7, 2016 ruling by the Hearing officer, the SDWA Parties will not be providing  
17 responses.

18 Outside of the scope of the October 7, 2016 ruling, the objecting parties also objected to  
19 Dr. Michael’s testimony as lacking in foundation. Specifically, objection is made to Dr.  
20 Michael’s testimony found on pages three through seven, which discuss the effects of  
21 changes in salinity on plants and leaching in soils. The main contention asserted by  
22 SLDMWA provides that Dr. Michael is not an expert in matters related to soil or water  
23 salinity, and the effect thereof on agriculture.

24 As correctly stated in SLDMWA’s objection, Dr. Michael is an economist. Dr.  
25 Michael’s testimony relates the financial effects of the Cal WaterFix to both San Joaquin  
26 County at large, and farmers within the central and south delta. Evidence Code §801(b), cited  
27 hereinabove in part, provides that Dr. Michael may base his analysis on matters that are of a  
28 type that reasonably may be relied upon by experts in forming opinions on the particular

1 subject. The analysis is based, in part, on the increase in salinity as analyzed by Thomas  
2 Burke and the effects of that on agriculture as opined by Terry Pritchard. Dr. Michael  
3 utilized those analyses to determine the financial effects on San Joaquin County and its  
4 farmers in the south and central Delta. Dr. Michaels opines as to the effects from increased  
5 salinity, not as to how much additional salinity will be present because of the Cal WaterFix.

6 Given the above, any objections to Dr. Michael's testimony should be overruled.  
7

8 **F. Dante Nomellini, Sr. – SDWA 151**

9 DWR, SLDMWA and Tehama-Colusa Canal Authority, *et. al.* object to Dante John  
10 Nomellini, Sr.'s testimony on multiple grounds. To the extent these objections have been  
11 dealt with in the October 7, 2016 ruling by the Hearing Team, and Mr. Nomellini's  
12 subsequently amended testimony, SDWA Parties will not be providing responses.

13 DWR and SLDMWA object to Dante Nomellini's testimony as irrelevant, inadmissible  
14 opinion regarding questions of law and lacking in foundation. For the reasons stated below,  
15 these objections should be overruled.

16 Mr. Nomellini possesses vast knowledge of the history of the Delta, in both a general  
17 and legal sense. He has been a farmer in the area since the fifties and has served on behalf of  
18 water agencies and reclamation districts within the Delta and surrounding areas. Mr.  
19 Nomellini has had a front row seat to the effects each water project or other SWRCB  
20 imposition has had on the Delta. As such, Mr Nomellini's testimony provides necessary  
21 context with regard to the history of the proposed project and the motivations and issues  
22 related to same. Mr. Nomellini also discusses the issue of salinity within the Delta, and other  
23 issues related to Part 1B. However, the discussion of these relevant concerns is correlated  
24 with the historical context in order to provide a roadmap for the Hearing Team as to the  
25 effects the current project will have, given past outcomes of the projects already put into  
26 place. While DWR and SLDMWA would rather this contextual reference be left out of the  
27 proceedings, there is no denying that it is necessary to the discussion of the how CalWater  
28 Fix will affect legal users in the Delta.



1 Also included in DWR Objection are blanket objections to Mr. Nomellini's PowerPoint  
2 (SDWA 152) and "all related exhibits" (SDWA 221 – 242). Other than referenced the DWR  
3 Master Objection, the DWR Objection is silent as to the specific reason for exclusion of these  
4 SDWA exhibits. Additionally, SDWA 221 – 242 are not exhibits proffered by Mr.  
5 Nomellini, and as such are not related to his testimony.

6 For the reasons provided hereinabove, SDWA Parties respectfully request the Hearing  
7 Team overrule the objections to Dante Nomellini, Sr.'s testimony and PowerPoint, as well as  
8 SDWA exhibits 221 – 242)

9  
10 **IV. CONCLUSION**

11 For the reasons outlined herein the objections filed by SLDMWA and DWR regarding  
12 the testimony of witnesses submitted by SDWA Parties should be overruled in their entirety.

13  
14  
15 Respectfully submitted,

16  
17 Date: November 2, 2016

**HARRIS, PERISHO & RUIZ**

18  
19  
20 By:  \_\_\_\_\_

21 S. DEAN RUIZ, Esq.  
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28

**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):

***SDWA PARTIES' RESPONSE TO OBJECTIONS TO WRITTEN TESTIMONY  
AND EXHIBITS***

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 10/06/2016, 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](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.*

I certify that the foregoing is true and correct and that this document was executed on 11/02/2016.

Date

Signature: \_\_\_\_\_



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