

1 DOWNEY BRAND LLP
2 DAVID R.E. ALADJEM (Bar No. 152203)
3 MEREDITH E. NIKKEL (Bar No. 254818)
4 621 Capitol Mall, 18th Floor
5 Sacramento, CA 95814-4731
6 Telephone: 916.444.1000
7 Facsimile: 916.444.2100
8 daladjem@downeybrand.com
9 mnikkel@downeybrand.com

6 Attorneys for Protestants
7 City of Brentwood

8 BEFORE THE CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

10 In the matter of Hearing re California
11 WaterFix Petition for Change

**CITY OF BRENTWOOD’S RESPONSE TO
12 OBJECTION SUBMITTED BY DWR AND
13 JOINDER IN SVWU RESPONSE TO
14 MASTER OBJECTION**

15 On September 27, 2016, Hearing Officer Doduc instructed any parties who wished to file
16 responses to objections pertaining to the scope of Part 1B exhibits and testimony to do so by
17 12:00 noon, September 30, 2016. The City of Brentwood (“Brentwood”) submits this response to
18 the objection submitted¹ by the California Department of Water Resources (“DWR”) seeking to
19 strike or exclude Brentwood’s testimony and/or exhibits on the grounds that allegations of
20 financial injury are not relevant to Part 1 of the WaterFix hearing.² (DWR’s Objections to City of

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22 ¹ It should be noted that all of DWR’s objections were submitted after the noon deadline on September 21,
23 2016, and are thus untimely. (See Webpage Containing the Written Objections to Part 1B Cases in Chief, available at
24 [http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/opening_statements](http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/opening_statements/part1b_objection.shtml)
25 [/part1b_objection.shtml](http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/opening_statements/part1b_objection.shtml) (State Water Resources Control Board webpage describing DWR’s submitted objections as
26 “late”).) It is clear from the State Water Board’s original hearing notice in these proceedings that the requirement for
27 submission of filings includes the service of those filings on all parties. (Notice of Petition, p. 36.) Thus, despite Mr.
28 Mizell’s representations to the Hearing Officer on September 27 that DWR’s objections were timely *prepared*, the
failure to *serve* those objections on the Board and parties to these proceedings by the noon deadline makes those
objections untimely.

² Brentwood will address other specific objections to its testimony prior to presenting their Part 1B case in
chief, as directed by the SWRCB’s September 28, 2016 email. Brentwood reserves its right to respond to all other
objections lodged by DWR and any other party at the appropriate time. For example, DWR asserts that Brentwood
lacks “standing to participate in Phase 1” because it is not a legal user of water. This is not an evidentiary objection

1 Brentwood (Group 10) Part 1B, p. 1.) DWR’s arguments are incorrect and without merit.
2 Accordingly, the request to exclude Brentwood’s testimony and exhibits should be denied.
3 Additionally, Brentwood joins in the Sacramento Valley Water Users’ (“SVWU”) response to
4 DWR’s Master Objections to Protestants Cases-in-Chief Collectively (“Master Objection”) on the
5 ground that the objections in the Master Objection are not sufficiently stated and should be
6 denied.

7 DWR claims: “Brentwood through its own witnesses admits it is not a legal user of water
8 and they [sic] do not claim injury to ‘other human uses of water’ for [sic] this reason the
9 testimony of Mr. Ehlers should be stricken in its entirety because the alleged financial injury is
10 not relevant to the current Part 1 proceedings.” (DWR’s Objection, p. 2.) DWR misrepresents
11 Brentwood’s testimony, its status as a legal user of water, and its anticipated injuries.

12 First, nothing in the testimony of Chris Ehlers or Dr. Susan Paulsen resembles an
13 admission that Brentwood is not a legal user of water. Dr. Paulsen’s testimony focuses on the
14 changes in hydrodynamics and degradation of water quality that may result from implementation
15 of the WaterFix Project. (Exhibit Brentwood-100, p. 2.) Mr. Ehlers’ testimony describes how
16 Brentwood obtains water from groundwater pumping and through contracts with East Contra
17 Costa Irrigation District and Contra Costa Water District. (Exhibit Brentwood-001, pp. 1-2.)
18 Although Brentwood does not currently possess appropriative surface water rights, it is a legal
19 user of water under the plain meaning of Water Code section 1702 and California case law. As
20 discussed at length in the *State Water Resources Control Board Cases*, the term “legal users of
21 the water” includes traditional water right holders as well as “those who lawfully use water under
22 a contract with an appropriator.” (*SWRCB Cases (2006)* 136 Cal.App.3d 640, 799-805.) DWR’s
23 claim that Brentwood lacks standing for Part 1 of this hearing because it is not a legal user of
24 water is wrong in all respects.

25 Second, DWR’s suggestion that potential financial impacts are irrelevant to the inquiry of
26 whether or not the WaterFix project would cause injury to other legal users of water is also

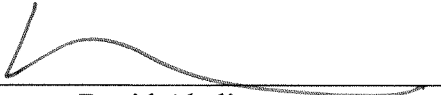
27 and is misplaced in DWR’s objection. Brentwood reserves the right to respond to this assertion at the appropriate
28 time.

1 incorrect. Brentwood’s testimony demonstrates that the likelihood of water quality degradation at
 2 Brentwood’s intake would result in increased water treatment costs, potential regulatory fines,
 3 and significantly more expensive water contracts. (Exhibit Brentwood-001 at p.5). As the
 4 California Supreme Court has held, an appropriator cannot be compelled to “incur substantial
 5 expense in order to accommodate [a] subsequent appropriator.” (*City of Lodi v. East Bay*
 6 *Municipal Utility District* (1936) 7 Cal.2d 316, 341; *see also Peabody v. City of Vallejo* (1935) 2
 7 Cal.2d 351, 376 (“[A]ny interference with the prior right which would cause substantial damage
 8 is actionable.”).) As Hearing Officer Doduc acknowledged on September 23, 2016 during Ms.
 9 Meredith Nikkel’s cross-examination of the Petitioners’ water rights panel, significant increases
 10 in costs that prevent a water user from accessing their water right are indeed relevant to Part 1 of
 11 this proceeding.

12 For the foregoing reasons, Brentwood respectfully requests that DWR’s objection to
 13 Brentwood’s testimony and exhibits on this ground be denied.

14
 15 Dated: September 30, 2016

DOWNEY BRAND LLP

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 17 By: 
 18 David Aladjem
 19 Attorney for City of Brentwood
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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);

**CITY OF BRENTWOOD'S RESPONSE TO OBJECTION SUBMITTED BY DWR
AND JOINDER IN SVWU RESPONSE TO MASTER OBJECTION**

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 September 29, 2016, posted by the State of Water Resources Control Board at
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.

For Petitioners Only:

	I caused a true and correct hard copy of the document(s) to be served by the following method of service to Suzanne Womack & Sheldon Moore, Clifton Court, L.P., 3619 Land Park Drive, Sacramento, CA 95818: Method of Service: _____
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I certify that the foregoing is true and correct and that this document was executed on September 30, 2016.

Signature: Catharine Irvine

Name: Catharine Irvine

Title: Legal Secretary

Party/Affiliation: Downey Brand, LLP

Address: 621 Capitol Mall, Sacramento, CA 95814