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7 BEFORE THE CALIFORNIA STATE WATER RESOURCES CONTROLBOARD

HEARING IN 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

RESPONSE TO CALIFORNIA DEPARTMENT OF  
WATER RESOURCES' OBJECTIONS TO SNUG  
HARBOR RESORTS, LLC WRITTEN TESTIMONY AND  
EXHIBITS SUBMITTED BY PROTESTANTS IN  
SUPPORT OF PART 1 B CASE IN CHIEF AND ANY  
RELATED JOINTDERS AND RESPONSE TO DWR  
OBJECTIONS TO TESTIMONY AND EXHIBITS  
SUBMITTED BY SNUG HARBOR RESORTS, LLC FOR  
ITS CASE IN CHIEF, PART 1A, AS REFERENCED IN  
DWR OBJECTIONS FILED ON SEPTEMBER 21, 2016

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9 RESPONSE TO DWR OBJECTIONS TO PART 1A AND PART 1B TESTIMONY, EVIDENCE AND CASE-IN-CHIEF:

10  
11 California Department of Water Resources ("DWR") submitted objections to Snug Harbor Resorts, LLC ("SHR")  
12 written testimony and exhibits in a document title which referenced only Part 1B case in chief, yet the very first  
13 line of the DWR document reads: "California Department of Water Resources ("DWR") submits this objection to  
14 the written testimony and objections submitted by Snug Harbor Resorts, LLC, for their case in chief **Part 1A.**"  
15 [emphasis added] On page 2 of the same document, at the bottom last three lines, DWR states "Even under the  
16 relaxed standards for admissibility of evidence in administrative proceedings, the testimony and exhibits  
17 objected to below should be excluded. DWR provides specific objections to Snug Harbor LLC's written testimony  
18 in Exhibit A attached hereto."

19 Please note that there was no Exhibit A with specific objections to SHR written testimony and exhibits  
20 attached to the DWR document received by Ms. Suard via email. Ms. Suard therefore has no idea what  
21 subjects or which specific exhibits or testimony DWR is referring to, as DWR failed to provide that information.  
22 Ms. Suard contacted other Protestants to enquire if they had received a copy of an "Attachment A" related to  
23 specific objections to SHR written testimony and exhibits, and none of the persons contacted received such an  
24 "Attachment A" either, related to specific objections to SHR exhibits or testimony. Therefore Ms. Suard cannot  
25 adequately respond to specific objections SHR was not provided, and SHR and Ms. Suard request that all written  
26 testimony and exhibits submitted by Ms. Suard be accepted into evidence, to be allowed to be used by Ms.  
27 Suard during presentation of the Case in Chief on behalf of Snug Harbor Resorts, LLC, and that the exhibits  
28 already presented during Ms. Suard cross-examination of DWR and USBR witnesses be submitted and accepted  
29 as evidence during Part 1A. Specifically, Part 1A exhibits are the Powerpoint slide sets Ms. Suard used when  
30 cross-examining DWR and/or USBR witnesses, the excel data form Ms. Suard used for requested of DWR during  
31 cross-examination, the graphics provided by DWR in response to Ms. Suard data request, statement of  
32 certification of authentication, verification of SHR as a legal user of drinking water, verification of DWR failure to  
33 provide flow data as required by law, location maps showing SHR proximity to proposed WaterFix intakes and

1 tunnel, and references to degradation of drinking water quality in the North Delta. Part 1A exhibits are noted in  
2 the revised Exhibit list that will be uploaded and forwarded today.

3 Ms. Suard and SHR wish to remind the hearing board of the physical location of the drinking water wells of  
4 Snug Harbor Resorts, LLC. We are located downstream of all three proposed points of diversion, on Steamboat  
5 Slough, which based on evidence not provided by DWR or USBR could end up suspended in a historic low flow  
6 drought status if proposed intakes are built. There can be no doubt SHR location makes it a potentially impacted  
7 legal owner of drinking water rights. It became apparent during DWR and USBR written testimony and exhibit  
8 presentations that impacts to drinking water wells located outside the intake and tunnel construction pathway  
9 were not adequately recognized or considered in the modeling for impacts. Ms. Suard believes it is important  
10 that the SWRCB, which has responsibility for protecting all of our drinking water, not just that of the export  
11 contractors, should hear, see and review available evidence on impacts to all of us, and especially places like SHR  
12 where physical location indicates it could be in an area of first negative impacts.

13 On 9/28/2016 Ms. Suard verbally acknowledge to the hearing board that the evidence uploaded on behalf of  
14 SHR includes both Part 1A and Part 1B exhibits, and per the instruction of the hearing board, SHR is submitting  
15 today a revised exhibit index which clearly labels which exhibits refer to Part 1A, Part 1B or to both parts of the  
16 hearing. Given the failure of DWR to provide any specific reasons for exclusion of SHR exhibits, and the gravity  
17 of the issues related to protection of the legal drinking water rights of Snug Harbor Resorts, LLC which manages  
18 and owns fully permitted drinking water wells which could be severely impacted by proposed WaterFix  
19 construction and operation, SHR requests that the board use a relaxed standard for admission of evidence  
20 submitted on behalf of SHR, and accept all SHR evidence and testimony as already submitted and available  
21 online at the SWRCB. Please note that Ms. Suard did provide a general authentication statement for the exhibits  
22 uploaded, but if the board requests it, Ms. Suard can provide specific authentication statement for each  
23 document and exhibit individually. DWR and USBR attorneys will have the opportunity to challenge SHR  
24 evidence after SHR puts on its Case in Chief.

25 RESPONSE TO DWR CHALLENGE OF WITNESS NICOLE S. SUARD, ESQ.

26 DWR claims the owner and managing member of Snug Harbor Resorts, LLC is not qualified to offer expert  
27 testimony on the impacts to the business drinking water wells from WaterFix regarding water quality, water  
28 levels and more general water uses in the Delta, claiming these areas are “sufficiently outside the common  
29 experience of a lay witness”. As noted in DWR objection to witness Suard, under Evidence Code Section 800(a),”  
30 lay witness testimony must be rationally based on the perception of the witness, i.e. personal observation of the  
31 witness. Generally, lay witnesses may only express opinions on matters within common knowledge or  
32 experience.” Apparently the legal team for DWR is not aware of the rigors and knowledge base required to own  
33 and manage a marina, RV park and mobile home park which operates a public drinking water system. Ms. Suard  
34 must on a daily basis manage drinking water quality, drinking water levels that affect water pressure, reporting  
35 of drinking water quality, payment of expenses related to management of a public drinking water system,  
36 interaction with hired professional contractors to make improvements or modifications to the public drinking  
37 water system of SHR, and more. Ms. Suard must also remain aware of possible changes in flows on Steamboat  
38 Slough which could impact business operations, especially if those flows could affect drinking water quality.  
39 Both excessive flood flows and inadequate low flows on Steamboat Slough can affect drinking water quality of  
40 the public drinking water wells that supply the park. Ms. Suard must also be able to prepare and file many  
41 different water-quality related reports to many different agencies, which requires an understanding of the  
42 results of drinking water tests, impacts from soil disturbances that affect drinking water, impacts from nearby

1 restoration actions that affect drinking water aquifer, and much more. Snug Harbor property is located  
2 waterfront on Steamboat Slough, and therefore Ms. Suard has a long history of observations of flows during wet  
3 and dry and critical years, and has observed the changes to drinking water quality based on the time of year, the  
4 type of year and the flows reported on public access websites like DAYFLOW, a DWR website. Contrary to DWR  
5 assertion, Ms. Suard is highly qualified as a lay witness, and her testimony is well within the common experience  
6 and knowledge of an owner of a business that owns a public drinking water system. Ms. Suard's testimony is  
7 based on her own experience, observations and is supported by reports and documents available to the public  
8 which are found at websites hosted by DWR, SWRCB, USGS, DOI, MWD and others. Ms. Suard specifically  
9 acknowledges she is not an expert in hydrology, but that does not preclude her testimony as an educated and  
10 observant reviewer of reports released to the public in a format easily readable to anyone who can read and  
11 write using the English language.

12 DWR also claims Ms. Suard lack sufficient expertise to assess impacts of the proposed change in point of  
13 diversion on water levels and water quality sufficiency of the modeling performed. Ms. Suard does not claim to  
14 be an expert computer modeler, but does provide proof of the impacts to drinking water quality from low flows  
15 on Steamboat during the last ten years of drought and experimental flows on Steamboat Slough, which is a  
16 good indication of the impact of the proposed WaterFix diversions because the proposed low bypass flows  
17 would in effect suspend the North Delta flows, including Steamboat Slough flows, into a permanent critical  
18 drought status, based on data provided by DWR and USBR. Ms. Suard confirms that she does have sufficient  
19 expertise to assess impacts of the proposed change in point of diversion on water levels and water quality for  
20 the location of Snug Harbor Resorts, LLC by use of evidence related to over ten years of records of the drinking  
21 water wells of SHR when compared to the historic and current flows on Steamboat Slough, a natural waterway  
22 of the Delta, a tributary of the Sacramento River. Ms. Suard confirms that she does have sufficient expertise to  
23 access reports and documents released to the public, which were written by DWR computer modeling and staff,  
24 that state opposite relationships between surface and groundwater hydrology in the Delta compared to the  
25 testimony provided by DWR and USBR witnesses.

26 As evidence of Ms. Suard sufficiency to testify as a lay person, please note that it was Ms. Suard who  
27 discovered that DWR published false or incorrect data regarding Delta water balance for the 2013 California  
28 Water Plan Update, which DWR subsequently revised. None of DWR's own water experts who reviewed the  
29 drafts to the 2013 California Water Plan Update recognized the incorrect data published by DWR. It was Ms.  
30 Suard who noticed that there was a pattern of gaps in DayFlow data showing online in March and April 2014,  
31 which all related to missing or unaccounted for flows at Freeport gage, at Steamboat Slough gage, and at the  
32 Georgiana Slough gage, to name a few. Only after the gaps in flow data from DAYFLOW was brought to the  
33 attention of DWR staff in 2014, the method for drawing attention to data gaps in the DAYFLOW tables was  
34 changed online by DWR. It was Ms. Suard who brought to the attention of DWR staff person Paul Marshall in  
35 2014 the fact there are subsurface flow barriers on Steamboat and Sutter Slough, that are not accounted for in  
36 DSM2 modeling, rendering that model inaccurate for use in assessing impacts on Steamboat Slough, at a  
37 minimum. DWR staff finally did acknowledge the existence of the subsurface flow barrier on Steamboat Slough,  
38 but as of this statement, it is not known if the barrier impact to flows has been calibrated into an updated DSM2  
39 model. The above examples are provided to give the hearing board an understanding of the level of attention  
40 and understanding of data research Ms. Suard has compiled as well as her good faith efforts to alert DWR staff  
41 to problems with baseline data used by DWR for its reports and baseline flow data.

42 RESPONSE TO DWR MASTER OBJECTIONS TO PROTESTANT'S CASES-IN-CHIEF COLLECTIVELY

1 DWR appears to attempt to apply objections to SHR using general statements or references that do not  
2 appear to SHR specifically. SHR therefore generally objects to the entire content of DWR Master Objections to  
3 Protestant's Cases-in-chief collectively, and joins in the response of LAND (Local Agencies of North Delta) and  
4 PCFFA/IFR and where those responses apply to issues related to SHR. I request the right to join in the  
5 statements of other responders if needed, once those other responder statement are received and reviewed by  
6 SHR.

7 In the meantime, SHR responds to the DWR statement of limited scope of Part 1, page 14 by pointing out the  
8 following answers to the questions as presented by DWR:

- 9 1) Will the changes proposed in the Petition in effect initiate a new water right? It appears so, but DWR  
10 and USBR did not provide sufficient concrete and current flow data on this issue.
- 11 2) Will the proposed changes in points of diversion alter water flows in a manner that causes injury to  
12 municipal, industrial or agricultural uses? Yes, and specifically related to SHR, proposed changes in  
13 points of diversion may alter water flows in a manner that causes to municipal and agricultural water  
14 uses located at SHR facility. The only way to avoid injury to SHR is to guarantee sufficient fresh water  
15 flow on Steamboat Slough year round in order to restore and maintain the drinking water aquifer in our  
16 area.
- 17

18 For all of the above reasons, SHR respectfully request that the Hearing Officers issue an order accepting the  
19 testimony and exhibits presented and uploaded by Ms. Suard on behalf of Snug Harbor Resorts, LLC.

20 Dated: September 30, 2016

21 Snug Harbor Resorts, LLC

22 

23 Nicole S. Suard, Esq.  
24 Managing Member, Snug Harbor Resorts, LLC

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STATEMENT OF SERVICE

CALIFORNIA WATERFIX PETITION HEARING

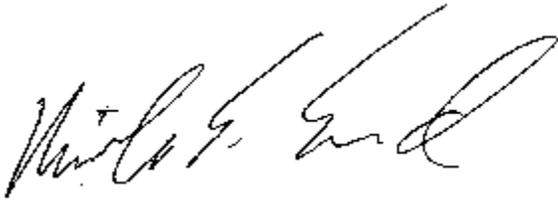
Department of Water Resources and U.S. Bureau of Reclamation (Petitioners)

I hereby certify that I have this day submitted to the State Water Resources Control Board and caused a true and correct copy of original letter to be attached, of the following document:

RESPONSE TO CALIFORNIA DEPARTMENT OF WATER RESOURCES' OBJECTIONS TO SNUGH HARBOR RESORTS, LLC WRITTEN TESTIMONY AND EXHIBITS SUBMITTED BY PROTESTANTS IN SUPPORT OF PART 1B CASE IN CHIEF AND ANY RELATED JOINDERS AND RESPONSE TO DWR OBJECTIONS TO TESTIMONY AND EXHIBITS SUBMITTED BY SNUG HARBOR RESORTS, LLC FOR ITS CASE IN CHIEF, PART 1A, AS REFERENCE IN DWR OBJECTIONS FILED ON SEPTEMBER 21, 2016

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, 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)

I certify that the foregoing is true and correct and that this document was executed on September 30, 2016, at 11:0 AM Pacific Time.



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