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COUNTY SANITATION DISTRICT

10
11 BEFORE THE
12 CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

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

SACRAMENTO REGIONAL COUNTY
SANITATION DISTRICT'S
17 RESPONSES TO DEPARTMENT OF
WATER RESOURCES' AND SAN LUIS
& DELTA-MENDOTA WATER
18 AUTHORITY'S SCOPE OBJECTIONS
TO SACRAMENTO REGIONAL
COUNTY SANITATION DISTRICT'S
PART 1B CASE IN CHIEF

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21 **I. INTRODUCTION**

22 Sacramento Regional County Sanitation District (Regional San) filed its case in
23 chief on September 1, 2016. It included 13 exhibits, including the testimony of Regional
24 San employees, Prabhakar Somavarapu and Christoph Dobson. Mr. Somavarapu is the
25 District Engineer, and Mr. Dobson is the Director of Policy and Planning. Department of
26 Water Resources (DWR) objected to the 13 exhibits, Mr. Somavarapu's testimony, and
27 Mr. Dobson's testimony as being outside the scope of these proceedings. (California
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1 Department of Water Resources' Objections To Sacramento Regional County Sanitation
2 District Written Testimony And Exhibits Submitted By Protestants In Support Of Part 1B
3 Case In Chief And Any Related Joinders (Sept. 21, 2016) (DWR Objections).)
4 Additionally, San Luis & Delta-Mendota Water Authority (SLDMWA) objected to the
5 relevance of portions of Mr. Dobson's testimony. (San Luis & Delta-Mendota Water
6 Authority's Objections to Part 1B Parties' Cases in Chief (Sept. 21, 2016), p. 73-74
7 (SLDMWA Objections).) Although these objections are to relevance and not specifically
8 to the scope of Part 1B, in an abundance of caution Regional San provides these
9 responses to the SLDMWA Objections. Both Mr. Somavarapu's and Mr. Dobson's
10 testimony and the exhibits are relevant evidence to this proceeding because they
11 provide foundational evidence on how the California Water Fix Project (Project) would
12 injure Regional San's use of the treated wastewater to which it has the exclusive right, if
13 the WaterFix change petition (or any approved of the petition) assumes the continued
14 discharge of those flows to meet obligations, standards, or objectives that are directly or
15 indirectly related to flow.

16 II. Legal Standard

17 This hearing is governed by Chapter 4.5 of the Administrative Procedure Act,
18 (Gov. Code, § 11400 et. seq.); regulations adopted by the State Water Resources
19 Control Board (State Water Board), (Cal. Code of Regs., tit. 23, § 648-648.8); sections
20 801 to 805 of the Evidence Code; and section 11513 of the Government Code. (Cal.
21 Code of Regs., tit. 23, § 648(b).) The State Water Board is not required to conduct
22 adjudicative hearings according to the technical rules of evidence applicable to a court.
23 (Gov. Code, § 11513(c).) Instead, "[a]ny relevant evidence shall be admitted if it is the
24 sort of evidence on which responsible persons are accustomed to rely in the conduct of
25 serious affairs, regardless of the existence of any common law or statutory rule which
26 might make improper the admission of evidence over objection in civil actions." (*Ibid.*)
27 The State Water Board follows these relaxed standards because the Hearing Officers'
28 expertise in the subject matter justifies the State Water Board's ability to make both legal

1 and factual determinations.

2 The State Water Board's Notice of Hearing includes further direction on the types
3 of evidence that must be included by protestants. Protests based on an injury to a legal
4 user of water "must describe specifically what injury would result if the proposed
5 changes requested in the Petition were approved." (October 30, 2015 Hearing Notice, at
6 p. 13.) Additionally, "the party claiming injury must provide specific information
7 describing the basis of the claim of right, the date the use began, the quantity of water
8 used, the purpose of use and the place of use." (*Ibid.*) Regional San is a legal user of
9 water that claims potential injury due to the Project, and its expert witness testimony and
10 exhibits are relevant foundational evidence for its protest in Part 1B of the hearing.

11 III. Argument

12 DWR and SLDMWA objected to the testimony and exhibits Regional San
13 submitted for its case in chief. DWR asserts that the testimony, while made by
14 competent experts, does not "provide specific details about the likely damages, injury or
15 harm to Regional San that would result from the [Project]." (DWR Objections, at p. 2:6-
16 9.) SLDMWA objects to portions of Mr. Dobson's testimony as being irrelevant to these
17 proceedings. (SLDMWA Objections, at p. 73:20-74:6.) Regional San is a legal user of
18 water with a superior right to use its treated wastewater discharges. Both Mr.
19 Somavarapu's and Mr. Dobson's testimony and the supporting exhibits demonstrate that
20 Regional San is using and will continue to increase the use of its treated wastewater
21 discharges. (See SRCSD-1 to 13.) This evidence is relevant because Regional San is
22 a legal user of water and the Project may injure Regional San's continued use of treated
23 wastewater discharges if the Project or its approvals assume or rely on the continued
24 discharge of any particular volume of Regional San's wastewater. Therefore, this is
25 admissible evidence under the relaxed evidentiary standards used in administrative
26 hearings. (*Thornbrough v. Western Placer Unified School Dist.*, (2013) 223 Cal.App.4th
27 169, 192-193.)

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1 Mr. Somavarapu's testimony explains the construction of the EchoWater Project
2 that will dramatically reduce ammonia and nitrogen in Regional San's effluent and
3 provide tertiary filtration and disinfection, which is required by its waste discharge permit.
4 (See SRCSD-1.) The EchoWater Project will allow Regional San to expand its recapture
5 and reuse of treated wastewater discharges. (*Ibid.*) Mr. Dobson's testimony describes
6 Regional San's water recycling present capabilities and its goals. (See SRCSD-2.)
7 Regional San is planning on expanding its water recycling by more than 50,000 acre-feet
8 per year. (SRCSD-2, at p. 6:12.) Therefore, the testimony and exhibits submitted by
9 Regional San are relevant to these proceedings because they provide foundational
10 evidence that the Project may injure Regional San's right to use its treated wastewater
11 discharges.

12 To the extent the California WaterFix Petition assumes that Regional San's
13 treated effluent will continue to be discharged to the Sacramento River, or that any
14 particular volume of treated effluent will be available to meet obligations, standards, or
15 objectives that are directly or indirectly related to flow, that assumption is incorrect; any
16 action based on the assumption could injure Regional San, a legal user of water under
17 its superior rights to its wastewater discharges, and would be contrary to law. Despite
18 having been served on January 5, 2016 with Regional San's protest alleging injury to its
19 prior rights to its treated wastewater discharges, Petitioners' case in chief makes no
20 mention of Regional San's current or future discharge, nor does it contain any
21 information about the assumptions Petitioners may have made regarding continued
22 discharge by Regional San, if any. Accordingly, Petitioners have failed to demonstrate
23 that the Petition will not injure Regional San as a legal user of water. As such, the
24 testimony and exhibits submitted by Regional San are relevant to these proceedings
25 because they are the type of evidence the State Water Board must consider to
26 determine whether the Project will injure Regional San. (Gov. Code, § 11513(c).)

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IV. Conclusion

Based on the foregoing, Regional San respectfully requests that the State Water Board overrule the DWR Objections and SLDMWA Objections.

SOMACH SIMMONS & DUNN
A Professional Corporation

DATED: September 30, 2016

By



Andrew M. Hitchings
Attorneys for Sacramento Regional
County Sanitation District

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STATEMENT OF SERVICE

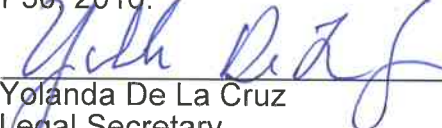
**CALIFORNIA WATERFIX PETITION HEARING
Department of Water Resources and U.S. Bureau of Reclamation (Petitioners)**

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):

SACRAMENTO REGIONAL COUNTY SANITATION DISTRICT'S RESPONSES TO DEPARTMENT OF WATER RESOURCES' AND SAN LUIS & DELTA-MENDOTA WATER AUTHORITY'S SCOPE OBJECTIONS TO SACRAMENTO REGIONAL COUNTY SANITATION DISTRICT'S PART 1B CASE IN CHIEF

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 20, 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:

I certify that the foregoing is true and correct and that this document was executed on September 30, 2016.

Signature: 
Name: Yolanda De La Cruz
Title: Legal Secretary
Party/Affiliation: Sacramento Regional County Sanitation District
Address: 500 Capitol Mall, Suite 1000
Sacramento, CA 95814