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14
15 BEFORE THE
16 CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

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

CITY OF STOCKTON'S RESPONSES
TO DEPARTMENT OF WATER
RESOURCES' SCOPE OBJECTIONS
TO CITY OF STOCKTON'S PART 1B
CASE IN CHIEF

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24 I. INTRODUCTON

25 The City of Stockton (Stockton) filed its case in chief on September 1, 2016. In its
26 case in chief, Stockton included three comment letters relating to the Environmental
27 Impact Report/Environmental Impact Statement (EIR/EIS) for the Bay Delta
28 Conservation Plan and California Water Fix Project (Project), marked as exhibits STKN-

1 002, 003, 004. The Department of Water Resources (DWR) objected to these exhibits
2 as irrelevant to the proceedings and moved to strike. However, both the Hearing
3 Officers and DWR have already established the relevance of these exhibits, and DWR
4 has waived or negated any objections by proposing to submit them into evidence.

5 II. LEGAL STANDARD

6 This hearing is governed by Chapter 4.5 of the Administrative Procedure Act,
7 (Gov. Code, § 11400 et seq.); regulations adopted by the State Water Resources
8 Control Board (State Water Board), (Cal. Code of Regs., tit. 23, § 648-648.8); sections
9 801 to 805 of the Evidence Code; and section 11513 of the Government Code. (Cal.
10 Code of Regs., tit. 23, § 648(b).) The State Water Board is not required to conduct
11 adjudicative hearings according to the technical rules of evidence applicable to a court.
12 (Gov. Code, § 11513(c).) Instead, “[a]ny relevant evidence shall be admitted if it is the
13 sort of evidence on which responsible persons are accustomed to rely in the conduct of
14 serious affairs, regardless of the existence of any common law or statutory rule which
15 might make improper the admission of evidence over objection in civil actions.” (*Ibid.*)
16 The State Water Board follows these relaxed standards because the Hearing Officers’
17 expertise in the subject matter justifies the State Water Board’s ability to make both legal
18 and factual determinations.

19 The State Water Board’s Notice of Hearing includes further direction on the types
20 of evidence that must be included by protestants. Protests based on an injury to a legal
21 user of water “must describe specifically what injury would result if the proposed
22 changes requested in the Petition were approved.” (October 30, 2015 Hearing Notice.
23 p. 13.) Additionally, “the party claiming injury must provide specific information
24 describing the basis of the claim of right, the date the use began, the quantity of water
25 used, the purpose of use and the place of use.” (*Ibid.*) Stockton is a legal user of water
26 that claims injury due to the Project, and its exhibits are relevant to Part 1B of the
27 hearing.
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III. ARGUMENT

DWR objected to comment letters submitted by Stockton regarding the EIR/EIS, and cited “STKTN(sic)-001, 002, 003, 004.” (California Department of Water Resources’ Objections to City of Stockton’s Part 1B Case In Chief, p. 2:19-26.) However, STKN-001 is a map of the Delta that shows the location of Stockton’s drinking water intake as well as its wastewater treatment plant and not a comment letter. The relevance of STKN-001 is not in dispute, and therefore, Stockton does not address its relevancy at this time, but reserves the right to do so if brought into dispute at a later date. Furthermore, DWR included Attachment A to its objections and does not include STKN-001 in the list of exhibits to which it objects. DWR also objects to STKN-002, 003, 004, 010 and 022 on other grounds than being outside the scope of the proceedings, and Stockton reserves the right to address these additional objections in later responses.

Stockton first introduced STKN-002, 003 and 004 in its cross examination of DWR’s modeling panel on August 25, 2016. At that time, no party, including DWR, objected to the relevance of these exhibits, and Stockton conducted cross examination of the modeling panel based on these three exhibits. By failing to object to their relevance when they were first introduced, DWR waived any objection to these exhibits. Regardless, each of these exhibits is admissible because they are relevant to Stockton’s claims of injury as a legal user of water.

a. STKN-002 is Admissible Because It Addresses Stockton’s Claim of Injury and DWR has Waived Any Objection and It is Relevant to the Proceedings

STKN-002 is entitled “City of Stockton Comments on the Notice of Preparation of an EIR/S for the Bay Delta Conservation Plan,” and dated May 30, 2008. This comment letter establishes that as far back as 2008, Stockton has claimed injury to its use of water due to the Project. DWR’s own Modeling Panel acknowledged on August 25, 2016, that Stockton’s claims of injury were raised in STKN-002. These claims of injury were addressed in the 2013 Draft EIR and Draft EIS (DEIR/DEIS) and 2015 Recirculated

1 DEIR and Supplemental DEIS (RDEIR/SDEIS). DWR included the 2013 DEIR/DEIS and
2 2015 RDEIR/SDEIS in its case in chief exhibits on June 21, 2016, and proposed to move
3 them into evidence as part of its case in chief. (See DWR's Revised Exhibit Index,
4 submitted June 21, 2016; *Submission of Exhibit List for Entry of Exhibits into Evidence*
5 (Sept. 28, 2016) DWR, SWRCB-3, 4.) STKN-002 was included in Appendix 1D of the
6 2013 DEIR/DEIS. (See SWRCB-4, ch. 32, sec. 32.1.1.3, p. 32-5, ln. 1-2.) Because
7 STKN-002 is part of the exhibits offered for entry to evidence by DWR, DWR has waived
8 any objection to its relevance to this proceeding. As noted, the exhibit's relevance is
9 unquestionable because it addresses Stockton's claim of injury as a legal user of water.
10 Finally, given the relaxed standards of this administrative proceeding, STKN-002 is the
11 type of evidence that a responsible person would rely on in the conduct of serious
12 affairs.

13 **b. STKN-003 is Relevant to the Proceedings Because It Addresses**
14 **Stockton's Claim of Injury and the Hearing Officers Ordered that the**
15 **Comment Letter Be Submitted**

16 STKN-003 is a comment letter submitted on the 2013 DEIR/DEIS and is entitled
17 "City of Stockton's Comments on Draft BDCP and Associated Draft EIR/EIS." DWR
18 objected to STKN-003, as being irrelevant to these proceedings. However, the exhibit's
19 relevance is unquestionable because it addresses Stockton's claim of injury as a legal
20 user of water. Further, the Hearing Officers ruled on April 25, 2016, that due to DWR's
21 own formatting issue "petitioners are expected to provide [2013 DEIR/DEIS] comment
22 letters, in an indexed and usable format, as one of their petition hearing exhibits."
23 (*Revised Hearing Schedule, Revised Notices of Intent to Appear, and Motion to*
24 *Disqualify Hearing Officers – California Waterfix Water Right Change Petition Hearing*
25 (April 25, 2016) State Water Resources Control Board, p. 9.) In April, the Hearing
26 Officers determined that the 2013 DEIR/DEIS comment letters would be relevant to the
27 proceedings, and stated their expectation that Petitioners would provide them. It
28 appears Petitioners ignored this direction and did not include them with any of their

1 exhibit indexes submitted on May 31, 2016, June 21, 2016, or most recently September
2 28, 2016. Not only is STKN-003 relevant to these proceedings because it addresses
3 Stockton's injury claims, but the Hearing Officers have also acknowledged the relevance
4 of the DEIR/DEIS comment letters in directing that Petitioners include them along with
5 the 2013 DEIR/DEIS.

6 **c. STKN-004 is Admissible Because It Addresses Stockton's Claim of**
7 **Injury and DWR has Waived Any Objection and it is Relevant to the**
8 **Proceedings**

9 STKN-004 is Stockton's comments to the 2015 RDEIR/SDEIS, entitled "City of
10 Stockton Comments on the Bay Delta Conservation Plan/California WaterFix
11 Recirculated Draft Environmental Impact Report/Supplemental Draft Environmental
12 Impact Statement (RDEIR/SDEIS)." DWR objected that this exhibit is irrelevant to these
13 proceedings. However, like STKN-002 and STKN-003, this comment letter raises
14 concerns about the types of injury that would occur to Stockton as a legal user of water
15 and thus is relevant to the issues in Part 1B. Moreover, as with STKN-002, DWR has
16 already included this comment letter in its own exhibits. In DWR's revised exhibit index,
17 submitted on June 21, 2016, and in its letter proposing to move its exhibits into
18 evidence, submitted on September 28, 2016, DWR included SWRCB-3. SWRCB-3 is
19 the RDEIR/SDEIS and comment letters, including STKN-004. DWR has waived any
20 objection to STKN-004 by including it in its own exhibits and proposing to move those
21 exhibits into evidence.

22 **IV. CONCLUSION**

23 STKN-002, 003, and 004 are relevant to these proceedings because they address
24 Stockton's claims of injury as a legal user of water and they are the type of evidence that
25 a responsible person would rely on in the conduct of serious affairs. Furthermore, DWR
26 has waived any objection it may have to STKN-002 and 004, and the Hearing Officers in
27 their April 25, 2016 Order stated their expectation that STKN-003 (and other comment


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letters on the 2013 DEIR/DEIS) would be entered into evidence. Therefore, Stockton respectfully requests that DWR's objection be denied.

SOMACH SIMMONS & DUNN
A Professional Corporation

DATED: September 30, 2016

By 
Kelley M. Taber,
Attorneys for City of Stockton

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STATEMENT OF SERVICE

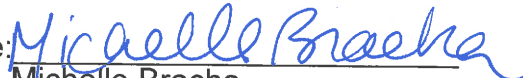
**CALIFORNIA WATERFIX PETITION HEARING
Department of Water Resources and U.S. Bureau of Reclamation (Petitioners)**

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 STOCKTON'S RESPONSES TO DEPARTMENT OF
WATER RESOURCES' SCOPE OBJECTIONS TO CITY OF
STOCKTON'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: Michelle Bracha
Title: Legal Secretary
Party/Affiliation: City of Stockton
Address: 500 Capitol Mall, Suite 1000
Sacramento, CA 95814