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

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11 HEARING IN THE MATTER OF
12 CALIFORNIA DEPARTMENT OF WATER
RESOURCES AND UNITED STATES
13 BUREAU OF RECLAMATION REQUEST
FOR A CHANGE IN POINT OF
14 DIVERSION FOR CALIFORNIA WATER
FIX

**DEPARTMENT OF WATER
RESOURCES' OBJECTIONS TO
TESTIMONY AND EXHIBITS
SUBMITTED BY CITY OF
BRENTWOOD (GROUP 10) AND
MOTION TO STRIKE**

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16 **I. INTRODUCTION**

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18 California Department of Water Resources ("DWR") submits these
19 evidentiary/procedural objections,¹ and motion to strike testimony and/or exclude
20 testimony and exhibits (case-in-chief), relating to the testimony submitted by the City of
21 Brentwood, Group 10. The introduction, background, and legal standards described in
22 the concurrently filed "California Department of Water Resources' Master Objections to
23 Protestants' Cases-In-Chief Collectively" ("Master Objections") are incorporated herein
24 by reference. Where applicable, DWR will further cite to its Master Objections in support
25 of specific objections.

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27 ¹ DWR reserves the right to make additional evidentiary/procedural objections to evidence and exhibits submitted by
28 Protestants in support of their cases-in-chief.

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2 **II. OBJECTIONS/REQUESTS TO EXCLUDE/STRIKE**

3 **A. City of Brentwood is Not a Legal User of Water, Does Not Allege Harm**
4 **to "Other Human Uses of Water" and the Testimony Should Be**
5 **Excluded and/or Stricken**

6 As Mr. Ehlers testifies, the City of Brentwood does not have a surface water right,
7 obtaining its water instead through groundwater pumping and contractual arrangements
8 with water suppliers like the Contra Costa Water District and Eastern Contra Costa
9 Irrigation District. (Ehlers Testimony, Exhibit Brentwood-001, paragraphs 5-7.) Mr. Ehler
10 further testifies that the City of Brentwood would continue to be able to purchase water in
11 the future, including water from Contra Costa Water District. (Ehlers Testimony, Exhibit
12 Brentwood-001, paragraph 13.) In fact, this available future supply could be diverted
13 through the California Water Fix's proposed point of diversion. (*Ibid.*) Mr. Ehler
14 ultimately explains that the City of Brentwood's alleged injury is that the water it may
15 purchase in the future may be more expensive than its current supply. (See e.g., Ehlers
16 Testimony, Exhibit Brentwood-001, paragraph 14.) Brentwood through its own
17 witnesses admits it is not a legal user of water and they do not claim injury to "other
18 human uses of water" for this reason the testimony of Mr. Ehlers should be stricken in its
19 entirety because the alleged financial injury is not relevant to the current Part 1
20 proceedings. Furthermore, since the City of Brentwood is not a legal user of water they
21 do not have standing to participate in Phase 1 of this proceeding. If the hearing officers
22 do not strike this testimony in its entirety, DWR makes the following arguments in the
23 alternative.

24 **B. City of Brentwood Submitted Testimony That Is Not Relevant, Lacks**
25 **Foundation, And Based on Conjecture and Speculation.**

26 The testimony of Chris Ehlers, exhibit Brentwood-001, alleges a financial injury that
27 is highly speculative, without foundation, misleading, and irrelevant. Specifically, Mr.
28 Ehlers states that as a result of California Water Fix, the City of Brentwood would deliver

1 poorer quality water to its customers, and when that water ultimately arrives at their
2 wastewater treatment plant, the City of Brentwood will be unable to treat it sufficiently to
3 meet its WDR requirements thereby resulting in a financial injury to the City of
4 Brentwood. However, Mr. Ehlers also testifies that there will continue to be high quality
5 water available for purchase by the City of Brentwood from its current suppliers, thereby
6 avoiding any new violation of its Wastewater Discharge Requirements ("WDR"). The
7 only alleged "injury" is financial.

8 The water quality degradation assumed by Mr. Ehler, which is the basis for his
9 alleged financial injury, is also highly speculative and without foundation. Mr. Ehler's
10 alleged water quality degradation is based the assumption that the State Water
11 Resources Control Board ("Water Board") would allow an increased number of violations
12 of Decision-1641 in the future. (Ehlers Testimony, Exhibit Brentwood-001, paragraph
13 12.) Mr. Ehler testifies that the City of Brentwood understands that violations of
14 Decision-1641 may occur during "dire drought" years, but Mr. Ehler's states that the City
15 of Brentwood's water resources management plan was developed based on the
16 assumption that the Water Board would continue to enforce Decision-1641 in all other
17 year-types. (*Ibid.*) Mr. Ehler's testimony is misleading because DWR and the Bureau of
18 Reclamation have repeatedly testified that they will continue to meet Decision-1641
19 standards, and the Water Board has in no way indicated that it would stop enforcing
20 Decision -1641 standards.

21 Based on the above, the following paragraphs of Mr. Ehlers testimony (Exhibit
22 Brentwood-001) should be excluded, being irrelevant, without foundation, misleading,
23 and speculative, paragraph 7 (lines 21-25), 8, 9, 11, 12, 13, and 14.

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1 **A. City of Brentwood Submitted Exhibits for Which There is No**
2 **Sponsoring Testimony and Which Lack Foundation and**
3 **Demonstrated Relevance.**

4 The City of Brentwood submitted its comment letter on the California Water Fix
5 Recirculated Environmental Impact Report and Environmental Impact Statement
6 ("REIR/S) as exhibit Brentwood-104. While exhibit Brentwood-104 is referenced in the
7 Eponent Technical Report (Exhibit Brentwood 102), the reference is only to the fact that
8 the City of Brentwood commented on the California Water Fix EIR/S, and not to the
9 contents of the comment letter. It is the policy of the Water Board to discourage the
10 introduction of surprise testimony and exhibits. (23 CCR 648.4(a).) The incorporation of
11 general testimony of unknown relevance constitutes impermissible surprise testimony
12 because it is impossible to determine exactly which parts of the incorporated testimony
13 the witness actually intends to use as direct testimony, and what additional conclusions
14 are made for purposes of this hearing. Furthermore, there is no witness testifying to the
15 authenticity of the comment letter, or any testimony linking the contents of the letter to
16 factors relevant to this proceeding, specifically injury to a legal user of water. As such,
17 exhibit Brentwood-104 lacks foundation, as well as demonstrated relevance to these
18 proceedings, and should be excluded. In fact, the City of Brentwood failed to provide
19 any witness testimony authenticating any of its exhibits as being "true and correct
20 copies," and all exhibits (Brentwood- 101, 102, 103, 104, 105, 106, 107, 108, 109, 110,
21 111, 112, 113, 114, 115, 116, 117) should be excluded on this basis. See also,
22 Collective Objections, Protestants Raised Arguments Related to Outside Regulatory
23 Processes, incorporated by reference, Section III (D).

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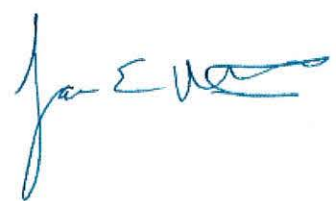
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1 **III. CONCLUSION**

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3 For the foregoing reasons, Petitioner DWR respectfully requests that the Water
4 Board exclude the identified exhibits and testimony.

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6 Dated: July 22, 2016

CALIFORNIA DEPARTMENT OF WATER
RESOURCES

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11 Tripp Mizell
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