

1 Spencer Kenner (SBN 148930)  
James E. Mizell (SBN 232698)  
2 Robin McGinnis (SBN 276400)  
**DEPARTMENT OF WATER RESOURCES**  
3 Office of the Chief Counsel  
1416 Ninth Street, Room 1104  
4 Sacramento, CA 95814  
Telephone: (916) 653-5966  
5 E-mail: james.mizell@water.ca.gov

6 Attorneys for California Department of Water  
Resources

8 BEFORE THE CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

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

**DEPARTMENT OF WATER  
RESOURCES' OBJECTIONS TO  
TESTIMONY AND EXHIBITS  
SUBMITTED BY BRANNAN-ANDRUS  
LEVEE MAINTENANCE DISTRICT,  
RECLAMATION DISTRICT 407,  
RECLAMATION DISTRICT 2067,  
RECLAMATION DISTRICT 317,  
RECLAMATION DISTRICT 551,  
RECLAMATION DISTRICT 563,  
RECLAMATION DISTRICT 150,  
RECLAMATION DISTRICT 2098 AND  
MOTION TO STRIKE**

17  
18 **INTRODUCTION**

19 California Department of Water Resources ("DWR") submits these objections,<sup>1</sup> to  
20 the Part 1B testimony and exhibits (case-in-chief) submitted by Brannan-Andrus Levee  
21 Maintenance District, Reclamation District 407, Reclamation District 2067, Reclamation  
22 District 317, Reclamation District 551, Reclamation District 563, Reclamation District  
23 150, Reclamation District 2098 (collectively "Delta Flood Control Group") in the matter of  
24 DWR and U.S. Bureau of Reclamation's (collectively "Petitioners") Request for a  
25 Change in Point of Diversion for California Water Fix. DWR also concurrently moves to  
26 strike the same written testimony and exhibits. Where applicable in these objections,

27 <sup>1</sup> 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.

1 DWR cites to its concurrently-filed Objections to Protestants' Cases-In-Chief Collectively  
2 ("Master Objections"), which also provides a common Statement of Facts and Legal  
3 Standards for DWR's separate responses to Protestants' cases-in-chief.

#### 4 OBJECTIONS/REQUESTS TO EXCLUDE

##### 5 **I. The Testimony of Gilbert Cosio, Jr. (DFCG-1) Lacks Foundation and is Not** 6 **Expert Opinion on Which a Responsible Person Would Rely**

7 On behalf of the Delta Flood Control Group, Mr. Cosio provides expert opinion  
8 testimony concerning the potential effects of the WaterFix's project design, construction  
9 and operations on reclamation districts, levees and Delta channels. (DFCG-1, p. 3.)  
10 While Mr. Cosio weaves a cautionary tale about potential impacts, primarily to levee  
11 stability, his conclusions about actual impacts of the WaterFix project lack sufficient  
12 bases or citation to supporting evidence.

13 Expert testimony is required when related to a "subject that is sufficiently beyond  
14 the common experience that the opinion of an expert would assist the trier of fact."  
15 (Evidence Code § 801; see also *Miller*, 8 Cal.3d at 702.) However, "[a]n expert opinion  
16 has no value if its basis is unsound." (*In re Lockheed Litigation Cases* (2004) 115  
17 Cal.App.4th 558, 564.) "Expert opinion based on speculation or conjecture is  
18 inadmissible." (*Id.*)

19 Mr. Cosio's testimony regarding impacts of the WaterFix project is wholly  
20 conclusory lacking sufficient bases or citation to any supporting evidence or independent  
21 analysis other than his own general personal experience. Representative examples of  
22 the many unsupported conclusions asserted by Mr. Cosio in his testimony include the  
23 following:

24 To mitigate against seepage damage, the Water Fix design includes a slurry  
25 wall through the center of the levee. This wall can also act as a "crack  
26 stopper" which may alleviate some of the ground shaking issues noted,  
27 above. However, the pile driving vibrations will travel a considerable distance  
28 and I fully anticipate that the fracturing will occur well outside the area the  
Water Fix project has proposed installing cut off/slurry walls. As mentioned  
previously, I have seen sand densification and resulting levee and building  
foundation damage occur up to three miles from the source of the  
construction vibration. (DFCG-1, p. 11, ¶ 35.)

1 The construction of the Water Fix project will create encroachments into  
2 several water channels that will obstruct and limit the existing capacity of  
3 floodways of the North Delta. Three construction sites that are located close  
4 together in a four mile stretch of the Sacramento River are the intake  
5 structures and a barge loading facility that will include cofferdams jutting out  
6 into waterway. The cumulative impacts to entire flood control system in the  
7 Delta will be significant, due to the combined effects of twelve cofferdams  
8 installed during construction of the three north Delta diversion (NDD) intakes,  
9 eight barge loading facilities, and a new operable gate. Each of these  
10 facilities could, during its construction, or while it is in place, cause levee  
11 damage individually, but their combined effects will significantly increase the  
12 probability of damage and levee failure. (DFCG-1, p. 12, ¶ 37.)

13 Based on my professional experience, obstructions of any kind in Delta  
14 channels can raise the water surface elevations, and also cause secondary  
15 impacts due to the changes in flow velocities, and flow directions, causing  
16 problems upstream, downstream and across the channel from the  
17 obstruction. Impacts caused by changes in flow velocity and direction will  
18 occur at every level of flow. None of these hydraulic impacts on flood flow  
19 capacity and levee stability has been analyzed by the Water Fix project.  
20 (DFCG-1, p. 13, ¶ 40.)

21 Water Fix proposes to drop subsurface water levels in order to accommodate  
22 construction of it facilities. Water Fix estimates this drawdown of the water  
23 table will lower the subsurface water level around the intakes and  
24 Intermediate Forebay by about 10-feet in a radius of approximately 2,600 feet  
25 from the dewatering wells. However, this is merely an estimate, because  
26 there has been no analysis of the extent and severity of impacts on  
27 groundwater levels. Based on my experience, this lowering of the  
28 groundwater table will certainly have an impact on irrigation systems and  
residential water wells. (DFCG-1, p. 18, ¶ 64.)

Other paragraphs in Mr. Cosio's testimony containing similar unsupported opinion  
testimony include, but are not limited to, paragraphs 16, 27, 28, 29, 30, 31, 34, 36, 38,  
41, 44, 45-47, 50, 51, 52, and 55. As is evident from these paragraphs, Mr. Cosio's  
conclusion are merely conjecture about possible or potential impacts given his personal  
experience rather than reasoned conclusions of likely adverse impacts based on specific  
evidence or site-specific conditions. Mr. Cosio himself performed no analyses to support  
his conclusions on matters such as levee stability, flood control or groundwater impacts.

Because Mr. Cosio's expert opinions lack foundation, it is not testimony on which a  
responsible person would rely in the conduct of serious affairs and should be excluded in  
its entirety. (Government Code § 11513(c).)

///

1 **II. Photos and Observations of Levees Cracking Due to Tree Roots Intrusion**  
2 **During Drought Are Irrelevant and Should be Excluded**

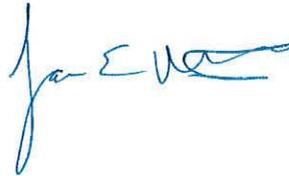
3 As part of his testimony, Mr. Cosio refers to exhibits DFCG-8 through DFCG-10,  
4 which depict photos of levees cracking due to tree root intrusion during the recent  
5 drought. (DFCG-1, p. 16, ¶ 52.) Mr. Cosio suggests that such photos show subsidence  
6 similar to the subsidence caused by overdrafting of groundwater. (Id.) Exhibit DFCG-11  
7 is a table of observation notes of similar levee cracking. None of these exhibits show or  
8 purport to show damage due to construction of the WaterFix (which has yet to be built)  
9 or provide any evidence relevant to the issue of whether the WaterFix will have an  
10 adverse effect on human uses of water, including legal users of water, or any other issue  
11 properly within this hearing. Because these photos and observation notes of tree root  
12 damage to levees add nothing to the issue of whether the proposed changes will cause  
13 injury to any human uses of water, they should be excluded as irrelevant. (Government  
14 Code § 11513(c).)

14 **CONCLUSION**

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

17  
18 Dated: September 21, 2016

CALIFORNIA DEPARTMENT OF WATER  
RESOURCES

19  
20 

21  
22  
23 \_\_\_\_\_  
24 Tripp Mizell  
25 Office of the Chief Counsel  
26  
27  
28