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

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

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

16 California Department of Water Resources ("DWR") submits the following
17 objections and motions to strike regarding aspects of the written testimony of the City of
18 Stockton ("Stockton"). In addition to submitting general and specific objections, DWR
19 incorporates by reference the Master Objections to Protestant's Cases in Chief ("Master
20 Objections") filed on September 21, 2016, which also provides a common Statement of
21 Facts and Evidentiary Standards for DWR's separate objections to individual cases in
22 chief.

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24 DWR objects and moves to strike the following portions of Stockton's Opening
25 Statement as being speculative and conclusory, mischaracterizing Petitioners' evidence,
26 and providing legal opinions and conclusions of law. Specifically these include, but are
27 not limited to: P2, L15-16 "the proposed action would, or threatens to, degrade water
28 quality by various means" is vague, speculative, conclusory, and unsupported by

1 competent evidence; P2, L18-19, "Petitioners have declined to analyze, disclose, or
2 acknowledge these impacts" is false, misleading, and mischaracterizes the evidence;
3 P2, L20-23, "Water quality at Stockton's drinking water intake will be affected by
4 changes in...flows resulting from the added points or diversion, associated operational
5 changes or both, and the adverse changes in water quality threaten to result in
6 substantial injury and burdens to Stockton and its residents" is speculative, conclusory,
7 mischaracterizes Petitioner's evidence, and cumulative.

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9 Multiple references to an absence of evidence or analysis that would address
10 Stockton's concerns is false and misleading, and mischaracterizes Petitioners' evidence
11 in that the relevant evidence is and has been available for review by Stockton, it includes
12 relevant and responsive data to address Stockton's concerns, and it appropriately
13 provides information specific to Stockton within the analysis for a broader geographic
14 parameter which encompasses Stockton's areas of alleged impact. Further, the
15 unsigned and unverified opening statement improperly concludes that Petitioners have
16 "completely failed to meet their burden of proof that the Petition will not result in injury to
17 Stockton" (P3, L24-25), and provides no information from which to determine who is
18 making said conclusions.

19 Protestants' exhibits also include comment letters submitted to the Lead Agencies
20 of the EIR/EIS that are irrelevant to these proceedings and untimely since the final
21 EIR/EIS will include written responses as to the resolution of public comments, including
22 those submitted. Additionally comment letters to the draft environmental documents
23 cover a wide range of issues that may result in surprise testimony not permitted in these
24 proceedings. Exhibits attaching EIR/EIS comment letters amount to a waste of time and
25 are misleading without the benefit of corresponding responses. (See STKTN-001, 002,
26 003, 004).

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1 Robert L. Grandberg, P.E. is not qualified to offer expert opinion testimony on the
2 impacts of the Water Fix on water quality and water levels and related impacts on Delta
3 water users, areas sufficiently outside the common experience of a lay witness.
4 (Evidence Code §801). Under Evidence Code §800(a), lay witness testimony must be
5 rationally based on the perception of the witness, i.e., personal observation of the
6 witness. Generally, lay witnesses may only express opinions on matters within common
7 knowledge or experience. (See Evidence Code §§ 800(a), 801(a); see also *Miller v. Los*
8 *Angeles County Flood Control Dist.* (1973) 8 Cal.3d. 689,702.) Expert testimony is
9 required when related to a “subject that is sufficiently beyond the common experience
10 that the opinion of an expert would assist the trier of fact.” (Evidence Code §801; see
11 also *Miller*, 8 Cal.3d at 702.)

12 In Stockton’s Notice of Intent to Appear signed January 5, 2016, Mr. Grandberg is
13 listed as an expert whose testimony would include, but not be limited to, areas of water
14 supply and water quality, as well as effects of injury from the proposed action. As shown
15 by his testimony and Professional History (STKN-011), Mr. Grandberg, though a Civil
16 Engineer with “water enterprise” management and project construction experience, has
17 no particular training or expertise with hydrology or hydrologic modeling. Without the
18 benefit of specialized expertise, however, Mr. Grandberg provides expert opinion on the
19 impacts of the proposed Petition on water quality and water supply, in addition to
20 characterizing the sufficiency of the modeling done in support of Petitioners’ case-in-
21 chief.

22
23 Mr. Grandberg opines that, “the City submitted comments identifying its concerns
24 about water quality...none of which I find to have been addressed or answered in
25 Petitioner’s case-in-chief” STKN-010, p.10:5-7; “water quality at the DWSPWTP intake
26 will be affected by changes in San Joaquin River flows and Sacramento River flows
27 resulting from the added points of diversion, associated operational changes, or
28 both” STKN-010, p. 10:10-15; and further discusses the effects of saltwater

1 intrusion, impacts to groundwater, and impacts of specific water quality constituents,
2 including (for example) bromide. Because Mr. Grandberg lacks sufficient expertise to
3 assess impacts of the proposed change in point of diversion on water supply, water
4 quality, the sufficiency of modeling performed, and the broad range of additional areas of
5 alleged impact included in his testimony, his testimony is conclusory and not useful to
6 aid the trier of fact in this proceeding. Even under the relaxed standards for admissibility
7 of evidence in administrative proceedings, his testimony should be excluded or the
8 weight limited to that given a lay witness.

9 DWR provides further objections to Protestant's specific testimony, presentations,
10 and exhibits in Attachment A.

11 Stockton has not met its burden to show injury. The October 30, 2015 Hearing
12 Notice provided that if the protest is based on injury to a legal user of water, the protest
13 must describe specifically what injury would result if the proposed changes requested in
14 the Petition were approved, and the party claiming injury must provide specific
15 information describing the basis of the claim of right, the date the use began, the
16 quantity of water used, the purpose of use and the place of use. (October 30, 2015
17 Hearing Notice, at p. 13.)
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20 Overall, Stockton's testimony and exhibits do not provide evidence that is
21 competent to support the conclusion reached by Protestants' witnesses that California
22 Water Fix (Project) will injure other legal users of water, as represented by Stockton. The
23 testimony in large part is conclusory statements without supporting evidence and most
24 often time historical, background, and policy-statements and not proffered evidence to
25 support a claim of injury.

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For the reasons stated above, those raised in DWR's Master Objections and summarized in Attachment A, Stockton's case-in-chief includes pages of irrelevant testimony and supporting documents that should be excluded from this hearing.

Dated: September 21, 2016

CALIFORNIA DEPARTMENT OF WATER RESOURCES



Tripp Mizell
Office of the Chief Counsel

California WaterFix hearing
California Department of Water Resources and U.S. Bureau of Reclamation

The Public Hearing will commence on
Thursday, October 20, 2016

PARTICIPANT: City of Stockton

Exhibit Identification Number	Exhibit Description	Objections
STKN-002	Comments on the Notice of Preparation for BDCP EIR, May 30, 2008	Impermissible surprise, misleading, incomplete, conclusory, irrelevant, improper proffer of legal opinion, improper proffer of expert opinion.
STKN-003	City of Stockton Comments on BDCP Draft EIR/EIS, July 2014	Impermissible surprise, misleading, incomplete, conclusory, irrelevant, improper proffer of legal opinion, improper proffer of expert opinion.
STKN-004	City of Stockton Comments on CalWaterFix RDEIR/DSEIS, October 29, 2015	Impermissible surprise, misleading, incomplete, relevance, conclusory, irrelevant, improper proffer of legal opinion, improper proffer of expert opinion.
STKN-010	Written Testimony of Robert Granberg	Improper proffer of legal opinion, improper proffer of expert opinion, cumulative.
STKN-022	Copy of Delta Diversion-DWSP Output Table	Lack of foundation, relevance.