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DISTRICT

8
9 BEFORE THE
10 CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

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

**GLENN-COLUSA IRRIGATION
DISTRICT'S RESPONSES TO SAN
LUIS DELTA-MENDOTA WATER
AUTHORITY'S OBJECTIONS TO
GLENN-COLUSA IRRIGATION
DISTRICT'S PART 1B CASE IN CHIEF**

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16 **I. INTRODUCTION**

17 Glenn-Colusa Irrigation District (GCID) filed its case in chief on August 31, 2016.
18 GCID's case in chief included the testimony of GCID's General Manager, Thaddeus
19 Bettner. San Luis Delta-Mendota Water Authority (SLDMWA) objected to Mr. Bettner's
20 testimony on the grounds that it is an inadmissible lay opinion, incorporates hearsay,
21 and lacks foundation. (San Luis & Delta-Mendota Water Authority's Objections to
22 Part 1B Parties' Cases in Chief (Sept. 21, 2016) (SLDMWA's Objections), p. 41.)
23 SLDMWA's Objections should be overruled because Mr. Bettner's testimony is relevant
24 and admissible under the administrative rules for State Water Resources Control Board
25 (State Water Board) hearings.

26 **II. LEGAL STANDARD**

27 State Water Board hearings are governed by chapter 4.5 of the Administrative
28 Procedure Act (Gov. Code, § 11400 et seq.); regulations adopted by the State Water

1 Board (Cal. Code Regs., tit. 23, §§ 648-648.8); sections 801 to 805 of the Evidence
2 Code; and section 11513 of the Government Code. (Cal. Code Regs., tit. 23, § 648(b).)
3 The State Water Board is not required to conduct adjudicative hearings according to the
4 technical rules of evidence applicable to a court. (Gov. Code, § 11513(c).) Instead,
5 “[a]ny relevant evidence shall be admitted if it is the sort of evidence on which
6 responsible persons are accustomed to rely in the conduct of serious affairs, regardless
7 of the existence of any common law or statutory rule which might make improper the
8 admission of evidence over objection in civil actions.” (*Ibid.*) The State Water Board
9 follows these relaxed standards because the Hearing Officers’ expertise in the subject
10 matter justifies the State Water Board’s ability to make both legal and factual
11 determinations.

12 The State Water Board’s Notice of Hearing includes further direction on the types
13 of evidence that must be included by protestants. Protests based on an injury to a legal
14 user of water “must describe specifically what injury would result if the proposed
15 changes requested in the Petition were approved.” (State Water Resources Control
16 Board’s Notice of Petition and Notice of Public Hearing and Pre-Hearing Conference to
17 Consider the Above Petition (Oct. 30, 2015), p. 13.) Additionally, “the party claiming
18 injury must provide specific information describing the basis of the claim of right, the date
19 the use began, the quantity of water used, the purpose of use and the place of use.”
20 (*Ibid.*) GCID is a legal user of water that claims potential injury due to the WaterFix
21 Project, and Mr. Bettner’s testimony is relevant foundational evidence for its protest in
22 Part 1B of the hearing.

23 III. ARGUMENT

24 A. Mr. Bettner’s Testimony is Admissible Lay Witness Testimony

25 SLDMWA objects to Mr. Bettner’s testimony as being inadmissible lay opinion that
26 lacks foundation. SLDMWA argues that Mr. Bettner needs “expertise regarding
27 modeling of project operations” in order to have the proper foundation for a relevant
28 opinion about injury to GCID. This is incorrect. A non-expert witness may offer an

1 opinion that is “[r]ationally based on the perception of the witness” and “[h]elpful to a
2 clear understanding of his testimony.” (Evid. Code, § 800.) Mr. Bettner set forth a
3 sufficient foundation by explaining his experience as GCID’s General Manager for over a
4 decade, and his detailed knowledge of GCID’s water rights and operations. Based upon
5 his review of MBK Engineers’ expert work, he developed the understanding that the
6 proposed WaterFix Project would increase the risk of injury to GCID. Therefore,
7 Mr. Bettner’s opinion about the potential injury to GCID is “[r]ationally based on [his]
8 perception” of the conditions that affect GCID’s operations, and “[h]elpful to a clear
9 understanding of [his] testimony” regarding the detrimental effects of the WaterFix
10 Project on GCID’s water supply. (Evid. Code, § 800.) Therefore, Mr. Bettner’s testimony
11 is relevant and admissible lay witness testimony.

12 **B. Mr. Bettner’s Testimony Regarding the MBK Reports is Admissible**

13 SLDMWA objects to Mr. Bettner’s testimony that “[b]ased upon the expert work of
14 and testimony by MBK Engineers . . . it is my understanding that with the WaterFix
15 Project constructed and operating, there is an increased risk of injury to GCID and other
16 legal users of water. In particular, the Bureau would have more opportunities to divert
17 water at the proposed new North Delta intakes, including water that was previously
18 stored in Shasta Reservoir. As such, if the Bureau is able to remove more stored water
19 with the WaterFix Project in place, and carryover storage water levels in Shasta
20 Reservoir are lower than they otherwise would be without the project, the Bureau could
21 be required to operate Shasta Reservoir in a manner that requires lower releases in
22 order for the Bureau to meet regulatory requirements (including maintenance of Shasta
23 Reservoir’s coldwater pool). This could adversely impact the Bureau’s performance of
24 its Sacramento River Settlement Contract obligations to GCID. In addition,
25 MBK Engineers’ analysis indicates that there would likely be a more frequent occurrence
26 of Term 91 water right curtailments than would otherwise occur in the absence of the
27 WaterFix Project.” (SLDMWA’s Objections, pp. 41-42.) SLDMWA objects to this
28 statement as “hearsay because it relies on a statement by someone other than the


1 witness to establish the truth regarding modeling runs analyzing impacts of the project.”
2 (*Ibid.* at p. 42.)

3 Mr. Bettner, however, is simply referring to and summarizing the relevant
4 testimony of an expert that has submitted evidence on GCID's behalf in this proceeding.
5 Relevant hearsay is admissible in adjudicative proceedings before the State Water
6 Board. The State Water Board has previously stated it will “decline to exclude or strike
7 any evidence on the grounds that it is hearsay,” but will consider relevant hearsay
8 evidence “subject to the limitations imposed by Government Code section 11513,
9 subdivision (d).” (Ruling on Motions filed in the Matters of the Administrative Civil
10 Liability Complaint against Byron-Bethany Irrigation District and Draft Cease and Desist
11 Order Against West Side Irrigation District (March 18, 2016), p. 4.) MBK Engineers’
12 expert work is relevant because it concerns the potential impacts of the WaterFix Project
13 operations on legal users of water. (See Exhs. SVWU-107, SVWU-108, SVWU-109.)
14 Further, MBK Engineers' expert work is reliable because it was prepared by Walter
15 Bourez, an expert in hydrologic modeling. (See Exh. SVWU-101.) Thus, this is relevant
16 evidence upon which Mr. Bettner can reasonably rely to form his opinion, and explain
17 the potential impacts of the WaterFix Project operations on GCID's water rights and
18 supplies. (See Evid. Code, § 11513(d).)

19 **IV. CONCLUSION**

20 Mr. Bettner's testimony is relevant and admissible because it is based on his
21 experience at GCID and his knowledge of its water rights. Mr. Bettner appropriately
22 relied on MBK Engineers' expert reports in forming his opinion regarding potential injury
23 to GCID. Therefore, SLDMWA's Objections should be overruled.

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26 Date: October 24, 2016

SOMACH SIMMONS & DUNN, P.C.
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By: 
Andrew M. Hitchings
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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):

GLENN-COLUSA IRRIGATION DISTRICT'S RESPONSES TO SAN LUIS DELTA-MENDOTA WATER AUTHORITY'S OBJECTIONS TO GLENN-COLUSA IRRIGATION 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 October 6, 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:


Note: In the event that any emails to any parties on the Current Service List are undeliverable, you must attempt to effectuate service using another method of service, if necessary, and submit another statement of service that describes any changes to the date and method of service for those parties.

FOR PETITIONERS ONLY:

I caused a true and correct **hard copy** of the document(s) to be served by the following method of service to Suzanne Womack & Sheldon Moore, Clifton Court, L.P., 3619 Land Park Drive, Sacramento, CA 95818:

Method of Service: _____

I certify that the foregoing is true and correct and that this document was executed on October 24, 2016.

Signature: 
Name: Crystal Rivera
Title: Legal Secretary
Party/Affiliation: Glenn-Colusa Irrigation District
Address: 500 Capitol Mall, Suite 1000
Sacramento, CA 95814