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7  
8 **BEFORE THE CALIFORNIA STATE WATER RESOURCES CONTROL BOARD**

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

**DEPARTMENT OF WATER**  
**RESOURCES' CONSOLIDATED**  
**OPPOSITION TO:**

**(1) SAVE THE CALIFORNIA DELTA**  
**ALLIANCES ET AL.'S MOTION TO**  
**CONTINUE HEARINGS FOR 90**  
**DAYS TO ALLOW REFORMATION**  
**OF WATERFIX HEARINGS TO**  
**CONFORM TO THE RULE OF LAW;**  
**AND**

**(2) COUNTY OF SACRAMENTO ET**  
**AL.'S MOTION TO STAY OR**  
**CONTINUE WATERFIX PART 2**  
**HEARING AND JOINDERS THERETO**

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18 California Department of Water Resources ("DWR") submits its Consolidated  
19 Opposition to the Motion of Save the California Delta Alliances ("SCDA") et al. to Continue  
20 Hearings for 90 Days to Allow Reformation of WaterFix Hearings to Conform to the Rule of  
21 Law and the Motion of County of Sacramento et al.<sup>1</sup> to Stay or Continue WaterFix Part 2  
22 Hearing and joinders thereto.<sup>2</sup> Protestants allege unlawful ex parte communications, and,

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24 <sup>1</sup> Other Protestants are Sacramento County Water Agency, Sacramento Regional County Sanitation District, City of Stockton, County of San Joaquin, Local Agencies of the North Delta and City of Antioch.

25 <sup>2</sup> Joinders to the County of Sacramento et al.'s motion of County of Sacramento were filed by the following  
26 Protestants: Contra Costa County, Contra Costa Water Agency, Solano County, County of Yolo, California  
27 Sportfishing Protection Alliance; California Water Impact Network; AquAlliance; Carter Mutual Water  
Company; El Dorado Irrigation District; El Dorado Water & Power Authority; Howald Farms, Inc.; Maxwell  
Irrigation District; Natomas Central Mutual Water Company; Meridian Farms Water Company; Oji Brothers

1 on those grounds, seek a stay and/or continuance of the Part 2 hearings.

2 None of the alleged ex parte communications cited by Protestants constitute a  
3 substantive issue or controversial matter of practice and procedure within the scope of the  
4 proceeding, in violation of Government Code Sections 11430.10 et seq. Instead, the  
5 alleged communications by Petitioners fall into one or more of the following categories: (1)  
6 communications between DWR staff and State Water Resources Control Board (“Water  
7 Board”) staff prior to the issuance of the October 30, 2015 Notice of Public Hearing and  
8 Prehearing Conference<sup>3</sup>; (2) communications with Water Board staff on non-substantive or  
9 non-controversial procedural issues within the scope of the proceeding; and (3)  
10 communications with Water Board staff on issues related to the California WaterFix  
11 Environmental Impact Report through its role as a CEQA Responsible Agency. On  
12 October 18, 2017 the State Water Resources Control Board issued a letter to Mr. Porgans  
13 setting forth the appropriate ex parte standard. As made plain in that letter, “the APA does  
14 not prohibit ex parte communications concerning non-controversial, procedural issues” and  
15 moreover “several of the emails concern the modeling and analysis of a WaterFix Project  
16 operational scenario contained in Appendix 5E of the Final Environmental Impact Report  
17 (EIR) for the project. ... State Water Board staff communicated with DWR staff only to the  
18 extent necessary to provide direction concerning the modeling and analysis of the scenario  
19 described in Appendix 5E of the Final EIR. To the extent that any substantive issues were

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21 Farm, Inc.; Oji Family Partnership; Pelger Mutual Water Company; Pleasant-Grove Verona Mutual Water Co.;  
22 Princeton-Codora-Glenn Irrigation District; Provident Irrigation District; Reclamation District 108; Sacramento  
23 Municipal Utility District; Henry D. Richter, et al.; River Garden Farms Company; South Sutter Water District;  
24 Sutter Extension Water District; Sutter Mutual Water Company; Tisdale Irrigation and Drainage Company;  
25 Windswept Land and Livestock Company; North Delta Water Agency; Reclamation District 999; Reclamation  
26 District 2060; Reclamation District 2068; Brannan-Andrus Levee Maintenance District; Reclamation District  
27 407; Reclamation District 2067; Reclamation District 317; Reclamation District 551; Reclamation District 563;  
28 Reclamation District 150; Reclamation District 2098; Reclamation District 800 (Byron Tract); Tehama-Colusa  
Canal Authority; Friends of the River and Sierra Club California; and Pacific Coast Federation of Fishermen’s  
Associations and Institute for Fisheries Resources.

<sup>3</sup> See October 30, 2015 Notice of Petition Requesting Changes in Water Rights of the Department of  
Water Resources and U.S. Bureau of Reclamation for the California WaterFix Project and Notice of  
Public Hearing and Pre-hearing conference to Consider the Above Petition, p. 16.

1 discussed, they were not conveyed to the State Water Board Members, and therefore no  
2 prohibited, indirect ex parte communications occurred.” Furthermore, Protestants allege ex  
3 parte violations on a matter outside the scope of the current proceeding as discussed in the  
4 letter from Water Board Attorney Nicole Kuenzi to SDCA attorney Michael Brodsky dated  
5 January 8, 2018.

6 For these reasons, DWR respectfully requests that the Hearing Officers deny the  
7 pending motions to stay or continue the Part 2 hearings that were scheduled to commence  
8 on Thursday, January 18, 2018.

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10 Dated: January 19, 2018

CALIFORNIA DEPARTMENT OF WATER  
RESOURCES  
  
\_\_\_\_\_  
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