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

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

**CALIFORNIA DEPARTMENT OF
WATER RESOURCES' OBJECTION TO
15 SJREC'S SUPPLEMENTAL NOTICE OF
16 INTENT TO APPEAR**

15 Pursuant to Code of Civil Procedure sections 2017.020, 2019.030, and 2025.420,
16 Government Code section 11450.30, subdivision (b), and California Code of
17 Regulations, title 23, section 648.5, subdivision (a), California Department of Water
18 Resources ("DWR") requests that the Hearing Officers reject the October 4, 2017
19 Supplemental Notice of Intent to Appear ("Supplemental Notice") filed by San Joaquin
20 River Exchange Contractors Water Authority ("SJREC"). SJREC attempts to argue
21 issues previously ruled beyond the scope of this hearing and has not attempted to
22 present this material in a less burdensome manner.

23 **I. STATEMENT OF FACTS**

24 The Supplemental Notice is the third attempt by SJREC to compel DWR Witnesses
25 to testify on matters beyond the scope of this hearing. The Hearing Officers have
26 determined that the existing ability to convey water through the Delta and the existing
27 levee funding is not within the scope of this hearing. Instead, SJREC was asked to
28 focus on the potential effects of the California WaterFix Project. Undeterred, SJREC has

1 persisted three times to present evidence on the existing conditions of the levees and
2 funding.

3 The first attempt by SJREC was on August 31, 2016 when it added DWR staff to
4 testify on the topics of levees and funding as a part of its Part 1B case-in-chief. In
5 response to a DWR motion, the Hearing Officers issued a ruling on December 8, 2016
6 explaining that the need for funding for levee maintenance and repair in order to
7 maintain *the existing ability* to convey water through the Delta was not relevant, being an
8 issue that will exist regardless of whether the Water Fix change petition is approved.
9 (December 8, 2016 Ruling, at p. 3.) Importantly, the Hearing Officers explained that
10 SJREC did not seek to explore any connection between the Water Fix change petition
11 and the need for funding for levee maintenance and repair. (*Ibid.*)

12 SJREC has previously listed its own witness to testify on the questions proposed in
13 the Supplemental Notice. It withdrew its witness due to scheduling conflicts and
14 attempted to substitute a DWR witness in place of its own. In a previous ruling, the
15 Hearing Officers determined that testimony concerning the *potential effects of the*
16 *California WaterFix Project* on funding for levee maintenance may be presented
17 (October 7, 2016 Ruling, at p. 3.) but requiring DWR to provide a witness for SJREC
18 would be unreasonable and inefficient. (December 8, 2016 Ruling, at p. 3.)

19 The second attempt by SJREC was on March 3, 2017 when it filed a Notice of
20 Deposition. In response, DWR provided links to the public documents and excerpts
21 therefrom that address the issues raised in the deposition notice on March 8 and 9,
22 2017, and filed a motion for protective order on March 10, 2017. The Hearing Officers
23 granted DWR's motion on March 16, 2017 indicating that the depositions are *not likely to*
24 *result in testimony that is relevant to the key hearing issues* because SJREC had not
25 shown how the need for funding *of existing* levee maintenance and repair is relevant to
26 the potential impacts of the California WaterFix Project. (March 16, 2017 Ruling, at p. 3.)
27 Furthermore, SJREC's theory that the California WaterFix Project will reduce present or
28 prospective funding for levee maintenance and repair is highly speculative and

1 uncertain. (*Ibid.*) Again, the Hearing Officers provided SJREC guidance and indicated
2 that it may be appropriate for SJREC to present evidence concerning *the potential*
3 *effects of the California WaterFix Project.* (*Id.* at p. 4.)

4 Now, in the third attempt by SJREC to force DWR Witnesses to testify at the
5 hearing on matters beyond the scope of this hearing, its Supplemental Notice indicates it
6 will again, and on a seemingly identical basis to its previous attempts, present
7 information about the current state of levee funding and in justification only provides a
8 naked assertion that the issue is connected to California WaterFix. The Supplemental
9 Notice states SJREC seeks up to three “DWR employees and consultants regarding
10 feasibility of dual path delivery July-Sept of each year at or above 3,000 CFS without
11 established financing for Delta levee preventive maintenance, repair and without funding
12 an immediate action plan when levee failures occur” and the “[e]ffect of the absence of
13 such measures implemented by DWR and Reclamation on the environment and public
14 trust and public interests.” (Supplemental Notice, at p. 1.) SJREC’s own Attachment to
15 the Supplemental Notice indicates that the Supplemental Notice simply continues the
16 same arguments in its request to: (1) take the depositions of DWR employees and
17 consultants; (2) subpoena and present testimony of DWR employees and consultants as
18 written testimony; and (3) provide for cross-examination of DWR employees and
19 consultants as hostile witnesses. (Attachment to Supplemental Notice, at p. 1.)

20 **II. ARGUMENT**

21 Once again, SJREC fails to follow the advice of the Hearing Officers and connect
22 its proposed topics to the actual California WaterFix Project. Presentation of the
23 proposed topics, therefore, does not require participation from any DWR witnesses. The
24 right to discovery is limited. The Hearing Officer may issue an order to protect a party or
25 deponent from undue burden and expense. (Code Civ. Proc., § 2025.420, subd. (b).)
26 Also, the Hearing Officers have discretion to conduct the hearing in a manner most
27 suitable for securing relevant information expeditiously without unnecessary delay and
28 expense. (Cal. Code Regs., tit. 23, § 648, subd. (a).)

1 **A. It is unnecessary for a DWR witness to testify about an alternate project**
2 **selected and described by SJREC.**

3 Although the March 16, 2017 ruling indicated that it may be appropriate for
4 SJREC to present evidence concerning the potential effects of the *California WaterFix*
5 *Project* on funding for levee maintenance and repair in Part 2, SJREC’s Supplemental
6 Notice indicates that it plans to ask DWR witnesses about a different project all together.
7 Under the guise of the quote “dual path delivery July-Sept of each year at or above
8 3,000 CFS,” SJREC attempts to confuse the issue by claiming that reducing reliance
9 upon the south Delta pumps is, instead, proposing to introduce new reliance upon the
10 flood protection system. This is not the CWF Project. In fact, on March 8 and 9 the
11 Petitioners provided SJREC substantial information to clarify DWR’s programs and what
12 levee impacts are analyzed as part of the CWF project. (See Exhibit D to DWR’s March
13 10, 2017 Motion for Protective Order.) To the extent that SJREC seeks information on
14 the connection between the California WaterFix Project and levees in the Delta, it has in
15 its possession the less burdensome and more reasonable evidence in the written
16 documents provided by DWR.

17 **B. SJREC had its opportunity to question DWR witnesses about levee**
18 **maintenance during Part 1.**

19 SJREC failed to question DWR’s witnesses on the topics of levee impacts due to
20 construction.¹ Because SJREC’s Supplemental Notice is repetitive of its prior attempts
21 to compel DWR to produce a witness, DWR hereby reiterates and incorporates by
22 reference its prior arguments as to the opportunity to cross-examine the appropriate
23 witnesses during the course of Part 1.

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26 ¹ On August 5 and 9, CWF Engineering panel testified on direct and was cross examined for two
27 full days, including questions about levee safety. Transcripts of the hearing are available here:
28 http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/transcripts.shtml.

1 **C. As Noticed by this Board, State Levee Funding is not a Topic in Part 2.**

2 SJREC is raising these same general levee funding issues into Part 2 simply by
3 inserting the text “[e]ffect... on the environment and public trust and public interests” into
4 its Supplemental Notice. SJREC states in its Supplemental Notice that it seeks to
5 present a theory that the California WaterFix Project “makes it impossible or impractical
6 to prevent through maintenance and repair and funding the rapid repair of the levee
7 system upon breaches occurring.” The project is unconnected to funding sources for
8 maintenance and repair of levees, as shown in the responsive documents provided in
9 Part 1, and a continued assertion to the contrary is not supported by facts. Thus, this is
10 nothing more than another attempt to discuss general state funding of the flood
11 protection system, an issue that the Hearing Officers have recognized is not relevant to
12 exploring the impacts of the California WaterFix Project.

13 **III. CONCLUSION**

14 SJREC may have concerns regarding the current state of the Delta levees and the
15 extent to which it claims existing levee maintenance is funded. It is not, however, within
16 the scope of the California WaterFix or this hearing to address these already existing
17 concerns where the Petition does not seek to alter the existing maintenance and funding
18 sources of Delta levees and does not propose to increase the reliance upon those
19 levees. SJREC’s insistence on attempting to redefine the petitioned project contrary to
20 the facts is no reason to now require DWR to provide witnesses on topics that the Board
21 has already ruled are outside the scope of the hearing. DWR requests that the Hearing
22 Officers reject SJREC’s Supplemental Notice.

23 Dated: October 12, 2017

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