

1 Spencer Kenner (SBN 148930)
James E. Mizell (SBN 232698)
2 Robin McGinnis (SBN 276400)
**CALIFORNIA DEPARTMENT OF WATER
3 RESOURCES**

4 Office of the Chief Counsel
1416 Ninth Street, Room 1104
Sacramento, CA 95814
5 Telephone: (916) 653-5966
E-mail: james.mizell@water.ca.gov

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7 Attorneys for California Department of Water
Resources

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

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

CALIFORNIA DEPARTMENT OF
WATER RESOURCES' OBJECTIONS
TO SOUTH DELTA WATER AGENCY
WRITTEN TESTIMONY AND
EXHIBITS SUBMITTED BY
PROTESTANTS IN SUPPORT OF
PART 1B CASE IN CHIEF AND
RELATED JOINDERS

15 The California Department of Water Resources (DWR) submits the following
16 objections and moves to exclude testimony of the South Delta Water Agency (SDWA),
17 specifically parts of the written testimony and PowerPoint presentation of Professor
18 Jeffrey Michael (SDWA Exhibits 134 and 135) and all related SDWA Exhibits 136-149 to
19 his testimony. DWR also objects and moves to exclude all of the written testimony of
20 Dante John Nomellini, Sr. and his PowerPoint presentation (SDWA Exhibits 151 and
21 152), and all related exhibits (SDWA Exhibits 221 to 242) to his testimony. The reasons
22 for these objections are set forth below and in DWR's Master Objections to Protestants
23 Case-in-Chief Collectively (Master Objections), filed simultaneously with these
24 objections. These objections incorporate the arguments and reasoning in the Master
25 Objections.
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1 DWR objects and moves to exclude the parts of Professor Michael's written
2 testimony that are not relevant and outside the scope of the hearing. DWR objects and
3 moves to exclude the parts of Professor Michael's testimony that address the economic
4 feasibility of WaterFix, namely all of his written testimony (SDWA 134) from Page 11,
5 lines 25-28 to Page 20, lines 23, and his PowerPoint presentation (SDWA 135) from
6 slide 19 to slide 20. DWR also objects to SDWA Exhibits 136-149 related to his
7 testimony, and requests that these exhibits be precluded from admission into the
8 administrative record.
9

10 The basis for DWR's objection to this testimony, PowerPoint presentation, and
11 exhibits is that the economic feasibility of the project is not at issue in this hearing. The
12 Master Objections describe in detail the scope of the hearing and explain how
13 economically feasibility of the WaterFix project is outside the scope. In summary, the
14 scope of the hearing is defined by Water Code sections 1700 to 1706 concerning
15 change petitions and by the SWRCB October 30, 2015 Hearing Notice. Neither this part
16 of the Water Code nor the Hearing Notice in any way state that the financial feasibility of
17 the WaterFix project is an issue to be determined in this hearing.
18

19 This is consistent with the organic statutes creating the State Water Project. Under
20 these statutes, DWR has been given the responsibility to determine the economic
21 feasibility and finances of the WaterFix project. The Central Valley Project Act (Water
22 Code §§11000 et seq.) governs decisions about the State Water Project's finances,
23 construction, operation, and maintenance. It provides in part:
24

25 The [DWR] shall have full charge and control of the construction,
26 operation, and maintenance of the project and the collection of all rates,
charges, and revenues from it.

27 (Water Code §11451.) Furthermore, the Central Valley Project Act provides that
28 DWR "shall proceed with the construction of the project immediately upon funds

1 being available therefor and shall carry such work to completion as rapidly as
2 possible. (Wat. Code §11452.) The Burns-Porter Act (Wat. Code §§11451 et
3 seq.), the other important set of statutes governing the financing and construction
4 of State Water Project facilities, similarly entrusts financial feasibility decisions for
5 the State Water Project with DWR. (See Wat. Code §§ 12931, 12934.)

6 The SWRCB should exclude the written testimony and exhibits offered by
7 Professor Michael about the financial issues associated with the WaterFix, because such
8 testimony and exhibits are not relevant to SWRCB's decision-making responsibilities in
9 this hearing. Furthermore, if such testimony and exhibits were admitted and considered
10 by the SWRCB, this would improperly intrude upon DWR's statutory responsibilities for
11 making financial determinations about the project.
12

13 The Master Objections set forth the reasons that legal opinions and argument
14 should be excluded from Part 1B cases-in-chief. DWR objects and moves to exclude the
15 testimony of Dante John Nomellini, Sr. (SDWA Exhibit 151), his PowerPoint presentation
16 summarizing his testimony (SDWA Exhibit 152), and all related exhibits (SDWA Exhibits
17 221 to 242). The testimony consists of legal opinions, arguments, and conclusions
18 based on the witness's interpretation of statutes, cases, and public records. It does not
19 provide factual evidence about issues identified in the Hearing Notice.
20

21 The argumentative testimony offered by this witness may be summarized as
22 follows:

- 23 • The timing of the decision to proceed with the WaterFix is inconsistent with
24 CEQA/NEPA (SDWA Exhibit 151, pp. 2-20)
- 25 • DWR and the Bureau have not mitigated existing project impacts (SDWA
26 Exhibits 151, pp. 21-30)
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- DWR and the Bureau have not developed surplus water, and have not followed the water rights priority system and the public trust doctrine (SDWA Exhibits 151, pp. 31-37)
- The proposed changes injure legal users of water (SDWA Exhibits 151, p. 38)
- The impacts of the project cannot be evaluated due to the lack of precision in project description (SDWA Exhibit 151, pp. 39-40)

DWR disagrees with each and every one of these legal opinions and arguments, and has presented substantial evidence and testimony in its case in chief in support of its positions. The proper stage of this proceeding to make legal arguments is at the end of the hearing through closing legal briefs and statements. DWR anticipates at the end of the evidentiary part of this proceeding, it will make legal arguments to address the legal issues that are part of this hearing, including any legal issues raised by SDWA. If SDWA wishes to make legal arguments as part of this hearing, they belong in its closing briefs, but not offered as testimony or evidence in its case in chief.

Under the rules for this hearing, the testimony of Professor Michael and Dante John Nomellini, Sr. do not meet the relevancy standard for the reasons described herein and the Master Objections, and should be excluded. (Govt. Code, § 11513 subd. (c).)

Dated: September 21, 2016

CALIFORNIA DEPARTMENT OF WATER
RESOURCES



Tripp Mizell
Office of the Chief Counsel