

1 Spencer Kenner (SBN 148930)
James E. Mizell (SBN 232698)
2 Robin McGinnis (SBN 276400)
3 **CALIFORNIA DEPARTMENT OF WATER
RESOURCES**
4 Office of the Chief Counsel
1416 Ninth Street, Room 1104
5 Sacramento, CA 95814
Telephone: (916) 653-5966
6 E-mail: james.mizell@water.ca.gov

7 Attorneys for California Department of Water
8 Resources

9 BEFORE THE CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

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

**CALIFORNIA DEPARTMENT OF
WATER RESOURCES' RESPONSE
TO OBJECTIONS OF THE COUNTY
OF SAN JOAQUIN, SAN JOAQUIN
COUNTY FLOOD CONTROL AND
WATER CONSERVATION DISTRICT,
AND MOKELUMNE RIVER WATER
AND POWER AUTHORITY TO
WRITTEN TESTIMONY AND
EXHIBITS SUBMITTED BY
PETITIONERS; JOINDER IN
WRITTEN OBJECTIONS SUBMITTED
BY OTHER PROTESTANTS**

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1 California Department of Water Resources ("DWR") submits this response to the
2 Objections of the County of San Joaquin, San Joaquin County Flood Control and Water
3 Conservation District, and Mokelumne River Water and Power Authority ("Protestants")
4 to Written Testimony and Exhibits Submitted by Petitioners and Joinder in Written
5 Objections Submitted by other Protestants in the matter of DWR and U.S. Bureau of
6 Reclamation's (collectively "Petitioners") Request for a Change in Point of Diversion for
7 California Water Fix. Protestants joined, adopted, and incorporated by reference the
8 objections submitted by numerous other parties.¹ DWR responded separately to the
9 objections raised by the other parties and incorporates those responses as though fully
10 set forth herein. DWR also incorporates the Master Response to Similar Objections
11 Made by Protestants Collectively ("DWR's Master Response") filed on July 20, 2016,
12 which also provides a common Statement of Facts and Evidentiary Standards for DWR's
13 separate responses to individual objections. Protestants raise procedural and evidentiary
14 objections, all of which should be overruled.

15 16 **GENERAL OBJECTIONS ADDRESSED IN DWR'S MASTER RESPONSE**

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18 Protestants raised general objections that are addressed in DWR's Master
19 Response as indicated in the following table. For the reasons explained in DWR's
20 Master Response, these general objections should be overruled. Also in response to
21 these general objections, such blanket objections are improper and should be overruled
22 as explained in Section C of DWR's Master Response. (DWR's Master Response, at
23 pages 10-11.)

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25 ¹ The other parties are: Central Delta Water Agency and South Delta Water Agency; Sacramento Valley
26 Water Users; Save the California Delta Alliance; California Sportfishing Protection Alliance (CSPA),
27 California Water Impact Network (C-WIN), and AquAlliance; Pacific Coast Federation of Fishermen's
28 Associations and Institute for Fisheries Resources; Friends of the River, Sierra Club California,
Environmental Water Caucus, and Planning and Conservation League; Local Agencies of the North Delta,
Bogle Vineyards/Delta Watershed Landowner Coalition, Diablo Vineyards and Brad Lange/DWLC,
Stillwater Orchards, Friends of Stone Lakes National Wildlife Refuge, and Islands Inc.; San Joaquin
Tributaries Authority; and Restore the Delta.

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Protestants' Objection	Citation to DWR's Master Response
This Hearing Should Not Proceed until the Final EIR/EIS Has Issued and the Parties Have Been Afforded an Opportunity to Review the Final EIR/EIS	Section I, at pages 22-25.
As Currently Structured, This Proceeding Unfairly and Unlawfully Shifts the Burden of Proof and Persuasion with Respect to "No Injury" from the Petitioners to the Protestants	Section J [sic], at pages 25-26.
This Hearing Should Not Proceed until the State Board has Completed its Review and Update of the Bay-Delta Water Quality Control Plan	Section I, at pages 22-25.
Applicability of the Kelly/ Frye Rule in Administrative Hearings	Section E, at pages 14-18.
Objection to Petitioners' Reliance on Cal Sim II Modeling, Generally	Section E, at pages 14-18.

I. RESPONSES TO SPECIFIC OBJECTIONS

A. Protestants raised objections to specific written testimony and exhibits that are addressed in the following table and sections below.

EXHIBIT	OBJECTION	RESPONSE
DWR-3, at pp. 8-9, 16-17	Improper and inadmissible expert opinion testimony because it includes legal conclusions in the guise of expert testimony (<i>Summers v. A. L. Gilbert Co.</i> (1999) 69 Cal.App.4 th 1155, 1183), speculation, and/or irrelevant material.	Regarding Protestants' objection that DWR-3 contains legal conclusions in the guise of expert testimony, see Section H of DWR's Master Response at page 22. Regarding Protestants' objection that DWR-3 contains speculation and/or irrelevant material, DWR responds that the information meets the relevancy standard described in Government Code section 11513, subdivision (c).
DWR-4, at p. 38	Improper and inadmissible expert	Regarding Protestants'

EXHIBIT	OBJECTION	RESPONSE
	<p>opinion testimony because it includes legal conclusions in the guise of expert testimony (<i>Summers v. A. L. Gilbert Co.</i> (1999) 69 Cal.App.4th 1155, 1183), speculation, and/or irrelevant material.</p>	<p>objection that DWR-4 contains legal conclusions in the guise of expert testimony, see Section H of DWR's Master Response at page 22.</p> <p>Regarding Protestants' objection that DWR-4 contains speculation and/or irrelevant material, DWR responds that the information meets the relevancy standard described in Government Code section 11513, subdivision (c).</p>
<p>DWR-5, at pp. 16-17, 28-82</p>	<p>A. Lacks foundation and based on facts not in evidence or which are speculative in nature. The proffered opinion testimony is based on inadequate, unreliable, or speculative underlying factual assumptions, data and modeling. This evidence fails to satisfy the Notice of Petition's requirement that evidence "clearly identify and explain the logic, assumptions, development, and operation of the studies or models" relied upon. Insofar as this testimony relies on CalSim II modeling, it should also be excluded under the <i>Kelly/ Frye</i> rule.</p> <p>B. Improper and inadmissible expert opinion testimony because it includes legal conclusions (<i>Summers v. A. L. Gilbert Co.</i> (1999) 69 Cal.App.4th 1155, 1183), speculation, and/or irrelevant material.</p>	<p>Regarding A., DWR responds that DWR-5 meets the standards described in Evidence Code sections 801 and 805 and Government Code section 11513, subdivision (c). Also, see Section E of DWR's Master Response at pages 14-18.</p> <p>Regarding B., see Section H of DWR's Master Response at page 22 and the information meets the relevancy standard described in Government Code section 11513, subdivision (c).</p>
<p>DWR-51, at pp. 10:7-16; 12: 14-16; 13: 17-14:9, 14:21-17:3 (Pierre Testimony)</p>	<p>A. Lacks foundation and based on facts not in evidence or which are speculative in nature (e.g., Ms. Pierre's reliance on the adaptive management plan). The proffered opinion testimony is based on</p>	<p>Regarding A., DWR responds that DWR-51 meets the standards described in Evidence Code sections 801 and 805 and Government Code section 11513, subdivision (c).</p>

EXHIBIT	OBJECTION	RESPONSE
	<p>inadequate, unreliable, or speculative underlying factual assumptions, data and modeling. This evidence fails to satisfy the Notice of Petition's requirement that evidence "clearly identify and explain the logic, assumptions, development, and operation of the studies or models" relied upon. Insofar as this testimony relies on CalSim II modeling, it should also be excluded under the <i>Kelly/ Frye</i> rule.</p> <p>B. Improper and inadmissible expert opinion testimony because it includes legal conclusions in the guise of expert testimony (<i>Summers v. A. L. Gilbert Co.</i> (1999) 69 Cal.App.4th 1155, 1183), speculation, and/or irrelevant material.</p>	<p>Also, see Section E of DWR's Master Response at pages 14-18.</p> <p>Regarding B., see Section H of DWR's Master Response at page 22 and the information meets the relevancy standard described in Government Code section 11513, subdivision (c).</p>
<p>DWR-53, at pp. 8: 17-19, 11:20-12:16 (Sergent Testimony)</p>	<p>Lacks foundation and based on facts not in evidence or which are speculative in nature. The proffered opinion testimony is based on inadequate, unreliable, or speculative underlying factual assumptions, data and modeling. This evidence fails to satisfy the Notice of Petition's requirement that evidence "clearly identify and explain the logic, assumptions, development, and operation of the studies or models" relied upon. Insofar as this testimony relies on CalSim II modeling, it should also be excluded under the <i>Kelly/ Frye</i> rule.</p>	<p>DWR responds that DWR-53 meets the standards described in Evidence Code sections 801 and 805 and Government Code section 11513, subdivision (c). Also, regarding the <i>Kelly/ Frye</i> rule, see Section e of DWR's Master Response at pages 14-18.</p>

EXHIBIT	OBJECTION	RESPONSE
<p>1 DWR-53, at pp. 3:22- 2 25, 8:13-21, 8:25-9:1, 3 10:24-15:11 (esp. 4 11:10-13), 24:5-28 (Sergent Testimony)</p>	<p>Improper and inadmissible expert opinion testimony because it includes legal conclusions in the guise of expert testimony (<i>Summers v. A. L. Gilbert Co.</i> (1999) 69 Cal.App.4th 1155, 1183), speculation, and/or irrelevant material.</p>	<p>Regarding Protestants' objection that DWR-53 contains legal conclusions in the guise of expert testimony, see Section H of DWR's Master Response at page 22.</p> <p>Regarding Protestants' objection that DWR-53 contains speculation and/or irrelevant material, DWR responds that the information meets the relevancy standard described in Government Code section 11513, subdivision (c).</p>
<p>10 DWR-53, at pp. 11 11:10-13; 17:23-18:4 (Sergent Testimony)</p>	<p>Evidence Code § 1523 (secondary evidence rule); DWR has possession or control of the referenced writings, which are the best and most reliable evidence of their content; a responsible trier of fact would not rely on secondary evidence of their content under these circumstances.</p>	<p>See Section II.B., below.</p>
<p>16 DWR 61, at pp. 5:23- 17 25, 6:6-8, 7:18-27, 18 8:1-8, 16:9-15, 17:5- 19 11, 17:23-25, 19:15- 20 26, 20:6-18</p>	<p>Improper and inadmissible expert opinion testimony because it includes legal conclusions in the guise of expert testimony (<i>Summers v. A. L. Gilbert Co.</i> (1999) 69 Cal.App.4th (Leahigh Testimony) 1155, 1183), speculation, and/or irrelevant material.</p>	<p>Regarding Protestants' objection that DWR-61 contains legal conclusions in the guise of expert testimony, see Section H of DWR's Master Response at page 22.</p> <p>Regarding Protestants' objection that DWR-61 contains speculation and/or irrelevant material, DWR responds that the information meets the relevancy standard described in Government Code section 11513, subdivision (c).</p>
<p>25 DWR 61, at pp. 11 : 26 20-24; 12: 1-6 (Leahigh Testimony)</p>	<p>Lacks foundation, relies on facts not in evidence; also runs afoul of the secondary evidence rule (Evidence Code § 1523).</p>	<p>DWR responds that DWR-61 meets the standards described in Evidence Code sections 801 and 805 and Government Code section 11513, subdivision (c). See</p>

EXHIBIT	OBJECTION	RESPONSE
		Section E of DWR's Master Response at pages 14-18. See also Section II.B., below regarding the secondary evidence rule.
DWR 61, at p. 11:25-28 (footnote 10) (Leahigh Testimony)	Evidence Code § 1523 (secondary evidence rule). The witness's characterization of WR 2010-0002 is misleadingly incomplete and inaccurate - the best evidence of what WR 2010-0002 actually says is WR 2010-0002 itself.	See Section II.B., below.
DWR-66 (Nader-Tehrani Testimony)	Improper and inadmissible expert opinion testimony because it includes legal conclusions in the guise of expert testimony (<i>Summers v. A. L. Gilbert Co.</i> (1999) 69 Cal.App.4 th 1155, 1183), speculation, and/or irrelevant material. Further this testimony's analysis of durations of time series data for DSM2 modeling (4:4-9) is not peer-reviewed. Input data for DSM2 derives from CalSim II output and, therefore, lacks foundation and based on facts not in evidence or which are speculative in nature. Insofar as this testimony relies on CalSim II modeling, it should be excluded under <i>Kelly/ Frye</i> .	Regarding Protestants' objection that DWR-66 contains legal conclusions in the guise of expert testimony, see Section H of DWR's Master Response at page 22. Regarding Protestants' objection that DWR-66 contains speculation and/or irrelevant material, DWR responds that the information meets the relevancy standard described in Government Code section 11513, subdivision (c). Regarding the adequacy of the modeling data and application of Kelly-Frye, see Section E of DWR's Master Response at pages 14-18.
DWR-66, at pp. 2:10-11, 4:23-7:21, 8:7-11:18 (Nader-Tehrani Testimony)	Lacks foundation and based on facts not in evidence or which are speculative in nature. The proffered opinion testimony is based on inadequate, unreliable, or speculative underlying factual assumptions, data and modeling. This evidence fails to satisfy the Notice of Petition's requirement that evidence "clearly identify and explain the logic, assumptions, development, and operation of the	See Section E of DWR's Master Response at pages 14-18.

EXHIBIT	OBJECTION	RESPONSE
	studies or models" relied upon. Insofar as this testimony relies on CalSim II modeling, it should also be excluded under the <i>Kelly/ Frye</i> rule.	
DWR 71, at pp. 2:19-23, 9:2-17, 15:5-24, 16: 18-18:5; 19:25-21:4 (Munevar Testimony)	Lacks foundation and based on facts not in evidence or which are speculative in nature. The proffered opinion testimony is based on inadequate, unreliable, or speculative underlying factual assumptions, data and modeling. This evidence fails to satisfy the Notice of Petition's requirement that evidence "clearly identify and explain the logic, assumptions, development, and operation of the studies or models" relied upon. Insofar as this testimony relies on CalSim II modeling, it should also be excluded under the <i>Kelly/ Frye</i> rule.	See Section E of DWR's Master Response at pages 14-18.
DWR 71, at pp. 2:19-23, 12:15-18, 12:27-13:20, 15:5-24, 16:12-21, 17:7-14, 19: 10-24, 19:25-21:4 (Munevar Testimony)	Improper and inadmissible expert opinion testimony because it includes legal conclusions in the guise of expert testimony (<i>Summers v. A. L. Gilbert Co.</i> (1999) 69 Cal.App.4 th 1155, 1183), speculation, and/or irrelevant material.	Regarding Protestants' objection that DWR-71 contains legal conclusions in the guise of expert testimony, see Section H of DWR's Master Response at page 22. Regarding Protestants' objection that DWR-71 contains speculation and/or irrelevant material, DWR responds that the information meets the relevancy standard described in Government Code section 11513, subdivision (c).
DWR-114	A. Lacks foundation and based on facts not in evidence or which are speculative in nature. The proffered opinion testimony is based on inadequate, unreliable, or speculative underlying factual assumptions, data and modeling.	Regarding A., DWR responds that DWR-114 meets the standards described in Evidence Code sections 801 and 805 and Government Code section 11513, subdivision (c). Also, see Section E of

DWR'S RESPONSE TO OBJECTIONS AND JOINDER OF THE COUNTY OF SAN JOAQUIN, SAN JOAQUIN COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, AND MOKELUMNE RIVER WATER AND POWER AUTHORITY

EXHIBIT	OBJECTION	RESPONSE
	<p>This evidence fails to satisfy the Notice of Petition's requirement that evidence "clearly identify and explain the logic, assumptions, development, and operation of the studies or models" relied upon. Insofar as this testimony relies on CalSim II modeling, it should also be excluded under the <i>Kelly/ Frye</i> rule.</p> <p>B. Improper and inadmissible expert opinion testimony because it includes legal conclusions in the guise of expert testimony (<i>Summers v. A. L. Gilbert Co.</i> (1999) 69 Cal.App.4th 1155, 1183), speculation, and/or irrelevant material.</p>	<p>DWR's Master Response at pages 14-18.</p> <p>Regarding B., see Section H of DWR's Master Response at page 22 and the information meets the relevancy standard described in Government Code section 11513, subdivision (c).</p>
DWR-115	<p>Improper and inadmissible expert opinion testimony because it includes legal conclusions in the guise of expert testimony (<i>Summers v. A. L. Gilbert Co.</i> (1999) 69 Cal.App.4th 1155, 1183), speculation, and/or irrelevant material.</p>	<p>Regarding Protestants' objection that DWR-115 contains legal conclusions in the guise of expert testimony, see Section H of DWR's Master Response at page 22.</p> <p>Regarding Protestants' objection that DWR-115 contains speculation and/or irrelevant material, DWR responds that the information meets the relevancy standard described in Government Code section 11513, subdivision (c).</p>
DWR-116	<p>A. [sic] Lacks foundation and based on facts not in evidence or which are speculative in nature. The proffered opinion testimony is based on inadequate, unreliable, or speculative underlying factual assumptions, data and modeling. This evidence fails to satisfy the Notice of Petition's requirement that evidence "clearly identify and explain the logic, assumptions,</p>	<p>DWR responds that DWR-116 meets the standards described in Evidence Code sections 801 and 805 and Government Code section 11513, subdivision (c). Also, see Section E of DWR's Master Response at pages 14-18.</p>

DWR'S RESPONSE TO OBJECTIONS AND JOINDER OF THE COUNTY OF SAN JOAQUIN, SAN JOAQUIN COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, AND MOKELUMNE RIVER WATER AND POWER AUTHORITY

EXHIBIT	OBJECTION	RESPONSE
	development, and operation of the studies or models" relied upon. Insofar as this testimony relies on CalSim II modeling, it should also be excluded under the <i>Kelly/ Frye</i> rule.	
DWR-117	Lacks foundation and based on facts not in evidence and which are speculative in nature. The Draft Adaptive Management Plan is based on inadequate, unreliable, and speculative underlying factual assumptions about potential future decision-making by agencies and individuals, some of which are not the Petitioners and will not be acting under the control by Petitioners. This evidence fails to satisfy the Notice of Petition's requirement that evidence "clearly identify and explain the logic, assumptions, development, and operation of the studies or models" relied upon.	DWR responds that DWR-116 meets the standards described in Evidence Code sections 801 and 805 and Government Code section 11513, subdivision (c). Also, see Section E of DWR's Master Response at pages 14-18.
DWR-324	Improper and inadmissible expert opinion testimony because it includes legal conclusions in the guise of expert testimony (<i>Summers v. A. L. Gilbert Co.</i> (1999) 69 Cal.App.4 th 1155, 1183), speculation, and/or irrelevant material.	Regarding Protestants' objection that DWR-324 contains legal conclusions in the guise of expert testimony, see Section H of DWR's Master Response at page 22. Regarding Protestants' objection that DWR-324 contains speculation and/or irrelevant material, DWR responds that the information meets the relevancy standard described in Government Code section 11513, subdivision (c).
DWR-513	A. Lacks foundation and based on facts not in evidence or which are	Regarding A., DWR responds that DWR-513

EXHIBIT	OBJECTION	RESPONSE
	<p>speculative in nature. The proffered opinion testimony is based on inadequate, unreliable, or speculative underlying factual assumptions, data and modeling. This evidence fails to satisfy the Notice of Petition's requirement that evidence "clearly identify and explain the logic, assumptions, development, and operation of the studies or models" relied upon. Insofar as this testimony relies on CalSim II modeling, it should also be excluded under the <i>Kelly/ Frye</i> rule.</p> <p>B. Improper and inadmissible expert opinion testimony because it includes legal conclusions (<i>Summers v. A. L. Gilbert Co.</i> in the guise of expert testimony (1999) 69 Cal.App.4th 1155, 1183), speculation, and/or irrelevant material.</p>	<p>meets the standards described in Evidence Code sections 801 and 805 and Government Code section 11513, subdivision (c). Also, see Section E of DWR's Master Response at pages 14-18.</p> <p>Regarding B., see Section H of DWR's Master Response at page 22 and the information meets the relevancy standard described in Government Code section 11513, subdivision (c).</p>
DWR-514	<p>A. Lacks foundation and based on facts not in evidence or which are speculative in nature. The proffered opinion testimony is based on inadequate, unreliable, or speculative underlying factual assumptions, data and modeling. This evidence fails to satisfy the Notice of Petition's requirement that evidence "clearly identify and explain the logic, assumptions, development, and operation of the studies or models" relied upon. Insofar as this testimony relies on CalSim II modeling, it should also be excluded under the <i>Kelly/ Frye</i> rule.</p> <p>B. Improper and inadmissible expert opinion testimony because it includes legal conclusions (<i>Summers v. A. L. Gilbert Co.</i> in the guise of expert testimony</p>	<p>Regarding A., DWR responds that DWR-514 meets the standards described in Evidence Code sections 801 and 805 and Government Code section 11513, subdivision (c). Also, see Section E of DWR's Master Response at pages 14-18.</p> <p>Regarding B., see Section H of DWR's Master Response at page 22 and the information meets the relevancy standard described in Government Code section 11513, subdivision (c).</p>

EXHIBIT	OBJECTION	RESPONSE
	(1999) 69 Cal.App.4th 1155, 1183), speculation, and/or irrelevant material.	
DWR-515	<p>A. Lacks foundation and based on facts not in evidence or which are speculative in nature. The proffered opinion testimony is based on inadequate, unreliable, or speculative underlying factual assumptions, data and modeling. This evidence fails to satisfy the Notice of Petition's requirement that evidence "clearly identify and explain the logic, assumptions, development, and operation of the studies or models" relied upon. Insofar as this testimony relies on CalSim II modeling, it should also be excluded under the <i>Kelly/ Frye</i> rule.</p> <p>B. Improper and inadmissible expert opinion testimony because it includes legal conclusions in the guise of expert testimony (<i>Summers v. A. L. Gilbert Co.</i> (1999) 69 Cal.App.4th 1155, 1183), speculation, and/or irrelevant material.</p>	<p>Regarding A., DWR responds that DWR-515 meets the standards described in Evidence Code sections 801 and 805 and Government Code section 11513, subdivision (c). Also, see Section E of DWR's Master Response at pages 14-18.</p> <p>Regarding B., see Section H of DWR's Master Response at page 22 and the information meets the relevancy standard described in Government Code section 11513, subdivision (c).</p>
DOI-4, at pp. 2, 6 (joining in the improper testimony of Ms. Sergent); pp. 7-9 (testimony re documents separately included as DOI-13 through DOI-31) (Sahlberg Testimony)	Evidence Code § 1523 (secondary evidence rule); DWR has possession or control of the referenced writings, which are the best and most reliable evidence of their content; a responsible trier of fact would not rely on secondary evidence of their content under these circumstances.	See Section II.B., below.
DOI-4, at pp. 6-7, 9 (Sahlberg Testimony)	A. Lacks foundation and based on facts not in evidence or which are speculative in nature. The proffered opinion testimony is based on inadequate, unreliable, or speculative underlying factual	Regarding A., DWR responds that DOI-4 meets the standards described in Evidence Code sections 801 and 805 and Government Code section 11513, subdivision (c).

EXHIBIT	OBJECTION	RESPONSE
	<p>assumptions, data and modeling. This evidence fails to satisfy the Notice of Petition's requirement that evidence "clearly identify and explain the logic, assumptions, development, and operation of the studies or models" relied upon. Insofar as this testimony relies on CalSim II modeling, it should also be excluded under the <i>Kelly/ Frye</i> rule.</p> <p>B. Improper and inadmissible expert opinion testimony because it includes legal conclusions (<i>Summers v. A. L. Gilbert Co.</i> in the guise of expert testimony (1999) 69 Cal.App.4th 1155, 1183), speculation, and/or irrelevant material.</p>	<p>Also, see Section E of DWR's Master Response at pages 14-18.</p> <p>Regarding B., see Section H of DWR's Master Response at page 22 and the information meets the relevancy standard described in Government Code section 11513, subdivision (c).</p>
DOI-5, at pp. 14, 17, 18 (Sahlberg Power Point)	<p>A. Lacks foundation and based on facts not in evidence or which are speculative in nature. The proffered opinion testimony is based on inadequate, unreliable, or speculative underlying factual assumptions, data and modeling. This evidence fails to satisfy the Notice of Petition's requirement that evidence "clearly identify and explain the logic, assumptions, development, and operation of the studies or models" relied upon. Insofar as this testimony relies on CalSim II modeling, it should also be excluded under the <i>Kelly/ Frye</i> rule.</p> <p>B. Improper and inadmissible expert opinion testimony because it includes legal conclusions in the guise of expert testimony (<i>Summers v. A. L. Gilbert Co.</i> (1999) 69 Cal.App.4th 1155, 1183), speculation, and/or irrelevant material.</p>	<p>Regarding A., DWR responds that DOI-5 meets the standards described in Evidence Code sections 801 and 805 and Government Code section 11513, subdivision (c). Also, see Section E of DWR's Master Response at pages 14-18.</p> <p>Regarding B., see Section H of DWR's Master Response at page 22 and the information meets the relevancy standard described in Government Code section 11513, subdivision (c).</p>

EXHIBIT	OBJECTION	RESPONSE
<p>1 DOI-7, at p. 4 2 (Milligan)</p>	<p>3 A. Lacks foundation and based on 4 facts not in evidence or which are 5 speculative in nature. The 6 proffered opinion testimony is 7 based on inadequate, unreliable, 8 or speculative underlying factual 9 assumptions, data and modeling. 10 This evidence fails to satisfy the 11 Notice of Petition's requirement 12 that evidence "clearly identify and 13 explain the logic, assumptions, 14 development, and operation of the 15 studies or models" relied upon. 16 Insofar as this testimony relies on 17 CalSim II modeling, it should also 18 be excluded under the <i>Kelly/ Frye</i> 19 rule.</p> <p>20 B. Improper and inadmissible 21 expert opinion testimony because 22 it includes legal conclusions in the 23 guise of expert testimony 24 (<i>Summers v. A. L. Gilbert Co.</i> 25 (1999) 69 Cal.App.4th 1155, 26 1183), speculation, and/or 27 irrelevant material.</p>	<p>Regarding A., DWR responds that DOI-7 meets the standards described in Evidence Code sections 801 and 805 and Government Code section 11513, subdivision (c). Also, see Section E of DWR's Master Response at pages 14-18.</p> <p>Regarding B., see Section H of DWR's Master Response at page 22 and the information meets the relevancy standard described in Government Code section 11513, subdivision (c).</p>

B. The Secondary Evidence Rule Does Not Bar Petitioners' Testimony

Protestants' objections based on section 1523 of the Evidence Code, the "Secondary Evidence Rule," are not well taken. Protestants object to portions of Maureen Sergent's testimony (DWR-53, at pp. 11:10-13; 17:23-18:4, and 12:1-6) and Ray Sahlberg's testimony (DOI-4, at pp. 2, 6, and 7-9) on the grounds that DWR has the documents, they are the best and most reliable evidence of their content, and a responsible trier of fact would not rely on secondary evidence of their content under these circumstances. Protestants also object to John Leahigh's testimony (DWR 61, at pp. 11: 20-24; 11:25-28 (footnote 10)) on the grounds that his characterization of WR

1 2010-0002 is misleadingly incomplete and inaccurate, and the best evidence of what
2 WR 2010-0002 actually says is WR 2010-0002 itself.

3 But Evidence Code section 1523 does not apply to administrative hearings.
4 Instead, to be admissible under Government Code section 11513, the testimony must
5 be: (1) relevant; and (2) the sort of evidence on which responsible persons are
6 accustomed to rely in the conduct of serious affairs. (Government Code section 11513,
7 subdivision (c).
8

9 Here, Ms. Sergent's, Mr. Sahlberg's, and Mr. Leahigh's testimony regarding their
10 understanding of the documents provides one of the bases for their expert opinions. As
11 such, this evidence is clearly relevant to the proceedings. In addition, the testimony of
12 qualified experts regarding the writings and reasoning supporting their ultimate opinions
13 are the type of evidence upon which reasonable persons routinely rely in the conduct of
14 serious affairs. See *Big Boy Liquors, Limited v. Alcoholic Beverage Control Appeals Bd.*
15 (1969) 71 Cal.2d 1226, 1229-1230 (rejecting petitioner's argument that the Department
16 of Alcoholic Beverage Control failed to introduce the "best evidence" of the petitioner's
17 violations, and the Alcoholic Beverage Control Appeals Board failed to consider the lack
18 of this "best evidence," on the grounds that the Board was not required to consider
19 Evidence Code presumption that weaker evidence be viewed with distrust). Even if the
20 Board were to apply Evidence Code section 1523, it would not mandate the exclusion of
21 the testimony because the testimony that protestants seek to exclude does not "prove
22 the content of a writing" as contemplated by the statute. The objections based on
23 Evidence Code section 1523 should be overruled.

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CONCLUSION

For the reasons stated above and in the incorporated Master Response,
Protestants objections are unfounded and should be overruled.

Dated: July 22, 2016

CALIFORNIA DEPARTMENT OF WATER
RESOURCES



Robin McGinnis
Office of the Chief Counsel