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## State Water Resources Control Board

**TO:** Yuba Water Long-Term Transfer Petition Service List

**FROM:** Sam Bivins  
Senior Hearing Officer  
**ADMINISTRATIVE HEARINGS OFFICE**

**DATE:** July 11, 2025

**SUBJECT:** Procedural Ruling on Evidentiary Objections and Allocation of Time

On February 25, 2025, the State Water Resources Control Board's (State Water Board or Board) Administrative Hearings Office (AHO) issued a Notice of Pre-Hearing Conference and Notice of Public Hearing on the Petition for Long-Term Transfer filed by Yuba County Water Agency for Permit 15026 (Petition). The AHO issued the operative Amended Notice of Public Hearing (Amended Hearing Notice) on April 7, 2025.

The parties submitted written testimony and exhibits for the case-in-chief portion of the hearing on June 25, 2025. On July 3, Yuba County Water Agency (Yuba Water) and the State Water Contractors filed evidentiary objections to case-in-chief exhibits filed by other parties. California Sportfishing Protection Alliance (CSPA), Friends of the River, Nevada Irrigation District (NID), South Yuba River Citizens League (the League), and South Delta Water Agency, et al. (Delta Parties) filed responses to those objections on July 8. On July 9, the parties submitted a joint status report addressing, among other things, the allocation of time for cross-examination.

This procedural ruling addresses the evidentiary objections filed by Yuba Water and State Water Contractors,<sup>1</sup> and allocates available hearing time based on the parties' joint status report. It also provides direction on the formatting and submission of future evidentiary objections.

### Legal Background

This hearing is being conducted in accordance with State Water Board regulations applicable to adjudicative proceedings. (Cal. Code Regs., tit. 23, § 648, subd. (a).) The rules governing the admission of evidence in adjudicative proceedings before the Board are found in California Code of Regulations, title 23, section 648 et seq.; chapter 4.5 of the Administrative Procedure Act (commencing with section 11400 of the Government Code); sections 801 to 805 of the Evidence Code; and section 11513 of the

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<sup>1</sup> My ruling on State Water Contractor's objections is set forth in **Attachment A** to this ruling letter.

Government Code. (Cal. Code Regs., tit. 23, § 648.) The State Water Board is not bound in its proceedings by other technical rules relating to evidence and witnesses that would apply in a court of law. (See Gov. Code, § 11513, subd. (c); Cal. Code Regs., tit. 23, § 648.) Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely on the conduct of serious affairs. (Gov. Code, § 11513, subd. (c).) Hearsay evidence is admissible in State Water Board proceedings to supplement or explain other evidence, but, over timely objection, is not sufficient in itself to support a finding unless it would be admissible over objection in a civil action. (Gov. Code, § 11513, subd. (d).) “The [hearing officer] has discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission would necessitate undue consumption of time.” (*Id.*, § 11513, subd. (f).)

### **Objections to Delta Parties’ Evidence**

#### **1. Objections to Paragraph 21 of Gregory F. Wilson’s Written Testimony (SDWA-001) and SDWA-007**

Paragraph 21 of SDWA-001 addresses the cumulative impacts of the proposed transfer at issue in this hearing and the Sites Reservoir and Delta Conveyance projects that the State Water Board is addressing in separate proceedings. Using a six-day period in 2016 (January 29-February 3) as an example, Mr. Wilson opines that, based on evidence submitted in the Sites Reservoir Project hearing (SDWA-007), the Sites Project could potentially divert water at the same time Yuba Water will refill its reservoir after conducting transfers, and under conditions in which electroconductivity objectives in the Delta have been exceeded. Mr. Wilson further opines that, if approved, the Delta Conveyance Project could also divert when Yuba Water is diverting water to storage. Mr. Wilson states that Yuba Water’s CEQA document is inadequate because its cumulative impacts analysis does not provide a “quantitative analysis” of how these projects would operate together. (SDWA-001, p. 13:18-20.) Yuba Water argues that these opinions are irrelevant, lack foundation, and speculative, and that unpacking the theories expressed in paragraph 21 would require an undue consumption of hearing time. (See Gov. Code, § 11513 subd. (f).)

Yuba Water’s objections to Paragraph 21 and SDWA-007 are overruled. The cumulative environmental impacts of the proposed transfer with other pending projects are relevant to this proceeding. (See Amended Hearing Notice at pp. 6-7.) Based on the anticipated corrections to his testimony, Mr. Wilson has laid sufficient foundation for the AHO and the Board to consider his analysis of SDWA-007. Finally, addressing Mr. Wilson’s opinion about the adequacy of the FSEIR’s cumulative impacts analysis need not require the undue consumption of hearing time. For example, parties who disagree with Mr. Wilson’s opinion as to the adequacy of Yuba Water’s CEQA document might consider making focused legal arguments about the extent to which the Board and/or Yuba Water Agency may or must conduct additional environmental analysis under CEQA. (See Cal. Code Regs., tit. 14, §§ 15096, 15162.) Developing a record to support such potential arguments should not require extensive cross-examination time or rebuttal evidence. Accordingly, I decline to exercise my discretion to exclude paragraph 21 and SDWA-007 under Government Code section 11513, subdivision (f).

## 2. Objections to Paragraphs 25 and 26 of SDWA-001

Paragraphs 23-26 of SDWA-001 propose specific permit terms that Mr. Wilson believes are necessary to protect the Delta Parties and their constituents from injury. Yuba Water objects to paragraphs 25 and 26 as irrelevant, lacking foundation, and requiring undue consumption of time.

Paragraph 25 of Mr. Wilson's testimony would require the California Department of Water Resources (DWR) to account for the amount of water provided to it by Yuba Water's groundwater substitution operations. It would also require DWR to make "all attempts to use this water [for] upstream recharge as opposed to additional exports." This permit term appears to be related to the opinions Mr. Wilson has expressed about streamflow depletions from groundwater pumping, so Yuba Water's foundation objection is overruled. (See SDWA-001, ¶ 18.) The effects of streamflow depletions on downstream users of water are relevant to the issue of whether legal users of water in the Delta and instream beneficial uses may be injured by the approval of the proposed transfer, so Yuba Water's relevance objection is overruled. Further, DWR is both a party to this hearing and a party to the proposed transfer. (See Yuba Water-206.) Accordingly, I am not inclined, at this time and on the current record, to find that such a term would be illegal or infeasible as a matter of law. (See e.g., *McMillin Companies, LLC v. American Safety Indemnity Co.* (2015) 233 Cal.App.4th 518, 541.) Finally, Yuba Water has not shown how or why exploring paragraph 25 of Mr. Wilson's testimony would lead to the undue consumption of hearing time. Accordingly, Yuba Water's objections to paragraph 25 of Mr. Wilson's testimony are overruled in their entirety.

Paragraph 26 of Mr. Wilson's testimony would require Yuba Water to dedicate a portion of water exported at Clifton Court Forebay or the Jones Pumping Plant for "later release to the San Joaquin River during future dry periods." This proposed permit term appears to be based on Mr. Wilson's concerns about through-Delta exports when electroconductivity objectives under D-1641 have been exceeded, so Yuba Water's foundational objection is overruled. (See SDWA-001, ¶¶ 10-12, 17.) Similarly, as Yuba Water's opening brief acknowledges, the effect of export operations on Delta water quality objectives is relevant to the State Water Board's approval of the proposed transfer. (Yuba Water Opening Brief at p. 6:4-26.) And again, Yuba Water has not shown why focused cross-examination or the submission of appropriate rebuttal evidence to address Mr. Wilson's proposed permit term would require an undue consumption of hearing time. Accordingly, Yuba Water's objections to paragraph 26 of SDWA-001 are overruled in their entirety.

## **Objections to Testimony of Dr. Aaron Zettler-Mann (SYRCL-001)**

Yuba Water objects to paragraphs 11 and 25 of Dr. Aaron Zettler-Mann's testimony on the grounds that the opinions expressed therein are speculative, advance improper

legal opinions, and exceed his expertise as a geographer.<sup>2</sup> Dr. Zettler-Mann has worked for the League since March 2020, and has been the League's executive director since August 13, 2023. (SYRCL-001, ¶ 1.) He has advanced degrees in geography from the University of Denver and the University of Oregon, and has served on the steering committee for the Hydropower Reform Coalition and as a board member for the California Coastkeeper Alliance. (SYRCL-002.)

Paragraphs 11 and 25 of Dr. Zettler-Mann's testimony state:

11. Pricing of per acre-foot water transfers has increased through time, resulting in a significant increase in revenue (Ex. SYRCL-004). A review of water sales and water year types suggests that revenue from water sales increases during water-year types characterized as Critical, Dry, and Below Normal. Revenue is especially high when a [Temporary Urgency Change Order (TUCO)] has been issued. Most dramatically, this occurred during the 2021 TUCO when YWA's revenue from water sales was more than \$51 million.

25. The figure above shows revenue from water sales by year (points), by water-year type (color), and the minimum and maximum price per acre-foot for that water based on Accord pricing. Highlighted are the years when TUCOs are in effect. Revenue from water sales is generally high during critical water years, when TUCOs are in effect, and as the price per acre-foot increases. This shows a steady increase in revenue as water pricing increases through Accord amendments, and during drought years. However, the environmental benefits anticipated as a result of the Yuba Accord have not been realized (Ex. FOR-002).

Yuba Water's argument that these paragraphs include improper legal opinions because the "sort of TUCOs that concern Dr. Zettler-Mann depend on the discretionary application of multiple laws by the Governor and the State Board" does not provide a persuasive basis for exclusion. Paragraphs 11 and 25 do not appear to offer any legal opinions. Even if they did, the rule against admission of testimony containing legal conclusions is primarily intended to protect a jury from improper influence and preserve the judge's role in instructing the jury on the appropriate legal standard. (See *Torres v. County of Oakland* (6th Cir. 1985) 758 F.2d 147; *Hygh v. Jacob* (2nd Cir. 1992) 961 F.2d 359 (cited in *People v. Brown* (2016) 245 Cal.App.4th 140, 162); *Summers v. A.L. Gilbert Co.* (1999) 69 Cal.App.4th 1155, 1178-1182.) The rule serves little purpose when the decisionmaker has legal expertise and makes findings of both law and fact. Hearing officers in the AHO are required to have "knowledge and experience in water law" and the hearing officers make both legal and factual determinations when drafting a proposed order to submit to the Board. (Wat. Code, § 1111, subd. (a).) AHO hearing officers are capable of distinguishing, and discounting or disregarding as appropriate, portions of testimony that are essentially legal opinion. I therefore overrule Yuba Water's objection to Dr. Zettler-Mann's testimony as offering improper legal opinions.

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<sup>2</sup> Yuba Water also objects to paragraph 3 of Dr. Zettler-Mann's testimony on the same grounds. Paragraph 3 describes the purpose of his testimony and does not advance an opinion. Yuba Water's objection to paragraph 3 is therefore overruled.

Yuba Water's objection to Dr. Zettler-Mann's testimony on the ground that it is improperly speculative is also unpersuasive. Paragraphs 11 and 25 of Dr. Zettler-Mann's testimony do not offer speculative opinion testimony about future transfer prices or revenues. Rather, he explains the pricing model detailed in the Yuba Accord and subsequent amendments, observes that drier years result in higher prices for delivered water, and explains how that pricing model has impacted Yuba Water's revenues in the past. I therefore overrule Yuba Water's speculation objection to Dr. Zettler-Mann's testimony.

Dr. Zettler-Mann also appears qualified to offer the opinions in paragraphs 11 and 25. Under the California Evidence Code, experts may offer opinion testify based on "experience." (Evid. Code, §§ 801 subd. (b), 802.) As the employee of an organization generally focused on Yuba River watershed issues for over five years, Dr. Zettler-Mann appears to have developed sufficient experience to evaluate the pricing of, and revenues generated by, Yuba Water's past transfers. His training as a geographer does not preclude his ability to offer opinions developed through his experience as a League employee.

Yuba Water may explore the nature of Dr. Zettler-Mann's experience and its relationship to the opinions offered in his testimony through cross-examination, and may renew its objection when the League moves SYRCL-001 into evidence. On this record, however, I find that Dr. Zettler-Mann is qualified to offer the opinions he expresses in paragraphs 11 and 25 of his testimony and overrule Yuba Water's objection on that basis.

### **Objection to Testimony of Jennifer Hanson<sup>3</sup>**

Yuba Water objects to the entirety of Jennifer Hanson's testimony on the ground that its discussion of the ongoing FERC relicensing proceeding for NID's Yuba Bear Hydroelectric Project (Yuba Bear Project) violates my June 6 ruling on Yuba Water's motion to cancel NID's protest (June 6 Ruling). The June 6 Ruling made two legal determinations relevant to Yuba Water's objection:

1. Because NID may be required to release additional flows in connection with the relicensing proceeding for the Yuba Bear Project regardless of the Board's decision on the Petition, approval of the Petition cannot, as a matter of law, injure NID's upstream water rights based on the legal theory NID advanced in its protest.
2. Even if there were a connection between approval of the pending petition and regulatory requirements that may be imposed on NID in unrelated proceedings, Yuba Water's proposed approval term 20 prohibits—by Yuba Water's own admission—the transfer of, or receipt of any compensation for, flows that NID may be required to release in connection with the pending FERC relicensing proceeding.

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<sup>3</sup> Ms. Hanson's testimony is not numbered or identified in NID's exhibit index. NID is hereby directed to resubmit the exhibits that have not been excluded by this ruling in accordance with the procedures identified in the Amended Hearing Notice not later than 11:59 p.m. on July 14, 2025.

Based on these determinations, I ruled that evidence relating to the pending FERC relicensing proceeding's effect on NID's water rights is not relevant to the question of whether the Petition should be approved and would therefore be excluded under Government Code section 11513, subdivisions (c) and (f).

Paragraphs 11-13 and 16-17 of Ms. Hanson's testimony, and NID exhibits 4 and 6, relate directly to the pending Yuba Bear Project relicensing proceeding and are thus subject to exclusion based on the June 6 Ruling. (See June 6 Ruling at p. 7.) NID's arguments that it may offer evidence related to the Draft Water Quality Certification referenced in paragraph 13 and set forth in NID exhibit 4, and that such evidence is relevant to the issues in this proceeding, lack merit. By its own terms, the Draft Water Quality Certification arises out of, and is thus directly related to, the Yuba Bear Project FERC relicensing proceeding. (See NID-4 at pdf p. 1.) Ms. Hanson's testimony about impacts to NID from implementation of conditions in the 2014 FEIS for the FERC relicensing process is not relevant to any claim of injury to NID from approval of the Yuba Water's petition. As explained in the June 6 Ruling, evidence about releases that may be required of NID through the FERC relicensing proceeding does not tend to prove any fact relevant to injury to NID's senior upstream rights.

NID does not successfully point to any other hearing issue to which this portion of Ms. Hanson's testimony is relevant. NID argues in its response to objections that Ms. Hanson's testimony addresses the extent to which environmental benefits and purposes of flows that may be required by the FERC relicensing proceeding would be frustrated if the pending petition is granted. (NID Opposition at p. 7:7-15; Hanson Testimony, ¶ 19.) But Ms. Hanson's testimony purports to be relevant to, and explicitly offers opinions related to, the water right injury argument addressed in the June 6 Ruling. (Hanson Testimony, ¶ 20; see also *id.* at ¶¶ 6-10, NID Opp. at p. 7:25-28; June 6 Ruling at pp. 6-7.) More importantly, Ms. Hanson's testimony and other exhibits offered by NID do not demonstrate a connection between those flows that may be required through the relicensing proceeding and the transfer at issue here or how such a frustration of purpose might occur. (NID Opposition at pdf p. 2:14-18; see Evid. Code, § 801 subd. (b).) Finally, although Ms. Hanson may be "familiar with . . . proceedings associated with the State Water Resources Control Board's Bay-Delta Water Quality Control Plan, and Federal Energy Regulatory Commission licensing proceedings for NID's Yuba-Bear Hydroelectric Project (FERC Project 2266)[,]" nothing in her testimony suggests she is qualified to offer opinion testimony on this topic. (Hanson Testimony, ¶¶ 2, 19.)

Accordingly, I will exclude paragraphs 11-13 and 16-21 of Ms. Hanson's testimony.<sup>4</sup> In doing so, I do not preclude NID from offering competent evidence to address environmental and public policy considerations responsive to hearing issues 3.a and 6.c as may be appropriate during the rebuttal phase of this hearing. NID is also free to make public interest arguments about the potential nexus between Yuba Water's transfer operations and the Bay-Delta Plan in its closing brief. (See Amended Hearing Notice at pdf pp. 6-7.) I will not, however, permit NID to introduce testimony related to the effect of its ongoing FERC re-licensing proceeding to support its water right injury

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<sup>4</sup> Yuba Water's remaining objections to Ms. Hanson's testimony are overruled.

claims, nor will I permit NID to make legal and public policy arguments in the guise of expert testimony.<sup>5</sup> (See Hanson Testimony at ¶¶ 19-21; Gov. Code, § 11513 subd. (f).)

### **Objection to Testimony of Devon Pearse, Ph.D. (FOR-002)**

Yuba Water objects to paragraphs 3 and 14-16 of Dr. Pearse's testimony on the ground that testimony about the effects of storage-related alterations of the lower Yuba River's stream flows on salmonids is outside the scope of this hearing and should be excluded under Government Code section 11513, subd. (f). Yuba Water's objection is based on the fact that Yuba Water "generates transfer water by making releases to meet" the Yuba Accord's minimum streamflow requirements. Because the approval of Yuba Water's petition would not change those minimum streamflow requirements in any way, Yuba Water argues that any testimony about the effects of such requirements falls outside the scope of this hearing and should be excluded.

The purpose of this hearing is to receive evidence to be considered in determining whether the Board should approve the Petition. (Amended Hearing Notice at p. 3.) The effects and consequences of the Yuba Accord's minimum streamflow requirements more generally are not at issue, and I will not permit them to be litigated here.

It is not clear, however, that approval of the pending petition would solely authorize the transfer of water released to meet minimum instream flow requirements. Indeed, both Corrected Order WR 2018-0014 and testimony submitted by Yuba Water in this proceeding suggest that approval of the pending petition may authorize Yuba Water to transfer water in excess of that released to meet minimum streamflow requirements. (See Yuba Water-200, ¶ 21 ["[T]he primary way that Yuba Water makes 'new' water available is by releasing water from New Bullards Bar Reservoir to comply with the Accord's minimum streamflow requirements . . . ." (emphasis added)]; AHO-015 at p. 9 ["The transferred water will include water released to meet instream flow needs on the Yuba River pursuant to the Fisheries Agreement flow schedules." (emphasis added)].)

If approval of Yuba Water's petition would authorize the transfer of water beyond that required to be released to meet the Yuba Accord's minimum instream flow requirements, the effect of those operations on salmonids in the lower Yuba River are fair game in this proceeding. Accordingly, I overrule Yuba Water's objection to Dr. Pearse's testimony.

### **Objections to Exhibits Submitted by CSPA**

Yuba Water submitted a wide array of objections to the testimony of Chris Shutes and other exhibits submitted by CSPA. In addition to opposing many of these objections, CSPA has agreed to withdraw paragraphs 13-15, 22-24, 51-55, and all but the last two

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<sup>5</sup> Yuba Water has also filed a motion for sanctions against NID for its decision to submit testimony and exhibits relating to the FERC relicensing proceeding discussed in the June 6 Ruling. The AHO will rule on Yuba Water's sanctions motion after the case-in-chief portion of this hearing has concluded. I encourage Yuba Water and NID to carefully consider this evidentiary ruling and make every effort to resolve the motion for sanctions without the AHO's involvement.

sentences of paragraph 59 of CSPA-1. CSPA has also agreed to withdraw CSPA-8. CSPA's decision to withdraw those paragraphs and CSPA-8 therefore moots Yuba Water's objections as to those matters. Below, I address a variety of Yuba Water's other objections.

1. CSPA-5. CSPA-5 is a newspaper article entitled "Pumping water and cash from the Delta" that appears to address the "Environmental Water Account" program discussed in Corrected Order WR 2008-0014. I find that CSPA-5 is not the "sort of evidence on which responsible persons are accustomed to rely" or the type of information that reasonably may be relied upon by an expert in forming an opinion as to the efficacy of the Environmental Water Account. I therefore sustain Yuba Water's objection to CSPA-5 under Government Code section 11513, subdivision (c) and Evidence Code section 801, subdivision (b). I also exclude the sentence beginning with "Moreover, . . . ." on page 4:25-26 on the same bases.
2. Improper legal argument. Yuba Water objects to much of Mr. Shutes' testimony as advancing improper legal argument. I sustain those objections as to paragraphs 16, 50, 56-57, and the last sentence of paragraph 59 of CSPA-1. (See Evid. Code, §§ 140, 210; Gov. Code § 11513 subd. (c).) CSPA is free to raise these types of arguments in its closing brief.
3. Hearsay. I overrule Yuba Water's hearsay objections to paragraphs 17 of CSPA-1, CSPA-16, SYRCL-005, and the references to those exhibits in paragraph 49 of CSPA-1 pursuant to Evidence Code section 1220. I also overrule Yuba Water's hearsay objections to Corrected Order WR 2008-0014 (AHO-015) and the references to that order in paragraph 8 of CSPA pursuant to Evidence Code section 1221. (See AHO-010, pdf p. 21 ["The information in this technical memorandum . . . the analyses the SWRCB used to support its findings are still valid."].) Yuba Water's remaining hearsay objections are noted. I will address those objections as necessary in preparing a proposed order after the hearing has ended.
4. CSPA-7. Yuba Water objects to the introduction of CSPA-7 as an unnecessarily voluminous exhibit prepared by third parties that CSPA is attempting to pass off as its own technical testimony. I understand and appreciate Yuba Water's concerns about the introduction of the entirety of CSPA-7. I preliminarily conclude that CSPA-7 is the type of material "that may be relied upon by an expert in forming an opinion upon the subject to which his testimony relates" and decline to exclude CSPA-7 at this time. (Evid. Code, § 801 subd. (b); see also *id.* at § 804 subd. (c).) I will, however, limit its use by only considering those aspects of CSPA-7 that have been directly addressed by a witness in this proceeding. I am also mindful that CSPA-7 is a draft report that has not been finalized or adopted by the Board. I will consider that context in assessing the weight of opinion evidence that relies on CSPA-7.<sup>6</sup> Further, I note that Yuba Water has not yet shown that CSPA-7's authors are unavailable to be questioned on their

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<sup>6</sup> CSPA-7 also appears to be hearsay, although I have not yet considered whether there are any applicable exceptions that would allow CSPA-7 to be used to independently support any findings. (See Gov. Code, § 11513 subd. (d).)



qualifications or the details of their analysis. (See Evid. Code, § 804 subd. (a), but see also *id.* at subd. (d).) Yuba Water's Objections to Shutes Testimony and Exhibits at pdf p. 3:5-8.) Finally, I note that Yuba Water is free to cross-examine Mr. Shutes about his reliance on CSPA-7 and/or present rebuttal evidence responsive to his specific uses of that document. With these limits and observations, I overrule Yuba Water's objection to CSPA-7 and paragraphs 11-12 of CSPA-1, without prejudice.

5. Qualifications. Yuba Water objects to much of CSPA-1 on the basis that Mr. Shutes is unqualified to offer expert opinions because he lacks necessary technical expertise as required by Evidence Code section 720. Mr. Shutes' testimony and statement of qualifications (CSPA-2) indicate that he has extensive experience with the operations of the Yuba County Water Agency, the Central Valley Project, the State Water Project, and environmental issues in the Delta and Yuba River watersheds based on 25 years of professional experience in California water policy and water operations (including as a witness on several of these subject matters in other Board hearings). I therefore overrule Yuba Water's objections to Mr. Shutes' qualifications. I will consider any objections Yuba Water may wish to renew after it has cross-examined Mr. Shutes. I will also consider the extent of Mr. Shutes' technical expertise in assessing the relative weight of the evidence Mr. Shutes offers in CSPA-1.

### **Submission of Corrected Testimony**

Parties who have elected to withdraw testimony or have had testimony excluded are directed to submit corrected testimony in accordance with those withdrawals and this procedural ruling. Corrected testimony should be submitted in redline format, and identified by the same exhibit number with a notation indicating that it is corrected testimony (e.g., CSPA-1c) no later than July 14 at 11:59 p.m.

Any remaining objections that have not been addressed by this procedural ruling are deemed overruled without prejudice.

### **Allocation of Hearing Time and Cross-on-Cross**

I have reviewed the parties' joint status report and commend the parties on their efforts to reach agreement on the order of presentation, witness panels and the allocation of hearing time. I generally approve of the parties' proposed witness panels and order of presentation.

The parties' allocation of cross-examination and direct witness presentation also seems generally appropriate. By this ruling, I allocate all hearing time based on the parties' joint status report and the following assumptions and directives:

1. The Amended Hearing Notice provides that each party may take up to ten minutes to make an opening statement.
2. This evidentiary ruling excludes all of Jennifer Hanson's testimony except for paragraphs 1-10 and 14-15. As such, an allocation of 20 minutes of time for

- the presentation of her direct testimony is excessive. (See Gov. Code, § 11513 subd. (f).) NID is allocated a total of five minutes for the presentation of Ms. Hanson's testimony in accordance with this evidentiary ruling.
3. We will generally take a mid-morning break of approximately ten minutes, an hour long lunch break, and a mid-afternoon break of approximately ten minutes. I also intend to limit discussion of procedural and logistical matters to no more than 30 minutes each morning.

Accordingly, I allocate the available hearing time as follows:

- a. Yuba Water: 410 minutes
- b. NID: 75 minutes
- c. Delta Parties: 90 minutes
- d. DWR: 90 minutes
- e. State Water Contractors: 70 minutes
- f. NGO Parties: 320 minutes

By my calculations, this allocation leaves approximately 55 minutes of discretionary hearing time. The parties should anticipate that I will use that time to ask my own questions and should not expect to be allocated any additional hearing time.

The parties may use their allocated time for presentation of direct testimony, cross-examination, re-direct examination, opening statements, and objections as they see fit (except as specifically provided in item 2 above and subject to my general discretion to manage the hearing process). For example, if Mr. Shutes' oral summary of his written testimony consumes only ten minutes of hearing time, the NGO Parties will have 310 minutes to address other matters.

I have also reviewed the parties' positions with respect to cross-on-cross. I decline to impose limits on cross-on-cross at this time. I will, however, generally prohibit "friendly cross." This means, for example, that DWR will not be permitted to cross-examine Yuba Water's witnesses regardless of the cross-examination testimony other parties may elicit from them.

Finally, although I anticipate that we will adhere closely to these directives and guidelines, I reserve the right to modify or deviate from them at my sole discretion.

### **Formatting for Future Evidentiary Objections**

The process of ruling on evidentiary objections in this hearing has been complicated by the multiplicity of formats in which the parties have asserted their objections and responses. Future evidentiary objections should be concise and submitted in table format. Parties shall submit objections as a PDF document and as a Word document, in landscape orientation, that contains a column for responses to the objection and a column for the hearing officer's ruling. A party that submits objections to multiple parties' exhibits shall use separate tables to set forth objections; for example, if DWR objects to exhibits submitted by CSPA and Friends of the River, it must file one table of objections to CSPA's exhibits and a separate table of objections to Friends of the River's exhibits.

Parties responding to evidentiary objections shall set forth their responses in the appropriate column of the Word document(s) containing the evidentiary objections, and submit both PDF and Word versions of the consolidated objection and response tables.

I strongly encourage parties whose interests are aligned in this proceeding to coordinate their evidentiary objections.

Date: July 11, 2025

/s/ Sam Bivins  
Sam Bivins, Hearing Officer

Attachments:

- Attachment A – SWC Objections
- Attachment B – Service List

**- ATTACHMENT A -**  
**RULING ON STATE WATER CONTRACTORS' WRITTEN EVIDENTIARY OBJECTIONS**

<b>Material Objected To</b>	<b>Grounds for Objection</b>	<b>Response to Objection</b>	<b>Ruling on Objection</b>
<p>CSPA-1</p> <p>(Testimony of Chris Shutes) ¶¶ 8<sup>1</sup>, 28, 30, 32–40, 48–49, 51</p>	<p><b>Lack of foundation.</b> (Cal. Evid. Code, § 702; <i>Sargon Enter., Inc. v. Univ. of S. Cal.</i> (2012) 55 Cal.4th 747, 770 (“<i>Sargon</i>”) [“the matter relied on must provide a reasonable basis for the particular opinion offered, and ... an expert opinion based on speculation or conjecture is inadmissible”].) This testimony contains statements that are unsupported by citation.</p> <p>Moreover, these statements are not admissible as lay testimony, because they are not rationally based on the witnesses’ perception. (Cal. Evid. Code, § 800, subd. (a).)</p> <p>The witness has not established he has special knowledge, skill, experience, training, or education to form the basis of the opinions contained in his testimony. (Cal. Evid. Code § 720, 800–03.)</p>	<p>¶ 8 (p. 4): A description of why subsequent testimony matters is relevant. The citation regarding whether the findings in Corrected Water Right Order (CRWO) 2008-0014 are still valid is the theme of the paragraphs that follow in the testimony.</p> <p>¶ 28 states a potential option that YCWA may have to use some of its transfer water to augment Delta inflows to help allow DWR to meet D-1641 or other applicable Delta water quality and flow requirements. It is not presented as a potential legal requirement, but as an option that a watershed operator with relatively few local demands may exercise that may help to preserve the opportunity to transfer some water.</p> <p>¶ 30 answers one of the hearing questions, which asks: “What would be the use or fate of the proposed 200,000 acre-feet of transfer water in the absence an approved transfer petition?” In order to respond to the hypothetical, the testimony stated its assumptions in answering it. It is particularly relevant in that it describes the</p>	<p>CSPA has withdrawn paragraph 51. The remaining objections to Mr. Shutes’ testimony are overruled. This ruling is without prejudice to State Water Contractors renewing their objections to CSPA-1 based on testimony elicited through cross-examination and/or rebuttal.</p>

**- ATTACHMENT A -**  
**RULING ON STATE WATER CONTRACTORS' WRITTEN EVIDENTIARY OBJECTIONS**

		<p>relatively unique position of YCWA under the Yuba Accord in that YCWA can sell for transfer water that it also releases as a required minimum instream flow. YCWA has stated this fact numerous times in the record. The legal assumption regarding potential serial “temporary” transfers is stated for the purpose of explaining the response to the hypothetical, not to offer a legal opinion per se.</p> <p>¶¶32-40 generally respond to a hypothetical that was asked in the hearing notice: “What would be the use or fate of the proposed 200,000 acre-feet of transfer water in the absence an approved transfer petition?” It is unclear if the objection is to the witnesses expertise in answering or what citation might be requested in answering the question. Please see also specific answers in response to YCWA objections.</p> <p>¶48: The witness is extremely well-informed about EBMUD’s operations and planning through a variety of actions and stakeholder processes over the past seventeen years. The witness also</p>	
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**- ATTACHMENT A -**  
**RULING ON STATE WATER CONTRACTORS' WRITTEN EVIDENTIARY OBJECTIONS**

		<p>supported CCWD's expansion of Los Vaqueros Reservoir and became familiar with CCWD's operation through the Bay Area Regional Reliability Project, which the witness helped open to NGO participation.</p> <p>¶49 describes that fact that DWR and Reclamation's contractors south of Delta do not receive full contract amounts in almost any year, and that therefore transfers through the Yuba Accord serve to backfill inherently unreliable supplies. It is a valid perspective provided foundation by exhibits CSPA-16 (SWP) and CSPA-17 (CVP) that show annual historical deliveries on a percent-of-contract basis.</p> <p>¶51. CSPA withdraws ¶51. See below.</p>	
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<sup>1</sup> The paragraph numbering in CSPA-1 is incorrect. Paragraph 8 referred to herein appears on 5 of CSPA-1.

- ATTACHMENT A -  
**RULING ON STATE WATER CONTRACTORS' WRITTEN EVIDENTIARY OBJECTIONS**

Material Objected To	Grounds for Objection	Response to Objection	Ruling on Objection
CSPA-1  (Testimony of Chris Shutes)) ¶¶ 11–15, 26, 45, 52–59	<p><b>Inadmissible opinion testimony by expert witness.</b> (Cal. Evid. Code § 720, 800–03.) Mr. Shutes’ written testimony and related exhibits do not state or otherwise establish that he has special knowledge, skill, experience, training, or education to form the basis of the opinions contained in his testimony regarding fisheries biology or the relationship between flow and fish, or fish screens. Moreover, these statements are not admissible as lay testimony, because they are not rationally based on the witnesses’ perception. (Evid. Code, § 800, subd. (a).)</p> <p><b>Lack of foundation.</b> (Cal. Evid. Code, § 702; <i>Sargon, supra</i>, 55 Cal.4th at p. 770 [“the matter relied on must provide a reasonable basis for the particular opinion offered, and ... an expert opinion based on speculation or conjecture is inadmissible”].) The documents cited by Mr. Shutes speak for themselves, but cannot be incorporated by</p>	<p>As stated in CSPA reply to YCWA objections, Mr. Shutes withdraws ¶¶ 13-15, 51-55, and the first three sentences of ¶59.</p> <p>¶¶ 11-12The Draft Staff Report is the State Water Board’s most current summary of the hydrology of the Sacramento River and Delta watersheds. It is reliable information that presents an appropriate level of detail for the present hearing and the purpose of recommending that the State Water Board revisit some of its findings in CWRO 2008-0014. The summary statements in regarding the hydrograph in ¶12 support the finding in the CWRO 2008-0014 regarding the shifting of the hydrograph under the Yuba Accord from spring toward summer.</p> <p>¶45 The facts cited are common knowledge and the documents cited are not sought to be incorporated by reference. It would be an undue use of time to introduce them as</p>	<p>CSPA has withdrawn paragraphs 13-15, 51-55, and the first three sentences of paragraph 59. I have excluded paragraphs 56, 57, and the last sentence of paragraph 59 on other grounds.</p> <p>State Water Contractors’ remaining objections to CSPA-1 are overruled. This ruling is without prejudice to State Water Contractors renewing their objections to CSPA-1 based on testimony elicited through cross-examination and/or rebuttal.</p>

**- ATTACHMENT A -**  
**RULING ON STATE WATER CONTRACTORS' WRITTEN EVIDENTIARY OBJECTIONS**

Material Objected To	Grounds for Objection	Response to Objection	Ruling on Objection
	reference into the written testimony because the witness did not establish expertise on the subject matter therein.	exhibits. ¶¶ 56-58 summarize foregoing paragraphs and should be addressed consistent with the disposition of those paragraphs.	
CSPA-5; CSPA-13; FOR-11	<b>Hearsay.</b> (Gov. Code, § 11513, subd. (d); Cal. Code Regs., tit. 23, § 648.5.1.) These exhibits contain hearsay that cannot be used to support a finding by the Administrative Hearing Officer. The probative value of the proposed evidence is substantially outweighed by the probability that its admission will necessitate undue consumption of time in evaluating the validity of any claims therein relied upon by any party in this proceeding. (Gov. Code, § 11513, subd. (f).) The exhibits contain numerous opinions and assertions by the author(s) that are unsupported by citation and for which it has not been established are within the personal knowledge or expertise of the author(s).	Ex. CSPA-5 is acceptable hearsay that supports other evidence, notably Ex. CSPA-4. (Gov't Code § 11513(d).)  Ex. CSPA-13 was co-authored by the witness.	The hearsay objections to CSPA-13 and FOR-11 are sustained. CSPA-13 and FOR-11 may be used to supplement or explain other evidence.  State Water Contractors' objection to CSPA-5 is sustained and the exhibit excluded for the reasons stated at page 8 of this procedural ruling. State Water Contractors' hearsay objection is noted.  State Water Contractors' remaining objections to CSPA-13 and FOR-11 are overruled.
SDWA 7	<b>Irrelevant.</b> The probative value of the proposed evidence is substantially	On Page 4-10 (pdf p. 184) of AHO-002 (DSEIR),	Overruled for the reasons stated on page 2 of this procedural ruling.



**- ATTACHMENT A -**  
**RULING ON STATE WATER CONTRACTORS' WRITTEN EVIDENTIARY OBJECTIONS**

	<p>outweighed by the probability that its admission will necessitate undue consumption of time. (Gov. Code, § 11513, subd. (f).) The AHO should exercise his discretion to exclude this exhibit because it was prepared for and relates to Sites Reservoir specifically.</p>	<p>Yuba lists Sites Reservoir as a "Present and Future" status project. SDWA 007 is a technical memorandum containing potential Sites diversions to support Mr. Wilson's opinion that the cumulative impacts analysis in the Yuba DSEIR and FSEIR is insufficient. SDWA 007 shows that Yuba refill and Sites diversions may occur at the same time and supports Mr. Wilson's opinion that a quantitative analysis must be performed</p> <p>Strict rules governing the admissibility of evidence do not apply in administrative proceedings. This is so in part because the hearing officer is "presumably competent to ... discount that evidence which has lesser probative value, it makes little sense, as a practical matter, for a judge in that position to apply strict exclusionary evidentiary rules." (Underwood v. Elkay Min., Inc. (4th</p>	
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**- ATTACHMENT A -**  
**RULING ON STATE WATER CONTRACTORS' WRITTEN EVIDENTIARY OBJECTIONS**

		Cir. 1997) 105 F.3d 946, 949.) The AHO is conducting the Sites and Yuba hearings and has the capability of determining the probative value of the subject exhibit, and doing so will not result in an undue consumption of time.	
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-Attachment B-  
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