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7

8 BEFORE THE CALIFORNIA STATE WATER RESOURCES CONTROL BOARD
9

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
14

**CALIFORNIA DEPARTMENT OF
WATER RESOURCES' MASTER
RESPONSE TO SIMILAR OBJECTIONS
MADE BY PROTESTANTS
COLLECTIVELY**

15 California Department of Water Resources ("DWR") submits this master response
16 to objections submitted by Protestants¹ to the hearing in the matter of DWR and U.S.
17 Department of Interior's Bureau of Reclamation's ("Petitioners'") Request for a Change in
18 Point of Diversion for California Water Fix. DWR reserves the right to provide additional
19 responses to these objections and to respond to any objections that may be raised later
20 in this proceeding. For the reasons explained below, the objections should be overruled.
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28 ¹ Attachment A lists the Protestants by grouping

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INTRODUCTION

1 The Protestants collectively filed 21 sets or “motions” of written objections that
2 often included multiple joinders with other parties. To efficiently respond and facilitate
3 the review of these objections, DWR submits this master response to address common
4 issues and duplicative arguments raised by Protestants’ objections, which will then be
5 referenced in DWR’s specific responses to objections raised by individual Protestants.
6 Many of these objections have previously been ruled upon in this matter. Accordingly,
7 much of this master response relies on rulings of the State Water Resources Control
8 Board (“Board”) as well as the Hearing Officers’ rulings in this proceeding, including the
9 rulings issued on February 1, 2016, March 4, 2016, April 25, 2016, June 10, 2016, and
10 July 13, 2016.

STATEMENT OF FACTS

13 On August 26, 2015, DWR and Reclamation filed a joint petition to add three
14 points of diversion to the water rights of the State Water Project and Central Valley
15 Project (“Change Petition”) necessary to allow for the construction and operation of new
16 water conveyance facilities as components of the State’s “California WaterFix” (“CWF” or
17 “WaterFix”) program. The CWF is a critical element of a broader State effort to meet the
18 goals of providing for a more reliable water supply for California and protecting,
19 restoring, and enhancing the Delta ecosystem. The Board issued a Notice of Petition
20 and Notice of Public Hearing and Pre-Hearing Conference on October 30, 2015 to
21 consider the petition.

22 On January 5, 2016, DWR filed its Notice of Intent to Appear (“Notice”) and
23 included as “Attachment A” a list of the witnesses that will testify during Part 1 of the
24 hearing. In this NOI and in the subsequent NOI DWR and Reclamation provided all
25 parties with the organization of testimony, specifically a lead witness submitting
26 testimony and a panel of witnesses for cross examination. This structure was affirmed
27 by the Board in its June 10, 2016 Ruling. The Hearing Officers conducted a pre-hearing
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1 conference on January 28, 2016 to discuss procedural issues related to the hearing and
2 issued a ruling after the conference on February 1, 2016

3 In a March 4, 2016 ruling (p. 2), the Hearing Officers noted that DWR has
4 provided compliance schedules for endangered species laws and environmental impact
5 review, and that Part 2 of the hearing could not commence without completion of those
6 processes.

7 On April 25, 2016, the Hearing Officers issued a ruling that included a revised
8 hearing schedule that indicated Petitioners' case-in-chief for Part 1, including written
9 testimony, would be due on May 31, 2016 and the hearing would start on July 26, 2016.
10 Also in the April 25, 2016 letter, the Hearing Officers indicated that "it may be necessary
11 to revisit Part 1 hearing issues at the close of the hearing to the extent that any
12 substantial changes to the final CEQA document for WaterFix relative to the draft
13 document have a material bearing on Part 1 issues. . . ." (*Id.*)

14 On May 31, 2016, DWR submitted its case-in-chief, including an updated list of
15 the witnesses that will testify during Part 1 of the hearing.

16 On June 10, 2016, the Hearing Officers issued a ruling extending the deadline to
17 July 12, 2016 for parties to submit procedural or evidentiary objections that, if valid,
18 would preclude Petitioners' witnesses from testifying (June 10, 2016 Ruling, at pages
19 2-3). In the ruling, the Hearing Officers strongly encouraged, but did not require, parties
20 to submit any other procedural or evidentiary objections by the July 12, 2016 deadline.
21 The Board's Rulings do not specify a time for Petitioners to respond to these objections,
22 but noted that extending the deadline to July 12, 2016 would reduce the amount of time
23 that Petitioners have to respond to objections and the amount of time that the Hearing
24 Officers have to rule on them before the hearing. The Notice of Hearing dated

25 October 30, 2015 (Enclosure D) provides, "To provide time for parties to respond,
26 the hearing officers will rule on procedural requests filed in writing no sooner than fifteen
27 days after receiving the request, unless an earlier ruling is necessary to avoid disrupting
28 the hearing."

1 Also in the June 10, 2016 ruling, the Hearing Officers explained that greater
2 continuity and understanding of the information presented will be achieved if the lead
3 and secondary witnesses covering each subject area are subject to cross-examination
4 as a panel immediately after they summarize their direct testimony concerning the
5 subject area (June 10, 2016 Ruling, at page 3).

6 On July 13, 2016, the Hearing Officers issued a ruling reminding the parties that
7 follow-up comments on rulings and duplicative motions or requests on issues already
8 addressed are strongly discouraged and indicating that in the future, they may not
9 respond to duplicative comments, motions, or requests (July 13, 2016 Ruling at page 2).

10 **EVIDENTIARY STANDARDS**

11 This is an administrative hearing governed by Title 23 of the California Code of
12 Regulations, section 648 et seq.; Chapter 4.5 of the Administrative Procedure Act
13 (commencing with 11400 of the Government Code); sections 801 to 805 of the Evidence
14 Code; and section 11513 of the Government Code, (Cal. Code Regs., tit. 23, § 648,
15 subd. (b)). This is not a civil or criminal trial, nor even a formal adjudicative hearing
16 under Chapter 5 of the Administrative Procedures Act. The Board is not required to
17 conduct adjudicative hearings according to the technical rules relating to evidence and
18 witnesses in trial court (Cal. Gov. Code, § 11513, subd. (c)). Instead, “[a]ny relevant
19 evidence shall be admitted if it is the sort of evidence on which responsible persons are
20 accustomed to rely in the conduct of serious affairs, regardless of the existence of any
21 common law or statutory rule which might make improper the admission of the evidence
22 over objection in civil actions” (*Id.*).

23 Hearsay evidence is admissible and may be used to supplement or explain other
24 evidence (*Id.*, § 11513, subd. (d)). Over a timely objection, however, hearsay is not
25 sufficient in itself to support a finding unless it would be admissible over objection in a
26 civil action (*Id.*). The goal of any adjudicative hearing is to gain information without
27 undue expense to the parties, and thus the Hearing Officers may “exclude evidence if its
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1 probative value is substantially outweighed by the probability that its admission will
2 necessitate undue consumption of time” (Id., § 11513 subd. (f)).

3 Sections 801 to 805 of the Evidence Code set requirements for expert and other
4 opinion testimony. Challenges to exclude experts as non-experts and disqualify them
5 are subject to the discretion of the hearing officer (Government Code section 11513;
6 Evidence Code sections 801-805). The Board is not bound in its proceedings by
7 Evidence Code 720, which requires the court to qualify an expert witness prior to
8 allowing him or her to testify. Rather, the Hearing Officers may determine based on their
9 review of the record, after the submission of all relevant evidence, whether the expert’s
10 opinion is “based on a matter (including [the expert’s] special knowledge, skill,
11 experience, training, and education) perceived by or personally known to the witness or
12 made known to him at or before the hearing, whether or not admissible, that is of a type
13 that reasonably may be relied upon by an expert in forming an opinion upon the subject
14 to which his testimony relates....” (Evid.Code, § 801, subd.(b)).

15 As noted above, the hearing need not be conducted according to technical rules
16 relating to evidence and witnesses, except as provided in Government Code section
17 11513. The relaxation of strict rules of admissibility in administrative proceedings
18 recognizes that the Hearing Officer has expertise in the subject matter and makes both
19 the legal and factual determinations.

20 **ARGUMENT**

21 Overall, many of the objections raised by Protestants are presented as arguments
22 against the hearing process, conclusory statements without supporting evidence, or
23 disagreements with testimony improperly phrased as “objections”. In many instances,
24 the objecting parties are arguing the merits of the Petition.

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1 **A. Many Objections are duplicative and cumulative challenging Expert**
2 **Opinions under the wrong legal standard**

3 The Board has broad discretion in conducting this hearing. In multiple rulings the
4 Board has decided to allow motion practice broadly and has discouraged duplicative and
5 repetitive filings by all parties (See February 11, 2016 Ruling at page 10; and
6 July 13, 2016 Ruling at page 2). The Board has also required that written testimony be
7 concise and clear and structured direct testimony to summarize the issues and cross-
8 examination to expand upon the written testimony (June 10, 2016 Ruling at page 3; and
9 July 13, 2016 Ruling at pages 1-2).

10 As shown by the attached *Table of Objections*² broadly written objections present
11 an undue burden on DWR and will likely be duplicative and largely argumentative
12 regardless of the Board's admonition to the parties. The purpose of providing the table
13 is to help organize the objections prior to the commencement of the hearing on
14 July 26, 2016. DWR intends to submit individual written responses to substantive
15 objections.
16

17
18 To the extent that the objecting parties do address admissibility, they apply the
19 wrong standards. The objecting parties rely on Evidence Code section 720, which
20 governs the qualifications of expert witnesses in trial court, and on cases interpreting
21 section 720. Evidence Code section 720 does not apply in Board adjudicative
22 proceedings (23 Cal. Code Regs. § 648, subd. (b)). Even if section 720 did apply, the
23 general 720 objection by San Joaquin County is overbroad and provides insufficient
24 notice to respond. Without waiving said objection, Petitioner believes each and every
25 witness offered as an expert for the Petition will qualify as an expert. Each has been
26

27 ² *Attachment 2* to this Master Response is a summary of objections submitted organized by
28 witness and exhibit cumulatively.

1 identified as having the requisite and appropriate background and experience.

2 DWR's witness testimony easily meets the governing relevance and admissibility
3 standards (Gov. Code section 11513, subd. (c)).³ Based on their academic and
4 professional qualifications, DWR's witnesses all qualify as expert witnesses. The
5 fundamental business of DWR is to manage and protect California's water by working
6 under its own powers and with other agencies to benefit the state's people, and to
7 protect, restore and enhance the natural and human environments (See Section IV.E.
8 below and the witnesses' Statements of Qualifications, which are Exhibit Numbers DWR-
9 11, DWR-12, DWR-14, DWR-17 to DWR-22, DWR-24, DWR-26 to DWR-30, DWR-32,
10 and DWR-33). They are experts in the subject matter of their testimony. To the extent
11 that the objecting parties argue that DWR's witnesses offer testimony beyond the scope
12 of their expertise, Evidence Code sections 801 through 805 apply to these proceedings.
13

14 Section 801 limits the scope of opinion testimony to opinion that is:

15
16 Related to a subject that is sufficiently beyond common experience that
17 the opinion of an expert would assist the trier of fact; and . . . [b]ased on
18 matter (including his special knowledge, skill, experience, training, and
19 education) perceived by or personally known to the witness or made
20 known to him at or before the hearing, whether or not admissible, that is
of a type that reasonably may be relied upon by an expert in forming an
opinion upon the subject to which his testimony relates, unless an expert
is precluded by law from using such matter as a basis for his opinion.

21 (Cal. Evid.Code § 801.)

22
23
24 ³ DWR's witnesses qualify as experts where the type of analysis at issue is their business.
(*Greenebaum v. City of Los Angeles* (1984) 153 Cal.App.3d 391, 413.) DWR's witnesses may provide
25 both percipient and expert testimony, any of which the Board may properly rely on as substantial evidence
26 supporting decisions in this proceedings. (*Center for Biological Diversity v. California Department of
Forestry and Fire Protection* (2014) 232 Cal.App.4th 931, 948; *Oakland Heritage Alliance v. City of
Oakland* (2011) 195 Cal.App.4th 884, 900; *City of Rancho Cucamonga v Regional Water Quality Control
Board* (2006) 135 Cal.App.4th 1377, 1387; *Anthony v. Snyder* (2004) 116 Cal.App.4th 643, 660-661;
27 *Browning-Ferris Industries v. City Council* (1986) 181 Cal.App.3d 852, 866; *Coastal Southwest Dev. Corp.
v. California Coastal Zone Conservation Comm.* (1976) 55 Cal.App.3d 525, 535-536.)
28

1 The expert testimony offered by DWR's witnesses easily meets these thresholds.
2 There can be little question that technical matters related to the WaterFix are sufficiently
3 beyond common experience that expert testimony would clearly assist the Hearing
4 Officers. Moreover, the testimony of DWR's witnesses regarding these matters is based
5 on their special knowledge, skills, experience, and training developed at least in part in
6 the course of working on the project, and by reviewing information developed and
7 submitted in anticipation of their appearance as witnesses in these proceedings. The
8 Hearing Officers should admit the evidence and consider whether the expert testimony is
9 reliable, relevant, and comports with sections 801 through 805 of the Evidence Code
10 upon their review of all of the evidence.

11 **B. Factual objections are not the basis for the exclusion of testimony**

12 Objections which submit legal and factual arguments as "evidentiary" objections
13 should not be considered by Hearing Officers. For example, the San Joaquin Tributaries
14 Authority's (SJTA) "Procedural and Evidentiary Objections" objects to all testimony of
15 Maureen Sergent, and provides a number of challenges to Ms. Sergent's testimony with
16 presentation of multiple references to contrary facts and analysis. At page 3, line 22,
17 SJTA states, "Furthermore, the SJTA disagrees with Ms. Sergent's assertion that
18 downstream pre-1914 water right holders do not have the ability to divert previously
19 stored water. Pre-1914 water right holders are not prohibited from diverting previously
20 stored water. To the extent water from the Project is abandoned or cannot be
21 continuously controlled by the Project, pre-1914 water right holders may validly divert
22 previously stored water". Such factual and legal arguments should be dismissed as
23 improper. This is a blatant attempt to use a forum intended for objections to evidence to
24 instead interject testimony and argument. If the SJTA strongly believes Ms. Sergent has
25 failed to address particular points or disputes, vigorous cross-examination, presentation
26 of contrary evidence, and careful instruction on the burden of proof are the traditional
27 and appropriate means of attacking evidence.
28

1 As another example, California Water Research's July 12, 2016 "Evaluation of
2 testimony on the reliability of the methods used to produce CalSim and DSM2 model
3 results" submits what is referred to as "relevant definitions used in ensuring reliability of
4 computer simulations from the Department of Defense, which regularly procures large
5 computer simulations" and appears to submit these as applicable to matters being
6 considered in these proceedings. Such improper factual "objections" should not be
7 considered as they are conclusory, lack foundation, and are generally irrelevant. The
8 presentation of contrary factual evidence is the function of cross examination in which
9 Protestants are afforded the opportunity to challenge the weight of the evidence
10 presented.

11 **C. Blanket Objections should be disregarded**

12 Some parties objected to all of DWR's testimony⁴ and/or exhibits via a blanket
13 "objects to all testimony" type statement. This could be seen as the functional equivalent
14 of a motion for judgment, because the practical effect of excluding all of DWR's evidence
15 would be to deprive it of any means to satisfy its burden of proof.

16 The Board made it clear in its order in the Byron Bethany Irrigation District (BBID)
17 and West Side Irrigation District (WSID) proceedings that it will not entertain these types
18 of broad motions, except at its own discretion (Board Order Number 2016-0015, at page
19 12). The Board's ruling on the BBID and WSID matters states "[w]e do not generally
20 allow parties to move for judgment during the course of an evidentiary hearing. The
21 hearing officers explicitly directed the parties not to do so in these matters. We
22 discourage any parties to a future proceeding before the Board from attempting to do
23 so." (*Id.*)

24 In proceedings before the Board, "relevant evidence shall be admitted if it is the
25 sort of evidence on which responsible persons are accustomed to rely in the conduct of
26 serious affairs" (Gov. Code, § 11513). Generally, it is Board practice to consider "all

27 _____
28 ⁴See Attachment B for a list of specific Protestants objecting to all testimony and exhibits.

1 relevant evidence” when making its rulings (*In the Matter of WR Order 2001-04-DWR*
2 *Implementing Condition 6 Of Order WR 95-10 As Modified By Order WR-98-04*
3 *California-American Water Company* (2001) SWRCB Ord. No. WR 2001-13; WL
4 36253670, at *3).

5 Evidence Code section 210 defines “relevant evidence” to mean evidence “having
6 any tendency in reason to prove or disprove any disputed fact that is of consequence to
7 the determination of the action.” The bar for relevancy is not high, as evidence having
8 “any tendency in reason” to assist the Board in reaching a decision about a disputed
9 issue may be admitted.

10 **D. Adequate foundation for testimony is before the Board**

11 The Protestants’ expert witness objections are barely-concealed attacks on the
12 weight of DWR’s testimony rather than on the admissibility of the testimony or the
13 qualifications of the expert. The question here is whether the testimony should be
14 admitted at all, and under the standards governing admissibility in these proceedings, all
15 of DWR’s written testimony and exhibits should be admitted. The parties will have ample
16 opportunity to argue the weight of the evidence.

17 Below is a summary response to objections related to specific lead expert
18 witnesses⁵: Many objections are layered upon another where the basis is a challenge to
19 another’s testimony or exhibit. In that regard, this Master Response provides a general
20 response and does not address each individual or layered objection.

- 21 • **Armin Munevar** – Mr. Munevar is an engineer with 22 years of
22 experience in water resource systems modeling for complex water systems including
23 the development and application of the CalSim II model, and application of the DSM2
24 model, for a range of Central Valley and Sacramento-San Joaquin Delta water
25 resource management projects. Objections raised include attacks on his

26 _____
27 ⁵ DWR reserves the right to respond specifically to all objections filed by Protestants in a separate
28 response that addresses issues not covered in this Master Response. It is anticipated that some
objections will require a detailed individual response not included in this Master Response.

1 qualifications and that his testimony is speculative/ambiguous and lacks foundation,
2 offers legal opinions, and/or is irrelevant. The underlying theme of many of the
3 objections attack the efficacy of the modeling programs, assumptions, analysis and
4 used for the proposed project. These specific objections are best addressed in
5 **Section E** of this Response.

6 • **John Bednarski** – Mr. Bednarski is an engineer with over 20 years of
7 experience with design and construction of water infrastructure: Objections raised
8 include argument that he is an unqualified expert who offers legal opinions, and that
9 his testimony is speculative and lacks foundation. Protestants take selected text
10 without considering other applicable sections of the DEIR/RDEIR including specific
11 mitigation measures; with regards to the speculative nature of the mitigation
12 measures. Protestants are making arguments and factual objections, not challenging
13 his testimony or his qualifications. Mr. Bednarski has extensive experience that
14 qualifies him to describe the mitigation measures in his testimony.

15 • **Jennifer Pierre** – Ms. Pierre is an environmental scientist who has
16 worked on the BDCP/Cal Water Fix in a lead consulting role for over 5 years.
17 Objections raised claims that she is unqualified, her testimony is speculative and
18 offers legal opinions and are not based on generally accepted principles/science.
19 The purpose of her testimony is to explain the proposed project as requested by the
20 Hearing Officers and Protestants. Much of these objections are factual challenges or
21 arguments disagreeing with the modeling programs used for the proposed project or
22 otherwise attacking other witnesses' testimony/exhibits.

23 • **John Leahigh** – Mr. Leahigh is a water resources engineer, who has
24 been with DWR for 24 years who prepares and directs SWP operations planning and
25 management, including water supply forecasts, Delta compliance reports, scheduling
26 system-wide SWP water operations, and analyzing annual SWP water delivery
27 capabilities based on forecasted water supply (DWR-21). Protestants object to Mr.
28 Leahigh's testimony concerning SWP's compliance with D-1641 water quality

1 objectives, including exceedance metrics, and past and anticipated hydrological
2 conditions. Protestants do not object to Mr. Leahigh's status as an expert but to
3 certain opinions in his testimony. Mr. Leahigh's testimony addresses SWP
4 operations and the key issue of whether the proposed changes to points of diversion
5 would alter water quality in a manner that causes legal injury to other water users and
6 is relevant for consideration by the Board.

7 • **Maureen Sergent** – Ms. Sergent is an engineer with DWR with 25 years
8 of experience implementing contracts between the DWR and water agencies.
9 Objections raised include that Mrs. Sergent is not qualified to render opinions related
10 to the contracts administered by DWR and that her testimony offers legal opinions; is
11 speculative being based on underlying modeling and the testimony of others; lacks
12 foundation related to the modeling; assumes D-1641 standards are appropriate for
13 determining legal injury to water users; and is irrelevant. Her Statement of
14 Qualifications (SOQ) sufficiently demonstrates her expertise. **Section “H”** below
15 address the objection based on legal opinion. **Section E** below explains the
16 modeling and project operations relied upon by all witnesses. Ms. Sergent's
17 testimony addresses the requirements of Water Code section 1740 in a succinct and
18 clear manner that this Board has required.

19 • **Parviz Nader-Tehrani** – Dr. Nader-Tehrani is a civil engineer with over
20 26 years of experience in numerical modeling in hydrodynamics, water quality and
21 particle tracking in the Sacramento San Joaquin Delta mostly using DSM2. Similar to
22 the objections to Armin Munevar's testimony, the Protestants are attacking the model
23 programs, assumptions, analysis and application to the proposed project, not the
24 witnesses' qualifications or testimony. These objections are addressed in Section F
25 below.

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1 **E. Challenges to the Efficacy of the Model Programs Should Go to the Weight**
2 **Afforded the Evidence and not its Admissibility.**

3 Any objections to Petitioners' use of the CalSim II and DSM2 models⁶, go to the
4 weight of the evidence, not to its admissibility. These models have been in the public
5 domain for over 15 years, have been used by the SWRCB, state and federal⁷ court
6 proceedings and have been subject to various studies and peer reviews.⁸ Agencies
7 have been publishing reports, peer reviewed articles, and technical memorandums since
8 the CalSim and DSM2 models have been released in the public domain, with open
9 source and transparent documentation.⁹ The models have been used by the modeling
10 community since their release. The Board has relied on these models and their analysis
11 to assist it in reaching a decision in a number of important hearings, including D-1650
12 concerning water rights application of the City of Davis and Woodland, and D-1641
13 concerning the implementation of the water rights for the Bay-Delta. Since 2004, a
14 public forum known as the DSM2 Users Group has been meeting about two times a year
15 to share ideas, applications and issues related to DSM2 model.¹⁰ Further, DWR submits
16 an Annual Progress Report on Bay-Delta modeling to the Board which includes DSM2
17 model developments and applications.¹¹ Numerous precedential SWRCB decision and

18 _____
19 ⁶ Models used to analyze possible water quality, water level and water delivery impacts of the proposed project.

20 ⁷ SLDMWA v. Salazar (E.D. Cal.2010) 760 F. Supp. 855, 880, 893, 896, et.seq.; SLDWA v. Jewell (9th Cir. 2014) 747 F.2d 581, 581, 617-618.

21 ⁸ For example, see: "A Strategic Review of CALSIM II and its Use for Water Planning, Management, and Operations in Central California," by A. Close, W. M. Haneman, J. W. Labadie, D. P. Loucks, J. R. Lund, D. C. McKinney, and J. R. Stedinger. CALFED Science Program, 4 Dec. 2003. (available at
22 <http://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/daviswoodland/daviswoodland_cspa_es_9.pdf>.); "Peer Review Response: A Report by DWR/Reclamation in Reply to the Peer Review of the CalSim-II Model Sponsored by the CALFED Science Program In December 2003." Aug. 2004. (available at
23 <[http://baydeltaoffice.water.ca.gov/modeling/hydrology/Peer%20Review%20Response%20\(August%202004\).pdf](http://baydeltaoffice.water.ca.gov/modeling/hydrology/Peer%20Review%20Response%20(August%202004).pdf)>)

24 ⁹ For information on CalSim II and DSM2, see DWR's Bay Delta Modeling website at:
25 <http://baydeltaoffice.water.ca.gov/modeling/hydrology/CalSim/Downloads/CalSimDownloads/CalSim-IIStudies/index.cfm>; and <http://baydeltaoffice.water.ca.gov/modeling/deltamodeling/models/dsm2/dsm2.cfm>.

26 ¹⁰ The DSM2 Users Group meeting agendas and presentations are found at:
<http://baydeltaoffice.water.ca.gov/modeling/deltamodeling/dsm2usersgroup.cfm>

27 ¹¹ For DWR Annual Progress Reports to the State Water Board on Bay Delta modeling, see
<http://baydeltaoffice.water.ca.gov/modeling/deltamodeling/annualreports.cfm>

1 orders have supported the application of CalSimII and DSM2.¹² Any objections to
2 Petitioners' use of these models, even if valid, go to the weight of the evidence, not to its
3 admissibility.

4 The courts have also considered these modeling tools and have determined them
5 to be adequate for CEQA purposes. In an unpublished 2009 CEQA case, the California
6 Court of Appeal upheld the use of CalSim II in a water transfer Environmental Impact
7 Report ("EIR") provided the limitations of the model were explained, which was the case
8 in this EIR (*California Water Impact Network v. Newhall County Water Dist.* (Cal. Ct.
9 App., May 13, 2009, No.B203781) 2009 WL 1314719, at *15).

10 The court quoted the EIR, which provided the following information about
11 CalSim II (*Ibid.* at *14).

12
13 Like any computer model, CalSim II is subject to criticism, but it provides
14 a reasonable planning level simulation of existing project operations for
15 the CVP and SWP despite that the operating environment and regulatory
16 requirements for the projects are in a constant state of transition and
17 change. In determining suitability of these studies to a particular
18 analysis, the user should consult all documentation that accompanies the
19 model package release as appropriate. Analytic controversies and
20 misunderstandings are inevitable, but CalSim II is the most prominent
21 water management model in California, and has become central to a
22 variety of water management and policy issues and controversies. It is
23 appropriate for DWR and the USBR to use CalSim II. The court held the
24 city's discussion of CalSim II in the EIR was sufficient, because it
25 included an adequate discussion of it, including its recognized
26 shortcomings(*Ibid.* at *15).

27 In a recent enforcement hearing before the Board, parties objected to testimony
28 that included DSM2 modeling results (March 9, 2016 Ruling in the enforcement actions
against Byron-Bethany Irrigation District and West Side Irrigation Districts, available at:
http://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/byron_beth

¹² See: e.g., See, e.g., In The Matter Of Water Right Applications 30358A And 30358B (2011), SWRCB Decision No. 1650, 2011 WL 1211391, at *4 (Board member Doduc receives assurances regarding confidence in CalSim II); In The Matter Of Petition For Reconsideration Of The Approval Of Application 30531A And The Issuance Of Permit 21176 To The City Of Stockton (2006) SWRCB Ord. No. WR 2006 – 0007, 2006 WL 684394, at *4 (CalSim II modeling applied in support of EIR).

1 [any/docs/bbid_wsid/bbidwsid_rulingonmotions_finals_030916.pdf](#)). The parties asserted
2 that questioning on cross-examination would not be a sufficient opportunity to explore
3 the underlying assumptions of the model runs. The Board overruled that objection and
4 held the appropriate remedy was to discount the weight of the evidence rather than
5 exclude it.

6 In that same enforcement proceeding, the parties also objected to the testimony
7 that included modeling results, because they asserted that the model runs were not in
8 the public domain or otherwise available for review. In denying the parties' motions in
9 limine, the hearing officers quoted expert testimony of those parties' witnesses that
10 explained that "modeling tools such as the DSM2 have been available and in
11 widespread use for decades" (BBID-384, Report of Susan Paulsen, at page 73, available
12 at:

13 http://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/byron_beth
14 [any/docs/exhibits/bbid/bbid384.pdf](#)). The hearing officers ruled that the parties had the
15 ability to analyze and understand the model runs described in the submissions and
16 would be able to conduct a thorough cross-examination of the witnesses. If certain
17 information was not available or could not be understood or analyzed in preparation of
18 cross-examination, the hearing officers ruled that they would take that into account when
19 assessing the relative weight and reliability of the testimony.

20 Similar principles apply here. The modeling data (model assumptions that
21 describe input and results that describe output) is part of Petitioners' case in chief, which
22 was served on all parties on May 31, 2016 (DWR-5, DWR- 66, and DWR-71). Further,
23 many of the Protestants have requested and received from DWR the packages of model
24 information (which includes the models, input, output and "diff" files comparing model
25 runs) during the course of the proceedings and many received extensive modeling data
26 before these proceedings began.¹³ For example, the modeling assumptions for

27
28 ¹³ For information on DWR's release of model packages, see DWR March 11, 2016 letter to SWRCB for list of models
(continued...)

1 conveyance alternatives were provided in the 2013 BDCP public EIR/EIS (see Chapter 5
2 and Appendix 5A). Additional modeling analysis was provided in the 2015
3 RDEIR/SDEIS (see Appendix B – Supplemental Modeling for New Alternatives).

4 The objecting parties will have ample opportunity to question Petitioners' witnesses
5 during cross examination at the hearing about the models, assumptions and analysis
6 related to the proposed project in this Petition. Thus, objections to the modeling
7 testimony, go only to the weight of the testimony, not its admissibility.¹⁴

8 The objection issued by the Delta Protestants¹⁵ that Petitioner DWR's scientific
9 evidence, specifically CALSIM 2 version 1.2.4b, DWR's 15 year-old water resources
10 modeling system for evaluating operational alternatives of large, complex river basins,
11 violates the People v. Kelly (1976) 17 Cal.3d 24 "generally accepted" test is not well
12 taken. The Board is not bound to conduct this evidentiary hearing using technical rules
13 related to evidence and witnesses. (Gov't Code § 11513(c); 23 Cal.Code Regs § 648.)
14 Any relevant evidence is admissible as long as it is the sort of evidence on which
15 responsible persons are accustomed to rely in the conduct of serious affairs. (Gov't
16 Code § 11513(c).)

17 Further, even if People v. Kelly were applied in this situation, CALSIM2 clearly
18 meets the Kelly requirements, because for purposes of the Kelly test, once a published
19 appellate opinion has accepted a scientific technique, that precedent controls any
20 subsequent trials where that technique is used. (People v. Doolin (2009) 45 Cal.4th 390,
21 447.) Therefore, if the Board did choose to apply People v. Kelly to the Change Petition,

22 (...continued)

23 made available, and see May 16, 2016 letter for additional model information.

24 ¹⁴ Petitioners' do not believe it is necessary to include the complete model packages for CalSim II and DSM2 in their
25 testimony as the testimony includes the relevant input and output information used in their analysis. However, the
26 model packages have been made available to all parties, upon request. In February, March, and May 2016, DWR and
27 Reclamation made available the CalSim II and DSM2 modeling packages used in analyzing CWF and Alternative 4A.
28 Petitioners announced in letters to the SWRCB and the parties that this information was available upon request by
contacting DWR. (See <http://baydeltaconservationplan.com>, <http://www.californiawaterfix.com>; see also Footnote 11
above.)

¹⁵ South Delta Water Agency, Central Delta Water Agency, Lafayette Ranch, Heritage Lands, Mark Bachetti
Farms and Rdy Mussi Investments L.P.

1 it must permit CALSIM2 because of its precedential acceptance before this Board and in
2 13 separate federal and state decisions (see discussion, *supra.*).

3 Importantly, CALSIM 2 is the latest publicly available water resource model and
4 used today by local, state, and federal agencies to evaluate and make difficult water
5 allocation decisions. It was designed and is currently maintained by an interagency
6 team. It meets the criteria for admissibility of evidence utilized in this matter. The Delta
7 Protestants objection should be denied.¹⁶

8 **F. The Proposed Project Operations are adequately described in the**
9 **Testimony and Exhibits**

10 Various Protestants object to witness testimony on the basis that the proposed
11 project operations are not clear.¹⁷ These Protestants focus on select pieces of testimony
12 and evidence and mischaracterize Petitioners' proposed project and the purpose of the
13 analysis for the boundary operational criteria presented for this hearing. DWR's
14 testimony regarding the operational criteria that is broader than the project described in
15 the Change Petition is relevant and necessary to respond to the Board's comment that
16 Petitioners should "show that there are feasible operations available to meet any
17 performance standards." (March 4, 2016 Ruling, at page 2.)

18 Objections that DWR's testimony fails to adequately describe the project
19 operations go to the weight of the evidence and such objections are contrary to DWR's
20 submitted testimony. DWR witnesses present facts and analysis describing the CWF
21 proposed project and initial operational criteria, as well as additional operational criteria,
22 referred to as Boundaries 1 and 2, to show there are feasible operations to meet any

23 _____
24 ¹⁶ Protestants Local Agencies of the North Delta, Bogle Vineyards, Delta Watershed landowner Coalition,
25 Diablo Vineyards and Brad Lange, Delta Watershed Landowner Coalition, Stillwater Orchards, Delta Watershed
26 Landowner Coalition, and Friends of Stone Lakes National Wildlife Refuge raised an objection citing People v. Kelly
27 but did not relate their objection to any DWR evidence. DWR repeats the above response to the extent these
28 Protestants object to CalSim 2.

¹⁷ See: SVWU objections 3:7-13, 5:4-6; PCFFA, LAND, Delta Protestants, Restore the Delta, CSPA, and San Joaquin
County

1 performance standards. (DWR-1, DWR-5, DWR-51, and DWR-71.) In addition, the
2 testimony clearly and fully describes operations for the Alternative 4A, the preferred
3 alternative from the 2015 RDEIR/SDEIS (SWRCB-3), and which is the project submitted
4 to the SWRCB for this Hearing. (DWR-51, at 10:3-6.) Also, DWR-324 indicates where
5 parties may obtain information on Alternative 4A, including in the August 2015 Change
6 Petition, as supplemented in September 2015 (SWRCB-1 and SWRCB-2). The Change
7 Petition lists specific references to sections of the RDEIR/SDEIS for this detailed
8 information. (SWRCB-1, Environmental Information and Supplemental Information, at 8-
9 14.)

10 Furthermore, DWR testimony describes Alternative 4A and the associated initial
11 operational criteria in several exhibits. (DWR-1, DWR-5, DWR-51, and DWR-71.) Taken
12 together, these exhibits provide a comprehensive description of Alternative 4A and
13 operational criteria that is used in modeling to analyze potential impacts from operation
14 of the NDD intakes. Operational criteria for Alternative 4A will include existing regulatory
15 requirements and new criteria associated with new and existing facilities and permitting
16 requirements under the biological opinions. (DWR-51, at 12:10-16.) The initial
17 operational criteria is anticipated to occur within a range between Operating Scenarios
18 H3 and H4. (DWR-71, at 15:25-28, 16:1-4; DWR-515) The expert testimony presents the
19 modeling assumptions (input), results (output), and analysis of these operational criteria
20 for Scenarios H3 and H4 to show changes in water quality, water levels, water deliveries,
21 and reservoir storage caused by Alternative 4A. (DWR-1, at 15; DWR-5, at 16-82; DWR
22 71, at 14-21; DWR-66, at 4-11; DWR-116, DWR 515.)¹⁸

23 Although the testimony describes and analyzes the Alternative 4A initial operating
24 Scenarios H3 to H4, Petitioners' also present an additional analysis as bookends of a
25 range of operational and regulatory assumptions to address the Part 1 issue as to
26 whether the project may impact other legal users of water. (DWR-1, at 7; DWR-71, at

27 _____
28 ¹⁸ See Footnotes 9 and 10 above.

1 15.) The testimony describes and analyzes operational scenarios for Boundary 1 and 2.
2 (DWR-1, at 10, 15; DWR-51, at 12-14; DWR-71, at 15.) Boundary 1 reflects less
3 regulatory restrictions on operations than the No Action Alternative (NAA) and H3, and
4 Boundary 2 reflects increased restrictions on operations than the NAA and H4 to result in
5 outflows that are somewhat lesser or greater than outflows resulting from Scenarios H3
6 and H4. (Id.) . This analysis is offered as additional information on potential impacts to
7 water users to cover any future operations that may be required as conditions of future
8 permits, such as the biological opinion and incidental take permit required by state and
9 federal endangered species acts. (DWR-51, at 10:6-14, 22-26; 11:1-14.) In addition, the
10 CWF proposes, and the biological opinion and incidental take permit for the proposed
11 project will include, a program for collaborative science and adaptive management which
12 may lead to changes in the initial operating criteria. (DWR-51, at 14:21-27, 15:1-3, 10-
13 17.) The modeling and analysis of Boundary 1 and 2 is intended to be sufficiently broad
14 to address any potential future adjustments in operations related to adaptive
15 management actions, however, these boundaries do not represent the proposed project.
16 (DWR-51, at 10:15-16.)

17 The expert witness testimony specifically presents modeling assumptions and
18 results used to analyze the outer boundary conditions of Boundary 1 and Boundary 2.
19 (DWR 51, at 12-14; DWR-4, at 19- 30.) The analysis and opinions explain with graphs
20 and figures the effects of Alternative 4A on water levels, water deliveries, water quality,
21 and reservoirs under operational criteria for Scenarios H3, H4, and Boundaries 1 and 2
22 as compared to the No Action Alternative. (DWR 51, at 12-14; DWR-4, at 19-82; DWR
23 71, at 14-21; DWR-66, at 4-11.) Thus, the testimony includes the necessary evidence
24 and modeling information that the SWRCB and other parties need to understand and
25 evaluate the basis for the experts' analysis and opinions and any alleged deficiencies
26 can be raised on cross examination.

27 ///

28

1 **G. The Structure of DWR/Reclamation Case in Chief presentation has been**
2 **determined by the Board**

3 The Board has the authority and discretion to conduct an adjudicatory proceeding
4 “in a manner as the Board deems most suitable to the particular case with a view toward
5 securing relevant information expeditiously without unnecessary delay and expense to
6 the parties and the Board.”(California Code of Regulations, Title 23, section 648.5.)This
7 section of the regulations gives the Board the authority to control gamesmanship of the
8 hearing process and unexpected filings by parties.

9 The objections to the structure of DWR’s presentation of its case in chief should
10 be overruled for several independent reasons. First, DWR carries the burden of proof in
11 this matter and it should be allowed to use the witnesses it believes will foster the
12 greatest continuity and understanding of the information. Second, the list of witnesses
13 that DWR submitted on January 5, 2016 indicated that it would present its testimony by
14 using panels of witnesses, including one main witness and several secondary witnesses.
15 This list was submitted and posted by the Board on its website before the pre-hearing
16 conference on January 28, 2016.

17 DWR and Reclamation submitted written qualifications for all of their witnesses
18 detailing their background and expertise. Additionally a short statement regarding the
19 scope of expertise for cross-examination was provided as required by the Hearing Team.

20 Furthermore, the Protestants here ignore that the Board has accepted the panel
21 witnesses, see June 10, 2015 ruling, “[a]ccordingly petitioners’ proposal for the
22 organization and presentation of their case-in-chief is approved, *except that cross-*
23 *examination of the witnesses* covering each subject area will begin immediately after the
24 lead witnesses summarize their direct testimony on that subject.”(Emphasis added.)

25 The objections to DWR’s use of panels of witnesses appear calculated to disrupt
26 DWR’s presentation of evidence rather than to foster greater understanding of the
27 information.

1 **H. Testimony regarding Witnesses' understanding and application of the**
2 **legal framework for the hearing is proper and relevant to understanding**
3 **the project, not legal argument**

4 Several parties object to the testimony of Jennifer Pierre and Maureen Sergent,
5 arguing that their testimony includes improper legal argument.¹⁹ The objecting parties
6 misconstrue the testimony. The testimony at issue here is not legal argument, but rather
7 each witness' description of her understanding of the legal framework governing the
8 hearing, and how that understanding guided staff decisions regarding development of
9 the project. Such understanding is necessary, proper, and relevant to this hearing, as it
10 will help the witnesses describe their expert opinions to the Board. The Board will then
11 consider the testimony to determine whether the project meets legal standards. These
12 objections should be overruled.

13 Not all testimony that includes legal terms is inappropriate. "Testimony in the form
14 of an opinion that is otherwise admissible is not objectionable because it embraces the
15 ultimate issue to be decided by the trier of fact." (Evid.Code, section 805.) Such an
16 opinion is not improper if a foundation is laid by the witness as to the factors taken into
17 account when forming the opinion on the ultimate issue. A witness may use statutory or
18 other legal terms to frame her opinion, and doing so may be helpful for the
19 decision-maker to understand the witnesses' testimony.

20 The Hearing Officers have the ability to distinguish and disregard testimony that is
21 essentially legal argument. DWR's witnesses' understanding of the legal framework is
22 relevant to explain decisions by staff in the methodology and facts used in analysis of
23 the project. The testimony is, therefore, admissible.

24 **I. The Board has authority to proceed with this Hearing**

25 Numerous parties object on essentially jurisdictional grounds, asserting that the
26 Board may not exercise its authority under Water Code section 1700 et seq. to permit

27 _____
28 ¹⁹ See: SVWU; Protestant Islands, City of Stockton and SJ Tributaries Authority

1 changes in water rights until after various other State agency proceedings take place,
2 such as the Board's update of the Bay-Delta Water Quality Control Plan, the Delta
3 Stewardship Council's adoption of a Delta Plan that has been subject to litigation, state
4 and federal fish agencies issuance of endangered species protections, the Board's
5 implementation of Delta flow criteria, or Petitioners' finalization of the draft EIS/EIR.
6 These objections have already been considered and determined by the Board. In its
7 February 11, 2016 ruling, the Board decided to move forward with the hearing despite
8 these types of arguments. (Board Feb. 11, 2016, Ruling, at 1-9; see also Board March 4
9 and April 25 rulings regarding lack of requirement to address Delta flow standards before
10 beginning Part 1.)

11 The Protestant's objections ignore the Board's prior rulings and its authority and
12 duty to act on the Change Petition. California Water Code sections 1700-1706 set forth
13 the matters that the Board must consider as it rules on a change petition. Additionally,
14 the Court of Appeal in the State Water Resources Control Board Cases held that a Delta
15 water right decision had to implement any relevant existing Delta Water Quality Control
16 Plan. (*State Water Resources Control Board Cases* (2006) 136 Cal.App.4th 674, 733-
17 734.) None of these authorities requires consideration of external proceedings.

18 The Water Code further requires Board action on change petitions and provides
19 the Board with authority to "do all things required or proper relating to" permit
20 applications. (Wat.Code, § 1250.) In addition to this broad authority regarding change
21 petition and water rights permitting under the Water Code, the Board exercises plenary
22 authority via the public trust and reasonable use doctrines, and need not await the
23 determination of other bodies. (*See, e.g., In The Matter Of Applications 31487 And*
24 *31488 Filed By The United States Bureau Of Reclamation . . .* (2012), SWRCB Dec.
25 No.1651, 2012 WL 5494093, at *9-10 [Board need not await separate court decision in
26 ditch matter before exercising its change petition authority under state law].) Indeed, the
27 Board must exercise its "independent duty to resolve . . . water quality issues and ...
28

1 place appropriate conditions in the permits.” (*Central Delta Water Agency v. State Water*
2 *Resources Control Bd.* (2004) 124 Cal.App.4th 245, 265.)

3 Procedurally, the Board has retained the right to reopen the record to take
4 additional evidence as necessary, even after Part 1 of the hearings concludes. In their
5 April 25, 2016 letter, the Hearing Officers held that “it may be necessary to revisit Part 1
6 hearing issues at the close of the hearing to the extent that any substantial changes to
7 the final CEQA document for WaterFix relative to the draft document have a material
8 bearing on Part 1 issues. . . .” (Board April 25, 2016 Ruling, at 3.) In their March 4, 2016
9 letter, the Hearing Officers noted that DWR has provided compliance schedules for
10 endangered species laws and environmental impact review, noting that Part 2 of the
11 hearing could not commence without completion of those processes. (March 4, 2016,
12 Ruling at 2.)

13 Specific to the Delta Plan and Delta flow requirements issue, the Hearing Officers
14 ruled, both on March 4th and April 25th, that there is no requirement in the Delta Reform
15 Act that Delta flow standards be in place before the Part 1 hearings may commence.
16 (Board April 25, 2016 Ruling, at 3.) Rather, the Delta Reform Act plainly states in at least
17 two places that it does not affect the Board’s authority over change petitions. Section
18 85031, subdivision (c) of the Water Code states that “[n]othing in this division
19 supersedes, limits, or otherwise modifies the applicability of Chapter 10 (commencing
20 with Section 1700) of Part 2 of Division 2, including petitions related to any new
21 conveyance constructed or operated in accordance with Chapter 2 (commencing with
22 Section 85320) of Part 4.” Section 85032, subdivision (g) of the Water Code states that
23 “[t]his division does not affect any of the following . . .” and specifically lists Section 1702.

24 Therefore, the Water Code, Delta Reform Act, public trust, and reasonable use
25 doctrines provide the Board with both the authority and the responsibility to act on this
26 permit without awaiting the actions of other agencies. Additionally, the Board has taken
27 procedural steps to ensure it can “revisit Part 1 hearing issues” if necessary. Finally,
28 DWR has provided compliance schedules that will enable the Board to anticipate and

1 schedule its hearings to correspond with the external proceedings. For these reasons,
2 the Board should overrule these jurisdictional objections.

3 **I. Burden of Proof - the hearing process as structured does not unlawfully**
4 **shifts the burden of proof to the Protestants.**

5 Some Protestants²⁰ object that the hearing process as structured unlawfully shifts
6 the burden of proof to the Protestants. However, as noticed by the SWRCB, Petitioners
7 bear the burden of establishing that the proposed changes will not injure legal users of
8 water nor in effect initiate a new water right, and Petitioners will be afforded ample
9 opportunity for rebuttal.²¹ (February 11, 2016 Ruling, at page 7.)

10 The case-in-chief will consist of any opening statement, oral testimony,
11 introduction of exhibits, and cross-examination of the party's witnesses. DWR must
12 establish a prima facie case that the proposed project²² will not cause an injury to
13 another legal user of water. During the hearing, the Hearing Officer may take additional
14 evidence on an issue and may, if necessary, refer the case for such further evidence to
15 be taken by the Board as the court may direct, and may require a further determination
16 by the Board. Water Code Section 2767.

17 Once the Board determines that the Petitioners have met the prima facie case,
18 the burden of proof shall shift to any party that has filed a protest.²³ The basic rule, which
19 covers most situations, is that whatever facts a party must affirmatively plead he also
20 has the burden of proving." 1 Witkin, California Evidence (5th ed. 2012) Presumptions
21 Affecting Burden of Producing Evidence, § 56, p. 73 (1958). However, the broader rule,
22 applies to issues not necessarily raised in the pleadings. That rule is that a party has the

23
24 ²⁰ **San Joaquin County** (joined by LAND; Delta Protestants; Restore the Delta; CSPA/CWIN/AA)
and **CSPA** (joined by Delta Protestants; Save the Delta; Restore the Delta

25
26 ²² The Hearing Officers will decide whether to accept the party's exhibits into evidence upon a motion of the
party after completion of the case-in-chief. October 2015 Notice of Petition and Hearing, page 35 H(b).

27
28 ²³ See WC 1727 regarding the burden for the "no injury" rule related to temporary transfers.; Barnes v. Hussa,
136 Cal.App.4th 1358 (2006), holding, the appropriator should have the burden of proving what right exists and
consequently how it is impacted by any change cause by another.

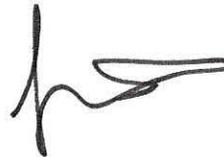
1 burden of proof as to each fact the existence or nonexistence of which is essential to the
2 claim for relief or defense that he/she is asserting. California Evidence Code
3 Section 500.

4 **CONCLUSION**

5 The objections raise issues outside the scope of the Board's rulings, are based on
6 sections of the Evidence Code that do not apply in Board actions, are duplicative and
7 cumulative challenging expert opinions under the wrong legal standard. In addition, the
8 objections are invalid factual objections, are blanket objections that would deprive
9 Petitioners of the ability to carry their burden of proof, are objections to matters already
10 ruled upon by the Board, and are unpersuasive because Petitioners have presented
11 adequate foundation for the testimony before the Board. Finally, Protestants challenges
12 to the efficacy of the widely-used, peer-reviewed model programs are not convincing
13 given the use and acceptance of these public domain models by many of the water
14 districts participating in this hearing. For these reasons, DWR requests that the Hearing
15 Officers overrule these objections.
16
17

18 Dated: July 20, 2016

CALIFORNIA DEPARTMENT OF WATER
RESOURCES

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22 James E. Mizell
23 Office of the Chief Counsel
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Attachment A

ATTACHMENT A

FOLLOWING PARTIES FILED OBJECTIONS:

No	Filing Date	Authorized Representative/ Attorney	Authorized Representative's Affiliation	Filing Party	Title of the Motion
1	7/8/2016	Downey Brand, LLP	Kevin O'Brien	(NDWA, Reclamation Districts 999, 2016, and 2068)	Joinder in Objections filed by Sacramento Valley Water Users.
2	7/8/2016	Somach Simmons & Dunn	Andrew M. Hitchings	Downey Brand, LLP (Tehama-Colusa Canal Authority, Glenn Valley Water District and Myers-Marsh Mutual Water)	Joinder in Objections filed by Sacramento Valley Water Users.
3	7/8/2016	Downey Brand LLP;	Kevin O'Brien & David Aladjem;	Sacramento Valley Water Users: CARTER MUTUAL WATER COMPANY, EL DORADO IRRIGATION DISTRICT, ELDORADO WATER & POWER AUTHORITY, HOWALD FARMS, INC., MAXWELL IRRIGATION DISTRICT, NATO MAS CENTRAL MUTUAL WATER COMPANY, MERIDIAN FARMS WATERCOMPANY, OJI BROTHERS FARM, INC., OJI FAMILY PARTNERSHIP, PELGER MUTUAL WATER COMPANY, PLEASANT-GROVE VERONA MUTUAL WATER COMPANY, PRINCETON-CODORA-GLENN IRRIGATION DISTRICT, PROVIDENT IRRIGATION DISTRICT, RECLAMATION DISTRICT 108, SACRAMENTO MUNICIPAL UTILITY DISTRICT, HENRY D. RICHTER, ET AL., RIVER GARDEN FARMS COMPANY, SOUTH SUTTER	Objections to Written Testimony and Exhibits

		Bartkiewicz, Kronick & Shanahan;	Ryan S. Bezarra;	WATER DISTRICT, SUTTER EXTENSION WATER DISTRICT, SUTTER MUTUAL WATER COMPANY, TISDALE IRRIGATION AND DRAINAGE COMPANY, WINDSWEPT LAND AND LIVESTOCK COMPANY.	
		Somach, Simmons & Dunn, PC;	Andrew M. Hitchings; Aaron Ferguson	CITY OF FOLSOM, CITY OF ROSEVILLE, SAN JUAN WATER DISTRICT, SACRAMENTO SUBURBAN WATER DISTRICT, YUBA COUNTY WATER AGENCY. GLENN -COLUSA IRRIGATION DISTRICT, BIGGS-WEST GRIDLEY WATER DISTRICT, SACRAMENTO COUNTY WATER AGENCY, PLACER COUNTY WATER AGENCY, CARMICHAEL WATER DISTRICT	
		Minasian, Meith, Soares, Sexton & Cooper, LLP;	Dustin Cooper;	ANDERSON-COTTONWOOD IRRIGATION DISTRICT, BUTTE WATER DISTRICT, NEVADA IRRIGATION DISTRICT, PARADISE IRRIGATION DISTRICT, PLUMAS MUTUAL WATER COMPANY, RECLAMATION DISTRICT NO. 1004, RICHVALE IRRIGATION DISTRICT, SOUTH FEATHER WATER & POWER AGENCY, WESTERN CANAL WATER DISTRICT.	
		Stoel Rives, LLP	Wesley A. Miliband	CITY OF SACRAMENTO	

4	7/11/2016	Law Offices of Michael Jackson	Michael Jackson, Bill Jennings, Chris Shutes, Barbara Vlamis, Carolee Krieger	California Sportfishing Protection Alliance	Objections to Written Testimony and Exhibits Submitted by Petitioners; Joinder in Written Objections Submitted By Other Protestants
5	7/11/2016	Clifton Court, L.P.	Suzanne Womack & Sheldon Moore	Clifton Court, L.P.	Evidentiary Objection concerning Petitioners' Case
6	7/11/2016		E. Robert Wright & Kyle Jones Jonas Minton Barbara Barrigan-Parilla and Tim	Friends of the River, Sierra Club California, Planning and Conservation League, Environmental Water Caucus	Motion to Disqualify Certain Witnesses and Witness Testimony. Joint Objection of Petitioners' Exhibits

			Stroshane and Conner Everts		
7	7/12/2016	Downey Brand LLP	David Aladjem	City of Brentwood	Joinder in Objections filed by Sacramento Valley Water Users
8	7/12/2016	Somach Simmons & Dun	John Luebberke, Paul S. Simmons, Kelley Taber & Tara Mazzanti	City of Stockton's Objections to Written Testimony and Exhibits	Objections to Written Testimony and Exhibits
9	7/12/2016			Downey Brand, LLP (Sacramento Valley Water Users - Brannan-Andrus Levee Maintenance District; Reclamation District 407, Reclamation District 2067, Reclamation District 317, Reclamation District 551, Reclamation District 563, Reclamation District 150, Reclamation District 2098, and Reclamation District 800 (Byron Tract) (collectively the "Delta Flood Control Group"))	Objections to Testimony of John Bednarski and Joinder in Objections filed by Sacramento Valley Users
10	7/12/2016	Hanson Bridgett, LLP	Osha Meserve and Michael J. Van Zandt	Islands, Inc	Objections to Petitioners' Evidence
11	7/12/2016		Osha Meserve	Local Agencies of the North Delta, Bogle Vineyards / Delta Watershed Landowner Coalition, Diablo Vineyards and Brad Lange / Delta Watershed Landowner Coalition Stillwater Orchards / Delta Watershed Landowner Coalition, Friends of Stone Lakes National Wildlife Refuge	Objections to Petitioners' Evidence

12	7/12/2016	Volker Law	Stephan C. Volker and M. Benjamin Eichenberg	Pacific Coast Federation of Fishermen's Associations and Institute for Fisheries Resources	Motion to Disqualify Petitioners' Witnesses and Exclude Their Testimony
13	7/12/2016	Restore the Delta	Barbara Barrigan-Parilla & Tim Strohane, Yana Garcia & Trent Orr	Restore the Delta Objections	Objections to Evidence and Witnesses submitted by Petitioners
14	7/12/2016	Somach Simmons & Dunn, PC	Paul S. Simmons & Kelley Taber	Sacramento Regional County Sanitation District	Objection to Written Testimony and Exhibits
15	7/12/2016	Freeman Firm	Thomas H. Keeling	San Joaquin County Protestants (Protestants County of San Joaquin, San Joaquin County Flood Control and Water Conservation District, and Mokelumne River Water and Power Authority (collectively, the "San Joaquin County Protestants"))	Objections to Written Testimony and Exhibits; Joinder in Written Objections Submitted by Other Protestants
16	7/12/2016	O'Laughlin & Paris, LLP	Tim O' Laughlin & Valerie C. Kincaid	San Joaquin Tributaries Authority (Interested Parties Modesto Irrigation District, Oakdale Irrigation District, South San Joaquin Irrigation District, Turlock Irrigation District, all of which are California Irrigation Districts, the City and County of San Francisco, a California municipal corporation acting by and through its Public Utilities Commission, and San Joaquin Tributaries Authority)	Procedural and Evidentiary Objections to Waterfix Testimony and Evidence
17	7/12/2016	Law Offices of Michael A. Brodsky	Michael Brodsky	Save the California Delta Alliance	Objections To Evidence and Joinder in Objections To Evidence
18	7/12/2016		John Herrick, Esq.	South Delta Water Agency, Central Delta	Objections to Written

			and Dean Ruiz, Esq.	Water Agency, Lafayette Ranch, Heritage Lands, Mark Bachetti Farms and Rudy Mussi Investments L.P.	Testimony and Exhibits
19	7/12/2016		Deirdre Des Jardins	California Water Research	Evaluation of Testimony on Reliability of Modeling

Attachment B

ATTACHMENT B

DUPLICATIVE OBJECTIONS (Those generally responded to in the Master Response are underlined, others will be responded to in separate written responses to the Protesting Party)

Exhibit No.	Basis of Objection/Argument	Party Making/Joining Objection
<p align="center">Procedural/ Blanket Objections</p>	<ul style="list-style-type: none"> • <u>Premature/Irrelevant: with no final EIR/EIS, witnesses have no basis to testify to WaterFix’s specific environmental impacts on legal users of water.</u> • <u>Relevance: No BiOp; lack of specificity & clarity required by CCR §794.</u> • <u>Kelly-Frye: no independent expert validation of CalSim II or DSM2 models.</u> • <u>Lacks foundation: based on modeling w/o explanatory data</u> • <u>Lacks foundation: model does not reflect actual operations</u> • <u>Kelly-Frye: RDEIR/SDEIS criticized by peer reviews, no acceptance</u> • <u>Failure to describe Delta flow criteria, as directed by Board and §85086.</u> • Petition should be framed as a new water right, not a change • Irrelevant b/c: No specific information on impacts/injuries; no information on water level changes, no information to restore & protect ecosystem • <u>Kelly-Frye/Relevance: Assumes compliance with existing environmental standards ensures</u> 	<ul style="list-style-type: none"> • Pac Coast Fishermen & Fisheries; LAND; Delta Protestants (South & Central Water Agencies); Friends of the River; Restore the Delta; CSPA/CWIN/AA; Save the Delta • Pac Coast Fishermen & Fisheries; LAND; Delta Protestants (South & Central Water Agencies); Restore the Delta, CSPA/CWIN/AA • CSPA/CWIN/AA; Delta Protestants; Save the Delta; Restore the Delta Save the Delta; Friends of the River; San Joaquin; • CSPA/CWIN/AA; Delta Protestants; Save the Delta; Restore the Delta Save the Delta • SJ Tributaries Auth., San Joaquin County • LAND; Delta Protestants (Central & South Agencies); San Joaquin County; CSPA/CWIN/AquaAlliance [POINTS 6&7] • Pac Coast Fishermen & Fisheries; LAND; Delta Protestants (South & Central Water Agencies); Restore the Delta • CSPA/CWIN/AA; Delta Protestants; Save the Delta; Restore the Delta • Clifton Court, L.P. • Friends of the River/Sierra Club; LAND; Delta Protestants; San Joaquin County; Save the Delta; Restore the Delta; CSPA/CWIN/AA • Friends of the River/Sierra Club; LAND; Delta

	<p><u>no injury of CWF</u></p> <ul style="list-style-type: none"> • <u>Assumes facts not in evidence – fail to identify models underlying data</u> • Premature elimination of alternatives w/o disclosure of basis • <u>Shifts Burden of Proof</u> • Lack of clarity, conflicting data/maps makes it impossible to project injury to water rights • Premature/Irrelevant: D-1641 should be updated first • Irrelevant: at best complies with existing standards, already ruled inadequate • <u>Lack of alternatives violates CEQA</u> • <u>Objects to all Testimony and Exhibits¹</u> 	<p>Protestants; San Joaquin County; Save the Delta; Restore the Delta; CSPA/CWIN/AA</p>
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¹ Parties objection to ALL DWR witnesses & exhibits:

- Friends of the River objects of all testimony & exhibits RE: 1) Bay-Delta Plan 2) DSM2 & CalSim II modeling; 3) no final EIR/EIS; 4) no alternatives
 - Friends joined by: LAND; Delta Protestants; San Joaquin County; Save the Delta; Restore the Delta; CSPA/CWIN/AA
- LAND objects to all evidence and testimony (“As Petitioners’ vague promises are entirely unreliable, they should be disregarded in their entirety.”)
 - LAND joined by: Delta Protestants (Central & South Agencies); San Joaquin County; CSPA/CWIN/AquaAlliance
- Pac Coast Fishermen “lack of legal predicates”: 1) Bay-Delta Plan not updated; 2) no compliance with Delta Reform Act; 3) no EIR/EIS; (“Accordingly, their testimony and exhibits must, along with their Change Petition, be rejected.”)
 - Plus 4) all testimony & exhibits based on CalSim II and DSMS models
 - Pac Coast joined by: LAND; Delta Protestants (South & Central Water Agencies); Restore the Delta
- Delta Protestants Procedural Objections: 1) no final EIR/EIS; 2) Bay-Delta Plan update; 3) no economic/financial feasibility analysis; 4) testimony which relies upon modeling
 - Joined by: LAND; San Joaquin County; Restore the Delta; CSPA/CWIN/AA
- Restore the Delta: “Petition should be dismissed for failure to supply information necessary to evidentiary proceedings ...”
 - Joined by: LAND; Delta Protestants; San Joaquin County; CSPA/CWIN/AA
- San Joaquin County procedural objections: 1) no final EIR/EIS; 2) shifts burden of proof; 3) Bay-Delta Plan not updated yet
 - Joined by: LAND; Delta Protestants; Restore the Delta; CSPA/CWIN/AA

OBJECTIONS BASED ON EXHIBIT NUMBER

<p>DOI-4 (Sahlberg, Ray)</p>	<ul style="list-style-type: none"> • <u>Lacks foundation b/c based on modeling w/o explanatory data (pp. 6-7, 9; pp.14, 17, 18)</u> • <u>Speculative Expert Testimony AND PowerPoint b/c boundary analysis lacks specificity</u> • Best Evidence Rule: testimony of meaning/content of Feather River settlement agreements in lieu of agreements themselves (DOI-4, at pp. 2, 6, and 7-9) • Irrelevant – refuses to believe petition is not for a new water right 	<ul style="list-style-type: none"> • SVWU; Delta Flood Group; Delta Protestants (South & Central Water Agencies); City of Stockton; City of Brentwood; Restore the Delta; CSPA/CWIN/AquaAlliance; Friends of the River/Sierra Club; North Delta Water Agency; Tehama-Colusa Canal Authority • Sac Valley Water Users, North Delta Water Agency, Tehama-Colusa Canal Authority, City of Brentwood, Delta Flood Control Group, Sac Regional San, City of Stockton • SVWU; Delta Flood Group; Delta Protestants (South & Central Water Agencies); City of Stockton; City of Brentwood; Restore the Delta; CSPA/CWIN/AquaAlliance; Friends of the River/Sierra Club; North Delta Water Agency; Tehama-Colusa Canal Authority • Friends of the River/Sierra Club; LAND; Delta Protestants; San Joaquin County; Save the Delta; Restore the Delta; CSPA/CWIN/AA
<p>DOI-6 (White, Kristin)</p>	<ul style="list-style-type: none"> • <u>Proposed testimony not provided by May 31 deadline</u> 	<ul style="list-style-type: none"> • Delta Protestants; LAND; San Joaquin County; Restore the Delta; CSPA/CWIN/AA
<p>DOI-7 (Milligan, Ron)</p>	<ul style="list-style-type: none"> • <u>Testimony lacks foundation b/c based on modeling w/o explanatory data (p. 4)</u> • <u>Speculative Expert Testimony b/c boundary analysis lacks specificity</u> • <u>Irrelevant/Speculative – based on modeling</u> 	<ul style="list-style-type: none"> • SVWU; Delta Flood Group; Delta Protestants (South & Central Water Agencies); City of Stockton; City of Brentwood; Restore the Delta; CSPA/CWIN/AquaAlliance; Friends of the River/Sierra Club; North Delta Water Agency; Tehama-Colusa Canal Authority • Friends of the River/Sierra Club; LAND; Delta Protestants; San Joaquin County; Save the Delta; Restore the Delta; CSPA/CWIN/AA

DOI-10 through31	<ul style="list-style-type: none"> Lacks foundation, improper opinion, unqualified expert, <u>offers legal opinions, speculative</u> 	<ul style="list-style-type: none"> Protestants Islands
DWR-1 (Project Overview PowerPoint)	<ul style="list-style-type: none"> <u>Lacks foundation; improper opinion</u> 	<ul style="list-style-type: none"> Protestants Islands
DWR-3 (Water Rights PowerPoint)	<ul style="list-style-type: none"> <u>Speculative Expert Testimony b/c boundary analysis lacks specificity (pp. 8-9, 16-17)</u> Fails to address return flows, riparian rights and transportation losses Irrelevant: slides use incorrect definition of “new water right” 	<ul style="list-style-type: none"> SVWU; Delta Flood Group; Delta Protestants (South & Central Water Agencies); City of Stockton; City of Brentwood; Restore the Delta; CSPA/CWIN/AquaAlliance; Friends of the River/Sierra Club; North Delta Water Agency; Tehama-Colusa Canal Authority Protestants Islands Friends of the River/Sierra Club; LAND; Delta Protestants; San Joaquin County; Save the Delta; Restore the Delta; CSPA/CWIN/AA
DWR-4 (Operations PowerPoint)	<ul style="list-style-type: none"> <u>Speculative Expert Testimony b/c boundary analysis lacks specificity (p. 38)</u> Irrelevant – compliance not active during period shown by exhibit 	<ul style="list-style-type: none"> Sac Regional San Restore the Delta; LAND; Delta Protestants; San Joaquin County; CSPA/CWIN/AA
DWR-5 (Modeling PowerPoint)	<ul style="list-style-type: none"> <u>Kelly-Frye: relies on models unsupported by peer review</u> 	<ul style="list-style-type: none"> Friends of the River/Sierra Club; LAND; Delta Protestants; San Joaquin County; Save the Delta; Restore the Delta; CSPA/CWIN/AA
DWR-51 (Pierre, Jennifer)	<ul style="list-style-type: none"> <u>Kelly-Frye: Not based on generally accepted principles/best available science</u> <u>Lacks foundation b/c based on modeling w/o explanatory data (pp. 10:8-16, 13:17-14:9)</u> <u>Improper Speculative Expert Testimony b/c boundary analysis lacks specificity (pp. 10:8-16, 13:17-14:9)</u> 	<ul style="list-style-type: none"> Pac Coast Fishermen & Fisheries; LAND; Delta Protestants (South & Central Water Agencies); Restore the Delta Sac Valley Water Users, North Delta Water Agency, Tehama-Colusa Canal Authority, City of Brentwood, Delta Flood Control Group, Protestants Islands, Sac Regional San, City of Stockton SVWU; Delta Flood Group; Delta Protestants (South & Central Water Agencies); City of Stockton; City of

	<ul style="list-style-type: none"> • Unqualified expert • Offers legal opinions • Failure to comply with CCR §794 evidentiary standards • Speculation – adaptive management fails to describe new fish screens • Irrelevant, not reliable, vague, contrary to evidence 	<p>Brentwood; Restore the Delta; CSPA/CWIN/AquaAlliance; Friends of the River/Sierra Club; North Delta Water Agency; Tehama-Colusa Canal Authority</p> <ul style="list-style-type: none"> • Protestants Islands • Pac Coast Fishermen & Fisheries; LAND; Delta Protestants (South & Central Water Agencies); Restore the Delta Protestants Islands, City of Stockton • City of Stockton • CSPA/CWIN/AA; Delta Protestants; Save the Delta; Restore the Delta Save the Delta • Friends of the River/Sierra Club; LAND; Delta Protestants; San Joaquin County; Save the Delta; Restore the Delta; CSPA/CWIN/AA
DWR-52 (Centerwall, Steve)	<ul style="list-style-type: none"> • Cumulative, irrelevant • <u>Proposed testimony not provided by May 31 deadline</u> 	<ul style="list-style-type: none"> • Protestants Islands • Pac Coast Fishermen & Fisheries; LAND; Delta Protestants (South & Central Water Agencies); Restore the Delta; Friends of the River
DWR-53 (Sergent, Maureen)	<ul style="list-style-type: none"> • <u>Lacks foundation b/c based on modeling w/o explanatory data (pp. 8:17-19, 11:20-12:16)</u> • <u>Improper Speculative Expert Testimony b/c boundary analysis lacks specificity (pp. 3:22-25, 8:14-19, 10:24-15:11, 24:5-28)</u> • Best Evidence Rule: testimony of meaning/content of Feather River settlement agreements in lieu of agreements themselves (DWR-53 at pp. 11:10-13, 17:23 – 18:4) • <u>Unqualified expert</u> • <u>Offers legal opinions</u> • Irrelevant b/c fails to address how increased storage impacts other legal users of water • Lacks foundation AND Irrelevant b/c assumes 	<ul style="list-style-type: none"> • SVWU; Delta Flood Group; Delta Protestants (South & Central Water Agencies); City of Stockton; City of Brentwood; Restore the Delta; CSPA/CWIN/AquaAlliance; Friends of the River/Sierra Club; North Delta Water Agency; Tehama-Colusa Canal Authority [FOR THE FIRST 3 POINTS] • CSPA/CWIN/AA; Delta Protestants; Save the Delta; Restore the Delta Save the Delta [pts 4&5] • Protestants Islands, SJ Tributaries Auth.; San Joaquin County • Protestants Islands, City of Stockton, Delta Protestants, SJ Tributaries Auth.; San Joaquin County • SJ Tributaries Auth.; San Joaquin County [PTS. 6-8] • CSPA/CWIN/AA; Delta Protestants; Save the Delta;

	<p>D-1641 diversion controversy decided in Petitioner's favor</p> <ul style="list-style-type: none"> • Irrelevant b/c assumes continuing applicability of D-1641 flows • Omits info (Board never acted on petition, time period as passed), so exclude • Unsupported by material - Uses wrong definition for new water right • <u>Irrelevant/Unreliable – relies on CalSIM II and DSM@ modeling</u> 	<p>Restore the Delta Save the Delta</p> <ul style="list-style-type: none"> • Friends of the River/Sierra Club; LAND; Delta Protestants; San Joaquin County; Save the Delta; Restore the Delta; CSPA/CWIN/AA • Friends of the River/Sierra Club; LAND; Delta Protestants; San Joaquin County; Save the Delta; Restore the Delta; CSPA/CWIN/AA
<p>DWR-54 (Pirarooban, Shanmugam (Praba))</p>	<ul style="list-style-type: none"> • <u>Proposed testimony not provided by May 31 deadline</u> 	<ul style="list-style-type: none"> • Pac Coast Fishermen & Fisheries; LAND; Delta Protestants (South & Central Water Agencies); Restore the Delta
<p>DWR-57 (Bednarski, John)</p>	<ul style="list-style-type: none"> • Improper expert testimony lacks foundation b/c RDEIR/SDEIS does not contain mitigation measures mentioned in testimony; and road repair permits from transportation agencies are not assured. • <u>Unqualified expert,</u> • <u>offers legal opinions,</u> • <u>speculative</u> 	<ul style="list-style-type: none"> • Delta Flood Control Group, Protestants Islands • Protestants Islands • Protestants Islands • Protestants Islands
<p>DWR-58 (Valles, Sergio)</p>	<ul style="list-style-type: none"> • <u>Lacks foundation, improper opinion, unqualified expert, offers legal opinions, speculative</u> • <u>Proposed testimony not provided by May 31 deadline</u> 	<ul style="list-style-type: none"> • Protestants Islands • Pac Coast Fishermen & Fisheries; LAND; Delta Protestants (South & Central Water Agencies); Restore the Delta

DWR-60 (Cooke, Robert)	<ul style="list-style-type: none"> Lacks foundation, improper opinion, unqualified expert, <u>offers legal opinions</u>, speculative <u>Proposed testimony not provided by May 31 deadline</u> 	<ul style="list-style-type: none"> Protestants Islands Pac Coast Fishermen & Fisheries; LAND; Delta Protestants (South & Central Water Agencies); Restore the Delta
DWR-61 (Leahigh, John)	<ul style="list-style-type: none"> <u>Speculative Expert Testimony b/c boundary analysis lacks specificity (pp. 5:23-25, 6:6-8, 7:18-22, 8:3-8, 16:9-15, 17:5-11, 17:23-18:25, 19:15-26, 20:6-18)</u> <u>Lacks foundation, offers legal opinions</u> <u>Unqualified expert</u> Irrelevant, assumes facts not in evidence (e.g., D-1641 continuing applicability) Irrelevant & unqualified b/c analysis excluded D-1641 TUCP's, treats last 4 dry years as outliers Facts not in evidence – relies on ICF report Irrelevant – assumes compliance with water quality assures no injury Kelly-Frye, Lacks foundation & speculative b/c based on CalSIM II Unqualified, not relevant, not reliable – relies on modeling and un-updated Bay-Delta Plan compliance 	<ul style="list-style-type: none"> SVWU; Delta Flood Group; Delta Protestants (South & Central Water Agencies); City of Stockton; City of Brentwood; Restore the Delta; CSPA/CWIN/AquaAlliance; Friends of the River/Sierra Club; North Delta Water Agency; Tehama-Colusa Canal Authority Protestants Islands, City of Stockton, SJ Tributaries Auth. Pac Coast Fishermen & Fisheries; LAND; Delta Protestants (South & Central Water Agencies); Restore the Delta Protestants Islands, Delta Protestants Delta Protestants; LAND; San Joaquin County; Restore the Delta; CSPA/CWIN/AA, SJ Tributaries Auth. SJ Tributaries Auth.; San Joaquin County Restore the Delta; LAND; Delta Protestants; San Joaquin County; CSPA/CWIN/AA CSPA/CWIN/AA; Delta Protestants; Save the Delta; Restore the Delta Save the Delta CSPA/CWIN/AA; Delta Protestants; Save the Delta; Restore the Delta Save the Delta Friends of the River/Sierra Club; LAND; Delta Protestants; San Joaquin County; Save the Delta; Restore the Delta; CSPA/CWIN/AA
DWR-62 (Holderman, Mark)	<ul style="list-style-type: none"> Lacks foundation, improper opinion, unqualified expert, <u>offers legal opinions</u>, speculative 	<ul style="list-style-type: none"> Protestants Islands Pac Coast Fishermen & Fisheries; LAND; Delta Protestants (South & Central Water Agencies); Restore the Delta

	<ul style="list-style-type: none"> • <u>Proposed testimony not provided by May 31 deadline</u> 	
DWR-64 (Anderson, Michael)	<ul style="list-style-type: none"> • Lacks foundation, improper opinion, unqualified expert, <u>offers legal opinions, speculative</u> • <u>Proposed testimony not provided by May 31 deadline</u> 	<ul style="list-style-type: none"> • Protestants Islands • Pac Coast Fishermen & Fisheries; LAND; Delta Protestants (South & Central Water Agencies); Restore the Delta
DWR-66 (Nader-Tehrani, Parviz)	<ul style="list-style-type: none"> • <u>Lacks foundation b/c based on modeling w/o explanatory data (pp. 2:10-11, 4:23-7:21, 8:7-11:18)</u> • <u>Speculative Expert Testimony b/c boundary analysis lacks specificity</u> • <u>Unqualified expert (water quality/water level)</u> • <u>offers legal opinions</u> • <u>Irrelevant & lacks foundation b/c uses monthly averages, inapplicable to specific water year types</u> 	<ul style="list-style-type: none"> • SVWU; Delta Flood Group; Delta Protestants (South & Central Water Agencies); City of Stockton; City of Brentwood; Restore the Delta; CSPA/CWIN/AquaAlliance; Friends of the River/Sierra Club; North Delta Water Agency; Tehama-Colusa Canal Authority [POINTS 1 &2] • Protestants Islands, Delta Protestants Protestants Islands, City of Stockton, SJ Trib. Auth.; San Joaquin County • SJ Trib. Auth., LAND; San Joaquin County
DWR-67 (Reyes, Eric)	<ul style="list-style-type: none"> • Lacks foundation, improper opinion, unqualified expert, <u>offers legal opinions, speculative</u> • <u>Proposed testimony not provided by May 31 deadline</u> 	<ul style="list-style-type: none"> • Protestants Islands • Pac Coast Fishermen & Fisheries; LAND; Delta Protestants (South & Central Water Agencies); Restore the Delta
DWR-69 (Anderson, Jamie)	<ul style="list-style-type: none"> • Lacks foundation, improper opinion, unqualified expert, <u>offers legal opinions, speculative</u> • <u>Proposed testimony not provided by May 31 deadline</u> 	<ul style="list-style-type: none"> • Protestants Islands • Pac Coast Fishermen & Fisheries; LAND; Delta Protestants (South & Central Water Agencies); Restore the Delta
DWR-70 (Smith, Tara)	<ul style="list-style-type: none"> • Lacks foundation, improper opinion, unqualified expert, <u>offers legal opinions, speculative</u> • <u>Proposed testimony not provided by May 31</u> 	<ul style="list-style-type: none"> • Protestants Islands • Pac Coast Fishermen & Fisheries; LAND; Delta Protestants (South & Central Water Agencies); Restore the Delta

	<u>deadline</u>	
DWR-71 (Munevar, Armin)	<ul style="list-style-type: none"> • <u>Lacks foundation b/c based on modeling w/o explanatory data (pp. 2:19-23, 15:5-24, 16:12-21:6, 4:5-17, 4:24-27, 12:15-18, 12:27-12:30, 15:8-10)</u> • <u>Speculative Expert Testimony b/c boundary analysis lacks specificity</u> • Unqualified expert • <u>offers legal opinions</u> • <u>Failure to comply with CCR §794 evidentiary standards</u> • <u>Ambiguous – boundary analysis [lacks specificity]</u> • Irrelevant storage analysis (EOMSS) w/o including New Melones • <u>Lacks foundation b/c model conversion from monthly to daily flows not peer-reviewed</u> • <u>Irrelevant – relies on defective modeling doesn't show actual operations</u> 	<ul style="list-style-type: none"> • SVWU; Delta Flood Group; Delta Protestants (South & Central Water Agencies); City of Stockton; City of Brentwood; Restore the Delta; CSPA/CWIN/AquaAlliance; Friends of the River/Sierra Club; North Delta Water Agency; Tehama-Colusa Canal Authority [POINTS 1 &2] • Protestants Islands • Protestants Islands, City of Stockton • City of Stockton, Delta Protestants • SJTrib. Auth.; San Joaquin County • SJTrib. Auth.; San Joaquin County • Friends of the River/Sierra Club; LAND; Delta Protestants; San Joaquin County; Save the Delta; Restore the Delta; CSPA/CWIN/AA
DWR-72 (Buchholz, Gwendolyn)	<ul style="list-style-type: none"> • <u>Lacks foundation, improper opinion, unqualified expert, offers legal opinions, speculative</u> • <u>Proposed testimony not provided by May 31 deadline</u> 	<ul style="list-style-type: none"> • Protestants Islands • Pac Coast Fishermen & Fisheries; LAND; Delta Protestants (South & Central Water Agencies); Restore the Delta

DWR-73 (Bryan, Michael)	<ul style="list-style-type: none"> • <u>Lacks foundation, improper opinion, unqualified expert, offers legal opinions, speculative</u> • Proposed testimony not provided by May 31 deadline 	<ul style="list-style-type: none"> • Protestants Islands • Pac Coast Fishermen & Fisheries; LAND; Delta Protestants (South & Central Water Agencies); Restore the Delta
DWR 106, 107, 113, 117, 201, 203, 212-220, 311, 505, 505, 507, 511-515	<ul style="list-style-type: none"> • <u>Lacks foundation, improper opinion, unqualified expert, offers legal opinions, speculative</u> 	<ul style="list-style-type: none"> • Protestants Islands
DWR-114 (Alternatives Comparison)	<ul style="list-style-type: none"> • <u>Lacks foundation b/c based on modeling w/o explanatory data</u> • <u>Speculative Expert Testimony b/c boundary analysis lacks specificity</u> • Lacks identifying information 	<ul style="list-style-type: none"> • SVWU; Delta Flood Group; Delta Protestants (South & Central Water Agencies); City of Stockton; City of Brentwood; Restore the Delta; CSPA/CWIN/AquaAlliance; Friends of the River/Sierra Club; North Delta Water Agency; Tehama-Colusa Canal Authority [PTS. 1&2} • Protestants Islands
DWR-115(Map of Channel Margin Habitat)	<ul style="list-style-type: none"> • <u>Improper legal opinion by an expert</u> • <u>Lack of identifying information/reliability</u> • <u>Lack of foundation</u> 	<ul style="list-style-type: none"> • SVWU; Delta Flood Group; Delta Protestants (South & Central Water Agencies); City of Stockton; City of Brentwood; Restore the Delta; CSPA/CWIN/AquaAlliance; Friends of the River/Sierra Club; North Delta Water Agency; Tehama-Colusa Canal Authority; Sacramento Regional San; San Joaquin County • Pac Coast Fishermen & Fisheries; LAND; Delta Protestants (South & Central Water Agencies); Restore the Delta • CSPA/CWIN/AA; Delta Protestants; Save the Delta; Restore the Delta
DWR-116 (Table of Operating	<ul style="list-style-type: none"> • <u>Lack of foundation, based on modeling</u> • <u>Lack of identifying information/reliability</u> 	<ul style="list-style-type: none"> • SVWU; Delta Flood Group; Delta Protestants (South & Central Water Agencies); City of Stockton; City of

Criteria)		<p>Brentwood; Restore the Delta; CSPA/CWIN/AquaAlliance; Friends of the River/Sierra Club; North Delta Water Agency; Tehama-Colusa Canal Authority; City of Stockton; Protestants Islands; Sac Regional San; San Joaquin County</p> <ul style="list-style-type: none"> • Pac Coast Fishermen & Fisheries; LAND; Delta Protestants (South & Central Water Agencies); Restore the Delta •
DWR-117 (Draft Adaptive Management)	<ul style="list-style-type: none"> • Irrelevant – incomplete, lacks authorship, doesn’t address species impacts • Funding not identified, lack of due diligence 	<ul style="list-style-type: none"> • Restore the Delta; LAND; Delta Protestants; San Joaquin County; CSPA/CWIN/AA
DWR-301	<ul style="list-style-type: none"> • Assumes facts not in evidence – lacks isohalines data 	<ul style="list-style-type: none"> • Restore the Delta; LAND; Delta Protestants; San Joaquin County; CSPA/CWIN/AA
DWR-324 (CWF Petition Information for Regulation)	<ul style="list-style-type: none"> • <u>Speculative Expert Testimony b/c boundary analysis lacks specificity (p. 8)</u> • <u>Failure to comply with CCR §794 evidentiary obligations, speculative “adaptive management,” based on improper modeling</u> 	<ul style="list-style-type: none"> • SVWU; Delta Flood Group; Delta Protestants (South & Central Water Agencies); City of Stockton; City of Brentwood; Restore the Delta; CSPA/CWIN/AquaAlliance; Friends of the River/Sierra Club; North Delta Water Agency; Tehama-Colusa Canal Authority • City of Stockton
DWR-401 (Bay-Delta Compliance Metrics D-1485)	<ul style="list-style-type: none"> • Irrelevant, assumes facts not in evidence (e.g., D-1641 continuing applicability) • Irrelevant & unqualified b/c analysis excluded D-1641 TUCP’s, treats last 4 dry years as outliers • Unreliable – omits water periods 	<ul style="list-style-type: none"> • SJ Tributaries Auth.; San Joaquin County • SJ Tributaries Auth.; San Joaquin County • Friends of the River/Sierra Club; LAND; Delta Protestants; San Joaquin County; Save the Delta; Restore the Delta; CSPA/CWIN/AA
DWR-402 (Bay-Delta Compliance Metrics D-1641j)	<ul style="list-style-type: none"> • Unreliable – omits water periods 	<ul style="list-style-type: none"> • Friends of the River/Sierra Club; LAND; Delta Protestants; San Joaquin County; Save the Delta;

		Restore the Delta; CSPA/CWIN/AA
DWR-404 (D-1641 standards)	<ul style="list-style-type: none"> Irrelevant b/c D-1641 is not valid. 	<ul style="list-style-type: none">
DWR-406 through 410 (precipitation, snowpack, runoff, runoff again)	<ul style="list-style-type: none"> Assumes facts not in evidence...lacks data 	<ul style="list-style-type: none"> Restore the Delta; LAND; Delta Protestants; San Joaquin County; CSPA/CWIN/AA
DWR-411 (Conceptual CWF operation)	<ul style="list-style-type: none"> <u>Lacks clarity; factual basis not in evidence; CalSIM II not validated or calibrated</u> 	<ul style="list-style-type: none"> Restore the Delta; LAND; Delta Protestants; San Joaquin County; CSPA/CWIN/AA
DWR-412 (Daily avg. EC at Bacon Island)	<ul style="list-style-type: none"> Irrelevant – not a site of D-1641 monitoring 	<ul style="list-style-type: none"> Restore the Delta; LAND; Delta Protestants; San Joaquin County; CSPA/CWIN/AA
DWR-413 (South Delta Compliance)	<ul style="list-style-type: none"> Unreliable – omits water periods 	<ul style="list-style-type: none"> Friends of the River/Sierra Club; LAND; Delta Protestants; San Joaquin County; Save the Delta; Restore the Delta; CSPA/CWIN/AA
DWR-505 through 515 (CalSim products)	<ul style="list-style-type: none"> <u>Kelly-Frye: models lack scientific support</u> 	<ul style="list-style-type: none"> Friends of the River/Sierra Club; LAND; Delta Protestants; San Joaquin County; Save the Delta; Restore the Delta; CSPA/CWIN/AA
DWR-511 (Memo to C. Crothers Re CalSim II 82vs16 years)	<ul style="list-style-type: none"> <u>Un-authenticated draft; DSM2 & CalSIM 88 not peer-reviewed validated or calibrated; irrelevant as to SWRCB-3, 4, & 5</u> <u>Irrelevant – unauthenticated draft</u> 	<ul style="list-style-type: none"> Restore the Delta; LAND; Delta Protestants; San Joaquin County; CSPA/CWIN/AA Friends of the River/Sierra Club; LAND; Delta Protestants; San Joaquin County; Save the Delta; Restore the Delta; CSPA/CWIN/AA
DWR-513 (DSM2 Modeling Results)	<ul style="list-style-type: none"> <u>Lacks foundation b/c based on modeling w/o explanatory data</u> <u>Speculative Expert Testimony b/c boundary analysis lacks specificity</u> <u>Failure to comply with CCR §794 evidentiary standards</u> 	<ul style="list-style-type: none"> SVWU; Delta Flood Group; Delta Protestants (South & Central Water Agencies); City of Stockton; City of Brentwood; Restore the Delta; CSPA/CWIN/AquaAlliance; Friends of the River/Sierra Club; North Delta Water Agency; Tehama-Colusa Canal Authority [POINTS 1&2]

	<ul style="list-style-type: none"> • Irrelevant b/c monthly averages fail to supply useful data • Facts not in evidence; irrational negative stream bed modeling 	<ul style="list-style-type: none"> • City of Stockton • SJTrib. Auth., LAND; San Joaquin County • Restore the Delta; LAND; Delta Protestants; San Joaquin County; CSPA/CWIN/AA
DWR-514 (CalSim II Modeling Results)	<ul style="list-style-type: none"> • <u>Lacks foundation b/c based on modeling w/o explanatory data</u> • <u>Speculative Expert Testimony b/c boundary analysis lacks specificity</u> • <u>Failure to comply with CCR §794 evidentiary standards</u> 	<ul style="list-style-type: none"> • SVWU; Delta Flood Group; Delta Protestants (South & Central Water Agencies); City of Stockton; City of Brentwood; Restore the Delta; CSPA/CWIN/AquaAlliance; Friends of the River/Sierra Club; North Delta Water Agency; Tehama-Colusa Canal Authority [PTS 1&2] • City of Stockton, Delta Protestants • SJTrib. Auth.; San Joaquin County
DWR-515 (Modeling Assumptions Table)	<ul style="list-style-type: none"> • <u>Irrelevant – modeling may not reflect actual operations</u> 	<ul style="list-style-type: none"> • Restore the Delta; LAND; Delta Protestants; San Joaquin County; CSPA/CWIN/AA

STATEMENT OF SERVICE

**CALIFORNIA WATERFIX PETITION HEARING
Department of Water Resources and U.S. Bureau of Reclamation (Petitioners)**

I hereby certify that I have this day submitted to the State Water Resources Control Board and caused a true and correct copy of the following document(s):

DEPARTMENT OF WATER RESOURCES' MASTER RESPONSE TO SIMILAR OBJECTIONS MADE BY PROTESTANTS COLLECTIVELY, AND BUREAU OF RECLAMATION'S JOINDER IN CALIFORNIA DEPARTMENT OF WATER RESOURCES' MASTER RESPONSE TO OBJECTIONS

to be served **by Electronic Mail** (email) upon the parties listed in Table 1 of the **Current Service List** for the California WaterFix Petition Hearing, dated July 15, 2016, posted by the State Water Resources Control Board at

http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/service_list.shtml

Note: In the event that any emails to any parties on the Current Service List are undeliverable, you must attempt to effectuate service using another method of service, if necessary, and submit another statement of service that describes any changes to the date and method of service for those parties.

For Petitioners Only:

	I caused a true and correct hard copy of the document(s) to be served by the following method of service to Suzanne Womack & Sheldon Moore, Clifton Court, L.P., 3619 Land Park Drive, Sacramento, CA 95818:
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	Method of Service: <u>U.S. Postal</u>
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I certify that the foregoing is true and correct and that this document was executed on July 20, 2016

Date

Signature: _____



Name: Valentina German

Title: Legal Analyst

Party/Affiliation: DWR

Address: 1416 Ninth Street 1104

Sacramento, CA 95814