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**CALIFORNIA DEPARTMENT OF WATER  
RESOURCES**

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6 Attorneys for California Department of Water  
7 Resources

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10 BEFORE THE CALIFORNIA STATE WATER RESOURCES CONTROL BOARD  
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12 HEARING IN THE MATTER OF  
13 CALIFORNIA DEPARTMENT OF WATER  
RESOURCES AND UNITED STATES  
14 BUREAU OF RECLAMATION REQUEST  
FOR A CHANGE IN POINT OF  
15 DIVERSION FOR CALIFORNIA WATER  
16 FIX

**CALIFORNIA DEPARTMENT OF WATER  
RESOURCES' RESPONSE TO  
RESTORE THE DELTA'S OBJECTIONS  
TO EVIDENCE AND WITNESSES AND  
JOINDER IN OBJECTIONS FILED BY  
CSPA et al.**

17 California Department of Water Resources ("DWR") files this response to  
18 objections filed by the above-captioned Protestant to proposed evidence in the hearing  
19 in the matter of DWR and U.S. Bureau of Reclamation's Request for a Change in Point  
20 of Diversion for California Water Fix. Protestant also joined in the objections of  
21 California Sportfishing Alliance, California Water Impact Network, and AquAlliance  
22 (CSPA et al) to all written testimony and exhibits submitted by DWR and Reclamation.  
23 DWR also incorporates its Master Response to Similar Objections Made by Protestants  
24 Collectively ("Master Response"), all DWR individual responses to objections joined in by  
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Protestants, and reserves the right to provide additional responses to these objections and to respond to other objections that may be raised later. DWR's responses to Protestant's individual objections are provided in Attachment A.

Dated: July 25, 2016	CALIFORNIA DEPARTMENT OF WATER RESOURCES  Robin McGinnis Office of the Chief Counsel
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## Attachment A

Attachment A

Restore the Delta's Objections to Evidence				
Exhibit Number	Exhibit Description	Strike Testimony Requested	Objection(s) Description	DWR's Response
DWR-301, pp. 22-23	Isohaline maps of maximum salinity intrusion, 1921-1943, 1944-1990.	DWR-53 (Sergent), 14:3-26.	<p>1. Both maps in this exhibit fail to specify whether the isohalines are annual, monthly, or daily maxima for salinity intrusion, and provide no date during the year on which they actually occur. Assumes facts not in evidence.</p> <p>2. Maps are not relevant to preventing injury or harm to legal users of water in the Delta based on operation of Petition facilities.</p> <p>We request that Hearing Officers strike this exhibit and related witness testimony, since DWR-322 provides the date of maximum salinity intrusion for 1924 through 1931, Table 85, p. 159.</p>	<p>1. Protestant's objection goes to the weight of the evidence and not admissibility. Protestants will have an opportunity to ask for the information identified above on cross examination.</p> <p>2. Similar as stated above. Figures and table are submitted to help explain information in the testimony. For a response to factual objections, see DWR's Master Response Section B.</p> <p>Protestant's request to strike is not supported by the statements here.</p>
		DWR-61 (Leahigh), 11:21-24, 12:1-6.	This witness testimony refers to a draft ICF report not now in evidence that addresses interior south Delta salinity sources, and states that a final report is due during "summer 2016." Petitioner had a deadline for submitting exhibits and failed to meet it. We ask that the Hearing Officers disallow reference to this report in Mr. Leahigh's testimony on grounds that it is not timely submitted as evidence.	Protestant's objection appears to challenge the timeliness of Exhibit DWR-61 although it was submitted with Mr. Leahigh's testimony on May 31, 2016. Note DWR and the USBR are not prohibited from submitting additional evidence at the hearing as requested by the Hearing team or as needed to explain testimony submitted.

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DWR-117	Draft Adaptive Management Framework for the California Water Fix and 2008/2009 Biological Opinions on the combined operations of the Central Valley Project and State Water Project	DWR-51 (Pierre), 16:2.	<ol style="list-style-type: none"> <li>1. This exhibit shows incomplete staff work, lacks clear authorship, and does not describe accurate or complete account of scientific tasks that must be undertaken to address both listed species issues and the initial and permanent operations of Petition facilities. It lacks relevance to Petition facilities' operation that would affect potential for injury to legal users of water.</li> <li>2. Funding for this adaptive management framework is not identified in the exhibit either, showing a lack of due diligence in implementing this element of the Petition's overall program. We request that Hearing Officers strike this exhibit and related witness testimony.</li> </ol>	<p>Protestants attempt to object to the adaptive management planning efforts required by law. Similar to current operational adjustments made, the proposed project will be operated adaptively (also under real time management) to adjust to current conditions including hydrology, presence of endangered species, and to meet water quality standards. This information was made available in the 2013 BDCP EIR/EIS and the 2015 RDEIR/SDEIS, and will in the final EIR/EIS.</p> <p>The request to strike the adaptive management description is not supported by the argument proffered by Protestant.</p>
DWR-406, -407 - 408, -409, and -410	California Statewide 4-year Precipitation Sums; Sacramento Valley Calendar Year Data (1895-2015); Sierra Snowpack v. Winter Temperature	DWR-61 (Leahigh), 13:16-26, 14:1-24, 15:1-8.	<ol style="list-style-type: none"> <li>1. Assumes facts not in evidence concerning how Petitioners actually managed their water systems. Witness Leahigh blames operational challenges of the recent drought years only on natural conditions of precipitation, runoff, and temperature, but system management also involved decisions made by water managers concerning allocation decisions, reservoir releases, and fishery management concerns, across several years which are not submitted to evidence.</li> </ol>	<p>Protestants challenges the testimony by stating a disagreement with the conclusions and information presented in the format. Protestants can prepare exhibits with the information they intend to present, but DWR is not required to present its testimony or illustrations as desired by Protestant.</p>

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	(1950-2015); Eight River 4 Year Average Water Year Runoff (1909-2015); Eight River 3- Year Average April-July Runoff (1909-2015)		<p>2. DWR-408 includes no legend and its y-axis units are unlabeled.</p> <p>3. DWR-409 and DWR-410 appear to rank order the Eight River Index record of runoff, but labels only Water Year 2015 while omitting from rank ordering all other years; the x-axis on each of these exhibits is unlabeled, omitting facts that would give context to this exhibit as evidence.</p> <p>We ask that Hearing Officers strike these exhibits and related testimony.</p>	
DWR-411	Conceptual CWF Operation (12/1/15 - 4/30/16) (Operational Criteria for Scenario H3)	DWR-61 (Leahigh), 18:10-25, 19:15-26.	<p>1. This exhibit fails to clarify whether “additional CWF Diversion” of 1.2 MAF is calculated at the point in time at which it is illustrated under the red dotted line of Total North and South Delta diversions, or whether it is the entire area under the red dotted line.</p> <p>2. Factual basis for modeling not submitted to evidence.</p> <p>3. CalSIM II has not been validated or calibrated adequately. We ask that Hearing Officers strike this exhibit and related testimony.</p>	Protestant can request clarification through cross examination. Also see DWR’s Master Response filed on July 20, 2016, Section 7 for a summary of the Proposed Project operations and boundary analysis.
DWR-412	Daily Average EC at Bacon Island (12/1/15 - 4/30/16) (Operational Criteria for Scenario H3)	DWR-61 (Leahigh), 18:26-27, 19:1-14.	This exhibit is not relevant to issues of injury and harm because it presents isolated results for 5 months at Bacon Island which is not a site of water quality objective monitoring and enforcement in D-1641 or the 2006 Water Quality Control Plan. (See DWR-405, which shows no compliance point at or near	Again Protestant disagrees with the testimony. See DWR’s Master Response, Sections A-D.

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			Bacon Island.) We ask that Hearing Officers strike this exhibit and related testimony.	
DWR-4 (slides 19-21, 24-26, 36, 37), -401, -402, -403, and -413	D-1485 Bay-Delta Exceedance Metrics (Joint SWP/CVP responsibility); D-1641 Bay-Delta Exceedance Metrics (Joint SWP/CVP responsibility); Municipal, Industrial and Agricultural Water Quality Standards for D-1485 and D-1641; D-1641 Interior South Delta Water Quality Standards	DWR-61 (Leahigh), 8:22-26, 9:23-26, 10:20-28, 11:1-24, 12:1-6.	For the period in which Petitioners have actually been responsible for water quality objective compliance or face pain of enforcement, these exhibits exaggerate their compliance rate. For example, D-1641 did not actually require Petitioners' compliance with interior South Delta agricultural water quality objectives until 2005. We object to inclusion of D-1485 "compliance" periods, since compliance at that time was not mandatory. Only the regulated period for individual compliance points during which compliance and enforcement were active is relevant to Petitioner's compliance record. Slides summarizing these compliance exhibits in DWR-4 should be excluded. We ask that Hearing Officers strike exhibits and related witness testimony.	<p>Protestant has joined in whole other parties making similar objections. See Section III.B. of DWR's Response to San Joaquin Tributaries Authority's Objections, filed July 22, 2016.</p> <p>Protestant here similarly objects to John Leahigh's testimony about SWP's compliance with D-1641, including testimony based on DWR-401, which concerns Bay-Delta objectives exceedance metrics for objectives that are the SWP's and CVP's responsibility, and testimony about past and anticipated hydrological conditions. The Protestant does not object to Leahigh's status as expert witness, but instead objects to certain opinions he expresses in his testimony.</p>

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<p>DWR-511</p>	<p>Draft DWR memorandum from Parviz Nader-Tehrani, Erik Reyes, Francis Chung, and Tara Smith, to Cathy Crothers, dated 8/22/2013, concerning CalSim II and DSM2 Modeling for BDCP (16 years versus 82 years)</p>	<p>DWR-66 (Nader-Tehrani), 4:7-9.</p>	<ol style="list-style-type: none"> <li>1. Memorandum is a draft. It is not authenticated with a departmental author signature or other indication that the document is finalized and has been transmitted to its recipient. It appears to us to be true and correct only to the extent that it is a draft.</li> <li>2. Its analysis of relative merits of 16-year versus other durations of time series data for DSM2 modeling is not peer-reviewed, nor is the purpose of drafting the memo clear. Input data to DSM2 derives from CalSIM II output, and thus relies on modeling software that is neither validated nor calibrated.</li> <li>3. There is no explanation of its relevance to SWRCB-3, SWRCB-4, and SWRCB-5. These documents and their associated modeling likely supersedes the observations or relevance of this memorandum to the record of this hearing, as does CCWD's subsequent comments in 2014 and 2015 on these three SWRCB exhibits. We ask Hearing Officers to strike this exhibit and related testimony.</li> </ol>	<p>The memorandum objected to is submitted as part of DWR's testimony.</p> <p>Protestant may disagree with the analysis in the memorandum but that is not a proper basis for an objection.</p> <p>See DWR's Master Response, Sections B-D.</p>
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DWR-513	Figures W1 through W5, pp. 11-15.	DWR-66 (Nader-Tehrani), 9:4-26, 10:1-15.	<p>1. Figures W1 through W5 do not address injury potential at the local scale based on water levels; it assumes facts not in evidence that water levels on other channels in the Delta would behave similarly without so demonstrating.</p> <p>2. Figures W1 through W5 reveal modeled stage results that become negative in a probability of exceedance presentation. The y-axis for stage in feet provides negative stage results; we understand the parameter of stage to reflect water level above a stream bed as benchmark with a stage of 0 reflecting no water level in the stream bed; it strikes us that a negative stage must pertain to some other benchmark that is at best unspecified in these figures. We ask Hearing Officers to strike these exhibits and related testimony.</p>	See the responses to the objections to Exhibits 406 through 410 above. These types of objections go to the weight of evidence rather than its admissibility and appear to argue the merits of testimony prior to the hearing of Petitioners' case-in-chief.
DWR-514	Table 2, p. 3	DWR-71 (Munevar), 9:2-17.	Witness makes conclusory remarks "suggesting a close fit between simulated and actual values" in CalSIM II modeling based on this table, without the underlying modeling results and assumptions for this table being disclosed. Use of CalSIM II to provide results summarized in this exhibit has not been validated and calibrated to scientific standards and best practices. We request that Hearing Officers strike this table and witness's related conclusory remarks	Petitioners addressed the use of modeling and CalSim II in Section E of the Master Response. Also see separate Responses to Objections as joined by this Protestant raising similar issues about modeling limitations.

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			from testimony.	
DWR-515	Series of tables detailing modeling assumptions for No Action Alternative, H3, H4, and Boundary 1 and 2 scenarios, plus operating and flow criteria assumptions for modeling purposes.	DWR-71 (Munevar), 14:19-21.	Modeling testimony lacks any clear explanation of how Boundary 1 and Boundary 2 scenarios were developed or are likely to represent actual operation of the projects. Table 2 of DWR-515 (north Delta diversion bypass flow criteria) states that the parameters described are for modeling purposes, and that actual operations are based on real-time monitoring of hydrologic conditions and fish presence/movement. There is no demonstration from these limited explanations of modeling assumptions that they will resemble actual operations that would not injure legal users of water in the Delta. Without adequate explanation of the modeling testimony that is relevant to the question of harm to legal users of water, we request that Hearing Officers strike the exhibit and related witness testimony.	This general objection to modeling attempts to correlate actual operations to future modeling scenarios. Please see the explanation of modeling as a tool in analyzing possible impacts, detailed in Appendix 5A of the 2013 BDCP EIR/EIS, Appendix 3 of the 2015 RDEIR/SDEIS and Section E of DWR's Master Response to Objections.

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Restore the Delta's Requests for Disqualification of Witnesses			
Exhibit Number	Witness Name	Specific Testimony	Response
DWR-52	Steve Centerwall	"I testify that I helped review the written testimony of Jennifer Pierre."	Objections to testimony of panel witnesses prior to the cross examination is misguided. See Section G of DWR's Master Response.
DWR-64	Michael Anderson	"I testify that I contributed information about the extreme conditions of recent years to the testimony of John Leahigh."	
DWR-67	Eric Reyes	"I reviewed and contributed to the written testimony of Mr. Munevar. In particular, I was relied upon by Mr. Munevar for my particular expertise in modeling."	
DWR-73	Michael D. Bryan	"I testify that I helped review the written testimony of Parviz Nader-Tehrani. Specifically, I was relied upon by Parviz Nader-Tehrani for my particular expertise in water quality."	

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DWR-69	Jamie Anderson	"I testify that I reviewed and contributed to the written testimony of Parviz Nader-Tehrani. In particular, I was relied upon by Parviz Nader-Tehrani for my particular expertise in Delta Modeling."
DWR-70	Tara Smith	"I testify that I reviewed and contributed to the written testimony of Parviz Nader-Tehrani. In particular, I was relied upon by Parviz Nader-Tehrani for my particular expertise in Delta Modeling."
DOI-6	Kristin White	"I have participated in the modeling testimony for this hearing by reviewing drafts and making comments on CVP-related matters."
DWR-72	Gwendolyn Buchholz	"I testify that I am closely involved in the creation of the BDCP/California WaterFix EIR/EIS."
DWR-62	Mark A. Holderman	"I testify that I can speak knowledgeably about the Department of Water Resources' Temporary Barriers Project."

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DWR-54	Shanmugam (Praba) Pirarooban	"I testify that I contributed significantly to the engineering testimony of John Bednarski. In particular, I was relied upon by John Bednarski for my experience in the project's conceptual design."	
DWR-58	Sergio Valles	"I testify that I contributed significantly to the engineering testimony of John Bednarski. In particular, I was relied upon by John Bednarski for my experience in the project's conceptual design."	
DWR-60	Robert Cooke	"I testify that I can provide historical perspective on water contracts and Delta water transfer facility activities, SWP water rights, long-term water supply contracts, and SWP settlement agreements."	

**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' RESPONSE TO RESTORE THE DELTA'S OBJECTIONS TO EVIDENCE AND WITNESSES, AND JOINDER IN OBJECTIONS FILED BY CSPA et al.**

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](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 <b>hard copy</b> 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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	<b>Method of Service:</b> <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 25, 2016

Date

Signature: \_\_\_\_\_



Name: Valentina German

Title: Legal Analyst

Party/Affiliation: DWR

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