

1 Spencer Kenner (SBN 148930)
James E. Mizell (SBN 232698)
2 Emily M. Thor (SBN 303169)
DEPARTMENT OF WATER RESOURCES
3 Office of the Chief Counsel
1416 9th St., Room 1104
4 Sacramento, CA 95814
Telephone: 916-653-5966
5 E-mail: jmizell@water.ca.gov

6 Attorneys for California Department of Water
Resources

7
8 **BEFORE THE**
9 **CALIFORNIA STATE WATER RESOURCES CONTROL BOARD**

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

CALIFORNIA DEPARTMENT OF
WATER RESOURCES OPPOSITION
TO CALIFORNIA'S WATER
RESEARCH'S MOTION TO STRIKE
PORTIONS OF TESTIMONY OF
MARIN GREENWOOD AND
RICHARD WILDER

16
17 The California Department of Water Resources ("DWR") opposes California Water
18 Research's Motion to Strike Portions of Testimony of Marin Greenwood and Richard
19 Wilder.

20 Ms. Des Jardins basis her motion on the argument that reasonable protection is an
21 "absolute standard" that, in her opinion, prohibit a comparative analysis of the CWF H3+
22 with the No Action Alternative. This is not supported by the law or the process established
23 in this hearing. Ms. Des Jardins proceeds to argue that she was unable to cross-examine
24 the witnesses on reasonable protection that are beyond the scope of Dr. Greenwood's and
25 Dr. Wilder's rebuttal. Ms. Des Jardins thoroughly mischaracterizes her cited portions of
26 their testimony.

1 **I. Reasonable Protection**

2 California Water Research has provided no support for its claim that reasonable
3 protection is an absolute standard. Reasonable protection is based in statute; Water Code
4 section 1701.2(c) states a petition shall “Include all information reasonably available to the
5 petitioner, or that can be obtained from the Department of Fish and Wildlife, concerning the
6 extent, if any, to which fish and wildlife would be affected *by the change*, and a statement of
7 any measures proposed to be taken for the protection of fish and wildlife in connection with
8 *the change*. (emphasis added.) Furthermore, key hearing issue 3 is whether “the *changes*
9 *proposed in the Petition* unreasonably affect Fish and Wildlife.” (Hearing Notice October 30,
10 2015, emphasis added.) Nothing in Ms. Des Jardin’s motion to strike supports a departure
11 from the interpretation of reasonable protection used in the Water Code or the Hearing
12 Notice.

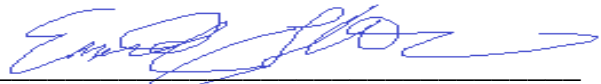
13 **II. Cross-Examination**

14 Ms. Des Jardins claims she was unable to sufficiently cross Dr. Greenwood and Dr.
15 Wilder about existing conditions and the no action alternative. This was appropriate given
16 the scope of Dr. Greenwood and Dr. Wilder’s testimony, which focused on any impacts to
17 fish and wildlife caused by the CWF H3+ as compared to the NAA. As supported above,
18 their testimony was appropriately addressing key hearing issues. Ms. Des Jardins does not
19 dispute the citations provided as the basis for Dr. Greenwood and Dr. Wilder’s testimony.

20 **Conclusion**

21 DWR respectfully requests the Board deny California Water Research’s Motion to
22 Strike for the above stated reasons.

23 Executed on this 17th day of August, 2018, in Sacramento, California.

24 

25 _____
26 Emily M. Thor
27 Attorney
28 California Department of Water Resources