1 2 3 4 5 6 7 8	Spencer Kenner (SBN 148930) James E. Mizell (SBN 232698) Robin McGinnis (SBN 276400) <b>CALIFORNIA DEPARTMENT OF WATER</b> <b>RESOURCES</b> Office of the Chief Counsel 1416 Ninth Street, Room 1104 Sacramento, CA 95814 Telephone: (916) 653-5966 E-mail: james.mizell@water.ca.gov Attorneys for California Department of Water Resources BEFORE THE CALIFORNIA STATE WATER RESOURCES CONTROL BOARD
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10	HEARING IN THE MATTER OF CALIFORNIA DEPARTMENT OF WATER CALIFORNIA DEPARTMENT OF WATER RESOURCES' RESPONSE
11 12	RESOURCES AND UNITED STATES BUREAU OF RECLAMATION REQUEST
12	FOR A CHANGE IN POINT OF DIVERSION FOR CALIFORNIA WATER
14	FIX AND POWER AUTHORITY TO WRITTEN TESTIMONY AND
15	EXHIBITS SUBMITTED BY PETITIONERS; JOINDER IN WRITTEN OBJECTIONS SUBMITTED
16	BY OTHER PROTESTANTS
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	DWR'S RESPONSE TO OBJECTIONS AND JOINDER OF THE COUNTY OF SAN JOAQUIN, SAN JOAQUIN COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, AND MOKELUMNE RIVER WATER AND POWER AUTHORITY

California Department of Water Resources ("DWR") submits this response to the 1 Objections of the County of San Joaquin, San Joaquin County Flood Control and Water 2 3 Conservation District, and Mokelumne River Water and Power Authority ("Protestants") to Written Testimony and Exhibits Submitted by Petitioners and Joinder in Written 4 Objections Submitted by other Protestants in the matter of DWR and U.S. Bureau of 5 Reclamation's (collectively "Petitioners") Request for a Change in Point of Diversion for 6 California Water Fix. Protestants joined, adopted, and incorporated by reference the 7 objections submitted by numerous other parties.<sup>1</sup> DWR responded separately to the 8 objections raised by the other parties and incorporates those responses as though fully 9 set forth herein. DWR also incorporates the Master Response to Similar Objections 10 Made by Protestants Collectively ("DWR's Master Response") filed on July 20, 2016. 11 which also provides a common Statement of Facts and Evidentiary Standards for DWR's 12 separate responses to individual objections. Protestants raise procedural and evidentiary 13 objections, all of which should be overruled. 14 15 16 GENERAL OBJECTIONS ADDRESSED IN DWR'S MASTER RESPONSE 17 Protestants raised general objections that are addressed in DWR's Master 18 Response as indicated in the following table. For the reasons explained in DWR's 19 Master Response, these general objections should be overruled. Also in response to 20 these general objections, such blanket objections are improper and should be overruled 21 as explained in Section C of DWR's Master Response. (DWR's Master Response, at 22 pages 10-11.) 23 24 <sup>1</sup> The other parties are: Central Delta Water Agency and South Delta Water Agency; Sacramento Valley Water Users; Save the California Delta Alliance; California Sportfishing Protection Alliance (CSPA), 25 California Water Impact Network (C-WIN), and AguAlliance; Pacific Coast Federation of Fishermen's Associations and Institute for Fisheries Resources; Friends of the River, Sierra Club California, 26 Environmental Water Caucus, and Planning and Conservation League; Local Agencies of the North Delta, Bogle Vineyards/Delta Watershed Landowner Coalition, Diablo Vineyards and Brad Lange/DWLC, 27 Stillwater Orchards, Friends of Stone Lakes National Wildlife Refuge, and Islands Inc.; San Joaquin Tributaries Authority; and Restore the Delta. 28 2 DWR'S RESPONSE TO OBJECTIONS AND JOINDER OF THE COUNTY OF SAN JOAQUIN, SAN JOAQUIN COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, AND MOKELUMNE RIVER WATER AND POWER AUTHORITY

Protestants' Objection		Citation to DWR's Master Response	
This Hearing Should Not Proceed until the Final EIR/EIS Has Issued and the Parties Have Been Afforded an Opportunity to Review the Final EIR/EIS		Section I, at p	ages 22-25.
As Currently Structured, This Proceeding Unfairly and Unlawfully Shifts the Burden		Section J [sic]	, at pages 25-26.
Unfairly and Unlawful of Proof and Persuas "No Injury" from the P Protestants	ion with Respect to		
This Hearing Should		Section I, at p	ages 22-25.
State Board has Com Update of the Bay-De Control Plan	pleted its Review and Ita Water Quality		
Applicability of the Ke Administrative Hearin		Section E, at	pages 14-18.
Objection to Petitioners' Reliance on Cal Sim II Modeling, Generally		Section E, at pages 14-18.	
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I. RESPONS A. Protest	ES TO SPECIFIC OB	s to specific w	-
I. RESPONS A. Protest exhibits	ES TO SPECIFIC OB ants raised objection that are addressed i	s to specific w n the following	-
I. RESPONS A. Protest	ES TO SPECIFIC OB	s to specific w n the following ION issible expert ecause it usions in the mony illbert Co.	RESPONSE Regarding Protestants' objection that DWR-3 contains legal conclusions in the guise of expert testimony, see Section H o DWR's Master Response a page 22. Regarding Protestants' objection that DWR-3 contains speculation and/o irrelevant material, DWR responds that the information meets the relevancy standard described in Government Code section 11513,
I. RESPONS A. Protest exhibits EXHIBIT DWR-3, at pp. 8-9,	ES TO SPECIFIC OB ants raised objections that are addressed i OBJECT Improper and inadm opinion testimony be includes legal conclu guise of expert testir (Summers v. A. L. G (1999) 69 Cal.App.4 1183), speculation, a	s to specific w n the following ION issible expert ecause it usions in the mony <i>ilbert Co.</i> th 1155, and/or	RESPONSE Regarding Protestants' objection that DWR-3 contains legal conclusions in the guise of expert testimony, see Section H o DWR's Master Response a page 22. Regarding Protestants' objection that DWR-3 contains speculation and/o irrelevant material, DWR responds that the information meets the relevancy standard described in Government

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

	EXHIBIT	OBJECTION	RESPONSE
1		inadequate, unreliable, or speculative underlying factual	Also, see Section E of DWR's Master Response a
2		assumptions, data and modeling.	pages 14-18.
3		This evidence fails to satisfy the Notice of Petition's requirement	Regarding B., see Section H of DWR's Master
4		that evidence "clearly identify and explain the logic, assumptions,	Response at page 22 and the information meets the
5		development, and operation of the	relevancy standard described in Government
6		studies or models" relied upon. Insofar as this testimony relies on	Code section 11513, subdivision (c).
7		CalSim II modeling, it should also be excluded under the <i>Kelly/ Frye</i>	
8		rule.	
9		B. Improper and inadmissible	
10		expert opinion testimony because it includes legal conclusions in the	
11		guise of expert testimony (Summers v. A. L. Gilbert Co.	
12		(1999) 69 Cal.App.4th 1155,	
13		1183), speculation, and/or irrelevant material.	
14			
15	DWR-53, at pp. 8:	Lacks foundation and based on	DWR responds that
16	17-19, 11:20-12:16 (Sergent Testimony)	facts not in evidence or which are speculative in nature. The	DWR-53 meets the standards described in
17		proffered opinion testimony is based on inadequate, unreliable,	Evidence Code sections 801 and 805 and
18		or speculative underlying factual assumptions, data and modeling.	Government Code section 11513, subdivision (c).
19		This evidence fails to satisfy the	Also, regarding the Kelly/ Frye rule, see Section e of
20		Notice of Petition's requirement that evidence "clearly identify and	DWR's Master Response a pages 14-18.
21		explain the logic, assumptions, development, and operation of the	p-9
22		studies or models" relied upon. Insofar as this testimony relies on	
23		CalSim II modeling, it should also	
24		be excluded under the <i>Kelly/ Frye</i> rule.	
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27			

	EXHIBIT	OBJECTION	RESPONSE
	DWR-53, at pp. 3:22-	Improper and inadmissible expert	Regarding Protestants'
	25, 8:13-21, 8:25-9:1, 10:24-15:11 (esp. 11:10-13), 24:5-28	opinion testimony because it includes legal conclusions in the	objection that DWR-53 contains legal conclusions in the guise of expert
	(Sergent Testimony)	guise of expert testimony ( <i>Summers v. A. L. Gilbert Co.</i> (1999) 69 Cal.App.4 <sup>th</sup> 1155,	testimony, see Section H o DWR's Master Response a page 22.
		1183), speculation, and/or	
ļ		irrelevant material.	Regarding Protestants' objection that DWR-53
			contains speculation and/o irrelevant material, DWR responds that the
			information meets the relevancy standard
			described in Government Code section 11513, subdivision (c).
	DWR-53, at pp. 11:10-13; 17:23-18:4	Evidence Code § 1523 (secondary evidence rule); DWR	See Section II.B., below.
507 507	(Sergent Testimony)	has possession or control of the referenced writings, which are the	
		best and most reliable evidence of their content; a responsible trier of	
		fact would not rely on secondary evidence of their content under these circumstances.	· · · · · · · · · · · · · · · · · · ·
	DWR 61, at pp. 5:23- 25, 6:6-8, 7:18-27, 8:1-8, 16:9-15, 17:5-	Improper and inadmissible expert opinion testimony because it includes legal conclusions in the	Regarding Protestants' objection that DWR-61 contains legal conclusions
	11, 17:23-25, 19:15- 26, 20:6-18	guise of expert testimony	in the guise of expert testimony, see Section H o
		(Summers v. A. L. Gilbert Co. (1999) 69 Cal.App.4 <sup>th</sup> (Leahigh	DWR's Master Response a page 22.
		Testimony) 1155, 1183), speculation, and/or irrelevant	Regarding Protestants' objection that DWR-61
		material.	contains speculation and/o irrelevant material, DWR
			responds that the information meets the
			relevancy standard described in Government
		1 	Code section 11513, subdivision (c).
	DWR 61, at pp. 11 : 20-24; 12: 1-6 (Least interaction	Lacks foundation, relies on facts not in evidence; also runs afoul of	DWR responds that DWR-61 meets the
	(Leahigh Testimony)	the secondary evidence rule (Evidence Code § 1523).	standards described in Evidence Code sections 801 and 805 and
		6	Government Code section 11513, subdivision (c). Se
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			Section E of DWR's Master Response at pages 14-18 See also Section II.B., below regarding the secondary evidence rule.
	DWR 61, at p. 11:25-	Evidence Code § 1523	See Section II.B., below.
	28 (footnote 10) (Leahigh Testimony)	(secondary evidence rule). The witness's characterization of WR 2010-0002 is misleadingly	
		incomplete and inaccurate - the	
		best evidence of what WR 2010- 0002 actually says is WR 2010- 0002 itself.	
			Descending Destastants'
	DWR-66 (Nader- Tehrani Testimony)	Improper and inadmissible expert opinion testimony because it	Regarding Protestants' objection that DWR-66
	, , , , , , , , , , , , , , , , , , ,	includes legal conclusions in the	contains legal conclusion in the guise of expert
		guise of expert testimony (Summers v. A. L. Gilbert Co.	testimony, see Section H DWR's Master Response
		(1999) 69 Cal.App.4 <sup>th</sup> 1155, 1183), speculation, and/or	page 22.
		irrelevant material. Further this	Regarding Protestants' objection that DWR-66
		testimony's analysis of durations of time series data for DSM2	contains speculation and irrelevant material, DWR
		modeling (4:4-9) is not peer- reviewed. Input data for DSM2	responds that the
		derives from CalSim II output and, therefore, lacks foundation and	information meets the relevancy standard described in Government
		based on facts not in evidence or which are speculative in nature.	Code section 11513, subdivision (c).
		Insofar as this testimony relies on CalSim II modeling, it should be excluded under <i>Kelly/ Frye.</i>	Regarding the adequacy the modeling data and
			application of Kelly-Frye, see Section E of DWR's Master Response at page 14-18.
	DWR-66, at pp. 2:10-	Lacks foundation and based on	See Section E of DWR's
	11, 4:23-7:21, 8:7- 11:18 (Nader-Tehrani Testimony)	facts not in evidence or which are speculative in nature. The proffered opinion testimony is	Master Response at page 14-18.
	rooumony)	based on inadequate, unreliable, or speculative underlying factual	
		assumptions, data and modeling. This evidence fails to satisfy the	
		Notice of Petition's requirement	
		that evidence "clearly identify and explain the logic, assumptions, development, and operation of the	

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

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

EXHIBIT	OBJECTION	RESPONSE
	development, and operation of the studies or models" relied upon. Insofar as this testimony relies on	
	CalSim II modeling, it should also be excluded under the <i>Kelly/ Frye</i> rule.	
DWR-117	Lacks foundation and based on facts not in evidence and which	DWR responds that DWR-116 meets the
	are speculative in nature. The	standards described in Evidence Code sections
	Draft Adaptive Management Plan is based on inadequate, unreliable, and speculative	801 and 805 and Government Code section
	underlying factual assumptions	11513, subdivision (c). Also, see Section E of DWR's Master Respons
	about potential future decision- making by agencies and	pages 14-18.
· · ·	individuals, some of which are not the Petitioners and will not be	
	acting under the control by Petitioners. This evidence fails to	
	satisfy the Notice of Petition's	
	requirement that evidence "clearly identify and explain the logic,	
	assumptions, development, and operation of the studies or	
	models" relied upon.	
DWR-324	Improper and inadmissible expert opinion testimony because it	Regarding Protestants'
	includes legal conclusions in the guise of expert testimony	objection that DWR-324 contains legal conclusio
	(Summers v. A. L. Gilbert Co.	in the guise of expert testimony, see Section I
	(1999) 69 Cal.App.4 <sup>th</sup> 1155, 1183), speculation, and/or	DWR's Master Respons page 22.
	irrelevant material.	Regarding Protestants'
		objection that DWR-324 contains speculation an
		irrelevant material, DWF responds that the
		information meets the relevancy standard
5. 1		described in Governmer Code section 11513, subdivision (c).
DWR-513	A. Lacks foundation and based on	Regarding A., DWR
	facts not in evidence or which are	responds that DWR-513
	TO OBJECTIONS AND JOINDER OF THE CO NTY FLOOD CONTROL AND WATER CONSE	

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	EXHIBIT	OBJECTION	RESPONSE
1 2		speculative in nature. The proffered opinion testimony is	meets the standards described in Evidence Code
3		based on inadequate, unreliable, or speculative underlying factual	sections 801 and 805 and Government Code section 11513, subdivision (c).
4		assumptions, data and modeling. This evidence fails to satisfy the Notice of Petition's requirement	Also, see Section E of DWR's Master Response at pages 14-18.
5		that evidence "clearly identify and	
6		explain the logic, assumptions, development, and operation of the	Regarding B., see Section H of DWR's Master Response at page 22 and
7		studies or models" relied upon. Insofar as this testimony relies on	the information meets the
8		CalSim II modeling, it should also be excluded under the Kelly/ Frye	relevancy standard described in Government Code section 11513,
9		rule.	subdivision (c).
10		B. Improper and inadmissible	
11		expert opinion testimony because	
12		it includes legal conclusions (Summers v. A. L.	
13		Gilbert Co. in the guise of expert	
14		testimony (1999) 69 Cal.App.4th 1155, 1183), speculation, and/or	
		irrelevant material.	
15 16	DWR-514	A. Lacks foundation and based on facts not in evidence or which are speculative in nature. The	Regarding A., DWR responds that DWR-514 meets the standards
17		proffered opinion testimony is based on inadequate, unreliable,	described in Evidence Code sections 801 and 805 and Government Code section
18		or speculative underlying factual	11513, subdivision (c).
19		assumptions, data and modeling. This evidence fails to satisfy the	Also, see Section E of DWR's Master Response a
20		Notice of Petition's requirement that evidence "clearly identify and	pages 14-18. Regarding B., see Section
21		explain the logic, assumptions, development, and operation of the	H of DWR's Master Response at page 22 and
22		studies or models" relied upon. Insofar as this testimony relies on	the information meets the relevancy standard
23		CalSim II modeling, it should also	described in Government Code section 11513,
24		be excluded under the <i>Kelly/ Frye</i> rule.	subdivision (c).
25		B. Improper and inadmissible	
26		expert opinion testimony because	
27		it includes legal conclusions (Summers v. A. L. Gilbert Co. in	
28		the guise of expert testimony	
	DWR'S RESPONSE 1	O OBJECTIONS AND JOINDER OF THE CO	UNTY OF SAN JOAQUIN, SAN

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1	EXHIBIT	OBJECTION	RESPONSE
2		(1999) 69 Cal.App.4th 1155, 1183), speculation, and/or irrelevant material.	
3	DWR-515	A. Lacks foundation and based on	Regarding A., DWR
4 5		facts not in evidence or which are speculative in nature. The proffered opinion testimony is	responds that DWR-515 meets the standards described in Evidence Code
6		based on inadequate, unreliable,	sections 801 and 805 and Government Code section
7		or speculative underlying factual assumptions, data and modeling.	11513, subdivision (c). Also, see Section E of
8		This evidence fails to satisfy the Notice of Petition's requirement	DWR's Master Response at pages 14-18.
9		that evidence "clearly identify and explain the logic, assumptions,	Regarding B., see Section H of DWR's Master
10		development, and operation of the studies or models" relied upon.	Response at page 22 and the information meets the
11		Insofar as this testimony relies on	relevancy standard described in Government
12		CalSim II modeling, it should also be excluded under the <i>Kelly/ Frye</i> rule.	Code section 11513, subdivision (c).
13			
14		B. Improper and inadmissible expert opinion testimony because	
15		it includes legal conclusions in the guise of expert testimony	
16		<i>(Summers v. A. L. Gilbert Co.</i> (1999) 69 Cal.App.4th 1155,	
17		1183), speculation, and/or irrelevant material.	
18		· · · · · · · · · · · · · · · · · · ·	
19	DOI-4, at pp. 2, 6 (joining in the	Evidence Code § 1523 (secondary evidence rule); DWR	See Section II.B., below.
20	improper testimony of Ms. Sergent); pp. 7-9	has possession or control of the referenced writings, which are the	
21	(testimony re	best and most reliable evidence of	
22	documents separately included	their content; a responsible trier of fact would not rely on secondary	
23	as DOI-13 through DOI-31) (Sahlberg	evidence of their content under these circumstances.	
24	Testimony)		
25	DOI-4, at pp. 6-7, 9 (Sahlberg Testimony)	A. Lacks foundation and based on facts not in evidence or which are	Regarding A., DWR responds that DOI-4 meets
26		speculative in nature. The proffered opinion testimony is	the standards described in Evidence Code sections
27		based on inadequate, unreliable,	801 and 805 and Government Code section
28		or speculative underlying factual	11513, subdivision (c).
	JOAQUIN COUNTY	OBJECTIONS AND JOINDER OF THE CO / FLOOD CONTROL AND WATER CONSE KELUMNE RIVER WATER AND POWER A	RVATION DISTRICT, AND
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	EXHIBIT	OBJECTION	RESPONSE
		assumptions, data and modeling. This evidence fails to satisfy the Notice of Petition's requirement	Also, see Section E of DWR's Master Response a pages 14-18.
		that evidence "clearly identify and explain the logic, assumptions,	Regarding B., see Section H of DWR's Master
		development, and operation of the studies or models" relied upon.	Response at page 22 and the information meets the
		Insofar as this testimony relies on CalSim II modeling, it should also	relevancy standard described in Government Code section 11513,
		be excluded under the <i>Kelly/ Frye</i> rule.	subdivision (c).
		B. Improper and inadmissible	
		expert opinion testimony because it includes legal conclusions	
		(Summers v. A. L. Gilbert Co. in the guise of expert testimony	
		(1999) 69 Cal.App.4th 1155, 1183), speculation, and/or	
		irrelevant material.	
	-5, at pp. 14, 17, Sahlberg Power	A. Lacks foundation and based on facts not in evidence or which are	Regarding A., DWR responds that DOI-5 meets
Poir	it)	speculative in nature. The proffered opinion testimony is	the standards described in Evidence Code sections 801 and 805 and
		based on inadequate, unreliable, or speculative underlying factual	Government Code section 11513, subdivision (c).
		assumptions, data and modeling. This evidence fails to satisfy the	Also, see Section E of DWR's Master Response a pages 14-18.
		Notice of Petition's requirement that evidence "clearly identify and explain the logic, assumptions,	Regarding B., see Section
		development, and operation of the studies or models" relied upon.	H of DWR's Master Response at page 22 and the information meets the
		Insofar as this testimony relies on	relevancy standard described in Government
		CalSim II modeling, it should also be excluded under the <i>Kelly/ Frye</i>	Code section 11513, subdivision (c).
		rule.	
		B. Improper and inadmissible expert opinion testimony because	
		it includes legal conclusions in the	
		guise of expert testimony (Summers v. A. L. Gilbert Co.	
		(1999) 69 Cal.App.4th 1155, 1183), speculation, and/or	
		irrelevant material.	
╣		OBJECTIONS AND JOINDER OF THE CO	

EXHIBIT	OBJECTION	RESPONSE
DOI-7, at p. 4 (Milligan)	A. Lacks foundation and based on facts not in evidence or which are speculative in nature. The proffered opinion testimony is based on inadequate, unreliable, or speculative underlying factual assumptions, data and modeling. This evidence fails to satisfy the Notice of Petition's requirement that evidence "clearly identify and explain the logic, assumptions,	Regarding A., DWR responds that DOI-7 meets the standards described in Evidence Code sections 801 and 805 and Government Code section 11513, subdivision (c). Also, see Section E of DWR's Master Response a pages 14-18. Regarding B., see Section H of DWR's Master
	development, and operation of the studies or models" relied upon.	Response at page 22 and the information meets the
	Insofar as this testimony relies on CalSim II modeling, it should also be excluded under the <i>Kelly/ Frye</i>	relevancy standard described in Government Code section 11513,
	rule.	subdivision (c).
	B. Improper and inadmissible	·
	expert opinion testimony because it includes legal conclusions in the	
	guise of expert testimony (Summers v. A. L. Gilbert Co.	
	(1999) 69 Cal.App.4th 1155, 1183), speculation, and/or irrelevant material.	
B. The Secondary Evidence Rule Does Not Bar Petitioners' Testimony		
Protestants' ob	jections based on section 1523 of the E	Evidence Code, the
"Secondary Evidence	e Rule," are not well taken. Protestants	s object to portions of
Maureen Sergent's t	estimony (DWR-53, at pp. 11:10-13; 17	7:23-18:4, and 12:1-6) and
Ray Sahlberg's testi	mony (DOI-4, at pp. 2, 6, and 7-9) on th	e grounds that DWR has th
documents, they are	the best and most reliable evidence of	their content, and a
responsible trier of fa	act would not rely on secondary eviden	ce of their content under
these circumstances. Protestants also object to John Leahigh's testimony (DWR 61, at		
pp. 11: 20-24; 11:25	-28 (footnote 10)) on the grounds that h	is characterization of WR
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2010-0002 is misleadingly incomplete and inaccurate, and the best evidence of what WR 2010-0002 actually says is WR 2010-0002 itself.

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

Here, Ms. Sergent's, Mr. Sahlberg's, and Mr. Leahigh's testimony regarding their 9 understanding of the documents provides one of the bases for their expert opinions. As 10 such, this evidence is clearly relevant to the proceedings. In addition, the testimony of 11 qualified experts regarding the writings and reasoning supporting their ultimate opinions 12 are the type of evidence upon which reasonable persons routinely rely in the conduct of 13 serious affairs. See Big Boy Liquors, Limited v. Alcoholic Beverage Control Appeals Bd. 14 (1969) 71 Cal.2d 1226, 1229-1230 (rejecting petitioner's argument that the Department 15 of Alcoholic Beverage Control failed to introduce the "best evidence" of the petitioner's 16 violations, and the Alcoholic Beverage Control Appeals Board failed to consider the lack 17 of this "best evidence," on the grounds that the Board was not required to consider 18 Evidence Code presumption that weaker evidence be viewed with distrust). Even if the 19 Board were to apply Evidence Code section 1523, it would not mandate the exclusion of 20 the testimony because the testimony that protestants seek to exclude does not "prove 21 the content of a writing" as contemplated by the statute. The objections based on 22 Evidence Code section 1523 should be overruled. 23 24 111

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

1	CONCLUSION	
2	For the reasons stated above and in the incorporated Master Response,	
3	Protestants objections are unfounded and should be overruled.	
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6	Dated: July 22, 2016 CALIFORNIA DEPARTMENT OF WATER RESOURCES	
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8	Jol missi	
9	Robin McGinnis	
10	Office of the Chief Counsel	
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	DWR'S RESPONSE TO OBJECTIONS AND JOINDER OF THE COUNTY OF SAN JOAQUIN, SAN JOAQUIN COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, AND MOKELUMNE RIVER WATER AND POWER AUTHORITY	