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4 **CALIFORNIA DEPARTMENT OF WATER
RESOURCES**

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12 **BEFORE THE CALIFORNIA STATE WATER RESOURCES CONTROL BOARD**

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

**CALIFORNIA DEPARTMENT OF
WATER RESOURCES' RESPONSES TO
OBJECTIONS TO EXHIBITS
SUBMITTED IN SUPPORT OF
PETITIONERS' CASES-IN-CHIEF**

17
18 **INTRODUCTION**

19 California Department of Water Resources ("DWR") hereby responds to remaining pending
20 objections to Petitioners' submitted exhibits raised in motions, objections and oppositions filed by
21 the following protestants:¹

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- 23 • Deidre Des Jardins' Motion to Continue Objection to Hearsay Testimony, to Exclude
24 Evidence and Strike Written Testimony, to Rule on Prior Objections, and to Allow
Cross Examination of All Testimony filed September 21, 2016;
 - 25 • Deidre Des Jardins' Motion Opposing Petitioners' Submission of Surprise Testimony
26 filed September 27, 2016;

27 ¹ Several parties/protestants filed joinders in these motions/objections.
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- Deidre Des Jardins’ Objection to Late Filings by the Protestants and Motion for Clarification of September 27, 2016 Hearing Rulings filed September 30, 2016;
- LAND et al.’s Opposition to Petitioners’ Modeling Evidence filed October 6, 2016;
- Deidre Des Jardins’ Motion to Exclude SWRCB-3, SWRCB-4, and DWR-514, or Limit Use in Hearing filed October 7, 2016;
- Deidre Des Jardins’ Motion to Limit Use of SWRCB-3 and SWRCB-4 in the hearing filed October 7, 2016;
- City of Antioch’s Objections to New Evidence in the Cross-Examination of Maureen Sergent; Motion to Disqualify Maureen Sergent’s Testimony filed October 7, 2016; and
- City of Sacramento’s Objections to DWR-558 and DWR-563 filed November 2, 2016.

Cumulatively, these objections and motions are largely repetitive and can be addressed by examining how:

1. DWR’s modeling evidence is not surprise testimony;
2. DWR’s evidence DWR-505, DWR-514, Table 2 and DWR-71 are relevant and have foundation;
3. DWR’s evidence SWRCB-3, SWRCB-4, DWR-513 and DWR-514 are relevant and have foundation;
4. DWR’s witness Ms. Sergent is an expert and her testimony is relevant and has foundation; and,
5. DWR’s evidence DWR-558 and DWR-563 are relevant and have foundation.

For the reasons provided below, DWR respectfully requests that the Hearing Officer’s deny these pending objections to Petitioners’ submitted exhibits.

STATEMENT OF FACTS

On August 26, 2015, DWR and Reclamation filed a petition for a change to the points of diversion in their water rights necessary to allow for the implementation of the California Water Fix (“CWF”). On October 30, 2015, the State Water Resources Control Board (“Water Board”) issued a Notice of Petition and Notice of Public Hearing and Pre-Hearing Conference to consider the petition and subsequently issued a Notice of Rescheduled Public Hearing and Second Revised Notice of Rescheduled Public Hearing on March 25, 2016 and May 11, 2016, respectively. The

1 Second Revised Notice provided that the deadline for Petitioners' Part 1A case-in-chief was
2 May 31, 2016 with written procedural/evidentiary objections concerning Petitioners'
3 case-in-chief due June 15, 2016. The deadline for written/procedural objections was later
4 extended to July 12, 2016 by ruling dated June 10, 2016. The June 12, 2016 ruling made clear
5 that any motions to disqualify any petitioners' witnesses, or to exclude a witness's testimony, in
6 whole or in part, must be filed and served on petitioners and other parties by July 12, 2016.

7 The hearing commenced on July 26, 2016 with the presentation of policy statements
8 followed immediately by Petitioners' Part 1A case-in-chief and cross-examination of Petitioners'
9 witnesses. Petitioners closed their case-in-chief on September 27, 2016 and submitted a written
10 exhibit list on September 28, 2016, which was later amended to incorporate exhibits utilized on
11 cross examination in Part 1B.

12 On December 19, 2016, the Hearing Officers issued a ruling setting a deadline of
13 December 30, 2016 to submit objections to evidence to testimony or exhibits that have been
14 offered into evidence, including exhibits that were introduced during cross examination. The
15 ruling did not extend or modify the July 12, 2016 deadline established in the June 12, 2016 ruling
16 pertaining to Petitioners' case-in-chief. Rather, it only applies to protestants' cases-in-chief and
17 any exhibits of Petitioners or protestants submitted for purposes of cross-examination of
18 protestants' cases-in-chief. The December 19, 2016 ruling also established a deadline of
19 January 6, 2016 for responses to any additional objections to the party's testimony or exhibits that
20 were filed during or after presentation of the party's case-in-chief.

21 **LEGAL STANDARDS**

22 As stated in the October 30, 2015 hearing notice, this is an administrative hearing
23 governed by Title 23 of the California Code of Regulations, section 648-648.8, 649.6, and 760;
24 Chapter 4.5 of the Administrative Procedure Act (commencing with 11400 of the Government
25 Code); sections 801 to 805 of the Evidence Code; and section 11513 of the Government Code.
26 (Cal. Code Regs., tit. 23, § 648, subd. (b).)

27 In this hearing, the Hearing Officers shall admit any relevant evidence if it is the sort of
28 evidence on which responsible persons are accustomed to rely on in the conduct of serious affairs,

1 regardless of the existence of any common law or statutory rule which might make improper the
2 admission of the evidence over objection in civil actions. (Govt. Code § 11513 subd. (c).)
3 However, the Hearing Officers have discretion to exclude evidence if its probative value is
4 substantially outweighed by the probability that its admission will necessitate undue consumption
5 of time. (Govt. Code, § 11513 subd. (f).)

6 **RESPONSE TO OBJECTIONS**

7 **I. Objections to the Admission of Modeling Files as Exhibit DWR-500 on Grounds of** 8 **“Surprise” Evidence are Unfounded**

9 Ms. Des Jardins and the LAND et al. parties submitted motions/objections to DWR’s
10 submission of modeling files, originally made available on May 16, 2016, as an exhibit on its
11 September 28, 2016 exhibit list, on the grounds that exhibit DWR-500 constitutes improper
12 “surprise” evidence as well as a due process violation of protestants’ right to fully examine, cross
13 examine and rebut evidence.² (See Ms. Des Jardin’s motions filed September 21, 2016 [p. 13:21-
14 22.], September 27, 2016 and September 30, 2016 (p. 3:12-16.), and LAND et al.’s motion filed
15 October 6, 2016.) At the Hearing Officer’s request, DWR provided its rationale for including
16 DWR-500 in its letter accompanying the submission of its exhibit list dated September 28, 2016.
17 (See Vol. 19, pp. 111:10-112:7.)

18 Ms. Des Jardins and LAND et al. argue that they were prejudiced by the submission of the
19 modeling files in DWR’s exhibit list on September 28, 2016. These protestants assert that they
20 lacked sufficient time to prepare their cases-in-chief, though other protestants prepared extensive
21 cases-in-chief analyzing the modeling output, which had been publically available since
22 May 16, 2016 (modeling for the BDCP/WaterFix environmental review and the draft BA was
23 available in February 2016 and earlier). A good example would be Mr. Bourez’s analysis of the
24 modeling data presented in exhibit SVWU-109 on behalf of the Sacramento Valley Water Users.

25 These parties also assert that they were not afforded the opportunity to effectively cross

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27 ² In her motions, Ms. Des Jardins failed to note that the Hearings Officer overruled her oral objection that the modeling package
28 was not originally submitted as an exhibit during the cross examination of the Petitioners’ modeling panel by Ms. Taber on behalf
of the City of Stockton. (See Vol 25, p. 103:1-10.)

1 examine Petitioners’ witnesses on issues such as authentication of the modeling and related
2 issues, even though Petitioners’ witnesses were subject to extensive cross examination regarding
3 the modeling performed in reaching the conclusions in their testimony as well as the conclusions
4 in the BDCP/WaterFix environmental review documents (SWRCB-3 and SWRCB-4), the
5 adequacy of the models used, the appropriate use of such models and, as any participant to the
6 hearing can attest, the peer review and validation of such models. (See Vols. 13, 14, 15 and 16
7 comprising 4 days of cross examination of DWR’s modeling panel, in particular Ms. Des Jardins
8 cross at Vol. 15, pp. 252:2- 266:4 and Vol. 16, pp. 2:19-21:14 and 251:21-284:17, which included
9 questions regarding “who” performed the modeling, “error checking,” calibration, validation,
10 Sacramento Valley hydrology, historical simulation and the reservoir module [See Vol. 15, pp.
11 253:4-254:1 and 258:4-24 for cross topics].)

12 While both protestants characterize the submission of DWR-500 as a legal strategy to avoid
13 scrutiny, the truth of the matter is that the modeling for the WaterFix, including the modeling in
14 support of the Petition, was information publically available to protestants for many months, and
15 in no way represents “surprise” evidence. The narrow modeling contained in DWR-500 was
16 announced on May 16, 2016 in a letter to the Hearing Officers, which made clear that the
17 Petitioners intended to submit as part of their case-in-chief updated modeling results related to the
18 proposed project and modeling on an adaptive operational range for the Board’s consideration.
19 The letter offered to make available, upon request, the model study package used for this
20 modeling to any party.³ Further, at the Water Board’s request, the modeling package in support
21 of the testimony was also submitted to the Board on May 25, 2016 and made available to all
22 parties through the State Water Board’s website and ftp site.

23 All other modeling data, in support of the Draft Biological Assessment, the Final EIR/S or
24 the RDEIR/SDEIS was publically available in February 2016 or earlier. Moreover, DWR has
25 provided detailed explanations concerning the modeling performed. (See e.g., DWR Letters to
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27 ³ In fact, the release of the modeling package was in direct response to requests for information by parties, such as Ms. Des Jardins
28 who now opposes its submission into evidence.

1 the Hearing Officers dated March 11, 2016 and May 25, 2016 and the explanatory testimony of
2 Armin Munevar, DWR-71, pp. 3-16.) All of the modeling data, including the modeling data
3 made available on May 16, 2016 is not “new” surprise information elicited for the first time on
4 cross examination to the prejudice of protestants. Rather it is thoroughly examined evidence.
5 Parties were not only aware of its purpose and import upon submission of DWR’s written
6 case-in-chief, but had access to the modeling data for months prior to the deadline for submission
7 of protestants’ cases-in-chief.

8 As modeling data submitted to the Water Board in support of Petitioners’ case-in-chief,
9 which then came up extensively during cross examination of Petitioners’ modeling witnesses, the
10 modeling files contained in DWR-500 are informative to the decision making of the Water Board.
11 Indeed, Hearing Officer Doduc even noted at one point during the hearing that she would be
12 opening these files and doing analysis herself. (See Vol. 15, pp. 106:22-25.) For the reasons
13 stated above, the motions to exclude DWR-500 should be denied.

14 **II. Exhibits DWR-505, DWR-514, Table 2, and DWR-71 are Relevant to the Proceeding**
15 **and Have Adequate Foundation, and Objections are Untimely**

16 Rulings by the Hearing Officers established a deadline of July 12, 2016 for any motions to
17 disqualify any of Petitioners’ witnesses, or to exclude a witness’s testimony in whole or in part.
18 In her motion filed on September 21, 2016, Ms. Des Jardins requests that the Hearing Officers
19 exclude DWR exhibits DWR-505, a Technical Memorandum Report titled “CalSim II Simulation
20 of Historical SWP/CVP Operations” dated November 2003, DWR-514, Table 2 which is derived
21 from the results of DWR-505, and the testimony of DWR modeling expert Armin Munevar on
22 these exhibits, DWR-71, pp. 9:2-16. DWR-505 and DWR-514, Table 2 were referenced in Mr.
23 Munevar’s written direct testimony explaining the development of the CalSim model and its
24 review over the years. (DWR-71, pp. 7:6-9:17.) In his testimony, Mr. Munevar explains that
25 since the 2003 Technical Report, which showed a close fit between simulated and actual
26 historical values, DWR and Reclamation have continued to improve CalSim II. (Id.)
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1 Ms. Des Jardins asserts that the DWR-505 and Table 2 of DWR-514 have little probative
2 value to the hearing, and should be excluded on those grounds along with Mr. Munevar's
3 testimony. (September 21, 2016 Motion, p. 17:6-18:4.) She claims DWR attorneys successfully
4 objected to her questions during cross examination of the DWR modeling panel that these
5 exhibits were not relevant to the current version of the model.⁴ Ms. Jardins' mischaracterizes
6 DWR's general objections during much of her cross examination, on August 26, 2016, which
7 were to her repeated unfocused questions on CalSim II generally that did not focus upon the use
8 of modeling in support of the WaterFix. (See Vol. 16, pp. 2:19-21:14 and 251:21-284:17.) DWR
9 never objected that DWR-505 and Table 2 of DWR-514 were not relevant to this proceeding and
10 the choice to use the CalSim II model for analysis in support of the Petition.

11 As explained in Mr. Munevar's testimony (DWR-71, pp. 8:22-9:17) and Mr. Reyes on
12 cross examination by Ms. Des Jardins (Vol. 16, pp. 277:12-278:2.), the 2003 Technical
13 Memorandum Report demonstrated that the CalSim model does an accurate job of water
14 allocation and water accounting, and that, since the study in 2003, there have been continued
15 improvements to the model. It is an important part of Mr. Munevar's testimony that the CalSim
16 II model represents the state-of-the art model for comparing WaterFix scenarios. (DWR-71, pp.
17 7:6-9:17.)

18 As such, the exhibits referenced in Mr. Munevar's direct testimony, and Mr. Munevar's
19 testimony on these exhibits, is evidence relevant to the proceeding helpful to the trier of fact.⁵

20 **III. Motion to Exclude SWRCB-3, SWRCB-4, DWR-513 and DWR-514 or Limit Use Is**
21 **Unsupported, Repetitive and Untimely**

22 Rulings by the Hearing Officers established a deadline of July 12, 2016 for any motions to
23 disqualify any of Petitioners' witnesses, or to exclude a witness's testimony in whole or in part.

24 Ms. Des Jardins argues that exhibits SWRCB-3 and SWRCB-4, the entire RDEIR/SDEIS and
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26 ⁴ Ms. Des Jardins provides no citation to the transcripts. In fact, having re-reviewed Ms. Des Jardins' muddled, and in parts
27 confusing, cross examination on August 26, 2016, conducted in two parts to allow her additional time to get better organized,
DWR is not entirely certain to which cross examination questions and objections Ms. Des Jardins is referring exactly.

28 ⁵ As publically available models, on the website of the Water Board, DWR-500 is also subject to official notice.

1 DEIR/EIS for the BDCP/WaterFix, and DWR-513 and DWR-514, respectively DSM2 and
2 CalSim II Modeling results, should be excluded from the record, because, in her opinion, the
3 model results presented in these exhibits “are unsuitable for their proposed use in the hearing.”
4 (See October 7, 2016 Motion, p. 1.) The basis of her arguments is that Petitioners failed to
5 provide independent reviews validating the CalSim II model’s simulation of hydrologic processes
6 or “current, relevant” information on the calibration of the model’s simulation of hydrologic
7 processes. (See October 7, 2016 Motion, p. 10.) Alternatively, she requests that the use of the
8 models should be limited in the hearing to non-quantitative purposes. (See October 7, 2016
9 Motion, p. 1.)

10 Ms. Des Jardins ignores, or merely disagrees with, the testimony put forward by Petitioners
11 that CalSim II represents the widely-accepted, start of the art model for comparing WaterFix
12 scenarios (DWR-71, Testimony of Armin Munevar), the information contained in the DEIR/EIS
13 and RDEIR/SDEIS regarding the models utilized, and the extensive testimony on cross
14 examination by Petitioners’ modeling panel concerning the use, peer review, calibration and
15 validation of the CalSim II model, and the continual process of the modeling community to
16 improve and update the CalSim II model. Even the modeling expert of protestants Sacramento
17 Valley Water Users, Dan Easton, acknowledged on cross examination that CalSim II was the best
18 available tool (Vol. 21, pp. 5:15-6:9) and Sacramento Valley Water Users’ other modeling expert,
19 Walter Bourez, acknowledged that the operation of the model is adequate to mimic actual
20 CVP/SWP operations for planning studies. (Vol. 21, pp. 75:10-19.)

21 While Ms. Des Jardins may have the opinion that the information put forward by the
22 Petitioners regarding the adequacy of the models chosen is insufficient, which is an issue for the
23 trier of fact, Ms. Des Jardins points to no actual evidence that the CalSim II or DSM2 models are,
24 as alleged, “unsuitable” for the modeling conducted.⁶ Moreover, any challenges to Petitioners’
25 use of the CalSim II or DSM2 models go to the weight of the evidence, and not its admissibility

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27 ⁶ In fact, much of Ms. Des Jardins’ motion appears to be an argument that the Petitioners have failed to submit the information
28 required by Title 23, Section 794, of the California Code of Regulations in support of the Petition. This argument, however, is not
an evidentiary objection but rather an early closing brief on the sufficiency of the Petition.

1 as explained in DWR's extensive response to similar objections submitted by protestants to
2 Petitioners' case-in-chief, including Ms. Des Jardins, to the modeling programs, which response
3 DWR hereby incorporates.⁷ (See DWR's July 20, 2016 Master Response to Objections, pp. 14-
4 18.)

5 For these reasons, Ms. Des Jardins request that exhibits SWRCB-3, SWRCB-4, DWR-513
6 and DWR 514 be excluded from the record, or that their use by limited, should be denied.

7 **IV. Motion To Disqualify Ms. Sargent And To Strike Her Testimony, Or, Alternatively**
8 **To Strike Portions Of Her Cross Examination Testimony Lacks Merit**

9 The City of Antioch seeks to wholly disqualify Ms. Sargent as an expert and strike her
10 testimony. Rulings by the Hearing Officers established a deadline of July 12, 2016 for any
11 motions to disqualify any of Petitioners' witnesses, or to exclude a witness's testimony in whole
12 or in part. The City of Antioch did not file objections to Ms. Sargent's testimony or qualifications
13 in advance of the July 12, 2016 deadline. As such, the City's motion to disqualify Ms. Sargent or
14 to exclude her direct written testimony is untimely.

15 To the extent the Water Board determines that the City of Antioch's motion is not untimely,
16 DWR incorporates herein its extensive response found in its July 20, 2016 Master Response to
17 Objections (pp. 13 and 22) to similar objections to Ms. Sargent's testimony on legal argument
18 grounds. As explained in DWR's Master Response (p. 22), Ms. Sargent's testimony is not legal
19 argument, but rather her description of the legal framework governing the hearing. Such
20 understanding is necessary, proper and relevant to this hearing as it helps Ms. Sargent describe
21 her expert opinion to the Board on matters concerning DWR's water rights and settlement
22 agreements and how the CWF will be operated consistent with its permits and obligations.

23 As further grounds for the exclusion of Ms. Sargent's testimony, the City of Antioch also
24 complains that Ms. Sargent's testimony provides no new information, opinion or analysis

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26 ⁷ Ms. Jardins also attempts to argue that the alleged lack of a peer review is significant because it violates the Kelly-Fry standard
27 (p. 5), but seems unaware that the Kelly-Fry standard does not apply in proceedings before the Water Board. (See the Water
28 Board's March 18, 2016 Ruling on Motions filed in the enforcement proceedings against Byron-Bethany Irrigation District and
the West Side Irrigation District in which the Board explained the reasons why the Kelly-Fry standard does not fully translate to
the administrative context, including proceedings before the Board.)

1 regarding injury or harm and that she herself provided no independent analysis. City of Antioch
2 mischaracterizes the purpose and scope of Ms. Sergent’s testimony, DWR-53. Ms. Sergent
3 provides unique expertise that builds on the testimony of other experts in Part 1A to provide
4 additional information to the State Water Board to support a decision that, within the framework
5 of DWR’s water rights, regulations, and contracts, the CWF can be constructed and operated
6 without injuring other legal users of water or initiating a new water right. Ms. Sergent is an
7 expert on SWP water rights and regularly prepares petitions to the Water Board related to changes
8 to DWR’s water rights. (DWR-53, pp. 1:17-2:20; DWR-19.) Her testimony provides relevant
9 information regarding the DWR’s water right permits for the SWP at issue in the pending Petition
10 and her understanding how the CWF will be operated consistent with those permits and also
11 provides an overview of DWR’s water supply and settlement agreements. (DWR-53, pp. 2:21-
12 4:7.) As part of Petitioners’ larger case-in-chief, Ms. Sergent’s testimony is relevant and helpful
13 to the trier of fact, particularly in light of the City of Antioch’s own reliance upon contracts with
14 DWR, which Ms. Sergent has years of experience interpreting.

15 Alternatively, City of Antioch also seeks to exclude specific testimony made by
16 Ms. Sergent during cross examination by the City of Antioch on September 23, 2016. First,
17 Antioch seeks to strike testimony on cross regarding any opinion concerning mitigation to
18 Antioch under the 1968 Agreement on the grounds that she has insufficient information regarding
19 Section 10 of the 1968 Agreement and no knowledge of the new 2016 agreement with Contra
20 Costa Water District. (October 7, 2016 Motion, pp. 3-5.) Contrary to Antioch’s allegations (pp.
21 4-5), Ms. Sergent demonstrated ample knowledge of the 1968 City of Antioch Agreement on
22 cross examination by the City and did not testify that she was unfamiliar with Section 10 of the
23 Agreement or that she had no knowledge of the 2016 Agreement with Contra Costa Water
24 District. (See Vol. 18, pp. 167:25-187:20.) For this reason, Ms. Sergent’s testimony on cross
25 examination regarding the 1968 Agreement should not be excluded.

26 The City of Antioch also seeks to strike testimony by Ms. Sergent regarding her alleged
27 conversation with Dr. Nader-Tehrani regarding “useable days” of water under Antioch’s “water
28 rights” on the grounds that this is “new information” and also regarding Dr. Nader-Tehrani’s

1 analysis of the EC impacts of the new 2016 Agreement with Contra Costa Water District on the
2 grounds that her testimony is a new opinion contradicted by the testimony of Dr. Nader Tehrani
3 and Ms. Pierre. (October 7, 2016 Motion, pp. 3-6.)

4 Antioch is unclear as to what “conversation” between Ms. Sergent and Dr. Nader-Tehrani it
5 is referencing in regards to Ms. Sergent’s testimony on cross examination on this topic. (See Vol.
6 18, pp. 173:2- 174:24.) Looking past this lack of specificity and addressing the first point,
7 Ms. Sergent clearly testified that her determination regarding Antioch was based on Dr. Nader-
8 Tehrani’s modeling regarding number of days when water would be available at Antioch, which
9 was based on the compliance location located at the Contra Costa Canal. (See Vol. 18, pp. 173:2-
10 174:24.) Contrary to assertions, this is not new evidence or information but information clearly
11 discussed in the testimony of Dr. Nader-Tehrani as pointed out by Ms. Sergent on cross. (DWR-
12 66, pp. 8:1-9:2; DWR-513.)

13 As to the EC impacts of the new 2016 Agreement with Contra Costa Water District, Ms.
14 Sergent testified accurately on cross examination that her direct testimony did indeed state that
15 the modeling analysis in DWR-512 by Dr. Nader-Tehrani represented “two possible worst case
16 scenarios” or “two extreme implementations” of the agreement. (Vol. 18, pp. 177:2-178:4,
17 184:7-186:3.) This is accurate as to Ms. Sergent’s direct testimony and also Dr. Nader-Tehrani’s
18 analysis. (See DWR-512; DWR-53, p. 23.) Instead of a problem with Ms. Sergent’s testimony,
19 Antioch instead seems to be taking exception to the fact that Dr. Nader-Tehrani did not utilize
20 Boundary 1 in his modeling analysis in DWR-512, an issue that has nothing to do with Ms.
21 Sergent’s cross examination testimony.

22 For these reasons, Antioch’s requests to strike specific (non-specified) sections of Ms.
23 Sergent’s cross examination testimony should be denied.

24 **V. Objections to Cross Examination Exhibits DWR-558 and DWR-563 on the Grounds**
25 **of Relevance and Lack of Foundation Lack Merit**

26 City of Sacramento objects to the admission of exhibits DWR-558 and DWR-563 on the
27 grounds that these two exhibits, utilized by DWR on cross examination of the City of
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1 Sacramento's witnesses lack foundation and relevance to the proceeding.

2 DWR-558 is a copy of a document referenced in Ms. Starr's testimony as recent work
3 conducted by the CV-RWQCB regarding potential drivers of cyanobacteria growth in which
4 water temperature and residence time were cited factors of algal growth. (CITYSAC-8, p. 18, n.
5 31.) The study was shown to Ms. Starr in order to ask her about the statement in the document
6 that microcystis colonies are rarely seen on the mainstem of the Sacramento. (Vol. 23, pp.
7 205:10-209:3.) Ms. Starr herself cited the document as a reference, and would presumably be
8 familiar with the work. The document was relevant to counter testimony regarding occurrence of
9 microcystis at the City of Sacramento's intake on the Sacramento River. The exhibit has an
10 adequate foundation and is clearly relevant to the proceeding.

11 DWR-563 is an excerpt of Section 8 on Water Quality from the RDEIR/SDEIS which
12 quotes the 2008 OCAP BiOp and was used by DWR on the cross examination of Ms. Vandeyar
13 and Ms. Starr concerning the correlation between water temperatures and algae growth, including
14 temperature. (See Vol. 23, pp. 186:7-187:22 and pp. 201:20-202:24.) The excerpt was shown to
15 both witnesses to determine whether they were aware of the BiOp's conclusion that water
16 temperatures in the Delta, including as far upstream as Freeport, were primarily driven by air
17 temperature and not flows on the Sacramento River. The excerpt is relevant in that both
18 witnesses' testimony for City of Sacramento attempted to link reservoir releases/operations to
19 impacts upon water temperatures in the vicinity of the City's intake. (See CITYSAC-8.) The
20 excerpt is clearly labeled as an excerpt from the RDEIR/SDEIS, the full copy of which is
21 SWRCB-4. DWR-563 is supported by an adequate foundation and is clearly relevant to the
22 proceeding in light of the City of Sacramento's testimony.

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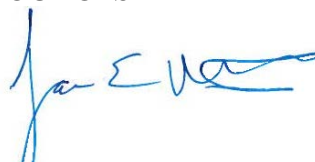
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CONCLUSION

For the above-stated reasons, DWR respectfully requests that the Hearing Officers deny these pending objections to evidence submitted by the DWR.

Dated: January 6, 2017

CALIFORNIA DEPARTMENT OF WATER
RESOURCES



James (Tripp) Mizell
Office of the Chief Counsel