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

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

**DEPARTMENT OF WATER**  
**RESOURCES' OBJECTIONS TO**  
**TESTIMONY AND EXHIBITS**  
**SUBMITTED BY CALIFORNIA**  
**SPORTFISHING PROTECTION**  
**ALLIANCE, CALIFORNIA WATER**  
**IMPACT ALLIANCE AND**  
**AQUALLIANCE (GROUP 31) AND**  
**MOTION TO STRIKE**

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## INTRODUCTION

California Department of Water Resources ("DWR") submits these objections<sup>1</sup> to the Part 1B testimony and exhibits (cases-in-chief) submitted by Group 31 comprised of California Sportfishing Protection Alliance ("CSPA"), California Water Impact Network ("C-WIN"), and AquAlliance (collectively "CSPA et al.") in the matter of DWR and U.S. Bureau of Reclamation's (collectively "Petitioners") Request for a Change in Point of Diversion for California Water Fix. DWR also concurrently moves to strike the same written testimony and exhibits. Where applicable, DWR cites to its concurrently-filed Objections to Protestants' Cases-In-Chief Collectively ("Master Objections"), which also provides a common Statement of Facts and Legal Standards for DWR's separate responses to Protestants' cases-in-chief.

## OBJECTIONS

### **I. AquAlliance Submitted Exhibits for Which There is No Sponsoring Testimony and Which, Therefore, Lack Foundation and Demonstrated Relevance**

Many of the exhibits submitted by AquAlliance are not referenced in any testimony of CSPA et al.'s witnesses. There is no witness providing testimony as to the authenticity,<sup>2</sup> reliability, or provenance of these exhibits or any testimony establishing the relevance of these exhibits to the proceeding. As such, these exhibits lack any foundation as well as any demonstrated relevance and should be excluded from Part 1 of this proceeding. Exhibits lacking any "sponsoring" testimony are the following:

AQUA-34, AQUA-35, AQUA-36, AQUA-45, AQUA-46, AQUA-47, AQUA-48, AQUA-49, AQUA-50, AQUA-51, AQUA-52, AQUA-53, AQUA-54, AQUA-55, AQUA-56, AQUA-57, AQUA-58, AQUA-59, AQUA-60, AQUA-61, AQUA-63, AQUA-64, AQUA-65, AQUA-66,

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<sup>1</sup> DWR reserves the right to make additional evidentiary/procedural objections to evidence and exhibits submitted by Protestants in support of their cases-in-chief.

<sup>2</sup> In fact, CSPA et al. provides no testimony for any of its referenced exhibits stating that such exhibits are "true and correct copies."

1 AQUA-67, AQUA-68, AQUA-70, AQUA-71, and AQUA-72.

2 **II. Testimony of Arve Sjovold (C-WIN-2) and Accompanying Analysis (C-WIN-3)**

3 **1. Economic Cost Benefit Analyses of the California WaterFix are**  
4 **Outside the Scope of Part 1.**

5 Mr. Sjovold's expert testimony largely summarizes an economic affordability study  
6 of the "Twin Tunnels" conducted by C-WIN and submitted as exhibit C-WIN-3. However,  
7 economic considerations of the Cal WaterFix including projected costs or financial  
8 solvency or prudence of the project are outside the narrowly-defined scope of Part 1,  
9 which focuses on impacts to legal users of water and other human uses of water. (See  
10 October 30, 2015 Notice of Hearing, p. 11-12; see also DWR's Master Objections.) This  
11 larger issue includes sub-issues on whether the proposed changes in points of diversion  
12 will alter water flows or water quality in a manner that causes injury to municipal,  
13 industrial, or agricultural uses of water. (*Id.*) Because testimony on WaterFix's  
14 economic cost-benefit analysis and purported impact on Santa Barbara ratepayers falls  
15 outside the scope of Part 1, Mr. Sjovold's testimony, C-WIN-2, pages 1-6, and the  
16 accompanying report at C-WIN-3, should be excluded as irrelevant.

17 **B. Mr. Sjovold's Testimony Contains Assertions Regarding Modeling**  
18 **Validity that Lack Foundation**

19 Mr. Sjovold also makes a number of conclusory statements in his "Concluding  
20 Remarks" section critiquing Petitioners' modeling that appear to have no adequate  
21 bases or foundation. (See C-WIN-2, p. 6.) These include assertions that because the  
22 Water Year Index purportedly lacks merit, "the use of those designations in the model  
23 CALSIM II, invalidates any use of CALSIM II until better characterizations of Sacramento  
24 River hydrology can be developed and validated." He goes on to broadly conclude that:

25 In turn, because CALSIM II is required to provide boundary values for the  
26 exercise of DSM2, the DWR model used to analyze salinity variations in the  
27 Delta, its results are also invalid. Also, DSM2 model results cannot purport to  
28 provide objective evaluations as long as it depends on an uncalibrated  
CALSIM II model. In addition, because SWRCB regulations use the Water  
Year Type to set flow standards throughout the Delta, they too cannot purport  
to provide objectively derived requirements for flows.

(See C-WIN-2, p. 6.) Mr. Sjovold's testimony that any use of CALSIM II under current hydrologic inputs is invalidated lacks explanation or support in his testimony. Mr. Sjovold's conclusory testimony on page 6 regarding modeling, should be excluded for lack of foundation.

### **III. Testimony of Ed Whitelaw (C-WIN-5) and Accompanying Report (C-WIN-6)**

#### **A. Mr. Whitelaw's Testimony and Accompanying Report are Impermissible Legal Argument Not Useful to the Trier of Fact.**

Mr. Whitelaw's testimony and accompanying report describe his "analysis of the claim by the Department of Water Resources and U.S. Bureau of Reclamation (the "Petitioners") that their petition to change the point of diversion for the State Water Project and for the Central Valley Project would not injure legal users of water." (C-WIN-5, p. 1). Mr. Whitelaw's "testimony" is nothing short of a legal brief in which Mr. Whitelaw opines on what constitutes a "legal injury" under the "no injury rule" and then, in a conclusory fashion, applies "law to facts" to claim in two paragraphs that Petitioners' testimony failed to show that the proposed change would meet the no injury rule. For example, Mr. Whitelaw concludes:

Based on our review of petitioner's testimony submitted in this matter, I find they failed to show the proposed change would meet the no injury. To be clear, they failed because they provided no analysis of the effects of their proposal on the other legal users of water in the Delta region. To address the [no injury] rule's requirement to show that the proposal would spare all legal users of water from injury, the petitioners should have described the proposal's causal sequence of effects and substantiated the underlying explanations of the effects. Moreover, they should have evaluated these effects on all of the other legal users in the Delta region.

(C-WIN-5, p. 3.) Mr. Whitelaw goes on to fault Petitioners for failing to use the "tools" of economics in their analysis of injury.<sup>3</sup> (See C-WIN-5, pp. 3-4.) Mr. Whitelaw also claims that Petitioners have failed to meet the Kelly-Frye standard for "evaluating expert testimony," a standard that does not apply in administrative proceedings before the Board. (See C-WIN-5, p. 4; see March 18, 2016 Ruling in WSID CDO/BBID ACL

1 Hearings, p. 3.)

2 Testimony that is merely conclusory legal assertions, essentially legal argument, is  
3 not helpful to a trier of fact. Further, the manner in which the law should apply to  
4 particular facts is a legal question and is not subject to expert opinion. (*Downer v.*  
5 *Bramet* (1984) 154 Cal.App.3d 837, 841; see also DWR Master Objections.) Here, by  
6 purporting to determine what constitutes an injury to a legal user of water and making an  
7 analysis of whether Petitioners have met their burden, Mr. Whitelaw has usurped the role  
8 of the Water Board. Because Mr. Whitelaw's testimony (C-WIN-5) and accompanying  
9 analysis (C-WIN-6) is largely legal argument, it should be excluded.

10 **B. Mr. Whitelaw's Testimony Concluding that Petitioners Failed to Heed**  
11 **the 'No Injury' Rule Lacks Foundation.**

12 Finally, Mr Whitelaw's conclusion that Petitioners failed to heed the "no injury" rule  
13 consists of assertions that lack bases or citation to supporting evidence. (C-WIN-5, p.  
14 3.) For example, in addition to the testimony quoted in the previous section, Mr.  
15 Whitelaw concludes that "[w]e find, however, no evidence that they evaluated the effects  
16 of their proposal on even one – let alone all – legal users of water in the Delta region."  
17 "An expert opinion has no value if its basis is unsound." (*In re Lockheed Litigation*  
18 *Cases* (2004) 115 Cal.App.4th 558, 564.) "Expert opinion based on speculation or  
19 conjecture is inadmissible." (*Id.*) Section IV.B. of Mr. Whitelaw's testimony should be  
20 entirely excluded on the grounds that it lacks adequate foundation.

21 **IV. Testimony of Bill Jennings (CSPA-2)**

22 **A. Mr. Jennings' Incorporation of Extensive Comments into His**  
23 **Testimony Constitutes Impermissible Surprise Testimony.**

24 As part of his testimony, Mr. Jennings incorporates, "as if contained herein," an  
25 additional approximately 59 pages of comments prepared to the EIR/EIS and  
26 RDEIR/SDEIS. It is the policy of the Water Board to discourage the introduction of  
27 surprise testimony and exhibits. (23 CCR 648.4(a).) The incorporation of so many  
28 additional pages of testimony constitutes impermissible surprise testimony because it is

1 impossible to determine exactly which parts of the incorporated testimony Mr. Jennings  
2 actually intends to use as his direct testimony, and what additional conclusions he  
3 intends to make. The focus of the incorporated comments is the adequacy of the  
4 environmental review under CEQA, an issue not identified for hearing in this proceeding.  
5 So presumably, Mr. Jennings intends to pick and choose content from the incorporated  
6 comments. To avoid impermissible surprise testimony, the portion of Mr. Jennings'  
7 testimony incorporating CSPA's comments (CSPA-2, p. 10) should be stricken, and such  
8 practices disallowed.

9 **B. Mr. Jennings Submits Testimony Outside the Scope of Part 1 That**  
10 **Should be Excluded**

11 Despite clear rulings establishing the scope of Part 1, Mr. Jennings, on behalf of  
12 CSPA et al., submits 31 pages of testimony, much of which addresses issues outside of  
13 the scope of Part 1. (See DWR Master Objections.) The October 30, 2015 Notice of  
14 Hearing established that Part 2 of the hearing would focus on effects of the Petition on  
15 fish and wildlife and recreational uses, including what appropriate Delta flow criteria  
16 should be included in any project approval, and public interest considerations. The  
17 Hearing Officers also made clear that issues related to the adequacy of the EIR/EIS  
18 under CEQA/NEPA are not an issue for this proceeding. (January 15, 2016 Ruling.)  
19 Finally, the Hearing Officers have ruled that other regulatory processes such as the  
20 finalization of the EIR/EIS under CEQA/NEPA, the Board's update of the Water Quality  
21 Control Plan, and the ESA/CESA consultation process need not conclude prior to  
22 proceeding with Part 1 of the proceeding. (See February 11, 2016 Ruling, pp. 3-9.)

23 Section IV of Mr. Jennings testimony, however, concerns the "proper" standard for  
24 the "no injury" rule primarily in the context of environmental concerns, discussing the  
25 decline of fish species, restoration of the Delta ecosystem, and protection of public trust  
26 resources. (See CSPA-2, pp. 3-7.) These are purported "injuries" or impacts that are  
27 outside the scope of Part 1, which focuses on legal users of water and other human  
28 uses of water. (October 30, 2015 Notice of Hearing, pp. 11-12; February 11, 2016



1 Ruling.)

2 Similarly in Section VI, Mr. Jennings provides testimony concerning updates to the  
3 Water Quality Control Plan, the Delta Reform Act, and the establishment of flow criteria,  
4 all of which are also irrelevant to Part 1 of the proceeding. (CSPA-2, pp. 12-13.) In  
5 Section VIII, Mr. Jennings testifies that the public trust is pertinent to Part 1 of this  
6 hearing despite Water Board rulings to the contrary. (See CSPA-2, pp. 24-26.) Finally,  
7 in Section IX, Mr. Jennings provides a list of critiques of the Petitioners' case-in-chief  
8 much of which involves Part 2 issues or parallel regulatory proceedings, which are  
9 outside the scope of Part 1. (See CSPA, pp. 26-30 [see numbered critiques 1, 2, 3, and  
10 4, 9 and 10 on pages 27-28 and the discussion of CEQA/NEPA compliance on pages  
11 28-29].)

12 Mr. Jennings' testimony raising issues outside the scope of Part 1 should be  
13 excluded, in particular CSPA-2, pp. 3-7, 12-13, 24-26, and 26-30.

14 **C. Mr. Jennings Testimony on the Proper Standard for "Injury" Is Pure**  
15 **Legal Argument Not Helpful to the Trier of Fact.**

16 Mr. Jennings' testimony on pages 3-8 concerns what should be, according to  
17 CPSA et al., the "acceptable standard to demonstrate injuries to legal users of water" in  
18 the Delta under the Porter-Cologne Water Quality Control Act, 2009 Delta Reform Act,  
19 the Clean Water Act, and various publications. As noted above, the testimony in this  
20 section encompasses not just injury to human uses of water, Part 1 issues, but also  
21 "injury" in the context of ecosystem health in particular fisheries and wildlife.

22 After running through what he considers the applicable law, Mr. Jennings  
23 concludes: "In a highly degraded and impaired ecosystem where beneficial uses and  
24 public trust resources have already been identified by state and federal agencies as not  
25 being protected, simply maintaining the status quo or complying with existing inadequate  
26 requirements cannot be the acceptable standard to demonstrate no injury to legal users  
27 of water." (CSPA-2, p. 7.) Mr. Jennings' legal argument on these issues does not aid in  
28 understanding his testimony. Rather, it is conclusory legal argument not useful to the

1 trier of fact and should be excluded.

2 **D. Mr. Jennings' Statements Regarding Adaptive Management and**  
3 **Impacts of the Proposed Changes Lack Foundation.**

4 In his testimony, Mr. Jennings makes a number of unsupported conclusory  
5 statements regarding the impacts of the proposed changes that are unsupported by  
6 adequate bases or citation to supporting evidence. Statements that lack support in Mr.  
7 Jennings' testimony include:

8 The present degraded quality water adjacent to our land and the prospect of  
9 further degradation has delayed our decision on how best to use CSPA's  
10 property. (CSPA-2, p. 2.)

11 The proposed North Delta diversion project would reduce outflow and further  
12 degrade water quality adjacent to our property and restrict our ability to put  
13 our property to the best use. (CSPA-2, p. 3.)

14 The upstream diversion of millions of acre-feet of the best quality water  
15 entering the Delta will facilitate saltwater intrusion and increase the  
16 concentration of existing pollutants. (CSPA-2, p. 30.)

17 CWF's reliance upon TUCP's to weaken flow and water quality criteria  
18 during drought scenarios has the potential to injure water users because, if  
19 granted, relaxed flow and water quality criteria will degrade water quality and  
20 cause injury. (CSPA-2, p. 30.)

21 Mr. Jennings points to no evidence that water quality at CSPA's property will be  
22 degraded or that the North Delta points of diversion would reduce outflow and facilitate  
23 saltwater intrusion or that TUCPs granted in the future will cause injury.

24 Mr. Jennings also critiques the adaptive management program proposed by  
25 Petitioners claiming that adaptive management is an excuse to defer difficult decisions.  
26 (See CSPA-2, pp. 19-24.) Mr. Jennings' testimony also contains unsupported opinions  
27 regarding adaptive management in the Delta including that:

28 Managers and decision makers have routinely rejected the "adaptive"  
recommendations made by scientists. Resources and regulatory agencies  
have failed to adopt and implement recommended criteria and failed to  
enforce existing criteria. (CSPA-2, p. 23.)

It's not that the scientific community doesn't understand what needs to be  
done: it's that agency heads and regulators refuse to implement them.  
(CSPA-2, p. 24.)

When an expert's opinion is purely conclusory because it does not connect the

1 relevant facts to the ultimate conclusion, the opinion has no evidentiary value. (*Jennings*  
2 *v. Palomar Pomerado Health Systems, Inc.* (2003) 114 Cal.App.4th 1108, 1117.)  
3 Because Mr. Jennings' statements identified above are unsupported, they have no  
4 evidentiary value and should be excluded or stricken from Mr. Jennings' testimony.

5 **E. Mr. Jennings Lacks the Qualifications to Provide Expert Opinion**  
6 **Testimony on Petitioners' Modeling Analysis and Modeling Results**  
7 **on Water Quality**

8 Mr. Jennings statement of qualifications at CSPA-1 demonstrates that Mr.  
9 Jennings, as Chairman/Executive Director of CSPA, has a long history of participation in  
10 water and environmental proceedings. His statement of qualifications, however,  
11 provides no information on his technical training, education, or experience with models,  
12 in particular the CALSIM or DSM2 models. Despite this lack of expertise, Mr. Jennings  
13 provides extensive testimony regarding the use and limitations of these models. (See  
14 CSPA-2, pp. 10-19.)

15 Generally, expert testimony is required when related to a "subject that is sufficiently  
16 beyond the common experience that the opinion of an expert would assist the trier of  
17 fact." (Evidence Code § 801; *see also Miller*, 8 Cal.3d at 702.) Here, expert testimony is  
18 necessary to assess the sufficiency and proper use of the complex models used in the  
19 Delta, CALSIM II and DSM2, which were utilized by Petitioners in support of the Petition.  
20 There is no indication, however, that Mr. Jennings has personal expertise or experience  
21 with modeling generally or with these particular models. Nor does Mr. Jennings appear  
22 to have any actual technical training that would enable him to draw these conclusions.  
23 Nonetheless Mr. Jennings reaches a conclusion that the modeling performed by  
24 Petitioners was technically deficient and was not based on the best available science.  
25 (See CSPA-2, pp. 10-19.) Along the way to this conclusion, he propounds on what  
26 constitutes the best available science, the most representative hydrology, appropriate  
27 consideration of climate change, and limitations of the models. (*Id.*) Mr. Jennings lacks  
28 the necessary expertise to provide expert opinion testimony on these topics that would

1 make his testimony useful to the triers of fact in this proceeding. For this reason, Mr.  
2 Jennings' testimony at CSPA-2, pp. 10-19 regarding modeling should be excluded.

3 **V. Testimony of Chris Shutes (CSPA-4)**

4 **A. Mr. Shutes' Testimony on CEQA Compliance is Outside the Scope of**  
5 **the Proceeding.**

6 Though the Hearing Officers have expressly ruled that compliance with CEQA is  
7 not part of the current proceeding (Parts 1 or 2), Mr. Shutes submits testimony regarding  
8 the sufficiency of the environmental document under CEQA. (See January 15, 2016  
9 Ruling, p. 5; see also DWR Master Objections, pp. 14-15.) In Section III.A, Mr. Shutes  
10 concludes that the 2013 DEIR and 2015 RDEIR do not meet the basic requirements of  
11 CEQA to describe and analyze both baseline and proposed reservoir operations, under  
12 a standard he independently derives from the *Amador v. El Dorado* decision. (CSPA-4,  
13 pp. 6-7.) Because CEQA compliance is not within the scope of this proceeding, this  
14 section should be excluded as irrelevant.

15 **B. Mr. Shutes Testimony on Expiration of Water Rights is not Within the**  
16 **Issues Noticed for Hearing and Should be Excluded as Irrelevant.**

17 Mr. Shutes argues that the water rights permits of DWR for the State Water Project  
18 ("SWP") and Bureau of Reclamation for the Central Valley Project ("CVP"), including the  
19 permits at issue in this proceeding, expired years ago and that the Petitioners should be  
20 required to apply for a new water right for the WaterFix project. (CSPA-4, pp. 4-5, 22-  
21 24.) This "issue" of whether DWR or Reclamation have current water rights, apparently  
22 the subject of CSPA petition protests in 2009, is distinct from the issue identified for Part  
23 1 of the hearing, which narrowly asks whether the changes in points of diversion  
24 proposed in the Petition in effect initiate a new water right. (See October 30, 2015  
25 Notice of Hearing, p. 11.) Because it is outside the scope of the pending proceeding,  
26 Mr. Shutes' testimony alleging that the water rights permits of DWR and Reclamation  
27 expired years ago, CSPA-4, pp. 4-5, 22-24, should be excluded as irrelevant.

28 **C. Mr. Shutes Lacks the Necessary Expertise to Provide Testimony on**  
**Modeling of Reservoir Operations.**

1 Mr. Shutes, a self-taught fisheries and water rights advocate, provides testimony  
2 on Petitioners' modeling of reservoir operations, matters well outside the experience of a  
3 lay witness. (Evidence Code § 801 et seq.) Mr. Shutes has no relevant education,  
4 training, or direct work experience with such models or reservoir operations but, as he  
5 describes it, has developed over time good working relationships with engineers and  
6 modelers who do have such experience. (See CPSA-3.) As Mr. Shutes admits, he  
7 lacks the expertise to analyze the model outputs for the WaterFix provided by Petitioners  
8 (CSPA-4, p. 10). Yet, he provides testimony on the modeling analysis based on his  
9 review of the testimony and underlying environmental review documents. (See CSPA-4,  
10 pp. 9-13.) Mr. Shutes concludes that the "CalSim II modeling should have treated  
11 reservoir storage as a variable and not a constant" to model a range of reservoir  
12 operations scenarios since project reservoir operations are not constrained by the  
13 defined rules in the CalSim II model to maintain storage. (CSPA-4, p. 11-12.) Due to his  
14 admitted lack of expertise, however, Mr. Shutes' expert opinion testimony on Petitioners'  
15 modeling of reservoir operations is not useful, largely lacks foundation as described  
16 below, and even if marginally probative, the value of the testimony is far outweighed by  
17 the probability that the testimony will necessitate an undue consumption of time.  
18 (Government Code § 11513(f).)

19 **D. Based Largely on Conjecture, Mr. Shutes' Testimony Regarding**  
20 **Future Reservoir Operations Lacks Foundation.**

21 The overall conclusion of Mr. Shutes' 25 pages of testimony is that the WaterFix  
22 will provide opportunities and incentives for managers of the CVP and SWP to manage  
23 reservoir operations in a more risky manner and that the Board and legal users of water  
24 cannot rely on the judgment and decisions of DWR and Reclamation in reservoir  
25 operations, which will not protect legal users of water. (See CSPA-4, p. 25.) Note he  
26 alleges no actual injury to a legal user of water or other human uses of water. Instead,  
27 he posits through a couple steps in logic that risky behavior to increase exports will  
28 reduce the availability of stored water to meet in-Basin uses, which will in turn injure

1 legal users of water. (CSPA-4, p. 2.) A quick read of Mr. Shutes' testimony  
2 demonstrates that he primarily relies on his own unsupported conjecture for his  
3 conclusions providing no basis for his opinions or citation to supporting evidence.

4 For example, as part of this theory, Mr. Shutes states that it is reasonable to  
5 assume that DWR and Reclamation will work to minimize constraints on project  
6 operations and that SWP and CVP contractors will also advocate to weaken operational  
7 constraints. (CSPA-4, p. 4.) He then suggests that a number of factors including recent  
8 reservoir operations, ongoing political and economic pressure to increase exports, and  
9 climate change will make reservoir operations increasingly risky. (CSPA-4, pp. 13-18.)  
10 Continued risk taking to increase exports, he further concludes, will increase the  
11 frequency of TUCPs to the potential injury of legal users of water. (CSPA-4, pp. 20-22.)  
12 Despite extensive testimony, however, Mr. Shutes never provides any actual evidence to  
13 support his ultimate conclusion that the proposed changes in the Petition will result in  
14 reservoir operations that injure legal users of water. Lacking an adequate bases, Mr.  
15 Shutes' testimony on injury to legal users of water from future reservoir operations under  
16 the WaterFix should be excluded as unsupported information on which a responsible  
17 person would not rely in the conduct of serious affairs. (Government Code § 11513(c).)

## 18 **VI. Testimony of G. Fred Lee (CSPA-6)**

### 19 **A. Dr. Lee's Incorporation of Numerous Reports and Comments into His** 20 **Testimony Constitutes Impermissible Surprise Testimony.**

21 Throughout his testimony, Dr. Lee cites certain exhibits which he also  
22 "incorporates" into his testimony. (See e.g., CSPA-6, pp. 3, 4, 6, 8, 13, 15, 16, 18 and  
23 19.) As noted above, it is the policy of the Board to discourage the introduction of  
24 surprise testimony and exhibits. (23 CCR 648.4(a).) The incorporation of a couple  
25 hundred pages of additional pages, not all of which were authored by Dr. Lee, as  
26 testimony constitutes impermissible surprise testimony because it is impossible to  
27 determine exactly which parts of the incorporated testimony Dr. Lee actually intends to  
28 use as his direct testimony, and what additional conclusions he intends to make. It is

1 also improper to adopt wholesale the writings of another person as your sworn  
2 testimony. For this reason, Dr. Lee's testimony incorporating particular exhibits (CSPA-  
3 58, CSPA-60, CSPA-62, CSPA-63, CSPA-66, CSPA-67, CSPA-73, CSPA-75, CSPA-76,  
4 CSPA-77, CSPA-80, and CSPA-82) should be stricken, and such practice disallowed.

5 **B. Dr. Lee's Testimony Concerning the Legal Standard for Adverse**  
6 **Water Quality Impact is Legal Argument Not Helpful to the Trier of**  
7 **Fact.**

8 On pages 1 to 2, Dr. Lee provides a legal opinion, based on his interpretation of  
9 applicable statutes, that the "water quality impact" evaluation by Petitioners did not meet  
10 the standards of the Porter Cologne Water Quality Control Act and did not meet the  
11 requirements for the Board to approve a change petition under the Water Code. Such  
12 testimony is an improper legal opinion that is not helpful to a trier of fact in this  
13 proceeding and impinges on the role of the Board to apply the law to the facts of the  
14 proceeding. (*See Downer v. Bramet* (1984) 152 Cal.App.3d 837, 841 [the manner in  
15 which the law should apply to particular facts is a legal conclusion and is not subject to  
16 expert opinion].) For this reason, Dr. Lee's testimony on pages 1-2 is irrelevant to the  
17 proceeding and should be excluded. Similarly, corresponding statements from Mr. Lee's  
18 PowerPoint presentation, CSPA-56, slides 2-4, are irrelevant and should be excluded.

19 **C. Parts of Dr. Lee's Water Quality Testimony are Outside the Scope of**  
20 **Part 1 of the Proceeding.**

21 The primary focus of Dr. Lee's testimony is the levels of actual water quality  
22 constituents in the Central and South Delta, as opposed to water-quality related impacts  
23 to legal users of water and other human uses of water. Dr. Lee speaks generally about  
24 water quality-related impacts to uses of water but does not limit his testimony to human  
25 uses of water, the scope of Part 1 of the proceeding, but more broadly mentions other  
26 uses of water including recreational uses and fish and wildlife uses. (CSPA-6; See  
27 October 30, 2015 Notice of Hearing.)

28 For example, on pages 16-17, Dr. Lee generally discusses the potential impacts of  
dissolved phosphorus and its effects on phytoplankton biomass stating that water uses

1 adversely impacted by reductions in dilution of phosphorus concentrations can include  
2 fishing, boating, swimming, aesthetic quality of water, odors, low dissolved oxygen,  
3 plugging of agricultural intake screens, sediment toxicity, floating scum, and other effects  
4 of phosphorus and low flow alterations. On pages 17-19, Dr. Lee discusses past  
5 sampling for dissolved oxygen levels and a connection to fish kills in the South Delta.  
6 Because Dr. Lee's testimony encompasses issues identified for both Part 1 and Part 2 of  
7 the proceeding, Dr. Lee's testimony should be narrowed to admit only testimony that  
8 pertains to the issues identified for Part 1, injury to legal users of water and impacts on  
9 other human uses of water. (See DWR Master Objections.) For the same reasons, the  
10 following corresponding slides should be struck or excluded from Dr. Lee's PowerPoint  
11 presentation: CSPA-56, slides 24-29.

12 **D. Statements in Dr. Lee's Testimony Lack Adequate Support.**

13 Dr. Lee provides no support or specific cite to evidence for his conclusion that:

14 [O]peration of the proposed WaterFix northern intake diversion of Sacramento  
15 River will reduce the volume flow of Sacramento River presently available to  
16 dilute pollutants derived from the SJWDWSC water that enters the Central  
17 Delta. The net result is that with the proposed WaterFix north diversion, the  
18 pollutants in Turner Cut will have an increased adverse impact on Central  
19 Delta water quality beneficial use.

20 (See CSPA-6, p. 12.) There is also no cite to evidence or analysis substantiating the  
21 conclusion that "[t]he DWR/USBR evaluation of 'water quality impacts' of the proposed  
22 WaterFix project fails to discuss the fact that the tunnel diversion will at time deprive the  
23 Central Delta of thousands cfs of Sacramento River water that currently dilutes the SJR  
24 flow and its pollutant load that enters the Central Delta at Turner and Columbia Cuts."  
25 (CSPA-6, p. 12.) Though he reports on current water quality levels in the Delta, Dr. Lee  
26 makes no specific, independent analysis of the impact of the North Delta Diversion  
27 intakes on flows or water quality, nor does he reference such an analysis specifically  
28 looking at impacts of the proposed points of diversions. Dr. Lee's statements fail to fully  
connect the facts cited by Dr. Lee regarding current water quality parameters in the  
Central and South Delta to his ultimate opinions regarding the actual impacts of the



1 proposed changes. Such ultimate opinions are conclusory and have no evidentiary  
2 value.

3 Later in his testimony, Dr. Lee states without citation or explanatory bases that “[i]t  
4 is well known that relying only on exceedances of a limited number of water quality  
5 objectives, as has been done by the DWR and USBR in evaluating the impact of the  
6 North Delta Sacramento River diversions, is highly unreliable for evaluating the impact of  
7 the diversion on water quality/beneficial uses of the Delta” referring to “unrecognized and  
8 unregulated pollutants.” (CSPA-6, p. 19.)

9 Though Dr. Lee cites a lot of supporting studies and reports, the statements  
10 identified above at CSPA-6, pp. 12 and 19 are conclusory, lacking an adequate  
11 foundation, and should be excluded from his testimony. Corresponding statements in  
12 Dr. Lee’s Power Point presentation, CSPA-56, slides 22, 24, 35 and 39 should likewise  
13 be excluded.

#### 14 **VII. Testimony of Thomas Cannon (CSPA-8)**

##### 15 **A. Mr. Cannon’s Testimony is Replete with Unsupported Statements 16 That Lack Evidentiary Value as Expert Opinion Testimony.**

17 Mr. Cannon’s testimony contains a number of assertions regarding CVP/SWP  
18 operations, but very few of his statements and conclusions, including references to  
19 specific facts, numbers, or even DWR’s testimony, are supported by any citations to  
20 supporting evidence. (CSPA-8) Generally, expert testimony is required when related to  
21 a “subject that is sufficiently beyond the common experience that the opinion of an  
22 expert would assist the trier of fact.” (Evidence Code § 801; *see also Miller*, 8 Cal.3d at  
23 702.) Testimony unsupported by an adequate bases, however, has little evidentiary  
24 value.

25 For example, Mr. Cannon states his opinion that “WaterFix demands may  
26 aggravate the already compromised Oroville and Folsom water supplies” and that the  
27 “potential effects on beneficial uses in these two rivers from the Water are likely  
28 underestimated” but nowhere does he explain what he means by these statements or

1 the facts on which he bases his opinion. (See CSPA-8, pp. 4-5.) In his section titled  
2 "Statement on Delta operations of the CVP/SWP," Mr. Cannon provides an explanation  
3 of how the WaterFix will purportedly operate citing bypass requirements and export  
4 limits, among other parameters, but nowhere does he provide any cites for the sources  
5 of such facts on which he bases his conclusions. (See CSPA-8, pp. 5-6.) The same is  
6 true for the final section, "Statement on Delta outflow to the Bay," which is replete with  
7 factual assertions but, again, little to no supporting bases or evidence. (CSPA-8, pp.  
8 6-7.) The following excerpt provides a perfect example of the unsupported statements  
9 and conclusions that exemplify most of Mr. Cannon's testimony:

10 In these drier years, 80% of more of Valley rain and snowmelt into Valley  
11 reservoirs is stored for summer use. Most of the remaining 20% reaches the  
12 Bay comes in with winter-rain snowmelt pulses from Valley streams that have  
13 no reservoirs. The runoff from the uncontrolled sources in winter pulses  
14 make up half of the annual outflow to the Bay. Today about two-thirds  
15 reaches the Bay because of winter-spring BO export restrictions. The Water  
16 Fix will reduce that commitment to the Bay to less than half – outflow will fall  
17 below 50% of the Valley's annual supply. The State Board's own assessment  
18 found that a healthy estuary needs at least 75% of its water. Outflow would  
19 be only about 40% with the WaterFix in over half of the future years. DWR's  
20 own testimony shows that in one of the wetter dry years, 2016, the Water Fix  
21 would allow taking over 25% of the "excess outflow" to the Bay.

22 (CSPA-8, pp. 6-7.) It appears that most of these facts are based on underlying data.  
23 Unfortunately, Mr. Cannon provides no evidentiary support for these facts rendering his  
24 expert opinions of little evidentiary value because it lacks foundation. Unsupported  
25 expert opinion, particularly on technical matters, is not the type of evidence on which  
26 responsible parties rely in the conduct of serious affairs. (Government Code  
27 § 11513(c).) On these grounds, Mr. Cannon's testimony should be excluded because it  
28 lacks foundation.

**B. Mr. Cannon's General Conclusions Regarding SWP/CVP Operations  
Are not Relevant to the Part 1 Proceeding.**

29 Part 1 of the hearing focuses on whether the proposed changes will cause injury to  
30 legal users of water, including impacts on other human uses of water. Unfortunately, Mr.  
31 Cannon's rather general testimony adds little to the understanding of the issues before  
32

1 the Board in Part 1. In his testimony, Mr. Cannon makes the following conclusions  
2 regarding the WaterFix:

3 The WaterFix has the potential to significantly alter system reservoir storage,  
4 reservoir releases and river flows, Delta inflow and outflow, which in turn  
5 would potentially affect water supply and quality. Such effects would directly  
6 and indirectly effect beneficial uses. (CSPA-8, p. 3.)

7 It is not clear how these future constraints on projected water supply yields of  
8 the WaterFix are taken into account, or whether WaterFix demands will affect  
9 demands on the Shasta-Trinity water supply or its delivery schedule and  
10 commitments to water contractors. (CSPA-8, p. 4)

11 WaterFix demands may aggravate already compromised Oroville and Folsom  
12 water supplies. Projected WaterFix water supply benefits from these  
13 reservoirs are likely overestimated. ... The potential effects on beneficial  
14 uses in these two rivers from the WaterFix are likely underestimated.  
15 (CSPA-8, p. 5.)

16 Proposed lower net flows below the WaterFix intakes will increase the  
17 frequency of high water temperatures in the north Delta channel of the  
18 Sacramento River. (CSPA-8, p. 5.)

19 Under these conditions, flows into the central and south Delta via Georgiana  
20 Slough and the Delta Cross Channel would be less than under present  
21 conditions. (CSPA-8, p. 6.)

22 Outflow to the during drier years... from uncontrolled runoff flows of lower  
23 Sacramento tributaries will be reduced measurably by the WaterFix Tunnel  
24 Capacity. (CSPA-8, p. 6.)

25 The Water Fix will reduce that commitment to the Bay to less than half –  
26 outflow will fall below 50% of the Valley's annual supply. (CSPA-8, p. 7.)

27 Outflow would be only about 40% with the WaterFix in over half of the future  
28 years. (CSPA-8, p. 7.)

29 These general conclusions, however, do not address the critical issues of whether flows  
30 or water quality are altered in a manner that causes injury. Mr. Cannon never ties his  
31 conclusions to an actual purported injury to any municipal, industrial, agricultural or other  
32 human use of water. As such, his testimony is of little relevance to Part 1 of this  
33 proceeding and whatever marginal probative value it might have is far outweighed by the  
34 probability that its admission would necessitate an undue consumption of additional  
35 hearing time. (Government Code § 11513(f).)

## 36 **VIII. Testimony of Barbara Vlamis (AQUA-1)**

### 37 **A. Ms. Vlamis' Testimony Concerning CEQA Compliance is Outside the**

### Scope of this Proceeding.

Ms. Vlamis' testimony in Part 1 of this proceeding focuses primarily on her allegations that the environmental review for the BDCP/WaterFix was inadequate and does not comply with CEQA. (See AQUA-1, pp. 2, 3, 5, 6, 8, 10, 13, and 14). Among other CEQA claims, Ms. Vlamis asserts that the NEPA/CEQA documents ignored groundwater conditions in the watershed (pp. 3, 5), failed to consider that increased groundwater extractions for water transfers might impact groundwater quality (p. 6), that impacts from cumulative transfers were not considered (p. 8), that cumulative impacts of other projects on groundwater and surface water resources were not included (p. 10), and that subsidence was not addressed (p. 13). At the end of her testimony, she concludes "[a]s demonstrated in our testimony, there is a great deal omitted from the WaterFix NEPA and CEQA documents." (AQUA-1, p. 17.)

The adequacy of DWR's EIR for the WaterFix Project for purposes of CEQA is not a key hearing issue in this proceeding. (January 15, 2016 Ruling, p. 5; see also DWR Master Objections, pp. 14-15.) In the January 15, 2016 ruling, the Hearing Officers indicated that the adequacy of the EIR for CWF for purposes of CEQA compliance is not a key hearing issue, and the parties should not submit evidence or argument on this issue and the parties will be permitted to submit evidence and argument concerning the document only if the evidence or argument relate to the key hearing issues. (January 15, 2016 Ruling, p. 5) Because Ms. Vlamis' testimony overwhelmingly concerns CEQA compliance, her testimony should be excluded from the proceeding in its entirety.

#### **B. Ms. Vlamis' Testimony Concerning Groundwater Conditions and the Impacts of Groundwater Transfers is Not Relevant.**

Though Ms. Vlamis' testimony concerns the adequacy of environmental review under CEQA, it is clear that one of her primary concerns is that the WaterFix project may increase groundwater transfers causing groundwater decline and other associated effects in the Northern Sacramento Valley. (AQUA-1, pp. 6-10.) However, though she points to testimony acknowledging that the WaterFix might increase system capacity to implement water transfers, Ms. Vlamis' points to no evidence that the proposed changes

1 will injure users of groundwater. As a result, without evidence of a causal connection,  
2 her testimony regarding groundwater conditions is not relevant to the issues of Part 1.

3 **C. Ms. Vlamis' Relies on Hearsay Evidence.**

4 In her testimony, Ms. Vlamis repeatedly relies, and often quotes, unpublished and  
5 undisclosed documents, which constitutes hearsay evidence. (AQUA-1, pp. 4 n.11, 7 n.  
6 23, and 12 [quoting a panelist at a workshop].) While hearsay evidence is admissible  
7 and may be used to supplement or explain other evidence, over timely objection it shall  
8 not be sufficient in itself to support a finding unless admissible over objection in a civil  
9 action. (Government Code § 11513(d).) DWR hereby provides its timely objection to  
10 Ms. Vlamis' testimony that constitutes hearsay evidence.

11 **IX. Testimony of James Brobeck (AQUA-3)**

12 **A. Mr. Brobeck's Testimony Raising Concerns Regarding Increases in**  
13 **Groundwater Substitution Transfers due to Water Fix is Redundant**  
14 **Testimony.**

15 Mr. Brobeck's testimony raising general concerns regarding the potential impact of  
16 the WaterFix project on groundwater transfers is largely redundant to Ms. Vlamis'  
17 testimony discussed in the previous section. Both AquAlliance witnesses testify that the  
18 WaterFix will increase opportunities for groundwater substitution transfers. (AQUA-3,  
19 pp. 4-5.) Because both testimonies raises the same issue, either Mr. Brobeck's or Ms.  
20 Vlamis' testimony on this point should be excluded.

21 **B. Large Parts of Mr. Brobeck's Testimony Are Either Irrelevant or**  
22 **Outside the Scope of Part 1.**

23 Mr. Brobeck's testimony contains information regarding the importance of trees to  
24 the Central Valley landscape (p. 3) and the importance of salmon and salmon streams  
25 (pp. 4-5). Neither topic is relevant to the issues in Part 1 of the Proceeding regarding  
26 effects of the proposed change on human uses of water. This testimony should be  
27 excluded as irrelevant to the issues of Part 1 of the proceeding.

28 **C. Mr. Brobeck's Conclusions Regarding the Impacts of the WaterFix**  
**Lack Foundation.**

1 Mr. Brobeck makes three conclusory pronouncements that entirely lack adequate  
2 support. First, Mr. Brobeck concludes that "[t]he Water Fix fails to clearly identify the  
3 risks to a balanced Northern Sacramento Valley aquifer system that is presented by the  
4 emerging market that intends to employ groundwater substitution water transfers to fill  
5 the giant tunnels that require this water right change petition. (AQUA-3, p. 2) He next  
6 states that "[t]he Water Fix promises to reduce fishery constraints on Delta exports and  
7 thereby increase demand on Sacramento Valley water systems, including aquifer  
8 systems." (AQUA-3, p. 4.) Finally, he testifies that "[i]mplementing the Water Fix will  
9 increase opportunities for irrigation district to participate in these groundwater  
10 substitution water sales." (AQUA-3, p. 5.) Because these conclusory statements are not  
11 supported by any bases or evidence, they are not evidence on which a responsible  
12 person would rely in the conduct of serious affairs and should be excluded.

13 **X. Testimony of Kit Custis (AQUA-5)**

14 **A. Mr. Custis' Incorporation of his "Letters" into His Testimony**  
15 **Constitutes Impermissible Surprise Testimony.**

16 As part of his testimony, Mr. Custis incorporates, "[a]s part of my testimony," an  
17 additional approximately 3,700 pages of "letters" written by Mr. Custis to AquAlliance  
18 (Exhibits AQUA-29 through 33). (AQUA-5, p.5.) It is the policy of the Water Board to  
19 discourage the introduction of surprise testimony and exhibits. (23 CCR 648.4(a).) The  
20 incorporation of several thousands of additional pages of testimony constitutes  
21 impermissible surprise testimony because it is impossible to determine exactly which  
22 parts of the incorporated testimony Mr. Custis actually intends to use as his direct  
23 testimony, and what additional conclusions he intends to make. For this reason, the  
24 portion of Mr. Custis' testimony incorporating these letters into his testimony, AQUA-5,  
25 p.5, should be excluded, and such practices disallowed.

26 **B. Mr. Custis' Testimony Regarding Potential Indirect Impacts of the**  
27 **Proposed Changes on Groundwater and Surface Water Resources in**  
28 **Northern California Lacks Relevance.**

Mr. Custis' testimony on potential impacts to surface and groundwater from

1 increased water transfers hinges on an assumption that implementing the Water Fix  
2 Project will increase or facilitate an increase in the amount of groundwater substitution  
3 and crop idling water transfers and that the increase in these types of water transfers will  
4 then have an adverse impact on groundwater and surface water resources in the  
5 Sacramento Valley and Delta that then, in turn, will have an adverse impact on beneficial  
6 uses of these water resources . (See AQUA-5, pp. 2, 5, 11 18.) This is not a direct  
7 impact or injury caused by the proposed changes on a municipal, industrial or  
8 agricultural use of water, the proper scope of Part 1. Rather, this is a broader, more  
9 attenuated theory that relies on a number of assumptions, which may or may not hold  
10 true, but also a myriad of intervening controlling factors such as the conditions and  
11 management of surface water resources in the Sacramento Valley, which are managed  
12 and utilized by a large number of entities and the impacts of other projects using such  
13 water resources. (AQUA-5.) Such potential, but uncertain cumulative impacts of  
14 unrelated projects are best addressed in the environmental review process pursuant to  
15 CEQA, as discussed in Mr. Custis' testimony. (See AQUA-5, pp. 2-5.) Here, in contrast,  
16 there is no evidence that WaterFix will have any impact on any particular water transfer,  
17 themselves each individually subject to environmental review, or that ground and surface  
18 water resources would be impacted.

19 Mr. Custis' speculative testimony provides no evidence regarding an actual impact  
20 or injury of the WaterFix to legal users of water or impacts on other human uses of  
21 water, adding little to the understanding of the issues identified for Part 1 of the  
22 proceeding. On relevance grounds, Mr. Custis' testimony should be excluded. Further,  
23 admission of Mr. Custis' testimony will necessitate an undue amount of hearing time that  
24 far outweighs the value of his testimony. (Government Code § 11513(f).)

25 ///

26 ///

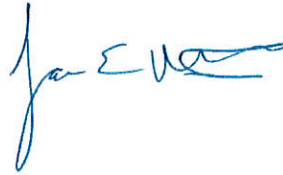
27 ///

1 **CONCLUSION**

2 For the foregoing reasons, DWR respectfully requests that the Board exclude the  
3 identified exhibits and testimony. To aid the Board in its decision, given the large  
4 number of exhibits and testimony submitted by CSPA et al., attached hereto is a chart  
5 summarizing the objections made above to CSPA et al.'s testimony and exhibits.

6 Dated: September 21, 2016

CALIFORNIA DEPARTMENT OF WATER  
RESOURCES

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**California WaterFix hearing**  
**California Department of Water Resources and U.S. Bureau of Reclamation**

The Public Hearing will commence on

**Thursday, October 20, 2016**

**PARTICIPANT: CSPA et al.'s**

<b>Exhibit Identification Number</b>	<b>Exhibit Description</b>	<b>Objections</b>
<b>Table: Objections to CSPA et al.'s Exhibits and Testimony</b>		
<b>Exhibit</b>	<b>Description</b>	<b>Objections</b>
AQUA-1	Vlami's Testimony	Relevance/Scope of Part 1: AQUA-1 Relevance: AQUA-1, pp. 6-10 Hearsay
AQUA-3	Brobeck Testimony	Redundant Testimony: AQUA-3 Relevance/Scope of Part 1: AQUA-3. pp. 3-5 Lacks Foundation: AQUA-3. pp. 2, 4 and 5
AQUA-5	Custis Testimony	Impermissible Surprise: AQUA-5, p. 5 Relevance: AQUA-5
AQUA-7	Custis Powerpoint	See written objections to testimony
AQUA-34	Report: SYSTEM-WIDE CONJUNCTIVE WATER MANAGEMENT	Lacks Foundation and Relevance due to lack of testimony
AQUA-35	Third Party Effects and Asymmetric Externalities in Groundwater Extraction, Siwa Msangi	Lacks Foundation and Relevance due to lack of testimony
AQUA-36	Memo: VWPA Substantiation of Damages, Gilbert & Dunn	Lacks Foundation and Relevance due to lack of testimony
AQUA-45	USGS Surface Water Records	Lacks Foundation and Relevance due to lack of testimony
AQUA-46	BDCP EIS/R, Environmental Consequences	Lacks Foundation and Relevance due to lack of testimony
AQUA-47	Draft LTO, EIS, Chapter 5	Lacks Foundation and Relevance due to lack of testimony
AQUA-48	N. Sac Valley IRWMP, Minutes	Lacks Foundation and Relevance due to lack of testimony
AQUA-49	Cal GAMA Monitoring, Sac Valley	Lacks Foundation and Relevance due to lack of testimony
AQUA-50	Letter re Aquifer Performance Testing, Karen Hoover	Lacks Foundation and Relevance due to lack of testimony
AQUA-51	GAMA, Domestic Well Project, Tehama	Lacks Foundation and Relevance due to lack of testimony
AQUA-52	BASE OF FRESH GROUNDWATER IN THE SACRAMENTO VALLEY,	Lacks Foundation and Relevance due to lack of testimony

**Attachment A – Objections to Protestant LAND et al Exhibits to Part 1B**

Exhibit Identification Number	Exhibit Description	Objections
	CALIFORNIA	
AQUA-53	Email re Summary of Assurances-Water Funds	Lacks Foundation and Relevance due to lack of testimony
AQUA-54	2009 Drought Water Bank FONSI	Lacks Foundation and Relevance due to lack of testimony
AQUA-55	EWA EIS/R	Lacks Foundation and Relevance due to lack of testimony
AQUA-56	Draft LTO, EIS, Chapter 7	Lacks Foundation and Relevance due to lack of testimony
AQUA-57	68 Federal Register 150	Lacks Foundation and Relevance due to lack of testimony
AQUA-58	SLDMWA Agenda and Resolution	Lacks Foundation and Relevance due to lack of testimony
AQUA-59	Prop 13 Groundwater Loans and Grants	Lacks Foundation and Relevance due to lack of testimony
AQUA-60	ACID IRWMP EA/IS	Lacks Foundation and Relevance due to lack of testimony
AQUA-61	Cal Water Service, 2010 Urban Water Management Plan	Lacks Foundation and Relevance due to lack of testimony
AQUA-63	Report: Renewed Rapid Subsidence in the San Joaquin Valley	Lacks Foundation and Relevance due to lack of testimony
AQUA-64	Groundwater Substitution Transfer Impact Analysis, CH2M Hill	Lacks Foundation and Relevance due to lack of testimony
AQUA-65	Peer Review of Sacramento Valley Finite Element Grounwater Model	Lacks Foundation and Relevance due to lack of testimony
AQUA-66	Long-Term Water Transfer EIS/R Section 3.3	Lacks Foundation and Relevance due to lack of testimony
AQUA-67	2008 DWR/USBR Sacramento Valley	Lacks Foundation and Relevance due to lack of testimony
AQUA-68	DRW Letter re GPS	Lacks Foundation and Relevance due to lack of testimony
AQUA-69	Vlomis Powerpoint	See written objections to testimony
AQUA-70	Chico's Heritage Tree Program	Lacks Foundation and Relevance due to lack of testimony
AQUA-71	Intermittent Streams as Rearing Hbitat for Chinook	Lacks Foundation and Relevance due to lack of testimony
AQUA-72	Sacramento Valley Water Resource Monitoring, Data Collection and Evaluation Framework	Lacks Foundation and Relevance due to lack of testimony

Exhibit Identification Number	Exhibit Description	Objections
CSPA-2	Bill Jennings Testimony	Impermissible Surprise: CSPA-2, p. 10 Relevance/Scope of Part 1: CSPA-2, pp. 3-7, 12-13, 24-26, and 26-30. Impermissible Legal Argument: CSPA-2, pp. 3-8 Lacks Foundation: CSPA, pp. 2-3, 19-24, 30. Lacks Expert Qualifications: CSPA-2, pp. 10-19
CSPA-4	Chris Shutes Testimony	Relevance/Scope of Part 1: CSPA-4, pp. 4-7, 22-24 Lacks Expert Qualifications: CSPA-4, pp. 9-13 Lacks Foundation: CSPA-4
CSPA-6	G. Fred Lee Testimony	Impermissible Surprise: CSPA-6, pp. 3, 4, 6, 18, 13, 15, 16, 18 and 19 Impermissible Legal Argument: CSPA-6, pp. 1-2 Relevance/Scope of Part 1: CSPA-6, pp. 16-19 Lacks Foundation: CSPA-6, pp. 12 and 19
CSPA-8	Thomas Cannon Testimony	Lacks Foundation: CSPA-8 Relevance/Scope of Part 1: CSPA-8
CSPA-56	Lee Testimony PowerPoint	See written objections to testimony
CWIN-2	Arve Sjovald Testimony	Relevance/Scope of Part 1: CWIN-2, pp. 1-6 Lacks Foundation: C-WIN-2, p. 6
CWIN-3	Santa Barbara Report	Relevance/Scope of Part 1: CWIN-2, pp. 1-6
CWIN-5	Ed Whitlaw Testimony	Impermissible Legal Argument: C-WIN-5 Lacks Foundation: C-WIN-5, p. 3
CWIN-6	ECONorthwest Report on Change in Point of Diversion and No Injury Rule	Impermissible Legal Argument: C-WIN-5