

1 Spencer Kenner (SBN 148930)
James E. Mizell (SBN 232698)
2 Robin McGinnis (SBN 276400)
3 **CALIFORNIA DEPARTMENT OF WATER
RESOURCES**

4 Office of the Chief Counsel
1416 Ninth Street, Room 1104
Sacramento, CA 95814
5 Telephone: (916) 653-5966
E-mail: james.mizell@water.ca.gov
6

7 Attorneys for California Department of Water
Resources

8 BEFORE THE CALIFORNIA STATE WATER RESOURCES CONTROL BOARD
9

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

**CALIFORNIA DEPARTMENT OF
WATER RESOURCES' RESPONSE
TO PROTESTANT SAVE THE
CALIFORNIA DELTA ALLIANCE, ET
AL.'S REQUEST FOR OFFICIAL
NOTICE IN SUPPORT OF
OBJECTIONS TO EVIDENCE**

15 California Department of Water Resources ("DWR") submits this response to
16 Protestant Save the California Delta Alliance, et al.'s ("SCDA's") request for official
17 notice in the matter of DWR and U.S. Bureau of Reclamation's (collectively "Petitioners")
18 Request for a Change in Point of Diversion for California Water Fix. SCDA did not cite
19 the provision that authorizes the Board to take official notice, which is Title 23, California
20 Code of Regulations, Section 648.2, and provides:

21 The Board or presiding officer may take official notice of *such facts as may*
22 *be judicially noticed by the courts of this state.* Upon notice to the parties,
23 official notice may also be taken of any generally accepted technical or
24 scientific matter within the Board's field of expertise, provided parties
25 appearing at the hearing shall be informed of the matters to be noticed.
26 The Board or presiding officer shall specify the matters of which official
notice is to be taken. Parties shall be given a reasonable opportunity on
request to refute officially noticed technical or scientific matters in a
manner to be determined by the Board or presiding officer.

1 (Cal. Code Regs., tit. 23, § 648.2; emphasis added.) Evidence Code section 451
2 provides a list of items courts *shall* take notice of, and Evidence Code section 452
3 provides a list of items courts *may* take notice of. SCDA's Exhibits A and B are letters
4 written by the Regional Director of the U.S. Environmental Protection Agency in 2015
5 and 2014, respectively, and appear to fit within the scope of Evidence Code section 452.
6 SCDA's Exhibit C, the September 30, 2015 Delta Independent Science Board Review of
7 the Partially Recirculated Draft Environmental Impact Report/Supplemental Draft
8 Environmental Impact Statement is included as Staff Exhibit SWRCB-49 and it is
9 therefore unnecessary for the Board to take official notice of it.

10 DWR opposes SCDA's request for official notice of Exhibit D, the September 2013
11 report by Saracino & Mount, et al. It does not fall into any of the categories listed in
12 Evidence Code section 451 or 452. DWR also opposes SCDA's request for official
13 notice of Exhibit E, Petitioners' March 11, 2016 letter for two reasons. First, it is already
14 in the record for these proceedings. Second, it is not a true and correct copy of the
15 letter.

16
17
18 Dated: July 22, 2016

CALIFORNIA DEPARTMENT OF WATER
RESOURCES



Robin McGinnis
Office of the Chief Counsel