

1 Deirdre Des Jardins  
2 145 Beel Dr  
3 Santa Cruz, California 95060  
4 Telephone: (831) 423-6857  
5 Cell phone: (831) 566-6320  
6 Email: [ddj@cah2oresearch.com](mailto:ddj@cah2oresearch.com)

7 Principal, California Water Research

8  
9 **BEFORE THE**  
10 **CALIFORNIA STATE WATER RESOURCES CONTROL BOARD**  
11

12 HEARING REGARDING PETITION  
13 FILED BY THE DEPARTMENT OF  
14 WATER RESOURCES AND U.S. BUREAU  
15 OF RECLAMATION REQUESTING  
16 CHANGES IN WATER RIGHTS FOR THE  
17 CALIFORNIA WATERFIX PROJECT

18 CALIFORNIA WATER RESEARCH'S  
19 JOINDER IN MOTION OF SAN JOAQUIN  
20 COUNTY ET. AL. AND LAND ET. AL. TO  
21 STRIKE TESTIMONY OF CHARLES  
22 HANSON AND PAUL HUTTON AND  
23 MOTION TO STRIKE PORTIONS OF  
24 TESTIMONY OF SHAWN ACUNA

25 Deirdre Des Jardins, principal at California Water Research ("California Water  
26 Research") joins in the oral motions by San Joaquin County et. al. and LAND et. al. to strike  
27 testimony of Charles Hanson, (Exhibit DWR-1223) and testimony of Paul Hutton (Exhibit  
28 DWR-1224) as being beyond the scope of rebuttal. California Water Research also moves to  
strike portions of testimony of Shawn Acuna, (Exhibit DWR 1211), based on similar grounds to  
those motions.

1. California Water Research moves to strike the following statement in DWR-1214  
(which is also in DWR-1223 and 1224):

I am also responding to several parties whose experts suggested that the SWRCB's 2010  
Flow Criteria Report and the SWRCB's Phase II Technical Basis Report recommended  
standards should be accepted without modification, suggesting that there was no new  
relevant information that should also be considered. (See e.g., CSPA-202, errata, pp. 7-

1 11; April 11, 2018, Transcript, Vol. 28, p. 122; April 24, 2018, Transcript, Vol. 33, pp.  
2 110-115; PCFFA-161, p. 8:7-9.)

3 (*Id* at 2:24 to 3:2.)

4 Argument:

5 This statement needs to be stricken because it mischaracterizes the testimony it is  
6 rebutting. As argued by County of San Joaquin et. al. orally in the hearing, these references to  
7 Case in Chief testimony are being used construct a “straw man” argument, in order to provide  
8 rebuttal substantially beyond the scope of the cited testimony. The mischaracterization of  
9 protestants’ testimony evades the clear direction by the Hearing Officers in the June 18, 2018  
10 Hearing Ruling that rebuttal witnesses’ testimony must clearly indicate the case-in-chief  
11 evidence to which the rebuttal evidence is responsive.

12 As an example, the testimony cited in PCFFA-161 states on p. 8 at 7-10:

13 However, there is no analysis in the State Water Board’s Final Phase 2 Bay-Delta Water  
14 Quality Control Plan Update Scientific Basis Report (Exhibit PCFFA-168) of the effects  
15 of the major changes to diversions in the Delta from the BDCP/WaterFix project. I  
16 believe this analysis does need to be done.

17 This section of testimony in PCFFA-161 clearly does *not* state that there is no new  
18 relevant information that needed to be considered for the State Water Board’s Final Phase 2 Bay-  
19 Delta Water Quality Control Plan Update Scientific Basis Report (“Scientific Basis Report.”)  
20 The opinion does not address *any* of the conclusions in the Scientific Basis Report about  
21 protective flows for aquatic species. The testimony simply states an opinion that an additional  
22 analysis of the effects of major changes to diversions in the Delta should be done.

23 Similarly, the citation to cross-examination testimony of Randy Baxter (April 11, 2018,  
24 Transcript, Vol. 28, p. 122) is misleading because there is *no* testimony by Randy Baxter on page  
25

1 122, because of a string of objections which narrowed the question being asked on cross-  
2 examination. On p. 133 at 8-14, the Hearing Officer clarifies:

3 CO-HEARING OFFICER DODUC: And -- Hold on.

4 8 And you're asking, Mr. Ruiz, specifically on  
5 9 only opinion -- the opinions or analysis that

6 10 Mr. Baxter did --

7 11 MR. RUIZ: Correct.

8 12 CO-HEARING OFFICER DODUC: -- not on the

9 13 entirety of this report.

10 14 MR. RUIZ: That's correct.

11 The Hearing Officers have also ruled on August 8, 2018 that the entire 2010 Delta Flow  
12 Criteria Report is not appropriate for the scope of rebuttal. To the extent that Acuna's testimony  
13 simply rebuts information in the entire 2010 Delta Flow Criteria Report or the Scientific Basis  
14 Report, and not specific witnesses' testimony, it is beyond the scope of rebuttal.

15 In addition, California Water Research moves to strike the following sections as being  
16 beyond the scope of rebuttal, based on prior rulings on the scope of rebuttal. Consideration of  
17 the new opinions and voluminous studies advanced in this testimony will also consume a large  
18 amount of time.

19 2. Strike Opinion 1, p. 3:21-4:12.

20 Argument:

21 The opinion header for the section states at 3:21-23:

22 **OPINION 1: THE EFFECTS OF CURRENT SWP-CVP OPERATIONS ON DELTA  
23 SMELT ARE UNCERTAIN, AND SHOULD BE MANAGED ACCORDINGLY**

24 The opinion does not indicate what testimony it is responding to, simply stating at 3:24-25:

25 Several Protestants stated that the SWP-CVP operations are the primary cause of  
26 currently low Delta smelt abundance indices, and therefore additional management of  
27 project operations will improve Delta Smelt abundance.

1 The opinion then references multiple studies, not submitted by any protestant, without tying  
2 them to any specific witnesses' testimony.

3 3. Strike portion of Opinion 2 at p. 5:9 to 5:25.

4 Argument:

5 This section discusses project operations based on new studies and avoiding creation of a  
6 "turbidity bridge." There appears to be no testimony by protestants on either the new studies or  
7 "turbidity bridges." This information would have been appropriate to include in a discussion of  
8 Real Time Operations in Petitioner's Case in Chief but is beyond the scope of rebuttal.

9 4. Strike p. 9:11-21.

10 Argument:

11 The section is a general discussion of Delta smelt migratory behavior. There is no  
12 linkage of either the testimony or referenced studies to any witnesses' testimony.

13 5. Strike p. 10:4-7.

14 Argument:

15 The testimony discusses contaminants. There is no link of either the testimony or  
16 references studies to any witnesses' testimony on contaminants.

17 6. Strike p. 10:11-19.

18 Argument:

19 The testimony discusses prey densities of zooplankton, but there is no linkage of either  
20 the testimony or referenced studies to any witnesses' testimony.

21 7. Strike p. 12:5-6.

22 Argument:

23 The testimony states,

24 Factors that affect Delta smelt population dynamics have been studied for decades.  
25 (DWR-1242, DWR-1243.)

1 The sentence does not reference any witnesses testimony, and Exhibits DWR-1242 and 1243  
2 were not used by any witnesses in rebuttal. Rebuttal is not the time to introduce additional  
3 references, only generally related to any witnesses' testimony.

4 Thank you for your consideration of this motion to strike.

5  
6  
7  
8 Dated August 15, 2018

Respectfully submitted,

9  
10 

11 Deirdre Des Jardins  
12 Principal, California Water Research  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**STATEMENT OF SERVICE**

**CALIFORNIA WATERFIX PETITION HEARING  
Department of Water Resources and U.S. Bureau of Reclamation (Petitioners)**

I hereby certify that I have this day submitted to the State Water Resources Control Board and caused a true and correct copy of the following document(s):

**California Water Research's Joinder in Motion of San Joaquin County et. al. and LAND et. al. to Strike Testimony of Charles Hanson And Paul Hutton and Motion to Strike Portions of Testimony Of Shawn Acuna**

to be served by Electronic Mail (email) upon the parties listed in the Current Service List for the California Water Fix Petition Hearing, dated August 14, 2018, posted by the State Water Resources Control Board at

[http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/california\\_waterfix/service\\_list.shtml](http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/service_list.shtml)

*Note: In the event that any emails to any parties on the Current Service List are undeliverable, you must attempt to effectuate service using another method of service, if necessary, and submit another statement of service that describes any changes to the date and method of service for those parties.*

I certify that the foregoing is true and correct and that this document was executed on August 15, 2018.

Signature:



Name: Deirdre Des Jardins

Title: Principal, California Water Research

Party/Affiliation:

Deirdre Des Jardins

Address:

145 Beel Dr

Santa Cruz, California 95060