The California Department of Water Resources ("DWR") opposes California Water Research’s Motion to Strike Portions of Testimony of Marin Greenwood and Richard Wilder.

Ms. Des Jardins basis her motion on the argument that reasonable protection is an "absolute standard" that, in her opinion, prohibit a comparative analysis of the CWF H3+ with the No Action Alternative. This is not supported by the law or the process established in this hearing. Ms. Des Jardins proceeds to argue that she was unable to cross-examine the witnesses on reasonable protection that are beyond the scope of Dr. Greenwood’s and Dr. Wilder’s rebuttal. Ms. Des Jardins thoroughly mischaracterizes her cited portions of their testimony.
I. Reasonable Protection

California Water Research has provided no support for its claim that reasonable protection is an absolute standard. Reasonable protection is based in statute; Water Code section 1701.2(c) states a petition shall “Include all information reasonably available to the petitioner, or that can be obtained from the Department of Fish and Wildlife, concerning the extent, if any, to which fish and wildlife would be affected by the change, and a statement of any measures proposed to be taken for the protection of fish and wildlife in connection with the change.” (emphasis added.) Furthermore, key hearing issue 3 is whether “the changes proposed in the Petition unreasonably affect Fish and Wildlife.” (Hearing Notice October 30, 2015, emphasis added.) Nothing in Ms. Des Jardin’s motion to strike supports a departure from the interpretation of reasonable protection used in the Water Code or the Hearing Notice.

II. Cross-Examination

Ms. Des Jardins claims she was unable to sufficiently cross Dr. Greenwood and Dr. Wilder about existing conditions and the no action alternative. This was appropriate given the scope of Dr. Greenwood and Dr. Wilder’s testimony, which focused on any impacts to fish and wildlife caused by the CWF H3+ as compared to the NAA. As supported above, their testimony was appropriately addressing key hearing issues. Ms. Des Jardins does not dispute the citations provided as the basis for Dr. Greenwood and Dr. Wilder’s testimony.

Conclusion

DWR respectfully requests the Board deny California Water Research’s Motion to Strike for the above stated reasons.

Executed on this 17th day of August, 2018, in Sacramento, California.

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California Department of Water Resources