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

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

**CALIFORNIA DEPARTMENT OF**  
**WATER RESOURCES MOTION FOR**  
**RECONSIDERATION OF JULY 27,**  
**2018 RULING STRIKING DWR-1226,**  
**AND PORTIONS OF DWR-1212**

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17 The California Department of Water Resources (“DWR”) requests that the Hearing  
18 Officers reconsider their ruling striking the testimony of Erik Reyes, DWR-1226, and  
19 portions of the testimony of John Bednarski, DWR-1212, considering the following.

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21 **I. DWR-1226 Section II was ordered by the March 27, 2018 Ruling**

22 On March 26, 2018 the Hearing Officers issued a ruling ordering DWR to “prepare  
23 and include an exhibit within their Part 2 rebuttal with the same purpose that motivated  
24 DWR-1143.” The Hearing Officers then agreed, on July 16, 2018, with a concern raised by  
25 the Sacramento Valley Water Users that DWR’s response to the Hearing Officers’ ruling  
26 must be entered as “*evidence* within DWR’s Part 2 rebuttal.” SVWU goes on to argue that  
27 “DWR was required to augment or replace DWR-11143 with actual evidence.” (SVWU’s  
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1 July 12, 2018 letter re: DWR-1143 – Compliance with the Hearing Officers’ March 27, 2018  
2 *Ruling on Objections and Motions to Strike.*) By striking DWR-1226 in its entirety, the  
3 Hearing Officers undermine DWR’s compliance with the March 27, 2018 ruling, and the  
4 July 16, 2018 ruling, to submit as part of rebuttal testimony evidence responsive to the  
5 March 27, 2018 ruling. DWR requests that the Hearing Officers reconsider the striking of  
6 DWR-1226 section II in order to avoid any concerns or motions opposing the entry into  
7 evidence of the exhibit DWR-1143 Second Revision (DWR-1143rev2) for a lack of  
8 sponsoring testimony.

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10 **II. DWR-1226 Section III is responsive to the testimony of Chris Shutes,**  
11 **CSPA-202-errata and oral testimony**

12 DWR-1226 section III contained reference to cross-examination of Erik Reyes, which  
13 the Hearing Officers have indicated is not an acceptable “connection with another party’s  
14 case-in-chief.” Accepting this distinction, DWR submits that the intent of the citation was to  
15 indicate that there was widespread testimony on the Rio Vista flow standard by other  
16 parties. DWR-1226 section III directly addresses points submitted in CSPA-202-errata  
17 p.9:16-18 and Transcript Vol.22 p.67:11, the written and oral testimony of Chris Shutes.  
18 Mr. Shutes testifies that the Petitioners propose to eliminate the Rio Vista flow standard.  
19 DWR-1226 section III sets forth the ways in which the Rio Vista flow standard was  
20 modeled, and how the modeling is an accurate representation of the continued existence of  
21 the D-1641 Rio Vista flow standard. DWR requests that the Hearing Officers reconsider  
22 the striking of DWR-1226 section III after considering this further specificity citing to direct  
23 testimony of another party.<sup>1</sup>

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27 <sup>1</sup> It is common judicial practice that evidence excluded upon one ground, but which could be admitted on  
28 another, can be properly brought into the record.

1           **III.     DWR-1212 pp. 20:23 to 22:19 contains reference to Part 2 case-in-chief**  
2           **evidence which it responds to and should be accepted**

3           DWR-1212 pp. 20:23 to 22:19 is testimony directly responsive to the citations found  
4 later within section IX of that testimony. Within section IX on page 22:20 through page  
5 23:1, Mr. Bednarski cites to the testimonies of Mr. Tootle and Ms. Des Jardins and their  
6 assertions regarding seismic design. The testimony in DWR-1212 sets forth the clear  
7 connection between the information provided and the Tootle/Des Jardins testimony  
8 questioning the seismic analysis for the California WaterFix (“CWF”). As summarized by  
9 Mr. Bednarski:

10                   During Part 2, evidence was offered through cross examination of  
11                   Mr. Tootle that DWR had not followed industry standards when  
12                   determining the criteria to be used for the tunnel’s seismic design  
13                   criteria. (Transcript March 16, 2018, Volume 17, p. 148:20-25,  
14                   pp.149-152.) The line of questioning by Ms. Des Jardins implied  
15                   that the American Society of Civil Engineers Minimum Design  
16                   Loads for Buildings and Other Structures (ASCE/SEI 7-10, 2010)  
17                   called out in the FEIR/FEIS (SWRCB-102, Chapter 9, page 9-32  
18                   lines 31-41) was the appropriate seismic criteria for the tunnels.  
19                   The assertions made by Ms. Des Jardins, through questions to Mr.  
20                   Tootle, are incorrect. This ASCE standard is meant to be applied to  
21                   above-ground structures, and does not apply to tunnels and other  
22                   buried structures, contrary to Mr. Tootle’s answers.

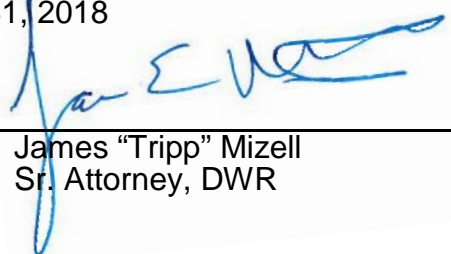
23           Testimony provided in the struck pages describes, in detail, the seismic analysis and  
24           criteria utilized for the CWF, which is directly responsive to the citations provided on pages  
25           22 and 23. DWR is unaware of any regulation or guidance indicating that the citation to  
26           opposing testimony must occur at the beginning of the discussion. Mr. Bednarski  
27           adequately cites his testimony as per the Board’s direction.

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**IV. Conclusion**

DWR requests that the Hearing Officers reconsider the striking of DWR-1226 in its entirety, and the striking of DWR-1212 p. 20:23 to 22:19. DWR-1226 is both responsive to the Hearing Officers' prior rulings that DWR provide evidence within its Part 2 rebuttal, and is directly responsive to the testimony of Chris Shutes. DWR-1212 contains appropriate citations mid-way through the paragraph.

July 31, 2018



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