State Water Resources Control Board

April 23, 2026

Re: Ruling on DWR's Objections to BBID, DPWA, San Francisco Baykeeper, and Sierra Club et al.'s Case-In-Chief Evidence

TO ALL PARTIES:

On November 3, 2025, Byron Bethany Irrigation District (BBID), Delta Party Water Agencies (DPWA), San Francisco Baykeeper, and the Sierra Club et al. Parties offered case-in-chief exhibits into the evidentiary record. (2025-11-03 BBID's Offer of Exhibits into the Evidentiary Record, 2025-11-03 SASD's Offer of Exhibits, 2025-11-03 Stockton's Offer of Exhibits, 2025-11-03 Baykeeper Offer of Exhibits, and 2025-11-03 Sierra Club et al. Offer of Exhibits). This procedural ruling addresses the objections submitted by the Department of Water Resources (DWR) to these parties' exhibits.

The hearing officer has ruled on the objections in the following attachments:

- Attachment 1 – Rulings on DWR Evidentiary Objections to BBID Case-in-Chief
- Attachment 2 – Rulings on DWR Evidentiary Objections to DPWA Case-in-Chief
- Attachment 3 – Rulings on DWR Evidentiary Objections to Baykeeper's Case-in-Chief
- Attachment 4 – Rulings on DWR Evidentiary Objections to Sierra Club et al. Parties' Case-In-Chief

Sincerely,



_____
Nicole Kuenzi
Presiding Hearing Officer
Administrative Hearings Office
State Water Resources Control Board

Attachments:

- Attachment 1 – Rulings on DWR Evidentiary Objections to BBID Case-in-Chief
- Attachment 2 – Rulings on DWR Evidentiary Objections to DPWA Case-in-Chief
- Attachment 3 – Rulings on DWR Evidentiary Objections to Baykeeper's Case-in-Chief
- Attachment 4 – Rulings on DWR Evidentiary Objections to Sierra Club et al. Parties' Case-In-Chief
- Attachment 5 – Service List

EXHIBIT A

The Department of Water Resources and State Water Contractors' Objections to Byron Bethany Irrigation District's
Case-In-Chief Testimony and Exhibits

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
1. Portion of in-person direct testimony of Edwin Pattison submitted on behalf of Byron Bethany Irrigation District on October 10, 2025. Move to strike oral statement on 10/10/2025 Zoom transcript, PDF p. 50. [Ed Pattison "I think Dr. Paulson mentioned, within Clifton Court forebay, it's not tidally influenced, but what we have found is that when, Banks is pumping and are drawing down, storage within Clifton Court. We have had problems with water hammer on our pumps, because it, the enormous pumping by the state water project through banks drops	**Scope: Witnesses may not give oral direct testimony that goes beyond the scope of the witness's written proposed testimony.** (State Water Resources Control Board Notice of Public Hearing, July 31, 2024, p. 18; Cal. Code Regs., tit. 23, sec. 648.4 ["It is the policy of the State and Regional Boards to discourage the introduction of surprise testimony and exhibits"]; see also (*Malaga County Water Dist. v. Central Valley Reg. Wat. Qual. Control Bd.* (2020) 58 Cal.App.5th 418, 428-429). Witness testified that they did not provide that information in his written	The evidentiary rules and regulations do not prohibit Mr. Pattison's oral statements. DWR's objection relies solely on the State Board's *policy* of *discouraging* surprise testimony. There is no basis in the statute governing admissibility for this proceeding to strike statements that do not fall squarely within a witness' written testimony. (Gov. Code, § 11513, Cal. Code Regs, tit. 23, § 648.5.1 [adjudicative proceedings of the SWRCB shall follow Gov. Code, § 11513.) Moreover, the objection relies on flawed arguments. Here, Mr. Pattison's statements are closely related to the subject matter	☐ Sustained ☒ Overruled Summaries of written testimony provided orally during the hearing are limited to the scope of written testimony. "The hearing officer will not allow witnesses to provide oral direct testimony on matters not in their written proposed testimony." (July 31, 2024 Notice of Public Hearing, p. 23.) The purpose of allowing oral summaries of testimony is for the convenience and understanding of the hearing officer and Board Members – not to supplement or

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water elevations, that impacts our ability during certain seasons and year types."]	testimony. See generally 10/10/2025 Zoom transcript, PDF p. 66. [Stefanie Morris: "[i]n terms of when I read this paragraph, I didn't see anything about Clifton Court forebay, but then in your testimony, you gave a rather detailed statement about changes to water levels in Clifton Court forebay. Where… where can I find that?" Ed Pattison: "I just… it's just factual information I added."]	and purpose of the allegations contained in paragraph 40 of his written testimony (BBID-001): "The pump stations for BBID's water right rights – both Pre-14 Right and License No. 1381 – are tidally influenced. Any changes in the current water levels at Wicklund Cut due to sea level rise or changes to the current export operations of the SWP can negatively impact BBID's ability to divert and deliver water. Attached, as BBID-005, are photos of BBID's pump station for License No. 1381 during both a low tide event and DWR exporting water (on or around May 21, 2025), which resulted in all of BBID's pumps at Wicklund Cut cavitating due to the low water levels. This shut down the pump station until water levels improved. Any interruption in water	alter the previously submitted w ritten testimony. Mr. Pattison's written testimony states that "export operations of the SWP can negatively impact BBID's ability to divert and deliver water." (Exh. BBID-001, ¶ 40.) Mr. Pattison's oral statement regarding water levels within Clifton Court forebay and impacts on BBID's pumps provides essentially the same conclusion, although it is unclear whether the oral statement is entirely within the scope of the written testimony. Given DWR's intimate knowledge of the relationship between SWP pumping and water levels in Clifton Court forebay, however, and the

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
		deliveries negatively impacts BBID's customers." Finally, DWR has not been prejudiced by Mr. Pattison's oral statements because it had the opportunity to cross-examine Mr. Pattison regarding the statements. The AHO should overrule the objection.	opportunity for DWR to cross-examine Mr. Pattison about his oral statements, I will not exclude the testimony.
2. Move to strike BBID-001 at p. 6:25-28 stating: "Specifically, for agricultural customers, these concentrations may result in reduced crop yields (SDWA-40),"	**Lack of foundation**. (Evid. Code, § 702; *Sargon Enterprises, Inc. v. University of Southern California* (2012) 55 Cal.4th 747, 770 (*Sargon*) ["the matter relied on must provide a reasonable basis for the particular opinion offered, and ... an expert opinion based on speculation or conjecture is inadmissible"].) Testimony lacks foundation when the underlying factual basis has not been submitted or is improper. *Pacific Gas &*	This objection and many of the subsequent objections cite irrelevant rules and case law authorities, which have no basis in the statute governing admissibility for this proceeding. (Gov. Code, § 11513, Cal. Code Regs, tit. 23, § 648.5.1 [adjudicative proceedings of the SWRCB shall follow Gov. Code, § 11513.) Specifically, there is no statutory or regulatory authority requiring a party to lay a formal foundation for the admission of exhibits or testimony. (See Gov. Code, § 11513.) Rather, "[a]ny	☒ Sustained, in part. ☐ Overruled In response to the objection, BBID clarifies that Mr. Pattison is not offering an expert opinion on the referenced matter and is merely offering a reference to related testimony. The hearing officer will therefore construe the statement as consisting solely of a reference to other testimony.

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	Electric Co. v. Zuckerman (1987) 189 Cal.App.3d 1113, 1135 ["The value of opinion evidence rests not in the conclusion reached but in the factors considered and the reasoning employed."]; *Hyatt v. Sierra Boat Co.* (1978) 79 Cal.App.3d 325 [It is well settled that an expert's assumption of facts must not be based on speculative or conjectural data.]; *Jennings v. Palomar Pomerado Health Systems, Inc* (2003)114 Cal.App.4th 1108 "[W]hen an expert's opinion is purely conclusory because unaccompanied by a reasoned explanation connecting the factual predicates to the ultimate conclusion, that opinion has no evidentiary value..."]); An expert's opinion based on assumptions of fact without evidentiary	relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions." (Gov. Code, § 11513, subd. (c).) Thus, DWR's cited case law is irrelevant. Moreover, the objection relies on flawed arguments. Mr. Pattison made no representation that he was offering an expert opinion on the referenced matter. He merely offered a reference to related testimony submitted and supported by another witness. To the extent necessary, the AHO can consider Mr. Pattison's qualifications and	

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	support has no evidentiary value. Witness testified they had not reviewed the testimony in SDWA-040. The statement lacks foundation and is improper hearsay. See 10/10/2025 Zoom transcript, PDF p. 55: [Stefanie Morris: “And for impacts related to agricultural customers, you cite to the testimony, of Dr. Leinfelder Miles, is that correct?” Ed Pattison: “Yes.” Stefanie Morris: “And, did you review Dr. Leinfelder Miles' testimony that was submitted on the same day as your testimony prior to submitting your testimony?” Ed Pattison: “I have not.”]	expertise when evaluating the weight of his testimony. The AHO should overrule the objection.	

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
3. Move to strike BBD-001 at p. 7:19-21 stating: "Since at least 2015, and generally twice each year, DWR treats both the Intake Channel and Clifton Court Forebay with herbicides (e.g., Aquathol K and Komeen) for HABs abatement as part of its operation of the State Water Project (SWP)." Also, move to strike oral statement on 10/10/2025 Zoom transcript, PDF p. 47. [Ed Pattison: "Currently, about twice a year since at least 2015, DWR treats both the intake channel and Clifton Court forebay with herbicides as part of its operation of the State Water Project."]	**Lack of foundation.** (See case law above.) The Statements are based on BBID-004, which only shows one instance of treating for a cyanobacteria bloom as the targeted species, which do not support the statements in question. See generally discussion on 10/10/2025 Zoom transcript, PDF p. 60-61. [Stefanie Morris: "Thank you. If we could just scroll through the target list, is it accurate that the year is only one event [t]hat shows cyanobacteria bloom as the targeted species that's being treated." Ed Pattison: "Yeah, based on what I'm looking at, correct."]	As discussed above, there is no requirement to formally lay foundation for expert witness testimony, and relevant evidence of the sort that responsible persons are accustomed to rely on in the conduct of serious affairs shall be admitted. (See Gov. Code, § 11513.) Moreover, the listing of one basis for reservoir treatment does not rule out the possibility that there were additional reasons for the treatment, and DWR provided no evidence to demonstrate that the treatments cited in BBID-04 did not target or otherwise address additional factors, including HABs abatement. The objection should therefore be overruled. If the AHO should nonetheless sustain the objection as to the quoted written statement located at BBID-001, p. 7:19-21, BBID requests that the AHO strike	☐ Sustained ☒ Overruled Objection goes to the weight rather than the admissibility of the testimony. DWR had adequate opportunity to cross-examine the witness and submit evidence in rebuttal to address the disputed testimony. The objection will be considered in determining the weight to be afforded the testimony in the context of the evidentiary record as a whole.

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		only the portion of the text stating “for HABs abatement,” retaining the remainder of the quoted testimony. The resulting statement would be directly supported by BBID-004. As to the quoted oral statement, the AHO should overrule the objection in its entirety. DWR’s purported grounds for objection do not establish that the quote is incorrect. Mr. Pattison stated that DWR has treated both the intake channel and Clifton Court forebay with herbicides as part of its operation of the State Water Project about twice a year. This statement makes no representations as to the purpose of the treatment and therefore is not contradicted by the oral testimony during cross-examination. The AHO should overrule the objection.	

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4. Move to strike portion of BBID-001 at p. 9:11 stating: “and DWR exporting water”	**Lack of foundation.** (See case law above.) Witness testified that they could not quantify what portion of the BBID pump issue was from low tides or State Wate Project pumping. Additionally, witness did not provide information about State Water Project Pumping and could not recall how much pumping was occurring. This portion of the statement lacks foundation and is speculative. See 10/10/2025 Zoom transcript, PDF p. 70. [Stefanie Morris: “the, the issue that occurred in May was due to a low tide versus what DWR was exporting.” Ed Pattison: “I didn't model it, so I can't answer	As discussed above, there is no requirement to formally lay foundation for expert witness testimony, and relevant evidence of the sort that responsible persons are accustomed to rely on in the conduct of serious affairs shall be admitted. (See Gov. Code, § 11513.) Moreover, the objection relies on flawed arguments. The quoted portion of testimony asserts that DWR was exporting water, not that DWR was exporting a specific quantity of water. Conversely, the portions of cross-examination testimony cited in DWR’s grounds supporting the objection only demonstrate that at the time of his cross examination Mr. Pattison was not aware of the exact quantity of water that DWR was exporting at specific times. This does not invalidate Mr. Pattison’s testimony that DWR was exporting water, or his	☐ Sustained ☒ Overruled Objection goes to the weight rather than the admissibility of the testimony. DWR had adequate opportunity to cross-examine the witness and submit evidence in rebuttal to address the disputed testimony. The objection will be considered in determining the weight to be afforded the testimony in the context of the evidentiary record as a whole.

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	that quantitatively to give you percentages..."] Witness cannot recall how much water SWP was pumping. See 10/10/2025 Zoom transcript, PDF, p. 71-72. [Stefanie Morris: "And, do you know on May 21st, 2025, how much water the state water project was pumping? Ed Pattison: "I did look at the numbers, I don't recall them off the top of my head currently. But we did, look at that, both CBP and State Water Project." Stefanie Morris: "But you don't recall either of those numbers at this point?" Ed Pattison: "No."]	opinion based on his prior review of the volume of State Water Project pumping that SWP pumping adversely affects BBID's pump. The AHO should overrule the objection.	

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
5. Move to strike statement "DWR implied that HABs are not a concern within Clifton Court Forebay," which occurs in multiple locations in BBID-010, BBID-011, BBID-012, and the oral testimony. See specifically, BBID-010 p. 5:4-5; BBID-010 p. 10:16; BBID-011, PDF pp. 3, 11, and 25; BBID-012 on Slide 2 Opinion 3; BBID-012 Slide 16 and orally at 10/10/2025 Zoom transcript, PDF p. 26.	**Lack of foundation.** (See case law above.) Witness cannot provide any validation that DWR stated that or in fact implied it. See 10/10/2025 Zoom transcript, PDF p. 33. Generally, witness says they were concerned that would leave the impression regarding Clifton Court Forebay. This statement is misleading, lacks foundation, and causes unnecessary confusion in the record.	The Evidence Code allows expert testimony in the form of an opinion to be based on matters (including the expert's special knowledge, skill, experience, training, and education) perceived by or personally known to the witness or made known to her at or before the hearing that reasonably may be relied upon by an expert in forming an opinion upon the subject to which [her] testimony relates. (Evid. Code, § 801 subd. (b).) As discussed above, there is no requirement to formally lay foundation for expert witness testimony, and relevant evidence of the sort that responsible persons are accustomed to rely on in the conduct of serious affairs shall be admitted. (See Gov. Code, § 11513.) As an expert, Dr. Paulsen reasonably relied on DWR's analysis of potential impacts related to HABs as	☐ Sustained ☒ Overruled The objection to Dr. Paulsen's characterization of DWR's analysis of HABs in the Delta will be considered in determining the weight rather than the admissibility of the statement. DWR had adequate opportunity to cross-examine the witness and submit evidence in rebuttal to address the disputed testimony.

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
		documented in the DCP Final Environmental Impact Report and DWR's expert testimony to form her opinion about how DWR characterized existing problems with HABs in the Delta, including that DWR's failure to provide any evidence related to HABs in Clifton Court Forebay implies (or supports an inference) that DWR does not believe HABs are a problem in Clifton Court Forebay. (See, e.g.,BBID-010, 8:5-10:15.) Moreover, DWR's objection relies on flawed arguments. Dr. Paulsen explains her contention that DWR implied that HABs are not a concern in Clifton Court Forebay in BBID-010, p. 10:21-27 ["Although DWR stated that they focused their HABs analysis on Delta locations that were part of routine monitoring programs and identified as primary bloom areas, DWR did not evaluate	

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
		HABs at Clifton Court Forebay"]. DWR's omission supports Dr. Paulsen's statement that DWR has implied that HABs are not a concern in Clifton Court Forebay. The AHO should overrule the objection.	

EXHIBIT A

The Department of Water Resources and State Water Contractors' Objections to the Delta Party Water Agencies' Case-In-Chief Testimony and Exhibits moved by Byron-Bethany Irrigation District, City of Stockton, and Sacramento Area Sewer District

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
1. Move to strike DPWA-001 at slide 20 stating: "Analysis appears inconsistent with DWR's testimony that DCP would be operated to "continue to comply" with D-1641 WQS"	Lack of foundation. (Evid. Code, § 702; S*argon Enterprises, Inc. v. University of Southern California* (2012) 55 Cal.4th 747, 770 (*Sargon*) ["the matter relied on must provide a reasonable basis for the particular opinion offered, and... an expert opinion based on speculation or conjecture is inadmissible"].) Testimony lacks foundation when the underlying factual basis has not been submitted or is improper. *Pacific Gas & Electric Co. v. Zuckerman* (1987) 189 Cal.App.3d 1113, 1134 ["The value of opinion evidence rests not in the conclusion reached but in the factors considered and the reasoning employed..."]; *Hyatt v. Sierra Boat Co.* (1978) 79 Cal.App.3d 325 [It is well settled that an expert's assumption of fact must not be based on speculative or conjectural data.]; *Jennings v.*	This objection and many of the subsequent objections cite irrelevant rules and case law authorities, which have no basis in the statute governing admissibility for this proceeding. (Gov. Code, § 11513, Cal. Code Regs, tit. 23, § 648.5.1 [adjudicative proceedings of the SWRCB shall follow Gov. Code, § 11513.) Moreover, the objection is based on a flawed argument. The quoted pages of the transcript do not establish that the statement is misleading, nor has DWR explained precisely how it is misleading. The transcript excerpt instead establishes why the challenged portion of DPWA-001 is accurate. The Evidence Code allows expert testimony in the form of an opinion	☐ Sustained ☒ Overruled The objection to Dr. Paulsen's characterization of testimony and modelling submitted by DWR will be considered in determining the weight rather than the admissibility of the statement. Dr. Paulsen adequately describes the bases for this opinion in her written testimony. DWR had the opportunity to cross-examine the witness and submit evidence in rebuttal to address the disputed testimony.

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
	Palomar Pomerado Health Systems, Inc (2003)114 Cal.App.4th 1108 "[W]hen an expert's opinion is purely conclusory because unaccompanied by a reasoned explanation connecting the factual predicates to the ultimate conclusion, that opinion has no evidentiary value..."]); An expert's opinion based on assumptions of fact without evidentiary support has no evidentiary value. The referenced statement is misleading. (See DWR transcript 9/2/2025 159:21-162:18.)	to be based on matters (including the expert's special knowledge, skill, experience, training, and education) perceived by or personally known to the witness or made known to her at or before the hearing that reasonably may be relied upon by an expert in forming an opinion upon the subject to which her testimony relates. (Evid. Code, § 801 subd. (b).) DWR has not stated nor otherwise shown that Dr. Paulsen lacked the special knowledge, skill, experience, training, and education to support the statement. As Dr. Paulsen indicated, the statement was based on a quote from the testimony of DWR's expert Dr. Ellen Preece (DWR-400, 9:1-3) and Dr. Paulsen's analysis that standards would be exceeded more frequently (DPWA-002, 14:19-15:24; DPWA-004, pp. 19-21). A witness' personal knowledge of a matter may be shown by any otherwise admissible evidence, including their own testimony. (Evid. Code, § 702, subd. (b).) The AHO should	

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		overrule the objection and deny the motion to strike.	
2. Move to strike DPWA-002 at p. 4:22-25: "DWR did not evaluate the need for or impact of Temporary Urgency Change Petitions (TUCPs) during dry and critically dry water years; DWR should have done so because it is reasonably foreseeable that TUCPs will be needed during DCP operation. DWR's assertions that it will meet D-1641 water quality standards (WQS) are not credible."	Lacks foundation. (See case law above.) The witness provided no citations or analysis for these statements.	As discussed above, DWR cites irrelevant rules and case law authorities in support of this objection. Government Code § 11513 provides that "[a]ny relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions." (Gov. Code, § 11513, subd. (c).) The Evidence Code allows expert testimony in the form of an opinion to be based on matters (including the expert's special knowledge, skill, experience, training, and education) perceived by or personally known to the witness or made known to her at or before the hearing that reasonably may be relied upon by an expert in forming an opinion upon the subject to	☐ Sustained ☒ Overruled See above.

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
		which her testimony relates. (Evid. Code, § 801 subd. (b).) Moreover, the objection relies on a flawed argument. As cited above, Dr. Paulsen relied on her analysis that concluded that the WQS would be exceeded more frequently. (DPWA-002, 14:19-15:24; DPWA-004, pp. 19-21.) Additionally, DWR provides no evidence disproving Dr. Paulsen's assertions. The AHO should overrule the objection and deny the motion to strike.	
3. Move to strike DPWA-002 at p. 15:16-24: "Because the historical record includes years that were comparably dry to years in which TUCPs were requested, it is foreseeable that TUCPs may be adopted and project operations may be modified during critically dry and dry years in the future. However, DWR has not evaluated water quality conditions within the Delta under these conditions,	Lacks foundation. (See case law above.) The witness provided no citations or analysis for these statements. These statements are misleading because speculative because [sic] DWR has not [sic] control over the implementation of TUCP requirements, nor is required to model that speculative analysis in a change in point of diversion hearing.	As discussed above, DWR cites irrelevant rules and case law authorities in support of this objection, and Government Code § 11513 provides that "[a]ny relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil	☐ Sustained ☒ Overruled. See above.

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
including the potential impact of operation of the DCP. Because DWR's modeling evaluation and discussion of impacts within the FEIR and its testimony to the SWRCB does not disclose or evaluate the water supply and water quality impacts of the DCP under TUCPs, either for 2020 or future climate conditions, the SWRCB and in-Delta water users do not have information sufficient to understand or evaluate the potential impacts of the DCP on Delta water quality and their operations.		actions." (Gov. Code, § 11513, subd. (c).) The Evidence Code allows expert testimony in the form of an opinion to be based on matters (including the expert's special knowledge, skill, experience, training, and education) perceived by or personally known to the witness or made known to her at or before the hearing that reasonably may be relied upon by an expert in forming an opinion upon the subject to which her testimony relates. (Evid. Code, § 801 subd. (b).) Moreover, DWR relies on flawed arguments to support its objections. As demonstrated in Dr. Paulsen's Expert Report, Dr. Paulsen relied on Water Year Index records and DWR's own modeling for her statement that "[b]ecause the historical record includes years that were comparably dry to years in which TUCPs were requested, it is foreseeable that TUCPs may be adopted and project operations may be modified during critically dry and dry years in the future." (DPWA-003, pp. 19-20.)	

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		Dr. Paulsen further relies on the analysis that precedes the challenged statement (DPWA-002, 14:23-15:15) and related analysis in her Expert Report (DPWA-004, pp. 19-21.) Dr. Paulsen's testimony states the facts supporting her conclusion and provides a reasoned explanation connecting such facts to her ultimate conclusion. Additionally, Dr. Paulsen did not make a legal conclusion as to whether DWR must include TUCP modeling in its evaluation of the DCP. Rather, she stated her expert opinion that the omission of the TUCPs in DWR's modeling results in insufficient information to understand or evaluate the potential impacts of the DCP on Delta water quality and their operations. The AHO should overrule the objection and deny the motion to strike.	
4. Move to strike DPWA-004 at PDF p. 42 stating: "Although DWR testified that the DCP would be operated to	Lack of foundation. (See case law above.) The referenced statement is misleading and calls for	The DPWA incorporates by reference the response to Objection No. 1 above.	☐ Sustained ☒ Overruled See above.

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"continue to comply" with D-1641 WQS, it does not appear that DWR would be able to operate the DCP in accordance with the operations described in the FEIR and in DWR's testimony to the SWRCB over the planned operations period."	speculation. (See DWR transcript 9/2/2025 159:21-162:18.)	The AHO should overrule the objection and deny the motion to strike.	

EXHIBIT "A"

Baykeeper Response to the Department of Water Resources and State Water Contractors' Objections to San Francisco Baykeeper's Case-In-Chief Testimony and Exhibits

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
1. Move to Strike BK-2.	Lack of foundation. (Evid. Code, § 702; S*argon Enterprises, Inc. v. University of Southern California* (2012) 55 Cal.4th 747, 770 (*Sargon*) ["the matter relied on must provide a reasonable basis for the particular opinion offered, and... an expert opinion based on speculation or conjecture is inadmissible"].) Testimony lacks foundation when the underlying factual basis has not been submitted or is improper. *Pacific Gas & Electric Co. v. Zuckerman* (1987) 189 Cal.App.3d 1113, 1134 ["The value of opinion evidence rests not in the conclusion reached but in the factors considered and the reasoning employed..."]; *Hyatt v. Sierra Boat Co.* (1978) 79 Cal.App.3d 325 [It is well settled that an expert's assumption of fact must not be based on speculative or conjectural	DWR's witnesses testified they had seen the document. Hearing Tr. Vol 1, April 3, 2025 at 222:4-8. The document is a true and correct copy of what it purports to be. (Declaration of Eric Buescher ["Buescher Decl."], ¶ 4.) (Evid. Code § 1401.) DWR submitted a prior version (from 2018) of the Ocean Protection Council's Sea Level Rise Guidance with its case in chief. (See DWR-608; see also DWR-600, ¶ 34.) The document [is] admissible because it is the "sort of evidence on which responsible	❑ Sustained ❑ X Overruled Neither State Water Board regulations nor Chapter 4.5 of the Administrative Procedure Act (APA) strictly require a party to authenticate or lay a formal foundation for the admission of exhibits or testimony. In an administrative proceeding, not every exhibit requires sponsoring testimony to demonstrate authenticity and relevance. Sufficient information to meet the standard for admission into the evidentiary record may be self-evident from the document, may be provided by a witness's testimony, or may be evident from other properly admitted evidence. Here, the document appears to be self-

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	data.]; *Jennings v. Palomar Pomerado Health Systems, Inc* (2003)114 Cal.App.4th 1108 "[W]hen an expert's opinion is purely conclusory because unaccompanied by a reasoned explanation connecting the factual predicates to the ultimate conclusion, that opinion has no evidentiary value..."]); An expert's opinion based on assumptions of fact without evidentiary support has no evidentiary value. This exhibit was introduced on cross examination but a foundation for the document was not provided. (See DWR transcript 7/3/25 p. 222: Both Mr. Reyes and Dr. Draper stated they had not seen the document marked as BK-2 before.)	persons are accustomed to rely in the conduct of serious affairs." (Gov. Code § 11513(c); see also 23 C.C.R. 648.5.1.) The document is also admissible as an "official act" of an "executive department" of the state of California. (Evid Code 452(c).) The document is also admissible because it is "not reasonably subject to dispute" and is "capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy." (Evid. Code § 452(h).)	authenticating and DWR does not challenge its authenticity. Furthermore, exhibits introduced for the purpose of cross-examination are included in the evidentiary record for the limited purposes of impeachment or eliciting relevant testimony from the witness, and are not admitted in their entirety as substantive evidence.
2. Move to strike BK-4.	Lack of foundation. (See above case law.) This exhibit was introduced on cross examination but a foundation for the document was not provided. (See DWR	The document is admissible because it is the "sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs." (Gov.	❑ Sustained ❑ X Overruled See above.

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
	transcript 4/23/25 p. 39: Witness Mr. Singh is not asked about his familiarity and does not know what modeling the statement is based on.)	Code § 11513(c); see also 23 C.C.R. 648.5.1.) The document is a true and correct copy of what it purports to be. (Buescher Decl., ¶ 5.) The document is admissible as a "public record[] of the Board that [is] relevant to the subject of the hearing." (23 C.C.R. § 648.3.) The document is admissible under the Evidence Code as a party admission. (Evid. Code § 1220.) The document is also admissible under the Evidence Code because DWR and SWC have acted in such a way to adopt the statement and their belief in its truth. (Evid. Code § 1221.)	

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
		The document is admissible because it is "not reasonably subject to dispute" and is "capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy." (Evid. Code § 452(h).)	
3. Move to strike BK-9 and BK-10.	Untimely: The AHO may refuse to admit the proposed exhibit into evidence because it was untimely submitted. (Cal. Code Regs., tit. 23, § 648.4, subds. (c), (e).) IFR-28 was submitted late to the administrative record and without good cause. The exhibit should not be admitted into the evidentiary record. Documents are not in the ftp site for review.	BK-009 and BK-010 are true and correct copies of the documents they purport to be. (See Buescher Decl., ¶¶ 6, 7.) They are admissible as the "sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs." (Gov. Code § 11513(c); see also 23 C.C.R. 648.5.1.) BK-009 is a document that is "not reasonably subject to dispute" and is "capable of immediate and accurate	❑ Sustained ❑ Overruled ❑ X Deferred The AHO construes the objection to apply to BK-9 and BK-10, not IFR-28. Objections to these exhibits are deferred. The exhibits may be offered by San Francisco Baykeeper as part of its submission of rebuttal exhibits, to which DWR will have an opportunity to object. If the exhibits may be admitted as proper rebuttal exhibits, the objection of untimeliness will become moot.

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
		determination by resort to sources of reasonably indisputable accuracy." (Evid. Code § 452(h).) BK-010 is admissible because it was published in the Federal Register. (Evid. Code § 451(b) and 44 U.S.C. § 1507.) The documents were submitted in September 29, 2025 and again on November 3, 2025 and are in the FTP site. While the submission was after the July 11, 2025 deadline, good cause existed for their submission in September, as the submission was in response to inaccurate statements related to these documents made by DWR's counsel during cross-examination of Dr. Rosenfield. (See	Exhibits BK-009 and BK-010 were uploaded to and made available on the ftp site in the folder for San Francisco Baykeeper exhibits after being received by the AHO on September 19, 2025. The exhibits are within the subfolder titled "Pending Exhibits" because they were subject to an outstanding motion by San Francisco Baykeeper.

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
		Baykeeper's September 29, 2025 Motion for Cross-Examination and Testimony.)	

EXHIBIT A
Sierra Club et al. Parties' Response to the Department of Water Resources and State Water Contractors' (collectively, "DWR") Objections to Sierra Club et al. Parties' Case-In-Chief Testimony and Exhibits

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
1. Move to strike SC-1.	The errata copy of SC-1 should be moved into the record. It is unclear if Sierra Club is moving in the correct copy because the exhibit numbering is the same.	Sierra Club confirms it is moving the errata copy of SC-1 into the record. Any confusion regarding exhibit numbering can be clarified; the corrected version supersedes the original.	☒ Sustained ☐ Overruled
2. Move to strike SC-1E, p.1:11-15.	Inadmissible opinion testimony by expert witness. (Evid. Code, §§ 720, 800-803; *Kennemur v. State of California* (1982) 133 Cal.App.3d 907, 923 ["[T]he law does not accord to the expert's opinion the same degree of credence or integrity as it does the data underlying the opinion."]; *Putensen v. Clay Adams, Inc.* (1970) 12 Cal.App.3d 1062, 1081 ["dearth of evidence indicating […] special knowledge, experience or education" disqualifies a witness as an expert].There is no basis in the written testimony to support that the	DWR's objection is difficult to parse insofar as there are no lines 11-15 on page 1 of SC-1E. However, to the extent DWR objects to paragraph 3 of SC-1E (lines 11-15 on page 2 of that document), its objections are unfounded. DWR's objection mischaracterizes the relevant requirements. Evidence Code § 720 does not require that an expert hold a specific professional title; it requires "special	☐ Sustained ☒ Overruled The objection is unclear. Assuming the objection is to paragraph 3 of SC-1E (lines 11-15 on page 2 of that document), the objection is overruled. Although Ms. Des Jardins does not identify a specific source for her statement that 2012 was the beginning of the driest four-year period in the historical record, this substantive factual dispute is more appropriately addressed in assessing the weight of the

	witness has the necessary knowledge, skill, experience, training, or education to testify in the form of opinions to the matters addressed in the exhibits. Lack of foundation. (Evid. Code, § 702; S*argon Enterprises, Inc. v. University of Southern California* (2012) 55 Cal.4th 747, 770 (*Sargon*) [“the matter relied on must provide a reasonable basis for the particular opinion offered, and... an expert opinion based on speculation or conjecture is inadmissible”].) Testimony lacks foundation when the underlying factual basis has not been submitted or is improper. *Pacific Gas & Electric Co. v. Zuckerman* (1987) 189 Cal.App.3d 1113, 1134 [“The value of opinion evidence rests not in the conclusion reached but in the factors considered and the reasoning employed...”]; *Hyatt v. Sierra Boat Co.* (1978) 79 Cal.App.3d 325 [It is well settled that an expert’s assumption of fact must not be based on speculative or conjectural	knowledge, skill, experience, training, or education" on the subject. Though Ms. Des Jardins is not a professional hydrologist by trade, she has experience with hydrologic analysis and has, in fact, undertaken hydrologic studies. Ms. Des Jardins testified here and in past, analogous proceedings (including the past proceeding relating to the related WaterFix project) as an expert on complex systems analysis and nonlinear dynamics, particularly as it relates to climate change. Ms. Des Jardins' background in physics and complex systems analysis directly informs her analysis of large hydrologic systems, like the Delta and its watersheds. (Evid. Code § 720.) The paragraph objected to goes towards Ms. Des	evidence in light of the record as a whole, rather than as a threshold question of its admissibility. Although DWR purports to object to the testimony as inappropriate expert opinion, the paragraph does not appear to contain expert opinion testimony.

	data.]; *Jennings v. Palomar Pomerado Health Systems, Inc* (2003)114 Cal.App.4th 1108 "[W]hen an expert's opinion is purely conclusory because unaccompanied by a reasoned explanation connecting the factual predicates to the ultimate conclusion, that opinion has no evidentiary value..."]); An expert's opinion based on assumptions of fact without evidentiary support has no evidentiary value. (See DWR Transcript, 9/22/2025, p. 132:10-23.) Ms. Des Jardins is not a hydrologist and her work is not peer reviewed. It is unclear if this is the same report as SC-23.	Jardins' qualifications as an expert insofar as it demonstrates that her past testimony in a related proceeding proved accurate. To the extent DWR objects to the underlying report, SC-23, its objections are unjustified. Ms. Des Jardin's assertions in the paragraph objected to are not related to the underlying report itself; Ms. Des Jardins here pointed to the fact that her prior testimony in a similar, past proceeding proved to be accurate. Further, although the report referenced therein (and potentially objected to herein) was not peer-reviewed, its reasoning is clear and it provides explanations connecting the factual predicates to the report's ultimate conclusions. Moreover, to the extent DWR objects that the	

		references cited in that report are not themselves provided as separate testimony here, its argument misses the mark. The peer-reviewed studies referenced in the report are linked to therein. (*Consolidated Irrigation Dist. v. Superior Court* (2012) 205 Cal. App. 4th 697, 724-726 [holding that where a document is accessible via a functioning hyperlink embedded in a document that is within the administrative record, the linked document is itself also within the administrative record].)	

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
3. Move to strike SC-1E, p. 2:27-3:4.	Hearsay: DWR objects to the extent this testimony contains hearsay statements that do not supplement or explain admissible evidence or are not admissible in themselves as non-hearsay or pursuant to a hearsay exception. (Gov. Code, § 11513, subd. (d); (*Lake v. Reed* (1997) 16 Cal.4th 448, 458 [hearsay is only permissible if it supplements or explains admissible evidence].) DWR requests that the AHO exercise her discretion to weigh the probative value of the evidence against the probability that the evidence creates substantial danger of undue prejudice, confuses the issues, or is misleading. (Evid. Code, § 352; Gov. Code, § 11513, subd. (f); Cal. Code Regs., tit. 23, § 648.4, subd. (e).) Adam Gray did not appear as a witness in this hearing, nor was an exhibit entered or authenticated to support this statement.	This is not hearsay. The assertions objected to speak to actions taken by Ms. Des Jardins; not statements made elsewhere, outside of this proceeding. As paragraph 5 of SC-1E makes clear, Ms. Des Jardin analyzed relevant DWR reports, data, and studies and Ms. Des Jardin contributed to comments with the California Sportfishing Protection Alliance submitted during a California Environmental Quality Act proceeding related to the instant proceeding. These are not assertions made outside of this proceeding. To the extent that DWR objects to Ms. Des Jardins' assertion that Adam Gray referenced her work when calling for an audit of DWR's runoff forecasts and water management, that too is not hearsay. Ms. Des Jardins is not speaking to what Mr. Gray said when he referenced her work, just that he did. And to the extent this statement could be characterized as hearsay, it is	☐ Sustained ☒ Overruled The cited testimony is not hearsay, as the referenced statements made outside of this proceeding are not offered for the truth of the underlying matter. Rather, as clarified by Sierra Club's response, Ms. Des Jardins is describing her actions, and perceptions known to her. The objection does not explain how the testimony might create a substantial danger of undue prejudice, confuse the issues, or be misleading. The hearing officer and the Board Members are competent to appropriately weigh the testimony in light of the evidentiary record as a whole.

		nevertheless admissible insofar as it “supplements or explains” Ms. Des Jardins’ qualifications and her history of advocacy regarding the Delta and DWR’s operations therein. (Govt. Code § 11513(d).)	

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
4. Move to strike SC-1E, p. 3:6-12.	Irrelevant. (Gov. Code, § 11513, subd. (c).) The purpose of the hearing is to investigate the facts and reach conclusions grounded in an evidentiary record that contains the sort of evidence on which responsible persons are accustomed to rely upon in the conduct of serious affairs. (*People v. Morrison* (2004) 34 Cal.4th 698, 711 [evidence is "irrelevant" if it leads only to speculative inferences].) The WaterFix project is not at issue in this hearing. Inadmissible opinion testimony by expert witness. (See case law above.) Ms. Des Jardins is not an expert in the planning, siting, or construction of water conveyance infrastructure.	DWR's objection misses the mark. The paragraph objected to here is a roadmap explaining what Ms. Des Jardins will address elsewhere in SC-1E. To the extent DWR objects to the testimony referenced in the paragraph objected to, its objection is still misguided. Though it is certainly true, as DWR points out, that the WaterFix project is not at issue herein, the agency's historical and ongoing water supply challenges regarding the State Water Project are relevant to this proceeding. The paragraph objected to here speaks to Ms. Des Jardins' past testimony before this Board (from the WaterFix proceeding) regarding the history of DWR's overallocation of water supply resources. This history is as true and relevant today as it was in 2017 when Ms. Des Jardins initially testified to it. (Govt. Code, § 11513; *see also* Evid. Code § 210 [evidence is "[r]elevant" if it speaks to the	☐ Sustained. ☒ Overruled. The referenced portions of the testimony by Ms. Des Jardins submitted in the Waterfix proceeding (offered here as SC-8) addresses the history and development of the State Water Project, including the underlying water rights and infrastructure. Although the WaterFix project is not at issue in this proceeding, water right permits for the State Water Project are at issue. The subject matter is therefore relevant to the hearing issues. The hearing officer and the Board will consider DWR's remaining objections in determining the weight to be afforded the testimony. Although Ms. Des Jardins does not have specific education or training

		"credibility of a witness or hearsay declarant" or has "any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action"].) To the extent DWR here objects to Ms. Des Jardins' qualifications as an expert to testify to this issue, it likewise confuses the relevant standards. Though Ms. Des Jardins does not have a professional background operating or siting water diversion facilities or preparing or negotiating water contracts, she has over one decade of experience reviewing and analyzing State Water Project and Central Valley Project contracts and allocations in collaboration with biologists, engineers, and geologists, and has testified to these issues in past, similar proceedings before this Board.	related to the State Water Project, Ms. Des Jardins has submitted comments on legislation and administrative processes related to the State Water Project and Central Valley Project over more than fifteen years. (Exh. SC-7) She has also conducted extensive research of primary documents and compiled that research into "reports" that include references to the primary source documents. The testimony to which DWR objects consists, in substantial part, of summaries and related inferences based on the referenced primary evidence, including exhibits offered into the evidentiary record by the Sierra Club. The hearing officer and the Board will consider the testimony within the context of this other evidence and the extent to which summary statements and inferences are supported by and supplement other evidence

			in the record.

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
5. Move to strike SC-1E, p. 3:12-13.	Irrelevant. (See case law above.) The DCP does not include reservoir reoperation.	DWR's objection is without merit. As above, the paragraph objected to here is a roadmap referencing testimony provided elsewhere in SC-1E. To the extent DWR objects to the testimony referenced in the lines objected to here, its objection is still misguided. "Any relevant evidence [must] be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions." (Govt. Code, § 11513(c).) Ms. Des Jardins' reference in the paragraph objected to here is relevant to this proceeding insofar as it speaks to the potential impacts of the proposed project. (Evid. Code § 210 [evidence is "[r]elevant" if it speaks to the "credibility of a witness or hearsay declarant" or has "any tendency in reason to prove or	☐ Sustained ☒ Overruled The referenced testimony appears to refer to past operations of Oroville Reservoir rather than changes in operation as part of the proposed DCP. Furthermore, regardless of the reason for any changes in operation of Oroville Reservoir, such changes could affect operation of the proposed North Delta intakes and the associated impacts. Therefore, the subject matter of the testimony is relevant and the objection to the testimony on this basis is overruled.

		disprove any disputed fact that is of consequence to the determination of the action"].) If the DCP were constructed, DWR may be more able to export larger volumes of water out of the Delta more regularly. The agency's past practice of aggressively managing State Water Project-related reservoir facilities is relevant in assessing the potential impacts of water exports to result from the DCP since reservoir operations inform flows in the rivers supplying the Delta and sustaining fish species.	
6. Move to strike SC-1E, p. 3:14-24.	Lack of foundation. (See case law above.)	Foundation is established here both by way of Ms. Des Jardins' qualifications and by reference to citations throughout SC-1E.	☐ Sustained ☒ Overruled See above, response to Objection No. 4.

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
	The witness did not provide citations for the referenced written testimony.		
7. Move to strike SC-1E, p. 3:25-4:9.	Irrelevant. (See case law above.) The Bureau of Reclamation is not a party to this hearing, and the scope of the hearing is restricted to the Delta Conveyance Project.	DWR's objection is without merit. As above, the lines objected to here simply provide a roadmap to testimony provided elsewhere in Ms. Des Jardins' testimony. Nevertheless, to the extent DWR here objects to the testimony referenced therein, its objection is also without merit. As noted, "[a]ny relevant evidence [must] be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over	☐ Sustained ☒ Overruled The Bureau of Reclamation <u>is</u> a party to this hearing. (2024-12-13 Ruling on Party Status, pp. 1-2.) Changes in operation of the SWP, including changes resulting from coordinated operations of the SWP and CVP, could affect impacts of the proposed operations of the proposed North Delta intakes. Therefore, the subject matter of the testimony is relevant and the objection to the testimony on this basis is overruled.

		objection in civil actions." (Govt. Code, § 11513(c).) Here, information regarding the 2018 Addendum to the Coordinated Operating Agreement between DWR and the U.S. Bureau of Reclamation is relevant to this proceeding. Any change in the State Water Project's points of diversion will impact how the Central Valley Project and State Water Project coordinate water deliveries. The testimony referenced in the paragraph objected to is relevant to whether the DCP would contribute to water supply shortages in the Delta and how the DCP (and State Water Project overall) would operate. (*See* Evid. Code § 210 [evidence is "[r]elevant" if it speaks to the "credibility of a witness or hearsay declarant" or has "any tendency in reason to prove or	

		disprove any disputed fact that is of consequence to the determination of the action"].)	
8. Move to strike SC-1E, p. 4:10-15.	Irrelevant. (See case law above.) The Bureau of Reclamation is not a party to this hearing, and the scope of the hearing is restricted to the Delta Conveyance Project. Calls for speculation.	DWR's objection is without merit. As above, the lines objected to here simply provide a roadmap to testimony provided elsewhere in Ms. Des Jardins' testimony. Nevertheless, to the extent DWR here objects to the testimony referenced therein, its objection is also without merit. As noted, "[a]ny relevant evidence [must] be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions." (Govt. Code, §	☐ Sustained ☒ Overruled The Bureau of Reclamation is a party to this hearing. (2024-12-13 Ruling on Party Status, pp. 1-2.) The hearing officer and the Board are competent to disregard those portions of the testimony that may be sufficiently speculative, in light of the evidentiary record as a whole, to lack probative value or be irrelevant to the hearing issues. The extent to which the testimony may lack a reasonable factual foundation, and may be speculative as a result, will be considered by the hearing officer and the Board in determining the weight to be afforded the testimony.

		11513(c).) Recent, relevant history regarding how "Voluntary Agreement" regimes in similar circumstances impacted the U.S. Bureau of Reclamation's ability to meet water quality objectives is relevant to this proceeding insofar as the DCP, at least as currently contemplated, could result in similar outcomes. (S*ee also* Evid. Code § 210 [evidence is "[r]elevant" if it speaks to the "credibility of a witness or hearsay declarant" or has "any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action"].)	
9. Move to strike SC-1E, p. 4:16-25.	Lack of foundation. (See case law above.) No citations provided. Inadmissible opinion testimony by expert witness.	DWR's objection is without merit. As above, the lines objected to here simply provide a roadmap to testimony provided elsewhere in	☐ Sustained, in part ☒ Overruled See above, response to Objection No. 4.

	Ms. Des Jardins lacks the requisite expertise to opine on the issues raised in the referenced written testimony.	Ms. Des Jardins' testimony. Nevertheless, to the extent DWR here objects to the testimony referenced therein, its objection is also without merit. Citations to the assertions summarized in the lines objected to here are provided elsewhere in SC-1E. To the extent DWR here objects to Ms. Des Jardins' qualifications to speak to the topics referenced in the lines objected to here, its objection is misguided for the same reasons provided *supra*.	

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
10. Move to strike SC-1E, p. 5:4-10.	Lack of foundation. (See case law above.) Irrelevant. (See case law above.) No citations provided. Inadmissible opinion testimony by expert witness or improper lay testimony as witness does not have any water operation or contract experience. Ms. Des Jardins lacks the requisite expertise to opine on the issues raised in the referenced written testimony. WaterFix is a separate and [distinct] project. Furthermore, the issue regarding the State Water Project contracts and allocation are not relevant to this proceeding.	The testimony objected to here is relevant insofar as it provides context regarding the relevance of Ms. Des Jardins' past testimony in the WaterFix proceeding, including her recitation of DWR's history of water allocations. (Govt. Code, § 11513(c); *see also* Evid. Code § 210 [evidence is "[r]elevant" if it speaks to the "credibility of a witness or hearsay declarant" or has "any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action"].) DWR's other objections here are without merit for the same reasons provided in response to Objection No. 4.	☐ Sustained, in part ☒ Overruled See above, response to Objection No. 4. In addition, demand for water exported through the Delta is relevant as to the public interest in the proposed Project. To the extent that elements of the testimony are irrelevant to this proceeding, the hearing officer and the Board will disregard those portions.

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
11. Move to strike SC-1E, p. 5:12-6:20-6.	Lack of foundation. (See case law above.) Irrelevant. (See case law above.) No citations provided. Inadmissible opinion testimony by expert witness or improper lay testimony as witness does not have any water operation or contract experience. Ms. Des Jardins lacks the requisite expertise to opine on the issues raised in the referenced written testimony.	DWR's objections here are also without merit. Ms. Des Jardins is more than sufficiently qualified to review DWR's own reports and information and relevant climate change reports and recite recent circumstances relevant to the DCP proposal at issue here. As noted, though Ms. Des Jardins is not a professional hydrologist by trade, she has experience with hydrologic analysis and has, in fact, undertaken hydrologic studies. And her background in physics and complex systems analysis directly informs her analysis of large hydrologic systems, like the Delta and its watersheds. (Evid. Code § 720.) Further, though Ms. Des Jardins does not have a professional background operating or siting water diversion facilities or preparing or negotiating	☐ Sustained ☒ Overruled The objection is construed as applicable to SC-1E, p. 5:12-6:20. See above response to Objection No. 4. In addition, although Ms. Des Jardins does not have specific education or training related to hydrology, Ms. Des Jardins has education and experience in complex systems analysis which she has applied to the topics of climate change and hydrology.

		water contracts, she has over one decade of experience reviewing and analyzing State Water Project and Central Valley Project contracts and allocations in collaboration with biologists, engineers, and geologists, and has testified to these issues in past, similar proceedings before this Board. Her past testimony and other agencies' reliance on that testimony is testament to her aptitude to analyze the topics covered in her testimony. To the extent DWR objects that no citations were provided in the lines objected to here, its objection is without merit. The lines cited include references to several exhibits identified in the reference list provided in SC-1E and offered as testimony in this proceeding, including SC-24, SC-25, SC-26, and SC-27.	

12. Move to strike SC-1E, p. 6:21-7:13.	Lack of foundation. (See case law above.) Irrelevant. (See case law above.) Hearsay. (See case law above.) Inadmissible opinion testimony by expert witness or improper lay testimony as witness does not have any water operation or contract experience. Ms. Des Jardins lacks the requisite expertise to opine on the issues raised in the referenced written testimony. Witness is not an expert and cannot rely on comments submitted by CSPA in a wholly separate matter (2020 LTO DEIR).	DWR's objections here are without merit. Ms. Des Jardins is more than qualified to explain that Assemblymember Gray called for an audit of DWR's water allocation operations and explain what the audit focused on. (Evid. Code § 720.) The testimony objected to here is relevant to this proceeding insofar as it underscores DWR's past practice of overallocation and the impact of that overallocation on the Delta. (Govt. Code § 11513(c); *see also* Evid. Code § 210 [evidence is "[r]elevant" if it has "any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action"].).) To the extent DWR objects that the water audit itself is hearsay, its objection is likewise misguided. (Evid. Code § 452(c) [hearsay exemption for "official act[s]"	☐ Sustaine ☒ Overruled See above. It is unclear to which portion of the testimony DWR objects as hearsay. The referenced statements by Assemblymember Adam Gray seem to be offered only to show that the statements were made, and not necessarily for their truth. Regardless, hearsay is admissible in administrative proceedings for the purpose of supplementing or explaining other evidence. (Gov. Code § 11513, subd. (d))

		of a State of California]; Govt. Code § 11513(d) [admissible because it is the "sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs"].)	

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
13. Move to strike SC-1E, p. 7:15-8:8.	Lack of foundation. (See case law above.) Irrelevant. (See case law above.) Inadmissible opinion testimony by expert witness or improper lay testimony as witness does not have any water operation or contract experience. Ms. Des Jardins lacks the requisite expertise to opine on the issues raised in the referenced written testimony. The witness is not a climate change expert and is simply reading and summarizing studies she did not conduct.	DWR's objection here is without merit for many of the same reasons discussed *supra*. Ms. Des Jardins is an expert on complex systems analysis, particularly as it relates to climate change and droughts. Her past testimony and other agencies' reliance on her testimony is testament to that. She has not claimed here that she published any primary climate change-related research in peer-reviewed journals. She conducted a comprehensive literature review and then summarized and synthesized the research she reviewed, all of which was peer-reviewed and much of which was published by some of the leading climate scientists anywhere. Her academic background in nonlinear dynamics and chaos theory directly informs and underscores her review and synthesis analysis here.	☐ Sustained ☒ Overruled Past and future changes in climate, and modeling to assess the impact of those changes, are relevant to the hearing issues in this proceeding. Ms. Des Jardins has education and experience in complex systems analysis, which she has applied to the topic of climate change and droughts in conducting a review of peer-reviewed scientific literature on the topic. The hearing officer and the Board will consider Ms. Des Jardins' testimony in light of other supporting evidence

		That said, Ms. Des Jardins has recently undertaken primary climate change related-research that she will be publishing. The testimony objected to here is relevant to this proceeding since it relates to the climatic conditions that the DCP would face if approved and constructed. Moreover, the testimony objected to here relates to DWR's climate-related modelling presented in this proceeding. (Govt. Code, § 11513(c); *see also* Evid. Code § 210 [evidence is "[r]elevant" if it has "any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action"].)	and citations provided by Ms. Des Jardins to other evidence in the record for this proceeding, and will consider DWR's objections in determining the weight to be afforded the testimony in the context of the record as a whole.

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MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
14. Move to strike SC-1E, p. 8:10-9:26.	Lack of foundation. (See case law above.) Irrelevant. (See case law above.) Hearsay. (See case law above.) Inadmissible opinion testimony by expert witness or improper lay testimony as witness does not have any water operation or contract experience. Ms. Des Jardins lacks the requisite expertise to opine on the issues raised in the referenced written testimony. The witness relies on hearsay from comment letter to a wholly different process. Ms. Jardin makes opinions about the COA which is an agreement between DWR and USBR and not at issue in this case.	DWR's objections are baseless. As noted, "[a]ny relevant evidence [must] be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions." (Govt. Code, § 11513(c).) Here, information regarding the 2018 Addendum to the Coordinated Operating Agreement between DWR and the U.S. Bureau of Reclamation is relevant to this proceeding. Any change in the State Water Project's points of diversion will impact how the Central Valley Project and State Water Project coordinate water deliveries. The testimony referenced in the paragraph objected to is relevant to whether the DCP would contribute to water supply shortages in the Delta and how the DCP (and State Water	☐ Sustained ☒ Overruled See above response to Objection No. 4. To the extent that elements of the testimony are irrelevant to this proceeding, which addresses solely impacts associated with the proposed changes in points of diversion of the SWP water rights, the hearing officer and the Board will disregard those portions.

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		Project overall) would operate. (*See* Evid. Code § 210 [evidence is "[r]elevant" if it speaks to the "credibility of a witness or hearsay declarant" or has "any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action"].) To the extent DWR here objects to Ms. Des Jardins' qualifications as an expert to testify to this issue, it likewise confuses the relevant standards. Though Ms. Des Jardins does not have a professional background operating or siting water diversion facilities or preparing or negotiating water contracts, she has over a decade of experience reviewing and analyzing State Water Project and Central Valley Project contracts and allocations in collaboration with biologists, engineers, and geologists, and has testified to these issues in past, similar proceedings before this Board.	

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15. Move to strike SC-1E, p. 10:3-21.	Lack of foundation. (See case law above.) Irrelevant. (See case law above.) Hearsay. (See case law above.) Inadmissible opinion testimony by expert witness or improper lay testimony as witness is not a fisheries biologist. Ms. Des Jardins lacks the requisite expertise to opine on the issues raised in the referenced written testimony. The witness relies on hearsay from comment letter to a wholly different process.	DWR's objection here is baseless for the same reasons stated in response to Objection No. 3. This information is relevant insofar as it relates to the impacts the DCP could (or will) have on the Delta ecosystem. (Evid. Code § 210.) To the extent DWR objects that Ms. Des Jardins is not qualified to opine on this topic, its objection is misguided. Ms. Des Jardins is not offering opinions on fish biology; she is addressing the modeling and operational assumptions that determine water availability, areas within her demonstrated expertise.	☐ Sustained. ☒ Overruled See above response to Objection No. 4. The basis for DWR's hearsay objection is unclear. Sierra Club has offered CSPA et al.'s 2020 comment letter on the LTO DEIR into the evidentiary record as Exhibit SC-21, to which DWR has not objected.

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
16. Move to strike SC-1E, p. 10:23-11:25.	Lack of foundation. (See case law above.) Irrelevant. (See case law above.) Hearsay. (See case law above.) Inadmissible opinion testimony by expert witness or improper lay testimony. Ms. Des Jardins lacks the requisite expertise to opine on the issues raised in the referenced written testimony. The witness relies on hearsay from comment letter to a wholly different process. Furthermore, the testimony is irrelevant as it relates to the Voluntary Agreements, which are not part of the DCP.	DWR's objection here is without merit for the same reasons articulated in response to Objection No. 8. The Voluntary Agreements are directly relevant because they represent the regulatory framework DWR claims will govern Delta operations. DWR cannot simultaneously rely on the Voluntary Agreements to demonstrate environmental protection while excluding evidence about whether those agreements will actually be implemented or are adequate.	☐ Sustained ☒ Overruled. See above response to Objection No. 4. Again, DWR's hearsay objection is unclear. The documents summarized in the testimony have been offered into the evidentiary record. The Voluntary Agreements are relevant to Delta outflow requirements and compliance of operation of the proposed North Delta intakes with amendments to the Bay-Delta Plan, which is a hearing issue.

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
17. Move to strike SC-1E, p.11:27-12:11.	Lack of foundation. (See case law above.) Inadmissible opinion testimony by expert witness or improper lay testimony. Ms. Des Jardins lacks the requisite expertise to opine on the issues raised in the referenced written testimony. The witness relies on hearsay from comment letter to a wholly different process. Furthermore, the testimony is irrelevant as it relates to the Voluntary Agreements, which are not part of the DCP.	Ms. Des Jardin is more than qualified to provide the testimony asserted herein for the reasons articulated *supra*.	☐ Sustained ☒ Overruled See above response to Objection No. 4. DWR's objections based on hearsay and relation to the Voluntary Agreements do not appear to apply to the testimony objected to.

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
18. Move to strike SC-3.	Corrected versions of these exhibits were submitted. The old versions should not be introduced.	Sierra Club confirms the corrected version of SC-3 should be moved into the record.	☒ Sustained ☐ Overruled
19. Move to strike SC-8.	Lack of foundation (See case law above.) Irrelevant. (See case law above.) The WaterFix project is not at issue in this hearing.	DWR's objections are baseless. Though it is certainly true, as DWR points out, that the WaterFix project is not at issue herein, the agency's historical and ongoing water supply challenges regarding the State Water Project are relevant to this proceeding. The paragraph objected to here speaks to Ms. Des Jardins' past testimony before this Board (from the WaterFix proceeding) regarding the history of DWR's overallocation of water supply resources. This history is as true and relevant today as it was in 2017 when Ms. Des Jardins initially testified to it. (Govt. Code, § 11513; *see also* Evid. Code § 210 [evidence is "[r]elevant" if it speaks to the "credibility of a witness or hearsay declarant" or has "any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action"].)	☐ Sustained ☒ Overruled. Although the testimony was submitted in the water right hearing for the proposed WaterFix Project, the testimony related to operation of the State Water Project is relevant to the impact of the proposed DCP and the public interest in State Water Project operations with the DCP generally. See above response to Objection No. 4.

20. Move to strike SC-23.	Lack of foundation (See case law above.) (See DWR Transcript, 9/22/2025: p. 150:12-151:1.)	Foundation for this exhibit is established through SC-8 (Ms. Des Jardins' Statement of Qualifications) and elsewhere herein, the written testimony explaining the relevance and basis for each exhibit; and the relaxed evidentiary standards applicable to administrative hearings under Government Code § 11513(c). Climate change analyses prepared by a researcher who has presented to the National Academy of Sciences and who has a track record of whistle-blowing on DWR's failure to incorporate climate change into State Water Project planning constitute precisely the "sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs."	☐ Sustained ☒ Overruled See responses to Objection Nos. 4 and 13.
21. Move to strike SC-24.	Lack of foundation (See case law above.) (See DWR Transcript, 9/22/2025: p. 150:12-151:1.)	See response to Objection No. 20.	☐ Sustained ☒ Overruled See response to Objections Nos. 4 and 13.

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
22. Move to strike SC-25.	Lack of foundation (See case law above.) (See DWR Transcript, 9/22/2025: p. 150:12-151:1.)	See response to Objection No. 20.	☐ Sustained ☒ Overruled See response to Objection Nos. 4 and 13.
23. Move to strike SC-26.	Lack of foundation (See case law above.) (See DWR Transcript, 9/22/2025: p. 150:12-151:1.)	See response to Objection No. 20.	☐ Sustained ☒ Overruled See response to Objection Nos. 4 and 13.
24. Move to strike SC-27.	Lack of foundation (See case law above.) (See DWR Transcript, 9/22/2025: p. 150:12-151:1.)	See response to Objection No. 20.	☐ Sustained ☒ Overruled See response to Objection Nos. 4 and 13.
25. Move to strike SC-28.	Lack of foundation (See case law above.) (See DWR Transcript, 9/22/2025: p. 150:12-151:1.)	See response to Objection No. 20.	☐ Sustained ☒ Overruled See response to Objection Nos. 4 and 13.
26. Move to strike SC-29.	Lack of foundation (See case law above.) (See DWR Transcript, 9/22/2025: p. 150:12-151:1.)	See response to Objection No. 20.	☐ Sustained ☒ Overruled See response to Objection Nos. 4 and 13.

ATTACHMENT 5
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