

June 29, 2017

VIA ELECTRONIC MAIL

Tam Doduc, Hearing Chair and Co-Hearing Officer
Felicia Marcus, Co-Hearing Officer
State Water Resources Control Board
1001 I Street
Sacramento, California 95814
CWFhearing@waterboards.ca.gov

Re: Sacramento Valley Water Users' Subpoenas *Duces Tecum*

Dear Hearing Chair Doduc, Hearing Officer Marcus, and California WaterFix Hearing Staff:

The Sacramento Valley Water Users ("SVWU") submit the attached subpoenas *duces tecum* requesting the U.S. Bureau of Reclamation and California Department of Water Resources ("DWR") to produce documents and modeling files referenced in the Biological Opinions ("BiOps") issued by the United States Fish & Wildlife Service ("USFWS") and the National Marine Fisheries Agency ("NMFS") on June 26, 2017.

As described in the BiOps, the requested documents and files reflect recent changes to the proposed project that must be evaluated in the context of the WaterFix Change Petition proceedings. The changes to the construction and operation of WaterFix may result in new impacts to legal users of water that were not considered in Part 1 of the hearing. Although Part 1 of the hearing is nearing completion, the Hearing Notice acknowledges that issues arising out of the Endangered Species Act processes may be revisited in Part 2. The requested information and documents reflect changes to the project description that have a material bearing on the potential impacts of the WaterFix Project and must therefore be produced by DWR and Reclamation.

The SVWU request that Reclamation and DWR upload the documents and modeling files to the WaterFix FTP site by 5:00 p.m. on Friday, July 7, 2017, or by a date the Hearing Officers determine to be reasonable. To facilitate this production and ensure access for all parties, the SVWU respectfully ask that the Hearing Staff set up a dedicated folder on the WaterFix FTP site for the subpoenaed records.

Please contact my colleague Meredith Nikkel at mnikkel@downeybrand.com or 916-520-5211 if you have any questions about the subpoena or our request. Thank you.

Very truly yours,

DOWNEY BRAND LLP



David R.E. Aladjem
Kevin M. O'Brien

SOMACH, SIMMONS & DUNN, PC

/s/ Andrew M. Hitchings

Andrew M. Hitchings

/s/ Kelley M. Taber

Kelley M. Taber

/s/ Aaron A. Ferguson

Aaron A. Ferguson

BARTKIEWICZ, KRONICK & SHANAHAN

/s/ Alan Lilly

Alan Lilly

/s/ Ryan Bezerra

Ryan Bezerra

MINASIAN, MEITH, SOARES, SEXTON & COOPER, LLP

/s/ Dustin C. Cooper

Dustin C. Cooper

STOEL RIVES LLP

/s/ Wesley A. Miliband

Wesley A. Miliband

PLACER COUNTY WATER AGENCY

/s/ Daniel Kelly

Daniel Kelly

Encls

cc: CA WaterFix Service List

BEFORE THE STATE WATER RESOURCES CONTROL BOARD OF THE STATE OF CALIFORNIA

ATTORNEY OR PARTY WITHOUT ATTORNEY REQUESTING SUBPOENA <i>(name, address, and telephone no.):</i> Kevin M. O'Brien David R.E. Aladjem Meredith E. Nikkel Downey Brand LLP 621 Capitol Mall, 18th Floor Sacramento, CA 95814 REPRESENTING: Sacramento Valley Water Users ("SVWU")	FOR STATE WATER BOARD USE ONLY
TITLE OF THE PROCEEDING: <p style="text-align: center;"><i>California WaterFix Change Petition Hearing</i></p>	
<input type="checkbox"/> SUBPOENA <input type="checkbox"/> RE HEARING <input checked="" type="checkbox"/> SUBPOENA DUCES TECUM <input type="checkbox"/> RE DEPOSITION	

THE PEOPLE OF THE STATE OF CALIFORNIA, TO *(name)*: **California Department of Water Resources**

1. YOU ARE ORDERED TO APPEAR AS A WITNESS in this proceeding as follows unless you make special agreement with the person named in item 3:

a. Date:	July 7, 2017	Time:	5:00 p.m.
b. Address:	Via electronic submittal to WaterFix FTP		

2. AND YOU ARE:

- a. Ordered to appear in person. (Wat. Code, § 1080; Gov. Code, § 11450.10; Cal. Code Regs., tit. 23, § 649.6(a).)
- b. Not required to appear in person if you produce the records described in the accompanying affidavit in compliance with Evidence Code sections 1560 and 1561. (Wat. Code, § 1080; Gov. Code, § 11450.10(b); Cal. Code Regs., tit. 23, § 649.6(a).)
- c. Ordered to appear in person and to produce the records described in the accompanying affidavit. The personal attendance of the custodian or other qualified witness and the production of the original records is required by this subpoena. The procedure authorized by subdivision (b) of section 1560, and sections 1561 and 1562, of the Evidence Code will not be deemed sufficient compliance with this subpoena. (Wat. Code, § 1080; Gov. Code, § 11450.10; Cal. Code Regs., tit. 23, § 649.6(a).)

3. IF YOU HAVE ANY QUESTIONS ABOUT WITNESS FEES OR THE TIME OR DATE FOR YOU TO APPEAR, OR IF YOU WANT TO BE CERTAIN THAT YOUR PRESENCE IS REQUIRED, CONTACT THE FOLLOWING PERSON BEFORE THE DATE ON WHICH YOU ARE TO APPEAR:

a. Name: Meredith E. Nikkel	b. Telephone number: (916) 444-1000
-----------------------------	-------------------------------------

(Gov. Code, § 11450.20(a); Code Civ. Proc., § 1985.2.)

4. WITNESS FEES: You are entitled to witness fees and mileage actually traveled, both ways, as provided by law. Request them from the person who serves this subpoena or from the person named in item 3. (Wat. Code, §§ 1081, 1083, 1084; Gov. Code, §§ 11450.40, 68070 et seq.; Code Civ. Proc., §§ 1986.5, 2065.)

5. If you object to the terms of this subpoena, you may file a motion for a protective order including a motion to quash with the hearing officer assigned to your case. Motions must be made within a reasonable period after receipt of the subpoena, and shall be made with written notice to all parties, with proof of service upon all parties attached. In response to your motion, the hearing officer may make an order quashing the subpoena entirely, modifying it, or directing compliance with it, or may make any order needed to protect the parties or witnesses from unreasonable or oppressive demands, including unreasonable violations of the right to privacy. (Gov. Code, § 11450.30.) (Send motions to: The State Water Resources Control Board, Office of Chief Counsel, P.O. Box 100, Sacramento, CA 95812-0100.)

DISOBEDIENCE OF THIS SUBPOENA MAY CAUSE YOU TO BE LIABLE FOR CONTEMPT AND OTHER PENALTIES PROVIDED BY LAW

(Wat. Code, §§ 1090-1097, Gov. Code, §§ 11450.20(b), 11455.10-11455.20.)

Dated: June 29, 2017



(Handwritten signature)

(signature)

Name: Meredith E. Nikkel

Title: Counsel

Unless issued by an attorney pursuant to Code of Civil Procedure, Section 1985, subdivision (c), the original subpoena is embossed with this seal.

(See reverse for Endorsement on Subpoena, if used, and Proof of Service)

PROOF OF SERVICE OF SUBPOENA

(Gov. Code, § 11440.20; Code Civ. Proc., §§ 1987, 1987.5, 1988, 1989, 2015.3, 2015.5.)

1. I served this subpoena subpoena duces tecum and supporting affidavit by:

personally delivering a copy to the person served as follows:

a. Person served (<i>name</i>):	b. Date of delivery:
c. Address where served:	d. Time of delivery:
e. Witness fees and mileage both ways (<i>check one</i>): (1) <input type="checkbox"/> were paid. Amount: \$ _____ (2) <input type="checkbox"/> were not paid. (3) <input type="checkbox"/> were tendered to the witness's public entity employer as required by Government Code § 68097.2. The amount tendered was \$ _____	f. Fees for service. Amount: \$ _____

- delivering true copies thereof by certified mail, return receipt requested, to the address as shown below.
 delivering true copies thereof enclosed in a sealed envelope to a messenger for immediate personal delivery to the address as shown below.

Address where served:
 Served via electronic mail to the attached service list in accordance with the Hearing Notice procedures.

2. I certify that I received this subpoena subpoena duces tecum for service on _____
Date

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on:
 Date _____ at (place) _____ Signature _____
California

(For California sheriff, marshal, or constable use only)
 I certify that the foregoing is true and correct and that this certificate is executed on:
 Date _____ at (place) _____ Signature _____
California

NOTE: IF THIS SUBPOENA IS ISSUED IN CONNECTION WITH A HEARING IN AN ADJUDICATIVE PROCEEDING UNDER GOVERNMENT CODE § 11400 ET SEQ., THE ATTORNEY OR PARTY WITHOUT AN ATTORNEY REQUESTING THIS SUBPOENA MUST PROVIDE A COPY OF THE SUBPOENA TO EVERY PARTY IN THE HEARING, AND FILE A COPY WITH THE STATE WATER RESOURCES CONTROL BOARD. THE COPY PROVIDED TO THE STATE WATER RESOURCES CONTROL BOARD MUST BE ACCOMPANIED BY A CERTIFICATE OF SERVICE LISTING THE NAMES AND ADDRESSES OF PARTIES WHO WERE PROVIDED COPIES IN ACCORDANCE WITH GOVERNMENT CODE § 11440.20. (Gov. Code, § 11440.20; Cal. Code Regs., tit. 23, § 648.4(c).) (Send to: The State Water Resources Control Board, Office of Chief Counsel, P.O. Box 100, Sacramento, CA 95812-0100.)

**ENDORSEMENT ON SUBPOENA IN A PROCEEDING
OTHER THAN AN ADJUDICATIVE PROCEEDING**

Pursuant to Water Code §1086 and upon affidavit of _____ (copy attached) showing that the testimony of the witness ordered by the subpoena to appear is material and necessary to this proceeding, it is required that said witness attend this proceeding.

Dated: _____ (signature) _____
 Name: _____
 Title: _____
 State Water Resources Control Board

NOTE: This ENDORSEMENT is required if the subpoena is in connection with a proceeding other than a hearing under Government Code § 11400 and the witness is being compelled to testify at a location that is both out of the witness's county of residence and 150 miles or more from the witness's place of residence. (Wat. Code, § 1086; Cal. Code Regs., tit. 23, § 649.6(c).)

1 DOWNEY BRAND LLP
2 KEVIN M. O'BRIEN (Bar No. 122713)
3 DAVID R.E. ALADJEM (Bar No. 152203)
4 MEREDITH E. NIKKEL (Bar No. 254818)
5 621 Capitol Mall, 18th Floor
6 Sacramento, CA 95814-4731
7 Telephone: 916.444.1000
8 Facsimile: 916.444.2100
9 kobrien@downeybrand.com
10 daladjem@downeybrand.com
11 mnikkel@downeybrand.com

12 Attorneys for Protestants
13 Reclamation District 108 et al.

14 BEFORE THE CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

15 In the matter of Hearing re California
16 WaterFix Petition for Change

**AFFIDAVIT IN SUPPORT OF
SACRAMENTO VALLEY WATER
USERS' SUBPOENA *DUCES TECUM*
TO CALIFORNIA DEPARTMENT OF
WATER RESOURCES**

[Cal. Wat. Code, § 1080; Cal. Gov. Code, §
11450.10; Cal. Code Regs., tit. 23, § 649.6]

17 **I, David R.E. Aladjem, declare as follows:**

18 1. I am an attorney admitted to practice law in the State of California and attorney of record
19 for some members of the Sacramento Valley Water Users ("SVWU") in this proceeding. The
20 following matters are within my personal knowledge, and if called as a witness, I could
21 competently testify thereto.

22 2. I am informed and believe that on June 26, 2017, the United States Fish and Wildlife
23 Service ("USFWS" or the "Service") and National Marine Fisheries Service ("NMFS") each
24 released a Biological Opinion ("BiOp") regarding the California WaterFix project ("WaterFix").

25 3. The BiOps reference documents and information that contain changes to the proposed
26 action that are not reflected in the proposed action as described in the July 2016 Biological
27 Assessment for WaterFix. (See USFWS BiOp, pp. 11-12; NMFS BiOp, p. 13.) Specifically, this
28 subpoena *duces tecum* requests that the California Department of Water Resources ("DWR")

1 produce the following documents and modeling files as described in the BiOps that are within
2 DWR's possession or under its control:

- 3 a. "On May 8, 2017, Reclamation transmitted an initial package of changes to the
4 project description that have occurred since submission of the BA (Reclamation
5 2017a)." NMFS BiOp, at 9.
- 6 b. "On May 24, 2017, DWR transmitted a final package of changes to the project
7 description and reconciliation with other sections of the BA (DWR 2017). This
8 package includes, among other components, a revised adaptive management
9 program, implementation agreement, and implementation schedule; revisions to
10 timing of some construction activities; revisions to operations of the proposed
11 action; and commitment to habitat restoration." NMFS BiOp, at 9-10.
- 12 c. "On June 2, 2017, Reclamation provided correspondence identifying the May 24,
13 2017, package of changes to the project description as the final proposed action for
14 consultation (Reclamation 2017b)." NMFS BiOp, at 10.
- 15 d. A Draft Permit for Incidental Take that was issued under Section 2081(b) of the
16 California Endangered Species Act by the California Department of Fish and
17 Wildlife. Appendix A2 to the NMFS BiOp, at 3-1, n.1.
- 18 e. "Model results" and/or "sensitivity analysis" that were submitted to USFWS on
19 May 5, 2017, that purportedly "confirmed the effects of the operational updates are
20 within the range analyzed in the BA." Appendix A2 to the NMFS BiOp, at 3-81,
21 n.27; *id.* at 3-91, n.42.
- 22 f. Modeling that was performed in connection with the California Department of
23 Fish and Wildlife's draft 2081(b) Incidental Take Permit, specifically regarding
24 spring outflow criteria. Appendix A2 to the NMFS BiOp, at 3-86, n.38.
- 25 g. On May 5, 2017, "[t]he Service receive[d] from DWR revisions to the project
26 description including Guiding Principles for CWF actions and subsequent
27 consultations, changes to operations of the NDD and pulse flow protections for
28 salmonids, changes to south Delta operations in October and November, and

1 changes to delta smelt compensatory mitigation along with a new long-term
2 sensitivity analysis simulation of the PA which included some of the changes.”
3 USFWS BiOp, at 7-8.

- 4 h. On May 24, 2017, “[t]he Service receive[d] from Reclamation and DWR
5 modifications to the project description, BiOp Resolution Log, Adaptive
6 Management Framework and funding assurances.” USFWS BiOp, at 8.
- 7 i. On May 30, 2017, “[t]he Service receive[d] an email from DWR with written
8 clarifications to the longfin spring outflow criteria.” USFWS BiOp, at 8.
- 9 j. The *BiOp Resolution Log* that the BiOp indicates is included as an appendix to the
10 USFWS BiOp, but does not appear to be included. See USFWS BiOp, at 12.

11 4. Alternative 4A, the preferred alternative from the Recirculated Draft Environmental
12 Impact Report/Supplemental Draft Environmental Impact Statement for Water Fix, is the project
13 proposed by DWR and the United States Bureau of Reclamation in the WaterFix Change Petition.

14 5. Many or all of these documents appear to be dated in May and June 2017, so the
15 information and changes to the proposed action could not have been included in Alternative 4A
16 described in the Final Environmental Impact Report/Environmental Impact Statement
17 (“EIR/EIS”) for WaterFix that was released in December 2016.

18 6. The requested documents and information appear to describe changes to the proposed
19 project that, if implemented, could result in a significantly different project than the projected
20 described as Alternative 4A that is the subject of the WaterFix Change Petition.

21 7. Good cause exists for the production of documents described in paragraph 3 because the
22 nature and significance of the changes to the proposed project cannot be fully understood without
23 reviewing the requested documents and modeling files.

24 8. In addition, the documents and information requested concern the issues identified as
25 within the scope of both Part 1 and Part 2 of the Change Petition Hearing. The requested
26 documents reflect changes to the construction and operation of WaterFix that may result in
27 impacts to legal users of water that were not considered in Part 1 of the hearing. While Part 1 of
28 the hearing is nearing completion, the Notice of Public Hearing for the WaterFix Change Petition

1 explains that “issues that arise out of the [Endangered Species Act] and [California Endangered
2 Species Act] processes that have a material bearing on the issues addressed in the first part of the
3 hearing, those issues may also be revisited in the second part of the hearing.” (Notice of Petition
4 and Notice of Public Hearing for the California WaterFix Project, p. 11 (Oct. 30, 2015).) The
5 requested information and documents arise out of the federal and state Endangered Species Act
6 processes and reflect changes to the project description that may have a material bearing on the
7 issue of injury to legal users of water, which is the subject of Part 1 of the Hearing. As such, the
8 requested materials are relevant and necessary for the parties and the SWRCB to be fully apprised
9 of the potential impacts of the WaterFix Project on legal users of water and to determine whether
10 or not it may be appropriate to revisit Part 1 issues in Part 2 of the hearing.

11 9. I am informed and believe that the documents and modeling files requested in the
12 Subpoena *Duces Tecum*, served herewith, are within DWR’s possession and/or control, as they
13 were submitted during formal consultation with USFWS and NMFS regarding the WaterFix
14 project proposed by DWR.

15 I declare under penalty of perjury under the laws of the State of California that the
16 foregoing is true and correct. Executed this 30th day of June, 2017 in Sacramento, California.

17
18 By: 
19 David R.E. Aladjem
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26
27
28

BEFORE THE STATE WATER RESOURCES CONTROL BOARD OF THE STATE OF CALIFORNIA

ATTORNEY OR PARTY WITHOUT ATTORNEY REQUESTING SUBPOENA (<i>name, address, and telephone no.</i>): Kevin M. O'Brien David R.E. Aladjem Meredith E. Nikkel Downey Brand LLP 621 Capitol Mall, 18th Floor Sacramento, CA 95814 REPRESENTING: Sacramento Valley Water Users ("SVWU")	FOR STATE WATER BOARD USE ONLY				
TITLE OF THE PROCEEDING: <p align="center"><i>California WaterFix Change Petition Hearing</i></p>					
<table style="width:100%; border: none;"> <tr> <td style="width:50%; border: none;"><input type="checkbox"/> SUBPOENA</td> <td style="width:50%; border: none;"><input type="checkbox"/> RE HEARING</td> </tr> <tr> <td style="border: none;"><input checked="" type="checkbox"/> SUBPOENA DUCES TECUM</td> <td style="border: none;"><input type="checkbox"/> RE DEPOSITION</td> </tr> </table>		<input type="checkbox"/> SUBPOENA	<input type="checkbox"/> RE HEARING	<input checked="" type="checkbox"/> SUBPOENA DUCES TECUM	<input type="checkbox"/> RE DEPOSITION
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<input checked="" type="checkbox"/> SUBPOENA DUCES TECUM	<input type="checkbox"/> RE DEPOSITION				

THE PEOPLE OF THE STATE OF CALIFORNIA, TO (*name*): **United States Bureau of Reclamation**

1. YOU ARE ORDERED TO APPEAR AS A WITNESS in this proceeding as follows unless you make special agreement with the person named in item 3:

a. Date: July 7, 2017	Time: 5:00 p.m.
b. Address: via electronic submittal to WaterFix FTP	

2. AND YOU ARE:

- a. Ordered to appear in person. (Wat. Code, § 1080; Gov. Code, § 11450.10; Cal. Code Regs., tit. 23, § 649.6(a).)
- b. Not required to appear in person if you produce the records described in the accompanying affidavit in compliance with Evidence Code sections 1560 and 1561. (Wat. Code, § 1080; Gov. Code, § 11450.10(b); Cal. Code Regs., tit. 23, § 649.6(a).)
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a. Name: Meredith E. Nikkel	b. Telephone number: (916) 444-1000
------------------------------------	--

(Gov. Code, § 11450.20(a); Code Civ. Proc., § 1985.2.)

4. **WITNESS FEES:** You are entitled to witness fees and mileage actually traveled, both ways, as provided by law. Request them from the person who serves this subpoena or from the person named in item 3. (Wat. Code, §§ 1081, 1083, 1084; Gov. Code, §§ 11450.40, 68070 et seq.; Code Civ. Proc., §§ 1986.5, 2065.)

5. If you object to the terms of this subpoena, you may file a motion for a protective order including a motion to quash with the hearing officer assigned to your case. Motions must be made within a reasonable period after receipt of the subpoena, and shall be made with written notice to all parties, with proof of service upon all parties attached. In response to your motion, the hearing officer may make an order quashing the subpoena entirely, modifying it, or directing compliance with it, or may make any order needed to protect the parties or witnesses from unreasonable or oppressive demands, including unreasonable violations of the right to privacy. (Gov. Code, § 11450.30.) (Send motions to: The State Water Resources Control Board, Office of Chief Counsel, P.O. Box 100, Sacramento, CA 95812-0100.)

DISOBEDIENCE OF THIS SUBPOENA MAY CAUSE YOU TO BE LIABLE FOR CONTEMPT AND OTHER PENALTIES PROVIDED BY LAW

(Wat. Code, §§ 1090-1097; Gov. Code, §§ 11450.20(b), 11455.10-11455.20.)

Dated: June 29, 2017



 (signature)
 Name: Meredith E. Nikkel
 Title: Counsel

Unless issued by an attorney pursuant to Code of Civil Procedure, Section 1985, subdivision (c), the original subpoena is embossed with this seal.

(See reverse for Endorsement on Subpoena, if used, and Proof of Service)

PROOF OF SERVICE OF SUBPOENA

(Gov. Code, § 11440.20; Code Civ. Proc., §§ 1987, 1987.5, 1988, 1989, 2015.3, 2015.5.)

1. I served this subpoena subpoena duces tecum and supporting affidavit by:

personally delivering a copy to the person served as follows:

a. Person served (name):	b. Date of delivery:
c. Address where served:	d. Time of delivery:
e. Witness fees and mileage both ways (check one): (1) <input type="checkbox"/> were paid. Amount: \$ _____ (2) <input type="checkbox"/> were not paid. (3) <input type="checkbox"/> were tendered to the witness's public entity employer as required by Government Code § 68097.2. The amount tendered was \$ _____	f. Fees for service. Amount: \$ _____

- delivering true copies thereof by certified mail, return receipt requested, to the address as shown below.
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Address where served:
 Served via electronic mail to the attached service list in accordance with the Hearing Notice procedures.

2. I certify that I received this subpoena subpoena duces tecum for service on _____ Date

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on:
 Date _____ at (place) _____, California Signature _____

(For California sheriff, marshal, or constable use only)
 I certify that the foregoing is true and correct and that this certificate is executed on:
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NOTE: IF THIS SUBPOENA IS ISSUED IN CONNECTION WITH A HEARING IN AN ADJUDICATIVE PROCEEDING UNDER GOVERNMENT CODE § 11400 ET SEQ., THE ATTORNEY OR PARTY WITHOUT AN ATTORNEY REQUESTING THIS SUBPOENA MUST PROVIDE A COPY OF THE SUBPOENA TO EVERY PARTY IN THE HEARING, AND FILE A COPY WITH THE STATE WATER RESOURCES CONTROL BOARD. THE COPY PROVIDED TO THE STATE WATER RESOURCES CONTROL BOARD MUST BE ACCOMPANIED BY A CERTIFICATE OF SERVICE LISTING THE NAMES AND ADDRESSES OF PARTIES WHO WERE PROVIDED COPIES IN ACCORDANCE WITH GOVERNMENT CODE § 11440.20. (Gov. Code, § 11440.20; Cal. Code Regs., tit. 23, § 648.4(c).) (Send to: The State Water Resources Control Board, Office of Chief Counsel, P.O. Box 100, Sacramento, CA 95812-0100.)

**ENDORSEMENT ON SUBPOENA IN A PROCEEDING
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Pursuant to Water Code §1086 and upon affidavit of _____ (copy attached) showing that the testimony of the witness ordered by the subpoena to appear is material and necessary to this proceeding, it is required that said witness attend this proceeding.

Dated: _____ (signature) _____
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 Title: _____
 State Water Resources Control Board

NOTE: This ENDORSEMENT is required if the subpoena is in connection with a proceeding other than a hearing under Government Code § 11400 and the witness is being compelled to testify at a location that is both out of the witness's county of residence and 150 miles or more from the witness's place of residence. (Wat. Code, § 1086; Cal. Code Regs., tit. 23, § 649.6(c).)

1 DOWNEY BRAND LLP
2 KEVIN M. O'BRIEN (Bar No. 122713)
3 DAVID R.E. ALADJEM (Bar No. 152203)
4 MEREDITH E. NIKKEL (Bar No. 254818)
5 621 Capitol Mall, 18th Floor
6 Sacramento, CA 95814-4731
7 Telephone: 916.444.1000
8 Facsimile: 916.444.2100
9 kobrien@downeybrand.com
10 daladjem@downeybrand.com
11 mnikkel@downeybrand.com

12 Attorneys for Protestants
13 Reclamation District 108 et al.

14 BEFORE THE CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

15 In the matter of Hearing re California
16 WaterFix Petition for Change

**AFFIDAVIT IN SUPPORT OF
SACRAMENTO VALLEY WATER
USERS' SUBPOENA *DUCES TECUM* TO
UNITED STATES BUREAU OF
RECLAMATION**

[Cal. Wat. Code, § 1080; Cal. Gov. Code, §
11450.10; Cal. Code Regs., tit. 23, § 649.6]

17 **I, David R.E. Aladjem, declare as follows:**

18 1. I am an attorney admitted to practice law in the State of California and attorney of record
19 for some members of the Sacramento Valley Water Users ("SVWU") in this proceeding. The
20 following matters are within my personal knowledge, and if called as a witness, I could
21 competently testify thereto.

22 2. I am informed and believe that on June 26, 2017, the United States Fish and Wildlife
23 Service ("USFWS" or the "Service") and National Marine Fisheries Service ("NMFS") each
24 released a Biological Opinion ("BiOp") regarding the California WaterFix project ("WaterFix").

25 3. The BiOps reference documents and information that contain changes to the proposed
26 action that are not reflected in the proposed action as described in the July 2016 Biological
27 Assessment for WaterFix. (See USFWS BiOp, pp. 11-12; NMFS BiOp, p. 13.) Specifically, this
28 subpoena *duces tecum* requests that the United States Bureau of Reclamation ("Reclamation")

1 produce the following documents and modeling files as described in the BiOps that are within
2 Reclamation's possession or under its control:

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5 2017a)." NMFS BiOp, at 9.
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7 description and reconciliation with other sections of the BA (DWR 2017). This
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9 j. The *BiOp Resolution Log* that the BiOp indicates is included as an appendix to the
10 USFWS BiOp, but does not appear to be included. See USFWS BiOp, at 12.

11 4. Alternative 4A , the preferred alternative from the Recirculated Draft Environmental
12 Impact Report/Supplemental Draft Environmental Impact Statement for Water Fix, is the project
13 proposed by the Department of Water Resources and Reclamation in the WaterFix Change
14 Petition.

15 5. Many or all of these documents appear to be dated in May and June 2017, so the
16 information and changes to the proposed action could not have been included in Alternative 4A
17 described in the Final Environmental Impact Report/Environmental Impact Statement
18 (“EIR/EIS”) for WaterFix that was released in December 2016.

19 6. The requested documents and information appear to describe changes to the proposed
20 project that, if implemented, could result in a significantly different project than the project
21 described as Alternative 4A that is the subject of the WaterFix Change Petition.

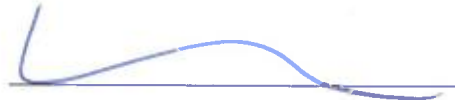
22 7. Good cause exists for the production of documents described in paragraph 3 because the
23 nature and significance of the changes to the proposed project cannot be fully understood without
24 reviewing the requested documents and modeling files.

25 8. In addition, the documents and information requested concern the issues identified as
26 within the scope of both Part 1 and Part 2 of the Change Petition Hearing. The requested
27 documents reflect changes to the construction and operation of WaterFix that may result in new
28 impacts to legal users of water that were not considered in Part 1 of the hearing. While Part 1 of

1 the hearing is nearing completion, the Notice of Public Hearing for the WaterFix Change Petition
2 explains that “issues that arise out of the [Endangered Species Act] and [California Endangered
3 Species Act] processes that have a material bearing on the issues addressed in the first part of the
4 hearing, those issues may also be revisited in the second part of the hearing.” (Notice of Petition
5 and Notice of Public Hearing for the California WaterFix Project, p. 11 (Oct. 30, 2015).) The
6 requested information and documents arise out of the federal and state Endangered Species Act
7 processes and reflect changes to the project description that may have a material bearing on the
8 issues of injury to legal users of water, which is the subject of Part 1 of the Hearing. As such, the
9 requested materials are relevant and necessary for the parties and the SWRCB to be fully apprised
10 of the potential impacts of the WaterFix Project on legal users of water and to determine whether
11 or not it may be appropriate to revisit Part 1 issues in Part 2 of the hearing.

12 9. I am informed and believe that the documents and modeling files requested in the
13 Subpoena *Duces Tecum*, served herewith, are within Reclamation’s possession and/or control, as
14 they were submitted during formal consultation with USFWS and NMFS regarding the WaterFix
15 project proposed by Reclamation.

16 I declare under penalty of perjury under the laws of the State of California that the
17 foregoing is true and correct. Executed this 29th day of June, 2017 in Sacramento, California.

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19 By: 
20 David R.E. Aladjem

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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:

Subpoena Duces Tecum to DWR; Affidavit in Support of Sacramento Valley Water Users' Subpoena Duces Tecum to California Department of Water Resources

Subpoena Duces Tecum to United State Bureau of Reclamation; Affidavit in Support of Sacramento Valley Water Users' Subpoena Duces Tecum to United States Bureau of Reclamation

Letter dated June 29, 2017 re Sacramento Valley Water Users' Subpoena Duces Tecum

to be served by **Electronic Mail** (email) upon the parties listed in Table 1 of the **Current Service List** for the California WaterFix Petition Hearing, dated June 14, 2017, posted by the State of Water Resources Control Board at 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.

For Petitioners Only:

	I caused a true and correct hard copy of the document(s) to be served by the following method of service to Suzanne Womack & Sheldon Moore, Clifton Court, L.P., 3619 Land Park Drive, Sacramento, CA 95818: Method of Service: _____
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I certify that the foregoing is true and correct and that this document was executed on June 29, 2017.

Signature: 

Name: Catharine Irvine

Title: Legal Secretary

Party/Affiliation: Downey Brand, LLP

Address: 621 Capitol Mall, Sacramento, CA 95814