

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

ATTORNEY OR PARTY WITHOUT ATTORNEY REQUESTING SUBPOENA (name, address, and telephone no.): STEPHAN C. VOLKER (CSB #63093) ALEXIS E. KRIEG (CSB #254548) JAMEY M.B. VOLKER (CSB #273544) 1633 University Avenue Berkeley, California 94703 Tel: - 510/496-0600 REPRESENTING: PCFFA/IFR	FOR STATE WATER BOARD USE ONLY				
TITLE OF THE PROCEEDING: <p align="center">HEARING REGARDING CHANGES IN WATER RIGHTS OF DWR AND RECLAMATION FOR THE CALIFORNIA WATERFIX PROJECT</p>					
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THE PEOPLE OF THE STATE OF CALIFORNIA, TO (name): **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: March 19, 2018	Time: 9:30 a.m.
b. Address: via electronic submittal to WaterFix Hearing ftp site	

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: Alexis Krieg	b. Telephone number: 510/496-0600
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(Gov. Code, § 11450.20(a); Code Civ. Proc., § 1985.2.)

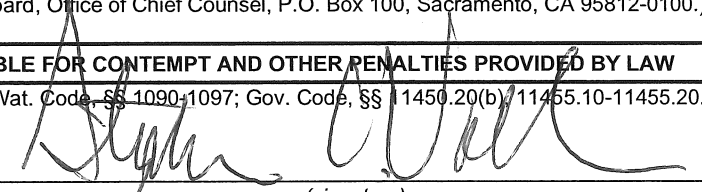
4. **WITNESS FEES:** You are entitled to witness fees and mileage actually traveled, both ways, as provided by law. Request them from the person who serves this subpoena or from the person named in item 3. (Wat. Code, §§ 1081, 1083, 1084; Gov. Code, §§ 11450.40, 68070 et seq.; Code Civ. Proc., §§ 1986.5, 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: March 2, 2018



 (signature)

Name: Stephan C. Volker

Title: Attorney



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)

1 STEPHAN C. VOLKER (CSB #63093)
ALEXIS E. KRIEG (CSB #254548)
2 JAMEY M.B. VOLKER (CSB #273544)
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5 Attorneys for Protestants
6 PACIFIC COAST FEDERATION OF FISHERMEN'S
ASSOCIATIONS, and INSTITUTE FOR
7 FISHERIES RESOURCES

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

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

ADDENDUM TO SUBPOENA DUCES
TECUM TO THE CALIFORNIA
DEPARTMENT OF WATER RESOURCES
AND AFFIDAVIT

14
15 **TO THE CUSTODIAN OF RECORDS FOR THE CALIFORNIA DEPARTMENT OF WATER**
16 **RESOURCES, BY AND THROUGH THEIR COUNSEL OF RECORD**

17 Pursuant to the provisions of Water Code section 1080 and 1100, Government Code sections
18 11450.10-11450.50 and Code of Civil Procedure sections 1985 and 1987, the California Department of
19 Water Resources is commanded to provide the following documents, communications, and electronic
20 data, as described below and in connection with the above-titled proceeding, by 9:30 am on March 19,
21 2018. Please make the electronic records available to download via the WaterFix hearing ftp site, and
22 notify Alexis Krieg by email at akrieg@volkerlaw.com upon doing so.

23 To the extent that the same documents, communications, and electronic data are also
24 subpoenaed by the City of Antioch for this proceeding, a single production via the WaterFix FTP
25 site is sufficient, and a single response to both subpoenas is sufficient, if it is legally adequate and
26 complies with the specifications below. The Pacific Coast Federation of Fishermen's Associations
27 ("PCFFA")/ Institute for Fisheries Resources ("IFR") reserves the right to file its own motions to
28 compel production in connection with this subpoena if DWR's response is legally inadequate.

1 I. DEFINITIONS

2 The terms listed below, as used in this subpoena duces tecum, are defined as follows:

3 1. The terms "person" or "persons" mean natural persons, partnerships, corporations,
4 businesses, state or federal agencies, public or private water agencies, joint powers authorities, or other
5 forms of governmental or legal entities.

6 2. The term "DWR" means the California Department of Water Resources, and each person
7 acting or purporting to act on its behalf, including but not limited to, its former or present officers,
8 employees, agents, contractors, consultants, and representatives.

9 3. The term "you" or "your" mean "DWR."

10 4. The term "CDFW" means the California Department of Fish and Wildlife, and each person
11 acting or purporting to act on its behalf, including but not limited to, its former or present officers,
12 employees, agents, contractors, consultants, and representatives.

13 5. The term "Reclamation" means the United States Bureau of Reclamation, and each person
14 acting or purporting to act on its behalf, including but not limited to, its former or present officers,
15 employees, agents, contractors, consultants, and representatives.

16 6. The term "control" means control, custody, or possession in the broadest sense possible
17 under Code of Civil Procedure section 2031.010.

18 7. The terms "communication" or "communications" mean any occurrence whereby data,
19 expressions, facts, opinions, thoughts, or other information of any kind is transmitted in any form
20 including, but not limited to, any correspondence, electronic mail, meeting, conversation,
21 memorandum, message, note, or web conference on the Internet.

22 8. The terms "relating to" or "related to" shall be construed in the broadest possible sense and
23 shall mean, without limitation, pertaining to, regarding, concerning, comprising, constituting, in
24 connection with, reflecting, respecting, referring to, stating, describing, recording, noting, embodying,
25 containing, mentioning, studying, analyzing, discussing or evaluating, and as defined in Black's Law
26 Dictionary (5th ed. 1979), p. 1158.

27 9. The terms "document" or "documents" encompass all physical and/or electronic documents
28 within your control and include all writings as defined in section 250 of the California Evidence Code,

1 and shall include, but not be limited to technical, legal, and other memoranda, opinions, summaries,
2 notes, work documents, spreadsheets, powerpoints, reports, studies, analyses, evaluations, manuals,
3 schematics, plans or other engineering drawings, maps, contracts, agreements, document repositories
4 and things similar to any of the foregoing, whether sent or received, including drafts.

5 10. The term “electronic data” shall include, but not be limited to, data sets, computer code,
6 input and output parameter sets, and linked data or metadata.

7 11. The term “publicly distributed” refers to the publication or publicly noticed distribution of
8 a document, communications, or electronic data as defined herein, via the internet, or other method of
9 access available to the general public. This term does not include documents only available on internet
10 sites with passcodes or on inspection in offices.

11 12. The term “WaterFix Project” encompasses the project known as the WaterFix, the Bay
12 Delta Conservation Plan, and the Delta Habitat Conservation and Conveyance Program, including any
13 new State Water Project (“SWP”) diversion, conveyance, and storage facilities in the Sacramento
14 Delta. The term “WaterFix Project” also encompasses the planning for operation of said new facilities
15 in coordination with the existing SWP and Central Valley Project (“CVP”) facilities.

16 13. The term “provided for the WaterFix Hearing,” shall mean served on WaterFix Hearing
17 parties and/or uploaded to the WaterFix Hearing ftp site. It does not include documents,
18 communications, or electronic data only referred to or incorporated by reference.

19 14. The term, “Reinitiation of Consultation on the Coordinated Long-term Operation of the
20 Central Valley Project and the State Water Project” means the NEPA process begun on August 2, 2016,
21 when Reclamation requested reinitiation of Endangered Species Act Section 7 consultation with the
22 United States Fish and Wildlife Service and National Marine Fisheries Service on the Coordinated
23 Long-Term Operation of the CVP and SWP, and any related NEPA processes.

24 15. Definitions for water industry or regulatory process terms contained herein are to be
25 construed broadly. Where the water industry or regulatory definition set forth herein does not coincide
26 precisely with your definition, the question, inquiry or production request should be responded to or
27 answered by using the definition that you apply and/or recognize in your usage of the term, and you
28 should further document your definition in the response. Non-industry or non-regulatory process

1 definitions should be applied as defined herein.

2 II. INSTRUCTIONS

3 1. The time period covered by this subpoena is from the dates indicated below, up to five days
4 before your full compliance with this subpoena. All documents, communications and electronic data
5 relating to this time period, and not publicly distributed as of the date of this subpoena are to be
6 produced, regardless of whether the documents came into existence before or during this period.

7 2. Your response to the subpoena should include a declaration or affidavit, pursuant to section
8 1561 of the Evidence Code. It should state that a diligent search for all requested documents,
9 communications and electronic data has been conducted and that the affiant or declarant oversaw the
10 search or otherwise monitored and reviewed the search sufficiently to be able to represent under oath
11 that such a search was conducted. It should be signed under oath by the person most knowledgeable
12 about the documents, communications and electronic data and your efforts to comply with the
13 subpoena. If different people are the most knowledgeable about portions of the search each should sign
14 an affidavit or declaration identifying the category in the request for documents, communications and
15 electronic data for which that person is the most knowledgeable.

16 3. Unless otherwise indicated, for any document, communications, or electronic data stored in
17 a computer, including all electronic mail messages, you should produce the document,
18 communications, or electronic data in the original electronic file format in which it was created,
19 together with instructions and all other materials necessary to use or interpret the data. Electronic mail
20 messages should be provided, even if only available on backup or archive. Computer files, other than
21 those with common file extensions (e.g., .doc, .docx, .xls, .xlsx, .pdf, .zip, etc.) should be accompanied
22 by (a) an identification of the software needed to open and view the documents or (b) a copy of the
23 software needed to open and view the document.

24 4. For all documents, communications, or electronic data for which you submit copies
25 (physical or electronic copies if the original was on paper, and, if the original was in electronic format,
26 in the same electronic medium as the original) such copies should be accompanied by an affidavit
27 stating that the copies of all types of documents, communications, or electronic data are true, correct,
28 and complete copies of the original documents, communications, or electronic data. If there is in your

1 possession, custody or control no original, but only a copy thereof, then you should produce a true and
2 legible copy of each such document, communication, or electronic data, in the form in which it is
3 maintained.

4 5. If any documents, communications, or electronic data are responsive to this subpoena and
5 are in your control, but are not in your possession or custody, in addition to obtaining and producing the
6 document, identify the person who had possession or custody of the document, and that person's
7 telephone number and current business and residence addresses.

8 6. If any documents, communications, or electronic data subpoenaed are no longer in your
9 possession, custody, control, or care, you should provide a written statement identifying the documents,
10 communications, or electronic data with specificity, stating whether they are lost, missing, destroyed,
11 transferred to others, or otherwise disposed of. The written statement should also identify the person
12 who transferred or disposed of the documents, communications, or electronic data, explain the
13 circumstances and authorization for the transfer or disposal, and the approximate date of the
14 disposition.

15 7. All documents, communications, or electronic data provided in response to this subpoena
16 should be complete and unredacted, submitted as found in your files.

17 8. All documents, communications, or electronic data produced pursuant to this subpoena
18 should be identified according to the category in the subpoena to which it is responsive. In lieu of
19 indicating on each document, communications, or electronic data the category to which it is responsive,
20 on the date set for production, you may instead provide an index if you provide it in electronic form
21 (such as a computerized spreadsheet in Excel or a Word or WordPerfect document set up in a table
22 format) of all documents you produce, as long as this index shows the request(s) to which the
23 documents, communications, or electronic data are responsive. Responsive documents from each
24 person's files should be produced together, in electronic file directories, if provided as an electronic
25 file, or in boxes, if provided as paper copies. Indicate in the responses the request(s) to which they are
26 responsive.

27 9. For documents produced in spreadsheets or tables, include in the declaration or affidavit
28 the identification of the fields and codes and a description of the information contained in each coded

1 field.

2 10. The requests contained in this subpoena shall be deemed to include a request for all
3 relevant documents, communications, or electronic data in the personal files of all your officers,
4 employees, agents and representatives, including independent contractors

5 11. Whenever necessary to bring within the scope of this subpoena documents,
6 communications, or electronic data that might otherwise be construed as outside its scope, the use of
7 the verb in any tense shall be construed, as the use of that verb in all other tenses, and the singular shall
8 include the plural, and vice versa, so as to make this subpoena broadly inclusive.

9 III. DOCUMENTS TO BE PRODUCED

10 A. CURRENT WATERFIX PROJECT INFORMATION

11 1. All documents under DWR's control related to the engineering design or construction of
12 the WaterFix Project since the Final Draft Conceptual Engineering Report was issued on July 1, 2015
13 (Exhibit DWR -212, p. 1), not publicly distributed or provided for the WaterFix Hearing.

14 2. All documents under DWR's control related to the WaterFix Project's compliance with the
15 Clean Water Act or Porter-Cologne Act, including, but not limited to, disposal of "reusable tunnel
16 material," material from dredging of Clifton Court Forebay, or decant liquids from same, expected to
17 be generated by construction of the WaterFix Project, since the Final Draft Conceptual Engineering
18 Report was issued on July 1, 2015 (Exhibit DWR-212, p. 1), not publicly distributed or provided for the
19 WaterFix Hearing.

20 3. All documents under DWR's control related to property acquisition for construction of the
21 WaterFix Project, not publicly distributed or provided for the WaterFix Hearing, since the 2014 Draft
22 Design and Construction Enterprise CM1 Property Acquisition Management Plan (Exhibit LAND-69).

23 4. All communications under DWR's control with John Bednarski related to the WaterFix
24 Project's engineering design, construction, property acquisition, Clean Water Act compliance, and
25 Porter-Colonge Act compliance, since the Final Draft Conceptual Engineering Report was issued on
26 July 1, 2015 (Exhibit DWR-212, p.1) not publicly distributed or provided for the WaterFix Hearing.

27 5. All Documents and Electronic Data under DWR's control related to operational scenarios
28 for the WaterFix Project since the Acting Director for DWR signed the Certification of the WaterFix

1 Final EIR/EIS on July 21, 2017 (Exhibit SWRCB-109, p. 1), not publicly distributed or provided for
2 the WaterFix Hearing.

3 6. All communications under DWR's control with Gwen Bucholz related to the operational
4 scenarios for the WaterFix Project since the Acting Director for DWR signed the Certification of the
5 WaterFix Final EIR/EIS on July 21, 2017 (Exhibit SWRCB-109, p. 1).

6 7. All communications under DWR's control with Erik Reyes related to the operational
7 scenarios for the WaterFix Project since the Acting Director for DWR signed the Certification of the
8 WaterFix Final EIR/EIS on July 21, 2017 (Exhibit SWRCB-109, p. 1).

9 8. All communications under DWR's control with John Leahigh related to the operational
10 scenarios for the WaterFix Project since the Acting Director for DWR signed the Certification of the
11 WaterFix Final EIR/EIS on July 21, 2017 (Exhibit SWRCB-109, p. 1).

12 9. All communications under DWR's control with Aaron Miller related to the operational
13 scenarios for the WaterFix Project since the Acting Director for DWR signed the Certification of the
14 WaterFix Final EIR/EIS on July 21, 2017 (Exhibit SWRCB-109, p. 1).

15 10. All documents, communications and electronic data under DWR's control related to
16 CALSIM II modeling of the CWF H3+ operational scenario submitted for Part 2 of the WaterFix
17 Hearing, particularly including all spreadsheets and technical memoranda related to technical review of
18 the modeling, not publicly distributed or provided for the WaterFix Hearing.

19 **B. NON-DISCLOSURE POLICY**

20 1. All documents relating to DWR's designation of engineering and operational
21 specifications, or designation of documents and electronic data related to operational scenarios,
22 hydrologic modeling, and impact assessments for the SWP, Bay-Delta Conservation Plan or WaterFix
23 Project as confidential, since the Bay-Delta Conservation Plan Memorandum of Agreement was signed
24 on March 12, 2009. Exhibit SDWA-157, p. 13-15. To the extent that there were confidentiality
25 designations for the above specified information, already in effect on March 12, 2009, those documents
26 are also requested.

1 **C. REINITIATION OF CONSULTATION ON THE COORDINATED LONG-TERM**
2 **OPERATION OF THE CENTRAL VALLEY PROJECT AND THE STATE WATER**
3 **PROJECT**

4 1. All documents and electronic data under DWR's control related to the reinitiation of
5 consultation on the coordinated long-term operation of the CVP and the SWP, since the Director for
6 DWR signed the Memorandum of Understanding for the Reinitiation of Consultation on the
7 Coordinated Long-term Operation of the CVP and the SWP on December 29, 2016, including, but not
8 limited to potential CVP and SWP long-term operations with the WaterFix North Delta diversions.

9 2. All communications between DWR and Reclamation, under DWR's control, related to the
10 reinitiation of consultation on the coordinated long-term operation of the CVP and SWP, since the
11 acting director for DWR signed the incidental take permit for the WaterFix Project on July 27, 2017.
12 Exhibit SWRCB-107, p. 232.

13 3. All communications between DWR and CDFW, under DWR's control, related to the
14 reinitiation of consultation on the coordinated long-term operation of the CVP and SWP, since the
15 acting director for DWR signed the incidental take permit for the WaterFix Project on July 27, 2017.
16 Exhibit SWRCB-107, p. 232.

17 **D. STATE WATER RESOURCES CONTROL BOARD**

18 1. All communications under DWR's control between DWR and staff or Board members of
19 the State Water Resources Control Board (collectively "SWRCB"), and all documents shared with staff
20 or Board members of the SWRCB related to the WaterFix Hearing, the WaterFix Project, the
21 SWRCB's determination of "appropriate Delta flow criteria" pursuant to Water Code section
22 85086(c)(2), not publicly distributed or provided for the WaterFix Hearing, since the WaterFix Water
23 Right Change Petition application was submitted to the State Water Resources Control Board on
24 August 26, 2015. Exhibit SWRCB-1. These communications include, but are not limited to,
25 communications which may contain attorney-client communications and/or attorney work product.
26 Any communications withheld on the grounds of privilege should be identified, and the basis for the
27 privilege explained and documented, in a privilege log.

28 2. All communications with SWRCB, and all documents shared with SWRCB related to
SWRCB permit terms for the SWP or CVP, the Bay-Delta Water Quality Control Plan, and the

1 WaterFix Project, under DWR's control, not publicly distributed or provided for the WaterFix
2 Hearing, since the WaterFix Water Right Change Petition application was submitted on August 26,
3 2015. Exhibit SWRCB-1. These communications include, but are not limited to, communications
4 which may contain attorney-client communications and/or attorney work product. Any
5 communications withheld on the grounds of privilege should be identified, and the basis for the
6 privilege explained and documented, in a privilege log.

7 **E. CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE**

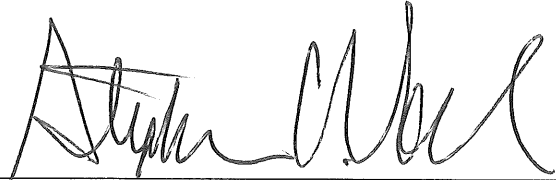
8 1. All communications between DWR and CDFW, and all documents shared with
9 CDFW, related to environmental compliance for construction or operation of the WaterFix
10 Project, including compliance with the California or Federal Endangered Species Acts, under
11 DWR's control, not publicly distributed or provided for the WaterFix Hearing, since the Acting
12 Director for DWR signed the Incidental Take Permit for the WaterFix Project on July 27, 2017
13 (Exhibit SWRCB-107, p. 232). These communications include, but are not limited to,
14 communications which may contain attorney-client communications and/or attorney work product.
15 Any communications withheld on the grounds of privilege should be identified, and the basis for the
16 privilege explained and documented, in a privilege log.

17 2. All communications between DWR and CDFW, and all documents shared with
18 CDFW, under DWR's control, related to the reinitiation of consultation on the coordinated long-term
19 operation of the CVP and the SWP, since the Acting Director for the California Department of
20 Water Resources signed the Incidental Take Permit for the WaterFix Project on July 27, 2017
21 (Exhibit SWRCB-107, p. 232), including, but not limited to, potential state and federal
22 Endangered Species Act compliance for the long-term operations of the SWP and CVP with the
23 WaterFix North Delta diversions.

24 3. All communications related to withdrawal by CDFW as a Party to the WaterFix hearing,
25 under DWR's control, since the WaterFix Water Right Change Petition application was submitted on
26 August 26, 2015. These communications include, but are not limited to, communications which may
27 contain attorney-client communications and/or attorney work product. Any communications withheld
28

1 on the grounds of privilege should be identified, and the basis for the privilege explained and
2 documented, in a privilege log.

3 Dated: March 2, 2018



Stephan Volker
Attorney for Protestants
PACIFIC COAST FEDERATION OF FISHERMEN'S
ASSOCIATIONS, and INSTITUTE FOR FISHERIES
RESOURCES

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1 declined to participate in the WaterFix project, we are supportive of a lower-cost, scaled-down, and
2 staged project.”

3 6. DWR states it is considering phased implementation of the WaterFix Project, but has yet to
4 provide protestants with detailed information about the phased implementation process.

5 7. DWR was reported to have notified the County of Sacramento et al. on January 31, 2018,
6 that DWR would not provide records requested under the Public Records Act, relating to the phased
7 implementation of the WaterFix project, until March 24, 2018.

8 8. DWR has previously stated to PCFFA’s expert, Deirdre Des Jardins, that the CALSIM
9 modeling for the Bay-Delta Conservation Plan and WaterFix Project is “proprietary.” DWR has stated
10 in the WaterFix Hearing that CALSIM is a public model.

11 9. CDFW is consulting with DWR on environmental compliance for the WaterFix Project and
12 was reported by the County of Sacramento et al., to have been in a meeting with DWR on January 26,
13 2018 at which materials regarding proposed WaterFix Project changes were shown to CDFW personnel
14 but then collected and taken away.

15 10. CDFW is a trustee agency for fish and wildlife in the State of California (Fish and Game
16 Code § 1802), yet CDFW withdrew as a party from Part 2 of the WaterFix Hearing, and objected to a
17 subpoena for witnesses to testify on CDFW’s public trust recommendations to the State Water
18 Resources Control Board in 2010, for reasons which are unexplained.

19 11. The October 4, 2017 Final Phase 2 Scientific Basis Report states:

20 [t]he interior Delta flow requirements for Old and Middle River reverse flows, export
21 limits, and DCC gate closures would be determined and based on monitoring of fish
22 presence and a consultation process involving staff from the fisheries agencies, DWR,
and Reclamation, with the addition of the State Water Board.

23 Exhibit SWRCB-103, Section 5.5, p. 5-48. This SWP and CVP permit term proposal was not in the
24 SWRCB’s October 2016 Working Draft Scientific Basis Report. The Working Draft Scientific Basis
25 report discussed scientific evidence relating to correlations between fish populations and flows, and had
26 specific numeric flow recommendations.

27 12. The proposal to delegate determination of all numeric objectives for interior Delta flows
28 regulating diversions of the SWP and CVP to the adaptive management process is essentially the same

1 as that proposed by DWR and Reclamation in their September 8, 2017 filing in the WaterFix Hearing
2 (p. 2.) If there was an agreement made with the SWRCB and/or CDFW outside of the WaterFix
3 Hearing, it is relevant to the Board's process for consideration of "appropriate Delta flow criteria."

4 13. Based on the above considerations, it appears likely that CDFW has significant information
5 on changes to engineering design, proposed construction, and proposed operations for the WaterFix
6 Project, and changes to environmental compliance requirements for the WaterFix Project, not provided
7 for the WaterFix Water Right Change Petition Hearing. This information is relevant and necessary to
8 the Hearing, and is also required under statute and regulation for Change Petitions. Water Code §
9 1701.2(c), (e); 23 C.C.R. § 794(a)(6), (8), (9).

10 14. The WaterFix Final EIR/EIS was published over a year ago on December 22, 2016, but
11 Reclamation has not signed a Record of Decision for the EIS.

12 15. On December 29, 2016 DWR signed a Memorandum of Understanding with Reclamation
13 to initiate a concurrent NEPA process to determine long-term coordinated operation of the CVP and
14 SWP, and the Reinitiation of Consultation on Long Term Operations with CDFW.

15 16. On December 29, 2017, Reclamation published a Notice of Intent to Prepare an
16 Environmental Impact Statement on the Revisions to the Coordinated Long Term Operation of the CVP
17 and SWP and Related Facilities in Volume 82, no. 249 of the Federal Register. The notice stated that
18 Reclamation would be considering "Modified operations of the CVP and SWP *with and without new or*
19 *proposed facilities including possible requests to modify environmental and regulatory requirements,*
20 and sharing of water and responsibilities in the Delta." *Id.* at p. 61790 (emphasis added).

21 17. Minutes of the February 14, 2017, stakeholder meeting on Reclamation's Reinitiation of
22 Consultation contain statements by Reclamation that "there is a basic assumption that if the project
23 period extends to 2070, then Water Fix may be operable and this project would have to consider/model
24 according to Water Fix impacts on CVP/SWP."

25 18. Reclamation has not submitted any information to the WaterFix Water Right Change
26 Petition Hearing regarding new operational scenarios that Reclamation is considering as part of its
27 NEPA review of Revisions to the Coordinated Long Term Operations of the CVP and SWP and
28

1 Related Facilities. Reclamation has also provided no operations or CVP management witnesses for
2 Part 2 of the WaterFix Hearing to testify or be cross-examined on proposed CVP operations.

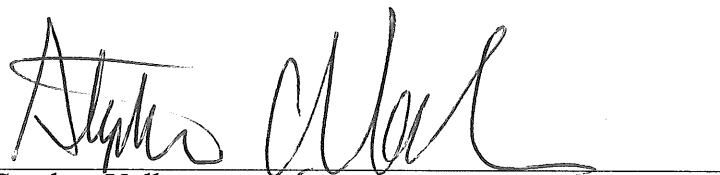
3 19. The Department of Interior (“DOI”) asserted on November 14, 2017 that under the
4 Department’s “Touhy” Act regulations at 43 C.F.R. section 2.280 *et. seq.*, none of the agencies in the
5 Department of Interior are required to comply with a subpoena for witnesses or for records in the
6 WaterFix Hearing, unless approved by DOI under DOI’s “Touhy” Act regulations. These agencies
7 include Reclamation and the National Marine Fisheries Service.

8 20. DWR and CDFW are participating as NEPA cooperating agencies in the Reinitiation of
9 Consultation on the Coordinated Long-Term Operation of the CVP and SWP.

10 21. Based on the above considerations, it appears likely that CDFW has significant information
11 on long-term proposed operations for the CVP and SWP, which may include the WaterFix Project, and
12 potential changes to environmental compliance requirements for the CVP and SWP, not provided for
13 the WaterFix Water Right Change Petition hearing. This information is relevant and necessary to the
14 Hearing and is also required under statute and regulation for Change Petitions. Water Code §
15 1701.2(c), (e); 23 C.C.R. § 794(a)(6), (8), (9).

16 I declare under penalty of perjury pursuant to the laws of California that the foregoing is true and
17 correct. Executed this 2nd day of March, 2018, in Berkeley, California.

18
19 By:



20
21 Stephan Volker
22 Attorney for Protestants
23 PACIFIC COAST FEDERATION OF FISHERMEN’S
24 ASSOCIATIONS, and INSTITUTE FOR FISHERIES
25 RESOURCES
26
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