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**TRIBUTARIES AUTHORITY**  
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9  
10 BEFORE THE  
11 CALIFORNIA STATE WATER RESOURCES CONTROL BOARD  
12

13 IN RE STATE WATER RESOURCES ) **THE SAN JOAQUIN TRIBUTARIES**  
14 CONTROL BOARD PETITION ) **AUTHORITY'S APPLICATION TO**  
15 REQUESTING CHANGES IN WATER ) **DISMISS THE JOINT PETITION OF THE**  
16 RIGHTS OF THE DEPARTMENT OF ) **DEPARTMENT OF WATER RESOURCES**  
17 WATER RESOURCES AND U.S. BUREAU ) **AND U.S. BUREAU OF RECLAMATION**  
OF RECLAMATION FOR THE ) **CHANGES IN WATER RIGHTS FOR THE**  
CALIFORNIA WATERFIX PROJECT. ) **CALIFORNIA WATERFIX PROJECT**

18 \_\_\_\_\_ )  
19 MODESTO IRRIGATION DISTRICT, )  
OAKDALE IRRIGATION DISTRICT, )  
20 SOUTH SAN JOAQUIN IRRIGATION )  
DISTRICT, TURLOCK IRRIGATION )  
21 DISTRICT, CITY AND COUNTY OF SAN )  
FRANCISCO, a California municipal )  
22 corporation, each individually, and )  
23 collectively the SAN JOAQUIN )  
TRIBUTARIES AUTHORITY, )  
24

Interested Parties. )  
25 \_\_\_\_\_ )  
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1 PLEASE TAKE NOTICE that the MODESTO IRRIGATION DISTRICT, OAKDALE  
2 IRRIGATION DISTRICT, SOUTH SAN JOAQUIN IRRIGATION DISTRICT, TURLOCK  
3 IRRIGATION DISTRICT, all of which are California Irrigation Districts, the CITY AND  
4 COUNTY OF SAN FRANCISCO, a California municipal corporation acting by and through its  
5 PUBLIC UTILITIES COMMISSION, and the SAN JOAQUIN TRIBUTARIES AUTHORITY (all  
6 parties collectively referred to as the SJTA), submit the following application to the State Water  
7 Resources Control Board for (1) an order dismissing the joint petition (Petition) of the California  
8 Department of Water Resources (DWR) and the United States Bureau of Reclamation (USBR)  
9 (collectively Petitioners) to modify their permits for the State Water Project and Central Valley  
10 Project to add points of diversion and rediversion in order to implement the California WaterFix  
11 project (Project), or (2) alternatively, an order compelling the Petitioners to submit additional  
12 information necessary to clarify, amplify, correct or otherwise supplement the Petition before any  
13 hearing is held, or (3) an order directing an independent and preliminary hearing on the issue of  
14 “appropriate Delta flow criteria” under Water Code section 85086.

15 **INTRODUCTION**

16 The SJTA hereby moves the State Water Resources Control Board (SWRCB or Board) for  
17 an order dismissing the Petition on the grounds that it fails to set forth a legally sufficient proposal  
18 of “appropriate Delta flow criteria” which is necessary for any approval of the Petition under Water  
19 Code section 85086, and which is directly relevant to demonstrating a reasonable likelihood that  
20 Project operations will not cause injury to other legal users of water. (Water Code, § 1701.2[d];  
21 Water Code, § 85086.) In its Pre-Hearing Ruling of February 11, 2016, the Board found that the  
22 Petition “lacks clarity in several ways” related to the proposed operations of the WaterFix project.  
23 (February 11, 2016, Pre-Hearing Ruling, p. 6.) The SJTA agrees with the Board’s assessment and  
24 contends that the absence of a legally sufficient proposal for “appropriate Delta flow criteria”  
25 further demonstrates the inadequacy of the Petition and the proposed operations therein. Without a  
26 sufficient proposal for “appropriate Delta flow criteria” in the Petition, there is no method or basis  
27 for determining whether the Project will cause injury to other legal users of water during Part I of  
28 the hearing process, as the flow criteria are a critical input into the operations equation, and thus the

1 Petition must be dismissed as deficient. Conversely, if Petitioners maintain that that the flows in  
2 Water Rights Decision 1641 (“D-1641”) constitute “appropriate Delta flow criteria” for the Project,  
3 then the STJA requests that the Board dismiss the Petition as deficient for failing to set forth any  
4 Delta flow criteria that are **appropriate**, as required by Water Code section 85086.

5 In the event the Board declines to dismiss the Petition, or declines to compel the Petitioners  
6 to supplement the Petition with the requisite information as permitted under Water Code section  
7 1701.3, then the SJTA requests that the Board hold an independent and preliminary hearing on the  
8 issue of “appropriate Delta flow criteria” required by Water Code section 85086. The Board has  
9 made several pronouncements about what will constitute “appropriate Delta flow criteria” before  
10 any evidence has been presented in this matter. As numerous parties have argued, these  
11 pronouncements as to the stringency and temporal limitations of the flow criteria are improper and  
12 predecisional. The SJTA recognizes that the Board issued a subsequent ruling dated March 4, 2016,  
13 indicating that it had not predetermined these issues and that it would address the issue of  
14 “appropriate Delta flow criteria” in Part II of the WaterFix hearing. However, the consideration of  
15 “appropriate Delta flow criteria” cannot be restricted to Part II of the hearing process which,  
16 according to the Board, will focus on “the potential effects of the Petition on fish and wildlife as  
17 recreational uses and conditions that should be placed on any approval of the Petition to protect  
18 those uses, including consideration of appropriate Delta flow criteria for the California WaterFix  
19 Project.”<sup>1</sup> As the flow criteria will affect operations of the Project and potentially cause injury to  
20 other legal water users, delaying consideration of the flow criteria to Part II is both prejudicial to  
21 other legal water users who may be harmed by those operations, and inefficient insofar as the Board  
22 will need to revisit the issues from Part I after taking evidence on appropriate Delta flow criteria  
23 during Part II. To avoid these prejudices and inefficiencies, and in light of the initial  
24 predeterminations mentioned above, the SJTA requests a hearing to either (1) determine the  
25 procedure and process through which appropriate Delta flow criteria will be developed before or

26 \_\_\_\_\_  
27 <sup>1</sup> Notice of Petition and Notice of Public Hearing and Pre-Hearing Conference to Consider the Above Petition, dated  
28 October 30, 2015, page 2; available at  
[http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/california\\_waterfix/docs/cwfnnotice\\_pet\\_hrg.pdf](http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/docs/cwfnnotice_pet_hrg.pdf)

1 during Part I of the WaterFix hearing, or (2) decide, as a substantive matter, what constitutes  
2 “appropriate Delta flow criteria” as required by Water Code section 85086.

### 3 BACKGROUND

#### 4 **1. Delta Reform Act of 2009**

5 In 1999, the SWRCB issued D-1641 which, among other things, implemented flow  
6 objectives for the Bay-Delta Estuary as part of the Water Quality Control Plan. D-1641 includes  
7 minimum monthly average flow rates for the Sacramento River (at Rio Vista) and the San Joaquin  
8 River (at Vernalis), as well as a minimum monthly average Net Delta Outflow Index (SWRCB-21  
9 [D-1641], Table 3.) Since the issuance of D-1641, DWR and USBR have repeatedly failed to meet  
10 the flow objectives specified therein and have regularly submitted Temporary Urgency Change  
11 Petitions (TUCP) to the SWRCB seeking relaxation of these flow objectives. (See e.g., Cover Letter  
12 to Temporary Urgency Change Petition – San Joaquin River Flow at Airport Road Bridge, Vernalis;  
13 and Dissolved Oxygen on the Stanislaus River, dated April 1, 2016;<sup>2</sup> Notice of USBR TUCP to  
14 Change terms of Water Right Permits of the New Melones Project Requiring Implementation of the  
15 Dissolved Oxygen Objective on the Stanislaus River dated June 23, 2015;<sup>3</sup> Notice of DWR and  
16 USBR TUCP Requesting Temporary Modification of Conditions Imposed Pursuant to D-1641  
17 dated January 27, 2015;<sup>4</sup> Notice of DWR and USBR TUCP Requesting Temporary Modification of  
18 Conditions Imposed Pursuant to D-1641 dated January 31, 2014.<sup>5</sup>)

19 Approximately ten years after the SWRCB issued D-1641, the California Legislature  
20 determined that the Sacramento-San Joaquin Delta watershed and the State’s water infrastructure  
21 were in a “crisis” and that “existing Delta policies [were] not sustainable.” (Water Code, §  
22 85001[a].) In an effort to address this crisis and “provide for sustainable management” of the Delta,  
23 the Legislature passed the Sacramento-San Joaquin Delta Reform Act of 2009. (Water Code, §  
24

25 <sup>2</sup> Cover Letter, dated April 1, 2016, Temporary Urgency Change Petition available at  
26 [http://www.swrcb.ca.gov/waterrights/water\\_issues/programs/applications/transfers\\_tu\\_notices/2016/14858a\\_covltr.pdf](http://www.swrcb.ca.gov/waterrights/water_issues/programs/applications/transfers_tu_notices/2016/14858a_covltr.pdf)

27 <sup>3</sup> Notice of USBR TUCP dated June 23, 2015 available at  
[http://www.swrcb.ca.gov/waterrights/water\\_issues/programs/applications/transfers\\_tu\\_notices/2015/14858a\\_notice.pdf](http://www.swrcb.ca.gov/waterrights/water_issues/programs/applications/transfers_tu_notices/2015/14858a_notice.pdf)

28 <sup>4</sup> Notice of DWR and USBR TUCP dated January 27, 2015 available at  
[http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/drought/docs/tucp/notice\\_tucp021815.pdf](http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/docs/tucp/notice_tucp021815.pdf)

<sup>5</sup> Notice of DWR and USBR TUCP dated January 31, 2014 available at  
[http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/drought/docs/tucp/bd\\_tucp\\_notice.pdf](http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/docs/tucp/bd_tucp_notice.pdf)

1 85001[c].) The objectives of the Delta Reform Act were numerous, but included managing the  
2 Delta's water and environmental resources, protecting and enhancing the cultural, recreational and  
3 agricultural values of the Delta, restoring the Delta ecosystem, improving water quality, improving  
4 water conveyance systems, and reducing risks to people, property and state interests in the Delta.  
5 (Water Code, § 85020.)

6 Within the Delta Reform Act, the Legislature explicitly recognized the existence of the Bay-  
7 Delta Conservation Plan (BDCP) and the prospect of a dual tunnel project like the newly proposed  
8 WaterFix. Specifically, Water Code section 85086 states that “[a]ny order approving a change in the  
9 point of diversion of the State Water Project or the federal Central Valley Project from the southern  
10 Delta to a point on the Sacramento River shall include **appropriate Delta flow criteria.**” (Water  
11 Code, § 85086[c][2] [emphasis supplied].) A review of the bill analysis of this provision reflects  
12 that “flow criteria” is “a new legal concept.” (SBX7 1 Senate Bill, Bill Analysis, at 17.)  
13 Specifically, “‘flow criteria’ are neither federal water quality ‘criteria,’ nor state ‘flow objectives.’”  
14 (*Id.*) In fact, any effort to transform flow “criteria” into ‘flow objectives’ . . . would require further  
15 proceedings, pursuant to existing law.” (*Id.*)

16 The determination of “appropriate Delta flow criteria” requires a two-step process. First, the  
17 Delta Reform Act requires the SWRCB to preliminarily adopt, pursuant to its “public trust”  
18 obligations, a new set of informational flow criteria specifically for “the Delta ecosystem” and “to  
19 protect public trust resources.” (Water Code, § 85086[c][1].) These flow criteria were to be  
20 “developed in a public process” in the nature of “an informational proceeding” pursuant to 23 CCR  
21 § 649 *et seq.*, with “an opportunity for all interested persons to participate.” (Water Code, §  
22 85086[c][1].) The legislature described this flow criteria as “a landmark concept of the state  
23 exercising its public trust authority to ask – FIRST – what the Delta needs, before completing plans  
24 for fundamental change to the nature of the Delta, as envisioned by the Bay Delta Conservation  
25 Plan.” (SBX7 1 Senate Bill, Bill Analysis, at 17.) The Board satisfied its obligation of adopting this  
26 strictly informational flow criteria on August 3, 2010, when it adopted Resolution 2010-0039  
27 approving the final report determining new flow criteria for the Delta ecosystem (hereinafter the  
28 “2010 flow criteria”). However, Resolution 2010-0039 explicitly stated that **the development of**

1 **the informational flow criteria did not include consideration of “the need for water for other**  
2 **beneficial uses, including the amount of water needed for human health and safety [or] other**  
3 **policy considerations, such as the state goal of providing a decent home and suitable living**  
4 **environment for every Californian.”<sup>6</sup>**

5 The second step in determining appropriate Delta flow criteria could only begin after the  
6 2010 flow criteria were adopted. The Water Code clearly states that the 2010 flow criteria, and all  
7 of the analysis that went into the process of developing that criteria, was intended – and required –  
8 to “inform” the later selection of “appropriate Delta flow criteria.” (Water Code, § 85086[c][2]  
9 [“appropriate Delta flow criteria . . . shall be informed by the analysis conducted pursuant to this  
10 section.”].) It is also clear from the bill analysis that the legislature intended there to be a  
11 “proceeding” to determine what criteria would be “‘appropriate’ for inclusion in the water right  
12 change order.” (SBX7 1 Senate Bill, Bill Analysis, at 17.) In this regard, the legislature stated,  
13 “While the analysis used in developing [the 2010 flow criteria] will be considered in setting  
14 [appropriate Delta flow criteria], neither the analysis nor the criteria themselves predetermine the  
15 outcome **of the later proceeding** to determine what criteria are ‘appropriate’ for inclusion **in the**  
16 **water right change order.**” (SBX7 1 Senate Bill, Bill Analysis, at 17 [emphasis supplied].)

17 A review of the changes to this bill throughout its development confirms the legislature’s  
18 intent to create a process for determining what flow criteria are “appropriate” **after** determining the  
19 strictly informational flow criteria in 2010. Initially, when the bill (then SB12 and AB39) was  
20 published for public comment in preprint form in August of 2009, there was a single process related  
21 to flow criteria. Specifically, Section 85086 did not contain a requirement that “appropriate” flow  
22 criteria be developed at any point, nor included as part of any approval of a change petition related  
23 to a project such as the WaterFix. The bill merely required that the Board determine the instream  
24 flow needs of the Delta *before* proceeding with the separate process of addressing a change petition:

25 “(c)(1) The board, in consultation with the Department of Fish and Game and by  
26 June 30, 2010, shall complete an analysis of the best available scientific information  
in existence as of the date of enactment of this division and determine the instream

27  
28 <sup>6</sup> Resolution 2010-0039, pg. 7; available at  
[http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/deltaflow/docs/final\\_rpt080310.pdf](http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/deltaflow/docs/final_rpt080310.pdf)

1 flow needs in the Delta, from the Sacramento River watershed, for ecosystem and  
2 water quality purposes.

3 (2) The board may not grant any petition to change a point of diversion in the Delta  
4 that is submitted by the department on behalf of the State Water Project or by the  
5 United States Bureau of Reclamation on behalf of the federal Central Valley Project  
before the board makes its determination pursuant to paragraph (1).” (PrePrint  
Senate Bill No. 1, at 12, dated August 4, 2009.)<sup>7</sup>

6 The Summary and Comments for Preprint of AB39 state as follows: “As the conference committee  
7 begins this proposal, it also may want to consider technical amendments to address the following: . .  
8 . conditions for SWRCB issuing a change in place of diversion for SWP/CVP.”<sup>8</sup> (Preprint AB1  
9 (AB39 content) Summary & Comments, dated August 25, 2009, at 7.)

10 Shortly thereafter, on September 9, 2009, Section 85086 was amended to include – for the  
11 first time - language requiring the inclusion of “appropriate Delta flow criteria” in “[a]ny order  
12 approving a change in point of diversion of the State Water Project and federal Central Valley  
13 Project.” (Amendments to Senate Bill NO. 12, dated September 9, 2009).<sup>9</sup> This language created  
14 flow criteria that were not only legally enforceable, as opposed to simply informational, but also  
15 “appropriate” in light of other beneficial uses of water. In other words, the bill distinguished and  
16 created two types of flow criteria, the informational flow criteria and the appropriate flow criteria.  
17 By adopting this language, the legislature linked the appropriate flow criteria to the approval of a  
18 change petition for a BDCP or WaterFix project – but not to any other process.

19 The statute does not specify the type of proceeding by which appropriate Delta flow criteria  
20 were to be determined. However, it would defy logic to suggest that the adoption of “appropriate  
21 Delta flow criteria” should receive a less comprehensive hearing than that required to adopt the  
22 2010 flow criteria. As the legislature noted, the “appropriate Delta flow criteria” will have much  
23 greater legal significance than the 2010 flow criteria: “While the [2010 flow criteria] do not have  
24 regulatory effect – they serve instead as recommendations for consideration in the Delta Plan and  
25 the Bay Delta Conservation Plan – the [appropriate Delta flow criteria] are included **in the water**  
26

27  
28 <sup>7</sup> Available at <http://sntr.senate.ca.gov/sites/sntr.senate.ca.gov/files/PSB%201.pdf>.

<sup>8</sup> Available at <http://sntr.senate.ca.gov/sites/sntr.senate.ca.gov/files/Summary%20-%20Preprint%20AB%201.pdf>

<sup>9</sup> Available at <http://sntr.senate.ca.gov/sites/sntr.senate.ca.gov/files/SB%2012%20-%20200909.pdf>

1 **right change order**, and have the effect of terms and conditions of that order.” (SBX7 1 Senate  
2 Bill, Bill Analysis, at 17.) Additionally, the 2010 flow criteria were never intended to inform any  
3 decision-making process other than the type of change petition currently presented to the Board by  
4 the Petitioners, and the appropriate Delta flow criteria were never intended to be binding upon any  
5 parties other than Petitioners who are proposing a drastic change to Delta management and  
6 operations.

7       **2.       Joint Petition to Change Points of Diversion of the SWP and CVP from the**  
8       **Southern Delta to a Point on the Sacramento River**

9       DWR and USBR filed a joint petition, pursuant to Water Code section 1701, to modify their  
10 permits for the SWP and CVP to add points of diversion and rediversion within the Sacramento/San  
11 Joaquin Delta Estuary. The Petition indicates that the new points of diversion would “allow SWP  
12 and CVP water to move through [new] intakes [on the Sacramento River that are] identified by  
13 Alternative 4A (California WaterFix) of the Bay Delta Conservation Plan/California WaterFix  
14 Partially Recirculated Draft Environmental Impact Report / Supplemental Draft Environmental  
15 Impact Statement (Draft EIR/EIS).” (Staff Exhibits, California WaterFix Hearing, SWRCB-1, p. 1  
16 of 24.)

17       The Petition acknowledged it did not contain the appropriate Delta flow criteria required by  
18 Water Code section 85086. On the topic of flow criteria, the Petition is confusing at best. At one  
19 point, the Petition states that such criteria would be established later: “Subsequent filings and  
20 appearances before the State Water Board will fully support approval of the request contained in  
21 this Petition **and demonstrate satisfaction of California Water Code section 85086.**” (SWRCB-  
22 1, p. 2 of 24 [emphasis supplied].) Then, in a subsequent section, the Petition seems to state that the  
23 existing flow requirements together with Alternative 4A flows would satisfy the appropriate Delta  
24 flow criteria:

25       “Consideration of this Petition under Water Code § 85086(c)(2) should occur within  
26 the existing regulatory framework for the Delta provided by the WQCP and D-1641.  
27 Flows presented by Alternative 4A, beyond those required by D-1641, satisfy the  
28 appropriate Delta flow criteria to be considered by the Board under 85086(c)(2). In  
addition to D-1641, the SWP and CVP operate in compliance with the NMFS 2009  
Salmon and FWS 2008 Delta Smelt Biological Opinions (BiOps) completed under  
Section 7 of the ESA, and SWP in compliance with the CDFW 2009 long-fin smelt

1 Section 2081 Incidental Take Permit (ITP) and Consistency Determinations for Delta  
2 Smelt and Salmon. The CVP and SWP will continue to operate under these  
3 requirements until new requirements are issued by NMFS, USFWS or CDFW. Under  
4 the California WaterFix, the CVP and SWP would operate pursuant to a new Section  
5 7 consultation and ITP for in-Delta operations.” (SWRCB-1, at 11-12 of 24.)

6 As demonstrated below, none of these proposals can satisfy the appropriate Delta flow  
7 criteria requirement in Water Code section 85086(c)(2).

8 **3. The SWRCB’s Pre-Hearing Conference Ruling of February 11, 2016**

9 On January 28, 2016, the SWRCB held a pre-hearing conference to organize the conduct of  
10 the hearing on the Petitioners’ change petition. On February 11, 2016, the SWRCB issued a Pre-  
11 Hearing Conference Ruling. The ruling acknowledged the many deficiencies in the Petition and  
12 highlighted the various reasons why the Board should either dismiss the Petition, or compel the  
13 Petitioners to supplement the Petition before proceeding with any hearings. The ruling also made  
14 predeterminations regarding the “appropriate Delta flow criteria” required by Water Code section  
15 85086. Those predeterminations highlight the need for a full and independent hearing on this issue  
16 if the Petition is not dismissed.

17 **a. The Board Acknowledged that the Petition is Deficient**

18 Water Code section 1701.2(d) requires that all change petitions “[i]nclude sufficient  
19 information to demonstrate a reasonable likelihood that the proposed change will not injure any  
20 other legal user of water.” In its ruling, the Board made reference to its own regulation regarding  
21 this statutory provision which further specifies the type of information that must be provided in a  
22 change petition, “including effects [of the proposed change] on other known users of water, and any  
23 quantified changes in water quality, quantity, timing of diversion and use, reduction in return flows  
24 and other pertinent information.” (February 11, 2016, Pre-Hearing Ruling, p. 5, citing 23 CCR §  
25 794.)

26 The Board acknowledged that the information provided by the Petitioners “**lacks clarity in**  
27 **several ways**, including whether operational criteria are intended to constrain project operations or  
28 are identified for modeling purposes only, areas where a specific operational component or  
mitigation measure is not yet chosen or identified, operational parameters that are not defined and

1 deferred to an adaptive management process, and lack of clarity concerning some mitigation  
2 measures.” (February 11, 2016, Pre-Hearing Ruling, p. 6 [emphasis supplied].)

3 The Board is correct that the Petition is deficient. As demonstrated below, the Petition fails  
4 to include a legally sufficient proposal for appropriate Delta flow criteria, which in turn means that  
5 any proposal regarding Project operations is incomplete, insofar as the flow criteria requirement  
6 will necessarily affect operations. With an incomplete operations proposal, the Petitioners cannot  
7 demonstrate that other legal users will not be injured by the proposed Project. As such, the Petition  
8 is deficient under Water Code section 1701.2(d) and therefore must be dismissed.

9 **b. The Board Made Contradictory Statements on the Issue of Appropriate Delta**  
10 **Flow Criteria and Predetermined the Issue in Certain Respects**

11 In its ruling, the SWRCB rejected the argument raised by several parties at the pre-hearing  
12 conference that the Board must update the Bay-Delta Plan before holding a hearing on the WaterFix  
13 petition. Specifically, the basis of this rejection was the Board’s conclusion that water quality  
14 objectives developed as part of the Bay-Delta Plan were not the same as “appropriate Delta flow  
15 criteria.” (February 11, 2016, Pre-Hearing Ruling, at 4.) Despite this fairly clear statement that flow  
16 criteria are different than flow objectives under the Bay-Delta Plan, the Board proceeded to  
17 complicate the matter through other statements in the ruling. Specifically, the Board stated, “flow  
18 criteria imposed as a condition of any approval [of the Petition] would be an **interim requirement**  
19 **until Phases 2 and 3 of the Bay-Delta Plan update and subsequent implementation processes**  
20 **are complete**, at which point the flow criteria would be revisited.” (Pre-Hearing Ruling, p. 4  
21 [emphasis supplied].) The Board then elaborated, stating that “completion of Phase 2 will not  
22 resolve the issue of appropriate flow criteria for the WaterFix because the various obligations of  
23 responsible parties to meet the revised objectives, including the obligations of the CVP and SWP,  
24 will not be established until completion of Phase 3 of the State Water Board’s Bay-Delta planning  
25 processes.” (Pre-Hearing Ruling, at 5.)

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27 ///

28 ///

1 The Board also made a determination as to the stringency of the appropriate flow criteria  
2 that would ultimately be included in any order approving the Petition: “[t]he appropriate Delta flow  
3 criteria will be more stringent than petitioners’ current obligations and may well be more stringent  
4 than the petitioners’ preferred project.” (February 11, 2016, Pre-Hearing Ruling, at 4.)

5 **4. Activity Following Pre-Hearing Ruling of February 11, 2016**

6 **a. Revised Hearing Schedule, dated March 4, 2011**

7 After receiving multiple letters in response to the February 11, 2016 ruling, the Board issued  
8 a second ruling on March 4, 2016, wherein it stated, among other things, that it had not prejudged  
9 the stringency or temporal limitations of the appropriate Delta flow criteria, and agreed that the  
10 issue should not be decided until consideration of all relevant arguments and evidence in the  
11 administrative record. (Revised Hearing Schedule, March 4, 2016, at 5.)<sup>10</sup> The Board also held that  
12 the issue of appropriate Delta flow criteria would be determined in Part II of the WaterFix hearing,  
13 as part of Key Issue 3d, and as indicated in the WaterFix hearing notice. (Revised Hearing  
14 Schedule, March 4, 2016, at 5.) However, the Board did not explain how **Part I** of the hearing could  
15 be completed without addressing appropriate Delta flow criteria, particularly in light of the  
16 Petitioners’ failure to properly set forth a legally sufficient proposal for appropriate Delta flow  
17 criteria in the Petition. If the flow criteria is not known, then operations cannot be known, and if  
18 operations are not known, then injury to other legal water users cannot be known. The Board did not  
19 address this issue.

20 **b. Proposed Changes to Petition and Potential Case in Chief**

21 The Board previously declined to dismiss the Petition, in part, because some of the required  
22 information regarding Project operations was contained “in the CEQA/NEPA documents”  
23 submitted by Petitioners, and the Board anticipated that Petitioners would further explain and  
24 supplement the operations during their case in chief using these documents. (February 11, 2016,  
25 Pre-Hearing Ruling, at 5.) However, as explained in a letter from California Water Research dated  
26 \_\_\_\_\_

27 <sup>10</sup> Revised Hearing Schedule, Revised Notices of Intent to Appear, Electronic Service and Submissions, and other  
28 Procedural Issues Concerning the California WaterFix Water Right Change Petition, dated March 4, 2016, available at  
[http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/california\\_waterfix/docs/cwf\\_final\\_030416\\_ruling.pdf](http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/docs/cwf_final_030416_ruling.pdf)

1 April 2, 2016,<sup>11</sup> the Petitioners announced an intent to abandon the information from the  
2 CEQA/NEPA modeling in support of their case in chief by letter dated March 11, 2016, and instead  
3 to use the modeling conducted for the Biological Assessment.<sup>12</sup> Specifically, and as noted by  
4 California Water Research, Petitioners indicated that “the modeling conducted for the [Biological  
5 Assessment] is the basis of the information that will be used in the case-in-chief in the Hearing  
6 process.” (Written Response to March 4 Requirement to Address Information Requests from  
7 California Water Research and Sacramento Valley Water Users, dated March, 11, 2016, p. 8.) In  
8 short, the Petitioners have effectively undermined the basis and reasoning for the Board’s decision  
9 not to dismiss the Petition.

### 10 ARGUMENT

#### 11 1. The Joint Petition is Deficient and Must be Dismissed

12 The SJTA respectfully requests that the Board dismiss the Petition as deficient for several  
13 reasons. First, the Board has already acknowledged in its Pre-Hearing Ruling of February 11, 2016,  
14 that the information provided by the Petitioners regarding the proposed project operations “lacks  
15 clarity in several ways” and is insufficient to satisfy the Petitioners’ obligations under Water Code  
16 1701.2(d) and 23 CCR § 794. (February 11, 2016, Pre-Hearing Ruling, p. 6.) The most serious of  
17 these deficiencies is that Petitioners failed to include a proper proposal for “appropriate Delta flow  
18 criteria.” (Water Code, § 85086[c][2].) Insofar as the “appropriate Delta flow criteria” will impact  
19 operations of the project, and thus potentially result in additional impacts to legal water users, this  
20 information should have been included in the Petition in accordance with Water Code section  
21 1701.2(d). As demonstrated below, the flows proposed by the Petitioners do not constitute  
22 appropriate Delta flow criteria sufficient to satisfy the Petitioners’ obligations under Water Code  
23 sections 1701.2 and 85086(c)(2). For these reasons, the SJTA respectfully requests that the Petition  
24 be dismissed or cancelled.

25  
26  
27 <sup>11</sup> California Water Research letter, dated April 2, 2016, available at  
[http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/california\\_waterfix/docs/20160402\\_cwr\\_unresolved.pdf](http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/docs/20160402_cwr_unresolved.pdf)

28 <sup>12</sup> Petitioners’ Written Response to March 4 Requirement to Address Information Requests from California Water Research and Sacramento Valley Water Users, dated March 11, 2016.

1           **a. The Petition is Deficient for Failing to Provide Sufficient Information as to the**  
2           **Proposed Operations of the Project and Its Effects on Other Legal Water Users**

3           Every change petition brought before the SWRCB must include “sufficient information to  
4 demonstrate a reasonable likelihood that the proposed change will not injure any other legal user of  
5 water” (Water Code, § 1701.2[d].) This requirement is further specified in the Board’s regulations,  
6 which require that the following be included in the Petition: “Information identifying any effects of  
7 the proposed change(s) on other known users of water, including identification in quantitative terms  
8 of any projected change in water quantity, water quality, timing of diversion or use, consumptive  
9 use of the water, reduction in return flows, or reduction in the availability of water within the  
10 streams affected by the proposed change(s).” (Cal. Code Regs., tit. 23, § 794[a][9].) The Board’s  
11 Regulations are explicit in stating that this information is mandatory: “The petition for change(s)  
12 will not be accepted for filing unless it contains all of the information required.” (Cal. Code Regs.,  
13 tit. 23, § 794[d].)

14           As relevant to the instant Petition, the Delta Reform Act mandates that any order approving  
15 a change in the point of diversion of the SWP or CVP from the southern Delta to a point on the  
16 Sacramento River “**shall** include appropriate Delta flow criteria.” (Water Code, §  
17 85086[c][2][emphasis supplied].) The legislature’s use of the word shall demonstrates that this is a  
18 mandatory requirement, and that the ultimate burden of satisfying this criteria must be placed on the  
19 Petitioners as part of the approval of their change petition. The Act also contemplates that the  
20 Petitioners, rather than the SWRCB, are responsible for analyzing, developing, and proposing the  
21 type of flow criteria that will constitute “appropriate Delta flow criteria.”  
22 (Water Code, § 85086[c][2].) Specifically, Water Code section 85086(d) states the SWRCB shall  
23 reimburse the SWP and CVP contractors who rely on water exported from the Sacramento River  
24 watershed for “the costs of the analysis conducted” to assess Delta flow criteria.

25           The Petition reflects the Petitioners’ contradictory position on flow criteria. First the  
26 Petition stated appropriate Delta flow criteria would be established in subsequent filings and  
27 processes. (SWRCB-1, at 2 of 24.) However, the Petition also appears to allege it includes  
28 appropriate Delta flow criteria:

1 “Consideration of this Petition under Water Code §85086(c)(2) shall occur within the  
2 existing regulatory framework for the Delta provided by the WQCP and D-1641.  
3 Flows presented by Alternative 4A, beyond those required by D-1641, satisfy the  
4 appropriate Delta flow criteria to be considered by the Board under 85086(c)(2).”  
(SWRCB-1, at 11-12.)

5 This explanation is contradictory and fatally deficient. While the Petition purports to set  
6 forth “appropriate Delta flow criteria,” it does so only in reference to, and reliance upon, the  
7 development of future flow objectives/requirements through a variety of legal processes that have  
8 not yet been completed, and that have no explicit relation to the Delta Reform Act and the  
9 requirement of establishing appropriate Delta flow criteria. The Petitioners have effectively said that  
10 they did not develop appropriate Delta flow criteria, and that they will instead defer to the outcomes  
11 of a variety of other legal processes, including the updates to the Bay-Delta Plan. This violates the  
12 spirit and the letter of the Delta Reform Act, which required appropriate Delta flow criteria to be  
13 included in any approval of the change petition.

14 i. Reliance on other Legal Processes to Establish or Develop Appropriate Delta  
15 Flow Criteria Violates the Delta Reform Act

16 The Petitioners state that consideration of the petition under Water Code §85086(c)(2)  
17 should occur “within the existing regulatory framework for the Delta provided by the WQCP and  
18 D-1641.” (Petition, at 11.) This statement suggests that Petitioners deem the flow objectives of D-  
19 1641 to be “appropriate Delta flow criteria” as required by Water Code § 85086(c)(2). This is  
20 erroneous for several reasons.

21 First, the legislature did not intend for the flow objectives in D-1641 to be blindly adopted as  
22 appropriate Delta flow criteria. D-1641 was in effect when the Delta Reform Act was passed, at  
23 which time the legislature explicitly stated that the “Delta watershed and California’s water  
24 infrastructure are in crisis and existing Delta policies are not sustainable.” (Water Code, §  
25 85001[a].) A review of the Bill Analysis for Water Code section 85086 reveals the legislature’s  
26 clear directive that “‘flow criteria’ are neither federal water quality ‘criteria,’ nor state ‘flow  
27 objectives.’” (SBX7 1 Senate Bill, Bill Analysis, at 16.) Indeed, the Act states that the flow criteria  
28 will be “new.” (Water Code, § 85086[c][1].) The SWRCB explicitly agreed with this proposition in

1 its Pre-Hearing Ruling, wherein it stated, “We do not interpret ‘appropriate Delta flow criteria’ to  
2 mean the same thing as either existing or revised water quality objectives.” (Pre-Hearing  
3 Conference Ruling, p. 4.)

4 Second, the Petitioners are currently responsible for complying with the D-1641 flow  
5 objectives, **but have repeatedly failed to meet those objectives and have not offered any**  
6 **explanation as to why they have deemed these unattainable standards to be appropriate Delta**  
7 **flow criteria.**

8 Third, the Delta Reform Act required the SWRCB to preliminarily adopt, pursuant to its  
9 “public trust” obligations, a new set of informational flow criteria “for the Delta ecosystem  
10 necessary to protect public trust resources.” (Water Code, § 85086[c][1].) The Board satisfied this  
11 obligation when it adopted Resolution 2010-0039 approving the final report determining new flow  
12 criteria for the Delta ecosystem (the “2010 flow criteria”). The adoption of the 2010 flow criteria  
13 was not intended to “inform” the later selection of “appropriate Delta flow criteria.” (Water Code, §  
14 85086[c][2] [“appropriate Delta flow criteria . . . shall be informed by the analysis conducted  
15 pursuant to this section.”].) The extent to which the 2010 flow criteria would inform - or affect, if it  
16 all - the appropriate Delta flow criteria is a matter for debate. However, it is obvious that the flow  
17 objectives in D-1641 were not informed by the 2010 flow criteria. Likewise, any future changes to  
18 the flow objectives are not required to be informed by the 2010 flow criteria. (Water Code, §  
19 13240.) Further, Petitioners cannot predict that those updates will include consideration of the 2010  
20 flow criteria such that they can casually propose in their Petition that any such updates will  
21 constitute appropriate Delta flow criteria. In short, the D-1641 flow objectives simply cannot serve  
22 as a substitute for the “appropriate Delta flow criteria” required by Water Code § 85086(c)(2).

23 ii. Reliance on Alternative 4A Flows Cannot be Considered Appropriate Delta  
24 Flow Criteria

25 The Petition states that any flows presented by Alternative 4A that happen to go beyond  
26 those required by D-1641 should be deemed to satisfy the appropriate Delta flow criteria to be  
27 considered by the Board under 85086(c)(2). (SWRCB-1, at 12.) The flows proposed as part of  
28 Alternative 4A are set forth in Table 4.1-2 of the Partially Recirculated Draft Environmental Impact

1 Report/Supplemental Draft Environmental Impact Statement (RDEIR/SDEIS), and then again in  
2 narrative form on pages 4.1-11 through 4.1-14 of the same document. The Petitioners have not  
3 explained - in these pages of the RDEIR/SDIES or in the Petition itself - how these proposed flows  
4 were informed by the 2010 flow criteria, nor how they constitute “appropriate Delta flow criteria.”  
5 (Water Code, § 85086[c][2].) Rather, the Petitioners appear to have worked in reverse, by first  
6 proposing a set of flows that suit their own needs for the WaterFix project, and then asserting,  
7 without any explanation or support, that the proposed flows will constitute appropriate Delta flow  
8 criteria. This is in direct conflict with both the letter and spirit of the Delta Reform Act and Water  
9 Code section 85086(c)(2). The SWRCB should reject, on its face, the Petitioners’ assertion that they  
10 have set forth appropriate Delta flow criteria in the Petition.

11 iii. The Biological Opinion Flow Are Not Appropriate Delta Flow Criteria

12 The Petitioners also suggest, without explicitly stating, that the flow requirements set forth  
13 in the NMFS 2009 Salmon and FWS 2008 Delta Smelt Biological Opinions should be considered as  
14 part of the “appropriate Delta flow criteria.” (SWRCB-1, at 12.) As with the flow objectives in D-  
15 1641, the flow requirements set forth in the Biological Opinions were not informed by the 2010  
16 flow criteria, nor by the process that led to the adoption of the 2010 flow criteria. Moreover, the  
17 Biological Opinions, which were drafted as part of formal consultation with NMFS and FWS  
18 pursuant to Section 7 of the Endangered Species Act, were only designed to avoid the likelihood of  
19 jeopardizing the continued existence of certain listed species from impacts of the existing Project  
20 operation. The Petition is requesting to change the existing Project operations and will need to  
21 obtain a revised Biological Opinion to allow for the proposed changes. The existing Biological  
22 Opinions were not designed nor intended to protect the entire Delta ecosystem, or other beneficial  
23 uses, as contemplated by the Delta Reform Act, nor were they intended to protect species from the  
24 changes proposed in the Petition.

25 Furthermore, the Petitioners are not required to comply with the flows set forth in the  
26 Reasonable and Prudent Alternatives (RPAs) of the 2008 and 2009 Biological Opinions. An agency  
27 is not required to adopt or adhere to the RPAs in a Biological Opinion, as the RPAs are only a  
28 suggested means of avoiding a “take” under the Endangered Species Act. (*Tribal Village of Akutan*

1 v. *Hodel* (1988, CA9 Alaska) 19 ELR 20071, 101 OGR 453, cert den (1989) 493 US 873 [an  
2 agency is not required to adopt RPAs to its proposals as suggested in a BO, but if the agency  
3 deviates from them it does so subject to the risk that it has not satisfied Section 7(a)(2)].) Thus,  
4 while the Petitioners state that the CVP and SWP will continue to operate under the existing BOs,  
5 the Petitioners are under no legal obligation to continue operations in this manner. The same will be  
6 true for any other Biological Opinions and RPAs issued pursuant to a new ESA Section 7  
7 consultation for the WaterFix project. Thus, the Board cannot rely on any future Biological  
8 Opinions as being sufficient to form the basis for appropriate Delta flow criteria as required by  
9 Water Code section 85086(c)(2).

10 In sum, the Petitioners cannot rely on a variety of other legal processes through which flow  
11 objectives/requirements have, or may be, created as a substitute for their independent obligation to  
12 develop appropriate Delta flow criteria. Petitioners also cannot rely on Alternative 4A flows to  
13 satisfy the flow criteria requirement. As the Petition improperly relies on these unrelated flow  
14 objectives/requirements, and also fails to demonstrate that the additional flows proposed as part of  
15 Alternative 4A were informed by the 2010 flow criteria as required by Water Code § 85086(c)(2),  
16 the Petition is defective. Without appropriate Delta flow criteria, the SWRCB simply cannot issue  
17 an order approving the change petition.

18 iv. The Unspecified and Potential Future Flow Objectives set forth in the  
19 Petition that are intended to Serve as a Substitute for Appropriate Flow  
20 Criteria Do Not Constitute Sufficient Information to Demonstrate the  
21 Absence of Injury to Other Users

22 Water Code section 1701.2(d) provides that a petition for change in a permit or license shall  
23 include, among other things, “sufficient information to demonstrate a reasonable likelihood that the  
24 proposed change will not injure any other legal user of water.” The Petition does not provide  
25 sufficient information to demonstrate legal water users will not be injured.

26 As noted above, the Petition indicates that appropriate Delta flow criteria include the flow  
27 objectives from D-1641, plus any additional flows from Alternative 4-A, plus all flows set forth in  
28 the 2008 USFWS BO and the 2009 NMFS BO, as well as any future water quality objectives  
adopted by the SWRCB as part of its updates to the Bay-Delta Plan. Putting aside the fact that the

1 Petitioners have repeatedly not met the most basic of these flow requirements (the D-1641 flow  
2 objectives), and that flow objectives are not the same as flow criteria, the mere uncertainty of the  
3 Petitioners' proposal that future updates to water quality objectives should serve as "appropriate  
4 Delta flow criteria" renders the Petition insufficient to demonstrate the absence of injury to other  
5 users, as required by Water Code sections 1701.2(d) and 1702. Stated otherwise, if the Petitioners  
6 cannot identify how the project will operate in relation to the "appropriate Delta flow criteria"  
7 requirement that will ultimately attach to their permits if the change application is approved, then  
8 Petitioners cannot - and have not - demonstrated that operations will not cause injury to other water  
9 users.

10 Furthermore, reliance on the Bay-Delta Plan process and the updates to the water quality  
11 control objectives is improper. That process may allocate responsibility for meeting flow objectives  
12 to parties other than Petitioners. Accordingly, such reliance could cause injury to other legal users,  
13 not to mention inappropriately shift the burden of meeting appropriate Delta flow criteria from  
14 Petitioners to other water users.

15 For these reasons, the SJTA respectfully requests that the Board issue an order dismissing  
16 the Petition, or, alternatively, for an order compelling the Petitioners to submit additional  
17 information necessary to clarify, amplify, correct or otherwise supplement the Petition before any  
18 hearing is held.

19 **2. Holding a Hearing on a Deficient Petition is a Waste of Resources, is Unduly**  
20 **Burdensome, and is Not Justified by the False Sense of Urgency to Reach a**  
21 **Decision on the WaterFix Project**

22 The Petitioners' insistence that a hearing must be held - in spite of the Board's  
23 acknowledgement that the Petition is facially deficient - is a waste of Board and protestor  
24 resources, is unduly burdensome to protesters, and is not justified by the false sense of urgency to  
25 reach a decision on the WaterFix project.

26 First, as the Board noted in its Ruling, it is currently developing updates to the Bay-Delta  
27 plan through a phased process. (February 11, 2016, Pre-Hearing Ruling, p. 4.) A review of the  
28 Board's website indicates that Phase 1 of that project, which involves updating San Joaquin River  
flow and southern Delta water quality requirements, is on a collision course with the Board's

1 proposed schedule for hearings on the WaterFix petition. Specifically, a Revised Draft Substitute  
2 Environmental Document (SED) and draft of proposed changes to the Bay-Delta Plan will be  
3 released for public comment in Spring 2016. A Final SED and proposed changes to the Bay-Delta  
4 Plan will be released for public review in Late Summer 2016, and the Board will hold a meeting to  
5 consider adoption of changes to the Bay-Delta Plan and certification of the Final SED in Fall 2016.  
6 Despite this ambitious schedule, the Board proposes to simultaneously commence with Part 1A and  
7 Part 1B of the hearing on the instant Petition. In addition to Board resources being stretched thin by  
8 the simultaneous consideration of these two monumental projects, the resources of protestors and  
9 stakeholders with considerable interests in both projects will also be unnecessarily stressed. The  
10 repeated requests by Petitioners for continuances only exacerbates this issue insofar as the requests  
11 require protestors and stakeholders to continually adjust their schedules in order to ensure an ability  
12 to attend and participate in both processes.

13         Second, proceeding with a hearing on this Petition, rather than requiring the Petitioners to  
14 amplify, correct or supplement their Petition in accordance with Water Code section 1701.3, will  
15 cause an undue and unnecessary burden on other legal water users who might be injured by project  
16 operations. To date, the Petitioners have not provided a sufficiently detailed – or consistent -  
17 explanation of the proposed operations for the WaterFix project in relation to its effect on other  
18 legal water users. (February 11, 2016, Pre-Hearing Ruling, p. 6.) Requiring the Petitioners to  
19 independently supplement their deficient Petition so as to bring it into compliance with Water Code  
20 section 1701.2 and 23 CCR 794, rather than allowing them to present this required information at a  
21 lengthy public hearing, would free the protestors from having to attend the hearing in full if they  
22 want to preserve any prospect of having sufficient information to raise meaningful objections to the  
23 WaterFix project. Holding a hearing will place an undue burden on the protestors, who should have  
24 been afforded an opportunity to review, or have their experts review, a full and complete petition so  
25 that they could determine, in the first instance, whether and to what extent they desired to  
26 participate in the WaterFix hearings. The same information that the Board now intends to allow the  
27 Petitioners to develop at a lengthy public hearing could have been – and should be – compelled  
28 directly from the Petitioners, pursuant to Water Code section 1701.3, in a manner that will not

1 require every possible protestor to sit and watch the Petitioners present and explain their proposed  
2 project.

3         Finally, the Board recognized in its Ruling that DWR could not offer a clear explanation as  
4 to why the hearing process should begin now. (February 11, 2016, Pre-Hearing Ruling, p. 1.)  
5 Nevertheless, the Board stated that “[p]roject planning has been ongoing for many years now” and  
6 “it is in the public interest to resolve without further delay whether and how the WaterFix will be  
7 part of the solution to longstanding problems in the Bay-Delta.” (Pre-Hearing Ruling, p. 2.) It is  
8 apparent from the Petitioners’ repeated requests for continuances that this issue will *not* be resolved  
9 *without further delay*. Moreover, the SJTA respectfully disagrees with the Board’s assessment that  
10 holding a hearing on this deficient petition is in the best interest of the public. Rather than simply  
11 requiring the Petitioners to supplement their Petition so that the public could thoroughly review and  
12 assess the project, the Board is asking the public to attend weeks of proceedings in order to discover  
13 what the Petitioners propose to do as part of the WaterFix project. Such a procedure is not in the  
14 public’s interest where there is an alternative procedure that would have given the public advance  
15 notice of the specifics related to the Petitioners’ project. Moreover, the Petitioners’ delay in  
16 advancing their own project over the past few years should not serve as a justification for now  
17 speeding up the project, particularly where the Petition itself demonstrates that the Petitioners have  
18 still not worked out all of the specifics, and where DWR cannot offer any reasonable explanation  
19 for proceeding with a hearing at this time.

20         In sum, the Board’s proposal to allow the Petitioners to remedy their deficient Petition  
21 during a public hearing is a waste of Board and protestor resources, is unduly burdensome to  
22 protestors who must now attend weeks of hearings in order to learn the specifics of the Petitioners’  
23 proposed project, and is not justified by the false sense of urgency to reach a decision on the  
24 WaterFix project. Accordingly, the SJTA requests that the Board cancel or dismiss the deficient  
25 Petition, or, in the alternative, that the Board issue an order compelling the Petitioners to provide  
26 additional information to clarify, amplify, correct, or otherwise supplement the deficient Petition, in  
27 accordance with Water Code section 1701.3, before any hearing is held on the matter.

28 ///

1           3.           **The Board's Statements Regarding Appropriate Delta Flow Criteria**  
2                           **Demonstrate the Need for a Full and Independent Hearing on this Issue**

3           In the event the Board declines to dismiss the Petition, the SJTA requests that the Board  
4 issue an order directing an independent and preliminary hearing on the issue of “appropriate Delta  
5 flow criteria” under Water Code section 85086.

6           The Board has rejected the argument that the Bay-Delta Plan should be updated before the  
7 WaterFix petition is heard, finding that appropriate Delta flow criteria are not the same as revised  
8 water quality objectives under the Bay-Delta Plan. (February 11, 2016, Pre-Hearing Ruling, at 4.)  
9 However, the Board also stated in its Ruling that “[t]he flow criteria imposed as a condition of any  
10 approval [of the WaterFix petition] would be **an interim requirement** until Phases 2 and 3 of the  
11 Bay-Delta Plan update and subsequent implementation processes are complete, at which point the  
12 flow criteria would be revisited.” (Pre-Hearing Ruling, at 4 [emphasis supplied.]) The SJTA objects  
13 to the Board’s determination to adopt “interim” flow criteria – in any sense - as part of any approval  
14 of the Petition.

15           First, Water Code section 85086 requires that an order approving the WaterFix petition  
16 “include appropriate Delta flow criteria.” When the legislature mandated that the appropriate Delta  
17 flow criteria be included in any order approving a project such as the WaterFix, it demonstrated an  
18 intent to impose the obligation of meeting this flow criteria solely upon the Petitioners. The Board  
19 has now stated that the flow criteria included in the order will be only of an “interim” nature until  
20 the Bay-Delta Plan is updated, demonstrating that the Board views the update process for the Bay-  
21 Delta Plan as a means of revisiting, clarifying and/or elaborating upon the appropriate Delta flow  
22 criteria required by Water Code 85086. The Board confirmed this approach when it stated that “the  
23 issue of appropriate flow criteria for the WaterFix” will not be resolved “until completion of Phase  
24 3 of the State Water Board’s Bay-Delta planning processes.” (February 11, 2016, Pre-Hearing  
25 Ruling, at 5.) The problem with the Board’s stated approach is that the water quality objectives of  
26 the Bay-Delta Plan can be imposed on water users, other than Petitioners, who do not benefit from  
27 WaterFix. The appropriate Delta flow criteria, however, can only be imposed upon the Petitioners  
28 proposing this Project. Thus, the Board has effectively determined that the burden of satisfying the

1 appropriate Delta flow criteria will only be borne by the Petitioners temporarily, i.e., on an  
2 “interim” basis, until the Board can shift some – or all - of that burden onto other water users  
3 through an update to the Bay-Delta Plan. Such an act would, by definition, impact other legal users  
4 of water. The Board should not be permitted to revisit - and potentially relax - the “appropriate  
5 Delta flow criteria” that Petitioners must meet after the Board updates the Bay-Delta Plan in a way  
6 that effectively satisfies the flow criteria through the imposition of water quality objectives on other  
7 water users. Water Code section 85086 does not allow for such a shifting of responsibility, and the  
8 burden of ensuring that the full amount of appropriate Delta flows remain in place in relation to the  
9 WaterFix project should always remain on the Petitioners.

10         Second, Water Code section 85086 does not permit the adoption of an “interim” condition  
11 for appropriate flow criteria, nor does it indicate that appropriate flow criteria can be satisfied,  
12 modified, or otherwise impacted by water quality objectives. Instead, the statute explicitly sets forth  
13 the procedure and requirements for updating the flow criteria, none of which reference the Bay-  
14 Delta Plan. Specifically, the statute provides that “flow criteria shall be subject to modification over  
15 time based on a science-based adaptive management program that integrates scientific and  
16 monitoring results, including the contribution of habitat and other conservation measures, into  
17 ongoing Delta water management” (Water Code, § 85086[c][2].) This is the only procedure that the  
18 legislature prescribed for amending the “appropriate Delta flow criteria.” The legislature did not  
19 authorize the adoption of “interim” flow criteria, nor did it determine that the water quality  
20 objectives from the Bay-Delta Plan could be used to resolve or satisfy the appropriate flow  
21 requirement.

22         Third, the SJTA objects to the Board’s determination insofar as it constitutes a substantive  
23 predetermination embedded in a procedural ruling. The Board has determined - in advance of the  
24 hearing on this Petition – that, if it approves the Petition, the order will include “appropriate Delta  
25 flow criteria” that are of an “interim” nature, and that are “more stringent than petitioners’ current  
26 obligations and may well be more stringent than the petitioners’ preferred project.” (Pre-Hearing  
27 Ruling, at 4.). Both the determination as to the temporal limitations of the flow criteria and the  
28 determination as to the stringency of the flow criteria are improper predeterminations insofar as

1 none of the parties have been afforded an opportunity to present evidence as to these substantive  
2 issues. This type of predetermination regarding a condition to an approval of a change petition  
3 violates Water Code section 1704, which states that “[t]he Board, **after a hearing**, may approve  
4 with conditions, or deny, a petition.” (Water Code § 1704[a] [emphasis supplied].)

5 The limited guidance from the legislature as to how the Board should handle the issue of  
6 appropriate flow criteria, coupled with the Board’s Pre-Hearing Conference Ruling, has led to  
7 significant disagreement amongst the Petitioners and interested parties as to how appropriate flow  
8 criteria should be addressed. This disagreement was highlighted by a flurry of follow-up letters  
9 from Petitioners and parties after the Board’s Pre-Hearing Ruling. As the Board is aware, the State  
10 Water Contractors asserted that the Board improperly predetermined the issue of appropriate Delta  
11 flow criteria by stating that the flow criteria imposed as a condition of any approval of the Petition  
12 would be more stringent than Petitioners’ current requirements.<sup>13</sup> The South Delta Water Agency  
13 asserted that this predetermination was proper in light of Resolution 2010-0039, which adopted the  
14 informational flow criteria under Water Code section 85086(c)(1), and that there was an outstanding  
15 issue as to which parties would ultimately be responsible for meeting the flow criteria.<sup>14</sup> The  
16 Petitioners asserted that the appropriate Delta flow criteria would be addressed in Part 2 of the  
17 WaterFix hearing.<sup>15</sup> Various environmental groups continued to advance the position that the Bay-  
18 Delta Plan should be updated before proceeding with any hearings on the WaterFix petition.<sup>16</sup> The  
19 SJTA asserted many of the same positions asserted herein.<sup>17</sup> These discrepancies simply exemplify

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21  
22 <sup>13</sup> State Water Contractors’ letter of February 22, 2016 available at  
([http://www.swrcb.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/california\\_waterfix/exhibits/docs/20160222\\_swrc.pdf](http://www.swrcb.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/exhibits/docs/20160222_swrc.pdf)).

23 <sup>14</sup> South Delta Water Agency letter of February 22, 2016 available at  
24 ([http://www.swrcb.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/california\\_waterfix/exhibits/docs/20160223\\_sdwaetal.pdf](http://www.swrcb.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/exhibits/docs/20160223_sdwaetal.pdf)).

25 <sup>15</sup> Petitioners’ letter of February 23, 2016 available at  
26 ([http://www.swrcb.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/california\\_waterfix/exhibits/docs/20160223\\_dwrdoi.pdf](http://www.swrcb.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/exhibits/docs/20160223_dwrdoi.pdf)).

27 <sup>16</sup> Restore the Delta, et al. letter of February 25, 2016 available at  
([http://www.swrcb.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/california\\_waterfix/docs/20160225\\_rtdetal\\_response.pdf](http://www.swrcb.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/docs/20160225_rtdetal_response.pdf)).

28 <sup>17</sup> SJTA letter of February 24, 2016 available at  
([http://www.swrcb.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/california\\_waterfix/docs/20160225%20sjta\\_objections.pdf](http://www.swrcb.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/docs/20160225%20sjta_objections.pdf)).

1 the need for the Board to hold an independent hearing to squarely address the issue of appropriate  
2 Delta flow criteria before proceeding any further with the WaterFix petition. The current lack of  
3 structure and plan for addressing the issue is prejudicial to all parties who desire to be heard as to  
4 when and how the flow criteria will be developed and determined.

5 **4. Addressing Appropriate Delta Flow Criteria in Part II of the Hearing Process is**  
6 **Prejudicial and Inefficient**

7 The Board stated in its March 4, 2016 revised ruling that the issue of “appropriate Delta  
8 flow criteria” will be addressed in Part II of the hearing process, as indicated in the hearing notice  
9 which identifies appropriate flow criteria as Key Issue 3d. Addressing the issue of appropriate Delta  
10 flow criteria solely in Part II of the hearing process is prejudicial and inefficient for the following  
11 reasons.

12 According to the hearing notice, Part I of the process is designed to address the effects of the  
13 Petition on municipal, industrial and agricultural uses of water, including associated legal users of  
14 water. This is the part of the hearing where the Board will hear evidence as to whether the proposed  
15 project operations will cause injury to other legal users of water. Part II is designed to address the  
16 effects of the petition on fish and wildlife and recreational uses, including appropriate flow criteria.  
17 However, any flow criteria that are included in an approval of the change petition will impact  
18 operations of the Project. In addition, Project operations - whatever they may be - could adversely  
19 impact other legal users of water. Accordingly, the appropriate flow criteria that would be included  
20 in any approval of the petition could indirectly impact other legal users of water, and thus the  
21 consideration of appropriate flow criteria should not – and cannot – be confined to Part II of the  
22 hearing process. This would be prejudicial to legal water users who might be adversely impacted by  
23 the flow criteria and the resultant operations of the Project.

24 Delaying consideration of appropriate Delta flow criteria to Part II will only require the  
25 Board to revisit the issues addressed in Part I after conclusion of Part II, so that legal water users  
26 may comment and provide evidence as to whether the appropriate Delta flow criteria will cause  
27 injury to them. This type of inefficiency should be avoided in this proceeding.

28 ///

1 For these reasons, the SJTA respectfully requests that the Board order a hearing on the issue  
2 of appropriate Delta flow criteria before proceeding with any other aspect of the WaterFix hearing.  
3 The hearing can be strictly related to procedure, wherein the parties will provide input as to when,  
4 where and how the issue of appropriate flow criteria will be addressed, or the hearing can be  
5 substantive, wherein the parties directly address what flow criteria should be adopted by the Board  
6 as part of any approval of the WaterFix petition.

7 **CONCLUSION**

8 The Board has acknowledged that the Petition is deficient in several important respects. The  
9 issue of appropriate Delta flow criteria has not been properly addressed by the Petition. The current  
10 lack of structure and plan for addressing this issue is prejudicial to all parties who desire to be heard  
11 as to when and how the appropriate Delta flow criteria will be developed and determined. The SJTA  
12 requests that the Board dismiss the deficient Petition for the various reasons set forth above, or  
13 order a preliminary and independent hearing to address the issue of appropriate Delta flow criteria  
14 and the various issues attendant thereto.

15  
16 DATED: April 20, 2016

O'LAUGHLIN & PARIS LLP

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19 By:   
20 TIM O'LAUGHLIN  
21 VALERIE KINCAID  
22 TIMOTHY J. WASIEWSKI, Attorneys for  
23 SAN JOAQUIN TRIBUTARIES AUTHORITY  
24  
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1 Re: *Before the California State Water Resources Control Board*  
2 *Public Hearing to Determine Requested Changes in Water Rights of the*  
3 *Department of Water Resources and U.S. Bureau of Reclamation for the*  
4 *California WaterFix Project*

5 **PROOF OF SERVICE BY EMAIL/MAIL**  
6 (Government Code §11440.20)

7 I, Linda L. Wood, declare that:

8 I am employed in the County of Sacramento, State of California. I am over the age of eighteen years  
9 and not a party to the within cause. My business address is 2617 K Street, Suite 100, Sacramento, CA 95814.  
10 On this date, in the following manner, I served the foregoing document(s) identified as:

11 **THE SAN JOAQUIN TRIBUTARIES AUTHORITY'S APPLICATION TO DISMISS THE**  
12 **JOINT PETITION OF THE DEPARTMENT OF WATER RESOURCES AND U.S.**  
13 **BUREAU OF RECLAMATION CHANGES IN WATER RIGHTS FOR THE**  
14 **CALIFORNIA WATERFIX PROJECT**

15 \_\_\_\_\_ **UNITED STATES MAIL** [CCP §1013]: I enclosed the documents in a sealed envelope addressed to  
16 the following persons and placed the envelope for collection and mailing, following our ordinary  
17 business practices. I am readily familiar with our practice for collection and processing  
18 correspondence for mailing. On the same day that the correspondence is placed for collection and  
19 mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a  
20 sealed envelope with postage thereon fully prepaid at Sacramento, California addressed as below:

21 \_\_\_\_\_ **FACSIMILE**: Based on prior consent, I caused the documents to be sent to the following persons  
22 via telecopier/facsimile machine a true copy thereof to the parties indicated below:

23 \_\_\_\_\_ **OVERNIGHT DELIVERY** [CCP §1013(c)]: I enclosed the documents in a sealed envelope  
24 provided by an overnight delivery carrier and addressed it to the persons identified below. I placed  
25 said envelope for collection at a regularly utilized drop box of the overnight carrier.

26 **▶▶▶ E-MAIL** [CCP §1010.6]: Based on pending consent of the parties, and/or court order or an  
27 agreement of the parties to accept service by e-mail, I caused the documents to be sent to the  
28 following persons at the following e-mail address, and did not receive, within a reasonable time  
after the transmission, any electronic message or other indication that the transmission was  
unsuccessful:

\_\_\_\_\_ **PERSONAL DELIVERY** [CCP §415.10] I arranged to have the documents personally delivered to  
the office of the persons identified below on \_\_\_\_\_:

26 **SEE ATTACHED SERVICE LIST**

1 I declare under penalty of perjury under the laws of the State of California that the foregoing is true  
2 and correct, and that this declaration was executed on April 20, 2016, at Sacramento, California.

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Linda L. Wood, Legal Assistant

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**LIST OF PARTICIPANTS**  
**California WaterFix Petition Hearing**  
**(Scheduled to Commence on April 7, 2016)**

**REVISED SERVICE LIST (corrected)**  
**(Dated January 26, 2016)**

Be sure to copy all documents and correspondence addressed to the State Water Resources Control Board Members or staff regarding this hearing to [CWFhearing@waterboards.ca.gov](mailto:CWFhearing@waterboards.ca.gov).

**Table 1- Service List of Parties to Exchange Information**  
**(Parties Participating in Direct Testimony, Cross-Examination or Rebuttal)**

**Parties Participating in Part I (May also be Parties in Part II)**

**THE FOLLOWING PARTIES MUST BE SERVED WITH WRITTEN TESTIMONY, EXHIBITS AND OTHER DOCUMENTS. (Note: The parties listed below agreed to accept electronic service, pursuant to the rules specified in the hearing notice.)**

<b>Party</b>	<b>Authorized Representative/ Attorney</b>	<b>Authorized Representative's Affiliation</b>	<b>Email Address of Authorized Representative/ Attorney</b>
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U.S. Department of the Interior, The	Amy L. Aufdemberge, Esq.		amy.aufdemberge@sol.doi.gov
Sacramento County Water Agency	Aaron Ferguson	Somach Simmons & Dunn	aferguson@somachlaw.com
Carmichael Water District, The	Aaron Ferguson	Somach Simmons & Dunn	aferguson@somachlaw.com
City of Roseville, The	Alan Lilly & Ryan Bezerra	Bartkiewicz, Kronick & Shanahan	abl@bkslawfirm.com; rsb@bkslawfirm.com
Sacramento Suburban Water District	Alan Lilly & Ryan Bezerra	Bartkiewicz, Kronick & Shanahan	abl@bkslawfirm.com; rsb@bkslawfirm.com
San Juan Water District	Alan Lilly & Ryan Bezerra	Bartkiewicz, Kronick & Shanahan	abl@bkslawfirm.com; rsb@bkslawfirm.com
City of Folsom, The	Alan Lilly & Ryan Bezerra	Bartkiewicz, Kronick & Shanahan	abl@bkslawfirm.com; rsb@bkslawfirm.com
Yuba County Water Agency	Alan Lilly & Ryan Bezerra	Bartkiewicz, Kronick & Shanahan, P.C.	abl@bkslawfirm.com; rsb@bkslawfirm.com
South Valley Water Association, et al.	Alex M Peltzer	Peltzer & Richardson, LC	apeltzer@prlawcorp.com
Biggs-West Gridley Water District (BWGWD)	Andrew M. Hitchings	Somach Simmons & Dunn, PC	ahitchings@somachlaw.com
Glenn-Colusa Irrigation District (GCID)	Andrew M. Hitchings	Somach Simmons & Dunn	ahitchings@somachlaw.com

Restore the Delta	Barbara Barrigan-Parilla & Tim Stroshane	Restore the Delta	barbara@restorethedelta.org; tim@restorethedelta.org
Barbara Daly	Barbara Daly		bdalymn@citlink.net
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California Delta Chambers & Visitor's Bureau	Bill Wells		info@californiadelta.org
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Reclamation District No. 800 (Byron Tract)	David Aladjem	Downey Brand LLP	daladjem@downeybrand.com
Friant North Authority	David Orth		dorth@davidorthconsulting.com
Deirdre Des Jardins	Deirdre Des Jardins		ddj@cah2oresearch.com
Nevada Irrigation District (NID)	Dustin C. Cooper	Minasian, Meith, Soares, Sexton & Cooper LLP	dcooper@minasianlaw.com
Butte Water District (BWD)	Dustin C. Cooper	Minasian, Meith, Soares, Sexton & Cooper, LLP	dcooper@minasianlaw.com
Richvale Irrigation District (RID)	Dustin C. Cooper	Minasian, Meith, Soares, Sexton & Cooper, LLP	dcooper@minasianlaw.com
Anderson - Cottonwood Irrigation District	Dustin C. Cooper	Minasian, Meith, Soares, Sexton & Cooper, LLP	dcooper@minasianlaw.com
Plumas Mutual Water Company (PMWC)	Dustin C. Cooper	Minasian, Meith, Soares, Sexton & Cooper, LLP	dcooper@minasianlaw.com
Reclamation District 1004	Dustin C. Cooper	Minasian, Meith, Soares, Sexton & Cooper, LLP	dcooper@minasianlaw.com
South Feather Water and Power Agency	Dustin C. Cooper	Minasian, Meith, Soares, Sexton & Cooper, LLP	dcooper@minasianlaw.com
Western Canal Water District (WCWD)	Dustin C. Cooper	Minasian, Meith, Soares, Sexton & Cooper, LLP	dcooper@minasianlaw.com
Paradise Irrigation District	Dustin C. Cooper	Minasian, Meith, Soares, Sexton & Cooper, LLP	dcooper@minasianlaw.com

Friant Water Authority & Friant Water Authority Members	Fennemore Craig, Lauren Caster, Gregory Adams, Jennifer Buckman, and 13 others		lcaster@fclaw.com; gadams@fclaw.com; jbuckman@friantwater.org; thomas.esqueda@fresno.gov; kelweg1@aol.com; mlarsen@kdwcd.com; sdalke@kern-tulare.com; mhagman@lindmoreid.com; sae16@lsid.org; fmorrissey@orangecoveid.org; sgeivet@ocsnet.net; roland@ssjmud.org; jph@tulareid.org
East Bay Municipal Utility District	Fred Etheridge & Jonathan Salmon		fetherid@ebmud.com; jsalmon@ebmud.com
North San Joaquin Water Conservation District	Jennifer Spaletta	Spaletta Law	jennifer@spalettalaw.com
City of Sacramento, The	Joe Robinson / Martha Lennihan	Office of the City Attorney / Lennihan Law	jrobinson@cityofsacramento.org; mlennihan@lennihan.net
Central Delta Water Agency, South Delta Water Agency (Delta Agencies), Lafayette Ranch, Heritage Lands Inc., Mark Bachetti Farms and Rudy Mussi Investments L.P.	John Herrick, Esq. and Dean Ruiz, Esq.		jherrlaw@aol.com; dean@hprlaw.net
City of Stockton, The	John Luebberke & Tara Mazzanti		john.luebberke@stocktonca.gov; tara.mazzanti@stocktonca.gov
San Luis & Delta-Mendota Water Authority	Jon Rubin		Jon.Rubin@SLDMWA.org
Stockton East Water District	Karna E. Harrigfeld		kharrigfeld@herumcrabtree.com
North Delta Water Agency & Member Districts	Kevin O'Brien	Downey Brand LLP	kobrien@downeybrand.com

Brannan-Andrus Levee Maintenance District; Reclamation District 407; Reclamation District 2067; Reclamation District 317; Reclamation District 551; Reclamation District 563; Reclamation District 150; Reclamation District 2098	Kevin O'Brien & David Aladjem	Downey Brand LLP	kobrien@downeybrand.com; daladjem@downeybrand.com
Sacramento Valley Group, The	Kevin O'Brien & David Aladjem	Downey Brand LLP	kobrien@downeybrand.com; daladjem@downeybrand.com
Sacramento Municipal Utility District (SMUD)	Kevin O'Brien & David Aladjem	Downey Brand LLP	kobrien@downeybrand.com; daladjem@downeybrand.com
County of San Joaquin, San Joaquin County Flood Control and Water Conservation District, and Mokelumne River Water and Power Authority	Kurtis C. Keller	Neumiller & Beardslee	kkeller@neumiller.com
County of Colusa, The	Marcos Kropf & Matthew C. Bently		mkropf@countyofcolusa.com; mbently@countyofcolusa.org
Save the California Delta Alliance; Janet & Michael McCleary; Frank Morgan; and Captain Morgan's Delta Adventures, LLC	Michael Brodsky	Law Offices of Michael A. Brodsky	michael@brodskylaw.net
Islands, Inc	Michael J. Van Zandt	Hanson Bridgett, LLP	mvanzandt@hansonbridgett.com
California Sportfishing Protection Alliance (CSPA), California Water Impact Network (C-WIN), and AquAlliance	Michael Jackson, Bill Jennings, Chris Shutes, Barbara Vlamis, and Carolee Krieger	Law Offices of Michael Jackson	mjatty@sbcglobal.net; .blancapaloma@msn.com; deltakeep@me.com; barbarav@aqualliance.net; caroleekrieger7@gmail.com;
Snug Harbor Resorts, LLC	Nicole S. Suard, Esq.		sunshine@snugharbor.net
Local Agencies of the North Delta	Osha Meserve		osha@semlawyers.com
Bogle Vineyards/Delta Watershed Landowner Coalition	Osha Meserve		osha@semlawyers.com
Diablo Vineyards and Brad Lange/Delta Watershed Landowner Coalition	Osha Meserve		osha@semlawyers.com

Stillwater Orchards/Delta Watershed Landowner Coalition	Osha Meserve		osha@semlawyers.com
Patrick Porgans	Patrick Porgans	Patrick Porgans & Associates	porgansinc@sbcglobal.net
San Joaquin River Exchange Contractors Water Authority	Paul R. Minasian	Minasian, Meith, Soares, Sexton & Cooper, LLP	pminasian@minasianlaw.com
Coalition for a Sustainable Delta, The	Paul S. Weiland		pweiland@nossaman.com
Sacramento Regional County Sanitation District	Paul S. Simmons	Somach Simmons & Dunn, PC	psimmons@somachlaw.com
Westlands Water District	Philip A Williams		pwilliams@westlandswater.org
County of Yolo, The	Philip J. Pogledich		philip.pogledich@yolocounty.org
City of Antioch	Ron Bernal		rbernal@ci.antioch.ca.us
Contra Costa County and Contra Costa County Water Agency	Ryan Hernandez		ryan.hernandez@dcd.cccounty.us; stephen.siptroth@cc.cccounty.us
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Tehama-Colusa Canal Authority & water service contractors in its service area	Steven Saxton, Meredith Nikkel & J. Mark Atlas	Downey Brand	ssaxton@downeybrand.com mnikkel@downeybrand.com matlas@jmatlaslaw.com
San Joaquin Tributaries Authority, The (SJTA), Merced Irrigation District, Modesto Irrigation District, Oakdale Irrigation District, South San Joaquin Irrigation District, Turlock Irrigation District, and City and County of San Francisco	Tim O' Laughlin & Valerie C. Kincaid	O'Laughlin & Paris, LLP	towater@olaughlinparis.com; vkincaid@olaughlinparis.com
Water Forum, The	Tom Gohring		tgohring@waterforum.org

Earthjustice	Trent W. Orr		torr@earthjustice.org
County of Solano	William Emlen		wfemlen@solanocounty.com

**THE FOLLOWING PARTY MUST BE SERVED WITH WRITTEN TESTIMONY, EXHIBITS AND OTHER DOCUMENTS. (Note: The party listed below must be served a hard copy, pursuant to the rules specified in the hearing notice.)**

<b>Party</b>	<b>Authorized Representative/ Attorney</b>	<b>Mailing Address of Authorized Representative/ Attorney</b>
Clifton Court, L.P.	Suzanne Womack & Sheldon Moore	3619 Land Park Drive Sacramento, CA 95818

**Parties Participating in Part II Only (Must also be Served in Part I)**

**THE FOLLOWING PARTIES MUST BE SERVED WITH WRITTEN TESTIMONY, EXHIBITS AND OTHER DOCUMENTS. (Note: The parties listed below agreed to accept electronic service, pursuant to the rules specified in the hearing notice.)**

<b>Party</b>	<b>Authorized Representative/ Attorney</b>	<b>Authorized Representative's Affiliation</b>	<b>Email Address of Authorized Representative/ Attorney</b>
County of Sacramento, The	Aaron Ferguson	Somach Simmons & Dunn	aferguson@somachlaw.com
Friends of the River	E. Robert Wright		bwright@friendsoftheriver.org
Environmental Council of Sacramento (ECOS)	Brenda Rose		office@ecosacramento.net
Trout Unlimited	Brian Johnson		bjohnson@tu.org
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Environmental Water Caucus	Conner Everts		connere@gmail.com
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Planning & Conservation League	Jonas Minton		jminton@pcl.org
Natural Resources Defense Council, The Bay Institute, and Defenders of Wildlife	Kate Poole	Natural Resources Defense Council	kpoole@nrdc.org; awarn@nrdc.org; bobker@bay.org; rzwilling@defenders.org; dobegi@nrdc.org
SAVE OUR SANDHILL CRANES	Mike Savino		wirthsoscranes@yahoo.com
Friends of the San Francisco Estuary	Mitch Avalon		friendsofsfestuary@gmail.com
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American Rivers, Inc.	Steve Rothert		srothert@americanrivers.org

**Table 2 - Interested Persons  
(Persons Intending to Make Policy Statements Only)**

**PARTIES IN TABLE 1 ARE NOT REQUIRED TO SERVE THE FOLLOWING INTERESTED PERSONS WITH WRITTEN TESTIMONY, EXHIBITS, AND OTHER DOCUMENTS**

**Interested Persons Participating in Part I (May also be Interested Persons in Part II)**

<b>Interested Person</b>	<b>Authorized Representative/ Attorney</b>	<b>Authorized Representative's Affiliation</b>	<b>Email Address of Authorized Representative/ Attorney</b>
Castaic Lake Water Agency	Matthew Stone		mstone@clwa.org
Central Valley Clean Water Association	Debbie Webster		eofficer@cvcwa.org
Coachella Valley Water District	Robert C Cheng		rcheng@cvwd.org
Desert Water Agency	Mark Krause		mkrause@dwa.org
Kern County Water Agency	Curtis Creel		ccreel@kcwa.com, ameliam@kcwa.com
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Mojave Water Agency	Kirby Brill		kbrill@mojavewater.org
North Delta C.A.R.E.S.	Anna Swenson		deltaactioncommittee@gmail.com
North State Water Alliance	David J. Guy	Northern California Water Association	dguy@norcalwater.org
Partnership for Sound Science in Environmental Policy	Craig S.J. Johns		cjohns@calrestrats.com
San Bernardino Valley Municipal Water District	Douglas Headrick		douglash@sbnmwd.com
Butte County Department of Water and Resource Conservation	Paul Gosselin		pgosselin@buttecounty.net
San Geronio Pass Water Agency	Jeff Davis		jdavis@sgpwa.com
Santa Clara Valley Water District	Erick Soderlund		esoderlund@valleywater.org
Terri Crain	Terri Crain		tcrain@scvchamber.com

Tulare Lake Basin Water Storage District	Mark Gilkey		mgilkey@tlbwsd.com
U.S. EPA Region 9	Tomas Torres		torres.tomas@epa.gov
Zone 7 Water Agency	J. Duerig		jduerig@zone7water.com
City of Chico, The	Erik Gustafson		Erik.gustafson@chicoca.gov
Rural County Representatives of California	Kathy Mannion		kmannion@rcrcnet.org
SEMILLAS (Stockton Educational Movement in Language Literacy and Scholarship)	Moteczuma Sanchez		motecps@gmail.com

### Interested Persons Participating in Part II Only

Interested Person	Authorized Representative/ Attorney	Authorized Representative's Affiliation	Email Address of Authorized Representative/ Attorney
African American Chamber of Commerce of San Joaquin County	Brandie Owusu-Spencer	African American Chamber of Commerce of San Joaquin County	eyv209@gmail.com
Asian Pacific Self-Development and Residential Association (APSARA)	Hengsothea Ung		usothea@apsaraonline.org
Assemblymember Susan Eggman (and staff)	Gustavo Medina		gustavo.medina@asm.ca.gov
Braceros del Delta	Luis Magaña		Lmagana@afsc.org
Cafe Coop	Esperanza Vielma		evielma@cafecoop.org
California Striped Bass Association	Jim Cox		jimcoxsportfishing@yahoo.com
California Student Sustainability Coalition	Ryan Camero		rcarcamero@gmail.com
Catholic Charities, Diocese of Stockton	Katelyn Roedner Sutter		kroedner@ccstockton.org
Central Valley Asian Chamber	Cynthia Lau		cynthiajlau@gmail.com
Earth Law Center	Linda Sheehan		lsheehan@earthlaw.org
Frank L Ruhstaller	Frank L Ruhstaller		larryruhstaller@gmail.com
Golden Gate Salmon Assoc	John McManus		john@goldengatesalmon.org
Greater Stockton Chamber of Commerce	Douglas W. Wilhoit, Jr.		doug@stocktonchamber.org
Joan Buchanan	Joan Buchanan		bu4567@aol.com

Lao Family Community Empowerment, Inc.	Ger Vang		gvang@lfcempowerment.org
Lower Sherman Island Duck Hunters Association	Roger Mammon		r.mammon@att.net
Michael Frost	Michael Frost		mr.michaelfrost@gmail.com
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Rogene Reynolds	Rogene L. Reynolds		reynolds6568@gmail.com
Ronald A. Forbes, Delta Fly Fishers	Ronald A. Forbes		bluse03@yahoo.com
San Francisco Baykeeper	George Torgun		george@baykeeper.org
Senator Cathleen Galgiani	Senator Cathleen Galgiani and Staff Trent Hager & Marian Norris		Cathleen.Galgiani@sen.ca.gov; Trent.Hager@sen.ca.gov; Marian.Norris@sen.ca.gov
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Visit Stockton	Wes Rhea		wes@visitstockton.org