
State Water Resources Control Board

July 5, 2016

[Via Email]

Stephan C. Volker
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CALIFORNIA WATERFIX WATER RIGHT CHANGE PETITION HEARING – SUBPOENA REQUEST

Dear Mr. Volker:

The hearing officers in the pending hearing on the water right change petition for the California WaterFix Project received your letter dated June 29, 2016, requesting the State Water Resources Control Board (State Water Board) to issue a subpoena to the Department of Water Resources (DWR) and the United States Bureau of Reclamation (Reclamation) for the production of documents concerning the CalSim II model. The hearing officers have directed me to respond to your request.

Requesting the State Water Board to issue a subpoena is unnecessary because, as the attorney of record for parties to this proceeding, you may sign and issue a subpoena yourself. Government Code section 11450.20, which applies to adjudicative proceedings before the State Water Board, provides that a subpoena or subpoena duces tecum shall be issued by the agency at the request of a party, or by the attorney of record for a party, in accordance with sections 1985 to 1985.4 of the Code of Civil Procedure. Section 1985 does not establish a procedure whereby a court (or, by extension, an agency) must issue a subpoena directly to another party at the request of a party. Instead, section 1985, subdivision (c) specifies that the clerk, or a judge, shall issue a subpoena “signed and sealed but otherwise in blank to a party requesting it, who shall fill it in before service.” In the alternative, an attorney of record in an action or proceeding may sign and issue a subpoena or subpoena duces tecum. Consistent with these provisions, the State Water Board has developed a subpoena form for the use of parties in adjudicative proceedings before the Board. A copy of the form is attached for your convenience. I also provided a copy of this form to Ms. Deirdre Des Jardins of California Water Research on June 14, 2016.

Please note that a subpoena duces tecum must be accompanied by affidavit that meets the requirements set forth in section 1985, subdivision (b) of the California Code of Civil Procedure. In addition, the subpoena and affidavit must be served on DWR and Reclamation in accordance

with section 11450.20, subdivision (b) of the Government Code and sections 1987 and 1988 of the California Code of Civil Procedure. A copy also must be provided to all the other parties to the hearing and a copy must be filed with the State Water Board, together with a statement of service. A custodian of subpoenaed documents who fails to comply with the subpoena may be compelled to appear and produce the documents. Please be advised, however, that a subpoena is subject to a motion for a protective order or motion to quash. (Gov. Code, § 11450.30.) Any objections to a subpoena will be resolved by the hearing officers, who may quash or limit a subpoena as appropriate to protect parties or witnesses from any unreasonable or oppressive demands.

In your June 29, 2016 letter, you stated that the State Water Board has authorized the use of the informal hearing procedures set forth in sections 11445.10 through 11445.60 of the Administrative Procedure Act. Although this statement does not appear to be related to your request for the issuance of a subpoena, I thought I should take the opportunity to inform you that the State Water Board has not in fact elected to follow the informal hearing procedures for the hearing on the California WaterFix Project.

If you have any further questions about the procedures for issuing a subpoena or other procedural matters, please feel free to contact me at (916) 341-5188 or Dana.Heinrich@waterboards.ca.gov.

Sincerely,



Dana Heinrich
Staff Attorney IV
State Water Resources Control Board
Office of Chief Counsel
1001 I Street
Sacramento, CA 95814

Attachment

[Via Email Only]

cc: Felicia Marcus, California WaterFix Co-Hearing Officer
Tam M. Doduc, California WaterFix Co-Hearing Officer
CWFhearing @waterboards.ca.gov
Electronic Service List

PROOF OF SERVICE OF SUBPOENA

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

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

personally delivering a copy to the person served as follows:

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

delivering true copies thereof by certified mail, return receipt requested, to the address as shown below.

delivering true copies thereof enclosed in a sealed envelope to a messenger for immediate personal delivery to the address as shown below.

Address where served:

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on:

Date	at (place)	Signature
		, California

(For California sheriff, marshal, or constable use only)

I certify that the foregoing is true and correct and that this certificate is executed on:

Date	at (place)	Signature
		, California

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

ENDORSEMENT ON SUBPOENA IN A PROCEEDING OTHER THAN AN ADJUDICATIVE PROCEEDING

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

Dated: _____

_____ (signature)

Name: _____

Title: _____

State Water Resources Control Board

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