

1 KATHERINE POOLE (SBN 195010)
DOUGLAS ANDREW OBEGI (SBN 246127)
2 NATURAL RESOURCES DEFENSE COUNCIL
111 Sutter Street, 21st Floor
3 San Francisco, CA 94104
Telephone: (415) 875-6100
4 Facsimile: (415) 875-6161
kpoole@nrdc.org; dobegi@nrdc.org

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6 Attorneys for Natural Resources Defense Council,
The Bay Institute, and Defenders of Wildlife

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9 BEFORE THE STATE WATER RESOURCES CONTROL BOARD

10 HEARING IN THE MATTER OF
CALIFORNIA DEPARTMENT OF
11 WATER RESOURCES AND UNITED
STATES BUREAU OF
12 RECLAMATION REQUEST FOR A
CHANGE IN POINT OF DIVERSION
13 FOR CALIFORNIA WATERFIX

**OPPOSITION TO THE CALIFORNIA
DEPARTMENT OF FISH AND
WILDLIFE'S MOTION FOR
PROTECTIVE ORDER FOR SUBPOENA
DUCES TECUM FROM THE PACIFIC
COAST FEDERATION OF FISHERMEN'S
ASSOCIATIONS AND INSTITUTE FOR
FISHERIES RESOURCES**

1 The Natural Resources Defense Council, Defenders of Wildlife, and The Bay Institute
2 (“NRDC et al”) oppose the California Department of Fish and Wildlife’s (“CDFW”) motion for
3 protective order for subpoena duces tecum from the Pacific Coast Federation of Fishermen’s
4 Associations and Institute of Fisheries Resources (“PCFFA”).

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6 First, contrary to CDFW’s assertions, the subjects of the subpoena clearly are relevant to Part
7 2 of this proceeding. DWR’s witnesses testified under cross-examination by NRDC on February 28,
8 2018 that the foundation for DWR’s testimony regarding the reasonable protection of fish and
9 wildlife was through a comparison of WaterFix to existing ESA and CESA obligations of the
10 Central Valley Project (“CVP”) and State Water Project (“SWP”). In light of DWR’s admission,
11 information from CDFW regarding existing ESA and CESA standards applicable to the CVP and
12 SWP, the adequacy of those standards in protecting fish and wildlife, and the SWP and CVP’s
13 compliance with those standards is clearly relevant for purposes of Part 2 of this hearing.

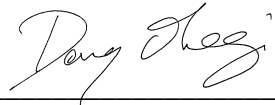
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15 Second, given CDFW’s withdrawal as a party from Part 2 of the Hearing, a subpoena is the
16 only way to obtain information from CDFW. Unlike CDFW, the Parties are spending substantial
17 time and resources to participate in Part 2 of this hearing, and the burden for CDFW to comply with
18 the subpoena duces tecum is far lower considering their non-participation in this hearing.

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20 Finally, state law generally requires a party to civil litigation, which withholds disclosure of
21 relevant evidence in response to a discovery request pursuant to a claim of privilege, to provide a
22 privilege log or sufficient factual information for the parties to evaluate the claim of privilege. *See*
23 *Cal. Code Civ. Proc. § 2031.240(c)*. Requiring CDFW to provide a privilege log for any relevant
24 documents or records that are withheld on the grounds of privilege is consistent with this statutory
25 provision, which is explicitly a codification of existing case law.

26 For these reasons, the Hearing Officers should deny CDFW’s motion.
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1 Dated: March 8, 2018

Natural Resources Defense Council

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4 Doug Obegi

5 On behalf of the Natural Resources Defense Council,
6 Defenders of Wildlife, and the Bay Institute

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