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13 RECLAMATION DISTRICT 108, et al.

14 BEFORE THE CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

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

17 **DOWNEY BRAND PROTESTANTS'**
18 **RESPONSE TO THE CALIFORNIA**
19 **DEPARTMENT OF FISH AND**
20 **WILDLIFE'S MOTION FOR**
21 **PROTECTIVE ORDER**

22 Pursuant to the Hearing Team's March 7, 2018 email to the parties, the Downey Brand
23 Protestants¹ hereby respond to the California Department of Fish and Wildlife's ("CDFW")
24 Motion for Protective Order for Subpoena Duces Tecum from Pacific Coast Federation of
25 Fishermen's Associations ("PCFFA") and Institute for Fisheries Resources ("IFR").

26 CDFW requests that the Hearing Officers quash the portion of PCFFA and IFR's
27 subpoena that seeks documents and communications under CDFW's control related to the State
28 Water Project ("SWP") and Central Valley Project's ("CVP") compliance with the California

¹ Carter Mutual Water Company, El Dorado Irrigation District, El Dorado Water & Power Authority, Howald Farms, Inc., Maxwell Irrigation District, Natomas Central Mutual Water Company, Meridian Farms Water Company, Oji Brothers Farm, Inc., Oji Family Partnership, Pelger Mutual Water Company, Pleasant-Grove Verona Mutual Water Co., Princeton-Codora-Glenn Irrigation District, Provident Irrigation District, Reclamation District 108, Sacramento Municipal Utility District, Henry D. Richter, et al., River Garden Farms Company, South Sutter Water District, Sutter Extension Water District, Sutter Mutual Water Company, Tisdale Irrigation and Drainage Company, Windswept Land and Livestock Company, North Delta Water Agency, Reclamation District 999, Reclamation District 2060, Reclamation District 2068, 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, Reclamation District 800 (Byron Tract), and Tehama-Colusa Canal Authority and its member districts

1 Endangered Species Act (“CESA”) since the July 27, 2017, issuance of the Incidental Take
2 Permit (“ITP”) for the California WaterFix Project. Notwithstanding CDFW’s position regarding
3 the scope of the request, any documents that touch on Part 2 issues, such as how the Petitioners
4 may intend to operate the SWP and CVP with WaterFix in place while complying with CESA,
5 are relevant. Indeed, documents and communications pertaining to the Petitioners’ compliance
6 with CESA since July 27, 2017 are especially probative and relevant in light of DWR witnesses’
7 interpretation of and reliance upon the October 18, 2017 CDFW memorandum, entitled
8 “Clarification of California WaterFix California Endangered Species Act Incidental Take Permit
9 No. 2081-2016-055-03 Condition of Approval 9.9.4.3 to maintain spring outflow” (“Clarification
10 Memo”) in Part 2 of this hearing. Whether the Clarification Memo has had any effect on
11 Petitioners’ understanding of how they may operate the SWP and CVP goes directly to how the
12 projects would be operated under WaterFix.

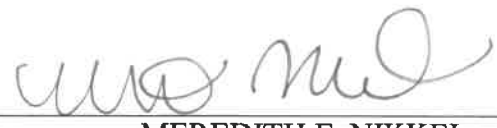
13 The Downey Brand Protestants are also aware of other pending subpoenas for documents
14 in Part 2 of this hearing.² In response to the City of Antioch’s subpoena to DWR, the Hearing
15 Team notified the parties on February 7, 2018 that it created a folder for responsive records on the
16 State Water Board’s File Transfer Protocol (“FTP”) website. To date, no documents appear to
17 have been produced to that folder. In the interest of transparency and efficiency, the Downey
18 Brand Protestants respectfully request that any and all documents produced in response to the
19 City of Antioch subpoena, PCFFA/IFR subpoena, as well as any productions in response to other
20 subpoenas or document requests, be similarly uploaded and made publicly available on the FTP
21 website. Adoption of a standardized approach to subpoenas will promote efficiency in this
22 hearing by avoiding duplicative requests and ensuring a level playing field for all parties.

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26 ² On February 5, 2018, the City of Antioch served a subpoena duces tecum on DWR for records relating to current
27 WaterFix Project information, DWR’s non-disclosure policy, reinitiation of consultation on the coordinated long-
28 term operation of the CVP and SWP, communications with the State Water Board, and communications with CDFW.
On February 14, 2018, Restore the Delta served a subpoena duces tecum on DWR for documents related to the
potential phased approach for construction of the WaterFix intakes and tunnels.

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DATED: March 8, 2018

DOWNEY BRAND LLP

By: 

MEREDITH E. NIKKEL
Attorney for Petitioners CARTER MUTUAL
WATER COMPANY; EL DORADO
IRRIGATION DISTRICT; EL DORADO
WATER & POWER AUTHORITY; HOWALD
FARMS, INC.; MAXWELL IRRIGATION
DISTRICT; NATOMAS CENTRAL MUTUAL
WATER COMPANY; MERIDIAN FARMS
WATER COMPANY; OJI BROTHERS FARM,
INC.; OJI FAMILY PARTNERSHIP; PELGER
MUTUAL WATER COMPANY; PLEASANT-
GROVE VERONA MUTUAL WATER CO.;
PRINCETON-CODORA-GLENN IRRIGATION
DISTRICT; PROVIDENT IRRIGATION
DISTRICT; RECLAMATION DISTRICT 108;
SACRAMENTO MUNICIPAL UTILITY
DISTRICT; HENRY D. RICHTER, ET AL.;
RIVER GARDEN FARMS COMPANY; SOUTH
SUTTER WATER DISTRICT; SUTTER
EXTENSION WATER DISTRICT; SUTTER
MUTUAL WATER COMPANY; TISDALE
IRRIGATION AND DRAINAGE COMPANY;
WINDSWEPT LAND AND LIVESTOCK
COMPANY; NORTH DELTA WATER
AGENCY; RECLAMATION DISTRICT 999;
RECLAMATION DISTRICT 2060;
RECLAMATION DISTRICT 2068; 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;
RECLAMATION DISTRICT 800 (BYRON
TRACT); TEHAMA-COLUSA CANAL
AUTHORITY

STATEMENT OF SERVICE

**CALIFORNIA WATERFIX PETITION HEARING
Department of Water Resources and U.S. Bureau of Reclamation (Petitioners)**

I hereby certify that I have this day submitted to the State Water Resources Control Board and caused a true and correct copy of the following document:

**DOWNEY BRAND PROTESTANTS' RESPONSE TO THE CALIFORNIA
DEPARTMENT OF FISH AND WILDLIFE'S MOTION FOR PROTECTIVE ORDER**

to be served by **Electronic Mail** (email) upon the parties listed in Table 1 of the **Current Service List** for the California WaterFix Petition Hearing, dated March 6, 2018, posted by the State of Water Resources Control Board at

http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/service_list.shtml:

Note: In the event that any emails to any parties on the Current Service List are undeliverable, you must attempt to effectuate service using another method of service, if necessary, and submit another statement of service that describes any changes to the date and method of service for those parties.

For Petitioners Only:

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| | I caused a true and correct hard copy of the document(s) to be served by the following method of service to Suzanne Womack & Sheldon Moore, Clifton Court, L.P., 3619 Land Park Drive, Sacramento, CA 95818: Method of Service: _____ |
|--|--|

I certify that the foregoing is true and correct and that this document was executed on March 8, 2018.

Signature: 

Name: Catharine Irvine

Title: Legal Secretary

Party/Affiliation: Downey Brand, LLP

Address: 621 Capitol Mall, Sacramento, CA 95814