
From: Deirdre Des Jardins <ddj@cah2oresearch.com>
Sent: Tuesday, March 27, 2018 8:24 AM
To: CWFhearing
Cc: abl@bkslawfirm.com; aferguson@somachlaw.com; ahitchings@somachlaw.com; ajr@bkslawfirm.com; akrieg@volkerlaw.com; amy.aufdemberge@sol.doi.gov; apeltzer@prlawcorp.com; awarn@nrdc.org; barbara@restorethedelta.org; barbarav@aqualliance.net; barry@solagra.com; bdalymn@citlink.net; bjohnson@tu.org; blancapaloma@msn.com; bobker@bay.org; bpoulsen@eid.org; bradpappa@gmail.com; brettgbaker@gmail.com; burkew@saccounty.net; bwright@friendsoftheriver.org; caroleekrieger7@gmail.com; colin@ejcw.org; connere@gmail.com; CWFhearing; daladjem@downeybrand.com; daniel@kaydix.com; dcooper@minasianlaw.com; dcoty@bpmnj.com; ddj@cah2oresearch.com; dean@hprlaw.net; deltakeep@me.com; dkelly@pcwa.net; dmwolk@solanocounty.com; dobegi@nrdc.org; dohanlon@kmtg.com; dorth@davidorthconsulting.com; elamoe@minasianlaw.com; empappa@gmail.com; esoderlund@valleywater.org; evielma@cafecoop.org; ewehr@gwdwater.org; fetherid@ebmud.com; fmorrissey@orangecoveid.org; gadams@fclaw.com; hwalter@kmtg.com; info@californiadelta.org; jailin@awattorneys.com; jtb@bkslawfirm.com; jconway@rd800.org; jfox@awattorneys.com; Mizell, James@DWR; jennifer@spalettalaw.com; jherrlaw@aol.com; jminasian@minasianlaw.com; jminton@pcl.org; john.luebberke@stocktonca.gov; Jon.Rubin@SLDMWA.org; jph@tulareid.org; jsagwomack@gmail.com; jsalmon@ebmud.com; jvolker@volkerlaw.com; kcorby@somachlaw.com; kelweg1@aol.com; kharrigfeld@herumcrabtree.com; kobrien@downeybrand.com; kpoole@nrdc.org; ktaber@somachlaw.com; kurtis.keller@cc.cccounty.us; kyle.jones@sierraclub.org; lcaster@fclaw.com; matlas@downeybrand.com; matthew@mlelaw.com; melissa.poole@wonderful.com; mghafar@earthjustice.org; mhagman@lindmoreid.com; michael@brodskylaw.net; mjatty@sbcglobal.net; mkropf@countyofcolusa.com; mlarsen@kdwcd.com; mnikkel@downeybrand.com; mvanzandt@hansonbridgett.com; mvoss@cityofsacramento.org; myoung@awattorneys.com; nrobertson@earthjustice.org; office@ecosacramento.net; osha@semlawyers.com
Subject: Proof of service -- CDFW witness subpoena for waterfix hearing
Attachments: subpoena wserve.pdf; CDFW reply subpoena.pdf; Statement of Service 03-27-18.pdf

Good morning,

Deirdre Des Jardins, principal at California Water Research, noticed CDFW witnesses for Part 2 Case in Chief. Please find attached proof of service of a subpoena which was issued to a CDFW witness, and correspondence with CDFW counsel regarding the appearance (CDFW counsel is requesting alternate dates for appearance.)

(The affidavit of service for the March 20 service was only received from the process server, We Serve Law, yesterday.)

Deirdre Des Jardins
ddj@cah2oresearch.com
831 423-6857 v
831 566-6320 c



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

| | |
|--|--|
| ATTORNEY OR PARTY WITHOUT ATTORNEY REQUESTING SUBPOENA (name, address, and telephone no.): Deirdre Des Jardins 145 Beel Dr Santa Cruz, CA 95060 831-423-6857 | FOR STATE WATER BOARD USE ONLY |
| REPRESENTING: self | |
| TITLE OF THE PROCEEDING: <i>Hearing on Petition for Changes in Water Rights for the California WaterFix Project</i> | |
| <input checked="" type="checkbox"/> SUBPOENA | <input type="checkbox"/> RE HEARING |
| <input type="checkbox"/> SUBPOENA DUCES TECUM | <input type="checkbox"/> RE DEPOSITION |

THE PEOPLE OF THE STATE OF CALIFORNIA, TO (name): **Randall Baxter, CA Dept. of Fish & Wildlife**

1. YOU ARE ORDERED TO APPEAR AS A WITNESS in this proceeding as follows unless you make special agreement with the person named in item 3:

| | |
|--|----------------------|
| a. Date: Mar 29,30, Apr 2,5 2018 | Time: 9:30 am |
| b. Address: WaterFix Hearing Room, 1001 I St., Sacramento CA, 95814 | |

2. AND YOU ARE:

- a. Ordered to appear in person. (Wat. Code, § 1080; Gov. Code, § 11450.10; Cal. Code Regs., tit. 23, § 649.6(a).)
- b. Not required to appear in person if you produce the records described in the accompanying affidavit in compliance with Evidence Code sections 1560 and 1561. (Wat. Code, § 1080; Gov. Code, § 11450.10(b); Cal. Code Regs., tit. 23, § 649.6(a).)
- c. Ordered to appear in person and to produce the records described in the accompanying affidavit. The personal attendance of the custodian or other qualified witness and the production of the original records is required by this subpoena. The procedure authorized by subdivision (b) of section 1560, and sections 1561 and 1562, of the Evidence Code will not be deemed sufficient compliance with this subpoena. (Wat. Code, § 1080; Gov. Code, § 11450.10; Cal. Code Regs., tit. 23, § 649.6(a).)

3. IF YOU HAVE ANY QUESTIONS ABOUT WITNESS FEES OR THE TIME OR DATE FOR YOU TO APPEAR, OR IF YOU WANT TO BE CERTAIN THAT YOUR PRESENCE IS REQUIRED, CONTACT THE FOLLOWING PERSON BEFORE THE DATE ON WHICH YOU ARE TO APPEAR:

| | |
|-------------------------------------|---|
| a. Name: Deirdre Des Jardins | b. Telephone number: 831-566-6320 (Fees TBA) |
|-------------------------------------|---|

(Gov. Code, § 11450.20(a); Code Civ. Proc., § 1985.2.)

4. **WITNESS FEES:** You are entitled to witness fees and mileage actually traveled, both ways, as provided by law. Request them from the person who serves this subpoena or from the person named in item 3. (Wat. Code, §§ 1081, 1083, 1084; Gov. Code, §§ 11450.40, 68070 et seq.; Code Civ. Proc., §§ 1986.5, 2065.)

5. If you object to the terms of this subpoena, you may file a motion for a protective order including a motion to quash with the hearing officer assigned to your case. Motions must be made within a reasonable period after receipt of the subpoena, and shall be made with written notice to all parties, with proof of service upon all parties attached. In response to your motion, the hearing officer may make an order quashing the subpoena entirely, modifying it, or directing compliance with it, or may make any order needed to protect the parties or witnesses from unreasonable or oppressive demands, including unreasonable violations of the right to privacy. (Gov. Code, § 11450.30.) (Send motions to: The State Water Resources Control Board, Office of Chief Counsel, P.O. Box 100, Sacramento, CA 95812-0100.)

DISOBEDIENCE OF THIS SUBPOENA MAY CAUSE YOU TO BE LIABLE FOR CONTEMPT AND OTHER PENALTIES PROVIDED BY LAW

(Wat. Code, §§ 1090-1097; Gov. Code, §§ 11450.20(b), 11455.10-11455.20.)

Dated: 2.27.18





 (signature)

Name: Erik Erdahl

Title: Deputy Director, Division of Water Rights

Unless issued by an attorney pursuant to Code of Civil Procedure, Section 1985, subdivision (c), the original subpoena is embossed with this seal.

(See reverse for Endorsement on Subpoena, if used, and Proof of Service)

| | |
|---|---|
| ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address) Deirdre Des Jardins 145 Beel Dr Santa Cruz, CA 95060 TELEPHONE NO.: (831) 423-6857 FAX NO. E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): SELF: DEIRDGE DES JARDINS | FOR COURT USE ONLY |
| STATE WATER RESOURCES CONTROL BOARD OF THE STATE OF CALIFORNIA STREET ADDRESS: 1001 I ST MAILING ADDRESS: CITY AND ZIP CODE: SACRAMENTO, CA 95814 BRANCH NAME: | Hearing Date: 3/27/2018 Room: COASTAL HEAR Hearing Time: 9:30 AM Dept: |
| PLAINTIFF: HEARING ON PETITION FOR CHANGES IN WATER RIGHTS FOR THE CALIFORNIA WATER FIX PROJECT DEFENDANT: | CASE NUMBER: |
| PROOF OF SERVICE | Ref. No. or File No.: WATER RIGHTS |

AT THE TIME OF SERVICE I WAS AT LEAST 18 YEARS OF AGE AND NOT A PARTY TO THIS ACTION
I SERVED COPIES OF THE FOLLOWING DOCUMENTS:

SUBPOENA

PARTY SERVED: **RANDALL BAXTER, CA. DEPT. OF FISH & WILDLIFE**

DATE & TIME OF DELIVERY: **3/20/2018
 6:47 PM**

ADDRESS, CITY, AND STATE: **1209 Devine Dr
 Lodi, CA 952400406**

PHYSICAL DESCRIPTION: **Age: 51-55 Weight: 180-200 Lbs Hair: Gray /White
 Sex: Male Height: 6'0 - 6'6 Eyes: Blue
 Skin: White Marks:**

MANNER OF SERVICE:
 Personal Service - By personally delivering copies.

A2Z

County: FRESNO
 Registration No.: S201310000022
 A2Z Attorney Service
 980 9th St, 16th Flr
 Sacramento, CA 95814
 (916) 436-5484
 Ref: WATER RIGHTS



I declare under penalty of perjury under the laws of the The State of California that the foregoing information contained in the return of service and statement of service fees is true and correct and that this declaration was executed on March 21, 2018.

Signature: _____
VICTOR MORENO

PROOF OF SERVICE

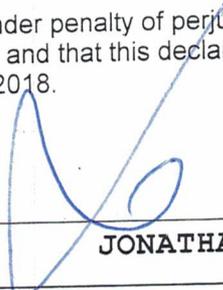
| | | | | | |
|---|--|----------------------------|------------------|---|--------------|
| Attorney or Party without Attorney: Deirdre Des Jardins 145 Beel Dr Santa Cruz, CA 95060 TELEPHONE No.: (831) 423-6857 FAX No. (Optional): E-MAIL ADDRESS (Optional): Attorney for: SELF | | | | FOR COURT USE ONLY | |
| | | | | Ref No. or File No.: WATER RIGHTS | |
| Insert name of Court, and Judicial District and Branch Court: None - | | | | | |
| Plaintiff: HEARING ON PETITION FOR CHANGES IN WATER RIGHTS FOR THE CALIFORNIA WATER FIX PROJECT Defendant: | | | | | |
| NON SERVICE REPORT | | HEARING DATE: 3/27/2018 | TIME: 9:30 AM | DEPT.: | CASE NUMBER: |

After due search, careful inquiry and diligent attempts at the following address(es), I have not been able to effect service of said process on: **RANDALL BAXTER, CA. DEPT. OF FISH & WILDLIFE**
 Documents: **SUBPOENA**

| Date | Time | Results |
|-----------|-----------|---|
| 3/16/2018 | 2:08 PM | spoke with staff attorney Catherine Kennedy, they cannot accept on behalf of an individual for personal appearance - JONATHAN SHISLER |
| | Location: | 1416 9th St Ste 1341, Sacramento, CA 958145515 |

County: **SACRAMENTO**
 Registration No.: **2008-10**
A2Z Attorney Service
980 9th St, 16th Flr
Sacramento, CA 95814
(916) 436-5484

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on March 19, 2018.

Signature: 
JONATHAN SHISLER

NON SERVICE REPORT

Order#: 7736



Deirdre Des Jardins
145 Beel Dr
Santa Cruz, CA 95060
(831) 423-6857
ddj@cah2oresearch.com

March 24, 2018

VIA electronic mail

Shannon Little
Attorney III, California Department of Fish and Wildlife
1416 9th Street, Suite 1341
Sacramento, CA 95814

Dear Ms. Little,

This letter is in response to your phone call and email on March 22, 2018. You objected to the service of my March 20, 2017 subpoena to Randy Baxter, and requested that I serve a second subpoena without a time or date for appearance, to “enable us to work with you and the hearing team to identify an appropriate date for attendance with adequate notice. “

I did want to remind you of your November 6, 2017 response to my Notice Calling Witnesses (attached.) It stated,

CDFW objects to the Notice and considers it insufficient to require CDFW employees to appear at an unspecified time and date before the Board. Government Code section 11450.50. subdivision (a) applies to the production of a party to the record of a proceeding before the Board, CDFW withdrew as a party to the California WaterFix Change Petition Hearing by submitting a Supplemental Notice of Intent to Appear to the Board, with service to the Service List on September 9, 2017. As specified in that supplemental notice, CDFW will participate only as an interested person presenting a policy statement . Therefore, CDFW is not subject to the subpoena exemption described in Government Code, section 11450.50, subdivision (a). CDFW considers the Notice to create no obligation on the part of CDFW or its employees, and will provide no further response to it. (underlining added.)

The two objections in your response were:

- (1) CDFW is not participating in the hearing, except to make a policy statement
- (2) The subpoena did not specify a time and date

It is a requirement that subpoenas specify a time and date. This was difficult with the multiparty structure of the WaterFix Water Right Change Petition Hearing. The objection based on not specifying a time and date held up the service of a subpoena for months, and as you indicated, CDFW was not going to provide any further response to my Notice Calling Witnesses. I also got a phone call from Xochitl Miranda which generally indicated that the Office of General Counsel would not be involved in the subpoena.

When the process server attempted to serve a subpoena for Randy Baxter to appear on the CDFW Office of the General Counsel, the response by Catherine Kennedy was that the Office of the General Counsel would not accept a subpoena by an individual for a personal appearance.

Now that Mr. Baxter has been served with a subpoena “by an individual for a personal appearance,” it appears that CDFW Office of General Counsel is *not* considering it just a personal appearance, but would like to work with the Hearing Officers to arrange for Mr. Baxter to appear with CDFW counsel, as if CDFW was a party. You are also citing the Hearing Rulings. This is not consistent with your prior assertion that CDFW is not participating in the Hearings as a party, but is only making a policy statement, and refusal to accept service of the subpoena.

You have also objected to the proposed appearance dates, stating that CDFW counsel is not available. I will waive attendance on March 29, because the process server was unable to serve Mr. Baxter until March 20. But given the number of attorneys at CDFW Office of General Counsel, I am a bit dubious that no one is available on March 30, April 2, or April 5. If this is indeed the case, please provide a statement to this effect. I have also attached the Hearing schedule. Please indicate by Monday, March 26, 2018, the next dates when both Mr. Baxter and CDFW counsel are available.

I have sent you three checks for witness fees via certified mail. One is for \$550 for two days of appearance, and two are for \$275 each for a 3rd and 4th day of appearance. Please indicate if this is not acceptable.

Finally, I would like to note that I requested that Mr. Baxter appear to be cross-examined on CDFW’s 2010 public trust recommendations to the State Water Resources Control Board. Since this is the State Water Resources Control Board Hearing to determine “appropriate Delta flow criteria,” and CDFW is the trustee agency for fish and wildlife, there should be more cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Des Jardins', written in a cursive style.

Deirdre Des Jardins
Principal, California Water Research

STATEMENT OF SERVICE

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

I hereby certify that on March 27, 2018 I submitted to the State Water Resources Control Board and caused a true and correct copy of the following document(s):

Subpoena to CDFW witness with statements of service and attempted service

March 24, 2018 letter to CDFW counsel

to be served by Electronic Mail (email) upon the parties listed in the Current Service List for the California Water Fix Petition Hearing, dated March 26, 2018, posted by the State 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.

I certify that the foregoing is true and correct and that this document was executed on March 27, 2018.

Signature:



Name: Deirdre Des Jardins

Title: Principal, California Water Research

Party/Affiliation:

Deirdre Des Jardins

Address:

145 Beel Dr

Santa Cruz, California 95060