

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

ATTORNEY OR PARTY WITHOUT ATTORNEY REQUESTING SUBPOENA ( <i>name, address, and telephone no.</i> ): TIM O'LAUGHLIN (SBN 116807) TIMOTHY J. WASIEWSKI (SBN 302306) O'LAUGHLIN & PARIS LLP 2617 K STREET, SUITE 100 SACRAMENTO, CA 95816 (916) 993-3962 REPRESENTING: SAN JOAQUIN TRIBUTARIES AUTHORITY	FOR STATE WATER BOARD USE ONLY				
TITLE OF THE PROCEEDING:  <p align="center">California WaterFix Change Petition Hearing</p>					
<table style="width:100%;"> <tr> <td><input checked="" type="checkbox"/> SUBPOENA</td> <td><input checked="" type="checkbox"/> RE HEARING</td> </tr> <tr> <td><input type="checkbox"/> SUBPOENA DUCES TECUM</td> <td><input type="checkbox"/> RE DEPOSITION</td> </tr> </table>		<input checked="" type="checkbox"/> SUBPOENA	<input checked="" type="checkbox"/> RE HEARING	<input type="checkbox"/> SUBPOENA DUCES TECUM	<input type="checkbox"/> RE DEPOSITION
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THE PEOPLE OF THE STATE OF CALIFORNIA, TO (*name*): DEAN MARSTON, Staff - California Department 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: August 2, 2018*	Time: 9:30 a.m.
b. Address: Joe Serna Jr. - CalEPA Building 1001 I Street. Second Floor. 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: \* *Contact the issuing attorney below to confirm a mutually agreeable time and date for your scheduled appearance.*

a. Name: Tim O'Laughlin	b. Telephone number: 916-993-3962
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(Gov. Code, § 11450.20(a); Code Civ. Proc., § 1985.2.)

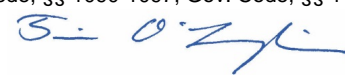
4. **WITNESS FEES:** You are entitled to witness fees and mileage actually traveled, both ways, as provided by law. Request them from the person who serves this subpoena or from the person named in item 3. (Wat. Code, §§ 1081, 1083, 1084; Gov. Code, §§ 11450.40, 68070 et seq.; Code Civ. Proc., §§ 1986.5, 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: July 10, 2018

  
\_\_\_\_\_  
(signature)



Name: TIM O'LAUGHLIN  
Title: Attorney for SJTA

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)

**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: **See attached Statement of Service**

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).)

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Valerie C. Kincaid (SBN 231815)  
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6 [tw@olaughlinparis.com](mailto:tw@olaughlinparis.com)

7 Attorneys for **SAN JOAQUIN**  
**TRIBUTARIES AUTHORITY**

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10 BEFORE THE CALIFORNIA STATE WATER RESOURCES CONTROL BOARD  
11 IN THE MATTER OF

12 CALIFORNIA DEPARTMENT OF WATER ) **AFFIDAVIT OF TIM O’LAUGHLIN IN**  
13 RESOURCES AND UNITED STATES ) **SUPPORT OF SAN JOAQUIN**  
BUREAU OF RECLAMATION PETITION ) **TRIBUTARIES AUTHORITY’S SUBPOENA**  
14 FOR WATER RIGHT CHANGE RE: ) **FOR PERSONAL APPEARANCE OF**  
CALIFORNIA WATERFIX. ) **DEAN MARSTON OF THE CALIFORNIA**  
15 ) **DEPARTMENT OF FISH AND WILDLIFE**  
16 )  
17 )  
18 )

19 I, Tim O’Laughlin, declare as follows:

20 1. I am an attorney of record for SAN JOAQUIN TRIBUTARIES AUTHORITY  
21 (“SJTA”) in this proceeding. The SJTA is a joint powers authority consisting of Modesto Irrigation  
22 District, Oakdale Irrigation District, South San Joaquin Irrigation District, Turlock Irrigation  
23 District, and the City and County of San Francisco, and forms Group 18 of Protestants in this  
24 proceeding. I have personal knowledge of the facts stated in the Affidavit and, if called as a  
25 witness, would testify to those facts.

26 2. One of the issues addressed in Part 2 of this proceeding is the appropriate Delta flow  
27 criteria that should be included in any approval of the WaterFix change petition. What constitutes  
28 appropriate Delta flow criteria is tied to, among other things, the Delta Reform Act of 2009, the

1 State Water Resources Control Board’s (“SWRCB” or “Board”) 2010 report on the “Development  
2 of Flow Criteria for the Sacramento-San Joaquin Delta Ecosystem” (“2010 Delta Flow Criteria  
3 Report” or “DFCR”), and the various exhibits relied on by the Board in drafting the 2010 Delta  
4 Flow Criteria Report, including a report from the California Department of Fish and Game  
5 (“CDFG”) entitled “Flows Needed in the Delta to Restore Anadromous Salmonid Passage from the  
6 San Joaquin River at Vernalis to Chipps Island,” identified throughout the DFCR (and herein) as  
7 “DFG Exhibit 3.”

8           3.       The State Water Board is required by the Delta Reform Act of 2009 to consider the  
9 DFCR when determining what constitutes “appropriate Delta flow criteria” for any approval of the  
10 WaterFix project. (Wat. Code, § 85086[c][2].)

11           4.       The DFCR was entered into evidence in the WaterFix proceeding (marked as Exhibit  
12 No. SWRCB-25) and is part of the administrative record for this proceeding. (SWRCB Ruling,  
13 dated February 21, 2017.)

14           5.       In written testimony submitted to the Board, numerous witnesses relied upon and  
15 endorsed the DFCR and DFG Exhibit 3 findings and advised the Board to adopt the recommended  
16 flow criteria therein. (See e.g., Bill Jennings Testimony [Exhibit No. CSPA-200-Corrected]; Chris  
17 Shutes Testimony [Exhibit No. CSPA-202-errata].)

18           6.       Likewise, numerous witnesses - on direct and cross-examination during Part 2 of the  
19 WaterFix proceeding - relied upon and endorsed the DFCR and DFG Exhibit 3 findings and advised  
20 the Board to adopt the recommended flow criteria therein. (See e.g., Oral Testimony of Dr.  
21 Jonathan Rosenfield, [April 23, 2018]; Oral Testimony of Bill Jennings [March 27, 2018]; Oral  
22 Testimony of Chris Shutes [March 27, 2018]; Oral Testimony of Dr. Richard Denton [March 26,  
23 2018].)

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1           7.       The SJTA is subpoenaing Dean Marston, an Environmental Program Manager with  
2 the California Department of Fish and Wildlife, because he is associated with CDFG’s submittal of  
3 Exhibit 3 in the 2010 DFCR informational proceeding.<sup>1</sup> Additionally, according to Mr. Marson’s  
4 Statement of Qualifications, when CDFG submitted Exhibit 3 in the 2010 DFCR informational  
5 proceeding, he was responsible for, “[o]versight of all technical, supervisory, managerial, and  
6 budgetary aspects of CDFG San Joaquin Basin (R4) Anadromous Fish Management Program.”<sup>2</sup>  
7 Further, Mr. Marston states he was also responsible for, “[o]versight for development of San  
8 Joaquin River Fall-run Chinook salmon population computer simulation model and San Joaquin  
9 River Water Temperature Model.”<sup>3</sup>

10           8.       Good cause exists for Mr. Marston’s testimony because, as discussed above, the  
11 DFCR repeatedly cites to DFG Exhibit 3, authored by the (then) California Department of Fish and  
12 Game. This exhibit is cited for, among other things, the proposition that DFG’s analysis concluded  
13 that higher flows from the San Joaquin tributaries resulted in more juvenile salmon leaving the  
14 tributaries, more salmon successfully migrating to the South Delta, and more juvenile salmon  
15 surviving through the Delta.

16           9.       Additionally, the DFCR cites to DFG Exhibit 3 for the proposition that increased  
17 spring flows lead to increased smolt survival which then leads to a subsequent substantial increase  
18 in adult abundance. Further, the DFCR extensively discusses DFG’s development of flow  
19 recommendations for the San Joaquin River from March 15 through June 15 to double Chinook  
20 salmon smolt production and, ultimately, bases its flow recommendations on those proposed in  
21 DFG Exhibit 3.

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24 <sup>1</sup> Dean Marston’s name appears on the CDFG’s 2010 Delta Flow Criteria informational proceeding “Witness  
25 Identification List” and “Revised Witness Identification List” for expertise related to anadromous fish – which is what  
26 Exhibit 3 addresses (See “Witness Identification List” and “Revised Witness Identification List” at:  
27 [https://www.waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/deltaflow/dfg.shtml](https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/deltaflow/dfg.shtml))

28 <sup>2</sup> As of July 6, 2018, Mr. Marston’s Statement of Qualifications are hosted on the State Water Resources Control  
Board’s official website (See “Statement of Qualifications” at:  
[https://www.waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/deltaflow/docs/exhibits/dfg/dfg\\_exh7\\_marston.pdf](https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/deltaflow/docs/exhibits/dfg/dfg_exh7_marston.pdf).)

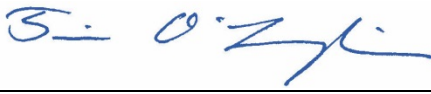
<sup>3</sup> *Id.*

1           10.     Based on his work experience and association with DFG Exhibit 3, Mr. Marston's  
2 testimony will be material and necessary to this proceeding, specifically to the issue of DFG Exhibit  
3 3's flow recommendations. As a contributor to DFG Exhibit 3, he is in a unique position to provide  
4 information regarding the preparation and recommendations in DFG Exhibit 3, and can answer  
5 questions pertaining to the assumptions, limitations, analyses, findings and conclusions in the  
6 report.

7           I declare under penalty of perjury under the laws of the State of California that the foregoing  
8 is true and correct.

9           Executed on July 10, 2018, at Sacramento, California.

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By:   
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TIM O'LAUGHLIN