

Exhibit A

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>): Kevin M. O'Brien David R.E. Aladjem Meredith E. Nikkel Downey Brand LLP 621 Capitol Mall, 18th Floor Sacramento, CA 95814 REPRESENTING: Sacramento Valley Water Users ("SVWU")	FOR STATE WATER BOARD USE ONLY				
TITLE OF THE PROCEEDING: <p align="center"><i>California WaterFix Change Petition Hearing</i></p>					
<table style="width:100%; border: none;"> <tr> <td style="width:50%; border: none;"><input type="checkbox"/> SUBPOENA</td> <td style="width:50%; border: none;"><input type="checkbox"/> RE HEARING</td> </tr> <tr> <td style="border: none;"><input checked="" type="checkbox"/> SUBPOENA DUCES TECUM</td> <td style="border: none;"><input type="checkbox"/> RE DEPOSITION</td> </tr> </table>		<input type="checkbox"/> SUBPOENA	<input type="checkbox"/> RE HEARING	<input checked="" type="checkbox"/> SUBPOENA DUCES TECUM	<input type="checkbox"/> RE DEPOSITION
<input type="checkbox"/> SUBPOENA	<input type="checkbox"/> RE HEARING				
<input checked="" type="checkbox"/> SUBPOENA DUCES TECUM	<input type="checkbox"/> RE DEPOSITION				

THE PEOPLE OF THE STATE OF CALIFORNIA, TO (*name*): **United States Bureau of Reclamation**

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: July 7, 2017	Time: 5:00 p.m.
b. Address: via electronic submittal to WaterFix FTP	

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: Meredith E. Nikkel	b. Telephone number: (916) 444-1000
------------------------------------	--

(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: June 29, 2017



 (signature)
 Name: Meredith E. Nikkel
 Title: Counsel

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:

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:

Served via electronic mail to the attached service list in accordance with the Hearing Notice procedures.

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).)

1 DOWNEY BRAND LLP
2 KEVIN M. O'BRIEN (Bar No. 122713)
3 DAVID R.E. ALADJEM (Bar No. 152203)
4 MEREDITH E. NIKKEL (Bar No. 254818)
5 621 Capitol Mall, 18th Floor
6 Sacramento, CA 95814-4731
7 Telephone: 916.444.1000
8 Facsimile: 916.444.2100
9 kobrien@downeybrand.com
10 daladjem@downeybrand.com
11 mnikkel@downeybrand.com

12 Attorneys for Protestants
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

**AFFIDAVIT IN SUPPORT OF
SACRAMENTO VALLEY WATER
USERS' SUBPOENA *DUCES TECUM* TO
UNITED STATES BUREAU OF
RECLAMATION**

[Cal. Wat. Code, § 1080; Cal. Gov. Code, §
11450.10; Cal. Code Regs., tit. 23, § 649.6]

17 **I, David R.E. Aladjem, declare as follows:**

18 1. I am an attorney admitted to practice law in the State of California and attorney of record
19 for some members of the Sacramento Valley Water Users ("SVWU") in this proceeding. The
20 following matters are within my personal knowledge, and if called as a witness, I could
21 competently testify thereto.

22 2. I am informed and believe that on June 26, 2017, the United States Fish and Wildlife
23 Service ("USFWS" or the "Service") and National Marine Fisheries Service ("NMFS") each
24 released a Biological Opinion ("BiOp") regarding the California WaterFix project ("WaterFix").

25 3. The BiOps reference documents and information that contain changes to the proposed
26 action that are not reflected in the proposed action as described in the July 2016 Biological
27 Assessment for WaterFix. (See USFWS BiOp, pp. 11-12; NMFS BiOp, p. 13.) Specifically, this
28 subpoena *duces tecum* requests that the United States Bureau of Reclamation ("Reclamation")

1 produce the following documents and modeling files as described in the BiOps that are within
2 Reclamation's possession or under its control:

- 3 a. "On May 8, 2017, Reclamation transmitted an initial package of changes to the
4 project description that have occurred since submission of the BA (Reclamation
5 2017a)." NMFS BiOp, at 9.
- 6 b. "On May 24, 2017, DWR transmitted a final package of changes to the project
7 description and reconciliation with other sections of the BA (DWR 2017). This
8 package includes, among other components, a revised adaptive management
9 program, implementation agreement, and implementation schedule; revisions to
10 timing of some construction activities; revisions to operations of the proposed
11 action; and commitment to habitat restoration." NMFS BiOp, at 9-10.
- 12 c. "On June 2, 2017, Reclamation provided correspondence identifying the May 24,
13 2017, package of changes to the project description as the final proposed action for
14 consultation (Reclamation 2017b)." NMFS BiOp, at 10.
- 15 d. A Draft Permit for Incidental Take that was issued under Section 2081(b) of the
16 California Endangered Species Act by the California Department of Fish and
17 Wildlife. Appendix A2 to the NMFS BiOp, at 3-1, n.1.
- 18 e. "Model results" and/or "sensitivity analysis" that were submitted to USFWS on
19 May 5, 2017, that purportedly "confirmed the effects of the operational updates are
20 within the range analyzed in the BA." Appendix A2 to the NMFS BiOp, at 3-81,
21 n.27; *id.* at 3-91, n.42.
- 22 f. Modeling that was performed in connection with the California Department of
23 Fish and Wildlife's draft 2081(b) Incidental Take Permit, specifically regarding
24 spring outflow criteria. Appendix A2 to the NMFS BiOp, at 3-86, n.38.
- 25 g. On May 5, 2017, "[t]he Service receive[d] from DWR revisions to the project
26 description including Guiding Principles for CWF actions and subsequent
27 consultations, changes to operations of the NDD and pulse flow protections for
28 salmonids, changes to south Delta operations in October and November, and

1 changes to delta smelt compensatory mitigation along with a new long-term
2 sensitivity analysis simulation of the PA which included some of the changes.”
3 USFWS BiOp, at 7-8.

- 4 h. On May 24, 2017, “[t]he Service receive[d] from Reclamation and DWR
5 modifications to the project description, BiOp Resolution Log, Adaptive
6 Management Framework and funding assurances.” USFWS BiOp, at 8.
7 i. On May 30, 2017, “[t]he Service receive[d] an email from DWR with written
8 clarifications to the longfin spring outflow criteria.” USFWS BiOp, at 8.
9 j. The *BiOp Resolution Log* that the BiOp indicates is included as an appendix to the
10 USFWS BiOp, but does not appear to be included. See USFWS BiOp, at 12.

11 4. Alternative 4A , the preferred alternative from the Recirculated Draft Environmental
12 Impact Report/Supplemental Draft Environmental Impact Statement for Water Fix, is the project
13 proposed by the Department of Water Resources and Reclamation in the WaterFix Change
14 Petition.

15 5. Many or all of these documents appear to be dated in May and June 2017, so the
16 information and changes to the proposed action could not have been included in Alternative 4A
17 described in the Final Environmental Impact Report/Environmental Impact Statement
18 (“EIR/EIS”) for WaterFix that was released in December 2016.

19 6. The requested documents and information appear to describe changes to the proposed
20 project that, if implemented, could result in a significantly different project than the project
21 described as Alternative 4A that is the subject of the WaterFix Change Petition.

22 7. Good cause exists for the production of documents described in paragraph 3 because the
23 nature and significance of the changes to the proposed project cannot be fully understood without
24 reviewing the requested documents and modeling files.

25 8. In addition, the documents and information requested concern the issues identified as
26 within the scope of both Part 1 and Part 2 of the Change Petition Hearing. The requested
27 documents reflect changes to the construction and operation of WaterFix that may result in new
28 impacts to legal users of water that were not considered in Part 1 of the hearing. While Part 1 of

1 the hearing is nearing completion, the Notice of Public Hearing for the WaterFix Change Petition
2 explains that “issues that arise out of the [Endangered Species Act] and [California Endangered
3 Species Act] processes that have a material bearing on the issues addressed in the first part of the
4 hearing, those issues may also be revisited in the second part of the hearing.” (Notice of Petition
5 and Notice of Public Hearing for the California WaterFix Project, p. 11 (Oct. 30, 2015).) The
6 requested information and documents arise out of the federal and state Endangered Species Act
7 processes and reflect changes to the project description that may have a material bearing on the
8 issues of injury to legal users of water, which is the subject of Part 1 of the Hearing. As such, the
9 requested materials are relevant and necessary for the parties and the SWRCB to be fully apprised
10 of the potential impacts of the WaterFix Project on legal users of water and to determine whether
11 or not it may be appropriate to revisit Part 1 issues in Part 2 of the hearing.

12 9. I am informed and believe that the documents and modeling files requested in the
13 Subpoena *Duces Tecum*, served herewith, are within Reclamation’s possession and/or control, as
14 they were submitted during formal consultation with USFWS and NMFS regarding the WaterFix
15 project proposed by Reclamation.

16 I declare under penalty of perjury under the laws of the State of California that the
17 foregoing is true and correct. Executed this 29th day of June, 2017 in Sacramento, California.

18
19 By: 
20 David R.E. Aladjem

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Exhibit B

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 (<i>name</i>):	b. Date of delivery:
c. Address where served:	d. Time of delivery:
e. Witness fees and mileage both ways (<i>check one</i>): (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: \$ _____

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<i>Date</i>	<i>at (place)</i>	<i>Signature</i>
	, California	

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Name: _____

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BEFORE THE CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

In the matter of Hearing re California
WaterFix Petition for Change

**AFFIDAVIT IN SUPPORT OF
SACRAMENTO VALLEY WATER
USERS' SUBPOENA *DUCES TECUM*
TO CALIFORNIA DEPARTMENT OF
WATER RESOURCES**

[Cal. Wat. Code, § 1080; Cal. Gov. Code, §
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I, David R.E. Aladjem, declare as follows:

1. I am an attorney admitted to practice law in the State of California and attorney of record for some members of the Sacramento Valley Water Users ("SVWU") in this proceeding. The following matters are within my personal knowledge, and if called as a witness, I could competently testify thereto.

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2 Species Act] processes that have a material bearing on the issues addressed in the first part of the
3 hearing, those issues may also be revisited in the second part of the hearing.” (Notice of Petition
4 and Notice of Public Hearing for the California WaterFix Project, p. 11 (Oct. 30, 2015).) The
5 requested information and documents arise out of the federal and state Endangered Species Act
6 processes and reflect changes to the project description that may have a material bearing on the
7 issue of injury to legal users of water, which is the subject of Part 1 of the Hearing. As such, the
8 requested materials are relevant and necessary for the parties and the SWRCB to be fully apprised
9 of the potential impacts of the WaterFix Project on legal users of water and to determine whether
10 or not it may be appropriate to revisit Part 1 issues in Part 2 of the hearing.

11 9. I am informed and believe that the documents and modeling files requested in the
12 Subpoena *Duces Tecum*, served herewith, are within DWR’s possession and/or control, as they
13 were submitted during formal consultation with USFWS and NMFS regarding the WaterFix
14 project proposed by DWR.

15 I declare under penalty of perjury under the laws of the State of California that the
16 foregoing is true and correct. Executed this 30th day of June, 2017 in Sacramento, California.

17
18 By: 

19 David R.E. Aladjem
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Exhibit C

From: [Mizell, James@DWR](mailto:Mizell_James@DWR)
To: [Nikkel, Meredith](#)
Cc: [Aladjem, David](#); [Ryan Bezerra](#)
Subject: RE: Documents Pursuant to SVWU Subpoena
Date: Friday, July 21, 2017 9:15:51 AM
Attachments: [image001.png](#)

Meredith, David and Ryan,

The FTP website should now contain subfolders representing the categories within your subpoena. The files have been moved and verified by DWR that they represent files within our (and Reclamation's) possession. I have also worked with CDFW to produce files within its possession as it relates to the draft 2081 modeling.

As noted by Meredith, the CDFW files are result files for modeling and it is my understanding that the models themselves are held by USFWS.

Regards,

Tripp Mizell

Sr. Attorney, Office of the Chief Counsel
California Department of Water Resources
Office 1118-B
1416 Ninth Street
Sacramento, California 95814
o: (916) 653-7533


James.Mizell@water.ca.gov

This email is confidential and may be subject to confidentiality rules under the attorney work product or attorney client communication privileges. If you have received this email in error, please inform the sender and delete it.

From: Nikkel, Meredith [mailto:mnikkel@DowneyBrand.com]
Sent: Wednesday, July 19, 2017 8:47 PM
To: Mizell, James@DWR
Cc: Aladjem, David; 'Ryan Bezerra'
Subject: RE: Documents Pursuant to SVWU Subpoena

Tripp,

I did not see the index this morning, so let me know if I've missed it. I did, however, notice that there are several new files loaded to the FTP site, each with file name starting a0000000. Are those modeling files from USFWS in response to category F?

We noticed one other issue with the production. The document with file name "AMP Implementation Schedule 5-18-17" is illegible as it appears in the production. It looks like it was converted from landscape to portrait when it was converted into a PDF, making it impossible to follow each of the rows of information in an intelligible way. Can you produce a legible version of the document, preferably in its native format?

Finally, I will be out on vacation starting on Friday through July 28. I am cc'ing David Aladjem and Ryan Bezerra to this email to ensure there are no gaps in communication when I am on vacation. Please include them both on all future correspondence regarding the SVWU subpoena. Thank you.

--Meredith

Meredith E. Nikkel

DOWNEY BRAND

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621 Capitol Mall, 18th Floor
Sacramento, CA 95814
916.444.1000 Main
916.520.5211 Direct
916.520.5611 Fax
mnikkel@downeybrand.com
www.downeybrand.com

From: Mizell, James@DWR [mailto:James.Mizell@water.ca.gov]
Sent: Wednesday, July 19, 2017 8:37 AM
To: Nikkel, Meredith
Subject: Re: Documents Pursuant to SVWU Subpoena

Hi Meredith,

I am verifying the index right now and should have it to you this morning if there are no significant omissions in this draft.

As for the modeling, I am uncertain of the response I will get from FWS or the timing. As I find out more I will let you know.

- Tripp Mizell

Sr. Staff Counsel
Office of the Chief Counsel
California Department of Water Resources

O:(916)653-7533

1416 Ninth Street
Sacramento, CA 95814

James.Mizell@water.ca.gov

This email is confidential and may be subject to confidentiality rules under the attorney work product or attorney client communication privileges. If you have received this email in error, please inform the sender and delete it.

From: Nikkel, Meredith <mnikkel@DowneyBrand.com>

Sent: Wednesday, July 19, 2017 8:34:20 AM

To: Mizell, James@DWR

Subject: RE: Documents Pursuant to SVWU Subpoena

Hi Tripp,

I am checking in on the status of the index and your response to my question about the modeling files. Please let me know when you will be able to respond. I will be available today by cell if you would like to discuss-- [REDACTED]. Thank you.

Meredith E. Nikkel
916-520-5211

-----Original Message-----

From: Nikkel, Meredith

Sent: Tuesday, July 18, 2017 09:22 AM Pacific Standard Time

To: 'Mizell, James@DWR'

Subject: RE: Documents Pursuant to SVWU Subpoena

Tripp,

Thank you for your responses. While we wait for the index, I have a follow up question about the modeling requested in category F. It appears that the files you identify contain only model results, data and related summaries, but not the actual modeling files themselves. For example, the first page of the file FD_CWF references a "simulation run date of 4/28/2017" called CWF PA ELT and another simulation called CDFW LFS RUST4 Mar1-May31. That same file on page 4 references three different CalSimII simulation runs. None of the modeling files for these simulations have been provided. If DWR does not have possession of the modeling files, then can you obtain them from the appropriate agency? I note that a hydrologist with USFWS is referenced in a couple of the files.

--Meredith

Meredith E. Nikkel

DOWNEY BRAND

Downey Brand LLP
621 Capitol Mall, 18th Floor
Sacramento, CA 95814
916.444.1000 Main

916.520.5211 Direct
916.520.5611 Fax
mnikkel@downeybrand.com
www.downeybrand.com

From: Mizell, James@DWR [<mailto:James.Mizell@water.ca.gov>]
Sent: Monday, July 17, 2017 11:04 PM
To: Nikkel, Meredith
Subject: Re: Documents Pursuant to SVWU Subpoena

Hi Meredith,

The files associated with category F, the CDFW modeling related to the draft 2081, include files with names beginning:

RUST 2
FD_Copy
FD_CWF
AD_RUST

These are the only documents that CDFW claims to have in their possession regarding this modeling. Prior to my requesting the documents pursuant to our understanding that I would attempt to produce each category in the subpoena, DWR did not have possession of any of the files for category F. Thus, these are the only documents I have been able to locate for this category.

As for identifying which files are responsive to which category of the subpoena, I will ask my paralegal to prepare an index which I can email to you. I will work to have that done tomorrow.

Regards,

-Tripp Mizell
Sr. Staff Counsel
Office of the Chief Counsel
California Department of Water Resources

1416 Ninth Street
Sacramento, CA 95814
O: (916) 653-7533

James.Mizell@water.ca.gov

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From: Nikkel, Meredith <mnikkel@downeybrand.com>

Sent: Monday, July 17, 2017 5:03 PM
Subject: RE: Documents Pursuant to SVWU Subpoena
To: Mizell, James@DWR <james.mizell@water.ca.gov>

Thank you, Tripp.

From: Mizell, James@DWR [Mizell, James@DWR [<mailto:James.Mizell@water.ca.gov>]
Sent: Monday, July 17, 2017 4:32 PM
To: Nikkel, Meredith
Subject: Re: Documents Pursuant to SVWU Subpoena

Hi Meredith,

I'll address your questions. Expect a reply later tonight.

-Tripp Mizell
Sr. Staff Counsel
Office of the Chief Counsel
California Department of Water Resources

1416 Ninth Street
Sacramento, CA 95814
O: (916) 653-7533

James.Mizell@water.ca.gov

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From: Nikkel, Meredith <mnikkel@DowneyBrand.com>
Sent: Monday, July 17, 2017 3:25:48 PM
To: Mizell, James@DWR
Subject: FW: Documents Pursuant to SVWU Subpoena

Tripp,

Thank you for your efforts in getting these materials posted today. I have two follow up questions that I would appreciate your help with.

1. The materials do not appear to include the documents and information responsive to item (f) ("Modeling that was performed in connection with the California Department of Fish and Wildlife's draft 2081(b) Incidental Take Permit, specifically regarding spring outflow criteria."). Please let me know which files contain those documents or when we can expect DWR to produce documents responsive to item (f).

2. The materials provided do not appear to be organized by category and it is very difficult to identify which documents are responsive to which category of the request. Please help me understand how we can determine which documents are responsive to which request.

Your continued cooperation on our request is much appreciated. Please feel free to call me if you wish to discuss.

--Meredith

Meredith E. Nikkel

|
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mnikkel@downeybrand.com
www.downeybrand.com

From: German, Valentina@DWR [<mailto:Valentina.German@water.ca.gov>]
Sent: Monday, July 17, 2017 11:03 AM
To: CWFhearing; Doduc, Tam@Waterboards; Marcus, Felicia@Waterboards
Cc: abl@bkslawfirm.com; aferguson@somachlaw.com;
ahitchings@somachlaw.com; ajr@bkslawfirm.com; amy.aufdemberge@sol.doi.gov;
apeltzer@prlawcorp.com; awearn@nrdc.org; barbara@restorethedelta.org;
barbarav@aqualliance.net; barry@solagra.com; bdalymns@citlink.net; bjohnson@tu.org;
blancapaloma@msn.com; bobker@bay.org; bradpappa@gmail.com; brettgbaker@gmail.com; Britton,
Sarah@saccounty; bwright@friendsoftheriver.org; Wilcox, Carl@Wildlife; caroleekrieger7@gmail.com;
colin@ejcw.org; connere@gmail.com; CWFhearing; Aladjem, David; daniel@kaydix.com;
dcooper@minasianlaw.com; dcoty@bpmnj.com; ddj@cah2oresearch.com; dean@hprlaw.net;
deltakeep@me.com; dkelly@pcwa.net; dgarrett@volkerlaw.com; dobegi@nrdc.org;
dohanlon@kmtg.com; dorth@davidorthconsulting.com; empappa@gmail.com; evielma@cafecoop.org;
elamoe@minasianlaw.com; fetherid@ebmud.com; fmorrissey@orangecoveid.org;
friendsofsfestuary@gmail.com; gadams@fclaw.com; info@californiadelta.org; Mizell, James@DWR;
jailin@awattorneys.com; jtb@bkslawfirm.com; jconway@rd800.org; jfox@awattorneys.com;
jennifer@spalettlaw.com; Herrick, John@aol.com; Minton, Jonas; john.luebberke@stocktonca.gov;
Rubin, Jon@sldmwa.org; jph@tulareid.org; jrobinson@cityofsacramento.org; jsagwomack@gmail.com;
jsalmon@ebmud.com; jvolker@volkerlaw.com; kcorby@somachlaw.com; kelweg1@aol.com;
kharrigfeld@herumcrabtree.com; O'Brien, Kevin; kpoole@nrdc.org; ktaber@somachlaw.com;
kyle.jones@sierraclub.org; lcaster@fclaw.com; matlas@jmatlaslaw.com;
matthew@mlelaw.com; mbently@countyofcolusa.org; melissa.poole@wonderful.com;
mhagman@lindmoreid.com; michael@brodskylaw.net; mjatty@sbcglobal.net;
mkropf@countyofcolusa.com; mlarsen@kdwcd.com; Nikkel, Meredith; Van
Zandt, Michael@hansonbridgett.com; myoung@awattorneys.com;
ncardella@prlawcorp.com; office@ecosacramento.net; Meserve, Osha@semlawyers.com; Pogledich,
Philip@yolocounty; pminasian@minasianlaw.com; pp@planetarysolutionaries.org; Miljanich,
Peter@solanocounty; psimmons@somachlaw.com; pwilliams@westlandswater.org; Akroyd,
Rebecca@KMTG; randy@ejcw.org; rbernal@ci.antioch.ca.us; rmaddow@bpmnj.com;
rdenton06@comcast.net; rmburness@comcast.net; roland@ssjmud.org; rsb@bkslawfirm.com; Smith,

Rebecca; russell@spalettalaw.com; Hernandez, Ryan@dcd; rzwilling@defenders.org; sae16@lsid.org; schaffin@awattorneys.com; sdalke@kern-tulare.com; sgeivet@ocsnet.net; smorris@swc.org; Sophie.Froelich@Roll.com; sonstot@awattorneys.com; srothert@americanrivers.org; Saxton, Steven; ssdwaterfix@somachlaw.com; stephen.siptroth@cc.cccounty.us; sunshine@snugharbor.net; svolker@volkerlaw.com; sgrady@eslawfirm.com; red@eslawfirm.com; tara.mazzanti@stocktonca.gov; tgohring@waterforum.org; thomas.esqueda@fresno.gov; tim@restorethedelta.org; tkeeling@freemanfirm.com; trobanch@freemanfirm.com; torr@earthjustice.org; towater@olaughlinparis.com; vkincaid@olaughlinparis.com; wes.miliband@stoel.com; Femlen, William@solanocounty.com; wirthsoscranes@yahoo.com; ygarcia@earthjustice.org

Subject: Documents Pursuant to SVWU Subpoena

Dear Hearing Officers Doduc and Marcus,

The Department of Water Resources has uploaded the documents to Subpoena Rerecords folder on the WaterFix FTP Site.

This message is electronically served upon the parties indicated in the revised service list dated July 3, 2017. A copy is being mailed to Clifton Court L.P.

Respectfully

Tina German
Legal Analyst
Office of the Chief Counsel
Department of Water Resources
(916) 653-5966
Valentina.German@water.ca.gov

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CONFIDENTIALITY NOTICE: This communication and any accompanying

document(s) are confidential and privileged. They are intended for the sole use of the addressee. If you receive this transmission in error, you are advised that any disclosure, copying, distribution, or the taking of any action in reliance upon the communication is strictly prohibited. Moreover, any such inadvertent disclosure shall not compromise or waive the attorney-client privilege as to this communication or otherwise. **If you have received this communication in error**, please contact our IS Department at its Internet email address (is@downeybrand.com), or by telephone at (916)444-1000 x5325. Thank you.

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Exhibit D

CWF PA ELT (simulation run date of
4/28/2017) provided on 5/5/2017
with CDFW LFS RUST4 Mar1-May31
Delta Outflow Requirements

For/with CDFW
May 10, 2017

Derek Hilts M.S., P.E.
Hydrologist, USFWS

Objectives

- Include delta outflow target lookup tables for use in the future (Early Long Term climate) with Eight River Index estimates (ELT 8RI) to help assure future CWF operations will provide the same frequency and magnitude of recent (1980-2017) delta outflows in the Mar-May timeframe.
 - First table is based on February ELT 8RI for use during Mar1-15.
 - Second table is based on March ELT 8RI for use during Mar16-Apr15.
 - Third table is based on April ELT 8RI for use during Apr16-May15.
 - Fourth table is based on May ELT 8RI for use during May16-31.
- Simulate the CWF PA ELT using those tables in combination with estimated ELT 8RIs as follows:
 - March delta outflow target = $(15\text{days} * \text{FebTarget} + 16\text{days} * \text{MarTarget}) / 31$.
 - April delta outflow target = $(15\text{days} * \text{MarTarget} + 15\text{days} * \text{AprTarget}) / 30$.
 - May delta outflow target = $(15\text{days} * \text{AprTarget} + 16\text{days} * \text{MayTarget}) / 31$.

Proposed Criteria

RUST4 VERSION	
X	Y
Feb ELT 8RI	Mar1-15 TARGET
(TAF)	(CFS)
0	0
450	7100
900	7100
1000	9100
1100	11000
1200	13000
1300	14900
1400	16900
1500	18800
1600	20800
1700	22700
1800	24700
1900	26600
2000	28600
2100	30500
2200	32500
2300	34400
2400	36400
2500	38300
2600	40300
2700	42200
2815	44500
> 2815	44500

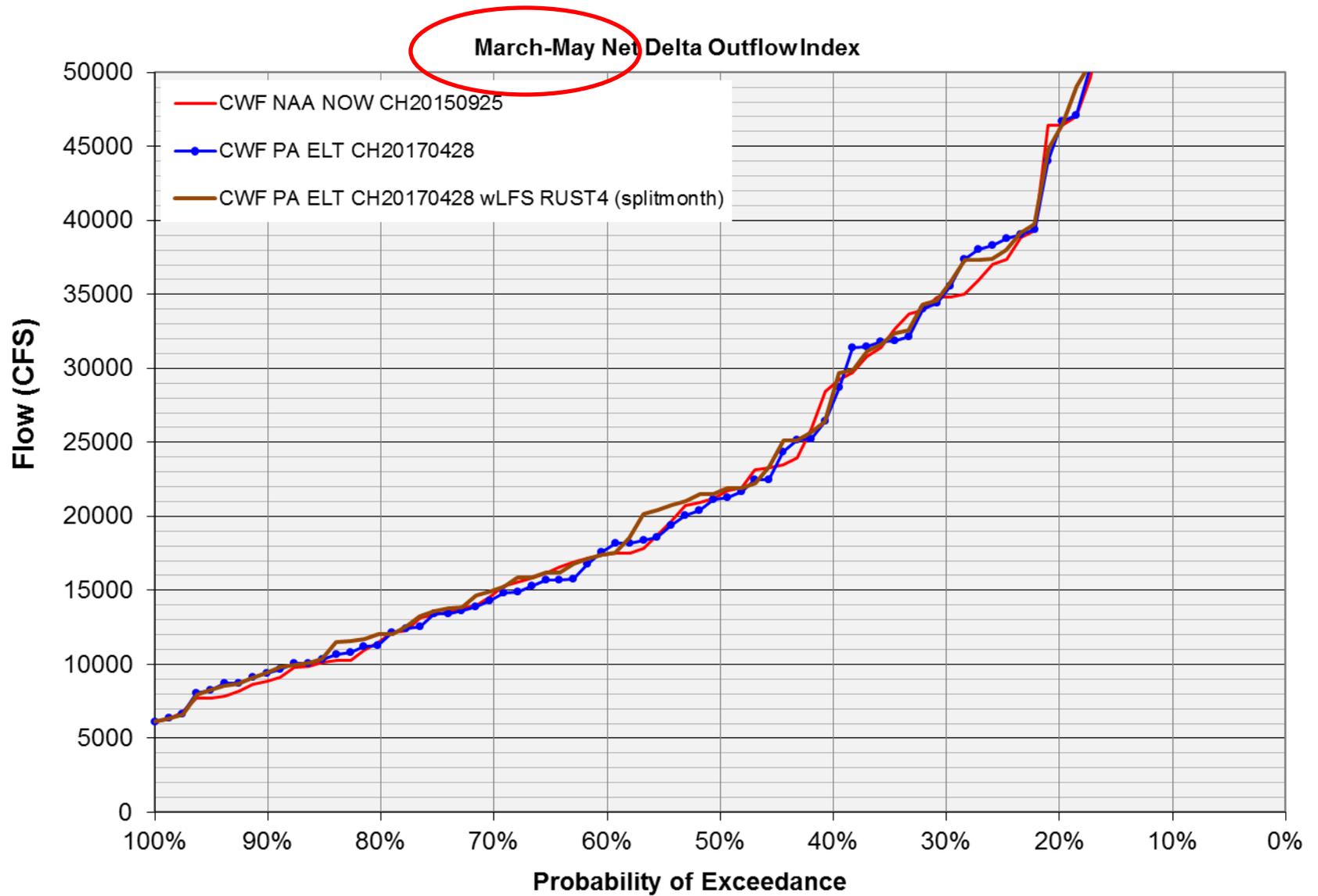
RUST4 VERSION	
X	Y
Mar ELT 8RI	Mar16-Apr15 TARGET
(TAF)	(CFS)
0	0
450	7100
1000	7100
1625	7100
1700	8700
1800	10900
1900	13000
2000	15200
2100	17400
2200	19500
2300	21700
2400	23800
2500	26000
2600	28100
2700	30300
2800	32400
2900	34600
3000	36800
3100	38900
3200	41100
3300	43200
3360	44500
> 3360	44500

RUST4 VERSION	
X	Y
Apr ELT 8RI	Apr16-May15 TARGET
(TAF)	(CFS)
0	0
450	7100
1000	7100
1500	7100
1855	7100
1900	8100
2000	10300
2100	12500
2200	14700
2300	16900
2400	19100
2500	21300
2600	23500
2700	25700
2800	27900
2900	30100
3000	32300
3100	34500
3200	36700
3300	38900
3400	41200
3500	43400
3550	44500
> 3550	44500

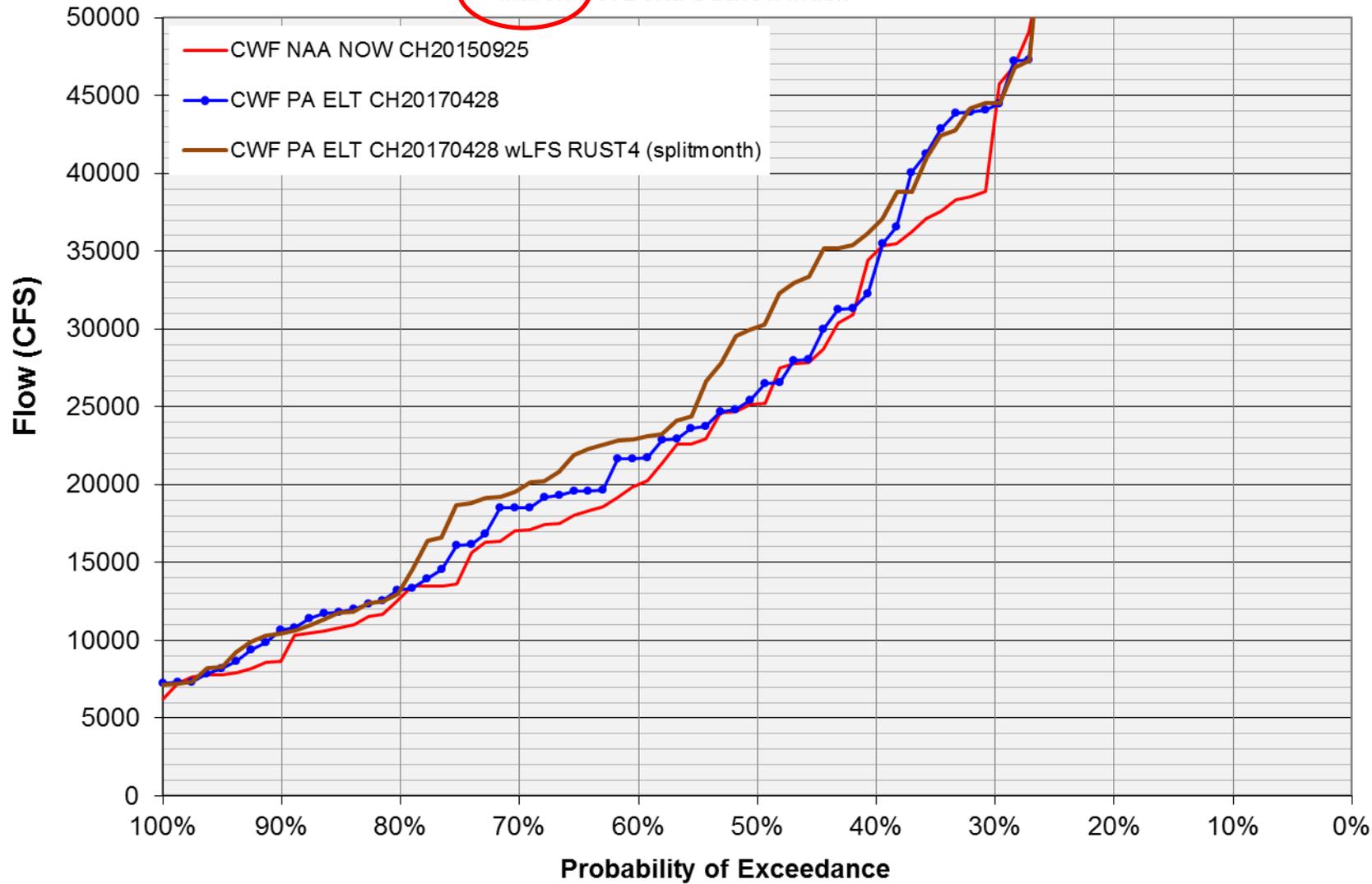
RUST4 VERSION	
X	Y
May ELT 8RI	May16-31 TARGET
(TAF)	(CFS)
0	0
250	4000
850	4000
1545	4000
1600	4700
1700	6000
1800	7300
1900	8600
2000	9900
2100	11300
2200	12600
2300	13900
2400	15200
2500	16500
2600	17800
2700	19100
2800	20400
2900	21700
3000	23000
3100	24300
3200	25600
3300	26900
3400	28300
3500	29600
3600	30900
3700	32200
3800	33500
3900	34800
4000	36100
4100	37400
4200	38700
4300	40000
4400	41300
4500	42600
4600	44000
4650	44500
> 4650	44500

Results

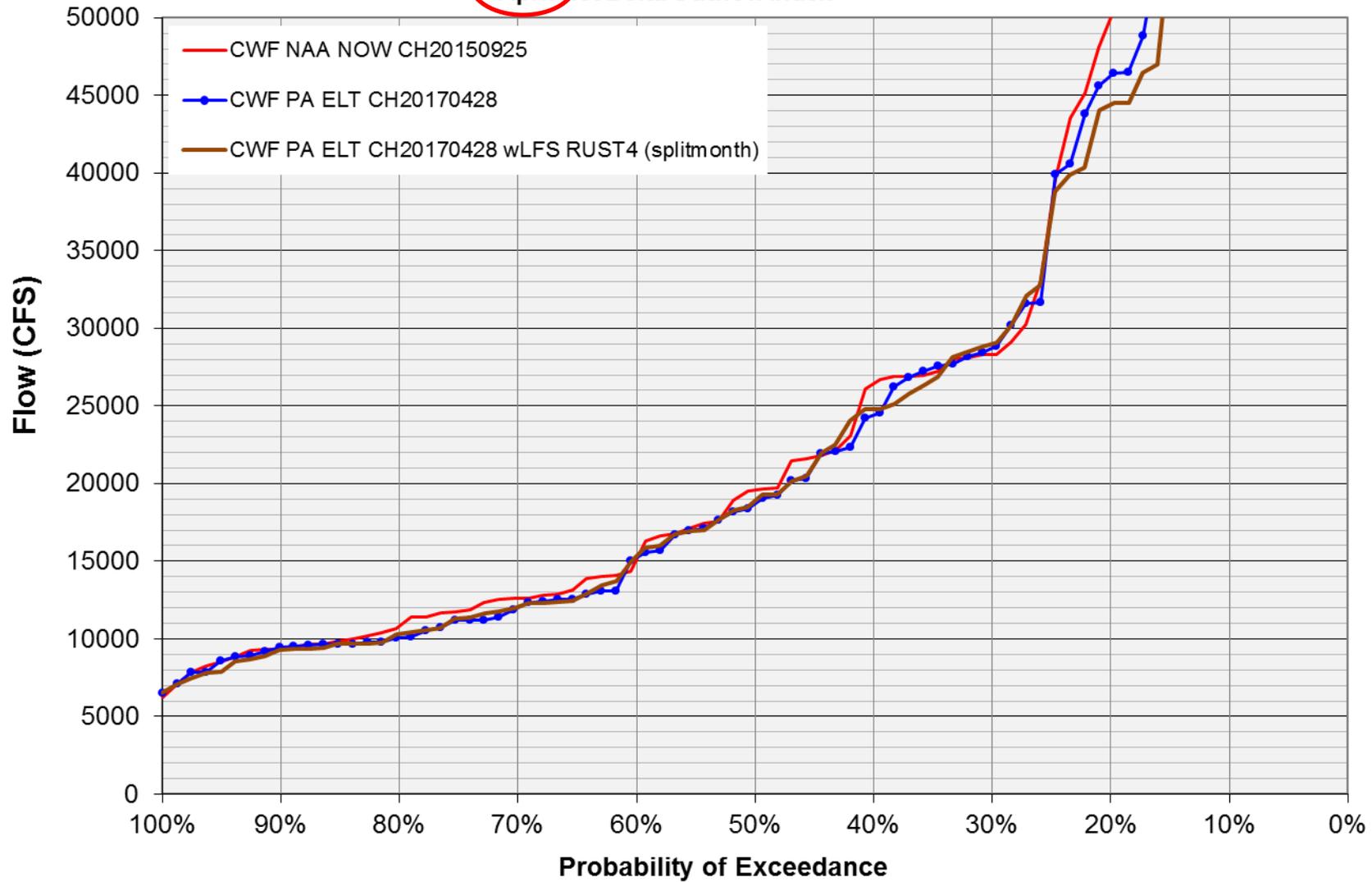
- The following slides show CalSim II simulation results for the following runs:
 - CH 9/25/15 CWF NAA run w/o climate change or sea level rise – **“CWF NAA NOW 9/25/15”** (spring outflows only)
 - CH 4/28/17 CWF PA ELT run – **“CWF PA ELT 4/28/17”**
 - DH 05/10/17 CWF PA ELT run with RUST4 (split month)
“CWF PA ELT LFS RUST4”



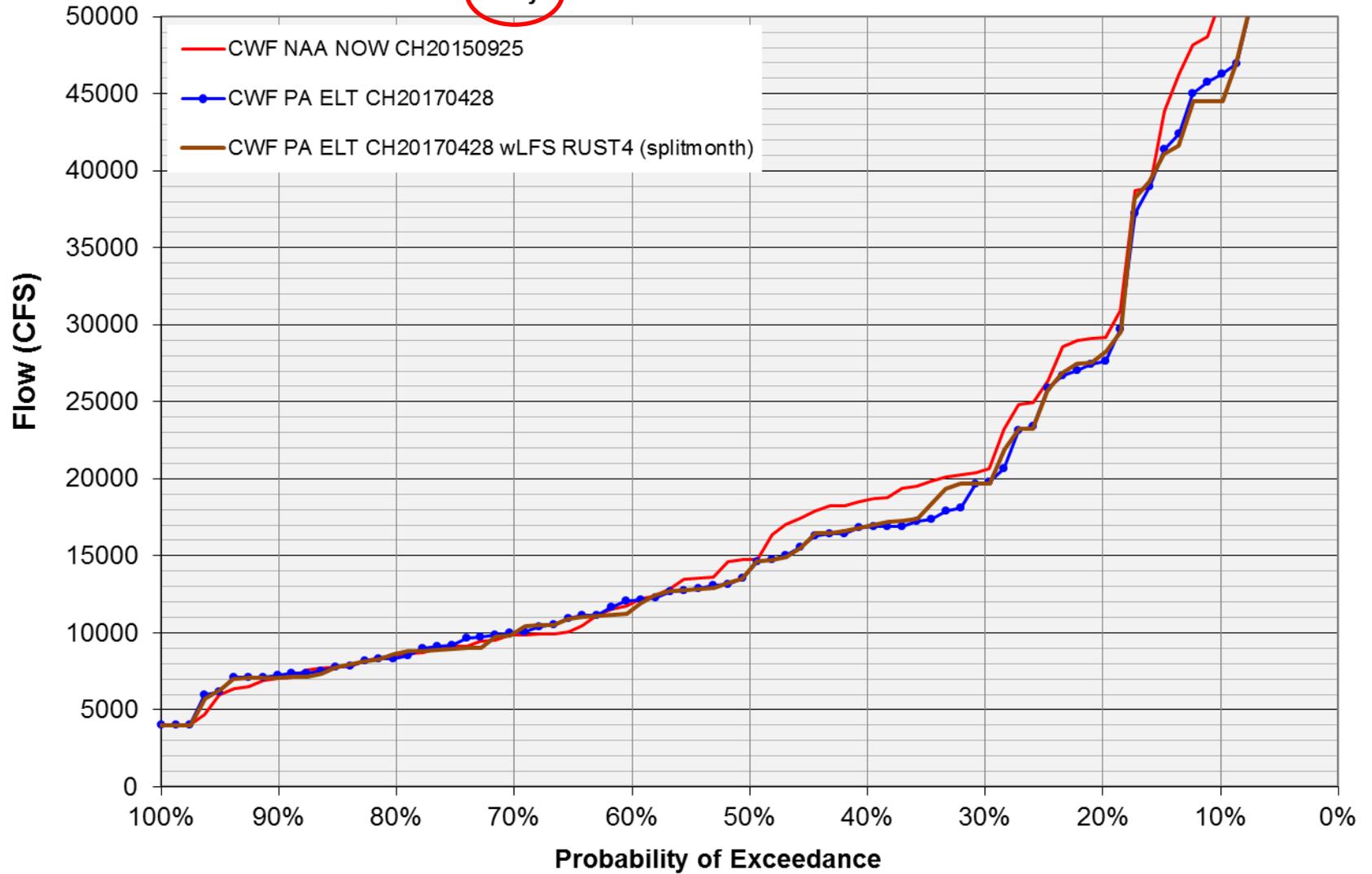
March Net Delta Outflow Index



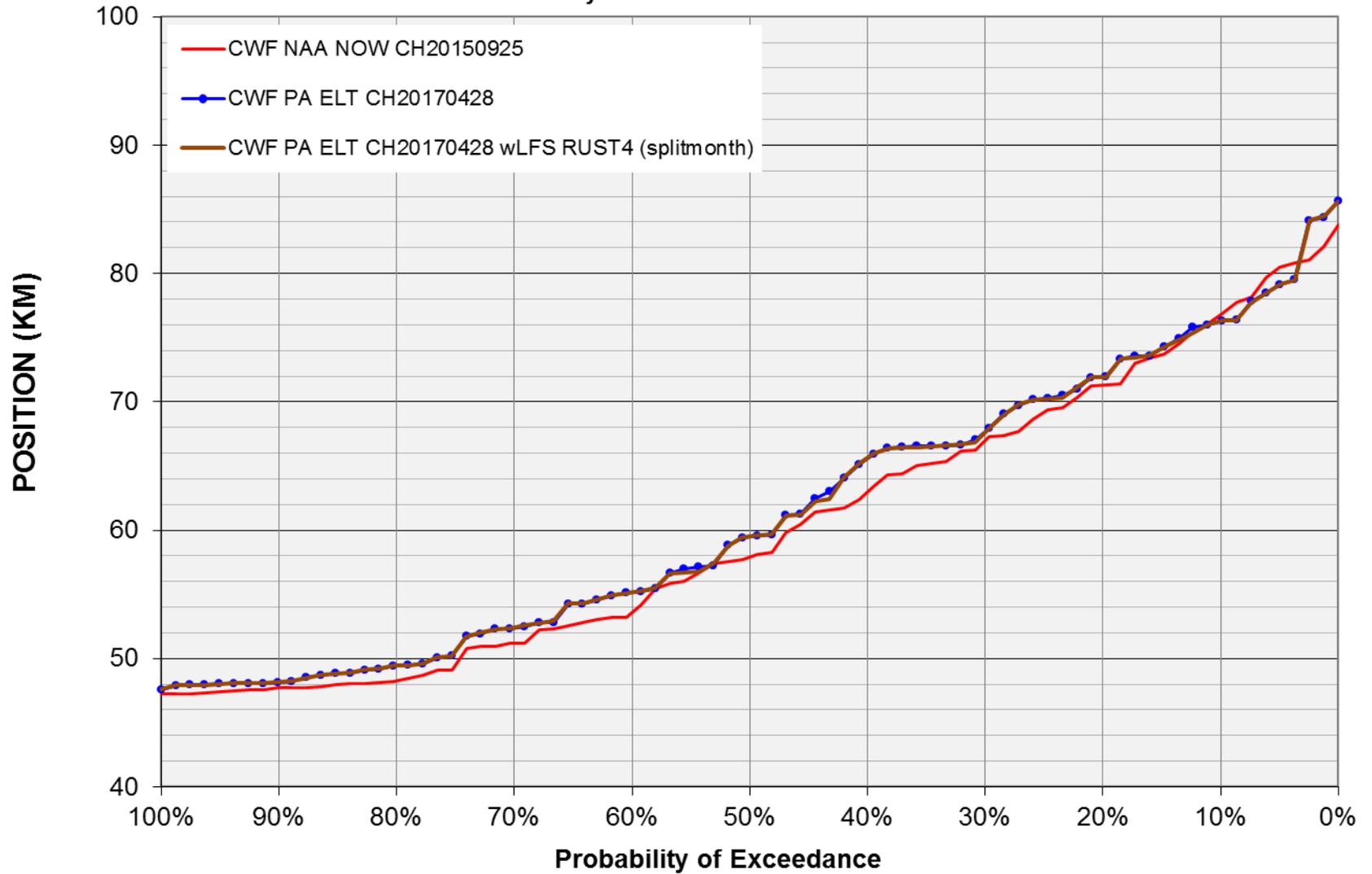
April Net Delta Outflow Index



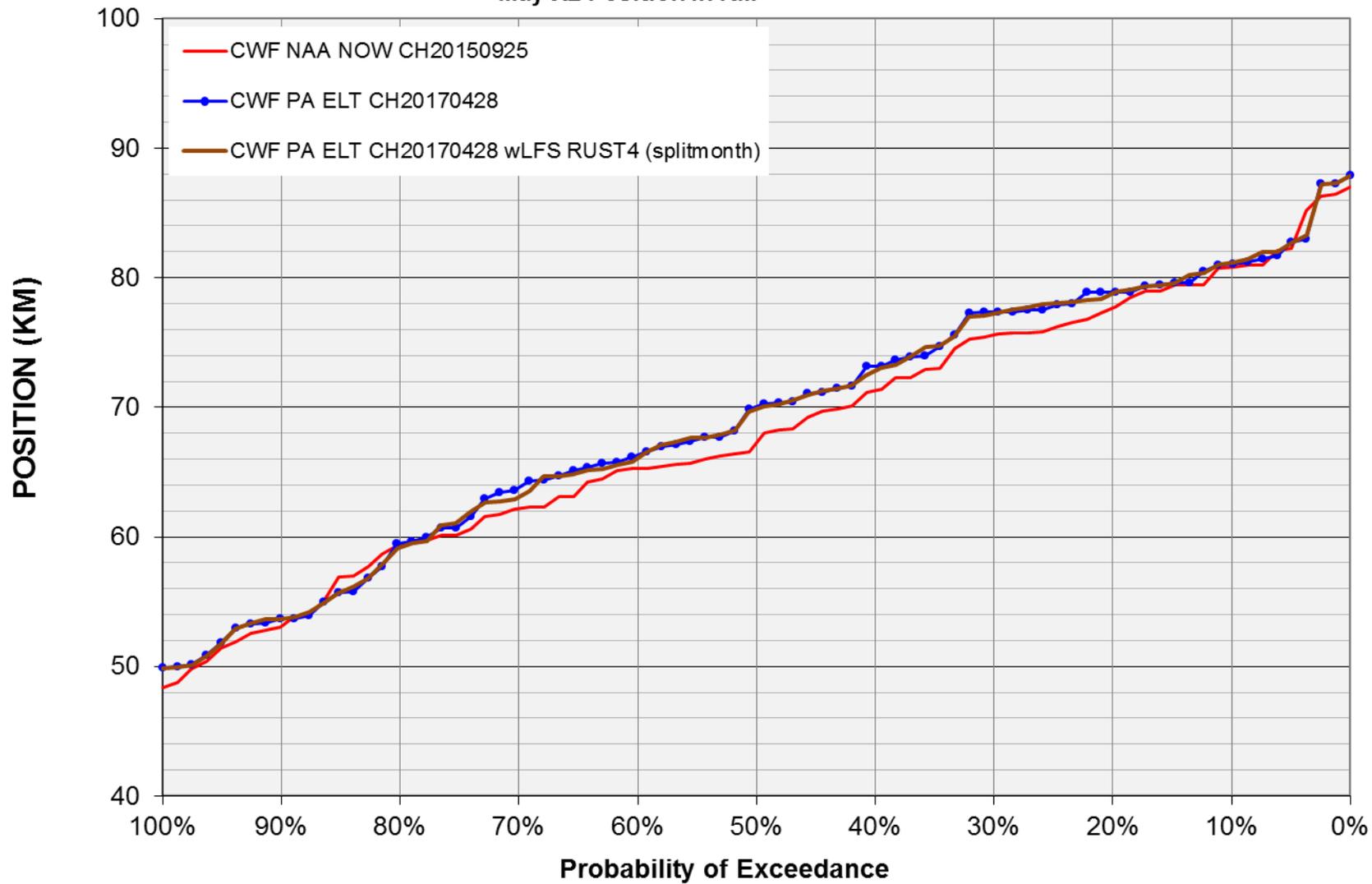
May Net Delta Outflow Index



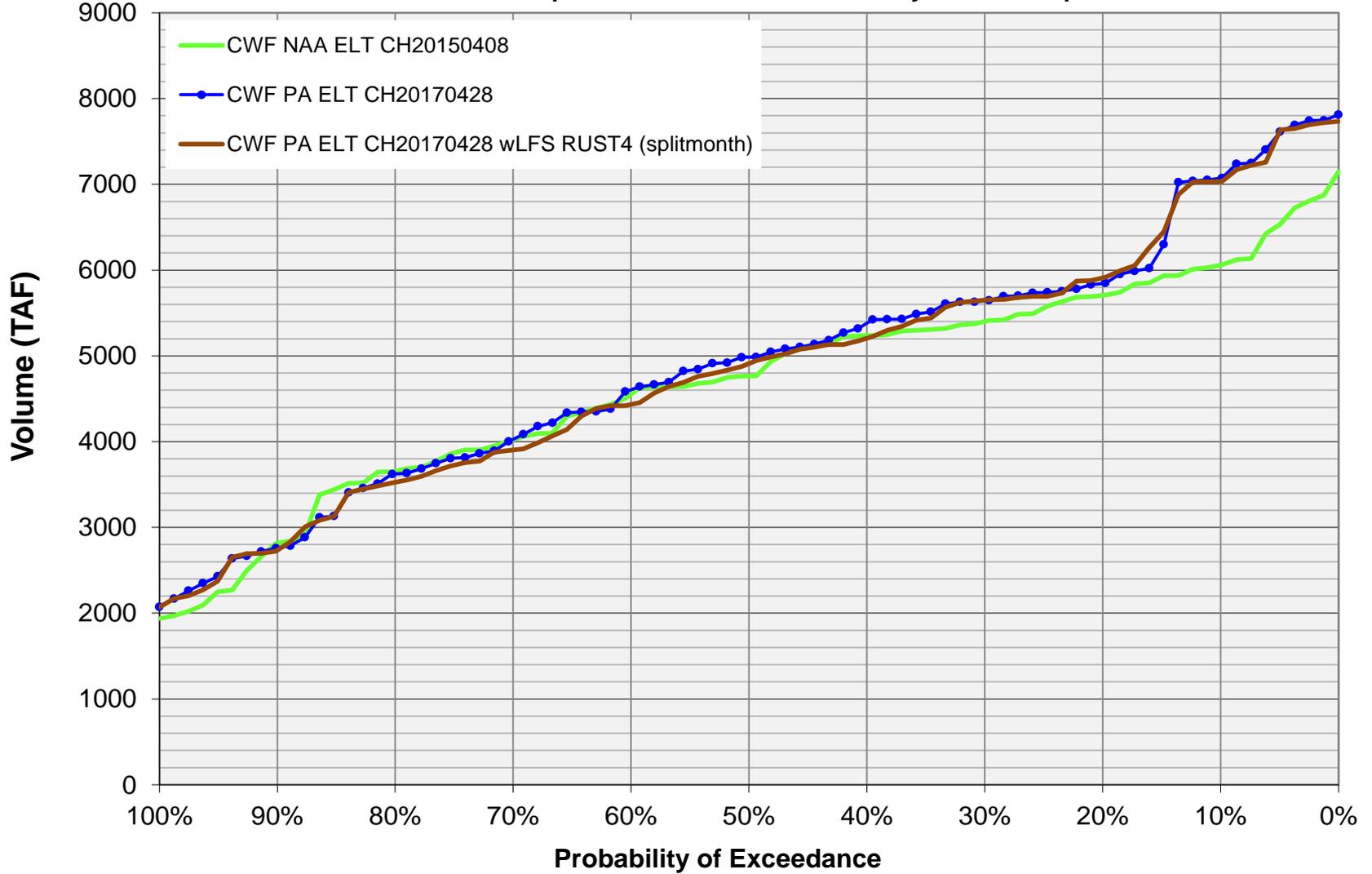
February X2 Position in KM



May X2 Position in KM



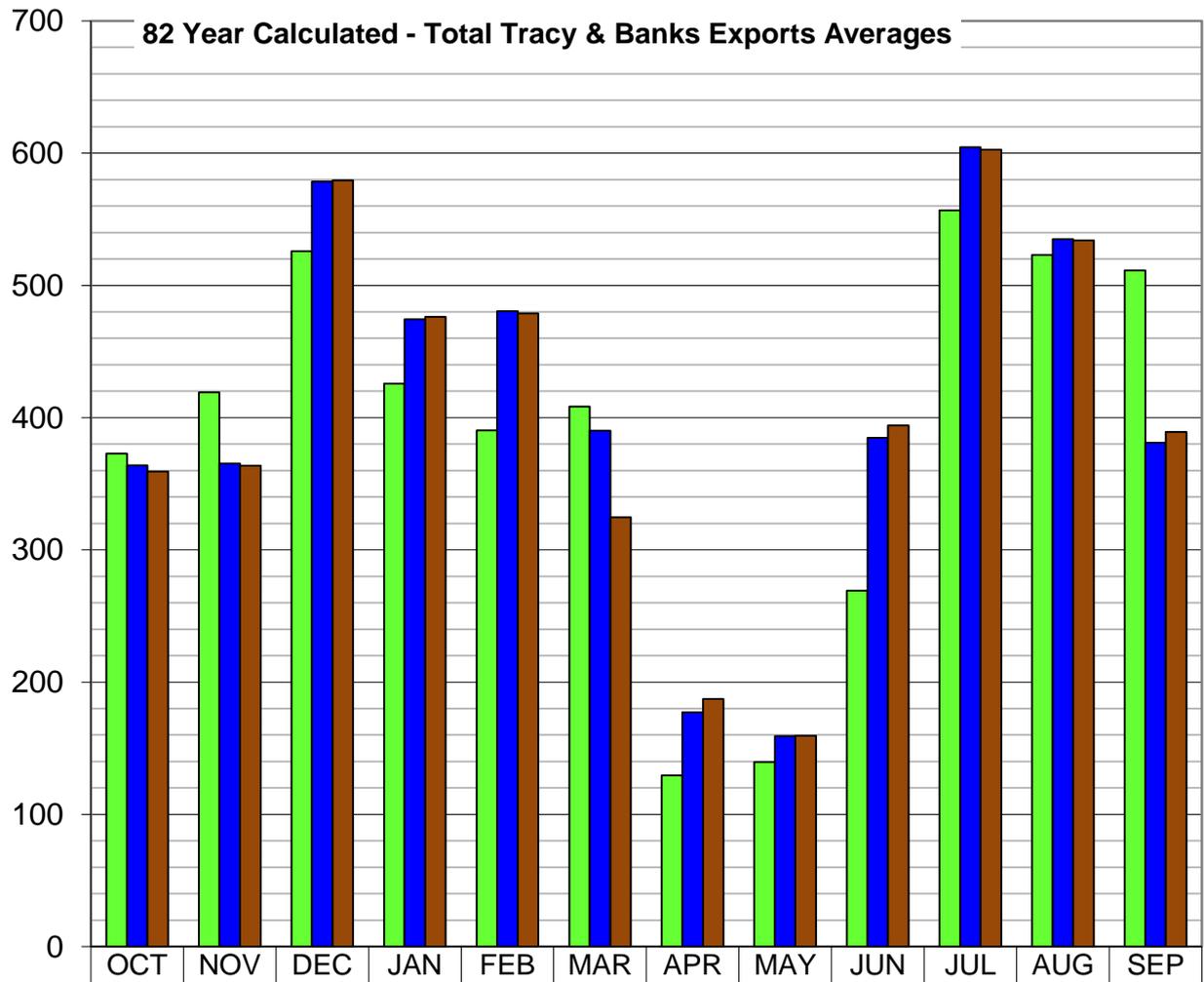
October-September Calculated - Total Tracy & Banks Exports



CAUTION: Note NAA changed for this graph to keep SLR & Climate Change consistent.

CAUTION: Note NAA changed for this graph to keep SLR & Climate Change consistent.

Volume (TAF)



■ CWF NAA ELT CH20150408	372.7	419.3	526.0	425.7	390.4	408.3	129.6	139.5	269.3	556.8	523.0	511.4
■ CWF PA ELT CH20170428	363.9	365.3	578.6	474.3	480.6	390.1	177.1	159.2	384.8	604.5	535.0	381.1
■ CWF PA ELT CH20170428 wLFS RUST4 (splitmonth)	359.3	363.8	579.4	476.3	478.8	324.7	187.2	159.4	394.0	602.6	534.0	389.1

Average Annual (Oct-Sep) Tracy+Banks Exports in TAF/YR = 4672

Average Annual (Oct-Sep) Tracy+Banks Exports in TAF/YR = 4894

Average Annual (Oct-Sep) Tracy+Banks Exports in TAF/YR = 4849

Conclusion

- In combination with all non-LFS criteria proposed in the 4/28/17 CWF PA ELT simulation, the splitmonth RUST4 approach for LFS should insure spring delta outflows of a similar frequency and magnitude as recent conditions. Its success will depend on using a best guess at 8RI in the future (ELT), i.e., using 50% forecasts.

Questions?

Exhibit E

Permitting Resolution Log

Priority Legend (Automatic priority set based on criteria below)

- 1 High less than 1 month remain before due date
- 2 Medium between 1-30 days remain before due date
- 3 Low greater than 30 days remain before due date
- 4 Late see past due date

Working Days Remaining Legend (Number in cell is a count down of working days)

- Green less than 2 months remain before due date
- Yellow 2-3 months remain before due date
- Orange 3-4 months remain before due date
- Red 5+ months remain before due date

Working Days Remaining Legend (Number in cell is a count down of working days)

- Green less than 2 months remain before due date
- Yellow 2-3 months remain before due date
- Orange 3-4 months remain before due date
- Red 5+ months remain before due date

Working Days Remaining Legend (Number in cell is a count down of working days)

- Green less than 2 months remain before due date
- Yellow 2-3 months remain before due date
- Orange 3-4 months remain before due date
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Working Days Remaining Legend (Number in cell is a count down of working days)

- Green less than 2 months remain before due date
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Working Days Remaining Legend (Number in cell is a count down of working days)

- Green less than 2 months remain before due date
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- Orange 3-4 months remain before due date
- Red 5+ months remain before due date

Working Days Remaining Legend (Number in cell is a count down of working days)

- Green less than 2 months remain before due date
- Yellow 2-3 months remain before due date
- Orange 3-4 months remain before due date
- Red 5+ months remain before due date

Item No	Comment Detail	Information Request	Agency	Type	Assigned	Due	Working Days Remaining	% Complete	Priority	Comments
1	<p>May 2016 Comment Tech/Contaminant Exposure: There should be a link between turbidity effects analysis and the contaminants effects analysis because this will have an effect on the species.</p>	<p>Information Request to DWWR/Inc: NIMS requests that DWWR/Inc review and provide for NIMS comments information on the link between turbidity effects analysis and the contaminants effects analysis. The link between turbidity effects analysis and the contaminants effects analysis should be updated. Please see detail provided in 9/16/16 Action Item memo.</p>	NIMS	BDP	Michael		100%		See Item 2011	<p>The response to NIMS request for baseline/historical sediment contaminants data from sediment sampling conducted in the Sacramento and Stockton Deep Water Ship Channels for the Corps' Maintenance dredging Project (Request # in 9/16/16 NIMS memo):</p> <p>31.Sac and Stockton DWS Sediment Data, Datafile 30 - Temporal contents and description of summary data</p> <p>31.SacDWS_2010_2014.xlsx and StocktonDWS_2010_2014.xlsx - Summary tables of sediment chemistry data by year, station, and analysis.</p> <p>31.SacDWS_2010_2014_station map.pdf and StocktonDWS_2010_2014_station map.pdf - Shows approximate locations of 2010-2014 sediment sampling stations.</p> <p>51.SacDWS_SedimentData.xlsx and StocktonDWS_SedimentData.xlsx - 2008-14 sediment data (raw data and pivot tables)</p> <p>See B. Mitchell 11/17/16 email re: this transmits additional data in response to NIMS's request for information on baseline/historical sediment contaminants for the Port of Stockton West Complex Dredging Project (Request # in 9/16/16 NIMS memo). This transmittal includes the October 2013 and appendices for the proposed dredging Docks 18 through 18 for the Port West Complex facility on Rough and Ready Island. In addition to the sediment chemistry results and tabulars, the reports and appendices include a summary effects assessment and provide additional information in response to NIMS request 02/19/2016 request 02/19/2016 memo.</p> <p>See document "0201 - FINAL_Sac-Stockton DWS/DM Dredging_BA_07 Mar 16"</p> <p>See B. Mitchell 10/26/16 transmittal.</p> <p>This transmits the following files in response to NIMS's request for information on baseline/historical sediment contaminants data from Old River in the vicinity of the Mountain House Wastewater Treatment Plant outfall (Item #1 in 9/16/16 NIMS memo):</p> <p>0201 - FINAL_Sac-Stockton DWS/DM Dredging_BA_07 Mar 16</p> <p>0201 - FINAL_Sac-Stockton DWS/DM Dredging_BA_07 Mar 16</p>
2	<p>Maintenance Frequency: Provide information on the frequency of maintenance activities, such as a basic inspection or a major repair that would indicate when the action would occur (i.e., after a certain number of years or a certain number of days). For example, if the frequency of maintenance activities is expected to occur weekly, monthly, annually, or every X years?</p>	<p>Information Request to DWWR/Inc: NIMS requests to work with the application agency to identify additional information that would support a programmatic proposal and provide the biological opinion.</p> <p>UPDATE:</p> <p>Please see detail provided in 9/16/16 Action Item memo.</p>	NIMS	BDP	None		100%		See B. Mitchell assumptions table dated 9/29/16 document "OWM Main Source Activities Assumptions DCE Comments_QCF Final_09/29/16". Responses agreed upon by C. Mackelke and team at 9/27/16 meeting.	
3	<p>IP 3.4.1 p. 3.3, Table 3.1.1 for "low" flow: The NIMS 5.2.2.3, the BA needs to clarify whether there would be any triggers that would require reports of damage incident based species in high numbers or densities.</p>	<p>Information Request to DWWR/Inc: NIMS requests clarification on whether the include triggers from the NIMS 2009 BOD as well as those from the 2008 USFWS BOD, since the updated row in the table is labeled "USFWS". Should the revision shown in the track changed final BA be applied to the line previous to the one that was changed?</p>	NIMS	BDP	Chinakauri		100%		Confirmed: 9/16/16 Cathy Mackelke w/ NIMS	
4	<p>IP 3.4.1 p. 3.4, Table 3.1.1, for "The end of stream effects" row: Provide information on the BA. The BA also needs to clarify the elements of NIMS V.4.1, IV.2.2, and IV.4.3 that are expected to continue under the PA with no change.</p>	<p>Information Request to DWWR/Inc: NIMS requests clarification that all components of NIMS V.4.1, IV.4.2, and IV.4.3 are expected to continue under the PA with no change.</p>	NIMS	BDP	Chinakauri		100%		Confirmed: 9/16/16 Cathy Mackelke w/ NIMS	
5	<p>IP 3.4.1 p. 3.20, Table 2.2, "NAMES" row: Please confirm and clarify timing of pile driving for each component of the project; the document has different calendar dates for different parts of the PA.</p>	<p>Information Request to DWWR/Inc: NIMS requests clarification that Table 2 construction is expected to begin in May, as specified in 75 of Appendix B. This is outside of the recommended in water work window and the in water work window otherwise defined in BA.</p>	NIMS	BDP	Greenwood		100%		Confirmed: 9/16/16 Cathy Mackelke w/ NIMS	
6	<p>IP 3.4.1 p. 3.26: The BA should clarify whether the use of "wood" implies that, as required "crenna", these crennas would not require any effects are therefore discouraged, or whether the use of "wood" on this page implies that the crennas and their effects would be minimized, but not entirely absent.</p>	<p>Information Request to DWWR/Inc: Please clarify use of "wood". A discussion at the 4/26 meeting with NIMS, CCF, and DWWR, NIMS requests clarification on whether the include triggers from the NIMS 2009 BOD as well as those from the 2008 USFWS BOD, since the updated row in the table is labeled "USFWS". Should the revision shown in the track changed final BA be applied to the line previous to the one that was changed?</p> <p>Information was from the FTT recommendations but were very proposal specific components of the north delta included in the project description. This would provide clarification as to the use of the FTT criteria will guide design but that the PA does not yet guarantee that those criteria are met.</p>	NIMS	BDP	Greenwood		100%		Confirmed: 9/16/16 Cathy Mackelke w/ NIMS	
7	<p>IP 3.4.1 p. 3.33: Regarding the "5-foot thick tremie concrete wall", the BA should indicate whether this is permanent or if it will remain through construction (i.e., 3 years). This comment applies generally to all "downstream" and "clarify" whether that collection wall remain in perpetuity.</p>	<p>Information Request to DWWR/Inc: Please clarify whether the standard procedure will include pouring of the tremie concrete wall that is for the 50-year facility.</p>	NIMS	BDP	Greenwood		100%		Confirmed: 9/16/16 Cathy Mackelke w/ NIMS	

Permitting Resolution Log

Working Days Remaining Legend (Number in cell is a count down of working days)

- Green: (less than 2 months remain before due date)
- Yellow: (less than 2 months remain before due date)
- Orange: (less than 1 month remain before due date)
- Red: (less than 1 month remain before due date)

Priority Legend (Automatic priority set based on criteria below)

- 1 High: less than 1 month remain before due date
- 2 Medium: between 1-3 months remain before due date
- 3 Low: greater than 3 months remain before due date
- 4 Late: past due date

Item #	Comment Detail	Information Request	Agency	Type	Assigned	Due	Working Days Remaining	% Complete	Priority	Comments
90	Need to discuss mitigation of all phase one wetland mitigation, phase 2 can come later because of subsequent approval.		NMFS	Restoration	Yes			100%		Provide for 9/29/16 email from M. Bradbury see documents: 300889 - 20160202 Bradbury Email Compensatory Mitigation Strategy and 300889 - CM Mitigation Strategy 07/27/16
91	Need information on commitment to compensation to be done prior to the impact (construction).		NMFS	Restoration	Gradier			100%		Yes, the project will commit to compensation prior to the impacts as they occur and will follow the construction schedule.
92	Confirmation of implementing compensation prior to impacts	USBR to confirm need, level of implementation and timing then report back.	NMFS	Restoration	White			100%		See #91: Yes, the project will commit to compensation prior to the impacts as they occur and will follow the construction schedule.
93	Need for added detail re: mitigation measure implementation	Send the language Ken Rogden referred to at the meeting regarding funding and debt reform act requirements for funding for mitigation to be secured prior to construction, etc. in the 1081 application.	NMFS	Restoration	Regan	9/7/2016	-136	100%	4 Late	The relevant information is in Chapter 7 of the 2016 application (http://mca.protechnologies.com/Client/Default/CaliforniaWater/A/ajp/aj/ACT_7_funding.pdf). In section 7.2.1, describes the current way the SWP funds "mitigation," 7.2.2 describes the funding mechanism for the initial CWF activities, and 7.2.3 describes the funding for concurrent and long term mitigation actions. It is in 7.2.3 that we describe the Debt Reform Act requirements.
94	Issues related to timing of habitat implementation and providing partial credit	Clarify proposed activity metrics on various partial credit covers the contents of implementation. Detail how to categorize habitat at least to 100% or other proposal.	NMFS	Restoration	MacKinnage			100%		Final status: Ongoing per C. MacKinnage 10/29/2016. Additional information needs will be proposed as they arise. Update: 9/30/16, CT to look into proposed banks and costs, then determine proposed on-site bank credits for mitigation to meet next week for resolution. R. Wulff to send examples. (see #2, #45)
95	Need for details is related to funding alternatives.	Meet with Ken Rogden to get additional information on funding alternatives for 2081.	NMFS	Restoration	Gradier	9/7/2016	-135	100%	4 Late	The relevant information is in Chapter 7 of the 2016 application (http://mca.protechnologies.com/Client/Default/CaliforniaWater/A/ajp/aj/ACT_7_funding.pdf). In section 7.2.1, describes the current way the SWP funds "mitigation," 7.2.2 describes the funding mechanism for the initial CWF activities, and 7.2.3 describes the funding for concurrent and long term mitigation actions. It is in 7.2.3 that we describe the Debt Reform Act requirements.
96	Email from C. MacKinnage dated 9/27/16	How do the funding alternatives to the BA fit in with the funding alternatives that are provided by the NMFS in the attached July 26, 2016 email, to be appended at the end of Section 4.2.1... and it identifies the entire area of occurrence of Chinook salmon and the Southern Resident killer whale? NMFS provided this information to us in the BA. We need to make sure we include in our description of the action area because the BA identifies the remaining for the action area.	NMFS	BDP	Pierre			100%		Response: 1 Piece of CT confirmed language 9/23/16.
97	Debit Sheet Critical Habitat Discussion	Ask Chandra re: CALM error around No change of date change in April with X2 to read change or within noise (thru boat).	USFWS	Sneth	Pierre			100%		Assume the change is correct.
98	Debit Sheet Critical Habitat Discussion	Talk with USBR/DWR including ability to include barges sheet in BA and if so, how to characterize.	USFWS	Sneth	Pierre			100%		Analysis delivered 9/27/16. BA is as follows: BARGE - Name, orientation, and turning outflow Methods: 2016/09/27/16. Name, size, weight, and method. 08/27/2016 Analysis delivered 9/29/16. Name, size, weight, and method. 08/27/2016 Analysis delivered 9/29/16. Name, size, weight, and method. 08/27/2016
99	Debit Sheet Critical Habitat Discussion	Provide length, sneth, me thobday soon 9/29/16, receive comments 9/29/16, write-up and analysis by Col 9/29/16.	USFWS	Sneth	Greenwood			100%		Complete, delivered to L. Zwieg, see document ID#100 - 20160202 Greenwood email in Data Effects
100	Summarize the methods used in the BA for its Delta effects.		USFWS	General	Greenwood			100%		The locations are correct as noted on page 6-22 and have been provided as a GIS layer by CD: <ul style="list-style-type: none"> • Soudgrass Slough north of Twin Cities Road (adjacent to proposed intermediate forbay) • Little Potato Slough (Boulder Island south) • Little Potato Slough (Boulder Island north) • San Joaquin River (Nose Lake to room) • San Joaquin River (Nose Lake to room) • Middle River (Victoria Island north) • Middle River (Victoria Island northward) • Old River (Victoria Island northward) • Old River (Victoria Island northward) Disregard delete the language on 6-23 that reads: large docks may also be needed, at contractors' discretion, at the intake 3 and intake 5 construction sites at the Staten Island TBM retrieval shaft, and at the Banks and Jones Connections construction sites.
101	Please clarify the number and location of barge landings as the Bargees to 2 specific then notes per language on 6-23 that reads: Barge docks may also be needed, at contractors' discretion, at the intake 3 and intake 5 construction sites at the Staten Island TBM retrieval shaft, and at the Banks and Jones Connections construction sites.		USFWS	General	Valles			100%		
102	How do the questions concerning the use of the two light weight helicopters for mitigation relate to the BA? Where are they going to take off from and where are they going to land? How low in elevation will they fly?		USFWS	General	Bradbury			100%		Helicopters may fly as low as the top of the transmission towers, which may be as low as 60 feet. They will take off and land in the right of ways obtained for its mission for the construction, within the corridor identified on the construction footprint, or another property obtained for this project and identified on the project construction footprint, or designated existing helicopter pads (if any). They will not be allowed to land on sensitive habitat.

Exhibit F

From: Nikkel, Meredith
Sent: Friday, July 07, 2017 10:43 AM
To: 'Aufdemberge, Amy'; Mizell, James@DWR
Subject: RE: WaterFix subpoenas

Amy,

Thanks for your response. I understand your position about the authority of the SWRCB to enforce a subpoena against a federal agency, but I disagree because Reclamation is a party in the SWRCB proceeding. I hope we never have to deal with this issue, however, and appreciate your cooperation to make sure federal records are made available as efficiently as possible. I suggest that item 2 be

modified as follows to acknowledge Reclamation's position:

2. The deadline for Reclamation to respond or object to the subpoena will be extended to July 21, 2017 at noon, except that Reclamation reserves all rights and immunities available to it under federal law.

I've attached a draft of the letter that I plan to submit to the hearing team today and welcome any revisions or comments either you or Tripp may have. Thank you both for your continued cooperation on this issue.

--Meredith

Meredith E. Nikkel

DOWNEY BRAND

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From: Aufdemberge, Amy [mailto:amy.aufdemberge@sol.doi.gov]
Sent: Friday, July 07, 2017 10:06 AM
To: Mizell, James@DWR
Cc: Nikkel, Meredith
Subject: Re: WaterFix subpoenas

Hi guys,

sorry for the short delay in getting to this this morning -- from discussing with Tripp, I think I understand the intent here, especially in connection with delaying the time for Reclamation to respond, as we currently believe DWR can fully satisfy the request. My only issue is that we will not be responding or objecting to the subpoena. If you tried to enforce the subpoena through the Board, we also would not argue about it, but rather notify they Board that they have no jurisdiction over federal records and Section 8 of the Reclamation laws does not subject federal records to state administrative control. There are two principal ways that you can get these records from Reclamation: 1) FOIA; and 2) a Touhy Request. So, the "deadline" for us to respond can be as short as you want, it will have no impact on how we make the records available and on what timeframe, which will be controlled by federal law and policy.

If there are any shortfalls in what DWR can produce, I will work with both of you to make sure we devise the best and fastest way to get producible federal records. So, I guess you can say that DOI has not agreed to the terms, but you could file it anyway with that acknowledgment.

Amy

On Thu, Jul 6, 2017 at 8:08 PM, Mizell, James@DWR <James.Mizell@water.ca.gov> wrote:
If Amy is agreeable to the shortened extension for Reclamation, then I am willing to accept these as our agreed upon terms.

-Tripp Mizell
Sr. Staff Counsel
Office of the Chief Counsel
California Department of Water Resources

1416 Ninth Street
Sacramento, CA 95814
O: (916) 653-7533

James.Mizell@water.ca.gov

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From: Nikkel, Meredith <mnikkel@DowneyBrand.com>
Sent: Thursday, July 6, 2017 7:31:41 PM
To: Mizell, James@DWR; 'amy.aufdemberge@sol.doi.gov'
Subject: RE: WaterFix subpoenas

Tripp,

I think that your expectation of DWR's possession of all documents is sufficient if we have a relatively short turn around to the deadline for Reclamation to respond in the event that it has documents that DWR does not. I propose that we go with the July 21 at noon deadline for Reclamation to respond instead of the 30 days I mentioned on the phone. This should cover the unforeseen complications that would require a response directly from Reclamation and provide a reasonable time for Reclamation to do so.

If you and Amy are agreeable, then the terms of the agreement would look like the following:

1. DWR will produce all of the requested documents and information, including documents and information duplicative of that in Reclamation's possession that Reclamation does not object to being produced.
2. The deadline for Reclamation to respond or object to the subpoena will be extended to July 21, 2017 at noon.
3. DWR will make a good faith effort to produce the BiOp Resolution Log component of (b) and all documents responsive to categories (d) and (i) by July 7, 2017 at 5pm and the deadline for producing those documents will be July 10, 2017 at noon.
4. DWR will produce all remaining documents by noon on July 17, 2017.
5. All documents will be produced to the FTP site made available by the CWF Hearing Team.
6. The deadline for DWR to object to the subpoena will be extended to noon on July 18, 2017.

--Meredith

From: Mizell, James@DWR [James.Mizell@water.ca.gov]
Sent: Thursday, July 06, 2017 6:41 PM
To: Nikkel, Meredith; 'amy.aufdemberge@sol.doi.gov'
Subject: Re: WaterFix subpoenas

I expect that DWR will have the documents in its possession. As you might expect it is difficult to say with certainty since staff are still reassembling the submission packages referenced in the request. Since we are extending Reclamation's time to respond or object, I was under the impression that an expectation was sufficient for now and you still have the opportunity to see any documents subject to unforeseen complications.

- Tripp Mizell

Sr. Staff Counsel
Office of the Chief Counsel
California Department of Water Resources

O:(916)653-7533


1416 Ninth Street
Sacramento, CA 95814

James.Mizell@water.ca.gov<mailto:James.Mizell@water.ca.gov>

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From: Nikkel, Meredith <mnikkel@downeybrand.com><mailto:mnikkel@downeybrand.com>>
Sent: Thursday, July 6, 2017 5:55 PM
Subject: RE: WaterFix subpoenas
To: Mizell, James@DWR <james.mizell@water.ca.gov><mailto:james.mizell@water.ca.gov>>, 'amy.aufdemberge@sol.doi.gov><mailto:amy.aufdemberge@sol.doi.gov>' <amy.aufdemberge@sol.doi.gov><mailto:amy.aufdemberge@sol.doi.gov>>

Tripp,

Can you confirm that DWR has all of the requested documents or information in its possession? If not, then we may need to discuss item 1 further to clarify how documents in Reclamation's possession will be produced.

Thank you.

--Meredith

Meredith E. Nikkel
916-520-5211

-----Original Message-----

From: Mizell, James@DWR [James.Mizell@water.ca.gov<mailto:James.Mizell@water.ca.gov>]
Sent: Thursday, July 06, 2017 05:34 PM Pacific Standard Time
To: Nikkel, Meredith; 'amy.aufdemberge@sol.doi.gov><mailto:amy.aufdemberge@sol.doi.gov>' <amy.aufdemberge@sol.doi.gov><mailto:amy.aufdemberge@sol.doi.gov>>
Subject: RE: WaterFix subpoenas

Hi Meredith,

Thank you for capturing our conversation. A couple of notes (in ~~strikeout~~) on these points with my comments in brackets.

1. DWR will produce all of the requested documents and information, including documents and information ~~and information~~ duplicative of that in Reclamation's possession that Reclamation does not object to being produced. [Since we can't claim to be responding for Reclamation but are intending to produce all the documents on the list.]
2. The deadline for Reclamation to respond or object to the subpoena will be extended to ~~July 21~~ August 7, 2017 at noon. [It was my understanding that we would give Reclamation 30 calendar days, which will fall on a weekend and August 7 is the next Monday.]
3. The deadline for DWR to object to the subpoena will be extended to noon on July 17, 2017. [This reflects my notes. I will also accept the 18th.]

-Tripp

From: Nikkel, Meredith [Nikkel, Meredith [\[mailto:mnikkel@DowneyBrand.com\]](mailto:mnikkel@DowneyBrand.com)]
Sent: Thursday, July 06, 2017 5:13 PM
To: Mizell, James@DWR; 'amy.aufdemberge@sol.doi.gov'
Subject: WaterFix subpoenas

Tripp & Amy:

Through various communications with Tripp today, I propose the following agreement regarding DWR's and Reclamation's responses to the subpoenas we served on June 29, 2017. Please confirm your agreement by noon tomorrow or call me in the meantime to discuss any concerns or changes that you may have.

1. DWR will produce all of the requested documents and information, including documents and information in Reclamation's possession that Reclamation does not object to being produced.
2. The deadline for Reclamation to respond or object to the subpoena will be extended to July 21, 2017 at noon.
3. DWR will make a good faith effort to produce the BiOp Resolution Log component of (b) and all documents responsive to categories (d) and (i) by July 7, 2017 at 5pm and the deadline for producing those documents will be July 10, 2017 at noon.
4. DWR will produce all remaining documents by noon on July 17, 2017.
5. All documents will be produced to the FTP site made available by the CWF Hearing Team.
6. The deadline for DWR to object to the subpoena will be extended to noon on July 17, 2017.

I am available all morning tomorrow to discuss and finalize this agreement. Thank you both for your cooperation.

--Meredith

Meredith E. Nikkel

[\[cid:image001.png@01D2F67E.054EFAE0\]](#)

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--

Amy Aufdemberge

Assistant Regional Solicitor
2800 Cottage Way, Rm. E-1712
Sacramento, CA 95825

(916) 978-5688

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