

1 Tim O’Laughlin (SBN 116807)
 Valerie C. Kincaid (SBN 231815)
 2 Timothy J. Wasiewski (SBN 302306)
 O’LAUGHLIN & PARIS LLP
 3 2617 K. Street, Suite 100
 Sacramento, California 95816
 4 Telephone: (916) 993-3962
 Facsimile: (916) 264-2040
 5 Email: towater@olaughlinparis.com
vkincaid@olaughlinparis.com
 6 tw@olaughlinparis.com

7 Attorneys for **SAN JOAQUIN**
TRIBUTARIES AUTHORITY

10 BEFORE THE CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

11 IN THE MATTER OF

12 CALIFORNIA DEPARTMENT OF WATER) **DECLARATION OF TIM O’LAUGHLIN**
 13 RESOURCES AND UNITED STATES) **RE: REBUTTAL TESTIMONY OF SAN**
 BUREAU OF RECLAMATION PETITION) **JOAQUIN TRIBUTARIES AUTHORITY**
 14 FOR WATER RIGHT CHANGE RE:) **FOR PART 2 OF CALIFORNIA WATERFIX**
 CALIFORNIA WATERFIX.) **PROCEEDING (EXHIBIT SJTA-404)**

18
 19 I, Tim O’Laughlin, declare as follows:

20 1. I am an attorney of record for the 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 San Francisco. The SJTA is Group 18 of Protestants in this above-
 24 captioned proceeding. I have personal knowledge of the facts stated in this Declaration and, if called
 25 as a witness, would testify to those facts.

26 2. In accordance with the State Water Resources Control Board’s Order dated June 18,
 27 2018, this Declaration provides the basis for the SJTA’s Part 2 Rebuttal Testimony of Daniel
 28 Steiner (SJTA-401), Doug Demko (SJTA-402 and SJTA-403), and the anticipated oral testimony of

1 the concurrently subpoenaed witnesses¹ who prepared (a) the State Water Resource Control Board’s
 2 2010 report entitled, “Development of Flow Criteria for the Sacramento-San Joaquin Delta
 3 Ecosystem,” and (b) the California Department of Fish and Game’s report entitled “Flows Needed
 4 in the Delta to Restore Anadromous Salmonid Passage from the San Joaquin River at Vernalis to
 5 Chipps Island.”

6 INTRODUCTION

7 3. The State Water Resources Control Board (“State Water Board” or “Board” or
 8 “SWRCB”) is about to begin the rebuttal phase of Part 2 of the California WaterFix hearing.
 9 (SWRCB June 18, 2018 Ruling, at p. 1.) One of the “key issues” to be addressed in Part 2 is, “what
 10 *appropriate Delta flow criteria* should be included in any approval of the WaterFix Change
 11 Petition.”²

12 4. As demonstrated below, the issue of what constitutes appropriate Delta flow criteria
 13 is tied to, among other things, the Delta Reform Act of 2009, the State Water Board’s 2010 Report
 14 on the “Development of Flow Criteria for the Sacramento-San Joaquin Delta Ecosystem” (the
 15 “2010 Delta Flow Criteria Report” or “DFCR”), and the various exhibits relied upon by the State
 16 Water Board in drafting the 2010 Delta Flow Criteria Report, including a report from the California
 17 Department of Fish and Game (“CDFG”) entitled “Flows Needed in the Delta to Restore
 18 Anadromous Salmonid Passage from the San Joaquin River at Vernalis to Chipps Island,” identified
 19 throughout the DFCR (and herein) as “DFG Exhibit 3.”

20 5. The 2009 Delta Reform Act requires the State Water Board to consider the DFCR in
 21 determining what constitutes “appropriate” Delta flow criteria. (Wat. Code, § 85086[c][2].) The
 22 DFCR has been admitted into evidence in the WaterFix proceeding, and the hearing officers have
 23 _____

24 ¹ The SJTA is concurrently subpoenaing Phillip Crader, Les Grober, Adam Ballard, Chris Foe, Diane Riddle, David La
 25 Brie, Mark Gowdy, Lucas Sharkey, and Jean McCue (all of whom, based upon information and belief, participated in
 26 preparation of the State Water Board’s 2010 Delta Flow Criteria Report), and Dean Marston, Carl Wilcox, Robert G.
 27 Titus, Robert F. Vincik, the Person Most Knowledgeable regarding DFG Exhibit 3, and the Person Most
 Knowledgeable regarding DFW’s SalSim modeling basis for DFG Exhibit 3 (all of whom, based upon information and
 belief, participated in the preparation of DFG Exhibit 3, which is referenced and relied upon in the 2010 Delta Flow
 Criteria Report).

28 ² SWRCB Fact Sheet, *California WaterFix – Water Right Change Petition And Water Quality Certification Process*
 (Updated May 2018), at p. 1 (available at: https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/docs/ca_waterfix_factsheet.pdf) [Emphasis added.]

1 stated that the report will play a “very important part” of the Board’s consideration in determining
2 whether, and upon what conditions, to approve the WaterFix Change Petition. (Transcript of
3 WaterFix Hearing, March 27, 2018, p. 264:15 to 266:8.) During Part 2, numerous witnesses relied
4 on and endorsed the DFCR and advised the Board to adopt the recommended flow criteria therein.

5 6. The testimony of Daniel Steiner (SJTA-401) and Doug Demko (SJTA-402 through
6 SJTA 403) pertains to the DFCR and is responsive to the Part 2 case-in-chief testimony
7 (summarized below) regarding the DFCR.

8 7. In addition, the SJTA has subpoenaed the individuals who prepared the 2010 Delta
9 Flow Criteria Report, and DFG Exhibit 3, to provide rebuttal testimony that is responsive to the Part
10 2 testimony regarding the DFCR.

11 8. To date, none of the individuals who prepared the 2010 Delta Flow Criteria Report
12 have been called to provide direct testimony, nor have they been cross examined, as part of the
13 WaterFix proceeding. Similarly, none of the individuals who prepared the exhibits relied upon by
14 State Water Board staff in drafting the 2010 Delta Flow Criteria Report, including the CDFG
15 personnel who prepared DFG Exhibit 3, have been called to provide direct testimony, nor have they
16 been cross examined, as part of the WaterFix proceeding.

17 9. As stated by the Board in this proceeding, “[t]he purpose of cross-examination is to
18 elicit favorable testimony from the witness or to impeach the witness.” (California WaterFix
19 Hearing Ruling, April 23, 2018, p. 2.) As explained in more detail below, the parties to this
20 proceeding must be afforded the opportunity to question the individuals who prepared the 2010
21 Delta Flow Criteria Report, and the individuals who prepared DFG Exhibit 3, so that the
22 assumptions, limitations, analyses, findings and conclusions in those documents may be fully
23 explored and explained.

24 **DELTA REFORM ACT OF 2009**

25 10. In 2009, the California Legislature passed the Sacramento-San Joaquin Delta Reform
26 Act (Wat. Code, § 85000, *et seq.* [“Delta Reform Act”]) to, among other things, “provide for
27 sustainable management of the Sacramento-San Joaquin Delta ecosystem, to provide for a more
28 reliable water supply for the state, [and] to protect and enhance the quality of water supply from the

1 Delta.” (Wat. Code, § 85001[c].)

2 11. Within the Delta Reform Act, the Legislature explicitly recognized the existence of
3 the Bay-Delta Conservation Plan and the prospect of a tunnel project, such as California WaterFix.
4 Specifically, Water Code section 85086 states that “[a]ny order approving a change in the point of
5 diversion of the State Water Project or the federal Central Valley Project from the southern Delta to
6 a point on the Sacramento River shall include *appropriate Delta flow criteria.*” (Wat. Code, §
7 85086[c][2] [emphasis added].)

8 12. To assist the State Water Board in determining what constitutes “appropriate Delta
9 flow criteria,” the Delta Reform Act required the Board to develop, pursuant to its “public trust”
10 obligations, a new set of informational flow criteria specifically for “the Delta ecosystem” and to
11 “protect public trust resources.” (Wat. Code, § 85086[c][1].)

12 13. The informational Delta flow criteria was required to be developed in a public
13 informational proceeding, at which all interested persons were to be provided an opportunity to
14 participate. (Wat. Code, § 85086[c][1].)

15 **DEVELOPMENT OF 2010 DELTA FLOW CRITERIA REPORT**

16 14. To satisfy its obligations under the Delta Reform Act, the State Water Board held an
17 informational proceeding on March 22, 23, and 24, 2010, for the expressed purpose of, among other
18 things, receiving “scientific information from technical experts on the Delta outflows needed to
19 protect public trust resources.” (SWRCB, Exhibit No. 25, at p. 7.)

20 15. At the informational hearing, the State Water Board received testimony and exhibits
21 from the California Department of Fish and Game. Among other exhibits, CDFG provided the State
22 Water Board with a report entitled, “Flows Needed in the Delta to Restore Anadromous Salmonid
23 Passage from the San Joaquin River at Vernalis to Chipps Island.” The report was identified in the
24 2010 informational proceeding, and in the DFCR, as “DFG Exhibit 3.”

25 ///

26 ///

27 ///

28 ///

1 16. On August 3, 2010, following the informational proceeding, the State Water Board
2 adopted Resolution 2010-0039, approving the final report determining informational flow criteria
3 for the Delta, i.e., the 2010 Delta Flow Criteria Report.³

4 17. The 2010 Delta Flow Criteria Report repeatedly cites to DFG Exhibit 3, authored by
5 the (then) California Department of Fish and Game. (SWRCB, Exhibit No. 25, at p. 56.) This
6 exhibit is cited for, among other things, the proposition that DFG’s analysis concluded that higher
7 flows from the San Joaquin tributaries resulted in more juvenile salmon leaving the tributaries, more
8 salmon successfully migrating to the South Delta, and more juvenile salmon surviving through the
9 Delta. (*Id.*)

10 18. Critically, the 2010 Delta Flow Criteria Report relies on what it refers to as “Figure
11 9” (an exhibit from DFG Exhibit 3, pgs. 16 – 17), for the proposition that increased spring flows
12 lead to increased smolt survival which then leads to a subsequent substantial increase in adult
13 abundance. (*Id.*, at 56.) Further (citing to DFG Exhibit 3) the 2010 Delta Flow Criteria Report also
14 extensively discusses DFG’s development of flow recommendations for the San Joaquin River from
15 March 15 through June 15 to double Chinook salmon smolt production. (*Id.*, at 56 – 59.)

16 19. In discussing the recommended San Joaquin River inflow criteria, the 2010 Delta
17 Flow Criteria Report notes that it based its recommendations, in part, on “DFG flow
18 recommendations.” (SWRCB, Exhibit No. 25, at p. 119.) The DFG flow recommendations the
19 Board relied on are derived from DFG Exhibit 3. (SWRCB, Exhibit No. 25, at p. 158, 171.)⁴

THE WATERFIX PROCEEDING AND THE DFCR

21 20. The 2010 Delta Flow Criteria Report is an integral part of the Board’s determination
22 of appropriate Delta flow criteria in California WaterFix, Part 2. The Delta Reform Act provides
23

24
25 ³ SWRCB Resolution 2010-0039, pgs. 6-7, available at: https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/deltaflow/docs/final_rpt080310.pdf

26 ⁴ Appendix A of the 2010 Delta Flow Criteria Report summarizes the participants’ recommendations to the Board for
27 flow criteria. (SWRCB, Exhibit No. 25, at p. 153.) Appendix A, Table 3 on page 158 lists the Department of Fish and
28 Game’s San Joaquin River inflow recommendations to the Board (see “CDFG”). (*Id.*, at 158.) The final column in
Appendix A, Table 3 reads “Source/Notes.” (*Id.*) The information in this column notes each participant’s source/basis
for their flow recommendations. For DFG, this column reads “48” – which corresponds to a box in Appendix A, Table
7. (*Id.*, at 158, 171.) Note 48 reads that DFG’s San Joaquin River inflow recommendations derived from: “SJR Salmon
Model V. 1.6, *DFG Exhibit 3*, and the CDFG’s closing comments. ((*Id.*, at 171) [Emphasis added].)

1 that the 2010 flow criteria, and all of the analysis that went into developing that criteria, must
2 “inform” the selection of the “appropriate Delta flow criteria.” (Wat. Code, § 85086[c][2]
3 [“appropriate Delta flow criteria...shall be informed by the analysis conducted pursuant to this
4 section.”].)

5 21. Consistent with this requirement, the State Water Board has stated throughout this
6 proceeding – orally and in writing – that the 2010 Delta Flow Criteria Report will be instrumental in
7 its decision-making process.

8 22. For instance, prior to commencement of the WaterFix proceeding, the Board stated
9 that “[t]he Delta Reform Act requires that any order approving the water right change petition [in
10 this proceeding] must include ‘appropriate Delta flow criteria’ [and] [t]hose flow criteria must be
11 informed by the flow criteria to protect the Delta ecosystem, which the State Water Board
12 developed in 2010.” (February 11, 2016, Pre-Healing Ruling, p. 4.)

13 23. In addition, Hearing Officer Doduc has stated that, “[t]he Board will determine what
14 Delta criteria are appropriate to include as conditions of approval of the Change Petition based on
15 the entire Administrative Record, including the parties’ proposals and evidence, the *2010 Flow*
16 *Criteria Report*, and the scientific basis report for Phase 2 of the Bay-Delta Plan Update.”
17 (Transcript of WaterFix Hearing, October 19, 2017, at pgs. 15:25 to 16:4) [emphasis added].)

18 24. Thereafter, in a discussion with Part 2 witness Bill Jennings from the California
19 Sportfishing Protection Alliance, Hearing Officer Doduc stated as follows: “And recognizing the
20 Delta Reform Act requirement for us to consider the flow criteria in this process, let me assure you
21 we have not disavowed anything associated with it. And it [the 2010 Delta Flow Criteria Report] is
22 going to be a *very important part of our consideration*.” (Transcript of WaterFix Hearing, March
23 27, 2018, at pgs. 264:15 to 266:8) (emphasis added).)

24 25. The 2010 Delta Flow Criteria Report is marked as Exhibit No. SWRCB-25 and was
25 admitted into evidence in this proceeding. (SWRCB Ruling, dated February 21, 2017.)

26 ///

27 ///

28 ///

1 and integrate the findings and recommendations from CDFW’s parallel proceeding to develop
2 biological objectives and flow criteria for species dependent on the Delta and establish a flow
3 regime fully protective of public trust resources.” (*Id.*, at 36 – 37.)

4 30. During his oral testimony, Mr. Jennings similarly endorsed to the 2010 Delta Flow
5 Criteria Report, claiming that it represented, in relevant part, “the best available science on flows
6 necessary to protect public trust resources.” (Transcript of WaterFix Proceeding, March 27, 2018
7 [Oral Testimony of Bill Jennings], pgs. 17:23 to 18:20.) Additionally, when discussing the Board’s
8 2010 informational hearings leading up to the DFCR, Mr. Jennings stated that the “record is
9 probably the best record that the Board’s ever assembled on what fish need from this estuary.”
10 (Transcript of WaterFix Proceeding, March 27, 2018 [Oral Testimony of Bill Jennings], pgs. 251:21
11 to 251:23.)

12 31. In his written testimony, Chris Shutes (on behalf of Group 31, California
13 Sportfishing Protection Alliance, *et al.*) likewise encouraged the Board to “give great weight” to the
14 2010 flow criteria developed from the informational hearings, especially the “submittals of the
15 fisheries agencies.” (CSPA Exhibit No. 2002-Errata, at pg. 4:14 to 4:17.) One of the “submittals of
16 the fisheries agencies” was DFG Exhibit 3, an exhibit (as discussed above) the Board repeatedly
17 cites in the 2010 Delta Flow Criteria Report.⁵ Mr. Shutes advised the Board that because of the
18 fisheries agencies “absence from this hearing,” their submittals (such as DFG Exhibit 3) “take on
19 particular importance [for Part 2].” (*Id.*, at 7:13 to 7:16.)

20 32. In his oral testimony, Mr. Shutes asserted that the “submittals of the fisheries
21 agencies” in the Board’s 2010 informational proceeding are “particularly relevant because the
22 fisheries agencies have chosen not to be parties to this proceeding.” (Transcript of WaterFix
23 Proceeding, March 27, 2018 [Oral Testimony of Christopher Shutes], at p. 44:16 to 44:20.)
24 Consequently, Mr. Shutes advised that the fisheries agencies’ submittals, “are the closest thing
25

26 ⁵ In his written testimony, Mr. Shutes provides the following link for readers to access the “submittals of the fisheries
27 agencies.” He references [[https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/deltaflow/en
28 tity_index.shtml](https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/deltaflow/entity_index.shtml)]. (CSPA Exhibit No. 202-Errata, at pg. 7:19 to 7:23.) From this link, see “Department of Fish and
Game” “Exhibits.” On that page, under the heading titled “Other Exhibits,” see “Exhibit 3 – Flows Needed in the Delta
to Restore Anadromous Salmonid Passage from the San Joaquin River at Vernalis to Chipps Island” available at:
https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/deltaflow/dfg.shtml .

1 available to the opinions of fisheries agencies regarding the flows necessary to protect public trust
 2 fisheries resources, not just listed species, for the purposes of this [Part 2] proceeding.” (*Id.*, at pg.
 3 44:21 to 45:1.)

4 33. Mr. Shutes specifically called the Board’s attention to a report authored by the
 5 Department of Fish and Game, titled “Quantifiable Biological Objectives and Flow Criteria for
 6 Aquatic and Terrestrial Species of Concern on the Delta [SWRCB Exhibit No. 66].” (*Id.*, at pg.
 7 45:4 to 45:8.)⁶ This report extensively cites to and relies on the 2010 Delta Flow Criteria Report
 8 (cited therein as “SWRCB 2010.”) (See, e.g., SWRCB Exhibit No. 66, at pgs. 5, 32, 44, 46, 47, 48,
 9 49.) CDFG discloses that it cited to the 2010 Delta Flow Criteria Report for, amongst other
 10 purposes, information provided by DFG Exhibit 3. (*Id.*, at pgs. 126 – 127.)⁷

11 34. As another example, witness Dr. Richard Denton (on behalf of Group 25, Contra
 12 Costa County and Contra Costa County Water Agency) endorsed the 2010 Delta Flow Criteria
 13 Report. Specifically, Dr. Denton noted that the Board’s 2010 Delta Flow Criteria Report showed,
 14 “what was needed for -- in Delta ecosystem for fishery protection if fishery protection was the sole
 15 purpose for which the waters were put to beneficial use.” (Oral testimony of Dr. Richard Denton, at
 16 pg. 207:11 to 207:15.) Dr. Denton further asserted that the 2010 Delta Flow Criteria Report, “gives
 17 us an idea of what we should be aiming for in terms of flows if we’re trying to improve the Delta
 18 ecosystem.” (*Id.*, at 207:16 to 207:18.)

19 **REBUTTAL TESTIMONY OF DANIEL STEINER**

20 35. The rebuttal testimony of Daniel Steiner (SJTA-401) addresses, among other things,
 21 the flow assumptions in the 2010 Delta Flow Criteria Report, and is responsive to the written and
 22 oral testimony set forth above endorsing the DFCR.

23
 24
 25 ⁶ DFG was required by Water Code section 85084.5 to develop quantifiable biological objectives and flow criteria for
 26 species of concern in the Delta. (SWRCB Exhibit No. 66 at “Preface.”) This report was released in November 2010,
 after the DFCR was released (in August 2010). (*Id.*, at “Executive Summary.”) As noted herein, this report extensively
 cites to and relies on the DFCR.

27 ⁷ In the “References Cited” section of SWRCB Exhibit No. 66, the authors note that the report cites to “Exhibits Cited
 28 from SWRCB 2010.” (SWRCB Exhibit No. 66, at p. 127.) Specifically listed in this section is DFG Exhibit 3, “Flows
 needed to Restore Anadromous Salmonid Passage from the San Joaquin River at Vernalis to Chipps Island. Entered by
 CDFG for the State Water Resources Control Board 2010 informational proceeding to develop flow criteria for the
 Delta ecosystem necessary to protect public trust resources.” (*Id.*)

REBUTTAL TESTIMONY OF DOUG DEMKO

1
2 36. The rebuttal testimony of Doug Demko (SJTA-402 and SJTA-403) addresses, among
3 other things, the flaws and limitations of the 2010 Delta Flow Criteria Report from a biological
4 perspective and is responsive to the written and oral testimony set forth above endorsing the DFCR.

BASIS FOR SUBPOENA OF SWRCB AND CDFW PERSONNEL

5
6 37. The SJTA is subpoenaing the SWRCB and CDFG staff noted herein due to each
7 individual's involvement in the development, preparation and/or authorship of the DFCR or DFG
8 Exhibit 3.

a. SWRCB PERSONNEL

- 9
10 i. The SJTA is subpoenaing the following SWRCB personnel: Phillip
11 Crader, Les Grober, Adam Ballard, Chris Foe, Diane Riddle, David La
12 Brie, Mark Gowdy, Lucas Sharkey, and Jean McCue. Each of the
13 abovementioned names is listed as an author or contributor of the DFCR.
14 (SWRCB, Exhibit No. 25)
- 15 ii. Good cause exists for this testimony during Part 2 because, as discussed
16 above, the 2010 Delta Flow Criteria Report has been admitted into the
17 record, the State Water Board is required by law to consider the DFCR in
18 this proceeding, the hearing officers have confirmed that the Board will,
19 in fact, consider the DFCR in its decision-making process, and numerous
20 Part 2 witnesses relied upon and endorsed the analyses, findings and
21 conclusions in the DFCR, and opined that the Board should adopt the
22 recommended flow criteria therein.
- 23 iii. In addition, despite the prominent role the 2010 Delta Flow Criteria
24 Report has played, and will continue to play, in Part 2, not a single author
25 or contributor has offered testimony regarding the Report. Fairness
26 dictates that the Protestants be entitled to cross-examine the above listed
27 individuals regarding the preparation and recommendations of this report
28

1 so that the assumptions, limitations, analyses, findings and conclusions
2 therein may be fully explored and explained.

3 **b. CDFW PERSONNEL**

- 4 i. Protestants are subpoenaing the following CDFW personnel: Carl
5 Wilcox, Dean Marston, Robert G. Titus, and Robert F. Vincik. Each of
6 the above listed names is associated with CDFG's submittal of Exhibit 3
7 in the 2010 DFCR informational proceeding.⁸
- 8 ii. Good cause exists for this testimony during Part 2 because, as discussed
9 above, the DFCR repeatedly cites to DFG Exhibit 3, authored by the
10 (then) California Department of Fish and Game. This exhibit is cited for,
11 among other things, the proposition that DFG's analysis concluded that
12 higher flows from the San Joaquin tributaries resulted in more juvenile
13 salmon leaving the tributaries, more salmon successfully migrating to the
14 South Delta, and more juvenile salmon surviving through the Delta.
- 15 iii. Additionally, the DFCR cites to DFG Exhibit 3 for the proposition that
16 increased spring flows lead to increased smolt survival which then leads
17 to a subsequent substantial increase in adult abundance. Further, the
18 DFCR extensively discusses DFG's development of flow
19 recommendations for the San Joaquin River from March 15 through June
20 15 to double Chinook salmon smolt production and, ultimately, bases its
21 flow recommendations on those proposed in DFG Exhibit 3.
- 22 iv. Despite the prominent role that DFG Exhibit 3 has played in the
23 development of the flow recommendations encompassed within the

24 _____
25 ⁸ The Board maintains a webpage listing the exhibits CDFG submitted in the 2010 Delta Flow Criteria informational
26 proceeding. Carl Wilcox is listed above because he authored a memorandum to Phillip Crader (at the SWRCB)
27 enclosing CDFG's exhibits, which included Exhibit 3. (See "Cover Letter" at: [https://www.waterboards.ca.gov/waterri
ghts/water_issues/programs/bay_delta/deltaflow/dfg.shtml](https://www.waterboards.ca.gov/waterri
28 ghts/water_issues/programs/bay_delta/deltaflow/dfg.shtml).) Dean Marston, Robert G. Titus, and Robert F. Vincik are
listed because their names appeared on the CDFG's 2010 Delta Flow Criteria informational proceeding "Witness
Identification List" and "Revised Witness Identification List" for expertise related to anadromous fish – which is what
Exhibit 3 addresses (See "Witness Identification List" and "Revised Witness Identification List" at:
[https://www.waterboards.ca.gov/waterri
ghts/water_issues/programs/bay_delta/deltaflow/dfg.shtml](https://www.waterboards.ca.gov/waterri
ghts/water_issues/programs/bay_delta/deltaflow/dfg.shtml).)


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DFCR, not a single author or contributor of the exhibit has offered testimony regarding this exhibit. Fairness dictates that the Protestants be entitled to cross-examine the above listed individuals regarding the preparation and recommendations of this exhibit so that the assumptions, limitations, analyses, findings and conclusions therein may be fully-explored and explained.

38. The testimony that may be generated by these witnesses will be relevant to the Board’s decision-making process regarding appropriate Delta flow criteria, will illuminate the flaws, limitations and usefulness of the 2010 Delta Flow Criteria Report, will be responsive to the testimony of numerous Part 2 witnesses (outlined above) regarding appropriate Delta flow criteria, and can only be obtained from the above-listed witnesses (or others designated by the SWRCB or CDFW as a Person Most Knowledgeable) given their unique roles as authors or contributors to 2010 Delta Flow Criteria Report or DFG Exhibit 3.

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

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

By: 
TIM O’LAUGHLIN