

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

ATTORNEY OR PARTY WITHOUT ATTORNEY REQUESTING SUBPOENA (name, address, and telephone no.): MATTHEW L. EMRICK (SBN 148250) LAW OFFICES OF MATTHEW EMRICK 6520 Lone Tree Blvd., #1009 Rocklin, CA 95765 Telephone: (916) 337-0361	FOR STATE WATER BOARD USE ONLY
REPRESENTING: City of Antioch	
TITLE OF THE PROCEEDING: <p align="center"><b>HEARING REGARDING CHANGES IN WATER RIGHTS OF DWR AND RECLAMATION FOR THE CALIFORNIA WATERFIX PROJECT</b></p>	
<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): **California Department of Water Resources**

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: <b>February 21, 2018</b>	Time: <b>9:30 am</b>
b. Address: <b>Via electronic submittal to WaterFix Hearing ftp site</b>	

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: <b>Matthew Emrick</b>	b. Telephone number: <b>(916) 337-0361</b>
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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: February 5, 2018



*Matthew Emrick*  
 \_\_\_\_\_  
 (signature)

Name: Matthew Emrick  
 Title: Attorney

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)

1 MATTHEW L. EMRICK (SBN 148250)  
2 LAW OFFICES OF MATTHEW EMRICK  
3 6520 Lone Tree Blvd., #1009  
4 Rocklin, CA 95765  
5 Telephone: (916) 337-0361  
6 Facsimile: (916) 771-0200  
7 [matthew@mlelaw.com](mailto:matthew@mlelaw.com)

8 Attorneys for Protestant,  
9 City of Antioch

10 **BEFORE THE**  
11 **CALIFORNIA STATE WATER RESOURCES CONTROL BOARD**

12 HEARING IN THE MATTER OF  
13 CALIFORNIA DEPARTMENT OF WATER  
14 RESOURCES AND UNITED STATES  
15 BUREAU OF RECLAMATION  
16 REQUEST FOR A CHANGE IN POINT OF  
17 DIVERSION FOR CALIFORNIA WATER  
18 FIX

19 ADDENDUM TO SUBPOENA DUCES  
20 TECUM TO THE CALIFORNIA  
21 DEPARTMENT OF WATER RESOURCES  
22 AND AFFIDAVIT

23 **TO THE CUSTODIAN OF RECORDS FOR THE CALIFORNIA DEPARTMENT**  
24 **OF WATER RESOURCES, BY AND THROUGH THEIR COUNSEL OF RECORD**

25 Pursuant to the provisions of Water Code section 1080 and 1100, Government  
26 Code sections 11450.10-11450.50 and Code of Civil Procedure sections 1985 and 1987, the  
27 California Department of Water Resources is commanded to provide the following  
28 DOCUMENTS, COMMUNICATIONS and ELECTRONIC DATA, as described below and  
in connection with the above-titled proceeding, by 9:30 am on February 21, 2018. Please  
make the electronic records available to download via the WaterFix hearing ftp site and  
notify Matthew Emrick by email at [matthew@mlelaw.com](mailto:matthew@mlelaw.com). If all of the DOCUMENTS,  
COMMUNICATIONS and ELECTRONIC DATA are not available within that time frame,  
the California Department of Water Resources is commanded to provide the DOCUMENTS,

1 COMMUNICATIONS and ELECTRONIC DATA which are available, together with a  
2 statement of the DOCUMENTS, COMMUNICATIONS and ELECTRONIC DATA which  
3 are yet to be produced, and an estimate of the time required for production.

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5 I. DEFINITIONS

6 The capitalized terms listed below, as used in this Subpoena duces tecum, are defined  
7 as follows:

- 8 1. The term "PERSON" or "PERSONS" mean natural persons, partnerships,  
9 corporations, businesses, state or federal agencies, public or private water  
10 agencies, joint powers authorities, or other forms of governmental or legal  
11 entities.
- 12 2. The terms "DWR" means the California Department of Water Resources, and  
13 each person acting or purporting to act on its behalf, including but not limited  
14 to, its former or present officers, employees, agents, contractors, consultants,  
15 and representatives.
- 16 3. The terms "YOU" or "YOUR" mean "DWR."
- 17 4. The term "CONTROL" means control, custody, or possession in the broadest  
18 sense possible under Code of Civil Procedure section 2031.010.
- 19 5. The terms "COMMUNICATION" or "COMMUNICATIONS" mean any  
20 occurrence whereby data, expressions, facts, opinions, thoughts, or other  
21 information of any kind is transmitted in any form including, but not limited  
22 to, any correspondence, electronic mail, meeting, conversation, memorandum,  
23 message, note, or web conference on the Internet. These terms include,  
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- 26 6. The terms "RELATING TO" or "RELATED TO" shall be construed in the  
27 broadest possible sense and shall mean, without limitation, pertaining to,  
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1 regarding, concerning, comprising, constituting, in connection with,  
2 reflecting, respecting, referring to, stating, describing, recording, noting,  
3 embodying, containing, mentioning, studying, analyzing, discussing or  
4 evaluating, and as defined in Black's Law Dictionary (5th ed. 1979), p. 1158.

- 5 7. The terms "DOCUMENT" or "DOCUMENTS" encompass all physical and/or  
6 electronic documents within YOUR CONTROL and includes all writings as  
7 defined in section 250 of the California Evidence Code, and shall include, but not  
8 be limited to technical, legal, and other memoranda, opinions, summaries, notes,  
9 work documents, spreadsheets, powerpoints, reports, studies, analyses,  
10 evaluations, manuals, schematics, plans or other engineering drawings, maps,  
11 contracts, agreements, document repositories and things similar to any of the  
12 foregoing, whether sent or received, including drafts.
- 14 8. The terms "ELECTRONIC DATA" shall include, but not be limited to, data sets,  
15 computer code, input and output parameter sets, and linked data or metadata.
- 17 9. The term "PUBLICLY DISTRIBUTED" refers to the publication or publicly  
18 noticed distribution of a DOCUMENT, COMMUNICATIONS, or  
19 ELECTRONIC DATA as defined herein, via the internet, or other method of  
20 access available to the general public. Documents only available on internet sites  
21 with passcodes or on inspection in offices are NOT considered "PUBLICLY  
22 DISTRIBUTED."
- 24 10. The term "WATERFIX PROJECT" encompasses the project known as the  
25 WaterFix, and the Delta Habitat Conservation and Conveyance Program, or  
26 DHCCP, including any new State Water Project diversion, conveyance, and  
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1 storage facilities in the Sacramento Delta. The term "WATERFIX PROJECT"  
2 also encompasses the planning for operation of said new facilities in coordination  
3 with the existing State Water Project and Central Valley Project facilities.

4 11. The term "PROVIDED FOR THE WATERFIX HEARING," shall mean served  
5 on WaterFix Hearing parties and/or uploaded to the WaterFix Hearing ftp site. It  
6 does not include DOCUMENTS, COMMUNICATIONS, or ELECTRONIC  
7 DATA only referred to or incorporated by reference.  
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9 12. The term, "REINITIATION OF CONSULTATION ON THE COORDINATED  
10 LONG-TERM OPERATION OF THE CENTRAL VALLEY PROJECT AND  
11 THE STATE WATER PROJECT" means the process begun on August 2, 2016,  
12 when the United States Bureau of Reclamation requested reinitiation of  
13 Endangered Species Act Section 7 consultation with the United States Fish and  
14 Wildlife Service and National Marine Fisheries Service on the Coordinated Long-  
15 Term Operation of the Central Valley Project and State Water Project.  
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17 13. Definitions for water industry or regulatory terms contained herein are to be  
18 construed broadly. Where the water industry or regulatory definition set forth  
19 herein does not coincide precisely with YOUR definition, the question, inquiry or  
20 production request should be responded to or answered by using the definition  
21 that YOU apply and/or recognize in YOUR usage of the term, and YOU should  
22 further document YOUR definition in the response. Non-industry or non-trade  
23 definitions should be applied as defined herein.  
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1        II     INSTRUCTIONS

2            1. The time period covered by this subpoena is from the dates indicated below, up to  
3 five days before YOUR full compliance with this subpoena. All DOCUMENTS,  
4 COMMUNICATIONS and ELECTRONIC DATA RELATING TO this time period, and  
5 not PUBLICLY DISTRIBUTED as of the date of this subpoena are to be produced,  
6 regardless of whether the documents came into existence before or during this period.

7            2. YOUR response to the subpoena should include a declaration or affidavit,  
8 pursuant to section 1561 of the Evidence Code. It should state that a diligent search for all  
9 requested DOCUMENTS, COMMUNICATIONS and ELECTRONIC DATA has been  
10 conducted and that the affiant or declarant oversaw the search or otherwise monitored and  
11 reviewed the search sufficiently to be able to represent under oath that such a search was  
12 conducted. It should be signed under oath by the person most knowledgeable about the  
13 DOCUMENTS, COMMUNICATIONS and ELECTRONIC DATA and YOUR efforts to  
14 comply with the subpoena. If different people are the most knowledgeable about portions of  
15 the search each should sign an affidavit or declaration identifying the category in the request  
16 for DOCUMENTS, COMMUNICATIONS and ELECTRONIC DATA for which that  
17 person is the most knowledgeable.

18           3. Unless otherwise indicated, for any DOCUMENT, COMMUNICATIONS, or  
19 ELECTRONIC DATA stored in a computer, including all electronic mail messages, YOU  
20 should produce the DOCUMENT, COMMUNICATIONS, or ELECTRONIC DATA in the  
21 original electronic file format in which it was created, together with instructions and all  
22 other materials necessary to use or interpret the data. Electronic mail messages should be  
23 provided, even if only available on backup or archive. Computer files, other than those with  
24 common file extensions (e.g., .doc, .docx, .xls, .xlsx, .pdf, .zip, etc.) should be accompanied  
25 by (a) an identification of the software needed to open and view the DOCUMENTS or (b) a  
26 copy of the software needed to open and view the DOCUMENT.

1           4. For all DOCUMENTS, COMMUNICATIONS, or ELECTRONIC DATA for  
2 which YOU submit copies (physical or electronic copies if the original was on paper, and, if  
3 the original was in electronic format, in the same electronic medium as the original) such  
4 copies should be accompanied by an affidavit stating that the copies of all types of  
5 DOCUMENTS, COMMUNICATIONS, or ELECTRONIC DATA are true, correct, and  
6 complete copies of the original DOCUMENTS, COMMUNICATIONS, or ELECTRONIC  
7 DATA. If there is in YOUR possession, custody or control no original, but only a copy  
8 thereof, then YOU should produce a true and legible copy of each such DOCUMENTS,  
9 COMMUNICATIONS, or ELECTRONIC DATA, in the form in which it is maintained.

10           5. If any DOCUMENTS, COMMUNICATIONS, or ELECTRONIC DATA are  
11 responsive to this subpoena and are in YOUR control, but are not in YOUR possession or  
12 custody, in addition to obtaining and producing the DOCUMENT, identify the person who  
13 had possession or custody of the DOCUMENT, their telephone number and current business  
14 and residence addresses.

15           6. If any DOCUMENTS, COMMUNICATIONS, or ELECTRONIC DATA  
16 subpoenaed are no longer in YOUR possession, custody, control, or care, YOU should  
17 provide a written statement identifying the DOCUMENTS, COMMUNICATIONS, or  
18 ELECTRONIC DATA with specificity, stating whether it is lost, missing, has been  
19 destroyed, has been transferred to others, or has otherwise been disposed of. The written  
20 statement should also identify the person who disposed of the DOCUMENTS,  
21 COMMUNICATIONS, or ELECTRONIC DATA, explain the circumstances and  
22 authorization for the disposition and the approximate date of the disposition.

23           7. All DOCUMENTS, COMMUNICATIONS, or ELECTRONIC DATA provided  
24 in response to this subpoena should be complete and unredacted, submitted as found in  
25 YOUR files.

26           8. All DOCUMENTS, COMMUNICATIONS, or ELECTRONIC DATA produced  
27 pursuant to this subpoena should be identified according to the category in the subpoena to  
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1 which it is responsive. In lieu of indicating on each DOCUMENT, COMMUNICATIONS,  
2 or ELECTRONIC DATA the category to which it is responsive, on the date set for  
3 production, YOU may instead provide an index if YOU provide it in electronic form (such  
4 as a computerized spreadsheet in Excel or a Word or WordPerfect document set up in a  
5 table format) of all DOCUMENTS YOU produce, as long as this index shows the request(s)  
6 to which the DOCUMENTS, COMMUNICATIONS, or ELECTRONIC DATA are  
7 responsive. Responsive DOCUMENTS from each person's files should be produced  
8 together, in electronic file directories, if provided as an electronic file, or in boxes, if  
9 provided as paper copies. Indicate in the response to the requests(s) to which they are  
10 responsive.

11 9. For DOCUMENTS produced in spreadsheets or tables, include in the declaration or  
12 affidavit the identification of the fields and codes and a description of the information  
13 contained in each coded field.

14 10. The requests contained in this subpoena shall be deemed to include a request for all  
15 relevant DOCUMENTS, COMMUNICATIONS, or ELECTRONIC DATA in the personal  
16 files of all YOUR officers, employees, agents and representatives, including contractors.

17 11. Whenever necessary to bring within the scope of this subpoena DOCUMENTS,  
18 COMMUNICATIONS, or ELECTRONIC DATA that might otherwise be construed as  
19 outside its scope, the use of the verb in any tense shall be construed, as the use of that verb  
20 in all other tenses, and the singular shall include the plural, and vice versa, so as to make this  
21 subpoena broadly inclusive.

### 22 III. DOCUMENTS TO BE PRODUCED

#### 23 A. CURRENT WATERFIX PROJECT INFORMATION

- 24 1. All DOCUMENTS under DWR's CONTROL RELATED TO the engineering  
25 design or construction of the WATERFIX PROJECT since the Final Draft  
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1 Conceptual Engineering Report was issued on July 1, 2015 (Exhibit DWR-  
2 212, p. 1), not PUBLICLY DISTRIBUTED or PROVIDED FOR THE  
3 WATERFIX HEARING.

4 2. All DOCUMENTS under DWR's CONTROL RELATED TO the compliance  
5 of the WATERFIX PROJECT with the Clean Water Act or Porter-Cologne  
6 Act, including, but not limited to, disposal of "reusable tunnel material,"  
7 material from dredging of Clifton Court Forebay, or decant liquids from same,  
8 expected to be generated by construction of the WATERFIX PROJECT, since  
9 the Final Draft Conceptual Engineering Report was issued on July 1, 2015  
10 (Exhibit DWR-212, p. 1), not PUBLICLY DISTRIBUTED or PROVIDED  
11 FOR THE WATERFIX HEARING.

12 3. All DOCUMENTS under DWR's CONTROL RELATED TO property  
13 acquisition for construction of the WATERFIX PROJECT, not PUBLICLY  
14 DISTRIBUTED or PROVIDED FOR THE WATERFIX HEARING, since  
15 the 2014 Draft Design and Construction Enterprise ("DCE") CM1 Property  
16 Acquisition Management Plan (Exhibit LAND-69.)

17 4. All COMMUNICATIONS under DWR's CONTROL with John Bednarski  
18 RELATED TO the engineering design, construction, property acquisition,  
19 Clean Water Act or Porter-Cologne Act compliance for the WATERFIX  
20 PROJECT since the Final Draft Conceptual Engineering Report was issued on  
21 July 1, 2015 (Exhibit DWR-212, p. 1), not PUBLICLY DISTRIBUTED or  
22 PROVIDED FOR THE WATERFIX HEARING.

- 1 5. All DOCUMENTS and ELECTRONIC DATA under DWR's CONTROL  
2 RELATED TO operational scenarios for the WATERFIX PROJECT since the  
3 Acting Director for the California Department of Water Resources signed the  
4 Certification of the WaterFix Final EIR/EIS on July 21, 2017 (Exhibit  
5 SWRCB-109, p. 1), not PUBLICLY DISTRIBUTED or PROVIDED FOR  
6 THE WATERFIX HEARING.
- 7 6. All COMMUNICATIONS under DWR's CONTROL with Gwen Bucholz  
8 RELATED TO the operational scenarios for the WATERFIX PROJECT,  
9 since the Acting Director for the California Department of Water Resources  
10 signed the Certification of the WaterFix Final EIR/EIS on July 21, 2017  
11 (Exhibit SWRCB-109, p. 1.)
- 12 7. All COMMUNICATIONS under DWR's CONTROL with Erik Reyes  
13 RELATED TO the operational scenarios for the WATERFIX PROJECT since  
14 the Acting Director for the California Department of Water Resources signed  
15 the Certification of the WaterFix Final EIR/EIS on July 21, 2017 (Exhibit  
16 SWRCB-109, p. 1.)
- 17 8. All COMMUNICATIONS under DWR's CONTROL with John Leahigh or  
18 Aaron Miller RELATED TO the operational scenarios for the WATERFIX  
19 PROJECT, since the Acting Director for the California Department of Water  
20 Resources signed the Certification of the WaterFix Final EIR/EIS on July 21,  
21 2017 (Exhibit SWRCB-109, p. 1.)
- 22 9. All DOCUMENTS, COMMUNICATIONS and ELECTRONIC DATA under  
23 DWR's CONTROL RELATED TO CALSIM II modeling of the CWF H3+  
24 operational scenario submitted for Part 2 of the WaterFix hearing, not  
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1 PUBLICLY DISTRIBUTED or PROVIDED FOR THE WATERFIX  
2 HEARING, particularly including all spreadsheets and technical memoranda  
3 RELATED TO technical review of the modeling.

4 10. ALL DOCUMENTS and ELECTRONIC DATA under DWR's CONTROL  
5 RELATED TO the March 24, 2016 Settlement Agreement between DWR and  
6 CONTRA COSTA WATER DISTRICT ("CCWD"), including but not limited  
7 to any analysis of projected impacts resulting from the WATERFIX  
8 PROJECT to CCWD's water quality, including any such analysis or modeling  
9 prepared by CCWD that has been provided to DWR.  
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11 **B. NON-DISCLOSURE POLICY**

12 1. ALL DOCUMENTS relating to DWR's designation of engineering and  
13 operational specifications, or designation of DOCUMENTS and  
14 ELECTRONIC DATA RELATED TO operational scenarios, hydrologic  
15 modeling, and impact assessments for the State Water Project, Bay-Delta  
16 Conservation Plan or WATERFIX PROJECT as confidential, since the Bay-  
17 Delta Conservation Plan Memorandum of Agreement was signed on March  
18 12, 2009 (Exhibit SDWA-157, p 13-15.) To the extent that there were pre-  
19 existing designations as confidential for the above specified information that  
20 were in effect as of March 12, 2009, those documents are requested.  
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23 **C. REINITIATION OF CONSULTATION ON THE COORDINATED LONG-  
24 TERM OPERATION OF THE CENTRAL VALLEY PROJECT AND THE  
25 STATE WATER PROJECT**

26 1. ALL DOCUMENTS and ELECTRONIC DATA under DWR's CONTROL,  
27 RELATED TO the REINITIATION OF CONSULTATION ON THE  
28 COORDINATED LONG-TERM OPERATION OF THE CENTRAL VALLEY

1 PROJECT AND THE STATE WATER PROJECT, since the Director for the  
2 California Department of Water Resources signed the Memorandum of  
3 Understanding for the REINITIATION OF CONSULTATION ON THE  
4 COORDINATED LONG-TERM OPERATION OF THE CENTRAL VALLEY  
5 PROJECT AND THE STATE WATER PROJECT on December 29, 2016,  
6 including, but not limited to, potential Central Valley Project (“CVP”) and  
7 State Water Project (“SWP”) long-term operations with the WaterFix North  
8 Delta diversions.

- 9 2. All COMMUNICATIONS between DWR and the U.S. Bureau of  
10 Reclamation, under DWR’s CONTROL, RELATED TO the REINITIATION  
11 OF CONSULTATION ON THE COORDINATED LONG-TERM OPERATION  
12 OF THE CENTRAL VALLEY PROJECT AND THE STATE WATER  
13 PROJECT, since the Acting Director for the California Department of Water  
14 Resources signed the Incidental Take Permit for the WATERFIX PROJECT  
15 on July 27, 2017 (Exhibit SWRCB-107, p. 232.)

16 **D. STATE WATER RESOURCES CONTROL BOARD**

- 17 1. All COMMUNICATIONS with staff or Board members of the State Water  
18 Resources Control Board, and all DOCUMENTS shared with staff or Board  
19 members of the State Water Resources Control Board, RELATED TO THE  
20 WATERFIX HEARING, or WATERFIX PROJECT, or State Water Resources  
21 Control Board permit terms for the State Water Project or Central Valley Project,  
22 under DWR’s CONTROL, not PUBLICLY DISTRIBUTED or PROVIDED FOR  
23 THE WATERFIX HEARING, since the WaterFix Water Right Change Petition  
24 application was submitted to the State Water Resources Control Board on August 26,  
25 2015 (Exhibit SWRCB-1.) This includes, but is not limited to,  
26 COMMUNICATIONS which may contain attorney-client communications and/or  
27 attorney work product.

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2 E. CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

3 1. ALL COMMUNICATIONS between DWR and the California Department Of  
4 Fish And Wildlife, and all DOCUMENTS shared with the California  
5 Department Of Fish And Wildlife, RELATED TO environmental compliance  
6 for construction or operation of the WATERFIX PROJECT, including  
7 compliance with the California or federal Endangered Species Acts, under  
8 DWR's CONTROL, not PUBLICLY DISTRIBUTED or PROVIDED FOR  
9 THE WATERFIX HEARING, since the Acting Director for the California  
10 Department of Water Resources signed the Incidental Take Permit for the  
11 WATERFIX PROJECT on July 27, 2017 (Exhibit SWRCB-107, p. 232.)

12 This includes, but is not limited to, COMMUNICATIONS which may contain  
13 attorney-client communications and/or attorney work product.

14 2. All COMMUNICATIONS between DWR and the California Department of  
15 Fish and Wildlife, and all DOCUMENTS shared with the California  
16 Department of Fish and Wildlife, under DWR's CONTROL, RELATED TO  
17 the REINITIATION OF CONSULTATION ON THE COORDINATED LONG-  
18 TERM OPERATION OF THE CENTRAL VALLEY PROJECT AND THE  
19 STATE WATER PROJECT, since the since the Acting Director for the  
20 California Department of Water Resources signed the Incidental Take Permit  
21 for the WATERFIX PROJECT on July 27, 2017 (Exhibit SWRCB-107, p.  
22 232.), including, but not limited to, potential state and federal Endangered  
23 Species Act compliance for the long-term operations of the State Water  
24 Project and Central Valley Project with the WaterFix North Delta diversions.

25 3. All COMMUNICATIONS RELATED TO withdrawal by the California  
26 Department of Fish and Wildlife as a Party to the WaterFix hearing, under  
27 DWR's CONTROL, since the WaterFix Water Right Change Petition  
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1 application was submitted on August 26, 2015. This includes, but is not limited  
2 to, COMMUNICATIONS which may contain attorney-client communications  
3 and/or attorney work product.  
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AFFIDAVIT IN SUPPORT OF SUBPOENA DUCES TECUM

I, Matthew Emrick, do declare as follows:

I am an attorney admitted to practice law in the State of California and the attorney of record for the City of Antioch in this proceeding. The following matters are within my personal knowledge, and if called as a witness, I could competently testify thereto. Based on the considerations enumerated below, I believe the requests for production of the five (5) categories of documents described in the attached Addendum to the Subpoena Duces Tecum, above are reasonable and necessary for the Hearing, and the documents requested are under the control of the California Department of Water Resources.

1. True, correct and complete information on the proposed engineering design, proposed construction, and potential operations of the WaterFix project is relevant to the State Water Resource Control Board's consideration of whether the project will have unreasonable impacts on fish and wildlife, which is a key hearing issue in Part 2, and should be fully disclosed. The information is also required by regulation for change petitions ((Wat. Code § 711, Wat. Code § 1701.2, Tit. 23 Cal Code Regs §794(a)(6), §794(a)(8), §794(a)(9).))
2. True, correct and complete information on the proposed compliance with the Clean Water Act is also relevant to the State Water Resource Control Board's consideration of whether the project will have unreasonable impacts on fish and wildlife, which is a key hearing issue in Part 2, and should be fully disclosed. The information is also required by regulation for change petitions ((Wat. Code § 711, Wat. Code § 1701.2(c).))
3. There is evidence that the proposed operations, engineering design, and proposed construction of the WaterFix project either have changed or are subject to change, since the agents for the Department of Water Resources and the United States Bureau of

1 Reclamation signed the WaterFix Water Right Change Petition application on August  
2 25, 2015, as detailed below.

- 3 4. Contra Costa Water District signed a Settlement Agreement with the Department of  
4 Water Resources on March 24, 2016.
- 5 5. Westlands Water District voted on September 19, 2017 not to participate in the WaterFix  
6 project as currently proposed.
- 7 6. Santa Clara Valley Water District voted for a resolution on October 17, 2017, which  
8 stated in part, “[g]iven that Westlands Water District and certain other agriculture  
9 districts have declined to participate in the WaterFix project, we are supportive of a  
10 lower-cost, scaled-down, and staged project.”
- 11 7. The Department of Water Resources (“DWR”) has stated in a Request for Qualifications  
12 that DWR is considering changing to a phased implementation of the WaterFix project.
- 13 8. The Department of Water Resources has not submitted any new information in the  
14 WaterFix Water Right Change Petition Hearing regarding the phased implementation  
15 that DWR is considering.
- 16 9. The Department of Water Resources was reported to have notified the County of  
17 Sacramento et. al. on January 31, 2018, that DWR would not provide records requested  
18 under the Public Records Act, relating to the phased implementation of the WaterFix  
19 project, until March 24, 2018.
- 20 10. Employees of the California Department of Water Resources have stated that the  
21 CALSIM modeling for the WaterFix is “proprietary.” Attorneys for the California  
22 Department of Water Resources have made statements in the WaterFix hearing that  
23 CALSIM is a public model.
- 24 11. The California Department of Fish and Wildlife is consulting with the Department of  
25 Water Resources on environmental compliance for the WaterFix project, and was  
26 reported by the County of Sacramento et. al., to have been in a meeting with DWR on  
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1 January 26, 2018 at which materials regarding proposed project changes were shown to  
2 CDFW personnel but then collected and taken away.

3 12. The California Department of Fish and Wildlife is a trustee agency for fish and wildlife  
4 in the State of California (Fish and Game Code § 1802), yet the California Department of  
5 Fish and Wildlife withdrew as a party from Part 2 of the WaterFix hearing, and objected  
6 to a subpoena for witnesses to testify on the Department's public trust recommendations  
7 to the State Water Resources Control Board in 2010, for reasons which are unexplained.

8 13. The WaterFix Final Environmental Impact Report ("EIR") / Environmental Impact  
9 Statement ("EIS") was published over a year ago on December 22, 2016, but the United  
10 States Bureau of Reclamation ("Reclamation") has not signed a Record of Decision for  
11 the EIS.

12 14. On December 29, 2016 the Department of Water Resources signed a Memorandum of  
13 Understanding with Reclamation to initiate a concurrent NEPA process to determine  
14 long-term coordinated operation of the Central Valley Project and State Water Project,  
15 the Reinitiation of Consultation on Long Term Operations.

16 15. On December 29, 2017, Reclamation published a Notice of Intent to Prepare an  
17 Environmental Impact Statement on the Revisions to the Coordinated Long Term  
18 Operation of the Central Valley Project ("CVP") and State Water Project ("SWP") and  
19 Related Facilities in Volume 82, no. 249 of the Federal Register. The notice stated that  
20 Reclamation would be considering the following:

21 Modified operations of the CVP and SWP with and without new or proposed  
22 facilities including possible requests to modify environmental and regulatory  
23 requirements, and sharing of water and responsibilities in the Delta.  
(*Id.* at p. 61790, underlining added.)

24 16. Minutes of the February 14, 2017 stakeholder meeting on Reclamation's Reinitiation of  
25 Consultation contain statements by Reclamation that, "there is a basic assumption that if  
26 the project period extends to 2070, then Water Fix may be operable and this project  
27 would have to consider/model according to Water Fix impacts on CVP/SWP."  
28

- 1 17. Reclamation has not submitted any information to the WaterFix Water Right Change  
2 Petition Hearing regarding any new operational scenarios that Reclamation is  
3 considering in the NEPA process on Revisions to the Coordinated Long Term  
4 Operations of the CVP and SWP and Related Facilities. Reclamation has also provided  
5 no witnesses for Part 2 of the WaterFix hearing to testify or be cross-examined on  
6 proposed CVP operations.
- 7 18. The Department of Interior (“DOI”) asserted on November 14, 2017 that under the  
8 Department’s “Touhy” act regulations at 43 C.F.R. section 2.280 *et. seq.*, none of the  
9 agencies in the Department of Interior are required to comply with a subpoena for  
10 witnesses or for records in the WaterFix hearing, unless approved by DOI under DOI’s  
11 “Touhy” act regulations. These agencies include Reclamation and the National Marine  
12 Fisheries Service.
- 13 19. The Department of Water Resources and the California Department of Fish and Wildlife  
14 are participating as a NEPA cooperating agencies in the Reinitiation of Consultation on  
15 the Coordinated Long-Term Operation of the CVP and SWP.
- 16 20. Save the California Delta Alliance (“STCDA”) described documents shared with the  
17 WaterFix Hearing Team at meetings before and during Part 1 of the WaterFix Change  
18 Petition Hearing in STCDA’s filing of January 12, 2018. STCDA also issued a Public  
19 Records Act request to the California Department of Water Resources on January 12,  
20 2018. The documents have not been provided for the WaterFix hearing.
- 21 21. Emails obtained under Public Records Act requests show that the Department of Water  
22 Resources had many web conferences with the WaterFix Water Right Change Petition  
23 Hearing Team before and during Part 1 of the hearing. Recordings of the conferences  
24 may be available.
- 25 22. The definitions and instructions in this subpoena were adapted from a subpoena by the  
26 State Water Resources Control Board Prosecution Team in the Byron-Bethany Irrigation  
27 District, and are appropriate given the refusal by the Department of Water Resources to  
28

1 respond fully and adequately to Public Records Act requests and to PCFFA/IFR's  
2 subpoena of July 6, 2016.

3  
4 I declare under penalty of perjury pursuant to the laws of California that the foregoing is true  
5 and correct. Executed this 5<sup>th</sup> day of February, 2018 in Sacramento, California.  
6

7  
8 Dated: February 5, 2018



9  
10 Matthew Emrick  
11 Attorney for Protestant  
12 City of Antioch  
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**STATEMENT OF SERVICE  
CALIFORNIA WATERFIX PETITION HEARING**

**Department of Water Resources and U.S. Bureau of Reclamation (Petitioners)**

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

**City of Antioch's: -**

*Subpoena duces tecum to DWR with affidavit and attachment*

to be served by **Electronic Mail** (email) upon the parties listed in the **Current Service List** for the California WaterFix Petition Hearing, dated Jan. 24, 2018, posted by the State Water Resources Control Board at  
[http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/california\\_waterfix/service\\_list.shtml](http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/service_list.shtml):

I certify that the foregoing is true and correct and that this document was executed on Feb, 5, 2018

Signature: 

Name: Jessica Decker

Title: Assistant to Matthew Emrick

Party/Affiliation: City of Antioch

Address: **6520 Lonetree Blvd., #1009, Rocklin, CA 95762**