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9 City of Antioch

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

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

19 JOINDER IN MOTION TO FORMALLY
20 CONSIDER ADDITIONAL
21 INFORMATION SUBMITTED IN
22 SUPPORT OF PETITION

23 The City of Antioch hereby joins in and incorporates as if set forth in full Deirdre
24 Des Jardins' February 13, 2018 motion to formally consider additional information
25 submitted in support of petition, and provides the following additional points in support
26 of the motion.

27 The issues with the Petition date back to filing. The City of Antioch commented
28 on September 2, 2015 that the petition submitted by the Department of Water
Resources and the U.S. Bureau of Reclamation was defective and incomplete and
requested that the petition be rejected.¹ That letter stated in part:

The City believes the Petition is defective and incomplete as follows:

¹ Antioch's September 2, 2015 letter to the State Water Resources Control Board, RE: DWR and BOR Defective "Water Fix" Petition for Change Application, is incorporated as if set forth in full herein.

- 1 1. The Petition fails to provide sufficient information necessary to identify
2 potentially impacted water users and the specific impacts to those
3 users in the detail required by law. Water Code section 1701 et seq; 23
4 CCR 794 (a)(7),(9). This information is also almost completely absent
5 from the Draft Recirculated Environmental Impact Report (“DREIR”)
6 referenced in the Petition. In place of specific analysis of impacts to the
7 literally hundreds of potentially impacted water rights, the Petition (and
8 the DREIR) rely on broad statements promising to operate and divert
9 in such a way as to meet applicable law. This is simply insufficient
10 under the law for a change petition and especially for such a project
11 that will so fundamentally modify the present methods and location of
12 diversion. [...]
- 13 4. The Petition references additional studies regarding the operation and
14 design of the project that are as yet uncompleted (see pg. 14 of the
15 Supplemental Information attachment). Because these studies will
16 “inform design and operation of the diversion structures,” we conclude
17 that the proposed Project and the DREIR are currently incomplete. The
18 fact that the details of design and operation are currently unknown also
19 indicates that the Petition may be incomplete, as all the potential
20 impacts of the project to water users and to fish and wildlife are
21 unknown at this time.
- 22 5. The Applicants have not modeled the preferred alternative. The
23 modeling performed by the Applicants is for a different alternative
24 (Alternative 4, rather September 2, 2015 Page 3 than Alternative 4a).
25 The Applicants have not updated to model the current project, and
26 there are significant differences (e.g., amount of tidal restoration,
27 salinity compliance points, etc.) between the model runs and the
28 preferred alternative. Neither the Petition nor the RDEIR provide
adequate detail as to how the applicants will operate the project.
Project operations are proposed to be determined during an “adaptive
management” process, but they have not described how this will work,
or within what bounds. The Applicants underestimate the impacts of
the preferred alternative because they continue to use the incorrect
baseline condition, which the City and others have previously pointed
out to the Applicants. Therefore, relying on the present modeling to
demonstrate a “no harm/no injury” project impact is insufficient to meet
the standards required to proceed with the Change Petition. (p. 2-3.)

Antioch’s letter concluded by requesting that the State Water Resources Control
Board delay consideration of any petition until the Record of Decision was approved.
There were requests by other protestants to reject the petition as incomplete. The

1 petition was accepted for filing after Ex Parte discussion with the Department of Water
2 Resources and the WaterFix hearing was scheduled on October 30, 2015. The Board
3 met in closed session with the Office of Chief Counsel on December 2, 2015 to
4 “deliberate on procedural decisions” for the petition, but made no provision for a process
5 to formally require the Petitioners to supply the missing information.

6 The defects in the petition were not adequately corrected in Part 1 of the hearing,
7 and must be addressed before Part 2 to ensure a fair hearing.

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9 Dated: February 19, 2018

10 */s/ MATTHEW EMRICK*
11 Matthew Emrick
12 Attorney for Protestant
13 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: - *Deirdre Des Jardins' February 13, 2018 motion to formally consider additional information submitted in support of petition*

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:

I certify that the foregoing is true and correct and that this document was executed on Feb, 19, 2018

Signature: /s/ *Jessica Decker*

Name: Jessica Decker

Title: Assistant to Matthew Emrick

Party/Affiliation: City of Antioch

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