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10 Attorneys for State Water Contractors

11
12 **BEFORE THE**
13 **CALIFORNIA STATE WATER RESOURCES CONTROL BOARD**

14 ENFORCEMENT ACTION ENF01949 -
15 DRAFT CEASE AND DESIST ORDER
16 REGARDING UNAUTHORIZED OR
17 THREATENED UNAUTHORIZED
DIVERSIONS OF WATER FROM OLD RIVER
IN SAN JOAQUIN

STATE WATER CONTRACTORS'
MOTION TO QUASH SUBPOENAS
DUCES TECUM TO CHANDRA
CHILMAKURI AND KYLE WINSLOW,
OR, IN THE ALTERNATIVE, MOTION
FOR PROTECTIVE ORDER

18 In the Matter of ENFORCEMENT ACTION
19 ENF01951 - ADMINISTRATIVE CIVIL
20 LIABILITY COMPLAINT REGARDING
21 UNAUTHORIZED DIVERSION OF WATER
22 FROM THE INTAKE CHANNEL TO THE
BANKS PUMPING PLANT (FORMERLY
ITALIAN SLOUGH) IN CONTRA COSTA
COUNTY

1 State Water Contractors (“SWC”) submit this motion for an order to quash the
2 subpoenas duces tecum served by Byron-Bethany Irrigation District (“BBID”) on Chandra
3 Chilmakuri and Kyle Winslow, engineer employees of CH2M Hill, or, in the alternative, a
4 protective order prohibiting, or limiting, the production of documents sought by the
5 subpoenas duces tecum. (Government Code § 11450.30; Code of Civil Procedure
6 § 2025.420 (1), (11).)¹

7 **I. INTRODUCTION**

8 Mere weeks before the start of the evidentiary hearing, BBID has served two
9 subpoenas duces tecum to two individual engineers at non-party CH2M Hill. The
10 subpoenas command the production of documents and communications between SWC or
11 Metropolitan Water District of Southern California (“MWD”) and CH2M Hill “relating” to the
12 technical memorandum relied on (and produced as an exhibit) by SWC rebuttal witness Dr.
13 Paul Hutton, communications between SWC or MWD and CH2M Hill regarding BBID and a
14 “BBID Report” purportedly produced by CH2M Hill for BBID. BBID is misusing the
15 discovery process in this proceeding in order to obtain documents that constitute the
16 attorney work product of SWC and MWD, which retained CH2M Hill as a technical
17 consultant concerning disputes involving the Delta. BBID is also misusing the discovery
18 process to further explore its irrelevant allegations that SWC interfered with its working
19 relationship with CH2M Hill.

20 An order quashing the subpoenas, or, in the alternative a motion for protective order
21 prohibiting the subpoenas is warranted on the following grounds. The subpoenas seek the
22 production of documents protected by the attorney work product doctrine; seek information
23 duplicative of information already available through more convenient, less burdensome and
24 less expensive methods provided by the hearing procedures; constitute an undue burden
25 and expense on SWC in seeking to protect its attorney work product; and seek information

26 ¹ Attached as Exhibit A, hereto, is the Declaration of Jolie-Anne Ansley (“Ansley Decl.”)
27 attesting to the SWC’s reasonable and good faith attempt at an informal resolution of
28 issues raised by the subpoenas duces tecum, as required by California Code of Civil
Procedure § 2025.420(a). (Ansley Decl. ¶ 4.).

1 irrelevant to the proceedings and not calculated to lead to the discovery of admissible
2 evidence, in particular at this stage in the proceeding. In addition, the subpoenas suffer
3 from a number of procedural defects including failure to complete discovery before the
4 discovery cut-off; insufficient time provided to respond; and failure to issue and serve the
5 subpoenas on the custodian of records of CH2M Hill.

6 **II. BACKGROUND AND STATEMENT OF FACTS**

7 On July 20, 2015, the State Water Resources Control Board ("Board") issued an
8 Administrative Civil Liability Complaint to BBID relating to its diversions from the intake
9 channel to the Banks Pumping Plant (formerly Italian Slough) after June 12, 2015. In
10 response to the issued ACL, BBID requested a formal hearing on August 6, 2015.

11 On January 19, 2016, written testimony and exhibits composing the cases-in-chief,
12 including of the Prosecution Team and BBID were submitted. On January 25, 2016, written
13 rebuttal testimony and exhibits were submitted by parties including SWC, which submitted
14 the written testimony of Paul Hutton as exhibit SWC0001 in addition to exhibits SWC0002-
15 0007. The hearing in the enforcement proceeding is currently set to commence on March
16 21, 2016.

17 On February 25, 2016, attorneys for BBID served a subpoena duces tecum, issued
18 on February 24, 2016, on Chandra Chilmakuri, an engineer employed by CH2M Hill both as
19 an individual and on behalf of CH2M Hill seeking solely the production of documents by
20 10:00 a.m. March 10, 2016 but not the personal attendance of Mr. Chilmakuri.² On
21 February 29, 2016, attorneys for BBID served a subpoena duces tecum, issued on
22 February 24, 2016, on Kyle Winslow, an engineer employed by CH2M Hill both as an
23 individual and on behalf of CH2M Hill seeking solely the production of documents by 10:00

24 ² The subpoenas duces tecum to Chandra Chilmakuri and Kyle Winslow have a check in
25 the box denoting that the deponent is ordered to both appear in person and produce
26 records, but the respective addendums (p. 2:4-13.) command that the requested
27 documents be "sent" to attorney Michael E. Vergara of Somach Simmons & Dunn by the
28 stated deadline. (Ansley Decl. ¶¶ 2,3, Exhibits 1 and 2) Moreover, the subpoenas fail to
contain the information required by Code of Civil Procedure Section 2020.310 for an oral
deposition, including whether the deposition will be recorded and the matters, described
with reasonable particularity, on which examination is requested.

1 a.m. March 10, 2016 but not the personal attendance of Mr. Winslow. True and correct
2 copies of the subpoenas duces tecum to Mr. Chilmakuri and Mr. Winslow are attached as
3 Exhibits 1 and 2 to the Declaration of Jolie-Anne Ansley filed concurrently with this motion.
4 (Ansley Decl. ¶¶ 2,3 , Exhibits 1 and 2.)

5 **III. ARGUMENT**

6 Administrative hearings and discovery procedures are governed by the Water Code
7 (Water Code §§ 1075 et seq.) and Board regulations (23 C.C.R §§ 648 et seq.), which
8 incorporate portions of the Administrative Procedure Act (Gov't Code §§ 11400 et seq.;
9 11513), the Evidence Code (Evidence Code §§ 801-805) and the Civil Discovery Act
10 (Code of Civil Proc. § 2016.010 et seq.). The Board or any party to a proceeding before
11 the Board may take the deposition of witnesses in accordance with the Civil Discovery Act.
12 (Water Code § 1100). In adjudicative proceedings before the Board, subpoena duces
13 tecum for the production of business record are governed by Water Code § 1105 et seq.;
14 Government Code Section 11450.05 et seq. and Code of Civil Procedure Section 2020.410
15 et. seq. (See 23 C.C.R. § 649.6.) The right to discovery, however, is not unlimited.

16 The information sought to be discovered must be relevant or reasonably calculated
17 to lead to the discovery of admissible evidence. (Code of Civil Proc. § 2017.010). The
18 party seeking the discovery bears the burden of proving that the discovery is relevant.
19 (*Calcor Space Facility, Inc. v. Superior Court* (1997) 53 Cal.App.4th 216, 223.) Further,
20 discovery may be limited if it is determined that the burden, expense or intrusiveness of the
21 discovery sought outweighs the likelihood that the information sought will lead to the
22 discovery of admissible evidence. (Code of Civil Proc. § 2017.020(a); *Borse v. Superior*
23 *Court* (1970) 7 Cal.App.3d 286, 289.) Similarly, discovery can be restricted if it is
24 determined that the discovery sought is unreasonably cumulative or duplicative or is
25 obtainable from some other source that is more convenient, less burdensome, or less
26 expensive. (Code of Civil Proc. § 2019.030(a)(1).) In the case of depositions, the hearing
27 officer may also make any order that protects a party or deponent from unwarranted
28

1 annoyance, embarrassment, or oppression, or undue burden or expense. (Code of Civil
2 Proc. § 2025.420(b).) It is a misuse of the discovery process to employ any discovery
3 method in a manner or to an extent that causes unwarranted annoyance, embarrassment,
4 or oppression or undue burden and expense. (Code of Civil Proc. § 2023.010(c).)

5 **A. The Subpoenas Duces Tecum Seek Documents Protected by the**
6 **Attorney Work Product Doctrine**

7 Through these subpoenas, BBID requests the production documents from CH2M Hill
8 that constitute protected attorney work product of the SWC and its member agency MWD.
9 (Code of Civil Procedure § 2018.030.) The attorney work product doctrine “protects the
10 mental processes of the attorney, providing a privileged area within which he can analyze
11 and prepare his client's case.” (*Fireman's Fund Ins. Co. v. Superior Ct.* (2011) 196
12 Cal.App.4th 1263, 1281.) Protected work product expressly includes writings that reflect an
13 attorney's impressions, conclusions, opinions, or legal research or theories, which are
14 subject to absolute protection, as well as other work product of an attorney, which has
15 conditional protection, including the findings, opinions, and reports of consulting or advisory
16 experts. (Code of Civil Proc. § 2018.030; *National Steel Prods. v. Superior Ct.* 164 Cal.
17 App.3d 476, 487.) The latter is not discoverable unless it is determined that the denial of
18 discovery will unfairly prejudice the party seeking discovery in preparing its claim or
19 defense or will result in an injustice. (Code of Civil Proc. § 2018.030(b).)

20 CH2M Hill's work as a technical consultant for SWC and member agency MWD is
21 protected by the attorney work product doctrine. Working at the direction of in-house
22 counsel for SWC and MWD, CH2M Hill is retained as a technical consultant for the purpose
23 of analyzing conditions in the Delta in response to pending and threatened disputes,
24 including disputes involving BBID. (Declaration of Stefanie D. Morris (“Morris Decl.”) ¶ 2,
25 attached hereto as Exhibit B.) In this proceeding, SWC's rebuttal witness, Dr. Paul Hutton,
26 an employee of MWD, relies on a technical memorandum prepared by CH2M Hill in
27 forming his expert opinion, which he provided as exhibit SWC0005. Using Dr. Hutton's
28 reliance on the technical memorandum as a pretext, BBID now seeks to open up broader

1 discovery on CH2M Hill's work for SWC and MWD.

2 BBID can show no unfair prejudice in preparing its case or an injustice warranting
3 the extreme decision to remove the protections of the attorney work product doctrine from
4 CH2M Hill's documents. BBID has already submitted its case-in-chief and rebuttal
5 testimony. As such, the documents requested are not required to develop its case-in chief
6 or rebuttal, i.e., its defense to the allegations of the Prosecution Team. What remains is the
7 cross-examination of Dr. Hutton, which the hearing procedures limit to the scope of his
8 rebuttal testimony. To prepare for cross-examination of Dr. Hutton's, BBID has both Dr.
9 Hutton's written rebuttal testimony and the documents on which relies, including SWC0005,
10 all of which was submitted well in advance of the evidentiary hearing. At this point, BBID
11 has everything it needs for the evidentiary hearing, and Dr. Hutton's testimony in particular.
12 Indeed, Mr. Vergara's affidavit in support of the subpoena to Kyle Winslow doesn't even
13 argue that such documents are necessary for BBID to prepare its case at all, let alone
14 prepare for the cross-examination of Dr. Hutton. (See Vergara Affidavit, ¶ 9.)

15 Instead, BBID is attempting to use the discovery process in this proceeding to obtain
16 documents that disclose the attorney work product of SWC and MWD regarding its
17 underlying analyses and strategies regarding Delta disputes beyond this hearing. These
18 documents include communications between CH2M Hill and SWC or CH2M Hill and MWD
19 (document requests 3-8), writings subject to absolute attorney work product protection. It
20 also includes other documents "related" to CH2M Hill's Technical Memorandum, which
21 BBID expansively defines to include all documents, without limitation, "referring to,"
22 "stating," "describing," "mentioning," "studying," "analyzing," "discussing," or "evaluating" the
23 Technical Memorandum submitted as Exhibit SWC0005. (Ansley Decl. ¶¶ 2, 3, Exhibits 1
24 and 2.) Documents responsive to such a broadly defined requests open the door
25 potentially to CH2M Hill's wider work for SWC and MWD.

26 Further, as shown by Mr. Vergara's affidavit to the Winslow subpoena (¶¶ 7-9), BBID
27 is also seeking a way to obtain the results of modeling CH2M Hill allegedly started but
28

1 never finalized for BBID and to determine whether SWC or MWD “interfered” with CH2M
2 Hill’s work for BBID. BBID’s private dispute with CH2M Hill and an alleged interference by
3 SWC/MWD with that relationship have no place in, or relevance to, the matters to be
4 determined by the Water Board in this enforcement proceeding, which is whether BBID
5 engaged in unauthorized diversions as alleged in the ACL. For these reasons, an order
6 prohibiting the production of documents in response to the subpoenas duces tecum is
7 warranted to protect the attorney work product of the SWC.

8 **B. Information Sought by BBID through the Subpoenas Duces Tecum are**
9 **Duplicative of Information Already Available in a More Convenient, Less**
10 **Burdensome and Less Expensive Manner**

11 The hearing procedures adopted for the enforcement proceedings fully provide BBID
12 with the ability to gain the information regarding the CH2M Hill technical memorandum in a
13 more convenient, less burdensome and less expensive manner than subpoenas
14 commanding extensive document productions weeks shy of the hearing. (Code of Civil
15 Proc. § 2019.030(a)(1).) BBID is already in possession of not only Dr. Hutton’s complete
16 written rebuttal testimony, which was submitted well in advance of the hearing, but also the
17 documents on which Dr. Hutton relies, including the CH2M Hill Technical Memorandum
18 which was submitted as SWC0005. Further, Dr. Hutton will be made available to all parties
19 for cross-examination on his rebuttal testimony, providing parties with the opportunity to
20 question Dr. Hutton concerning the bases for his testimony. For these reasons, the
21 information sought by BBID through its subpoenas duces tecum to CH2M Hill is
22 unnecessarily duplicative of information already available to the parties in a manner much
23 more convenient, less burdensome, and less expensive. (Code of Civil Proc. §
24 2019.030(a)(1).)

25 **C. The Subpoenas Duces Tecum Constitute an Undue Burden and**
26 **Expense on SWC that Will Not Lead to the Discovery of Admissible**
27 **Evidence**

28 At this point in the proceeding, with all evidence comprising the cases-in-chief and
rebuttal testimony submitted, the extensive document requests of the Subpoenas Duces

1 Tecum are an undue burden and expense that far outweigh any likelihood of leading to the
2 discovery of any admissible evidence. ((Code of Civil Proc. §§ 2017.020(a); 2025.420(b).)
3 In particular, BBID's requests for irrelevant information concerning its own disputes with
4 CH2M Hill and the alleged "interference" by SWC with that relationship are not calculated to
5 lead to the discovery of any admissible evidence. (Ansley Decl. ¶¶ 2, 3, Exhibits 1 and 2,
6 [document requests 5-8 in both subpoenas and document request 9 in the Winslow
7 Subpoena].)

8 Allowing BBID to proceed with the document requests to CH2M Hill at this juncture
9 is an undue burden and expense on SWC, and its member agencies. SWC is already
10 burdened by being forced to make this motion to quash and motion for protective order,
11 mere weeks before the hearing, in order to protect SWC's and MWD's attorney-work
12 product. If CH2M Hill is required to produce documents pursuant to the subpoenas, SWC
13 must then expend significant hours of its own counsels' time reviewing potentially
14 responsive documents for privilege and making appropriate objections, again to protect its
15 attorney work product. (See Morris Decl.; ¶ 4.) The undue burden and expense to SWC
16 (and given the expansive definitions and lengthy instructions, CH2M Hill) far outweighs any
17 benefit to BBID at this point in the proceeding.

18 With these subpoenas, BBID is seeking to exploit the discovery process not really to
19 prepare for the cross-examination of Dr. Hutton, but to obtain documents in the possession
20 of CH2M Hill that constitute the attorney work product of SWC and also work performed by
21 CH2M Hill for BBID which it has been unable to obtain. For these reasons, good cause
22 exists for the issuance of a protective order prohibiting the subpoenas duces tecum in their
23 entirety.

24 **D. Documents Sought by the Noticing Parties Are Irrelevant to the**
25 **Proceeding and Not Calculated to Lead to Admissible Evidence.**

26 Finally, the documents requested by subpoenas duces tecum are not relevant to the
27 proceeding or calculated to lead to relevant evidence. (Code of Civil Proc. § 2017.010;
28

1 Government Code § 11513(c).) The issue to be determined is whether BBID engaged in
2 unauthorized diversions during 13 days in June 2015 as alleged in the ACL.
3 Communications between SWC or MWD and CH2M Hill regarding BBID generally and
4 communications regarding allegedly unfinished, modeling work conducted by CH2M Hill for
5 BBID are irrelevant to a determination of whether water was available to BBID during those
6 13 days under its water right. (Ansley Decl. ¶¶ 2,3, Exhibits 1 and 2.) The same is true of
7 any supposed report prepared by CH2M Hill for work that was never finalized, as Mr.
8 Vergara alleges in his affidavit. Moreover, such evidence is not likely to lead to admissible
9 evidence given the late stage in the proceeding, mere weeks prior to the evidentiary
10 hearing with all deadlines for direct and rebuttal evidence having passed.

11 **E. The Subpoenas Duces Tecum Suffer From a Number of Fatal Procedural**
12 **Defects**

13 **1. The Subpoenas Duces Tecum Were Issued and Served After the**
14 **Discovery Cut-Off Provided by the Civil Discovery Act**

15 BBID served its subpoenas less than 4 weeks before the start of the evidentiary
16 hearing on March 21, 2016. To date, there has been no contemplation by the parties or
17 hearing officers that additional discovery would be conducted *following* the submission of
18 both the cases-in-chief and rebuttal testimony and within 30-days of the evidentiary
19 hearing. Generally, discovery must be completed 30 days prior to the date the trial
20 commences. (Code Civil Proc. § 2024.020). As such, as once argued by BBID, “discovery
21 in ENF019151 must therefore be completed before February 19, 2016.” (BBID Opposition
22 to Prosecution Team’s Motion for Protective Orders dated October 21, 2015, p. 3:21-25.)
23 Here, the subpoenas were issued and served within 30 days of the evidentiary hearing and,
24 thus, should be quashed or prohibited on these grounds.

25 **2. The Subpoenas Duces Tecum Provide for Insufficient Time to**
26 **Respond to the Requests for Production of Documents**

27 The subpoenas duces tecum both “command” the production of documents by 10:00
28 a.m. on March 10, 2016. (Ansley Decl. ¶¶ 2,3, Exhibits 1 and 2.) Government Code
Section 11450.10 allows for issuance of subpoenas for production of documents at a

1 reasonable time and place. The Civil Discovery Act provides what constitutes a minimum
2 reasonable amount time to respond. A subpoena commanding only the production of
3 documents, and not attendance of the deponent, “shall command compliance ... on a date
4 that is no earlier than 20 days after the issuance, or 15 days after the service, of the
5 deposition subpoena, whichever date is later.” (Code of Civil Proc. § 2020.410(c).) Twenty
6 days after the issuance of both subpoenas on February 24, 2016 is March 15, 2015, and
7 fifteen days after the service of the subpoenas, on February 25 and 29, 2016, is March 11
8 or 15, 2016, respectively. Accordingly, the deadline for production of documents could be
9 no earlier than March 15, 2015. Both subpoenas are defective in that they provide an
10 insufficient and unreasonable amount of time to respond under applicable code provisions.

11 **3. The Subpoenas Duces Tecum Were Required to Have Been**
12 **Served on the Custodian of Records for CH2M Hill**

13 The subpoenas duces tecum should have been served on the custodian of records
14 for CH2M Hill as opposed to the named deponents. A subpoena that commands only the
15 production of business records for copying “shall be directed to the custodian of those
16 records or another person qualified to certify those records.” (Code of Civil Proc.
17 § 2020.410(c).) Similarly, Government Code Section 11450.10 provides that “the custodian
18 of documents that are the subject of a subpoena duces tecum may satisfy the subpoena by
19 delivery of the documents or a copy of the documents, or by making the documents
20 available... together with an affidavit in compliance with Evidence Code Section 1561.” To
21 comply with Evidence Code Section 1561, the custodian of record or other qualified witness
22 must be able to attest to various attributes of the records relevant to their authenticity and
23 trustworthiness. (*Cooley v. Superior Ct.* (2006) 140 Cal.App.4th 1039, 1044.)

24 Here, the subpoenas nominally seek documents purportedly in the named
25 deponents’ control (see document requests 1 and 4) but, in reality, are seeking the
26 business records, as stated, in the control of CH2M Hill (see document requests 2, 3, 5,6,7,
27 8 and 9, which duplicate requests 1 and 4). (Ansley Decl. ¶¶ 2,3, Exhibits 1 and 2.)

1 Neither deponent, however, is a custodian of records for CH2M Hill, but rather individual
2 employee engineers. (Morris Decl. ¶ 3.) To sufficiently respond to the subpoena directed
3 at CH2M Hill, a custodian of records that is knowledgeable about the type of records
4 maintained by CH2M Hill, the identity of those records and their method of preparation, is
5 required in order to sufficiently state "in substance" that such records exist or do not exist,
6 were prepared in the ordinary course of business, and how such documents were
7 prepared. (Evidence Code § 1561.) Under Code of Civil Procedure Section 2020.410(c)
8 and Government Code Section 11450.10, a subpoena duces tecum seeking the business
9 records of CH2M Hill was required to have been served on a custodian of records for
10 CH2M Hill or other person qualified to sign an affidavit as to the records in CH2M Hill's
11 possession and control.

12 **4. The Subpoena Duces Tecum to Mr. Chilmakuri is Incomplete**

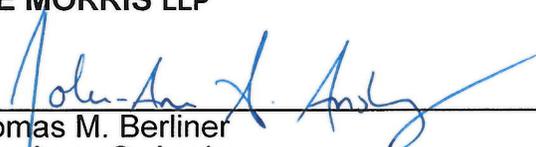
13 The copy of the subpoena duces tecum served on Mr. Chilmakuri attaches an
14 affidavit of attorney Michael Vergara of Somach Simmons & Dunn which is missing the
15 entire second page of three pages, eliminating testimony to establish good cause for the
16 production of business records. (See Ansley Decl. ¶ 2, Exhibit 1.)

17 **IV. CONCLUSION**

18 For the reasons stated above, good cause exists to grant a motion to quash the
19 subpoenas duces tecum served on Mr. Chilmakuri and Mr. Winslow, or, in the alternative, a
20 protective order prohibiting the subpoenas.

21
22 Dated: March 2, 2016

DUANE MORRIS LLP

23
24 By: 

25 Thomas M. Berliner
26 Jolie-Anne S. Ansley
27 Attorneys for State Water Contractors
28

DM216573765.3

EXHIBIT A

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10 Attorneys for State Water Contractors

11
12 **BEFORE THE**
13 **CALIFORNIA STATE WATER RESOURCES CONTROL BOARD**

14 ENFORCEMENT ACTION ENF01949 -
15 DRAFT CEASE AND DESIST ORDER
16 REGARDING UNAUTHORIZED OR
17 THREATENED UNAUTHORIZED
DIVERSIONS OF WATER FROM OLD RIVER
IN SAN JOAQUIN

DECLARATION OF JOLIE-ANNE S.
ANSLEY IN SUPPORT OF MOTION
TO QUASH SUBPOENAS DUCES
TECUM TO CHANDRA CHILMAKURI
AND KYLE WINSLOW, OR, IN THE
ALTERNATIVE, MOTION FOR
PROTECTIVE ORDER

18 In the Matter of ENFORCEMENT ACTION
19 ENF01951 - ADMINISTRATIVE CIVIL
20 LIABILITY COMPLAINT REGARDING
21 UNAUTHORIZED DIVERSION OF WATER
22 FROM THE INTAKE CHANNEL TO THE
BANKS PUMPING PLANT (FORMERLY
ITALIAN SLOUGH) IN CONTRA COSTA
COUNTY

23
24 I, Jolie-Anne S. Ansley, do hereby declare:

25 1. I am an attorney at law licensed to practice before the courts of the State of
26 California, and a partner with the law firm of Duane Morris LLP. I am the attorney with
27 primary responsibility for this matter in my firm, and am familiar with the above-referenced
28

1 proceedings and all documents related thereto, including all notices, rulings and filings. I
2 have personal knowledge of the matters stated herein, except as to matters herein stated
3 on information and belief, and as to those matters I believe them to be true, and if called
4 upon could competently testify thereto.

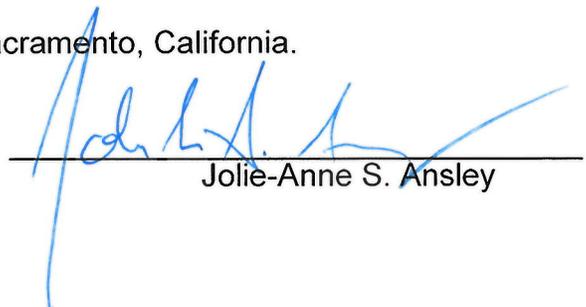
5 2. Attached hereto as Exhibit 1 is a true and correct copy of the subpoena duces
6 tecum to Chandra Chilmakuri issued on February 24, 2016 by attorney Michael Vergara on
7 behalf of Byron-Bethany Irrigation District, which I am informed and believe was served on
8 Chandra Chilmakuri on February 25, 2016.

9 3. Attached hereto as Exhibit 2 is a true and correct copy of the of the subpoena
10 duces tecum to Kyle Winslow issued on February 24, 2016 by attorney Michael Vergara on
11 behalf of Byron-Bethany Irrigation District, which I am informed and believe was served on
12 Kyle Winslow on February 29, 2016.

13 4. On February, 29, 2016, on behalf of SWC, I sent an email to Michael Vergara
14 and Daniel Kelly, attorneys for Byron-Bethany Irrigation District requesting a telephonic
15 meet-and-confer concerning the issues raised by the subpoenas duces tecum to Chandra
16 Chilmakuri and Kyle Winslow. A true and correct copy of the email dated February 29,
17 2016 from Jolie-Anne Ansley to Michael Vergara and Daniel Kelly is attached hereto as
18 Exhibit 3. On February 29, 2016 at approximately 4 p.m., Mr. Kelly, Mr. Vergara and I held
19 a meet-and-confer conference call. No resolution was reached between the parties.

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

22 Executed on 2 day of March, 2016 in Sacramento, California.

23
24 
25
26 Jolie-Anne S. Ansley

27 DM2\6581605.1

EXHIBIT 1

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: \$ _____

- delivering true copies thereof by certified mail, return receipt requested, to the address as shown below.
 delivering true copies thereof enclosed in a sealed envelope to a messenger for immediate personal delivery to the address as shown below.

Address where served: _____

2. I certify that I received this subpoena subpoena duces tecum for service on _____ Date

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on:
 Date _____ at (place) _____, California Signature _____

(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) _____, California Signature _____

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).)

SOMACH SIMMONS & DUNN
A Professional Corporation
DO NOT WRITE IN THESE SPACES

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SOMACH SIMMONS & DUNN
A Professional Corporation
DANIEL KELLY, ESQ. (SBN 215051)
MICHAEL E. VERGARA, ESQ. (SBN 137689)
LAUREN D. BERNADETT, ESQ. (SBN 295251)
500 Capitol Mall, Suite 1000
Sacramento, California 95814-2403
Telephone: (916) 446-7979
Facsimile: (916) 446-8199

Attorneys for Petitioner/Plaintiff BYRON-
BETHANY IRRIGATION DISTRICT

BEFORE THE
CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

ENFORCEMENT ACTION ENF01949
DRAFT CEASE AND DESIST ORDER
REGARDING UNAUTHORIZED
DIVERSIONS OR THREATENED
UNAUTHORIZED DIVERSIONS OF WATER
FROM OLD RIVER IN SAN JOAQUIN
COUNTY

In the Matter of ENFORCEMENT ACTION
ENF01951 – ADMINISTRATIVE CIVIL
LIABILITY COMPLAINT REGARDING
UNAUTHORIZED DIVERSION OF WATER
FROM THE INTAKE CHANNEL TO THE
BANKS PUMPING PLANT (FORMERLY
ITALIAN SLOUGH) IN CONTRA COSTA
COUNTY

SWRCB Enforcement Action
ENF01951 and ENF01949

ADDENDUM TO SUBPOENA
DUCES TECUM

California Water Code § 1080;
California Government Code §
11450.10; Cal. Code Regs., tit. 23 §
6496(a)

To: Chandra Chilmakuri
CH2M Hill
2485 Natomas Park Dr # 600
Sacramento, CA 95833

- You are served as an individual.
- You are served as (or on behalf of) the person
doing business under the fictitious name
of
- You are served on behalf of State Water Resources Control Board.

1 Pursuant to California Water Code section 1080, California Government Code section
2 11450.10, and California Code of Regulations, title 23, section 649.6, subdivision (a):

3 I. SUBPOENA FOR RECORDS AND DOCUMENTS

4 **Chandra Chilmakuri (ENGINEER) and CH2M or CH2M Hill (CH2M) Are**
5 **Commanded** to produce the papers, books, records, and documents that are in
6 ENGINEER and/or CH2M's possession or under ENGINEER and/or CH2M's control, as
7 described below and/or CH2M'S possession or under ENGINEER and/or CH2M'S
8 control, as described below and in connection with the above-titled proceeding, by 10:00
9 a.m. on March 10, 2016. Please send the documents to: Michael E. Vergara, Somach,
10 Simmons & Dunn, 500 Capitol Mall, Suite 1000, Sacramento, California 95814. You
11 may email electronic records to mvergara@somachlaw.com, or deliver all records via
12 mail or courier on a suitable electronic storage device, or make electronic records
13 available to download via the Internet.

14 CH2M and/or ENGINEER may seek the advice of an attorney in any matter
15 connected with this subpoena, and should consult its attorney promptly so that any
16 problems concerning the production of documents may be resolved within the time
17 required by this Subpoena. Failure to comply with the commands of this Subpoena will
18 subject CH2M and/or ENGINEER to the proceedings and penalties provided by law.

19 A. DEFINITIONS

20 The capitalized terms listed below, as used in this Addendum to Subpoena duces
21 tecum, are defined as follows:

- 22 1. The term "PERSON" or "PERSONS" mean associations, corporations,
23 natural persons, partnerships, trusts, governmental, or other forms of legal entities.
- 24 2. The terms "CH2M" means CH2M, CH2M Hill, and each PERSON acting or
25 purporting to act on its behalf, including but not limited to, its former or present officers,
26 employees, agents, contractors, consultants, and representatives.
- 27 3. The term "ENGINEER" means Chandra Chilmakuri, employed by CH2M.

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4. The terms "YOU" or "YOUR" mean "ENGINEER" and/or CH2M.

5. The term "CONTROL" means control, custody, or possession in the broadest sense possible under Code of Civil Procedure section 2031.010.

6. The terms "COMMUNICATION" or "COMMUNICATIONS" mean any occurrence whereby data, expressions, facts, opinions, thoughts, or other information of any kind is transmitted in any form including, but not limited to, any conversation, correspondence, discussion, electronic mail, meeting, memorandum, message, note, or posting or other display on the Internet or the World Wide Web. These terms include, but are not limited to, COMMUNICATIONS which may contain attorney-client communications and/or attorney work product.

7. The terms "RELATING TO" or "RELATE TO" shall be construed in the broadest possible sense and shall mean, without limitation, pertaining to, regarding, concerning, comprising, constituting, in connection with, reflecting, respecting, referring to, stating, describing, recording, noting, embodying, containing, mentioning, studying, analyzing, discussing or evaluating, and as defined in Black's Law Dictionary (5th ed. 1979), p. 1158.

8. The terms "DOCUMENT" or "DOCUMENTS" encompass all documents, things, property and/or electronic materials within YOUR CONTROL and includes all writings as defined in section 250 of the California Evidence Code, and shall include, but not be limited to, any kind of written, graphic or recorded matter, however produced or reproduced, of any kind or description, whether sent or received or neither, including originals, copies and drafts and both sides thereof, and including but not limited to paper, books, letters, photographs, posters, objects, tangible things, correspondence, telegrams, cables, facsimiles, telex messages, confirmations, account statements, receipts, billing statements, memoranda, legal memoranda, notes, notations, work papers, transcripts, minutes, reports, and recordings of telephone or other conversations, or other conversations, or in conferences or other meetings, affidavits,

1 statements, opinions, reports, studies, analysis, evaluations, financial statements,
2 prospectuses, circulars, certificates, press releases, annual reports, quarterly reports,
3 magazine or newspaper articles, manuals, contracts, agreements, statistical records,
4 journals, desk calendars, appointment books, diaries, lists, tabulations, summaries,
5 sound recordings, computer printouts, data processing input and output, electronic mail,
6 all records of communications recorded or encoded onto magnetic or computer disks,
7 diskettes, audio and video tapes or any other media, all records kept by electronic,
8 photographic, or mechanical means, and things similar to any of the foregoing, however
9 denominated, dated, produced, generated or received. These terms include, but are not
10 limited to, DOCUMENTS which may contain attorney-client communications and/or
11 attorney work product.

12 9. The terms "BYRON-BETHANY IRRIGATION DISTRICT" and "BBID" mean
13 the Byron-Bethany Irrigation District, an Irrigation District formed pursuant to Division 11
14 of the California Water Code, and anyone working on its behalf, including but not limited
15 to, its officers, employees, agents, contractors, consultant, and representatives.

16 10. The term "DRAFT TECHNICAL MEMORANDUM" means the Draft
17 Technical Memorandum, 2012– 2015 Delta Salinity Conditions under a Without Project
18 Scenario, Prepared For: Terry Erlewine/SWC, Prepared By: Tyler Hatch/CH2M HILL /
19 Chandra Chilmakuri/CH2M HILL, Dated: June 5, 2015.

20 11. Definitions for industry or trade terms contained herein are to be construed
21 broadly. Where the industry or trade definition set forth herein does not coincide
22 precisely with YOUR definition, the question, inquiry or production request should be
23 responded to or answered by using the definition that YOU apply and/or recognize in
24 YOUR usage of the term, and YOU should further document YOUR definition in the
25 response. Non-industry or non-trade definitions should be applied as defined herein.

26 **B. INSTRUCTIONS**

27 1. Unless otherwise indicated, the time period covered by this subpoena is
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1 from January 1, 2013 to up to five days before YOUR full compliance with this subpoena.
2 Any documents RELATING TO this time period are to be produced, regardless of
3 whether the documents came into existence before or during this period.

4 2. YOUR response to the subpoena should include a declaration or affidavit.
5 It should state that a diligent search for all requested DOCUMENTS has been conducted
6 and that the affiant or declarant was in charge of the search or otherwise monitored and
7 reviewed the search sufficiently to be able to represent under oath that such a search
8 was conducted. It should be signed under oath by the person most knowledgeable about
9 the DOCUMENTS and YOUR efforts to comply with the subpoena. If different people
10 are the most knowledgeable about portions of the search (e.g., one person is most
11 knowledgeable about DOCUMENTS contained in computer media and a different person
12 is most knowledge about DOCUMENTS contained on paper) each should sign an
13 affidavit or declaration identifying the category in the request for DOCUMENTS for which
14 that person is the most knowledgeable.

15 3. Unless otherwise indicated, for any DOCUMENT stored in a computer,
16 including all electronic mail messages, YOU should produce the DOCUMENT in the
17 original electronic file format in which it was created (e.g., Microsoft email should be
18 provided in its original format, which would have the .pst suffix, not in a tif file;
19 spreadsheets should be in their original file form, such as an Excel file and word-
20 processed DOCUMENTS should be in their original file format, such as a Word or
21 WordPerfect file), together with instructions and all other materials necessary to use or
22 interpret the data. Electronic mail messages should be provided, even if only available
23 on backup or archive tapes or disks. Computer media should be accompanied by (a) an
24 identification of the generally available software needed to open and view the
25 DOCUMENTS or (b) a copy of the software needed to open and view the DOCUMENT.
26 Note, however, that if a print- out from a computer DOCUMENT is a non-identical copy
27 of the electronic form in which it was created (non-identical by way of example but not
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1 limitation, because it has a signature, handwritten notation, or other mark or attachment
2 not included in the computer DOCUMENT), both the electronic form in which the
3 DOCUMENT was created and the original print-out should be produced.

4 4. For each DOCUMENT contained in an audio or video medium, YOU
5 should provide the tape, disk, or other device from which the audio or video can be
6 played and the transcript of the DOCUMENT.

7 5. For all DOCUMENTS for which YOU do not produce in the original, as
8 defined in Evidence Code section 255, YOU may submit copies (black and white copies
9 if the original was in black and white, color copies if the original was in color, and, if the
10 original was in electronic format, in the same electronic medium as the original) in lieu of
11 original DOCUMENTS provided that such copies are accompanied by an affidavit of an
12 officer of CH2M stating that the copies of all types DOCUMENTS are true, correct, and
13 complete copies of the original DOCUMENTS. If there is in YOUR possession, custody
14 or control no original, but only a copy or photographic record thereof, then YOU should
15 produce a true and legible copy of each such DOCUMENT. The accompanying affidavit
16 should state that the DOCUMENT is only a copy or photographic record and not the
17 original.

18 6. If a DOCUMENT is responsive to this subpoena and is in YOUR control,
19 but is not in YOUR possession or custody, in addition to obtaining and producing the
20 DOCUMENT, identify the person who had possession or custody of the DOCUMENT,
21 their telephone number and current business and residence addresses.

22 7. If any DOCUMENT subpoenaed is no longer in YOUR possession,
23 custody, control, or care, YOU should provide a written statement identifying the
24 DOCUMENT with specificity, stating whether it is lost, missing, has been destroyed, has
25 been transferred to others, or has otherwise been disposed of. The written statement
26 should also identify the person who disposed of the DOCUMENT, explain the
27 circumstances and authorization for the disposition and the approximate date of the
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1 disposition of the DOCUMENT. If there are no DOCUMENTS responsive to a document
2 request, as to each such document request, YOU should include a statement to that
3 effect in the accompanying declaration or affidavit.

4 8. DOCUMENTS provided in response to this subpoena should be complete
5 and unredacted, submitted as found in YOUR files (e.g., DOCUMENTS that in their
6 original condition were stapled, clipped, attached as a "post-it," or otherwise fastened
7 together shall be produced in the same form).

8 9. Each DOCUMENT produced pursuant to this subpoena should be
9 identified according to the category in the subpoena to which it is responsive. In lieu of
10 indicating on each DOCUMENT the category to which it is responsive, on the date set
11 for production, YOU may instead provide an index if YOU provide it in both paper and in
12 electronic form (such as a computerized spreadsheet in Excel or a Word or WordPerfect
13 document set up in a table format) of all DOCUMENTS YOU produce, as long as this
14 index shows by document control number the request(s) to which each DOCUMENT or
15 group of DOCUMENTS is responsive. Responsive DOCUMENTS from each person's
16 files should be produced together, in one box or in consecutive boxes, or on one disk or
17 consecutive disks. Mark each page of a paper DOCUMENT and each tangible thing
18 containing audio, video, computer, or other electronic DOCUMENTS (e.g. cassette, disk,
19 tape or CD) with corporate identification and consecutive document control numbers
20 (e.g., S.L . 00001, S.I. CD 001, S.I. audio tape 001). Number each box of DOCUMENTS
21 produced and mark each with the name(s) of the person(s) whose files are-contained
22 therein, the requests(s) to which they are responsive, and the document control numbers
23 contained therein.

24 10 For data produced in spreadsheets or tables, include in the declaration or
25 affidavit the identification of the fields and codes and a description of the information
26 contained in each coded field.

27 11. The document requests contained in this subpoena shall be deemed to
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include a request for all relevant DOCUMENTS in the personal files, including but not limited to files contained on laptops, handheld devices, home computers and home files of all YOUR officers, employees, accountants, agents and representatives, including sales agents who are independent contractors, and attorneys.

12. Whenever necessary to bring within the scope of this subpoena DOCUMENTS that might otherwise be construed as outside its scope, the use of the verb in any tense shall be construed, as the use of that verb in all other tenses, and the singular shall include the plural, and vice versa, so as to make this subpoena broadly inclusive.

DOCUMENTS TO BE PRODUCED

This subpoena commands production of the original of each and every DOCUMENT now or at any time in YOUR CONTROL without regard to the person(s) by whom or for whom said DOCUMENTS were prepared, including, but not limited to, all DOCUMENTS in the personal, business, or other files of all present or former officers, directors, employees, representatives, contractors, consultants, or agents

1. All DOCUMENTS in the ENGINEER's CONTROL RELATED TO the DRAFT TECHNICAL MEMORANDUM.
2. All DOCUMENTS in CH2M's CONTROL RELATED TO the DRAFT TECHNICAL MEMORANDUM.
3. All DOCUMENTS in CH2M's CONTROL RELATED TO COMMUNICATIONS between CH2M and anyone at the State Water Contractors regarding the DRAFT TECHNICAL MEMORANDUM.
4. All DOCUMENTS in the ENGINEER's CONTROL RELATED TO COMMUNICATIONS between CH2M and anyone at the Metropolitan Water District of Southern California regarding the DRAFT TECHNICAL MEMORANDUM.

1 5. All DOCUMENTS in CH2M's CONTROL RELATED TO
2 COMMUNICATIONS between CH2M and anyone at the State Water Contractors
3 regarding BBID.

4 6. All DOCUMENTS in CH2M's CONTROL RELATED TO
5 COMMUNICATIONS between CH2M and anyone at the Metropolitan Water District of
6 Southern California regarding BBID.

7 7. All DOCUMENTS in CH2M's CONTROL RELATED TO
8 COMMUNICATIONS between CH2M and anyone at the State Water Contractors
9 regarding modeling work conducted by CH2M for BBID.

10 8. All DOCUMENTS in CH2M's CONTROL RELATED TO
11 COMMUNICATIONS between CH2M and anyone at the Metropolitan Water District of
12 Southern California regarding modeling work conducted by CH2M for BBID.

13 If any document is withheld under a claim of privilege or other protection, please
14 provide a privilege log consistent with Code of Civil Procedure section 2031.240
15 containing the following information with respect to such documents: (a) an identification
16 of the document with reasonable specificity and particularity, including its nature
17 (memorandum, letter, etc.), title and date; (b) the parties, individuals, and entities that the
18 communication is between or references; (c) the exact nature of the privilege asserted;
19 and (d) all of the facts upon which your claim of privilege is based or which supports said
20 claim of privilege.

21
22 Dated: February 25, 2016

SOMACH SIMMONS & DUNN
A Professional Corporation

23
24
25 By: _____

Michael E. Vergara
Attorneys for Petitioner/Plaintiff BYRON-
BETHANY IRRIGATION DISTRICT

1 SOMACH SIMMONS & DUNN
A Professional Corporation
2 DANIEL KELLY, ESQ. (SBN 215051)
MICHAEL E. VERGARA, ESQ. (SBN 137689)
3 LAUREN D. BERNADETT, ESQ. (SBN 295251)
500 Capitol Mall, Suite 1000
4 Sacramento, California 95814-2403
Telephone: (916) 446-7979
5 Facsimile: (916) 446-8199

6 Attorneys for Petitioner/Plaintiff BYRON-
BETHANY IRRIGATION DISTRICT
7

8
9 BEFORE THE
10 CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

11 ENFORCEMENT ACTION ENF01949
12 DRAFT CEASE AND DESIST ORDER
REGARDING UNAUTHORIZED
13 DIVERSIONS OR THREATENED
UNAUTHORIZED DIVERSIONS OF WATER
14 FROM OLD RIVER IN SAN JOAQUIN
COUNTY

SWRCB Enforcement Action
ENF01951 and ENF01949

AFFIDAVIT

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16 In the Matter of ENFORCEMENT ACTION
ENF01951 – ADMINISTRATIVE CIVIL
LIABILITY COMPLAINT REGARDING
17 UNAUTHORIZED DIVERSION OF WATER
FROM THE INTAKE CHANNEL TO THE
18 BANKS PUMPING PLANT (FORMERLY
ITALIAN SLOUGH) IN CONTRA COSTA
19 COUNTY

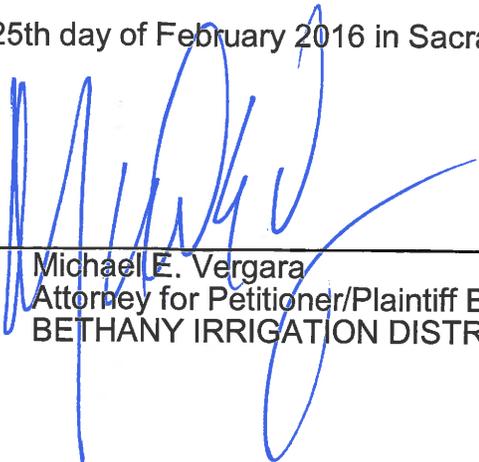
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21 I, Michael E. Vergara, declare as follows:

22 1. I am an attorney admitted to practice law in the State of California. I am a
23 shareholder in the law firm of Somach Simmons & Dunn. I am counsel of record for
24 Byron-Bethany Irrigation District (BBID). The following matters are within my personal
25 knowledge, and if called as a witness, I could competently testify thereto.

26 2. BBID holds a pre-1914 appropriative water right to divert and beneficially
27 use watercourses in the California Delta. On June 12, 2015, the State Water Resources
28 Control Board's (SWRCB) Executive Director sent a curtailment notice to BBID, which

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 25th day of February 2016 in Sacramento, California.

By: 

Michael E. Vergara
Attorney for Petitioner/Plaintiff BYRON-
BETHANY IRRIGATION DISTRICT

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PROOF OF SERVICE

I am employed in the County of Sacramento; my business address is 500 Capitol Mall, Suite 1000, Sacramento, California; I am over the age of 18 years and not a party to the foregoing action.

On February 25, 2016, I served the following document(s):

SUBPOENA DUCES TECUM TO CHANDRA CHILMAKURI; ADDENDUM TO SUBPOENA DUCES TECUM; AFFIDAVIT

X (via electronic mail) by causing to be delivered a true copy thereof to the person(s) and at the email addresses set forth below:

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 25, 2016 at Sacramento, California.


Yolanda De La Cruz

**SERVICE LIST OF PARTICIPANTS
BYRON-BETHANY IRRIGATION DISTRICT
ADMINISTRATIVE CIVIL LIABILITY HEARING**
(Revised 9/2/15; Revised: 9/11/15)

SOMACH SIMMONS & DUNN
A Professional Corporation

<p><u>VIA ELECTRONIC MAIL</u></p> <p>Division of Water Rights Prosecution Team Andrew Tauriainen, Attorney III SWRCB Office of Enforcement 1001 I Street, 16th Floor Sacramento, CA 95814 andrew.tauriainen@waterboards.ca.gov</p>	<p><u>VIA ELECTRONIC MAIL</u></p> <p>Byron-Bethany Irrigation District Daniel Kelly Somach Simmons & Dunn 500 Capitol Mall, Suite 1000 Sacramento, CA 95814 dkelly@somachlaw.com</p>
<p><u>VIA ELECTRONIC MAIL</u></p> <p>Patterson Irrigation District Banta-Carbona Irrigation District The West Side Irrigation District Jeanne M. Zolezzi Herum\Crabtree\Suntag 5757 Pacific Avenue, Suite 222 Stockton, CA 95207 jzolezzi@herumcrabtree.com</p>	<p><u>VIA ELECTRONIC MAIL</u></p> <p>City and County of San Francisco Jonathan Knapp Office of the City Attorney 1390 Market Street, Suite 418 San Francisco, CA 94102 jonathan.knapp@sfgov.org</p>
<p><u>VIA ELECTRONIC MAIL</u></p> <p>Central Delta Water Agency Jennifer Spaletta Law PC P.O. Box 2660 Lodi, CA 95241 jennifer@spalettalaw.com</p> <p>Dante John Nomellini Daniel A. McDaniel Dante John Nomellini, Jr. NOMELLINI, GRILLI & MCDANIEL 235 East Weber Avenue Stockton, CA 95202 ngmplcs@pacbell.net dantejr@pacbell.net</p>	<p><u>VIA ELECTRONIC MAIL</u></p> <p>California Department of Water Resources Robin McGinnis, Attorney P.O. Box 942836 Sacramento, CA 94236-0001 robin.mcginnis@water.ca.gov</p>
<p><u>VIA ELECTRONIC MAIL</u></p> <p>Richard Morat 2821 Berkshire Way Sacramento, CA 95864 rmorat@gmail.com</p>	<p><u>VIA ELECTRONIC MAIL</u></p> <p>San Joaquin Tributaries Authority Tim O'Laughlin Valerie C. Kincaid O'Laughlin & Paris LLP 2617 K Street, Suite 100 Sacramento, CA 95816 towater@olaughlinparis.com vkincaid@olaughlinparis.com</p>

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<u>VIA ELECTRONIC MAIL</u>	<u>VIA ELECTRONIC MAIL</u>
South Delta Water Agency John Herrick Law Offices of John Herrick 4255 Pacific Avenue, Suite 2 Stockton, CA 95207 Email: Jherrlaw@aol.com	State Water Contractors Stefani Morris 1121 L Street, Suite 1050 Sacramento, CA 95814 smorris@swc.org

**SERVICE LIST
WEST SIDE IRRIGATION DISTRICT
CEASE AND DESIST ORDER HEARING**

SOMACH SIMMONS & DUNN
A Professional Corporation

<p>1 2 3 4 5 6 7 8 9</p> <p>Division of Water Rights Prosecution Team Andrew Tauriainen, Attorney III SWRCB Office of Enforcement 1001 I Street, 16th Floor Sacramento, CA 95814 andrew.tauriainen@waterboards.ca.gov</p>	<p>The West Side Irrigation District Jeanne M. Zolezzi Karna Haringfeld Janelle Krattiger Herum\Crabtree\Suntag 5757 Pacific Avenue, Suite 222 Stockton, CA 95207 jzolezzi@herumcrabtree.com kharingfeld@herumcrabtree.com jkrattiger@herumcrabtree.com</p>
<p>10 11 12 13 14 15 16</p> <p>State Water Contractors Stefani Morris 1121 L Street, Suite 1050 Sacramento, CA 95814 smorris@swc.org</p>	<p>Westlands Water District Daniel O'Hanlon Rebecca Akroyd Kronick Moskowitz Tiedemann & Girad 400 Capitol Mall, 27th Floor Sacramento, CA 95814 dohanlon@kmtg.com rakroyd@kmtg.com</p> <p>Phillip Williams of Westlands Water District pwilliams@westlandswater.org</p>
<p>17 18 19 20 21 22</p> <p>South Delta Water Agency John Herrick Law Offices of John Herrick 4255 Pacific Avenue, Suite 2 Stockton, CA 95207 Email: Jherrlaw@aol.com</p>	<p>Central Delta Water Agency Jennifer Spaletta Law PC P.O. Box 2660 Lodi, CA 95241 jennifer@spalettalaw.com</p> <p>Dante Nomellini and Dante Nomellini, Jr. NOMELLINI, GRILLI & MCDANIEL ngmplcs@pacbell.net dantejr@pacbell.net</p>
<p>23 24 25 26 27 28</p> <p>City and County of San Francisco Jonathan Knapp Office of the City Attorney 1390 Market Street, Suite 418 San Francisco, CA 94102 jonathan.knapp@sfgov.org</p>	<p>San Joaquin Tributaries Authority Valerie C. Kincaid O'Laughlin & Paris LLP 2617 K Street, Suite 100 Sacramento, CA 95816 vkincaid@olaughlinparis.com</p>

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Byron-Bethany Irrigaton District Daniel Kelly Somach Simmons & Dunn 500 Capitol Mall, Suite 1000 Sacramento, CA 95814 dkelly@somachlaw.com	California Department of Water Resources Robin McGinnis, Attorney P.O. Boc 942836 Sacramento, CA 94236-0001 robin.mcginnis@water.ca.gov
---	---

EXHIBIT 2

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: \$ _____

- delivering true copies thereof by certified mail, return receipt requested, to the address as shown below.
 delivering true copies thereof enclosed in a sealed envelope to a messenger for immediate personal delivery to the address as shown below.

Address where served: _____

2. I certify that I received this subpoena subpoena duces tecum for service on _____ Date

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on:

Date	at (<i>place</i>)	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 (<i>place</i>)	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 SOMACH SIMMONS & DUNN
A Professional Corporation
2 DANIEL KELLY, ESQ. (SBN 215051)
MICHAEL E. VERGARA, ESQ. (SBN 137689)
3 LAUREN D. BERNADETT, ESQ. (SBN 295251)
500 Capitol Mall, Suite 1000
4 Sacramento, California 95814-2403
Telephone: (916) 446-7979
5 Facsimile: (916) 446-8199

6 Attorneys for Petitioner/Plaintiff BYRON-
BETHANY IRRIGATION DISTRICT

8 BEFORE THE
9 CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

11 ENFORCEMENT ACTION ENFO1949
12 DRAFT CEASE AND DESIST ORDER
REGARDING UNAUTHORIZED
13 DIVERSIONS OR THREATENED
UNAUTHORIZED DIVERSIONS OF WATER
14 FROM OLD RIVER IN SAN JOAQUIN
COUNTY

SWRCB Enforcement Action
ENF01951 and ENF01949

ADDENDUM TO SUBPOENA
DUCES TECUM

California Water Code § 1080;
California Government Code §
11450.10; Cal. Code Regs., tit. 23 §
6496(a)

15 In the Matter of ENFORCEMENT ACTION
ENF01951 – ADMINISTRATIVE CIVIL
16 LIABILITY COMPLAINT REGARDING
UNAUTHORIZED DIVERSION OF WATER
17 FROM THE INTAKE CHANNEL TO THE
BANKS PUMPING PLANT (FORMERLY
18 ITALIAN SLOUGH) IN CONTRA COSTA
COUNTY

19
20 To: Kyle Winslow
CH2M Hill
21 402 W Broadway # 1450
San Diego, CA 92101

22 (X) You are served as an individual.

23 (X) You are served as (or on behalf of) the person
24 doing business under the fictitious name
of

25 () You are served on behalf of State Water Resources Control Board.
26
27
28

1 Pursuant to California Water Code section 1080, California Government Code section
2 11450.10, and California Code of Regulations, title 23, section 649.6, subdivision (a):

3 I. SUBPOENA FOR RECORDS AND DOCUMENTS

4 **Kyle Winslow (ENGINEER) and CH2M or CH2M Hill (CH2M) Are Commanded**
5 to produce the papers, books, records, and documents that are in ENGINEER and/or
6 CH2M's possession or under ENGINEER and/or CH2M's control, as described below
7 and/or CH2M'S possession or under ENGINEER and/or CH2M'S control, as described
8 below and in connection with the above-titled proceeding, by 10:00 a.m., March 10,
9 2016. Please send the documents to: Michael E. Vergara, Somach, Simmons & Dunn,
10 500 Capitol Mall, Suite 1000, Sacramento, California 95814. You may email electronic
11 records to mvergara@somachlaw.com, or deliver all records via mail or courier on a
12 suitable electronic storage device, or make electronic records available to download via
13 the Internet.

14 CH2M and/or ENGINEER may seek the advice of an attorney in any matter
15 connected with this subpoena, and should consult its attorney promptly so that any
16 problems concerning the production of documents may be resolved within the time
17 required by this Subpoena. Failure to comply with the commands of this Subpoena will
18 subject CH2M and/or ENGINEER to the proceedings and penalties provided by law.

19 A. DEFINITIONS

20 The capitalized terms listed below, as used in this Addendum to Subpoena duces
21 tecum, are defined as follows:

- 22 1. The term "PERSON" or "PERSONS" mean associations, corporations,
23 natural persons, partnerships, trusts, governmental, or other forms of legal entities.
 - 24 2. The terms "CH2M" means CH2M, CH2M Hill, and each PERSON acting or
25 purporting to act on its behalf, including but not limited to, its former or present officers,
26 employees, agents, contractors, consultants, and representatives.
 - 27 3. The term "ENGINEER" means Kyle Winslow, employed by CH2M.
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3. The terms "YOU" or "YOUR" mean "ENGINEER" and/or CH2M.

4. The term "CONTROL" means control, custody, or possession in the broadest sense possible under Code of Civil Procedure section 2031.010.

5. The terms "COMMUNICATION" or "COMMUNICATIONS" mean any occurrence whereby data, expressions, facts, opinions, thoughts, or other information of any kind is transmitted in any form including, but not limited to, any conversation, correspondence, discussion, electronic mail, meeting, memorandum, message, note, or posting or other display on the Internet or the World Wide Web. These terms include, but are not limited to, COMMUNICATIONS which may contain attorney-client communications and/or attorney work product.

6. The terms "RELATING TO" or "RELATE TO" shall be construed in the broadest possible sense and shall mean, without limitation, pertaining to, regarding, concerning, comprising, constituting, in connection with, reflecting, respecting, referring to, stating, describing, recording, noting, embodying, containing, mentioning, studying, analyzing, discussing or evaluating, and as defined in Black's Law Dictionary (5th ed. 1979), p. 1158.

7. The terms "DOCUMENT" or "DOCUMENTS" encompass all documents, things, property and/or electronic materials within YOUR CONTROL and includes all writings as defined in section 250 of the California Evidence Code, and shall include, but not be limited to, any kind of written, graphic or recorded matter, however produced or reproduced, of any kind or description, whether sent or received or neither, including originals, copies and drafts and both sides thereof, and including but not limited to paper, books, letters, photographs, posters, objects, tangible things, correspondence, telegrams, cables, facsimiles, telex messages, confirmations, account statements, receipts, billing statements, memoranda, legal memoranda, notes, notations, work papers, transcripts, minutes, reports, and recordings of telephone or other conversations, or other conversations, or in conferences or other meetings, affidavits,

1 statements, opinions, reports, studies, analysis, evaluations, financial statements,
2 prospectuses, circulars, certificates, press releases, annual reports, quarterly reports,
3 magazine or newspaper articles, manuals, contracts, agreements, statistical records,
4 journals, desk calendars, appointment books, diaries, lists, tabulations, summaries,
5 sound recordings, computer printouts, data processing input and output, electronic mail,
6 all records of communications recorded or encoded onto magnetic or computer disks,
7 diskettes, audio and video tapes or any other media, all records kept by electronic,
8 photographic, or mechanical means, and things similar to any of the foregoing, however
9 denominated, dated, produced, generated or received. These terms include, but are not
10 limited to, DOCUMENTS which may contain attorney-client communications and/or
11 attorney work product.

12 8. The terms "BYRON-BETHANY IRRIGATION DISTRICT" and "BBID" mean
13 The Byron-Bethany Irrigation District, an Irrigation District formed pursuant to Division 11
14 of the California Water Code, and anyone working on its behalf, including but not limited
15 to, its officers, employees, agents, contractors, consultant, and representatives.

16 9. The term "DRAFT TECHNICAL MEMORANDUM" means the Draft
17 Technical Memorandum, 2012-- 2015 Delta Salinity Conditions under a Without Project
18 Scenario, Prepared For: Terry Erlewine/SWC, Prepared By: Tyler Hatch/CH2M HILL /
19 Chandra Chilmakuri/CH2M HILL, Dated: June 5, 2015.

20 10. The term BBID REPORT means the report CH2M was in the process of
21 preparing for BBID to set forth the results of the modeling that CH2M conducted for BBID
22 related to water availability and/or sources of water at BBID's point of diversion in 2015,
23 as it existed on or about October 15, 2015.

24 11. Definitions for industry or trade terms contained herein are to be construed
25 broadly. Where the industry or trade definition set forth herein does not coincide
26 precisely with YOUR definition, the question, inquiry or production request should be
27 responded to or answered by using the definition that YOU apply and/or recognize in
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1 YOUR usage of the term, and YOUR should further document YOUR definition in the
2 response. Non-industry or non-trade definitions should be applied as defined herein.

3 B. INSTRUCTIONS

4 1. Unless otherwise indicated, the time period covered by this subpoena is
5 from January 1, 2014 to up to five days before YOUR full compliance with this subpoena.
6 Any documents RELATING TO this time period are to be produced, regardless of
7 whether the documents came into existence before or during this period.

8 2. YOUR response to the subpoena should include a declaration or affidavit.
9 It should state that a diligent search for all requested DOCUMENTS has been conducted
10 and that the affiant or declarant was in charge of the search or otherwise monitored and
11 reviewed the search sufficiently to be able to represent under oath that such a search
12 was conducted. It should be signed under oath by the person most knowledgeable about
13 the DOCUMENTS and YOUR efforts to comply with the subpoena. If different people
14 are the most knowledgeable about portions of the search (e.g., one person is most
15 knowledgeable about DOCUMENTS contained in computer media and a different person
16 is most knowledge about DOCUMENTS contained on paper) each should sign an
17 affidavit or declaration identifying the category in the request for DOCUMENTS for which
18 that person is the most knowledgeable.

19 3. Unless otherwise indicated, for any DOCUMENT stored in a computer,
20 including all electronic mail messages, YOU should produce the DOCUMENT in the
21 original electronic file format in which it was created (e.g., Microsoft email should be
22 provided in its original format, which would have the .pst suffix, not in a tif file;
23 spreadsheets should be in their original file form, such as an Excel file and word-
24 processed DOCUMENTS should be in their original file format, such as a Word or
25 WordPerfect file), together with instructions and all other materials necessary to use or
26 interpret the data. Electronic mail messages should be provided, even if only available
27 on backup or archive tapes or disks. Computer media should be accompanied by (a) an
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1 identification of the generally available software needed to open and view the
2 DOCUMENTS or (b) a copy of the software needed to open and view the DOCUMENT.
3 Note, however, that if a print- out from a computer DOCUMENT is a non-identical copy
4 of the electronic form in which it was created (non-identical by way of example but not
5 limitation, because it has a signature, handwritten notation, or other mark or attachment
6 not included in the computer DOCUMENT), both the electronic form in which the
7 DOCUMENT was created and the original print-out should be produced.

8 4. For each DOCUMENT contained in an audio or video medium, YOU
9 should provide the tape, disk, or other device from which the audio or video can be
10 played and the transcript of the DOCUMENT.

11 5. For all DOCUMENTS for which YOU do not produce in the original, as
12 defined in Evidence Code section 255, YOU may submit copies (black and white copies
13 if the original was in black and white, color copies if the original was in color, and, if the
14 original was in electronic format, in the same electronic medium as the original) in lieu of
15 original DOCUMENTS provided that such copies are accompanied by an affidavit of an
16 officer of CH2M stating that the copies of all types DOCUMENTS are true, correct, and
17 complete copies of the original DOCUMENTS. If there is in YOUR possession, custody
18 or control no original, but only a copy or photographic record thereof, then YOU should
19 produce a true and legible copy of each such DOCUMENT. The accompanying affidavit
20 should state that the DOCUMENT is only a copy or photographic record and not the
21 original.

22 6. If a DOCUMENT is responsive to this subpoena and is in YOUR control,
23 but is not in YOUR possession or custody, in addition to obtaining and producing the
24 DOCUMENT, identify the person who had possession or custody of the DOCUMENT,
25 their telephone number and current business and residence addresses.

26 7. If any DOCUMENT subpoenaed is no longer in YOUR possession,
27 custody, control, or care, YOU should provide a written statement identifying the
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1 DOCUMENT with specificity, stating whether it is lost or missing, has been destroyed;
2 has been transferred to others, or has otherwise been disposed of. The written
3 statement should also identify the person who disposed of the DOCUMENT, explain the
4 circumstances and authorization for the disposition and the approximate date of the
5 disposition of the DOCUMENT. If there are no DOCUMENTS responsive to a document
6 request, as to each such document request, YOU should include a statement to that
7 effect in the accompanying declaration or affidavit.

8 8. DOCUMENTS provided in response to this subpoena should be complete
9 and unredacted, submitted as found in YOUR files (e.g., DOCUMENTS that in their
10 original condition were stapled, clipped, attached as a "post-it," or otherwise fastened
11 together shall be produced in the same form).

12 9. Each DOCUMENT produced pursuant to this subpoena should be
13 identified according to the category in the subpoena to which it is responsive. In lieu of
14 indicating on each DOCUMENT the category to which it is responsive, on the date set
15 for production, YOU may instead provide an index if YOU provide it in both paper and in
16 electronic form (such as a computerized spreadsheet in Excel or a Word or WordPerfect
17 document set up in a table format) of all DOCUMENTS YOU produce, as long as this
18 index shows by document control number the request(s) to which each DOCUMENT or
19 group of DOCUMENTS is responsive. Responsive DOCUMENTS from each person's
20 files should be produced together, in one box or in consecutive boxes, or on one disk or
21 consecutive disks. Mark each page of a paper DOCUMENT and each tangible thing
22 containing audio, video, computer, or other electronic DOCUMENTS (e.g. cassette, disk,
23 tape or CD) with corporate identification and consecutive document control numbers
24 (e.g., S.L . 00001, S.I. CD 001, S.I. audio tape 001). Number each box of DOCUMENTS
25 produced and mark each with the name(s) of the person(s) whose files are-contained
26 therein, the requests(s) to which they are responsive, and the document control numbers
27 contained therein.

28

1 between CH2M and anyone at the State Water Contractors regarding the DRAFT
2 TECHNICAL MEMORANDUM.

3 4. ALL DOCUMENTS, as defined in California Evidence Code section 250, in
4 the possession, custody and/or control of ENGINEER RELATED TO
5 COMMUNICATIONS between CH2M and anyone at the Metropolitan Water District of
6 Southern California regarding the DRAFT TECHNICAL MEMORANDUM.

7 5. ALL DOCUMENTS, as defined in California Evidence Code section 250, in
8 the possession, custody and/or control of CH2M RELATED TO any communications
9 between CH2M and anyone at the State Water Contractors regarding BBID.

10 6. ALL DOCUMENTS, as defined in California Evidence Code section 250, in
11 the possession, custody and/or control of CH2M RELATED TO COMMUNICATIONS
12 between CH2M and anyone at the Metropolitan Water District of Southern California
13 regarding BBID.

14 7. ALL DOCUMENTS, as defined in California Evidence Code section 250, in
15 the possession, custody and/or control of CH2M RELATED TO COMMUNICATIONS
16 between CH2M and anyone at the State Water Contractors regarding modeling work
17 conducted by CH2M for BBID.

18 8. ALL DOCUMENTS, as defined in California Evidence Code section 250, in
19 the possession, custody and/or control of CH2M RELATED TO COMMUNICATIONS
20 between CH2M and anyone at the Metropolitan Water District of Southern California
21 regarding modeling work conducted by CH2M for BBID.

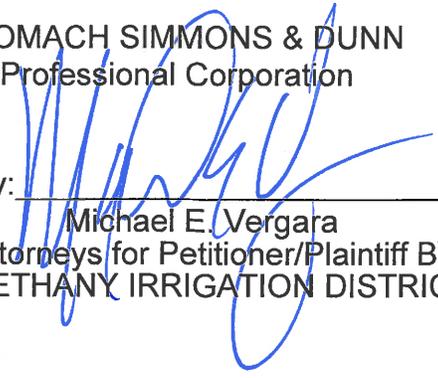
22 9. The BBID Report.

23 If any document is withheld under a claim of privilege or other protection, please
24 provide a privilege log containing the following information with respect to such
25 documents: (a) an identification of the document with reasonable specificity and
26 particularity, including its nature (memorandum, letter, etc.), title and date; (b) the
27 parties, individuals, and entities that the communication is between or references; (c) the
28

1 exact nature of the privilege asserted; and (d) all of the facts upon which your claim of
2 privilege is based or which supports said claim of privilege.

3
4 Dated: February 25, 2016

SOMACH SIMMONS & DUNN
A Professional Corporation

6
7 By: 
8 Michael E. Vergara
9 Attorneys for Petitioner/Plaintiff BYRON-
10 BETHANY IRRIGATION DISTRICT

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SOMACH SIMMONS & DUNN
A Professional Corporation

1 SOMACH SIMMONS & DUNN
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2 DANIEL KELLY, ESQ. (SBN 215051)
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4 Sacramento, California 95814-2403
Telephone: (916) 446-7979
5 Facsimile: (916) 446-8199

6 Attorneys for Petitioner/Plaintiff BYRON-
BETHANY IRRIGATION DISTRICT
7

8
9 BEFORE THE
10 CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

11 ENFORCEMENT ACTION ENF01949
12 DRAFT CEASE AND DESIST ORDER
REGARDING UNAUTHORIZED
13 DIVERSIONS OR THREATENED
UNAUTHORIZED DIVERSIONS OF WATER
14 FROM OLD RIVER IN SAN JOAQUIN
COUNTY

SWRCB Enforcement Action
ENF01951 and ENF01949

AFFIDAVIT

15
16 In the Matter of ENFORCEMENT ACTION
ENF01951 – ADMINISTRATIVE CIVIL
LIABILITY COMPLAINT REGARDING
17 UNAUTHORIZED DIVERSION OF WATER
FROM THE INTAKE CHANNEL TO THE
18 BANKS PUMPING PLANT (FORMERLY
ITALIAN SLOUGH) IN CONTRA COSTA
19 COUNTY

20
21 I, Michael E. Vergara, declare as follows:

22 1. I am an attorney admitted to practice law in the State of California. I am a
23 shareholder in the law firm of Somach Simmons & Dunn. I am counsel of record for
24 Byron-Bethany Irrigation District (BBID). The following matters are within my personal
25 knowledge, and if called as a witness, I could competently testify thereto.

26 2. BBID holds a pre-1914 appropriative water right to divert and beneficially
27 use watercourses in the California Delta. On June 12, 2015, the State Water Resources
28 Control Board's (SWRCB) Executive Director sent a curtailment notice to BBID, which

1 purports to curtail the pre-1914 appropriative water rights of BBID and other with 1903
2 and later priority dates within the entire Sacramento and San Joaquin River watersheds,
3 including the California Delta (Curtailment Notice). The Curtailment Notice directed
4 BBID to “immediately stop diverting” under its pre-1914 water rights, and provided that
5 any further diversions would subject BBID to “administrative penalties, cease and desist
6 orders, or prosecution in court.”

7 3. In response, BBID filed suit against the SWRCB on June 26, 2015,
8 challenging the Curtailment Notice, and asserting that the SWRCB exceeded its
9 jurisdiction, violated due process, and conducted a flawed water availability analysis.
10 Multiple other water right holders similarly situated to BBID, including the West Side
11 Irrigation District (WSID), also sued the SWRCB to challenge the Curtailment Notice.

12 4. On July 20, 2015, the SWRCB issued the Administrative Civil Liability
13 (ACL) Complaint, alleging that BBID unlawfully diverted water from June 13, 2015 to
14 June 25, 2015.

15 5. On February 22, 2016, the State Water Contractors submitted rebuttal
16 testimony in ENF01951, which included a Draft Technical Memorandum, dated June 5,
17 2015, prepared by CH2M (formerly “CH2M Hill”).

18 6. The SWRCB hearing on the ACL Complaint is set for March 15, 2016.

19 7. Early in 2015, BBID engaged the services of CH2M Hill (CH2M) to, among
20 other things, conduct certain modeling of the California Delta. As the deadlines for
21 submitting the identification of witnesses in ENF01951 approached, CH2M informed
22 BBID that CH2M would not participate in ENF01951 on BBID’s behalf and otherwise
23 ceased conducting the modeling work for BBID. BBID later learned that CH2M ceased
24 work for BBID as a result of communications between CH2M and the State Water
25 Contractors and/or Metropolitan Water District of Southern California.

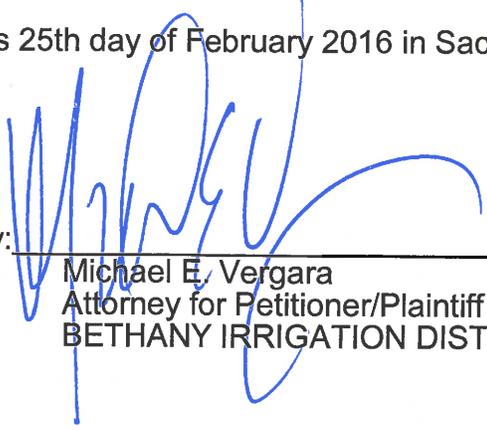
26 8. CH2M never finalized the work for BBID and, the end result of the
27 communications between CH2M and State Water Contractors and/or Metropolitan Water
28 District of Southern California was that CH2M did not provide BBID with the final results

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of the modeling it had undertaken for BBID.

9. Good cause exists for the production of the documents described in the Subpoena Duces Tecum and Addendum, served herewith to investigate the modeling work CH2M hill commenced for BBID, whether the State Water Contractors and/or Metropolitan Water District of Southern California interfered with CH2M's work for BBID in this proceeding, and to obtain any documents referring or relating to the the issues raised above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 25th day of February 2016 in Sacramento, California.

By: 

Michael E. Vergara
Attorney for Petitioner/Plaintiff BYRON-
BETHANY IRRIGATION DISTRICT

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PROOF OF SERVICE

I am employed in the County of Sacramento; my business address is 500 Capitol Mall, Suite 1000, Sacramento, California; I am over the age of 18 years and not a party to the foregoing action.

On February 26, 2016, I served the following document(s):

**SUBPOENA DUCES TECUM TO KYLE WINSLOW; ADDENDUM TO
SUBPOENA DUCES TECUM; AFFIDAVIT**

X (via electronic mail) by causing to be delivered a true copy thereof to the person(s) and at the email addresses set forth below:

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 26, 2016, at Sacramento, California.


Michelle Bracha

**SERVICE LIST OF PARTICIPANTS
BYRON-BETHANY IRRIGATION DISTRICT
ADMINISTRATIVE CIVIL LIABILITY HEARING**
(Revised 9/2/15; Revised: 9/11/15)

<p><u>VIA ELECTRONIC MAIL</u></p> <p>Division of Water Rights Prosecution Team Andrew Tauriainen, Attorney III SWRCB Office of Enforcement 1001 I Street, 16th Floor Sacramento, CA 95814 andrew.tauriainen@waterboards.ca.gov</p>	<p><u>VIA ELECTRONIC MAIL</u></p> <p>Byron-Bethany Irrigation District Daniel Kelly Somach Simmons & Dunn 500 Capitol Mall, Suite 1000 Sacramento, CA 95814 dkelly@somachlaw.com</p>
<p><u>VIA ELECTRONIC MAIL</u></p> <p>Patterson Irrigation District Banta-Carbona Irrigation District The West Side Irrigation District Jeanne M. Zolezzi Herum\Crabtree\Suntag 5757 Pacific Avenue, Suite 222 Stockton, CA 95207 jzolezzi@herumcrabtree.com</p>	<p><u>VIA ELECTRONIC MAIL</u></p> <p>City and County of San Francisco Jonathan Knapp Office of the City Attorney 1390 Market Street, Suite 418 San Francisco, CA 94102 jonathan.knapp@sfgov.org</p>
<p><u>VIA ELECTRONIC MAIL</u></p> <p>Central Delta Water Agency Jennifer Spaletta Law PC P.O. Box 2660 Lodi, CA 95241 jennifer@spalettalaw.com</p> <p>Dante John Nomellini Daniel A. McDaniel Dante John Nomellini, Jr. NOMELLINI, GRILLI & MCDANIEL 235 East Weber Avenue Stockton, CA 95202 ngmpics@pacbell.net dantejr@pacbell.net</p>	<p><u>VIA ELECTRONIC MAIL</u></p> <p>California Department of Water Resources Robin McGinnis, Attorney P.O. Box 942836 Sacramento, CA 94236-0001 robin.mcginnis@water.ca.gov</p>
<p><u>VIA ELECTRONIC MAIL</u></p> <p>Richard Morat 2821 Berkshire Way Sacramento, CA 95864 rmorat@gmail.com</p>	<p><u>VIA ELECTRONIC MAIL</u></p> <p>San Joaquin Tributaries Authority Tim O'Laughlin Valerie C. Kincaid O'Laughlin & Paris LLP 2617 K Street, Suite 100 Sacramento, CA 95816 towater@olaughlinparis.com vkincaid@olaughlinparis.com</p>

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<u>VIA ELECTRONIC MAIL</u>	<u>VIA ELECTRONIC MAIL</u>
South Delta Water Agency John Herrick Law Offices of John Herrick 4255 Pacific Avenue, Suite 2 Stockton, CA 95207 Email: Jherrlaw@aol.com	State Water Contractors Stefani Morris 1121 L Street, Suite 1050 Sacramento, CA 95814 smorris@swc.org

**SERVICE LIST
WEST SIDE IRRIGATION DISTRICT
CEASE AND DESIST ORDER HEARING**

SOMACH SIMMONS & DUNN
A Professional Corporation

<p>Division of Water Rights Prosecution Team Andrew Tauriainen, Attorney III SWRCB Office of Enforcement 1001 I Street, 16th Floor Sacramento, CA 95814 andrew.tauriainen@waterboards.ca.gov</p>	<p>The West Side Irrigation District Jeanne M. Zolezzi Karna Harringfeld Janelle Krattiger Herum\Crabtree\Suntag 5757 Pacific Avenue, Suite 222 Stockton, CA 95207 jzolezzi@herumcrabtree.com kharringfeld@herumcrabtree.com jkrattiger@herumcrabtree.com</p>
<p>State Water Contractors Stefani Morris 1121 L Street, Suite 1050 Sacramento, CA 95814 smorris@swc.org</p>	<p>Westlands Water District Daniel O'Hanlon Rebecca Akroyd Kronick Moskovitz Tiedemann & Girad 400 Capitol Mall, 27th Floor Sacramento, CA 95814 dohanlon@kmtg.com rakroyd@kmtg.com</p> <p>Phillip Williams of Westlands Water District pwilliams@westlandswater.org</p>
<p>South Delta Water Agency John Herrick Law Offices of John Herrick 4255 Pacific Avenue, Suite 2 Stockton, CA 95207 Email: Jherrlaw@aol.com</p>	<p>Central Delta Water Agency Jennifer Spaletta Law PC P.O. Box 2660 Lodi, CA 95241 jennifer@spalettalaw.com</p> <p>Dante Nomellini and Dante Nomellini, Jr. NOMELLINI, GRILLI & MCDANIEL ngmplcs@pacbell.net dantejr@pacbell.net</p>
<p>City and County of San Francisco Jonathan Knapp Office of the City Attorney 1390 Market Street, Suite 418 San Francisco, CA 94102 jonathan.knapp@sfgov.org</p>	<p>San Joaquin Tributaries Authority Valerie C. Kincaid O'Laughlin & Paris LLP 2617 K Street, Suite 100 Sacramento, CA 95816 vkincaid@olaughlinparis.com</p>

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Byron-Bethany Irrigaton District Daniel Kelly Somach Simmons & Dunn 500 Capitol Mall, Suite 1000 Sacramento, CA 95814 dkelly@somachlaw.com	California Department of Water Resources Robin McGinnis, Attorney P.O. Boc 942836 Sacramento, CA 94236-0001 robin.mcginnis@water.ca.gov
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EXHIBIT 3

Ansley, Jolie-Anne S.

From: Ansley, Jolie-Anne S.
Sent: Monday, February 29, 2016 1:02 PM
To: 'dkelly@somachlaw.com' (dkelly@somachlaw.com); Michael Vergara (mvergara@somachlaw.com)
Subject: ENF01951 - Meet and Confer Regarding Subpoenas Duces Tecum to Chandra Chilmakuri and Kyle Winslow of CH2M Hill

Dear Mr. Kelly and Mr. Vergara,

I represent the State Water Contractors, a party to Enforcement Proceeding ENF01951. I would like to arrange a meet and confer by telephone to discuss issues raised by the subpoenas duces tecum you served late last week on Chandra Chilmakuri and Kyle Winslow.

As I'm sure you are aware, with the response dates fast approaching, time is of the essence. Please let me know if you are available anytime this afternoon for a meet and confer call.

Regards,
Jolie-Anne Ansley



The image is a business card for Jolie-Anne S. Ansley, a partner at Duane Morris LLP. It features the firm's logo at the top, followed by the website address. Below that, the name and title of the contact person are listed, along with the firm's address and phone/fax numbers. At the bottom, there are links for email, bio, and vcard.

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EXHIBIT B