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13 BEFORE THE CALIFORNIA STATE WATER RESOURCES CONTROL BOARD
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15 In the Matter of Hearing Re California WaterFix)
16 Petition for Change)

17 **PARTIAL JOINDER OF CITY OF**
18 **FOLSOM, CITY OF ROSEVILLE, SAN**
19 **JUAN WATER DISTRICT AND**
20 **SACRAMENTO SUBURBAN WATER**
21 **DISTRICT IN CITY OF ANTIOCH'S**
22 **REQUEST FOR A CONTINUANCE**
23
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25 The City of Folsom, City of Roseville, San Juan Water District and Sacramento Suburban
26 Water District (collectively, "Protestants") hereby partially join in the City of Antioch's Motion to
27 Continue Phase 2, etc., filed on January 26, 2018 and request that the Board, in the interest of

1 judicial economy, stay these proceedings for up to 60 days and order DWR to indicate whether it
2 intends to seek approval to construct the project in "stages" so that facilities consisting of two intakes
3 and one tunnel would be operated as stand-alone facilities prior to the completion of construction of
4 the project as contemplated in the Petition for Change in the Point of Diversion.

5 DWR's Consolidated Opposition to Antioch's Motion, etc., filed January 30, 2018, admits –
6 as it must – that DWR is now considering "phasing" or "staging" the project. *See id.* at p. 5; *see also*
7 Antioch's Motion to Continue Phase 2, p. 2, fn. 2. While DWR indicates that it "has not altered its
8 water rights petition" and "continues to seek a permit that will allow for the addition of three 3,000
9 cfs points of diversion on the Sacramento River," DWR's Consolidation Opposition at p. 5, ll. 13 –
10 15, it would be a waste of the parties' and the Board's resources to proceed with hearing testimony on
11 this proposal when DWR's own contracting documents indicate that it now intends to construct a
12 "first stage consisting of two North Delta intakes instead of three, and one main tunnel instead of
13 two." Antioch's Motion to Continue Phase 2, p. 2, fn. 2. Obviously, the timing and location of
14 diversions impact downstream flows, which in turn impact the volume and quality of water
15 throughout the Delta and the need to make releases from upstream storage in reservoirs.

16 For this reason, this Board has already recognized, and the Court of Appeal has confirmed,
17 that injury to other legal users of water can result from actions that vary the amount of flow in the
18 system during specific seasons or periods. *State Water Res. Control Bd. Cases*, 136 Cal. App. 4th
19 674, 743 - 44 (2006) (approving Board's finding in D-1641 that downstream appropriators could be
20 injured if Oakdale and South San Joaquin Irrigation Districts varied their direct diversion of water
21 between May 1 and October 1 in such a manner as to cause a reduction in return flows during that
22 period and upholding Board's finding that no injury occurred under the facts of that case). Thus, if
23 DWR proposes to construct only a two diversion, one tunnel project at this time, the location-,
24 season- and volume-specific impacts associated with the operations of that revised project must be
25 evaluated. Reliance upon analysis of a larger project with greater diversions will not suffice: that
26 phase of the project, like the San Luis Drain phase of the San Luis Unit, *might never be built*.
27 Consequently, the impacts of operating the first stage as stand-alone facilities must be assessed.

1 Hence, in these proceedings, the Board must examine the flow, water supply, water quality and other
2 impacts associated with operating a two diversion, one tunnel project before the subsequent project
3 phases (as contemplated in the Petition) are completed. *Cf.*, Water Code § 1702; *see also* 23 C.C.R.
4 § 794(a).

5 Given the Board's obligation to answer these questions about the staged project, it would be a
6 waste of judicial resources to commence the second phase of hearings in this matter until sufficient
7 detail is available regarding the revisions to the proposed project. Proceeding before DWR presents
8 its staged proposal presents a very real risk that the DWR witness panels will have to be recalled,
9 and the hearing re-opened, after the key operational details of the staged proposal (such as whether
10 the previously imposed mitigation measures would apply to the reduced-scope project; what role
11 Reclamation will have in the project, given that no Central Valley Project contractors have yet
12 committed to participate in the first stage; and how the Coordinated Operation Agreement would
13 apply to facilities that are wholly owned and operated by DWR) are unveiled. Therefore, in the
14 interest of proceeding most efficiently with this hearing, Protestants request that the Board stay these
15 proceedings for up to 60 days and order DWR to present evidence regarding the new "staged" two
16 intake, one tunnel proposal, if it intends to proceed with a staged approach and operate these as
17 stand-alone facilities prior to completing construction of the project as proposed in the Petition.

18 Dated: January 31, 2018

Respectfully submitted,

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22 By:


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