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9 City of Antioch

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

12 PHASE 2 - HEARING IN THE MATTER OF  
13 CALIFORNIA DEPARTMENT OF WATER  
14 RESOURCES AND UNITED STATES  
15 BUREAU OF RECLAMATION REQUEST  
16 FOR A CHANGE IN POINT OF DIVERSION  
17 FOR CALIFORNIA WATER FIX

18 **CITY OF ANTIOCH'S OPENING**  
19 **STATEMENT – PHASE 2**

20 [WaterFix Petition for Change]

21 **INTRODUCTION**

22 During Phase 2 of this proceeding, the City of Antioch will present evidence and  
23 testimony addressing what “unimpaired natural flow” might have looked like historically  
24 in the Delta and what “flow criteria” would most likely be protective of beneficial uses and  
25 public trust resources at Antioch.

26 In addressing these issues during Phase 2, it is important for the State Water  
27 Resources Control Board (SWRCB) to keep in mind the requirements and directives of  
28 the Delta Reform Act. That Act requires the WaterFix Project to not only meet flow  
criteria established by the SWRCB but to also **restore** and **enhance** public trust  
resources and beneficial uses in the Delta.

**THE DELTA REFORM ACT**

The Delta Reform Act established a standard for Delta related water projects known

1 as the “co-equal” goals. The co-equal goals are set forth in Public Resources Code 29702  
2 and seek to provide a more reliable water supply for California while at the same time  
3 restoring and enhancing the Delta ecosystem:

4 the two coequal goals of providing a *more reliable water supply* for  
5 California **and** *protecting, restoring, and enhancing the Delta*  
6 *ecosystem*. The coequal goals **shall be achieved** in a manner that  
7 protects and enhances the unique cultural, recreational, natural  
8 resource, and agricultural values of the Delta as an evolving place.

9 Notably, the “co-equal” goals require (“shall”) the restoration and enhancement of  
10 the Delta ecosystem as well as the cultural and recreational values of the Delta. On the  
11 other hand, and significantly as to this proceeding, providing a more reliable water  
12 supply is not contingent upon increasing or enhancing the amount of water available for  
13 a new Delta diversion project such as the WaterFix. A “more reliable water supply”  
14 could in fact require reduced export diversions. DWR must accept the reality that  
15 applicable law will require DWR to divert **less** water via its WaterFix Project than it has  
16 historically in order in order to restore and enhance the Delta. In return for taking such  
17 measures to restore the Delta, the WaterFix Project will arguably provide DWR with a  
18 more reliable and predictable water supply because the needs for in-Delta ecosystem  
19 and beneficial uses will have been better quantified and identified than present  
20 conditions..

22 To achieve the co-equal goals - including the directives to restore and enhance the  
23 Delta - the Delta Reform Act requires any order by the SWRCB approving a petition for  
24 change in the point of diversion to include appropriate Delta Flow Criteria necessary to  
25 protect public trust resources. Water Code 85086 (c)(1) and (2). While the SWRCB’s  
26 prior findings relating to its flow criteria process in 2010 are not pre-decisional as to the  
27 WaterFix change petition process, the Delta Reform Act does require a finding by the  
28

1 SWRCB as to appropriate flow required to protect public trust resources. This is in  
2 addition to the other Delta Reform Act requirements that the WaterFix project *enhance*  
3 and *restore* the Delta Ecosystem (as well as in-delta water quality for human  
4 consumption).

5 Based on the foregoing, the Delta Reform Act and the flow criteria directive require  
6 **more** than the WaterFix Project simply maintaining the status quo, or a “status quo plus”  
7 with respect to restoring the Delta Ecosystem. “Enhance,” “Protect,” and “Restore”  
8 clearly indicate achieving a much higher standard of restoration beyond present State  
9 Water Project Operations and meeting D-1641 objectives. DWR, however, has so far  
10 promoted modeled operating scenarios (H3, H4) that at best indicate achieving a status  
11 quo condition. This is clearly not what is required by the Delta Reform Act.

#### 12 **NATURAL FLOW INTO THE DELTA**

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14  
15 In considering the adoption of Delta flow criteria, it is important to understand  
16 historical salinity and flow conditions within the Delta, and to understand how the  
17 WaterFix operations scenarios compare to both historical and current conditions. The  
18 State Board has stated that “third-party water right holders are only entitled to the  
19 natural flows necessary to provide adequate water quality for their purposes of use; they  
20 are not entitled to better water quality than would exist under natural conditions.”<sup>1</sup> Thus,  
21 it is important to understand what “natural conditions” may mean, even if “natural  
22 conditions” will not and cannot be attained in the future.

23 Antioch has already demonstrated during Phase 1 that it has diverted water from  
24 the Delta since before 1860. Significantly, this is a fact admitted to by the Department  
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27 <sup>1</sup> DWR (2017). Re: August 31, 2017 Ruling Regarding Scheduling of Part 2 and Other Procedural Matters. Letter from  
28 Tripp Mizell and Amy Aufdemberge to Chair Marcus and Board Member Doduc. Department of Water Resources.  
September 8, 2017.

1 of Water Resources (DWR), in the 1968 Agreement between the City and DWR (DWR  
2 304). What does that mean in connection with Phase 2 of this proceeding? It means  
3 that prior to the channelization of the Delta and development of large upstream water  
4 diversions prior to 1920, the Delta was historically fresh enough at Antioch for the City  
5 to have diverted water for drinking water purposes year around – at least up until 1917  
6 or so This in turn means that Public Trust resources existed and evolved within this  
7 primarily freshwater environment around Antioch.  
8

9 Again, Antioch realizes that it is not practical or even possible to restore the  
10 natural conditions of the Delta Ecosystem. However, in determining whether the  
11 WaterFix and associated flow criteria will restore and enhance the Delta as required by  
12 law, understanding the historic natural condition of the Delta provides a critically  
13 important point of reference.  
14

### 15 **ANTIOCH'S PROPOSED FLOW CRITERIA**

16 During Phase 2, Antioch will provide testimony establishing that minimum flow  
17 criteria protective of public trust and beneficial uses at Antioch (and the western Delta)  
18 already exist and are presently before the SWRCB as part of these proceedings.

19 D-1641 M&I objectives are already authorized by the SWRCB to be met at  
20 Antioch. Presently, DWR has long opted to meet these standards at the Contra Costa  
21 Canal to the detriment of water quality at Antioch. Antioch contends that requiring DWR  
22 to meet D-1641 M&I objectives at Antioch as already set forth in D-1641 would more  
23 closely meet the requirements of the Delta Reform Act to enhance and restore the Delta  
24 Ecosystem and enhance water quality for human consumption. Changing the M&I  
25 objectives to Antioch would also more closely approximate the natural condition in the  
26 Western Delta – e.g. the Delta was primarily fresh at Antioch as already acknowledged  
27  
28

1 by DWR.

2           In the alterative, the SWRCB should require DWR to operate the WaterFix  
3 Project to the Boundary 2 modeling scenario, which is the DWR scenario with the  
4 highest Delta outflow and appears most protective of Public Trust resources and  
5 beneficial uses in the western Delta. Boundary 2 is modeled to have lower salinity  
6 levels comparable to the pre-1918 condition at Antioch between 25 and 50 percent of  
7 the 16-year model simulation period,  
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10 Dec. 18, 2017

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*/s/ MATTHEW EMRICK*

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Matthew Emrick, Special Counsel for the City of  
Antioch

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