

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

ATTORNEY OR PARTY WITHOUT ATTORNEY REQUESTING SUBPOENA (name, address, and telephone no.): Somach Simmons & Dunn Michael E. Vergara, ESQ. (SBN 137689) 500 Capitol Mall, Ste 1000 Sacramento, California 95814-2403 (916)446-7979	FOR STATE WATER BOARD USE ONLY
REPRESENTING: Byron-Bethany Irrigation District	
TITLE OF THE PROCEEDING: In re: Administrative Civil Liability Complaint Enforcement Action (ENF01951)	
<input type="checkbox"/> SUBPOENA	<input type="checkbox"/> RE HEARING
<input checked="" type="checkbox"/> SUBPOENA DUCES TECUM	<input type="checkbox"/> RE DEPOSITION

Custodian of Records, State Water Resources Control Board, 1001 I St., 16th Floor, Sacramento California, 95812-0100

1. YOU ARE ORDERED TO APPEAR AS A WITNESS in this proceeding as follows unless you make special agreement with the person named in item 3:

a. Date: February 16, 2016	Time: 5:00 p.m.
b. Address: Via electronic submittal (see attached Addendum)	

2. AND YOU ARE:

- a.  Ordered to appear in person. (Wat. Code, § 1080; Gov. Code, § 11450.10; Cal. Code Regs., tit. 23, § 649.6(a).)
- b.  Not required to appear in person if you produce the records described in the accompanying affidavit in compliance with Evidence Code sections 1560 and 1561. (Wat. Code, § 1080; Gov. Code, § 11450.10(b); Cal. Code Regs., tit. 23, § 649.6(a).)
- c.  Ordered to appear in person and to produce the records described in the accompanying affidavit. The personal attendance of the custodian or other qualified witness and the production of the original records is required by this subpoena. The procedure authorized by subdivision (b) of section 1560, and sections 1561 and 1562, of the Evidence Code will not be deemed sufficient compliance with this subpoena. (Wat. Code, § 1080; Gov. Code, § 11450.10; Cal. Code Regs., tit. 23, § 649.6(a).)

3. IF YOU HAVE ANY QUESTIONS ABOUT WITNESS FEES OR THE TIME OR DATE FOR YOU TO APPEAR, OR IF YOU WANT TO BE CERTAIN THAT YOUR PRESENCE IS REQUIRED, CONTACT THE FOLLOWING PERSON BEFORE THE DATE ON WHICH YOU ARE TO APPEAR:

a. Name: Michael E. Vergara	b. Telephone number: (916)446-7979
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(Gov. Code, § 11450.20(a); Code Civ. Proc., § 1985.2.)

4. WITNESS FEES: You are entitled to witness fees and mileage actually traveled, both ways, as provided by law. Request them from the person who serves this subpoena or from the person named in item 3. (Wat. Code, §§ 1081, 1083, 1084; Gov. Code, §§ 11450.40, 68070 et seq.; Code Civ. Proc., §§ 1986.5, 2065.)

5. If you object to the terms of this subpoena, you may file a motion for a protective order including a motion to quash with the hearing officer assigned to your case. Motions must be made within a reasonable period after receipt of the subpoena, and shall be made with written notice to all parties, with proof of service upon all parties attached. In response to your motion, the hearing officer may make an order quashing the subpoena entirely, modifying it, or directing compliance with it, or may make any order needed to protect the parties or witnesses from unreasonable or oppressive demands, including unreasonable violations of the right to privacy. (Gov. Code, § 11450.30.) (Send motions to: The State Water Resources Control Board, Office of Chief Counsel, P.O. Box 100, Sacramento, CA 95812-0100.)

**DISOBEDIENCE OF THIS SUBPOENA MAY CAUSE YOU TO BE LIABLE FOR CONTEMPT AND OTHER PENALTIES PROVIDED BY LAW**

(Wat. Code, §§ 1090-1097; Gov. Code, §§ 11460.20(b), 11455.10-11455.20.)

Dated: February 5, 2016



\_\_\_\_\_  
(signature)  
Name: Michael E. Vergara  
Title: Attorney for Byron-Bethany Irrig.

*Unless issued by an attorney pursuant to Code of Civil Procedure, Section 1985, subdivision (c), the original subpoena is embossed with this seal.*

*(See reverse for Endorsement on Subpoena, if used, and Proof of Service)*

**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:

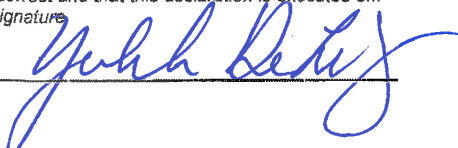
a. Person served (name):	b. Date of delivery:
c. Address where served:	d. Time of delivery:
e. Witness fees and mileage both ways (check one): (1) <input type="checkbox"/> were paid. Amount: \$ _____ (2) <input type="checkbox"/> were not paid. (3) <input type="checkbox"/> were tendered to the witness's 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:  
Served via electronic mail to the attached Service List per the Hearing Notice procedures.

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 2/5/16	at (place) Sacramento	, California	Signature 
<i>(For California sheriff, marshal, or constable use only)</i>			
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).)**

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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: Custodian of Records  
State Water Resources Control Board  
Office of Enforcement  
1001 I Street, 16th Floor  
Sacramento, CA 95815  
andrew.tauriainen@waterboards.ca.gov  
mlauffer@waterboards.ca.gov

- 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 CUSTODIAN OF RECORDS (CUSTODIAN), THE STATE WATER

5 RESOURCES CONTROL BOARD (SWRCB) ARE COMMANDED to produce the  
6 papers, books, records, and documents that are in CUSTODIAN and/or SWRCB's  
7 possession or under CUSTODIAN and/or SWRCB's control, as described below  
8 and/or SWRCB'S possession or under CUSTODIAN and/or SWRCB'S control, as  
9 described below and in connection with the above-titled proceeding, by 5:00 p.m.,  
10 February 16, 2016. Please send the documents to: Michael E. Vergara, Somach,  
11 Simmons & Dunn, 500 Capitol Mall, Suite 1000, Sacramento, California 95814. You  
12 may email electronic records to mvergara@somachlaw.com, or deliver all records via  
13 mail or courier on a suitable electronic storage device, or make electronic records  
14 available to download via the Internet.

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

20 A. DEFINITIONS

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

23 1. The terms STATE WATER RESOURCES CONTROL BOARD and  
24 "SWRCB" mean the State Water Resources Control Board, and anyone working on its  
25 behalf, including but not limited to, its officer, employees, agents, contractors,  
26 consultants, and representatives.

27 2. The term "CUSTODIAN" means Custodian of Records for the State Water  
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1 Resources Control Board, and any partners or shareholders or attorneys of the State  
2 Water Resources Control Board, Sacramento, California.

3 3. The terms "YOU" or "YOUR" mean "CUSTODIAN" and/or SWRCB.

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

11 5. The terms "RELATING TO" or "RELATE TO" shall be construed in the  
12 broadest possible sense and shall mean, without limitation, pertaining to, regarding,  
13 concerning, comprising, constituting, in connection with, reflecting, respecting, referring  
14 to, stating, describing, recording, noting, embodying, containing, mentioning, studying,  
15 analyzing, discussing or evaluating.

16 6. The terms "DOCUMENT" or "DOCUMENTS" encompass all documents,  
17 things, property and/or electronic materials within the scope of section 2031.010 of the  
18 California Code of Civil Procedure, and includes all writings as defined in section 250 of  
19 the California Evidence Code, and shall include, but not be limited to, any kind of written,  
20 graphic or recorded matter, however produced or reproduced, of any kind or description,  
21 whether sent or received or neither, including originals, copies and drafts and both sides  
22 thereof, and including but not limited to paper, books, letters, photographs, posters,  
23 objects, tangible things, correspondence, telegrams, cables, facsimiles, telex messages,  
24 confirmations, account statements, receipts, billing statements, memoranda, legal  
25 memoranda, notes, notations, work papers, transcripts, minutes, reports, and recordings  
26 of telephone or other conversations, or other conversations, or in conferences or other  
27 meetings, affidavits, statements, opinions, reports, studies, analysis, evaluations,  
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1 financial statements, prospectuses, circulars, certificates, press releases, annual reports,  
2 quarterly reports, magazine or newspaper articles, manuals, contracts, agreements,  
3 statistical records, journals, desk calendars, appointment books, diaries, lists,  
4 tabulations, summaries, sound recordings, computer printouts, data processing input  
5 and output, electronic mail, all records of communications recorded or encoded onto  
6 magnetic or computer disks, diskettes, audio and video tapes or any other media, all  
7 records kept by electronic, photographic, or mechanical means, and things similar to any  
8 of the foregoing, however denominated, dated, produced, generated or received. These  
9 terms include, but are not limited to, DOCUMENTS which may contain attorney-client  
10 communications and/or attorney work product.

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

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

21 B. INSTRUCTIONS

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

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

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

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

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

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

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

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

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

19 10 For data produced in spreadsheets or tables, include in the declaration or  
20 affidavit the identification of the fields and codes and a description of the information  
21 contained in each coded field.

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

1 12. YOU are required to produce all DOCUMENTS responsive to this  
2 Subpoena duces tecum, regardless of any claim of attorney-client communication and/or  
3 attorney work product privilege.

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

9 DOCUMENTS TO BE PRODUCED

10 This subpoena commands production of the original of each and every  
11 DOCUMENT now or at any time in the possession, custody or control of YOU without  
12 regard to the person(s) by whom or for whom said DOCUMENTS were prepared,  
13 including, but not limited to, all DOCUMENTS in the personal, business, or other files of  
14 all present or former officers, directors,

15 1. ALL DOCUMENTS, as defined in California Evidence Code section 250, in  
16 the possession, custody and/or control of the SWRCB, concerning, referring and/or  
17 relating to the SWRCB's authority to conduct criminal background checks on Byron-  
18 Bethany Irrigation District's (BBID) elected Board members and/or General Manager.

19 2. ALL DOCUMENTS, as defined in California Evidence Code section 250, in  
20 the possession, custody and/or control of the SWRCB reflecting requests made by the  
21 SWRCB and/or any of its agents, to any individual and/or entity to conduct a criminal  
22 background check on one or more of BBID's elected Board members and/or General  
23 Manager.

24 3. All DOCUMENTS, as defined in California Evidence Code section 250, in  
25 the possession, custody and/or control of the SWRCB, concerning, referring and/or  
26 relating to a criminal background check performed on one or more of BBID's elected  
27 Board members and/or General Manager.

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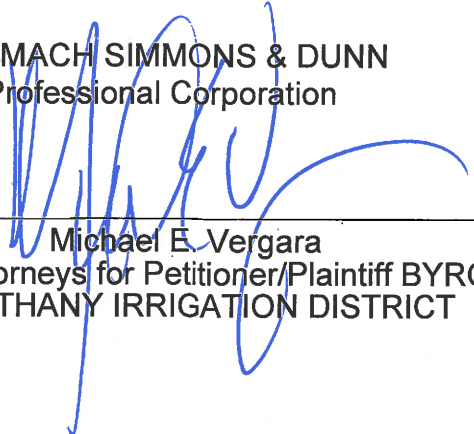
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4. ALL DOCUMENTS, as defined in California Evidence Code section 250, in the possession, custody and/or control of the SWRCB, concerning, referring and/or relating to documents and/or information produced to the SWRCB and/or any of its agents, in response to a criminal background check performed on one or more of BBID's elected Board members and/or General Manager.

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

Dated: February 5, 2016

SOMACH SIMMONS & DUNN  
A Professional Corporation

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

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. I recently learned that someone at the SWRCB requested a criminal  
16 background check on one or more of BBID's elected Board members.

17 6. Good cause exists for the production of the documents described in the  
18 Subpoena Duces Tecum and Addendum, served herewith to investigate the SWRCB's  
19 claimed authority to conduct criminal background checks on BBID's elected Board  
20 members and/or General Manager, to obtain copies of such requests, and to obtain any  
21 documents referring or relating to those requests.

22 I declare under penalty of perjury under the laws of the State of California that the  
23 foregoing is true and correct. Executed this 5th day of February 2016 in Sacramento,  
24 California.

25  
26 By: 

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