

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

Michael Lauffer, State Water Resources
 THE PEOPLE OF THE STATE OF CALIFORNIA, TO (name): 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, §§ 11450.20(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:

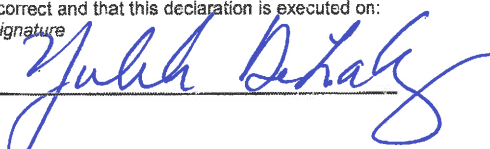
personally delivering a copy to the person served as follows:

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: 

(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).)

1 SOMACH SIMMONS & DUNN
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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 BEFORE THE
9 CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

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

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

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)

19 To: Michael Lauffer
20 Office of Chief Counsel
State Water Resources Control Board
21 1001 I Street, 22nd Floor
Sacramento, CA 95814
22 [Mlauffer@waterboards.ca.gov](mailto:mlauffer@waterboards.ca.gov)

- 23 You are served as an individual.
- 24 You are served as (or on behalf of) the person
25 doing business under the fictitious name
of
- 26 You are served on behalf of State Water Resources Control Board.
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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 **MICHAEL LAUFFER, Office of Chief Counsel(LAUFFER) AND THE STATE**
5 **WATER RESOURCES CONTROL BOARD (SWRCB) ARE COMMANDED** to produce
6 the papers, books, records, and documents that are in LAUFFER and/or SWRCB's
7 possession or under LAUFFER and/or SWRCB's control, as described below
8 and/or SWRCB'S possession or under LAUFFER 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 LAUFFER 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 LAUFFER 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 "LAUFFER" means Michael Lauffer, Office of Chief Counsel for
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1 the State Water Resources Control Board, and any partners or shareholders or attorneys
2 of the State Water Resources Control Board, Sacramento, California.

3 3. The terms "YOU" or "YOUR" mean "LAUFFER" 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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played and the transcript of the DOCUMENT.

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

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

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

8. DOCUMENTS provided in response to this subpoena should be complete and unredacted, submitted as found in YOUR files (e.g., DOCUMENTS that in their

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.

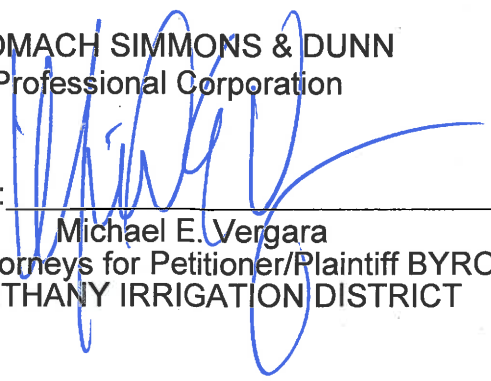
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4. ALL DOCUMENTS, as defined in California Evidence Code section 250, in the possession, custody and/or control of the SWRCB, concerning, referring and/or relating to documents and/or information produced to the SWRCB and/or any of its agents, in response 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
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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-
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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
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14 FROM OLD RIVER IN SAN JOAQUIN
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SWRCB Enforcement Action
ENF01951 and ENF01949
AFFIDAVIT

15 In the Matter of ENFORCEMENT ACTION
16 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

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.

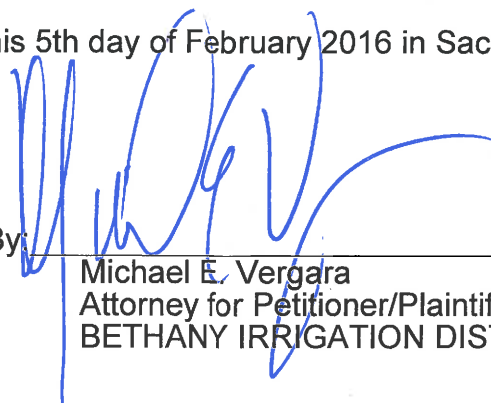
12 4. On July 20, 2015, the SWRCB issued the Administrative Civil Liability
13 (ACL) Complaint, alleging that BBID unlawfully diverted water from June 13, 2015 to
14 June 25, 2015.

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