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2 **DEPARTMENT OF WATER RESOURCES**

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7 **BEFORE THE**  
8 **CALIFORNIA STATE WATER RESOURCES CONTROL BOARD**

9 **HEARING IN THE MATTER OF CALIFORNIA**  
10 **DEPARTMENT OF WATER RESOURCES**  
11 **AND UNITED STATES BUREAU OF**  
12 **RECLAMATION REQUEST FOR A CHANGE**  
13 **IN POINT OF DIVERSION FOR CALIFORNIA**  
14 **WATER FIX**

**DWR'S CONSOLIDATED**  
**OPPOSITION TO:**  
**CITY OF ANTIOCH'S MOTION TO**  
**CONTINUE – MOTION FOR**  
**CONTINUANCE OF PHASE 2 AND**  
**RECONSIDERATION OF**  
**REOPENING OF PART 1; AND**  
**JOINDERS THERETO FILED BY**  
**LAND ET AL., SAN JOAQUIN**  
**COUNTY ET AL., CITY OF**  
**STOCKTON, SOUTH DELTA WATER**  
**AGENCY ET AL., CALIFORNIA**  
**SPORTFISHING PROTECTION**  
**ALLIANCE ET AL., FRIENDS OF THE**  
**RIVER ET AL., CONTRA COSTA**  
**COUNTY ET AL. AND**  
**SACRAMENTO REGIONAL COUNTY**  
**SANITATION DISTRICT**

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21 The California Department of Water Resources (DWR) submits this consolidated  
22 opposition to the repetitive motion by City of Antioch (Antioch) to continue Part 2 of the  
23 California WaterFix (CWF) water rights hearing and the joinders thereto by Local Agencies  
24 of the North Delta (LAND) et al., San Joaquin County et al., City of Stockton, South Delta  
25 Water Agency et al., California Sportfishing Protection Alliance (CSPA) et al., Friends of the  
26 River et al., Contra Costa County et al. and Sacramento Regional County Sanitation District  
27 (jointly Protestants). Protestants present no compelling case for departing from a hearing  
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1 structure selected by the Hearing Officers, which already accounts for the possibility of  
2 addressing new information, should it come to light through the course of Part 2.

3 **I. STATEMENT OF FACTS**

4 Antioch proposes a delay to Part 2 of the CWF water rights hearing based upon two  
5 arguments. First, Antioch argues that CWF H3+, the project description approved in the  
6 Biological Opinions issued for CWF, has not been presented in Part 1 of this hearing.  
7 Second, Antioch argues that DWR is modifying the project description based upon  
8 Antioch's reading of Scope of Work documents issued in the contracting process. Based  
9 upon these two arguments, Antioch requests both an immediate reopening of Part 1 of the  
10 hearing and an indefinite delay in the hearing.

11 Joinders were filed to Antioch's motion by LAND et al. and County of San Joaquin et  
12 al. on January 26, 2018, City of Stockton on January 28, 2018, South Delta Water Agency  
13 et al. on January 29, 2018, and Sacramento Regional County Sanitation District, CSPA et  
14 al., Contra Costa County et al. and Friends of the River et al. on January 30, 2018.

15 Joinders filed to Antioch's motion do not present arguments that are materially different  
16 than those discussed in Antioch's motion.

17 On July 27, 2017, the Hearing Officers ruled on a motion by the Sacramento Valley  
18 Water Users, and joined by other parties, denying its request to hold open Part 1 of the  
19 water rights hearing in order to evaluate alleged additional information on the project  
20 description included in the Biological Opinions. In this ruling, the Hearing Officers  
21 summarized the oft-repeated discussion regarding the degree of certainty and the ability of  
22 parties to meaningfully evaluate information and participate in this proceeding under the  
23 structure selected. Specifically, the Hearing Officers stated,

24 we recognize that the project description may be refined, and additional  
25 mitigation measures may be imposed, as a result of other regulatory processes,  
26 including the consultation process under the Endangered Species Act (ESA),  
27 the California Endangered Species Act (CESA) process, and the environmental  
28 review processes under NEPA and CEQA. To address this possibility, we  
stated that if there are any significant changes to the final CEQA document or  
issues that arise out of the ESA and CESA processes that have a material  
bearing on the issues addressed in the first part of the hearing, those issues

1           may be revisited in the second part of the hearing. (October 15, 2015 notice, p.  
11.)  
2 (July 27, 2017 Ruling, p. 2.) Arguments for delay due to the project description were also  
3 addressed, and many previous rulings summarized, in the August 31, 2017 Ruling.  
4 (August 31, 2017 Ruling, p.7.)

5           Similarly, on August 31, 2017, the Hearing Officers denied requests by parties to  
6 delay Part 2. The Hearing Officers concluded, “that a continuation of the hearing is not  
7 legally required, and that the public interest weighs in favor of proceeding with the hearing,”  
8 while considering many factors including that substantial information is available, the risks  
9 and costs of delay, and ability to reopen at a later date previous portions of the hearing if  
10 necessary. (*Id.*, p. 1.)

11           This ruling was made after assessing the merits of challenges to the completeness  
12 of the project description, and the environmental and biological permitting. In making their  
13 ruling, the Hearing Officers weighed many components and ultimately determined that  
14 postponing Part 2 in order to attain certainty about the various independent regulatory and  
15 decision making processes would not be efficient or effective. (See August 31, 2017  
16 Ruling, pp. 6-7.) The Hearing Officers succinctly summarized their position in stating:

17           the call for delay pending the completion of other regulatory processes  
18 highlights a fundamental dilemma that arises with any complex project.  
19 Pausing our process would not prevent other regulatory agencies from having  
20 to act without complete information. It is simply not possible for every agency  
to act with full knowledge of the terms and conditions that each other agency  
intends to impose. To some extent, the processes must be iterative. (August  
31, 2017 Ruling, p. 6.)

21           The Hearing Officers allowed for oral argument of these issues at the Part 2 pre-  
22 hearing conference, and set forth their summary of those arguments and rulings in writing  
23 on November 8, 2017. Again, addressing challenges to the project description, the Hearing  
24 Officers indicated that, “petitioners have not proposed to alter the physical parameters of  
25 the project or proposed any changes to operating criteria that cannot be addressed in Part  
26 2 of the hearing.” (November 8, 2017 Ruling, p. 1.). And in order to provide parties with  
27 additional opportunity to address the perceived changes, the Hearing Officers determined  
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1 that, “parties may cross-examine witnesses on Part 1 issues so long as the line of  
2 questioning directly relates to the witnesses’ direct testimony in Part 2. In addition, these  
3 parties may present rebuttal evidence within the scope of Part 1 if it is in direct response to  
4 another party’s Part 2 case-in-chief. ... To the extent possible, Part 1 issues that arise  
5 during Part 2 should be addressed within the scope of cross-examination or rebuttal.” (*Id.*  
6 p. 3.)

## 7 **II. ARGUMENT**

8 Antioch has failed to raise new issues or otherwise support with convincing evidence  
9 the argument that the hearing process set forth in multiple rulings by the Hearing Officers,  
10 specifically those on July 27, 2017, August 31, 2017 and November 8, 2017 require the  
11 reopening of Part 1 at this time. Nor has Antioch sufficiently supported its call for an  
12 indefinite delay to Part 2.

### 13 **A. Reopening Part 1 Based Upon CWF H3+ Unwarranted**

14 Arguments surrounding the project description were previously ruled upon by the  
15 Hearing Officers. Antioch’s motion is nothing more than a repetitive motion with no new  
16 evidence to support it. In its motion, Antioch argues that the CWF H3+ project description  
17 as set forth in the Petitioners’ case-in-chief is different enough from Part 1 evidence to  
18 require an immediate reopening. This ignores the Hearing Officers’ July 27, 2017 Ruling  
19 where SVWU attempted to argue identical facts when it requested reopening Part 1 based  
20 upon the Biological Opinions. As stated in Petitioners’ Part 2 testimony, the CWF H3+ is  
21 the project description permitted in the Biological Opinions issued for CWF. Thus, Antioch  
22 has simply recycled an issue that was raised nearly six months ago and previously ruled  
23 upon by the Hearing Officers in July 2017, then again in August 2017, and then again in  
24 November 2017.

25 The hearing structure selected by the Hearing Officers gives Antioch ample  
26 opportunity to assess CWF H3+, present its own case-in-chief evidence based upon CWF  
27 H3+, cross-examine Petitioners’ witnesses based upon CWF H3+, and develop rebuttal  
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1 testimony based upon CWF H3+. The Biological Opinions have been available for over six  
2 months and are the basis of CWF H3+. Thus, Antioch has not brought to light any “new”  
3 information at this time. In fact, Antioch has had roughly the same opportunity to assess  
4 the Biological Opinions as Petitioners. To the extent that Petitioners present CWF H3+ in a  
5 way that strikes Antioch as new, it has the option to prepare cross-examination and  
6 rebuttal.

7 **B. Indefinitely Delaying Part 2 Based Upon a Staged Construction**  
8 **Approach is Unnecessary**

9 As previously argued by many parties in the second half of 2017, Antioch requests  
10 an indefinite delay in Part 2 of the hearing. Again, this was considered and ruled upon by  
11 the Hearing Officers in their August 31, 2017 Ruling. In this case, Antioch argues that  
12 DWR has selected a “new” project to pursue based upon a scope of work description in the  
13 construction contract bidding process. DWR has not altered its water rights petition. DWR  
14 continues to seek a permit that will allow for the addition of three 3,000 cfs points of  
15 diversion on the Sacramento River at locations previously set forth in its petition. Thus,  
16 Antioch’s motion is sufficiently similar to previous motions to indefinitely delay this hearing  
17 such that it falls within prior rulings, the most recent of which is November 8, 2017.

18 Should additional information become available regarding the project description,  
19 Antioch has the ability to cross-examine Petitioners’ witnesses with authenticated copies of  
20 that information. In the circumstance that such cross-examination raises issues as to  
21 matters considered in Part 1, the Hearing Officers have indicated Antioch may address  
22 those in Part 2 rebuttal, and ultimately the Hearing Officers indicated they will consider  
23 reopening Part 1 at a later time.

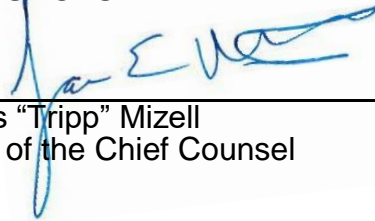
24 **III. CONCLUSION**

25 For the reasons set forth above, Antioch’s motion and joinders by LAND et al, San  
26 Joaquin County et al., City of Stockton, South Delta Water Agency et al., CSPA et al.,  
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1 Friends of the River et al., Contra Costa County et al. and Sacramento Regional County  
2 Sanitation District are repetitive and should be denied in their entirety.

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4 Dated: January 30, 2018

5 CALIFORNIA DEPARTMENT OF WATER  
6 RESOURCES



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8 James "Tripp" Mizell  
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