

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

ATTORNEY OR PARTY WITHOUT ATTORNEY REQUESTING SUBPOENA (name, address, and telephone no.): Andrew Tauriainen, SBN 214837 SWRCB Office of Enforcement 1001 I Street, 16th Floor Sacramento, CA 95814 (916) 341-5445	FOR STATE WATER BOARD USE ONLY
REPRESENTING: Division of Water Rights Prosecution Team	
TITLE OF THE PROCEEDING: <p style="text-align: center;"><i>In re: the Matter of Draft Cease and Desist Order Against The West Side Irrigation District</i></p>	
<input type="checkbox"/> SUBPOENA	<input type="checkbox"/> RE HEARING
<input checked="" type="checkbox"/> SUBPOENA DUCES TECUM	<input type="checkbox"/> RE DEPOSITION

THE PEOPLE OF THE STATE OF CALIFORNIA, TO (name): **The West Side Irrigation District**

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: November 13, 2015	Time: 12:00 noon
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: Andrew Tauriainen	b. Telephone number: (916) 341-5445
-----------------------------------	--

(Gov. Code, § 11450.20(a); Code Civ. Proc., § 1985.2.)

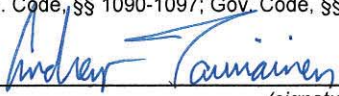
4. WITNESS FEES: You are entitled to witness fees and mileage actually traveled, both ways, as provided by law. Request them from the person who serves this subpoena or from the person named in item 3. (Wat. Code, §§ 1081, 1083, 1084; Gov. Code, §§ 11450.40, 68070 et seq.; Code Civ. Proc., §§ 1986.5, 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: 10/29/2015



 (signature)

Name: Andrew Tauriainen
 Title: Attorney for Prosecution Team



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 in accordance with 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 10/29/2015 at (place) Sacramento, California Signature *[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).)

**SERVICE LIST OF PARTICIPANTS
WEST SIDE IRRIGATION DISTRICT
CEASE AND DESIST ORDER HEARING
(October 8, 2015)**

<p>Division of Water Rights Prosecution Team Andrew Tauriainen, Attorney III SWRCB Office of Enforcement 1001 I Street, 16th Floor Sacramento, CA 95814 andrew.tauriainen@waterboards.ca.gov</p>	<p>West Side Irrigation District Jeanne M. Zolezzi Karna Harrigfeld Janelle Krattiger Herum\Crabtree\Suntag 5757 Pacific Ave., Suite 222 Stockton, CA 95207 jzolezzi@herumcrabtree.com kharrigfeld@herumcrabtree.com jkrattiger@herumcrabtree.com</p>
<p>State Water Contractors Stefani Morris, Attorney 1121 L Street, Suite 1050 Sacramento, CA 95814 smorris@swc.org</p>	<p>Westlands Water District Daniel O'Hanlon Rebecca Akroyd Kronick Moskovitz Tiedemann & Girard 400 Capitol Mall, 27th Floor Sacramento, CA 95814 dohanlon@kmtg.com rakroyd@kmtg.com Philip Williams of Westlands Water District pwilliams@westlandswater.org</p>
<p>South Delta Water Agency John Herrick, Esq. 4255 Pacific Ave., Suite 2 Stockton, CA 95207 jherrlaw@aol.com</p>	<p>Central Delta Water Agency Jennifer Spaletta Spaletta Law PC PO Box 2660 Lodi, CA 95241 jennifer@spalettalaw.com Dante Nomellini and Dante Nomellini, Jr. Nomellini, Grilli & McDaniel ngmplcs@pacbell.net dantejr@pacbell.net</p>
<p>City and County of San Francisco Johnathan Knapp Office of the City Attorney 1390 Market Street, Suite 418 San Francisco, CA 94102 jonathan.knapp@sfgov.org</p>	<p>San Joaquin Tributaries Authority Valeri Kincaid O'Laughlin & Paris LLP 2617 K Street, Suite 100 Sacramento, CA 95814 vkincaid@olaughlinparis.com</p>
<p>California Department of Water Resources Robin McGinnis, Attorney PO Box 942836 Sacramento, CA 94236-0001 robin.mcginis@water.ca.gov</p>	<p>Byron Bethany Irrigation District Daniel Kelly Somach Simmons & Dunn 500 Capitol Mall, Suite 1000, Sacramento, CA 95814 dkelly@somachlaw.com</p>

1 ANDREW TAURIAINEN, SBN 214837
2 OFFICE OF ENFORCEMENT
3 STATE WATER RESOURCES CONTROL BOARD
4 1001 I Street, 16th Floor
5 Sacramento, California 95812-0100
6 Telephone: (916) 341-5445
7 Facsimile: (916) 341-5896
8 E-mail: andrew.tauriainen@waterboards.ca.gov

9 Attorney for the Division of Water Rights Prosecution Team

10 BEFORE THE STATE WATER RESOURCES CONTROL BOARD

11 STATE OF CALIFORNIA

12 In the Matter of:
13 DRAFT CEASE AND DESIST ORDER
14 AGAINST THE WEST SIDE IRRIGATION
15 DISTRICT

16) ADDENDUM TO SUBPOENA *DUCES*
17) *TECUM*

18) California Water Code § 1080; California
19) Government Code § 11450.10; Cal. Code
20) Regs., tit. 23, § 649.6(a)
21)
22)
23)

24 TO: THE WEST SIDE IRRIGATION DISTRICT
25 **Jeanne M. Zolezzi**
26 **Karna Harrigfeld**
27 **Janelle Krattiger**
28 **Herum\Crabtree\Suntag**
29 **5757 Pacific Ave., Suite 222**
Stockton, CA 95207
jzolezzi@herumcrabtree.com
kharrigfeld@herumcrabtree.com
jkrattiger@herumcrabtree.com

NOTICE:

- () You are served as an individual.
- () You are served as (or on behalf of) the person
doing business under the fictitious name
of _____.
- (X) You are served on behalf of: The West Side Irrigation District

1 Pursuant to California Water Code section 1080, California Government Code section 11450.10,
2 and California Code of Regulations, title 23, section 649.6, subdivision (a):

3 **I. SUBPOENA FOR RECORDS AND DOCUMENTS**

4 **THE WEST SIDE IRRIGATION DISTRICT (WSID) IS COMMANDED** to produce the
5 papers, books, records, and documents that are in WSID's possession or under WSID's control,
6 as described below and in connection with the above-titled proceeding, by **noon, November 13,**
7 **2015.** Please send the documents to: Andrew Tauriainen, Staff Counsel III, Office of
8 Enforcement, State Water Resources Control Board, 1001 I Street, 16th Floor, Sacramento,
9 California 95814. You may email electronic records to Andrew.Tauriainen@waterboards.ca.gov,
10 or deliver all records via mail or courier on a suitable electronic storage device, or make electronic
11 records available to download via the Internet.

12 WSID may seek the advice of an attorney in any matter connected with this subpoena,
13 and should consult its attorney promptly so that any problems concerning the production of
14 documents may be resolved within the time required by this Subpoena. Failure to comply with the
15 commands of this Subpoena will subject WSID to the proceedings and penalties provided by law.

16 **A. DEFINITIONS**

17 The capitalized terms listed below, as used in this Addendum to Subpoena *duces tecum*,
18 are defined as follows:

19 1. The terms "THE WEST SIDE IRRIGATION DISTRICT" "WEST SIDE" and "WSID" mean
20 The West Side Irrigation District, an Irrigation District formed pursuant to Division 11 of the
21 California Water Code, and anyone working on its behalf, including but not limited to, its officers,
22 employees, agents, contractors, consultants, and representatives.

23 2. The terms "YOU" or "YOUR" mean THE WEST SIDE IRRIGATION DISTRICT.

24 3. The terms "COMMUNICATION" or "COMMUNICATIONS" mean any occurrence whereby
25 data, expressions, facts, opinions, thoughts, or other information of any kind is transmitted in any
26 form including, but not limited to, any conversation, correspondence, discussion, electronic mail,
27 meeting, memorandum, message, note, or posting or other display on the Internet or the World
28 Wide Web.

29 4. The terms "RELATING TO" or "RELATE TO" shall be construed in the broadest possible

1 sense and shall mean, without limitation, pertaining to, regarding, concerning, comprising,
2 constituting, in connection with, reflecting, respecting, referring to, stating, describing, recording,
3 noting, embodying, containing, mentioning, studying, analyzing, discussing or evaluating.

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

22 6. The term "STATE BOARD" means the State Water Resources Control Board.

23 7. The terms "CITY OF TRACY" and "TRACY" mean the City of Tracy in San Joaquin
24 County, California, and anyone working on its behalf, including but not limited to, its City Council,
25 officers, employees, agents, contractors, consultants, and representatives.

26 8. The term "WASTEWATER" means wastewater treated at and discharged into Old River in
27 San Joaquin County from the CITY OF TRACY's wastewater treatment plant (WWTP) operated
28 pursuant to Central Valley Regional Water Quality Control Board Order R5-2012-0115-01
29 (NPDES No. CA0079154).

1 9. The terms "DIVERT" or "DIVERSION" mean any water taken by WSID from Old River in
2 San Joaquin County at the Point of Diversion specified in Water Right License 1381 (Application
3 301), or from any point of diversion on any body of water, under any claim of right and through
4 any means.

5 10. The term "DISCHARGE" means the tail water or runoff collected from irrigated fields within
6 WSID or adjoining properties and discharged into the Old River in San Joaquin County or into any
7 connected body of water (e.g., the Bethany Drain), except as specifically referring to the
8 discharge of WASTEWATER from the CITY OF TRACY's WWTP.

9 11. The terms "AND" and "OR" have both conjunctive and disjunctive meanings.

10 12. The term "DRAFT CDO" means the Draft Cease and Desist Order Regarding
11 Unauthorized Diversions or Threatened Unauthorized Diversions of Water from Old River in San
12 Joaquin County (Enforcement Action ENF01949) issued against WSID by the Assistant Deputy
13 Director, Division of Water Rights, on July 16, 2015.¹

14 13. The term "2014 AGREEMENT" means the Wastewater Revocable License Agreement
15 between the CITY OF TRACY and WSID authorized by the CITY OF TRACY on or around May 6,
16 2014, further described in paragraph 8 of the DRAFT CDO.

17 14. The term "2015 AGREEMENT" means the Wastewater Revocable License Agreement
18 between the CITY OF TRACY and WSID authorized by the CITY OF TRACY on or around March
19 3, 2015, further described in paragraph 14 of the DRAFT CDO.

20 15. All references to a "YEAR" refer to a calendar year.

21 16. Definitions for industry or trade terms contained herein are to be construed broadly.
22 Where the industry or trade definition set forth herein does not coincide precisely with YOUR
23 definition, the question, inquiry or production request should be responded to or answered by
24 using the definition that YOU apply and/or recognize in YOUR usage of the term, and YOUR
25 should further document YOUR definition in the response. Non-industry or non-trade definitions
26

27 ¹ Available at

28 http://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/westside_irrigation_district/docs/wsid_draft_cdo_071615.pdf.

1 should be applied as defined herein.

2 **B. INSTRUCTIONS**

3 1. Unless otherwise indicated, the time period covered by this subpoena is from **July 1, 2014**
4 **to up to five days before YOUR full compliance with this subpoena.** Any documents
5 RELATING TO this time period are to be produced, regardless of whether the documents came
6 into existence before or during this period.

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

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

1 both the electronic form in which the DOCUMENT was created and the original print-out should
2 be produced.

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

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

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

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

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

1 condition were stapled, clipped, attached as a "post-it," or otherwise fastened together shall be
2 produced in the same form).

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

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

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

25 12. If any DOCUMENTS are withheld from production based on a claim of privilege, provide a
26 log under oath by the affiant or declarant, which includes each DOCUMENT'S authors,
27 addressees, date, a description of each DOCUMENT, all recipients of the original, and any
28 copies, and the request(s) of this subpoena to which the DOCUMENT is responsive. Attachments
29 to a DOCUMENT shall be identified as such and entered separately on the log. For each author,

1 addressee, and recipient, state the person's full name, title, and employer or firm, and denote all
2 attorneys with an asterisk. To the extent the claim of privilege relates to any employee, agent,
3 representative, or outside attorney, identify the person's name, division, and organization. Include
4 the number of pages of each DOCUMENT and in the description of the DOCUMENT, provide
5 sufficient information to identify its general subject matter without revealing information over which
6 a privilege is claimed. For each DOCUMENT withheld under a claim that it constitutes or contains
7 attorney work product, also state whether YOU assert that the DOCUMENT was prepared in
8 anticipation of litigation or for trial and, if so, identify the anticipated litigation or trial on which the
9 assertion is based. Submit all non-privileged portions of any responsive DOCUMENT (including
10 non-privileged or redactable attachments) for which a claim of privilege is asserted (except where
11 the only non-privileged information has already been produced in response to this instruction),
12 noting where redactions in the DOCUMENT have been made. DOCUMENTS authored by outside
13 lawyers representing YOU that were not directly or indirectly furnished to YOU or any third-party,
14 such as internal law firm memoranda, may be omitted from the log.

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

19 **C. DOCUMENTS TO BE PRODUCED**

20 This subpoena commands production of the original of each and every DOCUMENT now
21 or at any time in the possession, custody or control of YOU without regard to the person(s) by
22 whom or for whom said DOCUMENTS were prepared, including, but not limited to, all
23 DOCUMENTS in the personal, business, or other files of all present or former officers, directors,
24 trustees, agents, employees, attorneys, and accountants of WSID, which RELATES TO any of
25 the following subjects:

26 1. All DOCUMENTS and COMMUNICATIONS RELATING TO the 2014
27 AGREEMENT.

28 2. All DOCUMENTS and COMMUNICATIONS RELATING TO WSID'S
29 Commencement Notice or Commencement Notices pursuant to the 2014 AGREEMENT, as the

1 term "Commencement Notice" is defined in the 2014 AGREEMENT.

2 3. All DOCUMENTS and COMMUNICATIONS RELATING TO the coordination of
3 wastewater amounts available for diversion on a weekly basis between the CITY and WSID, and
4 the CITY's monthly reports to WSID regarding the amount discharged pursuant the 2014
5 AGREEMENT.

6 4. All DOCUMENTS and COMMUNICATIONS RELATING TO the 2015
7 AGREEMENT.

8 5. All DOCUMENTS and COMMUNICATIONS RELATING TO WSID'S
9 Commencement Notice or Commencement Notices pursuant to the 2015 AGREEMENT, as the
10 term "Commencement Notice" is defined in the 2015 AGREEMENT.

11 6. All DOCUMENTS and COMMUNICATIONS RELATING TO the coordination of
12 wastewater amounts available for diversion on a weekly basis between the CITY and WSID, and
13 the CITY's monthly reports to WSID regarding the amount discharged pursuant the 2015
14 AGREEMENT.

15 7. All DOCUMENTS and COMMUNICATIONS RELATING TO the daily and monthly
16 amounts of water DIVERTED and the claimed basis of right allowing for the DIVERIONS from
17 July 1, 2014, through October 31, 2014, and April 1, 2015, through October 31, 2015, including
18 the average rate of DIVERSION for each day, the total amount of water DIVERTED for each day,
19 the total amount of water DIVERTED in each month, the maximum rate of DIVERSION for each
20 month, and the method or methods used to determine the DIVERSION amounts reported.

21 8. All DOCUMENTS and COMMUNICATIONS RELATING TO the identification and
22 location of the point of DIVERSION (POD) and place of use for the water right being claimed, the
23 purpose of use, and the place of use being served with acreage and crop type, if applicable,
24 including: all DOCUMENTS and COMMUNICATIONS supporting the type of water right claimed,
25 including the property patent date and patent map, if riparian right; and, if claiming a pre-1914
26 right, all DOCUMENTS AND COMMUNICATIONS supporting the claimed pre-1914 right,
27 including, but not limited to, a copy of the notice filed with the county, a copy of property deed,
28 and all other information supporting the pre-1914 right pertaining to initial diversion and continued
29 beneficial use of water.

1 9. All DOCUMENTS and COMMUNICATIONS RELATING TO WSID's system or
2 systems for collecting tailwater or other runoff from property within WSID, including the
3 identification of any drainage canals (e.g. Bethany Drain) used to convey any irrigation tailwater or
4 other runoff from property within WSID.

5 10. All DOCUMENTS and COMMUNICATIONS RELATING TO the identification and
6 locations of all lands, whether within WSID or outside of WSID's boundaries, that contribute
7 irrigation tailwater or other runoff into any drainage canals (e.g. Bethany Drain) used to convey
8 any irrigation tailwater or other runoff from property within WSID.

9 11. All DOCUMENTS and COMMUNICATIONS RELATING TO the identification and
10 location of all the point(s) of DISCHARGE of WSID's tile drains or any other irrigation tailwater or
11 runoff collection means into any body of water including, but not limited to, the Old River Intake
12 Channel above WSID's Pumping Plant, Old River, and Tom Paine Slough.

13 12. All DOCUMENTS and COMMUNICATIONS RELATING TO the daily DISCHARGE
14 quantities at each point of DISCHARGE identified in response to Paragraph I.C.11, from May 1,
15 2014, through October 31, 2014, and April 1, 2015, through October 31, 2015, including the
16 relative DISCHARGE quantities at each point of DISCHARGE arising from irrigation tailwater or
17 other runoff collected from property within WSID and that collected from lands outside of WSID's
18 boundaries.


19 13. All DOCUMENTS and COMMUNICATIONS RELATING TO the method or
20 methods used to determine the quantity of DISCHARGE at each point of DISCHARGE identified
21 in response to Paragraph I.C.11, the method or methods used to determine the relative
22 DISCHARGE quantities at each point of DISCHARGE arising from irrigation tailwater or other
23 runoff collected from property within WSID and that collected from lands outside of WSID's
24 boundaries.

25 14. All DOCUMENTS and COMMUNICATIONS RELATING TO the DIVERSION
26 amounts and corresponding DISCHARGE amounts during any period during either 2014 or 2015
27 in which WSID claims to have DIVERTED or to be DIVERTING DISCHARGE water, including the
28 method or methods used to determine the quantity of DISCHARGE and DIVERSION during such
29 periods.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

15. All DOCUMENTS and COMMUNICATIONS RELATING TO any contracts or agreements that concern supplying water to WSID in effect between May 1, 2014, and October 31, 2015, in addition to the 2014 Agreement and 2015 Agreement.

Date: 10/24/2015



Andrew Tauriainen
Attorney for the Prosecution Team
Office of Enforcement
State Water Resources Control Board

1 16, 2015. The Hearing Officer held a Pre-Hearing Conference on October 19, 2015, during which
2 she indicated that she will consider various requests by a number of parties to reschedule the
3 hearing and a evidentiary submittal deadlines. On October 23, 2015, the Hearing Officer issued a
4 letter postponing the hearing until January 11, 2016, and postponing the evidence and witness
5 submittal deadlines to dates to be determined, likely beginning in late November, 2015.

6 4. On July 17, 2015, the Deputy Director for Water Rights issued Order WR 2015-
7 0024-DWR to WSID, pursuant to California Code of Regulations, title 23, section 879, subdivision
8 (c). On August 7, 2015, the Deputy Director for Water Rights issued Revised Order WR 2015-
9 0024-DWR (Revised Information Order), pursuant to the same authority, and ordered WSID to
10 provide information for water diversions that are conducted under any basis of right. Section 879,
11 subdivision (c)(1)(D), authorizes the Deputy Director to issue orders requiring additional
12 information in various circumstances, including upon receipt of information that indicates actual or
13 threatened unlawful diversions of water by any right holder. The Revised Information Order finds,
14 based on information including communications from the City of Tracy, a May 18, 2015,
15 inspection by the Office of the Delta Watermaster, and communications from WSID's counsel,
16 that WSID is or may be diverting water in excess of that available to serve WSID's License 1381,
17 without a valid basis of right, by diverting wastewater discharged into Old River by the City of
18 Tracy, and/or by diverting water at the WSID pump station in excess of any captured tail-water
19 runoff from WSID's Bethany Drain.

20 5. The Revised Information Order directs WSID to provide the following information
21 for water diversions that are conducted under any basis of right:

- 22 a. The monthly amounts of water diverted and the basis of right allowing for the
23 diversions for each month beginning July 2014 through October 2014, and April
24 2015 through July 2015, and the anticipated monthly amount of water to be
25 diverted and the basis of right each month in 2015 beginning with August 2015. For
26 direct diversion, the diversion information shall include the total amount of water
27 diverted in the month and the maximum rate of diversion for each month. For the
28 diversion information, identify the method used to determine the diversion amounts
29

availability@waterboards.ca.gov.

- 1
- 2
- 3 b. Identification and location of the point of diversion (POD) and place of use for
- 4 water right being claimed, the purpose of use, and the place of use being served
- 5 with acreage and crop type, if applicable. All documentation supporting the type of
- 6 water right claimed, including the property patent date and patent map, if riparian
- 7 right. If pre-1914 right is claimed, a copy of notice filed with the county, copy of
- 8 property deed, and all other information supporting the pre-1914 right pertaining to
- 9 initial diversion and continued beneficial use of water. This information is an
- 10 attachment to the report filed in (A) and must be submitted by email to: swrcb-
- 11 drought-availability@waterboards.ca.gov
- 12 c. The daily diversion amount for each day starting with August 1, 2015, shall be
- 13 submitted by the fifth (5th) day of each succeeding month until the drought
- 14 proclamations and orders described beginning in Paragraph 1 above are
- 15 rescinded. This information shall be submitted as an electronic spreadsheet via
- 16 email to: swrcb-drought-availability@waterboards.ca.gov
- 17 d. Identification and location of all the point(s) of discharge of WSID's tile drains into
- 18 the Old River Intake Channel above WSID's Pumping Plant, Old River, and Tom
- 19 Paine Slough, including the daily discharge amounts at each location for each
- 20 month beginning July 2014 through July 2015. For each point of discharge, identify
- 21 the method used to determine the discharges relied upon to support the
- 22 corresponding diversion amounts. This information shall be submitted as an
- 23 electronic attachment via email to: swrcb drought-availability@waterboards.ca.gov.
- 24 WSID shall also submit, in the same format and to the same email address, the
- 25 daily discharge amounts for each point of discharge for each month beginning with
- 26 August 2015 by the fifth (5th) day of each succeeding month until the drought
- 27 proclamations and orders described beginning in Paragraph 1 above are
- 28 rescinded.
- 29

1 6. On September 4, 2015, WSID submitted a Petition for Reconsideration of the
2 Revised Information Order. As of the date of this Affidavit, the Petition remains pending before the
3 State Water Resources Control Board.

4 7. WSID has not produced any documents or information in response to the Revised
5 Information Order, or concerning its diversions of water and the issues outlined in the draft CDO.

6 8. Good cause exists for the production of the documents described in the Subpoena
7 *Duces Tecum* and Addendum, served herewith, because the documents requested concern the
8 issues outlined in the CDO and are required in order to determine whether WSID is violating or
9 threatening to violate Water Code section 1052 and illegally diverting water. The requested
10 documents specifically concern WSID's diversions of City of Tracy wastewater, and its diversions
11 of tail-water runoff discharged from the Bethany Drain, which are relevant to whether WSID is or
12 may be diverting water in excess of that available to serve WSID's License 1381, without a valid
13 basis of right.

14 9. The documents and information requested in the Subpoena *Duces Tecum* and
15 Addendum, served herewith, are within WSID's possession and/or within WSID's control, as they
16 concern WSID's diversions of water, including the basis of right for the diversions and the
17 amounts diverted.

18 I declare under penalty of perjury under the laws of the State of California that the foregoing is
19 true and correct.

20
21 Date: 10/29/2015

22 
23 Andrew Tauriainen
24 Office of Enforcement
25 State Water Resources Control Board