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SECRETARY FOR  
ENVIRONMENTAL PROTECTION

## State Water Resources Control Board

September 11, 2017

### ***By E-Mail***

Mr. Patrick Porgans  
Porgans/Associates  
P.O. Box 60940  
Sacramento, CA 95860  
pp@planetarysolutionaries.org

### **RESPONSE TO PUBLIC RECORDS ACT RECQUEST**

Dear Mr. Porgans:

This letter follows up on your request, a complete copy of which was received on September 1, 2017, pursuant to the California Public Records Act (PRA), Government Code § 6250 et seq., for copies of:

1. "Ex parte correspondence, since the Change Petition was submitted on August 26, 2015, between the Department of Water Resources and [State Water Resources Control] Board staff about modeling for the [State Water Resources Control] Board for determination of 'appropriate Delta flow criteria' under Water Code section 85086.
2. "Any ex parte correspondence since the Change Petition was submitted on August 26, 2015, between the Department of Water Resources and [State Water Resources Control] Board staff about the Boundary 1 and Boundary 2 scenarios that were introduced by the Department of Water Resources in modeling for Part 1 of the WaterFix hearing.
3. "Any ex parte correspondence, since the Change Petition was submitted on August 26, 2015, regarding scheduling of Part 1 or Part 2 of the WaterFix Change Petition hearing."

Your letter cited to a memorandum concerning the prohibition against ex parte communications in adjudicative proceedings governed by the Administrative Procedure Act (APA). Please note that the APA prohibits direct or indirect communications to the hearing officer and other State Water Resources Control Board Members regarding any substantive or controversial procedural issue in an adjudicative proceeding without notice and opportunity for all parties to participate in the communication. The APA does not prohibit ex parte, or "off-the-record" communications concerning non-controversial, procedural issues. (Gov. Code, §§ 1143010, 11430.20) Nonetheless, the WaterFix hearing team staff interpret your Public Records Act request to include all communications between the Department of Water Resources (DWR) and the State Water Resources Control Board (State Water Board) concerning the WaterFix Project since August 26, 2015, that were not copied to the Service List for the hearing on the water right petition for the WaterFix Project, regardless of whether the communications constituted ex parte communications prohibited by the APA.

FELICIA MARCUS, CHAIR | EILEEN SOBECK, EXECUTIVE DIRECTOR

Staff searched the WaterFix Hearing Project email inbox for responsive documents, and identified a small number of emails to and from DWR that were not copied to the Service List or otherwise disclosed to the public. These communications were procedural and non-substantive and staff do not consider them to be prohibited *ex parte* communications.

Copies of these emails are attached to this letter. Staff is continuing to search individual email accounts for any additional responsive documents that may be in the State Water Board's possession. We will notify you if we identify any additional responsive documents.

If have any further questions, please contact me at [kyle.ochendusko@waterboards.ca.gov](mailto:kyle.ochendusko@waterboards.ca.gov) or (916) 319-9142.

Sincerely,

A handwritten signature in blue ink, appearing to read 'K. Ochendusko', written over a horizontal line.

Kyle Ochendusko, P.E.  
Senior Water Resource Control Engineer

Attachments: PRA Request from Porgans/Associates  
Emails dated January 27, 2016; March 25, 2016; October 24, 2016;  
May 18, 2017; and July 10, 2017

cc: Hearing Officers Marcus and Doduc  
Service List dated August 11, 2017  
WaterFix Hearing Team

## Baker, Jason@Waterboards

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**From:** German, Valentina@DWR  
**Sent:** Wednesday, January 27, 2016 1:27 PM  
**To:** McCue, Jean@Waterboards  
**Cc:** CWFhearing  
**Subject:** RE: Question

Thank you! I appreciate your help and a quick reply.

Respectfully,

**Tina German**

Legal Secretary  
Office of the Chief Counsel  
Department of Water Resources  
1416 Ninth Street, Suite 1118  
Sacramento, CA 95814  
(916) 653-5966  
[Valentina.German@water.ca.gov](mailto:Valentina.German@water.ca.gov)

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**From:** McCue, Jean@Waterboards  
**Sent:** Wednesday, January 27, 2016 1:25 PM  
**To:** German, Valentina@DWR  
**Cc:** CWFhearing  
**Subject:** RE: Question

Good Afternoon!

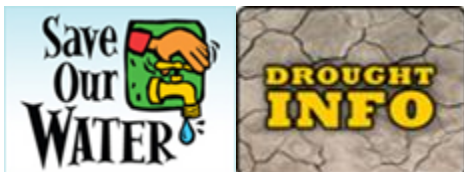
Yes. Staff exhibits for the California WaterFix hearing are posted on the exhibits page, which is at the following link: [http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/california\\_waterfix/exhibits/index.shtml](http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/exhibits/index.shtml)

There is a link to the exhibits page under the "Water Right Change" tab at:  
[http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/california\\_waterfix/](http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/)

Sincerely,

*Jean McCue*

Water Resource Control Engineer  
Division of Water Rights Hearings Unit  
State Water Resources Control Board  
1001 I Street, Sacramento, CA 95814  
Ph.: 916-341-5351  
Fax: 916-341-5400



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**From:** German, Valentina@DWR  
**Sent:** Wednesday, January 27, 2016 12:50 PM  
**To:** CWFhearing  
**Subject:** Question

Good afternoon,

I would like to obtain copies of the Staff Exhibits referenced in the Notice of Petition and Notice of Public Hearing (see attached).

Are they available on line? I looked to the SWRCB's website, couldn't find it. Please assist.

Thank you.

Respectfully,

**Tina German**  
Legal Secretary  
Office of the Chief Counsel  
Department of Water Resources  
1416 Ninth Street, Suite 1118  
Sacramento, CA 95814  
(916) 653-5966  
[Valentina.German@water.ca.gov](mailto:Valentina.German@water.ca.gov)

## **Baker, Jason@Waterboards**

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**From:** Ochendusko, Kyle@Waterboards on behalf of CWFhearing  
**Sent:** Friday, March 25, 2016 5:30 PM  
**To:** amy.aufdemberge@sol.doi.gov; Mizell, James@DWR  
**Cc:** Buckman, Michael@Waterboards; CWFhearing  
**Subject:** Electronic Service Procedures - CA WaterFix

Ms. Aufdemberge and Mr. Mizell,

The **noon, March 30, 2016** deadline for receipt and service of petitioners' case in chief, including witnesses' proposed testimony, witness qualifications, exhibits, list of exhibits, and a statement of service for Part IA of the change petition hearing is less than a week away. Depending on how large the documents are and how many you submit, it may take a long time for you to upload them to the FTP site. Therefore, I encourage you to test the FTP site and start uploading exhibits well in advance of the noon, March 30, 2016 deadline to ensure there are no problems using the FTP site. The instructions for "Electronic Service Procedures" begin on page 7 of the [hearing officers' March 4, 2016 ruling](#).

**Please be sure to follow the file naming convention beginning on page 9 of the [March 4<sup>th</sup> ruling](#) for all files uploaded to the FTP site.** Each electronically submitted exhibit must be saved as a separate PDF file. The parties should apply the following standard file naming convention for electronic exhibits:

1. Each file name should begin with an acronym for the party's name followed by an underscore "\_" and then the exhibit number.
2. The file name should be short and should not include any spaces.
3. The file name should not exceed 10 to 15 characters.
4. The Exhibit Identification Index shall list the exhibit number, the associated exhibit description, and the file name for each exhibit.
5. An example of the file naming syntax can be found on page 10 of the March 4<sup>th</sup> ruling.

Other parties and the public will not be able to view your documents until after the noon, March 30, 2016 deadline. I want to reiterate that after the noon deadline you will not be able to delete or replace any of the documents on the FTP site, but you will still be able to upload documents. If any exhibits are uploaded after the noon deadline on March 30th, however, they may not be admitted by the hearing officers. Please let Mr. Michael Buckman ([michael.buckman@waterboards.ca.gov](mailto:michael.buckman@waterboards.ca.gov) or 916-341-5448) or me know as soon as possible if you have any questions or problems with the FTP site.

Respectfully,

Kyle Ochendusko  
Senior Water Resource Control Engineer  
Division of Water Rights  
State Water Resources Control Board  
Phone: (916) 319-9142

## CWFhearing

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**From:** Baker, Jason@Waterboards on behalf of CWFhearing  
**Sent:** Monday, October 24, 2016 12:35 PM  
**To:** Mizell, James@DWR  
**Cc:** CWFhearing  
**Subject:** Revised Exhibit Index Needed Re: Cross Exhibits Used 10/20/2016  
**Attachments:** dwr\_543.pdf; dwr\_544.pdf; dwr\_545.pdf; dwr\_545\_errata.pdf; dwr\_546.pdf; dwr\_547.pdf; dwr\_549.pdf; dwr\_551.pdf; dwr\_542.pdf

**Importance:** High

Greetings,

According to our records, you used the following exhibits during cross examination on October 20, 2016.

I have attached the exhibit files for your reference.

DWR\_542  
DWR\_543  
DWR\_544  
DWR\_545  
DWR\_545\_errata  
DWR\_546  
DWR\_547  
DWR\_549  
DWR\_551

Please submit an exhibit index with the following files described.

Thank you,

CWF Hearing Team

## CWFhearing

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**From:** McGinnis, Robin C.@DWR <Robin.McGinnis@water.ca.gov>  
**Sent:** Friday, May 19, 2017 7:57 AM  
**To:** Ochenduszk, Kyle@Waterboards  
**Cc:** Mizell, James@DWR; CWFhearing; Morrow, Michelle@DWR; Crothers, Cathy@DWR  
**Subject:** Re: DWR-912

Hi Kyle,

Thanks for your call this morning. DWR agrees it does not need to submit Chapter 8 of the FEIR/FEIS at this time.

Robin

Robin McGinnis  
Attorney  
Office of the Chief Counsel  
Department of Water Resources  
Direct: (916) 657-5400  
[robin.mcginnis@water.ca.gov](mailto:robin.mcginnis@water.ca.gov)

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**From:** McGinnis, Robin [C.@DWR](mailto:C.@DWR)  
**Sent:** Thursday, May 18, 2017 10:15 PM  
**To:** Ochenduszk, Kyle@Waterboards  
**Cc:** Mizell, James@DWR; CWFhearing  
**Subject:** RE: DWR-912

Hi Kyle,

Sorry for the confusion. DWR submits Chapter 8 of the FEIR/FEIS by reference and moves it into evidence as DWR-913. Thank you.

Robin

**Robin McGinnis**  
Attorney  
Office of the Chief Counsel  
Department of Water Resources  
Direct: (916) 657-5400  
[robin.mcginnis@water.ca.gov](mailto:robin.mcginnis@water.ca.gov)

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**From:** Ochenduszko, Kyle@Waterboards [<mailto:Kyle.Ochenduszko@waterboards.ca.gov>]  
**Sent:** Thursday, May 18, 2017 4:35 PM  
**To:** McGinnis, Robin [C.@DWR](mailto:C.@DWR)  
**Cc:** Mizell, James@DWR; CWFhearing  
**Subject:** DWR-912

Robin,

On May 11, 2017, you [requested to add DWR-912 by reference](#). In the ruling today, we did not move Chapter 8 of the FEIR/FEIS into evidence. Does DWR still want to move this exhibit? If so, can it be renumbered, because there is [another DWR-912](#). Please feel free to call me to discuss further.

Respectfully,

Kyle Ochenduszko  
Senior Water Resource Control Engineer  
Division of Water Rights  
State Water Resources Control Board  
Phone: (916) 319-9142



## CWFhearing

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**From:** Ochendusko, Kyle@Waterboards  
**Sent:** Thursday, May 18, 2017 4:39 PM  
**To:** McGinnis, Robin C.@DWR  
**Cc:** Mizell, James@DWR; CWFhearing  
**Subject:** Request of DWR to provide Excel Files

Robin,

On May 9, 2017, Ms. Spaletta made a motion for DWR to produce the Excel spreadsheets used to generate Exhibit Nos. DWR-903 thru DWR-906, plus the master spreadsheet if it exists. The exchange starts around 7:08 of the video:

<https://youtu.be/tSeSJRcdjdg?t=7h8m1s>

Has DWR responded to Ms. Spaletta? If you wish to discuss this issue further, please feel free to call me.

Respectfully,

Kyle Ochendusko  
Senior Water Resource Control Engineer  
Division of Water Rights  
State Water Resources Control Board  
Phone: (916) 319-9142

## CWFhearing

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**From:** CWFhearing  
**Sent:** Monday, July 10, 2017 3:55 PM  
**To:** McGinnis, Robin C.@DWR  
**Cc:** Mizell, James@DWR; CWFhearing  
**Subject:** RE: DWR'S Response to California Water Research's' Objection

**Importance:** High

Greetings,

The response is posted on the California WaterFix site. At the start of Sur-Rebuttal an objection page was created and can be found hyperlinked as show below:

**Sur-Rebuttal for Part 1 of the hearing is scheduled to commence on June 15, 2017.**

- [Current California WaterFix Petition Hearing Schedule \(June 19, 2017\)](#)
- [Service List and Statement of Service Form](#)
- [Notices of Intent to Appear, Protests, Proposed Groupings and Order of Parties](#)
- [Ruling Letters, Notices, and Schedule](#)
- [Exhibits and FTP Information](#)
- [Opening Statements](#)
- [Policy Statements](#)
- [Written Objections and Responses to Part 1B Cases-in-Chief](#)
- [Written Motions, Objections and Response to Part 1 Sur-Rebuttal](#)
- [Transcripts](#)
- [Parties' Proposed Part 1 Closing Brief Topics](#)

The response letter can be found below Deirdre's objection as show below:

- [June 16, 2017 – Deirdre Des Jardins' Objection to Testimony of Dr. Parviz Nader-Tehrani \(Exhibit DWR-932\)](#)
  - o [California Department of Water Resources' Response Letter](#)

Please let me know if you have any questions or concerns.

Thank you,

CWF Hearing Team  
916-319-0960

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**From:** McGinnis, Robin C.@DWR [mailto:Robin.McGinnis@water.ca.gov]  
**Sent:** Monday, July 10, 2017 3:24 PM  
**To:** CWFhearing  
**Cc:** Mizell, James@DWR  
**Subject:** FW: DWR'S Response to California Water Researchs' Objection

Hello,

The attached document, served on 6/20/17, is not on the website.

Robin

**Robin McGinnis**

Attorney  
Office of the Chief Counsel  
Department of Water Resources  
Direct: (916) 657-5400  
robin.mcginis@water.ca.gov

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**From:** Randhawa, Baljit@DWR

**Sent:** Tuesday, June 20, 2017 11:29 AM

**To:** CWFhearing; Doduc, Tam@Waterboards; Marcus, Felicia@Waterboards

**Cc:** [abl@bkslawfirm.com](mailto:abl@bkslawfirm.com); [aferguson@somachlaw.com](mailto:aferguson@somachlaw.com); [ahitchings@somachlaw.com](mailto:ahitchings@somachlaw.com); [ajr@bkslawfirm.com](mailto:ajr@bkslawfirm.com); [amy.aufdemberge@sol.doi.gov](mailto:amy.aufdemberge@sol.doi.gov); [apeltzer@prlawcorp.com](mailto:apeltzer@prlawcorp.com); [awearn@nrdc.org](mailto:awearn@nrdc.org); [barbara@restorethedelta.org](mailto:barbara@restorethedelta.org); [barbarav@aqualliance.net](mailto:barbarav@aqualliance.net); [barry@solagra.com](mailto:barry@solagra.com); [bdalymn@citlink.net](mailto:bdalymn@citlink.net); [bjohnson@tu.org](mailto:bjohnson@tu.org); [blancapaloma@msn.com](mailto:blancapaloma@msn.com); [bobker@bay.org](mailto:bobker@bay.org); [bradpappa@gmail.com](mailto:bradpappa@gmail.com); [brettgbaker@gmail.com](mailto:brettgbaker@gmail.com); Britton, Sarah@saccounty; [bwright@friendsoftheriver.org](mailto:bwright@friendsoftheriver.org); Wilcox, Carl@Wildlife; [caroleekrieger7@gmail.com](mailto:caroleekrieger7@gmail.com); [colin@ejcw.org](mailto:colin@ejcw.org); [connere@gmail.com](mailto:connere@gmail.com); CWFhearing; [daladjem@downeybrand.com](mailto:daladjem@downeybrand.com); [daniel@kaydix.com](mailto:daniel@kaydix.com); [dcooper@minasianlaw.com](mailto:dcooper@minasianlaw.com); [dcoty@bpmnj.com](mailto:dcoty@bpmnj.com); [ddj@cah2oresearch.com](mailto:ddj@cah2oresearch.com); [dean@hprlaw.net](mailto:dean@hprlaw.net); [deltakeep@me.com](mailto:deltakeep@me.com); [dkelly@pcwa.net](mailto:dkelly@pcwa.net); [dgarrett@volkerlaw.com](mailto:dgarrett@volkerlaw.com); [dobegi@nrdc.org](mailto:dobegi@nrdc.org); [dohanlon@kmtg.com](mailto:dohanlon@kmtg.com); [dorth@davidorthconsulting.com](mailto:dorth@davidorthconsulting.com); [empappa@gmail.com](mailto:empappa@gmail.com); [evielma@cafecoop.org](mailto:evielma@cafecoop.org); [elamoe@minasianlaw.com](mailto:elamoe@minasianlaw.com); [fetherid@ebmud.com](mailto:fetherid@ebmud.com); [fmorrissey@orange Coveid.org](mailto:fmorrissey@orange Coveid.org); [friendsofsfestuary@gmail.com](mailto:friendsofsfestuary@gmail.com); [gadams@fclaw.com](mailto:gadams@fclaw.com); [info@californiadelta.org](mailto:info@californiadelta.org); Mizell, James@DWR; [jailin@awattorneys.com](mailto:jailin@awattorneys.com); [jtb@bkslawfirm.com](mailto:jtb@bkslawfirm.com); [jconway@rd800.org](mailto:jconway@rd800.org); [jfox@awattorneys.com](mailto:jfox@awattorneys.com); [jennifer@spalettalaw.com](mailto:jennifer@spalettalaw.com); Herrick, John@aol.com; Minton, Jonas; [john.luebberke@stocktonca.gov](mailto:john.luebberke@stocktonca.gov); Rubin, Jon@sldmwa.org; [jph@tulareid.org](mailto:jph@tulareid.org); [jrobinson@cityofsacramento.org](mailto:jrobinson@cityofsacramento.org); [jsagwomack@gmail.com](mailto:jsagwomack@gmail.com); [jsalmon@ebmud.com](mailto:jsalmon@ebmud.com); [jvolker@volkerlaw.com](mailto:jvolker@volkerlaw.com); [kcorby@somachlaw.com](mailto:kcorby@somachlaw.com); [kelweg1@aol.com](mailto:kelweg1@aol.com); [kharrigfeld@herumcrabtree.com](mailto:kharrigfeld@herumcrabtree.com); [kobrien@downeybrand.com](mailto:kobrien@downeybrand.com); [kpoole@nrdc.org](mailto:kpoole@nrdc.org); [ktaber@somachlaw.com](mailto:ktaber@somachlaw.com); [kyle.jones@sierraclub.org](mailto:kyle.jones@sierraclub.org); [lcaster@fclaw.com](mailto:lcaster@fclaw.com); [matlas@jmatlaslaw.com](mailto:matlas@jmatlaslaw.com); [matthew@mlelaw.com](mailto:matthew@mlelaw.com); [mbently@countyofcolusa.org](mailto:mbently@countyofcolusa.org); [melissa.poole@wonderful.com](mailto:melissa.poole@wonderful.com); [mhagman@lindmoreid.com](mailto:mhagman@lindmoreid.com); [michael@brodskylaw.net](mailto:michael@brodskylaw.net); [mjatty@sbcglobal.net](mailto:mjatty@sbcglobal.net); [mkropf@countyofcolusa.com](mailto:mkropf@countyofcolusa.com); [mlarsen@kdwcd.com](mailto:mlarsen@kdwcd.com); [mnikkel@downeybrand.com](mailto:mnikkel@downeybrand.com); Van Zandt, Michael@hansonbridgett.com; [myoung@awattorneys.com](mailto:myoung@awattorneys.com); [ncardella@prlawcorp.com](mailto:ncardella@prlawcorp.com); [office@ecosacramento.net](mailto:office@ecosacramento.net); Meserve, [Osha@semlawyers.com](mailto:Osha@semlawyers.com); Pogledich, Philip@yolocounty; [pminasian@minasianlaw.com](mailto:pminasian@minasianlaw.com); [pp@planetarysolutionaries.org](mailto:pp@planetarysolutionaries.org); Miljanich, Peter@solanocounty; [psimmons@somachlaw.com](mailto:psimmons@somachlaw.com); [pwilliams@westlandswater.org](mailto:pwilliams@westlandswater.org); Akroyd, Rebecca@KMTG; [randy@ejcw.org](mailto:randy@ejcw.org); [rbernal@ci.antioch.ca.us](mailto:rbernal@ci.antioch.ca.us); [rmaddow@bpmnj.com](mailto:rmaddow@bpmnj.com); [rdenton06@comcast.net](mailto:rdenton06@comcast.net); [rmburness@comcast.net](mailto:rmburness@comcast.net); [roland@ssjmud.org](mailto:roland@ssjmud.org); [rsb@bkslawfirm.com](mailto:rsb@bkslawfirm.com); [rsmith@downeybrand.com](mailto:rsmith@downeybrand.com); [russell@spalettalaw.com](mailto:russell@spalettalaw.com); Hernandez, Ryan@dcd; [rzwillinger@defenders.org](mailto:rzwillinger@defenders.org); [sae16@lsid.org](mailto:sae16@lsid.org); [schaffin@awattorneys.com](mailto:schaffin@awattorneys.com); [sdalke@kern-tulare.com](mailto:sdalke@kern-tulare.com); [sgeivet@ocsnet.net](mailto:sgeivet@ocsnet.net); [smorris@swc.org](mailto:smorris@swc.org); [Sophie.Froelich@Roll.com](mailto:Sophie.Froelich@Roll.com); [sonstot@awattorneys.com](mailto:sonstot@awattorneys.com); [srothert@americanrivers.org](mailto:srothert@americanrivers.org); [ssaxton@downeybrand.com](mailto:ssaxton@downeybrand.com); [ssdwaterfix@somachlaw.com](mailto:ssdwaterfix@somachlaw.com); [stephen.siptroth@cc.cccounty.us](mailto:stephen.siptroth@cc.cccounty.us); [sunshine@snugharbor.net](mailto:sunshine@snugharbor.net); [svolker@volkerlaw.com](mailto:svolker@volkerlaw.com); [sgrady@eslawfirm.com](mailto:sgrady@eslawfirm.com); [red@eslawfirm.com](mailto:red@eslawfirm.com); [tara.mazzanti@stocktonca.gov](mailto:tara.mazzanti@stocktonca.gov); [tgohring@waterforum.org](mailto:tgohring@waterforum.org); [thomas.esqueda@fresno.gov](mailto:thomas.esqueda@fresno.gov); [tim@restorethedelta.org](mailto:tim@restorethedelta.org); [tkeeling@freemanfirm.com](mailto:tkeeling@freemanfirm.com); [trobanch@freemanfirm.com](mailto:trobanch@freemanfirm.com); [torr@earthjustice.org](mailto:torr@earthjustice.org); [towater@olaughlinparis.com](mailto:towater@olaughlinparis.com); [vkincaid@olaughlinparis.com](mailto:vkincaid@olaughlinparis.com); [wes.miliband@stoel.com](mailto:wes.miliband@stoel.com); Femlen, [William@solanocounty.com](mailto:William@solanocounty.com); [wirthsoscranes@yahoo.com](mailto:wirthsoscranes@yahoo.com); [ygarcia@earthjustice.org](mailto:ygarcia@earthjustice.org)

**Subject:** DWR'S Response to California Water Researchs' Objection

Dear Hearing Officers Doduc and Marcus,

The Department of Water Resources respectfully submits its Response to California's Water Research's Objection.

This message is electronically served upon the parties indicated in the revised service list dated June 14, 2017. A copy is being mailed to Clifton Court L.P.

Respectfully

***Bobbie Randhawa***

Office of the Chief Counsel

Department of Water Resources

(916) 653-8167

[Baljit.Randhawa@water.ca.gov](mailto:Baljit.Randhawa@water.ca.gov)

