
State Water Resources Control Board

October 18, 2017

By E-Mail

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

Dear Mr. Porgans:

This letter responds to your request received on September 1, 2017, pursuant to Government Code § 6250 et seq., for public records in the files of the State Water Resources Control Board (State Water Board). The State Water Board staff has identified public records that are responsive to your request, attached to the e-mail transmitting this letter.

Your request included the following categories of records:

1. "*Ex parte* correspondence, since the Change Petition was submitted on August 26, 2015, between the Department of Water Resources and [State Water] Board staff about modeling for the [State Water] 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] 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."

In response to your request, the Board is producing all e-mail in the possession of the Board using the following criteria: (1) sent since August 26, 2015; (2) related to the WaterFix proceeding; (3) not sent to the service list for the proceeding; and (4) a staff person from the Department of Water Resources appears in the "to" field and a staff person or board member from the State Water Board appears in the "from" field, or a staff person from the Department of Water Resources appears in the "from" field and a staff person or board member from the State Water Board appears in the "to" field. The State Water Board did not identify any correspondence other than e-mail that fits these criteria.

As explained in a preliminary response to your request dated September 11, 2017, the Administrative Procedure Act (APA) prohibits direct or indirect communications to the hearing officer and other State Water 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 communications concerning non-controversial, procedural issues. I have reviewed the emails responsive to your request and determined that none of them constitute prohibited ex parte communications. Most of the emails concerned non-controversial, procedural issues. Several of the emails concern the modeling and analysis of a WaterFix Project operational scenario contained in Appendix 5E of the Final Environmental Impact Report (EIR) for the project. In order to ensure that the Final EIR would be adequate for the State Water Board's use as a responsible agency under the California Environmental Quality Act (CEQA), State Water Board staff asked DWR to analyze a scenario that increases Delta outflow without impacting cold water pool resources. State Water Board staff communicated with DWR staff only to the extent necessary to provide direction concerning the modeling and analysis of the scenario described in Appendix 5E of the Final EIR. To the extent that any substantive issues were discussed, they were not conveyed to the State Water Board Members, and therefore no prohibited, indirect ex parte communications occurred.

Conference call-in numbers and passcodes included in twenty-four of the documents being produced have been redacted. I have determined that this information is not responsive to your request and is exempt from disclosure pursuant to the balancing test under Government Code section 6255. Redaction of this information outweighs the public's interest in disclosure by protecting confidential teleconference lines that are not probative to the substance of the communication. No other documents have been withheld from disclosure based on an assertion of privilege, and this production completes the State Water Board's response to your request for records.

If you have any questions in the meantime or require further information, please contact me at (916) 322-4142 or at nicole.kuenzi@waterboards.ca.gov.

Best Regards,

/s/ Nicole L. Kuenzi

Nicole L. Kuenzi
Attorney
State Water Resources Control Board