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Principal, California Water Research

BEFORE THE
CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

HEARING REGARDING PETITION
FILED BY THE DEPARTMENT OF
WATER RESOURCES AND U.S. BUREAU
OF RECLAMATION REQUESTING
CHANGES IN WATER RIGHTS FOR THE
CALIFORNIA WATERFIX PROJECT

MOTION TO DISQUALIFY HEARING
OFFICERS AND HEARING COUNSEL
BASED ON FRAUD UPON THE
HEARING

Deirdre Des Jardins, principal at California Water Research (“California Water Research”), hereby moves to disqualify the Hearing officers and Hearing counsel, based on fraud upon the Hearing. This is not done lightly, nor without careful consideration. But the February 21, 2018 hearing ruling knowingly condones the submission of obsolete, misleading, and inaccurate evidence and testimony about initial project operations by the Department of Water Resources, and bars cross-examination and submission of rebuttal evidence that would show the extent of the deception. This should not be condoned.

In *Bullock v. United States*, 763 F.2d 1115, 1121 (10th Cir. 1985), the court stated "Fraud upon the court is fraud which is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury. ... It is where the court or a member is corrupted or influenced or influence is attempted or where the judge has not

1 performed his judicial function --- thus where the impartial functions of the court have been
2 directly corrupted."

3 "Fraud upon the court" has been defined by the 7th Circuit Court of Appeals to
4 "embrace that species of fraud which does, or attempts to, defile the court itself, or is a fraud
5 perpetrated by officers of the court so that the judicial machinery can not perform in the usual
6 manner its impartial task of adjudging cases that are presented for adjudication." *Kenner v.*
7 *C.I.R.*, 387 F.3d 689 (1968); 7 Moore's Federal Practice, 2d ed., p. 512, ¶ 60.23. The 7th Circuit
8 further stated "a decision produced by fraud upon the court is not in essence a decision at all, and
9 never becomes final.

10 This claim of fraud upon the Hearing is based on the February 21, 2018 Hearing ruling
11 barring any cross-examination or rebuttal based on changed initial project operations. (p. 5.)
12 This Hearing ruling is direct contravention of court interpretations of due process rights of
13 parties to cross-examination. In *Goldberg v. Kelly* (1970) 397 U.S. 254, 269, 90 S.Ct. 1011, 25
14 L.Ed.2d 287, the U.S. Supreme Court ruled that "almost every setting where important decisions
15 turn on questions of fact, due process requires an opportunity to confront and cross-examine
16 adverse witnesses." The court in *Manufactured Home Communities v. County of San Luis*
17 *Obispo* (2008) 167 Cal.App.4th 705, 712 cites *Goldberg v. Kelly*, and continues:
18

19 The right to cross-examine applies in a wide variety of administrative proceedings.
20 (*Giuffre v. Sparks* (1999) 76 Cal.App.4th 1322, 1330, 91 Cal.Rptr.2d 171 [disciplinary
hearings]; *Davis v. Mansfield Metropolitan Housing Authority* (6th Cir.1984) 751 F.2d
21 180, 185 [housing authority]; *Welfare Rights Org. v. Crisan* (1983) 33 Cal.3d 766, 769,
190 Cal.Rptr. 919, 661 P.2d 1073 [welfare]; *Pence v. Industrial Acc. Comm.* (1965) 63
Cal.2d 48, 50-51, 45 Cal.Rptr. 12, 403 P.2d 140 [industrial accident]; *Desert Turf Club*
22 *v. Board of Supervisors* (1956) 141 Cal.App.2d 446, 455, 296 P.2d 882 [use permit].) It
23 is especially important where findings against a party are based on an adverse witness's
testimony. [citations.]

24 As for what testimony requires cross-examination, the opinion states:

25 Where it makes a decision based on a party's testimony, the adversary is entitled to
26 question his or her opponent. (515 Associates v. City of Newark (1977 D. New Jersey)
27 424 F.Supp. 984, 995, fn. 20; see also *Goldberg v. Kelly*, supra, 397 U.S. at pp. 269-270,
90 S.Ct. 1011; *Palmer v. Rent Control Bd. of Brookline*, supra, 386 N.E.2d at p. 1050;
Rivera v. Div. of Industrial Welf., supra, 265 Cal.App.2d at p. 586, 71 Cal.Rptr. 739.)

(*Manufactured Home Communities v. County of San Luis Obispo*, *supra*, 712.)

The Hearing ruling to restrict cross-examination thus flies in the face of these clear rulings on due process. The Hearing ruling condones the Department of Water Resources' deliberate concealment of changes to the WaterFix project, and attempt to knowingly present testimony evidence in Part 2 based on obsolete initial project operations. The ruling bars protestants from introducing any evidence on rebuttal, that the Department of Water Resources knew that the proposed initial project operations were in the process of being changed when the testimony was submitted. This is in clear contravention of the due process right of parties to rebut evidence. The opportunity to present and rebut evidence is recognized in the Administrative Procedures Act Bill of Rights (Govt Code § 11425.10 (a)(1.)) It has been settled law for over a century that parties in an administrative proceeding have the right to fully examine and rebut evidence. (*Int. Com. Comm. v. Louis. & Nash. R.R.*, (1913) 227 U.S. 88, 93.)

Nor does the ruling allow presentation of evidence, either on cross-examination or rebuttal, that a staged implementation will likely result in the project not being completed until decades after the 2025 Early Long Term period, or provide for presentation of evidence on DWR's funding issues with the project, which could mean that it is never completed.

Furthermore, the hearing ruling also indicates that “routine written comments” by the Hearing Team on the Department of Water Resources’ Supplemental Environmental Impact Report for the project will not be disclosed to the Hearing parties.(p. 6.) It is unclear whether the exchange of “routine written comments” has started. The Board has also responded to a Public Records Act request by Sacramento County et. al. for correspondence with the Department of Water Resources about a one tunnel option indicating that the records may be withheld on one or more exemptions to the Public Records Act. The hearing ruling indicates that Public Records Act requests and responses should not be served on the service list. (p. 7.)

1 The ruling thus allows the Department of Water Resources to put on testimony about
2 obsolete initial operations for the project at the same time that DWR is corresponding with the
3 Hearing Team about the changes to the initial operations, and with no disclosure of the
4 correspondence, and without requests to the Board for the Ex Parte correspondence being
5 submitted for the Hearing record. The rationale that this ruling is favorable to protestants
6 because it saves them the trouble of having to rewrite their Part 2 testimony is an insult to the
7 parties.

The February 20, 2018 Joinder by the City of Antioch¹ in California Water Research's
February 13, 2018 Motion to Formally Consider Additional Information Submitted in Support
Of Petition² documented that the change petition was accepted for filing, in spite of clear notice
to the Board that the Petition did not include the information required under statute and
regulation (Wat. Code 1701.2, Cal Code Regs Tit. 23 section 794(a)) and the operations were not
adequately defined. The Hearing Officers have also repeatedly waived the statutory and
regulatory requirements for the change petition, although they do not have the authority to do
so,³ and have declined to formally consider whether the requirements have been met, prior to
Part 2. This is of absolute prejudice to protestants.

The Hearing Officers have also ruled against an outstanding motion requesting that the Hearing Officers rule on a request by California Water Research in Part 1 that the Department of Water Resources to provide a legally adequate response to a subpoena for modeling information – a subpoena that includes Ex Parte communications that were the subject of a renewed motion

¹ The February 20, 2018 Joinder by the City of Antioch in California Water Research's February 13, 2018 Motion to Formally Consider Additional Information Submitted in Support of Petition is hereby incorporated as if set forth in full herein.

² California Water Research's February 13, 2018 Motion to Formally Consider Additional Information Submitted in Support of Petition is hereby incorporated as if set forth in full herein.

³ California Water Research's August 11, 2018 filing, Response to DWR's request to notice Part 2 of the Hearing, id hereby incorporated as if set forth in full herein.

1 by Sacramento County et. al. It is unclear if the Hearing Officers will enforce any of the other
2 outstanding subpoenas to the Department of Water Resources.

The Hearing Officers have also ruled against a motion to not excuse the U.S. Bureau of Reclamation witnesses who testified in Part 1 on proposed CVP operations, even though the U.S. Bureau of Reclamation has been silent on proposed operations, and California Water Research submitted documents for official notice indicating that Reclamation has entered into a different NEPA process to determine long-term coordinated operations of the Central Valley Project and State Water Project, which will include the WaterFix. Those documents were not accepted into the Hearing Record.

In sum, the decision to proceed with Part 2 of the WaterFix hearing, without enforcing the statutory requirements for a change petition, is of absolute prejudice to protestants. To do so when the Department of Water Resources has knowingly submitted testimony on obsolete operational scenarios, while simultaneously barring cross-examination or rebuttal on changed operations, and not providing for a period of discovery, fundamentally compromises the integrity of the Hearing. To do so while the Hearing Team corresponds Ex Parte with the Department of Water Resources about potential changes in operations, and without providing for disclosure of those communications, so compromises the adjudicatory machinery that it cannot function to provide a fair hearing.

Dated Feb 21, 2018

Sincerely,

D. D. J.

Deirdre Des Jardins Principal, California Water Research



Deirdre Des Jardins
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(831) 423-6857
ddj@cah2oresearch.com

February 20, 2018

VIA electronic mail

Michael A.M. Lauffer, Chief Counsel,
Michael.Lauffer@waterboards.ca.gov

Nicole Kuenzi, Senior Staff Counsel
Nicole.Kuenzi@waterboards.ca.gov

Andrew Deeringer, Attorney III, Office of Chief Counsel
Andrew.Deeringer@Waterboards.ca.gov

State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Re: Public Records Act Requests for Ex Parte Communications and Documents Related to the WaterFix Hearing

Dear Chief Counsel Lauffer, Senior Staff Counsel Kuenzi, and Mr. Deeringer,

Thank you for the Office of Chief Counsel's response to California Water Research's Public Records Act request of January 28, 2018. The response, signed by Andrew Deeringer, indicated that there were "mostly emails" responsive to my request, and that Nicole Kuenzi would be coordinating production. Please provide the files to the WaterFix Hearing FTP server as they become available. I also have some additional requests, as detailed below.

I. Contract Executed Pursuant to Water Code § 85086(d.)

I am requesting a clarification of the Office of Chief Counsel's response to one of the requests in my PRA. Request #6 included the following:

A copy of the contract executed by the State Water Resources Control Board pursuant to the Board's 2010 resolution Authorizing the Executive Director to Enter into an Agreement With the State Water Project Contractors and the Federal Central Valley Project Contractors, or a Joint Powers Authority Comprised of Those Contractors, for Reimbursement of the Costs of Analysis Associated With Developing New Flow Criteria for the Delta Ecosystem, and any payments received under the contract.

The request refers to State Water Resources Control Board Resolution No. 2010-0003. The response to the PRA indicates that the contracts authorized by the resolution may never have been executed. If the contracts required under Water Code section 85086(d) were not executed by the Board, please provide a letter so stating.

II. WaterFix Subsequent or Supplemental EIR

In addition, given recent developments with the WaterFix project, California Water Research also requests responses to the following two questions:

1. Has the Office of Chief Counsel had any Ex Parte communications with the Department of Water Resources relating to preparation of a Subsequent or Supplemental EIR for the WaterFix?
2. If so, will the Office of Chief Counsel disclose the Ex Parte communications in response to the Public Records Act request by the County of Sacramento et. al.?

As explained below, many protestants in the WaterFix hearing have requested that the Board prepare a Subsequent EIR. For this reason, the Board should provide notice to the WaterFix Hearing parties and an opportunity to submit comments before determining that a Subsequent EIR is not required for the WaterFix project, but only a Supplemental EIR. Any final decision, and the basis for the decision, should also be noticed to the parties in the WaterFix hearing. California Water Research requests that the Chief Counsel ensure that this happens.

BACKGROUND

Friends of the River, the Sierra Club, and Planning and Conservation League requested that the Board prepare a subsequent EIR on January 21, 2016.¹: The Hearing Officers' February 11, 2016 pre-hearing conference ruling stated:

¹ Friends of the River and the Sierra Club, January 21, 2016 letter, Re: Written Comments for January 28, 2016, Pre-Hearing Conference. Available at https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/docs/2017/20170921_fotr_pt2phtopic.pdf

If during the course of this proceeding, the State Water Board determines that the range of alternatives evaluated by DWR is not adequate to support the Board's decision, then either DWR or the Board will need to prepare subsequent or supplemental documentation. (See id., §§ 15096, subd. (e), 15162, 15163.) At this point, however, it is uncertain whether any subsequent or supplemental documentation will be required. (p. 9.)

Friends of the River, the Sierra Club, Planning and Conservation League, Save the California Delta Alliance, California Water Impact Network, California Sportfishing Protection Agency, and Restore the Delta requested reconsideration of the Hearing Officers' decision not to prepare a subsequent EIR on February 17, 2016, citing the failing grade that the EPA gave the WaterFix EIR/EIS.²

Friends of the River and the Sierra Club also stated in their September 21, 2017 pre-hearing conference letter, under Need to Address CEQA issues³:

As either a lead or responsible agency, the State Water Board needs to consider requiring a subsequent EIR under CEQA, Public Resources Code § 21166(a), (b), and (c), because substantial changes are proposed in the project, substantial changes occur with respect to the circumstances under which the project is being undertaken, and new information has become available. Accord, 14 Code Cal. Regs (CEQA Guidelines) §§ 15162; 15096(e)(3). (p. 2.)

The February 6, 2018 Hearing Ruling stated,

We direct Petitioners to update us and the parties if and when they decide to modify the proposed WaterFix project. At that time, it may be necessary for us to solicit input from the parties as to whether such modifications necessitate an amended change petition or new or supplemental CEQA analysis. Until that time, however, we will proceed with consideration of the water right change petition that is now before us. (p. 3.)

The Department of Water Resources indicated at the Hearing on February 8 that substantial changes had been proposed in the WaterFix project, and that the changes required preparation of

² Friends of the River et. al., February 17, 2016 letter, Re: Written Comments Responding to CEQA Procedural Ruling in California Water Fix State Water Board hearing process. Available at https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/exhibits/docs/20160217_fotretal.pdf

³ Friends of the River et. al., September 21, 2017 letter, Re: Agenda Topics for October 19, 2017, Pre—Hearing Conference to discuss Part 2 procedural Issues. Available at https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/docs/2017/20170921_fotr_pt2phctopic.pdf

a supplemental EIR. CEQA guideline § 15162, subdivision (a) trigger preparation of a supplemental EIR when there are substantial changes proposed to a project. CEQA guideline § 15162 (c) then provides that

Once a project has been approved, the lead agency's role in project approval is completed, unless further discretionary approval on that project is required. Information appearing after an approval does not require reopening of that approval. If after the project is approved, any of the conditions described in subdivision (a) occurs, a subsequent EIR or negative declaration shall only be prepared by the public agency which grants the next discretionary approval for the project, if any. In this situation no other responsible agency shall grant an approval for the project until the subsequent EIR has been certified or subsequent negative declaration adopted.

The WaterFix project has been approved by the Department of Water Resources, and the State Water Resources Control Board is the agency with the next discretionary approval, so the State Water Resources Control Board would be the agency to prepare a subsequent EIR under section 15162, subdivision (c), as requested by the protestants.

However, CEQA guidelines § 15163(a) provides:

- (a) The Lead or Responsible Agency may choose to prepare a supplement to an EIR rather than a subsequent EIR if:
 - (1) Any of the conditions described in Section 15162 would require the preparation of a subsequent EIR, and
 - (2) Only minor additions or changes would be necessary to make the previous EIR adequately apply to the project in the changed situation.

Whether the construction of the WaterFix project in stages would require “only minor additions or changes” to the WaterFix Final EIR is also a major issue in the WaterFix Water Right Change Petition Hearing, and many protestants have filed briefs in the Hearing on the issue.

Ex Parte communications between the State Water Resources Control Board and the Department of Water Resources were requested under a January 23, 2018 Public Records Act request by Sacramento County et. al. The request included the following:

All communications between SWRCB and DWR, during the period of January 1, 2016, to the present, referencing or relating to (1) a single tunnel alternative for the WaterFix Project, or (2) separation of the two tunnels (and related facilities, such as intakes) proposed in the WaterFix Project into two distinct phases of construction and/or operation.

The Board's response, which was signed by Matthew Jay, Associate Governmental Program Analyst, indicates that Ex Parte correspondence with the Board about the one tunnel project may be withheld under one or more exemptions to the Public Records Act:

We are in the process of gathering and reviewing the records to determine whether any records responsive to your request may be disclosable.

The potential bases for non-disclosure include one or more of the following exemptions to the Public Records Act: Attorney-Client Privilege, Deliberative Process Privilege, Attorney Work Product Privilege, Investigative Records Exemption, Pending Litigation Exemption, Trade Secret Exemption, Other Laws

This response did not indicate whether there were Ex Parte communications between DWR and the Board about the extent of the changes to the WaterFix Final EIR/EIS required to adequately evaluate the proposed staged implementation of the project, or if so, if they would ever be produced.

Thank you,



Deirdre Des Jardins
Principal, California Water Research

Cc: WaterFix Hearing Counsel Dana Heinrich
WaterFix Water Right Change Petition Hearing Service List

EXHIBIT A



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

February 6, 2018

Ms. Des Jardins
145 Beel Drive
Santa Cruz, CA 95060
Telephone: (831) 423-6857
Email: ddj@cah2oresearch.com

RE: 10-DAY RESPONSE LETTER REGARDING REQUEST FOR PUBLIC RECORDS

Dear Ms. Des Jardins,

The California State Water Resources Control Board (State Water Board, or Board) received your January 28, 2018 request under the California Public Records Act (Gov. Code, § 6250 et seq.) for State Water Board records generally pertaining to communications between the State Water Board and certain entities participating in or otherwise involved in the proposed WaterFix project. Your request is attached for reference.

You requested the following State Water Board records:

1. *Any and all communications between the California Natural Resources Agency and the State Water Resources Control Board relating to:*
 - a. *The WaterFix project;*
 - b. *The WaterFix Water Right Change Petition application or hearing;*
 - c. *Permit terms for the State Water Project and Central Valley Project, since the WaterFix Water Right Change Petition application was filed on August 26, 2015, not currently posted on the State Water Resources Control Board website.*
2. *Any and all communications between the California Governor's office and the State Water Resources Control Board relating to:*
 - a. *The WaterFix project;*
 - b. *The WaterFix Water Right Change Petition application or hearing;*

FELICIA MARCUS, CHAIR | EILEEN SOBECK, EXECUTIVE DIRECTOR

1001 I Street, Sacramento, CA 95814 | Mailing Address: P.O. Box 100, Sacramento, CA 95812-0100 | www.waterboards.ca.gov

- c. *Permit terms for the State Water Project and Central Valley Project, since the WaterFix Water Right Change Petition application was filed on August 26, 2015, not currently posted on the State Water Resources Control Board website.*
3. *Any and all communications between the State Water Contractors and the State Water Resources Control Board relating to:*
 - a. *The WaterFix project;*
 - b. *The WaterFix Water Right Change Petition application or hearing, except for communications about non-controversial procedural issues;*
 - c. *Permit terms for the State Water Project and Central Valley Project, since the WaterFix Water Right Change Petition application was filed on August 26, 2015, not currently posted on the State Water Resources Control Board website.*
4. *Any and all communications between the California Department of Water Resources and the State Water Resources Control Board regarding:*
 - a. *The WaterFix Water Right Change Petition application or hearing, except for communications after October 30, 2015 about non-controversial procedural issues;*
 - b. *The WaterFix Partially Recirculated Draft EIR/EIS, not currently posted on the State Water Resources Control Board website, or previously produced in response to Public Records Act Requests by Patrick Porgans or Michael Brodsky, since January 1, 2015.*
5. *The 2002 comments by the firm of Bartkiewicz, Kronick & Shanahan on the Board's November 19, 2002 resolution to exempt Board members from Chapter 16 of the Administrative Procedure Act on Judicial Ethics.*
6. *A copy of the contract executed by the State Water Resources Control Board pursuant to the Board's 2010 resolution Authorizing the Executive Director to Enter into an Agreement With the State Water Project Contractors and the Federal Central Valley Project Contractors, or a Joint Powers Authority Comprised of Those Contractors, for Reimbursement of the Costs of Analysis Associated With Developing New Flow Criteria for the Delta Ecosystem, and any payments received under the contract.*

The State Water Board has determined that it has records responsive to your request. We anticipate that the majority of records will consist of emails that can be electronically transferred to an FTP site for easy access and at no cost. Nicole Kuenzi, Attorney III in the State Water Board's Office of Chief Counsel (OCC), will contact you shortly to help coordinate production of these electronic documents.

Once State Water Board staff have identified all State Water Board records responsive to your request, OCC will review those records for privilege and other potentially applicable exemptions from disclosure under the Public Records Act. Given the volume and nature of records described in your request, this review could be fairly time-intensive, but OCC and other Board

staff will make every effort to facilitate prompt review and timely disclosure of non-exempt, responsive public records. If, after OCC's review, the State Water Board withholds one or more documents based on an applicable privilege or other Public Records Act exemption, you will be provided with the number of documents withheld, the general nature of each, the specific privilege or other exemption justifying non-disclosure, and the name and title of the State Water Board employee who made the non-disclosure determination.

OCC and/or Board staff may follow up with you to coordinate the production of these records on a rolling basis as OCC's review progresses so that you may start obtaining access to responsive records as soon as possible. In the meantime, if you have questions or wish to express concerns regarding the State Water Board's response to your records request, you may contact Nicole Kuenzi by phone (916-322-4142) or email at Nicole.Kuenzi@waterboards.ca.gov.

Sincerely,



Andrew Deeringer
Attorney III
Office of Chief Counsel
State Water Resources Control Board

EXHIBIT B



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

February 13, 2018

VIA US AND ELECTRONIC MAIL

Kelley Taber
SOMACH SIMMONS & DUNN
500 Capitol Mall, Suite 1000
Sacramento, CA 95814
ktaber@somachlaw.com

Re: Public Records Request

Dear Ms. Taber,

On February 9, 2018, we received the *County of Sacramento et al.'s Petition for Reconsideration and Request for Stay or Continuance of Waterfix Part 2 Hearing*, which included several attachments, including a January 23, 2018 Public Records Act (PRA) request from you to the State Water Resources Control Board (State Water Board) that was labeled Exhibit C. Although you addressed the letter to the State Water Board, the email address you used to submit the PRA is specific to the State Water Board's State Contracting department. Therefore, we have only recently obtained your January 23, 2018 email and attached PRA request.

The State Water Board staff has made an initial determination that the State Water Board has records responsive to your request. We are in the process of gathering and reviewing the records to determine whether any records responsive to your request may be disclosable.

The potential bases for non-disclosure include one or more of the following exemptions to the Public Records Act: Attorney-Client Privilege, Deliberative Process Privilege, Attorney Work Product Privilege, Investigative Records Exemption, Pending Litigation Exemption, Trade Secret Exemption, Other Laws Exemption, and the Catch-All Balancing Test in Government Code section 6255.

If we determine your requested documents are exempt from disclosure, we will notify you. If we determine they are not exempt from disclosure, we will provide them to you as soon as possible after the determination is made.

Your request to receive responsive documents in electronic format has been noted, and we will provide these documents to you in this format if they are available.

FELICIA MARCUS, CHAIR | EILEEN SOBECK, EXECUTIVE DIRECTOR

1001 I Street, Sacramento, CA 95814 | Mailing Address: P.O. Box 100, Sacramento, CA 95812-0100 | www.waterboards.ca.gov

Please contact Mr. Matthew Jay by phone at (916) 341-5396 or by e-mail at
matthew.jay@waterboards.ca.gov should you have any questions regarding your request.

Sincerely,

A handwritten signature in blue ink, appearing to read "Matthew Jay".

Matthew Jay
Associate Governmental Program Analyst
State Water Resources Control Board
Division of Water Rights

EXHIBIT C



500 CAPITOL MALL, SUITE 1000, SACRAMENTO, CA 95814
OFFICE: 916-446-7979 FAX: 916-446-8199
SOMACHLAW.COM

January 23, 2018

Via Electronic Mail

State Water Resources Control Board
1001 I Street
Sacramento, CA 95814
PubRecReq@waterboards.ca.gov

Re: California Public Records Act Request

Dear Sir or Madam:

Pursuant to the California Public Records Act, Government Code section 6250 et seq., this letter on behalf of the County of Sacramento serves as a formal request upon the California State Water Resources Control Board (SWRCB) to furnish all public records prepared, received, owned, used, transmitted, or possessed (including, without limitation, those constructively possessed) by SWRCB which are responsive to the categories listed below. This request applies to all public records as defined in Government Code section 6252, subdivision (e), which includes any electronic mail and "writing," as defined in Government Code section 6252, subdivision (g).

In this request, "SWRCB" includes SWRCB itself, any and all persons acting on behalf of SWRCB, as well as SWRCB's officers, representatives, agents, employees, affiliates, consultants, and individual directors. The "Metropolitan Water District of Southern California" (MWD) includes MWD itself, any and all persons acting on behalf of MWD, as well as MWD's Board of Directors, officers, representatives, agents, employees, affiliates, consultants, and individual directors. The "Department of Water Resources" (DWR) includes DWR itself, any and all persons acting on behalf of DWR, as well as DWR officers, representatives, agents, employees, affiliates, consultants, and individual directors. The (SWC) includes the organization known as the SWC itself, any and all persons acting on behalf of the State Water Contractors, as well as the SWC's officers, representatives, agents, employees, affiliates, consultants, and individual directors. The "United States Bureau of Reclamation" (USBR) includes USBR itself, any and all persons acting on behalf of USBR, as well as USBR officers, representatives, agents, employees, affiliates, consultants, and individual directors. Additionally, the term "WaterFix Project" refers to the California WaterFix Project.

California State Water Resources Control Board

California Public Records Act Request

January 23, 2018

Page 2

Please provide or otherwise make available for review copies of the following:

1. All documents referencing or relating to (1) a single tunnel alternative for the WaterFix Project, or (2) separation of the two tunnels (and related facilities, such as intakes) proposed in the WaterFix Project into two distinct phases of construction and/or operation.
2. All documents referencing or relating to (1) the operation of a single tunnel alternative for the WaterFix Project; and (2) operation of the WaterFix Project, if the WaterFix Project is constructed in two or more distinct phases of construction and/or operation. “Operation” includes, but is not limited to, the amount and timing of diversions at both North and South Delta intakes and the amount of water delivered to State Water Project and/or Central Valley Project contractors, or any single contractor or combination of them.
3. All documents referencing or relating to the evaluation of environmental effects of (1) a single tunnel alternative for the WaterFix Project, or (2) separation of the two tunnels (and related facilities, such as intakes) proposed in the WaterFix Project into two distinct phases of construction and/or operation.
4. All documents referencing or relating to the cost of (1) a single tunnel alternative for the WaterFix Project, or (2) separation of the two tunnels proposed (and related facilities, such as intakes) in the WaterFix Project into two distinct phases of construction and/or operation, including costs associated with planning, design, investigation, environmental review, construction and operation.
5. All communications between SWRCB and MWD, during the period of January 1, 2016, to the present, referencing or relating to (1) consideration of a single tunnel alternative for the WaterFix Project, or (2) separation of the two tunnels (and related facilities, such as intakes) proposed in the WaterFix Project into two distinct phases of construction and/or operation.
6. All communications between SWRCB and DWR, during the period of January 1, 2016, to the present, referencing or relating to (1) a single tunnel alternative for the WaterFix Project, or (2) separation of the two tunnels (and related facilities, such as intakes) proposed in the WaterFix Project into two distinct phases of construction and/or operation.
7. All communications between SWRCB and SWC, during the period of January 1, 2016, to the present, referencing or relating to (1) a single tunnel alternative for the WaterFix Project, or (2) separation of the two tunnels (and related facilities, such as

California State Water Resources Control Board

California Public Records Act Request

January 23, 2018

Page 3

intakes) proposed in the WaterFix Project into two distinct phases of construction and/or operation.

8. All communications between SWRCB and USBR, during the period of January 1, 2016, to the present, referencing or relating to (1) a single tunnel alternative for the WaterFix Project, or (2) separation of the two tunnels (and related facilities, such as intakes) proposed in the WaterFix Project into two distinct phases of construction and/or operation.

Pursuant to Government Code section 6253.9, subdivision (a), I request any record that is available in electronic format to be provided in electronic format. If any computer programming services are necessary to export the data or files into the requested format, and SWRCB intends to charge for such costs pursuant to Government Code section 6253.9, subdivision (b), I hereby request to be advised of such costs immediately.

Please contact me within ten (10) business days of this request to let me know if SWRCB has any of the public records requested herein. Should you decide to withhold any of the requested records, please provide a written response in accordance with Government Code section 6255 that specifies the basis for withholding the records. I can be reached at (916) 469-3841 or via email at ktaber@somachlaw.com. Thank you for your attention to this matter.

Sincerely,



Kelley Taber
Attorney

MEC:rs