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March 27, 2018

VIA electronic mail

Randy Baxter  
California Department of Fish and Wildlife  
2109 Arch Airport Rd, Stockton, CA 95206

Re: No good deed goes unpunished

Dear Mr. Baxter,

This is regarding the subpoena served on you on March 20, 2018 for attendance at the State Water Resources Control Board's WaterFix hearing. Deirdre Des Jardins, principal at California Water Research, included an intent to call CDFW witnesses who had testified in the State Water Resources Control Board in the 2010 Delta Flow Criteria Hearing in a Notice of Intent to Appear for Part 2 of the hearing.

On November 6, 2017, the Office of General Counsel responded with a filing which stated in part:

CDFW objects to the Notice and considers it insufficient to require CDFW employees to appear at an unspecified time and date before the Board. Government Code section 11450.50, subdivision ( a ) applies to the production of a party to the record of a proceeding before the Board, CDFW withdrew as a party to the California WaterFix Change Petition Hearing by submitting a Supplemental Notice of Intent to Appear to the Board, with service to the Service List on September 9, 2017. As specified in that supplemental notice, CDFW will participate only as an interested person presenting a policy statement . Therefore, CDFW is not subject to the subpoena exemption described in Government Code, section 11450.50, subdivision ( a ). CDFW considers the Notice to create no obligation on the part of CDFW or its employees, and will provide no further response to it. (underlining added.)

The two objections in the response were:

- (1) CDFW is not participating in the hearing, except to make a policy statement

(2) The subpoena did not specify a time and date

I do not know if CDFW Office of General Counsel informed you of either of the notice or their response. It is a requirement that subpoenas specify a time and date. This was difficult with the multiparty structure of the WaterFix Water Right Change Petition Hearing. The objection based on not specifying a time and date held up the service of a subpoena for months, and CDFW Office of General Counsel indicated they were not going to provide any further response to my Notice Calling Witnesses. I also got a phone call from Xochitl Miranda which generally indicated that the Office of General Counsel would not be involved in the subpoena.

When the process server attempted to serve a subpoena for you to appear on the CDFW Office of the General Counsel, the response by Catherine Kennedy was that the Office of the General Counsel would not accept a subpoena by an individual for a personal appearance. For this reason, it had to be served on you personally. I do hope that CDFW Office of General Counsel informed you that you that a subpoena was being served, and that they directed that it be served on you personally. If not, I apologize for any surprise this may have caused.

Shannon Little from the CDFW Office of General Counsel has contacted me and indicated that CDFW Office of General Counsel would now like to represent you for this appearance. This is inconsistent with the Office of General Counsel's statement in refusing service of the subpoena, but I have been attempting to work with them.

Ms. Little has objected to the subpoenaed appearance dates, stating that CDFW counsel is not available, and stating that there was not adequate notice. I waived attendance on March 29, because the process server was unable to serve you until March 20. The Hearing Officers also cancelled the WaterFix Hearing dates on March 30 and April 5, 2018. This leaves April 2, 2018. I am still requesting that you be available on April 2, 2018, and have sent checks for witness fees via certified mail to CDFW, return receipt requested.

Shannon Little has indicated that CDFW has not received the witness fees and she will not respond to the subpoena or discuss dates of appearance without them. I have requested that if she still objects to your appearance on April 2, 2018, that she file a formal objection to the subpoena for your appearance on that date in the WaterFix hearing. I will also be arranging to directly deliver the witness fees to CDFW if CDFW General Counsel did not accept or lost the witness fees that were sent by certified mail.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Des Jardins', with a stylized flourish at the end.

Deirdre Des Jardins  
Principal, California Water Research