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## State Water Resources Control Board

### VIA EMAIL & U.S. MAIL

January 20, 2016

Dan Kelly  
Somach Simmons & Dunn  
500 Capitol Mall #1000  
Sacramento, CA 95814  
[dkelly@somachlaw.com](mailto:dkelly@somachlaw.com)

Dear Mr. Kelly:

I write in response to your requests dated July 21, 2015, pursuant to Government Code section 6250 et seq., for public records prepared, received, owned, used or possessed by the State Water Resources Control Board (State Water Board) or its staff that are related to enforcement action ENF01951. This letter follows my previous responses dated October 30, 2015, December 1, 2015, and December 21, 2015. As discussed in my prior letters, the Office of Chief Counsel (OCC) has been reviewing potentially responsive records of board members and those members of the State Water Board staff assigned to advise the board members in the pending enforcement matters (collectively, the advisory team).

OCC has now completed its secondary review of email records identified as potentially responsive to your request. OCC has determined that approximately 100 additional email records are responsive to your request and should be released. This is in addition to the email records that were released previously.

Pursuant to section 6255 of the Government Code, the State Water Board may withhold a record by demonstrating that, on the facts of the particular case, the public interest served by not disclosing a record clearly outweighs the public interest served by disclosure of the record. This includes records that would reveal the Board's deliberative process. (See, e.g., *California First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th 159, 170.)

Notwithstanding the exemption available pursuant to Government Code section 6255, the Board will release certain records, within the possession of the advisory team, of (i) the deliberative process leading up to the decision to send notices of water unavailability, (ii) the decision to initiate formal enforcement actions against WSID and BBID, and (iii) the decision to lift the notices of water unavailability. The public interest served by non-disclosure of these records does not clearly outweigh the public interest served by disclosure.

OCC has also determined that some records and some portions of records responsive to your requests and within the possession of the advisory team are subject to the attorney-client privilege, attorney work product privilege, deliberative process exemption, Governor's communications exemption, and/or public interest exemption. (See generally Gov. Code, §§ 6254, 6255.) These records and portions of records will not be released.

FELICIA MARCUS, CHAIR | THOMAS HOWARD, EXECUTIVE DIRECTOR

I am aware that the deadline for receipt and service of witnesses' proposed testimony, exhibits, lists of exhibits, and witness qualifications was January 19, 2016. To the extent, your offices wish to supplement exhibits with any records produced along with this letter, I have been informed by the hearing attorney, Nicole Kuenzi, that such supplemental exhibits must be submitted no later than February 4, 2016. I understand a confirmation will be relayed to the participants by either Ms. Kuenzi or the hearing officers.

As you know, the State Water Board has separated prosecutorial and decision making functions in the BBID enforcement action and related matters. If it has not already done so, the Office of Enforcement will respond separately to your request for responsive records identified during its separate review of records within the possession of the enforcement team.

Enclosed with this letter is a disc containing additional electronic documents that are responsive to your request. This concludes the Board's response to your request for public records.

Please do not hesitate to contact me should you have questions. I am available by email at [nathan.weaver@waterboards.ca.gov](mailto:nathan.weaver@waterboards.ca.gov).

Sincerely,

A handwritten signature in blue ink that reads "Nathan Weaver". The signature is written in a cursive style and is underlined with a single horizontal line.

Nathan Weaver  
Attorney, Office of Chief Counsel