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13
14 BEFORE THE
15 CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

16
17 HEARING ON THE MATTER OF
18 CALIFORNIA DEPARTMENT OF WATER
RESOURCES AND UNITED STATES
19 BUREAU OF RECLAMATION REQUEST
FOR A CHANGE IN POINT OF DIVERSION
20 FOR CALIFORNIA WATER FIX.

COUNTY OF SACRAMENTO ET AL.'S
MOTION TO STAY OR CONTINUE
WATERFIX PART 2 HEARING

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1 **I. INTRODUCTION**

2 County of Sacramento, Sacramento County Water Agency, County of San
3 Joaquin, City of Stockton, Sacramento Regional County Sanitation District, City of
4 Antioch, and Local Agencies of the North Delta (Protestants) hereby request a stay or
5 continuance of this hearing on Petitioners’ Petition for Change in order to afford the
6 opportunity to address serious rule violations resulting from substantive ex parte
7 communications between members of the Hearing Team and Petitioner, the Department
8 of Water Resources (DWR). As explained below, the ex parte communications that
9 already have been disclosed in response to a Public Records Act (PRA) request
10 establish that this proceeding is irrevocably tainted by misconduct on the part of certain
11 members of the Hearing Team and certain representatives of DWR. The full extent and
12 larger implications of that misconduct are the subject of ongoing investigative efforts,
13 including pending additional PRA requests. The stay or continuance should remain in
14 effect until the full extent and import of the unlawful ex parte communications have been
15 determined.

16 As demonstrated in “Table 1: Compilation of Ex Parte Contacts and Other Events
17 in the CWF Hearing Process” (Ex Parte Timeline Table), attached hereto as Exhibit A-
18 1,¹ the ex parte communications disclosed to date are, in themselves, extremely serious.
19 They concern substantive issues at the heart of the Petition on which the Hearing
20 Officers are expected to render a decision. These ex parte communications clearly
21 violate the parties’ constitutional due process rights, prohibitions set forth in the
22 California Government Code, and the State Water Resources Control Board’s (State
23 Water Board) own rules governing this proceeding. In themselves, these violations

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25 ¹ See also Declaration of Osha R. Meserve in Support of County of Sacramento et al.’s
26 Motion to Stay or Continue WaterFix Part 2 Hearing for additional information about the
27 Ex Parte Timeline Table. The information in the table was developed based on
28 information obtained through the Porgans PRA request and subsequently produced
emails. Email correspondence documenting the ex parte contacts is included as Exhibit
A-2 and is also hyperlinked in the farthest right column of the Ex Parte Timeline Table.

1 warrant significant changes, which may include appointment of independent hearing
2 officers, dismissal of the Petition, and/or other substantial changes affecting the
3 decision-making process in this Hearing.

4 **II. FACTUAL BACKGROUND**

5 On December 28, 2017, Michael A. Brodsky, on behalf of Mr. Patrick Porgans and
6 Save the California Delta Alliance, sent a letter to Michael Lauffer, State Water Board
7 Chief Counsel, addressing an outstanding PRA request filed by Mr. Porgans on August
8 31, 2017, regarding ex parte communications involving WaterFix Hearing Team
9 members (Brodsky Letter, attached hereto as Exhibit B). The Brodsky Letter describes
10 in detail repeated communications between WaterFix Hearing Team members and DWR
11 representatives revealed by the State Water Board's partial disclosure of documents
12 responsive to Mr. Porgans' PRA request. Building upon the ex parte communication
13 documents already disclosed, Mr. Brodsky's letter seeks additional materials exchanged
14 between DWR and WaterFix Hearing Team members.

15 On January 8, 2018, Nicole L. Kuenzi, State Water Board attorney, responded to
16 the Brodsky Letter, acknowledging meetings between Board staff and DWR on factual
17 and legal matters related to the Environmental Impact Report (EIR) for the WaterFix
18 Project (Kuenzi Letter, attached hereto as Exhibit C). On January 10, 2018, Ms. Kuenzi
19 informed Mr. Brodsky that substantial materials were present and/or utilized during these
20 ex parte communications, and that DWR personnel collected all of these materials at the
21 conclusion of each meeting. Ms. Kuenzi also indicated that further documents would be
22 produced on a rolling basis. On January 10, 2018, Mr. Brodsky filed a PRA request with
23 DWR, asking for production of documents that will further elucidate the nature, content,
24 and extent of DWR's ex parte communications with the Hearing Team and other State
25 Water Board personnel after August 26, 2015. (DWR PRA Request, attached hereto as
26 Exhibit D.)

27 As explained below, the evidence of substantive ex parte communications
28 between Hearing Team members and DWR already disclosed warrants a stay or

1 continuance in order to ascertain the full extent of the ex parte communications and their
2 impact on this proceeding. In addition to full compliance with the pending PRA requests,
3 investigation into this misconduct will require formal discovery, most likely including
4 depositions of key personnel involved in – and witnesses to – the unlawful ex parte
5 communications. In his own motion for continuance filed herein, Mr. Brodsky has
6 proposed a 90-day continuance. Assuming that the responses to the further PRA
7 requests are timely and fully comply with requirements of the PRA, and that formal
8 discovery efforts are not delayed by obstructionist tactics, Protestants agree that 90 days
9 should be sufficient. Protestants also agree with Mr. Brodsky’s request that a hearing be
10 scheduled for the purpose of addressing the rule violations that have tarnished this
11 proceeding.²

12 III. LEGAL BACKGROUND

13 A. Due Process and Administrative Procedure Act Requirements

14 The California Constitution guarantees that “[a] person may not be deprived of
15 life, liberty, or property without due process of law.” (Cal. Const. art. I, §7, subd. (a).)
16 The constitutional guarantee of due process, including a fair tribunal, applies in
17 adjudicative proceedings conducted by an administrative agency. (*Morongo Band of*
18 *Mission Indians v. State Water Resources Control Board* (2009) 45 Cal.4th 731, 737-739
19 citing *Withrow v. Larkin* (1975) 421 U.S. 35, 46; accord, *Nightlife Partners, Ltd. v. City of*
20 *Beverly Hills* (2003) 108 Cal.App.4th 81, 90 [“Just as in a judicial proceeding, due
21 process in an administrative hearing also demands an appearance of fairness and the
22 absence of even a *probability* of outside influence on the adjudication.”].) The WaterFix
23 petition for change proceeding concerns injury to water rights, a form of property right.
24 (Wat. Code, § 102; *San Francisco v. County of Alameda* (1936) 5 Cal.2d 243, 246.)

25 _____
26 ² Mr. Brodsky’s request, filed on January 12, 2018, is to “Schedule A Reformation
27 Hearing.” Irrespective of the title, the objective is the same: to determine, in light of the
28 evidence of unlawful ex parte communications, how this Hearing may be structured to
comply with the rule of law going forward.

1 Thus, the Constitution guarantees Protestants' due process rights in this proceeding.

2 Adjudicative proceedings before State Water Board hearing officers are governed
3 by chapter 4.5 of the Administrative Procedures Act (APA) (commencing with Section
4 11400 of the Government Code). (Cal. Code Regs., tit. 23, § 648, subd. (b).) The APA
5 ensures a fair tribunal by requiring that, “[w]hile the [adjudicative] proceeding is pending
6 there shall be no communication, direct or indirect, regarding any issue in the
7 proceeding, to the presiding officer from an employee or representative of an agency
8 that is a party or from an interested person outside the agency, without notice and
9 opportunity for all parties to participate in the communication.” (Gov. Code, § 11430.10
10 subd. (a).)

11 **B. California Supreme Court Interpretation and Application of the APA**

12 The APA’s prohibition against ex parte communications extends beyond the
13 agency decision makers. The California Supreme Court interprets “presiding officer” as
14 it is used in the APA to mean all decision makers, including “an officer who presides over
15 an evidentiary hearing,” “agency heads and their delegees, whether or not they preside
16 over an evidentiary hearing,” and, significantly, advisors to decision makers.
17 (*Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board*
18 (2006) 40 Cal.4th 1, 9-10 (*Quintanar*); see also Gov. Code, § 11405.80.) On this point,
19 the Supreme Court explained:

20
21 The Court of Appeal drew no distinction between communications between
22 a prosecutor and a final agency decision maker on the one hand, and those
23 between a prosecutor and the decision maker’s advisor, on the other. Nor
24 do we. Each form of contact equally compromises the protections the
25 APA’s adjudicative bill of rights sought to adopt; nothing in the APA
26 contemplates permitting an agency to accomplish through secondhand
27 communications what is forbidden through firsthand communications.

28 (*Quintanar*, 40 Cal.4th at 10, fn. 8; see also, *Rondon v. Alcoholic Beverage Control*
Appeals Board (2007) 151 Cal.App.4th 1274, 1288-1289 (*Rondon*); *Chevron*
Stations, Inc. v. Alcoholic Beverage Control Appeals Board (2007) 149 Cal.App.4th

1 116, 121.)

2
3 In *Quintanar*, the Court reasoned that interpreting the APA to more broadly
4 prohibit ex parte communications to a decision maker or a decision maker’s advisor from
5 a party furthers “two important procedural precepts: First, it promotes neutral decision-
6 making by requiring a limited internal separation of functions Second, the rule
7 preserves record exclusivity.” (*Quintanar, supra*, 40 Cal.4th at pp. 10-11.) These
8 precepts further the Constitutional guarantee of due process because “[t]he action of
9 such an administrative board exercising adjudicatory functions when based upon
10 information of which the parties were not apprised and which they had no opportunity to
11 controvert amounts to a denial of a hearing. [Citation omitted]” (*Rondon, supra*, 151
12 Cal.App.4th at p. 1289-1290.)

13 To succeed on a claim that an agency violated the APA’s ex parte rules, it is not
14 necessary that the evidentiary record contain proof that ex parte communications were
15 actually considered by decision makers or their advisors. As the California Supreme
16 Court has explained:

17 [P]erhaps because such proof is unattainable, the APA prophylactically outlaws
18 any substantive communications or advice from an agency prosecutor to an
19 agency decision maker. The party faced with such a communication need not
20 prove that it was considered; conversely, the agency engaging in ex parte
21 discussions cannot raise as a shield that the advice was not considered.

22 (*Quintanar, supra*, 40 Cal.4th at p. 16.) Similarly, a showing of prejudice is not required.
23 (See *Rondon, supra*, 151 Cal.App.4th at pp. 1289-1290.)

24 Unlawful ex parte communications cannot be cured merely by pointing to other,
25 properly introduced evidence that supports the decision maker’s ruling. (*Rondon, supra*,
26 151 Cal.App.4th at pp. 1289-1290.) The APA requires that a presiding officer make an
27 ex parte communication known by written publication and offer the parties an opportunity
28 to address the communication. (Gov. Code, § 11430.50 subds. (a)-(b).) Specifically, the
presiding officer may allow a party to present evidence concerning the subject of the

1 communication, and may even reopen a hearing that has been concluded. (*Id.* §
2 11430.50(c).) Significantly, receipt by a presiding officer of a communication in violation
3 of the APA may be grounds for disqualification of the presiding officer. (Gov. Code, §
4 11430.60.) **Due process violations that are not corrected in accordance with**
5 **Government Code section 11430.50 require reversal of the adjudicative agency’s**
6 **administrative orders.** (*Quintanar, supra*, 40 Cal.4th at p. 17; *Rondon, supra*, 151
7 Cal.App.4th at p. 1290; *Chevron, supra*, 149 Cal.App.4th at p. 134.)

8 **C. The Rules and Admonitions Governing this Proceeding Prohibit Substantive**
9 **Ex Parte Communications Between Hearing Team Members and DWR**
10 **Representatives.**

11 This Board’s October 30, 2015 Notice of Petition and Notice of Public Hearing
12 expressly and unambiguously reiterated the Board’s prohibition against substantive ex
13 parte communications between parties to this proceeding and hearing team staff:

14 **EX PARTE CONTACTS.** During the pendency of this proceeding,
15 commencing no later than the issuance of the Notice of Hearing, there
16 shall be no ex parte communications with State Water Board members or
17 State Water Board hearing team staff and supervisors, regarding
18 substantive or controversial procedural issues within the scope of the
19 proceeding. (Gov. Code, §§ 11430.10-11430.80.) **Any communications**
regarding potentially substantive or controversial procedural matters,
including but not limited to evidence, briefs, and motions, must
demonstrate that all parties were served and the manner of service.

20 (October 30, 2015 Notice of Petition for the California WaterFix Project and Notice of
21 Public Hearing and Pre-Hearing Conference to Consider the Petition (Hearing Notice), p.
22 36, emphasis in original; see also Exhibit A-1, Ex Parte Timeline Table, p. 3.) The
23 Hearing Officers have continued to reiterate this admonition against substantive ex parte
24 communications on multiple occasions during the WaterFix Hearing.

25 **D. The Board’s Rules Grant Discretion to Issue a Stay or Continuance**

26 The hearing rules grant the State Water Board discretion to stay or continue the
27 hearing. Hearings “shall be conducted in a manner as the Board deems most suitable to
28

1 the particular case ... without unnecessary ... expense to the parties and to the Board.”
2 (Cal. Code Regs., tit. 23, § 648.5.)

3 **IV. DISCUSSION**

4 **A. Communications Between Hearing Team Members and DWR** 5 **Representatives Were Unlawful Ex Parte Communications**

6 Despite the unambiguous prohibition on ex parte communications applicable to
7 this proceeding, the documents released to date by the State Water Board reveal that
8 numerous meetings, phone calls, and information exchanges occurred between DWR
9 and Hearing Team members after DWR filed its Petition. (See Exhibit A-1, Ex Parte
10 Timeline Table; see also Exhibit B, Brodsky Letter, pp. 2-10, see also Exhibit D, DWR
11 PRA request, pp. 2-11.) This evidence establishes two types of violations of the APA’s
12 prohibition against ex parte communications.

13 First, under the clear standard set by the California Supreme Court, the
14 communications, both oral and written, between DWR and State Water Board Hearing
15 Team members constitute unlawful ex parte communications between representatives of
16 an agency that is a party and advisors to the decision makers. DWR is a party to the
17 proceeding. The Hearing Team members “assist the hearing officers by providing legal
18 and technical advice.” (Hearing Notice, p. 12; linked at Exhibit A-1, Ex Parte Timeline
19 Table, p. 3.)

20 The documents disclosed pursuant to the PRA requests demonstrate that at least
21 some of those communications involved critical evidence before the State Water Board
22 in the WaterFix proceeding. Of note, DWR counsel Tripp Mizell and Hearing Team
23 member Dana Heinrich met on September 15, 2015, to discuss technical and procedural
24 deficiencies of a Petition Addendum that the State Water Board received from DWR on
25 September 16, 2015. They met again on October 28, 2015, to discuss similar issues,
26 and that time they were joined by DWR hearing counsel, Kenneth Bogdan. (See Exhibit
27 A-1, Ex Parte Timeline Table, p. 2.) Although the Hearing Notice was not issued until
28

1 October 30, 2015, Government Code section 11430.10, subdivision (a), prohibits ex
2 parte communications “while the proceeding is pending.” (Gov. Code, § 11430.10, subd.
3 (a).) In a water rights matter, a proceeding is typically pending once the State Water
4 Board issues a notice of hearing. (See Transmittal of Ex Parte Communications
5 Questions and Answers Document from Michael Lauffer to the State Water Resources
6 Control Board and Regional Water Quality Control Boards (April 25, 2013), p. 5.)³. The
7 State Water Board’s Chief Counsel, however, has warned that “[w]hen a proceeding is
8 clearly impending, water board members should consider ex parte communications to be
9 prohibited based on due process considerations.” (*Id.* at p. 6.) The Petition for Change
10 in Water Rights was submitted to the State Water Board by DWR and the Bureau of
11 Reclamation on August 26, 2015. Immediately, a flood of letters from interested parties
12 criticizing the petition began pouring in. At this point, there was no question that the
13 petition was headed for a contested evidentiary proceeding. Therefore, any
14 communications between DWR representatives and Hearing Team members after
15 August 26, 2015, concerning the WaterFix change petition constituted improper ex parte
16 communications.

17 Meetings, conference calls, and email conversations between DWR
18 representatives and State Water Board Hearing Team members repeatedly occurred
19 before and after the filing of the Hearing Notice on October 30, 2015. For instance, on
20 January 25, 2016, DWR representatives, Kenneth Bogdan, Cassandra Enos, Jennifer
21 Pierre, and Chandra Chilmakuri held an in-person and WebEx meeting with State Water
22 Board Hearing Team members Dana Heinrich, John Gerlach, and Rich Satkowski to
23 discuss “Preparation of the Final EIR/EIS.” (See Exhibit A-1, Ex Parte Timeline Table, p.
24 5.) On May 26, 2016, DWR representatives, Kenneth Bogdan, Jennifer Pierre, Chandra
25 Chilmakuri again met with State Water Board Hearing Team members Dana Heinrich,
26 Diane Riddle John Gerlach, and Kyle Ochendusko to discuss WaterFix Appendix 5E,

27 _____
28 ³ See Exhibit B, Brodsky Letter, Attachment 8.

1 regarding the Boundary 1–Boundary 2 analysis. (See Exhibit A-1, Ex Parte Timeline
2 Table, p. 9.) On June 10, 2016, in an email discussion between DWR representatives,
3 Kenneth Bogdan and Marcus Yee and State Water Board Hearing Team members,
4 Dianne Riddle, Dana Heinrich and Kyle Ochendusko, Hearing Team members were
5 provided information and, in return, offered direction about the content of DWR’s
6 Boundary 1 – Boundary 2 modeling analysis contained in the EIR. (See Exhibit A-1, Ex
7 Parte Timeline Table, p. 11.) These communications and others identified in the Ex
8 Parte Timeline Table, the Brodsky Letter, and the DWR PRA request constitute unlawful
9 ex parte communications between DWR and the Hearing Team. These communications
10 and any others between DWR representatives and Hearing Team members that may be
11 produced through responses to the pending PRA requests, are relevant to the
12 exploration of the extent and substance of any and all ex parte communications from
13 August 26, 2015, through the present.

14 Second, State Water Board staff who were part of the WaterFix Hearing Team
15 exceeded their authority as nonadversarial staff members when they participated in the
16 development of evidence after DWR filed its Petition. Although nonadversarial staff are
17 permitted to advise decision makers in a proceeding, they may not go so far as to
18 “furnish, augment, diminish, or modify the evidence in the record.” (See Gov. Code, §
19 11430.30 subd. (a).) The State Water Board Chief Counsel’s interpretation of the ex
20 parte rules is to this effect. (See Transmittal of Ex Parte Communications Questions and
21 Answers Document from Michael Lauffer to the State Water Resources Control Board
22 and Regional Water Quality Control Boards (April 25, 2013), p. 9.)⁴ The available
23 correspondence illustrates that Hearing Team members coordinated with DWR in
24 revising the EIR/EIS and modeling analysis intended for submission to the Board. (See
25 Exhibit B, Brodsky letter, pp. 2-3; see also June 10, 2016 entry in Exhibit A-1, Ex Parte
26 Timeline Table, p. 11.) This clearly constituted a violation, because staff overstepped

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28 ⁴ See Exhibit B, Brodsky Letter, Attachment 8.

1 their nonadversarial authority by shaping evidence in the record. (See Gov. Code, §
2 11430.30 subd. (a).)

3 The Kuenzi Letter states that State Water Board staff met with DWR staff or
4 consultants “solely related to the adequacy of the Environmental Impact Report (EIR) for
5 the WaterFix Project for which the State Water Board is a responsible agency”
6 (See Exhibit C, Kuenzi Letter, p. 4.) Ms. Kuenzi asserts that State Water Board staff
7 were not engaged in communications with DWR regarding matters at issue in the
8 proceeding and that “[t]he subject matter of these meetings was restricted to factual and
9 legal matters related to the EIR.” (*Ibid.*) However, California courts have interpreted the
10 prohibition against ex parte communications regarding “any issue in the proceeding” to
11 include “communication of information in which counsel [or a party] knows or should
12 know the opponents would be interested . . . [T]he standard generally bars any ex parte
13 communication by counsel [or a party] to the decisionmaker of information relevant to
14 issues in the adjudication.” (*Mathew Zaheri Corp. v. New Motor Vehicle Board* (1997)
15 55 Cal.4th 1305, 1317.) The underlying importance of the EIR/EIS and modeling to the
16 State Water Board’s review of the WaterFix Project, and the fact that DWR’s witnesses
17 and other parties have relied on the EIR/EIS and modeling in their testimony, logically
18 suggests that DWR and Hearing Team staff knew or should have known that the other
19 parties to the proceedings would have an interest in participating in discussions
20 regarding revisions to the scope and content of the CEQA effects analysis, including the
21 modeling that was the basis for both that analysis and DWR’s Petition for Change.

22 Additionally, the Kuenzi Letter states: “[t]o the extent that any underlying factual
23 information discussed during the meetings may be related to any controversial matter
24 within the scope of the hearing for the change petition for the WaterFix Project, State
25 Water Board staff did not share this information with any member of the State Water
26 Board.” (See Exhibit C Kuenzi Letter, pp. 4-5.) This statement ignores the Supreme
27 Court’s holding that due process rights may be violated regardless of whether the
28 ultimate decision maker is made aware of the content of ex parte communications or if

1 prejudice is shown. (See *Rondon, supra*, 151 Cal.App.4th at pp. 1289-1290.) Whether
2 or not the substance of the discussions was shared with the Hearing Officers (which,
3 Protestants assert, remains an unresolved question of fact subject to formal discovery,
4 including depositions), is irrelevant to a determination that unlawful ex parte
5 communications occurred.

6 Throughout the time that Hearing Team members and DWR representatives were
7 conducting ex parte communications, the Hearing Officers made several rulings in the
8 WaterFix hearing bearing on the role of CEQA and water modeling evidence in the
9 hearing. The topics of the admitted ex parte communications are within the scope of,
10 and indeed central to, the Hearing. Moreover, between January and October of 2016,
11 the Hearing Officers made nine rulings that explained the import of the CEQA process
12 within the context of the hearings or made a substantive decision regarding the rights of
13 the parties with respect to the modeling. (See Exhibit A-1, Ex Parte Timeline Table.)
14 The Hearing Officers acknowledged that the Final EIR/EIS would be submitted into
15 evidence in the hearing, and therefore, the parties would be able to “point to the analysis
16 contained in the CEQA document as evidence of the potential effects of the project on
17 legal users of water, or they may wish to refute that analysis.” (January 15, 2016,
18 *Service List of Participants, List of Other Interested Persons, and Pre Hearing*
19 *Conference Agenda in the Matter of Hearing on Petition Requesting Changes in Water*
20 *Rights of the Department of Water Resources and U.S. Bureau of Reclamation for the*
21 *California WaterFix Project*, pp. 5-6; see Exhibit A-1, Ex Parte Timeline Table, P. 4.) The
22 Hearing Officers have recognized the importance of the analysis contained in the CEQA
23 documents on the outcome of the hearing and whether Petitioners can demonstrate that
24 the WaterFix Project would not injure legal users of water. Likewise, the disclosed ex
25 parte communications relate to the WaterFix Project’s unreasonable effects on fish and
26 wildlife and the public interest.

27 On May 25, 2016, Petitioner DWR submitted modeling data in the change petition
28 proceeding that it used in the CEQA documents to evaluate the effects of the WaterFix

1 Project on water flows and water quality. Many parties requested an extension of time to
2 file procedural and evidentiary objections and additional time before the Hearing
3 commenced to evaluate this new data. On June 10, 2016, the Hearing Officers granted
4 a 27-day extension to file objections but denied the continuance to the Hearing
5 requested by the parties. (June 10, 2016, *Deadline Extension Requests, Policy*
6 *Statements, Format of Petitioners' Case-in-Chief, Parties' Participation, and Other*
7 *Procedural Matters*, pp. 1-2; see Exhibit A-1, Ex Parte Timeline Table, p.11.) The
8 Hearing Officers' ruling limiting the opportunity for protestants to review and object to
9 complex modeling data, and refusing to continue the hearing, all the while maintaining
10 ex parte communications with DWR about what would be included in the modeling
11 evidence, suggests bias by the Hearing Officers. (*Morongo, supra*, 45 Cal.4th at p. 741.)
12 The appearance of bias is particularly concerning because the modeling and EIR/EIS
13 are the primary evidence DWR has submitted on the question of whether the WaterFix
14 Project would injure Protestants' water rights and otherwise be contrary to the public
15 interest due to unreasonable effects on fish and wildlife and public trust resources.

16 The ex parte communications have the potential to result in an unfair
17 hearing. The same Hearing Team members who participated in shaping the modeling
18 and EIR/EIS with Petitioner DWR advised the Hearing Officers with respect to disputes
19 about the quality and import of key modeling and EIR evidence at the heart of the
20 protests. Numerous protestants have argued that the water modeling and EIR/EIS are
21 insufficient to answer questions about the key issues in this hearing, including the extent
22 to which the petition will injure legal users of water or public trust resources. The
23 Hearing Officers have overruled objections to the modeling on the theory that such
24 arguments will go to the weight of the evidence. Where members of the Hearing Team,
25 the key advisors to the Hearing Officers, have helped shape the water modeling and
26 EIR/EIS, it is foreseeable that they may advise the Hearing Officers and State Water
27 Board that the modeling, and EIR/EIS's impact conclusions should be given great
28

1 weight.⁵

2 Even in the absence of direct cause-and-effect evidence, however, the
3 information already disclosed establishes an appearance of pre-decisional bias and
4 collusion so compelling that this proceeding has been irrevocably tainted. Whether it
5 can be salvaged, in whole or in part, remains to be determined.

6 **B. A Stay or Continuance Would Allow the State Water Board and Parties the**
7 **Opportunity to Determine the Extent and Substance of Any and All Ex Parte**
8 **Communications**

9 As articulated by the Supreme Court, it is presumed that state administrative
10 adjudicators are impartial “when rules mandating an agency’s internal separation of
11 functions and prohibiting ex parte communications are observed.” (*Morongo Band of*
12 *Mission Indians v. State Water Resources Control Board*, 45 Cal.4th 731, 741.) This
13 presumption of impartiality “can be overcome only by specific evidence demonstrating
14 actual bias or a particular combination of circumstances creating an unacceptable risk of
15 bias.” (*Ibid.*) The documents disclosed to date by the State Water Board reveal that an
16 unacceptable risk of bias has resulted from a failure to maintain the necessary
17 separation of functions between State Water Board staff members performing duties of
18 the responsible agency and staff members assigned to the Hearing Team. The State
19 Water Board’s failure to maintain a separation of functions, as discussed above, cannot
20 be saved by a finding that ex parte communications were not shared with the decision
21 makers; the communications between DWR and the Hearing Team violate the APA.

22 If the ex parte communications are not corrected in accordance with
23 Government Code section 11430.50 prior to a final decision by the administrative
24 adjudicators, the administrative decision can be, and most likely will be, reversed.
25 Without full disclosure of the ex parte communications, and the opportunity to evaluate

26 ⁵ A State Water Board finding that the modeling and EIR/EIS are not adequate would be
27 tantamount to a finding that its staff (Hearing Team advisors) failed in their job to ensure
28 that the document was adequate under CEQA for the State Water Board’s responsible
agency role.

1 them, it is premature to determine the appropriate remedy. However, if these
2 proceedings are stayed or continued pursuant to section 648.5 of title 23 of the Code of
3 Regulations, there will be an opportunity to establish the extent of ex parte
4 communications between DWR and the Hearing Team, publish any extra-record
5 evidence, and determine the extent to which Hearing Team members and
6 nonadversarial advisors may have shaped evidence in the WaterFix record. The
7 possibility still exists, depending on the scope of the communications, that irreparable
8 damage to the proceeding, and the parties, may be avoided.

9 **C. Allowing the Hearing to Proceed Before Ex Parte Communication Issues Are
10 Resolved Will Result in Prejudice and Substantial Hardship to Protestants**

11 Protestants and all parties to this proceeding will be prejudiced if Protestants'
12 motion is not granted.⁶ The very same topics of the unlawful ex parte communications
13 revealed to date—water modeling and the EIR/EIS--are also the subject of testimony
14 and evidence submitted in Part 2. Without a stay, the parties and the State Water Board
15 will invest significant resources reviewing testimony and participating in the next part of
16 the hearing, currently scheduled to last 93 days. To ensure there is no prejudice, due
17 process requires that parties be informed of the full extent of ex parte communications
18 relating to Petitioners' evidence and anything else pertinent to the hearing, before the
19 hearing proceeds.

20 **V. CONCLUSION**

21 A stay or continuance is within the Board's discretion to conform the hearing as
22 necessary and ensure the continuity and efficiency of the hearing process. In addition,
23 neither the parties nor the State Water Board should incur the potentially unnecessary
24 expense of proceeding with Part 2 until a complete investigation results in a
25 determination regarding the scope and implications of the ex parte communications,
26 including whether they have irreparably compromised this Hearing. To ensure

27 _____
28 ⁶ Protestants need not show that the ex parte communications have or will result in
prejudice for there to be a violation of the APA.

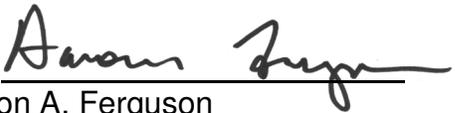
1 Protestants' due process rights are protected, the State Water Board should stay or
2 continue this hearing until the full extent and import of the unlawful ex parte
3 communications have been determined. That will require adequate time for compliance
4 with the pending PRA requests and the opportunity for protestants to identify, explore
5 and evaluate the significance of the evidence, and time for a hearing to determine how
6 to move forward in compliance with the rule of law.

7 Based on the foregoing, the Protestants respectfully request that the Hearing
8 Officers grant this motion for stay or continuance.

9 SOMACH SIMMONS & DUNN
A Professional Corporation

10

11 Dated: January 15, 2018

By: 
Aaron A. Ferguson
Attorney for County of Sacramento and
Sacramento County Water Agency

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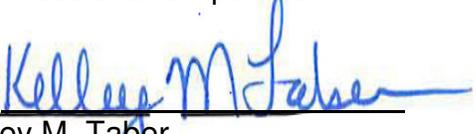
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15 SOMACH SIMMONS & DUNN
A Professional Corporation

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18 Dated: January 15, 2018

By: 
Kelley M. Taber
Attorney for City of Stockton and
Sacramento Regional County Sanitation
District

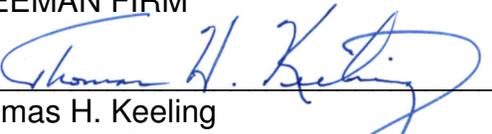
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21

FREEMAN FIRM

22 Dated: January 15, 2018

By: 
Thomas H. Keeling
Attorney for County of San Joaquin

23

24

25 SOLURI MESERVE, A LAW
CORPORATION

26

27 Dated: January 15, 2018

By: 
Osha R. Meserve
Attorney for Local Agencies of the North
Delta

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LAW OFFICES OF MATTHEW
EMRICK

Dated: January 15, 2018

By: Matthew L. Emrick / *ML*
Matthew L. Emrick
Attorney for City of Antioch

Table 1: Compilation of Ex Parte Contacts and Other Events in the CWF Hearing Process Exhibit A-1

Date(s)	Ex Parte Communication/Individuals and Affiliations*	Submissions, Filings, Deadlines and Other Actions	Additional Details/Comments	Corroborating Attachments
August 26, 2015 ¹		Water Right Change Petition submitted to SWRCB by DWR and BOR	Commencement of proceeding triggers prohibition on ex parte contacts.	August 26, 2015 Water Right Change Petition
August 31, 2015 September 2, 2015 September 9, 2015		Letters pertaining to deficiencies in DWR's Water Rights Petition submitted by LAND/CDWA, City of Antioch and Friends of the River (FOR)		August 31, 2015 Letter from Local Agencies of the North Delta and Central Delta Water Agency Re: Petition for Change submitted by DWR and BOR September 2, 2015 Letter from City of Antioch Re: Petition for Change Submitted by DWR and BOR September 9, 2015 Letter from Friends of the River to Federal Agencies Re: Request for ESA and NEPA Compliance
September 15, 2015	Meeting at State Water Board offices between Tripp Mizell (DWR hearing counsel) and Dana Heinrich (SWRCB hearing team)		Meeting discussed "technical and procedural issues of Petition Addendum," along with mention of mapping issues. SWRCB hearing team members apparently	September 14, 2015 – Email setting meeting time

¹ The events included in Ex Parte Timeline Table range from the filing of the Petition for Change in Water Rights on August 26, 2015 to October 7, 2016. This date range was selected due to the availability of information regarding ex parte contacts in this period, and may not include all ex parte contacts or related information.

Table 1: Compilation of Ex Parte Contacts and Other Events in the CWF Hearing Process Exhibit A-1

Date(s)	Ex Parte Communication/Individuals and Affiliations*	Submissions, Filings, Deadlines and Other Actions	Additional Details/Comments	Corroborating Attachments
			assisted in the development of an Addendum to help correct the incomplete Petition.	
September 16, 2015		DWR and BOR submit Water Right Change Petition Addendum and Errata	Additions attempt to correct deficiencies identified in public comments, apparently with the assistance of the SWRCB hearing team.	September 16, 2015 Water Right Change Petition Addendum and Errata
October 28, 2015	Conference call and emails between Tripp Mizell and Kenneth Bogdan (DWR hearing counsel); and Dana Heinrich (SWRCB hearing team)		Email indicates that Tripp Mizell raised issues during the call which Heinrich was uncomfortable speaking about.	October 28, 2015 Email discussing conference call October 28, 2015 Email setting up the conference call

Table 1: Compilation of Ex Parte Contacts and Other Events in the CWF Hearing Process Exhibit A-1

Date(s)	Ex Parte Communication/Individuals and Affiliations*	Submissions, Filings, Deadlines and Other Actions	Additional Details/Comments	Corroborating Attachments
October 30, 2015		SWRCB Issues Notice of Petition and Notice of Public Hearing and Pre-Hearing Conference to Consider the Petition	Hearing team announced: Felicia Marcus and Tam Doduc (hearing officers); Dana Heinrich, Diane Riddle, Rich Satkowski, John Gerlach, Michael Buckman, Kenneth Emanuel, Thaddeus Hunt, Kevin Long, Steve Marquez, and Jean McCue (hearing team staff).	October 30, 2015 Notice of Petition and Notice of Public Hearing and Pre-Hearing Conference to Consider the Petition
January 4, 2016	Meeting with Samantha Olson, Dana Heinrich, Rich Satkowski, John Gerlach (SWRCB hearing team members); Kenneth Bogdan (DWR hearing counsel); and Cassandra Enos (DWR staff)		DWR and SWRCB meet at the Cal/EPA building for "WaterFix EIR discussion".	Undated Outlook invite Email setting meeting time

Table 1: Compilation of Ex Parte Contacts and Other Events in the CWF Hearing Process Exhibit A-1

Date(s)	Ex Parte Communication/Individuals and Affiliations*	Submissions, Filings, Deadlines and Other Actions	Additional Details/Comments	Corroborating Attachments
January 15, 2016		SWRCB issues ruling "Service List of Participants, List of Other Interested Persons, and Pre-hearing Conference Agenda in the Matter of Hearing on Petition Requesting Changes in Water Rights of the Department of Water Resources and U.S. Bureau for the California WaterFix Project"		January 15, 2016 Service List of Participants, List of Other Interested Persons, and Pre-Hearing Conference Agenda
January 21 and 22, 2016		FOR, Sierra Club and PCL; LAND; Restore the Delta; Sacramento Valley Group; and other parties provide prehearing comments on problems with proceeding with hearing prior to completion of EIR/EIS and WQCP Updates, among other issues		January 21, 2016 – FOR, Sierra Club and PCL Comment Letter January 22, 2016 LAND Comment Letter January 22, 2016 Restore the Delta Comment Letter January 22, 2016 Sacramento Valley Group Comment Letter

Table 1: Compilation of Ex Parte Contacts and Other Events in the CWF Hearing Process Exhibit A-1

Date(s)	Ex Parte Communication/Individuals and Affiliations*	Submissions, Filings, Deadlines and Other Actions	Additional Details/Comments	Corroborating Attachments
January 25, 2016	In person and WebEx meeting between Kenneth Bogdan (DWR hearing counsel); Cassandra Enos (DWR staff); Jennifer Pierre and Chandra Chilmakuri (DWR consultants); Dianne Riddle, Dana Heinrich, John Gerlach, and Rich Satkowski (SWRCB hearing team members)		Meeting at DWR Bonderson Building of DWR and SWRCB staff to discuss "Preparation of the Final EIR/EIS."	Undated Outlook Invite Email setting the meeting time
January 28, 2016		Prehearing conference on Change Petition		
February 4, 2016		California Water Research (CWR/Deirdre Des Jardins) cites "chaotic" state of Change Petition, and that information required by statute and regulation for Change Petition is in the modeling, requests full disclosure of modeling by DWR	Modeling of water right change is key hearing issue and is within the scope of the hearing.	February 4, 2016 CWR's Comment Letter
February 11, 2016		SWRCB issues "California WaterFix Project Prehearing Conference Ruling"		February 11, 2016 Hearing Officers' Ruling on Pre-Hearing Conference Procedural Issues

Table 1: Compilation of Ex Parte Contacts and Other Events in the CWF Hearing Process

Exhibit A-1

Date(s)	Ex Parte Communication/Individuals and Affiliations*	Submissions, Filings, Deadlines and Other Actions	Additional Details/Comments	Corroborating Attachments
February 17, 2016		SVWU requests that DWR specify modeling to be used for Change Petition	Modeling of water right change is key hearing issue and is within the scope of the hearing.	February 17, 2016 SVWU's Letter to Petitioners.
March 4, 2016		SWRCB issues ruling: Revised Hearing Schedule, Revised Notice of Intent to Appear, Electronic Service and Submissions, and Other Procedural Issues Concerning the California WaterFix Water Right Change Petition Hearing	Ruling states in part that DWR must respond within 7 days to requests of SVWU and CWR.	March 4, 2016 Hearing Officers' Ruling on Revised Hearing Schedule, Revised NOIs, Electronic Service and Submissions, and Other Procedural Issues
March 11, 2016		DWR responds to Board mandate to answer information requests by SVWU and CWR, specifies that CWF BA modeling will be used for Change Petition, provides link to protestants to download modeling	Modeling of water right change is key hearing issue and is within the scope of the hearing.	March 11, 2016 Petitioners' Response to Parties' WaterFix Modeling Comments and requests for information
March 28, 2016		DWR files motion for 60-day continuance, citing settlement talks		March 28, 2016 Petitioners' Request for a 60-Day Continuance of California WaterFix Petition Hearing
April 1, 2016		Planning and Conservation League (PCL) filed second motion to dismiss Petition		April 1, 2016 PCL et al.'s Second Request for Dismissal

Table 1: Compilation of Ex Parte Contacts and Other Events in the CWF Hearing Process

Exhibit A-1

Date(s)	Ex Parte Communication/Individuals and Affiliations*	Submissions, Filings, Deadlines and Other Actions	Additional Details/Comments	Corroborating Attachments
April 2, 2016		CWR submits letter regarding significant unresolved issues with modeling	Modeling of water right change is key hearing issue and is within the scope of the hearing.	April 2, 2016 CWR's Letter Re: Significant Unresolved Issues
April 11, 2016	Email between John Gerlach (SWRCB hearing team) and Chandra Chilmakuri (DWR consultant), and Kenneth Bogdan (DWR hearing counsel)		<p>John Gerlach asks DWR to “please clarify what modeling will be relied on for the case-in chief for each of the three phases of the hearing-1A, 1B, and 2. It’s not clear to me from the table in the March 11, 2015 letter from DWR and Reclamation to the SWRCB how the WaterFix RDEIR/SDEIS modeling for water quality (DSM2 16year period) and the BA modeling for endangered species (82-year period) are being used in the various hearing phases.”</p> <p>Hearing team communicating with DWR staff on substance of petition and modeling supporting it, which is key hearing issue within the scope of the hearing.</p>	April 11, 2016 Email correspondence

Table 1: Compilation of Ex Parte Contacts and Other Events in the CWF Hearing Process Exhibit A-1

Date(s)	Ex Parte Communication/Individuals and Affiliations*	Submissions, Filings, Deadlines and Other Actions	Additional Details/Comments	Corroborating Attachments
April 21, 2016	Meeting between Kenneth Bogdan (DWR hearing counsel); Jennifer Pierre and Chandra Chilmakuri (DWR consultants); John Gerlach, Diane Riddle, Dana Heinrich, and Kyle Ochendusko (SWRCB hearing team)		Meeting at DWR Bonderson Building between DWR and SWRCB staff to discuss CWF modeling.	Undated Outlook invite Email setting meeting time
April 25, 2016		SWRCB issues: Revised Hearing Schedule, Revised Notices of Intent to Appear, and Motion to Disqualify Hearing Officers – California WaterFix Water Right Change Petition Hearing [granting Petitioners' requested 60-day continuance and allowing submission of new modeling]	DWR had not requested leave to submit new modeling in the motion for a 60-day continuance, making it unclear how SWRCB would know of new modeling except from ex parte communications.	April 25, 2016 Hearing Officers' Ruling on Revised Hearing Schedule, Revised Notices of Intent to Appear, and Motion To Disqualify Hearing Officers
May 25, 2016		DWR sends new modeling to SWRCB with formal letter of transmission		May 25, 2016 DWR's Transmittal Letter .

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Date(s)	Ex Parte Communication/Individuals and Affiliations*	Submissions, Filings, Deadlines and Other Actions	Additional Details/Comments	Corroborating Attachments
May 26, 2016	Meeting between Jennifer Pierre and Chandra Chilmakuri (DWR consultants); Kenneth Bogdan (DWR hearing counsel); Dana Heinrich, Diane Riddle, Kyle Ochendusko, and John Gerlach (SWRCB hearing team)		Meeting at DWR Bonderson Building between DWR and SWRCB staff for “CWF Appendix 5E Meeting”.	Undated Outlook invite Email setting meeting time
June 2, 2016		PCFFA/IFR requests 60-day extension of time to submit objections, cites new modeling, failure of DWR to respond fully to CWR’s requests for modeling in the CEQA/NEPA documents and information on the modeling	Modeling of water right change is key hearing issue and is within the scope of the hearing.	June 2, 2016 PCFFA's Request for Extension
June 3, 2016		South Delta Water agency requests 60-day extension of time to submit objections, cites new modeling. DWR responds to request for time to analyze new modeling, stating that it will not be submitted as evidence for the hearing. DWR also states that DWR has provided “all data under its control” in response to CWR’s requests	Modeling of water right change is key hearing issue and is within the scope of the hearing.	June 3, 2016 SDWA's Request for Extension June 3, 2016 DWR's Opposition to Requests for Extensions

Table 1: Compilation of Ex Parte Contacts and Other Events in the CWF Hearing Process Exhibit A-1

Date(s)	Ex Parte Communication/Individuals and Affiliations*	Submissions, Filings, Deadlines and Other Actions	Additional Details/Comments	Corroborating Attachments
June 9, 2016		CWR requests 60-day extension and requests that Board require DWR to answer questions regarding 2004 report by DWR and Reclamation that shows that DWR and Reclamation may be withholding substantial technical documentation on the modeling.	Modeling of water right change is key hearing issue and is within the scope of the hearing.	June 9, 2016 CWR's Request for Extension

Table 1: Compilation of Ex Parte Contacts and Other Events in the CWF Hearing Process

Exhibit A-1

Date(s)	Ex Parte Communication/Individuals and Affiliations*	Submissions, Filings, Deadlines and Other Actions	Additional Details/Comments	Corroborating Attachments
June 10, 2016	Email discussion between Dianne Riddle, Dana Heinrich, and Kyle Ochenduszko (SWRCB hearing team); Marcus Yee (DWR staff), and Kenneth Bogdan (DWR hearing counsel)	SWRCB issues ruling: Deadline Extension Requests, Policy Statements, Format of Petitioners' Case-in-Chief, Parties' Participation, and Other Procedural Matters	<p>Yee requests a meeting with Riddle regarding Appendix 5E. Riddle responds, asking if Yee's concern is primarily with the modeling and legal issues in Appendix 5E. Yee confirms DWR would like to discuss modeling.</p> <p>Hearing team members provided with ex parte evidence from DWR and gave DWR ex parte direction about content of DWR's evidence to be presented to the Board with respect to the impact analysis in the EIR/EIS, the input and output of Boundary 1–Boundary 2 modeling, and legal issues that were, and are, before the Board.</p> <p>SWRCB ruling granted a 27-day extension to submit procedural and evidentiary objections, but denied a request for a two-month extension.</p>	<p>June 10, 2016 Hearing Officers' Ruling on Deadline Extension Requests, Policy Statements, Format of Petitioners' Case-In-Chief, Parties' Participation, and Other Procedural Matters</p> <p>June 10, 2016 Email correspondence</p>

Table 1: Compilation of Ex Parte Contacts and Other Events in the CWF Hearing Process Exhibit A-1

Date(s)	Ex Parte Communication/Individuals and Affiliations*	Submissions, Filings, Deadlines and Other Actions	Additional Details/Comments	Corroborating Attachments
June 16, 2016	Skype call between Marcus Yee (DWR staff); Jennifer Pierre (DWR consultant); Kenneth Bogdan (DWR hearing counsel); Diane Riddle, Dana Heinrich, and Kyle Ochendusko (SWRCB hearing team)		DWR and SWRCB staff discuss Appendix 5E via Skype Call.	Undated Outlook invite Email requesting participant's join call.
June 20, 2016		CWR files request that SWRCB take Official Notice of 2012 report by SWRCB's panel of independent experts, recommending that testing and calibration information be submitted for all models used in Board proceedings	Modeling of water right change is key hearing issue and is within the scope of the hearing.	June 20, 2016 CWR's Request for Official Notice.
June 24, 2016	Conference call between Marcus Yee (DWR staff); Jennifer Pierre (DWR consultant); Kenneth Bogdan (DWR hearing counsel); Diane Riddle, Kyle Ochendusko, and Dana Heinrich (SWRCB hearing team)		DWR and SWRB staff discuss Appendix 5E via conference call.	Undated Outlook invite Email setting conference call time.

Table 1: Compilation of Ex Parte Contacts and Other Events in the CWF Hearing Process Exhibit A-1

Date(s)	Ex Parte Communication/Individuals and Affiliations*	Submissions, Filings, Deadlines and Other Actions	Additional Details/Comments	Corroborating Attachments
July 8-12, 2016	July 12, 2016 email between Kenneth Bogdan (DWR hearing counsel); Marcus Yee (DWR staff); Diane Riddle and Dana Heinrich (SWRCB hearing team)	Tehama-Colusa Canal Authority, et al., Sacramento Valley Water Users (SVWA), North Delta Water Agency (NDWA), FOR, City of Stockton, Sacramento Regional County Sanitation District, (SRCSD) San Joaquin Tributaries Authority (SJTA), Save the California Delta Alliance (SCDA), Restore the Delta (RTD), LAND, Islands Inc., California Sportfishing Protection Alliance et al. (CSPA), County of San Joaquin (SJC), Central Delta water Agency et al. (CDWA), and Clifton Court all file Objections to DWR's Exhibits, many raising issues about problems with modeling.	<p>Deadline to submit objections was 12:00 P.M., July 12, 2016.</p> <p>Email between DWR and SWRCB staff setting up meeting regarding Appendix 5E.</p> <p>Email was sent July 12, 2016 1:00 p.m., one hour after the 12:00 p.m. deadline.</p>	<p>See SWRCB Website for filings made July 8, 11, and 12, 2016</p> <p>July 12-13 Emails setting meeting time (see July 12, 2016 1:00 P.M. send time for initial email from Marcus Yee)</p>

Table 1: Compilation of Ex Parte Contacts and Other Events in the CWF Hearing Process Exhibit A-1

Date(s)	Ex Parte Communication/Individuals and Affiliations*	Submissions, Filings, Deadlines and Other Actions	Additional Details/Comments	Corroborating Attachments
July 14, 2016	Conference call with Marcus Yee and Russell Stein (DWR staff); Chandra Chilmakuri and Jennifer Pierre (DWR consultants); Kenneth Bogdan (DWR hearing counsel); Diane Riddle, Dana Heinrich and Kyle Ochendusko (SWRCB hearing team); and Rick Wilder (BOR consultant)		DWR and SWRCB staff hold conference call to discuss Appendix 5E.	July 12-13, 2016 Emails setting meeting time
July 19, 2016	Telephone call between Kenneth Bogdan (DWR hearing counsel) and Dana Heinrich (SWRCB hearing team)		Unclear what topic of call was, but appears to relate to content of DWR's response to objections filed the next day.	July 19, 2016 Email confirming earlier call
July 20, 2016		DWR files Response to Objections		July 20, 2016 DWR's Response to Objection
July 22, 2016		SWRCB issues ruling: California WaterFix Hearing – Evidentiary Objections and Other Procedural Matters [ruling it is not necessary to address objections before Hearing begins]	Ruling delays consideration of weight and admissibility of modeling evidence, which is essential to Petitioners' Case in Chief.	July 22, 2016 Hearing Officers' Ruling on Evidentiary Objections and Other Procedural Matters

Table 1: Compilation of Ex Parte Contacts and Other Events in the CWF Hearing Process Exhibit A-1

Date(s)	Ex Parte Communication/Individuals and Affiliations*	Submissions, Filings, Deadlines and Other Actions	Additional Details/Comments	Corroborating Attachments
August 5, 2016		<p>SWRCB issued letter: California WaterFix Hearing – Deirdre Des Jardins’ Motion to Introduce Foundational Evidence into the Hearing Record</p> <p>[explaining that ultimate decision on water right change petition would be based on the entire administrative record, and no findings on Petitioners’ modeling evidence would be made until all other parties had an opportunity to question the reliability of the evidence through cross-examination and presentation of their Cases in Chief]</p>	Modeling of water right change is key hearing issue and is within the scope of the hearing.	<p>August 5, 2016 Hearing Officers’ Letter Re: Deirdre Des Jardins’ Motion to Introduce Foundational Evidence into the Hearing Record</p>

Table 1: Compilation of Ex Parte Contacts and Other Events in the CWF Hearing Process

Exhibit A-1

Date(s)	Ex Parte Communication/Individuals and Affiliations*	Submissions, Filings, Deadlines and Other Actions	Additional Details/Comments	Corroborating Attachments
August 11-12, 2016		<p>SDWA et. al. request extension of time to submit testimony and exhibits for Part 1B; multiple protestants join motion</p> <p>SVWU joins in SDWA et. al request for extension, citing new operational scenarios in revised Biological Assessment</p>	Modeling of water right change is key hearing issue and is within the scope of the hearing.	<p>August 11, 2016 Central Delta Water Agency, South Delta Water Agency, et al.'s Request for Extension of Time to Submit Protestant Exhibits and Written Testimony for Part 1B</p> <p>August 12, 2016 Sacramento Valley Water Users Partial Joinder</p>
August 15, 2016		DWR files objection to request for extension of time		August 15, 2016 California Department of Water Resources' Response to Requests to Extend Part 1B Deadline for Cases-in-Chief
August 18, 2016	Email between Michael Lauffer (SWRCB Chief Counsel); Kenneth Bogdan (DWR hearing counsel)		Email meant to set up future discussion regarding 404 fill permit for project. States that Office of the Chief Counsel counsel not on the WaterFix advisory team should participate, in recognition of ex parte prohibition.	August 18, 2016 Email scheduling August 19, 2016 call

Table 1: Compilation of Ex Parte Contacts and Other Events in the CWF Hearing Process Exhibit A-1

Date(s)	Ex Parte Communication/Individuals and Affiliations*	Submissions, Filings, Deadlines and Other Actions	Additional Details/Comments	Corroborating Attachments
August 19, 2016	Conference call with Michael Lauffer (SWRCB chief counsel); Kenneth Bogdan (DWR hearing counsel); Karla Nemeth (CNRA/DWR management); Michelle Hutzel (EPA), Gordon Burns (EPA), Michael Jewell (USACE) and Kimberly Arbuckle (CNRA administrative assistant)		Demonstrates possibility for SWRCB to provide information to DWR without violating ex parte prohibitions.	August 17, 2016 Email setting conference call time
August 24, 2016		SWRCB issues: California WaterFix Hearing – Ruling on Save the California Delta Alliance et al.’s Renewed Motion to Amend Protest [Delta Alliance argued that Petitioners changed project description and added boundary analysis in modeling and therefore Delta Alliance et al. should be allowed to amend protest; SWRCB declined to allow Delta Alliance et al. to amend]	Modeling of water right change is key hearing issue and is within the scope of the hearing.	August 24, 2016 Hearing Officers' Ruling on Save the California Delta Alliance, et al.'s Renewed Motion to Amend Protest

Table 1: Compilation of Ex Parte Contacts and Other Events in the CWF Hearing Process Exhibit A-1

Date(s)	Ex Parte Communication/Individuals and Affiliations*	Submissions, Filings, Deadlines and Other Actions	Additional Details/Comments	Corroborating Attachments
September 21, 2016		CWR submits Motion to Exclude Evidence and Strike Written Testimony, citing DWR's failure to submit modeling as an exhibit, and SWRCB requirements to exclude exhibits based on unpublished technical documentation.	Modeling of water right change is key hearing issue and is within the scope of the hearing.	September 21, 2016 CWR's Motion to Exclude Evidence and Strike Written Testimony
September 22, 2016	Marcus Yee (DWR staff) emails Dianne Riddle (SWRCB hearing team), with a cc to: Kenneth Bogdan (DWR hearing counsel), Jennifer Pierre and Chandra Chilmakuri (DWR consultants); Kyle Ochendusko and Dana Heinrich (SWRCB hearing team)		Yee requested setting up a web conference meeting to discuss Appendix 5E.	September 22, 2016 Email setting conference call time
September 27, 2016		Last day of Part 1A hearings; DWR includes modeling in list of exhibits submitted into evidence at end of Case in Chief.	Modeling of water right change was a part of DWR's Case in Chief.	

Table 1: Compilation of Ex Parte Contacts and Other Events in the CWF Hearing Process Exhibit A-1

Date(s)	Ex Parte Communication/Individuals and Affiliations*	Submissions, Filings, Deadlines and Other Actions	Additional Details/Comments	Corroborating Attachments
September 27, 2016		CWR files motion opposing DWR's submission of modeling exhibit, cites hearing officers' pre-hearing ruling to not allow time to examine modeling; joined by City of Antioch and City of Stockton.	Modeling of water right change is key hearing issue and is within the scope of the hearing.	September 27, 2016 CWR's Motion Opposing Petitioners' Submission of Surprise Exhibits
October 4, 2016	Web conference call with Dana Heinrich and Kyle Ochendusko (SWRCB hearing team); Kenneth Bogdan (DWR hearing counsel); Marcus Yee (DWR staff); Jennifer Pierre, Chandra Chilmakuri (DWR consultants); and Rick Wilder (BOR consultant)		DWR and SWRCB staff participate in planned web conference call to discuss Appendix 5E.	October 3, 2016 Outlook invite email accepting conference call time
October 7, 2016		SWRCB issues: California WaterFix Hearing – Ruling on Written Testimony Outside the Scope of Part 1 and Other Procedural Matters	SWRCB reiterated its limited role as responsible agency under CEQA and reminded parties that evidence concerning adequacy of EIR/EIS is irrelevant to hearing.	October 7, 2016 Hearing Officers' Ruling on Written Testimony Outside the Scope of Part 1 and Other Procedural Matters

***INDIVIDUALS AND AFFILIATIONS**

SWRCB

Dana Heinrich – SWRCB hearing team member (senior staff counsel)
Diane Riddle – SWRCB hearing team member (lead engineer)
John Gerlach – SWRCB hearing team member (environmental scientist)
Kyle Ochendusko – SWRCB hearing team member (hearings & special projects staff)
Rich Satkowski – SWRCB hearing team member (hearings & special projects staff)
Samantha Olson – SWRCB staff member (senior staff counsel)
Michael Lauffer – SWRCB chief counsel (Office of Chief Counsel)

Petitioner DWR

Kenneth Bogdan – DWR hearing counsel (2015-current), former SWRCB staff counsel (2012-2015) and consultant at Jones & Stokes/ICF for BDCP/CWF EIR/EIS (est. 2008-2012)
Tripp Mizell – DWR hearing counsel
Marcus Yee – DWR staff member
Cassandra Enos – DWR staff member
Russel Stein – DWR staff member

Petitioner Bureau of Reclamation

Rick Wilder – Bureau of Reclamation consultant at ICF (senior manager and senior fisheries biologist)

Consultants to DWR**

Chandra Chilmakuri – DWR consultant
Jennifer Pierre – DWR consultant

Other Agencies

Karla Nemeth –California Natural Resources Agency (Deputy Secretary for Water Policy, now DWR Director)
Kimberly Arbuckle – California Natural Resources A (administrative assistant)
Gordon Burns – EPA (undersecretary for environmental protection)
Michelle Hutzell – EPA (administrative assistant)
Michael Jewell – USACE (division chief)

**These individuals may also have consulting arrangements with the State and Federal Water Contractors.

Table 1: Compilation of Ex Parte Contacts and Other Events in the CWF Hearing Process Exhibit A-1

From: Heinrich, Dana@Waterboards
Sent: Monday, September 14, 2015 1:42 PM
To: Mizell, James@DWR
Subject: Accepted: Technical and Procedural Details of Petition Addendum

I think it's okay to meet to discuss mapping issues. I don't think we need to talk first, but let me know if you'd like me to call you this afternoon.

From: Heinrich, Dana@Waterboards
Sent: Wednesday, October 28, 2015 1:44 PM
To: Bogdan, Kenneth M.@DWR
Subject: RE: phone call

That's okay. Hope I wasn't too testy. He has a valid point. I just didn't feel very comfortable debating it between us at this point.

From: Bogdan, Kenneth M.@DWR
Sent: Wednesday, October 28, 2015 12:18 PM
To: Heinrich, Dana@Waterboards
Subject: phone call

Sorry. I was not expecting that line of questioning from Tripp

Ken

Kenneth M Bogdan
Senior Staff Counsel
Office of Chief Counsel
CA Department of Water Resources

11th Floor
1416 9th Street
Sacramento CA 95814
Office 916.651.2988
Cell 916.607.7852

From: Bogdan, Kenneth M.@DWR </O=MMS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BOGDAN, KENNE5220383A-43A9-484A-83D8-5C3482B931580F4>
Sent: Wednesday, October 28, 2015 10:18 AM
Subject: RE: phone call

Hi Dana – thanks for the response. Let’s plan on talking at 12:00. I will attempt to conference both you and Tripp in on my line.

You probably already heard that I was able to talk to Diane yesterday so it may not be necessary to have her on the call but I defer to you and her on that.

Ken

Kenneth M Bogdan
Senior Staff Counsel
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CA Department of Water Resources

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Cell 916.607.7852

From: Heinrich, Dana@Waterboards
Sent: Tuesday, October 27, 2015 9:34 PM
To: Bogdan, Kenneth M.@DWR
Cc: Riddle, Diane@Waterboards
Subject: phone call

Ken,

I'm free tomorrow between 12 and 2 to discuss procedural issues. Don't know whether Diane will have time to join us, but I'll try to contact her tomorrow morning to find out.

-Dana

EXHIBIT A-2

From: [Riddle, Diane@Waterboards](mailto:Riddle_Diane@Waterboards)
To: [Olson, Samantha@Waterboards](mailto:Olson_Samantha@Waterboards); [Heinrich, Dana@Waterboards](mailto:Heinrich_Dana@Waterboards); [Bogdan, Kenneth M.@DWR](mailto:Bogdan_Kenneth.M.@DWR); Satkowski, Rich@Waterboards; Gerlach, John@Waterboards; Enos, Cassandra@DWR
Subject: WaterFix EIR discussion
Start: Monday, January 04, 2016 11:00:00 AM
End: Monday, January 04, 2016 12:30:00 PM
Location: Cal EPA room 1410 or 916-[REDACTED]

Subject: Preparation of the Final EIR/EIS
Location: Bonderson (room confirmation pending)
Start: Mon 1/25/2016 2:00 PM
End: Mon 1/25/2016 4:00 PM
Recurrence: (none)
Meeting Status: Not yet responded
Organizer: Bogdan, Kenneth M.@DWR

Cc: Riddle, Diane@Waterboards; Heinrich, Dana@Waterboards
Subject: RE: Water Board modeling for WaterFix

Thanks Ken.

It sounds as if the meeting should include more than technical staff as the issues likely go beyond pure technical issues.

Given the different statements that I've read, could you please clarify what modeling will be relied on for the case-in-chief for each of the three phases of the hearing - 1A, 1B, and 2. It's not clear to me from the tables in the March 11, 2015 letter from DWR and Reclamation to the SWRCB how the WaterFix RDEIR/SDEIS modeling for water quality (DSM2 16 year period) and the BA modeling for endangered species (82 year period) are being used in the various hearing phases.

Based on what I can see on Diane's Outlook calendar, could we set up a meeting at 11 am on Thursday April 21st?

Thank you,

John

From: Bogdan, Kenneth M.@DWR
Sent: Monday, April 11, 2016 9:10 AM
To: Gerlach, John@Waterboards; Chandra.Chilmakuri@CH2M.com
Subject: RE: Water Board modeling for WaterFix

Hi John and Chandra – just to clarify (I am sure I wasn't clear with Dana since modeling is not my specialty!), Chandra has not run the latter end H4 analysis and wanted to talk with you on several assumptions (including whether to use the 2015 version of Calsim). I'd like to be part of the discussion as there are a few things that may weigh into the decisions on moving forward with the modeling. I have also been the bottle neck on the impact analysis side of things and can give an update about that too.

Ken

Kenneth M Bogdan
Senior Staff Counsel
Office of Chief Counsel
CA Department of Water Resources

11th Floor
1416 9th Street
Sacramento CA 95814
Office 916.651.2988
Cell 916.607.7852

From: Gerlach, John@Waterboards
Sent: Monday, April 11, 2016 7:21 AM
To: Chandra.Chilmakuri@CH2M.com
Cc: Bogdan, Kenneth M.@DWR
Subject: Water Board modeling for WaterFix

Hi Chandra,

Ken mentioned to one of our attorneys that you had completed some additional modeling for the Water Boards scenario using H4 as the baseline. Dianne Riddle asked me to contact you so that you could provide some technical

EXHIBIT A-2

specifics to me about the new modeling. Our discussion will be focused on the modeling and not the effects analysis. My third hand information is that while the H3 baseline was based on the 2010 version of CalSim2 that the H4 baseline might be based on the 2015 version of CalSim2. We'd also like to know if both runs used the same analysis period, say ELT, and whether there are any other different assumptions.

After you bring me up to speed on the new modeling Diane would like a meeting with the larger group to discuss the CEQA effects analysis based on the modeling. I don't know the status of those efforts but if they have been completed Diane would like to set something up for late next week as she is out of town this week.

If you have an questions please feel free to give me a call.

Thanks,

John

=====
John Gerlach, Ph.D., J.D. | Senior Environmental Scientist
State Water Resources Control Board | Division of Water Rights
1001 "I" Street, 14th Floor | Sacramento, CA 95814
John.Gerlach@waterboards.ca.gov
P: (916) 341-5394

Subject: WaterFix modeling
Location: Bonderson Building

Start: Thu 4/21/2016 3:30 PM
End: Thu 4/21/2016 5:30 PM

Recurrence: (none)

Meeting Status: Not yet responded

Organizer:

Ken,
I'm assuming that you will reserve the meeting room and send us the room number.
Thanks,
John

Subject: CWF Appendix 5E Meeting
Location: Bonderson 422

Start: Thu 5/26/2016 10:00 AM
End: Thu 5/26/2016 12:00 PM

Recurrence: (none)

Meeting Status: Not yet responded

Organizer: Yee, Marcus@DWR

From: Yee, Marcus@DWR </O=MMS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=YEE, MARCUS0860BB66-1D2A-47B6-93F5-A93D119281DE74B>
Sent: Friday, June 10, 2016 4:27 PM
Subject: RE: CWF Appendix 5E Follow-up

Great. Thanks, Diane. We like to discuss the modelling, but I suspect it will be a short call.

Chandra, please set up a phone line and send out an invite for a ten minute conference call for us.

Thanks,
marcus

From: Riddle, Diane@Waterboards
Sent: Friday, June 10, 2016 12:10 PM
To: Yee, Marcus@DWR <Marcus.Yee@water.ca.gov>
Cc: Bogdan, Kenneth M.@DWR <Kenneth.Bogdan@water.ca.gov>; Heinrich, Dana@Waterboards <Dana.Heinrich@waterboards.ca.gov>; Ochendusko, Kyle@Waterboards <Kyle.Ochendusko@waterboards.ca.gov>
Subject: RE: CWF Appendix 5E Follow-up

I'm out next week and Dana is out the following. Is it primarily modeling you would like to present or text? If it is text to address the legal issues Dana raised, I think you can meet without me. If it is modeling, I would prefer to be there and could do a webex late Thursday (4-5 maybe).

From: Yee, Marcus@DWR
Sent: Friday, June 10, 2016 7:08 AM
To: Riddle, Diane@Waterboards
Cc: Bogdan, Kenneth M.@DWR; Heinrich, Dana@Waterboards; Ochendusko, Kyle@Waterboards
Subject: CWF Appendix 5E Follow-up

Hi Diane,
We'd like to follow up with you on Appendix 5E. I know this may be a bit of a stretch, but I thought I'd throw it out there just in case.
Any chance you guys might be available on Wednesday (6/15) from 11-12 for a check-in. We could make it a Webex.
-marcus

Marcus L. Yee
Department of Water Resources

Sent from my mobile device.

From: Chandra.Chilimakuri@CH2M.com
To: Yee.Marcus@DWR; Bogdan.Kenneth.M.@DWR; Riddle.Diane@Waterboards; Heinrich.Dana@Waterboards; Ochenduszeko.Kyle@Waterboards; Jennifer.Pierre@lcfi.com
Subject: App 5E
Start: Thursday, June 16, 2016 4:00:00 PM
End: Thursday, June 16, 2016 5:00:00 PM
Location: Skype Meeting

All,

Please join for a quick call to check in on the App 5E modeling.
Please use the following conference line, and skype link for webcast:

Call in: 1- [REDACTED]
Pin: [REDACTED]

Thanks,
Chandra

.....
à HYPERLINK [REDACTED] "Join Skype Meeting
This is an online meeting for Skype for Business, the professional meetings and communications app formerly known as Lync.

[!OC([1033])!]
.....

From: [Christine Shay](#)
To: [Yee, Marcus@DWR](#); [Riddle, Diane@Waterboards](#); [Chandra.Chilmakuri@CH2M.com](#); [Bogdan, Kenneth M.@DWR](#); [Heinrich, Dana@Waterboards](#); [Ochendusko, Kyle@Waterboards](#)
Subject: Appendix 5E Discussion
Start: Friday, June 24, 2016 10:00:00 AM
End: Friday, June 24, 2016 11:00:00 AM
Location: Conference Call

Fri, Jun 24, 2016 10:00 AM - 11:00 AM Pacific Daylight Time
Please join my meeting from your computer, tablet or smartphone.
<https://global.gotomeeting.com/join/██████████>
Join the conference call.
(888) ██████████ Code: ██████████

From: Heinrich, Dana@Waterboards
Sent: Wednesday, July 13, 2016 11:10 AM
To: Bogdan, Kenneth M.@DWR
Subject: RE: Hi Diane, I sent you an invite for an App 5E follow-up meeting based on availability from Kyle.

I think she's working from home, so she should be fine. Thanks, Ken.

From: Bogdan, Kenneth M.@DWR
Sent: Wednesday, July 13, 2016 11:01 AM
To: Heinrich, Dana@Waterboards
Subject: RE: Hi Diane, I sent you an invite for an App 5E follow-up meeting based on availability from Kyle.

She cc-d me on her acceptance of the invite – thanks for checking in with her. I believe it is a call in only meeting anyway, so she can call from wherever she is. It is webex though so hopefully she will have access to a computer (and wifi!).

From: Heinrich, Dana@Waterboards
Sent: Wednesday, July 13, 2016 10:49 AM
To: Bogdan, Kenneth M.@DWR
Subject: RE: Hi Diane, I sent you an invite for an App 5E follow-up meeting based on availability from Kyle.

Diane said she plans to attend, probably by phone.

From: Bogdan, Kenneth M.@DWR
Sent: Tuesday, July 12, 2016 1:11 PM
To: Heinrich, Dana@Waterboards
Subject: FW: Hi Diane, I sent you an invite for an App 5E follow-up meeting based on availability from Kyle.

Hi Dana - I think it is critical that Diane be at this meeting - anything you can do to help get her there would be appreciated. We are at the final stages in preparing the Final EIR and this is the last substantive issue that needs to be completed .

Thanks!

From: Yee, Marcus@DWR
Sent: Tuesday, July 12, 2016 1:00 PM
To: Riddle, Diane@Waterboards
Cc: Bogdan, Kenneth M.@DWR
Subject: Hi Diane, I sent you an invite for an App 5E follow-up meeting based on availability from Kyle.

Hopefully, the time will work for you.
-marcus

From: Heinrich, Dana@Waterboards
Sent: Tuesday, July 19, 2016 3:21 PM
To: Bogdan, Kenneth M.@DWR
Subject: office space

Hi Ken. Nice talking to you today. Another thought, if renting space is an option. The Retro Lodge across the street on H rents office space. Seems like it would be ideal if DWR can afford it.

Dana Heinrich
Staff Attorney IV
State Water Resources Control Board
Office of Chief Counsel
1001 I Street
Sacramento, CA 95814
(916) 341-5188
Dana.Heinrich@waterboards.ca.gov

From: Nemeth, Karla@CNRA
Sent: Thursday, August 18, 2016 7:14 AM
To: Lauffer, Michael@Waterboards
Cc: Bogdan, Kenneth M.@DWR; Burns, Gordon@EPA; Hutzell, Michelle@EPA; Michael.s.jewell@usace.army.mil
Subject: Re: Call Re: Delta

Michael, Friday is fine.

Mike Jewell....I think Ken Bogdan was working to set up a call with just the three of us related to 404 permit.

Thanks all.

On Aug 17, 2016, at 5:39 PM, Lauffer, Michael@Waterboards <michael.lauffer@waterboards.ca.gov> wrote:

Any chance this can be reset to Friday? Gordon and I had a general conversation that makes me think we should have an OCC attorney from the water board who is not on the WaterFix advisory team participate in this initial meeting.

Unfortunately, our best candidate appears to have a conflict tomorrow afternoon.

-maml

MICHAEL A.M. LAUFFER, CHIEF COUNSEL
STATE WATER RESOURCES CONTROL BOARD
1001 I STREET, 22ND FLOOR
SACRAMENTO, CA 95814-2828

PHONE: 916.341.5183
FACSIMILE: 916.341.5199
michael.lauffer@waterboards.ca.gov

For tips on what you can do to save water, visit
<http://saveourwater.com/>

On Aug 17, 2016, at 4:37 PM, Nemeth, Karla@CNRA <karla.nemeth@resources.ca.gov> wrote:

<meeting.ics>

From: Lauffer, Michael@Waterboards
Sent: Wednesday, August 17, 2016 11:54 AM
To: Hutzel, Michelle@EPA
Cc: Arbuckle, Kimberly@CNRA; Bogdan, Kenneth M.@DWR; Burns, Gordon@EPA
Subject: Re: Meeting/call request - Karla Nemeth Re: Delta

I can adjust times tomorrow and Friday to make any of those blocks work.

-maml

MICHAEL A.M. LAUFFER, CHIEF COUNSEL
STATE WATER RESOURCES CONTROL BOARD
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PHONE: 916.341.5183
FACSIMILE: 916.341.5199
michael.lauffer@waterboards.ca.gov

For tips on what you can do to save water, visit
<http://saveourwater.com/>

On Aug 17, 2016, at 11:37 AM, Hutzel, Michelle@EPA <Michelle.Hutzel@calepa.ca.gov> wrote:

Below in red works for Gordon

MICHELLE HUTZEL (916) 323-2515

Every Californian should conserve water. Find out how at: <http://saveourwater.com>

From: Arbuckle, Kimberly@CNRA
Sent: Wednesday, August 17, 2016 11:28 AM
To: Lauffer, Michael@Waterboards; Bogdan, Kenneth M.@DWR; Burns, Gordon@EPA
Cc: Hutzel, Michelle@EPA
Subject: Meeting/call request - Karla Nemeth Re: Delta

Hello,

Karla would like to get you all together or on the phone asap for 30 minutes regarding the delta. Would you please let me know which times blocks below work for you?

Today 8/17 – 1 – 1:30, 3 – 3:30 – **not available**
8/18 – 8 – 10, 10:30 – 11, 12 – 5 – **available from 8-9:30 – 4:30-5**
8/19 – 8 – 9, 11 – 5 – **8-9; 1-5**

Thank you,

Kim

Kimberly Arbuckle

California Natural Resources Agency

Administrative Assistant to

Todd Ferrara, Deputy Secretary for External Affairs

Karla Nemeth, Deputy Secretary for Water Policy

Saul Gomez, Deputy Secretary for Energy

Kristopher Tjernell, Special Assistant for Water Policy

Bruce Babbitt, Former Interior Secretary

1416 9th Street, Suite 1311

Sacramento, CA 95814

916-653-9205

Every Californian should conserve water. Find out how at:

<image001.jpg>

SaveOurWater.com · Drought.CA.gov

Kuenzi, Nicole@Waterboards

From: Yee, Marcus@DWR </O=MMS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=YEE, MARCUS0860BB66-1D2A-47B6-93F5-A93D119281DE74B>
Sent: Tuesday, October 04, 2016 9:02 AM
Subject: RE: Appendix 5E

Sorry, it looks like we lost a "2"

Code: [REDACTED]

From: Riddle, Diane@Waterboards
Sent: Tuesday, October 04, 2016 9:01 AM
To: Yee, Marcus@DWR <Marcus.Yee@water.ca.gov>; Bogdan, Kenneth M.@DWR <Kenneth.Bogdan@water.ca.gov>; 'Jennifer.Pierre@icfi.com' <Jennifer.Pierre@icfi.com>; 'Chandra.Chilmakuri@CH2M.com' <Chandra.Chilmakuri@CH2M.com>
Cc: 'Pierre, Jennifer' <Jennifer.Pierre@icf.com>; Ochendusko, Kyle@Waterboards <Kyle.Ochendusko@waterboards.ca.gov>; Heinrich, Dana@Waterboards <Dana.Heinrich@waterboards.ca.gov>
Subject: RE: Appendix 5E
Importance: High

There is a number missing in the call in below. Can you please send the full number.

-----Original Appointment-----

From: Yee, Marcus@DWR
Sent: Thursday, September 22, 2016 2:25 PM
To: Yee, Marcus@DWR; Riddle, Diane@Waterboards; Bogdan, Kenneth M.@DWR; 'Jennifer.Pierre@icfi.com'; 'Chandra.Chilmakuri@CH2M.com'
Cc: 'Pierre, Jennifer'; Ochendusko, Kyle@Waterboards; Heinrich, Dana@Waterboards
Subject: Appendix 5E
When: Tuesday, October 04, 2016 9:00 AM-11:30 AM (UTC-08:00) Pacific Time (US & Canada).
Where: Web Conference-

Appendix 5E Meeting

Tue, Oct 4, 2016 9:00 AM - 11:30 AM Pacific Daylight Time

Please join my meeting from your computer, tablet or smartphone.

[https://global.gotomeeting.com/join/\[REDACTED\]](https://global.gotomeeting.com/join/[REDACTED])

Join the conference call. Conference Line: [REDACTED] Code: [REDACTED]

First GoToMeeting? Try a test session: <http://help.citrix.com/getready>

From: Heinrich, Dana@Waterboards
Sent: Monday, October 3, 2016 5:18 PM
To: Yee, Marcus@DWR
Subject: Accepted: Appendix 5E