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November 2, 2010

VIA E MAIL ONLY

Jessica M. Newman, Staff Counsel
Office of Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor
Sacramento, CA 95814-2828

Gerald D. Shoaf, Esq.
Redwine and Sherrill
1950 Market Street
Riverside, CA 92501

Dear Ms. Newman and Mr. Shoaf:

RE: ACL COMPLAINT NO. R9-2010-0085 – Eastern Municipal Water District,
Set for Hearing November 10, 2010; Prosecution Team’s Notice of Potential Bias
of Board Member Luker

This is to call the Advisory Team’s attention to the fact, recently discovered by the Prosecution Team, that Board Member Marc Luker’s father Mr. Michael Luker is the Assistant General Manager for the named Discharger in the above-referenced proceeding. The Prosecution Team believes that this close familial relationship subjects Mr. Luker to potential disqualification in this proceeding for bias, prejudice and/or personal interest. (See Gov. Code, §§ 11425.10(a)(5), 11425.40(c).)

As you are no doubt well-aware, the Administrative Adjudication Code of Ethics, which incorporates certain provisions of the Code of Judicial Ethics, applies to this proceeding. (Gov. Code, § 11475.20.) Canons 2 and 3 of the Code of Judicial Ethics, require Mr. Luker to “avoid all impropriety or the appearance of impropriety[,]” to “be faithful to the law regardless of partisan interests[,]” and to “perform judicial duties without bias or prejudice.” (Code of Judicial Ethics, Canon 2 Advisory Committee Commentary; Canon 3(B)(2); Canon 3(b)(5), respectively.)

The close familial relationship between Board Member Luker and a high-ranking manager within the Discharger’s organization certainly raises, at a minimum, the appearance of impropriety, and a reasonable inference that Mr. Luker may have a personal interest in the outcome of this proceeding, or be biased in favor of his father’s organization.

California Environmental Protection Agency

Accordingly, the Prosecution Team respectfully requests that Mr. Luker either recuse himself from participating in the adjudication of this matter, or state on the record at the beginning of the hearing that he is capable of adjudicating this matter without bias, in a fair and impartial manner despite the fact that his father is the Discharger's Assistant General Manager.

Thank you in advance for the anticipated courtesy of your prompt attention to this important matter.

Sincerely,

/s/

Christian Carrigan
Counsel for the Prosecution Team
San Diego Regional Water Quality Control Board