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3 **CALIFORNIA DEPARTMENT OF WATER
RESOURCES**

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6

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Resources

8 **BEFORE THE CALIFORNIA STATE WATER RESOURCES CONTROL BOARD**

9
10 **HEARING IN THE MATTER OF
CALIFORNIA DEPARTMENT OF WATER
11 RESOURCES AND UNITED STATES
BUREAU OF RECLAMATION REQUEST
12 FOR A CHANGE IN POINT OF
DIVERSION FOR CALIFORNIA WATER
13 FIX**

**CALIFORNIA DEPARTMENT OF
WATER RESOURCES' MOTION FOR
PROTECTIVE ORDER BASED ON
14 SJREC'S NOTICE OF DEPOSITION OF
DWR FOR A PERSON MOST
KNOWLEDGABLE (PMK)**

15 DWR requests that the Hearing Officers issue a protective order pursuant to Code
16 of Civil Procedure sections 2017.020, 2019.030, and 2025.420, because the deposition
17 is not likely to lead to the discovery of admissible evidence, it would be unreasonably
18 cumulative and duplicative, San Joaquin River Exchange Contractors Water Authority
19 (SJREC) is able to obtain the information from a more convenient, less burdensome, and
20 less expensive source, and the deposition would result in undue burden and expense.

21 After already having had a similar witness subpoena denied, SJREC issued a
22 Notice of Deposition dated March 3, 2017 for March 20, 2017 expanding the request
23 from Dave Mraz to the PMKs at DWR on flood and levee issues. (See Exhibit A.)
24 Besides the burden on DWR, the deposition should not be allowed because the notice is
25 not timely, and the Hearing Officers already ruled that testimony on the noticed topics
26 would not be relevant to Part 1 issues.
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1 **I. STATEMENT OF FACTS**

2 On August 26, 2015, DWR and the U.S. Bureau of Reclamation (USBR) filed a
3 petition for a change to their water rights necessary to allow for the implementation of
4 key components of the State's California Water Fix (CWF) program. On October 30,
5 2015, the Board issued a Notice of Petition and Notice of Public Hearing and Pre-
6 Hearing Conference to consider the petition. In their February 11, 2016 ruling, the
7 Hearing Officers notified the parties that, Part 1 focuses on human uses of water,
8 including flood control issues, and Part 2 focuses on environmental issues. In their
9 October 7, 2016 ruling, they indicated that testimony concerning the potential effects of
10 the project on funding for levee maintenance may be presented in Part 1B.

11 SJREC filed its initial Notice to Appear on January 4, 2016 listing Chris Neudeck as
12 an expert to testify on topics related to levees and funding. SJREC filed an updated
13 witness list on August 31, 2016 indicating that Mr. Neudeck was not available and
14 adding DWR staff to testify on these issues during SJREC's Part 1 case-in-chief. SJREC
15 proposed to ask DWR witnesses about: (1) modeling assumptions; (2) Delta Risk
16 Management Study (DRMS) reports; and (3) the need to fund levee improvements and
17 repairs.
18

19 DWR filed a motion for protective order under Government Code section 11450.30,
20 subdivision (b), and in response, the Hearing Officers ruled that requiring DWR to
21 provide a witness to testify would be unreasonable and inefficient. (December 8, 2016
22 Ruling). The Hearing Officers explained that the need for funding for levee maintenance
23 and repair in order to maintain the existing ability to convey water through the Delta was
24 not relevant, being an issue that will exist regardless of whether the Water Fix change
25 petition is approved. Importantly, the Hearing Officers explained that SJREC did not
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1 seek to explore any connection between the Water Fix change petition and the need for
2 funding for levee maintenance and repair.

3 Part 1B cases in chief were due on September 1, 2016. SJREC served a Notice of
4 Deposition on DWR on March 3, 2017. The notice sets the deposition on
5 March 20, 2017, three days before Part 1 rebuttal testimony is due. The topics included
6 in SJREC's notice are: (1) costs and efforts required to maintain levees and water quality
7 under the proposed dual conveyance system, including modeling assumptions; (2) why
8 the proposed plan of operation does not provide a plan of implementation for the
9 measures recommended in the DRMS Phase 2 report; and (3) details of the operational
10 plan under various conditions, including decreased water quality because of levee
11 breaches or failures, estimated timelines for levee repairs, and funding required to repair
12 levee breaches and failures (Exhibit A, Sections 2-4, at pages 2-4).

14 In an attempt to meet, confer, and compromise regarding the Deposition Notice,
15 DWR contacted SJREC on March 8, 2017 and provided links to the public documents
16 that address the issues raised in the deposition notice. SJREC responded by letter dated
17 March 9, 2017 indicating the information that DWR provided was insufficient. (See
18 Exhibits B & C.) DWR responded via e-mail on March 10, 2017 and provided excerpts
19 from some of the public documents that address the topics in SJREC's deposition notice.
20 (See Exhibit D.)

22 **II. ARGUMENT**

24 The Water Code governs the Board's hearing and discovery procedures and
25 incorporates elements of the Administrative Procedure Act and the Civil Discovery Act
26 (Title 4 [commencing with Section 2016.010] of Part 4 of the Code of Civil Procedure).
27 (See generally Wat. Code, § 1100; Gov. Code, § 11400 et seq.; Cal. Code Regs., tit. 23,
28

1 §§ 648, 648.4.) The Board or any party to proceedings before the Board may take
2 depositions of witnesses in accordance with the Civil Discovery Act. (Wat.Code, § 1100.)

3 But the right to discovery is limited. The Hearing Officer may issue an order to
4 protect a party or deponent from undue burden and expense. (Code Civ. Proc., §
5 2025.420, subd. (b).) The Hearing Officer may issue a protective order if the discovery
6 sought would be "unreasonably cumulative or duplicative, or is obtainable from some
7 other source that is more convenient, less burdensome, or less expensive." (Code Civ.
8 Proc., § 2019.030, subds. (a), (b).)

9
10 **A. The noticed deposition will not lead to the discovery of admissible**
11 **evidence and SJREC already had the opportunity to question witnesses**
12 **on these topics.**

13 SJREC's proposed deposition, just three days before rebuttal testimony is due,
14 would result in undue burden and expense, not only because it is not likely to lead to the
15 discovery of admissible evidence, but also because SJREC already had the opportunity
16 to question witnesses on these topics. The deposition notice attempts to cure the defect
17 in its August 31, 2016 witness subpoena that it did not seek to explore a connection
18 between Water Fix and the need for funding for levee maintenance and repair. But the
19 notice falls short of this goal. The topics in the deposition notice all fall within the scope
20 of the topics SJREC previously proposed, which the Hearing Officers already ruled were
21 not relevant to Part 1 key hearing issues. Further, SJREC did not identify any testimony
22 to which this deposition would be relevant that was not already covered by a witness on
23 cross-examination. The only reference to the record is found on page 2, where SJREC
24 references the operational scenarios of Exhibit 515. But SJREC fails to point out where
25 levee funding was raised during Part 1 testimony and therefore how it would now be
26 permissible on rebuttal.
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1 It is unclear why SJREC did not use its own witnesses to testify on these issues
2 during its Part 1 case-in-chief. Nor is it clear how SJREC would use testimony on the
3 proposed topics. The deadline to submit Part 1B cases-in-chief passed more than six
4 months ago, and rebuttal testimony is due on March 23, 2017. Thus, it is simply too late
5 for SJREC to establish the connection between Water Fix and the need for funding for
6 levee maintenance and repair. SJREC has understandably struggled in making this
7 connection, because these topics are not part of the proposed project.

8
9 Further, DWR's experts were available for cross-examination where parties used
10 that opportunity to establish testimony for the record. It appears that SJREC failed to
11 explore the topics on which it now seeks information. It is unreasonable for SJREC to
12 now demand that DWR produce witnesses to testify at deposition, especially because
13 the deadline to submit this type of information has passed. DWR provided panels of
14 witnesses to testify on the topics of modeling, operations, and engineering.¹ SJREC
15 already had the opportunity to ask the correct witnesses about these topics, and allowing
16 SJREC to depose additional DWR witnesses on these topics would result in undue
17 burden and expense.

18
19 **B. The noticed deposition would be unreasonably cumulative and
20 duplicative.**

21 SJREC's questions about funding and measures required to respond to levee
22 breaches and failures, if they pertained to CWF, are covered in Chapter 6 and Appendix
23 6A of the 2016 Bay Delta Conservation Plan / California WaterFix Final Environmental
24

25 ¹ The Engineering panel testified on direct and was cross examined on August 5 and 9. The
26 Operations panel testified on direct and was cross examined on August 10-12 and 18-19. The Modeling
27 panel testified on direct and was cross examined on August 23-26. Transcripts of the hearing are available
28 here:
http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/transcripts.shtml.

1 Impact Report/Environmental Impact Statement (Final EIR/DEIS).² However, it appears
2 that SJREC's questions apply to programs well outside of CWF. Similar to some of the
3 other issues raised by Protestants, long term levee maintenance improvement and
4 funding is a State issue, and is not limited to CWF or even DWR. The Delta Stewardship
5 Council (DSC) is leading the Delta Levee Investment Strategy (DLIS) effort, specifically
6 flood and levee long term planning and funding. The DSC programs are outside the
7 scope of this hearing. Information about levee safety and funding is found in documents
8 such as DSC's July 2014 DLIS Fact Sheet,³ DLIS FAQs,⁴ and March 24, 2016 DLIS
9 Update and Contract Amendment.⁵ In addition to the DSC's planning efforts regarding
10 Delta levees, the Central Valley Flood Management Planning (CVFMP) Program sets
11 forth a plan for sustainable flood management and investment to improve flood risk
12 management in the Central Valley through use of the State Plan of Flood Control (SPFC)
13 facilities.⁶

14
15 Further, the engineering panel was cross examined for two full days and included
16 questions about levee safety related to CWF.⁷ SJREC could have had its questions
17 about the reasonableness of funding for levees in the Delta addressed at that time.
18

19
20 ² DWR & USBR, Final Environmental Impact Report/Environmental Impact Statement for the Bay
21 Delta Conservation Plan / California WaterFix, December 2016, Appendix 6A at page 6A-1 ("The proposed
22 project does not include a commitment to improve the current levee system except where the project
explicitly includes levees in the project construction available"; available at:
http://baydeltaconservationplan.com/Libraries/Dynamic_Document_Library/Final_EIR-EIS_Appendix_6A_-_BDCP_California_WaterFix_Coordination_with_Flood_Management_Requirements.sflb.ashx).

23 ³ Available at:
http://deltacouncil.ca.gov/sites/default/files/2014/10/DLIS_FactSheet1_Final_102314_lowres.pdf.

24 ⁴ Available at: http://deltacouncil.ca.gov/sites/default/files/2014/10/DLIS_FAQ_Final_10-31-14%28rev0%29.pdf.

25 ⁵ Available at: <http://deltacouncil.ca.gov/docs/delta-stewardship-council-march-24-2016-meeting-agenda-item-11-delta-levees-investment-strategy>.

26 ⁶ More information is available at: <http://www.water.ca.gov/cvfmp/>.

27 ⁷ The Engineering panel testified on direct and was cross examined on August 5 and 9.

Transcripts of the hearing are available here:

28 http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/transcripts.shtml.

1 SJREC has not shown that cross examination of DWR's Part 1 witnesses or the
2 information in the publicly available documents are insufficient. It is therefore
3 unreasonable for SJREC to depose DWR witnesses on these topics, and it is
4 inappropriate to ask a DWR employee to predict future funding of levee maintenance or
5 improvements as this is a complex state wide policy level decision being led by the DSC
6 and that ultimately depends on the legislature for long-term funding.

7
8 **C. SJREC is able to obtain the information from a more convenient, less
burdensome, and less expensive source.**

9 The 2009 and 2011 DRMS reports are in the public realm.⁸ These are reports
10 prepared by DWR, a public agency, of which the Board can take official notice or that
11 can be submitted as exhibits to a party's case-in-chief. These reports are fully discussed
12 in publicly available documents, including Chapter 6 in the 2016 Final EIR/EIS.⁹ They
13 are also discussed in the Delta Stewardship Council's (DSC's) January 2015 report
14 entitled, "State Investments in Delta Levees, Key Issues for Updating Priorities."¹⁰ It
15 should also be noted that SJREC did, in fact, submit portions of the 2011 DRMS report
16 as an exhibit to its Part 1B case-in-chief. The relevant information has already been
17 submitted as part of SJREC's case-in-chief, and it is therefore unreasonable and
18 burdensome for SJREC to depose DWR witnesses about the contents of these reports.
19

20 **III. CONCLUSION**

21 Allowing DWR witnessed to be deposed regarding funding and speculative levee
22 breaches and failures at this point in the hearing process would be unreasonable and
23 inefficient. The proposed depositions are not likely to lead to the discovery of admissible
24

25 ⁸ Available at: <http://www.water.ca.gov/floodsafe/fessro/levees/drms/>.

26 ⁹ Final EIR/EIS, Appendix 6A, at pages 6A-14 to 6A-15 & 6A-25 (available at:
http://baydeltaconservationplan.com/Libraries/Dynamic_Document_Library/Final_EIR-EIS_Appendix_6A_-_BDCP_California_WaterFix_Coordination_with_Flood_Management_Requirements.sflb.ashx).

27 ¹⁰ Available at: http://deltacouncil.ca.gov/sites/default/files/2015/01/15-0109_Levee_Investment_Strategy_Issue_Paper.pdf.

1 evidence, would be unreasonably cumulative and duplicative, would result in undue
2 burden and expense, and SJREC is able to obtain the information from a more
3 convenient, less burdensome, and less expensive source. Indeed, DWR has repeatedly
4 provided this information to SJREC. DWR requests that the Hearing Officers vacate
5 SJREC's deposition notice.

6 Dated: March 10, 2017

CALIFORNIA DEPARTMENT OF WATER
RESOURCES



Robin McGinnis
Office of the Chief Counsel

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Exhibit A

1 PAUL R. MINASIAN (SBN 040692)
2 MINASIAN, MEITH,
3 SOARES, SEXTON & COOPER, LLP
4 1681 Bird Street
5 P.O. Box 1679
6 Oroville, California 95965-1679
7 Telephone: (530) 533-2885
8 Facsimile: (530) 533-0197
9 Email: pminasian@minasianlaw.com

10 Attorneys for
11 SAN JOAQUIN RIVER EXCHANGE CONTRACTORS WATER AUTHORITY

12 **BEFORE THE CALIFORNIA**

13 **STATE WATER RESOURCES CONTROL BOARD**

14 **HEARING IN THE MATTER OF**
15 **CALIFORNIA DEPARTMENT OF**
16 **WATER RESOURCES AND UNITED**
17 **STATES BUREAU OF**
18 **RECLAMATION'S REQUEST FOR A**
19 **CHANGE IN POINT OF DIVERSION**
20 **FOR CALIFORNIA WATER FIX**

21 **NOTICE TO DEPARTMENT OF**
22 **WATER RESOURCES OF**
23 **DEPOSITION OF DAVID MRAZ**
24 **AND/OR OTHER MOST**
25 **KNOWLEDGEABLE WITNESSES**
26 **TO APPEAR AT DEPOSITION**
27 **PURSUANT TO GOVERNMENT**
28 **CODE SECTION 11450.10 AND**
WATER CODE SECTION 1100

TO: THE STATE OF CALIFORNIA, DEPARTMENT OF WATER RESOURCES,
AND JAMES MIZELL, its attorney:

NOTICE IS HEREBY GIVEN to the Department of Water Resources, by and through its attorneys, James Mizell, JamesMizell@water.ca.gov, that pursuant to Water Code Section 1100 and Government Code Section 11450.10, the San Joaquin River Exchange Contractors Water Authority, by and through its attorneys of record, Paul R. Minasian of Minasian, Meith, Soares, Sexton & Cooper, LLP, pminasian@minasianlaw.com, requests and demands that the Department of Water Resources produce the below-described witnesses for their deposition(s) on March 20, 2017 commencing at 9:00 a.m., and continuing with reasonable breaks until completed, at the offices of Capitol Reporters located at 2386 Fair Oaks Boulevard, Sacramento, California 95825, (916) 923-5447.

1 Notice is given that the place of deposition may change based on anticipated
2 attendance numbers. Notice will be provided of such a change by subsequent service via
3 email transmission to the parties. The deposition will be videotaped.

4 Notice is also given that the Department of Water Resources is provided the
5 reasonable discretion to specify the most knowledgeable witnesses to be presented if
6 persons other than David Mraz are most knowledgeable. First among the witnesses
7 should be:

8 DAVID MRAZ, Chief, Delta Levees and Environmental Engineering Branch
9 FloodSAFE Environmental Stewardship and Statewide Resources Office
Department of Water Resources

10 David Mraz issued the Executive Summary for the Delta Risk Management Study
11 (“DRMS”) Phase 2 Report: portions of Section Eight entitled “Building Block 1.6:
12 Armored ‘Pathway’ (Through-Delta Conveyance)” at pages 8-i through 8-13, and Tables
13 T-1 through T-4, Figure 8-1; Section Nineteen entitled “Results and Observations” at
14 pages 19-1 through 19-13 (SJRECWA-2).

15 2. If David Mraz is not the most knowledgeable person on the following
16 subjects, the other individual or individuals employed by the Department of Water
17 Resources who are most knowledgeable and best able to testify shall appear. That person
18 shall be able to testify regarding the range of financial costs and organizational measures
19 that would be reasonably required to assure that levees necessary and essential to maintain
20 the cross-Delta flow path and to maintain reasonable salinity levels and organic carbon
21 content of water to be pumped at the SWP and Developer Delta pumps reasonably
22 required to assure the feasibility of the assumptions contained in the modeling of both
23 Boundary 1 and Boundary 2 utilizing the H-3 Alternatives described in DWR Exhibit 515,
24 Table 4 on page 2 (attached hereto), and the “note” which describes the assumptions
25 incorporated in Boundary 1 and 2 regarding cross-Delta flows through the system of
26 levees that states as follows, should appear for deposition:

27 “SWRCB D-1641, pumping at the South Delta intakes are
28 preferred during July through September months up to a total
pumping of 3,000 cfs to minimize potential water quality
degradation in the South Delta channels. No specific intake is

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assumed beyond 3,000 cfs.”

The witnesses should be prepared to testify as to the amounts of monies and organization of financial contributions reasonably required to be made by the DWR, Bureau of Reclamation and local Reclamation Districts which would provide reasonable assurance that this “second” or “dual pathway” for water to reach CVP and SWP pumps during at least the July through October period would reliably exist in the future.

3. That individual or individuals most knowledgeable employed by Department of Water Resources with knowledge of why the proposed plan of operation for the WaterFix facilities, which assumes the availability of cross-Delta flow and through-Delta flow capacity through levees and channels as described in the “note” above quoted in DWR Exhibit 515, does not provide for a means of the Department of Water Resources and United States Department of the Interior, Bureau of Reclamation, and local Reclamation Districts, of implementing the Levee Improvement Projects and Levee Protection Programs described in the DRMS Phase 2 Report, or any portion thereof, to assure the likelihood of the ability to maintain flows across the Delta as described in DWR Exhibit 515 and models depicting Boundary 1 and Boundary 2 conditions.

4. That individual or individuals most knowledgeable employed by the Department of Water Resources who can testify to the operations plan for the Tunnels as proposed in the WaterFix Petition for Change under conditions in which:

(A) Organic carbon discharges from failed levees and islands in the vicinity of the SWP and CVP pumps exceed the capacity to treat to levels acceptable for human consumption, according to EPA Drinking Water Standards; and/or,

(B) Salinity above 3.00 E.C. prevails at the intakes of the SWP and CVP pumps because of levee breaches and failure to close the breaches; and/or,

(C) A number of levees have collapsed in a range of 10 to 20 and it is projected that the levees will not be substantially repaired for in excess of three (3) irrigation seasons; and/or,

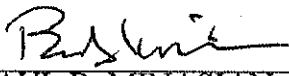
(D) The estimated amount of funds to repair 10 to 20 almost simultaneous

1 levee breaches or collapses caused by a flood or earthquake, the current availability of that
2 funding mechanism in 2017, and the availability of that funding proposed to exist when the
3 Tunnels are in operation.

4 Dated: March 2, 2017

MINASIAN, MEITH, SOARES
SEXTON & COOPER, LLP:

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By: 

PAUL R. MINASIAN
Attorney for SAN JOAQUIN RIVER EXCHANGE
CONTRACTORS WATER AUTHORITY

	No Action Alternative (NAA)	H3	H4	Boundary 1	Boundary 2
South Delta Export Restrictions					
South Delta exports (Jones PP and Banks PP)	SWRCB D-1641. Vernalis flow-based export limits Apr 1 – May 31 as required by NMFS BiOp (Jun, 2009) Action IV.2.1 (additional 500 cfs allowed for Jul – Sep for reducing impact on SWP)	SWRCB D-1641. Pumping at the south Delta intakes are preferred during the July through September months up to a total pumping of 3,000 cfs to minimize potential water quality degradation in the south Delta channels. No specific intake preference is assumed beyond 3,000 cfs.	Same as H3	Same as H3	Same as H3
Combined Flow in Old and Middle River (OMR)	FWS BiOp (Dec 2008) Actions 1 through 3 and NMFS BiOp (Jun 2009) Action IV.2.3	New OMR criteria in Table 3 below or same as the NAA, whichever results in less negative OMR flows	Same as H3	Same as NAA	New OMR criteria in Table 5 below or same as the NAA, whichever results in less negative OMR flows
Head of Old River Barrier/Gate	Head of Old River Barrier (HORB) is only installed in the fall months per FWS Delta Smelt BiOp Action 5; it is assumed to be not installed in April or May.	HOR gate operations assumptions (% OPEN) Oct 50%, Nov 100%, Dec 100%, Jan 50%, Feb - Jun 15th 50%, Jun 16-30 100%, Jul - Sep 100%; HOR gate will be open 100% whenever flows are greater than 10,000 cfs at Vernalis.; Oct-Nov: Before the D-1641 pulse = HOR gate open, During the D-1641 pulse = for 2 weeks HOR gate closed; After D-1641 pulse: HORB open 50% for 2 weeks	Same as H3	Same as NAA	HOR gate operations assumptions (% OPEN) Oct - Dec 100%, Jan - Feb 50%, Mar - Jun 0%, Jul - Sep 100%; HOR gate will be open 100% whenever flows are greater than 10,000 cfs at Vernalis.; Oct-Nov: Before the D-1641 pulse = HOR gate open, During the D-1641 pulse = for 2 weeks HOR gate closed; After D-1641 pulse: HORB open 50% for 2 weeks
Delta Outflow Requirements					
Delta Outflow Index (Flow and Salinity)	SWRCB D-1641 and USFWS BiOp (Dec 2008) Action 4 (Fall X2 Requirement)	Same as NAA	Same as NAA; In addition, enhanced spring Delta outflow required during the Mar-May period. Mar-May average outflow requirement is determined based on 90% forecast of Mar-May Eight River Index (8RI). For modeling purposes the Mar-May 8RI was forecasted based on a correlation between the Jan-Feb 8RI and Mar-May 8RI at ELT. Each year in March,	SWRCB D-1641	Same as NAA; In addition, year-round Delta outflow goals (see Table 8 below); outflow above existing requirements, attempted to achieve through Delta export curtailments by an amount needed to meet the outflow goal, such that minimum exports are greater of 1500 cfs or to meet CVP San

Exhibit B

McGinnis, Robin C.@DWR

From: McGinnis, Robin C.@DWR
Sent: Wednesday, March 08, 2017 11:13 AM
To: 'Paul Minasian'
Cc: Mizell, James@DWR
Subject: Meet and Confer on SJREC's Deposition Notice

Hi Paul,

Following up on the voicemail I just left you, this is a meet and confer to resolve the issues in SJREC's deposition notice. The information SJREC seeks is included in various public documents that were referenced in DWR's previous motion for protective order.

The documents are:

- *Draft Central Valley Flood Protection Plan, 2017 Update*, December 2016, Chapter 4 at pages 4-1 to 4-45
 - available at: <http://www.water.ca.gov/cvfmp/docs/CVFPP-2017-CVFPP-Update-Draft.pdf>
- *Final Environmental Impact Report/Environmental Impact Statement for the Bay Delta Conservation Plan / California WaterFix*, December 2016, Appendix 6A at pages 6A-1, 6A-14 to 6A-15, and 6A-25
 - Available at: [http://baydeltaconservationplan.com/Libraries/Dynamic_Document_Library/Final EIR-EIS Appendix 6A - BDCP California WaterFix Coordination with Flood Management Requirements.sflb.ashx](http://baydeltaconservationplan.com/Libraries/Dynamic_Document_Library/Final_EIR-EIS_Appendix_6A_-_BDCP_California_WaterFix_Coordination_with_Flood_Management_Requirements.sflb.ashx)

DWR is willing to stipulate to the authenticity of these documents. Thus, deposing DWR witnesses on the subjects in SJREC's deposition notice is unnecessary. DWR plans to file a motion for protective order if we are not able to resolve these issues.

Robin

Robin McGinnis
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Department of Water Resources
Direct: (916) 657-5400
robin.mcginnis@water.ca.gov

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Exhibit C

**MINASIAN, MEITH,
SOARES, SEXTON &
COOPER, LLP**

ATTORNEYS AT LAW
A Partnership Including Professional Corporations

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March 9, 2017

Robin McGinnis, Attorney
Office of the Chief Counsel
Department of Water Resources

Robin.McGinnis@water.ca.gov

Re: WaterFix – Depositions of Department of Water Resources' Persons Most Knowledgeable

Dear Ms. McGinnis:

The Department of Water Resources's proposal in your email transmission of March 8, 2017 to submit (1) the Final Environmental Impact Report, Environmental Impact Statement for the Bay-Delta Conservation Plan and California WaterFix, and (2) the Draft Central Valley Flood Protection Plan in the Record of the State Water Resources Control Board for determination of the issue whether harm will arise to legal users of water from the WaterFix plan, and whether or not conditions are necessary to be placed in that plan to reduce the risk or the duration of any such injury, we believe, is insufficient.

First, the issues presented by our proposed deposition testimony of Department of Water Resources witnesses continues to be:

1. DWR and Reclamation have submitted modeling of water quality changes based upon the continued existence of "Dual Path" delivery through cross-Delta flow during the months of July through September across the Delta to the CVP and SWP pumps. The Delta Risk Management Strategy I and II reports and the most knowledgeable persons at DWR can demonstrate the substantial investment that would be required to make this "Dual Path" reasonably reliable. Of course, perfect reliability is not often achieved regarding water facilities, but a reasonable plan for repair and correction of levee failures funding of those repairs is inferentially part of the WaterFix plan since there has been no testimony that DWR and Reclamation intend to abandon this second path under certain conditions of failure or extraordinary costs in the future.

None of these subjects are addressed or dealt with in the EIR/EIS or Central Valley Flood Protection Plan. The materials do not address the issue.

2. If it is the plan of Reclamation and DWR to provide for termination of the "Dual Path" delivery system and use because it is economically or physically infeasible to maintain that "Dual Path" delivery under certain circumstances because the CVP and SWP do not wish to fund the repair or preventative maintenance in part, the SWRCB and all participants in this proceeding should know that. What are the likely circumstances are from a water quality point of view in which it would be impossible because DWR and the CVP wish not to fund continued delivery of water through the "second path" proposed in the WaterFix Plan? The most knowledgeable persons of DWR can explain the likely measures required to prevent "Dual Path" interruption, and when it occurs, to reinstate its function. They can also explain how the WaterFix Tunnel operation would continue to function and who would receive water and who would not receive water that had formerly been provided through the "second path" during interruption.

3. The Tunnel project has been billed as a means of providing reliability for urban consumers. At the same time, the DRMS reports and supplemental reports make clear that in the case of extensive levee failures and long periods of time to mobilize repairs, the presence of organic carbon discharges from the failed levees and flooded islands may substantially disrupt the availability of water for urban use in those areas where treatment to remove carcinogenic precursors of organic carbon in the water is not economically feasible or physically available. The SWRCB and all parties are entitled to have knowledge of DWR's plan in regard to the operations of San Luis Reservoir and the Tunnels during periods in which organic carbon discharges make the water arriving at the pumps through the "second path" problematic in this regard. None of these procedures or outlines are contained within DWR's modeling, DWR's testing to date, or any of DWR's publications you have offered to incorporate within the Record.

You mention in your meet and confer letter the possibility of the DWR seeking a protective order. We strongly recommend the DWR not take that step, as it may become equated by the general public with "hiding the true plan." We would not presume to "think" for the DWR. However, there are many meritorious elements to the Tunnel project, and the better course of action is to collectively test those elements in an open forum. That is what the deposition of DWR's identified and most knowledgeable persons would 'propose to do. It would be a shame if a project that is meritorious in

To: Robin McGinnis, Attorney, Office of the Chief Counsel, California Department of Water Resources
Re: WaterFix - Depositions of Department of Water Resources' Persons Most Knowledgeable
Date: March 9, 2017

Page 3

most respects cannot be improved with reasonable conditions and modifications to reflect how it will actually avoid harm to other legal users of water and instead becomes embroiled in accusations that the true plan is being hidden.

Very truly yours,

MINASIAN, MEITH, SOARES,
SEXTON & COOPER, LLP

By: 

PAUL R. MINASIAN, ESQ.

PRM:dd

cc: James Mizell, Senior Attorney, Office of the Chief Counsel, California Department of Water Resources
San Joaquin River Exchange Contractors Water Authority
WaterFix Parties

SJREC\WaterFix.McGinnis.DWR.3.9.17.wpd

Exhibit D

McGinnis, Robin C.@DWR

From: McGinnis, Robin C.@DWR
Sent: Friday, March 10, 2017 2:02 PM
To: 'Paul Minasian'
Cc: Mizell, James@DWR
Subject: RE: Meet and Confer on SJREC's Deposition Notice
Attachments: Excerpts (00019407xD9FEC).docx

Hi Paul,

I received your letter yesterday. As previously explained when we met and conferred on October 14, 2016, in DWR's October 27, 2016 motion for protective order, and in my e-mail below, larger programs are thoroughly evaluating and planning for the very issues you raise, and Water Fix has committed to improve any levees impacted by Water Fix facilities. These efforts are described in various public documents. I spent some time today pulling the attached excerpts. Please let me know if you have any questions about them.

Robin

Robin McGinnis
Attorney
Office of the Chief Counsel
Department of Water Resources
Direct: (916) 657-5400
robin.mcginis@water.ca.gov

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From: McGinnis, Robin C.@DWR
Sent: Wednesday, March 08, 2017 11:13 AM
To: 'Paul Minasian'
Cc: Mizell, James@DWR
Subject: Meet and Confer on SJREC's Deposition Notice

Hi Paul,

Following up on the voicemail I just left you, this is a meet and confer to resolve the issues in SJREC's deposition notice. The information SJREC seeks is included in various public documents that were referenced in DWR's previous motion for protective order.

The documents are:

- *Draft Central Valley Flood Protection Plan, 2017 Update*, December 2016, Chapter 4 at pages 4-1 to 4-45
 - available at: <http://www.water.ca.gov/cvfmpp/docs/CVFPP-2017-CVFPP-Update-Draft.pdf>
- *Final Environmental Impact Report/Environmental Impact Statement for the Bay Delta Conservation Plan / California WaterFix*, December 2016, Appendix 6A at pages 6A-1, 6A-14 to 6A-15, and 6A-25
 - Available at: [http://baydeltaconservationplan.com/Libraries/Dynamic_Document_Library/Final EIR-EIS Appendix 6A - BDCP California WaterFix Coordination with Flood Management Requirements.sflb.ashx](http://baydeltaconservationplan.com/Libraries/Dynamic_Document_Library/Final_EIR-EIS_Appendix_6A_-_BDCP_California_WaterFix_Coordination_with_Flood_Management_Requirements.sflb.ashx)

DWR is willing to stipulate to the authenticity of these documents. Thus, deposing DWR witnesses on the subjects in SJREC's deposition notice is unnecessary. DWR plans to file a motion for protective order if we are not able to resolve these issues.

Robin

Robin McGinnis

Attorney

Office of the Chief Counsel

Department of Water Resources

Direct: (916) 657-5400

robin.mcginnis@water.ca.gov

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- Page 6A-26: "Various federal and state policies are applicable to the [Water Fix] project in the Plan Area, as it relates to flood management and levees, and implementation of the project, including construction, maintenance, and operations, will be consistent with the standards associated with these policies. Project proponents will coordinate with the appropriate agencies and include design features into the project to ensure any modifications to the flood management system will not increase flood risk to the surrounding areas. Project proponents would be required to comply with the requirements of the USACE, CVFPB, and DWR to avoid increased flood potential."
- Page 6A-42: "Project proponents will coordinate with the appropriate flood agencies to ensure implementation of the proposed project is consistent with existing flood management programs and plans. . . , including the CVFPP and California Water Action Plan, and not increase flood risk or vulnerability of the current flood management system."
- Page 6A-43: "Implementing a dual conveyance system, as proposed under the California WaterFix, would complement other programs by adding additional flexibility to the way water is conveyed through the estuary. Levee improvement and habitat restoration projects focused on benefitting both ecosystems and flood conveyance under other programs could add additional flood protection. Project proponents will coordinate with the appropriate agencies involved in flood system improvement and maintenance activities to ensure the proposed project will not interfere with their abilities to achieve their programs' goals and objectives, and to maintain flood neutrality during implementation of the proposed project."
- Page 6A-1: "The proposed project does not include a commitment to improve the current levee system except where the project explicitly includes levees in the project construction. . . . However, it would provide additional adaptability to catastrophic failure of Delta levees by providing a mechanism to continue making water deliveries to State Water Project (SWP) and Central Valley Project (CVP) contractors and local and in-Delta water users with conveyance interties even if the Delta were temporarily disrupted. . . . Any modifications to Delta levees and the flood control system, as a result of constructing the project, would be fully mitigated and under the responsibility of the project proponents. In some instances, levees modified by the project would be strengthened relative to existing conditions. Levees are an important public safety resource and the proposed project would not change levee policy or replace ongoing programs and grant projects aimed at facilitating and supporting levee improvements in or outside the Delta. It is recognized that levee maintenance and safety in the Delta is an important issue for the residents of the Delta and for statewide interests."
- Page 6A-12: "There is a statewide interest in levee maintenance in the Delta because the islands' levees maintain flow velocities in the sloughs and channels that combat saltwater intrusion. The [Delta Levees Maintenance Subvention Program] is authorized in the Water Code, Sections 12300–12315 and 12980–12995. In 1988, with the passage of the Delta Flood Protection Act, financial assistance was increased through the Delta Levees Subvention Program. The intent of the program is key to preserving the Delta physical characteristics of levees defining the waterways and producing the adjacent islands. Thus, funds necessary to maintain and improve the Delta's levees to protect the physical characteristics should be used. As of 2015, the subventions program has reimbursed more than \$175 million of eligible levee maintenance and rehabilitation work."

- Pages 6A-12 to 6A-13: “The Delta Levees Special Flood Control Projects provides financial assistance to local maintaining agencies for levee rehabilitation in the Delta. The program was established by the California Legislature under SB 34 in 1988. Since the inception of the program, more than \$200 million has been provided to local agencies in the Delta for flood management and related habitat projects.”
- Pages 6A-13 to 6A-14: “The Water Supply, Reliability, and Environmental Improvement Act of 2004 (Public Law 108-361) authorizes the USACE to design and construct levee stability projects for purposes such as flood damage reduction, ecosystem restoration, water supply, water conveyance, and water quality objectives as outlined in the CALFED Bay-Delta Program, Programmatic Record of Decision (CALFED ROD) (CALFED Bay-Delta Program 2000). . . . The Act directed the USACE to identify and prioritize levee stability projects that could be carried out with federal funds. An initial amount of \$90 million was authorized, with another \$106 million authorized in the 2007 Water Resources Development Act of 2007. The USACE initially solicited proposals for various levee improvement projects and received 68 project proposals totaling more than \$1 billion. In the short-term, the USACE plans to proceed with implementation of high-priority improvements that can be constructed with the limited funds appropriated to date.”
- Page 6A-14: “The USACE also is proceeding with a Delta Islands and Levees Feasibility Study to develop long-term plans for flood-risk management, water quality, water supply, and ecosystem restoration. In addition, the USACE is working on a Lower San Joaquin Feasibility Study to determine whether there is a federal interest in providing flood risk management and ecosystem restoration on the lower San Joaquin River. . . . Included in the Delta Plan are policies and recommendations to reduce flood risk and improve flood protection in the Delta. Policy RR P1, Prioritization of State Investments in Delta Levees and Risk Reduction covers any proposed action that involves discretionary state investments in Delta flood risk management, including levee funding. The Delta Stewardship Council, in consultation with DWR, the CVFPB, and the California Water Commission, developed priorities for interim funding that include emergency preparedness, response, and recovery, as well as Delta levees funding. This policy prioritizes localized flood protection for existing urban areas; protecting water quality and water supply conveyance in the Delta; and protecting existing and providing for a net increase in habitat.”
- Pages 6A-16 to 6A-17: “Emergency preparedness and response is primarily a local responsibility, although state assistance is available after local entities have reached their capacity to respond. The federal government may also have an interest due to public safety, environmental and socioeconomic concerns. In the past several years, DWR, USACE, the Delta Protection Commission, and local agencies have worked to improve the response to an in-Delta flood emergency, such as a levee failure. As a result, DWR and local agencies are better prepared to respond effectively through improved planning and coordination and the stockpiling of materials. Thus, in the event of a threatened levee breach, local agencies will respond immediately and will notify the County Office of Emergency Services and DWR Flood Center of an event. If needed, additional supplies and support are available.”
- Page 6A-17: “The Delta Flood Emergency Preparedness, Response and Recovery Program (Delta ER Program) was established under Proposition 1E, which made \$135 million available to DWR for essential emergency preparedness supplies and projects. The Legislature recognized the vital role that the Delta plays in California’s water supply and the effects that a major flood event could have on that supply.”

Draft Central Valley Flood Protection Plan, 2017 Update, December 2016
(<http://www.water.ca.gov/cvfmp/docs/CVFPP-2017-CVFPP-Update-Draft.pdf>):

- Page 4-11: “The Sacramento–San Joaquin Delta Reform Act of 2009 directed the Delta Stewardship Council to provide a Delta Plan that reduces risks to people, property, and outlines the State’s interest in the Delta. The Delta Stewardship Council supported the Delta Plan through the draft Delta Levee Investment Strategy (DLIS), an updated prioritization of levee investments. The Delta is part of the overall system for which the Central Valley Flood Protection Plan (CVFPP) has guided the State’s participation in managing flood risk in areas protected by the State Plan of Flood Control (SPFC) as directed by the Central Valley Flood Protection Act of 2008. Collaboration between the investment strategies supporting the Delta Plan and CVFPP is necessary to deliver effective improvements in integrated flood management to the Central Valley and Delta.”
- Page 4-45: “The CVFPP planning process has brought together many stakeholders and flood management-related efforts in the Central Valley. Many of the planning efforts that informed this 2017 CVFPP Update were prepared in close coordination with State, federal, and regional partners and guided by a robust, multi-year stakeholder engagement process that began in 2012. As part of this process, the 2012 SSIA has been refined to develop the 2017 refined SSIA portfolio, which refines the set of actions associated with each physical and operational element in the 2012 SSIA.”
- Page 4-9: “The CVFPP funding plan (included in the Draft CVFPP Investment Strategy TM) aligns the 2017 refined SSIA [State Systemwide Investment Approach] portfolio with appropriate funding mechanisms and implementation programs. The CVFPP funding plan also considers other influential factors affecting the timing of investments and provides a recommended approach to fully fund the 2017 refined SSIA portfolio. Actions needed at the local, State, and federal levels to support the fully funded 2017 refined SSIA portfolio are included in the recommended CVFPP funding plan.”
- Page 4-14: “The CVFPP investment strategy considers priorities, complexity and variety of management actions, availability and applicability of funding mechanisms, and other influential factors to optimize the timing of investments. The finance model varied these factors to analyze several possible investment scenarios. These influential factors included: historical expenditures, political sentiment, cost-share agreements, project benefits, project magnitude and scope, maintenance needs, and ability and willingness to pay.”
- Page 4-17: “To implement the CVFPP over the next 30 years, much larger contributions would be required from all entities. Figure 4-8 outlines recommended funding and phasing of funding for each cost share partner to support the CVFPP funding plan. The information is presented this way to demonstrate when funding mechanisms could be available and how much would be needed. The recommended CVFPP funding plan would take advantage of existing revenues sources and needed increases in revenue-generation capacity.”
- Page 4-22: “The responsibility of [the Flood Emergency Response] program is to prepare for floods, effectively respond to flood events, and support quick recovery when flooding occurs. This program will implement flood emergency response enhancements formulated in the CVFPP, including the provision of technical and funding assistance to local agencies to improve local flood emergency response. The State covers the cost of operation and administration of all of these programs under the ongoing investment category of State operations, planning, and performance tracking as described in Section 4.1.4 to the extent funding is available.”
- Page 4-29: “The flood management policy discussions in this update have included a brief introduction to each issue in Chapter 1, partner and stakeholder perspectives relative to these

issues in Chapter 2, strategies for addressing these issues in Chapter 3, and, finally, recommended actions addressing these issues presented here. By articulating these policy recommendations and the associated achievement strategies described in Chapter 3, the 2017 CVFPP Update provides broad guidance for an important shift in approach—one that will lead to more resilient and long-lasting flood risk management, and which can reconcile flood risk management with other economic, social, and environmental values. All flood management policy issues discussions under the following recommendations are structured to support the creation of work plans to collectively and consistently address these issues.”

- Page 4-40: “It is recommended that appropriations from the State general fund for Central Valley flood management increase from the \$40M currently expected to \$160M annually. General obligation bonds could be used to fund some of the more critical flood risk reduction projects, including the completion of the Yolo Bypass expansion. The CVFPP funding plan recommends pursuing flood management funding in three bond issues. The first issue of \$3 billion would be targeted for the 2020 election, the second issue of \$3 billion approximately a decade later, and the third issue of \$4.5 billion a decade after that. . . . DWR will provide the necessary annual budget information regarding flood system ongoing and capital investments to the California Department of Finance for incorporation into the California’s Five-year Infrastructure Plan, which compiles all infrastructure needs, including water, flood, transportation, and others, across the State. Incorporate infrastructure life-cycle analysis per California Executive Order B-30-15.”

Delta Stewardship Council October 12, 2015 Delta Levees Investment Strategy Council Work Session - Managing Flood Risk with a Delta Levees Investment Strategy Fact Sheet

<http://deltacouncil.ca.gov/docs/delta-stewardship-council-october-12-2015-delta-levees-investment-strategy-council-work-sessi-0>

- “The Delta Stewardship Council (Council) is tasked with developing and recommending priorities for State investments in the Delta levees to reduce flood risk to people, property, and State interests. State interests in the Delta include advancing the coequal goals of water supply reliability and restoring the Delta habitat in a manner that protects and enhances the Delta as an evolving place. The Council is developing a Delta Levees Investment Strategy (DLIS) to evaluate and guide future State investments to reduce both the likelihood and consequences of levee failures. This comprehensive, long-term strategy is based on a decision-making process that is fully transparent to stakeholders and the public. At the core of the DLIS is an analysis of flood risks in the Delta.”

October 2014 Frequently Asked Questions

http://deltacouncil.ca.gov/sites/default/files/2014/10/DLIS_FAQ_Final_10-31-14%28rev0%29.pdf

- “The Delta Reform Act of 2009 called on the Delta Stewardship Council to lead a multi-agency effort to establish priorities for State investments in the Delta levee system. The Council is collaborating with State agencies, local reclamation districts, Delta landowners, and many other involved stakeholders to prepare a Delta Levees Investment Strategy. . . . The Delta Levees Investment Strategy is an extensive, inclusive stakeholder research project that will identify State funding priorities and provide direction to assemble them into a comprehensive investment strategy for the Delta levees—based on the best available data, research, local knowledge, and lessons learned from other State and local programs and planning efforts. . . . Since the 1970s, the State has committed more than \$700 million to operate, maintain, and improve Delta levees and reduce risks in the Delta. However, the State does not have a longterm strategy to guide future investments, and funding is limited. . . . The Delta Levees Investment

Strategy will build on previous levee planning work and provide a long-term strategy for future State investments based on current conditions, information, and technologies. This strategy will use a comprehensive methodology that considers the Delta levee assets, threats and consequences, types of beneficiaries, costs, stakeholder input, and various risk-reduction measures. . . . The funding for the Delta Levees Investment Strategy is provided by Proposition 1E bond funds (2006). . . . Future funding for levee improvements and other risk-reduction strategies would likely come from a mix of sources, including the State and the landowners, businesses, and water users who benefit from the levees. The Delta Levees Investment Strategy will consider how costs should be allocated to the various beneficiaries. . . . This project will result in a report that outlines a suite of investments that best address the State's many goals and priorities. The strategy will recommend risk reduction actions for each island, tiered priorities for State investment, and a method for allocating costs to beneficiaries. Study results will include a computer-based tool that can be used in the future for investment planning as new information becomes available. The strategy will be submitted to the California Legislature. The Delta Stewardship Council will use these results to update its regulations and recommendations that guide risk reduction in the Delta."

State Investments in Delta Levees, Key Issues for Updating Priorities, January 2015

<http://deltacouncil.ca.gov/docs/august-12-2016-joint-meeting-delta-stewardship-council-and-central-valley-flood-protection-0>

- Page 13: "DWR guides many flood management activities across the State. Its broad view, engineering and environmental science skills, multiple programs, and size contribute to its role as the leading State flood management agency. For project levees, DWR develops and recommends the Central Valley Flood Protection Plan to the CVFPB. Pursuant to State law, on the Sacramento River DWR maintains at its expense many bypasses and a few levees of the State Plan of Flood Control, including in the Delta the west levee of the Yolo Bypass above Putah Creek and Putah Creek's levees (Water Code section 8361). For non-project levees DWR administers two key programs. The first is the Delta Levee Maintenance Subvention Program, which cost shares local agencies' maintenance of Delta levees (Water Code sections 12980 through 12995). The other is the Delta Levees Special Flood Control Projects Program which funds improvements to levees and levee-related wildlife and fish habitats that have discrete and identifiable public benefits, including the protection of public highways and roads, utility lines and conduits, and other public facilities, and the protection of urbanized areas, water quality, recreation, navigation, fish and wildlife habitats, and other public benefits (Water Code sections 12300-12314). In the past, DWR has prepared plans for the Delta levee system (DWR 1975; DWR 1982; DWR 1992; DWR 2011a). It recommends criteria for maintenance and improvement of non-project levees to the CVFPB (Water Code section 12984), and inspects completed projects funded through the Delta Levee Maintenance Subventions Program, reporting its findings to the CVFPB (Water Code section 12988)."

STATEMENT OF SERVICE

**CALIFORNIA WATERFIX PETITION HEARING
Department of Water Resources and U.S. Bureau of Reclamation (Petitioners)**

I hereby certify that I have this day submitted to the State Water Resources Control Board and caused a true and correct copy of the following document(s):

Motion for Protective Order

to be served **by Electronic Mail** (email) upon the parties listed in Table 1 of the **Current Service List** for the California WaterFix Petition Hearing, dated January 13, 2017, posted by the State Water Resources Control Board at

http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/service_list.shtml:

Note: In the event that any emails to any parties on the Current Service List are undeliverable, you must attempt to effectuate service using another method of service, if necessary, and submit another statement of service that describes any changes to the date and method of service for those parties.

For Petitioners Only:

I caused a true and correct hard copy of the document(s) to be served by the following method of service to Suzanne Womack & Sheldon Moore, Clifton Court, L.P., 3619 Land Park Drive, Sacramento, CA 95818: Method of Service: <u>U.S Postal</u>
--

I certify that the foregoing is true and correct and that this document was executed on March 10, 2017
Date

Signature: Bobbie Randhawa

Name: Bobbie Randhawa

Title: Legal Secretary

Party/Affiliation: DWR

Address: 1416 Ninth Street 1104
Sacramento, CA 95814