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7  
8 **BEFORE THE**  
9 **CALIFORNIA STATE WATER RESOURCES CONTROL BOARD**

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

**DEPARTMENT OF WATER**  
**RESOURCES' OPPOSITION TO**  
**SAVE THE CALIFORNIA DELTA**  
**ALLIANCE'S MOTION TO COMPEL**

16 The California Department of Water Resources ("DWR") opposes Save the  
17 California Delta Alliance's Motion to Compel. Granting Mr. Brodsky's motion would be  
18 clearly inappropriate as it circumvents the process under the California Environmental  
19 Quality Act ("CEQA").<sup>1</sup> The very nature of the public review period is to allow for public  
20 participation. No person or entity is prejudiced by this public process. If Northgate Resorts  
21 and/or Tower Park Resort<sup>2</sup> wishes to participate in the public process, it may do so. Thus  
22 Mr. Brodsky's motion is frivolous and unnecessary.

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25 <sup>1</sup> CEQA can be found at Public Resources Code, §21000, *et seq.* The Guidelines for the  
26 Implementation of CEQA can be found at Cal.Code Regs., tit. 14, §15000, *et seq.*; hereafter ("CEQA  
Guidelines").

27 <sup>2</sup> Mr. Brodsky does not identify whether his client is Northgate Resorts or Tower Park Resort or  
28 both. Thus, DWR is referring to both entities herein. DWR reserves the right to correct the record if  
necessary.

1 **Background**

2 On July 17, 2018 DWR issued its Draft Supplemental EIR/EIS for public review and  
3 comment. On August 6, 2018, Save the California Delta Alliance filed a Motion to Compel  
4 requesting the Board to direct DWR to meet with North Tower Resort and/or Tower Park  
5 Resort prior to the close of the public comment period for the Draft Supplemental EIR/EIS  
6 on September 17, 2018. The Board, as a lead agency under CEQA, is no stranger to the  
7 CEQA process. Notwithstanding, the scope of the water rights hearing is limited and does  
8 not include issues properly examined through the CEQA process, and the purpose of the  
9 CEQA comment period is “to allow the lead agency to identify, at the earliest possible time,  
10 the potential significant adverse effects of the project and alternatives and mitigation  
11 measures that would substantially reduce these effects.” (*Laurel Heights Improvement Assn.*  
12 *v. Regents of University of California*, 6 Cal.4th 1112, 1129.) A lead agency is required to  
13 “respond to comments received during the noticed comment period.” (Cal. Code Regs., tit.  
14 14, § 15088, subd. (a).)

15 Concurrently with this water rights hearing on the California WaterFix, CEQA  
16 litigation is also taking place over the approved project. (Sacramento County Superior  
17 Court Case No. JCCP 4942.) Save the California Delta Alliance is a party in both actions.

18 This Change Petition is an administrative hearing governed by Title 23 of the  
19 California Code of Regulations, section 647, *et seq*; Chapter 4.5 of the Administrative  
20 Procedure Act (commencing with 11400 of the Government Code); sections 801 to 805 of  
21 the Evidence Code; and section 11513 of the Government Code. (Cal. Code Regs., tit. 23,  
22 § 648, subd. (b).) Under this authority the Board may “refer a dispute in a proceeding  
23 before it to mediation or nonbinding arbitration to resolve any adjudicative issues pending  
24 before it.” (Cal Code Regs., tit.23, § 648.6.) The Board may also “issue subpoenas and  
25 subpoenas duces tecum” and “compel attendance, testimony, or the production of  
26 evidence. . . .” (Cal Code Regs., tit.23, § 649.6) Nowhere is the Board given the authority to  
27 order parties to meet to resolve matters under the purview of CEQA.

1 **Discussion**

2 Mr. Brodsky fails to provide any legal authority to support the Motion to Compel  
3 DWR to meet with Northgate Resorts and/or Tower Park Resort. That is because none  
4 exists. DWR is complying with CEQA's requirements to provide public review and  
5 comment on the Draft Supplemental EIR/EIS and has even extended the comment period  
6 beyond the 45-day comment period. (See CEQA Guidelines, §15163, subd. (c).)

7 Further, Mr. Brodsky seems to miss the point of the public process. If DWR were  
8 required to meet privately with Northgate Resorts and/or Tower Park Resorts, DWR would  
9 neither be required to respond publicly to Northgate Resorts and/or Tower Park Resorts'  
10 comments nor would Northgate Resorts and/or Tower Park Resorts' discussion with DWR  
11 be made part of the administrative record in any future CEQA litigation. Thus, Northgate  
12 Resorts and/or Tower Park Resort would be prejudiced by Mr. Brodsky's motion for this  
13 order as it would result in Northgate Resorts and/or Tower Park Resort not enjoying the  
14 rights given to it by participating in an open, public process.

15 As stated above, comments on the Draft Supplemental EIR/EIS are currently being  
16 accepted by DWR. As indicated by Mr. Bednarski's testimony on August 3, 2018, the  
17 appropriate process for consultation with a landowner on the Draft Supplemental EIR/EIS is  
18 through the public comment process, that being DWR receiving a comment and then  
19 responding to that comment as appropriate. (Draft Transcript August 3, 2018, 195:3-5,  
20 196:3-6, 196:20-23.) DWR would like to note that at of the time of this filing no comments  
21 have been received from Northgate Resorts and/or Tower Park Resorts on the Draft  
22 Supplemental EIR/EIS. Additionally, DWR has previously made revisions in response to  
23 public comment demonstrating DWR's commitment to the CEQA process. (Draft Transcript  
24 August 3, 2018, 195:6-9) As required under CEQA, DWR will be responding to all  
25 comments received during the public comment period on the Draft Supplemental EIR/EIS.  
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1 **Conclusion**

2 The comment period is still open for the Draft Supplemental EIR/EIS. Comments  
3 and responses to comments should be made through the legally-mandated public process -  
4 not through a demanded private meeting. There is no authority supporting such demand  
5 and - in reality, the public process provides more rights and opportunities under CEQA to  
6 members of the public. Save the California Delta Alliance is attempting to raise issues that  
7 are unnecessary, unripe, frivolous, and without merit in an effort to expand the scope of this  
8 Change Petition. As such, DWR respectfully requests that the Board deny Save the  
9 California Delta Alliance's Motion to Compel. Northgate Resorts and/or Tower Park  
10 Resorts would not be prejudiced by the Board's denial.

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13 Executed on this 8th day of August, 2018, in Sacramento, California.

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