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11 Attorneys for Non-Parties
12 CH2M Hill Engineers, Inc., Chandra Chilmakuri and
13 Kyle Winslow

14 BEFORE THE
15 CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

16 ENFORCEMENT ACTION ENF01949 –
17 DRAFT CEASE AND DESIST ORDER
18 REGARDING UNAUTHORIZED OR
19 THREATENED UNAUTHORIZED
20 DIVERSIONS OF WATER FROM OLD RIVER
21 IN SAN JOAQUIN

22 In the Matter of ENFORCEMENT ACTION
23 ENF01951 - ADMINISTRATIVE CIVIL
24 LIABILITY COMPLAINT REGARDING
25 UNAUTHORIZED DIVERSION OF WATER
26 FROM THE INTAKE CHANNEL TO THE
27 BANKS PUMPING PLANT (FORMERLY
28 ITALIAN SLOUGH) IN CONTRA COSTA
COUNTY

SWRCB Enforcement Action ENF01951
and ENF01949

NON-PARTIES CH2M HILL
ENGINEERS, INC., CHANDRA
CHILMAKURI AND KYLE
WINSLOW'S RESPONSE TO BBID'S
OPPOSITION TO STATE WATER
CONTRACTORS' MOTION TO QUASH
SUBPOENA DUCES TECUM OR,
ALTERNATIVELY, MOTION FOR A
PROTECTIVE ORDER

23 Non-parties CH2M Hill Engineers, Inc. ("CHE"), Chandra Chilmakuri and Kyle Winslow
24 (collectively, "CHE Parties") hereby submit this response to the pleading submitted yesterday by
25 Byron-Bethany Irrigation District ("BBID") entitled "Opposition" to State Water Contractors'
26 ("SWC") motion to quash the subpoena served by BBID upon CH2M Hill ("CH2M Hill

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4837-8596-9967.3

1 Subpoena”) or, alternatively, motion for protective order (“March 10 Filing”).

2 The State Water Resources Control Board (“Board”) issued a ruling on March 9, 2016 in
3 which it vacated the aforesaid CH2M Hill Subpoena, as well as subpoenas issued to Mr.
4 Chilmakuri and Mr. Winslow, in their entirety (“March 9 Ruling”). BBID has now interposed its
5 March 10 Filing, ostensibly in opposition to SWC’s motion to quash the CH2M Hill Subpoena,
6 notwithstanding that the Board has already vacated *all* of the subpoenas. Thus, for the reasons set
7 forth below, BBID’s March 10 Filing should be discounted outright.

9 BBID issued deposition notices and subpoenas duces tecum to Chandra Chilmakuri and
10 Kyle Winslow, as agents for CH2M Hill. (*See* Exhibits 1 and 2 to the Declaration of Yasmin
11 Coffey in support of CHE Parties’ Motion to Quash Subpoenas, filed on March 4, 2016 (“CHE
12 Parties Motion”).) BBID also issued a subpoena duces tecum to the Custodian of Records for
13 CH2M Hill. (CHE Parties Motion, Exhibit 3.) (The aforesaid subpoenas to Chilmakuri, Winslow
14 and CH2M Hill are hereinafter collectively referred to as the “Subpoenas.”) On March 2, 2016,
15 SWC moved to quash the subpoenas issued to Messrs. Chilmakuri and Winslow (“SWC
16 Motion”). (*See* SWC Motion, pp. 1:1-8 and 2:21-23.) On March 4, 2016, the CHE Parties moved
17 to quash all of the Subpoenas on the grounds that they are overbroad and unduly burdensome and
18 seek information that is irrelevant and not reasonably calculated to lead to the discovery of
19 admissible evidence; the information sought is protected by the attorney work product doctrine;
20 and the subpoenas contain a number of procedural defects. (*See* CHE Parties Motion, 2:3-18.) On
21 March 8, 2016, BBID served a “consolidated” opposition to both SWC’s and the CHE Parties’
22 Motions (“BBID Opposition”). (BBID Opposition, 8:4-9.) Thereafter, the Board issued its March
23 9 Ruling, vacating the Subpoenas in their entirety. (*See* March 9 Ruling, p. 2.)

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1 On March 10, 2016, one day *after* the March 9 Ruling was entered, BBID inexplicably
2 submitted its March 10 Filing, which contains arguments that have already been evaluated and
3 ruled upon by the Board.¹ Indeed, BBID seeks the production of documents pursuant to the
4 vacated CH2M Hill Subpoena on the alleged grounds that, *inter alia*, SWC purportedly will not
5 be burdened or prejudiced by CH2M Hill’s production of documents. (*See* March 10 Filing, 2:8-
6 11, 2:25-27, 7:6-12 and Exhibit C.) BBID apparently misconstrues the March 9 Ruling as solely
7 “prohibiting additional depositions before the hearing [because] questioning could be conducted
8 through cross-examination.” (March 10 Filing, 2:12-14.) BBID asserts that, “[a]s such, it is
9 critical for BBID to receive the CH2M Hill documents in order to be reasonably and adequately
10 prepared to cross-examine SWC’s expert Hutton at the March 21, 2016 hearing.” (*Id.*, 2:14-16.)
11 In advancing these arguments, BBID disingenuously alleges that the CHE Parties did not oppose
12 the CH2M Hill Subpoena (*id.* at 8:3-5.) This is demonstrably not the case. The CHE Parties
13 Motion, which was granted by the Board, is explicitly directed at *all* of the Subpoenas. (CHE
14 Motion, 2:3-18.) Contrary to the assertions made in BBID’s March 10 Filing, the Board vacated
15 the Subpoenas issued to Messrs. Chilmakuri and Winslow *and CH2M Hill* based in part on the
16 burden to CH2M Hill to produce the requested documents. In this regard, the March 9 Ruling
17 provides, in relevant part:

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21 **The requests for documents are also broad enough that**
22 **significant time and [expenses] will be required to gather,**
23 **review, and produce the responsive documents. The burden on**
24 **all of the parties and non-parties of responding to discovery at**
25 **this point in the proceedings and on such short deadlines is**
26 **substantial.** The time and cost to conduct discovery will impact
27 the parties’ ability to prepare for the hearing, and it is likely that
28 we would be unable to address any new discovery or evidentiary

26 ¹ It is unclear why BBID would serve and file its March 10 Filing notwithstanding the March 9
27 Ruling. We contacted counsel for BBID to determine whether BBID’s papers were filed
28 erroneously. As of the filing of this response, counsel has not returned our call.

1 disputes before the hearing begins. There is also a serious risk of
2 prejudicing the parties if we were to re-open the deadline for
3 submission of evidence at this late date. A less burdensome and
4 less costly means of obtaining relevant information is by cross-
5 examination of Mr. Hutton and Mr. Marshall at the time scheduled
6 for this purpose during the hearing. The parties will have the
7 opportunity to question both witnesses and examine the bases for
8 their testimony.

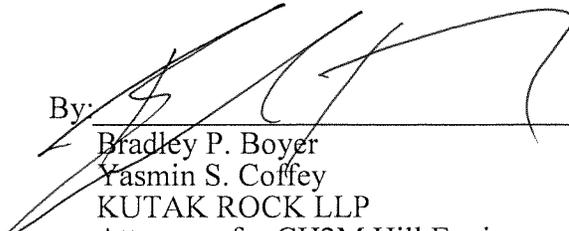
9 The opposing parties object that cross-examination is not a
10 sufficient opportunity to explore the underlying assumptions of the
11 model runs on which Mr. Hutton and Mr. Marshall rely in their
12 testimony. These model runs were not disclosed in these
13 proceedings...until the submission of rebuttal evidence...[W]e find
14 that the appropriate remedy is to discount the weight of this
15 evidence if we find that these model runs cannot be sufficiently
16 explored and understood through cross-examination. **The same is
17 true of the Technical Report prepared by CH2M Hill.** If State
18 Water Contractors is unable to lay a proper foundation to
19 demonstrate the reliability of the information contained in the
20 Technical Report, then we will discount the weight of this
21 evidence accordingly, as well as any portion of Mr. Hutton's
22 testimony that relies upon it.

23 (March 9 Ruling, p. 2 [emphasis added].)

24 Based on the foregoing, BBID's March 10 Filing should be disregarded and the vacatur of
25 the CH2M Hill Subpoena should stand. To the extent BBID's March 10 Filing is meant to be a
26 request for reconsideration of the Board's March 9 Ruling, the CHE Parties object as any such
27 request is palpably improper.

28 Dated: March 11, 2016

KUTAK ROCK LLP

By: 

Bradley P. Boyer
Yasmin S. Coffey
KUTAK ROCK LLP
Attorneys for CH2M Hill Engineers, Inc.,
Chandra Chilmakuri and Kyle Winslow

1 **PROOF OF SERVICE**

2 I am a resident of the state of California, I am over the age of 18 years, and I am not a party
3 to this lawsuit. My business address is 777 S. Figueroa Street, Suite 4550, Los Angeles, California,
90017.

4 On March 11, 2016, I served on the State Water Resources Control Board and all parties
5 attached and below, an electronic copy,-of the following document(s):

6 **NON-PARTIES CH2M HILL ENGINEERS, INC., CHANDRA CHILMAKURI AND KYLE**
7 **WINSLOW'S RESPONSE TO BBID'S OPPOSITION TO STATE WATER**
8 **CONTRACTORS' MOTION TO QUASH SUBPOENA DUCES TECUM OR,**
9 **ALTERNATIVELY, MOTION FOR A PROTECTIVE ORDER**

10 on the interested party(ies) in this action in the following manner:

11 **BY E-MAIL:** On March 11, 2016, at Los Angeles, California, I caused the foregoing document(s)
12 to be served by e-mail transmission to the e-mail address(es) set forth below, as last given by that
13 person on any document which he or she has filed in the cause and served on the party making the
14 service. The document(s) was(were) transmitted by e-mail from a computer in the offices of Kutak
15 Rock, LLP. The e-mail transmission(s) was(were) reported as delivered to the party(ies) at the
16 indicated e-mail address(es), and no undeliverable message from the recipient's server was received
17 by the sender of the e-mail.

18 **SEE ATTACHED SERVICE LIST**

19 I declare under penalty of perjury under the laws of the State of California that the foregoing is true
20 and correct. Executed on March 11, 2016, at Los Angeles, California.

21 
22 _____
23 Virginia L. Gomez
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**SERVICE LIST OF PARTICIPANTS
THE WEST SIDE IRRIGATION DISTRICT
CEASE AND DESIST ORDER HEARING**

PARTIES

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